
(1972) 08 MAD CK 0047

In the Madras High Court

Case No : Tax Case No. 157 of 1965 (Reference No. 81 of 1965)

Ranganayaki Ammal and Others

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 07-08-1972

Acts Referred:

Estate Duty Act, 1953 — Section 9(1)

Citation : (1973) 88 ITR 96

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Judgement

Ramanujam, J.—One Bheema Naidu died on 25th November, 1953, leaving behind him his widow, a widowed daughter-in-law and several grandchildren. An account of the estate duty with regard to the property passing on the death of the said Bheema Naidu was furnished by his widow and daughter-in-law as accountable person under the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), to the Deputy Controller of Estate Duty, Madras. The Deputy Controller determined the principal value of the estate at Rs. 19,34,884 which included, inter alia, a sum of Rs. 7,33,007 being the difference between the deceased's legal share in the properties of the Hindu undivided family of which he was a member and the share actually allotted to him on partition of the family on December 31, 1951. This inclusion is said to have been made by the revenue in accordance with the provision of section 9 read with section 27 and Explanation 2 to section 2(15) of the Act as a gift made by the deceased within two years of his death.

2. The gift is said to arise from the following facts and circumstances which are not in dispute. Till December 31, 1951, the deceased with the widow of his pre-deceased son and four grandsons constituted a Hindu undivided family. On that date which fell within a period of 2 years prior to the death of the deceased, a partition was effected of the joint family properties between the deceased and the members of his sons branch. The deceased was allotted properties and the

value of about 1/5th of the total instead of a half share to which he was legally entitled on a partition as between himself on the one hand and the widow and sons of his pre-deceased son on the other. On these facts the Deputy Controller held that the difference between the half share due to the deceased and the actual share he took on partition was liable estate duty as a gift made by the deceased within two years of his death u/s 9(1) read with section 27 and Explanation 2 to section 2(15) of the Act. Such difference was computed at Rs. 7,33,007 and the same was included in the principal value of the estate of the deceased. This was objected to by the accountable person, and they challenged the said inclusion in the appeal before the Central Board of Revenue.

3. Before the Board it was contended on behalf of the accountable person that under the Hindu law before a partition of a joint family takes place, no member can say that he has a definite or specific share in the family properties, that, therefore, there is no question of giving up such share by relinquishment and that the interest of a coparcener in a joint family is a fluctuating interest depending upon the number of coparceners entitled to a share at a given moment. The Board rejected the above contentions holding that section 39 of the Act directs that the value of any benefit accruing or arising from the cesser of coparcenary interest in the joint family property governed by the Mitakshara school of Hindu law, shall be the principal value of the share in the family property which the deceased would have received had there been a partition immediately before his death and has made it clear that though the coparcenary interest may be a fluctuating interest from time to time, it becomes a definite share on a notional partition being considered to have taken place immediately before the death in accordance with the provisions of section 39, that the deceaseds share became undoubtedly definite and specified at the time of the partition and when the deceased decided to forgo or relinquish on partition a rightful share in favour of the other members of the family it amounts to a gift u/s 9 read with section 27 and Explanation 2 to section 2(15) of the Act.

4. At the instance of the accountable persons, the following question has been referred to us u/s 64(1) of the Act :

Whether, on the facts and in the circumstances of the case, the sum of Rs. 7,33,007 representing the difference between the value of a share in the family properties and the value of the properties actually allotted to R. Bheema Naidu at the partition of the family properties within 2 years prior to the death of the deceased has been rightly included in the estate as property deemed to pass on the death of the deceased within the meaning of section 9(1) of the Estate Duty Act, 1953, read with section 27 and Explanation 2 to section 2(15) of the said Act ?

5. It is contended us on behalf of the accountable persons that an unequal partition between the members of a Hindu family will not amount to a disposition contemplated in Explanation 2 to section 2(15) of the Act and that therefore it will neither attract section 9 nor section 27. It was also urged that section 9 only

deals with properties taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos by way of transfer, delivery, declaration of trust, settlement or otherwise, that when a coparcener takes a lesser share than what is lawfully due to him at the partition, it cannot be said to be an immediate gift inter vivos by way of transfer, delivery, etc., that even section 27 which treats certain dispositions as deemed gifts will be subject to the provisions of section 9 dealing with gifts inter vivos. According to the learned counsel for the accountable persons, there is no transfer of the interest of the deceased to the other coparceners at the time of the partition so as to attract either section 9 or section 27.

