
(1979) 11 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 531 of 1975

Smt. Pannabai

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 19-11-1979

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1983) 142 ITR 856

Hon'ble Judges : G.P. Singh, C.J.;C.P. Sen, J

Bench : Division Bench

Judgement

G.P. Singh, C.J.—This is a reference made u/s 64(1) of the E.D. Act, 1933, by the Income Tax Appellate Tribunal, referring for our answer the following question of law :

" Whether, on the facts and in the circumstances of the case, the amount of Rs. 3,13,000 out of Rs. 4,00,000 gifted by the deceased to his relations was rightly deemed to pass on the donor's death, on the ground that the bona fide possession and the enjoyment of that amount was not retained by the donees to the entire exclusion of the donor or of any benefit to him by contract or otherwise as provided in Section 10 of the Estate Duty Act ? "

2. The reference relates to the estate of Balkishan Nathani, who died on 22nd March, 1961. Balkishan had two sons, Govindlal and Shankarlal. Shankarlal has two sons, Sunderlal and Laxmichand, and a daughter, Kusum. Govindlal has a son, Gangadas. Gangadas has a son, Ramratan, and three daughters, Rambha, Usha and Kiran. The deceased was a partner in the firm, M/s. Shaligram Laxmicband Nathani, doing money-lending business. The other partners in the firm were his two sons, Govindlal and Shankarlal, and an outsider, Purshottamdas. From 3rd October, 1955, Govindlal ceased to be a partner in the firm and in his place his son, Gangadas became a partner.

3. The deceased had an account with the firm. On 13th November, 1947, an

amount of rupees one lakh was debited to this account and a corresponding credit was given to a new account opened in the books of the firm in the name of Gangadas Nathani Account No. 1. This account of Gangadas continued up to Samvat Year 2009-10 when the amount of rupees one lakh was transferred to another account of Gangadas called Account No. 2. This account was actually started in the year 1949-50. There were credits of interest every year in this account; there were some other credits also. Further, there were debits on account of insurance premium and cash withdrawals and withdrawals for purchase of properties. On 13th November, 1947, another amount of Rs. one lakh was debited to the account of the deceased in the books of the firm and a credit was given to the new account opened in the name of Sunderlal Laxmichand Nathani-Account No. 2. This was a joint account in the names of Sunderlal and Laxmichand. This account continued up to Samvat Year 2009-10 when it was transferred to another account called Sunderlal Laxmichand Nathani-Account No. 1. This account had an opening balance of Rs. 46,443. There were credits to this account on account of interest received from the firm and also interest received from other parties. There were debits in this account on account of payments made to other parties. In the accounting year 2012-13, this account was split up into two accounts, one for Sunderlal and one for Laxmichand. In the account of Sunderlal there were credits on account of interest from the firm and from some other parties. In the accounting year 2014-15 there was a debit on account of cost of agricultural lands. In the account of Laxmichand, there were similar credits and in the accounting year 1959-60 there was a withdrawal of Rs. 21,000 on account of deposit with a third party.

4. On 18th November, 1956, the account of the deceased in the books of the firm was debited with Rs. two lakhs and credits were given to the accounts as under:

Rs.

"(1)

Sunderlal Nathani

25,000

(2)

Laxmichand Nathani

25,000

(3)

Kumari Kusum, daughter of Shankarlal Nathani

50,000

(4)

Ramrataa Nathani, son of Gangadas Nathani

25,000

(5)

Kumari Rambha

daughters

25,000

(6)

Kumari Usha

of Gangadas

25,000

(7)

Kumari Kiran

Nathani

25,000

2,00,000 "

5. The narration in the journal of the firm stated that the amounts were debited to the capital account of the deceased at his instance and the corresponding amounts were credited in the names of the persons mentioned above, for the respective marriage expenses. No interest has been charged to these accounts. The deceased addressed letters to Sunderlal, Shankarlal and Gangadas confirming these transfers and making it clear that the amounts were to be used for the marriage expenses of the transferees and the transferees were the owners of the amounts from the date on which the amounts were credited to their accounts in the books of the firm. The transfers were accepted by Sunderlal for himself and by Shankarlal for his son, Laxmichand, and his daughter, Kusum, and by Gangadas for his son, Ramratan, and daughters, Rambha, Usha and Kiran. The deceased also addressed a letter to the firm, making it clear that the amounts in question were to be paid to the parties at the time of their respective marriages. Letters were also addressed on behalf of the firm to Sunderlal, Shankarlal and Gangadas confirming the transfers and making it clear that the firm would be liable to pay the amounts only at the time of marriage and that till that time the amounts will remain as deposits in the respective names with the firm without interest. The deceased addressed separate letters to Sunderlal, Shankarlal and Gangadas on 18th November, 1956, referring to the arrangements made by him with the firm about the transfer of the amounts and making it clear that the amount had been gifted to the transferees, that they were the sole owners of the amounts and that he had no claim over those amounts.

