

(1990) 06 MAD CK 0016

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 : 25-06-1990

Acts Referred:

Estate Duty Act, 1953 — Section 44, 46(1), 46(2)

Citation : (1991) 189 ITR 566

Hon'ble Judges : V. Ratnam, J; K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; K.C. Rajappa, for the Respondent

Judgement

Thanikkachalam, J.—In this reference u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), the Tribunal has referred

the following two question for our opinion at the instance of the Revenue :

1. Whether, on the facts and in the circumstances 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 ?

2. 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 sum of Rs. 2,923 and Rs. 47,077 from the principal value of the estate ?

2. The first question pertains to the exclusion of Rs. 17,761 while computing the principal value of the half share of the deceased in the partnership

firm, M/s. Manilal and Sons. The said amount represented the credit balance in the charity account in the books of the partnership firm. The

Assistant Controller came to the conclusion that the credit balance was not a real liability and it should be added while evaluating the deceased's

half share in the profits of the firm. On appeal, the Appellate Controller held that the partnership firm had full control over the amounts till such time

they were disbursed or utilised for charitable purposes and hence the Assistant Controller was justified in including the same while evaluating the

deceased's half share in the profits of the partnership firm, M/s. Manilal and Sons. Aggrieved, the accountable person filed an appeal before the

Tribunal and contended that a property at Purasawalkam was sold on May 13, 1944, for Rs, 71,111 and the profit on the same property was

credited to the charity account even during the lifetime of the father of the accountable person and the amount was being utilised for charitable

purposes and the credit balance in the charity account cannot, therefore, be included, while evaluating the deceased's half share in the partnership

firm, M/s. Manilal and Sons.

3. The Revenue contended that since the deceased had a disposable interest in the funds, the amount has been rightly included in the estate of the

deceased. However, the Tribunal held that when the deceased's father credited the profits of the property sold on May 13, 1944, he did so for a

specific purpose and thereby imposed an obligation on the deceased to utilise it for charitable purposes, and it, therefore, follows that the legal

ownership of the fund vested in the trust and the amount cannot be included in the dutiable estate of the deceased.

4. Before us, learned standing counsel appearing for the Department contended that this was not a real liability and the credit balance in the charity

account in the books of the firm, Manilal and Sons, formed part of the real assets of the firm. Further, learned standing counsel pointed out that the

partnership firm was having control over these amounts till such time they are disbursed or utilised for charitable purposes. Therefore, it was

submitted that these amounts should also be included while ascertaining the principal value of the estate of the deceased. On the other hand,

learned counsel appearing for the accountable person submitted that the credit balance in the firm's books represent the sale proceeds of a

building. According to learned counsel for the accountable person, the father of the accountable person sold a building at Purasawalkam to

Jalukiya Bivi and Aisha Bivi on May 13, 1944, and the profit from the sale of the house was created to a charity account in the books of the

partnership firm and the amount so credited was being utilised for charitable purposes. Therefore, according to learned counsel for the accountable

person, the deceased had no dominion over the said amount. Thus, learned counsel for the accountable person submitted that the Tribunal was

correct in deleting the inclusion of the sum of Rs. 17,761 while ascertaining the principal value of the estate of the deceased.

5. We have heard the rival submissions. The fact remains that the deceased sold his house at Purasawalkam on May 13, 1944 and the profit

earned in the sale of the property was credited separately in the charity account in the books of the partnership firm. The amount so credited was

being utilised for charitable purposes. When the father of the accountable person credited the profits earned from the property sold on May 13,

1944, he did so for a specific purpose and thereby imposed an obligation on himself to utilise it for charitable purposes. When once the amount

was credited to a charity account, the legal ownership of the fund vested in the trust. While considering this aspect, the Supreme Court in the case

of Commissioner of Income Tax, West Bengal Vs. Tollygunge Club Ltd., , held that (headnote) :

It is settled law that a trust may be created by any language sufficient to show the intention and no technical words are necessary and it may even

be created by the use of words which are primarily words of condition. The only requisites which must be satisfied are that there should be

"purposes independent of the donee to which the subject-matter of the gift is required to be applied and an obligation on the donee to satisfy those

purposes".

6. Under these circumstances, considering the facts appearing on this aspect in the light of the judgment of the Supreme Court cited supra, the

Tribunal held that the sale proceeds credited in the books of account of the firm, under the head ""Charitable purposes"", should not be included

while evaluating the estate of the deceased. Inasmuch as the Tribunal came to the abovesaid conclusion on an appraisal of facts appearing on this

point in the light of the judicial pronouncement of the Supreme Court cited supra, we are of the opinion that there is no infirmity in the order passed

by the Tribunal on this aspect.

