(1996) 03 KL CK 0041

In the High Court Of Kerala

Case No : Income-tax Reference No. 56 of 1991

Controller of Estate Duty — APPELLANT

Vs

Smt. Sarala Nair and Others — RESPONDENT

Date of Decision : 19-03-1996

Acts Referred:
Estate Duty Act, 1953 — Section 6

Citation : (1997) 223 ITR 313

Hon'ble Judges : V.V. Kamat, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; P.R. Raman and K. Anand for respondent No. 3 and B.S. Krishnan, for the Respondent

Judgement

V.V. Kamat, J. 1. In O.P. No. 6878 of 1981 by an order dated February 27, 1985, this court directed reference of the following question and it has come before us for its answer ;

" Whether, on the facts and in the circumstances of the case and in view of Section 10 of the Estate Duty Act, 1953, the Tribunal is right in law and in deleting the inclusion of Rs. 85,000 in the assets of the deceased ?"

2. The Tribunal has deleted the inclusion of Rs. 85,000 in the estate of the deceased.

3. There was a cashew factory building at Calicut which was valued at Rs. 85,000 and from its inception it stood in the name of the wife of the deceased which became the subject-matter of the proceedings under the Estate Duty Act as a result of the death on January 11, 1973, of her husband.

4. Initially, it was included in the estate duty return by the wife accountable person. The reason was that the properties stood in her name from its inception.

5. With regard to this aspect, the Assistant Controller of Estate Duty by the order (annexure "A") found that as far as the deceased is concerned all along in the

wealth-tax assessments the value of the property in question was shown in his return. The property was purchased in 1964 in the name of the wife in regard to which her husband--the deceased, had no right in the property. The trial authority, as stated above, rejected the contention and thus the property at its value at Rs. 85,000 was added in the taxable assets of the deceased.

6. There was an appeal to the Appellate Controller of Estate Duty. By an order dated February 20, 1979 (annexure "B"), the appellate authority found that factually the cashew factory was purchased for an amount of Rs. 20,000 on July 14, 1964, by the deceased in the name of his wife. This was also leased by the deceased and the lease rent was also being assessed in the hands of the deceased in the Income Tax assessment. It was found as a fact that the property remained throughout the property of the deceased who was enjoying the usufruct or income thereof.

7. In yet a further appeal before the Income Tax Appellate Tribunal, Cochin Bench, the question was considered threadbare, particularly in paragraph 8 of the judgment. The Tribunal considered that the property stood in the name of the wife of the deceased throughout. The consideration for the purchase was provided by the deceased during his life time. The Tribunal also considered that the income was being included in the Income Tax assessment of the deceased during the time he was alive right from the purchase of the property and, therefore, there was no dispute that even in the wealth-tax assessment the property was included.

8. It was urged before the Tribunal that such inclusion not only of the income of the property and the value thereof in the assessment proceedings under the Income Tax Act and the Wealth-tax Act was only by operation of Section 64 of the Income Tax Act and not because the deceased had any preferential interest in such property. It was urged that the wife--the accountable person, was never considered as a benamidar of the deceased. It was emphasised that the deceased during his life time had not at any time declared that he had any kind of beneficial interest in the property. As a consequence it was urged that by reason of the position that right from the inception of the purchase of the property in 1964, the property . was never a part of the estate of the deceased.

9. It was urged under the above situation that this is not a position of benami transaction where the real ownership vested in the deceased and the accountable person--his wife could only be understood as a benamidar.

10. The Tribunal considered the position of law. The decision of the Andhra Pradesh High Court in BIBI GURDARSHAN KAUR (DECEASED) (THROUGH LEGAL HEIRS) Vs. COMMISSIONER OF Income Tax, NEW DELHI., ruled that in a situation where there is no material of benami interest, the property cannot be understood to be the property of the deceased subject to the provisions of the Estate Duty Act. The Tribunal further considered the situation that this principle is followed by other courts such as Aloke Mitra Vs. Controller of Estate Duty, ;

Controller of Estate Duty Vs. M.L. Manchanda, and B.K. Shantiraj Vs. Controller of Estate Duty, Mysore, .

11. In a case where there was a specific factual finding of fact that the property was purchased as benami and continued thereafter in the sam''eN characteristic, such a situation would lead to a conclusion that the property passed on the death of the deceased u/s 6 of the Estate Duty Act as decided by the Madras High Court in Controller of Estate Duty Vs. Smt. S.M. Muthukaruppi Achi, was held not to be applicable, the factual situation being quite contrary. As a lesult the inclusion of the value of the property at a sum of Rs. 85,000 was deleted. Thus, the position of law gets neatly clarified. If the factual situation spells out the benami character of the properties of the deceased at the hands of the person accountable then and then only such property could be said to have passed on the death of the deceased u/s 6 of the Estate Duty Act. If the factual situation is that the property does not display benami character in any manner and shows that from the inception the property is purchased in the name of the wife and continues to have the same character thereafter then the property cannot be understood to pass as the property of the deceased as per the provisions of Section 6 of the Estate Duty Act. It must be clarified that in the judgment of the Tribunal there is a wrong mention of the section. It is not Section 6 but it is Section 10. The situation is crystal clear if both the sections are seen in the context. That is the reason why we find in paragraph 6 of the statement of case, a statement that the applicability of Section 10 was neither taken up by the Department as such now considered by the Tribunal. There is no doubt that Section 6 appearing is a clear mistake. It has to be Section 10. This is how in the application for a reference and even the question directed to be referred it is Section 10, that is referred to. This Section 10 finds a place of mention. Be that as it may, it does not change the situation any way.

12. The factual situation shows that there is no finding as regards the benami character of the property. The Tribunal has already observed that there is no evidence for such a position. If that is so the Tribunal is right in law in deleting the value of Rs. 85,000 of the property.

13. For the above reasons, the question is answered in the affirmative, against the Revenue and in favour of the accountable person.

14. A copy of the judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin Bench, for passing consequential orders.