6. The court specifically considered the above contentions in *S. P. Valliammai Achi v. Controller of Estate Duty* and held that the scope of section 9 has to be appreciated and delimited with reference to the other provisions of the Act, one of which is the second Explanation to section 2(15), that when that Explanation speaks of a disposition of the kind it contemplates, it is impossible to conceive that that kind of disposition would have been intended by the legislature to be excluded from the scope of section 9 and that section 9 read with Explanation 2 to section 2(15) and the proviso to section 27 had been rightly invoked by the revenue in that case for including the difference between the value of the share to which the deceased was entitled and the value of the share actually allotted to him at the partition. After expressing the view that, though the partition or relinquishment on the part of one or more coparceners resulting in the joint ownership being severed in favour of severalty involves no transfer in the normal sense, and that transfer in the normal sense and as understood with reference to the Transfer of Property Act, connotes the movement of property or interest or right therein or thereto from one person to another in praesenti the court held that Explanation 2 to section 2(15) is concerned not with that kind of situation but an extinguishment of a right and creation of a benefit thereby which process is statutorily deemed to be a disposition which is in the nature of a transfer. The following are the relevant observations in that case :

The facts of this case, in our opinion, seem to square with the second Explanation to section 2(15). That, no doubt, is an Explanation to the inclusive definition of property. But, the language of it seems to go further and coins a deemed disposition in the nature of a transfer. The mechanics of the transfer for purposes of Explanation 2 consist in the extinguishment at the expense of the deceased of a right and the accrual of a benefit in the form of a right so given up in favour of the person benefited. Transfer in a normal sense and as understood with reference to the Transfer of Property Act connotes a movement of property or interest or right therein or thereto from one person to another in praesenti. But in the kind of disposition, contemplated by second Explanation, one can hardly trace such a transfer because by the mere fact of extinction of a certain right of the deceased which does not involve a movement, a benefit is created in favour of the person benefited thereby.

7. Though the above decision was rendered with reference to the same statutory provisions and it directly applies to the facts of this case, the learned counsel for the accountable persons contends that the said decision requires reconsideration in view of certain observations of the Supreme Court in *Commissioner of Gift-tax v. N. S. Getti Chettiar*. It is also pointed out that some of the other High Courts have taken a view contrary to the one expressed by this court in *S. P. Valliammai Achi v. Controller of Estate Duty*. The following decisions are referred to as taking a contrary view : *Cherukuri Eswaramma v. Controller of Estate Duty*, *Kantilal Trikamlal v. Controller of Estate Duty*, and *Kulbhushan v. Controller of Estate Duty*.

8. In *Commissioner of Gift-tax v. N. S. Getti Chettair*, the question was whether by allotting greater share to some members of the coparcenary than that to which they were entitled, the assessee could be held to have made a gift of a portion of his share of the property to others and was liable to be taxed under Gift-tax Act, 1958, and their Lordships of the Supreme Court held, (1) that the partition did not effect any transfer as generally understood in law and did not fall within the definition of "gift" in section 2(xii) of the Act; (2) that the partition in the family could not be considered to be a disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property within the meaning of section 2(xxiv) of the Act; and (3) that the partition not being a "transaction" entered into by the assessee with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person will attract section 2(xxiv)(d). According to the Supreme Court the word "transaction" in clause (d) of section 2(xxiv) takes its colour from its main clause dealing with transfer of property and that it must be a transfer of property in some way, and that the words "disposition", "conveyance", "assignment", "settlement", "delivery" and "payment" are all used to indicate some of the modes of transfer of property. The learned counsel for the accountable persons contends that though the above decision of the Supreme Court was rendered with reference to section 4(3) read with section 2(xxiv) of the Gift-tax Act that would equally apply to the interpretation of Explanation 2 to section 2(15) of the Act which is practically the same as section 2(xxiv)(d) of the Gift-tax Act. But, we are not in a position to accept the above contention that the provision in section 2(xxiv)(d) of the Gift-tax Act is the same as the Explanation 2 to section 2(15) of the Act. Section 2(xxiv) of the Gift-tax Act defines "transfer of property" so as to include any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person. Having regard to that definition their Lordships of the Supreme Court took the view that a transaction referred to in clause (d) of section 2(xxiv) takes its colour from the main clause definition transfer of property, and therefore, the transaction contemplated in clause (d) should be some sort of transfer as understood in the normal sense. But, section 2(15) of the Act defines property as including any interest in property, movable or immovable, and Explanation 2

