
(1984) 01 CAL CK 0020

In the Calcutta High Court

Case No : Estate Duty Reference No. 218 of 1973

Surajmull Gouti

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1985) 153 ITR 629

Hon'ble Judges : Dipak Kumar Sen, J;C.K. Banerji, J

Bench : Division Bench

Judgement

Dipak Kumar Sen, J.—The facts found or admitted and the proceedings leading up to this reference u/s 64(1) of the E.D. Act, 1953, are as follows:

The estate involved is that of Madanchand Gouti, who died on March 18, 1966. During his lifetime, the deceased had been a partner, having 12.5% share in a firm carrying on business in the name and style of "Chouthmull Jaychandlal Gouti", hereinafter referred to as the said firm.

2. During his lifetime, the deceased had made a gift of Rs. 10,000 to Sumatichand Gouti, his grandson, a minor and another gift of Rs. 80,001 to Ranjitmal Gouti, his nephew, also a minor. The said gifts were made by way of two trusts and the amounts of the gifts were made over in cash to Jaychandlal Gouti and Dharamchand Singhi who were appointed as trustees.

3. The trustees executed two deeds of trust on March 24, 1961, and April 1, 1963, recording the said gifts and the trusts.

4. Both the deeds provide as follows:

"We, the executors and other trustees and trustee for the time being of these presents all of whom are hereinafter called ("the Trustee") shall stand possessed of the said sum.....(hereinafter called the "Trust Fund") upon Trust to invest it in any manner as a man of ordinary prudence invests his money.....and in carrying

on of the business of any nature and to hold such investments with all accretions thereto upon the trust....."

5. In assessing the duty on the estate, the Assistant Controller of Estate Duty found that the amounts gifted had remained in the said firm in which the deceased was a partner. Accordingly, he held that the deceased, the donor, was not entirely excluded from the enjoyment and possession of the said amounts and included the same in the principal value of the estate u/s 10 of the E.D. Act.

6. An appeal was preferred by Surajmull Gouti, the accountable person, from the said order of the Assistant Controller.

7. The Appellate Controller found that the amounts of the gifts had first been deposited by the trustees in another business and later brought back to the said firm. He held that, on the facts, there was a failure to exclude the deceased donor from the corpus of the gifts and, therefore, Section 10 of the E.D. Act was attracted. The appeal on this point was rejected.

8. From the order of the Appellate Controller, a further appeal was preferred by the accountable person to the Income Tax Appellate Tribunal. It was contended before the Tribunal, on behalf of the accountable person, that the amounts of the said gifts had been reinvested in the said firm by way of loan or advance and regular interest was being paid by the said firm on the said amounts. It was contended further that Section 10 of the E.D. Act had been misapplied as the donees took immediate possession of the amounts and enjoyed the same to the entire exclusion of the donor who, as one of the partners in the said firm, could not have any control over the said amounts and which did not constitute the property of the partnership.

9. It was contended on behalf of the Revenue, on the other hand, that the interest of a partner extended over the entire assets of the firm and, when the amounts of the gifts were deposited back with the firm, the interest of the deceased over the said amounts became co-extensive along with the other partners.

10. The Tribunal held that though a partner cannot, as such, exclusively claim any asset of the firm, he, along with the other partners, can jointly enjoy the same. In the instant case, the deceased had enjoyed the benefit of the fund lying with the firm with his other partners in an indirect manner though without any direct control. The Tribunal held that the rigorous provisions of Section 10 of the E.D. Act had to be applied as in cases where the donor came to have possession and enjoyment of any property transferred on gift even indirectly. The Tribunal, accordingly, rejected the contentions of the accountable person.

11. On an application of the accountable person u/s 64(1) of the E.D. Act, the Tribunal has drawn up a case and has referred the following question as a question of law arising out of the order of the Tribunal for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the inclusion of the gifted amount of Rs. 90,000 in the principal value of the estate by applying Section 10 of the Estate Duty Act, 1953 ?"

