
(1983) 06 MAD CK 0032

In the Madras High Court

Case No : Tax Case No"s. 58, 59 and 60A of 1978 (References No"s. 31 to 33 of 1978)

Controller of Estate Duty

APPELLANT

Vs

Dr. Rajah Sir M.A. Muthiah Chettiar

RESPONDENT

Date of Decision : 15-06-1983

Acts Referred:

Estate Duty Act, 1953 — Section 33(1), 44

Citation : (1984) 149 ITR 510

Hon'ble Judges : Ramanujam, J;Fakkir Mohammed, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; S.V. Subramaniam, for Subbaraya Iyer, Padmanabhan and Ramamani, for the Respondent

Judgement

Ramanujam, J.—The following five questions of law, the first two at the instance of the Revenue and the other three at the instance of the accountable person, have been referred to this court u/s 64(1) of the E.D. Act, 1953 :

"1. Whether, on the facts and in the circumstances of the case, exemptions under Sections 33(1)(n) and 33(1)(c) were admissible in computing the share of the deceased in the joint family properties ?

2. Whether, on the facts and in the circumstances of the case, the sum of Rs. 13,785 or any part thereof could be added as accrued interest on deposits ?

3. Whether, on the facts and in the circumstances of the case, deduction towards foreign exchange entitlement charges was admissible in valuing the fixed deposits lying in Ceylon ?

4. Whether, on the facts and in the circumstances of the case, the estate duty payable is deductible in computing the principal value of the estate of the deceased ?

5. Whether, on the facts and in the circumstances of the case, the plea of the accountable person that any subsequent adoption should be considered to relate back to the date of death of the deceased and that the effect of the same would reduce the share of the deceased in the Hindu undivided family properties, has been properly rejected by the Tribunal?"

2. Shri M.A.M. Muthiah Chettiar, son of Dr. Raja Sir Muthiah Chettiar, died on January 24, 1970. In the course of determination of the principal value of the estate passing on his death, the accountable person claimed that the house property at Courtallam belonging to the HUF of which the deceased was a coparcener should be valued at Rs. 39,840 after allowing for exemption of Rs. 1,00,000 u/s 33(1)(n) of the E.D. Act. It was also claimed that in respect of household items found in Courtallam house property, the relief should be granted to the extent of Rs. 2,500 as provided in Section 33(1)(c) of the Act. This claim was rejected by the Assistant Controller. On further appeal to the Tribunal, it held that the disallowance of the claims under Sections 33(1)(n) and 31(1)(c) of the Act cannot be upheld and that the accountable person is entitled to claim the benefit of Sections 33(1)(n) and 33(1)(c) of the Act in respect of Courtallam house property. Aggrieved by the decision of the Tribunal in that respect, the Revenue has raised question No. 1.

3. It is not in dispute and it is clear from the order of the Assistant Controller as well as the Appellate Controller that the deceased was a co-owner in respect of the property known as Ghettnad House in Madras and while valuing his share in that house, an exemption has been given u/s 33(1)(n) of the Act to the extent of Rs. 1,00,000. It is also found that even in respect of household articles found therein, the maximum exemption of Rs. 2,500 as provided u/s 33(1)(c) of the Act has been allowed. It is because of the full exemption already granted under Sections 33(1)(n) and 33(1)(c) of the Act in respect of the deceased's share in the Madras house property, he was not given exemption both under Sections 33(1)(n) and 33(1)(c) of the Act in respect of Courtallam house property. The Tribunal has not considered this aspect of the matter but has proceeded to hold that the deceased is entitled to exemption both under Sections 33(1)(n) and 33(1)(c) of the Act in respect of Courtallam house property also. If as found by the Appellate Controller that exemption had already been given under Sections 33(1)(n) and 33(1)(c) of the Act in respect of house property at Madras, then the exemption cannot again be claimed under those sections in respect of another house property in which the deceased had an interest. Learned counsel for the accountable person does not put forward a contention that exemption under Sections 33(1)(n) and 33(1)(c) of the Act can be claimed in respect of every house property and the household articles owned by the deceased. A perusal of Sections 33(1)(n) and 33(1)(c) of the Act will clearly indicate that exemption under those sections can be claimed only once and not in respect of every house property and household articles therein. Therefore, in view of the fact that full exemption under Sections 33(1)(n) and 33(1)(c) had already been granted in respect of Chettinad House in Madras, a claim under those sections cannot again

be made by the accountable person with reference to the other house property and household articles therein in which the deceased had interest and which passed on his death. We are, therefore, of the view that the Tribunal is in error in allowing the claim made in this regard. We, therefore, answer question No. 1 in the negative and in favour of the Revenue.

4. The second question relates to a sum of Rs. 13,785 said to represent the interest accrued on fixed deposits with the Indian Bank, Ceylon, both in the individual account of the deceased and also as a member of the HUF. Before the Assistant Controller, the accountable person claimed that no interest is payable on the fixed deposits with the Indian Bank, Ceylon, on the date of death of the deceased as no interest had accrued, and that, therefore, the actual amount deposited alone should be taken into account for the purpose of determination of the principal value of the estate without adding any interest on the deposits.

