
(1986) 02 MAD CK 0013

In the Madras High Court

Case No : Tax Case No. 1514 of 1977 (Reference No. 1059 of 1977)

Controller of Estate Duty

APPELLANT

Vs

Susheela Mariappan

RESPONDENT

Date of Decision : 11-02-1986

Acts Referred:

Estate Duty Act, 1953 — Section 10, 44A, 46, 46(1)

Citation : (1987) 164 ITR 313

Hon'ble Judges : Venkataswami, J; M.N. Chandurkar, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; K.C. Rajappa, for the Respondent

Judgement

M.N. Chandurkar, C.J.—One V. P. K. Kayarohanam Pillai, hereinafter called the deceased, who died on June 27, 1970, had made several

gifts and settlements in favour of his daughter, his son-in-law and grandsons by the settlement deeds executed between May 2, 1953, and

November, 1959, in respect of agricultural lands. The son-in-law was in service in the State Bank of India and was liable to be transferred from

place to place. The property was managed by the deceased himself and the income from these lands was credited in his books to the account of

the donees. All the expenditure in connection with the earning of such income was also debited to the same account. The Assistant Controller in the

proceedings for assessment to estate duty took the view that the entire income of the gifted property had come into the possession of the deceased

and was used by him for his business notwithstanding the fact that separate accounts of the donees have been maintained in the books in respect of

such amounts. He, therefore, took the view that the donees could not be said to have assumed possession and enjoyment of the gifted property to

the entire exclusion of the deceased and the deceased could not be said to have been entirely excluded from the possession and enjoyment of the

property. He, therefore, included the value of the settled properties in the value of the estate of the deceased. By way of abundant caution, it

appears that the Assistant Controller also invoked the provision of section 46 of the Estate Duty Act. The accountable person had claimed a

deduction of Rs. 13,634 due to the son-in-law and Rs. 40,511 due to the daughter out of the monies credited to their accounts by the deceased.

The Assistant Controller held that these amounts were liable to abatement u/s 46(1)(b) of the Estate Duty Act and he held that a sum of Rs.

90,338 could be covered u/s 46(1)(b) and section 46(2) of the Estate Duty Act.

2. The accountable person took the matter in appeal to the Appellate Controller of Estate Duty. The Appellate Controller took the view that the

possession of the deceased was not attributable to any reservations in the deeds of settlement and was not referable to the gift. He found that the

son-in-law had to be at different places and the assessee had looked after the lands only on behalf of the donees and the deceased did not obtain

any benefit out of the gift as a matter of right and he acted only as an agent. He also took the view that section 46 of the Estate Duty Act was not

applicable.

3. The Revenue filed an appeal to the Tribunal. The Tribunal confirmed the finding of the Appellate Controller that the settlor had not reserved any

right under the settlement nor did he derive any benefit out of the gifted property and that since there was no competent person to look after the

lands on behalf of the donees, the deceased was looking after them on their behalf. The Tribunal thus confirmed the finding of the Appellate

Controller as already stated. With regard to section 46 of the Estate Duty Act, the Tribunal took the view that the donor had not made any

reservations in the settlements and he had derived no benefit of whatsoever out of the income or the corpus of the gifted properties. The

indebtedness was found to have occurred purely by force of the circumstances, namely, that the son-in-law was posted in different places away

from the gifted properties. The Tribunal took the view that merely because the monies came into the possession of the deceased as an agent, it

could not be said that there was any nexus between the disposition originally

made and the debts which were outstanding on the date of death. The appeal filed by the Revenue thus came to be dismissed. Aggrieved by the order of the Tribunal, at the instance of the Revenue, the following two questions have been referred to this court :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of section 10 are not applicable

for including the value of the properties gifted by the deceased in the principal value of the estate of the deceased ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of section 46 could not be

applied to the case of the deceased and that no abatement should be made in respect of the debt payable by the deceased to the donees ?

