**(1986) 02 MAD CK 0018**

**In the Madras High Court**

**Case No :** Tax Case No. 1514 of 1977

Controller of Estate Duty APPELLANT

Vs

V.P.K. Thirupurasundari Ammal and Another RESPONDENT

**Date of Decision :** 11-02-1986

**Acts Referred:**
Estate Duty Act, 1953 — Section 44, 46(1)

**Citation :** (1986) 02 MAD CK 0018

**Hon'ble Judges :** M.N. Chandurkar, C.J;Venkataswami, 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 27-6-1970, had made several

gifts and settlements in favour of his daughter, his son-in-law and grandsons by settlement deeds executed between 2-5-1953 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 were credited in his books to the account of the doness. 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 fact that separate accounts of the doness have been maintained in the books in respect of such

amounts. He, therefore, took the view that the doness 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 s. 46 of the ED Act. The accountable person had claimed a deduction 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 under s. 46(1)(b) of the ED Act and he held that a sum of Rs. 90,338 could be

covered under s. 46(1)(b) and s. 46(2) of the ED Act.

2. The accountable person took the matter on 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 doness 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 s. 46 of the ED Act was not applicable.

3. The Revenue took 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 doness, 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 s. 46 of the ED Act, the Tribunal took the view that the donor had not made any reservations in the

settlements and he had derived no benefit whatsoever out of the income or the corpus of the gifted properties. The indebtedness was found to have

occurred purely by the 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,

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thus, came to be dismised. 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 s. 10 are not applicable to

include the value of the properties gifted by the deceased, in the principle 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 s. 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 ?

4. The ld. 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 s. 10 could not be invoked by the Revenue in the instant case. It is

obvious that the gifts were absolute and merely because the doness could not look after the cultivation personally, and the donor cultivating the

land on behalf of the doness, 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 the 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 the properties to the various

relations. The Tribunal had found that the doness 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 doness 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 s. 10 of the ED 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

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of the doness 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.

5. In so far as the second question is concerned, it is difficult to see how the Revenue can invoke s. 46(2) of the ED Act at all. Section 46 provides

for an abatement of allowance which was permissible under s. 44(a) of the Act. Before s. 46(1) of the Act is invoked, it has to be established that

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

invoking s. 46(1) of the Act, therefore, is that the subject matter of the abatement must first be established as an allowance which is permissible to

be made under s. 44(a) of the ED Act. The relevant part of s. 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 encumbrances; but an allowance shall not be made -

(a) 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 money''s worth wholly for the

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

Other clauses of s. 44 are not material for our purpose. In so far as the relevant part of s. 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 cls. (a) and (d) of s. 44 of the Act. An allowance can be made under s. 44 as provided in clause (a) for debts

incurred by the deceased or encumbrances 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 s. 44 of the Act therefore, shows that debts contemplated by

clause (a) have to be incurred bona fide for full consideration. In other words s. 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

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consideration either in terms of money or money''s worth; in addition,

this debts 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 s. 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 doness, 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 doness. This amount was outstanding against him to the credit of the doness and that is how the liability has arisen. The amount outstanding

in the accounts of the doness could not be for the use of the donor himself. The basic requirement of clause (a) of s. 44 of the Act is, therefore, not

satisfied. There is thus, no occasion at all for invoking the provisions of s. 46 of the ED Act. The Tribunal, is therefore, right in taking the view that

s. 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 question 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.

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