

(1974) 01 KAR CK 0005
In the Karnataka High Court
Case No : T.R.C. No. 5 of 1971

Controller of Estate Duty, Bangalore

APPELLANT

Vs

John D'souza

RESPONDENT

Date of Decision : 09-01-1974

Acts Referred:

Estate Duty Act, 1953 — Section 21 (1) (i), 64 (1)
Finance Act, 1949 — Section 28 (2)

Citation : (1974) ILR (Kar) 299 : (1974) 95 ITR 460

Hon'ble Judges : G.K. Govind Bhat, C.J; M.K. Srinivas Iyengar, J

Bench : Division Bench

Advocate : S.R. Rajasekhara Murthy, for the Appellant; S.P. Bhat, for the Respondent

Judgement

Govinda Bhat C.J.

1. The Income Tax Appellate Tribunal, u/s 64(1) of the Estate Duty Act, 1953 (hereinafter called "the Act"), has stated a case and referred for the opinion of this court the following question of law :

"Whether, on the agreed facts and circumstances of the case, the Tribunal was right in law in holding that the sum of Rs. 7,14,000 representing the value of foreign movable property in the form of life interest was exempt from the levy of estate duty ?

2. Mrs. Alice St. John Ives, domiciled in India, died on April 8, 1962, and an account of the property passing on her death was filed by the accountable person before the Deputy Controller of Estate Duty, Southern Zone, Madras, on October 10, 1962, declaring the net principal value of the estate at Rs. 12,11,674. The Deputy controller computed the net principal value at Rs. 18,07,853 which included a sum of Rs. 7,14,000 the value of the deceased's interest in B. C. Alexander Trust, U. K. In the appeal preferred by the accountable person before the Appellate Controller of Estate Duty, New Delhi, the inclusion of the said sum

of Rs. 7,14,000 in the principal value was upheld; he, however, reduced the principal value by a sum of Rs. 7,320.

3. In the second appeal preferred by the accountable person the Income Tax Appellate Tribunal, Madras Bench, held that the said sum of Rs. 7,14,000 is not includible in the principal value of the estate. Aggrieved by the order of the Tribunal, the Controller of Estate Duty sought the reference and the Tribunal has referred the question of law as set out above for the opinion of this court.

4. The material facts as found by the Tribunal are :

B.C. Alexander, the father of the deceased, who was not domiciled in India, died before the year 1910 leaving a will under which a trust was created in respect of certain funds left by him in the United Kingdom. Under the terms of the said will the deceased became entitled to the income of the fund for life; she was further given the power of appointment of the successors to the fund, and, in the event of defeat of such appointment, the corpus was to pass on to such of her children who attained the age of 21 years. The Deputy Controller held that the deceased had an interest in the income of the fund left under the will of her father and, therefore, it was a case of property passing u/s 5 of the Act. The value of the corpus worked out to Rs. 7,14,000. The contention of the accountable person that the said amount was not includible in the net principal value of the estate on the ground that the deceased was entitled only to the income from the fund with no power of enjoyment of the corpus and that estate duty had been paid on the entire assets of B. C. Alexander in the United Kingdom at the time of his death prior to 1910, was rejected holding that the terms "property" included an "interest" in the property and that the "interest in property" passing on death is chargeable to duty u/s 5 of the Act. That order was affirmed by the Appellate Controller on appeal. In the appeal before the Tribunal the only contention urged by the accountable person was that the said sum of Rs. 7,14,000 had to be excluded from the computation of the principal value of the estate by virtue of section 21(1)(b)(ii) of the Act. The Tribunal upheld that contention holding that the settlor, B. C. Alexander, was admittedly domiciled outside India at the time the settlement took effect and the deceased had only a life interest in the settled property which was situate outside India at the time of the death and, therefore, the case fell u/s 21(1)(b)(ii) of the Act. Accordingly, the said sum of Rs. 7,14,000 was deleted from the computation of the principal value of the estate.

5. The question of raised is one on which there is not decision of any court. Sri Rajasekhara Murthy, learned counsel for the department, urged that the instant case falls u/s 21(1)(b)(i) and not u/s 21(1)(b)(ii) of the Act as erroneously held by the Tribunal. He argued that, as the deceased was domiciled in India at the time of her death, the value of the property in question has to be included in the principal value of her estate; that clause (ii) applied only to a case where the deceased was domiciled outside India at the time of death but the settlor was domiciled in India at the date the settlement took effect and, therefore, the Tribunal was in error in the view it has taken that the instant case came under

clause (i).

