(1996) 10 KL CK 0042

In the High Court Of Kerala

Case No : Income-tax Reference No. 58 of 1993

Dr. Mrs. Mary Cherian (Decd.) APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 24-10-1996

Acts Referred:

Citation : (1998) 234 ITR 116

Hon'ble Judges : V.V. Kamat, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : C. Kochunni Nair and M.C. Madhavan, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

V.V. Kamat, J.—The applicant is the accountable person in this reference application u/s 64(1) of the Estate Duty Act, 1953, and his claim is that the deceased, his wife, the late Dr. (Mrs.) Mary Cherian, had a domicile in Bahrain and the question of domicile problem after her death on October 16, 1981, at London arose. In this connection, the following three questions expect our answer :

"(1) Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in holding that the deceased cannot be stated to have acquired the domicile of Bahrain which she had clearly opted by means of a letter written to her husband two years before the date of death ?

(2) Whether the Appellate Tribunal is correct in arriving at the conclusion that charging Section 5 will not have an overriding effect on Section 15 of the Indian Succession Act ?

(3) Whether, on the facts and circumstances of the case, when there have been two decisions on the same point and which are not identical, was it not fair that the interpretation in favour of the accountable person should have been followed ?"

2. Undisputedly, the entire claim with regard to the domicile in Bahrain is based on the contents of a letter dated September 16, 1979, addressed by the wife to her husband-who is the accountable person.

3. The trial authority--Assistant Controller of Estate Duty, Ernakulam--considered the contents of the letter and the arguments of the authorised representative in regard thereto. He held that the deceased was an Indian passport holder and a citizen of India. He also added that her husband and children are living in India. He further alleged that she had not acquired any immovable property outside India and in regard to the claim, the only evidence produced by the accountable person is the letter in question.

4. Rejecting the claim based on the letter, the Estate Duty Officer proceeded and passed his order dated July 7, 1988.

5. The further travel of the proceedings before the first appellate authority--Appellate Assistant Commissioner of income tax--reversed the said decision. The said authority considered the provisions of Section 21 of the Estate Duty Act with regard to the territorial limitations on the property liable to duty and has observed on the basis of the situation that if the deceased was domiciled in India, the duty would be payable on the immovable and movable property in India and movable property outside India. He also considered that if the deceased was not domiciled in India, even then the situation would not be different, because the immovable property outside India is not liable to estate duty in any case, Even in spite of the above situation, that it would be only movable property outside India that could come under consideration for levy of estate duty and also in view of the position that immovable property outside India would not be liable to estate duty in either of the situations, the appellate authority thereafter took into consideration the letter dated September 16, 1979, and observed that the letter in question was written by the deceased from Bahrain to her husband and it is clear that she decided to continue to stay in Bahrain and spend the rest of her life there. On the basis of the conclusion with regard to the contents of the letter, the appellate authority proceeded to consider the statutory provisions of Section 15 of the Indian Succession Act with regard to the legal situation that the domicile of a married woman follows that of her husband, holding that the said provision of the Indian Succession Act cannot override the charging section, viz., Section 5 of the Estate Duty Act, 1953. The first appellate authority then considered the question of non-resident (external) account maintained by the deceased in various banks, though located in India. The authority considered the position of the rules--N. R. E. account rules--framed by the Central Government in 1970. He considered that the said rules are framed much after the statutory enactment of the Estate Duty Act, 1953. He observed that the accounts are freely transferable outside India also because the said rules specifically state that only a person resident outside India may open and maintain an account with an authorised dealer to be called N. R. E. account,