deems the extinguishment of a debt or other right at the instance of the deceased as a disposition made by the deceased as a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished and in relation to such a disposition the expression "property" shall include the benefit conferred by the extinguishment of the debt or right Explanation 2 to section 2(15) creates a special definition and, therefore, the word "disposition" occurring in that Explanation cannot be understood in the same sense as in the definition of transfer of property in section 2(xxiv) of the Gift-Act. As a matter of fact the decision in *S. P. Valliammai Achi v. Controller of Estate Duty* specifically refers to the position that if by a partition or relinquishment on the part of one or more coparceners the joint ownership is severed in favour of severalty, the process, having regard to the peculiar conception of a coparcenary, involves no transfer as defined in section 2(xxiv)(d) of the Gift-tax Act. But, nonetheless, the court expressed the view that Explanation 2 to section 2(15) is not concerned with that kind of situation, but it deems statutorily extinguishment of a right and creation of a benefit thereby as a disposition which is in the nature of a transfer. The peculiar definition of "disposition" in Explanation 2 to section 2(15) deems the extinguishment of a right and the creation of a benefit thereby to be a disposition in the nature of a transfer and section 27 of the Act as it stood at the relevant time makes any disposition made by the deceased in favour of his relative to be treated for the purpose of section 9 as a gift subject to certain exceptions. This shows that even though there may not be a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust, etc., as contemplated in section 9, the kind of disposition contemplated by Explanation 2 to section 2(15) will be a deemed gift by virtue of section 27 if the person benefited is a relative. It is only after recognising the well-established principle that a partition among the members of a Hindu undivided family would not be a transfer in the normal sense, that decision lays down that by virtue of the said special definition of "disposition" even in case of a partition if there is an extinguishment of a right and creation of a benefit thereby, that would be a disposition in the nature of a transfer. We are, therefore, of the view that the decision in *S. P. Valliammai Achi v. Controller of Estate Duty*, is not in conflict in any way with the principle laid down by the Supreme Court in *Commissioner of Gift-tax v. Getti Chettiar*, as contended by the accountable persons.

9. In the decision of *Cherukuri Eswaramma v. Controller of Estate Duty*, the Andhra Pradesh High Court dealt with a case of unequal partition within 2 years before the death of the deceased whereunder the deceased was allotted a sum of Rs. 98,103 while his actual share due to him under the law was Rs. 2,06,694. The revenue had levied estate duty on the difference u/s 9 read with Explanation 2 to section 2(15) and section 27 of the Act. The court held that the partition does not amount to transfer; nor can it be said to be a transaction inasmuch as

there is no donor and donee relationship between the deceased and the person benefited and that, therefore, an uneven partition does not become a gift for the purpose of section 9. In that case it was expressed that the word "disposition" in the context of section 9 and section 27 can only connote a transfer or conveyance but does not contemplate the peculiar characteristics involved in the process of partition of a Hindu undivided family, and that the word "otherwise" occurring in section 9(1) has to be read ejusdem generis. It was also expressed that the position under the Estate Duty Act is much the same as under the Income Tax Act and the Gift-tax Act, because what is envisaged u/s 9 of the Estate Duty Act is a gift inter vivos, i.e., between two persons and that as there is no transfer involved in the partition of joint family properties between two persons it cannot be a gift for the purpose of section 9; nor can there be a disposition in favour of a relative within the meaning of section 27. That decision proceeds on the basis that as the word "disposition" has not been defined under the Estate Duty Act, it should be treated as a disposition of the property by any of the modes stated in section 9. The deeming disposition contemplated by Explanation 2 to section 2(15) was not considered by the court in that case. This decision was referred to in *S. P. Valliammai Achi v. Controller of Estate Duty*. But this court was not inclined to accept the said view without full consideration, especially when Explanation 2 to section 2(15) has coined a deemed disposition in the nature of a transfer and the scope of section 9 has to be appreciated and delimited with reference to that Explanation.

