(1982) 10 MAD CK 0015

In the Madras High Court

Case No : Tax Case No. 1183 of 1977

Controller of Estate Duty, Madras APPELLANT

Vs

A.C. Desikachari RESPONDENT

Date of Decision : 07-10-1982

Acts Referred:

Estate Duty (Controlled Companies) Rules, 1953 — Rule 5(2)
Estate Duty Act, 1953 — Section 17, 5(1), 5(2)

Citation : (1983) 33 CTR 345 : (1983) 140 ITR 441 : (1983) 13 TAXMAN 546

Hon'ble Judges : V. Ratnam, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; S.V. Subramaniam, for the Respondent

Judgement

Balasubrahmanyan, J.—This is a reference under the E.D. Act, 1953. The deceased''s estate included, among other properties, 101 shares

in a private limited company. It the same company, the deceased''s brother, who figures as the accountable person in this case, held 16 shares. The

share capital of the company comprised, in the aggregate, only 250 shares. The deceased was all in all in the company as a director. The Assistant

Controller of Estate Duty accordingly considered this company as a ""controlled company"" within the meaning of s. 17 of the E.D. Act. there is no

dispute now about this determination. The Asst. Controller found that for a number of years past, the deceased has been maintaining a current

account with this company. This current account remained to the deceased''s credit right from the beginning unto the last. During the period of three

years before his death and even earlier, the deceased has been withdrawing various sums of money at one time or another from this current account for making investments outside. The Asst. Controller took up for consideration the nature of the deceased current account with the

company and also the character of the withdrawal therefrom. This inquiry was undertaken by the Asst. Controller while examining the prospects

for applying s. 17 to this case and with a view to finding out whether estate duty liability can be foisted to any extent on the assets of this company

as a controlled company, having regard to the relationship between the deceased''s current account on the one hand and the company''s resources

on the other. The Asst. Controller gave thought to these matters, and ultimately came to the conclusion that the amount to the credit of the

deceased in his current account must be treated as a ""transfer'' of property by the deceased to the company, and the withdrawals from the current

account must be regarded as"": benefits"" accruing to the deceased from the company. On these findings, the Asst. Controller proceeded to fix the

quantum of liability for estate duty on the company''s assets in accordance with s. 17 of the Act and by following the procedure laid down in the

relevant Rules made under the Act for the purposes of that section.

2. The accountable person objected to the levy of estate duty on the company, s assets under s. 17 of the Act. His principal contention was that

the maintenance of a current account by the deceased even with a controlled company cannot be treated as a ""transfer"" nor could the withdrawals

therefrom be regarded as ""benefits"". At a later stage, however, when the matter was in appeal before the Tribunal, the accountable person

reconciled himself to the position that the deceases, current account did amount to a transfer of property by the deceased to the company. This

was done presumably out of respect for the very wide sense in which the terms ""transfer"" and other cognate expressions were found defined in the

statute and in the Rules made thereunder. However, on the other aspect of the Asst. Controller''s determination, the accountable person held fast

to his objection that the withdrawals of money from the decease, s current account cannot be regarded as ""benefits"" within the statutory meaning of

that expression.

3. For holding that the deceased, s withdrawals from his current account were benefits which accrued to him from the company, the Asst.

Controller relied on s. 5(1)(a) of the Estate Duty (Controlled Companies) Rules,

1953. This rule defines a benefit as ''any periodical payment"" out

of the resources of the company which the deceased receives for his own benefit. There was no dispute in this case that the money in the current

account, although it undoubtedly remained to the credit of the deceased, was nevertheless part of the company, s resources. There was also no

dispute about the position that the withdrawals from the current account were utilised by the deceased for his won investments elsewhere, and,

therefore, very much to his benefit. The only controversy was whether every time the deceased withdrew money from his current account, that

involved a periodical payments by the company within the meaning of r. 5(1)(a) of the Controlled Companies Rules. On this aspect of

interpretation, the Asst. Controller, s view was that each and every one of the withdrawals must be considered as a periodical payment. He relied

from this view on r. 5 (2) of the Controlled Companies Rules, which carried an elaborate meaning of the expression ""periodical payment"" in the

following fashion:

(2) For the purpose of these rules, the expression ''periodical payment'' means a payment by way of dividend or interest, a payment by other

payment being one of a series of payments, whether inter-connected or not, whether of the same or of varying amounts, and whether payable at

regular intervals or otherwise.

