

(1979) 03 KAR CK 0026

In the Karnataka High Court

Case No : Tax Revision Cases No's. 133 of 1975 and 80 of 1977

H.M. Jaffer

APPELLANT

Vs

Controller of Estate Duty, Karnataka

RESPONDENT

Date of Decision : 12-03-1979

Acts Referred:

Estate Duty Act, 1953 — Section 10, 12, 64 (1)

Citation : (1980) 123 ITR 586

Hon'ble Judges : M.K. Srinivas Iyengar, J;M. Rama Jois, J

Bench : Division Bench

Advocate : G. Sarangan, for the Appellant; S.R. Rajasekhara Murthy, for the Respondent

Judgement

Rama Jois, J.—These two references, T.R.C. No. 133 of 1975, connected with T.R.C. No. 80 of 1977, arise out of the estate duty proceedings in respect of one A. H. Habibullah, who died on January 9, 1963.

2. In T.R.C. No. 133 of 1975, the following two questions have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Bangalore, u/s 64(1) of the E.D. Act:

(1) Whether, on the facts and in the circumstances of the case, the value of the Halsoor "A" and "B" estates is includible in the principal value of the estate passing on the death of the deceased u/s 10 of the Estate Duty Act, 1953 ?

(2) Whether, on the facts and in the circumstances of the case, the value of the standing crop of the Halsoor estate was includible in the principal value of the estate ?

3. In T.R.C. No. 80 of 1977, the following question is referred pursuant to the order made by this Court in C.P. No. 39 of 1976:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that a sum of Rs. 32,000 being the price of

Chikkannakonda estate purchased on April 4, 1962, was includible u/s 9 of the Estate Duty Act ?

4. The facts of the case, briefly, are as follows:

Late A.H. Habibullah made a settlement on March 29, 1954. Under the settlement deed the estate called Halsoor estate referred to in the first two questions was settled in favour of the two minor sons by name Aurangazeb and Baber Pasha. The relevant portions of the settlement deed read as follows:

As I am becoming aged, I intend to make arrangements, just like as I have done for my other sons, for you both Aurangazeb and Baber Pasha. I vest you with the full ownership of scheduled property worth about Rupees twenty-two thousand... After you both attain majority you can keep the property undivided or divide it equally. I will look after the management as long as I live. After my death, my second wife's son, Ali Asgar, may look after the management of the schedule property, willed to you regularly and keep the accounts and relative documents. I state in this settlement deed that hereafter I don't have any rights over this scheduled property.

5. After the settlement deed was made as above, the late Habibullah invested the income from the settled properties by purchasing the following four properties in the names of the two minor sons:

(1) Coffee lands from Sri Guolam Mohideen for Rs. 70,000 on December 26, 1959.

(2) Indian Bank Buildings in Chickmagalur in 1960, at a cost of Rs. 40,000.

(3) Building in Bangalore, for a sum of Rs. 1,20,000, on January 27, 1962.

(4) Chikkannakonda estate for a sum of Rs. 32,000 on April 4, 1962.

6. Thereafter, Habibullah died on January 9, 1963. The accountable person filed returns under the provisions of the E.D. Act before the Asst. CED, Mangalore. In the returns so filed the accountable person claimed that the properties settled, namely, the Halsoor estate as also the four items of the properties referred to above, which were purchased by investing the income from the Halsoor estate belonged to the minors and, therefore, cannot be considered as the assets passing on the death of Habibullah. In order to show that the purchase of the four items of the properties referred to above were out of the income from the Halsoor "A" and "B" estates, the accountable person furnished the income from those properties for the four years ending March 31, 1959, March 31, 1960, March 31, 1962, and March 31, 1963, as assessed for agricultural Income Tax, the particulars of which are as follows:

Income from	Income from	Halsoor	"A"	Halsoor	"B"	estate.	estate.
(Aurangazeb)	(Baber Pasha)	Rs.	Rs.	34,742	31-3-1959	32,743	10,898
31-3-1960	13,893	13,483	31-3-1962	13,484	16,409	31-3-1963	16,409
_____	_____	75,532	76,529				

7. He further claimed that the income for the earlier four years commencing from the date of settlement was also the same. On this basis, he stated that apart from the Halsoor estates settled on the minors the properties purchased being out of the income from the said estate, they could not be subjected to tax under the Act.

8. The Asst. Controller held that no material was furnished by the accountable person in respect of the income from the Halsoor estate earlier to 1959. He took the income for the earlier four years at Rs. 80,000 as against the income of Rs. 1,50,000 for the succeeding years. As the total amount invested on the four items of properties aforesaid was Rs. 2,62,000, he reached the conclusion that only a sum of Rs. 2,30,000 was available from the income from the settled properties and, therefore, the sum of Rs. 32,000 for which the Chikkannakonda estate was purchased on April 4, 1962, must be treated as gift by the late Habibullah, in favour of the minor sons and the said gift to the minor sons being within two years prior to the date of his death, has to be treated as an asset passing on the death of the said Habibullah.

