

**Controller of Estate Duty Vs. Jaisingh**

**Controller of Estate Duty Vs. Jaisingh**

**SooperKanoon Citation :** [sooperkanoon.com/753527](http://sooperkanoon.com/753527)

**Court :** Rajasthan

**Decided On :** Dec-04-1984

**Reported in :** [1986]159ITR133(Raj)

**Judge :** Dwarka Prasad and; S.S. Byas, JJ.

**Acts :** [Estate Duty Act, 1953](#) - Sections 10

**Appeal No. :** D.B. Income-tax Reference No. 4 of 1976

**Appellant :** Controller of Estate Duty

**Respondent :** Jaisingh

**Advocate for Def. :** B.C. Mehta, Adv.

**Advocate for Pet/Ap. :** J.P. Joshi, Adv.

**Judgement :**

**Dwarka Prasad, J.**

1. This reference has been made by the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur, under Section 64(4) of the [Estate Duty Act, 1953](#) (hereinafter referred to as 'the Act'), referring the following question of law arising out of its order dated November 6, 1971, to this court for its opinion:

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in excluding the sum of Rs. 30,875 standing in the name of Smt. Ajay Kanwar, widow of Kishansingh, from the total estate of the deceased, Kishansingh, under the Estate Duty Act ?'

2. The brief facts of the case which have led to the making of the reference are as under :

Kishan Singb, resident of Jodhpur, died on November 11, 1966. His son, Jaisingh, was 'the accountable person' within the meaning of that expression for the payment of estate duty on the property which passed on the death of his father, Kishansingh, in the proceedings for assessment of estate duty taken by the Assistant Controller of Estate Duty, Jaipur. The accountable person claimed a deduction of Rs. 30,875 from the value of the estate of the deceased as a debt due from Kishansingh to his wife, Smt. Ajay Kanwar. The plea taken by the accountable person was that the aforesaid amount was credited in favour of Smt. Ajay Kanwar in the books of account of the deceased right from the assessment year 1950-51 up to the date of Kishansingh's death. The Assistant Controller of Estate Duty, in his assessment order dated July 30, 1968, disallowed the aforesaid claim on the ground that in the income-tax assessments of the deceased, Kishansingh, for all the years subsequent to the year 1950-51, interest on the said amount of Rs. 30,875 was taxed in the hands of the deceased, Kishansingh, and that it was not established that the wife of Kishansingh had any independent source for the said amount other than her husband. It was also observed by the Assistant Controller of Estate Duty that the accountable person did not produce any evidence to substantiate the claim regarding the deduction of Rs. 30,875 from the estate of the deceased, Kishansingh, and hence the claim for deduction was rejected.

3. On appeal, the Zonal Appellate Controller of Estate Duty, Northern Zone, New Delhi, by his order dated November 3, 1969, upheld the order passed by the Assistant Controller of Estate Duty. It was observed in the appellate order that since the assessment year 1950-51, interest on the alleged deposit of Rs. 30,875 was added to the total income of the deceased, Kishansingh, in his income-tax

assessment proceedings, and no appeal was preferred by him against such addition. The accountable person took up the matter in further appeal before the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as 'the Tribunal'). The Tribunal allowed the exclusion of the said amount from the estate of the deceased by its order dated November 6, 1971. The reasons given by the Tribunal for allowing the exclusion of the said amount were as under :

'In our opinion, such long-standing amount covering more than 15 years in the deceased's account books in the name of his wife leaves little doubt that the deceased had wanted that this money should be considered as that of his wife and, therefore, irrespective of the fact whether the same initially in fact belonged to her, the same was at least gifted by him to her. At that time, there was no impediment of gift-tax. We are unable to accept the Department's contention that mere entries in deceased's books of account could not complete that gift, as the entries had not come into existence in the year of the death or shortly before that, but had existed for long. We, therefore, direct the deletion of this amount.'

4. Thus, it appears that the reason which persuaded the Tribunal to allow the deduction was the existence of the entries in the books of account of the deceased in favour of his wife, Smt. Ajay Kanwar, for such a long period of more than 15 years and the same was considered by the Tribunal as unambiguous evidence of the intention of the deceased, Kishansingh, that the amount should be considered as belonging to his wife. Thus, the Tribunal held that even if the amount in question did not initially in fact belong to the wife of the deceased, Kishansingh, the same could be treated as having been gifted by him to his wife.

5. The Controller of Estate Duty, Rajasthan, felt dissatisfied with the above order passed by the Tribunal and submitted an application before the Tribunal requesting it to refer a question of law arising out of its order dated November 6, 1971, to this court. However, the Tribunal, by its order dated April 27, 1972, declined to make a reference to this court. Thereupon, the Controller of Estate Duty approached this court by means of an application under Section 64(3) of the Act. The court allowed the said application by its order dated February 5, 1973, and directed the Tribunal to draw up a statement of the case and refer the

aforesaid question of law arising out of the order of the Tribunal dated November 6, 1971, to this court for its opinion. Consequently, the Tribunal drew up the statement of the case and referred the aforesaid question to this court by its order dated December 22, 1975.

