

(1989) 04 MAD CK 0021

In the Madras High Court

Case No : Tax Case No. 597 of 1978

Controller of Estate Duty

APPELLANT

Vs

Estate of Late W.S. Seshachala Gramani

RESPONDENT

Date of Decision : 19-04-1989

Acts Referred:

Excise Duty Act, 1953 — Section 12, 12(1)

Citation : (1989) 77 CTR 246 : (1989) 180 ITR 431

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

Bench : Division Bench

Advocate : N.V. Balasubramaniam, for the Appellant; K.C. Rajappa, for the Respondent

Judgement

Ratnam, J.—At the instance of the Revenue, u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), the following

questions of law have been referred to this court for its opinion :

1. Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the requirements of the proviso to section 12(1) have

been satisfied in this case and hence the value of the properties covered under the settlement deed dated February 15, 1942, should not be

included in the principal value of the estate of the deceased ?

2. Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the default of payment of Rs. 75 per month by the

settlor would per se lead to surrender of interest or right reserved by the settlor and that no document is necessary to evidence the surrender of

right two years before the death of the deceased ?

2. Sri. W. S. Seshachala Gramani died on June 4, 1958. Under a settlement deed dated February 15, 1942, the deceased settled certain

properties in favour of his son, Sri. W. S. Sivakolundu Gramani. Since, according to the Assistant Controller of Estate Duty, the properties dealt

with under the settlement deed were conveyed to the settlee after the lifetime of the deceased and the deceased had retained a life interest in

respect of the properties covered by the settlement deed, the value of the properties covered under the settlement deed were included in the

suitable value of the estate, invoking the provisions of section 12(1) of the Act. On appeal by the accountable person before the Appellate

Controller of Estate Duty, it was contended that owing to the default committed by the deceased-settlor in the payment of Rs. 75 per mensem to

the settlee, the settlee, viz., the accountable person, took possession of the properties and had been in enjoyment of the same to the exclusion of

the settlor and, therefore, section 12(1) of the Act could not be invoked. The Appellate Controller of Estate Duty took the view that there was no

document to evidence the deed and the proviso to section 12(1) of the Act cannot apply and, therefore, the value of the properties covered by the

settlement deed had been rightly included in the principal value of the estate of the deceased. On further appeal before the Tribunal, it considered

the question whether the accountable person is entitled to the benefit of the proviso to section 12(1) of the Act and placing reliance upon certain

circumstances, held that the accountable person took possession of the entire properties covered under the settlement deed and was in enjoyment

of the properties two years prior to the death of the settlor and, therefore, the value of the properties covered under the settlement deed cannot be

included in the principal value of the estate of the deceased. That is how the questions referred to at the outset have come up before this court.

3. Learned counsel for the Revenue contended that the Tribunal had reached the conclusion it did on a consideration of totally irrelevant materials

and the circumstances relied on by it do not establish surrender of possession of properties dealt with under the settlement deed by the settlor, or,

even the taking of possession of those properties by the accountable person and the enjoyment thereof to the exclusion of the settlor for a period

of two years prior to the date of death of the settlor and the Tribunal, acting judicially and property, could not have, on the strength of the

circumstances referred to in its order, come to the conclusion it arrived at and, therefore, the value of the properties covered by the settlement

deed should be included in the principal value of the decisions in *The Commissioner of Income Tax, Bihar and Orissa, Patna Vs. S.P. Jain, , T. A.*

Devaki Ammal Vs. Controller Of Estate Duty, Madras., , Trustees of H.E.H. The Nizam's Pilgrimage Money Trust Vs. Controller of Estate Duty,

Hyderabad, and Commissioner of Income Tax Vs. P. Sarada, .

4. On the other hand, learned counsel for the accountable person contended that on the terms of the settlement deed, section 12(1) of the Act did

not apply at all, as there was no question of reservation of any interest by the deceased and there was no creation of any charge in favour of the

settlor. Reference in this connection was made to the decision in *Controller of Estate Duty Vs. R. Kanakasabai and Others, .* It was further

submitted that the proviso to section 12(1) of the Act would apply, as at least one of the items of the properties had been established to have been

taken possession of by the settlee two years prior to the death of the settlor.

5. Before considering the aforesaid contentions, it would be necessary to notice the provisions in the deed of settlement executed on February 15,

1942, by the deceased in favour of his son. The following clauses are found therein :

Now, this deed of settlement witnesseth that the settlor hereby gives and grants to and up to the settlee/upon the settlee from after the lifetime of

the settlor a life interest in the immovable properties mentioned and described in the schedule hereunder written to have and to hold the same for

and during the lifetime of the settlee after the lifetime of the settlor...

