

(1989) 03 MAD CK 0028

In the Madras High Court

Case No : Tax Case No. 135 of 1979 (Reference No. 85 of 1979)

Controller of Estate Duty

APPELLANT

Vs

Sileshkumar R. Mehta

RESPONDENT

Date of Decision : 14-03-1989

Acts Referred:

Excise Duty Act, 1953 — Section 44, 44(1), 46, 46(1)

Citation : (1990) 181 ITR 10

Hon'ble Judges : S. Nainar Sundaram, J; K.M. Natarajan, J; Bellie, J

Bench : Full Bench

Advocate : Nalini Chidambaram, for the Appellant; K.C. Rajappa, for the Respondent

Judgement

Nainar Sundaram, J.—The order of reference by the Division Bench in this case reads as follows :

The following two questions have been referred to this court u/s 64(1) of the Estate Duty Act, 1953, by the Income Tax Appellate Tribunal for

the opinion of this court :

(a) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the sale proceeds of the house

property credited in the books of the firm is in the nature of a trust and, hence, it does not form part of the assets of the firm ?

(b) Whether, on the facts and in the circumstances of the case and having regard to the provisions of sections 46(1) and 46(2) of the Estate Duty

Act, the Tribunal was justified in excluding the sums of Rs. 2,923 and Rs. 47,077 from the principal value of the estate ?

The second question raises the true scope and ambit of section 46(1)(b) of the Estate Duty Act, 1953. The said provision was the subject-matter

of two decisions of this court in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, and Controller of Estate Duty, Tamil Nadu Vs. S.T.B.

Ameen Khaleeli, . Though the latter decision in Controller of Estate Duty, Tamil Nadu Vs. S.T.B. Ameen Khaleeli, purports to follow the earlier

decision in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, , the latter decision appears to run counter to the view expressed in Mrs.

Ratnakumari Kumbhat Vs. Controller of Estate Duty, as regards the true scope and effect of section 46(1)(b) of the Act. In the decision in Mrs.

Ratnakumari Kumbhat Vs. Controller of Estate Duty, , while dealing with section 46(1)(b), the court has observed that the said provision consists

of two parts, that the first part deals with a case where the consideration for the debt was given by any person who was at any time entitled to any

property derived from the deceased and that the other part deals with a case where the consideration for the debt was given by any person

amongst whose resources there was at any time any property derived from the deceased. While dealing with the scope of the expression ""at any

time"" occurring in clause (b) of section 46(1), the court pointed out that it is immaterial when the promisee became entitled to or amongst whose

resources included any property derived from the deceased and that what was required to render a transaction amenable to this clause was

possession or holding of property derived from the deceased at some time either before or after the principal transaction of loan, the only limitation

being what is contained in the proviso therein, under which any consideration which is in excess of the total value of the property derived by the

creditor from the deceased, would alone escape abatement. The court also observed that any other consideration would, in its opinion, easily

defeat the very object and purpose of the provision. It also gave an illustration of a person easily avoiding payment of estate duty by so arranging

the transaction of loan first and later on transferring his properties to the creditor. Thus, in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate

Duty, , it has been laid down that if the creditor had derived any property from the deceased, at any time either before or after the loan transaction,

the case will fall u/s 46(1)(b) subject to the proviso. In the later decision in Controller of Estate Duty, Tamil Nadu Vs. S.T.B. Ameen Khaleeli, ,

the court, while purporting to follow the decision in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, , has expressed a contrary view.

Dealing with the scope of the words "'at any time'" occurring in section 46(1)(b), the court has observed as follows (at page 692 of 143 ITR) :

"...Ordinarily understood, the expression at any time may mean, however long before and, however long after. An unrestricted meaning if given to

this phrase "at any time" may even refer to the property derived from the deceased by way of inheritance or testamentary succession. It is obvious,

however, that it must only refer to the derivation of property prior to the advance of the debt. This is because at the time at any rate when the

property becomes part of the creditor's resources, there may be some nexus between the resources and the consideration for the debt. But where

the property, irrespective of any distance of time, becomes part of the resources of the creditor of the deceased, that nexus cannot be established

merely because of the subsequent relation between the deceased and the creditor. Apart from this aspect, the expression "resources" itself

indicates a particular fund or feeder or source and it is from that fund that the debt should have been advanced. "Resource" means that which

supplies some deficiency or some want. "Resource" does not merely refer to the source of finance, without any antecedence. This also shows that

there must be a precedence of the property first and the advance of loan to the deceased subsequently."

