

(1983) 03 MAD CK 0040

In the Madras High Court

Case No : Tax Case No. 1529 of 1977 (Reference No. 1074 of 1977)

Controller of Estate Duty

APPELLANT

Vs

Amarlal

RESPONDENT

Date of Decision : 31-03-1983

Acts Referred:

Estate Duty Act, 1953 — Section 34(5), 44, 46, 46(1), 9

Citation : (1984) 38 CTR 60 : (1984) ILR (Mad) 301 : (1984) 147 ITR 243

Hon'ble Judges : P. Shanmugam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; S.V. Subramaniam, for the Respondent

Judgement

Ramanujam, J.—At the instance of the Revenue, the following two questions of law have been referred to this court under s. 64(1) of the

E.D. Act, 1953, hereinafter referred to as the Act for its opinion :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in deleting the addition of Rs. 20,000 made under

the provisions of section 46 of the Estate Duty Act to the principle value of the estate of the deceased ?

2. Whether the Appellate Tribunal's view that when once the value of the property is included u/s 9 of the Estate Duty Act, the same should not be

added again u/s 46(1)(a) of the aforesaid Act is sustainable in law ?

2. The facts and circumstances which gave rise to the above 1972, possessed of some properties. During her lifetime she had gifted on May 11,

1971, a sum of Rs. 20,000 in cash to her daughter Neetha. The said daughter had advanced a loan to the deceased on May 28, 1971, of an

identical sum. In the course of the assessment proceedings under the Act, the

accountable person did not include the sum of Rs. 20,000 gifted in favour of the daughter, while at the same time claimed deduction in respect of the loan taken by the deceased from her daughter. The Asst. Controller of E.D. however, included in the assessment the sum of Rs. 20,000 gifted by the deceased in favour of her daughter as property passing on death under s. 9 of the Act. He also disallowed the deduction of Rs. 20,000 claimed as a loan due by the deceased to her daughter. Aggrieved by the order of Asst. Controller, an appeal was filed before the Appellate Controller, but without success. the matter was thereafter taken by the accountable person to the Income Tax Appellate Tribunal in second appeal. The Tribunal after having held that both ss. 9 and 46 of the Act applied to the facts of the case, proceeded to delete the sum of Rs. 20,000 from the assessment on the ground that there cannot be two additions of Rs. 20,000 each, one by virtue of s. 9 of the Act and the other as a result of disallowance of the liability of the same sum under s. 46 of the Act.

The said view taken by the Tribunal is under challenge before us.

3. All the authorities below have proceeded on the basis that s. 9 of the Act stood attracted in this case as the gift by the deceased in favour of her daughter was within two years before the date of death and as such the amount gifted should be deemed to pass on the death of the deceased. In fact the sum of Rs. 20,000 gifted by the deceased in favour of her daughter is includible in the estate of the deceased under s. 9 of the Act was not disputed at any stage. Even before us the inclusion of the gifted sum of Rs. 20,000 in the estate of the deceased under s. 9 of the Act is not challenged by the learned counsel, Mr. Subramaniam, appearing as amicus curiae.

4. Then the question is whether s. 46 of the Act stood attracted to the facts of this case so as to justify inclusion of Rs. 20,000 by way of disallowance of the liability claimed as a deduction by the accountable person. Though Mr. Subramaniam, learned counsel appearing as amicus curiae, contends that, on the facts of this case, no nexus has been established between the amount gifted and the amount lent by the daughter to the deceased so as to attract the application of s. 46, we find that such a contention was not advanced before the authorities below by the accountable person. As a matter of fact, the Asst. Controller has found in his assessment order that the very same gifted amount was advanced by the daughter

to the deceased, as seen from the balance-sheet as on the date of the death of the deceased. According to the Asst. Controller, apart from the said sum of Rs. 20,000 advanced, the daughter had no separate amount to lend to the deceased that as such s. 46(1) of the Act stood attracted. It is in that view he held that there should be an abatement of liability in a sum of Rs. 20,000. When the appeal was filed against the order of the Assistant Controller to the Appellate Controller, the accountable person no doubt raised the plea that the amount lent to the deceased was in no way connected with the gift and hence the provision of s. 46 of the Act did not apply. But apart from making an assertion in the ground of appeal, no material was placed before the Appellate Controller to establish that assertion. In view of the fact that the accountable person has not established by adducing necessary evidence that there is no nexus between the amount gifted by the deceased to her daughter and the amount lent by the daughter to the deceased their Appellate Controller proceeded on the basis that the lending by the daughter was of the same amount which had been gifted by the deceased and, therefore, s. 46 stood attracted. Even the Tribunal proceeded on the basis that the borrowal by the deceased was of the very same amount as the one gifted by the deceased to the daughter and, therefore, s. 46 applied. All the authorities having proceeded on the basis that the liability to pay the sum of Rs. 20,000 arose out of the amount gifted by the deceased to the daughter, it is not possible to us to ignore the said finding the entertain the contention on behalf of the accountable person that there is no nexus between the amount gifted by the deceased to her daughter and the amount lent by the daughter to the deceased. It is also significant to note that the question referred to this court do not comprehend the determination of such as question of fact. We have, therefore, to proceed on the basis that on the facts and in the circumstances of this case both ss. 9 and 46(1) of the Act stood attracted.

