

N. K. Sanghi, Partner of M/S. Sanghi Brothers

Vs

Controller of Estate Duty, Rajasthan

Civil Appeal No. 608 (NT) of 1975

(CJI R. S. Pathak, M. H. Kania JJ)

06.05.1988

JUDGMENT

KANIA, J. -

1. This is in appeal against the judgment of a Division Bench of the High Court of Rajasthan rendered on a reference made to the Rajasthan High Court under Section 64(1) of Estate Duty Act, 1953. The question referred to the Rajasthan High Court for determination was as follows :

Whether on the facts and in the circumstances of the case the provisions of Section 10 of the Estate Duty Act, 1953 were applicable to this case.

2. The relevant facts are that one Motilal Sanghi (deceased) made a gift of Rs. 1 lakh on September 1, 1955 in favour of his four sons. Each of the sons was given a gift of Rs. 25,000. These amounts were invested by the sons in the firm known as Sanghi Brothers which was constituted by the said Motilal soon after the said gifts were made. Motilal Sanghi was a partner in the said firm and had an 8 annas share in the firm : each of his four sons had a share of 2 annas in the profits and losses of the firm. It was stated by learned counsel appearing for the accountable person before the Rajasthan High Court that the firm was managed not by Motilal Sanghi but it was managed by the eldest son, namely, N. K. Sanghi. Motilal Sanghi died on July 21, 1961. A question arose whether the sum of Rs. 1 lakh gifted by him as aforesaid was liable to be included in his estate for purposes of computation of estate duty under the provisions of the Estate Duty Act. The Assistant Controller of Estate Duty took the view that the sum was liable to be included in the estate of the said deceased in view of the provisions of Section 10 of the Estate Duty Act as that amount was not retained by the donees to the entire exclusion of the donor. An appeal preferred by the accountable person to the Controller of Estate Duty was allowed by him holding that Section 10 was not attracted to the circumstances of the case and an appeal preferred by the revenue to the Appellate Tribunal was dismissed. A reference was, thereafter made to the High Court at the instance of the revenue. After considering the provisions of Section 10, of the Estate Duty Act, the Division Bench of the High Court which decided the reference came to the conclusion that the provisions of Section 10 were attracted and the amount in question was liable to be included in the estate of the deceased for the purpose of assessment of estate duty. The High Court took the view that the said amount gifted by Motilal Sanghi to his sons was brought back into the partnership business of the donor and the donees and hence it was difficult to say that during the continuance of the partnership the donees enjoyed the amounts gifted to the entire exclusion of the donor. The donor, in one sense or the other had dominion over that property and that property was utilised both for the benefit of the donor and the donees and hence Section 10 of the Estate Duty Act was attracted.

3. Before considering the arguments of the learned counsel, we may note the relevant portion of Section 10 of the Estate Duty Act. The said portion runs as follows :

Property taken under any gift whenever made, shall be deemed to pass on the donor's death to the extent the 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 to him by contract or otherwise.

4. In the present case there is no dispute that when the amount of Rs. 1 lakh was gifted by way of gifts of Rs. 25,000 to each of the four sons of the deceased they immediately assumed bona fide possession and enjoyment thereof but it is contended by Mr. Ramaswamy, learned Additional Solicitor General, that as the said amounts of Rs. 25,000 were immediately thereafter invested in a firm of which the donees and the donors were partners it could not be said that those amounts aggregating to Rs. 1 lakh were retained by the donees to the entire exclusion of the donor. When the amounts were invested in the partnership in which the donor, namely, the deceased was a partner he got a certain interest and benefit in that amount which was liable to be used for purposes of partnership. The deceased had a certain dominion over that property as a partner in the said firm and hence it could not be said that the amount gifted was retained by the donees to the entire exclusion of the donor and, in these circumstances, the provision of Section 10 of the Estate Duty Act were attracted. It was, on the other hand, contended by Mr. Sharma, learned counsel for the accountable person, who is the appellant before us, that when the amounts were invested by the donees in the said firm, the interest which the deceased got in the amounts invested by the donees, as a partner of the firm in which the amounts were invested was in no way related to the gift and hence, merely be reason of that investment it could not be said that the donees had not retained the said amount to the entire exclusion of the donor for the purposes of Section 10 of the Estate Duty Act. It is the light of the provisions submissions which has to be examined in the light of the provisions of Section 10 and the decided cases.

