
(1987) 01 AP CK 0009
In the Andhra Pradesh High Court
Case No : R.C. No. 140 of 1978

Commissioner of Wealth-tax

APPELLANT

Vs

S.M. Bhandari

RESPONDENT

Date of Decision : 27-01-1987

Acts Referred:

Succession Act, 1925 — Section 142

Wealth Tax Act, 1957 — Section 19A, 19A(2), 19A(6)

Citation : (1987) 63 CTR 166 : (1987) 167 ITR 643

Hon'ble Judges : M.N. Rao, J;K. Ramaswamy, J

Bench : Division Bench

Advocate : M. Suryanarayana Murthy, for the Appellant; N.V. Ranganatham, for the Respondent

Judgement

K. Ramaswamy, J.—This reference arises u/s 27(1) of the Wealth-tax Act, 1957 (27 of 1957), for short "the Act", at the instance of the Revenue, which reads thus :

"Whether, on the facts and in the circumstances of the case, the amount paid to the residuary legatee is eligible for deduction in computing the net wealth in the hands of the executor ?"

2. The facts set out in the statement of the case are that one Pannalal Lahoti executed a will on April 21, 1956, and he died seven days thereafter, i.e., April 28, 1956, leaving behind him his widow, Bheema Bai and daughter, Govind Bai, as his heirs. Under the will, he also bequeathed a sum of Rs. 50,000 to Aruna Bai - a minor (his daughter's daughter) to be paid to her on her attaining majority. He has given authority to his wife to adopt a son, pursuant to which his widow adopted Sureshchandra Lahoti as his son. Under the will, on such adoption, his widow, daughter and adopted son, each was entitled to 1/4th share and the residuary estate, viz., the 1/4th share would be utilised as a fund for hospital and educational institutions. Under the will, he appointed his wife, Bheema Bai, and his brother-in-law, Balakrishnaji Bandari, as the executors. Since Beema Bai also

died subsequently, Balakrishnaji Bandari became the sole executor. The executor paid to the adopted son, Sureshchandra Lahoti, certain amounts towards household expenses, insurance premium, etc., from time to time. In the first instance, these amounts have been excluded by the Wealth-tax Officer from the net wealth of the estate of the deceased, Pannalal Lahoti. But subsequently, during the current assessments for the years 1973-74 and 1974-75, the Wealth-tax Officer has reopened the assessments for the assessment years 1968-69 to 1972-73 and the amounts paid to Sureshchandra Lahoti were brought into the net wealth and in appeal and the Appellate Assistant Commissioner dismissed the appeal. On further appeal to the Income Tax Appellate Tribunal, while upholding the power and legality of reopening the assessments of the years 1968-69 to 1972-73, it held that since the income has already been passed on to Sureshchandra Lahoti, it remained no longer the wealth of the deceased, Pannalal Lahoti, and, therefore, it is to be deducted from the estate of the deceased, thus :

"Section 3 of the Wealth-tax Act provides for the levy of tax in respect of the net wealth on the corresponding valuation date of every individual, etc. "Net wealth" has been defined in section 2(m) as the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date is in excess of the aggregate value of all the debts owed by the assessee on the valuation date (other than the debts mentioned therein). Where an executor makes payments on account to a residuary legatee, the same cannot be treated as a loan, because an executor has obviously no power to grant a loan to a legatee. Such payments, therefore, have to be treated only as payments on account, that is to say, in the final computation, these payments made to the various residuary legatees will have to be taken note of and adjustments have to be made. It is, therefore, obvious that the amounts covered by such payments could cease to form part of the estate. This factual position cannot be ignored or lost sight of in computing the net wealth assessable in the hands of the assessee. We hold that amounts paid to the residuary legatee and debited to their accounts cannot be considered as forming part of the estate of the deceased assessable in the hands of the executor for the above mentioned assessment years. We accordingly direct deletion of Rs. 2,67,698, Rs. 2,95,764, Rs. 3,20,644, Rs. 3,74,568, Rs. 5,40,174 and Rs. 5,60,371 in the assessments for the years 1968-69 to 1974-75 (sic), respectively."

At the instance of the Revenue, the above reference came to be made.