And this deed of settlement further witnesseth that as the settlor has reserved in and for himself a life interest in the said properties described in the

schedule hereunder written, the settlor shall and will be bound to pay regularly to the Government, Corporation of Madras, and other public

authorities such tax and assessments whatsoever that may be payable in respect of the properties mentioned and described in the schedule...

... the settlor hereby covenants and binds himself to pay during the life-time of the settlor to the settlee every month commencing from the 1st day

of March, 1942, a sum of Rs. 75 per month duly and regularly...

And it is also expressly provided that the said payment of Rs. 75 per mensem by the settlor to the settlee shall cease on the death of the settlor.

And this deed further witnesseth that if default be committed by the settlor in

the payment of the said sum of Rs. 75 per mensem for any three months consecutively, that is to say, if at any time the said sum of Rs. 75 per mensem shall be in arrears and unpaid for three months then and there, the above settlee shall have a right of action against the settlor and it is hereby further stipulated and provided that the payment of the said sum of Rs. 75 per mensem or such smaller amounts as herein provided, shall be a charge of the life interest of the settlor in the properties mentioned and described under the schedule...

In the event of the settlor not being able to pay Rs. 75 per month from the income of the properties nor willing to pay the said amount, he shall deliver possession of the schedule mentioned properties to the settlee.

6. The question of reservation of an interest in favour of the settlor for life or any other period determinable by reference to death, either expressly

or by implication, u/s 12(1) of the act has to be considered in the light of the aforesaid recitals in the settlement deed. Even in the very first clause

referred to above, the settlor has clearly stated that whatever rights are conferred on the settlee are only after the lifetime of the settlor. The rights

so conferred viz., the right of the settlee to enjoy the properties for his lifetime, would arise after the lifetime of the settlor. This is a clear indication

of the reservation of a life interest in favour of the settlor. This is made clearer and more specific by the recital to the effect that the settlor had

reserved for himself a life interest in the properties. The settlor has further agreed to pay to the settlee during the lifetime of the settlor, every month,

a sum of Rs. 75 and that right would cease on the death of the settlor. This provision has reference only to the payment of the amounts to the

settlee consequent upon the relinquishment by the settlee of his interest in all the other immovable properties of the settlor and has no bearing upon

the reservation of an interest in favour of the settlor. Even so, it is seen that the consequence of non-payment of this amount is also referred, in that,

the settlee will have a right of action against the settlor and the settlee shall also be entitled to a charge over the life interest of the settlor. This again

is affirmative of the reservation of a life interest in favour of the settlor, as there cannot be a charge over an interest stated to belong to the settlor,

without a reservation or creation thereof in his favour. The other right, which had been conferred on the settlee, arising out of the non-payment of

the monthly payment of Rs. 75 by the settlor is, that the settlor shall deliver possession of the properties to the settlee which will be adverted to later. It is thus seen from the very recitals in the settlement deed, referred to earlier, that the settlor had, in clear and unmistakable terms, retained a life interest in himself and after his lifetime, conferred on the settlee, a right over the properties and had also specifically referred to the retention in himself of the life interest as well as the creation of a charge over that life interest so retained, in the event of the non-payment of the monthly payment of Rs. 75 by him to the settlee. There cannot be any dispute that on the provisions of the settlement deed, the settlor had reserved for himself, under the settlement, an interest in the properties for life and clearly, therefore, section 12(1) of the Act stood attracted. The reliance upon Controller of Estate Duty Vs. R. Kanakasabai and Others, by learned counsel for the accountable person is of no assistance to him. In that case, no interest in the properties settled was reserved to the deceased settlor during his lifetime. The provisions in the settlement deed in favour of the wife, while passing ownership completely in her favour, merely expressed a hope or expectation that the settlor would be looked after and no enforceable right was created and in that sense, there was no retention by the settlor of any benefit. Likewise, in the settlement deeds execution in favour of the grandchildren also, some annual payment had been contemplated, but they were not charged and, therefore, it was held that the donor could not be said to have retained in himself any interest or benefit. On the provisions in the settlement deed in this case referred to earlier, it is clear that even according to the settlor, he had reserved a life interest in his favour and conferred rights upon the settlee only after his lifetime and had also created a charge in favour of the settlee over his life interest, in the event of his not paying the sum of Rs. 75 per mensem to the settlee, as provided in the said deed. On the terms of the settlement, in this case, Controller of Estate Duty Vs. R. Kanakasabai and Others, cannot have any application at all. Under the terms of the settlement deed, as found in this case, section 12(1) of the Act clearly stood attracted. There is also one other aspect which we would like to point out. Before the Tribunal, the accountable person had adopted the stand that though the settlement deed in question would fall u/s 12(1) of the Act, yet, by reason of the proviso to section 12(1) of the Act, the value of the properties covered by the