6. Thereafter, the first appellate authority has quoted the contents of the letter

and proceeded to consider the question on the basis thereof, as to whether the deceased had an Indian or a foreign domicile. The authority proceeded to consider as to whether the deceased had a domicile of choice and this was considered on the basis that there is no dispute about the domicile of origin as the deceased was an Indian. In the process of reasoning, the said authority considered Cheshire''s Private International Law, 9th edition, at page 171, a passage therefrom. The passage is quoted in the said order and it is found therefrom that even the said treatise lays down the situation that it is impossible to lay down any positive rule with respect to the evidence necessary to prove intention and all that can be said is that every conceivable event and incident in a man''s life would be relevant and admissible indication of his state of mind. It may be necessary to examine the history of even the hearsay evidence where the question concerned the domicile that a person, now deceased, possessed in his lifetime. Nothing must be overlooked that might possibly show the place which he regarded as his permanent home at the relevant time. Placing reliance on this passage, which the first appellate authority found to have been quoted in the decision of the Madras High Court in Seethalakshmi Ammal v. Ponnuswamy Nadar ILR 1966 Mad 373 the authority held that the prolonged residence of the deceased in Bahrain was accompanied by intention on the part of the deceased to choose Bahrain as her permanent home in preference to the country of her birth, viz., India.

7. With regard to this situation, the Controller of Estate Duty took the proceedings before the Income Tax Appellate Tribunal, Cochin Bench. Before the Tribunal, certain aspects were placed on record., viz., (a) certificate issued by the South Indian Bank Ltd., dated January 24, 1986, (b) certificate issued by the Central Bank of India dated January 24, 1986, (c) certificate issued by the Indian Overseas Bank dated January 25, 1986, (d) a copy of the licence for practice of medicine issued by the Ministry of Health, Bahrain, dated January 1, 1972, and a letter written by Amminey addressed to Appoose from Manama, Bahrain, dated September 16, 1979. It was submitted that the licence for medical practice dated January 1, 1972, was valid only for one year and further renewals show validity up to December 31, 1981. It is to be noted that the licence holder expired in London on October 16, 1981. On the basis of the material on record and the submissions of the learned departmental representative regarding the necessary factual findings, the Tribunal allowed the appeal of the Department.

8. In the process of making submissions, the departmental representative although did not question the genuineness of the letter, expressed doubts on the veracity thereof of acquisition of domicile by choice and in support thereof, placed reliance on certain circumstances with regard to the subsequent conduct of the deceased. It was submitted that the deceased had invested almost all her immovable and movable properties in India. It was pointed out that the only valuables she possessed at the time of her death was a television, a video cassette recorder and a very small amount of money. It was emphasised that her clinic where she used to practise was a rented one and even the residence was

also rented. On the basis of the material on record, the Tribunal has observed that it is only a private letter written by the deceased to her husband intimating her will to change the domicile. The Tribunal has considered that the deceased was a married lady whose family was away in India and her relation with the family was cordial. Thus, on the basis of the material on record, the Tribunal, on the facts, held that the contents of the letter cannot be accepted in toto. The conclusion arrived at by the Tribunal is a conclusion based on the factual matrix.

9. With the help of learned counsel for the accountable person, we have carefully gone through the contents of the letter (annexure-A). Left to ourselves the contents of the letter (annexure-A) do not inspire confidence in relation to the claim that the deceased had a domicile of choice on the basis of the contents thereof. Reading the letter as a whole, we are not left without any impression that it is an attempt to offer satisfaction and peace of mind to the husband waiting eagerly for her arrival. We gathered the impression that the deceased wanted to continue in Bahrain for her anxiety of health. The contents of the letter also show that she invited her husband to come over for celebration of Christmas at least.

10. The other material on record which has been considered by the Tribunal also shows that the Tribunal would be more than justified to consider the contents of the letter as hazardous to reach the conclusion regarding the domicile of choice, if considered along with other circumstances. We do not find any error with regard to the manner in which the final fact-finding authority--income tax Appellate Tribunal, Cochin Bench--has dealt with the situation with regard to the material on record to determine the claim of the accountable person that the deceased had a domicile of choice as Bahrain. This being the situation, we answer questions Nos. 1 and 2 in the affirmative--in favour of the Revenue and against the accountable person. Question No. 3--answer is declined as it is not necessary.

11. A copy of this judgment, under the seal of this court and the signature of the Registrar, shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.