(1963) 12 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 253 of 1963

Hotz Hotels (P.) Ltd. — APPELLANT

Vs

Assistant Controller of Estate Duty — RESPONDENT

Date of Decision : 20-12-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Estate Duty Act, 1953 — Section 57(2), 62(1)(b), 73, 73(3)
Income Tax Act, 1922 — Section 2(12), 2(12A), 46, 46(2), 46(5A)
Income Tax Act, 1961 — Section 46(5A), 53, 56
Succession Act, 1925 — Section 211, 212, 213, 214, 234

Citation : (1964) 53 ITR 12

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : H.L. Anand and N.S. Bhatia, for the Appellant; H.R. Mahajan and D.N. Awasthy, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan, J.—This order will dispose of Civil Writ Petitions Nos. 253 and 785 of 1963. The capacity of the petitioners is different, but the principal question which has been debated before me and which arises in both the petitions is common to them. In order to appreciate the entire controversy it will be proper to set out the facts in considerable detail though it may be mentioned that on facts there is not much dispute. Edwin Hotz, a British subject, died in England on the 9th September, 1957. In one of the petitions his date of death is mentioned as 4th July, 1957, but the learned counsel for the petitioners in both these petitions admitted that the correct date of death is 9th September, 1957. Edwin Hotz left in India shares in the petitioner-company, Hotz Hotels Private Limited (petitioner in C.W. No. 253 of 1963), and the amount of dividends due thereon. He also left money due to him as a beneficiary of one Mr. Hans Hotz. This money is held by the trustees of Mr. Hans Hotz (petitioner in C.W. No. 785 of 1963) for he created a trust in his lifetime which trust had to pay the amounts bequeathed by Hans Hotz to the respective beneficiaries.

2. Mrs. Olive Muriel Hotz is the widow of the deceased. She filed a return with the Controller of Estate Duty at Patiala under the Estate Duty Act, 1953 (hereinafter referred to as the Act). On the basis of her return the Controller assessed the duty at Rs. 1,34,825.90 np. She paid a sum of Rs. 39,128 towards the amount of that duty. The balance that still remains unpaid according to the department is Rs. 95,697.90 np. The department issued two notices to the respective petitioners in both the petitions u/s 73(5) of the Act read with section 46(5A) of the income tax Act, 1922, calling upon them to pay the amount due from the petitioners to or held by the petitioners for or on account of the assessee and belonging to the estate of the deceased, Edwin Hotz, towards the satisfaction of the balance of the estate duty not paid. It was also pointed out that if the amount claimed is not paid it will be recovered through the Collector as arrears of land revenue u/s 46(2) of the income tax Act.

3. The petitioners took the stand that they could not be made to pay this amount of duty unless a proper legal representation had been obtained by a person competent to deal with the estate of the deceased. This stand taken by the petitioners was not accepted by the department and as proceedings for recovery u/s 46(2) were threatened, the petitioners moved this court by the present petitions under article 226 of the Constitution of India praying that the demand made by the department on the petitioners be quashed by an appropriate writ, order or direction.

4. The petitioners do not dispute that the widow, Mrs. Olive Muriel Hotz, is not one of the heirs of the deceased, Edwin Hotz. All that is stated is that there are other heirs also and she being one of the heirs cannot be regarded as the assessee within the meaning of the expression in section 46(5A) of the income tax Act. In the course of arguments it was also urged that there may be a will by Edwin Hotz and it may ultimately transpire that the widow has no right to the estate whatever. It is in the light of these facts that the following contentions of the learned counsel for the petitioners have to be examined : (1) that in view of the provisions of section 73(5) of the Act read with section 46(5A) of the income tax Act the widow is not an assessee and that the petitioners do not hold any money for or on account of the assessee and, therefore, no demand can be made from them; and (2) that the moment an objection is raised u/s 46(5A) of the income tax Act read with section 73(5) of the Act, by a person from whom any amount is due to or held for or on account of the assessee and belongs to the estate of the deceased, Edwin Hotz, the department is bound to stay its hands and can only recover the same from such person after it is settled by a competent court that such person is in possession of the estate of the deceased and is holding it for or on account of the assessee, the assessee in the nature of things being the person who ought to be assessed to estate duty. However, there is a sharp difference of opinion between the parties as to whether the assessee is the person to whom the estate passes or it is merely the estate itself, for it is the

estate which is alone liable to estate duty. It is, however, not disputed that part of the estate of Edwin Hotz is in possession of the petitioners and they have no objection to pay the estate duty provided they get a valid discharge from liability to the persons who are in law entitled to the estate of the deceased.