4. The departmental view of r. 5(2) has always been that practically in payments must be treated as periodical payments, the only exception being

a single lump sum payment"", as an exception expressly excluded from the definition. In their order under reference, the Tribunal would seems to

have fallen in with the departmental understanding of the scope of this rule. For, without going into any other questions, the Tribunal straightway

entered upon the takes of finding out whether the deceases''s withdrawal could be regarded as a single lump sum payment. The record shows that

the deceased''s current account with the company was opened on November 16, 1966, and remained right through till his death on August 23,

1972. The total of the credits in the account during this period amounted to Rs. 5,76,369 and all but Rs. 1,574 has been withdrawn therefrom by

the time the deceased dies, the withdrawals were many and various, and at different times. The Tribunal nevertheless addressed itself seriously to the question whether what was involved in this case was a ""single lump sum payment"". Their view was that notwithstanding the multiplicity of

withdrawals, they all amounted only to a single lump sum payment.

5. The relevant part of the Tribunal order containing their reasoning is extracted below:

Where a sum of Rs. 1,00,000 is advanced to the company it is every one rupees comprised in the sum of Rs. 1,00,000 which constituted

property transferred to the company. When this sum of Rs. 1,00,000 is not returned at a time but is returned even over a period of time in several

installments each one rupees comprised in the installment would be the return of a particular one rupees transferred to the company in the same

coin. That is, it is a lump sum return. Prima facie, therefore, return of a loan advanced in cash to a company by the deceased cannot constitute a

periodical payments.

6. While arguing the departmental case before us, Mr Jayaraman, learned standing counsel, did not have to argue for long about the error of the

Tribunal reasoning. Even Mr. Subramaniam, learned counsel appearing for the accountable person, did not support the reasoning of the Tribunal.

The cardinal error of the Tribunal lay in disregarding the inexorable fact that the withdrawal by the deceased was not, at one single stroke, of the

entirety of the amounts standing to his credit in the current account, but were made at several points of time in several driblets of money. The

expression used in r. 5(2) is not merely ""a lump sum"" but ""a single lump sum"" which cannot fit in at all with the facts in the present case where the

amount to the credit of the deceased in the current account were subject to a multiplicity of withdrawals.

7. Even though we disagree with the Tribunal interpretation of r. 5(2), that does not mean the end of the discussion in this reference. For, the main

subject of controversy between the accountable person and the Estate Duty Office is whether the deceased''s withdrawals, such as they were,

could be regarded as ""benefits"" or as ""periodical payments"" within the meaning of r. 5 of the Controlled Companies Rules. Both the standing

counsel for the Department and the learned counsel for the accountable person agree that the Tribunal had apparently understood the language of

r. 5(2) wider than it has been used by the farmers of the Rules. Quite plainly, the

Central Board which framed these Rules did not intend to rope in

any and every payment within the expression ""periodical payment"". If the Central Board had so intended, nothing would have been easier than to

say that all payments shall be deemed to be periodical payments excepting a single lump sum payment. What actually has been set out in r. 5(2) as

a rule of interpretations is that the payments, in order to be a periodical payment, must be one of a ""series"" of payments. The question in every

case, therefore, is not whether there has been a payment, but whether the payment, such as it is, can be regarded as being one of a ""series"" of

payments. There can be no doubt that the expression ""series"" has been put in advisedly and with a purpose. Therefore, the word must carry some

significance. It cannot be overlooked in interpretation. The expression ""series"" is meant to denote a number, or set, of material things of one kind

ranged in a line, either contiguously or at more or less regular intervals. In other words, there must be some inherent quality of ""series""-ness If there

is not observable or desirable series, the mere fact that over a period time there have been a number of payments, all from a single account, is not

enough to lead to the conclusion that every one of such payments, even considered in the gross, is comprised in a ""series"" of payments.

8. Rule 5(2), while insisting on the payment being one of a series of payments, has, however, provided for relaxations in certain respects from the

literal meaning of the expression ""series"". For instance, it is not necessary that the payment in a supposed series should be inter-connected or that

they should be of identical amounts or that the interval between or that they should be of identical amounts or that the interval between one

payment and another should be regular or constant. To whatever extent the relaxations found in the latter part of r. 5(2) might water down the

connected of a ""series"", it cannot be gainsaid that a payment, in order to be regarded as periodical payment, must necessarily be one of a series.

While the rule treats with indifference the periodicity of payments, or the regularity of intervals, or the inter-connection between payments as

matters of indifference, the rule, however, does say that the payments can be anything other than payments in a series. The expression: series"" has

to be understood as an appellation which is only applied to payments which are of the same sort or nature, falling within a particular set, or range.

9. The learned counsel on both sides said that on this aspect of interpretation there is dearth of case law. It would seem that these provision in the

estate duty law are a bugbear to courts of interpretation as well as textbook writers. Acknowledged writers on this branch of the law have desisted

from assigning any fixed connotation or meaning to the expression ""series of payments"". Understandably enough, Dymond has rest content only

with referring to a departmental practice prevailing in the United Kingdom under which the authorities do not consider fewer than two payments as

forming a ""series"" of payments within the meaning of this phrase. While referring to the departmental practice prevailing in the United Kingdom

under which the authorities do not consider fewer than two payments as forming a ""series"" of payments within in the meaning of this phrase. While

referring to the departmental view, Dymond has merely added the comment that the expression ""series"" is not defined by the statute. Hanson alone,

amount the text book writers, has something tangible to say on the subject. In Hanson''s Death Duties, 9th End., at p. 408, the matter is dealt with

as follows:

A series may, according to the sub-section include payments which are of different amounts paid at irregular intervals, and not inter connected,

though it is difficult to imagine a series composed of payments having all these characteristics. It is apprehended that to form a series, the payments

must have some characteristic in common.

