
(1974) 09 MAD CK 0028

In the Madras High Court

Case No : Tax Case No. 292 of 1968 (Reference No. 91 of 1968)

Radhabai Ramchand

APPELLANT

Vs

Controller Of Estate Duty, Madras

RESPONDENT

Date of Decision : 27-09-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 30
Estate Duty Act, 1953 — Section 10, 2(15), 48, 64(1), 64(6)
Transfer of Property Act, 1882 — Section 130

Citation : (1975) 98 ITR 660

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Judgement

Ramanujam, J.—One Ramchand Khoobchand died on July 28, 1963. His wife, Radhabai Ramchand, is the accountable person. In the estate duty proceedings that followed the death of Ramchand Khoobchand, the Assistant Controller of Estate Duty included the amount of Rs. 85,000 in the principal value of his estate under the provisions of section 10 of the Estate Duty Act on the ground that the amount had been gifted by the deceased to his sons who had invested the same in the partnership concern known as Messrs. Seth Bhikchand Ramchand, Madras, in which the deceased was a partner and that the deceased was not excluded from the possession and enjoyment of the amount. According to the Assistant Controller, the deceased gifted the following amounts to his sons, who invested the same in the firm in which the deceased was a partner, but the donee did not enjoy the amounts gifted to them to the entire exclusion of the deceased and, therefore, section 10 of the Estate Duty Act is applicable.

Rs.

(1)

Gift to Mukesh Ramchand

20,000

(2)

Gift to Prakash Ramchand

15,000

(3)

Gift to Manohar Ramchand

25,000

(4)

Gift to Vashdev Ramchand

25,000

85,000

The accountable person preferred an appeal before the Appellate Controller contending that the amounts gifted had been withdrawn by the donees as soon as the gifts were made and they had only been subsequently invested in the firm as their funds, that, therefore, the donees should be taken to have been in possession and enjoyment of the amounts to the entire exclusion of the deceased, and that the case was covered by the decision of the Assam High Court in *Controller of Estate duty v. Birendrakumar Sen*. The Appellate Controller, however, rejected the said contentions and held that as the partnership in which the deceased was a partner was in possession and enjoyment of the amounts which were gifted by the deceased, it has to be held that the deceased was not entirely excluded from possession and enjoyment of the amounts. In that view he affirmed the order of the Assistant Controller.

2. There was a further appeal before the Appellate Tribunal. Before the Tribunal it was first contended that section 10 deals with only movable properties and that gifts of cash withdrawn and invested in a firm in which the deceased was a partner would not come within the purview of that section. It was also contended that the partner and the partnership being two different entities, from the mere investment of the gifted amount in the partnership in which the deceased was partners, it cannot be said that the deceased was to be excluded from possession of the amounts. On these two contentions the Tribunal held :

(1) that the words "property" used in section 10 of the Act was wide enough to include movable property and cash in view of the definition given in section 2(15) of the Estate Duty Act;

(2) that the principle laid down in *Chicks* case clearly applied to the facts of this case; and

(3) that, therefore, the value of the amounts gifted by the deceased was includible in the value of the estate of the deceased inasmuch as the deceased

has not been entirely excluded from possession and enjoyment of the properties gifted by him.

In this view the Tribunal dismissed the appeal filed by the accountable person. At her instance the following question has been referred to this court for opinion :

Whether, on the facts and in the circumstances of the case, the sum of Rs. 85,000 or any part thereof being the amount gifted by the deceased to his four sons was liable to be included in the principal value of the estate of the deceased under the provisions of section 10 of the Estate Duty Act ?

The detail of gifts made by the deceased to his sons aggregating to Rs. 85,000 are as under :

Rs.

1.

Sri Mukesh Ramchand

1-4-1955

15,000

1-4-1959

5,000

20,000

2.

Sri Manohar Ramchand

1-4-1955

15,000

1-4-1958

5,000

1-4-1959

5,000

25,000

3.

Sri Vashdev Ramchand

1-4-1955

15,000

1-4-1958

5,000

1-4-1959

5,000

25,000

4.

