

(1968) 11 AP CK 0003

In the Andhra Pradesh High Court

Case No : Case Referred No. 11 of 1965

Gopisetty Chandramouli

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 25-11-1968

Acts Referred:

Estate Duty Act, 1953 — Section 10, 46, 46(1), 46(2)

Citation : (1969) 74 ITR 439

Hon'ble Judges : P. Jaganmohan Reddy, C.J.; Ramachandra Rao, J

Bench : Division Bench

Advocate : T. Veerabhadraiah, for the Appellant; T. Anantababu, for the Respondent

Judgement

Ramachandra Rao, J.—The Central Board of Direct Taxes, New Delhi, has referred u/s 64(1) of the Estate Duty Act (hereinafter referred to as the Act) the following questions for the opinion of this court:

"" (1) Whether, on the facts and in the circumstances of the case, the amount of Rs. 22,630 was correctly included in the estate of the deceased under the provisions of Section 46(2) of the Act ? and

(2) Whether, on the facts and in the circumstances of the case, the following properties were correctly included in the estate of the deceased u/s 10 of the Act;

(a) N.G.P. notes of the value of Rs. 21,249.

(b) House properties No. 85, Nallagunta and Nos. 1234, 1235 and 1238 at Pioneer Bazar, Bolarum ?"

2. The facts which have given rise to the reference and as found in the statement of the case are as follows :

The estate duty assessment relates to the estate of late Gopisetty Ratnaiah, who died on May 25, 1957. His widow, Smt. Gopisetty Seshamma, who is the accountable person, filed a statement of account declaring the principal value of

the estate passing on the death of the deceased, Ratnaiah, at Rs. 1,57,443. The assessing authority (the Assistant Controller of Estate Duty, Hyderabad) determined the net principal value of the estate at Rs. 5,26,098 and the estate duty payable thereon at Rs. 49,600"30

3. In arriving at the said value, the following items, besides other properties were included as forming part of the estate of the deceased.

Rs.

1. Cash 60,000
2. Jewellery 32,450
3. N.G.P. Notes 21,249
4. House No. 85 at Nallagunta 22,000
5. House Nos. 1234, 1235 and 1238 at Bolarum 5,000

4. The accountable person claimed the aforesaid items as her personal property. With respect to the first item, cash of Rs. 60,000, while the statement of account filed by the accountable person (the applicant herein) did not show that the deceased had left any cash, the Assistant Controller found that the Commissioner appointed by the court of the Subordinate Judge, Secunderabad, to take an inventory of the articles in. the house of the deceased, had found on November 2, 1957, a sum of Rs. 65,898 in cash in the iron safe in the house. He also found from the books of account of the deceased that the deceased had withdrawn cash to the extent of at least Rs. 60,000 and kept by him. Accordingly, the Assistant Controller held that the deceased should have left at least Rs. 60,000 in cash and included the said amount in the estate of the deceased.

5. With regard to the item of jewellery, the Assistant Controller included the amount of Rs. 32,450 as the value of gold and silver belonging to the deceased and included the same in the estate. With regard to the N.G.P. notes and the house properties, the Assistant Controller found that these properties were admittedly gifted by the deceased but that he was not completely excluded from the benefit or enjoyment of the said properties and that the value, of the said properties was therefore included in the estate of the deceased under the provisions of Section 10 of the Act.

6. On appeal, the Board held with regard to cash item of Rs. 60,000 that only a sum of Rs. 26,928, withdrawn by the applicant during the two years prior to the death of the deceased in discharge of the liability to her, had to be deemed to be a gift made to her within the said period in view of the provisions of Section 46(2) of the Act and after allowing for certain adjustments, included a sum of Rs. 22,630 in the estate of the deceased. With regard to the other items of jewellery, N.G.P. Notes and house properties, the Board confirmed the order of the Assistant Controller. In this reference we are not concerned with the inclusion of the value of the jewellery, as it is not the subject-matter of the reference.

7. Sri T. Veerabhadraiah, the learned counsel for the applicant, contends that the Board erred in including the cash sum of Rs. 22,630 in the value of the estate of the deceased. He submits that the cash belonging to the applicant was only Rs. 20,000, which had been withdrawn and put in the iron safe, and that the Commissioner appointed by the sub-court, who took inventory on November 2, 1957, found a sum of Rs. 65,898 in the iron safe in two separate bags, one containing Rs. 20,000 and the other containing the balance and that the sum of Rs. 45,898 was the cash belonging to the deceased which was already included in the business valued at Rs. 2,67,229. The said amount cannot be included as part of the estate of the deceased. So far as Rs. 20,000 are concerned, the applicant claimed the said sum as solely belonging to her and not to the deceased and thus no amount of cash could be included in the estate of the deceased.

