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Court : Kerala

Decided On : Nov-23-1970

Reported in : [1971]81ITR745(Ker)

Appeal No. : Income-tax Reference No. 51 of 1968

Appellant : T. O. Hydrose

Respondent : Controller of Estate Duty, Ernakulam.

Judgement :

RAGHAVAN J. - The proprietor of a grocery business by name Kader Ooran had eight children, one of them being a minor. On 31st March, 1960, Kader Ooran gifted Rs. 40,000 worth of stock-in-trade, cash and cheques to his wife and children; and on 1st April, the next day, he entered into a partnership with them taking them as partners in the business and admitting the minor son to the benefits of the partnership. (The partnership deed, annexure 'A', however, states that the gift was on 1st April, 1960, and was by way of settlement). On 14th March, 1961, Kader Ooran died; and the balance-sheet of the business for the year was prepared as on 31st March, 1961. In the said balance-sheet, a sum of Rs. 31,069 was shown as the profit for the year, i.e., after the date of the gift, that fell to the share of the wife and children. Since Kader Ooran died within two years of the date of the gift, the sum of Rs. 40,000, the value of the stock-in-trade, cash and cheques, was the property of Kadar Ooran, which should be deemed to pass to the donees only on his death. There is no dispute regarding this either. The

Assistant Controller of Estate Duty included the sum of Rs. 31,069 also in the estate left by Kader Ooran and duty was charged on the aggregate. On appeal, the Appellate Controller of Estate Duty was of the opinion that this sum would not form part of the estate left by Kader Ooran and, consequently, reduced the value of the estate by this amount. On further appeal, the Appellate Tribunal disagreed with the Appellate Controller, reversed the appellate order and restored the order of the Assistant Controller. Then at the instance of the accountable person, the question :

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in including in the value of the estate, a sum of Rs. 31,069 which represents the balance in the drawing account of the wife and children of the deceased inclusive of profits ?'

has been referred to this court.

The counsel for the accountable person has contended before us that what was gifted to the wife and children was a sum of Rs. 40,000, so that the profit derived from the partnership in which the said sum was invested by the widow and children would not form part of the estate left by Kader Ooran. The counsel has also relied strongly on the English decision of the House of Lords in *Sneddon v. Lord Advocate*. The counsel for the revenue, on the other hand, has contended that what was gifted by Kader Ooran was a share in the business with a proportionate capital of Rs. 40,000.

The English decision of the House of Lords was, in fact, given in a case of a settlement and not in a case of a gift of cash out and out. Still, Lord Morton of Henryton has observed :

'My Lords, if the gift of Pounds 5,000 had been made to a donee who was to retain it for his own benefit, there could surely have been no doubt that duty would have been payable on the donors death within five years, on Pounds 5,000 case, even if the donee had forthwith invested the gift in Creamola shares and still held these shares at the donors death. If authority were needed for this proposition, it is to be found in the case of *Lord Strathcona v. Inland Revenue* applied and approved in

Attorney-General for Ontario v. National Trust Co. Ltd.; see also Attorney-General v. Oldham.'

In the next paragraph His Lordship has considered the question whether there was any distinction between a gift to a person for his own benefit and a gift to trustees for the benefit of persons entitled in succession. And the question appears to have been answered in the negative. The discussion in that paragraph also indicates that the proposition laid down above applied not only to cash gifts but to transfers of shares as well. (How far this is correct, in the manner we look at the question, we venture not to express any opinion on, in this case.) In Dymonds Death Duties, 13th edition, pages 232 to 234, the question regarding the subject-matter of gifts is dealt with. The Sneddon case is also referred to in the discussion : and it is observed that where an original absolute gift was of cash, the practice has always been to charge duty on that cash alone and to ignore any subsequent dealings with it by the donee. There is also some discussion regarding this principle in its application to a gift of other property and a gift by way of settlement. In Halsburys Laws of England, 3rd edition, vol. 15, page 18, paragraph 34, appears that the property chargeable is the property originally given whether the gift is made by settlement or not. And in the same volume, at page 72, paragraph 146, appears that every estate includes all income accrued upon the property comprised therein down to and outstanding at the date of the death. In Greens Death Duties, 4th edition, page 416, section 6(5) of the English Finance Act of 1894, which runs :

'Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased'

is extracted. Then it is observed :

'This provision seems superfluous. Accrued income in respect of property which forms part of the deceaseds free estate, or of of which he was tenant for life, is itself property of which he was competent to dispose.'