5. The Assistant Controller, however, rejected the claim and added the said sum of Rs. 13,785 to the principal value of the estate as forming part of interest accrued on the deposits till the date of death of the deceased. The matter was taken on appeal to the Appellate Controller. He held that the interest on deposits in the bank did not accrue from day to day and they are payable only on maturity of deposits. In this view, he set aside the inclusion of the above amount from the computation of the principal value of the estate. The matter was taken on appeal and the Tribunal held that since the interest is payable only on maturity of deposits and not earlier, no interest has accrued on the deposits on the date of death of the deceased and, therefore, the inclusion of the sum of Rs. 13,785 on the principal value as accrued interest on the deposits, cannot be sustained. Aggrieved by the decision of the Tribunal in that regard, the Revenue has raised question No. 2.

6. On-due consideration, we are of the view that the Tribunal has not come to the right conclusion on this aspect of the case. It cannot be disputed that there is a difference between the date of accrual of interest and the date when the interest is payable. It may be that the interest is payable on the deposits on their maturity. But it cannot be said that no interest has accrued on the deposits till the date of death of the deceased. Even though the date of payment of interest has been agreed to between the parties, it cannot be said that the interest accrues only on the maturity of the deposits. Interest normally accrues day by day though the payment is contemplated by the parties only after the maturity of the deposits. Admittedly, the amount has been invested and the interest is payable on the amount invested. The mere fact that the parties have fixed a date for payment of interest does not mean that the interest on the deposits suddenly springs into existence on the date fixed for payment. The interest should be taken to accrue day by day though the interest is due for payment only on a particular date agreed to between the parties. In this connection, it is useful to refer to the decision of the Supreme Court in *Rm. Ar. Ar. Rm. Ar. Ramanathan Chettiar Vs. Commissioner of Income Tax, Madras*, . In that case, there was an

order for refund of estate duty paid with interest. In pursuance of the said order, interest was paid by the estate duty authorities along with the amount of estate duty collected. The question arose whether the income in the hands of the recipient is casual and non-recurring. Dealing with that question, the Supreme Court observed that though there was a lump-sum payment awarded under the decree of a court it cannot be said that there was no quality of recurrence about it. Since the lump-sum payment received represents the interest, it should be taken to be a receipt of recurring nature, that the interest was granted under a decree of the court from the date of the institution of the proceedings in the District Court and it was calculated upon the footing that it accrued *de die in diem*, and, hence, it has the essential quality of recurrence which is sufficient to bring it within the scope of the Act and that the receipt cannot be taken to be of a casual and non-recurring nature. The said observations of the Supreme Court will clearly apply to the facts of this case. Wherever an amount is invested and the amount is earning interest, the interest is said to accrue from day to day, though the accrued interest is payable on a stipulated date. We are not inclined to agree with the learned counsel for the accountable person that the interest should be taken to have accrued only when the interest is due for payment. As already stated, there is a distinction between the notion of accrual of interest and the date fixed for payment of interest to the depositor. In this view, we have to differ from the view taken by the Tribunal and hold that the interest on the deposits with the Indian Bank should be taken to have accrued from the date of deposits till the date of death of the deceased less the amount of interest already drawn by the deceased and it should be taken and added on while determining the principal value of the estate. However, in this case, it is not known whether the accountable person allowed the deposits to remain till the date of maturity. If the accountable person had withdrawn the amount deposited even before the date of maturity, the bank would not have allowed interest at the agreed rate. Therefore, it is not possible to estimate the accrued interest at Rs. 13,785 without actually investigating the facts as to whether the fixed deposits remained invested till the date of maturity or whether they were withdrawn even before the date of maturity in which case only a lesser rate of interest would have been allowed by the bank. This requires further investigation by the Tribunal before the actual amount of accrued interest is determined. We, therefore, answer question No. 2 in the affirmative and in favour of the Revenue holding that whatever the accrued interest on the deposits will be added as part of the principal value of the estate, leaving the quantum of accrued interest to be determined by the Tribunal after investigation as contemplated above.

7. Coming to question No. 3, it is seen that the deceased and the joint family in which he was a co-parcener had deposits with the Indian Bank in Ceylon. The deposits in the individual name were Rs. 2,98,219 and in the name of the HUF, Rs. 7,09,107. After deducting Ceylon estate duty and cost of realisation of deposits at 5%, the Assistant Controller converted the balance in terms of the official exchange rate at Rs. 1.2623 between India and Ceylon. The accountable

person claimed before the Assistant Controller that a deduction of 55% should be allowed in conversion towards foreign exchange entitlement certificate charges. The Assistant Controller rejected that claim holding that the properties are valued as movable properties outside India and the market value to be considered was the market value in Ceylon and not in India. The matter was taken to the Tribunal by the accountable person. The Tribunal, however, upheld the orders of the lower authorities holding that the market value contemplated is the market value in the country in which the property is situate and, therefore, the disabilities of the owner of the property in bringing the assets into India, cannot be taken into account. Aggrieved by the findings of the Tribunal in that regard, the accountable person has raised question No. 3.