6. Shri S. P. Bhat, learned counsel for the accountable person, contended that clause (ii) has to be read as a proviso or an exception to clause (i) by reading the word "or" occurring after clause (i) not as a disjunctive but as "and", a conjunctive, in order to carry out the intention of the legislature. He argued that according to recognised principles of private international law, the "proper law" that governs the disposition of movable property is the "lex domicile" of the settlor and in the case of devolution of movable property it is the "lax domicile" of the deceased; that the concept of the "proper law" of the disposition or devolution regulating the passing of property on the death is the principal factor which determines the liability to estate duty under all estate duty enactments; that in the case of devolution of movable property situated outside India it will be chargeable to duty under the Act only if the deceased was domiciled in India at the time of the death and in the case of movable property in which the deceased had only a life interest the law under which the property passes on the death is the "lax domicile" of the settlor when the settlement took effect; that, in the instant case, since the property passed under a disposition made under the will of B. C. Alexander who was not domiciled in India but in the United Kingdom, the "proper law" regulating the disposition being not the law of India but of the United Kingdom, although the deceased was domiciled in India at the time of her death there is no basis for chargeability to duty on the movables situated outside India in which the deceased had only a life interest.

7. In India, estate duty is imposed by the Estate Duty Act, 1953, and the Rules made thereunder which largely adopts the estate duty provisions of the British Finance Acts of 1894 to 1960. In general, and subject to minor differences, the British Acts are closely followed as regards the various charging provisions, aggregation, valuation and exemptions. In the United Kingdom estate duty is levied either with respect to the estates of persons domiciled within Great Britain at the time of death or with respect to that property of persons not so domiciled which was situated within the United Kingdom at the time of death. Thus no tax liability can attach with respect to property situated outside the United kingdom unless the deceased was domiciled in Great Britain and all property which passes or is deemed to pass on death situated in Great Britain is subject to tax regardless of the domicile, residence, nationality or other legal status of the deceased. The conditions in which property situate outside Great Britain is not chargeable to duty has been summarised in Dymond's Death Duties (fifteenth edition, I Text, page 1323) thus :

".... It may be convenient to remind the reader that the escape duty it is necessary first to show that the property is situate outside Great Britain, and then both to satisfy condition (I) at page 1254, i.e., to show (except in the case of gifts inter vivos) that the proper law regulating the devolution of the property or of the disposition under which it passes is not British, and also to satisfy at least one of the conditions (II), i.e., (II) (a) (deceased domiciled outside Great

Britain at his death), or (II) (b) (disponer and provider of the property domiciled outside Great Britain at the date of disposition), or (where the death was before 1st August, 1962) (II) (c) (property immovable by the *lax situs*)".

8. At page 1254 conditions (I) and (II) referred to in page 1323 have been stated thus :

"Section 28(2) of the Finance Act, 1949, is in negative form, i.e., it defines the circumstances in which non-British property is not liable to estate duty. By abolishing the former provisions, it first brings all property within the *prima facie* charge of estate duty; but the sub-section (as amended by the Finance Act, 1962, section 28(1) then goes on to provide that property passing on the death which is situate out of Great Britain if it is shown -

(I) that the "proper law" regulating the devolution of the property so situate, or the disposition under or by reason of which it passes, is the law neither of England nor of Scotland; and (II) that one at least of the following conditions is satisfied, namely -

(a) that the deceased did not die domiciled in any part of Great Britain;

or

(b) that the property so situate passes under or by reason of a disposition -

(i) made by a person who, at the date at which the disposition took effect, was domiciled elsewhere than in some part of Great Britain; and

(ii) not made, directly or indirectly, on behalf of, or at the expense of, or out of funds provided by a person who at that date was domiciled in some part of Great Britain;

or

(c) if either the death was before 1st August, 1962, or the death was on or after that date and the savings with regard to *inter vivos* transactions mentioned at pages 1334-1336, *infra*, apply, but not otherwise - that the property so situate is, by the law of the country in which it is situate, immovable property."

