P.M. Rawal and anr. Vs. Controller of Estate Duty, Bombay City-i

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Court : Mumbai

Decided On : Sep-20-1979

Reported in : [1980]124ITR181(Bom); [1980]3TAXMAN171(Bom)

Judge : D.P. Madan and ;M. Jagannatha Rao, JJ.

Acts : Estate Duty Act, 1953 - Sections 10 and 22

Appeal No. : Estate Duty Reference No. 3 of 1971

Appellant : P.M. Rawal and anr.

Respondent : Controller of Estate Duty, Bombay City-i

Advocate for Def. : V.C. Kotwal, Adv.

Advocate for Pet/Ap. : D.H. Dwarkadas, Adv.

Judgement :

Madon, J.

1. This is reference under s. 64(1) of the E.D. Act, 1953, made at the instance of the accountable person. Two questions have been submitted to us for our opinion in this reference. These questions are as follows :

'(1) Whether, on the facts and in the circumstances of the case, the sums of (a) Rs. 13,000 gifted by the deceased to his near relations from his personal account

with Messrs. Rawal and Co., Bombay, in which he was a partner, and (b) Rs. 31,000 gifted by the deceased to his near relations from his personal account with M. G. Rawal, Hindu undivided family, of which the deceased was a coparcener, are includible in the principal value of the estate of the deceased, in view of the provisions of section 10 of the Estate Duty Act, 1953

(2) Whether, on the facts and in the circumstances of the case, the sum of Rs. 20,000, being part of the trust fund lying in the account of Messrs. Rawal and Co., in which the deceased was a partner, was includible in the principal value of the estate of the deceased, in view of the provisions of section 22 of the Estate Duty Act, 1953 ?'

2. The deceased, Mahipatram G. Rawal, was at the time of his death on February 11, 1962, a partner in two firms, namely, Rawal and Co., Bombay, and Rawal and Co., Madras. He was also a member of a joint and undivided Hindu family which was assessed to income-tax as a separate unit under the name of 'M. G. Rawal, Hindu undivided family'. Between October 26, 1943, and November 11, 1946, the deceased made gifts of several sums of money aggregating to Rs. 13,000 to his near relatives. These gifts were made by debiting the deceased's personal account with the said firm of Messrs. Rawal and Co., Bombay, and opening separate accounts is the names of the donees and crediting the respective amounts given to each of the donees in the account opened in his or her name. During the above period, the deceased also made other gifts to his near relations aggregating to Rs. 31,000. These gifts were made by debiting the deceased's personal account in the books of account of the said undivided Hindi family and crediting the accounts of the donees which were then opened in the said books of account with the respective amounts gifted to them. The Assistant CED as also the Appellate CED and the Income-tax Appellate Tribunal all held that these amounts were liable to be included in the estate of the deceased by reason of the provisions of s. 10 of the E.D. Act.

3. So far as the said gift of Rs. 13,000 is concerned, the position is now finally settled as pointed out by us in our judgment in Estate Duty Reference No. 1 of 1970, delivered on September 12 and 13, 1979 - Khatijabai Abdulla Soomar

v.CED : [1980]124ITR160(Bom) , by the decision of the Supreme Court, namely, CED v. C. R. Ramachandra Gounder : [1973]88ITR448(SC) , in the judgment of the Supreme Court delivered on August 5, 1979, in the Civil Appeal No. 2527 of 1972 and Civil Appeal No. 2528 of 1972 CED v. Kamlavati and CED v. Jai Gopal Mehra : [1979]120ITR456(SC) . In view of these judgments, it must be held that s. 10 of the E.D. Act was not attracted to this gift of Rs. 13,000.

4. So far as the said gift of Rs. 31,000 is concerned, Mr. Kotwal, learned Counsel for the respondent, urged that while in the cases above referred to, the investments of the amounts gifted were with a partnership firm in which the donor was a partner, in the present reference, the investments were with a joint and undivided Hindu family of which the deceased was a coparcener. We fail to see, on the reasoning upon which the Supreme Court decided the above cases, what difference this distinction makes, nor was Mr. Kotwal able to enlighten us with respect to this. So far as the rights of a coparcener in an undivided Hindu family are concerned, no coparcener is entitled to any special interest in the coparcenary property nor is he entitled to exclusive possession of any part of that property. What all the coparceners have in the coparcenary property is community of interest and unity of possession between all the members. Further, a coparcener cannot predicate at any given moment what his share in the joint family property is. His share becomes defined only when a partition takes place. These rights are analogous to the rights of a partner in the partnership assets as pointed out by the Supreme Court. Therefore, the reasoning and the principal laid down by the Supreme Court in the above cases would apply to this gift of Rs. 31,000 also, and it must be held that this amount too was not liable to be included in the estate of the deceased and was not exigible to estate duty.

5. So far as the second question is concerned the facts are that on May 31, 1945, the deceased executed a deed of trust for charitable objects. He was also one of the trustees. The subject-matter of the trust was a sum of Rs. 40,000. Clause 2 of the trust deed gave to the trustees the power to invest the trust properties either in authorized securities or in any firm in which the settlor, namely, the deceased, was a partner. The trustees invested the entire sum of Rs. 40,000 with the firm of Messrs. Rawal & Co., Bombay. From time to time they withdrew moneys out of the

amount so invested in the said firm, till at the time of death of the deceased and for a period of two years prior thereto the balance of such investment remaining with the said firm was Rs. 20,000. Here too the revenue authorities and the Tribunal took the view that s. 22 of the E.D. Act was attracted and the said balance of Rs. 20,000 was exigible to estate duty.

6. Section 22 of the E.D. Act, omitting the proviso which is not material for our purposes, provides as follows :

'22. Property held by the deceased as trustee. - Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased where (whether by virtue of the original disposition or of a subsequent surrender of any benefit originally reserved to the deceased or otherwise) possession and enjoyment of the property was bona fide assumed by the beneficiary at least two years before the death and thenceforward retained by him to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise.'

7. The material conditions which must be satisfied before property, the subject-matter of the disposition, can be excluded from the principal value of the estate of the deceased under s. 22 are the same as those required to be satisfied under s. 10 of the E.D. Act. Since these conditions are the same as those of s. 10, the ratio of the above Supreme Court cases would govern the present case and question No. 2, must also, therefore, be answered in favour of the accountable person.

8. In the result, we answer the aforesaid questions as follows :

Question No. 1 : In the negative.

Question No. 2 : In the negative.

9. The respondent will pay to the applicants the costs of this reference.