(1975) 11 MAD CK 0010

In the Madras High Court

Case No : Tax Case No. 143 of 1970

The Controller of Estate Duty APPELLANT

Vs

M.C.S. Kannammal RESPONDENT

Date of Decision : 26-11-1975

Acts Referred:
Estate Duty Act, 1953 — Section 10

Citation : (1976) ILR (Mad) 127

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; K. Srinivasan and K.C. Rajappa, for the Respondent

Judgement

V. Ramaswami, J.—With reference to the estate of one Narasimhachari who died on 25th January 1959, his daughter, as the Accountable

person, submitted a nil return. The deceased was a partner of a partnership firm of M/s N.C. Sundararajan and Co. At the time of his death, he

had 3/32 share in the partnership. The Assistant Controller, in the view that his share in the goodwill of the firm passed on death, included a sum of

Rs. 22,500 as the value of his share of goodwill that passed on death. The deceased had gifted a sum of Rs. 11,000 to his granddaughter on 30th

September 1941 and a sum of Rs. 1,19,000 to his grandson between September 1955 and June 1956. The sum of Rs. 11,000 was invested by

the grand-daughter in the firm of M/s M.C.S. Rajan and Co., in which also the deceased was a partnerat the time of his death. The other sum of

Rs. 1,19,000 was invested by the grandson with the firm of Mtrs. M.C. Sundararajan & Co. In the view that the donor/the deceased was not

entirely excluded from the enjoyment of the amount gifted by him till his death, the Assistant Controller included both these amounts in the principal

value of the estate of the deceased u/s 10 of the Estate Duty Act. The Appellate Controller of Estate Duty confirmed this order of the Assistant

Controller. On a further appeal, the Tribunal Considered that in view of Clauses 15 and 16 in the partnership deed relating to M/s M.S.

Sundararajan & Co., which provided that the retirement, death or insolvency of any partner shall not dissolve the firm as against the other partners

and that the goodwill and trade marks, etc., of the firm, shall belong to the continuing partners, the deceased had no interest in the goodwill of the

firm which could pass on the deceased''s death and that therefore, the sum of Rs. 22,500 could not be included in the principal value of the estate.

So far as the amounts gifted are concerned, the Tribunal was of the view that the deceased did not have possession or enjoyment of the amount

gifted by him subsequent to the gift, that the donees were in possession and enjoyment of the same to the entire exclusion of the donor and that,

therefore, those two amounts also could not be included. In that view the Tribunal directed the deletion of these three amounts from the

assessment. At the instance of the Revenue the following two questions are referred:

(1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in excluding a sum of Rs. 22,500 being the alleged

share of the deceased in the goodwill of the firm, from the principal value of the estate of the deceased?

(2) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right, in law in holding that Section 10 of the Estate Duty

Act could not be applied to the deceased''s gifts of Rs. 1,19,000 and Rs. 11,000 to his grandson, M.C.S. Raghavan and his grand daughter,

M.S.K. Pushpavalli respectively so as to include them in the dutiable estate?

The first question is directly covered by the decisions of this Court reported in Commissioner of Gift-tax Vs. M.K. Krishna Chettiar, Controller of

Estate Duty Vs. S.M.M. Subramanian Chettiar, and Controller of Estate Duty Vs. Ibrahim Gulam Hussain Currimbhoy, and nothing has been

stated by the learned Counsel for the accountable person to take this case out from the said decisions. Therefore we have to answer that question

in the negative and in favour of the Revenue.

2. So far as the second question is concerned, the facts as found by the Tribunal are these : Bona fide possession and enjoyment of the property

taken under the gift was immediately assumed by the donees. The donees treated the amounts standing to their credit in the firms as their own and

the gift was not conditioned upon their retention of the sum in the firm. The donees have withdrawn various sums of monies from time to time from

the gifted property and the accretions thereto for their own use such as to meet insurance premia, income tax and also by way of transfers to other

persons. On these facts, the Tribunal considered that though the amount was deposited by the donees in the firm in which the donor was a partner,

the enjoyment of the money after it was deposited, was by the firm of partnership and not by the donor. As far as the donor was concerned, in

view of the Tribunal, the donees did not share any of their rights. The Tribunal also relied on the decision of the Supreme Court in Addanki

Narayanappa and Another Vs. Bhaskara Krishtappa and Others, wherein it was held that a partner of a firm cannot be said to be a owner of any

specified share in the partnership and that, therefore, the deceased could not be said to have any right or interest in the amount deposited by the

donees in the firm. The Tribunal also referred to their earlier decision in some similar matters in support of their view. Learned Counsel for the

Revenue contended that in view of the decision in Radhabai Ramchand Vs. Controller Of Estate Duty, Madras, and Controller of Estate Duty Vs.

S.M.M. Subramanian Chettiar, the deceased could not be said to have been entirley excluded from the possession and enjoyment of the property

donated and that therefore, Section 10 is clearly attracted. On the other hand the learned Counsel for the accountable person contended that

though the ratio of the decisions reported in Radhabai Ramchand Vs. Controller Of Estate Duty, Madras, and Controller of Estate Duty Vs.

S.M.M. Subramanian Chettiar, could not be questioned, the Tribunal did not have the benefit of the decisions in these cases and the facts were not

analysed with reference to the legal position as now settled by this Court and that, therefore, the case will have to be remanded to the Tribunal for

a fresh consideration of the fact. Having given our careful consideration, we think that it is not necessary to remand the matter to the Tribunal. Or

the facts found by the Tribunal, it is clear that there was a gift of a sum of money by the deceased to the grandson and grand-daughter, respectively and that after the gifts, the donees deposited the money in the partnership firm in which the deceased was a partner. The amounts sought to be

included in the principal value of the estate passing on the death of the deceased was available in the firm of partnership in which the deceased was

a partner at the time of his death. Clearly therefore, the deceased was entitled to the possession and enjoyment of the money as a partner of the

firm. The view of the Tribunal, that it was only the partnership firm as such that was entitled to the possession and enjoyment of the same and not

the individual partner, the deceased is clearly wrong. The deceased, as partner, was also entitled to possession and enjoyment of the same. This is

not a case where the amount donated belonged to the partnership firm in which the amount was deposited at the time of the gift in order to raise a

doubt as to whether the gift was show of the right of the partnership for the possession and enjoyment of the same. As already stated, bona fide

possession and enjoyment of the property gifted was immediately assumed by the donees and they are treating the entire money as their own. It is

by virtue of their deposit in the firm that the firm came to possess and enjoy the same. Therefore clearly the two decisions of this Court in Radhabai

Ramchand Vs. Controller Of Estate Duty, Madras, and Controller of Estate Duty Vs. S.M.M. Subramanian Chettiar, conclude the issue against

the accountable person. We accordingly answer the second question also in the negative and in favour of the Revenue. In the result, both the

questions are answered in the negative and in favour of the Revenue. The Revenue will be entitled to the costs of this reference.