
(1990) 06 BOM CK 0071

In the Bombay High Court

Case No : Estate Duty Reference No. 13 of 1976

Controller of Estate Duty

APPELLANT

Vs

Official Trustee, Maharashtra State

RESPONDENT

Date of Decision : 13-06-1990

Acts Referred:

Excise Duty Act, 1953 — Section 12, 40, 7

Citation : (1991) 91 CTR 192 : (1990) 186 ITR 463

Hon'ble Judges : T.D. Sugla, J; Sujata V. Manohar, J

Bench : Division Bench

Advocate : G.S. Jetley, S.E. Dastur, for the Appellant;

Judgement

Mrs. Sujata Manohar, J.—This is an application u/s 64(1) of the Estate Duty Act, 1953. The applicant making the reference is the Controller of Estate Duty, Bombay. The accountable person is the Official Trustee, Maharashtra State, Bombay. The questions which are referred to us relate to the estate of the deceased, Sir Jamsetjee Jejeebhoy Baronet, who died on or about September 24, 1968. The questions relate to the interest which the deceased baronet had in the Sir Jamsetjee Jejeebhoy Baronetcy Fund which was created initially under the Baronetcy Act 20 of 1860, which Act was subsequently replaced by Act 10 of 1915. Under these Acts, certain promissory notes of the Government of India producing an annual income of Rs. 1 lakh and a Mansion House and hereditaments called Mazegaon Castle were settled in perpetuity to support the title and dignity of a baronet under the said Act. Under the said Act, the income from these properties and the use of the same was conferred on the baronet during the term of his natural life and from and immediately after his death to the use of the male heirs of the body of Sir Jamsetjee Jejeebhoy, first baronet who may succeed to the title of baronet conferred originally by the letters patent but as to each of the said male heirs to the use only during the term of their natural life. (See section 2 of Act 10 of 1915). In other words, under the Sir Jamsetjee Jejeebhoy Baronetcy Act, 1915, each of the baronets in succession is

entitled to the income of the baronetcy fund during his lifetime. The properties under the said Act have been vested in the commissioner for the Northern division of the Presidency of Bombay, for the time being, the Accountant-General for the time being of Bombay and the Collector for the time being of Bombay. These persons have been, u/s 3, made a corporation with perpetual succession and a common seal under the style and title of "Sir Jamsetjee Jejeebhoy Baronetcy Trustees". Under the Act, each of the baronets who succeeds the first baronet must adopt the designation of sir Jamsetjee Jejeebhoy.

2. The sixth baronet died on or about September 24, 1968. In the estate duty proceedings, the Tribunal has held that the baronetcy property passing on the death of a baronet would be equal to the actuarial value of the beneficial interest for the life of the beneficiary on the date of the death.

3. Under the said Act, the baronet also has a right u/s 17 to appoint his wife to an annuity of Rs. 10,000 for life. The Tribunal held that the actuarial value of the wife's interest, where an appointment u/s 17 of the Baronetcy Act is made, would also pass on the death of the deceased. In view of these findings, the following two questions have been referred to us at the instance of the controller of Estate Duty :

"(1) Whether, on the facts and in the circumstances of the case, the corpus of Sir Jamsetjee Jejeebhoy Baronetcy Fund created under the Baronetcy Act No. 10 of 1915 passed on the death of the deceased baronet, Sir Jamsetjee Jejeebhoy, u/s 5 or section 7 or under any other provisions of the Estate duty Act, 1953 ?

(2) Whether, on the facts and in the circumstances of the case, the only property in respect of the baronetcy fund that passed on the death of the deceased, Sir Jamsetjee Jejeebhoy Baronet, is the actuarial value on the death of the deceased sixth baronet on the basis of the remaining life of the seventh baronet in respect of his actual income from the baronetcy fund and also the actuarial value of his (sixth baronet's) wife's interest ?"

4. At the instance of the accountable person, the following two questions have also been referred to us which are numbered as questions Nos. 3 and 4 :

"(3) Whether, on the facts and in the circumstances of the case, the actuarial value of the income of Rs. 10,000 per annum arising to the Dowager Lady Jejeebhoy constituted a separate estate u/s 34(3) of the Estate Duty Act, 1953 ?

