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CONTROLLER OF ESTATE DUTY, KERALA

v.

M/S. R. V. VISHWANATHAN & ORS.

September 21, 1976

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[H. R. KHANNA, N. L. UNTWALIA AND JASWANT SINGH, JJ.]

Estate Duty Act (34 *of* 1953), *s.* 10—*Gift of property when deemed to be part of the estate of the deceased-donor.*

The deceased, with a view to convert his proprietary business into partnership business with his four major sons, transferred a sum of Rs. 45,000/- from his personal account to the credit of each of them. Five days later the partnership deed was executed, treating the sums transferred by the deceased to each of his four sons as their share capital in the partnership. A day later, the two minor sons of the deceased were also admitted to the benefit of the partnership. On the same day, the deceased transferred a sum of Rs. 45,000/- from his personal account to each of these two minor sons and an agreement was also executed on that day. That agreement recited that the capital of the partnership would be Rs. 3,15,000 made up by the contribution of Rs. 45,000 by the deceased and each of his six sons and that the share of the deceased and his six sons in profits would be 1/7th each.

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In the estate duty proceedings that followed the death of the deceased, the Assistant Controller of Estate Duty applied the provisions of s. 10 of the Estate Duty Act, 1953, and included in the estate of the deceased the capital of Rs. 2,70,000 which was the value of the shares of the six sons in the business. The Tribunal however held that what the deceased gifted to his sons was only a share in the business and not a gift of cash and that therefore, the sum of Rs. 2,70,000 could not be included in estate of the deceased. On reference the High Court confirmed the decision of the Tribunal.

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In appeal to this Court, it was contended on behalf of the Revenue that there was an absolute gift of Rs. 45,000/- by the deceased in favour of each of his sons and as that amount was, subsequent to the gift, utilised for the purpose of business of which the deceased-donor was at first proprietor and then a partner, the case was covered by s. 10.

Dismissing the appeal,

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HELD : (1) Property, which is the subject matter of gift, would not be deemed to be a part of the estate of the deceased, under s. 10, if each of the two following conditions is satisfied, namely, (a) the donee has bonafide assumed possession and enjoyment of the property, to the exclusion of the donor, immediately upon the gift, and (b) the donee has retained such possession and enjoyment of the property to the entire exclusion of the donor or of any benefit to him, by contract or otherwise. The two conditions are cumulative. The second part has two limbs : the deceased must be entirely excluded, (i) from the property and, (ii) from any benefit by contract or otherwise. The word 'otherwise' should be construed *ejusdem generis* and should be interpreted to mean some kind of legal obligation or some transaction enforceable at law or in equity which, though not in the form of a contract, may confer a benefit on the donor. But the words 'by contract or otherwise' in the second limb of the section do not control the words 'to the entire exclusion of the donor' in the first limb. Therefore, property gifted will deem to pass on the death of the donor and be subject to estate duty, even if the possession of the donor of the gifted property is not referable to some contractual or other arrangement enforceable in law or in equity but only to mere filial affection of his sons. [654 A—D]

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(2) (a) Whether gifted property should be held to be a part of the estate of the deceased-donor passing on his death for the purpose of s. 10, would

depend upon the fact as to what precisely was the subject matter of the gift and whether the gift was of an absolute nature or whether it was subject to certain rights. If the gift of property be made without reservation or qualification or condition, that is, where the gift carries the fullest right known to the law of exclusive possession and enjoyment, any subsequent enjoyment of the benefit of that property by the donor, in the nature of possession or otherwise, would according to s. 10, attract the levy of the estate duty on the death of the donor. [655 D—E]

George da Costa v. *Controller of Estate Duty* 63 ITR 497 and *Controller of Estate Duty* v. *Smt. Parvati Ammal* 97 ITR 621 followed.

Commissioner of Stamp Duties v. *Owens* [1953] 88 CLR 67 (88) and *Clifford John Chick & Anr.* v. *Commissioner of Stamp Duties* [1958] AC 435 (also reported in 37 ITR 89, Estate Duty Section) referred to.

