

(1985) 10 GUJ CK 0027
In the Gujarat High Court
Case No : Estate Duty Reference No. 4 of 1977

Nandkishore Sakarlal

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 03-10-1985

Acts Referred:

Estate Duty Act, 1953 — Section 9(2)

Citation : (1987) 163 ITR 199

Hon'ble Judges : B.S. Kapadia, J;A.M. Ahmadi, J

Bench : Division Bench

Advocate : H.M. Talati, for the Appellant; B.R. Shah, for the Respondent

Judgement

Ahmadi, J.—Champaben Sakarlal passed away on September 19, 1973. Thereupon, the accountable person filed estate duty account in respect of the estate of the deceased on March 30, 1974. In the course of the assessment proceedings, exemption was claimed in respect of Rs. 10,000 out of the total gifts of Rs. 57,975 made by the deceased relying on sub-section (2) of section 9 of the Estate Duty Act. Section 9(1) provides that property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise which shall not have been bona fide made two years or more before the death of the deceased shall be deemed to pass on the death provided that in the case of gifts made for public charitable purposes, the period shall be six months. Sub-section (2) of section 9 on which reliance is placed reads as under :

"9(2). The provisions of sub-section (1) shall not apply to -

(a) gifts made in consideration of marriage, subject to a maximum of rupees ten thousand in value;

(b) gifts which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, subject to a maximum of rupees ten

thousand in value."

2. The case of the accountable person is that by way of normal expenditure, the deceased gifted away a total sum of Rs. 57,975 between February 3, 1972, and December 28, 1972, and hence he is entitled to exemption of Rs. 10,000, the maximum permitted by sub-section (2) of section 9 of the Act. In order to bring his case within the ambit of clause (b) of sub-section (2) of section 9, the accountable person put up the contention that the deceased used to make gifts regularly in favour of relatives on every Makar Sankranti (Uttarayan) day, that is, January 14 of every year. On the basis of this statement, the accountable person claimed that the expenditure incurred by way of gifts by the deceased was "normal expenditure" within the meaning of clause (b) of sub-section (2) of section 9 of the Act.

3. In order to succeed, the accountable person must be shown to have established the fact that the deceased made gifts in favour of her relatives on every Makar Sankranti Day. Unless this fact is shown to have been established, the very premise on which exemption is claimed u/s 9(2)(b) of the Act would stand knocked out. In the instant case, in the statement of case submitted to this court, the Tribunal has stated the facts in the following words :

"The Tribunal observed that none of the aforesaid gifts was made on Makar Sankranti or Uttarayan Day, i.e., January 14. There was also nothing on record to indicate that the gifts were made on any festive occasion as contended on behalf of the accountable person. The Tribunal further observed that there was no evidence on record to prove that the gifts were part of the normal expenditure of the deceased."

4. In other words, the Tribunal found as a fact that the accountable person had failed to show that the deceased made gifts in favour of her relatives on every Uttarayan Day. This finding of fact has not been challenged as perverse and no question in that behalf was sought or is referred to us. Since the fun fundamental question of fact was not proved, the Tribunal was justified in reaching the conclusion that the accountable person had failed to bring his case within the ambit of section 9(2)(b) of the Act.

5. Two questions have been referred for our opinion. They read as under :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that gifts to the extent of Rs. 10,000 out of the total gifts of Rs. 57,975 made by the deceased were not excludible under clause (b) of sub-section (2) of section 9 of the Estate Duty Act ?

(2) Whether, on the facts and in the circumstances of the case, the estate duty payable by the accountable person is an admissible deduction while computing the principal value of the estate of the deceased ?"

6. So far as the first question is concerned, since the foundational fact on the basis of which exemption under clause (b) of sub-section (2) of section 9 of the

Act is claimed is not firmly established, we think the Tribunal was justified in refusing the exemption. We must, therefore, answer the first question in the affirmative, that is, in favour of the Revenue and against the assessee.

7. So far as the second question is concerned, it is covered by this court's decision in *Shantaben Narottamdas (A.P. of Late Narottamdas K. Shah) Vs. Controller of Estate Duty, Gujarat*, . We must, therefore, answer the second question in the negative, that is, in favour of the Revenue and against the assessee.

8. Mr. Talati states that the point covered by question No. 2 is pending before the Supreme Court in a matter carried from the decision of the Andhra Pradesh High Court. It would be open to the accountable person to move the authorities if the Supreme Court takes a view different from the view taken by this court in *Shantaben Narottamdas (A.P. of Late Narottamdas K. Shah) Vs. Controller of Estate Duty, Gujarat*, .

9. The reference stands disposed of accordingly with no order as to costs.