8. The Central Board found, on a consideration of the entries in the accounts and the explanation of the accountable person, that her account in the books of the deceased stood at a credit balance of Rs. 53,226 on November 9, 1950, while it stood as a debit balance of Rs. 4,298 on May 23, 1957. So far as the debit balance is concerned, it appeared as an asset in the deceased's balance-sheet and it was included in the estate as the value of investments in the business. The Board further drew an inference that the monies belonging to the deceased were lent in the name of his wife, the accountable person, and that the same was credited to her account in the books of the deceased, that the withdrawals during the period November 9, 1950, to May 23, 1957, amounted to Rs. 57,000 and out of the said amount, withdrawals to the extent of Rs. 26,928 were made during the two years prior to the death of the deceased. Out of the said amount of Rs. 26,928, a sum of Rs. 22,925 was withdrawn in one lump sum on November 14, 1955, and that this amount was likely to have been kept in the iron safe along with the cash of the deceased and that the total figure thus came to Rs. 65,898 found by the Commissioner who took the inventory. Therefore, the estimate of Rs. 60,000 as cash belonging to the deceased was accepted by the Board as correct.

9. On these facts the question for consideration is whether the inclusion of the said sum of Rs. 22,630 in the estate of the deceased is warranted by the provisions of Section 46(2) of the Act. u/s 5 of the Act, estate duty is leviable in respect of every person dying after the commencement of the Act on the principal value of all property settled or not settled, which passes on the death of such person. In determining the value of an estate for purposes of estate duty u/s 44, allowance shall be made for certain debts incurred by the deceased. Section 45 and Section 46 impose certain limitations on the debts for which allowance has to be made u/s 44 of the Act. The portions of Section 46 of the Act, relevant for the purpose of this case, are as follows :

"46. (1) Any allowance which, but for this provision, would be made u/s 44 for a debt incurred by the deceased as mentioned in Clause (a) of that section, or for

an encumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefore which consisted of--

(a) Property derived from the deceased; or ...

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which Sub-section(1) would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that sub-section has effect on his death, shall, unless so paid or applied two years before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, notwithstanding anything in Section 26, be payable in respect thereof accordingly."

10. The provisions of Section 46(1)(a) of the Act are intended to prevent avoidance of duty by the creation of debts by the deceased. If a debt is created by the deceased it shall be subjected to abatement to an extent proportionate to the value of any consideration thereof and which consisted of property derived from the deceased. Admittedly, the funds for the money-lending business in the name of the applicant came from the deceased in the first instance and these amounts had also passed through the account of the applicant in the books of the deceased. If this account had shown a credit balance at the time of the death of the deceased, the said liability would fall u/s 46(1)(a) of the Act and it would not be deductible from the value of the estate. If the liability to repay the debt had remained owing on his death, it would have been disallowed u/s 46(1) of the Act. But Section 46(2) of the Act provides that:

"Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which Sub-section(1) would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that sub-section has effect on his death, shall, unless so paid or applied two years before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, ... be payable in respect thereof. ..."

11. In other words, Section 46(2) of the Act extends the principle underlying Section 46(1) of the Act and provides that any debt falling u/s 46(1)(a) of the Act to the extent of the money or money's worth paid or applied by the deceased in satisfaction or discharge of a liability during two years prior to the death of the deceased shall be treated as part of the estate of the deceased. Admittedly, the amount withdrawn by the applicant herein during the two years prior to the death of the deceased for the discharge of the liability to her was Rs. 26,928 and this amount must therefore be treated as part of the property passing on the death of the deceased and is properly includible in the value of the estate. The Tribunal, therefore, correctly held that the amount of Rs. 22,630

was liable to estate duty. The first question referred is, therefore, answered in the affirmative and against the assessee.

12. Coming to the second question referred, it refers to two categories of property : (1) N.G.P. notes and (2) house properties. But we shall deal with the property, house No. 85, situated in Nallagunta in the first instance, as it stands on a separate footing from the other properties. This house was constructed by the deceased in the name of his wife, the applicant herein, and ever since the said construction, the deceased lived in that house till his death. Admittedly, this house was gifted. The Assistant Controller as well as the appellate authority appeared to have accepted the contention of the applicant that the said house belongs to her and that the deceased lived in the house till his death. If so, the question arises, whether the value of the said property can be included as part of the estate of the deceased u/s 10 of the Act.

13. Section 10 of the Act reads as follows :

"10. Gifts whenever made where donor not entirely excluded.--Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that bona fide possession and enjoyment of it was riot immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise: ..."

