(1989) 04 MAD CK 0002

In the Madras High Court

Case No : Tax Case No. 1118 of 1979

Controller of Estate Duty APPELLANT

Vs

A. Nisar Ahmed RESPONDENT

Date of Decision : 17-04-1989

Acts Referred:

Estate Duty Act, 1953 — Section 17, 17(1), 17(2), 46, 64(1)

Citation : (1989) 45 TAXMAN 435

Hon'ble Judges : V. Ratnam, J;Bakthavatsalam, J

Bench : Division Bench

Advocate : N.V. Balasubramaniam, for the Appellant; Srinivasamurthy, for the Respondent

Judgement

V. Ratnam, J.—On the death of one Haji Mohammed Ismail Sahib on 4-4-1971, an account was filed by the accountable person declaring

the principal value of the estate at Rs. 4,63,165. In completing the assessment under the provisions of the Estate Duty Act, 1953 (''the Act''), the

Assistant Controller brought to duty Rs. 3,92,700 as dutiable estate u/s 17 of the Act. It was found that the deceased had transferred by way of

sale a property at Tiruvottiyur High Road, Madras, in January 1961, to Taj Flour Mills (P.) Ltd. for Rs. 50,000. Taking note of the shares held by

the deceased as well as his relatives in Taj Flour Mills (P.) Ltd., the Assistant Controller considered that company to be a ''controlled company''

within the meaning of section 17. While considering the benefits derived by the deceased from the controlled company for the purpose of

computing the value of the estate, it was found that the benefits derived by the deceased and the assessed profit and loss of the company w ere as

under:

Benefits derived Assessed profit or loss (Rs.)

Year Salary Rent

31-3-1969 24,000 2,040 Loss 86,698

31-3-1970 ï¿½ 2,040 Income 36,157

31-3-1971 ï¿½ 2,040 Loss 60,835

Since the remuneration was found to be reasonable, that was not taken into consideration, though the rent of Rs. 2,040 was regarded as a benefit

under rule 5 of the Estate Duty (Controlled Companies) Rules, 1953. The average adjusted income for the three years ending with the death of

Haji Mohammed Ismail Sahib was a negative figure, i.e., Rs. 1,11,376. The Assistant Controller was of the view that 100 percent of the net assets

of the company shall be deemed to have passed on the death of the deceased. In that view, he subjected to duty -, Rs. 3,92,700. On appeal by

the accountable parson to the Appellate Controller, it was held that the very term ''slice'' used for ascertaining the amounts to be included, would

refer to a fraction of the total value of the assets of the company and in a case where the aggregate amount of net income of the company for three

years was a loss, there cannot be any slice and in the absence of profits, the question of working out any proportion cannot also arise and,

therefore, the addition of Rs. 3,92,700 as forming part of the dutiable estate, was deleted. On further appeal by the revenue before the Tribunal, it

was contended on behalf of the revenue, relying on proviso (a) to section 17(2), that even in a case where there were no profits for the company,

the entire value of the assets of the company should be deemed to pass. But the Tribunal repelled this contention, holding that in a case where the

net income of the company is nil, the slice rule cannot be worked out and that the operation of proviso (a) to section 17(2) would be limited to

cases where there is an income in one year and loss in another year and the net result was an income and that cannot be applied to a case, where

the net result of the income computation of the company is a loss. It was also pointed out that section 17 is a deeming provision and should receive

a strict interpretation and in that view, the Tribunal dismissed the appeal. u/s 64(1) of the Act, at the instance of the revenue, the following question

has been referred for the opinion of this Court:

Whether, on the facts and in the circumstances of the case and having regard to proviso (a) to section 17(2) of the Estate Duty Act, 1953, the

Appellate Tribunal was right in excluding the value of the assets of the controlled company, viz., Rs. 3,92,700 in the principal value of the estate of

the deceased?

