(1998) 04 AP CK 0025

In the Andhra Pradesh High Court

Case No : C.R.No. 9 of 1993

Dhananjay Waghray (died) A/P Smt. Manjula Waghray — APPELLANT

Vs

Controller of Estate Duty, Hyd. — RESPONDENT

Date of Decision : 13-04-1998

Acts Referred:

Estate Duty Act, 1953 — Section 21, 64(1)
Succession Act, 1925 — Section 7

Citation : (1998) 4 ALD 151 : (1998) 234 ITR 276

Hon'ble Judges : T.N.C. Rangarajan, J;S.V. Maruthi, J

Bench : Division Bench

Advocate : Mr. D. Man Mohan, for the Appellant; Mr. S.R. Ashok, SC for Income Tax Department, for the Respondent

Judgement

S.V. Maruthi, J

1. This application in filed u/s 64(1) of the Estate Duty Act at the instance of the accountable person.

2. The facts in brief are as follows. Late Dr. Dhananjay Wagray died in Hyderabad on 30-11-1983 leaving behind his wife Smt. Manjula Waghray and two sons.The deceased had left for United Kingdom in the year 1973 and later in the year 1974 shifted to Chicago, United States of America (for short ''USA''). He arrived in India on 7-4-1983 and brought with him his car used by him in USA and other articles, on transfer of residence to India. Necessary formalities were completed by the deceased with the authorities of Reserve Bank of India. As the deceased found that the conditions in India were not conducive, he thought of again going back to America andin this regard he wrote some letters to a few hospitals seeking employment. He had also made an application to Reserve Bank of India on 10-11-1983 for availing reconversion of currency. The deceased was a Green Card holder. When he returned to India, he stayed in the house belonging to his HUF at Hyderabad While the deceased was in India, the death occurred and a sum of Rs. 17,56,205.00 was remitted to India to his legal heirs, viz., the

accountable person, by the USA based insurance Company,

3. The accountable person filed an account of the estate passing on the death of the deceased admitting the value of the estate at Rs.2,02,630 which included the share of lineal descendant in respect of joint family properties, while completing the estate duty assessment, the Assistant Controller of Estate Duty included the proceeds of life insurance amounting to Rs. 17,56,025.00 balance in bank account of the deceased in Chicago amounting to Rs.53,431/- and the value of the car brought from USA in a sum of Rs.1,45,000/-. On appeal to the Appellate Controller, the Appellate Controller dismissed the same. On further appeal by the accountable person to the Tribunal. The Tribunal held that the deceased died domiciled in India and according to Section 7 of the Indian Succession Act, the deceased died domicile in India. The Tribunal thus confirmed the order of the Appellate Controller. Therefore an amount of Rs.17,56,205.00 is included in his estate. At the instance of the accountable person, the following question was referred for the opinion of this Court.

"Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is justified in holding that the deceased was not domiciled in USA at the time of his death."

4. The main argument of the Counsel for the accountable person is that the deceased is a Green Card holder having acquired domicile in America and he died domiciled in America and not in India as he had no intentionto settle down in India though he has returned to India with an intention to settle down in India. In support of his contention he relied upon a judgment of the Supreme Court in Sankaran Govindan Vs. Lakshmi Bharathi and Others, , while the learned Counsel for the Revenue supported the order of the Tribunal.

5. The question therefore is whether the deceased died domiciled in India and if he died domiciled in India, is the accountable person liable for the assets lying in a foreign country. Section 21 of Estate Duty Act reads as follows:

=3"(1) There shall not be included in the property passing on the death of the deceased-

(a) immovable property situated (outside India)

(b) moveable property situated (outside India) at the time of the death, unless -

(i) in the case of any property, whether settled or not, the deceased was domiciled in (India) at the time of his death; or

(ii) in the case of settled property'' of which the deceased was a life tenant, the settlor was domiciled in (India) at the date of settlement took effect."

