

(1985) 03 CAL CK 0019
In the Calcutta High Court
Case No : Matter No. 648 of 1968

Controller of Estate Duty

APPELLANT

Vs

Pannalal Sethi

RESPONDENT

Date of Decision : 29-03-1985

Acts Referred:

Estate Duty Act, 1953 — Section 10, 12, 46(1), 46(2)

Citation : (1986) 56 CTR 163 : (1987) 164 ITR 698

Hon'ble Judges : R.N. Pyne, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Judgement

Ajit Kumar Sengupta, J.—One Smt. K.K. Sethi who died on May 10, 1960, executed a deed of settlement dated August 21, 1940 by virtue of which she purported to create a trust of certain immovable properties and included therein three properties; (1) 70, Nalini Sett Road (house) and two plots of land at (2) 103, Lake Road and (3) 18/1, Mudiali Road. The said deceased and one Sri Mohanlal Putni were the trustees of the said trust. In the estate duty proceedings, the accountable person, Pannalal Sethi, one of the sons of the deceased, claimed, inter alia, on the basis of the said deed that the property should be held to be liable to estate duty u/s 10 of the Estate Duty Act, 1953, only to the extent to which the settlor was not excluded from the possession and enjoyment of the gifted property.

2. The Assistant Controller of Estate Duty, however, on a consideration of the terms of the deed of settlement mentioned above, held that the settlor had reserved to herself an interest for life and was in fact in enjoyment of the income. He accordingly included the full value of the said properties covered by the said deed of settlement in the estate of the deceased.

3. The deceased had been taking periodical loans from the trust. These loans were advanced to her out of the income of the trust. The outstanding liability as on the date of death was Rs. 61,917. The accountable person claimed a deduction of liability to the extent of the said amount as it was found that the

amount was owed by the deceased to the trustees of the settlement referred to above. The Assistant Controller held that the trust was created by the deceased by transferring her own property mainly for her own benefit and benefit of her children and the money was lent out to the deceased by the trustees out of the properties transferred by the deceased. Accordingly, he disallowed the said liability as claimed by the accountable person u/s 46(1) of the Estate Duty Act.

4. The Assistant Controller found that the deceased had an account with the said trust created by the deceased and within two years of the death of the deceased, the deceased paid in several counts Rs. 25,011 towards satisfaction or reduction of debts to which the provision of Section 46(1) are applicable. The Assistant Controller treated the said amount as property deemed to pass on the death of the deceased u/s 46(2) of the Act and as such included the said amount of Rs. 25,011 in the estate of the deceased.

5. The accountable person filed an appeal to the Appellate Controller who confirmed the assessment. The accountable person filed second appeal before the Tribunal. The Tribunal firstly held confirming the order of the Appellate Assistant Commissioner that the entire property is liable to duty u/s 12 and not u/s 10 of the Act.

6. In regard to the claim of the accountable person for Rs. 61,917, the amount outstanding at the time of the death of the deceased in the books of Smt. K. K. Sethi and Mohanlal Putni, the trustees to the trust estate, the Tribunal after considering the copies of the accounts filed before it came to the conclusion that the said account was more or less like a current account of the deceased. According to the Tribunal, the said account was in existence for several years in the past. The Tribunal also came to the conclusion that some of the expenses were made for the purpose of purchasing immovable properties also and the said properties were included in the assessment and were taken as the estate of the deceased. The Tribunal, for the reasons mentioned in its appellate order, accordingly held that the debts of the deceased should be allowed as valid deduction but in the absence of full details directed the Assistant Controller to scrutinise the accounts of the deceased in the trust estate with regard to entries therein and to allow the same in case he was satisfied that the debts which were originally taken by her were included in the estate of the deceased so as to justify that there was still a liability.

7. In regard to the add-back of a sum of Rs. 25,011 being the amounts repaid to the trust within two years of the death of the deceased towards satisfaction or reduction of the debts which was included in the estate of the deceased, the Tribunal after perusal of the copies of the accounts filed by the representative of the accountable person, came to the conclusion that the said payments were made towards discharge of her liabilities. In the opinion of the Tribunal, the Assistant Controller was not right in treating the said amount as property deemed to be included in the property passing on the death of the deceased u/s 46(2) of the Act. In the result, the authorities below were directed not to include

the same in the estate of the deceased.

