ESTATE DUTY REFERENCE

Before D. K. Mahajan and P. C. Pandit, JJ.

SHIV CHARAN DAS,—*Applicant.*

versus

THE CONTROLLER OF ESTATE DUTY, PATIALA,—*Respondent.*

Estate Duty Reference No. 1 of 1965.

November 4, 1970.

Estate Duty Act (XXXIV of 1953)—Section 9(2) prior to its amendment by Act (XXXIII of 1958)—General Clauses Act (X of 1897)—Section 13—Gifts on marriages made within two years of death—Aggregate amount of Rs. 5,000—Whether can be gifted on each marriage—Validity of gifts of cash amounts by book entries—Sufficient cash with the donor on the date of the transfer—Whether necessary—Capacity of the donor to put the donee in immediate possession of the funds transferred—Whether essential.

Held, that in section 9(2) of Estate Duty Act 1953, the word 'gifts' which is plural is followed by 'marriage' which is singular. If the intention of the Legislature was that 'gifts' made in consideration of marriage' mean any number of marriages, it would have used 'marriage' in the plural and not in the singular, or 'gifts' would have been in singular and not in plural. It is, therefore, plain that the Legislature wanted that gifts made in consideration of any one marriage should not exceed Rs. 5,000 in the aggregate. If gifts have been made in consideration of more than one marriage, then the gifts should not exceed Rs. 5,000 for each marriage. Section 13 of the General Clauses Act, 1897, according to which a singular should be read as plural and plural as singular, only helps where the context does not hold out to the contrary. In the context of the sentence in section 9(2) of the Act, gifts cannot in the aggregate exceed Rs. 5,000 for a marriage, and not marriages and thus section 13 of the General Clauses Act, must yield to the context. Hence the gifts made by the deceased within two years of his death of an amount not exceeding Rs. 5,000 in consideration of each of the marriages are exempt from inclusion in the estate of the deceased.

(Paras 7, 8, 17 and 18)

Held, that for the validity of gifts of cash amounts made by debit and credit entries in the account books, it is not necessary that there should be sufficient cash on the date of the transfers to carry out the directions of the donor regarding the transfer entries, provided the transfers are *bona fide* and there is an intention on the part of the transferor to divert, himself of the amounts transferred. It is, however, essential that the transferor can, if so required by the transferee, be in a position to place the amount transferred in the hands of the transferee. Where there is no evidence to show that the transferor could have put the transferee if he so required, in immediate possession of the funds transferred and even after the transfer, no

interest on the amount transferred was paid or credited to the transferee, the gifts made by book entries are invalid. (Para 10)

Reference made u/s. 64(1) of the Estate Duty Act, 1953, by the Income-tax Appeliate Tribunal (Delhi Bench) for opinion of this Court on the following questions of law involved in R.A. 360 of 1963-64 arising out of Estate Duty Appeal No. 24 of 1962-63:—

"1. *Whether on the facts and in the circumstances of the case there were valid gifts with refrence to the sum of Rs. 65,153 ?*

2. *On the facts and in the circumstances of the case what is the maximum limit in regard to gifts made in consideration of marriage covered by section 9(2) of the Estate Duty Act ?*

3. *Whether on the facts and in the circumstances of the case, the Tribunal was justified in excluding the amount of Rs. 8,098 on account of policy money from the principal value of the estate of the deceased ?"*

BAL RAJ KOHLI AND RAM RANG, ADVOCATES, for the petitioner.

D. N. AWASTHY AND B. S. GUPTA, ADVOCATES, for the respondent.

JUDGMENT

MAHAJAN, J.—(1) The Income-tax Appellate Tribunal, Delhi Bench 'A' by its order, dated 27th November, 1964, referred two questions of law for our opinion. One question was referred at the instance of the Assistant Controller of Estate Duty and the other at the instance of the accountable person. The third question of law was referred,—*vide* our order, dated 21st May, 1969. These questions of law are set out below:—

"(1) Whether on the facts and in the circumstances of the case there were valid gifts with reference to the sum of Rs. 65,153 ?