(4) If the answer to question No. 1 is in the affirmative, whether, on the facts and in the circumstances of the case, by virtue of the provisions of section 7(4) of the Estate Duty Act, 1953, no property chargeable to duty in any event passed or could be deemed to have passed on the death of Sir Jamsetjee Jejeebhoy, sixth baronet ?"

5. The first question before us is whether the corpus of the Sir Jamsetjee Jejeebhoy Baronetcy Fund created under the Baronetcy Act 10 of 1915 passes on the death of the deceased sixth baronet ?

6. The relevant portion of section 5(1) of the Estate Duty Act is follows :

"5. (1) In the case of every person dying after the commencement of this Act, there shall,... be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled... which passes on the death of such person, a duty called "estate duty" at the rates fixed in accordance with section 35."

7. We have, therefore, to determine which property passes on the death of the sixth baronet. The phrase property which passes" is not explained in the Estate Duty Act. It is used in a general sense of property changing hands on the death of the deceased. It is not disputed by Mr. Dastur who appears for the accountable person that the beneficial interest which the sixth baronet had in the income of the baronetcy fund does pass on his death.

8. Mr. Jetley, however, goes further and submits that u/s 5 read with section 12, the entire corpus of the baronetcy fund must be deemed to pass on the baronet. u/s 12(1), it is provided as follows :

"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."

9. It is submitted by Mr. Jetley that the deceased had a life interest in the corpus of the baronetcy fund. Hence, u/s 12(1), the entire property must be deemed to pass on the death of the sixth baronet. In support, he relied on a decision of this court in the case of Khatizabai Mohomed Ibrahim Vs. Controller of Estate Duty, Bombay, . He also relies upon a decision of the Supreme Court in the case of Controller of Estate Duty, Gujarat Vs. Hussainbhai Mohamedbhai Badri, and a decision of the Madras high Court in the case of Manian Natesan and Chandran Natesan Vs. The Controller of Estate Duty, Madras, .

10. The entire argument is misconceived. It proceeds on the assumption that section 12(1) applies to the present case. All the cases referred to by Mr. Jetley are cases where a settlor had settled certain property on trust. In Khatizabai Mohomed Ibrahim Vs. Controller of Estate Duty, Bombay, , the settlor had retained an interest in the income of the wakf property for her life. On the death of the settlor, the corpus of the wakf property was held to pass and not merely the life interest, in view of section 12.

11. Now, section 12 applies to property passing under any settlement made by the deceased by deed or any other instrument in which the settlor has retained an interest or in which the settlor has reserved to himself the right to reclaim absolute interest. In such cases, the entire property is deemed to pass on the

death of the settlor. Such is not the present case. The deceased (the sixth baronet) had not executed any deed or instrument under which he had settled any property on trust. In fact, in the present case, there is no deed or instrument executed by anybody settling the baronetcy fund on trust. Had such a deed been made incorporating the terms which find place in the Baronetcy Act 10 of 1915, such a settlement would have been void as violating the rule against perpetuity. But this is beside the point. The deceased baronet did not settle any property on trust retaining for himself any life interest. In the present case, there is an Act of Parliament under which a certain fund has been vested in the trustees appointed under the Act in perpetuity. The Act confers on a person holding the office of the baronet for the time being a life interest in the income of the fund so vested. The provisions of section 12, therefore, have no application to the present case.

12. Moreover, as the Act clearly provides, the corpus remains with the trustees in perpetuity and the title of the trustees is not affected in any manner by the death of the baronet. The corpus, therefore, does not pass on the death of the baronet.

13. In the alternative, it was submitted by Mr. Jetley that view of the provisions of section 7(1) of the Estate Duty Act read with section 40, the corpus of the trust fund must be deemed to pass on the death of the sixth baronet. Section 7(1) provides as follows :

"7. (1) Subject to the provisions of this section, property in which the deceased, or any other person had an interest ceasing on the death of the deceased, shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest..."

14. Section 40 of the Estate Duty Act is as follows :

"40. The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall -

(a) if the interest extended to the whole income of the property, be the principal value of that property; and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended."

