

(1982) 03 MAD CK 0025

In the Madras High Court

Case No : The Case No. 999 of 1977

Controller of Estate Duty, Madras

APPELLANT

Vs

N. Kunjammal

RESPONDENT

Date of Decision : 27-03-1982

Acts Referred:

Income Tax Act, 1961 — Section 271(4A)

Citation : (1983) 35 CTR 155 : (1983) 141 ITR 1

Hon'ble Judges : R. Sengottuvelan, J;G. Ramanujam, J

Bench : Division Bench

Judgement

Ramanujan, J.—The following question of law has been referred to this court by the Income Tax Appellate Tribunal, Madras, under s. 64 of

E.D. Act, 1953 :

Whether, on the fact and in the circumstances of the case, the Tribunal was right in holding that the unproved hundi credits offer for u/s 271(4A)

of the Income Tax Act, 1961, could not be added to the principal value of the estate of the deceased for estate duty purposes ?

2. This question arose out of the assessment under the E.D. Act, 1953, relating to the estate of late R. Krishnamurthy who died on November 30,

1968. While determining the principal value of the said estate, the Asst. Controller held that the legal representatives of the deceased had settled

the I.T. assessment for the assessment years 1959-60 to 1966-67 by admitting undisclosed income of Rs. 3,60,773 which was spread over these

years by an order passes under s. 271(4A) of the I.T. Act, 1961, that the said amount represented the cash credits in the books of the firm, M/s.

K. Orr & Co., which was the proprietary concern of the deceased and which could not be satisfactorily explained by the deceased, that,

therefore, this amount should be taken to represent the suppressed profit of the deceased and that it should have been available either as cash or as

investment and passed on to the heirs of the deceased on his death. He, therefore, called upon the accountable persons to show cause why it

should not be added, as undisclosed cash assets of the deceased, to the principal value of the estate. The accountable persons contended that the

settlement was effected with the Department to purchase peace and that, in reality, the amount represented genuine loans which had been returned

to the lenders by the deceased himself and, therefore, no portion of the said sum of Rs. 3,60,773 passes on the death of the deceased. The Asst.

Controller, however, did not accept this contention taking the view that by reason of the settlement the amount was considered to represent the

concealed profits of the deceased and that even assuming that a part of it could have been spent away by the deceased, a sum of Rs. 3,00,000 can

reasonably be taken as having passed on to the heirs of the deceased on his death, either as undisclosed cash or investment, in determining the

principal value of the estate.

3. The accountable persons had appealed to the Appellate Controller contending that the settlement in the Income Tax proceedings could not lead

to the inference that there was undisclosed cash available with the deceased at the time of his death. The Appellate Controller, however, did not

accept the said contention on the ground that the sum of Rs. 3,60,773 really represented the concealed income of the deceased but held that as a

part of it, at least a sum of Rs. 1,00,000 would have been spent by the deceased having regard to the time-lag, and, therefore, the balance of Rs.

2,00,000 may be taken as having passed to the heirs on his death, either as undisclosed cash or investment.

4. The accountable persons took the matter in appeal to the Income Tax Appellate Tribunal contending that the settlement in the I. T. proceedings

could not by itself imply that the amount which was allowed to be taxed in the I.T. proceedings was the undisclosed income of the deceased and

that it remained as an asset in his assets in his hands at the time of his death. It was also contended before the Tribunal that the cash credit, which

was treated as undisclosed income, represented genuine loans and it was due to lack of evidence available with the accountable persons, and to

purchase peace that they agreed to have the amount taxed by way of settlement and that notwithstanding the settlement in the I.T. proceedings, so

long as the amount had not been capitalised or correlated to any particular investment made by the deceased, the addition of Rs. 3,60,773 should

be taken to be only an intangible addition. It was also contended that even assuming that the amount could be treated as the concealed income of

the deceased for the period March 31, 1959, to March 31, 1966, having regard to the fact that the deceased died only on November 26, 1968,