settlement deed cannot be included in the principal value of the estate of the settlor. It is important to note that the applicability of section 12(1) of

the Act had not been disputed at all before the Tribunal. Even on the assumption that the accountable person did so, on the terms of the settlement

deed referred to above, the conclusion is irresistible that section 12(1) of the Act stood attracted. We may also usefully refer in this connection to

the decision in Trustees of H.E.H. The Nizam's Pilgrimage Money Trust Vs. Controller of Estate Duty, Hyderabad, . In the former case, it has

been pointed out that though normally, any property passing under a settlement passes from the settlor to the settlee when the settlement deed

comes into effect, section 12 of the Act constitutes a special provision to cover a case where, under a settlement, the settlor reserves to himself a

life interest and in such a case, section 12 creates a fiction by providing that the property should be deemed to pass on the settlor's death.

Likewise, in the latter case, it has been held that it would be a reservation of an interest within the meaning of section 12(1) of the Act when the

settlor could require the trustees to defray the expenses to be incurred by him regarding the purposes set out not only out of the income but also

out of the corpus in its entirety without any limitation whatsoever and the fact that the right had not been exercised could not, by implication, be

held to imply that the reservation must be deemed to have been surrendered two years before the death. Thus, on the terms of the settlement deed,

in this case, there can be no doubt that section 12(1) of the Act applied and precisely for that reason, the accountable person sought to press into

service the proviso to section 12(1) of the Act. We are, therefore, unable to agree with the contention of learned counsel for the accountable

person that section 12(1) of the Act would not stand attracted.

7. Whether the accountable person is entitled to claim the benefit of the first proviso to section 12(1) of the Act may now be considered. The

provision is in the nature of an exception and declares that in spite of the reservation of an interest by the settlor within the meaning of section 12(1)

of the Act, if there had been a surrender of such interest in the properties and the subsequent enjoyment of the properties to the exclusion of the

settlor, in whose favour the interest or benefit was reserved, at least for a period of two years before his death, then, the properties shall not be

deemed to pass. In this case, the settlor died on June 4, 1958, and it would, therefore, be necessary for the accountable person to make out that the settlor surrendered his right and the properties were enjoyed by the settlee to the exclusion of the settlor, at least from June 4, 1956. It is in this regard that the Tribunal has relied upon five circumstances referred to by it in paragraph 6 of its order. The first circumstances relied on is the filing of a suit in C.S. No. 423 of 1950 by the settlee against the settlor. The relief asked for by the settlee in that suit was for sale of the properties comprised in the settlement deed either by public auction or by private treaty and for directions regarding the payment of the amount to the settlee or the investment of the amounts in the purchase of other properties and for accounts in respect of certain amounts received by the settlor towards compensation for land acquisition. This is clear from annexure "C". There was no claim for possession of the properties or for surrender of the life interest of the settlor in that suit. The suit was dismissed as withdrawn on September 27, 1951, as could be seen from annexure "D". There is nothing to show the terms upon which the suit instituted in C.S. No. 423 of 1950 was dismissed as withdrawn. Therefore, the institution of C.S. No. 423 of 1950 relied on by the Tribunal cannot establish the surrender of the interest reserved by the settlor in the properties under the settlement deed or the exclusion of the settlor by the accountable person and enjoyment of the properties by him two years prior to the death of the settlor on June 4, 1958. The first circumstances has, therefore, been rightly characterised by learned counsel for the Revenue as an irrelevant circumstances. The second circumstances on which reliance has been placed by the Tribunal is that one of the properties comprised in the settlement deed had been leased out by the accountable person, by a lease deed dated January 1, 1953, for a sum of Rs. 200. An affidavit dated June 24, 1970, to the effect that the property was leased out by him in 1953 was also relied on by the Tribunal. If there was a lease deed on January 1, 1953, executed by Kannappa Gramani in favour of the accountable person as claimed in the affidavit, then, nothing prevented the production of the lease deed, which would be the best evidence to support the surrender of the interest of the settlor. Apart from it, the affidavit given in 1970, twelve years after the death of the settlor, cannot in any manner support the case of the accountable person that he had been in

possession from June 4, 1956, onwards excluding the settlor. While the affidavit accepts that the deponent was the lessee of the settlor for two

decades, it is not clearly stated how the accountable person came into possession and leased out the property to the deponent of the the affidavit.

The affidavit proceeds to state that the property was handed over and the settlee became the owner of the property in 1953. When the handing

over took place is not clear. How the settlee became the owner is shrouded in mystery. The affidavit is vague, totally unreliable and unacceptable.

