

(1984) 02 AP CK 0013

In the Andhra Pradesh High Court

Case No : Referred Case No. 132 of 1978

Barkat Ali Khan Bahadur

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 27-02-1984

Acts Referred:

Estate Duty Act, 1953 — Section 2(15), 22, 44, 46, 5
Income Tax Act, 1961 — Section 147

Citation : (1985) 47 CTR 229 : (1986) 158 ITR 259

Hon'ble Judges : Seetharam Reddy, J;K. Amareswari, J

Bench : Division Bench

Advocate : Y. Ratnakar, for the Appellant; M.S.N. Murthy, for the Respondent

Judgement

Amareswari, J.—The following six questions are referred for our opinion u/s 64(1) of the Estate Duty Act, 1953 :

"1. Whether, on the facts and in the circumstances of the case, the sum of Rs. 1,56,971, relating to the estate of late Mazharunnisa Begum is includible in the estate of the deceased as passing u/s 5 of the Estate Duty Act ?

2. Whether, on the facts and in the circumstances of the case, the sum of Rs. 8,23,697 representing the amount spent on the construction of quarters for dependants and khanazadas is includible in the estate of the deceased u/s 9 of the Estate Duty Act ?

3. Whether, on the facts and in the circumstances of the case, the sums of Rs. 12,61,649 and Rs. 8,85,850 representing respectively sale proceeds of the property known as "Persi Polis" belonging to Prince Mukarram Jah and shares of Hindustan Motors Ltd. belonging to the dependants and Khanazadas trust were held by the deceased in a fiduciary capacity and whether they are not includible in the estate of the deceased u/s 22 of the Estate Duty Act ?

4. If the answer to the above question is in the negative, whether, on the facts and in the circumstances of the case, the claim for the allowance of the sums of

Rs. 12,61,649 and Rs. 8,85,850 as debts due was hit by limitation imposed by section 46 of the Estate Duty Act ?

5. Whether, on the facts and in the circumstances of the case for purposes of determining u/s 36 of the Estate Duty Act the principal value of the estate passing on the death of the deceased, the amount of estate duty payable is liable to be taken into account and the principal value of the estate should be reduced accordingly or whether the amount could be deducted as a "debt" u/s 44 of the Estate Duty Act ?

6. Whether, on the facts and in the circumstances of the case, the sum of Rs. 5,01,460 being the value of the properties in the occupation of Sahabzadas and Sahebzadis was includible in the hands of the deceased as property passing ?"

Question No. 1 : - Nawab Mir Barkat Ali Khan is the accountable person herein. Mir Osman Ali Khan, the erstwhile Nawab of Hyderabad died on February 24, 1967. His successor, Mir Barkat Ali Khan, filed the estate duty return disclosing the net value of the estate at Rs. 1.20 crores. The Assistant Controller computed the value of the estate at Rs. 3.69 crores by making several additions. One such addition was a sum of Rs. 1,56,971 relating to the estate of one Mazharunnisa Begum who died on June 18, 1964. The Assistant Controller was of the view that Mazharunnisa Begum was the wife of the late Nizam. He drew this inference from the fact that the late Nizam impleaded himself as her legal representative after her death in O. S. No. 14 of 1958 on the file of the High Court relating to the Administration of Kurshud Jahi Paiga. The Assistant Controller further recorded in his order that the representative of the accountable person had agreed to the inclusion of this amount.

2. The accountable person carried the matter in appeal. It was urged before the appellate authority that Mazharunnisa Begum was not the wife of the late Nizam. Reliance was placed on a decision of the Andhra Pradesh High Court in Nawab Sir Mir Osman Ali Khan Bahadur, H.E.H. The Nizam of Hyderabad Vs. Income Tax Officer, . The Appellate Controller upheld the inclusion of the sum of Rs. 1,56,971 accepting the Revenue's contention that Mazharunnisa Begum should be considered to be the legally wedded wife of the late Nizam. He gave three reasons in support of his conclusion : (i) in several deeds of settlement and trusts, Mazharunnisa Begum was described as the wife of late Nizam and that, under the Muslim law, on open acknowledgment of a man that the woman is his wife in the absence of any direct evidence, marriage can be presumed, (ii) that in the estate duty proceedings of Mazharunnisa Begum, the late Nizam filed a return as an accountable person and as the husband of Mazharunnisa Begum, and (iii) that the late Nizam was impleaded as legal representative of Mazharunnisa Begum in O. S. No. 14 of 1958 on the file of the High Court of Andhra Pradesh. He referred to the aforementioned decision of the Andhra Pradesh High Court and distinguished it on the ground that the question whether Mazharunnisa Begum was the wife of the late Nizam did not directly arise therein. There was a further appeal to the Tribunal which also ended