5. Before determining these contentions it will be proper to examine a few preliminary matters. The tax which is sought to be recovered is a tax under the Estate Duty Act and is a tax on the estate left by a deceased person. The estate duty is levied and processed on the amount of the property left by a deceased person after taking into account certain permissible deductions allowed under the Act. It is assessed on the property that passes by reason of death (see in this connection sections 5 and 58 of the Act). The evaluation of the property which has passed by reason of the death is done on the basis of the accounts submitted in the prescribed form by an accountable person. An accountable person is defined in the Act in section 2(12A) as follows :

" 2(12A) ''person accountable'' or ''accountable person'' means the person accountable for estate duty within the meaning of this Act, and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of the principal value of the estate of the deceased."

6. It will also be convenient at this stage to set out the definition of the legal representative in section 2(12), which is in these terms-

"2. (12) ''legal representative'' means a person who in law represents the estate of a deceased person, and includes-

(i) an executor,

(ii) as regards any obligation under this Act, any person who takes possession of, or intermeddles with, the estate of a deceased person or any part thereof, and

(iii) where the deceased was a coparcener of a Hindu family, the manager, for the time being of the family."

7. Every legal representative to whom the whole or part of the property so passes becomes accountable for the whole of the estate duty but his liability is limited to the extent of the assets of the deceased. In other words, there is no personal liability on the accountable person. In case there are two or more accountable persons, whether their capacity is one or different, both of them are jointly as well as severally liable for the whole of the estate duty on the passing of the property (section 53 of the Act). The estate duty is the first charge on the property of the deceased and it operates from the date of death (section 74). Along with these provisions of the Act, which have been briefly adverted to, it will also be proper to keep in mind another legal fiction which is of universal application that on the death of a person his estate immediately vests in another person, and between the death and the vesting there is no vacuum. The principle is the same as is apparent from the well known maxim "King is dead, long live the King". Therefore, before death the property is vesting in a living person and

after death it is again vesting in a living person. It is the passing of property from one living person to the other which brings on it the charge of the estate duty. These conclusions have to be kept in view to determine the liability of the petitioners to pay the estate duty. The petitioners contended that they can only be made to pay it after it is settled as to who is the assessee to whom the estate of the deceased is due to or on whose behalf it is held by the petitioners. It is in this context that the learned counsel for the petitioners contends that the liability of the estate duty is of the person who inherits the estate or to whom on death the estate will pass by reason of death of the last holder and that the widow of Edwin Hotz is not such a person. On the other hand, the learned counsel for the department contends that it is the estate which is liable to estate duty and it is not material as to who is to get it. To put it in other words, according to the petitioners, assessee is the person to whom the estate passes on death while according to the department it is the estate itself. This distinction has been emphasised in view of the provisions of section 46(5A) of the income tax Act, which are in these terms :

"46. (5A) The income tax Officer may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the assessee at his last address known to the income tax Officer) require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the income tax Officer, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of arrears of income tax and penalty or the whole of the money when it is equal to or less than that amount.

The income tax Officer may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

Any person making any payment in compliance with a notice under this sub-section shall be deemed to have made the payment under the authority of the assessee and the receipt of the income tax Officer shall constitute a good and sufficient discharge of the liability of such person to the assessee to the extent of the amount referred to in the receipt.

Any person discharging any liability to the assessee after receipt of the notice referred to in this sub-section shall be personally liable to the income tax Officer to the extent of the liability discharged or to the extent of the liability of the assessee for tax and penalties, whichever is less.

If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the income tax Officer, further proceedings may be taken by and before the Collector on the footing that the income tax Officer''s notice has the same effect as an attachment by the Collector in exercise of his powers under the proviso to sub-section (2) of section 46.

Where a person to whom a notice under this sub-section is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the income tax Officer."

8. It will be apparent from this provision that the amount of estate duty can be recovered from a person other than the legal heir if such person holds the whole or a part of the estate of the deceased which is due to or is held for or on account of the assessee. As I have already said, the contention of petitioner''s counsel is that the assessee is the person who is admittedly the successor of the deceased and to whom the property passes on death, while according to the counsel for the department it is the estate itself and it hardly matters as to who is its successor.

9. In my view the contention advanced by the learned counsel for the petitioners that the assessee in section 46(5A) of the income tax Act, read in the context of the Estate Duty Act, denotes a living person and not the estate, is correct. In this connection reference may be made to sections 57(2), 62(1)(b) and 73(3) of the Estate Duty Act. For convenience of reference I have set down these provisions below-

"57. (2) Upon a provisional assessment being made under sub-section (1), the person so assessed shall pay to the Controller, or furnish security to the satisfaction of the Controller for the payment of, the estate duty, if any, payable on the provisional assessment, and the Controller shall thereupon grant him a certificate that such duty has been or will be paid or that none is due, as the case may be, in respect of the property mentioned in the certificate."

