
(2001) 03 DEL CK 0143

In the Delhi High Court

Case No : Estate Duty Reference No. 1 of 1981 5 March 2001

CONTROLLER OF ESTATE DUTY

APPELLANT

Vs

SMT. VEERAN WALI

RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Citation : (2001) 250 ITR 71

Hon'ble Judges : Arijit Pasayat, C.J.;D.K. Jain, J

Bench : Full Bench

Advocate : Sanjeev Khanna and Ajay Jha, for the Revenue None appeared, for the assessee, for the Appellant;

Judgement

Arijit Pasayat, C.J.

At the instance of the revenue , the following question has been referred for the opinion of this court u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), by the Income Tax Appellate Tribunal, Delhi Bench "D" (hereinafter referred to as "the Tribunal") :

"Whether, on the facts and circumstances of the case, the Tribunal was justified in law in holding that neither the site nor super-structures ingestion formed part of the property that passed on the death of Hari Ram?"

2. The background facts necessary for disposal of the reference are as follows. Hari Ram (hereinafter referred to as "the deceased") died on 25-2-1976, leaving behind his wife, Smt. Veeran Wali (hereinafter referred to as "the accountable person"). By order dated 30-12-1978, the Assistant Controller of Estate Duty (hereinafter referred to as "the Assistant Controller"), assessed the principal value of the property that passed on the death of the deceased to the accountable person at Rs. 2,33,104. The said figure included Rs. 1,67,240 as being the value of the house situated at No. 42/75, Punjabi Bagh, Delhi. The site of the house was acquired by the accountable person as per conveyance deed dated 23-3-1973, as member of a co-operative society and a building had been

constructed thereon. The Assistant Controller held that the funds for investment in the purchase of plot as well as construction thereon were provided by the deceased who was to be taken as the real owner of the house. Accordingly, it was held that the house passed on the death of the deceased to the accountable person. The matter was carried in appeal before the Appellate Controller of Estate Duty (hereinafter referred to as the "Appellate Controller"), who held that the value of the house was to be excluded from the computation of the principal value. According to him, the house did not pass on to the accountable person on the death of the deceased. He held that there was no material to hold that the legal title to the property ingestion in the name of the accountable person was sham or nominal. A Full Bench decision of the Allahabad High Court in O.S. Chawla Vs. Assistant Controller of Estate Duty, , was found to be distinguishable on the facts and he relied on certain other decisions to support his conclusions. The matter was carried in appeal before the Tribunal by the revenue . It was noticed by the Tribunal that though the funds were provided by the deceased and the income was being taxed in the hands of the deceased, that was really not material and it was a case where section 6 of the Act was inapplicable. The decisions to which reference was made by the Appellate Controller were held to be applicable to the facts of the case. The said decisions are BIBI GURDARSHAN KAUR (DECEASED) (THROUGH LEGAL HEIRS) Vs. COMMISSIONER OF Income Tax, NEW DELHI., ; SMT. DENABAI BOMAN SHAH Vs. CONTROLLER OF ESTATE DUTY, A.P., Alope Mitra Vs. Controller of Estate Duty, ; Controller of Estate Duty Vs. M.L. Manchanda, and Controller of Estate Duty Vs. T.N. Kochhar, On being moved for a reference, the question as set out above has been referred for the opinion of this court.

3. We have heard learned counsel for the revenue. There is no appearance on behalf of the accountable person in spite of notice. Learned counsel for the revenue submitted that in the case of a benami transaction, the real owner has got the title though the property is in the name of the benamidar. The real owner can deal with the property without reference to the latter. The above being the position, it was submitted that the Tribunals view is indefensible.

Sections 5 and 6 of the Act have relevance so far as the case is concerned. They read as follows :

"5. Levy of estate duty. (1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as herein after provided of all property, settled or not settled, including agricultural land situate in the territories which immediately before the 1-11-1956, were comprised in the states specified in the First Schedule to this Act, and in the Union Territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry, which passes on the death of such person, a duty called estate duty at the rates fixed in accordance with section 35.