6. If the deceased died domiciled in America then the moveable property which is in America is not includable in the Estate of the deceased and the accountable person is not liable to account for the same. The fact that the deceased left for UK in the year 1973 and then in the year 1974 to USA is not in dispute. He

returned to India on 7-4-1983. He stayed in America for over a period of 9 years and acquired domicile of USA. It is true that he returned to India on 7-4-1993 and an inference can be drawn that he has come to India with a view to settle down here. If he has come to India with a view to settle down here, then he has necessary intention to acquire domicile of India unless he changes his mindat a later point of time. The question therefore is whether there is any evidence to establish that he changed his intention to return to America. Counsel for the accountable person brought to our notice certain letters written by the deceased to the Reserve Bank of India and also to some hospitals seeking employment in America. From these letters the learned Counsel contended that since there is a change in the mind of the deceased to migrate to America, he ceased to have domicile in India. To consider the argument of the learned Counsel, it is necessary to refer to these letters.

7, The first letter dated 10-11-1983 is written to Reserve Bank of India before his death. In the covering letter dated 11-11-1983 sending the application he wrote as follows :

"Dr. D. Waghray 11-11-1983

To

The Controller,

Exchange Control,

RBI, Hyderabad.

Sir,

I, Dr. D. Waghray, have returned to India from USA. At present I am establishing my practice and seeking for opportunities here in India. After arriving in India. I, unknowingly applied for RIFEES - Ref.No.IBHD/NRE-765 in case, under unavoidable circumstances I want to return back. I would like to collect my foreign exchange back. To do this I am requesting you to kindly change my RIFEES to reconversion plan.

I am enclosing an application in this regard.

Kindly consider my case.

Thanking you,

Yours Sincerely,

Sd/-"

8. From a reading of this letter it is clear that he was vacillating whether to settle down in India or return to U.S.A. Therefore tobe on safe side he requested the Reserve Bank of India to permit him to convert the Indian currency into foreign currency and at the same time he also says that under unavoidable

circumstances if he has to return back to USA he would like to collect his foreign exchange. From this letter, the only inference that can be drawn is that he has not finally decided to settle down in India but was vacillating in view of the letter dated 11-11-1983 written by the deceased which was acknowledged by the Reserve Bank of India. The other letter on which the learned Counsel relied on is the letter dated 17-8-1983. This letter was written by Executive Vice President of the Kron Medical Corporation, USA. Evidently it is a reply by the Medical Corporation to the deceased for his employment in USA.

9. From the above letter written by Executive Vice President Medical Corporation it is clear that the deceased has not decided to settle down in India. From this we can draw an inference that the deceased is not domiciled in India but died domiciled in America. In this context it is necessary to extract the relevant portion of the judgment of the Supreme Court in Sankaran ''s case (supra)

"It is impossible to lay down any positive rule with respect to the evidence necessary to prove intention. All that can be said is that every conceivable event and incident in a man''s life is a relevant and an admissible indication of his state of mind. It may be necessary to examine the history of his life with the most scrupulous care and to resort even to hearsay evidence where the question concerns the domicil that a person, now deceased, possessed in his life time. Nothing must be over-looked that might possibly show the place which he regarded as his permanent home at the relevant time no fact is too trifling to merit consideration."

Nothing can be neglected which can possibly indicate the bent of Krishnan ''s mind. His aspirations, whims, prejudices and financial expectation, all must be takeninto account. Undue stress cannot be laid upon any single fact, however impressive it may appear when viewed out of its context, for its importance as a determining factor may well be minimised when considered in the light of other qualifying event. It is for this reason that it is impossible to formulate a rule specifying the weight to be given to particular evidence. All that can be gathered from the authorities in this respect is that more reliance is placed upon conduct than upon declaration of intention. "It is not by naked assertion but by deeds and acts that a domicile is established". See Me Mullen v. Wordsworth (1889) 14 AC 631

10. From the above it is clear that we have to take into account every conceivable event and incident in a man''s life as relevant and admissible indication of his state of mind. Such conceivable event is the letter written by the deceased to the Reserve Bank of India expressing his intention to reconvert rupees into foreign exchange as due to unavoidable circumstances if he has to return he would like to take back foreign currency. That establishes that he has not decided to acquire domicile of India. If he has not decided to settle down in India he did not have any animus to acquire domicile in India, and the deceased continues to be domiciled in America. Therefore, the letter written by the deceased to the Reserve Bank of India conclusively establishes his intention not

to settle down in India. In view of the above the view expressed by the Tribunal that the deceased died domiciled in India cannot be sustained.

11. In the light of the above, the question referred to is answered in the negative and in favour of the accountable person.

12. The question is answered accordingly.