2. The learned counsel for the revenue contended relying upon section 17 and proviso (a) to section 17(2) that in a case like this, where the

aggregate amount of the net income of the company in the three years ending with the death of the deceased, is a loss, or, a negative figure, even

then, the property should be deemed to pass, though not with reference to the slice rule u/s 17(2), but the whole of it. The learned counsel also

emphasised that section 17(2) should be construed in such a manner, as to make the charge to estate duty effective. On the other hand, the learned

counsel for the accountable person, submitted that section 17 is a special provision dealing with the ascertainment of the share in the assets of the

controlled company deemed to pass for the purpose of estate duty, to be included in the property passing on the death of a person and it should

be so applied that its operation is confined only upon the fulfillment of the conditions required u/s 17(1) and (2), and if, in any case, the slice of the

assets of the company deemed to be included in the property passing on the death of the deceased, cannot be worked out by applying that rule, it

cannot be included at all. Referring to proviso (a) to section 17(2), the counsel submitted that it contemplated and provided for only a case for the

computation of net aggregate income of a company, which should be a positive figure, though in one or more of the accounting years, the company

might have sustained a loss. Our attention was also drawn to some passages in Green''s Death Duties, Fifth edn. at page 198 and Dymond''s Death

Duties, Fourteenth edn. at page 473.

3. There is no dispute that the deceased had transferred property to the company Taj Flour Mills (P.) Ltd. and had held shares therein and further

that even the accountable person had conceded in his letter dated 19-10-1972 that the company is a controlled company. That certain benefits

had been received by the deceased is also not in controversy. Before section 17(1) could be applied, the following requirements should be fulfilled

: (1) there must be a transfer of assets by the deceased to a controlled company; (2) the property so transferred should not be an interest limited to

cease on death; (3) the property should not have been transferred in a fiduciary capacity; and (4) benefits must accrue from the company to the

deceased in the three years ending with his death. All the aforesaid requirements are fulfilled in this case. The principal question in this case is

regarding the applicability of slice rule, where the aggregate amount of the net income of the company for the three years ending with the death of

the deceased, is a negative figure or net loss. While section 17(1) declares that the assets of the company shall be deemed, for purposes of estate

duty to be included in the property passing on the death of a person, to the extent determined in accordance with section 17(2), such extent of

assets so deemed to be included in the property passing on death is quantified as provided u/s 17(2). Though section 17(1) is declaratory of the

deemed passing of the assets of the company for purposes of estate duty to be included in the property passing on the death of a person, it also

indicates the extent to which such assets of the company shall be deemed to be so included for purposes of estate duty, as that worked out as per

section 17(2). Section 17(2) enacts that a slice or proportion of the assets of the company worked out as provided therein shall be deemed to be

included for purposes of estate duty to be included in the property deemed to pass on death. The proportion to be worked out is determined by

the formula-

Benefits accruing to the

deceased

ï¿½ Assets of the company

Net income of the

company for three years

Proviso (a) to section 17(2) is designed only to compute the aggregate net income of the company in three years ending with the death of the

deceased in a case, where the company had sustained loss in one or more of the said accounting years. All that is contemplated by the proviso is,

in the process of ascertaining the aggregate net income of the company, if in any year the company had sustained a loss, that loss shall be

deducted, in ascertaining the aggregate net income. The proviso only indicates how the aggregate net income of the company should be computed

and ascertained, if the company had sustained loss in one or more of the three accounting years. Even so, the application of the slice rule u/s 17(2)

is possible, only if the proportion could be arrived at as a fraction, so that that fractional part of the assets of the company can be deemed, for

purposes of estate duty, to be included in the property passing on the death of the deceased. If, for some reason, the proportion cannot be worked

out or is unworkable, it follows that the slice rule cannot be applied. In the instant case, if the slice is worked out, i.e.

Rs. 6,120

ï¿½ Rs. 3,92,700=

Rs. 1,11,376

= ï¿½ .0549 ï¿½

3,92,700

= ï¿½ 21,559.23 (or) ï¿½ 21,559.