5. In *George Da Costa v. CED* ((1967) 63 ITR 497 (SC) : (1967) 1 SCR 1004, 1007-08 : AIR 1967 SC 849) analysing the Section 10 of the said Act this Court observed as follows :

The crux of the section lies in two parts : (1) the donee must bona fide have assumed possession and enjoyment of the property, which is the subject matter of 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. As a matter of construction we are of opinion that 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. It was argued for the appellant that the expression, "by contract or otherwise" should be construed ejusdem generis and reference was made to the decision of Hamilton, J. in *Attorney-General v. Secombe* ((1911) 2 KB 688 : 1 EDC 589 (KB)). On this aspect of the case we think the argument of the appellant is justified. In the context of the section, the word "otherwise" should, in our opinion 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 benefit on the donor.

6. We may also at this stage very briefly refer to two leading cases decided by the Privy Council on

a provision analogous to Section 10 of the Estate Duty Act. In one of these cases namely, *H. R. Munro v. Commissioner of Stamp Duties* (1934 AC 61 : 2 EDC 462) the Judicial Committee held that the property comprised in the transfers was the land shorn of the rights therein belonging to the partnership and was excluded from being dutiable, because the donees had assumed and retained possession thereof, and any benefit remaining in the donor was referable to the partnership agreement entered into earlier than the gifts and not to the gifts. In that case a father, who was the owner of a large plot of land on which he carried on the business of a grazier, entered into a partnership with his six children to carry on the said business. The partnership business was to be managed solely by the father, and each partner was to receive a specified share of the profits. Subsequently, the father transferred by way of gift all his right, title and interest in separate portions of his land to each of his four sons and transfer was subject to the partnership agreement and was on the understanding that any of the partners could withdraw and work the portion of the land gifted to him separately. The partnership was an oral one and about six years after these deeds of gifts were executed, a written partnership agreement was drawn up during the life time of the father under which no partner was entitled to withdraw from the partnership. On the death of the father, the land which he had transferred by way of gift to his six children was included in his estate in the assessment of death duties under the Stamp Duties Act (N.S.W.), 1920 which contained a provision in pari materia with Section 10 of the Estate Duty Act. On appeal, the Judicial Committee of the Privy Council held that such inclusion was not justified and laid down the principle which we have set out earlier.

7. The other leading case in this connection decided by the Privy Council is the case of *Clifford John Chick v. Commissioner of Stamp Duties* (1958 AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915). The same provision, namely Section 102 of the New South Wales Stamp Duties Act, 1920-56, came up for consideration in that case. The facts were that a father transferred, by way of gift, to one of his sons a pastoral property, the gift being made without any reservation or qualification or condition. Some months later, the son to whom the gift was made and another son of the donor entered into an agreement to carry on in partnership the business of graziers and stock dealers. The agreement, inter alia, provided that the father should be the Manager of the business and that his decision would be final and conclusive in matters connected with the conduct of the business. The agreement further provided that the capital of the business would consist of the livestock and plant owned by the respective holdings of the partners and such holdings should be used for the purposes of the partnership only and that all lands held by any of the partners at the date of the agreement should remain the sole property of such partner and should have the sole and free right to deal with it. Each partner brought into partnership inter alia his livestock and plant, and their combined properties were thenceforth used for the depasturing of the partnership stock. On the death of the father, the question arose as to whether the land gifted was liable to be added to his estate for the purposes of assessment of death duty. The Judicial Committee took the view that the land gifted to the son was liable to be so included in computation a father's estate because, although the son has assumed bona fide possession and enjoyment of the property immediately upon the gift to the entire exclusion of the father he has not, thenceforth retained the property to the father's entire exclusion as under the partnership agreement the partners and each of them were in possession and enjoyment of the property as long as the partnership subsisted, whatever force and effect might be given to that part of the partnership agreement which gave a partner the sole and free right to deal with his own property.