15. It is submitted by Mr. Jetley that the deceased sixth baronet had a life interest in the income of the baronetcy fund which ceased on the death of the deceased. According to him, as a result, a benefit accrues to the estate. Hence, section 7 is attracted. He submits that since the interest of the deceased extended to the whole income of the property, the value of the benefit so accruing must be computed as the principal value of the property in view of section 40 of the Estate duty Act.

16. This submission, in our view, cannot be accepted on a true interpretation of

section 7(1) read with section 40. For the application of section 7(1), it is first necessary that a benefit must accrue to the estate as a result of the cesser of an interest on death. If the interest extended to the entire income of the property, the value of such benefit is deemed to be the entire value of the property as per section 40. The provisions of section 7(1) of the Estate Duty Act, 1953, are in terms identical with section 2, sub-section (1)(b), of the English Finance Act, 1894.

17. The provisions of section 40 of the Estate Duty Act are indential with section 7, sub-section (7), of the English Finance Act, 1894.

18. Similarly, section 1 of the English Finance Act, 1894, is identical with section 5 of our Estate Duty Act, 1953. These sections of the English Act came up for consideration before the English Court in the case of *In re Harris's Will Trusts; Public Trustee v. Hurt* [1966] 1 Ch 475. In that case, a testator, by his will, bequeathed an annuity of Pound 250 and directed that, after the death of the annuitant, should she not have exercised a power of appointment given her by the will, the annuity was to be paid or divided equally amongst named beneficiaries for his or her life or their respective lives. On the death of the first annuitant, the question arose as to whether estate duty was payable u/s 1 on the actuarial value of the annuity in which the persons named in the will became beneficially interested or whether, u/s 2(1)(b) of the said Act, estate duty became payable on the capital value of the proportion of the testator's residuary estate required to produce the annuity.

19. The court held that, in order that property may be deemed to pass u/s 2(1)(b), it is necessary that there should be two elements, first, an interest which ceased on the death of the some person and, secondly, the benefit accruing or arising by the cesser of that interest. The court referred to an earlier judgment in the case of *Attorney-General v. Watson* [1917] 2 K B 427, and said that the benefit accruing u/s 2(1)(b) must necessarily be benefit to the property and not to any person having an interest in the property. Where there is a continuing annuity in which there are successive interests, upon the death of the first life to fall, the fund upon which the annuity is charged is not discharged from the annuity at all, but the annuity continues to be payable and is charged on that fund. It may be that the interest of certain persons entitled to the fund subject to the annuity would be increased in value by the dropping of one life, but that is not the kind of benefit contemplated by section 2(1)(b). The property itself remains subject to the same charge on the death of the first life to fall, the annuity continues to be payable and the position immediately before and immediately after the death of the first life to fall is the same. The court held that section 2(1)(b) would not be applicable in such a situation.

20. In an earlier case, namely, *In re Cassel's Will Trust : Public Trustee v. Attorney-General* [1947] Ch. 1, testator bequeathed various annuities by his will. He had given one annuity to J. and after her death he had given the annuity to her two daughters. The court applied the same principle which has been

subsequently followed in the above case of *In re Harris's Will trusts* [1966] 1 Ch. D. 475 to determine whether section 2(1)(b) was attracted, namely, whether, by cesser of interest, any benefit accrues to the estate. The court accepted that if an annuity is bequeathed to A for life, then to B for life, then to C for life, on the death of A (B and C surviving), estate duty is charged u/s 1 as on the passing of property, i.e., annuity and not as on the cesser of an interest. The same principle would be applied on the death of B, leaving C surviving, and estate duty would not be levied on a cesser of interest, that is to say, on a capital value basis, until the death of C. The court accepted the principle that the idea underlying the practice is that an annuity given to successive takers is a single item of property which subsists over a period, namely, that period between its commencement and the death of the last taker. The cesser of interest is only on the death of the last annuitant. On the construction of the indenture in that case, however, the court held section 2(1)(b) to be applicable.