10. *Kantilal Trikamalal v. Controller of Estate Duty* also dealt with a case under the Estate Duty Act. That was a case where the deceased took a lesser share and recounted his interest in the joint family properties. The difference between the value of the share taken and the actual share due to him was sought to be included in the value of the estate of the deceased. The Gujarat High Court in that case held that the word "disposition" in section 27 must possess the element of transfer of an interest in property from one person to another, and that will not take in partition which is nothing but a process in and by which joint enjoyment is transformed into enjoyment in severalty, without any transfer of interest from one coparcener to another in the process of partition and that merely because on partition a coparcener gets an unequal share, it does not cease to be a partition. It was also held that in the case of partition there is no extinguishment of any "right" possessed by a coparcener which results in benefit to another coparcener, even if the partition is unequal, within the meaning of Explanation 2 to section 2(15), and that the Explanation cannot be availed of for the purpose of bringing the case within section 27(1). The court felt that Explanation 2 to section 2(15) contemplates an extinguishment of a debt or other right and that, even if the partition has been unequal, it will not involve extinguishment of any interest in the property at the expense of the deceased who received less than what he might have received according to his rightful share. The reasoning in *S. P. Valliammai Achi v. Controller of Estate Duty*, that any process under which there is an extinguishment of a right by the deceased

and creation of a benefit thereby, should be deemed to be a disposition in the nature of a transfer has not been adverted to or appreciated in this case.

11. In *Kulbushan v. Controller of Estate Duty*, Punjab High Court had also expressed the view that an unequal partition of the family properties between the deceased and his sons would not amount to a disposition in favour of relatives. Here again the decision proceeded on the basis that there is no transfer of an interest from one coparcener to another in the process of partition, that the word "disposition" in section 27 must possess the element of transfer of an interest in property from one person to another and that the partition, even if unequal, does not involve extinguishment of any interest in the property at the expense of the coparcener who receives less than what he might have received according to his rightful share. But, the learned judges had not discussed the provisions of Explanation 2 to section 2(15) of the Act, which provision was held to be the distinguishment feature by this court in *S. P. Valliammai Achi v. Controller of Estate Duty*.

12. Reference was also made by the learned counsel for the accountable persons to the various decisions, including the decision of this court in *A. N. K. Rajamani Ammal v. Controller of Estate Duty*, which dealt with the question as to the process by which a self-acquired property converted into joint family property would amount to a disposition, creation of other right or extinguishment at the expense of the deceased of a debt or other right contemplated by Explanation 2 to section 2(15) of the Act. But, we are of the view that those decision cannot be of much help in deciding the question at issue in this case. In *A. N. K. Rajamani Ammal v. Controller of Estate Duty*, the question considered was whether the unilateral throwing of the self-acquired property by the deceased into the common stock of the joint family created a right enforceable against him personally or against the properties as contemplated in Explanation 1 to section 2(15) and it was answered in the negative. It was also considered whether such unilateral act of throwing the self-acquired property into common stock of the joint family would amount to extinguishment at the expense of the deceased of a debt or other right within the meaning of Explanation 2 to section 2(15). This question was also answered in the negative for the following reason :

As seen from the judgement cited above, after the act of the throwing into the common stock, it is the joint family or the coparcenary that owns the property. The person who converted his individual property into joint family property is a member of the Hindu joint family or the coparcenary and continues to be a member of the joint family. His interest in the erstwhile separate property would extend to the whole of the property even as of the coparceners, for the interest of every coparcener extends over the whole of the joint family property. There is community of interest and unity of possession between all the coparceners. On the death of any of the coparceners the others take the property by survivorship. It may be the ultimate survivor is the person who threw the self-acquired property into the common stock. It, therefore, follows that there was no

extinguishment of the right of the deceased and creation of a right in favour of another, in the case of throwing the self-acquired properties into the common stock.

13. The said decision does not deal with the question as to whether there is an extinguishment of a debt or right at the expense of the deceased in favour of the person for whose benefit the debt or right was extinguished in the case of an unequal partition so as to attract Explanation 2 to section 2(15). We are of the view that the decision in *S. P. Valliammai Achi v. Controller of Estate Duty* has laid down the correct principle, if we may say so with respect. With due respect, we are not inclined to adopt the reasoning in the three decisions referred to above which have taken a contrary view. In this connection, it is pertinent to point out that a Full Bench of the Punjab High Court in *Controller of Estate Duty v. Jaigopal Mehra* followed *Valliammai Achi v. Controller of Estate Duty* and held that the relinquishment by the deceased of his share in the property of the joint family amounted to the extinguishment of his rights in that property in favour of for the benefit of his sons and that it clearly fell within the definition of "disposition" in Explanation 2 to section 2(15).