8. For some years, the principles laid down in *Munro* case (1934 AC 61 : 2 EDC 462) and in the case of *Clifford John Chick v. Commissioner of Stamp Duties* (1958 AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915), referred to above, were followed by the courts of this country in construing

Section 10 of the Estate Duty Act. However, the decision in Chick case (1958 AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915) came up for consideration before this Court in CED v. C. R. Ramachandra Gounder ((1973) 88 ITR 448 (SC) : (1973) 4 SCC 102 : 1973 SCC (Tax) 388). Two different types of property were gifted in Gounder case ((1973) 88 ITR 448 (SC) : (1973) 4 SCC 102 : 1973 SCC (Tax) 388). The first type of property gifted was a house which the deceased owned and which was let to the firm in which the deceased was a partner as a tenant. He gifted this house to his two sons absolutely. After the deed of gift the firm paid the rent not to the deceased but to the donees by crediting the amount in the donee's accounts in equal shares. The second type of property gifted consisted of money. This gift was effected by the deceased by directing the firm in which he was a partner to transfer from his account a sum of Rs. 20,000 to the credit of each of this five sons in the firm's books of account with effect from a particular date. He gave intimation of this transfer to his sons. Pursuant to the directions given by the deceased a sum of Rs. 20,000 was credited in each of the sons' account with the said firm. The amounts remained invested with the firm for which the firm paid them interest. The deceased continued as a partner of the firm till dissolution. Within one month of its dissolution, the deceased died. The question arose as to whether value of the house property and the sum of Rs. 1 lakh should be included in the property deemed to pass on the death of the deceased under Section 10 of the Estate Duty Act. The court held that neither the house property nor the sum of Rs. 1 lakh could be deemed to pass under Section 10. Jagannmohan Reddy, J. who spoke for the court said (page 452 of the report) : (SCC p. 105, para 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 cent per annum thereon.

9. As far as the house property was concerned, it was observed that the donor, on the day when he gifted the property to his sons, which property 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 had been transferred, subject to the tenancy at will granted to the firm, to the donor's two sons because the firm from thenceforward had attorney to the donees as their tenant by crediting rent of Rs. 300 to the respective accounts in equal moiety. The donor, could, therefore, only transfer possession of the property which the nature of that property was capable of, which in that case was subject to tenancy. What is pertinent to note in the case is that this Court took the view that "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." This decision shows that the principle laid down in Chick case (1958 AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915) was departed from by the court in cases in which the property gifted was brought into a partnership in which the donor had an interest merely as a partner. The decision in Gounder case ((1973) 88 ITR 448 (SC) : (1973) 4 SCC 102 : 1973 SCC (Tax) 388) was followed by this Court in CED v. N. R. Ramarathnam ((1973) 91 ITR 1 (SC) : (1974) 3 SCC 268 : 1973 SCC (Tax) 574 : AIR 1973 SC 2598) and several other decisions.

10. An analysis of the decision of Supreme Court in Gounder case ((1973) 88 ITR 448 (SC) : (1973) 4 SCC 102 : 1973 SCC (Tax) 388) in our opinion, shows that the Supreme Court in that decision referred to Munro case (1934 AC 61 : 2 EDC 462) and also referred to Chick case (1958 AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915). It however, made a certain departure from the principle laid down in Chick case. (1958 AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915) This would appear clear from the decision of this Court in CED v. Kamlavatti ((1979) 120 ITR 456 (SC) : 1979

