
(1969) 02 MAD CK 0040
In the Madras High Court
Case No : Tax Case No. 160 of 1965

G. Annamalai Chettiar and Another	Vs	APPELLANT
Controller of Estate Duty		RESPONDENT

Date of Decision : 25-02-1969

Acts Referred:

Estate Duty Act, 1953 — Section 21(1)
Estate Duty Rules, 1953 — Rule 7

Citation : (1969) 74 ITR 743

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : Vedantham Srinivasan, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

Veeraswami, J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953. One A. Ar. Annamalai Chettiar died on August 9, 1957, leaving a will dated April 24, 1957, in and by which he bequeathed his estate in favour of his grandsons, who are the accountable persons. They filed a return showing the principal value of the estate that passed on the deceased's death at Rs. 1,57,090. The Assistant Controller, however, fixed the principal value at Rs. 1,81,185. Two items, among others, were in dispute : (1) a sum of Rs. 77,227, outstandings due to the deceased in Burma in the course of his money-lending business and (2) includibility in the principal value of compensation in respect of a part of the lands notified in Burma and taken over. The revenue has taken the view that since the only restriction in respect of the outstandings was about repatriation of funds, there is no sufficient reason why they should be excluded in computing the principal value of the deceased's estate. As regards the right to receive compensation, the revenue repelled the contention for the accountable person that it should be considered as a benefit arising out of the lands. The question, in the circumstances, which has been referred to us by the Central Board of Direct Taxes is :

" Whether, on the facts and in the circumstances of the case, the Board were correct in holding that the following properties are chargeable to estate duty as property passing on the death of the deceased under the Estate Duty Act, 1953 :

(1) the compensation receivable from the Government of Burma in respect of all the agricultural lands or any part of such lands which the deceased owned in Burma ;

(2) the amount of Rs. 77,227 representing the movable property of the deceased in Burma ? "

2. Though, the question has been framed in that manner, the answer to it really turns on whether the two items could be included in computing the principal value of the estate of the deceased. In our opinion, the outstandings being movable property and the deceased domiciled as he was in this country at the time of his death, the outstandings are clearly dutiable under the provisions of the Estate Duty Act. Section 21(1) is clear on the question. For the accountable persons the argument, however, is that the outstandings are not marketable in Burma and that they could not also be realised. But that involves investigation into the facts. The statement of the case does not provide the necessary facts. As a matter of fact, the Assistant Controller records in his assessment order that there was no material to show that any of these outstandings could not be recovered and constituted bad debts but, on the other hand, the accountable persons themselves in filling their return had deducted certain debts claimed to be bad and it was not their case that any of the foreign outstandings constituted bad debts. As to the marketability of the outstandings, the revenue at all stages has found that the only restriction in regard to them pertained to their impossibility of repatriation. But that, by itself, is not sufficient to accept the contention of the accountable persons to exclude the outstandings from the principal value of the deceased's estate.

3. On the other item, it seems the deceased owned 4,530 acres of agricultural land, of which 656.71 acres were notified under the laws of Burma for being taken over. In respect of this extent of land, a sum of Rs. 2,500 was admittedly payable as advance compensation to the deceased. The Assistant Controller directed that the immovable property, which was not under notification, should be excluded from the computation of the principal value but the extent which was under notification and in respect of which the deceased was entitled to compensation should be included in it. On that view he directed the accountable persons to inform the officer as to when compensation would be received so that it should be taken into account and the assessment reopened u/s 62 read with Section 53(4) of the Act. The Central Board of Taxes took a similar view.

4. The contention before us is that compensation received in such circumstances is a benefit derived from land and, therefore, should be regarded as immovable property situate outside the territories of India not liable to Indian estate duty. In support of this contention, our attention has been invited to Ranga Rao Bahadur

v. State of Madras and also Fletcher v. Ashburner (vide White and Tudor's Leading Cases on Equity, 9th edition, volume 1, page 325). We do not think that these authorities support the accountable persons. Sri Ravu Janardhana Krishna Ranga Rao Bahadur Vs. The State of Madras and Others, .I was concerned with the claims of maintenance holders against the compensation paid in respect of an impartible estate notified and taken over under the provisions of Madras Act XXVI of 1948. It was held that merely because the estate was converted into compensation, there was no justification for the view that the nature of the property underwent a change on its conversion into money. We are of the view that this case is an authority only for the proposition that where third parties' rights or liabilities interact on immovable property converted into money, in respect of and for the purpose of such rights or liabilities, the nature of the property as immovable property is preserved, notwithstanding its conversion into money. In Fletcher v. Ashburner (vide White and Tudor's Leading Cases on Equity, 9th edition, volume 1, page 325), also a similar proposition was enunciated. This is what we have in that case :

" Where money is paid into court, the produce of real estate converted by compulsory powers under Acts of Parliament, as under the 69th section of the Lands Clauses Consolidation Act, it in general remains in court subject to the rights of the parties interested in it to have it reinvested in land and is to be considered as money or personal estate in court, subject to a trust to be invested in land, and therefore impressed with the quality of real estate, until some act is done by the owner showing his election to take it as personalty.

It is obvious that this passage does not mean that when a land, which is compulsorily acquired, is converted into money compensation therefor, such money or compensation, irrespective of circumstances, continues to have its character as immovable property. Where immovable property is subject to a liability or a right and it is converted into compensation, for the purpose alone of such liability or right the compensation is impressed with the quality of real estate. Even there, the owner may, by an act of his, elect to consider it as personalty. That is all the ratio of Fletcher v. Ashburner (vide White and Tudor's Leading Cases on Equity, 9th edition, volume 1, page 325). We are not told in this reference, and it does not appear from the statement of the case, that the compensation paid or payable for the land notified is subject to any right or liability inhering in any third party. At his death the deceased undoubtedly had a right to receive the compensation for the extent of the land which had been notified during his lifetime. That right, in our view, is movable property.

5. Property is no doubt defined by the Estate Duty Act but the definition does not help in deciding the question before us. Rule 7(b) of the Rules framed u/s 21(2) of the Act shows that even the interest of a simple mortgagee in the hypotheca is treated as movable property for the purpose of the Act. The same provision further shows that only the interest of a mortgagee in possession will be considered as immovable property. That we think is an indication that, unless the

deceased had a direct interest in the land in the shape of possession thereof, merely because under the general law he has an interest as a mortgagee in the hypotheca, such interest cannot be considered to be immovable property.

6. We answer the question against the accountable persons but make it clear that it is only the compensation that the deceased was entitled to receive in respect of lands notified during his lifetime for being taken over that would be includible in the principal value of the estate of the deceased, and that the sum of Rs. 77,227 was rightly included in such principal value. The revenue is entitled to costs. Counsel's fee Rs. 250.