Sri Prakash Ramchand

1-4-1955

15,000

From the details set out above, it is seen that the deceased gifted amounts of Rs. 15,000 each to his four sons on April 1, 1955, Rs. 5,000 each to his two sons, Manohar Ramchand and Vashdev Ramchand, on April 1, 1958, and Rs. 5,000 each to three of his sons, Mukesh, Manohar and Vashdev, on April 1, 1959. It has been found by the tribunal that the amounts gifted on April 1, 1955, were invested by the donees in proprietary concern, Seth Ramdas Sangatdas. Later, they were withdrawn and invested in the firm of M/s. Seth Bhikchand Ramchand in which the deceased was a partner. The sum of Rs. 10,000 gifted on April 1, 1958, to two of his sons and the sum of Rs. 15,000 April 1, 1959, are said to have been transferred straight away to their in the firm of Seth Bhikchand Ramchand. On these facts the question consideration is whether section 10 of the Estate Duty Act stood attracted.

3. As already stated, out of the total amount of Rs. 85,000 gifted a sum of Rs. 60,000 was gifted in cash by the deceased and they were invested in the first instance with a third party, but later on brought into the firm in which the deceased was a partner. As regards the balance of Rs. 25,000 it is not in dispute that the amounts gifted continued with the firm in which the deceased was a partner though to the credit of the donees. The learned counsel for the accountable person, therefore, sought to treat the two amounts as distinct and separate and submitted his arguments on that basis. According to the learned counsel the sum of Rs. 60,000 has been gifted by the deceased in cash to his four sons which they have, after taking possession, invested originally with a third party and later on in the partnership firm in which the deceased was a partner, that such investment of funds by the donees in the partnership was only as creditors of the firm and that though the partnership had the use of these funds in its capacity as a borrower it was not entitled to the same. It was also contended by the learned counsel that the partnership-firm being different from the partners the use of the money by the partnership cannot be treated as an user by the partner and that, therefore, the possession and enjoyment of the money by the partnership cannot be equated to the possession and enjoyment by the partners so that, it could be said that the deceased partner was not excluded from possession and enjoyment of the money. According to him the amounts

given to a firm cannot be said to have been given to a partners and, therefore, the possession and enjoyment of the amounts by the firm as a debtor is not of any consequence, and the mere fact that the deceased happened to be a partner of the firm is not sufficient to attract section 10 of the Estate Duty Act. Thus the basis of the submission made by the learned counsel for the accountable person is that a firm is different from a partner and the firms possession of the gifted amounts is not the possession by a partner. If this assumption were to be correct, then the learned counsel will be right in his submission that the investment of the amounts in the partnership of which the deceased was a partner cannot be taken advantage of by the revenue to invoke section 10 of the Estate Duty Act on the ground that the donees had not been in possession and enjoyment of the gifted amounts to the exclusion of the donor, the deceased. We have to, therefore, find out as to what is the exact relationship between the partners and the firm.

4. Lindley on Partnership, 12th edition, at page 28, says :

... speaking generally, the firm as such has no legal recognition. The law, ignoring the firm, looks to the partners composing it; any change amongst them destroys the identity of the firm; what is called the property of the firm is their property, and what are called the debts and liabilities of the firm are their debts and their liabilities. In point of law, a partner may be the debtor or the creditor of his co-partners, but he cannot be either debtor or creditor of the firm of which he is himself a member, nor can he be employed by his firm, for a man cannot be his own employer.

In *Dulichand Laxminarayan v. Commissioner of Income Tax* the Supreme Court has stated :

It is clear from the foregoing discussion that the law, English as well as Indian, has for some specific purposes, some of which are referred to above, relaxed its rigid notions and extends a limited personality to a firm. Nevertheless, the general concept of partnership firmly established in both systems of law, still is that a firm is not an entity or person in law but is merely an association of individuals and a firm name is only a collective name of those individual who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership.