It follows that, on the strength of the affidavit, even the surrender by the settlor of the interest reserved in one item cannot be accepted, as claimed

by learned counsel for the accountable person. The reliance upon the affidavit is thus totally irrelevant. The third circumstance made much of by the

Tribunal is a notice issued to the settlee to appear in connection with a prosecution. It does not appear from the record under what circumstances

the summons was issued. From the mere circumstance of the issue of summons in May, 1958, to the accountable persons with reference to an item

of property comprised in the settlement deed, it cannot be inferred that possession had been surrendered by the settlor and that was the reason

why summons had been issued to the accountable person. This circumstances relied on by the Tribunal also does not throw any light upon the

possession of the accountable person from June 4, 1956. The fourth circumstances relief on by the Tribunal is the passing of an award in respect of

the acquisition of lands. That award had been passed on March 17, 1960, almost four years after the death of the settlor and that cannot at all in

any manner help the accountable person to show his possession of the properties dealt with under the settlement deed to the exclusion of the

settlor, in whose favour an interest was reserved, on and from June 4, 1956. The last circumstance relied on by the Tribunal is that in a written

statement filed by the settlor in C.S. No. 57 of 1957, in paragraph 6, the settlor had accepted that two items, viz., items Nos. 4 and 10, were

allowed to be taken by the accountable person and Sivabooshanam Gramani, respectively, under the settlement deeds. The obvious reference is to

those two items of properties having been dealt with under the settlement deed in favour of the accountable person and another and, therefore, not

available for partition. That stand so taken cannot be construed to be an acceptance by the settlor of the surrender of possession of the properties

covered by the settlement deed to the settlee two years prior to the date of death of the settlor, viz., June 4, 1956. None of the circumstances relied on by the Tribunal would assist the accountable person to establish that the properties dealt with under the settlement deed, in which the settlor had reserved a life interest in himself, could be deemed to pass, owing to the surrender of that right by the settlor or the enjoyment of those properties by the settlee to the exclusion of the settlor, two years prior to the date of death of the settlor. We are constrained to observe that the finding arrived at by the Tribunal, relying upon the aforesaid circumstances, is inconsistent with and totally repugnant to the materials and the conclusion arrived at could, at best, be regarded, as one based on conjectures and surmises which no person judicially acting and properly instructed could have come to and the findings so arrived at have to be held to be vitiated, vide *The Commissioner of Income Tax, Bihar and Orissa, Patna Vs. S.P. Jain*, . We may also point out that the finding arrived at by the Tribunal has been based on irrelevant materials and, therefore, it is open to this court to ignore the findings and re-examine the issues, as had been earlier done, in the light of the materials on record, which course is sanctioned by the decisions in *The Commissioner of Income Tax, Bihar and Orissa, Patna Vs. S.P. Jain*, and *Commissioner of Income Tax Vs. P. Sarada*, . We, therefore, hold that the Tribunal was in error in concluding that the requirements of the first proviso to section 12(1) of the Act are satisfied in this case and that the value of the properties covered by the settlement deed cannot be included in the principal value of the estate of the deceased. We, therefore, answer the first question referred to us in the negative and in favour of the Revenue.

8. We now proceed to consider the second question. On the terms of the settlement deed referred to earlier, certain rights have been conferred on the settlee-accountable person, in the event of default in payment of a sum of Rs. 75 per mensem by the settlor and the rights available to the settlee, in such an event, have been expressly set out even in the settlement deed. Besides the availability of a charge in respect of the sums remaining unpaid over the life interest of the settlor, a right of action has also been conferred on the settlee and a further provision has also been made that the settlor shall deliver possession of the properties to the settlee, in the event of the settlor not being able to pay Rs. 75 per mensem

from the income of the properties or not being solvent to pay the said amount. Reading these provisions in the settlement deed together, it would be clear that non-payment per se would not lead to the surrender of the interest reserved by the settlor under the document but what is contemplated is some positive step being taken by the settlee for enforcing his rights, such as by way of initiating action for the purpose of securing possession of the properties from the settlor or for enforcing the charge on the life interest of the settlor. The provision for yielding up possession of the properties to the settlee by the settlor, for the non-payment of a sum of Rs. 75 per mensem, cannot be construed to operate by itself, as a surrender of interest, in the absence of any action taken by the settlee in that regard and proof of factual surrender. Inasmuch as under the terms of the settlement deed, the settlor had expressly reserved in himself an interest in the properties for his life, the extinction or cessation of such an interest could be brought about only by the execution of a properly executed document by the settlor and duly registered. We, therefore, hold that the default of payment of Rs. 75 per mensem would not per se lead to the surrender of the interest reserved in favour of the settlor and that a proper document would also be necessary to evidence the surrender of the rights two years prior to the death of the settlor. We, therefore, answer the second question referred to us also in the negative and in favour of the Revenue. The Revenue will be entitled to the costs of this reference. Counsel's fee Rs. 500.