

(1977) 10 MAD CK 0027

In the Madras High Court

Case No : Tax Case No. 61 of 1971 (Reference No. 23 of 1971)

Controller of Estate Duty

APPELLANT

Vs

N. Balaji

RESPONDENT

Date of Decision : 03-10-1977

Acts Referred:

Estate Duty Act, 1953 — Section 44, 46
Partnership Act, 1932 — Section 14

Citation : (1979) 116 ITR 534

Hon'ble Judges : P. Govindan Nair, C.J;A. Varadarajan, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; K.R. Ramamani and S.V. Subramaniam, for the Respondent

Judgement

P. Govindan Nair, C.J.—This is a reference at the instance of the CED, Madras, in relation to the estate duty payable on the death of one Narayana Chettiar, who died on April 6, 1963. Between the years 1957 and 1960, commencing from May 26, 1957, the deceased had gifted properties worth Rs. 70,000 on May 26, 1957, and April 12, 1960, to Balaji, another sum of Rs. 70,000 on May 26, 1957, and April 12, 1960, to Govinda, a sum of Rs. 25,000 to Anusuya on April 6, 1958, and on the same day another sum of Rs. 25,000 to Saroja. Balaji, Govinda, Anusuya and Saroja are the children of the deceased. The deceased then borrowed from Balaji on March 3, 1960, Rs. 65,000, from Govinda another sum of Rs. 65,000 on the same day and from Anusuya and Saroja Rs. 25,000 each on the same date. So at the time of his death there were liabilities to the extent of Rs. 1,80,000. The creditors to whom the deceased owed these monies transferred their right to collect them to a firm called Balaji No. 2 on February 10, 1962. So at the time of the death, the liability of the deceased was towards the firm. No suggestion was made at any time that the transfer by the original creditors to the firm was sham or did not in fact take place. There is also no case and there is no material to show that Govinda and Balaji, who were the partners of the firm, Balaji No. 2, brought the properties, which they got by gift from the

deceased, to the firm and thus made them the properties of the firm. On these facts, the question is whether the accountable persons are entitled to claim the sum of Rs. 1,80,000 which was said to be due from the deceased at the time of his death on April 6, 1963, as a deduction to be made from the value of the estate of the deceased by applying Section 44 of the E.D. Act. In dealing with Section 44 the provisions of Section 46 of the Act will have to be borne in mind, for, the deductions permissible under the earlier section will get abated if the conditions of Section 46 are satisfied.

2. The Tribunal held that the accountable persons are entitled to have the entire amount of the debts claimed as deductions u/s 44 of the Act. The CED applied to the Tribunal for a reference to this court and the Tribunal has referred the following two questions to this court for answering the same:

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the abatement of the allowance for the debts due u/s 44 by the sum of Rs. 70,000 in computing the principal value of the estate of the deceased, invoking the provisions of Section 46(1)(b) of the E.D. Act, is erroneous and unjustified ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the debts amounting to Rs. 1,20,000 are not hit by the provisions of Section 46(1) or Section 46(2) of the E.D. Act ? "

3. These two questions have not been happily worded ; in fact they are most confusing; we will go further and say that the first question is understandable. "But it is agreed that what is meant by the first question is that whether on the facts and in the circumstance"s of the case Section 46 is attracted and whether any abatement can be made for the debts that were owing by the deceased at the time of his death, namely, Rs. 1,80,000 by applying the provisions of Section 46. The second question too is confusing because it mentions a figure of Rs. 1,20,000. How this figure had been arrived at we do not understand.