3. Sri Suryanarayana Murthy, learned standing counsel for the Revenue, has contended that by operation of sub-section (6) of section 19A of the Act any assets distributed or applied to a specific legatee are excluded from the net wealth in the hands of the executor or executors. Sureshchandra Lahoti is not a specific legatee. He is only a residuary legatee. Therefore, the amounts paid by the executor to Sureshchandra Lahoti are not excludable from the net wealth of

the estate of the deceased. In support thereof, he placed reliance on V.M. Raghavalu Naidu and Sons by executors, C.G. Krishnaswami Naidu and Another Vs. Commissioner of Income Tax and Excess Profits Tax, and Administrator-general of West Bengal Vs. Commissioner of Income Tax, Calcutta, .

4. Sri Ranganatham, learned counsel for the assessee, countered the contentions stating that the assessee has paid the amounts referred to above for the relevant assessment years; thereby, the title in the money has irrevocably gone out of the control of the executor and stands vested in the legatee, viz., Sureshchandra Lahoti. He has no power or authority to give as loan nor power or authority to call upon the said Lahoti to put back the amount in the estate of the deceased. He placed reliance on section 357 of the Indian Succession Act, 1925 (39 of 1925), and also sought reliance on Commissioner of Income Tax Vs. Bakshi Sampuran Singh, .

5. In view of the respective contentions, the question that arises for consideration is, whether the amounts paid during the relevant assessment years to Sureshchandra Lahoti are excludable from the net wealth of the estate of the deceased Pannalal Lahoti ?

6. Section 2(m) of the Act defines "net wealth" to mean the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under the Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than -We are not concerned with clauses (i) to (iii) of the definition. Hence omitted Chargeability to tax of the net wealth is u/s 3 of the Act. With regard to the assessment of the estate of the deceased in the hands of the executor it is governed by section 19A of the Act. Section 19A(1) postulates :

"19A : Assessment in the case of executors. - (1) Subject as hereinafter provided, the net wealth of the estate of a deceased person shall be chargeable to tax in the hands of the executor or executors.

(2) to (5)... ... (not relevant. Hence omitted)

(6) In computing the net wealth on any valuation date under this section, any assets of the estate distributed to, or applied to the benefit of, any specific legatee of the estate prior to that valuation date shall be excluded, but the assets so excluded shall, to the extent such assets are held by the legatee on any valuation date, be included in the net wealth of such specific legatee on that valuation date.

Explanation. - In this section, "executor" includes an administrator or other person administering the estate of a deceased person."

7. By the Explanation referred to above, "executor" has been amplified by stating that the "administrator" of the estate of the deceased person is also an

"executor" for the purpose of the Act. It would appear from the language engrafted in sub-section (6) of section 19A, that while computing the net wealth on any valuation date, the assets of the estate distributed to, or applied to the benefit of, the "specific legatee" shall be excluded from the net wealth of the estate of the deceased but to the extent so excluded shall be included in the net wealth of the specific legatee on the valuation date. Section 2(c) of the Indian Succession Act defines "executor" to mean a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided. He is the legal representative of the deceased. It, therefore, follows that he represents the estate of the deceased in the right of the testator, So long as he continues as an executor, he holds the estate as a representative of the deceased and not on behalf of the beneficiaries, Specific legatee has not been defined under the Act. So the definition u/s 142 of the Indian Succession Act is to be applied. it says thus :

"Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific."

8. In this case, Aruna Bai (daughter's daughter) was bequeathed a sum of Rs. 50,000 by Pannalal Lahoti, the testator. She is thereby a specific legatee in respect of the specific part of his property of Rs. 50,000 on its distribution or application to her benefit.

9. The next question is whether Sureshchandra Lahoti is entitled to the above amounts and acquired title thereto ? In Lord Sudeley v. Attorney General [1897] AC 11, Lord Halsbury L.C., at page 15, held thus :

"It is uncertain until the residuary estate has been ascertained of what it will consist. It may consist of many things - it may consist of only a sum of money - and until that has been ascertained the actual right capable of instant assertion does not exist and whether the character is that of executor or of trustee seems to me to be immaterial, because the legatee had no right to go and say, "I will have this or that part of the assets"."

Again, at page 16, it was held :

"Now, if the only thing that the legatee is entitled to is the fourth share of an ascertained residuary estate, I say that to my mind it is impossible to maintain that the character of any part of that estate can be ascertained so as to make it possess a specific locality until that has happened it is a condition precedent to know what the residuary estate is, and until that has been ascertained you cannot tell of what it will consist. The right of the person to bring an action or to insist upon the performance of the trust may be one thing but I want to know what the thing is, and until I ascertain that, and until the thing comes into existence, it appears to me the question does not arise."