8. On due consideration of the matter, we are of the view that the Tribunal has come to the right conclusion. It is no doubt true that if the deposits in the Indian Bank, Ceylon, were to be brought into India, the accountable person will have to face restrictions and obstacles and such factors would naturally affect the value of the assets. However, it is not necessary, to sustain a charge for estate duty, that all the assets should be brought into India. The charge to estate duty will attach to an asset wherever it is situate. Therefore, at the time of determining the principal value of the estate of the deceased, the market value of the assets, wherever it is situate, has to be determined. For enforcing charge of estate duty, the market value of the asset, wherever it is situate, has to be determined. Therefore, for the purpose of determination of the principal value of the estate, the market value of the assets in Ceylon should be ascertained on the basis of its market value in Ceylon. It is only when the asset is sought to be brought into India, the restrictions and obstacles will affect the real worth of the asset. But, in this case, the accountable person has claimed 55% deduction on the ground, that if the deposits in the Indian Bank, Ceylon, have to be remitted to India, he has to pay 55% as foreign exchange entitlement certificate charges to the Reserve Bank in Ceylon. However, as already stated, it is not necessary that the assets should be brought over to India for sustaining the charge of estate duty. Therefore, there is no necessity for remitting the bank deposits into India after paying 55% towards foreign exchange entitlement certificate charges. Since even without remittance the charge of estate duty can be fastened on the assets in Ceylon, the deduction sought for by the accountable person has rightly been rejected by the Tribunal. In this view of the matter, we answer question No. 3 in the negative and against the accountable person.

9. Then we come to question No. 4. It relates to deductibility of the estate duty payable in the computation of the principal value of the estate of the deceased. Admittedly, the estate duty has not been provided as one of the items of deduction under the provisions of the E.D. Act.

10. However, the accountable person claims the deduction on the ground that it is liability charged on the estate of the deceased and, therefore, it should be taken to be a debt deductible in computing the principal value of the estate. But

this contention of the learned counsel for the accountable person ignores one vital circumstance. The estate duty is payable only after the death of the deceased and the charge of estate duty comes into existence after the death of the deceased. Therefore, a debt which comes into existence even a moment after the death of the deceased cannot be taken to be a debt subsisting on the date of the death of the deceased. Even taking the estate duty payable as a debt due by the estate, it is not a debt due by the deceased, which alone is deductible u/s 44 of the E.D. Act. This question has been considered by a Division Bench of this court in RM. ARUNACHALAM Vs. CONTROLLER OF ESTATE DUTY, MADRAS., and the court has held that the estate duty payable on the estate of the deceased is not an allowable deduction in the computation of the principal value of the estate. The court has taken the view that the expressions "debts" and "incumbrances" in Section 44 of the E.D. Act, refer to debts and incumbrances created by the deceased during his lifetime, that the liability to pay estate duty, even if it were created by statute, cannot be said to be a debt or incumbrance created by the deceased, and that, therefore, the estate duty is not deductible from the value of the estate. Similar view has also been taken by the Andhra Pradesh High Court in the decision in Controller of Estate Duty Vs. Estate of Late Omprakash Bajaj, and by the Gujarat High Court in the decision in Shantaben Narottamdas (A.P. of Late Narottamdas K. Shah) Vs. Controller of Estate Duty, Gujarat, . Having regard to the principles laid down in those decisions, we hold that the estate duty payable on the estate of the deceased is not an allowable deduction u/s 44 of the E.D. Act. We, therefore, answer question No. 4 in the negative and against the accountable person.

11. Question No. 5 relates to the plea taken by the accountable person that any subsequent adoption should be considered to relate back to the date of death of the deceased and the effect of such adoption would reduce the share of the deceased in the HUF properties which has been rejected -by the Tribunal. A perusal of the order of the Tribunal itself indicates that the widow of the deceased has not chosen to adopt anybody either during the lifetime of the deceased or afterwards till the hearing of the appeal by the Tribunal and, therefore, the question as to what will happen if an adoption takes place in future is purely hypothetical. Having said that the question is hypothetical, the Tribunal proceeded to express its own opinion on the question as to whether any adoption will relate back to the date of death of the deceased and ultimately expressed the view that there will be no relating back. On the facts of this case, we are of the view that no answer is called for on the question posed. Admittedly, there was no adoption by the wife of the deceased till the decision was rendered by the Tribunal. However, the Tribunal has chosen to express an opinion on the hypothetical question and we are also asked to answer the same hypothetical question. Normally, the court will give its opinion only on the facts found or established before the Tribunal and it is not bound to give any opinion on an hypothetical question such as the one arising in this case as to what will .happen if an adoption was made by the wife of the deceased subsequent to the date of

the order of the Tribunal. Since question No. 5 involves only an hypothetical issue based on certain assumptions of facts which may take place or may not take place, we are reluctant to answer that question. We, therefore, return that question unanswered. As the Revenue has succeeded substantially, it will have the costs from the accountable person. Counsel's fee Rs. 500 one set.