6. It was argued by the learned counsel appearing for the Department before us that the order of the Tribunal dated November 6, 1971, clearly shows that the Tribunal did not accept the contention advanced before it on behalf of the accountable person that the amount of Rs. 30,875 initially in fact belonged to the wife of the deceased. It was urged that the Tribunal erred in making out an absolutely new case for the accountable person, namely, that the aforesaid amount may be treated as a gift made by the deceased, Kishansingh, to his wife before the assessment year 1950-51. Learned counsel for the Department also submitted that interest on the aforesaid deposit, standing in the name of the wife of the deceased, Kishansingh, was disallowed by the income-tax authorities since the first assessment in the year 1950-51 and was added to the total income of the deceased and the same position continued without any objection year after year until Kishansingh died on November 11, 1966, and, as such, the amount could not constitute a gift made by the deceased, Kishansingh, to his wife, because the gifted amount throughout remained with the deceased, Kishansingh, and thus it was not retained by the donee to the entire exclusion of the donor within the meaning of Section 10 of the Act. On the other hand, it was urged by the learned counsel for the accountable person that the Tribunal did not altogether reject the case of the accountable person that the money in fact belonged to the wife of the deceased, Kishansingh, but rather the Tribunal observed that the said amount could as well be treated as having been gifted by Kishansingh to his wife before the year 1951.

7. A bare reading of the relevant portion of the order passed by the Tribunal dated November 6, 1971, which has been quoted above in extenso, goes to show that it was argued before the Tribunal on behalf of the accountable person that the fact that the amount in question was shown in the deceased's account books as belonging to his wife for such a long period of over 15 years abundantly established that the money belonged to her. However, the Tribunal does not

appear to have accepted the aforesaid contention advanced on behalf of the accountable person and the Tribunal merely observed that the fact that the said amount was shown in the deceased Kishansingh's account books in the name of his wife for such a long period of more than 15 years left no doubt that the deceased had desired that the amount in question should be considered as belonging to his wife. It is one thing to say that the deceased wanted the amount in question to be treated as belonging to his wife and quite another thing to say that the Tribunal held as a fact that the amount in question belonged to the wife of the deceased, Kishansingh. There were two impediments in the way of the Tribunal in giving a finding of fact to the effect that the said amount belonged to the wife of the deceased, Kishansingh. The first reason was that in the income-tax assessments of Kishansingh, right from the beginning of the year 1950-51, the interest on the said deposit standing in the name of the wife of Kishansingh was disallowed by the Income-tax Officer and was added to the total income of the deceased, Kishansingh. This situation continued from 1950-51 right up to the death of Kishansingh. Moreover, those assessments were accepted without any objection as no appeals were preferred by Kishansingh in respect of the assessments on that question. The second formidable objection in this respect was that the Assistant Controller of Estate Duty and the Zonal Controller of Estate Duty held that no material was placed before them to show that the amount in dispute in fact belonged to the wife of Kishansingh, deceased. If no material was placed on the record to show that the amount did not belong to Kishansingh or that it belonged to his wife, it could not be held as a fact that the said amount belonged to the wife of Kishansingh, deceased, merely because for a long period of over 15 years, Kishansingh chose to show the said amount in his account books as belonging to his wife. The Tribunal, being aware of this position, did not accept the contention advanced before it by the accountable person and did not record a finding of fact that the amount in dispute in fact belonged to the wife of Kishansingh, deceased. It was because of this reason that an alternative argument was advanced on behalf of the accountable person before the Tribunal that the amount may be treated as a gift made by the deceased, Kishan-singh, to his wife before the assessment year 1950-51. This argument found favour with the Tribunal and appears to have been accepted by the Tribunal in its order dated November 6, 1971, and that is why the

Tribunal observed that entries in the account books of the deceased could be considered as evidence of gift, particularly in view of the fact that such entries had not come into existence in the year of death of Kishansingh or shortly before his death, but the same had existed for a long time. However, the Tribunal while arriving at the finding that the amount in dispute may be considered to have been gifted by Kishansingh to his wife, failed to consider the provisions of Section 10 of the Estate Duty Act, which are as under :

'10. Gifts whenever made where donor not entirely excluded.--Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that 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 :

Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gift, exclusively retained as aforesaid, if by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death :

Provided further that a house or part thereof taken under any gift made to the spouse, son, daughter, brother or sister, shall not be deemed to pass on the donor's death by reason only of the residence therein of the donor except where a right of residence therein is reserved or secured directly or indirectly to the donor under the relevant disposition or under any collateral disposition.'