10. In Barnardo's Homes v. Special Income Tax Commissioners (1921) 2 AC 1,

Lord Atkinson, following Lord Sudeley's dictum, held thus (see V.M. Raghavalu Naidu and Sons by executors, C.G. Krishnaswami Naidu and Another Vs. Commissioner of Income Tax and Excess Profits Tax, :

"...until the claims against the testator's estate for debts, legacies, testamentary expenses, etc., have been satisfied, the residue does not come into actual existence. It is a non-existent thing until that event has occurred. The probability that there will be a residue is not enough. It must be actually ascertained. After the residue is ascertained and the executor assents to the legacy either expressly or impliedly, the disposition in the will becomes operative and the beneficiaries have the property vested in them. The assent of the executor before the residue is ascertained would not perfect the title of the residuary legatee as the residue until then does not come into existence."

11. Viscount Finlay observed page 8, that the legatee of a share in a residue has no interest in any of the property of the testator until the residue is ascertained. His right is to have the estate properly administered and applied to his benefit when the administration is complete. In V.M. Raghavalu Naidu and Sons by executors, C.G. Krishnaswami Naidu and Another Vs. Commissioner of Income Tax and Excess Profits Tax, , Satyanarayana Rao J., has held at page 799 thus :

"Under the Indian Succession Act, the position is the same. The powers and duties of an executor are enumerated in Chapter VII of the Act beginning with section 316. The funeral charges have precedence over the debts and the debts have precedence over the legacies. The effect of assent of the executor or administrator is stated in Chapter VII. u/s 332, the assent of the executor or administrator is necessary to complete a legatee's title to his legacy. It may be noted that the assent is required only to complete the title and not for the acquisition of the title. The title of the legatee is the title under the will and the assent is only to perfect the title and to complete it. Before such assent, however, the legatee's right is only an inchoate one which is transmissible to his personal representatives. Section 333 states that when there is assent of the executor, then the executor is divested of his interest and the assent transfers the subject of the bequest to the legatee. Of course, the assent when once it is given operates retrospectively to the date of the death of the testator. But there is one distinction between a specific legacy and a residuary bequest. The doctrine of relation back does not apply to the bequest of residue, as residue only comes into existence when the administration is completed."

12. We respectfully agree with the above ratio. This ratio was also approved by their Lordships of the Supreme Court in Administrator-general of West Bengal Vs. Commissioner of Income Tax, Calcutta, . Aruna Bai (minor) is a specific legatee. Sureshchandra Lahoti is only a residuary legatee. Until the residuary estate is ascertained, the residuary legatee acquires no interest in the property and no fund in his favour comes into existence. As laid down by Viscount Finlay in Barnardo's case [1921] AC 1 that :

"The doctrine of relation, however, which applies to specific legacies, is not applicable to the bequest of a residue as the residue only comes into existence when the administration is completed."

13. Thus there is a distinction between a specific legacy and residuary legacy. The residuary legatee, i.e., Sureshchandra, acquires right, title and interest in the estate only on completion of the administration of the estate of his deceased adoptive father, Pannalal Lahoti. Section 19A(6) gives specific exclusion of specific legacy but not residuary legacy. It is an admitted fact that the administration of the estate is still going on. As a result, Sureshchandra acquires no right, title or interest in any of the specific items of the assets of the estate of the deceased. Sri Ranganatham obviously, realising this difficulty, placed strong reliance on section 357 of the Succession Act, which postulates :

"When an executor or administrator has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies."

14. He also contends that Sureshchandra is a specific legatee as 1/4th share is earmarked. We are unable to agree. u/s 142 of the Indian Succession Act, if a bequest of a specified part of the property is made to a person, he is called a specific legatee. Under the will, his share in the property ultimately to be found by the administrator or executor. Therefore, Sureshchandra Lahoti cannot be considered to be a specific legatee. Obviously, for that reason, he claimed only as a residuary legatee. It may be mentioned at this stage that Sureshchandra Lahoti when he was assessed under the Act for this net wealth of the relevant year, the amount now in dispute, received from the estate, representing it as his self-acquired, in his individual capacity, he filed wealth-tax appeals in the Tribunal in WTA Nos. 114 to 119 of 1970-71. Therein, he disclaimed his title to the amounts got by him from the estate of his adoptive father. On the other hand, he stated that it still represents the estate of the deceased, Pannalal Lahoti. That was accepted by the Tribunal in the above cases. No doubt, sections 356 and 357 of the Indian Succession Act made a distinction regarding involuntary payment and voluntary payment. In the case of the former, when made by the orders of a court, the executor is entitled to call back the same to make good the deficiency and in the latter case, the executor is devoid of power to call upon a legatee to retribute. But it must be remembered that such payments made are on the premise of pre-existing title to and entitlement to payment. As stated earlier, certain amounts were paid to Sureshchandra Lahoti by the assessee during the assessment years. But, as observed by the Tribunal, such payments, therefore, have to be treated only as payments on account, that is to say, in the final computation, these payments made to the various residuary legatees will have to be taken note of and adjustments have to be made. It need not be treated as a loan. Thus, the payments appear to be only interim payments pending administration of the estate of the deceased and thereby no absolute right, title or interest in the money paid could be divested from the estate and