Their Lordships referred with approval to the decision of the Privy Council in *Bhagwanji Morarji Goculdas v. Alembic Chemical Works Co. Ltd.*, where it has been laid down that the Indian law has not given legal personality to a firm apart from the partners. In *Addanki Narayanappa v. Bhaskara Krishnappa* the court has observed :

No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense a partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partners

can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in clause (a) and sub-clauses (i), (ii) and (iii) of clauses (b) of section 48.

In *R. M. Chidambaram Pillai v. Commissioner of Income Tax* the court pointed out that :

Notwithstanding the fact that a firm like an association of persons is for the purposes of assessment treated as a separate entity, it is not a legal person having a corporate character distinct from that of its members. A firm is but a compendious expression of the relationship between the partners, who, by an agreement between them, embark on a commercial venture and contribute capital or labour and share profits and loss according to mutual understanding. In mercantile practice the trade seems to look upon the firm as a kind of a body distinct from its members and capable in its right of owning property and entering into dealings and creating rights and liability binding on the partners. But in law that clearly is not the position.

From the statement of the law contained in the above decisions, it is clear that the property of a firm vests in all the partners and possession by the firm is possession by all the partner.

5. The learned counsel for the accountable person would contend that as the donees who have invested the amounts in the partnership have the undoubted right to get back the amounts whenever they want just like any other creditor, the partnership cannot be said to have any possession and enjoyment of the amount as owner. The question of ownership the scope of section 10 of the Estate Duty Act. Section 10 excluding the provision is set out here under :

Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that bona fide possession and enjoyment of it was not immediately assumed by the donee and there forward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise.

As per the above provisions the property taken under a gift shall be deemed to pass on the donor's death : (1) if bona fide possession and enjoyment of it was not immediately assumed by the donee, and (2) if the donee did not retain possession to the entire exclusion of the donor or of any benefit to him by contract or otherwise. Therefore, the section will stand attracted if it is shown that the donee did not take bona fide possession and enjoyment immediately or that the donee after taking such possession did not retain the same to the entire exclusion of the donor or of any benefit to him. The applicability of section 10 cannot be avoided merely by showing that the donee has assumed and enjoyment of the property gifted without proof that the donee retained possession of the same to the entire exclusion of the donor or of any benefit to

him. Only when it is shown that the donee has taken bona fide immediate possession and enjoyment of the property gifted and continued to possess and enjoy the same to the exclusion of the donor or of any benefit to him till the donors lifetime, section 10 would stand unattached in relation to the properties gifted.

6. The scope of section 10 came to be considered by the Supreme Court in *George Da Costa v. Controller of Estate Duty*. It was pointed out in that case that the crux section 10 of the Estate Duty Act lied in two parts : (1) the donee must bona fide have assumed possession and enjoyment of the property which is the subject-matter of the gift to the exclusion of the donor immediately upon the gift, and (2) the donee must have retained such possession and enjoyment of the property to the entire exclusion of the donor or of any benefit to him by contract or otherwise, that both theses conditions are cumulative and that unless each of these conditions is satisfied the property would be liable to estate duty u/s 10 of the Act. It was further pointed out that the words "by contract or otherwise" in the second limb of the section cannot control the words "to the entire exclusion of the donor" in the first limb and that the first limb may be infringed if the donor occupies and enjoys the property or its income though he has no rights to do so which he could legally enforce against the donees and that it is not necessary that the possession of the donor must be referable to some contractual or other arrangement enforceable in law in the equity. This court in *Controller of Estate Duty v. C. R. Ramachandra Gounder*, after consideration the said decision of the Supreme Court, explained the purport of section 10 thus :

It is in two parts, the first providing that to the extent of non-exclusion of the donor from possession and enjoyment of the subject-matter of the gift, the property shall be deemed to pass on the donors death. The second covers benefit secured or available to the donor by contract or otherwise in respect of the whole or any part of the subject-matter of the gifts and to the extent of such benefit the property gifted shall be deemed to pass.