(b) Where the gift is subject to certain rights or the subject matter of the gift is property shorn of cetrain rights, and the possession or enjoyment of some benefit in that property by the donor can be ascribed to those rights, that is, the rights subject to which the gift is made or the rights shorn of which the property is gifted, in such cases, the subject-matter of the gift shall not be deemed to pass on the death of the deceased donor. If the deceased donor delimits the interest he is parting with and possesses and enjoys some benefit in the property not on account of the interest parted with but because of the interest still retained by him, the interest parted with shall not be deemed to be part of the estate of the deceased-donor passing on his death for the purpose of s. 10. The principle is that by retaining something which he has never given, a donor does not bring himself within the mischief of that section, nor would the provisions of the section be attracted because of some benefit accruing to the donor on account of what was retained by him. [657 C—E]

H. R. Munro & Ors. v. *Commissioner of Stamp Duties* [1934] AC 61 applied.

Controller of Estate Duty, Madras v. *C. R. Ramachandran Gounder* 89 ITR 448 followed.

(3) In the present case, according to the Tribunal's finding the deceased transferred 6/7th share in the business in favour of the sons and retained 1/7th share and there is no infirmity in this finding. The transfer of Rs. 45,000 in favour of each of the sons was by book entries and not in cash. The transfer, the execution of the partnership deed and the agreement, were all parts of one integrated transaction, the object of which was to bring about a transfer of 6/7th share of the deceased in his business in favour of his sons, so that he and his sons might have each 1/7th share in the business. There was no absolute transfer of Rs. 2,70,000 in favour of his sons but the transfer was made subject to the condition that the sons would use it as capital not for any benefit of the deceased donor but for each of them becoming entitled to 1/7th share in the business. No benefit of any kind was enjoyed by way of possession or otherwise of the subject-matter of the gift, by the deceased. Whatever benefit was enjoyed by him subsequent to the date of the gift was on account of the fact that he held 1/7th share in the business which share he retained throughout and never parted with. Therefore, no question can possibly arise for the inclusion of the said 6/7th share or of the amount of Rs. 2,70,000/- in the estate of the deceased. [660 D—F]

CIVIL APPELLATE JURISDICTION : Civil Apeal No. 1576 of 1971.

(From the Judgment and Order dated 27-10-1970 of the Kerala High Court in I.T.R. No. 42/68).

R. M. Mehta, P. L. Juneja and *R. N. Sachthey,* for the Appellant.

K. S. Ramamurthi and *S. Balakrishnan* for the Respondents.

The Judgment of the Court was delivered by

KHANNA, J. This appeal on certificate is by the Controller of Estate Duty against the judgment of the Kerala High Court whereby

the High Court answered the following question referred to it under section 64(1) of the Estate Duty Act (hereinafter referred to as the Act) in favour of the accountable persons and against the revenue:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the sum of Rs. 2,70,000 is not includible in the estate of the deceased under section 10 of the Estate Duty Act?"

The matter relates to the estate of R. V. Veeramani Iyer who died on November 18, 1960. The accountable persons are the six sons of the deceased. The deceased was the proprietor of two business concerns, one dealing in yarn and carrying on money-lending business under the name and style of P. R. N. Ramanatha Iyer & Co. and the other dealing in piece-goods under the name and style of R. V. Veeramani Iyer. With a view to convert the business of the aforesaid two concerns into partnership business with his four major sons, the deceased transferred a sum of Rs. 45,000 from his personal account to the credit of each of his four adult sons on September 12, 1955. On September 17, 1955 a partnership deed was executed by the deceased and his four adult sons constituting a partnership firm under the name and style of P. R. N. Ramanatha Iyer & Co. The sums of Rs. 45,000 transferred by the deceased to each of his four sons were treated as their share capital in the partnership business. A day later on September 18, 1955 two minor sons of the deceased were also admitted to the benefit of the said partnership. Agreement dated September 18, 1955 was executed in this connection and in that agreement the deceased acted as guardian of his minor sons. The deceased also transferred on September 18, 1955 a sum of Rs. 45,000 from his personal account in the firm to each of his two minor sons who were admitted to the benefits of partnership. One of the minor sons attained majority on December 21, 1957 and he was taken as a regular partner by agreement dated March 29, 1958. The other son continued to be a minor till the date of the death of the deceased. The share of the deceased and each of his six sons, including the minor son, was one-seventh in the profits of the partnership till the date of the death of the deceased.