vested in the residuary legatee.

15. Sri Ranganatham further contended that Sureshchandra Lahoti, being a minor, is entitled under law to payments of money towards maintenance, though the will does not make any provision for payment of such amount during the administration of the estate. In law, however, he is entitled during the administration of the estate. In law, the minor, being a Hindu, under the Hindu personal law or u/s 20 of the Hindu Adoptions & Maintenance Act, or u/s 125 of the Code of Criminal Procedure, he is entitled to be maintained till he attains majority. Pannalal Lahoti himself would be under a legal obligation to maintain his adoptive son. So any payments made by the guardian or an executor, is still the expenditure representing the estate and the minor acquires no independent title to it. While meeting a similar contention in V.M. Raghavalu Naidu and Sons by executors, C.G. Krishnaswami Naidu and Another Vs. Commissioner of Income Tax and Excess Profits Tax, , Viswanatha Sastri J., in a separate but concurrent judgment, has held thus (p. 811) :

"The testator was under a personal obligation under the Hindu Law to maintain his wife and mother, and if he spent a portion of his income on such maintenance, he could not have deducted the expenses from his income any more than he could have deducted his own personal expenses. The position of the executor is much the same."

16. The same ratio would apply to the facts in this case. Had the deceased, Pannalal Lahoti, been alive, he would have expended the amount for the maintenance of his adopted son, Sureshchandra Lahoti, till he attains majority and, therefore, he cannot claim anything for deduction out of his estate. If that be the case, even the executor cannot make any separate payments from the estate and the same still continues to represent the assets of the estate of the deceased for the purpose of computing the net wealth. Under the above circumstances, the only conclusion that could be reached is that by operation of sub-section (1) of section 19A(6), the various amounts referred to hereinbefore paid to Sureshchandra Lahoti cannot be excluded and they still continue to be the assets of the estate of the deceased, Pannalal Lahoti. In Commissioner of Income Tax Vs. Bakshi Sampuran Singh, , relied on by Sri Ranganatham, the facts were that one Shamsheer Singh bequeathed under his will dated May 15, 1970, his entire property exclusively to his only son. The son was appointed as administrator. While administering the estate, he applied part of the estate as his income. The entire property was sought to be taxed. It was contended that he was having the dual capacity as an administrator and as a legatee and to the extent he applied the property for his benefit, it can be treated as to be the estate of the deceased. That contention was not accepted by the original authority and the Tribunal, but on reference, the Punjab and Haryana High Court has held that to the extent that the testator applied it for his benefit, the title has irrevocably passed into the hands of the assessee. Therefore, to that extent, the property is liable to tax and the residue continues to be the estate of the

deceased. In fact, the Division Bench has held thus (p. 655) :

"Another argument of the Commissioner of Income Tax is that since the assessee had applied some assets of the estate for his own benefit soon after the death of his father, he had become the absolute owner of the estate in question as also the income therefrom immediately after the death of the deceased. This argument is also not acceptable. After all, the assessee, as an executor, had to administer the estate and, if in the process, he applied a part of the estate to his benefit as a beneficiary, it does not mean that he became the owner of the "remaining assets" before the administration was completed. For completion of the administration much had yet to be done."

17. Though the ratio is open to doubt, on the facts in this case, the ratio is of little assistance to the assessee.

18. Thus, the Tribunal has committed an error of law in deleting the amounts of Rs. 2,67,698, Rs. 2,95,764, Rs. 3,20,644, Rs. 3,74,568, Rs. 5,40,174 and Rs. 5,60,371 in the assessments for the years 1968-69 to 1974-75 (sic), respectively, from the net wealth of the deceased, Pannalal Lahoti, in the hands of the assessee. We answer the reference accordingly in favour of the Revenue and against the assessee. No costs.