10. This line of observation in Hanson is in tune with the dictionary meaning of the expression ""series"" where in it has been defined a s number, or

set, of material things of one kind, ranged in a line, either contiguously or at more or less regular intervals, It seems to us that for any given payment

to be one of a series of payments we must be in apportion to say even about the very first payment that it is the beginning of a series. If we examine

the aspect of the first payment, without regard for we cannot come to the conclusion that the first and the last and those in between constitute a

series of payments. If the first payment is not the first of a series, the rest will also be nowhere in the series. Neither that payment not the

subsequent payments can be regarded as forming together any series of payments.

11. In this case, what apparently the E.D. authorities have taken note of is that

all the withdrawals effected by the deceased relate to money in

deposit or credit in one single current account and the withdrawals have tended to exhaust almost the entire credit balance in that current account.

These facts only show that there has been a multiplicity of withdrawals of varying amounts from time to time from the same credit account. From

the mere fact that the source of payment is a single account, it cannot be said that all these payments must be regarded as part and parcel of a

series of payments within the meaning of r. 5(2) of the Controlled Companies Rules. If r. 5(2) does not apply, r. 5(1)(a) cannot be applied either,

so as to regard any of the payments as benefits within the meaning of s. 17 of the E.D. Act. Hence, even on the footing that the opening, the

maintenance and the operation of the deceases, current account amounts to a transfer by the deceased of his property in favour of a controlled

company, s. 17 cannot be applied so as to first on the company''s, assets any estate duty under s. 17, since the withdrawals by the deceased from

the current account cannot in any view be regarded as ""benefits"" or as ""periodical payments"".

12. So far in the discussion we have confirmed ourselves strictly to the issues of statuary construction between the Department and the accountable

person. We must one refer to certain figures in order to enable the Tribunal to pass follow-up orders on the basis of our opinion in this reference.

We earlier mentioned that under s. 17 of the Act, the liability to estate duty on a controlled company is to be determined by following what is

familiarly known as"": slice Principle"". Under this formula, we have first to take note of the assets of the controlled company, because these there the

assets which are in greater or lesser measure liable for estate duty under s. 17. In this case, the Asst. controlled has determined the principle value

of the net assets of the controlled company in the sum of Rs. 4,11,319. How much of the value of the company''s net assets is to be charged to

estate duty under s. 17 would depend upon the portion which the benefit that has accrued to the deceased bears of a three year period

immediately preceding the deceases''s death. According to the calculations of the Asst. Controller, the total net assets of the controlled company

for the three years period amounted to Rs. 6,12,020. The various withdrawals which the deceased effected from his current account with the company over this three year period immediately prior to his death amounted in all to Rs. 3,92,066. The slice under s. 17 of the Act was, m

therefore, worked out by the Asst. Controller in the following fashion:

3,92,066 ---------- x 4,11,319 = Rs. 2,63,495. 6,12,020

13. This sum of Rs. 2,63,495 arrived at on the above ""slice principle"" was included as part of the dutiable estate on which estate duty was charged

on the company, s assets. This amount was, however, subject to certain limitations, with which we are not concerned in this reference. The effect

of the Tribunal''s decision as well as of our conclusion is the same although on different reasoning. The effect is that Rs. 2,63,495 cannot be

included as part of the dutiable estate.

14. The question of law which has been framed by the Tribunal and sent to use for our opinion, however, does not pinpoint the problem in the

case, either in statutory terms or in terms of figures in the way we have dealt with it in the foregoing paragraphs. The question of law referred to us

is in the following terms:

Whether, on the facts and in the circumstances of the case, a portion of the sum of Rs. 1,65,686 not covered by the benefit by way of interest,

remuneration and dividend could be included in the value of the asset passing u/ s 17 of the Estate Duty Act ?

15. Since, this question of law does not reflect the real controversy with sufficient clarity, we reframe the question of law in the following terms.

Whether, on the facts and in the circumstances of the case, Rs. 2,63,495 was properly excluded by the Tribunal from the dutiable estate as not

being liable to be charged to estate duty u/s 17 of the Estate Duty Act, read with rule 5 of the Estate Duty (Controlled Companies) Rules, 1953 ?

16. To the question as reframe above, our answer is in the affirmative and in favour of the accountable person. Since the Department has lost this

reference, it shall pay the costs of the accountable person. Counsel fee Rs. 500.