In the estate duty proceedings that followed the death of the deceased, the accountable persons included the value of a one-seventh share in the partnership business in the estate of the deceased which along with the movables was declared at Rs. 1,05,236. The assessment was completed on January 18, 1962. The Assistant Controller of Estate Duty by applying the provisions of section 10 of the Act included the following items in the estate of the deceased :

(1) The capital of Rs. 2,70,000;

(2) Subsequent accretion in the form of profits till the date of death of the deceased; and

(3) 6/7th share of goodwill, the quantum of goodwill being computed at Rs. 1 lakh.

A The principal value of the estate was determined at Rs. 8,43,214.

The accountable persons preferred appeal before the Appellate Controller of Estate Duty. It was contended on their behalf that the value of the share of the sons in the business should not be included in the estate of the deceased under section 10 and that the valuation of such shares as determined by the Assistant Controller was excessive. B The Appellate Controller held that so far as the gift of the share in the business was concerned, it could not be included in the estate of the deceased under section 10 of the Act. Regarding the gift of Rs. 2,70,000 by the deceased in favour of his sons, the Appellate Controller held that the same could be included in the estate of the deceased under section 10. Accordingly the Appellate Controller sustained the inclusion of Rs. 2,70,000 and deleted the balance of C Rs. 3,40,054 which amount also included six-seventh share of the goodwill. The value of the goodwill was reduced by the Appellate Controller from Rs. 1 lakh to Rs. 75,000.

Against the decision of the Appellate Controller the accountable persons filed appeal to the Appellate Tribunal and claimed that the inclusion of Rs. 2,70,000 in the estate of the deceased was wrong in D law. It was urged that although the deceased purported to transfer a sum of Rs. 45,000 in favour of each of his sons, it did not represent a transfer of cash and the transfer really represented a transfer of a share in the business. The Tribunal elaborately went into the clauses in the partnership deed and came to the conclusion that what the deceased gifted to his sons was only a share in the business and not a gift of cash. The Tribunal, therefore, held that the sum of Rs. 2,70,000 E could not be included in the estate of the deceased, and ordered the deletion of that sum.

On application made by the Controller of Estate Duty, the question reproduced above was referred to the High Court. The High Court held that the subject-matter of the transfers in favour of each of the sons of the deceased were the assets to the extent of Rs. 45,000 "subject to the rights of those assets being available for the continued F use of the business". The contention advanced on behalf of the revenue that there had been complete transfer of the assets to the extent of Rs. 45,000 to each of the sons and that thereafter the sons allowed the subject matter of the gift to be made use of by the donor, was rejected. It was further observed as under :

> "The Tribunal has taken the view that the subject matter of the gift was property which was subject to the rights of the G business to have that property being utilised for the purpose of business and they have expressed themselves by saying that the transfer was shorn of the rights of the partnership. The decision, we think, is correct. We therefore answer the question referred to us in the affirmative, that is, in favour of the assessee and against the department."

In appeal before us Mr. Mehta on behalf of the appellant has ar- H gued that there was absolute gift of Rs. 45,000 by the deceased in favour of each of his sons and as that amount was subsequent to the gift utilised for the purpose of business of which the deceased was at

first a proprietor and then a partner, the deceased should be held to have enjoyed the benefit of the gifted amount subsequent to the date of gift. The case, it is accordingly submitted, is covered by section 10 of the Act, and the High Court was in error in answering the question referred to it against the revenue. As against that, Mr. Ramamurthy on behalf the respondents has controverted the above contention and has canvassed for the correctness of the view taken by the Tribunal and the High Court. It has also been submitted by Mr. Ramamurthy that the findings of fact arrived at by the Tribunal on consideration of material facts regarding the subject matter of the gift must be accepted as correct in these advisory proceedings.

It may be appropriate at this stage to refer to the provisions of the Act having bearing on the question with which we are concerned. According to section 9 of the Act, as it stood at the relevant time, 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 : Provided that in the case of gift made for public charitable purposes the period shall be six months. Section 10 of the Act which has a material bearing read as under at the relevant time :

> "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 :
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> 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."

The intention of the legislature in enacting section 10 of the Act was to exclude from liability to estate duty certain categories of gifts. Property, which is the subject matter of gift, would however be deemed to be a part of the estate of the deceased donor under section 10 unless the donee assumes immediate exclusive and *bona fide* possession and enjoyment of the subject-matter of the gift, and there is no beneficial interest reserved to the donor by contract or otherwise. The section must be grammatically construed as follows :

> "Property taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and of which property *bona fide* possession and enjoyment shall not have been thenceforward retained by the donee to the entire exclusion of the donor from such possession and enjoyment, or of any benefit to him, by contract or otherwise....."