8. The fact that the amount of Rs. 30,875 was shown in the account books of the deceased as due from Kishansingh to his wife since the year 1950-51 and only the payment of interest in respect of that amount was entered in the account books of the deceased, Kishansingh, is not disputed. Moreover, even the alleged payment of interest was disallowed at the time of assessment of income-tax and the said amount of interest was added to the total income of the deceased, Kishansingh, in the year 1950-51 and the same position continued to remain till the death of Kishansingh, Thus, even if the alleged gift of the said amount of Rs. 30,875 may be considered to have been made by Kishansingh to his wife, it is not the case of

the accountable person that bona fide possession and enjoyment of the amount so gifted was immediately assumed by the donee. Moreover, for the non-application of Section 10 of the Act, such gifted amount should have been retained by the donee to the entire exclusion of the donor or of any benefit to him. It is well settled that the crux of Section 10 of the Act lies in two parts : (i) the donee must have bona fide assumed possession and enjoyment of the property, which is the subject of the gift to the exclusion of the donor immediately upon the gift ; and (ii) the donee must have retained such possession and enjoyment of the gifted property to the entire exclusion of the donor or of any benefit to him, by contract or otherwise. Both these conditions are cumulative and unless each one of these conditions is satisfied, the property in question would be liable to payment of estate duty because of the provisions of Section 10 of the Act.

9. It may further be observed that the second part of Section 10 has two limbs. The deceased must be entirely excluded (i) from the property, and (ii) from any benefit therefrom by contract or otherwise. The first limb could be infringed if the donor occupies or enjoys the so-called gifted property or its income, even though he has no right to do so, which he could legally enforce against the donee. Thus, in order to attract the provisions of Section 10, it is not necessary that the possession of the gifted property by the donor must be referable to some contractual or other arrangement enforceable in law or in equity. Even if the donor relied upon the mere affection of his sons or wife, with a view to enable him to continue to enjoy the gifted property which he has given to them, it cannot be said that the donor was 'entirely excluded from the possession and enjoyment' of the gifted property within the meaning of the first limb of Section 10 and, therefore, such property would be deemed to have passed with the estate of the deceased on the death of the donor and was subject to levy of estate duty.

10. The nearest case to the point which arises for consideration before us is that of *Mrs. Ida L. Chambers v. Kelland Suxford Chambers*, : AIR1941 Mad154 . In that case, the sole proprietor of a company got certain entries made in the company's account books crediting his wife with certain items after debiting them to his capital account. A separate account was opened in his wife's name in his account books. The wife was actually paid interest on these amounts standing to her credit. It was

held by their Lordships of the Madras High Court, in that case, that though the donor had the intention of making a gift, the entries made in his account books did not complete the gift and what the law required for completion of the gift was never carried out, namely, delivery of possession. It was pointed out that the entries in the account books no doubt manifested the intention of the donor to make a gift, but the mere fact of making the entries in the books did not complete the gift. Another case on this point is that of CIT v. Smt. Shyamo Bibi : [1966]59ITR1(All) . In that case, the Allahabad High Court reviewed the case law on the subject and held that executing a memorandum and making entries in her own account books were the only acts done by the donor and those two acts did not have the effect of putting the money in the possession of the donee, as the account books were in possession of the donor and simply by making entries in the account books, the donor did not vest the donee with possession, dominion and control over the money. It was thus held that making mere transfer entries in the personal account of the donee did not amount to constructive delivery.

11. The same view was taken by a Bench of this court in Nath Mal v. CED [1969] ILR 19 Raj 301. In that case, the deceased made entries in his account books on the Diwali of Samvat year 2003 withdrawing Rs. 1,00,000 from the capital account and crediting the same to the account of his daughter-in-law. It was held that merely making entries in his account books, the donor simply manifested his intention to make a gift of the amount of Rs. 1,00,000 but the same was not effectuated as no delivery of the amount was made by the deceased to the donee.

12. We may point out that those cases are distinguishable in which the donor besides making entries in his account books has asked a third party, which may sometimes happen to be the joint family firm or a partnership firm of which the donor himself may be a partner, to make entries in the firm's books of account debiting the amount donated to his account and crediting the same to the account of the donee and thereby such third party assumes liability for payment of the amount donated to the donee, so that the donor could not lay his claim to the gifted amount in future. On these considerations, the gifts have been held to be valid and operative in several cases. But in cases like the present one, where the donor made entries in his own account books, the gifted amount must be deemed



to pass with the estate of the deceased, as per the provisions of Section 10 of the Act and is includible in the estate of the deceased, because merely making such entries in the account books of the donor would not be sufficient to put the donee in possession and enjoyment of the gifted amount and it cannot be held that the gifted amount was retained to the entire exclusion of any benefit to the donor.

13. In the present case, there is not even a document or writing evidencing the alleged gift and the case suggested in the alternative on behalf of the accountable person that the amount in question may be treated as a gift made by the deceased to his wife before the assessment year 1950-51 is without any foundation. But even if it be considered that a gift of the aforesaid amount was intended to be made by the deceased, Kishansingh, to his wife prior to the year 1950, the mere fact that the deceased made entries in his account books showing the amount as belonging to his wife would not constitute a valid gift within the meaning of Section 10 of the the Act, as neither the donee appears to have been ever put in possession or enjoyment of the amount which was the subject-matter of the gift to the exclusion of the donor immediately upon making the gift nor the donee retained possession and enjoyment of the amount in question to the entire exclusion of the donor: As the essential conditions provided in Section 10 of the Act have not been complied with, the amount of Rs. 30,875 must be considered to pass on the death of the deceased with his estate and is includible in his estate for purposes of estate duty assessment.

14. We accordingly answer the reference in the negative, in favour of the Revenue and against the accountable person.