7. The second question in this reference relates to the exclusion of Rs. 2,923 and Rs. 47,077 under sections 46(1)(b) and 46(2), respectively, of

the Estate Duty Act. The deceased had taken a loan of Rs. 60,500 from his son, Samirkumar R Metha. He had also gifted a sum of Rs. 50,000 on

October 5, 1967, to his son. The Assistant Controller came to the conclusion that the liability to Samirkumar R Metha at the time of death of the

deceased amounting to Rs. 2,923 should be included in the estate of the deceased u/s 46(1)(b). The deceased also repaid a sum of Rs. 77,431

towards the amount borrowed from his son within two years of his death. The Assistant Controller came to the conclusion that the repayments will

be covered by section 46(2) and have to be assessed as property passing on the death of the deceased. The amount assessable u/s 46(1)(b) and

46(2) was, however, restricted to the sum gifted, viz., Rs. 50,000. On appeal, these conclusions of the Assistant Controller were confirmed by the

Appellate Controller on the same reasoning as given by the Assistant Controller.

8. Aggrieved, the accountable person filed an appeal before the Appellate Tribunal. The Tribunal, following the decision of this High Court in the

case of Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, , directed the Assistant Controller to exclude the sum of Rs. 50,000 while

ascertaining the principal value of the estate of the deceased.

9. Learned standing counsel for the Department before us contended that the deceased owed money to his son at the time of his death, and that

the money gifted by the deceased was included in the resources of the son, and, therefore, there is interconnection between the gift and the loan

and, in such circumstances, the provisions of section 46(1)(b) are clearly attracted. Learned standing counsel further submitted that the fact that the

father obtained a loan from the son earlier than the fact that the father obtained a loan from the son earlier than the gift given to his son will not in

any way prevent the applicability of the provisions of section 46(1)(b) of the Act. Learned standing counsel, relying on the decision in the case of

A. Kandaswami Pillai (deceased) (by legal representative) and Ahmed Haji Mohammed Vs. Controller of Estate Duty, , contended that the policy

behind the provisions is to counteract or render nugatory any attempt at avoidance or evasion of estate duty in this manner. Learned standing

counsel further submitted that the deceased had borrowed monies from his son to whom he had gifted Rs, 50,000 on October 5, 1967, and hence

the provisions of section 46(1)(b) are attracted in respect of the liability outstanding at the time of the death. Learned standing counsel pointed out

that the deceased had repaid the borrowed amount to the extent of Rs. 77,431 during the period July 22, 1970 to July 21, 1972, i.e., within two

years of death and, therefore, the repayment will be covered by section 46(2) and will have to be assessed as passing on his death. Finally, learned

standing counsel submitted that in view of the ratio adumbrated in the decision of the Full Bench of this court in the case of Controller of Estate

Duty Vs. Sileshkumar R. Mehta, , the words "'at any time'" occurring in section 46(1)(b) would mean at any time either before or after the loan was

taken by the deceased and in such a case, the nexus between the gift made and the loan taken need not be established by the Department. For all

these reasons, learned standing counsel submitted that the Tribunal was not correct in deleting the inclusion of Rs. 50,000 while ascertaining the

principal value of the estate of the deceased.

10. On the other hand, learned counsel appearing for the accountable person submitted that the loan was taken by the deceased from his son on

July 31, 1967, whereas the gift was made by the deceased to his son on October 5, 1967, and the sum of Rs. 2,942-82 being the closing balance

as on July 22, 1972, represented interest on the loan advanced to the deceased and this cannot be included in the estate of the deceased in view of

the decision of this court in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, . According to learned counsel, in order to apply the

provisions of section 46(1)(b), the property which constituted the consideration should have been in existence on the date when the debt was

incurred and hence further interest payable on the loan could not have constituted the consideration and hence interest paid on the loan would not

be covered by the provisions of section 46(1) of the Act. Learned counsel submitted that the Tribunal was correct in directing the Assistant

Controller to exclude the interest payment of Rs. 2,922 from the principal value of the estate.

11. Learned counsel further submitted that the loan taken by the deceased from his son preceded the gift made by the deceased to his son.