4 SCC 265 : 1979 SCC (TAX) 3476 : AIR 1980 SC 142) and CED v. Jai Gopal Mehra cases ((1979) 120 ITR 456 (SC) : 1979 4 SCC 265 : 1979 SCC (TAX) 346 : AIR 1980 SC 142). Both these decisions involved the question of applicability of Section 10 of the Estate Duty Act. In Kamlavati's appeal ((1979) 120 ITR 456 (SC) : 1979 4 SCC 265 : 1979 SCC (TAX) 346 : AIR 1980 SC 142), the facts were that Maharaj Mal, the deceased, was a partner in a firm which carried on business under the firm name and style of M/s. Maharaj Mal Mana Raj. Maharaj Mal had one-half share in the partnership, and the other two partners had one-fourth share each. Maharaj Mal made a gift of Rs. 1 lakh to his son, Lalit Kumar and of Rs. 50,000 to his wife Kamlavati. In the books of account of the firm the sums of Rs. 1 lakh and Rs. 50,000 were debited to the account of Maharaj Mal and credited to the accounts of and wife respectively. Almost simultaneously the son was taken as a partner in the said firm by giving him one-fourth share out of the one-half share of Maharaj Mal. On the death of different partners the firm was reconstituted and some other partners admitted. On the death of Maharaj Mal the question arose regarding the applicability of Section 10 of the said Act. In the other appeal, namely Jai Gopal Mehra's appeal the deceased donor made gifts of Rs. 20,000 each in favour of his son and four daughters-in-law. Thereafter the donees invested the sums gifted to them in the partnership firm in which the deceased was a partner. The donees were not partners in the firm nor were they taken as partners after the gifts were made in their favour. When the case came up in a reference before a Full Bench of the Punjab and Haryana High Court (CED v. Jai Gopal Mehra, (1972) 85 ITR 175 (P&H) (FB)), it answered the reference in favour of the accountable person, namely, Jai Gopal Mehra. The decision in Kamlavati case ((1979) 120 ITR 456 (SC) : 1979 4 SCC 265 : 1979 SCC (TAX) 346 : AIR 1980 SC 142), merely followed the Full Bench decision in Jai Gopal Mehra case ((1979) 120 ITR 456 (SC) : 1979 4 SCC 265 : 1979 SCC (TAX) 346 : AIR 1980 SC 142). In its judgment the Supreme Court first dealt with the appeal in Kamlavati case ((1979) 120 ITR 456 (SC) : 1979 4 SCC 265 : 1979 SCC (TAX) 3476 : AIR 1980 SC 142) and after referring with approval to the analysis of Section 10 of the Estate Duty Act in George Da Costa v. CED ((1924) 10 Tax Cases 155, 192-83 : (1926) AC 205 (HL)), it referred to the decision in Chick ((1980) 124 ITR 1 (SC) : (1980) 4 SCC 25 : 1980 SCC (Tax) 335) Munro ((1974) 15 ITR 185 (Lah) (FB) cases. It then turned to the earlier decision of the Supreme Court in Gounder case ((1973) 88 ITR 448 (SC) : (1973) 4 SCC 102 : 1973 SCC (Tax). After setting out the later part of the passage in its judgment in that case, which we have quoted earlier, the Supreme Court observed that : (SCC p. 271, para 10)

It should be noticed that, though not explicitly but implicitly some departure was made from the ratio of the Privy Council in Chick ((1958) AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915). When the principle of Munro case ((1934) AC 61 : 2 EDC 462) was applied it was on the basis that what was gifted by the donor was the whole of the property minus the rights of the partnership which were shared and enjoyed by the donor also; the donor enjoying the same bundle of rights in the partnership which he was enjoying before the gift did not bring the case within the ambit of Section 10. But the implicit departure from the Chick case ((1958) AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915) was when it was said that the benefit of 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 departure can be attributed to the very subtle distinction in the facts of the two cases and it is necessary to highlight them. In Chick case ((1958) AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915), the donor as a partner came to share the possession and enjoyment of the property by the partnership firm long after the gift while in Gounder ((1973) 88 ITR 448 (SC) : (1973) 4 SCC 102 : 1973 SCC (Tax) 388) the benefit which the donor was enjoying as a partner in the property gifted was existing at the time of the gift itself and continued to exist even thereafter.

It is important to note that the principle in Munro case ((1934) AC 61 : 2 EDC 462) was applied in

the case of Jai Gopal Mehra ((1979) 120 ITR 456 (SC) : (1979) 4 SCC 265 : 1979 SCC (Tax) 346 : AIR 1980 SC 142), although the donees invested the amounts gifted in the firm in which the donor was a partner after the gifts were made.

11. The same Bench which decided Gounder case ((1973) 88 ITR 448 (SC) : (1973) 4 SCC 102 : 1973 SCC (Tax) 388) followed it in the case of CED v. N. R. Ramarathnam ((1973) 91 ITR 1 (SC) : (1974) 3 SCC 268 : 1973 SCC (Tax) 574 : AIR 1973 SC 2598). In this case, the facts in relation to the gifts of money by the donor in favour of his three sons and daughter were materially similar to those of the Gounder case ((1973) 88 ITR 448 (SC) : (1973) 4 SCC 102 : 1973 SCC (Tax) 388) except that the three sons and daughter were also partners in the firm. Yet applying the ratio in Gounder case ((1973) 88 ITR 448 (SC) : (1973) 4 SCC 102 : 1973 SCC (Tax) 388) it was held that the amounts gifted were not chargeable to estate duty under Section 10.