Rs.

a negative figure and that cannot be deemed to pass and there cannot be a charge of duty. We are also fortified in this view of ours by the opinions

of eminent authors on Death Duties. In Green''s Death Duties, Fifth edn., it has been stated as follows:

The taxable proportion of the company''s assets is ascertained by comparing the aggregate amount of the deceased''s benefits in the last five

accounting years with the aggregate net income of the company for those years, a loss in any of those years being deducted in ascertaining the

latter figure. Where the company came into existence in the last but three, or last but two, or last but one, or the last accounting year, the

computation is made for the last four or three or two such years or the last such year. (The provision as to the four years, etc., may seem

superfluous, because the inclusion of a period before the company was in existence could not affect the figures, but it is linked with the definitions

of ''relevant accounting years'' and ''average rate'', which will appear later.)

In the case of deaths on or after April 5, 1960, benefits accruing to the deceased by reason only of the ''surrender of title'' provisions are reduced

for the purpose of section 46 computation if the surrender was made more than two years before the death.

If the company sustained an aggregate loss, there is no charge of duty.

[Emphasis supplied]

In Dymond''s Death Duties, Fourteenth edn., the following passage occurs

The income of a company for any accounting year (see pp. 475-476) is to be computed from each source in accordance with the provisions of the

income tax Acts relating to the computation of income from such a source, subject to the modification that the computation is to be made by

reference to the actual income for that year, and not by reference to the income for any other period (Finance Act, 1940, section 49). Where the

income tax Acts provide machinery for the computation of income from a particular source, but in the case of the particular company the income

from that source would not be liable to income tax, it is thought that such income should nevertheless be taken into account in computing the

''income'' for the purpose of section 49. This applies, for example, to the foreign income of foreign companies. Since the deceased''s ''benefits''

may include such income, it logically ought to be included in the ''net income'' also, so as to give equal treatment to both the numerator and

denominator of the fraction which determines the proportion of the assets chargeable with duty; to exclude it would result in an artificial reduction in

the denominator of the fraction, and an increase in the proportion of the assets liable to duty, except where such income was the only income of the

company, when the denominator would be reduced to nil, so that section 46 could not be applied at all. Income received by a company under a

settlement, which is treated as the income of the settlor ''and not of any other person'' under the income tax Act, 1952, sections 404-406 (formerly

Finance Act, 1938, section 38), appears to be in a similar position.

[Emphasis supplied]

The provisions of section 17(1) and (2) of the 1953 Act correspond to section 46(1) and (2) of the Finance Act, 1940, as amended by Part I

paragraph 4 of the Eleventh Schedule to the Finance Act, 1946, in the United Kingdom. We are, therefore, of the view that on the facts and in the

circumstances of the case, there is no scope whatever for applying and giving effect to the slice rule. We are unable to accept the contention of the learned counsel for the revenue that the entirety of the assets of the controlled company should be deemed to pass. When, even according to

section 17(2), only a fraction of the assets worked out in accordance with section 17(2), can be deemed to pass, it is difficult to accept how, when

even a fractional share cannot be worked out and deemed to pass, the entirety of the assets should be deemed to pass. To uphold the contention

of the revenue, would be to indulge in a legislative exercise, resulting in the rewriting and re-enactment of the relevant provisions of the Act to the

effect that even when a fractional share of the assets u/s 17(2) cannot be ascertained and treated as deemed to have passed, the whole of the

assets of the company should be regarded as deemed to have passed. A deeming provision like that, found in section 17(1) and (2) cannot lend

itself to the interpretation suggested by the learned counsel for the revenue. We, therefore, hold that the Tribunal was quite right in the view it took

that the slice rule cannot be worked out, and accordingly, nothing passed and that proviso (a) to section 17(2) is limited in its operation to the

ascertainment of the aggregate net income of the company in the three years ending with the death of the deceased, in cases where there is income

in one or more years and loss in another or others, and the result is a net income and not a loss, as in this case. We, therefore, answer the question

referred to us in the affirmative and against the revenue. The assessee will be entitled to the costs of this reference. Counsel''s fee Rs. 500.