8. On the aforesaid facts, at the instance of the Controller of Estate Duty, the following two questions u/s 64(1) of the Estate Duty Act, 1953, were referred to this court:

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Rs. 61,917 or any part thereof should be allowed as a deduction from the total value of the estate of the deceased ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 25,011 was not liable to be included in the estate of the deceased ? "

9. The respondent in its reply to the application of the Controller asking for reference on the aforesaid questions has suggested that a further question of law arises out of the order of the Tribunal. The Tribunal referred the following question as suggested by the respondent in its reply which is the third question in the statement of case :

" 3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the case was covered by Section 12 and not Section 10 of the Estate Duty Act and the entire property settled by the deceased on trust passed on her death ?"

10. The principles, as regards the right of the respondent to raise any question of law in its reply, are well settled and have been laid down in one of the recent decisions of the Supreme Court in the case of CIT v. Damodaran [1980] 121 ITR 573. The Tribunal confirmed the decision of the Appellate Controller who held that, on the facts and in the circumstances of the case, Section 12 would apply and the entire properties settled by the deceased would be included in the estate of the deceased and Section 10 would have no application. Thus, the Tribunal decided the issue regarding applicability of Section 12 against the accountable person. The accountable person who was aggrieved and who desired a reference to the High Court should have filed a reference application himself. It was not open to him to raise a question in the respondent's reply to the reference application filed by the Controller of Estate Duty. He cannot claim that the said question, without there being any independent reference application by the accountable person, should also be referred. This is not a case where the entire order went in favour of the accountable person. The accountable person must have felt aggrieved against the decision of the Tribunal holding that the case was covered by Section 12 and not by Section 10 of the Estate Duty Act. The Tribunal exceeded in its jurisdiction in referring the third, question before this court. Thus, reference on the third question is incompetent. We, therefore, decline to answer the third question referred to us. The first question relates to the amount of Rs. 61,917 which the accountable person claimed as outstanding at the time of the death of the deceased in the books of the trustees to the trust. The second question relates to the sum of Rs. 25,011 which was paid within two years from

the death of the deceased towards satisfaction or reduction of the duties which were included in the estate of the deceased. These two questions are to be decided in the light of the provisions contained in Section 46 of the Estate Duty Act, 1953. Section 44 of the Act provides for certain deduction for funeral expenses and debts and encumbrances in determining the chargeable value of the estate. Section 45 imposes limitation on debts deductible. Section 46 provides further limitation on the debts deductible. Broadly speaking, u/s 46 a debt which the deceased incurred by borrowing monies from a person to whom he had previously made a gift is disallowed. The abatement of or disallowance of the debt which falls within the mischief of Section 46 is proportionate to the value of the consideration given therefore by the person who derived property from the deceased. Section 46(1) provides that any debt incurred by the deceased or any incumbrance created by the deceased will not be allowed as a deduction, notwithstanding the provisions of Section 44, to the extent to which such debt or incumbrance consisted of-

(a) a loan or incumbrance, the consideration for which was given out of property derived from the deceased ; or

(b) a loan given by or incumbrance created in favour of a person who had at any time included within his resources property derived from the deceased, unless the proviso to Sub-section (1) applies to the case.

11. Section 46(2) of the Act provides as follows :

" 46. (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. "

12. For invoking the provision of Section 46, a clear nexus between the transactions and loans and derivation of the property from the deceased by the person providing the loan has to be established. In case a nexus is established, the loan is subject to abatement and the abatement will be only to the extent of the value of the property derived from the deceased and any excess of the consideration will not be liable to abatement. Sub-section (2) of Section 46 is virtually an extension of the principle laid down in Section 46(1). u/s 46(2) the payment made by the deceased towards a debt to which Sub-section (1) applies is wholly dutiable where such payment is made towards satisfaction or discharge or reduction of such debt within two years from the death of the deceased. Section 46(2), therefore, makes chargeable with duty as a gift inter vivos any money or money's worth paid within two years of death in satisfaction or

discharge of a debt to which Section 46(1) applies or would have applied.