6. The Asst. Controller included an amount of Rs. 3,45,000 in the estate of the deceased purporting to act u/s 10 of the Act. This included Rs. 45,000 lying to the credit of the account of Gangadas on the date of death of the deceased in the books of the firm, Rs. 50,000 each, lying to the credit of the accounts of Sunderlal and Laxmichand and Rs. 2 lakhs lying to the credit of the accounts of Sunderlal, Laxmichand, Kusum, Ramratan, Rarabha, Usha and Kiran. The accountable person filed an appeal to the (Appellate) Controller, who gave only a reduction of Rs. 23,000 out of the amount of Rs. 50,000 added in respect of the account of Sunderlal in the books of the firm. The remaining additions were confirmed. The accountable person thereafter appealed to the Tribunal. The Tribunal substantially confirmed the order of the Appellate Controller. At the instance of the accountable person the Tribunal referred the question of law which we have set out earlier for the opinion of the High Court.

7. Section 10 of the Act was considered by a Full Bench of this court in Balkishan Muchhal Vs. Controller of Estate Duty, . In adverting to the principles relevant in the application of Section 10, one of us (Singh C.J.) who was a member of the Full Bench in that case, observed as follows (pp. 250, 251):

" Section 10 of the Act enacts that "property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent the bona fide possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise ". The object of the section is to prevent evasion of duty by colourable gifts and semi-testamentary dispositions and to avoid the inconvenience of inquiry whether a gift is genuine or colourable where the conduct of the parties is prima facie inconsistent with the gift. The prima facie view is made by the legislature conclusive.

"The validity of the transaction is left untouched, for it concerns the parties alone. But they are not to embarrass the public treasury by equivocal acts " : Issacs J. in Lang v. Webb [1912] 13 CLR 503.

As construed by the Supreme Court in George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore, , before a gift can be taken out of the provisions of this section two conditions must be satisfied : " (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." It was further held in that case that the word " otherwise " in the second part of the section must be construed ejusdem generis and must be interpreted to mean " some kind of legal obligation or some transaction enforceable at law or in equity which, though not in the form of a contract, may confer a benefit on the donor ". It was also held that the words " by contract or otherwise " in the second part of the section only qualified the word " benefit" and they did not control the words " to the entire exclusion of the donor".

Therefore, if the donor remained in possession and enjoyment of the subject-matter of the gift even without any legal right, the gift will not be excluded from the operation of the section.

In determining the question of application of the section to a particular case, it has first to be ascertained as to what is the subject-matter of the gift, for the requirement for non-liability that the possession and enjoyment should be assumed immediately by the donee and retained to the exclusion of the donor has to be satisfied in relation to what is truly given. Possession and enjoyment which the donee must assume must necessarily vary according to the nature of the property. Copyright cannot be possessed and enjoyed in the same manner as a bottle of Champagne. As observed by Barton J., in *Horsfall v. Commissioner of Taxes*, 24 CLR 422, in the context of a similarly worded Victorian Statute :

"The section extends not only to interests in remainder or reversion but to incorporeal property such as choses-in-action as well as corporeal property. I do not think that the word " immediate" is intended to apply to the time of the acquisition of mere physical possession. In the words of the Chief Justice in the same case, *Lang v. Webb* [1912] 13 CLR 503. possession as used in Section 143(b) means such a change of ostensible dominion as can be made having regard to the nature of the particular property and that must vary according as the property is corporeal or incorporeal."

Further, the question whether the donor has been completely excluded is also a question depending upon what is truly given under the gift. If the donor retains and excludes from the gift certain rights and interests, possession and enjoyment by the donor of such rights and interests does not amount to non-exclusion of the donor of what is given under the gift of which possession and enjoyment is assumed by the donee. The distinction is adverted to in a number of cases and was re-stated by Lord Simonds in *Clifford John Chick v. Commissioner of Stamp Duties* [1959] 37 ITR 89 : 3 EDC 915 (PC), in the following words :

" It must often be a matter of fine distinction what is the subject matter of a gift. If as in *Munro's case* [1934] AC 61 : 2 EDC 462 (PC), 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 these rights, be said within the meaning of the section not to be excluded from possession and enjoyment of that which he has given."

Then, it must also be remembered that Section 10, though designed to meet devices of tax evasion has the effect of taxing even genuine gifts which do not fulfil the conditions of non-liability laid down in the section and hence there is no scope for any liberal construction of the section. The rule of construction applicable to such a provision is indicated in *Munro v. Commissioner of Stamp Duties* [1934] AC 61 : 2 EDC 462 (PC), where in dealing with a similarly worded section of a New South Wales Statute, the Privy Council said :

" It is not always sufficiently appreciated that it is for the taxing authority to bring each case within the taxing Act and that the subject ought not to be taxed upon refinements or otherwise than by clear words ".