The above extract will clearly indicate that the latter decision proceeds on the basis that the derivation of property by the creditor prior to the

advancement of the loan to the deceased alone will come within the scope of section 46(1)(b). Thus, there is a direct conflict between the two

decisions as to the scope and ambit of section 46(1)(b) read with the proviso thereto. In view of this conflict on the question which is likely to recur

frequently, we consider that the conflict must be resolved by a Full Bench.

The papers may, therefore, be placed before our Lord, the Chief Justice, for orders as to the posting before a Full Bench.

2. To appreciate the views expressed in the two pronouncements of the Division Benches of this court, referred to in the order of reference, it has

become necessary to extract section 46 of the Estate Duty Act, 1953, hereinafter referred to as the Act :

46. Further limitations. - (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 therefor, 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 one year 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.

3. In Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, , the court pointed out with reference to section 46(1)(b) that it is immaterial,

when the promisee became entitled to or amongst whose resources included any property derived from the deceased and that what was required

to render a transaction amenable to this clause was possession or holding of property derived from the deceased at some time either before or

after the principal transaction of loan, the only limitation being what is contained in the proviso therein under which any consideration which is in

excess of the total value of the property derived, by the creditor from the deceased, until the date of death of the deceased would alone escape

abatement. The later pronouncement in Controller of Estate Duty, Tamil Nadu Vs. S.T.B. Ameen Khaleeli, , though it purports to follow the

pronouncement in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, , made observations indicating that the derivation of property by the

creditor prior to the advancement of the loan to the deceased alone will come within the scope of section 46(1)(b) of the Act. The relevant

observations found in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, run as follows :

In respect of both the categories the words "at any time" are used, thereby showing that it is immaterial when the promisee became entitled to or

amongst whose resources included any property derived from the deceased. Thus, what was required to render a transaction amenable to this

clause was possession or holding of property derived from the deceased at some time either before or after the principal transaction of loan. The

only limitation is that which is provided in the proviso. Under the proviso any consideration which is in excess of the total value of the property

derived, by the creditor from the deceased, until the date of death of the deceased would alone escape abatement. Of course, in considering the

total value of the property derived, the property which itself constituted part of the consideration given shall have to be excluded. This is also

subject to the condition that there is a nexus between the loan transaction and the property derived. This is the irresistible conclusion we have

reached on a plain reading of the section. Any other consideration would, in our opinion, easily defeat the very object and purpose of the

provision. For a person could easily avoid payment of estate duty by so arranging the transaction of loan first and later on transferring his

properties to the creditor. But even under clause (b) what comes for abatement is the consideration paid for the loan. Consideration is the amount

that proceeded from the creditor to the deceased. Abatement is not of the value of the property derived from the deceased but the consideration

paid to the extent it did not exceed the value of the property derived.

4. The observations in *Controller of Estate Duty, Tamil Nadu Vs. S.T.B. Ameen Khaleeli*, , which the Division Bench, while making the order of

reference, in our view, rightly thought as running in conflict with the observations found in *Mrs. Ratnakumari Kumbhat Vs. Controller of Estate*

Duty, , are to the following effect (at page 692 of 143 ITR) :

In other words, the proviso is a proviso not to section 46(1)(a) but only to section 46(1)(b). Thus, the observations of this court in *A.*

Kandaswami Pillai (deceased) (by legal representative) and Ahmed Haji Mohammed Vs. Controller of Estate Duty, , made with reference to the

construction of section 46(1)(a), cannot be applied without any modification to section 46(1)(b) considering that section 45(1)(a) is not in any way

influenced by any proviso, whereas section 46(1)(b) has to reckon with the proviso. Quite apart from this aspect of the drafting and the resultant

structure of section 46(1) of the Act, we may observe that when the Legislature directed that notice must be taken of the fact that the creditor has

some property derived from the deceased as part of his resources, then the wide language of the enacting part of section 46(1)(b) was not

intended to be applied as it is without qualification. This would be seen from the fact that literally understood any and every property which at some

time or other had been derived from the deceased would have the effect of abating the debt to some extent or other. The words in section 46(1)

(b) are "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". Ordinarily understood, the expression "at any time" may mean, however, long before and, however long after. An unrestricted meaning

if given to this phrase "at any time" may even refer to the property derived from the deceased by way of inheritance or testamentary succession. It

is obvious, however, that it must only refer to the derivation of property prior to the advance of the debt. This is because at the time at any rate

when the property becomes part of the creditor's resources, there may be some nexus between the resources and the consideration for the debt.