12. Learned counsel for the accountable person submitted at the hearing that the gifts were absolute and possession of the amounts gifted was immediately assumed by the trustees on behalf of the donees to the entire exclusion of the donor. The amounts no doubt were reinvested in the firm where the donor had an insignificant share. This investment was made by the trustees in the - usual course of business with the object of earning interest. The firm and the donor as one of the partners in the firm assumed liability to repay the amount invested. It cannot be held that the donor regained possession of or came to have any particular benefit from or enjoyment of the money so as to attract Section 10 of the E.D. Act. In support of his contentions, learned counsel cited the following decisions.

(a) India Cements Ltd. Vs. Commissioner of Income Tax, Madras, . This decision was cited for the following proposition laid down by the Supreme Court (p. 62):

"We are unable to agree that a loan obtained can be treated as an asset or advantage for the enduring benefit of the business of the assessee. A loan is a liability and has to be repaid and, in our opinion, it is erroneous to consider a liability as an asset or an advantage."

(b) Controller of Estate Duty Vs. Jai Gopal Mehra, . Here, Rs. 20,000 was given as gift to one son and four daughters-in-law of the deceased. Subsequently, the donees invested the amount in a firm where the deceased was a partner. On a reference, it was held by a Full Bench, of the Punjab & Haryana High Court that the amount of the said gift could not be included in the estate of the deceased u/s 10 of the Act. The High Court observed as follows (p. 191):

"The money that is given to a firm by way of loan or deposit is meant for carrying on the business of the firm and cannot be utilised by any partner for his own purposes. The utilisation of that money for the purposes of the business of the firm does not mean that the partners become possessed of the same. The deposit of money carries with it the liability of the firm to repay the same to the depositor and no partner has the right, unless authorised by the depositor, to receive the amount or its interest or usufruct on his behalf.....when accounts are taken on dissolution of the firm, such deposits have to be repaid before the partners are entitled to share the assets or property of the firm amongst themselves."

(c) Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder, . Here, by a deed of settlement the deceased transferred an immovable property to his two sons. He also debited his account in a firm where he was a partner by Rs. 20,000 which was credited to the account of his sons in the firm. The firm was and continued to be a tenant in the said property and the rent payable was credited

to the accounts of the sons of the deceased in the firm. On the death of the deceased, the question arose whether the donees had retained possession of the subjects of the gifts to the entire exclusion of the donor within the meaning of Section 10 of the E.D. Act.

The question was ultimately decided in the Supreme Court where it was held that neither the immovable property nor the gifts of money could be included in the estate of the deceased. The Supreme Court observed as follows (p. 452):

".....there is an unequivocal transfer of the property and also of the money.....by crediting the amount of Rs. 20,000 in each of the sons' account with the firm which thenceforward become liable to the sons for the payment of the said amount and the interest at 7 1/2% per annum thereon. In these circumstances, the Revenue has failed to establish that the donees had not retained possession and enjoyment of the property or the amount and that the deceased was not entirely excluded from the possession and enjoyment thereof."

(d) Commissioner of Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and Others, . Here, the deceased and his three sons and a daughter constituted a partnership. During his lifetime, the deceased by adjustment entries in the books of the firm transferred amounts to the respective accounts of his daughter and three sons in the books of the firm which remained in the firm till the death of the deceased and were utilised in the firm's business. On these facts, the Supreme Court, following its earlier decision in Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder, , held that the said amounts would not be deemed to pass on the death of the deceased u/s 10 of the E.D. Act.

(e) Controller of Estate Duty Vs. Thanwar Dass, . In this case, the deceased, a partner in a firm, transferred by way of gifts aggregating to Rs. 40,000 by transfer entries in the books of the firm in favour of his daughter-in-law. The donee withdrew the amount but subsequently deposited back the same in her name. The deposit remained in the firm till the death of the deceased.

On these facts, a Full Bench of the Allahabad High Court following the decision of the Supreme Court in Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder, and Commissioner of Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and Others, , held that Section 10 of the E.D. Act was not attracted and the said amount could not be included in the estate for the purpose of estate duty.

