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Controller of Estate Duty Vs. Haji Essa Haji Abdul Sathar Sait (by Legal Representatives M.E. Mohammad Alias Babu Sait and Zubaida Bai)

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Court : Kerala

Decided On : Oct-10-1990

Reported in : [1991]190ITR187(Ker)

Judge : K.S. Paripoornan and; K.P. Balanarayana Marar, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 10 and 33(1)

Appeal No. : Income-tax Reference No. 65 of 1987

Appellant : Controller of Estate Duty

Respondent : Haji Essa Haji Abdul Sathar Sait (by Legal Representatives M.E. Mohammad Alias Babu Sait and Zubaida

Advocate for Def. : P.G.K. Wariyar, Adv.

Advocate for Pet/Ap. : P.K.R. Menon and; N.R.K. Nair, Adv.

Judgement :

K.S. Paripoornan, J.

1. At the instance of the Revenue, the Income-tax Appellate Tribunal has referred the following three questions of law for the decision of this court:

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in finding that Section 10 of the Estate Duty Act is not attracted ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in finding that 'it is not possible on an interpretation of the gift deed in the present case to come to the conclusion that in the absence of a fresh agreement after the expiry of the period of two years a benefit had been reserved in favour of the donor ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in finding that exemption under Section 33(1)(o) is available in this case ?'

2. The matter arises in connection with levy of estate duty on one Hajee Abdul Latiff Hajee Essa Sait. He died on November 25, 1967. Long before his death, the deceased had executed a gift deed in respect of 9 items of house property in favour of his daughter, Kadija Bai, on September 30, 1962. There was a reservation therein to the effect that out of the income of the properties, the donee shall pay to the deceased, for a period of two years, an amount of Rs. 1,250 per month towards his maintenance. A fresh agreement was contemplated after the said period of two years to determine the monthly payment to be made towards maintenance having regard to the then income of the property and other circumstances existing then. No fresh agreement was entered into thereafter. The deceased was receiving a monthly payment of Rs. 1,250 till his death on November 25, 1967. The Assistant Controller of Estate Duty held that Section 10 of the Estate Duty Act is attracted and the properties taken under the gift with the reservation of benefit to the deceased passed on the donor's death. The Appellate Controller of Estate Duty concurred with the said view. But, in second appeal, the Appellate Tribunal held, that as per the gift deed dated September 30, 1962, the benefit was limited for a period of two years. In the absence of a fresh agreement, as contemplated in the gift deed, a benefit must be deemed to have been surrendered on the expiry of the stipulated period. After the expiry of the two-year period, the donee continued in possession and enjoyment of the property before the death of the donor and the first proviso to Section 10 was attracted. The payments made after the expiry of the two-year period till the date of death were

not referable to the gift deed dated September 30, 1962 ; nor was it from the income of the properties. There was no enforceable right for the donor to claim the amount after the expiry of the two-year period ; nor was there any enforceable obligation against the donee. In these circumstances, the Appellate Tribunal held that after the period of two years of the gift deed dated September 30, 1962, the gifted property was possessed and enjoyed by the donee to the complete exclusion of or benefit to the donor, under any contract or otherwise, that any amount paid to the deceased after the expiry of two years from the date of the gift deed dated September 30, 1962, is not referable to the said gift and so the properties held by the donee as per the gift deed dated September 30, 1962, cannot be deemed to pass on the death of the testator, under Section 10 of the Act. The Tribunal also held that the entire gift is exempt under Section 33(1)(o) of the Estate Duty Act It was held that the gift in question was made beyond a period of five years before the death of the deceased and the gift had been subjected to tax. Appropriate relief was given under Section 33(1)(o) of the Act. It is thereafter at the instance of the Revenue that the Appellate Tribunal has referred the three questions of law formulated hereinabove for the decision of this court.

3. We heard counsel for the Revenue, Mr. N.R.K. Nair, as also counsel for the respondent/assessee, Mr. P.G.K. Wariyar. The question as to whether Section 10 and Section 33(1)(o) of the Estate Duty Act apply depends upon the interpretation to be placed on the gift deed dated September 30, 1962. The Appellate Tribunal has referred the question of interpretation of the said gift deed to this court. But it is unfortunate that the said gift deed does not form part of the statement of the case ; nor has it been included in the paper book. In order to give a satisfactory decision in the matter, it is necessary to peruse and interpret the various clauses in the gift deed dated September 30, 1962. The question whether, after the expiry of two years therefrom, a fresh agreement determining the quantum of monthly payment having regard to factors that existed then was contemplated, its impact and other aspects require a detailed examination of the gift deed as a whole. The Appellate Tribunal has, in its order, referred to the gist of the various clauses in the gift deed. We do not know whether the Appellate Tribunal has given the gist of all the clauses in the gift deed. Even otherwise, the deed as such does not form part of the statement of the case ; nor is it available in the paper book. A perusal of the

terms of the gift deed is absolutely essential to interpret its impact to pronounce as to how far Section 10 and Section 33(1)(o) of the Estate Duty Act are applicable or not, in the instant case.

4. Since we are not in a position to give a satisfactory and precise answer to the questions referred to this court in the absence of the basic document which should have been forwarded by the Appellate Tribunal, we decline to answer the questions referred to this court. We hereby direct the Appellate Tribunal to forward an appropriate statement of the case along with a true copy of the gift deed dated September 30, 1962, which was interpreted by the Appellate Tribunal in reaching the conclusion it did.

5. The reference is answered as above.

6. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income-tax Appellate Tribunal, Cochin Bench.

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