

PETITIONER:
SAROJINI AMMAL

Vs.

RESPONDENT:
THE CONTROLLER OF ESTATE DUTY, MADRAS

DATE OF JUDGMENT: 18/09/1996

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
BHARUCHA S.P. (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Venkataswami, J.

In this appeal by a certificate granted by the High Court of Madras under section 65 of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), the vexed question of applicability or otherwise of section, 10 of the Act arises for decision of this Court.

One Murugesu Mudaliar, the deceased, passed away on 15.10.1964. He was carrying on a business under the name and style of 'Newton & Company' a proprietary concern. On 20.7.1962. the deceased made two cash gifts of Rs.40,000/- each to his two daughters, namely Smt. Rajeswari and Gnanambigai by debiting his capital account and crediting their accounts in his personal business book. On 20.7.62, both the donee wrote letters to the deceased accepting the gifts and thanking their father. Again on 27.7.62 each donee by separate letters thanking once again for the gifts requested the deceased to retain the same in the business and admit them as partners. Accordingly, a partnership was formed with effect from 1.8.1962 in which the donees and also the donor were the partners. As noticed, the deceased passed away on 15.10.1964. A question arose, inter alia, whether on the facts and in the circumstances of the case, the gifts of Rs.80,000/- in all made by the deceased to his two daughters by debiting his capital account and crediting the accounts of the donees in his personal business book could not be included in the principal value of the estate of the deceased under section 10 of the Estate Duty Act.

The Assistant Controller of Estate Duty overruling the objection of the accountable persons concluded that since the gifted amounts were not taken possession of and enjoyed by the donees to the entire exclusion of the donor, the gifted amounts were liable to be included in the principal values of the estate of the deceased under section 10 of the Act. On appeal. the Appellate Controller confirmed the assessment. The accountable persons appealed to the Income Tax Appellate Tribunal ('Tribunal' for short) and the

Tribunal found that the gifts in question did not fall within the ambit of section 10 of the Act and consequently they were not liable to estate duty. The Tribunal found as follows:

"These sequence of events clearly go to establish:-

1) The two sums transferred by book entries were still available for purpose of the business carried on by the deceased.

2) Under Section 122 of the Transfer of Property Act, the gift must be accepted by the donee and an offer without acceptance of the donee cannot complete the gift. While accepting the gift, the donees have stipulated for retention of the gifted amounts in the business of the deceased and admit them as partners. It, therefore, follows that the transfer of gifts were complete with the condition or understanding that the gifted amounts for the capital account of the donees and continue to be available for purposes of the business carried on by the deceased.

3) On making the gifts, the donees assumed such possession and enjoyment of the subject matter of the gift as it was capable of at that time and that was also retained to the exclusion of the donor.

4) If the donor had some sort of control over the gifted amounts, it was not because of any reservation made by him while making the gifts, but the gift itself was made subject to the condition or understanding that the gifted amounts would be available for the continued use of the business carried on by the deceased".

The Revenue aggrieved by the decision of the Tribunal moved the High Court by way of reference. Before the High Court, on behalf of the accountable persons, a decision of the Court in *Controller of Estate Duty, Kerala vs. R.V. Viswanathan & Others.* (1977 (1) SCC 90) was relied upon. However, the High Court distinguished that decision and ruled that on the facts of the case, Section 10 of the Act is attracted and consequently answered the question referred to it in favour of the Revenue and against the assessee.

Later at the instance of the accountable persons, the High Court granted a certificate of fitness for appeal to this Court in view of the later decision of this Court in *Controller of Estate Duty, Punjab & Haryana, Jammu & Kashmir, Himachal Pradesh and Chandigarh vs. Kamlavati* (1979 (4) SCC 265).

Before us also learned counsel appearing for the appellant placing reliance on the decisions of this Court in *Viswanathan's case* (supra) and *Kamlavati's case* (supra) contended that the facts of this case as well as the facts in *Viswanathan's case* are identical and the High Court was

not correct in stating that the facts were not identical and therefore, the appellant is entitled to succeed in this Appeal. The learned counsel appearing for the Revenue, however, submitted that in almost all the cases, the donor was already a partner in partnership firm and the donee/donees was/were taken as partner/partners subsequent to the gift and the principle or the ratio laid down in such cases cannot be pressed into service to the facts of this case where the donor was sole proprietor of the concern and subsequent to the gift, the donees were taken as partners and the partnership came into existence. We do not think that the learned counsel for the Revenue is right in making this submission. In Viswanathan's case, the donor was the sole proprietor when he gifted the total sum of Rs.2,70,000/= to his four major and two minor sons.

After going through various decisions of this Court, which have taken into account a number of English decisions, we find that the rigour with which Section 102 of the English Act corresponding to Section 10 of our Act was applied, has been mellowed down, if we may use that expression, and certain amount of leniency has definitely been shown in favour of the accountable persons. It is true that when the High Court rendered this decision, there were conflicting views of High Courts and to a certain extent, misunderstanding of the decisions of this Court was prevailing. That was the reason for this Court in Kamlavati's case to observe as follows :-

"To avoid the conflict in the application of the ratio of the various Supreme Court cases as seems to have been done by some of the High Courts, we would like to clarify and elucidate some of the aspects and facets of the matter a bit further. 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 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 of benefit of the donor in the property is consistent with the 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 in any benefit to him by contract of otherwise. It makes no difference whether the donee is a partner in the firm from before or is taken as such at the partnership firm by allowing it to make use of the gifted property for the purposes of

the partnership."

After observing as above, this Court in the said case further observed as follows:-

"But we want to emphasize that the principles of law laid down by this Court in several decisions which we have reviewed in this judgment with some further clarification and elucidation should be carefully and broadly applied to the facts of each case without doing too much of dichotomy and hair SD splitting of facts so as not to easily apply or not to apply the provision of law contained in Section 10 of the Act."

We have already set out the facts as found by the Tribunal and from those, it is clear that when the gift was made and accepted, it was unconditional. A week later the donees requested that a partnership be formed and the amounts gifted be retained and utilised as share capital of the donees in the partnership firm to be formed. In the light of the letters written by the donees, as noticed above, we are of the view that there is nothing to suggest that parting with the enjoyment or benefit by the donee, or permitting the donor to share them out of the bundle of rights gifted in the property is referable to the gift. We agree with the contention of the learned counsel for the appellant that the facts are more or less identical with the facts in Viswanathan's case (supra) and the ratio laid down therein which has been consistently applied by this Court subsequently will apply to the facts of this case.

Accordingly, we allow the Appeal and answer the question referred to the High Court in the affirmative in favour of the accountable persons and against the revenue. However, there will be no order as to cost.