3. Learned counsel for the Revenue has fairly not disputed that on the finding recorded by the Tribunal that the possession and cultivation of the

gifted properties were purely in the capacity of an agent, the provisions of section 10 could not be invoked by the Revenue in the instant case. It is

obvious that the gifts were absolute and merely because the donees could not look after the cultivation personally, and the donor cultivated the land

on behalf of the donees, a conclusion could not be drawn that the donor had reserved any interest or that as a matter of right he was entitled to

enjoy the properties which were already gifted by him. In view of this, the first question has to be answered in the affirmative and in favour of the

accountable person. In addition, we may point out that question No. 1 is also covered by the decision of this court in *Controller of Estate Duty Vs.*

Estate of Late V. Shyamala Anni, . That was also a case in which the deceased executed settlement deeds gifting properties to various relations.

The Tribunal had found that the donees had assumed possession of the gifted lands in pursuance of the settlement deeds and there was no

evidence to show that the deceased had the benefit of the income derived from the gifted properties. The Tribunal had taken the view that the fact

that the donees had allowed the income from the gifted properties to lie with the deceased cannot be said to be a benefit in the properties gifted or

even referable to the properties gifted. In reference, this court held that if section 10 of the Estate Duty Act had to be invoked, there must be some

evidence, circumstantial or otherwise, that there has been enjoyment of the

gifted property by the deceased and a joint account in which the monies of the donees are accounted or maintenance of a common account book was not enough to establish enjoyment. Section 10 of the Act, according to this court, would require some enjoyment and the enjoyment will be only physical and not notional or potential.

4. In so far as the second question is concerned, it is difficult to see how the Revenue can invoke section 46(2) of the Estate Duty Act at all.

Section 46 provides for an abatement of allowance which was permissible u/s 44A of the Act. Before section 46(1) of the Act is invoked, it has to

be established that an allowance could be made u/s 44 for a debt incurred by the deceased as mentioned in clause (a) of that section. The pre-

condition for invoking section 46(1) of the Act, therefore, is that the subject-matter of the abatement must first be established as an allowance

which is permissible u/s 44(a) of the Estate Duty Act. The relevant part of section 44 of the Act reads as follows :

In determining the value of an estate for the purpose of estate duty, allowance shall be made for funeral expenses (not exceeding rupees one

thousand) and for debts and incumbrances; but an allowance shall not be made -

(a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless, subject to the provisions of

section 27, such debts or incumbrances were incurred or created bona fide for full consideration in money or money's worth wholly for the

deceased's own use and benefit and take effect out of his interest.

5. Other clauses of section 44 are not material for our purpose. In so far as the relevant part of section 44 of the Act is concerned, it is in two

parts. In the substantive part, section 44 provides for an allowance in respect of funeral expenses and for debts and incumbrances. Further, there

are certain exceptions which are specified in clauses (a) and (d) of section 44 of the Act. An allowance can be made u/s 44 as provided in clause

(a) for debts incurred by the deceased or incumbrances created bona fide for full consideration in money or money's worth wholly for the

deceased's own use and benefit and they take effect out of his interest. A bare reading of clause (a) of section 44 of the Act, therefore, shows that

debts contemplated by clause(a) have to be incurred bona fide for full consideration. In other words, section 44(a) of the Act contemplates a

transaction under which the deceased person has incurred bona fide a debt for which there must be full consideration either in terms of money or

money's worth; in addition, this debt must be wholly for the deceased's own use. The present is a case which can never fall within the terms of

clause (a) of section 44 of the Act. Firstly, though under law, the liability of the deceased to his son-in-law, the daughter and the grandsons, who

are the donees, amounts to a debt, the genesis of the debt is not a transaction of loan which has been incurred by the deceased. The genesis is that

the deceased was in the capacity of an agent liable to account for the management of the gifted properties and in the course of this management, he

had earned income for and on behalf of the donees. This amount was outstanding against him to the credit of the donees and that is how the liability

has arisen. The amount outstanding in the accounts of the donees could not be for the use of the donor himself. The basic requirement of clause (a)

of section 44 of the Act is, therefore, not satisfied. There is thus no occasion at all for invoking the provisions of section 46 of the Estate Duty Act.

The Tribunal is, therefore, right in taking the view that section 46 could not be invoked by the Revenue. Accordingly, question No. 2 has to be

answered in the affirmative and in favour of the accountable person.

6. The two questions referred to this Court are answered as follows :

Question No. 1 : In the affirmative and in favour of the accountable person; and

Question No. 2 : In the affirmative and in favour of the accountable person.

7. The Revenue to pay the costs of this reference. Counsel's fee Rs. 500.