9. Having reached the aforesaid conclusion, the Asst. Controller also held that the properties settled did not take effect immediately and, therefore, it was hit by the provisions of Section 12 of the Act. According to Section 12 of the Act, property passing under any settlement made by the deceased by a deed or any other instrument not taking effect as a will whereby the interest in such a property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor's death. Applying the said section, the Asst. Controller held that as the deceased continued to manage the property, the Halsoor estate must be held to have passed to his legal representatives after his death. In coming to this conclusion, the Assistant Controller relied on a portion of the settlement deed wherein it is mentioned that as long as Habibullah was alive he would himself look after the properties and thereafter the properties would be managed by his second wife's son, Ali Asgar. The Asst. Controller also held in the alternative that the settlement was in the nature of a gift and the donor continued to be in possession, enjoyment and management of the property till his death and, therefore, the property had to be treated as passing after his death in view of Section 10 of the Act. Aggrieved by the order of the Asst. Controller the accountable person preferred an appeal before the Appellate Controller. The Appellate Controller affirmed both the findings, but however held that Section 12 would not apply to the facts of this case. On further appeal to the Tribunal, it affirmed the view taken by the Appellate Controller. It is thereafter that these references have been made as stated earlier.

10. In our opinion the findings recorded by all the three authorities consistently on the third question is sufficient to answer the first two questions in favour of

the accountable person. With reference to the claim of the accountable person that the four properties purchased during the lifetime of Habibullah in favour of the minors was out of the income derived from the Halsoor estate, the finding recorded by all the three authorities concurrently was that income derived from Halsoor estate for the 8 years preceding such purchase fell short only by a sum of Rs. 32,000 and, therefore, while it was possible to accept the plea of the accountable person that three items of properties belonged to the minors even before the date of death of Habibullah, the 4th property purchased on April 4, 1962, for Rs. 32,000, namely, Chikkannakonda estate, must be deemed to be a purchase made out of the personal funds of Habibullah and, therefore, should be treated as gift and as the gift was within two years before his death the said property must be considered to have passed to his sons on the death of Habibullah. If the Halsoor estate did not become the property of the two minor sons from the date of settlement and passed on to them only on the death of their father, the income derived there from till that date could not be treated as belonging to them. Consequently, the four properties purchased out of such income could not also be treated as belonging to them. But the clear finding recorded by the Asst. Controller and the Tribunal is that the income from Halsoor estate for eight years which was computed at Rs. 2,30,000 was available for the purchase of the three properties. This finding clearly means that Halsoor "A" and "B" estates became the property of the minors with effect from the date of the execution of the settlement deed. This is also consistent with the recitals in the settlement deed, the relevant extracts of which are set out earlier. Therefore, in view of the settlement the position was that Habibullah parted possession of the two properties from the date of settlement in favour of his minor sons, but continued to manage the estates, in his capacity as the guardian of his minor sons having regard to the fact that under the provisions of the Mohamedan law he was the guardian and further as per the settlement deed also he constituted himself as the guardian of the minors. The interpretation placed by the Assistant Controller on the sentence in the settlement which was to the effect that Habibullah would look after and manage the properties as long as he lived is not correct. The said sentence could not be read torn out of the context. On a reading of the entire settlement deed executed by Habibullah who settled the properties in favour of his minor sons, it is clear that Habibullah being aged, in his anxiety to protect the interest of the minors made the settlement. The settlement was to come into effect immediately and the full ownership in the schedule-properties was also to be vested in the minors. As his two sons were minors, the settlor stated in the settlement, that he would look after the management of the properties so long he was alive which necessarily means that he would continue to do so only during their minority. This is clearly brought forth in the settlement, wherein it is stated that after both the minor sons attained majority they could keep the property undivided or divide it equally. This necessarily means that from the date of attaining majority they are given the right to manage the property as they pleased and consequently the guardianship was only for the duration of the minority. The provision "that his second wife"s

son would look after the properties, after him, was only to meet an eventuality, i.e., the death of the settlor himself during the minority of his sons, which actually happened, and the guardianship of both was not to extend beyond the minority of the two sons. The result is that the Halsoor estate having become the property of the two minor sons from the date of the settlement deed, neither the said estate nor the income from crops standing on the estate on the date of death of Habibullah, could be said to have passed to the two minor sons on the demise of Habibullah. For these reasons, we answer the first two questions in T.R.C. No. 133 of 1975 in the negative and in favour of the Assessee.

11. As regards the third question, the learned Counsel for the accountable person submitted that there is no justification for the authorities to say that the income from the Halsoor "A" and "B". estate for the four years preceding 1959 would not be approximately the same as was the case in the four years for which the figures were furnished in view of the determination made by "Agrl. I.T. proceedings. According to the figures furnished, the income for the four years commencing from March 31, 1959, was about Rupees one and half lakhs. When this basis was furnished by the accountable person, the Asst. Controller computed the income of the same properties for the earlier four years at Rs. 80,000 only. No reason is given or special circumstance relied on by him to show as to why the income for the preceding four years should be only Rs. 80,000 as against Rs. 1,50,000 for the subsequent four years. Even if the income for the four years prior to March 31, 1959, is taken approximately at Rs. 1,12,000 that would have been sufficient to cover all the investments made on the four properties referred to earlier. No good reasons are also assigned in the order of the Appellate Controller and the Tribunal to reject the plea of the accountable person that the income for the earlier four years was also approximately equal (to the subsequent one). In our opinion, even if it was taken at some reasonably lesser figure it could not have been as low as Rs. 80,000 without any basis whatsoever. In the circumstances, we are of the opinion that there was no material justifying the rejection of the plea of the accountable person that the income from the Halsoor estate for the four years preceding 1959 was approximately equal to the income of the succeeding four years. For these reasons we hold that the inclusion of a sum of Rs. 32,000, being the price of the Chikkannakonda estate purchased on April 4, 1962, in computing the value of the assets of the deceased applying Section 9 of the E.D. Act was not justifiable. Accordingly, the question referred in T.R.C. No. 80 of 1977 is answered in the negative and in favour of the accountable person.