In addition to these English authorities, the counsel of the accountable person has drawn our attention to two decisions of Indian High Courts as well. The first decision is of the Assam High Court in Controller of Estate Duty v. Birendra Kumar

Sen and the other one is the decision of this court, to which one of us was party, in *P. Gangadharan Pillai v. Controller of Estate Duty*.

At this stage, it will be instructive to consider the relevant provisions of the Estate Duty Act. Section 9(1), under which the estate duty authorities have taken action, provides that property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been bona fide made two years or more before the death of the deceased, shall be deemed to pass on the death. Under section 3(3) it is declared for the avoidance of doubt that references in the Act to property passing on the death of a person shall be construed as including references to property deemed to pass on the death of such person. The combined effect of these two provisions is that, if the donor dies within two years of the gift, the property gifted should be deemed to pass on the death of the donor, and such property, which is deemed to pass on the death of the donor, would only mean property passing on his death. 'Property passing on the death', under section 2(16) of the Act, includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation. The more important provision, in so far as this case is concerned, is section 34(4), which we shall extract in full :

'Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.'

These are the authorities and the provisions of law relevant for this case. From the *Sneddon* case what appears is that if cash is gifted which is to be retained by the donee for his own benefit, then duty is payable, in case the donor dies within two years of the gift, only on the cash gifted by the donor : even if the donee immediately invested the amount gifted and the investment yielded profit too, such profit will not form part of the estate deemed to be passing or passing on the death of the donor. The *Sneddon* case was actually in a case of settlement and not in a case of gift of cash out and out. It is therefore concluded that to both a gift of cash out and gift by way of settlement this principle applied. The English authorities

mentioned above seem also to indicate that the same principle might apply to all cases of gift irrespective of the nature of the property, whether cash or otherwise.

If that is the legal position, section 34(4) of our Estate Duty Act and section 6(5) of the British Finance Act of 1894 may lose their purpose. Therefore, some line has to be drawn where the Sneddon case ceases to apply and the principle found in section 6(5) of the British Finance Act similar to section 34(4) of the Indian Act starts to apply. The two Indian decisions in Birendra Kumar Sens case and in Gangadharan Pillais case, though they are cases under section 10 of the Act, may give some help in laying down a principle in a case like the one before us too. In both those cases, the question considered was whether the donor was entirely excluded from bona fide possession and enjoyment of the property gifted (section 10); and it was held that, if the donee used his own capita and effort in the business gifted, the income from such business should not be treated as part of the estate left by the donor. In such cases, the estate left by the deceased would only be the business which was gifted by the donor and would not include the income thereof.

In section 34(4) (section 6(5) of the British Finance Act of 1894), the word used is 'accrued'. 'Accrue' means 'to fall (to any one) as a natural growth or increment; to come as an accession or advantage', in the Shorter Oxford English Dictionary. And Murrays Dictionary defines 'accrue' to mean, inter alia, 'arise or spring as a natural growth especially interest'. It is in the light of this meaning that we have to interpret section 34(4) which will also recognise the principle of the Sneddon case. If, in the cash or the property gifted either by way of an out and out gift or by way of a settlement, the donee gets absolute dominion and he invests the same in any manner he likes, then the profit or the income resulting from such investment will not form part of the estate of the deceased. In such a case, the profit or income cannot be said to have 'accrued' - to have resulted as a natural growth, accession or increment from the property gifted. On the other hand, if the property gifted yields as a natural growth or result, without the intervention of the donee, income or profit, then such income or profit can be said to have 'accrued' from the property gifted, with the result that the income or profit will also form part of the estate left by the deceased. If the property or cash gifted is converted into another type of

