
(1981) 03 MAD CK 0048
In the Madras High Court
Case No : Tax Case No. 636 of 1976

S.K. Mohamed Kasim

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 17-03-1981

Acts Referred:

Estate Duty Act, 1953 — Section 10, 64(1)

Citation : (1981) 7 TAXMAN 418

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Advocate : K. Srinivasan and R. Jankiraman, for the Appellant; J. Jayaraman and Mrs. Nalini Chidambaram, for the Respondent

Judgement

V. Ramaswami, J.—In this reference u/s 64(1) of the E.D. Act, 1953, the addition of Rs. 1,88,640 u/s 10 of the Act to the principal value of the estate of one Kader Ibrahim Rowther, who died on March 10, 1967, is questioned. This addition was made on three distinct categories. The deceased had gifted Rs. 10,000 each, on February 9, 1962, and February 27, 1962, to his two daughters. These sums were withdrawn by the deceased from the books of account maintained by him for his hardware business and were given to the donees. After sometime, the amounts were deposited by the donees with the deceased and the deceased had made some corresponding credit entries, each for Rs. 10,000 in favour of his two daughters. At the time when the gifts were made and also at the time when these were received back by the deceased, the deceased was the sole proprietor of his business. The business was subsequently converted into one of partnership by the admission of the two sons of the deceased. On the ground that the amounts gifted came to the possession of the deceased and thus he was not entirely excluded from possession and enjoyment of those amounts, the Asst. Controller of Estate Duty included the said sum of Rs. 20,000 as properties deemed to pass u/s 10 of the Act. The Appellate Controller of Estate Duty as well as the Tribunal confirmed this order of the Asst. Controller. The second transaction that was brought u/s 10 was a gift of certain lands made by the

deceased in favour of his two sons. On 1st July, 1959, the deceased had gifted 8.27 acres and another 6.56 acres of wet land in favour of his two sons. The sons took possession of the lands and were in enjoyment of the income therefrom till 1965. The amounts of agricultural income from these lands were deposited in 1965, 1966 and 1967, in the firm of partnership in which the deceased father and his two sons, viz., the donees, were partners. On the ground that the father-donor had not been excluded from the enjoyment of the income from the properties, the Asst. Controller held that the provisions of section 10 were applicable. Accordingly, he included a sum of Rs. 1,18,640, being the value of the total extent of 14.83 acres in the total value of the estate passing. This order of the Asst. Controller was confirmed by the Appellate Controller and the Tribunal, subject to a small variation in the value of the lands to the extent of Rs. 15,000.

2. The third transaction was a gift made on January 15, 1959, of a house bearing door No. 14, Palakarai, Trichy, by the deceased in favour of his wife. The property was taken possession of by the donee, but later, it was let out to the firm, in which the deceased was a partner, for use as a godown on a monthly rent of Rs. 150. The value of the house was estimated at Rs. 50,000 and, on the ground that the donee had not retained possession of the same to the entire exclusion of the donor, the entire value was included for the purpose of estate duty by the Asst. Controller. The Appellate Controller held that the value of the house had to be determined only by capitalising the rent received by the donee and, on that method of valuation, determined the value at Rs. 36,000. However, he agreed with the Asst. Controller that this sum of Rs. 36,000 has to be included for the purposes of estate duty. The Tribunal also agreed with this view.

3. Learned counsel for the accountable person questioned the additions in respect of all the three transactions on the ground that possession, if any, by the donor subsequent to the donee coming into possession of the property is not referable to the original gift made and that, therefore, section 10 of the E.D. Act would not be attracted. In this connection he relied on the decision of the Supreme Court in *Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and Patiala Vs. Smt. Kamlavati and Shri Jai Gopal Mehra*, . In that case the deceased had a half share in a partnership. During his lifetime he made a gift of Rs. 1 lakh to his son and another sum of Rs. 50,000 to his wife. In the books of the partnership firm, the sums of Rs. 1 lakh and Rs. 50,000 were debited to the account of the deceased and credited to the accounts of the son and the wife, respectively. Later, the son and the wife also became partners, and in the reconstituted firm, the deceased had an one-fourth share and the son and the wife together had another one-fourth share. On the death of the donor, in the estate duty - proceedings the applicability of section 10 of the E.D. Act with reference to these gifts of Rs. 1 lakh and Rs. 50,000 came up for consideration. Both the Tribunal and the High Court held that the said sums were includible for purposes of estate duty. When the matter came up before the Supreme Court, after considering the earlier judgments and after noting some divergence of

opinions among the various High Courts, the Supreme Court held (p. 463):

When a property is gifted by a donor, the possession and enjoyment of which is allowed to a partnership firm in which the donor is a partner, then the mere fact of the donor sharing, the enjoyment or the benefit in the property is not sufficient for the application of section 10 of the Act until and unless such enjoyment or benefit is clearly referable to the gift, that is, to the parting with such enjoyment or benefit by the donee or permitting the donor to share them out of the bundle of rights gifted in the property. If the possession, enjoyment or benefit of the donor in the property is consistent with the other facts and circumstances of the case other than those of the factum of gift, then it cannot be said that the donee had not retained the possession and enjoyment of the property to the entire exclusion of the donor, or to the entire exclusion of the donor in any benefit to him by contract or otherwise. It makes no difference whether the donee is a partner in the firm from before, or is taken as such at the time of the gift or he becomes a creditor of the partnership firm by allowing it to make use of the gifted property for the purposes of the partnership.