A The crux of the section lies in two parts : (1) the donee must bona fide have assumed possession and enjoyment of the property, which is the subject-matter of the gift, to the exclusion of the donor, immediately upon the gift, and (2) donee must have retained such possession and enjoyment of the property to the entire exclusion of the donor or of any benefit to him, by contract or otherwise. Both these conditions are comulative. Unless each of these conditions is B satisfied, the property would be liable to estate duty under section 10 of the Act.

The second part of the section has two limbs the deceased must be entirely excluded, (i) from the property, and (ii) from any benefit by contract or otherwise. The word "otherwise" should be construed *ejusdem generis* and should be interpreted to mean some kind of legal C obligation or some transaction enforceable at law or in equity which, though not in the form of a contract, may confer a benefit on the donor. The words "by contract or otherwise" in the second limb of the section do not control the words "to the entire exclusion of the donor" in the first limb. In order to attract this section, it is consequently not necessary that the possession of the donor of the gifted property must be referable to some contractual or other arrangements enforceable in D law or in equity. Even if the donor is content to rely upon the mere filial affection of his sons with a view to enable him to continue to reside in the house, it cannot be said that he was "entirely excluded from possession and enjoyment" within the meaning of the first limb of the section and, therefore, the property will be deemed to pass on the death of the donor and will be subject to levy of estate duty (*see George da Costa* v. *Controller of Estate Duty*(1) and *Controller of* E *Estate Duty* v. *Smt. Ammal*(2).

The object underlying a provision like section 10 of the Act was explained by Isaacs J. in the case of *John Lang* v. *Thomas Prout Webb*(3) decided by the High Court of Australia while dealing with a similar provision as under :

F > "The owner of property desiring to make a gift of it to another may do so in any manner known to the law. Apparent gifts may be genuine or colourable, and experience has shown that frequently the process of ascertaining their genuineness is attended with delay, expense and uncertainty—all of which are extremely embarrassing from a public revenue standpoint.
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G > With a view to avoiding this inconvenience, the legislature has fixed two standards, both of them consistent with actual genuineness, but prima facie indicating a colourable attempt to escape probate duty. One is the standard of time. A gift, however, real and bona fide, if made within twelve months before the donor's death is for the purpose of duty regarded as not made. The other is conduct which at first H sight and in the absence of explanation is inconsistent with

(1) 63 I.T.R. 497. (2) 97 I.T.R. 621.
(3) [1912] 13 C.L.R. 503.

the gift. The prima facie view is made by the legislature conclusive. If the parties to the transaction choose to act so as to be in apparent conflict with its purport, they are to be held to their conduct.

The validity of the transaction itself is left untouched, because it concerns themselves alone. But they are not to embarrass the public treasury by equivocal acts."

It may be mentioned that there has been amendment of section 10 of the Act by Finance Act, 1965 (Act 5 of 1965) and a second proviso has been added to that section, according to which 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. We are, however, concerned with section 10 as it stood before the amendment.

The question as to whether gifted property should be held to be a part of the estate of the deceased donor passing on his death for the purpose of section 10 of the Act is not always free from difficulty. It would depend upon the fact as to what precisely was the subject matter of the gift and whether the gift was of an absolute nature or whether it was subject to certain rights. There is a fine but real distinction between the two types of cases. All the same, it is quite often a vexed question to determine on what side of the line the facts of the case fall. The line, though clearly demarcated, is thin and the cases near the borderline often pose problem, the solution of which calls for a touch of judicial refinement and forensic subtlety.

Broadly speaking, if the gift of property be made without reservation or qualification or condition, or to put it in the words of Dixon CJ. in the case of *Commissioner of Stamp Duties* v. *Owens*(1), where the gift carries the fullest right known to the law of exclusive possession and enjoyment, any subsequent enjoyment of the benefit of that property in the nature of possession or otherwise would attract the levy of estate duty on the death of the donor according to section 10 of the Act. Such were the cases of Clifford John Chick & *Anr.* v. *Commissioner of Stamp Duties.*(2) decided by the Judicial Committee and *George da Costa* v. *Controller of Estate Duty* (supra) and *Controller of Estate Duty* v. *Smt. Parvati Ammal* (supra) decided by this Court.