9. So far as the law in the United Kingdom is concerned, it is clear from the provisions of section 28(2) of the Finance Act, 1949, that to include the value of any movable property passing on the death situated outside Great Britain, the "proper law" regulating the devolution of the property so situate or the disposition under or by reason of which it passes is the law of the United Kingdom and the deceased must have died while he was a domicile in any part of Great Britain or that the property must have passed under or by reason of a disposition made by a person who was domiciled in Great Britain when the disposition took effect. If the proper law governing the disposition under which property situated outside Great Britain passes is not the law of the United Kingdom then the value of such movable property cannot be included in the

principal value of the estate. If the law in India under the Act has not made any departure from the law of the United Kingdom, it was not disputed by Sri Rajasekhara Murthy that the value of the deceased's interest in the Alexander Trust passing on her death cannot be included in the principal value of the estate.

10. A Bill for levy of estate duty in British India was first introduced in the Central Assembly in 1946, by the then Finance Minister, Mr. Liaqat Ali Khan. Clause 19 in the said Bill defined the territorial scope of the levy of estate duty. It read thus :

"There shall not be included in the property passing on the death of the deceased -

(a) immovable property situated outside British India at the time of the death;

(b) movable property situate outside British India at the time of the death except -

(i) in the case of settled property of which the deceased was life tenant, if the settlor was domiciled in British India at the time of his death;

(ii) in the case of any other property if the deceased was domiciled in British India at the time of his death".

11. It is relevant to notice that the provision defining the territorial scope of estate duty in Pakistan is similar to clause 19 of the 1946 Estate Duty Bill. That Bill having lapsed, Bill No. 30 of 1948 was introduced. Clause 19 in the said Bill read as follows :

"Foreign Property :

(1) There shall not be included in the property passing on the death of the deceased -

(a) immovable property situated outside the provinces of India;

(b) movable property situated outside the provinces of India at the time of the death except -

(i) in the case of settled property of which the deceased was a life tenant if the settlor was domiciled in any province of India at the time the settlement took effect;

(ii) in the case of any other property if the deceased was domiciled in any province of India at the time of his death.

(2) The Board may make rules prescribing the manner in which the nature and the locality of different classes of assets shall be determined for the purposes of this section."

12. The Bill was referred to a Select Committee which made certain changes. Clause 19 as amended by the Select Committee read thus :

"Foreign property.

1. There shall not be included in the property passing on the death of the deceased -

(a) immovable property situate outside India;

(b) immovable property situate within an acceding Indian State and movable property situate outside the provinces of India at the time of the death unless -

(i) in the case of any property, whether settled or not, the deceased was domiciled or resident in any province of India at the date of his death; or

(ii) in the case of settled property of which the deceased was a life tenant the settlor was domiciled or resident in any province of India at the date of settlement took effect."

13. Bill No. 30 of 1948 was not passed and hence it lapsed. Thereafter, the Estate Duty Bill of 1952 was introduced in the Indian Parliament. Clause 20 defined the territorial scope of the levy and was substantially similar to clause 19 of the 1948 Bill as amended by the Select Committee. The said Bill having been passed by Parliament it was enacted as the Estate Duty Act, 1953.

14. In the Act, clause 20 of the Bill has been numbered as section 21, which reads thus :

"21. (1) There shall not be included in the property passing on the death of the deceased -

(a) immovable property situated outside India;

(b) movable property situated outside India at the time of the death unless -

(i) in the case of any property, whether settled or not, the deceased was domiciled in India at the time of his death; or

(ii) in the case of settled property of which the deceased was a life tenant, the settlor was domiciled in India at the date the settlement took effect.

(2) The Board may make rules regulating the manner in which the nature and locality of different classes of assets shall be determined for the purposes of this section".

15. The charge to duty is levied under sub-section (1) of section 5 of the Act which is in pari materia with section 1 of the British Finance Act, 1894. The territorial scope of the duty is defined by section 21. Section 5(1) of the Act reads thus :

"5. (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 hereinafter provided of all property, settled or not settled, including agricultural land situate in the territories which immediately

before the 1st November, 1956, were comprised in the States specified in the First Schedule to this Act, which passes on the death of such person, a duty called "estate duty" at the rates fixed in accordance with section 35".