Having considering the scope of section 10, let us not consider as to whether the donees in this case have assumed bona filed possession and enjoyment of the same to the exclusion of the donor or of any benefit to him. So far as the sum of Rs. 60,000 is concerned, admittedly the donees were recipients of the cash gifts from the deceased and the amounts were invested by them with a third party. Therefore, the donees should be taken to have assumed possession and enjoyment of the gifted amounts immediately after the gifts are made. It is not the case of the revenue that any benefit has been created in favour of the donor by contract or otherwise. Therefore, the only question is whether the donees continued to retain possession and enjoyment of the gifted amounts to the entire exclusion of the donor.

7. As already pointed out, though the amounts gifted were invested at the first instance with a third party for some time, later they came to be invested in the firm of which the deceased was a partners. Can it be said that the deceased has

been excluded from possession and enjoyment of the movies ?

8. The learned counsel for the accountable person relies on the decisions in *Controller of Estate Duty v. Jai Gopal Mehra* in support of his submission that the amounts invested in the partnership in which the donor was a partner continued to be possessed and enjoyed by the donee to the exclusion of the donor, and, therefore, section 10 has no application to such a case. In that case a Full Bench of the Punjab and Haryana High Court distinguished the decision in *Controller of Estate Duty v. Arunachalam Chettiar and Smt. Cherukuri Eswaramma v. Controller of Estate Duty* and held that the person depositing the money in a firm does not lose his ownership of money deposited, that his case cannot be treated on par with the capital contributed by a partner to the firm for the purposes of carrying on its business, that the deposit of money carries with it the liability of the firm to repay the same to the depositor and that no partner has the right unless authorised by the depositor to receive the amount or its interest or usufruct on his behalf. In that case the deceased had made gifts of Rs. 20,000 to each of his sons and his four daughters-in-law and the donees had invested the said amounts in the firm in which the deceased was a partner. The court held that, notwithstanding the investment of the amounts in the firm in which the deceased was a partner, the exclusion of the deceased from the gifted amounts was completed, and, therefore, section 10 cannot have any application. The reasoning of the full bench is this :

The firm as a firm is a separate unit of business under the Income Tax Act, apart from its partners who are also units of assessment as individuals. Similarly, a firm is liable as a unit to pay profession tax which is also payable by the partners. For certain purposes, therefore, the firm as such is an entity apart from its partners and when a depositor lends to or invests money in a firm, he does not pass it on to the partners of the firm nor do the partners of the firm become his debtors. He cannot, at his sweet will, recover the amounts from any one of the partners. If he has to recover the amount deposited by him, he has to make a demand on the firm and in case he is not paid, the suit has to be brought against the firm. Under the Indian law, as embodied in Order 30 of the Code of Civil Procedure, a firm can sue and be sued in the firm named and it is not necessary that the partners should be made parties to such a suit. In view of this state of the law, we are of the opinion that the donees in this case retained the gifted amounts with themselves to the entire exclusion of Shri Jaishi Ram even when they invested the amounts in the firms in which he was a partner.

The Full Bench specifically overruled an earlier decision of the same court in *Controller of Estate Duty v. Ronaq Ram Bakshi Ram Gupta*. The Full Bench decision of the Allahabad High Court in *Controller of Estate Duty v. Thanwar Dass* is also to the same effect. In that case a person made a gift by adjustment entire in the books of account of a firm in which he was a partner and the money so gifted was not withdrawn by the donee but was allowed to remain with the firm. The Full Bench held that notwithstanding the retention of the money by the

firm the donor must be deemed to have excluded himself from possession of the gifted property for the purposes of section 10 and that any benefit which the donor derived out of the movies as a partner in the firm which held the movies arose from the agreement of partnership and not from any agreement referable to the gift. The Full Bench, relying on two earlier decisions of the Supreme Court in *Controller of Estate Duty v. C. R. Ramchandra Gounder* and *Commissioner of Income Tax v. N. R. Ramarathnam*, held that once there is a transfer of the amount to the accounts of the donees it becomes a debt due to them and that even though the donor had benefit of the movies invested in the firm, it cannot be said that there has been no non-exclusion of the donor.