The case of *Clifford John Chick* (supra) was under section 102 of the New South Wales Stamp Duties Act, 1920-56 similar to section 10 of the Act. In that case a father transferred in 1934, by way of gift, to one of his sons pastoral property. The gift was made without reservation or qualification or condition. In 1935, some 17 months after the gift, the father, the donee-son and another son entered into an agreement to carry on in partnership the business of graziers and

(1) [1953] 68 C.L.R. 67, 88.
(2) [1958] A.C. 435—37 I.T.R. 89.

A stock dealers. The agreement provided, *inter alia,* that the father should be the manager of the business and that his decision should be final and conclusive in connection with all matters relating to its conduct; that the capital of the business should consist of the livestock and plant then owned by the respective partners; that the business should be conducted on the respective holdings of the partners and such holdings should be used for the purposes of the partnership only; B that all lands held by any of the partners on the date of the agreement should remain the sole property of such partner and should not on any consideration be taken into account as or deemed to be an asset of the partnership and any such partner should have the able and free right to deal with it as he might think fit. Each of the three partners owned a property, that of the donee-son being that which had been given to him by his father in 1934. Each partner brought into the C partnership, livestock and plant, and their three properties were thenceforth used for the de-pasturing of the partnership stock. This arrangement continued up to the death of the father in 1952. It was held that the value of the property given to the son in 1934 was to be included in computing the value of the father's estate for the purpose of death duty. While it was not disputed that the son had assumed *bona fide* possession and enjoyment of the property immediately upon the gift to D the entire exclusion of the father, it was found that he had not thenceforth retained it to the father's entire exclusion, for under the partnership agreement the partners and each of them were in possession and enjoyment of the property so long as the partnership subsisted. The Judicial Committee held that where the question is whether the donor has been entirely excluded from the subject-matter of the gift, that is the single fact to be determined, and, if he has not been so excluded, E the eye need look no further to see whether his non-exclusion has been advantageous or otherwise to the donee. In the opinion of the Judicial Committee, it was irrelevant that the father gave full consideration for his rights as a member of the partnership to possession and enjoyment of the property that he had given to his son.

In the case of *George da Costa* (supra) the deceased had purchased a house in the joint names of himself and his wife in 1940. F They made a gift of the house to their sons in October 1954. The document recited that the donees had accepted the gift and that they had been put in possession. The deceased died on September 30, 1959. The Controller included the value of that house in the principal value of the estate that passed on the deceased's death, under section 10 of the Estate Duty Act, 1953. The Board found that, though the deceased had gifted the house four years before his death, he still G continued to stay in the house till his death as the head of the family and was also looking after the affairs of the house; and, further, that though the property stood in the joint names of the deceased and his wife, the wife was merely a name-lender and the entire property belonged to the deceased. It was held by this Court that the value of the property was correctly included in the estate of the deceased as property deemed to pass on his death under section 10, and that the H whole property and not merely half of it could be deemed to have passed for the purposes of the estate duty assessment.

In the case of *Smt. Parvati Ammal* (supra) on March 11, 1955 the deceased executed a deed whereby he gave the property in which

he was carrying on the business of boarding and lodging absolutely to his five sons in equal shares. Thereafter, on June 25, 1955 he took the property on lease from the sons and carried on the business as before. Later on, the deceased gave the boarding house on sub-lease to a third-party. The deceased died on April 6, 1957, and the question was whether the entire value of the property was liable to be included in the principal value of the estate of the deceased as property deemed to pass on his death under section 10 of the Estate Duty Act, 1953. It was held by this Court that the entire value of the property and not merely the value of the right to possession and enjoyment in the hands of the deceased as a lessee was liable to be included in the principal value of the estate of the deceased as property deemed to pass on his death under section 10. The subject-matter of the gift was found to be the full ownership in the property without any diminution.