(2) On the facts and in the circumstances of the case what is the maximum limit in regard to gifts made in consideration of marriage covered by section 9(2) of the Estate Duty Act ?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in excluding the amount of Rs. 8,098 on account of policy money from the principal value of the estate of the deceased?"

(2) One Sunder Dass, died on 24th January, 1960 and his son Shivcharan Dass is the accountable person. In the proceedings for the assessment of Estate duty a number of items fell for consideration. We are, however, only mentioning those items which are disputed. The dispute *qua* them was taken up in appeal and further appeal. It is now the subject-matter of the present reference. These items are three in number and were treated as part of the estate of the deceased by the Assistant Controller. These items are:—

(1) The deceased had given a sum of Rs. 4,000 to a granddaughter by name Raj on the occasion of her marriage. In connection with the marriage of his daughter the deceased within two years of his death had spent an amount of Rs. 14,928. These amounts were claimed as a deduction under section 9(2) of the Estate Duty Act. The Assistant Controller of Estate Duty only allowed a deduction of Rs. 5,000 and rejected the claim regarding the balance of Rs. 13,928.

(2) Certain transfers had been made by the deceased two years prior to his death aggregating to Rs. 65,153 in favour of a number of persons. These transfers were made in the account-books of the firm Messrs Sunder Dass-Jeevan Ram, by debit and credit entries. When the entries were made the case in hand fell very much short of the amount that was transferred. No interest was paid to the transferees on the amount of Rs. 65,153. On these facts, the Assistant Controller held that there were no completed transfers.

(3) Sunder Dass was insured for a sum of Rs. 5,000 under Policy. No. 87397208. This was a whole-life policy. The deceased had originally assigned this policy in favour of his wife. The wife died during his lifetime in 1957. The deceased then assigned the policy to his son (the accountable person) on 10th May, 1957. The accountable person claimed that the amount received on account of this policy, namely Rs. 8,098 was not part of the estate of the deceased. This contention was rejected by the Assistant Controller. He took the view that this amount formed part of the estate of the deceased in view of the provisions of section 15 of the Estate Duty Act and would be deemed to pass on the death of the deceased.

(3) The accountable person was not satisfied with the decision of the Assistant Controller and preferred an appeal to the Appellate Controller. The Appellate Controller affirmed the decision of the Assistant Controller on these matters. The matter was then taken to the Appellate Tribunal. The Appellate Tribunal, on the first matter, held as follows:—

> "The Department has allowed only a sum of Rs. 5,000 by interpreting that only that amount was allowable under section 9(2). It was argued by the learned counsel for the assessee that the words 'aggregating to Rs. 5,000' never governed the either portion of the section and that it was in view of the doubt cast in the interpretation of the section that the section itself was later on amended when maximum amounts were fixed for each of the two types of expenditure governed by that section. In our opinion, to a great extent, the learned counsel for the assessee is right in his argument. If there had been a semi-colon after the first section then we could have understood that there was a separate sentence conveying a different idea in regard to the subject-matter of the two parts of the section. But unfortunately, there is nothing specific to indicate as to whether the sum of Rs. 5,000 was in respect of both or only for the latter. In that state of affairs, we propose to give the benefit of doubt to the appellant herein and as such instead of Rs. 5,000 that has been allowed by the Department we will allow the full claim, viz., Rs. 18,928."

(4) On the second matter, the finding of the Tribunal is as follows :—

> "The next contention pertains to the inclusion of the sum of Rs. 65,153 in respect of gifts made which were patently beyond two years of the death of the deceased. The facts have been stated clearly in the orders of the Departmental officials and we need not repeat them here. Unfortunately, when the gifts were made, there was no sufficient cash balance available to cover up the gift of Rs. 65,153. The credit balance which could warrant the gift of a particular amount is necessary as then only there could be scspe for the delivery of the said amount gifted in the

