

(1983) 06 MAD CK 0025

In the Madras High Court

Case No : Tax Case No's. 58, 59 and 60A of 1978 (Reference No's. 31 to 33 of 1978)

Controller of Estate Duty, Madras

APPELLANT

Vs

Rajah Sir M.A. Muthiah Chettiar

RESPONDENT

Date of Decision : 15-06-1983

Acts Referred:

Estate Duty Act, 1953 — Section 33(1)

Citation : (1984) 149 ITR 510

Hon'ble Judges : G. Ramanujam, J;Fakir Mohammed, J

Bench : Division Bench

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

Judgement

Ramanujam, J.—The following five questions of law, the first two at the instance of the Revenue and the other three at the instance of the

accountable person, have been referred to this court under s. 64(1) of the E. D. Act, 1953 :

1. Whether, on the facts and in the circumstances of the case, exemptions under sections 33(1)(n) and 33(1)(c) were admissible in computing the share of the deceased in the joint family properties ?
2. Whether, on the facts and in the circumstances of the case, the sum of Rs. 13,785 or any part thereof could be added as accrued interest on deposits ?
3. Whether, on the facts and in the circumstances of the case, deduction towards foreign exchange entitlement charge was admissible in valuing the fixed deposits lying in Ceylon ?
4. Whether, on the facts and in the circumstances of the case, the estate duty

payable is deductible in computing the principal value of the estate of the deceased ?

5. Whether, on the facts and in the circumstances of the case, the plea of the accountable person that any subsequent adoption should be considered to relate back to the date of death of the deceased and that the effect of the same would reduce the share of the deceased in the Hindu undivided family properties, has been properly rejected by the Tribunal ?

2. Shri M. A. M. Muthiah Chettiar, son of Dr. Raja Sir Muthiah Chettiar, died on January 24, 1970. In the course of determination of the principal value of the estate passing on his death, the accountable person claimed that the house property at Courtallam belonging to the HUF of which the deceased was a coparcener should be valued at Rs. 39,840 after allowing for exemption of Rs. 1,00,000 under s. 33(1)(n) of the E. D. Act. It was also claimed that in respect of household items found in Courtallam house property, the relief should be granted to the extent of Rs. 2,500 as provided in s. 33(1)(c) of the Act. This claim was rejected by the Assistant Controller. On further appeal to the Tribunal, it held that the disallowance of the claims under ss. 33(1)(n) and 31(1)(c) of the Act cannot be upheld and that the accountable person is entitled to claim the benefit of ss. 33(1)(n) and 31(1)(c) of the Act in respect of Courtallam house property. Aggrieved by the decision of the Tribunal, in that respect the Revenue has raised question No. 1.

3. It is not in dispute and it is clear from the order of the Assistant Controller as well as the Appellate Controller that the deceased was a co-owner in respect of the property known as Chettinad House in Madras and while valuing his share in that house, an exemption has been given under s. 33(1)(n) of the Act to the extent of Rs. 1,00,000. It is also found that even in respect of household articles found therein, the maximum exemption of Rs. 2,500 as provided under s. 33(1)(c) of the Act has been allowed. It is because of the full exemption already granted under ss. 33(1)(n) and 33(1)(c) of the Act in respect of the deceased's share in the Madras house property, he was not given exemption both under ss. 33(1)(n) and 33(1)(c) of the Act in respect of Courtallam house property. The Tribunal has not considered this aspect of the matter but has proceeded to hold that the deceased is entitled to exemption both under ss. 33(1)(n) and 33(1)(c)

of the Act in respect of Courtallam house property also. If as found by the Appellate Controller that exemption had already been given under ss. 33(1)(n) and ss. 33(1)(c) of the Act in respect of house property at Madras, then the exemption cannot again be claimed under those sections in respect of another house property in which the deceased had an interest. Learned counsel for the accountable person does not put forward a contention that exemption under ss. 33(1)(n) and 33(1)(c) of the Act can be claimed in respect of every house property and the household articles owned by the deceased. A perusal of ss. 33(1)(n) and 33(1)(c) of the Act will clearly indicate that exemption under those section can be claimed only one and not in respect of every house property and household articles therein. Therefore, in view of the fact that full exemption under ss. 33(1)(n) and 33(1)(c) had already been granted in respect of Chettinad House in Madras, a claim under those sections cannot again be made by the accountable person with reference to the other house property and household articles therein in which the deceased had interest and which passed on his death. We are, therefore, of the view that the Tribunal is in error in allowing the claim made in this regard. We, therefore, answer question No. 1 in the negative and in favour of the Revenue.