(2) The Central Government may, by notification in the Official Gazette, add the

names of any other state to the First Schedule in respect whereof resolutions have been passed by the legislatures of those states adopting this Act under clause (1) of article 252 of the Constitution in respect of estate duty on agricultural lands situate in those states, and on the issue of any such notification the states so added shall be deemed to be states specified in the First Schedule within the meaning of sub-section (1)

5B, Act to cease to apply to estate duty in respect of agricultural land. Notwithstanding anything contained in section 5, this Act shall cease to apply to the levy of estate duty in respect of agricultural land.

5C. Discontinuance of levy of estate duty. Not with standing anything contained in section 5, this Act shall cease to apply to the levy of estate duty in respect of any property (other than agricultural land) which passes on the death of any person on or after the 16-3-1985.

6. Property within disposing capacity. Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death."

As has been observed by the Apex Court in *Controller of Estate Duty, Lucknow Vs. Alope Mitra*, , the Act imposes a tax upon the principal value of all properties, settled or not settled, passing on death or deemed to pass on death. The charging section is sub-section (1) of section 5 of the Act which provides that in the case of a person dying after the commencement of the Act, estate duty is livable on the capital value of all property, settled or not settled which passes on death, at the prescribed rates. Sections 6 to 15 relate to levy of estate duty on properties which by operation of the Act are deemed to pass on death. The expression "property passing on death" is defined in section 2(16) to include property passing immediately on death. As was observed by the Apex Court in *Controller of Estate Duty, Lucknow Vs. Alope Mitra*, , the word "passes" may be taken as meaning "changing hands on death" regardless of its destination. By no rule of construction operation of section 5(1) of the Act can be curtailed by the operation of section 6. In other words, it is in addition to or supplemental of the provisions of sub-section (1) of section 5, which is the charging section. A benamidar has no interest at all in the property standing in his name. Where the transaction is once made out to be benami, the court must give effect to the real and not to the nominal title subject to certain exceptions. A benami transaction is one where one buys property in the name of another or gratuitously transfers his property to another, without indicating an intention to benefit the other. The benamidar, Therefore, has no beneficial interest in the property or business that stands in his name ; he represents in fact the real owner and so far as their relative legal position is concerned, he is a mere trustee for him. In other words, a benami purchase or conveyance leads to a resulting trust in India. The general rule and principle of the Indian law as to resulting trusts differs but little if at all, from the general rule of English Law upon the same subject. The liability to pay estate duty u/s 5(1) of the Act arises upon the death of the real owner and not of the benamidar who is merely an ostensible owner. The test lies in whether upon

the death of the benamidar, there would be incidence of liability to pay estate duty.

4. As the factual position as highlighted above would go to show, the real ownership of the property was vested in the deceased who was entitled to deal with the same as if it were his own and the accountable person held it in trust u/s 82 of the Indian Trusts Act, 1882 (hereinafter referred to as "the Trusts Act"), for the benefit of the deceased. The benamidar subject to the equities flowing from section 41 of the Transfer of Property Act, 1882 (hereinafter referred to as "the TP Act"), could not deal with the property in any way.

The inevitable conclusion is that the estate belonged to the deceased who possessed the same and u/s 5(1) of the Act the value thereof was includible in the principal value of the estate of the deceased on his death. It is to be noted that in view of the decision in Controller of Estate Duty, Lucknow Vs. Alope Mitra, the decisions referred to by the Appellate Controller which were also noted by the Tribunal are impliedly overruled.

In fact the decision in Alope Mitra Vs. Controller of Estate Duty, , on which the Appellate Controller and the Tribunal relied was the subject-matter of challenge in the aforesaid case and has been overruled.

The answer to the question referred, Therefore, is in the negative, in favor of the revenue and against the accountable person.

The reference stands disposed of.