According to learned counsel since the Department failed to establish the nexus between the loan taken by the deceased and the gift made by the deceased to his son, the repayment of loan by the deceased is not liable to abatement u/s 46(2) of the Act. In fact, according to learned counsel, it is not established in this case that the loan taken by the deceased represented the amount gifted by him to his son. Further, learned counsel submitted that if it is established that the gift made by the deceased would not have facilitated the son to advance the loan to his father, then also the provisions of section 46(1)(b) cannot be made applicable. Learned counsel contended that the decision reported in Controller of Estate Duty, Tamil Nadu Vs. S.T.B. Ameen Khaleeli, was overruled by the Full Bench of this court in Controller of Estate Duty Vs. Sileshkumar R. Mehta, , only to a limited extent of interpreting the meaning of the words occurring in section 46(1)(b), viz., ""at any time"" and, therefore, on other points, the decision rendered by this court in Controller of Estate Duty, Tamil Nadu Vs. S.T.B. Ameen Khaleeli, still remains undisturbed. Learned counsel further submitted that even according to the Full Bench decision in Controller of Estate Duty Vs. Sileshkumar R. Mehta, , in order to apply the provisions of section 46(1)(b), the Department should establish the nexus between the loan taken and gift made by the deceased. In this case, according to learned counsel, no such nexus was established by the Department. It is, therefore, pleaded that the Tribunal was correct in holding that the sum of Rs. 50,000 cannot be included while ascertaining the principal value of the estate of the deceased.

12. In so far as the sum of Rs. 2,922 is concerned, it is the closing balance as on July 22, 1972 and it represented the interest on the loan taking by the deceased. The question is whether any part of the interest paid on the loan would be covered by the provisions of section 46(1)(b) of the Act.

13. This amount cannot be included in the estate of the deceased in view of the decision of this court in Mrs. Ratnakumari Kumbhat Vs. Controller

of Estate Duty, . This court, in the abovesaid decision, in similar circumstances, held that ""though the interest payable by the deceased and credited

to his son's account would also be the property derived from the deceased within the meaning of section 46(1) that will not be sufficient to hold

that the entire principal and interest due from the deceased are to be disallowed u/s 46(1). In order to attract section 46(1)(a), the property which

constituted the consideration should have been in existence on the date when the debt was incurred and hence the future interest payable on the loan cannot have constituted the consideration; accordingly, the consideration for the debt consisted only of the principal sum and not the future interest paid by the deceased, in view of the fact that on the date when the loan was given to the deceased, there were no accretions to the principal amount. Therefore, no part of the interest outstanding on the date of the death would be converted u/s 46(1) of the Act. The interest on the date of death which remains as an outstanding would be allowed u/s 44 of the Act". Therefore, in view of the abovesaid ratio laid down by this court in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, , we are of the opinion that the Tribunal's order in directing the Assistant

Controller of Estate Duty to exclude the sum of Rs. 2,922-82 while determining the principal value of the estate of the deceased is in order.

14. So far as the sum of Rs. 47,077 is concerned, this amount was included u/s 46(2) of the Act. The deceased had taken a loan of Rs. 60,500

from his son, Samirkumar R Mehta, on July 31, 1967, and the deceased gifted a sum of Rs. 50,000 to his son on October 5, 1967. During his

lifetime, the deceased repaid a sum of Rs. 77,431 within two years of his death. The Department came to the conclusion that this payment will be

covered by section 46(2) and has to be assessed as property passing on the death of the deceased. However, The amounts assessable under

sections 46(1)(b) and 46(2) were restricted to the sum gifted by applying the proviso to section 46(1)(b).

15. According to section 44 of the Act, in determining the value of an estate for the purpose of estate duty, allowance shall be made for debts and

encumbrances, but an allowance shall not be made for debts incurred by the deceased or encumbrances created by a disposition made by the

deceased, unless subject to the provisions of section 27, Such debts or encumbrances were incurred or created bona fide for full consideration in

money or moneys" worth wholly for the deceased's own use and benefit and take effect out of his interest, and any debt or encumbrance, for

which an allowance is made, shall be deducted from the value of the property liable thereto. Section 46 imposes a further limitation on the

deductions allowable u/s 44 and is aimed at preventing avoidance of duty by disposing of a property and borrowing it back. Section 46 provides

that the amount allowed as a 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 these cases, the deceased would be deemed to have provided the loan to himself.

16. While considering the meaning of the words, viz., "at any time", contained in section 46(1)(b) of the Act, this court in the case of Mrs.