9. The learned counsel for the revenue on the other hand relies on the decision of the Gujarat High Court in *Sakarlal Chunilal v. Controller of invested by the donees in the firm in the firm in which the donor was a partner*, the donor cannot be said to have been excluded from possession and enjoyment of the movies. In that case the deceased had gifted certain amounts to his two sons by debiting the aggregate amount in the accounts of the firm and crediting the sums separately in the account of the two sons. The question was whether the amounts gifted are eligible to estate duty in view of section 10. The court held that the amounts having been gifted outright by the deceased in favour of the donees without any reservation or qualification, by the subsequent deposit of the amount having been gifted out sight by deceased in favour of the donees without any reservation or qualification, by the subsequent deposit of the amounts with the firm in which the deceased was a partner, all the partners including the deceased partner had obtained possession and enjoyment of those amounts, that as such the deceased cannot be said to have been excluded from enjoyment of the money gifted and that, therefore, the gifts must come within the mischief of section 10. According to the learned judges in that case in determining the applicability of section 10 the question is as to what is the subject-matter of the gift, for the exclusion of the donor required by the section is from the subject-matter of the gift. If the gift is of a property, shorn of certain of the rights which appertain to complete ownership, the donor cannot, merely because he remains in possession and enjoyment of those rights, be said within the meaning of the section not to be excluded from possession and enjoyment of that which he has given, that it is not enough for the revenue to say that the donor is in possession and enjoyment of certain rights in the property. If certain rights are not included in the gift, but the property is gifted subject to those rights, the possession and enjoyment of those rights by the donor does not militate against the entire exclusion of the donor from possession and enjoyment of that which is gifted. What is required to be seen in such a case is whether the donor is excluded from possession and enjoyment of the property minus those rights of subject to those rights because that constitutes the subject-matter of the gift. The learned judges also expressed the view that where any property is in possession and enjoyment of firm, it is in the possession and enjoyment of the partners and each of them and where the deceased is a partner in the firm, he would be equally in

possession and enjoyment of the property and that possession and enjoyment required by section 10 to be assumed and retained by the donee to the entire exclusion of the donor is of the property gifted. This decision also takes note of the decision of the Supreme court in *Controller of Estate Duty v. C. R. Ramachandra Gounder*, which has been taken as the basis of the judgment of the Full Bench in *Controller of Estate Duty v. Thanwar Dass*.

10. The facts in *Controller of Estate Duty v. C. R. Ramachandra Gounder* were as follows :

The deceased who was a partner in a firm owned a house property let to the firm as tenant-at-will. In August, 1953, the deceased executed a deed of settlement under which he transferred the property let to the firm to his two sons absolutely and, thereafter, the firm paid the rent to the donee by crediting the amount in their accounts in equal shares. The deceased also directed the firm to transfer from his account a sum of Rs. 20,000 to the credit of each of his five sons in the books of account of the firm with effect from 1st April, 1953, and he also informed them of this transfer. The firm accordingly transferred a sum of Rs. 20,000 to each of the five sons by debiting a sum of Rs. 1,00,000 to the account of the father and crediting a sum of Rs. 20,000 in the account of each of the five sons in its books of account. The sons did not withdraw any amount from their accounts in the firm and the amounts remained invested with the firm for which interest at 7 1/2% per annum was paid to them by the firm. The deceased continued to be a partners in the firm up to 13th April, 1957, when the firm was dissolved and, thereafter, he died on 5th May, 1957. The question arose as to whether the value of the house property and the sum of Rs. 1,00,000 gifted by the deceased were includible in the principal value of the estate. The revenue claimed that since the deceased as a partner in the firm was in possession and enjoyment of these two properties, the possession and enjoyment of these two properties could not be said to have been assumed and retained by the donees to the entire exclusion of the deceased and, therefore, they fall within the mischief of section 10. The Supreme Court, however, rejected this claim of the revenue on the ground that in respect of each of the properties the deceased had given such possession as the circumstances and the nature of the property admitted and the benefit which the donor had from the two properties as a member of the partnership was not a benefit referable in any way to the gift, and, therefore, it was not possible to say that the deceased was not entirely excluded from possession and enjoyment of the two properties gifted by him. It was found that even on the date of gift the house property had been let out to the firm, and, therefore, the gift of the house property was subject to the tenancy of the firm and hence the enjoyment of the house by the deceased by virtue of the tenancy of the firm did not detract from the entire exclusion of the deceased from the property. Thus, the Supreme Court treated the gift of the house property as being subject to the tenancy of the firm. But, as regards the sum of Rs. 1,00,000, the court found that the sum was laying earlier with the firm to the credit of the deceased, that the firm was entitled to make use of it for