unsuccessfully. The two members of Tribunal while affirming the decision of the lower authorities gave different reasons. The judicial member upheld the inclusion on the ground that after the death of Mazharunnisa Begum, her estate passed into the hands of the late Nizam who was in actual possession of the same till his death. He reached this conclusion on the ground that in the memorandum of grounds filed before the Appellate Controller, there was an admission in ground No. 11 that the notional share of the estate of the late Mazharunnisa Begum devolved upon the deceased Nizam, and that an admission can be used as evidence against the maker of the admission, and that the admission made by the counsel on facts is binding on his client. The accountant member upheld the inclusion on the ground that in response to the notice issued by the Assistant Controller of Estate Duty, subsequent to the death of Mazharunnisa Begum, the late Nizam submitted a return relating to her estate and, hence, the estate of late Mazharunnisa Begum passed on her death to the late Nizam. The accountant member held that the late Nizam undoubtedly had some interest in the estate of the late Mazharunnisa Begum, although it was not clear from the estate duty proceedings the actual nature of interest which he had. It is in this set of facts and findings, the above question is referred for our opinion.

3. Mazharunnisa Begum died on June 18, 1964, without leaving any issues. It is not and it cannot be disputed that the late Nizam was closely associated with her and they were living like husband and wife. After her death, the Nizam took several legal proceedings holding out that he is the husband of Mazharunnisa Begum. For instance, he impleaded himself as representing her estate in Kurshud Jahi Paiga, the administration of which was the subject-matter of litigation in O. S. No. 14 of 1958 pending on the file of the High Court of Andhra Pradesh. On the death of Mazharunnisa Begum, he filed the estate duty return as accountable person relating to her estate. In the several trust deeds executed by the late Nizam in his lifetime, he referred to Mazharunnisa Begum and two other persons as his wives. On the basis of all these proceedings, it is not possible to say that the finding of the Assistant Controller and the Appellate Controller that on the death of Mazharunnisa Begum, her estate devolved on the late Nizam, her husband, is erroneous.

4. The learned counsel for the petitioner, however, relied upon a decision of this court in Nawab Sir Mir Osman Ali Khan Bahadur, H.E.H. The Nizam of Hyderabad Vs. Income Tax Officer, , to say that this court had already decided that Mazharunnisa Begum was not the wife of the late Nizam, that the said finding is binding on the Tribunals and since the impugned inclusion was on that ground, it is liable to be set aside. We see no force in this submission. The above cited case is a case in which proceedings were initiated by the Department u/s 147(a) of the Income Tax Act, 1961, on the ground that the incomes of the three ladies (one of them was Mazharunnisa Begum) transferred directly by the Nizam was includible in his estate and it was not included due to the failure of the Nizam to disclose the facts fully and truly concerning the status of the ladies as his legally

wedded wives, i.e., the case of the Department was that the three ladies were the wives of late Nizam, that he failed to disclose the facts fully, as a result of which certain income had escaped assessment. These proceedings were contested on the ground that there was no failure or omission to disclose the necessary information and, as such, the proceedings u/s 147(a) of the Income Tax Act were incompetent. The contention was upheld by this court on the ground that the assessment proceedings were completed and all the necessary information was before the Income Tax Officer, that on the material available, the Income Tax Officer came to the conclusion that the three ladies were not his wives, that there was no failure or omission to disclose any particulars and, therefore, the proceedings u/s 147(a) were without jurisdiction. Thus, it is seen that the question whether Mazharunnisa Begum was the legally wedded wife of the Nizam was not directly in issue in this case nor was it decided by the High Court.

5. This decision of the Andhra Pradesh High Court was carried in appeal to the Supreme Court. While affirming the decision, the Supreme Court observed in *Income Tax Officer, Income Tax-cum-Wealth Tax Circle II, Hyderabad Vs. Nawab Mir Barkat Ali Khan Bahadur, Hyderabad*, as follows (at p. 245) :

"In any event, we are not called upon in this proceeding to record a finding on the question whether in fact the ladies were the respondent's legally wedded wives. We are concerned only with the question whether the condition precedent to the exercise of jurisdiction u/s 147 exists in this case ; we have found that it does not."