16. The practical effect of section 5 read with section 21 is that all property - movable or immovable - situated in India passing on the death of a person after the coming into force of the Act is chargeable to duty, whether the person dying is a domicile of India or a non-domicile. Immovable property passing on the death of the deceased. Foreign movable property shall, not be included in the property passing on the death of the deceased unless : (i) in the case of any property whether settled or not the deceased was domiciled in India at the time for his death; or (ii) in the case of settled property of which the deceased was a life tenant, the settlor was domiciled in India at the time the settlement took effect. The section is in negative form i.e., it defines the circumstances in which non-Indian property is not liable to estate duty.

17. while u/s 28(2) of the U. K. Finance Act, 1949, one of the satisfied in order to being to charge movable property situated outside the United Kingdom is that the "proper law" regulating the devolution of the property so situate or the disposition under or by reason of which it passes is the law of the United Kingdom, section 21 of the Act, lays down no such condition. The basis of the charge under the Act is the domicile of the deceased or the domicile of the settlor where the property passing on death is "settled property" of which the deceased was a life tenant. Clause (i) of section 21(i)(b) of the Act is applicable to all movable property whether settled or not settled. The expression "settled property", according to the definition in section 2(19), means "property which stands limited to or in trust for any persons, natural or juridical, by way of secession". In view of the definition of the expression "settled property" the case of a deceased who acquired a life interest in the income of the corpus of fund situated outside India clearly falls under clause (i) if the deceased was domiciled in India at the time of the death; clause (ii) is intended to govern the case of a non-domicile deceased on whose death settled movable property of which the deceased was a life tenant passed on his death, if the settlor was domiciled in India at the time the settlement took effect. In case coming under clause (ii) the domicile of the settlor in India at the time the settlement took effect constitutes sufficient nexus to levy the duty notwithstanding that the deceased life tenant was not domiciled in the India at the time of death. This is so because the situs of such property for purposes of taxation is the country of domicile of the settlor.

18. The intention of Parliament to levy duty on movable property situated outside India on the death of a person not domiciled in India if the settlor was domiciled in India is clear in view of the deliberate alteration made in the language of section 21 of the Act from clause 19 of the Bills as originally introduced in 1946 and 1948. Under clause 19(1) of the Bills of 1946 and 1948, the intention was to include movable property situated outside India if it so settled property of which the deceased was a life tenant proceeded the settlor was domiciled in India at

the time the settlement took effect and in the case of any other foreign movable property, if the deceased was domiciled in India at time the settlement took effect and in the case of any other foreign movable property, if the deceased was domiciled in India at the time of his death. Clause 19(1) (i) in the original Bills referred to above was in effect a proviso to clause 19(1) (ii) since the latter clause makes the intention clear by stating that it applies to a case of "property" other than the one provided under clause (i). The original Bill did not disclose any intention to include any movable property situate outside India passing on the death of a person not domiciled in India even if the settlor was domiciled in India. Under the original Bills, in order to include movable property of which the deceased was a life tenant, two conditions were required, viz., (a) the settlor was domiciled in India at the time the settlement took effect, and (b) the deceased was domiciled in India at the time of his death. The Select Committee on the 1948 Bill amended clause 19 in the form as it is now found in section 21 of the Act; the reason for the amendment has been stated thus :

"We are of the opinion that for the purpose of determining the liability of any property to duty under this clause, both domicile and residence of the deceased or the settlor, as the case may be, should be taken into consideration and that for the said purpose the expression "residence" should have the same meaning as that assigned to it in section 4A of the Indian Income Tax Act, 1922. We have modified this clause accordingly."

19. In the opinion of the Select Committee the basis for chargeability to duty on movable situated outside India is not the concept of the "proper law" regulating devolution or disposition, but only the domicile of the deceased in the case of any property whether settled or not and that in the case of settled property of which the deceased was life tenant, the settlor's domicile.

20. Section 21(1) of the Act has not followed the pattern of section 28(2) of the U. K. Finance Act, 1949, which as stated earlier, requires, apart from the domicile of the deceased or the settlor, that the "proper law" governing the disposition is the law of the United Kingdom. The said section 28 (2) repealed and replaced section 24 of the U. K. Finance Act, 1936. Clause 19 in the original Bills of 1946 and 1948 referred to above was on the pattern of section 24 of the U. K. Finance Act, 1936, which read thus :

"24. The exemption from estate duty which exists by virtue of sub-section (2) of section two of the Finance Act, 1894, in the case of certain property situate out of Great Britain shall, subject as hereinafter provided, cease so far as relates to any such property passing on the death of a person dying after the passing of this Act domiciled in some part of Great Britain :

Provided that nothing in this section shall operate so as to charge with duty and such property -

(a) which passes under or by reason of a disposition made by a person who, at the date on which the disposition took effect, was domiciled elsewhere than in

some part of Great Britain, unless the deposition was made, directly or indirectly, on behalf of or at the expense of, or out of funds provided by, a person who at that date was domiciled in some part of Great Britain; or

(b) which by the law of the country in which it is situate is immovable property."