4. The second question relates to a sum of Rs. 13,785 said to represent the interest accrued on fixed deposits with the Indian Bank, Ceylon, both in the individual account of the deceased and also as a member of the HUF. Before, the Assistant Controller, the accountable person claimed that no interest is payable on the fixed deposits with the Indian Bank, Ceylon, on the date of death of the deceased as no interest had accrued, and that, therefore, the actual amount deposited alone should be taken into account for the purpose of determination of the principal value of the estate without adding any interest on the deposits. The Assistant Controller, however, rejected the claim and added the said sum of Rs. 13,785 to the principal value of the estate as forming part of interest accrued on the deposits till the date of death of the deceased. The matter was taken on appeal to the Appellate Controller. He held, that the interest on deposits in the bank did no accrue from day to day and they are payable only on maturity of deposits. In this view, he set aside the inclusion of the above amount from the computation of the principal value of the estate. The

matter was taken on appeal and the Tribunal held that since the interest is payable only maturity of deposits and not earlier, no interest has accrued

on the deposits on the date of death of the deceased and, therefore, the inclusion of the sum of Rs. 13,785 on the principal value as accrued

interest on the deposits, cannot be sustained. Aggrieved by the decision of the Tribunal in that regard, the Revenue has raised question No. 2.

5. On due consideration, we are of the view that Tribunal has not come to the right conclusion on this aspect of the case. It cannot be disputed that

there is difference between the date of accrual of interest and the date when the interest is payable. It may be that the interest is payable on the

deposits on their maturity. But it cannot be said that no interest has accrued on the deposits till the date of death of the deceased. Even though the

date of payment of interest has been agreed to between the parties, it cannot be said that the interest accrues only the maturity of the deposits.

Interest normally accrues day by day though the payment is contemplated by the parties only after the maturity of the deposits. Admittedly, the

amount has been invested and the interest is payable on the amount invested. The mere fact that the parties have fixed a date for payment of

interest does not mean that the interest on the deposits suddenly springs into existence on the date fixed for payment. The interest should be taken

to accrue day by day though the interest is due for payment only on a particular date agreed to between the parties. In this connection, it is useful

to refer to the decision of the Supreme Court in *Rm. Ar. Ar. Rm. Ar. Ramanathan Chettiar Vs. Commissioner of Income Tax, Madras*, . In that

case, there was an order for refund of estate duty paid with interest. In pursuance of the said order, interest was paid by the estate duty authorities

along with the amount of estate duty collected. The question arose whether the income in the hands of the recipient is casual and non-recurring.

Dealing with that question, the Supreme Court observed that though there was a lump-sum payment awarded under the decree of the court, it

cannot be said that there was not quality of recurrence about it. Since the lump-sum payment received represents the interest, it should be taken to

be a receipt of recurring nature, that the interest was granted under a decree of the court from the date of the institution of the proceedings in the

District Court and it was calculated upon the footing that it accrued *de die in diem*, and, hence, it has the essential quality of recurrence which is

sufficient to bring it within the scope of the Act and that the receipt cannot be taken to be of a casual and non-recurring nature. The said observations of the Supreme Court will clearly apply to the facts of this case. Wherever an amount is invested and the amount is earning interest, the interest is said to accrue from day to day, though the accrued interest is payable on a stipulated date. We are not inclined to agree with the learned counsel for the accountable person that the interest should be taken to have accrued only when the interest is due for payment. As already, stated, there is a distinction between the notion of accrual of interest and the date fixed for payment of interest to the depositor. In this view, we have the differ from the view taken by the Tribunal and hold that the interest on the deposits with the Indian Bank should be taken to have accrued from the date of deposits till the date death of the deceased less the amount of interest already drawn by the deceased and it should be taken and added on while determining the principal value of the estate. However, in this case, it is not known whether the accountable person allowed the deposits to remain till the date of maturity. If the accountable person had withdrawn the amount deposited even before the date of maturity, the bank would not have allowed interest at the agreed rate. Therefore, it is not possible to estimate the accrued interest at Rs. 13,785 without actually investigating the facts as to whether the fixed deposits remained invested till the date of maturity or whether they were withdrawn even before the date of maturity in which case only a lesser rate of interest would have been allowed by the bank. This requires further investigation by the Tribunal before the actual amount of accrued interest is determined. We, therefore, answer question No. 2 in the affirmative and in favour of the Revenue holding that whatever the accrued interest on the deposits will be added as part of the principal value of the estate, leaving the quantum of accrued interest to be determined by the Tribunal after investigation as contemplated above.

6. Coming to question No. 3, it is seen that the deceased and the joint family in which he was a co-parcener had deposits with the Indian Bank in Ceylon. The deposits in the individual name were Rs. 2,98,219 and in the name of the HUF, Rs. 7,09,107. After deducting Ceylon estate duty and cost of realisation of deposits at 5%, the Assistant Controller converted the balance in terms of the official exchange rate at Rs. 1.2623 between

India and Ceylon. The accountable person claimed before the Assistant Controller that a deduction of 55% should be allowed in conversion

towards foreign exchange entitlement certificate charges. The Assistant Controller rejected that claim holding that the properties are valued as

movable properties outside India and the market value to be considered was the market value in Ceylon and not in India. The matter was taken to

the Tribunal by the accountable person. The Tribunal, however, upheld the orders of the lower authorities holding that the market value

contemplated is the market value in the country in which the property is situate and, therefore, the disabilities of the owner of the property in

bringing the assets into India, cannot be taken into account. Aggrieved by the findings of the Tribunal in that regard, the accountable person has

raised question No. 3.