6. These observations clearly indicate that the question whether Mazharunnisa Begum was the wife of the late Nizam was never in issue in *Nawab Sir Mir Osman Ali Khan Bahadur, H.E.H. The Nizam of Hyderabad Vs. Income Tax Officer*, . However, we do not rest our conclusion on this aspect alone. Strictly speaking, it is not necessary to decide in this case whether Mazharunnisa Begum was the legally wedded wife of the late Nizam. All that we are concerned with is that Mazharunnisa Begum's estate which was held by the Nizam as his own, enjoyed and possessed by him is includible in the computation of the value of the estate as passing on his death.

7. The expression "property passing on death" was aptly described by Lord Russell of Killowen in *Scott and Coutts and Co. v. IRC* [1937] AC 174: [1936] 3 All ER 752 :

"The expression "property passing on death" is not a technical expression. In other words, it is not a term of law. The word "passes" means "changes hands". To ascertain whether property has passed, a comparison must be made between the persons beneficially interested the moment before the death and the persons so interested the moment after the death."

8. These observations of Lord Russell were quoted with approval by the Supreme Court in *Controller of Estate Duty, Gujarat Vs. Hussainbhai Mohamedbhai Badri*, .

9. In Mahendra Rambhai Patel Vs. Controller of Estate Duty, Gujarat, , it was pointed out that in determining whether a particular property passed on the death of the deceased, one has to see whether the deceased had any beneficial interest in that property and whether that interest "passed" to someone on his death.

10. Indisputably, late Mazharunnisa Begum had an interest in the estate popularly known as "Khurshid Jahi Paiga" and as she died issueless, her share fell to the late Nizam. That was the finding of the Assistant Controller of Estate Duty, Hyderabad, in the assessment order of late Mazharunnisa Begum. That finding had become final. The Nizam himself filed estate duty return in response to the notice u/s 55 of the Estate Duty Act, 1953. The admitted value of this property in that return was Rs. 1,48,000. These are all facts found by the Tribunal and their finding cannot be canvassed in this reference application. Even otherwise, no material is placed before us to show that these findings are incorrect. There is nothing to show that the interest of the late Mazharunnisa Begum did not pass to the accountable person on the death of the deceased. In fact, we find from the order of the Assistant Controller that the accountable person's representative had admitted the inclusion of this amount and in ground No. 11 of the memorandum of grounds filed before the Appellate Controller, it is stated that the notional share of the estate of the late Mazharunnisa Begum devolved upon the deceased. This is the case of the accountable person himself. In this background of facts, we cannot but come to the conclusion that the addition of Rs. 1,56,971 relating to the estate of Mazharunnisa Begum was rightly included in the estate of the deceased as passing on his death. We, therefore, answer this question in the affirmative and against the assessee.

11. Question No. 2. - This question relates to the inclusion of a sum of Rs. 8,23,697. King Kothi palace originally belonged to the late Nizam. This property was gifted on March 21, 1957, by an instrument in writing registered in favour of his grandson, Prince Mukarram Jah, the present accountable person. Simultaneously with the gift, the late Nizam has taken on lease the entire King Kothi palace subject to payment of rent and a lease deed was duly registered. While the property was in his occupation, the Nizam constructed on the open land lying in King Kothi palace, some quarters for occupation of certain descendants of the Nizam's family known as dependants and khanazadas. The Assistant Controller held that the late Nizam could not be considered to be the owner of the quarters constructed by him for the occupation of dependants and khanazadas. He also held that the sum of Rs. 8,23,697 spent by the late Nizam during the period of two years immediately preceding his death represented a gift by the deceased in favour of the said dependants and khanazadas and, therefore, the said sum of Rs. 8,23,697 was includible in the estate of the late Nizam by virtue of the fiction contained in section 9 of the Estate Duty Act. On appeal, the Appellate Controller upheld the said inclusion on the ground that under the Second Explanation to section 2(15) of the Act, there was a disposition as there was an extinguishment of a right and the accrual of a benefit in the form

of the right so given up in favour of the person benefited. This inclusion was also upheld by the Appellate Tribunal on further appeal. It is contended on behalf of the learned counsel for the accountable person that the late Nizam built the khanazadas quarters for residential purposes out of his own volition and, as such, the extinguishment at the expense of the deceased of a right and the accrual of a benefit in the form of the right so given up in favour of the khanazadas did not arise. As such, so argues the counsel, the invocation of the Second Explanation to section 2(15) of the Act is not warranted. It is also submitted that the late Nizam was under an obligation arising out of custom and family tradition to maintain the khanazadas who were exclusively dependent upon him and if he had constructed the residential quarters in fulfilment of that obligation, such a unilateral act does not tantamount to gifts inter vivos within the meaning of section 9 of the Estate Duty Act.

