TC02329

Appeal number: SC/3052/2009

TYPE OF TAX – INHERITANCE TAX – death – estate passing on death – deposit account in joint names of deceased and her son – whether deceased had general power to dispose of whole account – yes – whether deceased made gift with reservation – yes – whether whole balance on account subject to inheritance tax – yes – appeal dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

JOHN MATTHEWS **Appellant**
(Executive and Trustee of the estate of Mrs Mary Jean Matthews Deceased)

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE DAVID DEMACK

Sitting in public at Bedford House, Bedford Street, Belfast on 3 August 2012.

Mr Ian Lundie, tax adviser for the Appellant

Miss Virginia D'Vaz of H M Revenue and Customs, for the Commissioners.

DECISION

1. This is an appeal by Mr John Matthews ("Mr Matthews"), as executor and trustee of the will of his late mother, Mrs Mary Jean Matthews ("the Deceased") against a notice of determination to inheritance tax of 24 September 2008 that the whole of the monies in Abbey Investment Account no K6345918MAT in the joint names of Mr Matthews and the Deceased were liable to inheritance tax either under s.5(2) of the Inheritance Tax Act 1984, or as a gift with reservation.

2. Mr Matthews, a farmer, was represented by Mr Ian Lundie, a tax adviser, and the Commissioners by Miss Virginia D'Vaz of H M Revenue and Customs.

3. Miss D'Vaz provided me with a bundle containing not only documents relevant to the appeal, but also the authorities on which she relied. Mr Lundie also provided me with a bundle of documents containing his skeleton argument and other claims with which I shall shortly deal. I took oral evidence from Mr Matthews. It is from the whole of that evidence that I make my findings of fact.

4. The Deceased was born on 23 September 1925, and died on 19 January 2007. At the time of her death she was a widow. She and her late husband were farmers, and carried on their business in partnership.

5. The Deceased inherited a sum of money from her father, and invested it in an account in her sole name in what was the Abbey National Building Society (later Abbey plc). In 1999 the Deceased decided to open a new account with Mr Matthews at Abbey plc, and did so on 30 October of that year. She withdrew the whole of the monies in the account in her sole name and deposited them in the new joint account. They totalled £94,473.16. The number of that account was as stated in the first paragraph of my decision. Included in the special instructions for operation of the account endorsed on the bank pass book were the words `Either Signature'. Mr Matthews accepted that those words indicated that either he or the Deceased could withdraw monies from the account without the signature of the other being required.

6. An extract from pass book referred to above was produced to me, but only covered the period from 30 October 1999 to 14 April 2005. It showed that in that period no withdrawals were made from the account, and the only deposits into it after the Deceased's initial transfer into it consisted of interest credited and small bonuses the account attracted. The Commissioners accepted that between 15 April 2005 and the date of the Deceased's death the only monies added to the account were payments of interest, and that no withdrawals took place.

7. Mr Matthews claimed that he and the Deceased each included in their income tax returns for the period with which I am concerned one-half of the interest earned on the account each year. The Commissioners accepted that that was true, as do I.

8. He also claimed that the Deceased intended to make an immediate gift of one-half of the monies in the account on the date it was opened, but added that as he had no need of his share, since he had no requirement for further land to farm, he had not made use of the monies in it although, had he wished to do, he could have used the whole of the monies for whatever purpose he wished. Mr Matthews was unable to produce any evidence, documentary or otherwise, in support of his claims. As might have been expected within a family, there was no evidence of precisely what type of gift the Deceased intended to make.

9. At Section D of the inheritance tax return Mr Matthews made in relation to the Deceased's estate two relevant questions were asked:

1) Did the deceased make any gift or any other transfer of value on or after 18 March 1986?

2) Did the deceased hold any asset(s) in joint names with another person?

To the former question, Mr Matthews answered, incorrectly, "No", and to the latter he answered, "Yes".

10. At Section D4, in relation to bank and building society accounts, etc, the following questions and answers were recorded:

"If the value of the deceased's share is not the whole value,

Say		Answers
*	who the joint owner(s) is or are	Her son John Matthews
*	when the joint ownership began	30 October 1999
*	how much each joint owner provided to obtain the item	The deceased solely
*	who received the benefits of any withdrawals from bank or building society accounts, if any were made	No withdrawals
*	whether the item passes to other joint owner(s) by survivorship or under the deceased's will or intestacy	Passed by survivorship

11. The Deceased's share of the monies in the account was then shown as £57,674.48, one half of the total sum standing to the credit of the account at the date of her death.

12. Miss D'Vaz contended that the whole balance standing to the credit of the account at the date of the Deceased's death was taxable under s.5(2) of the Inheritance Tax Act 1984 ("the 1984 Act") which provides:

> "A person who has a general power which enables him, or would if he were sui juris enable him, to dispose of any property other than settled property, or to charge money on any property other than settled properly, shall be treated as beneficially entitled to the property or money' and for this purpose "general power" means a power or authority enabling the person by whom it is exercisable to appoint or dispose of property as he thinks fit".

13. That provision was applied to joint accounts by Mr Brian O'Brien, a Special Commissioner, in O'Neill v IRC [1998] STC (SpCD)) 110 as an alternative if he were wrong in finding that the other joint owner did not have any beneficial interest until the deceased's death. In addition, the Court of Appeal said obiter in Melville v IRC [2001] EWCA Civ 1247 at [36], [2001] STC 1271 at [36] that:

> "A clear example [of a provision of the inheritance tax regime that produces double taxation] is one falling within s.5(2) of the 1984 Act, the very common case of a joint bank account which permits any holder to draw on that account. The same property, the moneys in the account, is under s.5(2) taxable on the death of each holder".