14. It is true that it is very well-established that a partition is not a transfer in the sense in which that term is normally understood with reference to the Transfer of Property Act, and it is too late in the day to contend that a partition amounts to a transfer in the normal sense. It has been held in *Narasimhulu v. Someshwara Rao*, that the true nature of a partition arrangement is that each co-owner gets a specific property in lieu of his rights in all joint properties; that is to say each co-sharer renounces his rights in other common properties in consideration of his getting exclusive right to and possession of specific properties in which the other co-sharer renounce their rights and that it amounts to a renunciation of mutual rights and does not involve any transfer by one co-sharer of his interest in the properties to the other and that, therefore, the allotment at a partition of a "Jyeshtabagam" to the eldest brother means, as the term implies, no more than giving a larger share than would strictly be due to him and involves no gift by the younger brother or brothers. This view was accepted in *Radhakrishnayya v. Sarasamma*, wherein it was held that partition cannot be treated as a conveyance but is really a process in and by which a joint enjoyment is transformed into an enjoyment in severalty and that each one of the sharers had an antecedent title and therefore no conveyance is involved in the process, as a conferment of new title is not necessary and that the partition cannot be treated as a conveyance of a portion of joint right in exchange for similar right from his co-sharer. In *M. K. Stremann v. Commissioner of Income Tax* and *Commissioner of Income Tax v. Keshaval Lalubhai Patel* it has been held that the partition of a joint Hindu family property was not a transfer as contemplated in section 16(3)(a)(iii) and (iv) of the Indian Income Tax Act, 1922, and that the word "transfer" occurring therein has been used in the strict sense of including every means by which property may be passed from one to another. According to the learned counsel for the revenue the word "disposition"

occurring in section 27 of the Act has been used not in strict sense but in liberal sense so as to include any mode of passing property and that the general and normal notion of transfer cannot be brought in while interpreting the word "disposition" occurring in that section. It is stated that there is considerable difference not only between the provisions of the Gift-tax Act and those of the Estate Duty Act but also in the tax effect. It is also said that the tax structure is different in both the Acts in that while the Gift-tax Act contemplated and deals with only inter vivos transaction, the Estate Duty Act brings in all dispositions, whether inter vivos or not, into charge under certain circumstances. We are inclined to agree with learned counsel for the revenue that if section 9 of the Estate Duty Act alone has to be taken into account it could be said that only inter vivos transactions would stand attracted by that section. But section 27 provides that any disposition made by the deceased in favour of his relative shall be treated for the purpose of the Act as a gift unless the disposition has been made for full consideration in money or moneys worth, etc., provided where the disposition was made for partial consideration in money or moneys worth paid to him for his own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty. The word "any" preceding disposition in section 27 is significant and it shows that section 27 is intended to cover all disposition whether they are inter vivos transaction or not. By Explanation 2 to section 2(15) extinguishment at the expense of the deceased of debt or right has been deemed to be a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished and that in relation to such a disposition the expression "property" will mean benefit conferred by the extinguishment of the debt or right.

15. While construing section 45(2) of the English Finance Act of 1940 which corresponds to section 9 read with Explanation 2 to section 2(15) of the Act the Court of Appeal in *In re Strattons Disclaimer* held that where the widow of a testator disclaimed all interest in certain properties to which she was entitled under the will of her husband and died within five years of making the disclaimer estate duty was payable by virtue of that section. The Court of Appeal has pointed out that the disclaiming legatee has a right between the testator's death and the moment of disclaimer to call upon the executor to pay or transfer to her the subject-matter of the bequest or devise in due course of administration, that such a right was a right within the meaning of section 45(2), that the extinguishment of that right by a legatee disclaimed was at the expense of the legatee within the meaning of section 45(2), and that section 45(2) did not require it to be shown that in bringing about or saving the extinguishment the deceased was actuated by the intention, purpose or desire to benefit some other person. According to the learned judges in that case the word "right" occurring in section 45(2) was of the widest import and that the words "at the expense" in that section was not used in any technical sense but have been used in an ordinary and natural sense. Jenkins L.J. said as to the scope of section 45 of the Finance Act, 1940, thus :

.....to found liability under sub-section (2) of the section there must be (i) a debt or other right, and (ii) an extinguishment of that debt or other right, (a) at the expense of the deceased, and (b) for the benefit of some other person. Where these elements are present the enactment imputes to the deceased for estate duty purposes a disposition in favour of the person for whose benefit the debt or right was extinguished of property consisting of the benefit conferred by such extinguishment. This produces the result that the benefit conferred by a transaction falling within the ambit of sub-section (2) of section 45 of the Act of 1940 is to be treated as property..... taken under a disposition made by "the deceased" purporting to operate as an immediate gift inter vivos within the meaning of section 2(1)(c) of the 1894 Act,.....