"Property" is defined u/s 2, clause (15). It includes :

"any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method...

Explanation 2. - The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition, the expression "property" shall include the benefit conferred by the extinguishment of the debt or right."

In *Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal*, it was held by the Supreme Court (at pp. 102 & 103) that "the term "disposition" is not a term of art nor legalese but a plain English word of wide import. What is more, this word has acquired, beyond its normal ambit, an abnormal semantic expansion on account of a special definition with an explanation superadded. In short, "disposition" in the estate duty law of India enjoys an extended meaning.... We have also to stress the expression "other right " in the Explanation which is of the widest import and cannot be constricted by reading it ejusdem generis with "debt". "Other right", in the context, is expressly meant considerably to widen the concept and, therefore, suggests a somewhat contrary intention to the application of the ejusdem generis rule."

12. In the light of this decision, we have no hesitation in reaching the conclusion that the expenditure incurred by the deceased in respect of the construction will come within the purview of Explanation 2 to section 2(15) of the Act. According to this Explanation, any extinguishment at the expenses of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished and the benefit conferred by the extinguishment of the debt or right is property. Even though the khanazadas had the right of occupation and the

buildings were given to them, no liability was attached to them towards the cost of construction and that liability was extinguished by the late Nizam by meeting the cost and, therefore, to that extent this would be taken as an extinguishment at the expense of the deceased of a debt or other right and though it may not technically come within the term "debt", it can very well come within the meaning of the word "right". In this view, it is a disposition of the property and as this disposition has been made within two years from the date of death, the property shall be deemed to pass on the death. Further, it is not open to the accountable person to contend that it is not a gift.

13. In W.T.A. Nos. 87, 88, 89, 203, 294 and 295/Hyderabad/1972-73 and W.T.A. Nos. 64, 65 and 66/Hyderabad/1972-73 and 260, 261 and 262/Hyderabad/1973-74, the stand taken by the accountable person herein, Nawab Mir Barkat Ali Khan, was that the quarters were made over to the khanazadas and the Nizam had divested himself of the right over them and as such they were in the nature of gifts made by him to the khanazadas. It was contended in the said wealth-tax proceedings that whatever might be the cost of construction incurred by the late Nizam over these quarters, since they no longer belonged to him on the relevant valuation dates, their value could not be included in the net wealth for wealth-tax purposes. The Tribunal accepted this contention and directed deletion of the value of khanazadas quarters in computing the net wealth of the assessee, who is the accountable person herein. It is well settled that if an assessee has obtained a benefit by making certain representations to the taxing authorities, he cannot be permitted to deny the truth of the representations before the authorities at a later stage.

14. In Commissioner of Income Tax, Bombay City I Vs. Army and Navy Stores Ltd., it was held that having taken a benefit by a certain representation, the assessee cannot go back on that representation and deny the truth of the same and that he is estopped from doing so. It is, therefore, not open to the assessee herein to contend that the late Nizam had made no gift of this property. We accordingly hold that the inclusion of this amount was justified.

15. Question No. 3. - This question relates to the inclusion of two amounts of Rs. 12,61,649 and Rs. 8,85,850 representing respectively sale proceeds of the property known as "Persi Polis" belonging to Prince Mukarram Jah (Mir Barkat Ali Khan), i.e., the accountable person herein and the shares of Hindustan Motors Limited belonging to dependants and khanazadas in the estate of the late Nizam. The building known as "Persi Polis" situated at Bombay was one of the properties gifted by the late Nizam in the year 1957 to his grandson, Prince Mukarram Jah, the accountable person herein. Prince Mukarram Jah sold the said property for a consideration of Rs. 16,84,749. Since Prince Mukarram Jah was living abroad during the relevant time, this amount is said to have been received by the late Nizam for the purpose of safe custody. Out of the said sum, some amounts were drawn from time to time and at the time of death of the late Nizam, a sum of Rs. 12,61,649 was lying in deposit with the late Nizam. The accountable person