4. In the same decision, another case also was considered. In that case, the deceased had made gifts of Rs. 20,000 each in favour of his son and four daughters. The donees invested the entire sum of Rs. 1 lakh gifted to them, in the firm in which the deceased was a partner. It appeared these donees were not partners in the firm, nor were they taken as such after the gifts were made in their favour. The Supreme Court held that that was a stronger case and the principle enunciated by them equally applied to that case.

5. As may be seen from this decision, two simple propositions are laid down in order to determine the applicability of section 10 of the E.D. Act; firstly, the mere fact of the donor sharing the enjoyment or the benefit in the property is not sufficient for the applicability of section 10 but such enjoyment or benefit should be clearly referable to the gift, and, secondly, if the possession, enjoyment or benefit of the donor in the property is consistent with the other facts and circumstances of the case, other than those of the factum of gift, it cannot be said that the donee had not retained possession and enjoyment of the property to the entire exclusion of the donor. It was by applying these two tests, that it was held in that judgment that even though the sum of Rs. 1,50,000 received as gift from the deceased was invested in the firm in which the deceased was a partner, the possession or enjoyment or the user of the money so deposited by the deceased was not referable to the gift itself, and on those grounds, section 10 was held not applicable. So far as the gifts of Rs. 10,000 each to the daughters in this case are concerned, the facts are almost identical with the facts in the case before the Supreme Court. The investment of the money in the sole proprietary concern of the deceased or the retaining of the sum even after the business was converted into one of partnership, could not be related or referred to the original gift itself.

6. Even in regard to the second transaction, namely, the gift of the agricultural

lands, the bringing in of the income from the properties for use in the firm in which the deceased was a partner along with the other donees, was not referable to the gift itself, as there is no evidence to show that there was any contract or understanding at the time of the gift for linking the gift and the contract or understanding or that the income from the properties should be made available for the purposes of the business. Making the income from the gifted properties available for use in the business was a result of the sons deciding to deposit the money in the firm and has no reference to the original gift of the lands itself to them. Learned counsel for the revenue contended that the Tribunal had referred to an explanation given by the accountable person before the Appellate Controller, while considering the applicability of the later portion of section 10, in which it is stated that the handing over of the agricultural income to the father was in pursuance of a contract or understanding. We have already noticed that the donees were in possession and enjoyment of the income from 1959 to 1965. The vague statement of an understanding or a contract to make available the agricultural income to the partnership firm has only a reference to the income of the years 1965, 1966 and 1967. The contract or understanding referred to was not a contract or understanding that came to be arrived at between the donor and the donees at the time when the gifts were made or simultaneous to the gifts or part of a series of transactions, which we may call as forming one group linking or having reference to the gifts themselves. The learned counsel for the revenue, however, contended that it is not necessary, in order to bring the transaction within the later portion of section 10, that the understanding or contract should have been simultaneous or should have reference to the gift itself, and that the decision of the Supreme Court is on facts one relating to the first limb of section 10 and was not concerned with the later portion of section 10. The Supreme Court, in the passage which we have extracted earlier, clearly stated that the possession or enjoyment or benefit, if consistent with the other facts and circumstances of the case, other than those of the factum of the gift, it cannot be said that the donee "had not retained possession and enjoyment of the property to the entire exclusion of the donor or to the entire exclusion of the donor in any benefit to him by contract or otherwise". The observations of the Supreme Court, therefore, cover both the earlier as well as the later parts of section 10, so that even in cases falling under the later part, the contract or understanding must be referable to the gift. Thus, though the facts in that case related to the earlier part of section 10, the observations of the Supreme Court are wide enough to include even the later portion of section 10. Even if it were to be taken that these observations were obiter, being an enunciation of the law u/s 10, they are binding on this court. We, therefore, do not agree with the learned counsel for the revenue that the ratio of the judgment of the Supreme Court in *Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and Patiala Vs. Smt. Kamlavati and Shri Jai Gopal Mehra*, is not applicable to the second of the categories of transactions in the present case.

7. In the third transaction of the gift of the house to the wife also, the

transaction of lease in favour of the firm where the deceased was a partner, has no relation to the gift itself and it was for the consideration of payment of a rent, as in other normal business transactions. In the circumstances, therefore, section 10 is not applicable to any of the three types of transactions in this case. We, accordingly, answer the following three questions referred to us in the negative and against the revenue.

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the inclusion, u/s 10 of the Estate Duty Act in the assessment made, of gifts aggregating to Rs. 20,000 made by the deceased to his daughters on February 9, 1962, and February 27, 1962.

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the inclusion, u/s 10 of the Estate Duty Act in the assessment made, of the value of lands amounting to Rs. 1,03,640 gifted by the deceased to his sons? and

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the inclusion, u/s 10 of the Estate Duty Act in the assessment, of an amount of Rs. 36,000 relating to the value of the house property situated at No. 14, Palakarai, Trichy, which was gifted by the deceased on January 15, 1959, to his wife?

The accountable person will be entitled to his costs. Counsel's fee, Rs. 500.