But where the property, irrespective of any distance of time, becomes part of the resources of the creditor of the deceased, that nexus cannot be

established merely because of the subsequent relation between the deceased

and the creditor. Apart from this aspect, the expression "resources" itself indicates a particular fund or feeder or source and it is from that fund that the debt should have been advanced. "Resource" means that which supplies some deficiency or some wants. Resource does not merely refer to the source of finance, without any antecedence. This also shows that there must be a precedence of the property first and the advance of loan to the deceased subsequently.

5. The observations in *Controller of Estate Duty, Tamil Nadu Vs. S.T.B. Ameen Khaleeli*, , seem to indicate that the derivation of property must be prior to the advance of a debt, and that then alone the nexus could be established and the nexus cannot be established if the relationship between the deceased and the creditor comes in later.

6. Section 44 of the Act, while specifying the deductions to be made, subject to restrictions set out therein, for determining the value of the estate, has provided for deduction of debts. Section 46 of the Act has laid down further limitations by saying that the amount allowable as deduction for a debt u/s 44 should be reduced in proportion to the value of the consideration given for the debt, which was derived directly or indirectly from the deceased, or which was given by a creditor who had acquired property from the deceased for the purpose of facilitating the loan. In both the cases, the deceased is deemed to have provided the loan to himself. In substance, it is the deceased's own money that has taken the shape of a loan to him. The position would not be altered, if the deceased had obtained the loan first, and provided the resources or consideration therefore to the creditor later. This device, the parties many times resort to, to camouflage the real nature of the transaction. The provision is intended to check legal evasion by creation of a non-genuine debt. Keeping the above aspects in mind, if we advert to the language used in section 46, we find that the ultimate criterion for abatement of a debt, is the proportionate value of the consideration given therefor. The consideration given therefore could be either before or after the loan. That is why, in clause (b) the expression ""at any time"" have been significantly used. That cannot be easily lost sight of. This has been rightly kept in mind in *Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty*, , when the learned judges observed that what was required to render a transaction amenable to this clause was

possession or holding of property derived from the deceased at some time either before or after the principal transaction of loan. Of course, it is subject to the condition that the nexus between the loan transaction and the property derived stands established. However, in *Controller of Estate Duty, Tamil Nadu Vs. S.T.B. Ameen Khaleeli*, a restricted meaning has been given to the provision in the passages extracted above, when it is observed, that it must only refer to the derivation of property prior to the advanced of the debt. The observations also indicate that otherwise the nexus cannot be established and there must be precedence of the property first and advance of the loan to the deceased subsequently. We do not find any warrant for putting such a restricted construction on the provision.

7. It may be that the language used in the provision presents some difficulty in appreciating its real scope. With regard to statutes which impose pecuniary burdens on the subject, the court has to look merely at what has been clearly and expressly said. It is not open to the court to bring in the theory of any intendment. There could not be any equity about a tax. There could not be any presumption as to a tax. Nothing should be read in and nothing should be implied. The court has to look fairly and squarely at the language used in the provision. This rule of strict interpretation may not always ensure to the benefit of the subject. But, that shall not alter the duty of the court to tax him. If the subject comes within the letter of the provision, then he must be taxed, however great the hardship may appear to the mind of the court. These are well-accepted propositions, always kept in mind by the court, while interpreting statutes imposing pecuniary burden on the subject. It was observed in *A. Kandaswami Pillai (deceased) (by legal representative) and Ahmed Haji Mohammed Vs. Controller of Estate Duty*, :

We are unable to spell out any further element necessary for the application of section 46(1)(a), in the form of the intention, as contended for. We must confess that, at first sight, we felt some difficulty in appreciating the real scope of section 46(1). This is because, while the policy of the provision is obvious, viz., to avoid evasion of estate duty, the section seems to overstep that mark, and in its abundant caution, appears to do injustice by disallowing even debts not intended to escape tax. But, we can only interpret the statutory provision, having regard to the actual words

it has employed.

8. Accordingly, we approve the pronouncement in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, , with regard to the construction to

be put on section 46(1)(b) of the Act, and any observation or reasoning found in Controller of Estate Duty, Tamil Nadu Vs. S.T.B. Ameen

Khaleeli, , running contrary to the observations found in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, , and to the views expressed

by us as above, stand overruled. We answer this reference as above. Now that we have answered the reference, the matter will have to go before

the Division Bench who will deal with the same on merits, adverting to all the relevant aspects. There will be no order as to costs.