(f) Controller of Estate Duty, Madras Vs. Parvathi Ammal, . This decision of the Supreme Court was cited for the following observations (p. 632) :

"There is one other principle and that relates to gift of property shorn of certain rights belonging to the partnership in which the donor is a partner. In such a case, the benefit remaining in the donor is referable to the partnership agreement and not to the gift."

(g) Controller of Estate Duty, Kerala Vs. R.V. Viswanathan and Others, . Here,

with a view to convert his two proprietary business concerns into a partnership with his four major sons, the deceased transferred Rs. 45,000 from his personal account to the credit of each of his sons whereafter a partnership deed was executed. The minor sons of the deceased were thereafter admitted to the benefits of the partnership and Rs. 45,000 was transferred to each of the minors in the books of the firm. One of the minors became a partner on attaining majority. The other did not attain majority during the lifetime of the deceased.

On these facts, the Supreme Court held that what was transferred to his sons was the 6/7ths share in the businesses of the deceased. The transfer of Rs. 2,70,000 by the deceased to his sons by means of book entries was a part of the scheme of transfer of the business and was subject to the condition that the donees would use it as capital for being entitled to their respective shares in the business. The deceased continued to hold 1/7th share and did not receive any other benefit from the transfers. It was held that the said Rs. 2,70,000 could not come under the mischief of Section 10 of the E.D. Act.

(h) *Controller of Estate Duty Vs. Chaman Lal Bery*, . In this case, the deceased made a gift of Rs. 20,000 to each of his three sons and took them as partners in his business where the amounts gifted were used as capital contributed by the donees. On these facts, the Allahabad High Court held that as the donees had assumed possession of the subject-matter of the gift and as the amounts invested in the firm were utilised for profits and as no part of the same was enjoyed by the donor, the said amounts would not be includible in the estate.

13. Learned counsel for the Revenue contended, on the other hand, that the benefit or enjoyment of the subject-matter of the gifts came back to the donor when the amounts were reinvested in the firm. The donor along with his other partners in the firm had the benefit of the use of the money which the donees ceased to enjoy. Section 10 of the Act was, therefore, attracted in the facts of this case. The following decisions were cited in support of the contentions of the Revenue.

(a) *Controller of Estate Duty, Gujarat Vs. Chandravadan Amratlal Bhatt*, . Here, the deceased had debited his account in a firm where he was a partner, by Rs. 30,000. Each of his three minor sons were credited with Rs. 10,000 in the books of the firm. Subsequently, when the minors attained majority, the deceased debited his account with the firm further by Rs. 24,000 and paid Rs. 12,000 to each of his sons in cash which were subsequently brought into their respective accounts with the firm before the death of the deceased.

On a reference, the Gujarat High Court held that the subject-matter of the gifts having been made available to and placed at the disposal of the partnership where the deceased had an interest as a partner, Section 10 of the E.D. Act would apply in the facts.

(b) *Controller of Estate Duty Vs. N.K. Sanghi*, . In this case, the gifts by the deceased of Rs. 25,000 to each of his four sons were invested in a firm where

the donees as also the donor were partners. The Rajasthan High Court held on the facts that the gifted amounts having been ploughed back into the partnership, it could not be said that the donees enjoyed the possession of the same to the entire exclusion of the donor, who, in one sense or another, had a dominion over the property. The property was utilised for the benefit of the donor as well as the donees. It was held that Section 10 of the E.D. Act was attracted.

(c) Sakarlal Chunilal and Others Vs. Controller of Estate Duty, Gujarat, . Here, the deceased made money gifts to his sons, grandsons and daughters which were deposited in a firm where the deceased as also the donees were partners. The deposits were shown in the individual accounts of the donees in the firm.

The deceased made further gifts in favour of his two minor sons by transfer entries in the books of the firm to the credit of the two donees and made another gift in favour of a minor grandson in cash, the major part of which was deposited back in the firm.

On these facts, the Gujarat High Court held that where the donee actually received the amount gifted and thereafter deposited back the same in the firm where the deceased was a partner, it could not be said that the deceased was wholly excluded from the possession and enjoyment of the property gifted as property in the possession and enjoyment of a firm was in the possession and enjoyment of all the partners.