12. In Kamlavati case ((1979) 120 ITR 456 (SC) : (1979) 4 SCC 265 : 1979 SCC (Tax) 346 : AIR 1980 SC 142), this Court referred the decision of this Court in CED v. R. V. Viswanathan ((1976) 105 ITR 653 (SC) : (1977) 1 SCC 90 : 1977 SCC (Tax) 142 : AIR 1977 SC 463) and observed as follows : (SS p. 271, para 11)

In other words, the mere fact that the partnership may make use of sums of money gifted in which the donor also was a partner did not mean that he was allowed to enjoy or derive any benefit in the money gifted, which could be referable to the gift itself.

13. The Court clarified the position as follows (p. 463) : (SCC p. 272, para 12)

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 Section 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 to the entire exclusion of the donor in any benefit to him by contract or otherwise.

14. The court pointed out the distinction between the capital of the partnership and the property of the partnership and that whether an amount forms the part of the capital of the partnership or part of its property, it does not belong to co-partner in the sense of his being a co-owner p. 464 : (SCC p. 272)

15. Even in the recent decision of this Court in CED v. Godavari Bai ((1986) 158 ITR 683 (SC) : (1986) 2 SCC 264 : 1986 SCC (Tax) 365), where the decision in the Chick case ((1958) AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915) has been cited and discussed at some length, the decision in Kamlavati ((1979) 120 ITR 456 (SC) : (1979) 4 SCC 265 : 1979 SCC (Tax) 346 : AIR 1980 SC 142) and Jai Gopal Mehra ((1979) 120 ITR 456 (SC) : (1979) 4 SCC 265 : 1979 SCC (Tax) 346 : AIR 1980 SC 142) cases have been referred to without any indication that the ratio of the same was not accepted as good law. In fact, that decision has been referred to as one in which the principle in Chick case ((1958) AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915) was applied.

16. In the case before us the deceased gifted Rs. 25,000 to each of his four sons and almost immediately thereafter the firm of Sanghi Brothers was constituted as aforesaid in which the said four sons invested Rs. 25,000 each received from the father. As already pointed out, the father, as well as the sons had shares in the said partnership. Applying the decision in the case of Kamlavati ((1979) 120 ITR 456 (SC) : (1979) 4 SCC 265 : 1979 SCC (Tax) 346 : AIR 1980 SC 142) and Jai Gopal Mehra ((1979) 120 ITR 456 (SC) : (1979) 4 SCC 265 : 1979 SCC (Tax) 346 : AIR 1980 SC 142), discussed at some length by us earlier, it must be held that the interest which the deceased father retained or obtained in the aggregate sum of Rs. 1 lakh invested by the said four sons in the said firm, was an interest merely as a partner in the said firm and was not related to the gifts made by him to his said sons. In these circumstances it cannot be said that by reason of constitution of said partnership and the investment of the said amounts by the sons in the partnership the donees sons had not assumed bona fide possession and the enjoyment of the amounts gifted to them or that they had not retained the same to the entire exclusion of their father. In our opinion, the said amount of Rs. 1 lakh could not be included in the estate of the said deceased under the provisions of Section 10 of the Estate Duty Act. In our view the Division Bench of the High Court was in error in applying the ratio and decision in Chick case (1958 AC 435 : (1959) 37 ITR (ED) 89 : 3 EDC 915) to the present case and holding that the said amount of Rs. 1 lakh was liable to be included in the estate of the said deceased for the purpose of computation of estate duty in view of the provisions of Section 10 of the said Act. The learned judges of the High Court have, with respect failed to appreciate the true effect of the decision of this Court in Kamlavati case ((1979) 120 ITR 456 (SC) : (1979) 4 SCC 265 : 1979 SCC (Tax) 346 : AIR 1980 SC 142) and failed to appreciate that the interest which the donor retained in the amount gifted and invested by the donees in the partnership in which the donor was a partner is not an interest which can be said to be related to the gift.

17. In the result, the appeal is allowed. In our opinion, the question which was referred to the High Court for determination, which we have set out earlier, must be answered in the negative and in favour of the accountable person (appellant). The respondent must pay the costs throughout.

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