the purpose of the partnership business, that the deceased as a partner was not entitled to withdraw the amount standing to his credit without the consent of the other partners, and that, therefore, when he transferred the sum of Rs. 1,00,000 belonging to him to his sons it was only subject to the right of the firm to use it for the purpose of the partnership and, therefore, the gifts of the amount should be taken to be subject to the right of the firm to use it and that merely because the firm and the deceased enjoyed from possession and enjoyment of that which was gifted any him. The Supreme Court, therefore, equated the case with the case in *H. R. Munro v. Commissioner of Stamp Duties*. In our view the principle of Munros case has no application to the sum of Rs. 60,000 which are cash gifts given by the deceased to his four sons which were invested at the first instance with a third party and later on brought in and invested in the firm in which the deceased was a partner. There was no question of the gifts being subjected to any pre-existing right. In such cases the principle laid down in *Clifford John Chick v. Commissioner of Stamp Duties* stands attracted.

In Chicks case under a partnership agreement the donor as one of the partners was in possession and enjoyment of the property gifted so long as the partnership subsisted till the donors death. On these facts it was held that the entire value of the property gifted was includible in the estate of the father. As the donor in this case was in possession and enjoyment of the money gifts, as partner of the firm in which the sum was invested, there was no non-exclusion of the donor and, as such, section 10 will stand attracted. The principle in Chicks case has been followed in *Commissioner of Stamp Duties v. Owens*. In Owens case, two properties belonging to the father were invested in partnership by the father and son. The father gifted one property to the son during the continuance of the partnership and the son was free to go out of the partnership with the property gifted. But the son continued to remain in the firm. On the death of the father the question arose as to whether the value of the gifted property was dutiable. It was held that on the facts the gifts were of an estate in fee simple carrying the fullest right known to the law of the exclusive possession and enjoyment, that the benefits which the son allowed to the father to derive as a partner was incompatible with the exclusion, assumption and retention by the son of possession and enjoyment and that the value of the property gifted was, therefore, includible in the dutiable estate u/s 102(2) (d) of the Stamp Duties Act, 1920-1949.

11. The learned counsel for the assessee then points out that in any event the possession and enjoyment by the deceased of the money gifted should be taken to be in his capacity as a trustee for the donees in which case the principle laid down in *Commissioner of Stamp Duties v. Perpetual Trustee Co. Ltd.* will have to be applied. In that case a father conveyed certain shares to trustees (one of whom was himself) to be applied for the education and maintenance of his son during his minority and to be transferred with the accumulations of unspent income to the son absolutely on his attaining 21 years. On the death of the father in 1921 the estate duty authorities claimed duty on the entire value of the

shares on the ground that the settlement was a gift of the shares and a benefit to the settler was reserved therein. The son attained majority only in 1921. On these facts the Privy Council held : (1) that the interest of the son under the settlement was contingent on his attaining the age of 21 years; (2) the property comprised in the gifts was the equitable interest in the shares; (3) that the bona fide possession and enjoyment of the property gifted was taken by the son through the trustee immediately upon the gift; (4) that there was no reservation of any benefit to the settler in the subject-matter of the gift and duty was not payable on the value of shares. In this case admittedly the donor did not constitute himself as a trustee for the donees at any time case.