8. The subsequent decisions of the Supreme Court support the view taken in the aforesaid observations in *Balkishan Muchhal Vs. Controller of Estate Duty*, . We may only refer here to the decision in *Controller of Estate Duty, Kerala Vs. R.V. Viswanathan and Others*, , where the earlier cases were fully considered. The following passages from this judgment bring out its ratio (pp. 660, 662) :

" The question as to whether gifted property should be held to be a part of the estate of the deceased donor passing on his death for the purpose of Section 10 of the Act is not always free from difficulty. It would depend upon the fact as to what precisely was the subject-matter of the gift and whether the gift was of an absolute nature or whether it was subject to certain rights. There is a fine but real distinction between the two types of cases. All the same, it is quite often a vexed question to determine on what side of the line the facts of the case fall. The line, though clearly demarcated, is thin and the cases near the borderline often pose problem, the solution of which calls for a touch of judicial refinement and forensic subtlety.

Broadly speaking, if the gift of property be made without reservation or qualification or condition, or to put it in the words of Dixon C.J. in the case of *Commissioner of Stamp Duties v. Owen* [1953] 88 CLR 67, where the gift carries the fullest right known to the law of exclusive possession and enjoyment, any subsequent enjoyment of the benefit of that property in the nature of possession or otherwise would attract the levy of estate duty on the death of the donor according to Section 10 of the Act....

The other type of cases are those where the gift is subject to certain rights or the subject-matter of the gift is property shorn of certain rights and the possession or enjoyment of some benefit in that property by the donor can be ascribed to those rights, i.e., rights subject to which the gift is made or rights shorn of which the property is gifted; in such cases the subject-matter of the gift shall not be deemed to pass on the death of the deceased donor. To put it in other words, if the deceased donor delimits the interest he is parting with and possesses and enjoys some benefit in the property not on account of the interest parted with but because of the interest still retained by him, the interest parted with shall not be deemed to be part of the estate of the deceased donor passing on his death for the purpose of Section 10 of the Act. The principle is that by retaining something which he has never given, a donor does not bring himself within the mischief of that section, nor would the provisions of the section be attracted because of some benefit accruing to the donor on account of what was retained by him."

9. It is not disputed before us that the transfer of Rs. one lakh on 13th November, 1947, by the deceased in favour of Gangadas and another amount of

Rs. one lakh on the same date in favour of Sunderlal and Laxmichand jointly by debit and credit entries amounted to gift. The deceased's account in the firm was debited and the account of the donees with the firm was credited with the same amount. The donees operated their accounts and interest was credited to their accounts. In our opinion, the facts are fully covered by the decision of the Supreme Court in *Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder*, . In this case the deceased was a partner in a firm. He transferred sums of Rs. 25,000 each to the credit of his five sons in the firm's books. He also wrote to the five sons informing them of the transfer. The sons did not withdraw their amounts from the firm. The amounts continued to be invested in the firm for which interest was paid to them. On these facts it was held that there was an unequivocal transfer of Rs. 25,000 to each of the sons and the donees had retained possession and enjoyment of the amounts transferred to them to the entire exclusion from the possession and enjoyment of the donor. It was also held that the last limb of the condition relating to the benefit to the donor by contract or otherwise was inapplicable to this case. It was further held that the donor could only transfer such possession of the property as the nature of that property was capable of. In this view of the matter, the Supreme Court concluded that the conditions for exemption from the operation of Section 10 were satisfied. As earlier pointed out by us, this case fully applies to the gift of Rs. 2 lakhs made on 13th November, 1947, in favour of Gangadas, Sunderlal and Laxmichand. It is true that the amount remained invested in the firm of which the donor was a partner but the benefit so received by the donor was unconnected with the gift and was referable to the partnership agreement.

10. Coming to the gift of Rs. 2 lakhs made to the seven persons mentioned above on 18th November, 1956, for marriage expenses, the only difference is that no interest was credited to the accounts of the donees. The firm undertook to pay the amounts only at the time of marriage and till that time the amounts were to remain in deposit without interest. The question, therefore, is whether the absence of any obligation on the part of the firm to pay any interest to the donees made any difference and could it be said that possession and enjoyment was not retained to the entire exclusion of the donor or of any benefit by contract or otherwise. In our opinion, the absence of any liability of the firm to pay interest will not make any difference to the legal position. The amounts unequivocally were transferred by the donor in favour of the donees by the transfer entries made in the books of the firm. The property gifted was, however, not the amounts in cash but the amounts in deposit with the firm subject to the right of the firm to use them free of interest till the respective marriage of the donees. In other words, the gift in each case was of the amount in deposit shorn of the right of the firm to use it free of interest till the happening of marriage of the donee. The firm only retained possession and enjoyment of such rights which were not the subject-matter of the gift. The benefit to the firm of which the donor was a partner arising from the use of the amount till marriage was in respect of rights not forming the subject of gift. Viewed in this way, it cannot be

said that the donee in each case did not bona fide assume possession and enjoyment of the property which was the subject-matter of the gift to the exclusion of the donor and did not retain the possession and enjoyment of the property to the entire exclusion of the donor. In our opinion, the conditions for exemption from the operation of Section 10 are satisfied here also.

11. For the reasons given above, our answer to the question referred to us is in the negative, in favour of the accountable person and against the Department. There will be no order as to costs of this reference.