

(1986) 12 AHC CK 0028

In the Allahabad High Court

Case No : Estate duty Reference No. 314 of 1981

Controller of Estate Duty

APPELLANT

Vs

Maharani Raj Laxmi Devi

RESPONDENT

Date of Decision : 16-12-1986

Acts Referred:

Estate Duty Act, 1953 — Section 5

Citation : (1986) 12 AHC CK 0028

Hon'ble Judges : K.C. Agrawal, J;B.L. Yadav, J

Bench : Division Bench

Advocate : Rajendrakumar, for the Respondent

Final Decision : Disposed Of

Judgement

K.C. Agrawal, J.—Maharaja Pateshwari Prasad Singh died on June 20, 1964, leaving behind his widow, Maharani Raj Laxmi Devi. She filed estate duty return in the capacity of an accountable person of the deceased. The Assistant Controller of Estate Duty framed the assessment under the Estate Duty Act, 1953, on June 27, 1970, stating therein that Income Tax liabilities allowance and inclusion of refund was taken as nil subject to rectification u/s 61 of the Act. Subsequently, the Income Tax Officer reported to the Assistant Controller of Estate Duty that refunds of Rs. 8,47,034 became payable to the deceased on account of revision of Income Tax and wealth-tax assessments. Thereafter, notice u/s 61 of the Estate Duty Act was issued to the accountable person to show cause why the refund was not liable to be included in the principal value of the estate left by the deceased.

2. The accountable person filed objection contending that since the deceased had blended all his properties with the character of Hindu undivided family, no estate duty was imposable on the subsequent refunds. It was further contended on behalf of the accountable person that since the amounts of refund became due after the death of the deceased, the same could not be treated as his property passing on the death.

3. The Assistant Controller of Estate Duty held that since the tax up to the assessment year 1964-65 was paid by the deceased in his individual capacity, the refunds due in respect of these years would be his (deceased) individual estate. Regarding refunds due for the assessment year 1965-66, the Assistant Controller held that as the taxes for this year were paid out of the Hindu undivided family funds of the deceased, only 1/3rd of such refund was includible. Accordingly, the appellate authority held that the Assistant Controller of Estate Duty was not justified in including the value of the refunds amounting to Rs, 8,52,466 in the total value of the estate of the deceased. The refund of Rs. 3,632 for the assessment year 1959-60 which became due on September 7, 1959 was, however, directed to be added to the value of the estate determined by the order dated May 27, 1970, of the Assistant Controller.

4. Aggrieved, the Revenue preferred an appeal before the Income Tax Appellate Tribunal which was dismissed on December 14, 1980. It was thereafter that an application was moved for reference by the Department for referring the following question u/s 64(1) of the Estate Duty Act:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the deletion by the Appellate Controller of tax refunds payable to the deceased from the principal value of his estate liable to estate duty ?"

5. The application was allowed. Hence, the reference.

6. Section 2(16) deals with "property passing on the death" and includes any property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and "on the death" includes "at a period ascertainable only by reference to the death".

7. Section 3(1)(a), (b) and (c), inter alia, provides for certain situations in which a person is deemed competent to dispose of property. Section 5 deals with the levy of estate duty. Section 6 deals with the property within disposing capacity and provides that property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.

8. u/s 5, three factors are important: (1) there must be passing, (2) of such property, and (3) such passing on must be on the death of a person.

9. Counsel for the accountable person urged that it was a condition precedent for the attraction of the duty that (a) the estate holder must have possessed or enjoyed a property or an interest in a property ; (b) the interest in the property might be either vested or contingent; (c) but that interest should be with regard to either an immovable property or a movable property or an interest in immovable or movable property which was capable of being ascertained during the lifetime or at the time of the death of the estate holder ; (d) a contingent interest could fall within the purview of the Act only when the interest was of a

tangible nature and was capable of being ascertained, that is to say, the estate holder must always be having a possibility to enjoy or possess that interest either actually or constructively during his lifetime itself. In our opinion, in the instant case, the refunds which became available after the death of the deceased, Pateshwari Prasad Singh, could not be considered to be property available at the time of death. Hence, it could not be considered to be property which passed on his death. The death did not cause property to change hands. The fact that a person can nominate a beneficiary does not amount to the disposition of a property. We are, therefore, of the opinion that to such a case, as the present, Section 5 was not attracted. Hence, no estate duty was payable. No property passed on through the deceased.

10. In *M. Ct. Muthiah and Another Vs. Controller of Estate Duty, Madras*, the Supreme Court held (headnote):

"An accident insurance policy cannot be construed as a movable property unlike a life insurance policy or an annuity because, as laid down in Section 2(15) of the Estate Duty Act, 1953, it is not only necessary for the person to have property or interest in property but that interest must be in regard to a movable property and his interest should also be capable of being ascertainable during his lifetime or at the time of his death in that movable property. Secondly, an accident insurance policy could not be construed as a property or an interest in property since the person who possessed it cannot also be said to have a contingent interest because there was every possibility of the accident policy getting extinguished or rendered worthless during his lifetime : on the other hand, in the case of a life insurance policy, there was always a tangible continuing interest, only that the value of that interest might be subjected to change at the time of passing of the property."

11. Counsel for the Revenue urged that since the right to receive the refunds had not been merged and was kept separate, the said right was thrown in the hotchpotch. In the instant case, as we have shown above, the Act would not be attracted to the refunds received after the death of the deceased, Pateshwari Prasad Singh. Consequently, the argument that the right to receive the refunds had not been sent into common stock has not been gone into.

12. For what we have said above, we answer the question in the affirmative and in favour of the accountable person and against the Revenue. The accountable person would be entitled to receive the costs of the reference which are fixed at Rs. 300.