21. It will be seen from the above section that the case of property passing under or by reason of a disposition made by a person who was domiciled elsewhere than in some part of Great Britain was put as a proviso.

22. It was argued by the learned counsel for the accountable person that we should read the disjunctive word "or" occurring between sub-clauses (i) and (ii) of section 21(1)(b) of the Act as "and" in order to give effect to the intention of Parliament and that Parliament could not have intended to charge duty on movable property situated outside India where the deceased life tenant was not domiciled in India at the time of his death and that sub-clause (ii) is in the nature of a proviso to clause (i). If that was the intention of Parliament there was no necessity to make a deliberate change in the language of clause 19(1) found in the original Bills of 1946 and 1948. When Parliament made a substantial change in the Bill the same must be ascribed to a deliberate intention which cannot be ignored by the court.

23. As stated by Crawford on Statutory Construction (page 322, paragraph 188) :

"In ordinary use the word "or" is a disjunctive that marks an alternative which generally corresponds to the word "either". In face of this meaning, however, the word "or" and the word "and" are often used interchangeably. As a result of this common and careless use of the two words in legislation there are occasion when the court, through construction, may change one to the other. This cannot be done if the statute's meaning is clear, or if the alteration operates to change the meaning of the law. It is proper only in order to more accurately express or to carry out the obvious intent of the legislature, when the statute itself furnishes cogent proof of the error of the legislature, and especially where it will avoid assured or impossible consequences or operate to harmonize the statute and give effect to all of its provisions."

24. The learned counsel for the accountable person was unable to show from the provision so the Act that the obvious intent of parliaments was never to charge duty on the passing of movable property situated outside Indian or that there is intrinsic evidence in the Act itself to show that it was never the intention to levy duty on movable property situated outside India passing on the death of a person who was not domiciled in India. He also was unable to show that the interpretation which we have given will result in absurd or impossible consequences or the interpretation as contended by him is necessary to harmonize the statute and give effect to all its provisions. Therefore, we are unable to accede to the argument of the learned counsel for the accountable person to read the disjunctive word "or" as "and" and thereby to construe clause (ii) as a proviso to clause (i), i.e., read the expression "in the case of any

property" in clause (i) as "in the case of any property other than the case of property" coming under clause (ii).

25. Our interpretation of section 5 read with section 21 of the Act find's full support in Harvard Law School's World Tax Series - Indian. At page 107 under the heading "International Aspects" it is stated :

"In General. - Real property located in India and movable property located in India are subject to Indian estate tax regardless of the citizenship, residence or domicile of the decedent. Real property located outside India is exempt. Movable property located outside Indian is subject to Indian estate tax if the decedent was domiciled in India at the time of death; in addition, settled movable property located outside India in which the decedent had a life estate is subject to Indian estate tax if the settlor was domiciled in India at the time of his death. In all other cases, movable property located outside India is exempt. Domicile is determined in accordance with the principles a set forth in the Indian succession Act of 1925."

26. At page 102 under the heading "exemptions" it is stated :

"Property not included in estate. - The classes of property listed below are not included in the estate of a decedent for estate tax purposes.

1. Real property situated outside India is not included in property passing on death.

2. Movable property situated outside Indian is not included in property passing on death if the decedent was not domiciled in India at the time of death, provided the decedent was not life tenant of the property under a settlement made by a settlor who was domiciled in India when the settlement took effect."

27. The clear view of the Harvard Law School Scholars and Sri N. A. Palkhivala, the joint authors of the books, is that settled movable property located outside India in which the decedent had a life estate is subject to Indian estate tax if the settlor was domiciled in India when the settlement took effect, even if the decedent was not domiciled in India at the time of his death.