claimed before the Assistant Controller that the late Nizam held the aforesaid sum of Rs. 12,61,649 in a fiduciary capacity and, therefore, the said sum of Rs. 12,61,649 was not liable to be included in the estate passing on the death of the deceased u/s 22 of the Estate Duty Act. In regard to the amount of Rs. 8,85,850, the deceased has created a trust known as dependants and khanazadas trust for various descendants of the Nizam's family. The trust property included some ordinary shares in Hindustan Motors Limited. Subsequent to the creation of the trust, some doubts regarding the validity of the trust had arisen. The dispute regarding the validity was, however, set at rest in January, 1967, and during the interregnum till January, 1967, the trust properties were said to have been under the administration of the Financial Adviser to the late Nizam. During the said period, the shares of Hindustan Motors Limited were sold and shares in some other companies were purchased. As a result of this transaction, a sum of Rs. 8,85,850 remained with the late Nizam on account of the dependants and khanazadas trust which amount was made over to the trust after the death of the late Nizam. It was claimed before the Assistant Controller that the said sum of Rs. 8,85,850 was held by the deceased in trust for the dependants and khanazadas trust in a fiduciary capacity and, therefore, the same was not liable to be included u/s 22 of the Estate Duty Act. The Assistant Controller rejected the contention that the late Nizam held the sums of Rs. 12,61,649 and Rs. 8,85,850 in a fiduciary capacity. He included the said sums in computing the principal value of the estate of the deceased. On appeal, the Appellate Controller upheld the said inclusion and on further appeal, the Tribunal justified the said inclusion rejecting the contention that the two sums referred to above were held by the late Nizam in a fiduciary capacity and, therefore, fell to be excluded by virtue of the provisions contained in section 22 of the Estate Duty Act.

16. To appreciate this contention, it is necessary to refer to section 22 of the Estate Duty Act which is as follows :

"Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased where (whether by virtue of the original disposition or of a subsequent surrender of any benefit originally reserved to the deceased or otherwise) possession and enjoyment of the property was bona fide assumed by the beneficiary at least (two years) before the death and thenceforward retained by him to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise."

The ingredients of this section are that the property must be held by a person in a fiduciary capacity, that he must be holding it as a trustee under a disposition made by him or by any person and in the case of the former category, the beneficiary must assume possession and enjoyment to the total exclusion of the deceased at least two years before his death. These ingredients are absent in this case. Even if the late Nizam was holding these sums in a fiduciary capacity,

he was not holding as a trustee under a disposition made by him or by any other person. In the case of the amounts relating to "Persi Polis", there was no disposition at all. He was not holding the amounts as a trustee under any disposition. The disposition made by the late Nizam was of "Persi Polis" property and the amounts held by him were the sale proceeds of that property. The gift deed of the late Nizam under which the "Persi Polis" was settled on the accountable person herein did not contain any provision that the property should be sold and the sale proceeds should be held in trust for the donee. The property was sold at the discretion of the donee and the sale proceeds came to be deposited with the late Nizam as the donee was away at the material time. We, therefore, fail to see how this amount falls within the ambit of section 22 of the Act.

17. Regarding the amount of Rs. 8,85,850 which belonged to the Nizam's dependants and Khanazadas trust, even if it is assumed that he is constituted as one of the trustees, the latter part of section 22 is not fulfilled, namely, that the beneficiary had assumed enjoyment of the property to the total exclusion of the late Nizam. We are, therefore, of the view that section 22 has no application to the facts of the case.

18. Question No. 4. - This relates to the applicability of section 46 of the Estate Duty Act. It is contended by the learned counsel for the accountable person that the amount was held by the late Nizam as a trustee and, as such, the application of section 46 is misconceived. The learned counsel further contended that section 46(1) of the Act would be inapplicable unless at the time of gifting of the property, there was a simultaneous intention on the part of the donor to borrow the subject-matter of the gift, so to speak, at a later date in the form of a liability. It is submitted that to attract the provisions of section 46(1) or 46(2) of the Act, there must be a debt and in order to constitute a debt, there should be consensus ad idem and the jural relationship of the creditor and the debtor. It is submitted that the late Nizam held the amount only in a fiduciary capacity and, at any rate, it was kept with him as a deposit. According to the learned counsel, the concept of debt, in such circumstances, is wholly out of place. The expression debt was considered in a number of decisions.

19. In *Banchharam Majumdar v. Adyanath Bhattacharjee* [1909] ILR 36 Cal 936 Jenkins C.J., defined the word "debt" as (at pp. 938 & 939) :

"I take it to be well established that a debt is a sum of money which is now payable or will become payable in future by reason of a present obligation."