the amount cannot be taken to have remained with the deceased at the time he died and, therefore, unless the Revenue establishes the actual

existence of an asset on the date of his death, no addition can be made by the Revenue as undisclosed cash or investment remaining in the hands of

the deceased at the time of his death. The Tribunal, after a due consideration of the matter, accepted the contention of the accountable persons that

the actual existence of an asset, to the extent of the addition made for the assessment year in question on the date of the death of the deceased, had

to be established and mere fact that the assessee agreed for an order under s. 271(4A) of the I.T. Act for the inclusion of Rs. 3,60,773 as

undisclosed income could not be taken as an admission on their part that cash or investment to the value of Rs. 3,60,773 existed on the date of the

death of the deceased. The Tribunal took support for its view from the decision of the Kerala High Court in *Veerabhadrappe Chigateri Vs.*

Controller of Estate Duty, Mysore, . The Revenue relied on a decision of this court in *Smt. R.V. Kamalam Vs. Commissioner of Wealth-tax*, , but

the Tribunal distinguished that case on the ground that the decision had rested on the special facts of that case. The Tribunal ultimately held that

there were no materials to support the addition of Rs. 2,00,000 assessed by the Asst. Controller and the addition could not be sustained merely on

the basis of the settlement arrived at under s. 271(4A) in the I.T. proceedings, from which an inference could not be drawn that the assessee had

undisclosed assets to the extent of the addition at the time of his death, so that it could be said that the entire assets have passed on to the

accountable persons on his death. Thus, the question is whether the view taken by the Tribunal can legally be sustained.

5. According to the learned counsel for the Revenue, once the non-disclosure has been concealed by the accountable persons in the I.T.

proceedings after the death of the deceased and the same having been offered for assessment under s. 271(4A) of the I.T. Act, it can easily be

presumed that the deceased at the time of his death had with him the said asset and if the accountable persons come forward with a case that the

assets has been spent away by the deceased it is open to them to prove such a fact, but so long as this onus has not been discharged by the

assessee, it is open to the Revenue to assume that the assets, to the extent of Rs. 3,60,733, existed at the time of the death of the deceased and the

same passed on to the hands of the accountable persons on his death. The learned counsel for the Revenue strongly relies on the decision of this

court in Smt. R.V. Kamalam Vs. Commissioner of Wealth-tax, , in support of the plea that the onus is always on the accountable persons to show

that a particular asset which is shown to have existed in the hands of the deceased was not available on the date of the death of the deceased and,

therefore, it has not passed on his death. We do not see how the decision in the above cited case could be taken to lay down such a wide

proposition of law that in all cases the onus will lie on the accountable persons to show that the deceased did not leave a particular asset on the

date of the death of the deceased. That case related to W.T. assessment. For the year 1959-60, the W.T. assessment of the assessee in that case

was completed valuing the jewels in his possession at Rs. 1,00,000 disbelieving his claim that he had jewels worth only Rs. 40,000. This was

ultimately confirmed by the Tribunal as well as by this court. Meanwhile, the assessee died and in his estate duty proceedings, jewels of the value

of Rs. 1,00,000 were held to have passed to his heirs, rejecting the claim of the heirs that jewels of the value of only Rs. 3,350 were left by the

deceased. In respect of the W.T. assessments for the subsequent years 1960-61, the assessee's claim that jewels worth Rs. 1,00,000 had not

passed but only those of the value of Rs. 3,350 were left by him was negated on the ground that no tangible material to substantiate that

contention was produced. This court held that as no acceptable evidence was adduced to substantiate the contention that the deceased had left

behind jewels worth Rs. 3,350 only, to displace the order of the Tribunal was right in its view the wealth-tax assessment for 1959-60 the Tribunal

was right in its view that the assessee had inherited jewels worth Rs. 1,00,000 on the death of the deceased and those continued in her hands even

in the assessment years 1960-61 and 1961-62. The decision in that case purely rested on the special facts of that case. In the W.T. assessment for the previous year, the assessee was found to have held jewels worth about Rs. 1,00,000. In the next assessment year in respect of which the assessment was made after the death of the deceased, having regard to the close proximity of time, the court felt that inasmuch as the assessee, who submitted the wealth-tax return in the subsequent year after the death of the brother, did not place any material to show as to what had happened to the jewels, it was presumed that all the jewels should have remained as the assets of the deceased at the time of his death and that they should be deemed to have passed on his death. We are of the view that the said decision cannot apply to the facts of this case where the facts are quite different.