4. The Controller had permitted only a deduction of Rs. 70,000 u/s 44. The Tribunal allowed a deduction of Rs. 1,90,000. The sum of Rs. 1,20,000 must be understood to be the difference between these two figures. But there is no question of Rs. 1,90,000 coming into the picture, for, according to the case of the accountable persons, the total extent of the liability was only Rs. 1,80,000. That is why we said that the second question also is confusing. The above amount allowed by the Tribunal was allowed on the basis of Section 46(1)(b) which has no application. We find some difficulty in following the reasoning of the Tribunal, as it has adopted some formula, which, if at all, could be used when the proviso to Section 46(1) is to be applied. If the section itself is not attracted, then there is no question of applying the proviso or for that matter Sub-section (2) of Section 46. We shall, at this stage, extract Sections 44 and 46 in extenso :

"44. In determining the value of an estate for the purpose of estate duty, allowance shall be made for funeral expenses (not exceeding rupees one

thousand) and for debts and incumbrances ; but an allowance shall not be made-

(a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless, subject to the provisions of Section 27, such debts or incumbrances were incurred or created bona fide for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, or

(b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, or

(c) more than once for the same debt or incumbrance charged upon different portions of the estate, or

(d) for debts incurred by or on behalf of the deceased by way of dower, to the extent to which such debts are in excess of rupees five thousand,

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

Explanation.--For the purposes of this section, "funeral expenses" include all expenses which may have to be incurred in connection with the sraddha or barsi ceremonies of the deceased for a period of one year from his death."

"46. (1) Any allowance which but for this provision would be made u/s 44 for a debt incurred by the deceased as mentioned in clause (a) of that section, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefore which consisted of-

(a) property derived from the deceased ; or

(b) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased:

Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in Clause (b) of this sub-section, it is proved to the satisfaction of the Controller that the value of the consideration given, or of that part thereof, as the case may be, exceeded that which could have been rendered available by application of all the property derived from the deceased, other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to Sub-section (1) of Section 16 in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess.

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which Sub-section (1) would have had effect on his death if the debt or incumbrance had

not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that sub-section has effect on his death shall, unless so paid or applied two years before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, notwithstanding anything in Section 26, be payable in respect thereof accordingly.

(3) The provisions of Sub-section (2) of Section 16 shall have effect for the purpose of this section as they have effect for the purpose of that section. "

5. There is no case before us that if the deceased had debts at the time of his death and he had not made any gifts to anybody, Section 46 would apply to those debts. The question is complicated here because the persons to whom he made gifts had lent moneys to the deceased. Normally, therefore, in such circumstances, when the donees had become the creditors, the provisions of Section 46 would come into operation and both the limbs of Sub-section (1) of Section 46(a) and (b) will have to be considered in a given case. That is not enough. It will also become necessary to apply the proviso where the value of the property gifted or those derived by the creditors is less in value than the amount borrowed by the deceased. We are also certain that in order that Section 46 must apply, the donee must be the person who is the creditor of the deceased at the time of his death. That is a most important feature in this case, for at the time of the death the donees were not the creditors of the deceased. We mentioned earlier that the donees, who were the children of the deceased, transferred their right to collect the amount from the deceased to the firm, Balaji No. 2, and we are told that there is no case and there is no material to indicate that these transfers by the donees were not genuine transfers or an attempt to camouflage the real position or that in fact the transfer had not taken place and that the firm was not a creditor of the deceased. But when we say the firm has become the creditor, we must clarify this by stating immediately that the firm is not a legal entity like a company and it must be taken that the partners of the firm are the creditors of the deceased. That being so, Govinda and Balaji will continue to be creditors of the deceased. But in order that the provisions of Section 46 can be applied we are of the view that the creditors in their capacity as partners must have vested in them the properties which were originally gifted to them by the deceased. There is no case that the properties which the partners derived as their own was ever brought into the stock of the firm or became the properties of the firm u/s 14 of the Partnership Act, 1932. It is useful to read Section 14 of the Partnership Act at this stage:

"14. Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been

acquired for the firm."

6. In view of the fact that there is no relationship between the creditors, who are the partners of the firm, and the properties of the firm, Section 46 has no application. The wording of Section 46(2) makes it clear that only in such cases Section 46 could be applicable.

7. In the light of the above, we have to answer the two questions by giving a combined answer by saying that no abatement whatever can be made by applying Section 46 to the total amount of the debts of the deceased amounting to Rs. 1,80,000. The accountable persons are entitled to have this amount of Rs. 1,80,000 deducted from the total value of the estate of the deceased at the time of his death on April 6, 1963. We answer the two questions in the above terms. We make no order as to costs in this case.