5. Though, as already stated, the Tribunal held that both the sections stood attracted, it has chosen to hold that in cases where s. 9 applied, there cannot be a double assessment on the same amount and that in the present case the sum of Rs. 20,000 has come up for double assessment once by way of inclusion under s. 9 and against by way of disallowance of the claim for deduction of the said sum of Rs. 20,000 under s. 44 of the Act.

The Tribunal in fact rejected the contention of the Revenue that the addition under s. 9 and the disallowance of a liability under s. 46(1) are independent of each other and that, therefore, there was no question of double assessment. The Tribunal thereafter proceeded to hold that the inclusion of the sum of Rs. 20,000 twice made by the Assistant Controller cannot be upheld, in view of the opinion expressed by some of the commentators on the death duty in England where provisions are somewhat similar. The question is, whether the said view taken by the Tribunal can be upheld as legal and tenable.

6. In this connection we have to refer to the relevant statutory provisions. Section 5 of the Act deals with properties directly passing on the death of the deceased. Section 6 to 12 deal with properties which are deemed to pass on the death of the deceased. Section 9 is relevant in the context of the case before us and that section provides that property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos, whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession or otherwise, which shall not have been bona fide made two years or more before the death of the deceased shall be deemed to pass on the death. It is by application of this provision the gift made by the deceased to her daughter in the present case, which was admittedly made within two years before the death of the deceased, was taken as property deemed to pass on the death of the deceased.

7. Then we come to s. 27 which provides that any disposition made by the deceased in favour of the relative of his shall be treated for the purposes of this Act as a gift under the certain contingencies. Section 34 provides for aggregation for the purpose of determining the rate of estate duty to be paid on properties passing on the death of the deceased and those which are deemed to have passed on the death of the deceased. sub-section (5) of this section says that no property shall be aggregated more than once, nor shall estate duty in respect thereof be levied more than once on the same death.

8. Then we come to s. 44 and that section provides for allowance being given for debts incurred and encumbrances created by the deceased, subject to certain conditions. Section 46 provides for abatement of certain debts

incurred or encumbrances created by the deceased, if they are in relation to the property derived from the deceased.

9. It is in the light of the above provisions we have to see whether the Tribunal has come to the right conclusion in this case.

10. As already stated, the sum of Rs. 20,000 being the amount gifted by the deceased to her daughter, is admittedly includible as the property

deemed to have passed on the death of the deceased, under s. 9 of the Act. Mr. Subramaniam attempted to argue that as result of the application

of s. 9, the gift should be ignored entirely for the purposes of the Act and if so ignored s. 46 will not come into operation for the expression

property derived from the deceased occurring in s. 46(1) will not be applicable. However, we are not inclined to agree with the said submission.

Section 9 does not make the gift either invalid or non est in law. As a matter of fact s. 9 in terms does not invalidate a gift, but proceeds on the

basis that though the gift is valid for purposes of determining the principal value of the estate the gifted property shall be deemed to pass on the

death of the deceased under certain circumstances. Therefore, the contention of the learned counsel that the gift is non est for the purpose of the

Estate Duty Act cannot be accepted as tenable. Even assuming that such a contention is tenable it will lead to a situation where even without the

application of s. 46, the liability has to be eschewed from consideration for if the gift is invalid and non est, the gifted amount reverts to the

deceased, then there is no question of the deceased making as borrowing of his own amount and consequently no deduction can be claimed on the

basis of a debt incurred by the deceased. If s. 9 cannot be understood in the manner suggested by the learned counsel, then s. 46 had to be

understood in the light of both ss. 9 and 27, which proceed on the basis that a gift is valid, but for purposes of the Act, it comes for inclusion in

certain special contingencies. Section 46 specifically says that any allowances which would be available under s. 44 will stand abated if the

borrowing was in respect of the property derived from the deceased. In this case, as already pointed out the deceased had gifted a sum of Rs.

