

Controller of Estate Duty Kanpur

Vs

Vithal Das

Civil Appeal No. 851 (Nt) of 1974

(Sabyasachi Mukharji, S. Natarajan JJ)

03.02.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This appeal is directed against the judgment and order of the High Court of Allahabad dated July 15, 1971. The following two questions were referred by the Central Board of Direct Taxes under section 64(1) of the Estate Duty Act, 1953 (hereinafter called the Act) to the High Court :

(1) Whether, on the facts and in the circumstances of the case, only half share of the properties included in the estate duty assessment of the deceased should have been included as property passing or deemed to pass on his death under section 7 of the Act ?

(2) Whether, on the facts and in the circumstances of the case, the amount of Rs. 80,000 standing in the names of the grandchildren of the deceased was correctly included in his estate ?

2. This reference arose out of the proceedings in connection with the estate duty assessment in respect of the estate of late L. Kedar Nath, who died on September 8, 1955. Shri Vithal Das, the eldest son of the deceased, filed the estate duty return in respect of the properties left by Kedar Nath and had showed the value of the estate by the deceased at Rs. 1,57,764. The Assistant Controller of Estate Duty, however, computed the value at Rs. 3,09,972 and levied the estate duty on the accountable person. The Assistant Controller also discovered certain deposits amounting to Rs. 80,000 in the names of five grandsons and one granddaughter of the deceased, Rs. 15,000 each in the names of the grandsons and Rs. 5,000 in the name of the granddaughter. It was claimed that these amounts had been gifted by the deceased to his grandchildren on May 9, 1952, more than two years before his death. It was found that a debit entry of Rs. 80,000 was made in the deceased's account with Messrs. Girdhari Lal Kedar Nath of Tanda. There were corresponding credit entries in the newly opened account in the names of the deceased's grandsons and granddaughter. The Assistant Controller found that the cash balance of the firm on the date on which the above entry was made was Rs. 7745 only. According to the Assistant Controller, there was neither a registered instrument of transfer nor delivery of possession of the property alleged to have been gifted by the deceased and there was no valid and completed gift. The assessee had brought to the notice of the Assistant Controller that the aforesaid gifts were made by book entries and were accepted on behalf of the minors by their respective fathers. These sums were later on withdrawn from the books of Messrs. Girdhari Lal Kedar Nath of Tanda and got credited in the books of Bhawani Prasad Girdhari Lal Hatia, Kanpur, where the deceased was not a partner. The latter firm paid interest to the minors

on the amount standing in their names. The Assistant Controller found that the transfer of accounts from the books of Girdhari Lal Kedar Nath, Tanda, to the books of Messrs. Bhawani Prasad Girdhari Lal, Kanpur, took place only on November 3, 1953. At that time the amount was transferred only by making book entries and no cash passed from the Tanda firm to the Kanpur firm. It was only on August 4, 1955 that for the first time an amount of Rs. 6,000 was remitted from Tanda to Kanpur. This was followed by remittances amounting to Rs. 20,000, Rs. 12,000 and Rs. 25,000 made on August 16, 1955, September 5, 1955 and September 6, 1955, respectively. According to the Assistant Controller, neither the transfer entries made in the books of the two firms, nor the remittances of cash had the effect of validating the gift alleged to have been made on May 9, 1952. In any case as these remittances were made within two years of the death of the deceased, the amount gifted was liable to be included in the estate of the deceased under Section 10 of the Act. In the result he included the sum of Rs. 80,000 also in the value of the estate which according to him passed on the death of the deceased. The accountable person in appeal claimed that the amount of Rs. 80,000 was gifted on May 9, 1952, by debiting the account of the deceased in the books of the firm Girdhari Lal Kedar Nath and opening corresponding accounts in the names of the grandchildren.

3. The Board was unable to accept this position that there was any valid gift. The Board concluded that the signatures underneath the debit and the credit entries in the books of the Tanda firm were appended afterwards so as to create evidence indicating acceptance of the gift. The Board therefore came to conclusion that even if the deceased wanted to make a gift of the money to his grandchildren on May 9, 1952, the gift was incomplete and invalid.

4. The High Court dealt with this aspect by setting out the aforesaid facts and observing that there could be no doubt that the signatures underneath the entries were affixed in order to show that a gift had been made by the deceased to the minors. According to the High Court, however, it did not mean that the signatures were fraudulent. The High Court was of the view that where sufficient amount stood in the personal account of the donor in a firm, a valid gift could be made by making entries in the books of the firm at the instance of the donor. It followed its earlier decision in the case of Gopal Raj Swarup v. CWT ((1970) 77 ITR 912 (All)).

5. The High court in granting the certificate limited the appeal to one question, namely : "Whether, in a case where there was not sufficient cash balance from out of which the amount should be physically gifted to the donee, there could be valid gift ?"

6. We have considered this question in CIT v. Dr. R. S. Gupta. ((1987) 2 SCC 84) In view of the position as decided by us in that decision, we must allow this appeal. The appeal is accordingly allowed. The judgment and order of the High Court on this aspect are set aside. The respondent will pay the cost of this appeal.

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