14. Alternatively, Miss D'Vaz submitted that there had been a gift with reservation, relying for the purpose on s.102 of the Finance Act 1986:

> "(1) … where, on or after 18 March 1986, an individual disposes of any property by way of gift and either –
>
> (a) possession and enjoyment of the property is not bona fide assumed by the donee at or before the beginning of the relevant period [here the period from the gift to the date of death]; or
>
> (b) at any time in the relevant period the property is not enjoyed to the entire exclusion, or virtually to the entire exclusion, of the donor and of any benefits to him by contract or otherwise; …
>
> (2) It and so long as –
>
> (a) possession and enjoyment of any property is not bona fide assumed as maintained in subsection (1)(a) above, or
>
> (b) any property is not enjoyed as mentioned in subsection (1)(b) above
>
> the property is referred to (in relation to the gift and the donor) as property subject to a reservation.

(3) If immediately before the death of the donor, there is any property which, in relation to him, is property subject to a reservation then, to the extent that the payment would not, apart from this section, form part of the donor's estate immediately before his death, that property shall be treated for the purposes of the 1984 Act as property to which he was beneficially entitled immediately before his death."

15. Miss D'Vaz contended that the gift in the instant case was of the chose in action consisting of the whole account. On that basis she claimed that possession and enjoyment of the account had not been assumed by Mr Matthews, and nor had it been enjoyed to the entire exclusion of the Deceased and any benefit to her.

16. Mr Lundie contended that there was a tenancy in common of the whole account, and that the Deceased had made an initial absolute gift of one-half of the balance standing to its credit. He implicitly maintained that the Deceased had no right to withdraw more than one-half to which she was entitled and, had she done so, would have had to account to Mr Matthews for any excess. Mr Lundie particularly stressed the income tax treatment of the interest as the account as fortifying that contention.

17. Mr Lundie further implicitly submitted that there was no gift with reservation: the subject matter of the Deceased's gift was one-half of the balance standing to the credit of the account, possession and enjoyment of which was assumed by Mr Matthews. Not only would the Deceased have had to account for any excess withdrawn from the account beyond her entitlement to one-half, but she could not have benefited from Mr Matthew's share of it.

18. In giving the reasons for my decision I start, as did Dr Avery Jones in *Sillars, and another v IRC* [2004] (SpC) 10, by analysing what type of joint account I am dealing with. I observe, as did he, that at one end of the spectrum is a joint account where the deceased retains ownership of the funds, and no gift is made until death, as in *Young v Sealey* [1949] CH 278, either as a convenience for obtaining immediate use of the funds after death, or for more sinister motives, as in the O'Neill case. This is not the case here as I find that an immediate gift was intended. At the other end of the spectrum is a tenancy in common with each joint holder having separate ownership of a separate share in the account.

19. I have most carefully reflected on the evidence relating to Mr Lundie's claim in the latter behalf, and observe that it is inconsistent with the inheritance tax return which clearly states that one–half of the balance on the account at date of death passed (beneficially) by survivorship. The account being one for mother and son. I should not have expected the parties to have kept records showing who owned the funds, and what arrangements were in place for withdrawals from it. However, I should have expected Mr Matthews to have been able to explain what understanding existed between him and his mother as to how deposits and withdrawals were to be dealt with. In the event, it appeared from his evidence that they were matters that had

not been considered or, if they had been considered, the consideration had been at a most superficial level, and had reached no conclusion.

20. Certainly I could not conclude from his evidence that the arrangements in place constituted a tenancy in common. I infer from what Mr Matthews said, and the way in which the account was operated, that either he or the Deceased could withdraw funds up to the total amount deposited for his or her own benefit.

21. On that basis, I agree with Miss D'Vaz that s.5(2) of the 1984 Act applies. I accept the conclusion to which D. Avery Jones came in *Sillars* on the same point. He said at [13], adapting his words to the instant case:

> "While the Deceased's power over the account was not a general power in the ordinary sense, it fits the definition. The Deceased was able to dispose of the balance as she thought fit … The joint account was plainly not settled property … I do not accept that if the Deceased had needed more than one-[half] of the initial balance the excess would have been a gift by [Mr Matthews]. It is much more realistic to regard the Deceased as having power to deal with the Account as she thought fit. Whether or not s.5(2) can produce cases of double taxation does not arise in this appeal and on the facts found this is not a case where double taxation could arise. I do not consider that [Mr Matthews] had any such general power".

22. In *Sillars* Dr Avery Jones went on to deal and agree with the Commissioners' argument relating to gift with reservation. Again, I propose to follow his decision in that behalf. He said at [14] once more adapting his words to the instant case:

> "The account was held beneficially as joint tenants. The gift was of a chose in action consisting of the whole account, not [one half] of the initial balance. It follows that possession and enjoyment of the account had not been assumed by [Mr Matthews] because the Deceased was still entitled to a share; and nor had it been enjoyed to the exclusion of the Deceased and of any benefit to her as all benefits from the account were enjoyed by the Deceased".

23. It follows that I dismiss the appeal, and confirm the determination under appeal.

24 This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

DAVID DEMACK
TRIBUNAL JUDGE

RELEASE DATE: 30 August 2012