The other type of cases are those where the gift is subject to certain rights or the subject matter of the gift is property shorn of certain rights and the possession or enjoyment of some benefit in that property by the donor can be ascribed to those rights, *i.e.,* rights subject to which the gift is made or rights shorn of which the property is gifted, in such cases the subject matter of the gift shall not be deemed to pass on the death of the deceased donor. To put it in other words, if the deceased owner delimits the interest he is parting with and possesses and enjoys some benefit in the property not on account of the interest parted with but because of the interest still retained by him, the interest parted with shall not be deemed to be part of the estate of the deceased donor passing on his death for the purpose of section 10 of the Act. The principle is that by retaining something which he has never given, a donor does not bring himself within the mischief of that section, nor would the provisions of the section be attracted because of some benefit accruing to the donor on account of what was retained by him.

Two cases, one decided by the Judicial Committee and another by this Court, would furnish illustrations of matters falling in this category. The case decided by the Judicial Committee is *H. R. Munro & Ors.* v. *Commissioner of Stamp Duties*(1) and that decided by this Court is *Controller of Estate Duty, Madras* v. *C. R. Ramachandra Gounder*(2).

In the first of these two cases, in 1909 Munro, the owner of 35,000 acres of land in New South Wales on which he carried on the business of a grazier, verbally agreed with his six children that thereafter the business should be carried on by him and them as partners under a partnership at will, the business to be managed solely by Munro, and each partner to receive a specified share of the profits. In 1913, Munro transferred by way of gift all his right title and interest in portions of his land to each of his four sons and to trustees for each of his two daughters and their children. The evidence showed that the transfers were taken subject to the partnership agreement and on the understanding that any partner could withdraw and work his land

(1)[1934] A.C.61. (2) 88 I.T.R. 488.

A separately. In 1919 Munro and his children entered into a formal partnership agreement, which provided that during the lifetime of Munro, no partner should withdraw from the partnership. On the death of Munro in 1929 the land transferred in 1913 was included in assessing his estate to death duties under section 102 of the Stamp Duties Act, 1920-1931 (N.S.W.). The Judicial Committee held that the property comprised in the transfers was the land separated from the rights there-
B in belonging to the partnership, and was excluded from being dutiable because the donees had assumed and retained possession thereof, and any benefit remaining in the donor was referable to the partnership agreement of 1909, not to the gifts.

The relevant provisions of section 102 referred to above, it may be stated, were similar to those of section 10 of the Act. Lord Tomlin,
C speaking for the Judicial Committee, observed :

> "It is unnecessary to determine the precise nature of the right of the partnership at the time of the transfers. It was either a tenancy during the term of the partnership or a licence coupled with an interest. In either view what was comprised in the gift was, in the case of each of the gifts to
D the children and the trustees, the property shorn of the right which belonged to the partnership, and upon this footing it is in their lordship's opinion plain that the donee in each case assumed *bona fide* possession and enjoyment of the gift immediately upon the gift and thenceforward retained it to the exclusion of the donor."

E In the case of *Controller of Estate Duty, Madras* v. *C. R. Ramachandra Gounder* (supra), the deceased who was a partner in a firm owned a house property let to the firm as tenant-at-will. In August, 1953, he executed a deed of settlement under which he transferred the property let to the firm to his two sons absolutely and irrevocably and, therefore, the firm paid the rent to the donees by crediting the amount in their accounts in equal shares. The deceased further directed the firm to transfer from his account a sum of Rs. 20,000 to
F the credit of each of his five sons in the firm's books with effect from April 1, 1953, and he also informed them of this transfer. An amount of Rs. 20,000 was credited in each of the sons' accounts with the firm. The sons did not withdraw any amount from their accounts in the firm and the amounts remained invested with the firm for which interest at 7½ per cent was paid to them. The deceased continued to be a partner of the firm till April 13, 1957, when the firm was dissolved
G and thereafter he died on May 5, 1957. The question was whether the value of the house property and the sum of Rs. one lakh could be included in the principal value of the estate of the deceased as property deemed to pass under section 10 of the Estate Duty Act, 1953. It was held by this Court that neither the house property nor the sum of Rs. one lakh could be deemed to pass under section 10. The first two conditions of the section were satisfied because there was an unequivo-
H cal transfer of the property by a settlement deed and of the sum of Rs. one lakh by crediting the amount in each of the sons' accounts with the firm which thenceforward became liable to the sons for payment of that amount and the interest thereon; the possession which the donor

could give was the legal possession which the circumstances and the nature of the property could admit and this the donor had given. The benefit the donor had as a member of the partnership was not a benefit referable in any way to the gift but was unconnected therewith.

