
(1983) 02 MAD CK 0013

In the Madras High Court

Case No : Tax Case No. 1278 of 1977 (Reference No. 904 of 1977)

Controller of Estate Duty, Madras

APPELLANT

Vs

Lakshmi Saraswathi Textiles (Arni) (P) Ltd. and Another

RESPONDENT

Date of Decision : 16-02-1983

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1983) 37 CTR 344 : (1984) 145 ITR 15

Hon'ble Judges : P. Shanmugam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Ramanujam, J.—One B. Rajagopala Naidu, the founder director of Sri Lakshmi Saraswathi Textiles (Arni) (p.) Ltd., Madras, a controlled

company within the meaning of s. 17 of the E. D. Act, died on March 28, 1973. He had maintained a current as well as deposit account with the

company and was receiving interest on the deposits made by him with the company. During the three years ended March 31, 1972, the deceased

had received interest amounting to Rs. 55,177 on his deposits. Holding that the provisions of s. 17 applied to the facts of this case, the Asst.

Controller included the slice of the assets of the controlled company computed under s. 17 in the value of the estate passing on death. A sum of

Rs. 1,49,050 was thus included in the principal value of the estate as representing the deceased's slice of the assets of the controlled company.

2. On appeal, the Appellate Controller held that the deceased had not received any benefit from the company within the meaning of r. 5 of the

Controlled Companies Rules, that the current account did not represent any disposition of fund nor was there any transfer of property made by the

deceased to the company and that, therefore, the provisions of s. 17 would not apply to the facts of this case. In this view, the Appellant Controller

deleted from the value of the estate a sum of Rs. 1,49,050. He also held that at any rate the benefit by way of interest received by the deceased

would be only Rs. 31,128 and not Rs. 55,177 as worked out by the Asst. Controller.

3. The Revenue took the matter in appeal to the Income Tax Appellate Tribunal contending that the current account implied a transfer of property,

that the interest received by the deceased periodically through the accounts clearly constituted a benefit and that, therefore, the value of the slice

was clearly includible in the estate passing. the accountable person however, contended before the Tribunal that cash was not property for the

purpose of s. 17(1), that the maintenance of a current account would not constitute a disposition even taking into account the extended definition of

the word disposition occurring in the Estate duty (Controlled Companies) Rules, and that the deceased had not thrown the asset, namely, money

advanced on current account in to the resources of the company. The Tribunal, however, held that though the deceased had received benefit by

way of interest during the statutory period prior to his death from the controlled company the condition about transfer of assets by the deceased

was not satisfied on the facts of the case and that, therefore, no amount was includible under s. 17(1) in the value of the estate passing. Thus, the

Tribunal upheld the Appellate Controller's order, though for a different reason. Aggrieved by the decision of the Tribunal the Revenue has

obtained a reference to this court on the following question of law.

Whether, on the facts and in the circumstances of the case, there was any transfer of assets of the controlled company by the deceased for the

purpose of section 17 of the Estate Duty Act and whether any amount u/s 17(1) is includible in the value of the estate passing on the death of the

deceased ?

4. In this case the factual position is not disputed. The deceased, during the relevant period, had deposited money in the current account as well as

deposit account with a controlled company and was in receipt of the interest on the amounts deposited. The question is whether the deposit or the

lending of the amounts by the deceased to the company will amount to transfer

and the receipt of interest from the company can be taken to be a benefit accruing to the deceased from the company.

5. It is too late in the day to contend that cash or money is not property as defined in the Act. Property has been defined in s. 2(15) of the E. D.

Act, 1953, as including any interest in property, movable or immovable. Therefore, the money lent or invested by the deceased should be taken to

come within the expression "property". there is also no dispute that the company in which the money has been deposited is a controlled company

as defined in s. 2(4) of the Act. It cannot also be disputed that the interest received from the company is a benefit accruing to the deceased from

the company as contemplated by r. 5 of the Estate Duty (Controlled companies) Rules, 1953. thus, the only question to be considered is whether

the deposit of the amounts by the deceased with the company amounts to a transfer by him to the company.

6. Rules 2(6) of the Estate Duty (Controlled Companies) Rules, 1953, has defined disposition as under :

"Disposition" includes any trust, covenant, agreement or arrangement, whether made by a single operation or by associated operations, and also,

in relation to shares in or debentures of a company, the extinguishment or any alteration of rights attaching thereto, whether effected by a single

operation or by associated operations.

7. Under r. 4 a person is deemed, for the purpose of s. 17 of the Act, to have made a transfer of property to a company if the property came to

be included in the resources of the company by the effect of a disposition made by him or with his consent or of any associated operations of

which such a disposition formed one.

8. The deposit of the amount by the deceased with the controlled company resulted in the amounts deposited becoming the resources of the

company, and as such, as a change has been effected by an agreement or an arrangement between the deceased and the controlled company, it

will amount to a disposition as defined in s. 2(6). Before the deposit, the amount was the exclusive asset of the deceased but after the deposit the

resources of the company stands enhanced to that extent and the deceased does not have full control over the amount and he is merely an investor

or creditor. The amount deposited by the deceased with the company becomes

the resources of the company and it should be taken to be the capital employed by the company. This was the view taken by this court in Madras Industrial Linings Ltd. Vs. Income Tax Officer and Others, . In

that case the scope of the expression ""capital employed"" occurring in s. 80J of the I.T. Act, 1961, had come up for consideration. While dealing

with that question, the court observed (p. 259) :

There is no indication (in section 80J) that the capital employed must have come from any particular source or sources. There is no reference at all

to the nature of the capital that is employed. The capital can be that which a company possessed, namely, share capital or other moneys belonging

to the company. It may also be moneys that have become moneys of the company because the company had borrowed. It was not of course

contended that money borrowed by a company does not belong to the company. It must necessarily belong to the company, though for certain

purposes, the amount borrowed will be shown as representing a liability of the company. But we are not concerned with this aspect of the matter.

The borrowed money is the money of the company and if that money had been employed by the company as capital, that amount will become

capital employed for the purpose of the section.

9. We are in entire agreement with the said observations. One the money has been deposited by the deceased with the company it becomes the

asset of the company though the company is liable to repay the amount to the deceased. By depositing the amount with the company, the amount

deposited belongs to the company and the deceased does not own the asset but only becomes an investor or creditor. It is not possible to say

that the company with whom the money is deposited does not own the amount.

10. In this view of the matter, we have to hold that there has been a disposition by the deceased as contemplated by the definition in r. 2(6) in

favour of the controlled company when he deposited the amount with the company and that will attract s. 17 of the E. D. Act read with r. 4 of the

Estate Duty (Controlled companies) rules, 1953. we have to, therefore, disagree with the Tribunal that there has been no transfer of property

involved in the deceased making the deposit with the company.

11. The result is, the question referred to us has to be and is answered in the affirmative and in favour of the Revenue. Since the Tribunal has not

gone into the question of quantification of the benefit for purposes of s. 17 of the Act in view of its finding that there was no transfer for purposes of

s. 17 warranting the inclusion of any amount in the value of the estate passing, now that this court has answered the question in the affirmative, the

Tribunal has to quantify the benefit for purposes of s. 17.

12. The Revenue will have its costs. Counsel's fee Rs. 500.