
(1978) 06 BOM CK 0025

In the Bombay High Court

Case No : Estate Duty Reference No. 5 of 1968

Controller of Estate Duty, Bombay

APPELLANT

Vs

Fatimabai H. Jamal

RESPONDENT

Date of Decision : 21-06-1978

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1979) 9 CTR 72 : (1979) 117 ITR 979

Hon'ble Judges : R.M. Kantawala, C.J.;S.K. Desai, J

Bench : Division Bench

Advocate : R.J. Joshi, for the Appellant; S.E. Dastoor, for the Respondent

Judgement

Kantawala, C.J.—At the instance of the revenue the following question has been referred to us for our determination:

"Whether, on the facts and in the circumstances of the case, and on a proper construction of the provisions of section 10 of the Estate Duty Act (hereinafter referred to as the Act), the Tribunal was right in holding that only that portion of the building "Jamal Mansion", which was in the occupation of the deceased, could be deemed to pass on the death of the deceased and not the whole of the half share which he originally owned ?"

2. This question arose out of the estate duty assessment consequent upon the death of one Hussein Jamal (hereinafter referred to as the deceased). He died on April 17, 1962, and his widow, Fatimabai Husein Jamal, rendered the account of the estate as one of the accountable persons. The controversy in this reference relates to the value to be included in the estate on account of a building called "Jamal Mansion", situate in Bombay. This building was jointly owned by the deceased and his widow, Fathimabai. The total value of the property is Rs. 1,04,000. Out of this the share of the deceased was worth Rs. 52,000. By an indenture dated February 28, 1958, during his lifetime, the deceased gifted his half share in this property to his children, but he continued to reside in a portion

of the building paying a rent of Rs. 73 per month.

3. In the estate duty assessment upon the death of the deceased, a question arose whether any, and if so what, estate duty was payable in respect of his initial half share in this property which was gifted by him to his children. The Assistant Controller held that s. 10 of the Act was attracted and the sum of Rs. 52,000 was includible in the dutiable estate. He rejected the contention of the accountable person that no reservation for the residence of the deceased was made under the gift deed and, therefore, s. 10 was not attracted. He also rejected the alternative contention urged on behalf of the accountable person that only the value of the portion which the deceased occupied should be taken into account.

4. In an appeal by the accountable person before the Appellate Controller, he also held that s. 10 was rightly made applicable to the facts of the case, but following the decision of the Calcutta High Court in the case of Rajputana Textiles (Agencies) Private Ltd. Vs. Das Gupta, Income Tax Officer/excess Profits Tax Office and Another, , the Appellate Controller restricted the amount to be included to the proportionate value of the property actually occupied by the deceased in his lifetime.

5. In an appeal by the revenue before the Tribunal, it was sought to be urged, on behalf of the revenue, that the whole amount of Rs. 52,000 was liable for duty. Relying upon the decision of the Calcutta High Court, the Tribunal rejected that contention and confirmed the order of the Appellate Controller and dismissed the appeal of the revenue.

6. The above question arises out of the order of the Tribunal.

7. Mr. Joshi, on behalf of the revenue, urged that the Assistant Controller was right in taking the view that the sum of Rs. 52,000, being the value of the share of the deceased in the property, was includible in the estate of the deceased for levy of estate duty. He submitted that on a proper interpretation of s. 10 of the Act, it was not correct to include for levy of estate duty the proportionate value of the property actually occupied the deceased in his lifetime. In short, his submission was that both the Appellate Controller as well as the Tribunal were in error in reversing the finding of the Assistant Controller.

8. The contention urged on behalf of the revenue depends upon the correct interpretation of s. 10 of the Act, viz., that the property taken under any gift, whatever made, shall be deemed to pass on the donor's death and the donor is not entirely excluded. The material part of s. 10 for our purpose is as under:

"10. Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that bona fide possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise:....."

9. There are two provisos to this section, but they are not relevant for our purpose.

10. The provision of this section came up for consideration, both before the Calcutta High Court as well as before the Supreme Court. In *Rajputana Textiles (Agencies) Private Ltd. Vs. Das Gupta, Income Tax Officer/excess Profits Tax Office and Another*, the Calcutta High Court observed (p. 15):

"The expression "to the extent" introduced in the Indian statute is a departure from the provisions in the British and Australian Acts. So far as this aspect of the question is, therefore, concerned, no assistance can be derived from decisions in other countries. Mr. Balai Pal, learned counsel for the Controller, says that this expression does not indicate any quantum or degree of curtailment of interest. It is merely descriptive of the nature of the property given to the donee. I am not inclined to accept this argument. This is not the plain meaning of the expression at all and there is no reason why the meaning should be strained in the manner suggested by Mr. Pal. In any event, the doubt, if any, has been resolved by the Statement of Objects and Reasons with respect to section 10 of the Estate Duty Act, 1953, circulated to the Members of Parliament. The statement runs thus:

"This clause brings under charge property given in gift, but in which the donor retains some interest by contract or otherwise. Where the donor retain such interest in a part of the property only, estate duty is payable on that part only".

11. Thus, it is clear that, bearing in mind the language of the section as well as the Statement of Objects and Reasons, the Calcutta High Court rejected the contention on behalf of the revenue and restricted the levy of the estate duty only in respect of that part of the property in which the donor retained interest.

12. The view taken by the Calcutta High Court in this case has been approved by the Supreme Court in the case of *CED v. Smt. Parvati Ammal* [1947] 97 ITR 621. The Supreme Court in this case had held thus (p. 636):

"The words "to the extent" in section 10 connote that, if the donee does not assume immediate bona fide possession and enjoyment of a part or fraction of the gifted property and thenceforward retain it to the entire exclusion of the donor or of any benefit to him, by contract or otherwise, it shall be that part or fraction of the gifted property which shall be deemed to pass on the death of the donor. Those words thus seek to restrict the liability to pay estate duty in respect of only the aforesaid part or fraction of the property."

13. According to the Supreme Court, "they underline the intention of the legislature that in the event of the donee not assuming bona fide possession and enjoyment of a part or fraction of the gifted property and thenceforward retaining it to the entire exclusion of the donor or of any benefit to him by contract or otherwise, the estate duty shall be payable not in respect of the whole of the gifted property but only in respect of that part or fraction of the gifted property of which the donee did not assume bona fide possession and

enjoyment and thenceforward retain it to the entire exclusion of the donor or of any benefit to him by contract or otherwise."

14. Thus, it is quite evident that having regard to the decision of the Supreme Court as well as the Calcutta High Court, the view that has been taken by the Appellate Controller as well as the Tribunal is right and just and there is no scope for different interpretations as sought to be contended by Mr. Joshi on behalf of the revenue.

15. Accordingly, our answer to the question referred is in the affirmative and in favour of the accountable person. The revenue shall pay the costs of the reference.