20. This principle was approved by the Supreme Court in *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta*, . The late Nizam was under an obligation to pay back the amount to his grandson. Even accepting the argument advanced on behalf of the accountable person that he was holding the money in trust for his grandson, he was answerable for the payment of the amount to the grandson in respect of the sale proceeds of the

gifted property, i.e., even as a trustee, he was obliged and answerable to pay back this amount. Hence, the contention that it is not a debt cannot be accepted. Then the question is whether this is a debt which is subject to abatement u/s 46 of the Estate Duty Act. Section 46 of the Estate Duty Act is as follows :

"46. Further limitations. - (1) Any allowance which, but for this provision, would be made u/s 44 for a debt incurred by the deceased as mentioned in clause (a) of that section, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefore which consisted of -

(a) property derived from the deceased ; or

(b) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased :...

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which sub-section (1) would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that sub-section has effect on his death shall, unless so paid or applied two years before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, notwithstanding anything in section 26, be payable in respect thereof accordingly.

(3) The provisions of sub-section (2) of section 16 shall have effect for the purpose of this section as they have effect for the purpose of that section."

21. The scope of this section was considered in *A. Kandaswami Pillai (deceased) (by legal representative) and Ahmed Haji Mohammed Vs. Controller of Estate Duty*, . In this case, a Hindu undivided family made a gift of certain agricultural lands to three female members of the family and the family managed the properties on their behalf, the receipts and outgoings being exhibited in a separate account. These lands were sold in May, 1957, and the proceeds credited in favour of the three ladies. The share relatable to two of the ladies was paid over to them and the balance due to the third lady remained in the family. On the death of the karta on January 21, 1959, the amount due to the lady was claimed as deduction for purposes of liability u/s 44(a). This claim was rejected by the Assistant Controller relying on section 46(1)(a) read with section 39. The Tribunal having upheld the view, the accountable person took up the matter to the Madras High Court on reference. The High Court, rejecting the reference moved at the instance of the accountable person, observed as follows ([1969] 73 ITR 569) :

"It should be taken, therefore, particularly having regard to the definition of "property", that because sale proceeds represent property, viz., the lands, and

the property was derived from the family, the nexus required between the debt and the consideration of the particular type, in order to apply the limitation u/s 46(1)(a) is satisfied."

22. It is contended that such a harsh construction may not be placed upon section 46(1)(a) and an equitable approach would be more reasonable. Even this aspect of the matter was dealt with by the Madras High Court and the learned judges observed at page 569 as follows :

"We must confess that, at first sight, we felt some difficulty in appreciating the real scope of section 46(1). This is because, while the policy of the provision is obvious, viz., to avoid evasion of estate duty, the section seems to overstep that mark, and in its abundant caution, appears to do injustice by disallowing even debts not intended to escape tax. But we can only interpret the statutory provision, having regard to the actual words it has employed. Making that approach, it seems to us that the debt in the first reference seems to squarely fall within and satisfy the words therein."

23. These observations preclude any equitable construction as contended for on behalf of the accountable person. The learned counsel for the assessee sought to distinguish this case submitting that there was a concession there that the amount in question was a debt within the meaning of section 44(a) while that is not the case here. According to him, the amount deposited with the late Nizam was not a debt, but a mere deposit held by him in a fiduciary capacity and not as a debtor to the donee and, therefore, the aforesaid decision is not applicable. On the other hand, he relied upon a later decision of the Madras High Court in *Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty*, . In this case, the deceased made a gift of Rs. 50,000 to each of his three minor sons on March 31, 1955, and his wife as guardian of the minors accepted the gift on behalf of the minors. She had requested the deceased to keep the money with him as a deposit-bearing interest. The capital account of the deceased was debited with Rs. 1,50,000 and corresponding credit entries were made in the accounts of the three minors. Three promissory notes were also executed by the deceased promising to repay the deposits with interest. The transactions were affirmed by a subsequent declaration by the deceased. Interest due on those amounts was credited and withdrawals were also made in the minors' accounts in the books of the deceased. In the estate duty assessment of the deceased, the credit balance in the names of the minors was claimed as a debt due from the estate. According to the Assistant Controller of Estate Duty, the interest credited to the sons' accounts would also be property derived from the deceased within the meaning of section 46(1)(a) of the Estate Duty Act, 1953, in view of the definition in section 16(2) and hence he disallowed the amount standing to the credit of the minors. He was further of the view that for the applicability of section 46(1)(a), it is not necessary to prove that the property was derived from the deceased with a view to facilitate the giving of the consideration and it is enough if it is shown that the consideration for the debt or the amount advanced to the deceased was