6. On the other hand, we are of the view that the decisions reported in BIBI GURDARSHAN KAUR (DECEASED) (THROUGH LEGAL HEIRS) Vs. COMMISSIONER OF Income Tax, NEW DELHI., , Veerabhadrapa Chigateri Vs. Controller of Estate Duty, Mysore, , Annamma Paul Perincherry Vs. Commissioner of Wealth-tax, and Commissioner of Wealth-tax Vs. J.K. Jute Mills Co. Ltd., , will apply to the facts of this case.

7. In Smt. Shantabai Jadhav v. CED, the deceased, before his death, admitted possession of jewellery of a certain value in his wealth statements for some previous years furnished to the ITO in connection with his I.T. assessments. The said wealth statements were taken as the basis for an inclusion of jewellery, of such value, as having passed to the deceased's heirs and estate duty was sought to be levied on that. The accountable person denied that the deceased had any jewellery on his death. The question arose as to whether the wealth statements given by the deceased in connection with his I.T. assessment could be taken as the sole basis for treating the jewellery as having passed on his death. A Division Bench of the Andhra Pradesh High Court held that if the accountable persons had denied that the deceased had any jewellery on his death, it is the duty of the EDO to decide whether any jewellery was in existence as the property of the deceased at the time of his death and when specially the existence of the jewellery at the time of the death of the deceased was denied,

the EDO cannot merely rely on the wealth statements given by the deceased. The court also took the view that the fact that the jewellery existed at an earlier point of time while the deceased was alive does not by itself establish that he continued to be the owner of the jewellery at the time of his death.

8. This decision has been referred to and followed by the Mysore High Court in *Veerabhadrapa Chigateri Vs. Controller of Estate Duty*,

Mysore, . In that case, in arriving at the value of the estate of a person who died in 1957, the Asst. Controller included, inter alia, a sum of Rs.

33,000 as the value of the jewellery in the possession of the deceased at the time of his death. In the estate duty return the accountable person had

shown the value of the jewellery in the possession of the deceased at his death as Rs. 2,300 only. The Asst. Controller relied on the fact that the

deceased had estimated the jewellery at Rs. 50,000 in the wealth statement furnished by him in connection with the assessment under the I.T. Act

for the assessment year 1952-53. The question arose whether the wealth statement given by the deceased long earlier to his death could form the

basis for an inference that the jewels mentioned in the wealth statement continued to exist at the time of his death. The court held that the burden

was on the Department to show that at the time of his death the deceased was in possession of jewellery worth Rs. 33,000 and as there was no

material on which the Controller and the Board of Revenue could have come to the conclusion that the deceased at the time of his death was in

possession of the jewellery valued at Rs. 33,000, their decision could not be upheld. In support of that conclusion, they relied on the decision of

the Andhra Pradesh High Court in *BIBI GURDARSHAN KAUR (DECEASED) (THROUGH LEGAL HEIRS) Vs. COMMISSIONER OF*

Income Tax, NEW DELHI., .

9. In *Annamma Paul Perincherry Vs. Commissioner of Wealth-tax*, , a somewhat similar question, as has arisen here, came up for consideration. In

that case, during the assessment to Income Tax of the assessee, for the assessment years 1957-58, 1958-59 and 1959-60, large amounts were

added to his income as income from undisclosed sources. On the basis of the I.T. assessments, the WTO included a sum of Rs. 75,000 in the net

wealth of the assessee for the assessment years 1960-61, 1961-62 and

1962-63. The court held that the fact that in the Income Tax assessment a sum of Rs. 75,000 had been added as income from undisclosed sources to the net wealth of the assessee will not lead to the presumption that the whole income or any part of it continued as an asset of the assessee in the subsequent years and there was no material whatever to indicate that there were any assets, other than those disclosed, in existence on the valuation dates, and, therefore, the addition of Rs. 75,000 made to the net wealth of the assessee for the assessment years 1960-61, 1961-62 and 1962-63 could not be sustained.