particular facts of the case. That is why the High Courts have always viewed against the assessee claiming gifts when there was no sufficient cash balance available to meet the gifts made on the dates on which the gifts are alleged to have been made. But there is one decision which is of the Rajasthan High Court reported in 42 I.T.R. 650 There the assessee firm was a private banking concern. When in such a case the gift is made of a higher amount than what was warranted by the cash balance available, still their Lordships upheld the gift to be valid. That was because of the scope of there being over-draft facilities or for some arrangements with other banks to allow its over-drafts. Their Lordships thought it highly unsafe to judge the ability of the firm to discharge its liability merely from the state of the cash balance in its coffers on a particular day. In this case it is not a banking concern.. As such we do not see any substance in the assessee's case. The action of the Departmental officials is quite proper."

(5) On the third matter, the Tribunal held:—

"Since in this case it is a case of life policy, it cannot be said that at any moment the deceased expected to get the money himself. Somebody is to get it after his death and when he has disclosed by way of assignment as to who it is to get, it becomes the property of the person in whose favour the assignment has been made after the death of the deceased. In these circumstances it can never be stated that it formed an asset left by the deceased. As such that amount will be excluded from the computation of the wealth of the deceased."

(6) Applications were then filed before the Tribunal for a reference to this Court, both by the accountable person and by the Department, and that is how the three questions of law have been referred for our opinion.

(7) So far as the first item, which is the subject-matter of second question is concerned, it solely rests on the interpretation

of section 9(2) of the Estate Duty Act. This provision reads thus:—

> "9(2) The provisions of sub-section (1) shall not apply to gifts made in consideration of marriage or which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, but not exceeding rupees five thousand in the aggregate."

It is not in dispute that the amounts in question were expended on the marriages of a daughter and a grand-daughter. The question that really arises is as to how much amount could have been spent under the aforesaid provision on the marriage or marriages by the deceased ? The argument on behalf of the Department is that no matter how many marriages are performed, the total amount for the same can in no case exceed Rs. 5,000, whereas the contention on behalf of the accountable person is that for each marriage the maximum expenditure permissible within two years prior to the death of the deceased to the extent Rs. 5,000 is allowable. It is these respective contentions which have to be examined in the light of the provision already set out above. There is no authority bearing on the point. After considering the language of the provision, we are of the view that the first clause of section 9(2) should be read like this:—

> "The provisions of sub-section (1) shall not apply to gifts made in consideration of marriage."

The principal reason that has prevailed with us to read the first part of sub-section (2) of section 9 as quoted above, is that 'gifts', which is plural is followed by 'marriage' which is singular. If the intention of the Legislature was that 'gifts made in consideration of marriage' mean any number of marriages, it would have used 'marriage' in the plural and not in the singular, or 'gift' would have been in singular and not in plural.

(8) Against the view we have taken, the learned counsel for the Department contended that in view of the provisions of section 13 of the General Clauses Act, a singular should be read as plural and plural as singular. This provision will only help where the context does not hold out to the contrary. As we have taken the view that in the context of the sentence, gifts cannot now in the

aggregate exceed Rs. 5,000 for a marriage, and not marriages, the argument based on section 13 has to be repelled. It is a settled rule that section 13 must yield to the context. See in this connection *Budhai Sheik* v. *Emperor* (1), *and Ram Prasad* v. *Emperor* (2).

(9) The view we have taken as to the interpretation of section 9(2) of the Act finds further support from section 33(k) of the Estate Duty Act. Section 33(k) reads thus:—

> "33. (1) To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of property of any of the following kinds belonging to the deceased which passes on his death—
>
> (k) moneys earmarked under policies of insurance or declarations of trust or settlements effected or made by a deceased parent or natural guardian for the marriage of any of his female relatives dependent upon him for the necessaries of life, to the extent of rupees five thousand in respect of the marriage of each of such relatives."