itself property which was derived by the creditor from the deceased. The Assistant Controller ultimately held that the gift of Rs. 1,50,000 and the deposit of the amount as loan with the deceased was the result of the same arrangement while in respect of the payment of interest to two sons by the deceased, as the same was paid within two years prior to his death, section 46(2) would be attracted. In this view, the entire sum of Rs. 2,66,205 was included in the assessment. This was confirmed in appeal. In the further appeal, the assessment of Rs. 1,50,000 being the amount gifted was not questioned. Regarding the assessment of the interest of Rs. 1,16,205, the Tribunal held that the case would be governed by section 46(1)(b) and hence had to be disallowed. The Tribunal further held that the entire amount of interest as well as the principal would constitute "property derived from the deceased" within the meaning of section 46(1)(a) read with section 16(2) and hence the disallowance of the debt to the extent of the interest amount of Rs. 1,16,205 was in accordance with law. On a reference to the High Court, it was held that : (i) though the interest payable by the deceased and credited to his sons' accounts would be "property derived from the deceased" within the meaning of section 46(1), that will not be sufficient to hold that the entire principal and interest due from the deceased are to be disallowed u/s 46(1), and (ii) in order to attract section 46(1)(a), the property which constituted the consideration should have been in existence on the date when the debt was incurred and hence the future interest payable on the loan cannot have constituted the consideration. Accordingly, the consideration for the debt consisted only of the sum of Rs. 1,50,000 and not the future interest paid by the deceased in view of the fact that on the date when the loan was given to the deceased, there were no accretions to the amount of Rs. 1,50,000.

24. Relying upon this decision, it is submitted by the learned counsel for the accountable person that the deposit held by the late Nizam on behalf of the donee in a fiduciary capacity cannot be excluded from deduction by applying the provisions of section 46(1) for the reason that the consideration for the debt was not "property derived from the deceased" which was the "Persi Polis" property, but the sale proceeds of that property which cannot be described as "property derived from the deceased", (2) that there was no direct nexus between the deposit and the property settled by the deceased in favour of the donee, since the deposit was directly referable to the sale proceeds of the property, (3) that in terms of section 46(3), the provisions of section 16(2) shall have effect for the purpose of section 46, and section 16(2) defines the expression "property derived from the deceased", and (4) that, therefore, the deposit should be excluded from the operation of section 46(1) in the same manner as the interest on the debt in the above decision.

25. At this juncture, it is relevant to set out the provisions of section 16(2)(a) of the Estate Duty Act.

16. Annuity or other interest purchased or provided out of property derived from the deceased. -

(2) In this section, the following expressions have the meanings hereby assigned to them respectively, namely : -

(a) "property derived from the deceased" means any property which was the subject-matter of a disposition made by the deceased, either by himself alone or in concert or by arrangement with any other person, notwithstanding that the disposition was made for full consideration in money or money's worth paid to him for his own use or benefit, or which represented any of the subject-matter of such a disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions and whether any such intermediate disposition was or was not for full or partial consideration.....

[Provided... (Proviso is not material for the issue before us)]

(b) "disposition" includes any trust, covenant, agreement or arrangement; and

(c) "subject-matter" includes, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition."

26. The definition of property in section 2(15) includes sale proceeds of the property and any property converted from one species to another by any method. It is, therefore, not correct to say that this definition of property does not cover property mentioned in the expression "property derived from the deceased". If the property of "Persi Polis" was "property derived from the deceased", the sale proceeds thereof also would come within the meaning of "property derived from the deceased". The facts, in our case, are identical with the facts of the case of A. Kandaswami Pillai (deceased) (by legal representative) and Ahmed Haji Mohammed Vs. Controller of Estate Duty, . Of course, in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, , after referring to the meanings assigned to various expressions like "property derived from the deceased", "disposition" and "subject-matter" in section 16(2), the Madras High Court observed as under Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, at pp. 578 and 579) :