Coming to the facts of this case, we find that according to the agreed statement of the case, the deceased transferred the sum of Rs. 45,000 from his personal account to the credit of each of his four sons on September 12, 1955 with a view to convert the business carried on by him into a partnership business with his major sons. Clause 4 of the deed of partnership which was executed by the deceased and his four adult sons on September 17, 1955 was as under :

> "4. The capital of the partnership for the present, shall be Rs. 2,25,000/- contributed equally by the five partners at Rs. 45,000/ each but the partners shall have the option to increase the capital as and when required, each partner contributing the additional capital required in the same proportion as the original contribution and all such contributions including the original investment shall carry no interest for any duration. 'The present capitals represented by the assets, outstandings, liabilities and goodwill of the businesses P. R. N. RAMANATHA IYER & CO. and R. V. VEERAMANI IYER which have been taken over as going concerns and made part and parcel of the partnership business hereby constituted."

The agreement which was entered into on the following day by the deceased and his four adult sons relating to the admission of the two minor sons of the deceased to the benefits of partnership expressly recited that Rs. 45,000 had been transferred by the deceased from his personal account to the credit of each of the minor sons. It was also stated that the capital of the partnership would be Rs. 3,15,000 made up by contribution of Rs. 45,000 by the deceased and each of his six sons and that the share of the deceased and his six sons in profits would be one-seventh each. The transfer of Rs. 45,000 by book entries in favour of each of the four adult sons on September 12, 1955 and in favour of each of the minor sons on September 18, 1955, the execution of the partnership deed on September 17, 1955 and of the other agreement on September 18, 1955, in our opinion, were all parts of one integrated transaction, the object of which was to bring about transfer of six-seventh share of the deceased in his business in favour of his sons so that he and his sons might have each one-seventh share in the business. The Tribunal has expressly recorded a finding that what the decased gifted to his sons was only a share in the business. The Tribunal also expressed its full agreement with the following observations made by the Assistant Controller :

> "From the facts of the case it is clear that the gift in favour of the sons represented amounts transferred by book entries to the account of each of the sons who were admitted

A to the partnership and that it does not actually represent cash sums of Rs. 45,000/- as such. By virtue of these transfer entries the sons of the deceased got a share in the business. Thus the gift cannot be construed as a gift of cash but it only represented a gift of a share in the business. By virtue of this gift, the sons had necessarily to become partners. The subject matter of the gift is the investment B in the business and such investment was compulsory or in other words gift was for the specific purpose of admission into the business as partners and for no other purpose."

The above finding of the Tribunal has been arrived at upon the material facts and relevant circumstances of the case and in answering the question referred to by the Tribunal, we must proceed upon the C basis of the correctness of the above finding. Although Mr. Mehta has tried to assail that finding, nothing cogent has been brought to our notice as might indicate any infirmity in that finding. The circumstances of the case indeed point to the conclusion that the said finding is well founded.

In the light of the finding that the deceased transferred six-seventh D share in the business in favour of the sons and retained only one-seventh share, no question can possibly arise for the inclusion of the said six-seventh share or of the amount of Rs. 2,70,000 in the estate of the deceased. The transfer of Rs. 2,70,000 by the deceased in favour of his sons was not in cash but was by means of book entries. The transfer of that amount was a part of the scheme, as stated above, to transfer six-seventh share in the business in favour of the sons. E There was no absolute transfer of Rs. 2,70,000 in favour of the sons but the transfer was made subject to the condition that the sons would use it as capital not for any benefit of the deceased donor but for each of them becoming entitled to one-seventh share in the businss. No. benefit of any kind was enjoyed by way of possession or otherwise by the deceased under the gift of the subject matter of the gift. Whatever benefit was enjoyed by the deceased subsequent to the date of F the gift was on account of the fact that he held one-seventh share in the business, which share he retained throughout and never parted with. No extra benefit was also conferred under the deed of partnership upon the deceased although some extra benefit was conferred upon two of the major sons in the form of remuneration because of their active and full participation in the business. Keeping in view the G position of law discussed earlier, it is plain that the facts of the case would not fall within the ambit of section 10 of the Act.

We, therefore, agree with the High Court that the question referred to by the Tribunal should be answered in favour of the accountable persons and against the revenue. The appeal fails and is dismissed with costs.

H V. P. S. *Appeal dismissed.*