

(1981) 04 CAL CK 0010

In the Calcutta High Court

Case No : Estate Duty Reference No. 460 of 1972

Controller of Estate Duty

APPELLANT

Vs

Ramendra Nath Banerjee

RESPONDENT

Date of Decision : 22-04-1981

Acts Referred:

Estate Duty Act, 1953 — Section 5, 5(1)

Citation : (1982) 133 ITR 38

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : Ajit Sengupta and B.K. Naha, for the Appellant;None, for the Respondent

Judgement

Sabyasachi Mukharji, J.—The facts of the case are as follows:

2. Sri Bibhuti Bhusan Banerjee, about whose estate the present proceedings relate, died on August 7, 1961. He left a will dated June 1, 1961, in which Sri Ramendra Nath Banerjee was named as one of the executors who along with others is an accountable person in this case. The other accountable persons are beneficiaries under the above will. The deceased during his lifetime had purchased National Savings Certificates and Postal Cash Certificates of Rs. 15,000 each in the names of his two minor sons, namely, Subrata and Debabrata. The Asst. Controller included the entire value of Rs. 30,000 in the estate of the deceased on the ground that the sons were simply his benamidars. In support of his findings he relied on the following paragraph in the will of the deceased dated June 1, 1961 :

"I have also invested Rs. 30,000 in the National Savings Certificates and Postal Cash Certificates in the names of my two sons, Debabrata and Subrata. I give, devise and bequeath these savings and postal cash certificates, as the case may be, to my said two sons, Debabrata and Subrata, absolutely and in equal shares."

3. He rejected the contention of the accountable persons that these certificates

had been gifted to the two sons. A copy of the will dated June 1, 1961, is made as annex. "A" forming part of the case.

4. The matter was taken in appeal to the Appellate Controller. Before him the inclusion of the value of the certificates purchased on September 17, 1959, amounting to Rs. 10,000 was not contested since the period of purchase fell within two years of the death of the deceased. With regard to the purchases made on July 11, 1958, and December 23, 1958, of Rs. 15,000 and Rs. 5,000, respectively, it was again contended that the certificates had been gifted to the two sons. The Appellate Controller agreed with the findings of the Asst. Controller and confirmed the addition.

5. The accountable persons appealed to the Tribunal. Before the latter they relied on the decision of the Allahabad High Court in the case of Alope Mitra Vs. Controller of Estate Duty, , and argued that although the certificates belonged to the deceased, yet in the circumstances of the case, these did not constitute property which passed on his death for the purposes of Section 5 of the E.D. Act. The Tribunal found that there was no evidence in the present case that the deceased had obtained any release from the benamidars or had obtained a declaration from an appropriate court of law. In the circumstances, they observed that he remained incompetent to transfer the certificates till his death, which according to the Tribunal, were also the facts in the case of Alope Mitra and so the property in the certificates did not pass on his death as per Section 6 of the Act. The Tribunal, therefore, held that the value of the above certificates amounting to Rs. 20,000 could not be included in the estate of the deceased and, accordingly, excluded it.

6. On the aforesaid facts, the Tribunal has referred to us u/s 64(1) of the E.D. Act, 1953, the following question:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the National Savings Certificates and Postal Cash Certificates of the value of Rs. 20,000 bought by the deceased in the names of his two minor sons were not includible in the estate of the deceased ?"

7. In view of the decision of the Supreme Court in the case of Controller of Estate Duty, Lucknow Vs. Alope Mitra, , in our opinion, we find that the deceased was the real owner of the certificates in question and the same were leviable to duty u/s 5(1) of the E.D. Act, 1953.

8. In the premises, the question referred must be answered in the negative and in favour of the revenue.

9. There will be no order as to costs.

Sudhindra Mohan Guha J.

10. I agree.