14. The proviso is omitted as it is not necessary for the purpose of this case.

15. It is the contention of Sri Veerabhadraiah, the learned counsel for the applicant, that the deceased being the husband of the applicant, was living in the house and that it would not amount to deriving any benefit from the said house property gifted to the wife. We are of opinion that both the Assistant Controller and the appellate authority erred in holding that the provisions of Section 10 of the Act are applicable to the said house No. 85. When a donor lived with his wife in the house gifted to her till his death, the question whether the properties are liable to be included in the estate of the deceased u/s 10 of the Act, has been decided in a recent judgment of this court in MOHAMMED BHAI AND ANOTHER Vs. CONTROLLER OF ESTATE DUTY, A.P., by a Division Bench consisting of one of us (the Chief Justice) and Sambasiva Rao J. In similar circumstances, the learned Chief Justice, delivering the judgment of the court, observed at page 777, as follows :

"The only way in which possession can be given to a person who is already in possession is by vesting legal title in that person. The erstwhile possession as a licensee or "lessee" under some legal right will be changed immediately when title is vested in that person. There was no other way in which the donor, even from the department's point of view, could have given possession of the residential house to his wife in order to make an effective gift, unless it is stated that he should leave his wife and go into some other house, or that they should both move out of the house and lease it so that the wife will thenceforth receive the rents. The adoption of such a device would be the exact antithesis of love

and affection, the motivating basis for the gift in favour of a spouse. We do not think there is anything in Section 10 which requires a break in the marital relationship or separation from the husband to make an effective gift of the residential house to the wife or the wife to the husband."

16. Their Lordships referred to the judgment of the Supreme Court in *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, and held that the ratio decidendi of the Supreme Court in the said decision was not applicable to the facts and circumstances of the case. His Lordship observed at page 781, as follows:

"In our view, the ratio decidendi of the Supreme Court case rested on the question whether the donor was not entirely excluded from possession of the property as an infringement of the first limb of Section 10 and having regard to the facts of the case it was held that it was. That is not to say that in this case also the facts and circumstances justify the conclusion that merely because the wife and husband resided in the house after he gifted the property to his wife, he derived a benefit therefrom. Husband and wife live together as long as they maintain their matrimonial residence."

17. Their Lordships also referred to the cases in *M. Ranganatha Sastri and Another (Executors to the Estate of the Late Dewan Bahadur R. Subbaiah Naidu) Vs. Controller of Estate Duty, Madras*, ; *V.N. Krishnaswamy Vs. Collector of Estate Duty, Madras*, and *Collector of Estate Duty, Madras Vs. Estate of Janab S. Ibrahim Rowther, Madras*, where a similar view was taken. We may also in this connection refer to the observations of P. B. Mukharji J. in *MRS. SHAMSUN NEHAR MANSUR Vs. CONTROLLER OF ESTATE DUTY, WEST BENGAL I.*,

"Even assuming there was a gift by the deceased to the wife, no construction should be put on Section 10 of the Estate Duty Act so as to be against public policy to the extent that whenever a husband makes a gift of a property to his wife, he should lose both the property and the wife. In such circumstances, the fundamental point for consideration is that a husband's going to the wife for consortium or coverture is not a proprietary right in respect of the house gifted, and Section 10 was not applicable to the case."

18. Applying the principle of the aforesaid decision, it follows that the property, house No. 85, Nallagunta, was not includible in the estate of the deceased u/s 10 of the Act.

19. Coming to the other properties, viz., N. G. P. notes and the other house properties situated at Bolarum, the Assistant Controller and the appellate authority found concurrently that the assets were admittedly gifted by the deceased to his wife, that the income from these assets, viz., rents from the houses and the interest from the N. G. P. notes was received by the deceased and merged with the monies in money-lending business, even though a credit entry was made in the account of his wife, that no interest was at any time credited to the account of his wife for the monies utilised by the deceased. On

these facts the Central Board accepted the view of the Assistant Controller. The Controller came to the conclusion that the deceased was not entirely excluded from possession and enjoyment of the said house numbers and N. G. P. notes.

20. Sri T. Veerabhadraiah, the learned counsel, relying upon a decision in SMT. DENABAI BOMAN SHAH Vs. CONTROLLER OF ESTATE DUTY, A.P., and Smt. Shantabai Jadhav v. Controller of Estate Duty 1964 51 ITR (E.D.) 1 contended that the deceased had no disposing power over the house properties and therefore they should not be included. But, in view of the clear finding that the husband was utilising the rental income from the houses at Bolarum, it cannot be said that the deceased was excluded from possession and enjoyment of the said properties.

21. So far as the N. G. P. notes are concerned, there was no effective transfer of the same in favour of the wife till 1955. There was also no material to show that the wife was in possession and enjoyment of the interest realised therefrom. For the foregoing reasons we are of the opinion that the properties, viz., N. G. P. notes of the value of Rs. 21,249 and the house properties bearing Nos. 1234, 1235 and 1238 at Pioneer Bazar, Bolarum, were correctly included in the estate u/s 10 of the Act.

22. In the result, question No. 1 is answered in the affirmative and against the assessee. Under question No. 2 so far as house property bearing No. 85, Nallagunta is concerned, it is answered in the negative and in favour of the assessee. So far as the other properties, N. G. P. notes of -the value of Rs. 21,249 and house properties bearing Nos. 1234, 1235 and 1238 at Pioneer Bazar, Bolarum are concerned, the question is answered in the affirmative and against the assessee. In the circumstances, we make no order as to costs in this reference.