Ratnakumari Kumbhat Vs. Controller of Estate Duty, held as under :

In respect of both the categories the words "at any time" are used, thereby showing that it is immaterial when the promise 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 that 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

provisions. 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.

17. However, while considering the meaning of the same words, viz., "at any time", occurring in section 46(1)(b) of the Act, this court in Controller

of Estate Duty, Tamil Nadu Vs. S.T.B. Ameen Khaleeli, held as under (headnote) :

Though ordinarily understood the expression "at any time", used in the words "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" in section 46(1)(b), may mean however long before and however long after, if an unrestricted meaning is given to the words "at any time", it may even refer to property derived from the deceased by way of inheritance or testamentary succession. Hence, it must only refer to derivation of property prior to the advance of the debt or loan. This is because at the time when the property becomes part of the creditor's resources there must be some nexus between the resources and the consideration for the debt. The expression "resources" itself indicates a particular fund or source and it is from that fund that the debt should have been advanced. This also shows that there must be a precedence of the property first and the advance of the loan to the deceased subsequently and resource does not merely refer to the source of finance without any antecedence.

18. Thus, there were two difference views expressed by this court in understanding the meaning of the words "at any time" occurring in section 46(1)(b) of the Act as can be seen from the abovesaid two decisions of this court.

19. It is significant to note that the Full Bench of this court in Controller of Estate Duty Vs. Sileshkumar R. Mehta, , while resolving the conflict that arose as aforesaid, held that (at p. 16) :

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 of consideration, therefor, to the creditor later. This device the parties many at 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 advancement 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.

20. Ultimately, the Full Bench came to the following conclusion (at p. 18) :

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 the contention put forward by learned counsel appearing for the Department was that inasmuch as the Full Bench overruled the decision of

this court rendered in Controller of Estate Duty, Tamil Nadu Vs. S.T.B. Ameen Khaleeli, , there is no obligation imposed on the Department to

establish the nexus between the amount borrowed and the gift made by the

deceased. Learned standing counsel further pointed out that the provisions of section 46(1)(b) would be applicable even in cases, where the loan advanced by the son preceded the gift made by the father, in view of the above cited decision of the Full Bench of this court. But, according to learned counsel for the accountable person, in any event, it is for the Department to establish the nexus between the amount borrowed and the gift made by the deceased, in order to apply the provision of section 46(1)(b) of the Act. Learned counsel submitted that in the present case the Department failed to establish such nexus between the amount borrowed and the gift made by the deceased.

It remains to be seen that the Full Bench of this court in *Controller of Estate Duty Vs. Sileshkumar R. Mehta*, , while approving the decision in

Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, categorically held ""that any observation or reasoning found in *Controller of Estate Duty*,

Tamil Nadu Vs. S.T.B. Ameen Khaleeli, running contrary to the observation found in *Mrs. Ratnakumari Kumbhat Vs. Controller of*

Estate Duty, and the views expressed in this decision shall stand overruled.

21. It is further pertinent to note that the Full Bench of this court in *Controller of Estate Duty Vs. Sileshkumar R. Mehta*, , clearly pointed out that,

even according to the decision in *Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty*, , a transaction is amenable to section 46(1)(b) only if

the Department can establish a nexus between the amount borrowed and the gift made by the deceased. Thus a plain reading of the provisions

contained in section 46(1)(b) of the Act, in the light of the Full Bench decision of this court in *Controller of Estate Duty Vs. Sileshkumar R.*

Mehta, and the Division Bench decision of this court in *Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty*, would clearly show that in

order to apply the provisions contained in section 46(1)(b) for the Act, the Department should establish that there is a nexus between the loan

transactions and the property derived from the deceased. But, in the present case, nexus was not established by the Department. Further, in the

present case, the Department failed to establish that the loan taken by the deceased represented the amounts gifted by him to his son. Therefore, it

is not liable to abatement u/s 46(2) of the Estate Duty Act. Unless the Department establishes that the deceased made the gift to his son only with a

view to facilitate the giving of the loan to the deceased, section 46(1) cannot be made applicable to the debts and hence the sum of Rs. 47,077

cannot be taken as property passing on the death of the deceased u/s 46(2) of the Act.

22. Thus, considering the facts appearing on this aspect in the light of the judicial pronouncements cited supra, we are of the opinion that there is no infirmity in the order passed by the Tribunal on this point. In that view of the matter, we answer both the questions referred to us in the affirmative and against the Department. The accountable person is entitled to his costs. Counsel's fee is fixed at Rs. 500.