16. Roxburg J. expressed :

.....The structure of section 45(2) of the Finance Act, 1940, is such that a certain state of facts is to be deemed to be a different state of facts, and the line between fact and hypothesis seems to me to be drawn by the word deemed. If this be so, only three actual facts are expressed to be necessary in order to involve the hypothetical situation : (1) the existence of the a right, (2) its extinguishment, (3) its extinguishment at the expense of the deceased. When those three facts concur, the hypothesis goes into action, and the hypothesis is that these facts are equivalent to a disposition made by the deceased in favour of the person for whose benefit the right was extinguished. These words, in my opinion, all form part of the hypothesis and the concluding words are necessary to define the hypothetical donee.

17. As to the scope of section 46(1) of the Finance Act of 1950 (corresponding to section 27 of the Estate Duty Act), which amended section 44 of the Finance Act, 1940, Dymonds Death Duties states at page 256 :

The general effect of the new sub-section (1) is to render any disposition by the deemed to a relative a prima facie gift, and to place the onus of showing that the deceased received full or partial consideration on the transferee : duty can be escaped only if full consideration can be established, and not on the rather wider ground, discussed above, that the transaction did not purport to operate as an immediate gift.

18. This shows that the reference to a gift inter vivos in section 9 has to be construed in the light of section 27 if the disposition was to a relative, and even dispositions which may not strictly come within the term "gift inter vivos" will have to be treated as gifts if such dispositions are in favour of relatives.

19. The decision in Gorton v. Federal Commissioner of Taxation also throws some light on the question as to what the term "disposition" in section 27 read with Explanation 2 to section 2(15) would take in. In that case the court was considering the question whether a particular transaction constituted "disposition of property" as defined in section 4 of the Gift Duty Assessment Act, 1941-57, which provided :

In this Act, unless the contrary intention appears -

disposition of property means any conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes.....

(f) any transaction entered into by any person with intent thereby to diminish directly or indirectly, the value of his own property and to increase the value of the property of any other person;

gift means any disposition of property which is made otherwise than by will (whether with or without an instrument in writing) without consideration in money or moneys worth passing from the disponent to the donee, or with such consideration so passing if the consideration is not, or, in the opinion of the Commissioner, is not fully adequate.

20. The court expressed the view that the expression "disposition of property" is defined in the Act in the widest possible terms and that it is impossible to conceive any type of transaction by which the property is transferred from one person to another which would not be comprehended by the provisions in clauses (a) to (e) of the said Act. But, the definition goes further in paragraph (f) bringing in transaction which do not involve a disposition of property within the meaning of that term. Under paragraph (f) in the said definition, transactions which are not in any sense dispositions of property are deemed to fall within the meaning of that expression and such transactions are those entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own property and to increase the value of the property of any other person, and, to that extent, the meaning of the expression "disposition of property" is extended beyond the general words, and paragraphs (a) to (e) of the definition. In that case the court cited with approval the following passage from the judgment of Willams J. in *Grimwade v. Federal Commissioner of Taxation* :

The whole emphasis of paragraph (f) is upon a transaction entered into by one person, which seems to me to mean that where there is an act done by one person with the requisite intent, and as a result there is a transfer of value from any property of that person to the property of another person, the conditions of liability are satisfied.

With respect, we are inclined to adopt the reasoning of the learned judges in that case and hold that but for the Explanation 2 to section 2(15), the word "disposition" occurring in section 27 would comprehend only transactions by which properties are transferred from one person to another and Explanation 2 to section 2(15) makes transactions which are not in any sense disposition of property as deemed dispositions and sets out such transactions as extinguishments at the expense of the deceased of a debt or other right in favour of the person for whose benefit the debt or right was extinguished. In our view the above Explanation has coined and enlarged the definition of "disposition" which goes beyond the general expression "disposition".

21. The result is we uphold the view of the Tribunal and answer the reference in the affirmative and against the accountable persons. The revenue will have its costs. Counsels fee Rs. 250.

22. Reference answered in the affirmative.