

(1987) 04 BOM CK 0034

In the Bombay High Court

Case No : Estate Duty Reference No. 13 of 1973

Controller of Estate Duty

APPELLANT

Vs

B.B. Nigudkar

RESPONDENT

Date of Decision : 10-04-1987

Acts Referred:

Estate Duty Act, 1953 — Section 10, 10, 12(1)

Citation : (1988) 170 ITR 578

Hon'ble Judges : T.D. Sugla, J;Bharucha, J

Bench : Division Bench

Judgement

Sugla, J.—The facts are in a narrow compass. By a deed of settlement dated October 12, 1948, the settlor, who died on February 17, 1963, had settled certain properties on trust known as "Navare Vishwastha Nidhi" with the objects described differently as "temporary" and "permanent" objects. The "temporary objects" mainly provided for financial assistance to the members of the settlor's family, while the "permanent objects" provided for public charities and public welfare such as giving of monetary help to needy and worthy students by giving scholarships, loans against guarantee of repayment or against some security for the study of religion, philosophy, etc. Clause (13) of the deed empowered the settlor, i.e., the deceased, to make changes in the temporary objects and even to cancel some of them with a provision that savings caused on account thereof would be expended on permanent objects only.

2. The Assistant Controller of Estate Duty rejected the claim of the accountable person that the value of the properties settled on trust was not includible in the principal value of the estate of the deceased. According to him, the value of the trust property was includible in the principal value of the estate of the deceased under sections 6, 10 and 12 of the Estate Duty Act, 1953. The Appellate Controller of Estate Duty confirmed the order of the Assistant Controller in this behalf. The Income Tax Appellate Tribunal, however, accepted the claim of the accountable person.

3. The Tribunal has referred to this court the following question of law at the instance of the Revenue for consideration :

"Whether, on the facts and in the circumstances of the case, the trust property of the value of Rs. 3,20,931 settled under the deed of settlement dated October 12, 1948, was includible while computing the principal value of the property which passed on the death of the settlor, deceased Shri Ganesh Govind Navare, for the levy of estate duty under the Estate Act, 1953 ?"

4. Though the question of law is wide, Shri Dhanuka, learned counsel for the Revenue, has contended that the value of the trust property is includible in the principal value of the estate of the deceased u/s 12(1) of the Estate Duty Act, 1953, read with or even without the Explanation thereto. In this context, Shri Dhanuka invited our attention to clause (13) of the deed of trust which empowered the settlor to make changes or even to cancel the temporary objects of the trust during his life-time. He also referred to clause (3) of the deed of trust to show the nature of the temporary objects of the trust. It was stated that "temporary objects" admittedly reserved an interest in the settled property for the maintenance of the deceased's close relatives.

5. Section 12(1) of the Estate Duty Act, 1953, reads as under :

"12(1) Property passing under any settlement made by the deceased by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor's death :...

Explanation. - A settlor reserving an interest in the settled property for the maintenance of himself and any of his relatives (as defined in section 27) shall be deemed to reserve an interest for himself within the meaning of this section."

6. Sub-section (1) evidently applies only if one of the two conditions mentioned therein is satisfied, i.e. :

(i) an interest in the settled property is expressly or by implication reserved to the settlor; or

(ii) power is reserved in the settlor whereby he could restore to himself or to reclaim the absolute interest in the settled property.

7. The first condition of section 12(1) is obviously not satisfied in this case, as neither temporary nor permanent objects contemplate reservation of any interest to the settlor in the settled property. No doubt, the deceased as a settlor had reserved power to himself during his lifetime to make changes and even to cancel the temporary objects. A reading of clause (13), however, clearly suggests that the power reserved therein was for the purpose of cancelling one or more of

the temporary objects and/or making changes in them and any saving of income made on account thereof was to be applied for permanent objects and could not be diverted to the settlor himself. Therefore, even the second condition is not satisfied in this case.

8. This takes us to the Explanation which is the main plank of Shri Dhanuka's argument. According to Shri Dhanuka, the expression "reserving interest in the settled property for the maintenance of himself and any of his relatives..." used in the Explanation means that reservation of interest for the maintenance of the settlor or any of his relative will bring the case within the mischief of the Explanation. In other words, Shri Dhanuka wants us to read the word "and" as "or" used in the Explanation, though he fairly stated that the Gujarat High Court in the case of Kikabhai Samsuddin Vs. Collector of Estate Duty, Gujarat, Ahmedabad, and the Madras High Court in Controller of Estate Duty Vs. K.A. Kader and Others, , had taken the view that the word "and" used in the Explanation had to be read as "and" only and not as "or". He, however, stated that if the deceased had reserved some interest in the property settled on trust for himself, sub-section (1) itself would have applied and, therefore, the reasonable construction of the Explanation would be to read "and" as "or". We have considered the Explanation to section 12(1) carefully. In our view, the word "and" used in the Explanation to section 12(1) cannot be read as "or" as held by the Gujarat and the Madras High Court decisions : Kikabhai Samsuddin Vs. Collector of Estate Duty, Gujarat, Ahmedabad, and Controller of Estate Duty Vs. K.A. Kader and Others, . It may be true that if there was any reservation of interest in favour of the settlor/deceased, the provisions of sub-section (1) of section 12 would have applied. The Explanation is, however, to our mind, enacted to meet a situation where reservation of interest is for the settlor as well as his relatives and an argument might be advanced that the reservation of interest being not for the settlor himself alone, sub-section (1) would not apply. Any decision where a contrary view may have been taken has not been brought to our notice.

9. In the above view of the matter, the question referred to us is answered in the negative and in favour of the accountable person.

10. No order as to costs.