
(1980) 03 MAD CK 0005
In the Madras High Court
Case No : Tax Case No. 584 of 1976

Commissioner of Wealth Tax

APPELLANT

Vs

S. Prakasam

RESPONDENT

Date of Decision : 27-03-1980

Acts Referred:

Income Tax Act, 1918 — Section 41
Succession Act, 1925 — Section 332, 335, 335(2)
Wealth Tax Act, 1957 — Section 19A, 27(1)

Citation : (1981) 5 TAXMAN 193

Hon'ble Judges : V. Ramaswami, J; P. Venugopal, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; S.V. Subramaniam, M/s. Subbaraya Aiyar, Padmanabhan and Ramamani, for the Respondent

Judgement

P. Venugopal, J.—The assessee is a HUF of which S. Prakasam is the karta. Swaminatha Mudaliar, the father of Prakasam, was a partner

in a number of concerns. He became divided from his son long ago. He executed a will on January 20, 1969, under which he bequeathed all his

properties that were then owned and possessed by him to his son, Prakasam, and his children then existing and also the children that might be born

to him thereafter and the properties were to be owned and enjoyed by them as joint family properties with all the rights incidental thereto.

Prakasam was appointed as executor under the will. He had then three minor sons. The assessee, which is the HUF, filed the return through its

karta, Prakasam, disclosing a net wealth of Rs. 3,37,830 for the assessment year 1971-72, the relevant valuation date being April 13, 1971.

Prakasam filed another return in his capacity as executor of the estate of his

deceased father disclosing a net wealth of Rs. 3,64,325 for the assessment year in question. The WTO came to the conclusion that on the death of Swaminatha Mudaliar his estate devolved upon the HUF under the will and he made a single assessment on the HUF without making any separate assessment on the executor. Before the AAC it v/as contended that the administration of the estate of Swaminatha Mudaliar had not been completed and the wealth of the estate of Swaminatha Mudaliar should be assessed separately in the hands of the executor. The AAC rejected the contention and confirmed the assessment made by the WTO. On further appeal to the Tribunal, it was held that the administration of the estate of the deceased, Swaminatha Mudaliar, had not been concluded since the estate duty assessment was not made on the relevant valuation date, and in view of the specific provision contained in section 19A of the Wealth-tax Act, the value of the estate of the deceased could not be included in the assessment of the HUF. Arising out of the order of the Tribunal, the following question has been referred to this court for opinion u/s 27(1) of the Wealth-tax Act:

Whether, on the facts and in the circumstances of the case, it could be said that the administration of the estate of the deceased, Shri Swaminatha Mudaliar, had not been completed on the relevant valuation date and hence the value of such estate had to be assessed separately in the hands of the executor u/s 19A of the Wealth-tax Act, 1957, for the assessment year 1971-72?

The learned counsel for the revenue contended that the Tribunal's finding that the administration of the estate by the executor cannot be taken to have been completed during the assessment year in question since the estate duty assessment has not been made and some of the executorial functions are yet to be performed by the executor, is erroneous, and even before the administration of the estate was completed, the executor can vest the properties in the legatees with mutual consent and if, after such assent, the executor continued in possession of the property bequeathed, he would cease to be an executor and become a trustee for the legatees concerned, and this question whether there was such an assent by the executor either expressly or impliedly has not been adverted to or considered by the Tribunal.

2. In *IRC v. Aubrey Smith* (1930) 1 KB 713 ; 15 TC 661 (CA), the testator directed a sale of his properties, after payment of certain legacies and the distribution of the residue amongst his children in equal shares. The estate left by the deceased was subject to certain mortgages of considerable amount. The executors had been making payments to the children of the testator from out of the amounts with them, after crediting the share of the income relating to the residuary estate in their favour and debiting the payments made. It was contended that as the mortgages had not been paid off, there was no ascertainment of the residue, and as such the property could not be deemed to have been vested before the residue was ascertained. The contention was negatived holding that the existence of a debt or debts or liabilities which are outstanding do not bar the assent of the executor being inferred by his conduct, and on such an assent, the executors shed their character and become trustees for those who are beneficially interested.