12. As regards the gift amounting to Rs. 25,000 it is the contention of the learned counsel for the accountable person that the gifts were made by making credit entire in favour of the donees in the partnership accounts by making debit entire against the deceased partner and that, therefore, they should either be treated as cash gifts shorn of the rights of the partnership to use the same or they should be treated as transfer of actionable claim. Thus, the contention of the learned counsel is two-fold. (1) If the sum of Rs. 25,000 is treated as cash gifts made in the form of book entries it is subjected to the right of the partnership to use the same and therefore, it attracts the decision in Munros case and (2) If the subject-matter of the gift is not taken as money but as an actionable claim then section 10 cannot be applied to the same on the principle of the decision of this court in Controller of Estate Duty v. C. R. Ramchandra Gounder and Controller of Estate Duty v. C. R. Ramchandra Gounder. As regards the first submission that Rs. 25,000 represents gifts said to have been made by book entries and, therefore, it is subject to the right of the firm to use the same, there is controversy between the revenue and the accountable person on the factual question. While according to the accountable person the gifts were made by book entries, the revenue states that there is no material to show that the gifts were made by book entries and as such the gifts should be treated as outright gifts of cash. The revenue relies on the fact that the Tribunal did not make any distinction between the sums of Rs. 60,000 and Rs. 25,000 referred to above and took the entire sum of Rs. 85,000 as amounts gifted in cash and later deposited by the donees in the partnership in which the deceased was a partner. Though it is true that the Tribunal has proceeded on the basis that the entire sum of Rs. 85,000 was cash gift which was later brought in and invested in the firm in which the deceased was a partner, in the application for reference filed u/s 64(1) of the Estate Duty Act which has been filed along with a petition in T. C. M. P. No. 100 of 1974, for its reception, the accountable person stated that the sum of Rs. 5,000 each gifted on April 1, 1958, to two of his sons and a sum of Rs. 5,000 each gifted to three of his sons on April 1, 1958, were by making debit entries in the personal folio of the deceased in the firm of M/s. Seth Bhikchand Ramchand and credit entire in the names of the donees in the firms books. As already stated, the Tribunal has not gone into the question as to whether the gifts amounting to Rs. 25,000 were in the form of book entire. It proceeded on the

basis that the said sum also represented cash gifts. If the sum of Rs. 25,000 actually represents cash gifts made by the deceased by withdrawing the amounts from the firm, then the gifts will attract the principle in Chicks case, in the case of gifts amounting to Rs. 60,000. But, if cash has not been withdrawn by the deceased and handed over to the donees but if the gift was made only by books entries in the firms accounts, then in view of the decision of the Supreme Court in Controller of Estate Duty v. C. R. Ramachandra Gounder and the principle laid down in Munros case, the gifts has to be taken as shorn of the rights of the partnership to use the movies in which case section 10 cannot stand attracted. But the Tribunal has not given any clear finding on the nature of the gifts amounting to Rs. 25,000. The applicability of section 10 has to depend upon the factual possession which has to be ultimately decided by the Tribunal u/s 64(6).

13. As regards the contention of the accountable person that the sum of Rs. 25,000 should be taken to be transfer of an actionable claim and, therefore, attracts the decision in Controller of Estate Duty v. C. R. Ramchandra Gounder, the learned counsel for the revenue points out that the transfer of an actionable claim can only be by an instrument in writing signed by the transfer as contemplated by section 130 of the Transfer of Property Act which has not been complied with in this case. We are of the view that if the gifts amounting to Rs. 25,000 are treated as transfers of a mere actionable claim, then the gifts have to fail on the ground that the transfer has not been effected in accordance with section 130 of the Transfer of Property Act. It is not the case of the accountable person that section 130 of the Transfer Property Act has been complied with in this case.

14. The result of the forgoing discussion is that the sum of Rs. 60,000 out of Rs. 85,000 is liable to be included in the principle value of the estate of the decease u/s 10 of the Estate Duty Act. The sum of Rs. 25,000 can also be included in the principal value of the estate u/s 10 if the gifts amounting to Rs. 25,000 are found to be cash gifts. But it cannot be so included if the gifts are found to have been made in the form of book entries. The Tribunal will have to determine the factual question as regards the sum of Rs. 25,000 in the consequential proceedings u/s 64(6). The reference is answered accordingly. There will be no order as to costs.