62. (1) Any person-....

(b) denying his liability to the amount of estate duty payable in respect of any property, may, within thirty days of the date of the receipt of the notice of demand u/s 73, appeal to the Appellate Controller in the prescribed form which shall be verified in the prescribed manner :

Provided that no appeal shall lie under sub-clause (iv) of clause (a) unless the duty has been paid before the appeal is filed.

73. (3) Where a person accountable has been assessed in respect of assets located in a country outside India, the laws of which prohibit or restrict the remittance of money to India, the Controller shall not treat the person accountable as in default in respect of that part of the estate duty which is attributable to the assets in that country, and shall continue to treat the person accountable as not in default in respect of that part of the duty until the prohibition or restriction of remittance is removed."

10. The combined reading of these sections will show that the duty has to be recovered from a living person and the estate of a deceased cannot be equated with the term "assessee", though the assessee can, keeping in view the scheme of the Estate Duty Act, be equated to a person accountable, read along with the definition of legal representative. I am also fortified in my view by the fact that if the legal heir destroys the estate his liability does not come to an end and if the liability was purely a liability of the estate, on the destruction of the estate the liability would come to an end. This liability is apart from the liability under torts because it cannot be conceived that a person who deliberately destroys an estate is not liable in torts for that destruction. But the question which I am called upon to determine in this case is whether the destruction of the estate absolves the assessee from the estate duty on the ground that the duty is payable by the estate and not by a person who succeeds to that estate.

11. From the practical point of view it hardly matters to a person holding the estate of the deceased from discharging the legitimate demand of the department for payment of the estate duty from such estate. I am, however, not unmindful of the argument of the learned counsel for the petitioners that under the Indian Succession Act there can be no valid discharge to a debtor unless he pays money to an administrator or an executor : see in this connection section 273 of the Indian Succession Act. It is also true that both in the case of intestate as well as testamentary succession, proper representation can only be available to a person who has obtained either letters of administration or probate : see in this connection sections 211, 212, 213 and 214 of the Indian Succession Act. This proposition can admit of no doubt where a debtor other than the department is concerned. It may be that the position of the department and an ordinary debtor would appear to be somewhat alike. But the Act itself grants complete immunity to such person (the debtor) where he pays or is made to pay duty out of the estate of the deceased held by him. This follows from the plain reading of sections 53 and 56 of the Act read with section 46(5A) of the income tax Act. If this view of the matter is not taken it will lead to this that in case the heirs sit idle and do not obtain letters of administration or probate the department will not be able to collect the estate duty. The argument of the learned counsel for the petitioners that the department in such an eventuality can itself move and obtain letters of administration and thereafter collect the tax cannot be accepted because the remedy u/s 234 of the Indian Succession Act, which will not be available to the department. That remedy, on which reliance has been placed, would be available to a creditor. The department while collecting the estate duty is not collecting a debt but a tax and its position cannot be equated with that of an ordinary debtor who alone is contemplated by section 234 of the Indian Succession Act. It cannot be imagined that the statute made no provision for an eventuality like the present and left the department to take proceedings under the Indian Succession Act. If this view of the matter is to be taken it will render section 46(5A) almost redundant so far as the collection of estate duty from the estate held by persons other than the legal heirs is

concerned for there may be cases where the legal heirs are paupers and the entire estate is held by persons other than the legal heirs. In my view the provisions of sections 5, 53, 58 and 73 of the Act provide the machinery for the imposition and collection of the estate duty from such other person and such other person has been afforded ample protection under the Act for any claim by the legal heirs. Therefore, the first contention is repelled.

12. So far as the second contention is concerned it is hot claimed by the petitioners that they are not holding the monies for or on account of the true legal representatives of the deceased. It hardly matters whether those legal representatives are determined or have to be determined. Whoever they may be, they will only get the money held by the petitioners subject to the payment of an estate duty. The last paragraph to section 46(5A) is meant for a totally different contingency. It provides for cases where the third person denies that the monies stated to be of a particular deceased are not his. It is the deceased''s estate which is liable and it becomes liable in the hands of his legal representatives. When the department claims these monies to recover the estate duty due on the estate of the deceased from such third persons they can only refuse to pay if the demand is to satisfy the claim to estate duty of another deceased person. This is not the case here. Therefore, there is no merit in the second contention as well. For the reasons given above these petitions fail and are dismissed but there will be no order as to costs.