An attempt was made to argue that marriage expenses incurred by the deceased would also fall within the expression "which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased" in section 9(2). We are unable to agree with this contention. Section 9(2) specifically provides for marriage expenses and normal expenditure of the deceased. Therefore, by no stretch of reasoning can the normal expenditure be said to be an expenditure on account of marriage. 'Marriage' has been specially dealt with and therefore, there will be no question of its being the subject-matter of the other part of the sub-section for the purpose of expenditure. Moreover, normal expenditure of the deceased would even otherwise not include marriage expenditure, for marriage expenditure cannot be said to be a normal expenditure, on the view we have taken of the matter, the accountable person should have been allowed a deduction to the extent of Rs. 9,000, that is, Rs. 5,000 for the marriage of the daughter on whose marriage a sum of Rs. 14,928 was expended, and the amount of Rs. 4,000 given to the grand-daughter at the time of her marriage.

(1) I.L.R. 33 Cal. 292.
(2) 633 I.C. 449.

(10) So far as the second item is concerned, which is the subject-matter of question No. 1, reliance has been placed on *Balmal Nawal Kishore* v. *Commissioner of Income-tax, Punjab*, (3), *Controller of Estate Duty* v. *Bonaq Ram Bakshi Ram Gupta* (4), and *Naunihal Thakar Das* v. *Commissioner of Income-tax, Punjab* (5). The ratio of these decisions is that it is not necessary that there should be sufficient cash on the date of the transfers to carry out the directions of the assessee regarding the transfer entries provided the transfers are *bona fide* and there is an intention on the part of the transferor to divest himself of the amounts transferred. But it is essential that the transferor can, if so required by the transferee, be in a position to place the amounts transferred in the hand of the transferee. In other words, if the transferee could immediately after the transfer have full domain over the amounts transferred, the mere fact that there was not sufficient cash on the date of transfer is of no consequence. In the decided cases, where such transfers have been held to be valid, it was noticed that the transferor was in a position, if so required by the transferee, to put the transferee in possession of the funds so transferred, and that is the basis on which those transfers were held to be valid. In the present case, we have no evidence that the transferor could have put the transferee, if he so required, in immediate possession of the funds transferred. In fact, even after the transfer, no interest on the amounts transferred was paid or credited to the transferee. It is on the basis of these two significant facts that the Tribunal came to the conclusion that there was no valid transfer and we entirely agree with that conclusion.

(11) The third item relates to the insurance policy. It is now common ground that the provisions of section 15, on the basis of which the Tribunal as well as the two authorities below proceeded, could not bring this amount to charge of estate duty. Faced with this situation, the learned counsel for the Department drew our attention to section 14. Unfortunately, at no stage the case of section 14 was pleaded and in this situation the learned counsel for the accountable person wanted to lead evidence to show that whole or part of the premiums on the policy were paid by the accountable person or by some other person, and not by the deceased. The

(3) 62 I.T.R. 669.
(4) 76 I.T.R. 682.
(5) 77 I.T.R. 332.

other possibility is that all the premiums had been paid before the policy was assigned. In order to determine whether the amount in question is to be treated as an estate of the deceased, the case under section 14 will have to be examined. The decisions bearing on the matter are *The Lord Advocate* and *Fleming or Robertson and another* (6). *The Lord Advocate* v. *Inzievar Estates* (7), *Re Oakes (deceased)*. *Public Trustee* v. *Inland Revenue Commissioners* (8), and *D'avigdor-Goldsmid* v. *Inland Revenue Commissioners* (9). As facts have to be determined in order to see whether the amount in question can be brought to charge under section 14(1) of the Estate Duty Act, we remit the case to the Tribunal to determine the same in accordance with law.

(12) The result, therefore, is that the first question is answered against the accountable person and in favour of the Department, and the second question is answered in favour of the accountable person to the extent of Rs. 9,000. The decision of the third question is left to the Tribunal after it has given opportunity to the accountable person and the Department to lead such further evidence as they are minded on the same.

(13) The reference is answered accordingly. There will be no order as to costs.

P. C. PANDIT, J.—(14) I agree with my learned brother, but I like to add a few words of my own on the interpretation of section 9(2) of the Estate Duty Act, as it stood prior to its amendment by Act 33 of 1958.