3. In *Commissioner of Income Tax, Madras Vs. Estate of Late SRI T.P. Ramaswami Pillai*, the revenue took the stand that as the debts have not been fully discharged, the assessee would be assessed only as executors and not as trustees u/s 41 of the Indian income tax Act, 1922. It was pointed out that it was open to the executor to vest the properties in the legatees with mutual consent and hold the legacies as a trustee even before all the debts are discharged. In that case, the court held that the legacy had been ascertained and the executors had assented to vest the properties in the legatees.

4. In *Smt. Indu Prova Debi v. Durga Char an Mitra*, AIR 1940 Patna 40, the executor executed a mortgage in his individual capacity as a legatee with respect to the properties bequeathed to him and applied the money to his own use. It was held that the executor can be taken to have assented to the legacy in his own favour.

5. There is no invariable rule that an executor cannot shed his character as an executor and assume the character of a trustee under a will before all the debts are discharged and the legacies are paid. Merely because the debts have not been discharged and legacies paid, it cannot be stated that the executorial functions of the executor have not been completely performed. Thus, the existence of debts or liabilities of the deceased is no bar

for an executor giving assent in favour of the residuary legatees. An assent may be either express or implied. No formality is required for giving an

assent to a legatee. An implied assent to vest the property in the legatee can be inferred from the conduct of parties and other facts and

circumstances of the case. The assent of the executor may be inferred when there is clearly nothing more to be done by way of administration. In

other words, if the administration of the estate reached a point of ripeness, one can infer an assent by the executor. Section 332 of the Indian

Succession Act provides that the assent of the executor or administrator is necessary to complete a legatee's title to his own legacy, and section

335 provides that when the executor or administrator is a legatee, his assent to his own legacy is necessary to complete his title to it, and his assent

may be express or implied. Section 335(2) provides that assent shall be implied if in the manner of administering the property the executor does

any act which is referable to his character of legatee and is not referable to his character of executor. The illustration to the section is of an executor

who took the rent of the house or the interest from Government securities bequeathed to him and applied it to his own use and this was construed

as an assent by the executor. In the instant case, the bequest by the deceased, Swaminatha Mudaliar, was in favour of his son, Prakasam, and in

favour of the grandsons born and to be born and the properties to be enjoyed by them as joint family properties with all the rights incidental

thereto. Where a Hindu bequeathed his self-acquired properties under a will in favour of his son, the question arises whether such properties are

the separate properties of the son or whether they are ancestral properties in the hands of the son as regards his male issues. This question came to

be considered by the Supreme Court in C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and Another, and it was held that the

question was primarily one of intention of the testator to be gathered from the terms of the will and if there are no clear words describing the kind

of interest intended to be given the court would have to collect the intention from the language of the document taken along with the surrounding

circumstances in accordance with the established canons of construction. In the instant case, the deceased, Swaminatha Mudaliar, intended that the

properties bequeathed by him should be enjoyed by his son, Prakasam, and his minor sons, as ancestral properties with all the incidence and

character of joint family properties. The executor, Prakasam, is also a legatee under the will. The testator, Swaminatha Mudaliar, died on March 26, 1971, about 18 days prior to the relevant valuation date, i.e., April 13, 1971. So the question to be considered is whether the executor either expressly or impliedly gave his assent and vested the properties in the legatees during the period March 26, 1971, to April 13, 1971. Since this aspect has not been considered by the Tribunal, we are unable to answer the question referred to this court by the Tribunal. The reference is returned unanswered with a direction that the Tribunal in the light of the observations made above should go into the question whether there was assent, either express or implied, by the executor to vest the properties in the legatees during the period March 26, 1971, to April 13, 1971. There will be no order as to costs.