(d) Controller of Estate Duty Vs. S.M.M. Subramanian Chettiar, . Here, the deceased who was a partner in a firm in Malaya made money gifts to his married daughter, his sons and his grandsons. The amount gifted remained in deposit with the firm. On these facts, the Madras High Court held that cash gifts brought back to the firm would attract Section 10 of the E.D. Act. A distinction was made between transfer from current account and capital or loan or other general account of a firm for determining whether Section 10 of the E.D. Act would apply.

(e) Mahabir Prasad Poddar Vs. Controller of Estate Duty, . Here, cash gifts of Rs. 20,000 each by the deceased to his two sons were invested in a proprietary firm of the deceased which was subsequently converted into a partnership constituted by the deceased and his sons. Subsequently, further gifts by the deceased of Rs. 15,000 to each of his sons were invested back by the donees in the firm. The Patna High Court held that as the amounts of the gift had been ploughed back by the donees into the firm, it could not be said that they had retained the possession of the property gifted to the entire exclusion of the donor.

(f) CONTROLLER OF ESTATE DUTY Vs. B. V. KAPADIA., . In this case, the deceased, a partner in a firm before his death, made a gift of Rs. 1 lakh to his daughter by way of entries in the books of the firm. On the same day, the donee became a partner in the firm by contributing Rs. 75,000 out of the amount so gifted. It was held by a Division Bench of this court that the said amount contributed to the firm ceased to be the exclusive property of donee and the donor retained some interest in the said amount as a partner of the firm and the

same had to be included in the estate for computation of estate duty.

14. We have taken note of a subsequent decision of the Supreme Court on the same question which has come up repeatedly before the courts of India. This subsequent decision is *Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and Patiala Vs. Smt. Kamlavati and Shri Jai Gopal Mehra*, .

15. In the first appeal before the Supreme Court, the facts were that the deceased was a partner in a firm till his death. He made gifts of Rs. 1,00,000 to his son and Rs. 50,000 to his wife by debiting his account and crediting the amounts in the names of the donees in the books of the firm. Simultaneously, the son of the donee was taken as a partner in the firm and half of the share of the deceased was given to him.

16. In the second appeal, the deceased had made gifts of Rs. 20,000 each to his son and his four daughters-in-law. The donees invested the entire amount of gift in a firm where the deceased was and remained a partner till his death.

17. In each case the question arose whether the amounts of the gifts should be included in the respective estates u/s 10. of the E.D. Act, 1953, The Supreme Court, in each of the appeals, held that Section 10 of the said Act was not attracted observing as follows (p. 463):

"To avoid the conflict in the application of the ratio of the various Supreme Court cases as seems to have been done by some of the High Courts, we would like to clarify and elucidate some of the aspects and facets of the matter a bit further. 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 s. 10 of the Act until and unless such enjoyment or benefit is clearly referable to the gift, i.e., 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 of any benefit to him by contract or otherwise. It makes no difference whether the donee is a partner in the firm even before or is taken as such only 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..... The partnership firm is not a legal entity in the sense of having a legal personality of its own different from that of the partners. But no partner can claim a share in the partnership property according to his share in the partnership. A creditor of the partnership is entitled to get back the whole of his property on dissolution of the firm or otherwise, while a partner is entitled to get a share in the net assets of the property realised on the winding up of the partnership.....But we want to emphasise that the principles of law laid down by

this court in several decisions which we have reviewed in this judgment with some further clarification and elucidation should be carefully and broadly applied to the facts of each case without doing too much of dichotomy and hair splitting of facts so as not to easily apply or not to apply the provision of law contained in Section 10 of the Act."

18. It appears to us that the facts of the case before us are in all material respects similar to tho facts in Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and Patiala Vs. Smt. Kamlavati and Shri Jai Gopal Mehra, as noted above. Law on the question stands settled by the said decision following which we answer the question referred in the negative and in favour of the assessee. There will be no order as to costs.