property, the property into which the gifted property is converted will be the property gifted, but, in such a case, the income or profit derived from the converted property may not form part of the estate left by the deceased, since the income or profit can very well be said to be the result of the intervention of the donee. The counsel for the revenue has pointed out that, in the Sneddon case, section 6(5) of the Finance Act of 1894 was not considered, and, therefore, the observation of Lord Morton need not be followed, at any rate, in India. The counsel may be right when he says that the effect of section 6(5) of the Finance Act was not considered in the Sneddon case. Still, as we have already indicated, the proposition laid down in that case, as we have interpreted it, may be accepted as a just and wholesome principle. We reiterate our doubt regarding the applicability of the Sneddon case rule to transfers of shares by way of gift.

The counsel for the revenue has then brought to our notice one more English decision, viz., *Ralli Bros. Trustee Co. Ltd. v. Inland Revenue Commissioners*. Mrs. Ralli wanted to take insurance policies in her name and to make a gift of the same to her relations. She wished the Ralli Bros. Trustee Co. Ltd. to be the trustee of the policies. The policies were taken and premia were also paid. Mrs. Ralli died subsequently : and the question arose as to what was the property gifted by her - whether only the premia paid by her or the insurance policies taken in her name. The Chancery Division of the High Court held that, in the circumstances, the property gifted was not merely the premia paid by Mrs. Ralli but the policies taken in her name including the premia paid. This decision indicates that the search must be to find out what was the property gifted by the donor. In the Ralli case, it was the policies that were the subject-matter of the gift and not the premia paid by Mrs. Ralli; and this case is, therefore, of no help to the revenue to establish that in every case the totality of the properties including the income thereof should be considered to be the estate left by the deceased.

In the case before us, the gift deed appears to be a document of settlement, because the partnership deed says so. And it was on 31st March, 1960 (though it is stated in the partnership deed again that the settlement was on 1st April). What was gifted was Rs. 40,000 worth of stock-in-trade, cash and cheques, and not Rs. 40,000 in cash which the donees could have taken and utilised as they liked. Nor

was anything taken straightaway by the donees. The next day, on 1st April, came the partnership deed, in which the entire business was valued at Rs. 50,000, Kader Ooran taking Rs. 10,000 as his share and showing the remaining Rs. 40,000 as the share of the wife and children in different proportion. The business thus continued as a partnership. And the profit derived therefrom for the next year ending 31st March, 1961, was apportioned between the partners in proportion to their shares in the capital; and the disputed sum of Rs. 31,069 was the amount that fell to the share of the widow and children. In the circumstances, what was gifted must be taken as a share in the business and the profit that the business yielded has to be taken as the income that accrued from the business coming within the mischief of section 34(4) of the Act. And this amount must also then be deemed to pass only on the death of Kader Ooran under section 9.

The counsel of the accountable person has pointed out that Kader Ooran died on 14th March, 1961, while the balance-sheet was for the year ending 31st March, 1961. And the counsel has argued that the amount of Rs. 31,069 should have been proportionately reduced : in other words, only that portion of the amount which accrued till the death of Kader Ooran should have been treated as part of his estate and not the entire sum, of course, the counsel is right; but this contention has not been raised till now in this form. For the mere reason that a small amount (one out of twenty-four of Rs. 31,069) was also included in the estate, we cannot answer the question referred to us against the revenue, especially in view of the fact that this reduction was not claimed before the estate duty authorities. And the revenue, we are told, would have given this reduction (one out of twenty-four) if only the claim was made.

The result of the discussion hereinbefore is that our answer to the question referred to us is in the affirmative, i.e., against the accountable person. We pass no order regarding costs; and we direct the Registrar to send a copy of this judgment to the Tribunal.

Question answered in the affirmative.