

(1983) 03 MAD CK 0013
In the Madras High Court
Case No : T.C. No. 1536 of 1977

Controller of Estate Duty

APPELLANT

Vs

A.V. Fernando

RESPONDENT

Date of Decision : 07-03-1983

Acts Referred:

Estate Duty Act, 1953 — Section 36, 40, 5, 7

Citation : (1986) 56 CTR 286

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

Bench : Division Bench

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

Judgement

Ramanujam, J.—At the instance of the Revenue, the following question has been referred to this Court for its opinion under s. 64(1) of the

ED Act, 1953 :

Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the life interest of which the deceased's son is the

properties, are included in the principle value of the estate of the deceased, would have the effect of the deceased, would have the effect of

depressing the market value of the properties and the value should be computed after allowing a margin for the life interest of the deceased's son in

property ?

2. Under a settlement deed dt. 3-2-1966, the deceased's husband settled certain properties on the deceased for her lifetime. After the death of the

deceased, the properties are to be enjoyed by the deceased's son for his lifetime and after his death, the properties are to vest absolutely on the

son's sons. On the death of the deceased, the Asstt. CED came to the conclusion

that, there was a change in the beneficial ownership of the properties, the properties passed from her hand to her son, the next life estate holder of the properties. He therefore considered them as having passed on the deceased's death under s. 5 of the ED Act. Alternatively, he took the view that even if the properties as such has not passed under s. 5, the entire value of the properties is includible in the dutiable estate of the deceased under s. 7 r/w 40(2), since the deceased's interest as per the terms of the settlement deed extended to the whole income of the properties.

3. On appeal, the Appellate CED confirmed the order passed by the Asstt. Controller. When the matter was taken by the accountable person to the ITAT, the Tribunal held that even though the life interest of the deceased ceased on her death, the value of the interest should be taken to be the principle value of the properties in which the life interest has been given but while determining the principle value of the properties the life interest in favour of the son who is the accountable person should be taken into account and due allowance should be given therefore in the market value of the properties. For that purpose, the Tribunal remitted the matter to the Asstt. Controller.

4. Aggrieved by the decision of the Tribunal, the Revenue, has come before us. According to the Id. counsel appearing for the Revenue, the life interest which has ceased on the death of the deceased will fall under s. 7, and s. 7 read with s. 40(a) will enable the revenue to equate the value of cessor of interest and the principal value of the property and while determining the principal value, the subsequent life interest cannot at all be taken into account. The Id. counsel points out that s. 40 provides for a special method of determining the principal value of the property in the circumstances, referred to under that section and that the cessor of interest should be taken to have occurred a moment before death and the coming into existence of the subsequent life interest is a moment after death. Therefore, while valuing the principle value of that property, the coming into existence of the subsequent life interest later cannot be taken into account. It cannot be disputed in this case that there is a cessor of life interest on the death of the deceased and the benefit of that cessor of interest has passed on to the son of the deceased who is the subsequent life interest holder. Therefore, the benefit by the cessor of interest on the death of

the deceased has resulted in a benefit which is accruing to the son. It is also not in dispute that under the terms of the settlement deed the life interest created in favour of the deceased had extended to the whole income of the properties. The Id. counsel for the revenue is right in his submission that s. 40 enables the revenue to take the value of the interest ceasing on death, as the principal value of that property. Section 40 is applicable where the cessor of interest is dutiable under s. 5 or s. 7.

5. However, we are not in a position to agree with the Id. counsel for the revenue when he contends that the principal value of the property should be determined without reference to the subsequent life interest which has come into existence on the death of the deceased. According to the Id. counsel, the cessor of interest is earlier in point of time, to the accrual of benefit to the subsequent life estate holder arising by cessor of the deceased's interest, and therefore, the principal value of the property should be calculated without reference to the beneficial interest created in favour of the son of the deceased. If the Id. counsel is right in his submission that the cessor of interest has occurred earlier in point of time and the accrual of benefit to the subsequent life interest holder is latter in point of time, then the determination of the principal value of the property should be without reference to the subsequent accrual of benefit in favour of the son. However, we are of view that the cessor of interest as also the creation of a benefit on the son as a result of the cessor of interest are simultaneous both taking place on the death of the deceased. The moment there is a cessor of interest, there is a creation of benefits in favour of the deceased's son. Since both the cessor of interest as also the creation of life interest in favour of the son are simultaneous, the interest in favour of the son should be taken to have come into existence on the death of the deceased, the same moment when there is a cessor of interest. It is no doubt true that the cessor of interest has to be valued on the basis that it is the principal value of that property at the time of the death of the deceased. But as a result of the cessor of interest, a beneficial interest has been simultaneously created in favour of the son in whose favour there is a subsequent life interest. The principal value of the property has to be determined after taking into account such creation of benefit in favour of the son. We are not inclined to agree with the Id. counsel for the revenue

that s. 40 is to be read independent of s. 36. Section 40 provides for a method of valuation of interest ceasing on death. But the fact that it refers to the principal value of the properties naturally attracts s. 36 which provides for the method as to how the principal value of a property is to be determined. If s. 36 were to apply, then the principal value has to be determined as the price of the property according to the market price at the time of the deceased's death. If the principal value of that property is to be taken as the market value as per s. 40 read with s. 36, then the life interest in favour of the son, which has come into existence on the death of the deceased, has naturally to be taken into account, for that will affect the value of the property and any intending purchaser will naturally offer a price after giving due allowance for the life interest in favour of the son. In this view of the matter, the Tribunal appears to be right in holding that due allowance has to be given for the value of the life interest of the son while determining the principal value of the properties in question and remitting the matter to the Asstt. Controller for that purpose. Accordingly, the question referred to us is answered in the affirmative and against the revenue. The revenue shall pay Rs. 500 to the counsel for the respondent as costs.