20,000 to her daughter and the same amount had been advanced by the daughter to the deceased immediately after the gift. This will straightway

attract s. 46 and, therefore, the allowance provided under s. 44 should be taken

to have acted as provided in s. 46(1) of the Act. Thus, as per the statutory provisions, the amount gifted has to be added to the value of the estate, as property deemed to pass under s. 9 and the liability claimed as allowance under s. 44 will have to be denied as a result of s. 46(1) of the Act.

11. As already stated, the Tribunal has taken the view that if both sections operate, then on the facts of this case, there is a double assessment of

the same of sum Rs. 20,000. We do not see how there can be a double assessment in this case. It is not doubt true in this case that the amount

gifted by the deceased to her daughter and the amount lent by the daughter to the deceased happens to be the same. Both the sums, however, are

of different character, one has proceeded from the deceased as a gift and the other has proceeded from the daughter to the deceased by way of

loan. Supposing in this case, the amount borrowed is different from the amount gifted then the theory of double assessment or double deduction of

the same sum will not apply. We are of the view that the addition made under s. 9 and the liability under s. 46(1) are clearly independent of each

other. In this case the accountable person has made up his accounts and submitted the return in such a way as to make it appear that there is

double deduction or assessment while in fact there is no question of double assessment of the same sum of Rs. 20,000. What the accountable

person has done is to value the estate without including the sum of Rs. 20,000 gifted by the deceased to her daughter within two years before the

death of the deceased and at the same time deducting the sum of Rs. 20,000 which was lent by the daughter to the deceased as a liability own by

the estate which is deductible under s. 44 of the Act. The addition of one sum of Rs. 20,000 is made under s. 9 and another sum of Rs. 20,000 is

added by way of disallowance under s. 46. Though it appears that the same sum has been added twice, one by way of addition under s. 9 and

another by way of disallowance under s. 46, it cannot be said to be a double assessment or double addition. As already stated, the Tribunal has

referred to the following observations at page 514 of the seventh edition of the Green's Death Duties (1971) in support of its view :

Where in case(s) the consideration for the debt consisted to any extent of property derived from the deceased which is itself subject to duty on his

death, the debt is in practice allowed pro tanto.

12. But, as seen from the above paragraph, the commentator refers to the practice prevalent in England and he does not say that it is the result of any statutory provision. It is no doubt true that the relevant provisions of the Act correspond to the provisions of death duty in the United Kingdom. However, merely on the basis of a practice that is followed in the United Kingdom we cannot go against the provision of the Act with which we are concerned.

13. On a suggestion from the court to find out whether any such practice is being followed or any instruction has been given in that regard by the

Central Board of Direct Taxes, the learned counsel for the Revenue has produced Instruction No. 1060, which is to the following effect :

Instruction No. 1060"" :

XXIII/III/2 - Provisions of section 9, 10 and section 46 of the Estate Duty Act, 1953, whether can be invoked simultaneously-clarification regarding.

Sections 9 and 10 of the Estate Duty Act provide for the inclusion the the gifts made by the deceased during the lifetime in the principal value of the

estate. Section 46 of the Estate Duty Act provides for abatement of debt due from the deceased to an extent proportionate to the value of the

consideration given for such a debt which consists of (a) the property derived from the deceased, or (b) consideration not being such property 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. A question may arise whether in a case in which the deceased has made a gift so as to attract the provisions of section 9 and 10 and

subsequently the donee advances a loan of the gifted amount to the deceased provisions of sections 9/10 and section 46 can be invoked

simultaneously. It is clarified that the provisions of section 9/10 and section 46 can be invoked simultaneously provided the conditions mentioned in

the said section are otherwise applicable.

(F. No. 309/2/77/ED. dated 23-5-77 of the Central Board of Direct Taxes).

14. The aforesaid instruction is a clear deviation from the practice said to have been followed in the United Kingdom in administering death duty.

The said instruction proceeds on the basis that ss. 9 and 46 can be invoked simultaneously provided the conditions mentioned in the said sections

are otherwise applicable. Even otherwise we are of the view that it is not possible for the court to ignore the specific provisions of ss. 9 and 46 or

wager down the same taking into account the hardship that may be caused in a particular case.

15. The Tribunal has also proceeded on the basis that the double assessment of the same amount is prohibited by s. 34(5) of the Act. We do not

see how s. 34(5) will come into operation on the facts of this case. There is no question of the same property being aggregated twice not the estate

duty being levied more than once on the same death. The Tribunal is thus found to be in error in relying on the provisions in s. 34(5) of the Act in

support of its conclusion.

16. Under these circumstances we hold that the view taken by the Tribunal is this case cannot be legally sustained. We, therefore, answer the

question referred to this court in the negative and against the accountable person. There will be no order as to costs.

17. Before parting with this case, we have to express our appreciation for the effective assistance rendered by Mr. Subramaniam, learned counsel,

appearing before us as amicus curiae at our instance.