28. If clause (ii) of section 21(1)(b) has to be read as a proviso to clause (i), "settled property" located outside India of which the deceased had a life estate is not liable to the included for the purpose of estate duty if the deceased was not domiciled in India at the time of his death. It is in order to provide for such cases that parliaments has made the necessary modification in the original Bill.

29. That the Government of India and Great Britain understood the scope of section 5 read with section 21(1)(b) of the Act in the same manner is seen from article III (1) of the agreement for avoidance of double taxation entered into between the two Government. The said article reads :

"Subject to paragraph (2) of this article, duty shall not be imposed in India on the death of a person who was not domiciled at the time of his death in any part

of India but was domiciled in some part of Great Britain on any property situate outside India :

Provided that nothing in this paragraph shall prevent the imposition of duty in India on -

(a) any settled property of which the deceased was life tenant where the settlor was domiciled in Indian at the time the settlement took effect; or

(b) property that passes under a disposition or devolution regulated by the law of some part of India."

30. By article III (1) the high contracting parties while agreeing that duty in India shall not be imposed on the death of a person not domiciled in Indian but domiciled in Great Britain at his death on property situate outside India, preserved the right of the Indian government to imposed duty in India on : (i) settled property of which the deceased was life tenant where the settlor was domiciled in India at the time the settlement took effect; or (ii) on property passing under a disposition or devolution regulated by Indian law. Clause (a) of the Proviso to article III (1) preserves the right to imposed estate duty u/s 5 read with section 21(1)(b)(ii) of the Act in respect of settled property of which the deceased was life tenant where the settlor was domiciled in India at the time the settlement took effect.

31. We have examined the territorial scope of estate taxes in the United States of America, Canada, Australia, South Africa, Sweden, France, Netherlands and Switzerland in order to see whether there is any common basic principle underlying the levy of tax on property having sites outside the taxing State.

32. In the U. S. A. the federal estate tax is levied (a) in the case of a person domiciled in the U. S. A. or who, though not domiciled, is a U. S. A. citizen, on his real and personal estate wherever situate, and (b) in the case of a person not domiciled in the U. S. A., and not a U. S. A. citizen, on his real and personal estate in the U. S. A. subject to certain important exceptions like U. S. bank balances, U. S. Government securities, etc. Settled property is taxable only where the deceased was a settlor or competent to dispose of it. In the case of property a passing on the death of non-citizens, tax is levied if property has sites in the U. S. A. There is provisions for giving credit for tax paid on outside U. S. A. assets under the law.

33. Canadian succession duty was levied (a) in the case of a deceased who a was domiciled in a Province of Canada, in respect of the succession on his death of all real or immovable property in Canada and all personal property wherever situate, and (b) in the case of a deceased who was a domiciled outside Canada, in respect of the succession to all property situate in Canada. Settled property was dutiable only where the deceased was the settlor or competent to dispose of the property.

34. In Australia, movable property situated outside Australia is taxable if the

deceased was domiciled within the country and if not domiciled, no tax is levied.

35. The South African Estate Duty is payable if the deceased was ordinarily resident in the Republic on his movable and immovable property wherever situate - subject to deduction of the value of any property outside the Republic acquired before he becomes ordinarily resident there.

36. In Sweden the succession tax is payable on the receipt of property, whether located in Sweden or abroad, left by a person who at his death was either a citizen of Sweden, whether a resident or not. In the case of property located in Sweden on the decedent's death. The succession tax has limited application in the case of property left by a person who at the time of death was not a resident. In that case it is applied only to certain property deemed to have its situs in Sweden. The Crown has discretion to reduce or remit the taxes due to Sweden on properties also taxed in another country. In practice it results in relief from double taxation where Sweden has no treaty with the other nations involved.

37. In France, the duty is charged on property if the deceased was domiciled in France. It is also charged on most property outside France including shares in foreign companies, foreign bonds and debits but not on foreign tangible movable or foreign immovable, not on foreign policies.

38. In Switzerland, the duty is levied : (1) where the deceased was domiciled in Switzerland, or under Swiss law the succession is opened there on his immovable property and on his movable property wherever situate; (2) where he is not so domiciled, on his immovable property in Switzerland and on tangible movable property there.