10. In Commissioner of Wealth-tax Vs. J.K. Jute Mills Co. Ltd., , the Allahabad High Court also has taken the same view. In that case, the

Income Tax Investigation Commission had detected a huge amount of concealment of income by the assessee, under s. 34(1B) of the Indian I.T.

Act, 1922, and, as a result of it, the assessee agreed to be assessed on an amount of Rs. 59,48,714 and paid tax on the said amount. For the

assessment year 1958-59 and 1959-60, the WTO included the amount in the net wealth of the assessee. The assessee contended that the amount

was not available to it during the relevant assessment years either in the shape of assets or otherwise. The WTO did not accept the contention of

the assessee. However, the Tribunal, on appeal, had held that the amount was no available to the assessee in the form of assets on the relevant

valuation dates, and, therefore, the addition was set aside. When the matter came to the High Court, it held that before a particular item can be

treated as as asset of the assessee, it should be available with the assessee on the relevant valuation date, but the question as to whether the

amount was available with the assessee was a question of fact, that the secreted income related to the period 1939 to 1946 and considerable time

had elapsed there cannot be any resumption that the amount remained with the assessee so that it could be included in the net wealth for the

assessment years 1958-59 and 1959-60 and that the mere fact that the assessee arrived at a settlement with the Department under s. 34(1B) of

the Act and that the assessee was assessed on the concealed income would not establish that the assessee retained the assessee income even

though the monies had already gone from its coffers. It was held that the Tribunal was right in deleting the amount of Rs. 59,48,714 from the net

wealth of the assessee.

11. In this case, the settlement with the Department by the legal representatives of the deceased related to the period from April 1, 1958, to March

31, 1966. Though the case of the accountable persons was the income from undisclosed sources relating to the subject-matter of the settlement is

an actual borrowing made by the deceased, that was not accepted by the I.T. authorities and it is not open to the assessee to put forward such a

plea in those proceedings. But the fact remains that the period, during which the income was added as from undisclosed sources, was up to March

31, 1966, and the deceased having died on November 26, 1968, more than 1 1/2 years after the period of the assessment, it was not possible to

say that the income from undisclosed sources as assessed by the I.T. Dept. continued to exist as an assets either in the form of cash or as

deceased himself has spent the cash or other assets before his death. So far as the accountable persons are concerned, they cannot be expected to

know as to what happened before the death of the deceased in relation to any particular asset. As already stated, merely from the factum of

settlement by the accountable persons with the Department under s. 271(4A), the addition has been made to the principal value of the estate for

the purposes of estate duty, without any other material. As has been pointed out in the decisions referred to above, unless the assets are shown to

have existed on the date of the death of the deceased, the value of those assets cannot be included in the principal value of the estate for the

purpose of estate duty. In this case, there is absolutely no material to indicate that the undisclosed income which has been assessed as a result of

the settlement arrived at under s. 271(4A) continued to exist in the form of cash or other asset till the date of the death of the deceased, and unless

the existence of such an asset is established by the Revenue, which is its duty, the onus does not shift to the accountable persons to explain as to

what had happened to the assets. If the assets have continued to exist on the death of the deceased, then, of course, the onus will shift to the

accountable persons to explain as to what had happened to the assets and how they had been dealt with. On the facts of this case, we are not able

to say that the existence of the assets at the time of the death of the deceased has been duly established. Hence, we have to agree with the view

taken by the Tribunal in this case. The reference is, therefore, answered in the affirmative and against the Revenue. The Revenue will pay the costs of the assessee. Counsel's fees Rs. 500.