(15) The point for decision is as to how much amount spent by the deceased on gifts made by him in consideration of a marriage or marriages celebrated within two years of his death shall be excluded from his estate for the purposes of computing estate duty.

(6) 1897 A.C. 145.

(7) 1938 A.C. 402.

(8) (1950) 2 All. E.R. 851.

(9) (1953) 1 All. E.R. 403.

For deciding this point, the part of section 9(2), which is relevant, reads as under:—

> "Provisions of sub-section (1) shall not apply to gifts made in consideration of marriage—but not exceeding Rs. 5,000 in the aggregate."

(16) It is on the interpretation of this sentence that the answer to the question posed will depend. Is the aggregate of Rs. 5,000 fixed for all marriages taking place during this period regardless of their number or is it the limit for gifts made on each occasion ?

(17) It is contended for the department that this limit is fixed for gifts made on all the marriages taking place during two years prior to the deceased's death. I am unable to agree with this contention. If instead of the word "marriage", the Legislature had used the word "marriages", there would have been force in the position taken by the department. But that is not so. The department, then, relied upon the provisions of section 13 of the General Clauses Act, 1897, for the submission that the words in the singular shall include the plural and *vice-versa*. It was argued by the counsel that the word "marriage" would include "marriages". But the difficulty in accepting this contention is that whereas the Legislature has used plural so far as the word "gifts" is concerned, it did not do so regarding the word "marriage". If instead of the words "gifts", the word used had been "gift" in the singular, that is to say, if both the words 'marriage" as well as 'gift" had been used in the singular, then also perhaps the contention of the Revenue would have substance. But if the Legislature in the same sub-section has used one word in singular and the other in plural, then the intention is quite clear that it did not want the singular to include the plural in the sub-section under consideration. It is, therefore, plain that the Legislature wanted that gifts made in consideration of any one marriage should not exceed Rs. 5,000 in the aggregate. If gifts had been made in consideration of more than one marriage, then the gifts should not exceed Rs. 5,000 for each marriage.

(18) This apart, ordinarily also one uses the expression "*gifts* made on a marriage" and not says "*gift* made on a marriage." So the conclusion is that the amount of the gifts made within two years of the death of the deceased, will not be included in his estate provided they do not exceed Rs. 5,000 on each marriage.

(19) The construction that I am placing on this sub-section is further supported by the provisions of section 33(k) of the Estate Duty Act, the relevant portion of which is as under:—

> "33. (1) To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of property of any of the following kinds belonging to the deceased which passes on his death—
>
> (k) moneys earmarked under policies of insurance or declarations of trust or settlements effected or made by a deceased parent or natural guardian for the marriage of any of his female relatives dependent upon him for the necessaries of life, to the extent of rupees five thousand in respect of the marriage of each of such relatives."

According to this provision, no estate duty would be payable in respect of the moneys earmarked by the deceased under policies of insurance or declarations of trust or settlements effected or made by him as a parent or natural guardian for the marriages of any of his female relatives dependent upon him for the necessaries of life, to the extent of Rs. 5,000 in respect of the marriage of each of such relatives. In other words, if a person has created a trust or effected a settlement or earmarked money under a policy of insurance for the marriage of any of his female dependent relatives, then to the extent of Rs. 5,000 for the marriage of each such relative, no estate duty would be leviable. If that be so, then there is no reason why the estate of a person, who has actually celebrated the marriage of such a female relative, like a daughter, in his lifetime, should be deprived of relief to the extent of Rs. 5,000 on each such marriage. The idea being that whether a person celebrates such a marriage in his life time or makes a provision for it after his death, an amount of Rs. 5,000 on account of each such marriage would be excluded from the value of the estate left by him in computing the estate duty.

(20) I would, therefore, hold that on a correct interpretation of section 9(2) of the Estate Duty Act, gifts made within two years of the death of the deceased in consideration of each marriage up to Rs. 5,000 would be excluded from the net value of the estate for the purposes of charge of estate duty thereon.

B. S. G.