The Controller of Estate Duty, Madras

Vs

C. R. Ramachandra Gounder

Civil Appeal No. 1391 of 1970

(K. S. Hegde, H. R. Khanna, P. Jagmohan Reddy JJ)

27.02.1973

JUDGMENT

JAGANMOHAN REDDY, J. –

1. This appeal is by certificate against the judgment of the Tamil Nadu High Court, which has answered the following two questions referred to it, in favour of the assessee and against the Revenue :

> (1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the house property in Avanashi Road, Coimbatore, is not liable to estate duty as property deemed to pass on the death of the deceased under Section 10 of the Estate Duty Act, 1953 ?
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> (2) Whether on the facts and the in the circumstances of the case, the Tribunal was right in law in holding that the sum of Rs. 1 lakh gifted by the deceased to his sons in 1953 is not liable to estate duty as property deemed to pass on the death of the deceased under Section 10 of the Estate Duty Act, 1953 ?

These question arose on the facts set out in the statement of the case which are : one Ramaiah Gounder was a partner in the firm called N. Desai Gounder & Co., Coimbatore. He owned property which the firm was occupying as tenant-at-will. In August 1953, he executed a deed of settlement under which he transferred the property leased out to the firm to his two sons, Lingish and Krishnan, absolutely and irrevocably. After this transfer, the firm continued to be in occupation of the premises paying rent thereof at Rs. 300 p.m. to the two donees by crediting each of their accounts in the account books of the firm in equal shares. It may be mentioned that Ramaiah the father continued to be a partner of the firm even after the transfer till April 13, 1957, when the firm was dissolved. He had also an account with the firm, Desai Gounder & Co., and on March 30, 1953, he requested the firm by a letter to transfer from his account five sums of Rs. 20,000 each with effect from April 1, 1953 to the credit of his five sons in the firm's books. He also wrote to the five sons informing them of the transfer. Though the sons did not withdraw any amount from their accounts in the firm, the amounts continued to be invested in the firm for which interest at 7 1/2% per annum was paid to them.

2. On the death of Ramaiah Gounder on May 5, 1957, the Assistant Controller of Estate Duty, included in the estate of the deceased, the property leased out to the firm which was transferred to his two sons. According to him, possession and enjoyment of the subject-matter of the gift had not been assumed by the donees nor had they retained possession thereof to the entire exclusion of the

donor, inasmuch as the partnership in which the donor was a partner with other parties, continued to be in possession and enjoyment of the gifted property as tenants-at-will of the donees. With respect to the gift of Rs. 1 lakh to the five sons of the deceased, the Assistant Controller held that the donees had not been in possession and enjoyment of the subject-matter of the gift to the entire exclusion of the donor within the meaning of Section 10 of the Estate Duty Act. He, therefore, included this sum of Rs. 1 lakh in the principal value of the estate of the deceased.

3. The accountable persons appealed to the Appellate Controller who confirmed the said inclusion. The Tribunal on a further appeal, however, disagreed with the findings of the Assistant Controller and the Appellate Controller. It held that the firm, of which the deceased was a partner, occupied the property but that such interest was not as owner of the property, and therefore, the gift had been made without the donor retaining any interest, as such it could not be included in the estate of the deceased under Section 10 of the Estate Duty Act. It further held that the sum of Rs. 1 lakh gifted to the sons was given by the sons to the firm which had benefit of the money and that the father could not be said to have enjoyed the benefit of the money as partner of the firm. In this view, the Tribunal excluded the sum of Rs. 1 lakh from the estate of the deceased. The High Court agreed with these findings.

4. It is contended before us by the learned advocate for the Revenue that both the Tribunal and the High Court were in error in holding that the property as well as the sum of Rs. 1 lakh were enjoyed by the donees to the exclusion of the donor or that the deceased did not derive benefit therefrom within the meaning of Section 10 of the Estate Duty Act, because, firstly, the donor was a partner in the firm which had occupied the property as tenants-at-will even after the gift, and secondly, the amount of Rs. 1 lakh, though entered in each of the accounts of the donor's five sons in the books of the firm, was not utilised or enjoyed by them in any manner. Section 10 of the Estate Duty Act, as in the force on the date of the death of the deceased, was as follows :

> "10. Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that 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 of him by contract or otherwise :
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> Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gift, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death :...."

The crux of the above section as pointed out by this Court in George De Costa v. Controller of Estate Duty, Mysore (63 ITR 497 at p. 501 : (1967) 1 SCR 1004, 1008 : AIR 1967 SC 849 : (1967) 1 SCJ 493), lies in two parts : (1) the donees 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. Both these conditions are cumulative. Unless each of these conditions is satisfied, the property would be liable to estate duty under Section 10 of the Act. The second part of the section has two limbs : the deceased must be entirely excluded (i) from the property, and (ii) from any benefit by contract or otherwise. The words "by contract or otherwise" in the second limb of the section will not control the words "to the entire exclusion of the donor" in the first limb. The first limb may be

infringed if the donor occupies or enjoys the property or its income, even though he has no right to do so which he could legally enforce against the donee. In other words, in order to attract the section, it is not necessary that the possession of the donor of the gift must be referable to some contractual or other arrangement enforceable in law or in equity. In the context of the section, the word "otherwise" should be construed ejusdem generis and it 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.