21. In the present case, the estate, that is to say, the baronetcy fund retains the burden of providing its income to the next baronet. Therefore, by reason of the death of the sixth baronet and the consequent cesser of the sixth baronet's life interest, no benefit accrued to the estate. Hence, section 7(1) of the Estate Duty Act would not be attracted. Sections 7(1) and 40 go together. In fact, section 40 provides a method of valuing the benefit which accrues as a result of the cesser of an interest as per section 7(1). (See in this connection *Controller of Estate Duty, Bombay City-I Vs. Fakirchand Fatehchand Sachdev*, at p. 290 - *CED v. Fakirchand Fatehchand Sachdev*). When section 7(1) does not apply, section 40 cannot apply either. In our view, therefore, the deeming provisions of section 7(1) read with section 40 have no application to the present case. Hence, the principal value of the corpus of the baronetcy fund cannot be considered as the value of the property passing on the death of the sixth baronet.

22. Mr. Dastur, learned counsel for the respondent, submitted that even if section 7(1) is held to apply to the present case, the provisions of section 7(4) would exclude the corpus of the trust fund from the levy of estate duty because, u/s 7, sub-section (4), the provisions of sub-section (1) shall not apply to a property in which the deceased or any other person had an interest, inter alia, only as a holder of an office. Mr. Dastur submits that the sixth baronet had an interest in the trust property only as a holder of an office, namely, the office of a baronet.

23. Is a baronetcy an office ? What is an office ? In the case of *Attorney General v. Eyres* [1909] 1 KB 723, a property was settled upon three named trustees. Under the indenture, an annual sum of Pound 200 was to be given to each of the trustees while acting in the trusts by way of remuneration for their services. One of the trustees died and a new trustee was appointed in his place. The Crown claimed succession duty upon the annual sum of Pound 200 to which the new trustee became entitled upon his appointment and also estate duty upon the principal value of the capital fund yielding the annual sum of Pound 200. As stated earlier, provisions analogous to sections 7(1) and 7(4) of our Estate Duty

Act are to be found in the English Act also, we having presumably adopted those provisions here. In construing these provisions, the court considered whether a trusteeship is or is not an office. It said, "the question is, what does the word "office" mean in that section ? I cannot help thinking that the Legislature had in their minds the case of an office in which there was an immediate successor, and did not wish to impose estate duty upon the successor as being the recipient of a benefit which came to him by reason of the death of the person who held that office." The court held that even if no immediate successor was appointed, it would still be an office and that the trusteeship was an office covered by the exception to section 2(1)(b) of the Finance Act, 1894. The same question was considered in the case of *Great Western Railway Co. v. Bater* [1920] 3 KB 266 274, where Rowlatt J. observed that "an office or an employment of profit was an office or employment which was a subsisting, permanent, substantive position, which had an existence independent of the person who filled it and which went on and was filled in succession by successive holders".

24. In the case of *McMillan v. Guest* [1942] AC 561, the House of Lords considered the position of a director of a company. Lord Atkin said that there was no statutory definition of "office". He approved of the definition of that term by Rowlatt J. in *Great Western Ry. Co. v. Bater* [1920] 3 KB 266 above, as a generally sufficient statement of the meaning of the word, though not a complete definition. In the same case, Lord Wright observed that the word "office" is of indefinite content. Its various meanings cover four columns of the *New English Dictionary*. But he held as most relevant for purposes of that case the following (at p.608) : "A position or place to which certain duties are attached, especially one of a more or less public character."

25. All these observations of Rowlatt J., Lord Atkin and Lord Wright have been cited with approval by the Supreme Court in the case of *Srimati Kanta Kathuria Vs. Manak Chand Surana*, . The observations of Rowlatt J. and Lord Atkin are wider in content than those of Lord Wright. While Lord Wright would require that an office should have duties attached to it, this requirement is not spelt out by Rowlatt J. or Lord Atkin. Since the Supreme Court has approved of all these definitions, we consider the wider definitions as equally valid. An office, therefore, has to be a subsisting, permanent position which is held in succession by a number of persons. In this wide sense, an office may or may not have any duty attached to it, though generally it does have some duty attached to it. There are, however, some offices which are sinecures because no duty is attached to them, but only benefits such as receipt of an income by the holder of such an office. We do not see any reason for excluding the latter from the definition of an office. Mr. Jetley, in this connection, relied upon a decision of the Madras High Court in the case of *S.C. Sreemanavikraman Raja, Zamorin Rajah of Kozhikode and Another Vs. Controller of Estate Duty, Madras and Another*, , where the Madras High Court held, inter alia, that a Sthanam was not an office because there were no duties attached to it. The Supreme Court, however, in *Srimati Kanta Kathuria Vs. Manak Chand Surana*, above, has cited with approval