39. One basic principle discernible in the estate duty laws of the United Kingdom and other countries referred to above is that property having its situs in the taxing country is charged to tax. Immovable property situated outside the taxing state is not included in the property death. Movable property is taxed though physically situated outside the territory of the taxing state by applying the maxim, *mobilia sequuntur personam* which means "movable follow the person". That maxim is sometimes loosely expressed in the phrase, "the situs of personal property is the domicile of the owner". This maxim is generally followed by legislatures while enacting laws imposing tax on movable property situated outside the taxing states. For tax purpose movable property is governed, no matter where situated by the law of the domicile in that state passing on the death is taxed if the deceased was domiciled in the state at the time of death. In the case of settled property of which the deceased was a life tenant, the domicile at the time of the settlor at the time the settlement took effect determines the situs of the movable property passing on the death, no matter where the property was physically present and where the deceased life tenant was domiciled at the time of the death. Clause (ii) was enacted to impose the duty on settled movable property situated outside India if the settlor was

domiciled at the time of the settlement took effect, whatever be the domicile of the deceased life tenant. If the same principle had been followed throughout, settled movable property situated outside India ought to have been excluded from the purview of the duty if the settlor was not domiciled in India even if the deceased life tenant had obvious reason that the situs of such property does not follow the domicile of the life tenant. The British Parliament has throughout observed the above principles of international law while enacting section 24 of the 1936 Finance Act and section 28(2) of the 1949 Finance Act. Clause 19 of the 1949 and 1948 Bills referred to above was on the pattern of section 24 of the 1936 U.K. Finance Act. Section 21(1)(i) as enacted is violative of the principles of international law observed by the community of nations in so far as it imposed duty on property that has no Indian situs. In the instant case, the settlor was admittedly not domiciled in India at the time of the death. The property had no situs in India. But the Act has imposed duty on the passing of such property taking the Indian domicile of the life tenant alone as affording sufficient nexus for levy of the duty.

40. The fact that section 21(1)(b)(i) as interpreted by us is repugnant to the principles of international law does not render the Act unenforceable. As laid down by the Judicial Committee of the Privy Council in *British Columbia Electric Railway Co. Ltd. v. King* :

"A legislature which passes a law having extra-territorial operation may find that what it has enacted cannot be directly enforced, but the Act is not invalid on that account, and the courts of its country must enforce the law with the machinery available to them".

41. Therefore, when the Indian Parliament which is a sovereign legislature expressly manifests an intention to legislate with extra-territorial effect, the courts in India are bound to give effect to it regardless of the fact that it is not consistent with or violative of the principles of international law.

42. As the law now stands the same property passing on the death of a person may suffer multiple taxation in several States. In our own country, before the enactment of the Central Sales-tax Act, 1956, more than one State began to levy sales-tax on the same sale transaction, each State taking one or other of the elements of sale as constituting sufficient nexus for levying tax. That havoc was put an end to by the intervention of Parliament by making appropriate amendments to the Constitution and enacting the Central Sales Tax Act. When several sovereign States impose tax having extra-territorial operation, the same property suffers multiple taxation. The proper thing to do in such circumstances is for the United Nations to lay down sound conventions consistent with recognised principles of international law and for the member States to observe the conventions.

43. In the instant case it is undisputed that the deceased was domiciled in India and, therefore, the case clearly falls u/s 21(1)(b) of the Act and, as such, the

sum of Rs. 7,14,000 representing the value of movable property in which the deceased had a life interest is liable to be included in the computation of the principal value of the estate notwithstanding the fact that the property passing on the death of the deceased had no situs in India. This being a reference under the Act, we are not called upon to express any opinion on the constitutional validity of such an impost. Accordingly, we answer the question referred to us in the negative and in favour of the department.

44. It was submitted before us by the learned counsel for the accountable person that estate duty has been paid in the U. K. on the value of the deceased's interest in the Alexander Trust Fund in accordance with the law in force in that country. It was also submitted that the provision in the agreement for avoidance of double taxation entered into between the Governments of India and U. K. cannot give relief to the accountable person as the claim for credit or refund of duty founded on the provisions of the agreement has to be made within a period of six years from the date of death and that in the instant case the death was in 1962. The Tribunal held that the value of the property in questions is not includible in the value of the estate of the property in question is not includible in the value of the estate of the deceased and it is in the year 1974 that this court is taking a contrary view. It may be open to the Central Government to give relief against double taxation waiving the plea of the bar of limitation taking into account the special facts of the case.

45. In the circumstances, each party is directed to bear its own costs.

46. Question answered in the negative.