7. On due consideration of the matter, we are of the view that the Tribunal has come to the right conclusion. It is no doubt true that if the deposits

in the Indian Bank, Ceylon, were to be brought into India, the accountable person will have to face restrictions and obstacles and such factors

would naturally affect the value of the assets. However, it is not necessary, to sustain a charge for estate duty, that all the assets should be brought

into India. The charge to estate duty will attach to an asset wherever it is situate. Therefore, at the time of determining the principal value of the

estate of deceased, the market value of the assets, wherever it is situate, has to be determined. For enforcing charge of estate duty, the market

value of the asset, wherever it is situate, has to be determined. Therefore, for the purpose of determination of the principal value of the estate, the

market value of the assets in Ceylon should be ascertained on the basis of its market value in Ceylon. It is only when the asset is sought to be

brought into India, the restrictions and obstacles will affect the real worth of the asset. But, in this case, the accountable person has claimed 55%

deduction on the ground that if the deposits in the Indian Bank, Ceylon, have to be remitted to India, he has to pay 55% as foreign exchange

entitlement certificate charges to the Reserve Bank in Ceylon. However, as already stated, it is not necessary that the assets should be brought

over to India for sustaining the charge of estate duty. Therefore, there is no necessity for remitting the bank deposits into India after paying 55%

towards foreign exchange entitlement certificate charges. Since even without remittance the charge of estate duty can be fastened on the assets in

Ceylon, the deduction sought for by the accountable person has rightly been rejected by the Tribunal. In this view of the matter, we answer

question No. 3 in the negative and against the accountable person.

8. Then we come to question No. 4. It relates to deductibility of the estate duty payable in the computation of the principal value of the estate of

the deceased. Admittedly, the estate duty had not been provided as one of the items of deduction under the provisions of the E.D. Act. However,

the accountable person claims the deduction on the ground that it is liability charged on the estate of the deceased and, therefore, it should be taken

to a debt deductible in computing the principal value of the estate. But this contention of the learned counsel for the accountable person ignores one

vital circumstance. The estate duty is payable only after the death of the deceased and the charge of estate duty comes into existence after the

death of the deceased. Therefore, a debt which comes into existence even a moment after the death of the deceased cannot be taken to be a debt

subsisting on the date of the death of the deceased. Even taking the estate duty payable as a debt due by the estate, it is not a debt due by the

deceased, which alone is deductible under s. 44 of the E.D. Act. This question has been considered by a Division Bench of this court in RM.

ARUNACHALAM Vs. CONTROLLER OF ESTATE DUTY, MADRAS., and the court has held that the estate duty payable in the estate of

the deceased is not an allowable deduction in the computation of the principal value of the estate. The court has taken the view that the expressions

debts"" and ""encumbrances"" in s. 44 of the E.D. Act, refer to debts and encumbrances created by the deceased during his lifetime, that the liability

to pay estate duty, even if it were created by statute, cannot be said to be a debt or encumbrance created by the deceased, and that, therefore, the

estate duty is not deductible from the value of the estate. Similar view has also been taken by the Andhra Pradesh High Court in the decision in

Controller of Estate Duty Vs. Estate of Late Omprakash Bajaj, and by the Gujarat High Court in the decision in Shantaben Narottamdas (A.P. of

Late Narottamdas K. Shah) Vs. Controller of Estate Duty, Gujarat, . Having regard to the principles laid down in those decision, we hold that the

estate duty payable on the estate of the deceased is not an allowable deduction under s. 44 of the E.D. Act. We, therefore, answer question No. 4

in the negative and against the accountable person.

9. Question No. 5 relates to the plea taken by the accountable person that any subsequent adoption should be considered to relate back to the

date of death of the deceased and the effect of such adoption would reduce the share of the deceased in the HUF properties which has been

rejected by the Tribunal. A perusal of the order of the Tribunal itself indicates that the widow of the deceased has not chosen to adopt anybody

either during the lifetime of the deceased or afterwards till the hearing of the appeal of the Tribunal and, therefore, the question as to what will

happen if an adoption takes place in future is purely hypothetical. Having said that the question is hypothetical, the Tribunal proceeded to express

its own opinion on the question as to whether any adoption will relate back to the date of death of the deceased and ultimately expressed the view

that there will no relating back. On the facts of this case, we are of the view that no answer is called for on the question posed. Admittedly, there

was no adoption by the wife of the deceased till the decision was rendered by the Tribunal. However, the Tribunal has chosen to express an

opinion on the hypothetical question and we are also asked to answer the same hypothetical question. Normally, the court will give its opinion only

on the facts found or established before the Tribunal and it is not bound to give any opinion on an hypothetical question such as the one raising in

this case as to what will happen if an adoption was made by the wife of the deceased subsequent to the date of the order of the Tribunal. Since

question No. 5 involves only an hypothetical issue based on certain assumptions of facts which may take place or may not take place, we are

reluctant to answer that question. We, therefore, return that question unanswered. As the Revenue has succeeded substantially, it will have the

costs from the accountable person. Counsel's fee Rs. 500 one set.