the wider definition of Rowlatt J. and Lord Atkin, both the judges holding the majority view and the judges holding the minority view approving it. In view of these and looking to the context of section 7(4) of the Estate Duty Act, 1953, in our view, the term "office" can be interpreted widely as was done in the above cases to include within its ambit an office which may or may not have duties attached to it so long as it partakes of the character of a permanent and substantial position entailing certain benefits which may or may not have duties attached to it so long as it partakes of the character of a permanent and substantial position entailing certain benefits which should be held in succession by a number of persons. It is also pointed out by Mr. Dastur that, in the present case, in fact, duties are attached to the office of Sir Jamsetjee Jejeebhoy Baronetcy. He has pointed out that Sir Jamsetjee Jejeebhoy is ex-officio chairman of various charitable trusts including the Panjrapol. He is required to look after the functioning of these charitable trusts by virtue of his office, so that even the test of a duty being attached to an office is satisfied.

26. Looking to the context of section 7(4) of the Estate Duty Act, in our view, holding of an office must be construed widely so as to include all such posts which are held in succession by a number of persons. The purpose of an exemption u/s 7(4) appears to be not to whittle down the benefits which may be attached to an office which is held in succession by a number of persons. (vide in this connection Attorney-General v. Eyres [1909] 1 KB 723.

27. In the present case, the baronetcy is held in succession by a number of persons as per the provisions of the Baronetcy Act. The successive baronet enjoy certain benefits as a result of occupying that office. Every person occupying this office is required to adopt the title of Sir Jamsetjee Jejeebhoy. In our view, the baronetcy of Sir Jamsetjee Jejeebhoy is an office. The benefit which the sixth baronet enjoyed in the baronetcy fund was by virtue of his holding the office of the sixth baronet. Hence, section 7(1) of the estate Duty Act is not applicable. The corpus of the trust fund is, therefore, not chargeable to estate duty u/s 40.

28. The application of section 7(4), however, requires to be considered only if it is held that section 7(1) is attracted to the present case. In view of our finding that section 7(1) is not attracted, the alternative submission u/s 7(4) does not strictly require consideration. In view, however, of the fact that arguments were advanced at some length on this aspect, we have considered this alternative submission also.

29. It was also submitted by Mr. Dastur that, u/s 7(4) of the Estate Duty Act, the present baronetcy can also be considered as a corporation sole. We have already considered one alternative and held in favour of Mr. Dastur. We need not consider the second alternative submission as to whether this baronetcy would qualify for exemption on the ground that it is a corporation sole.

30. In our view, therefore, only the provisions of section 5 are attracted in the present case. The property which passes on the death of the baronet is the

actuarial value of his beneficial interest as well as of his wife's interest, as laid down by the Tribunal and not the corpus of the baronetcy trust fund.

31. Accordingly, we answer question No. 1 in the negative and against the Revenue.

32. We answer question No. 2 in the affirmative and against the Revenue.

33. Questions Nos. 3 and 4 are referred to us at the instance of the accountable person in this reference which is at the instance of the Controller of Estate Duty. In view of the decision of the Supreme court in the case of Commissioner of Income Tax, Kerala Vs. V. Damodaran, , the Tribunal was not competent to refer questions at the instance of the respondents on an application filed by the applicant. Reference of those questions must be considered to be void.

34. Mr. Dastur, however, submitted that, prior to the decision of the supreme Court in the above case, it was a settled position in law that, in a reference where questions were raised at the instance of one party, it was open to the respondents also to raise questions which could be referred to the court. Hence, in a number of references which were filed prior to the decision of the Supreme Court in the above case, there are questions which are raised not merely at the instance of the applicant but also at the instance of the respondents. The latter did not consider it necessary to file separate references. In such cases, the principle of prospective overruling should be applied and questions raised by the respondents in such references made prior to the above Supreme Court judgment should also be answered, the Supreme Court, however, has held that a reference in respect of such questions is void. These observations are binding on us. Looking to this decision of the Supreme Court, questions Nos. 3 and 4 cannot be raised in the present reference. We, therefore, decline to answer them.

35. In the circumstances, there will be no order as to costs.