

Commissioner of Income Tax and Controller of Estate Duty, Madras

Vs

N. R. Ramarathnam and Others

Civil Appeal No. 1398 of 1970

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

05.03.1973

JUDGMENT

HEDGE, J. –

1. The question of law referred to the High Court for its opinion was : "Whether, on the facts and in the circumstances of the case, the sum of Rs. 1,29,924 was liable to estate duty as property deemed to pass on the death of the deceased under Section 10 of the Estate Duty Act 1953 ?" The High Court answered that question in the negative and in favour of the assessee. Aggrieved by that decision the department has come up in appeal to this Court. The facts of the case as can be gathered from the statement of the case submitted by the Tribunal are as follows :

"The deceased, Sri N. S. Ramaswami Iyer, was a partner in the firm of Messrs. Ennessor and Company. The other partners of the firm consisted of the three sons and the daughter of the deceased. The firm was engaged in money-lending and financing business. The firm was registered under Section 26-A of the Indian Income-tax Act, 1922.

2. At the end of the accounting year 1952-53, the current account of the deceased showed a credit balance of Rs, 78,098-6-5. On March 31, 1953, the deceased transferred by adjustment entries a sum of Rs. 52,042-7-3 to the accounts of his daughter and three sons. The balance in the account of the deceased was reduced to Rs. 26,055-15-2. Again on March 31, 1956, the account of the deceased in the firm showed a credit balance of Rs. 1,15,304-11-9. On April 1, 1956, the deceased transferred Rs. 77,881-11-8 again by adjustment entries to his daughter and three sons. Thus, the two transfers on March 31, 1953, and April 1, 1956, amounted to Rs. 1,29,924. The amounts thus transferred by the deceased to his daughter and sons continued to remain in the partnership business subsequent to the transfers till the death of the deceased and were utilised in the firm's money lending business.

3. The deceased died on October 17, 1960. The daughter and the three sons of the deceased, as accountable persons, filed an estate duty return showing the principal value of the estate as Rs. 2,81,574. In computing the value of the estate of the deceased the accountable persons did not include the amount of Rs. 1,29,924 which had been transferred by the deceased to their accounts. The Assistant Controller of Estate Duty, however, included this amount in the value of the estate of the deceased on the following grounds :

(i) The gifts were made by mere adjustment entries in the books and the partnership did not lose its funds.

(ii) These moneys were used in the money-lending and financing business, which earned profits.

(iii) By retaining the amounts to the business, in which he was a partner, the deceased continued to enjoy the benefit of this capital.

(iv) Section 10 of the Estate Duty Act was applicable.

4. The accountable persons preferred an appeal before the Appellate Controller against the order of the Assistant Controller including the sum of Rs. 1,29,924 in the value of the estate of the deceased. They contended that it cannot be said that the donees, who were partners in the firm, were not having exclusive possession and beneficial enjoyment of their share in the assets of the partnership merely because the deceased was participating in the management of the business of the partnership. It was, therefore, contended that Section 10 of the Estate Duty Act was inapplicable. The Appellate Controller, however, did not accept these contentions and held that the provisions of Section 10 were attracted. He, therefore, confirmed the order of the Assistant Controller.

5. The accountable persons went on further appeal before the Tribunal against the order of the Appellate Controller.

6. They contended that after the amounts were transferred by the deceased to his daughter and sons, the amounts were in the absolute control and powers of the donees who were partners in the firm and that the mere fact that they thought it wiser to allow the said funds to remain in the partnership business as their own capital would not deprive them of their absolute right, title and interest in the funds. It was further contended that the possession and control retained by the deceased over the funds gifted to them were not referable to the gifts themselves, but the partnership which was already in existence prior to the date of the gifts, and that, therefore, Section 10 was not applicable. The accountable persons relied upon the decision in the case of *H. R. Munro v. Commissioner of Stamp Duties*. (1934 AC 61 : 2 EDC 462 (PC)) On the other hand, the contentions of the department were that as the deceased continued to be in effective management of the business of the partnership even after the gift, and as he was thus exercising effective control over the funds of the partnership, including the amounts gifted by him to the donees, the deceased cannot be deemed to have been entirely excluded from the possession and enjoyment of the amounts gifted or from the benefits therefrom. The department relied upon the decision in the case of *Clifford John Chick v. Commissioner of Stamp Duties*. (1958 AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915 (PC))

7. The attention of the Tribunal was also drawn to the decision in the case of *Rash Mohan Chatterjee v. Controller of Estate Duty*, ((1964) 52 ITR (ED) 1 (Cal)) in which the distinguishing feature between Chick's case (*supra*) and Munro's case (*supra*) was pointed out, viz., that whereas in Munro's case (*supra*) the subject-matter of the gift was property shorn of the rights of the pre-existing partnership of Munro and his sons, in Chick's case (*supra*) there was an initial outright gift of the property without its having shorn of any rights. The Tribunal was of the view that the facts of the case under appeal were similar to the facts of Munro's case (*supra*) and dissimilar to the facts of Chick's case (*supra*) and that, therefore, the decision in Munro's case (*supra*) governed the instant case. The Tribunal, therefore, held that the amount of Rs. 1,29,924 which was the subject-matter of the gifts did not come within the purview of Section 10 and was, therefore, not property subject to estate duty.

8. The question of law arising for decision is completely covered by our decision in the *Controller of Estate Duty v. C. R. Ramchandra Gounder*. ((1973) 88 ITR 449 (SC) : (1973) 4 SCC 102 : 1973

SCC (Tax) 388) Mr. Karkhanis, the learned counsel for the department, sought to satisfy us that that decision requires reconsideration. We have not permitted him to reargue the question of law which has already been concluded by our decision. Following that decision we affirm the decision of High Court and dismiss the appeal with costs.

</html