"It would be seen from the above definitions that the words "property derived from the deceased" would include not only the property which was the subject-matter of a disposition made by the deceased but also any annual or periodical payment made or payable under or by virtue of a trust, covenant, agreement or arrangement. In the instant case, the deceased had gifted a sum of Rs. 1,50,000 to his minor children. It has also been found that the gift and the deposit or taking of loan for interest are all associated operations forming part of an arrangement entered into by the deceased with his children. It is this arrangement that necessitated the payment of interest at 7 1/2% per cent. and, therefore, the interest payable or paid would come within the definition of "subject-matter" in section 16(2). In our view, therefore, the learned counsel for the Revenue is well founded in his contention that the interest payable by the deceased and credited to his sons" accounts would also be "property derived from the deceased" within the meaning of those words in section 46(1). But we

are unable to agree that this resultant position is enough to hold that the entire principal and interest due from the deceased are to be disallowed u/s 46(1)."

27. We do not think that the learned judges made any departure from their earlier decision in the case of A. Kandaswami Pillai (deceased) (by legal representative) and Ahmed Haji Mohammed Vs. Controller of Estate Duty, . They were only dealing with the contention that in view of section 46(1)(b), no abatement shall be made for the debt if the disposition of the property which was derived from the deceased was not made with reference to or with a view to enabling or facilitating the provision of the consideration for the debt. In dealing with this contention, the learned judges observed as follows (at p. 587 of 101 ITR) :

"It may also be noticed at this stage that it is the view of the learned judges in McDougal's Trustees" case [1952] 31 Tax Cases 153 and also text book writers that in respect of cases falling under clause (b), no abatement shall be made if it were shown that the disposition under which the property was derived was not made with reference to or with a view to enabling or facilitating the provisions of the consideration for the debt. In other words, the loan transaction must have been in the contemplation of the parties at the time of making the gift. This view has been expressed in view of the proviso to clause (b). But this court in A. Kandaswami Pillai (deceased) (by legal representative) and Ahmed Haji Mohammed Vs. Controller of Estate Duty, , did not favour this construction of the proviso and held that it was not possible or permissible to construe the section as being confined to a debt which was incurred pursuant to an intention evinced by the deceased at the time of making the gift to incur the debt. All the same, this court expressed the view that there should be a nexus between the incurring of the debt and the gift."

Thus, not only the learned judges of the Madras High Court have not departed from their earlier decision in A. Kandaswami Pillai (deceased) (by legal representative) and Ahmed Haji Mohammed Vs. Controller of Estate Duty, , but they have also explained the ratio in that case. We are in full agreement with the view expressed in Kandaswami Pillai's case and since the facts are identical with the facts before us, we have no hesitation in holding that the said decision practically governs this case.

28. The learned counsel has placed reliance upon (1975) 101 ITR 748 (Guhawati) a decision of the Gujarat High Court that the sum in question was not in the nature of a debt. We do not think that this decision helps the case of the accountable person. The question there was regarding the allowability of interest on deposits. The decision does not subscribe to the view that a deposit ceased to be a debt though there was no act of borrowing or lending between the parties. On the other hand, the decision of the Supreme Court in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, clearly lays down what a debt means and following that decision, the deposit here has to be treated as a debt coming within the scope of section 44(a). But the benefit of

deduction has to be denied to the accountable person in view of section 46(1) of the Act.

29. Question No. 5. - A similar question was considered by a Division Bench of this court in Controller of Estate Duty Vs. Estate of Late Omprakash Bajaj, and it was held that in determining the principal value of the estate of the deceased u/s 36 of the Estate Duty Act, the amount of estate duty payable cannot be taken into account and the principal value of the estate should not be reduced accordingly. The correctness of this decision is not challenged before us. In view of this decision, the question has to be answered in the negative and against the accountable person.

30. Question No. 6. - This question is covered by a decision of this court in CIT v. Barkat Ali Khan [1974] TLR 90 against the assessee. The question is, therefore, answered in the affirmative and against the accountable person.

31. For the reasons stated above, the referred case is accordingly disposed of. No costs.

32. After the judgment is pronounced, Mr. Y. Ratnakar, the learned counsel for the petitioner, made a request for grant of a certificate to appeal to the Supreme Court. Questions Nos. 5 and 6 were answered against the accountable person following the judgments of this court in Controller of Estate Duty Vs. Estate of Late Omprakash Bajaj, and CIT v. Barkat Ali Khan [1974] TLR 90.

33. It is represented by the learned counsel that leave was granted against the decisions in those two cases and appeals are pending in the Supreme Court. In view of this, we grant certificate in this case also, in respect of all the questions.