5. There is no doubt on the facts of this case, the first two conditions are satisfied because there is an unequivocal transfer of the property and also of the money, in the one case by a settlement deed, and in the other by crediting the amount of Rs. 20,000/- in each of the sons' account with the firm which thenceforward became 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. The last limb of the condition relating to any benefit to the donor by contract or otherwise is inapplicable in this case. The donor on the date when he gifted the property to his sons which was leased out to the firm, had two rights, namely, of ownership in the property and the right to terminate the tenancy and obtain the possession thereof. There is no dispute that the ownership has been transferred subject to the tenancy-at-will granted to the firm, to the donor's two sons because the firm from thenceforward had attorned to the donees as their tenant by crediting the rent of Rs. 300 to the respective accounts in equal moity. The donor could, therefore, only transfer possession of the property which the nature of that property was capable of, which in this case is subject to the tenancy. He could do nothing else to transfer the possession in any other manner unless he was required to effectuate the gift for the purpose of Section 10 of the Act by getting the firm to vacate the premises and handing-over possession of the same to the donees leaving the donees thereafter to lease it out to the firm. Even then the objection of the learned Advocate that since the donor was a partner in the firm which had taken the property on lease, he derived benefit therefrom and was, therefore, not entirely excluded from the possession and enjoyment thereof, will nevertheless remain unsatisfied. To get over such an objection, the donees will have to lease out the property after getting possession from the firm to some other person totally unconnected with the donor. Such an unreasonable requirement the law does not postulate. The possession which the donor can give is the legal possession which the circumstances and the nature of the property would admit. This he has given. The benefit the donor had as a member of the partnership, was not a benefit referable in any way to the gift but is unconnected therewith. The Privy Council in Munro v. Commissioner of Stamp Duties (1934 AC 61), was dealing with a case of a similar nature. The donor in that case by six registered transfers in the form prescribed, transferred by way of gift all his right, title and interest in portions of his land to each of his four sons and to trustees for each of his two daughters and their children. The four sons and the two daughters were, prior to this transfer, on a verbal agreement with the donor, treated as partners of the business carried on by him as grazier of the land owned by him. The evidence showed that the transfers were taken subject to the partnership agreement and on the understanding that any partner could withdraw and work his land separately. On an analogous provision of the law, the Privy Council thought it unnecessary to determine the precise nature of the right of the partnership at the time of the transfers because it was either a tenancy during the term of the partnership or a licence coupled with an interest. Lord Tomlin, giving his opinion, observed at p. 67, that "the benefit which the donor had as a member of the partnership in the right to which the gift was subject was not in their Lordships' opinion a benefit referable in any way to the gift." This decision was referred to and distinguished in Clifford John Chick and Another v. Commissioner of

Stamp Duties (37 ITR (ED) 89), and though it was considered to have no application to the case at point, Viscount Simonds observed at p. 97 : "It must often be a matter of fine distinction what is the subject-matter of gift. If, as in Munro's case (supra), 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 those rights, be said within the meaning of the section not to be excluded from possession and enjoyment of that which he has given." In Commissioner of Stamp Duties of New South Wales v. Perpetual Trustees Company Limited (1934 AC 425), the Privy Council further elaborated the concept of the nature of possession required to be given to the donee as not to attract the analogous provisions of the Commonwealth Act. Lord Russell of Killowen observed at p. 440 :

> "The linking of possession with enjoyment as a composite object which has to be assumed by the donee indicates that the possession and enjoyment contemplated is beneficial possession and enjoyment by the object of the donor's bounty.... because the son was (through the medium of the trustees) immediately put in such bona fide beneficial possession and enjoyment of the property comprised in the gift as the nature of the gift and the circumstances permitted. Did he assume it, and thenceforth retain it to the entire exclusion of the donor ? The answer, their Lordships think, must be in the affirmative, and for two reasons : (1) the settlor had no enjoyment and possession and enjoyment as he had from the fact that the legal ownership of the shares vested in him and his co-trustees as joint tenants, was had by him solely on behalf of the donee. In his capacity as donor he was entirely excluded from possession and enjoyment of what he had given to his son. Did the donee retain possession and enjoyment to the entire exclusion of any benefit to the settlor of whatever kind or in any way whatsoever ? Clearly yes."

The views expressed by the Privy Council are in complete accord with our views already expressed. This was also the view held in Controller of Estate Duty, Mysore v. S. Aswathanarayana Setty and Another (72 ITR 29 (Mys) HC), where a Bench of the Mysore High Court considered both the cases of Clifford John Chick (supra), and of Munro (supra), above referred to. In that case, on June 30, 1954, the deceased transferred to his two sons Rs. 57,594 being half of the share standing to his credit as on that date in the books of a firm in which he was a partner and from July 1, 1954, the sons were also taken as partners in the firm. On the death of the deceased on November 16, 1957, the Assistant Controller held that the amount transferred to the sons must be deemed to pass as per the provisions of Section 10 of the Estate Duty Act, which decision was confirmed by the Appellate Controller. The Tribunal, however, held that the sum which subsequently was rectified to be Rs. 73,695 was not so includible. One of us (Hegde, J., as he then was), speaking for the Bench, observed at p. 32 :

> "On the facts of the case, it cannot be said that, after the gifts, the donees did not retain the property gifted to the entire exclusion of the donor or that the donor had any benefit either by contract or otherwise in the property gifted. That in order that the property could deem to pass and estate duty could be leviable in such cases, the benefit of the donor must be a benefit referable to his own property. The view, that if it is once found that the deceased had some benefit in the property, that in itself was sufficient to bring the case within the ambit of Section 10 irrespective of the question whether that benefit was referable or not referable to the gift, in our opinion, is erroneous."

6. In our view, neither the property gifted to the donees, nor the amount of Rs. 1 lakh gifted to the five sons, could be included in the estate of the deceased. The appeal is accordingly dismissed with costs.

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