13. The Tribunal relied on a passage from Hanson's Death Duties, 9th edition. The said passage is as follows :

" Thus where the deceased settles property and borrows from the trustees, no deduction for the debt can be allowed against his estate although there was no connection between the transfer by the deceased to the settlement trustees and the subsequent loan from them. If the settled property (including the debt due from the deceased) is chargeable with estate duty upon the deceased's death, however, it seems that the principle of Section 7(10) of the Finance Act, 1894, should be applied to prevent what would otherwise amount to double taxation. "

14. Section 7(10) of the English Finance Act, 1894, is analogous to Section 46(1) of the Estate Duty Act, 1953. It appears that the Tribunal was of the view that if the borrowing was made for the purpose of acquiring any properties which are included in the estate, the debt should not be disallowed. This is not, however, the correct reading of the said provisions. It is only in case where the debt itself forms part of property which is included in the estate u/s 12 that a question of double inclusion would arise. The following passage from Hanson's Death Duties (10th edition) would make the position clear :

" If the settled property (including the debt due from the deceased) is chargeable with estate duty upon the deceased's death, however, it seems that the principle of Section 7(10) of the Finance Act, 1894, should be applied to prevent what would otherwise amount to double taxation (p. 730)."

15. Similar view is taken in Dymond's Death Duties (12th edition). The relevant passage is as follows :

" If the debt itself is liable to duty (e.g., where it is a debt due to trustees and forms part of the assets of a settled fund which passed on the death), Section 7(10) of the Finance Act, 1894, precludes a double charge of duty; but the mere fact that the " property derived from the deceased " is itself liable to Estate Duty does not seem to bring Section 7(10) into play, e.g., if the deceased gives his son Blackacre within five years of his death, and the son mortgages Blackacre for ? 1,000 and lends this sum to the deceased, the fact that the unencumbered value of Blackacre is dutiable as a gift will not make the ? 1,000 deductible in the deceased's estate (p. 568)."

16. It is, therefore, evident that the question of double inclusion arises only if the debt itself is already included in the estate passing on death u/s 12 and not where the loan has been utilised for purchase of properties which are included in the estate u/s 5 of the Act. In this case, the entire estate of the deceased including the properties settled upon the said trust had been charged to estate duty u/s 12 of the Act. It was not a case where settlement was made within two years and then deduction was being claimed on account of advance received by the deceased by way of a loan. The Tribunal came to the conclusion that the

entire estate of the deceased has been charged to estate duty including the settled properties and as such the debt of the deceased should be allowed as a valid deduction. The Tribunal held as follows :

" We do not, however, have full details of the entries of the account of Smt. K. K. Sethi, the deceased. The same was necessary to find out as to whether the amounts utilised for the purpose of purchasing the estate were actually outstanding on the date of death or not. For instance, if there was a debit entry for the purchase of a property and the same was repaid, the same could not be said to be still outstanding on the death of the deceased. We, therefore, direct the Assistant Controller to scrutinise the accounts of the deceased in the trust estate with regard to the entries therein and in case he is satisfied that the debts which originally taken by her and were included in the estate of the deceased so as to justify that there was still a liability, the said amount or the part thereof, as the case may be, should be allowed by him,"

17. It may be that the reasoning of the Tribunal may not be quite correct but, on the facts and in the circumstances of this case, we are of the view that the Tribunal was right in giving the aforesaid direction to the Assistant Controller. We, therefore, answer the first question in the affirmative and in favour of the accountable person.

18. The second question relates to a sum of Rs. 25,011 which was paid towards satisfaction or reduction of the debts which was included in the estate of the deceased. The correctness of the inclusion u/s 46(2) is entirely dependent on the correctness of the disallowance u/s 46(1). We have already held that on the facts of this case, the debt could not be disallowed u/s 46(1) of the Act and on the same principle the sum of Rs. 25,011 could not be included in the estate of the deceased. In that view of the matter, we answer the second question also in the affirmative and in favour of the accountable person.

19. There will be no order as to costs.

R.N. Pyne, J.

20. I agree.