
(1975) 09 MAD CK 0052

In the Madras High Court

Case No : Tax Case No. 215 of 1969 (Reference No. 70 of 1969)

Ismail Mulla Gulamally

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 02-09-1975

Acts Referred:

Estate Duty Act, 1953 — Section 44, 46, 46(1), 46(2)

Citation : (1975) 09 MAD CK 0052

Hon'ble Judges : V. Sethuraman, J; V. Ramaswami, J

Bench : Division Bench

Advocate : K. Srinivasan and K.C. Rajappa, for the Appellant; J. Jayaraman, for the Respondent

Judgement

Sethuraman, J.—This reference under the E.D. Act is a sequel to the death of one Gulamally Akbarally on 1st August, 1960, leaving behind him his widow, three sons and four daughters. There are three questions raised in this reference and it will be convenient to take each question separately. The first question runs as follows :

"Whether, on the facts and circumstances of the case, the disallowance of the debts amounting to Rs. 22,820 due to the two sons of the deceased u/s 46(1) of the Estate Duty Act, is valid in law ?"

2. The facts relating to this question are : The deceased was the owner of a house property bearing No. 19, Venkatachala Mudali Street, Park Town, Madras. On 24th August, 1951, he executed a deed of gift settling this property in favour of his two sons, Abdulla and Abbas, who were then minors aged 13 years and 4 years respectively. The gift was accepted by their guardian the donor himself. The property was valued for the purpose of stamp duty at Rs. 77,100.

3. The donees (through their guardian) realised the rent from this property from the tenants and deposited various amounts out of such rent realisations in the proprietary concern of the deceased. At the time of the death of the deceased

the amount standing to their credit came to Rs. 22,820.

4. The accountable persons claimed that this amount represented a debt due from the estate of the deceased so as to be deductible u/s 44(a) of the Act. The Asst. Controller rejected this claim relying on Section 46(1)(b) of the Act. The Appellate Controller confirmed the disallowance. On further appeal, the Appellate Tribunal felt that Section 46(1)(a) was applicable to the debt in question. The amount of loan had been advanced out of the rent collected by the two sons from the property gifted by their father to them and, therefore, in the view of the Tribunal, the value of the consideration of the debt could be taken to be the property derived from the deceased, which brought it within the scope of Section 46(1)(a) itself. Before the Tribunal reliance was placed on the proviso to Section 46(1)(b) on behalf of the accountable person. The Tribunal observed that the proviso was to the effect that if the value of the consideration of the debt exceeded that which could have been rendered available by application of all the property derived from the deceased, then no abatement was to be made in respect of the excess. As the value of the property gifted was Rs. 77,100 in this case, the Tribunal considered that the loan in question, being only Rs. 22,820, was not eligible for any abatement contemplated by that provision. The accountable person has sought reference of the above question already set out on the above facts.

5. The learned counsel for the accountable person contended that this is a case where Section 46(1)(a) of the Act did not apply and that, if at all, Section 46(1)(b) would have applied. He tried to bring the case within the scope of the proviso to Section 46(1)(b) if that provision is taken to apply. The endeavour of the learned counsel for the Revenue was to show that it was unnecessary to go into Section 46(1)(b) or to consider the effect of the proviso on the facts herein and that the present case squarely came within Section 46(1)(a) of the Act.

6. Section 5 of the E.D. Act contemplates levy of estate duty upon the principal value ascertained in accordance with the provisions of the Act of all the property which passed on the death of every person, who died after the commencement of that Act. Sections 6 to 16 provide for the properties that are deemed to pass on the death of a person. With reference to the principal value so ascertained in accordance with the provisions of this Act, deductions are contemplated by Section 44. Section 44 provides that in determining the value of an estate for the purpose of estate duty, allowance is to be made for funeral expenses not exceeding Rs. 1,000 and for debts and incumbrances. Allowance for debts and incumbrances incurred by the deceased would not be made unless such debts or incumbrances were created bona fide for full consideration in money or money's worth wholly for the deceased's own use and benefit. Section 46 contemplates disallowance of certain debts. As the whole section is material to this reference, it would be useful to set out the provision in full:

"46. Further limitations.--(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 incumbrance 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

(b) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased :

Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in Clause (b) of this sub-section, it is proved to the satisfaction of the Controller that the value of the consideration given, or of that part thereof, as the case may be, exceeded that " which could have been rendered available by application of all the property derived from the deceased, other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to Sub-section (1) of Section 16 in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess.

(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.

(3) The provisions of Sub-section (2) of Section 16 shall have effect for the purpose of this section as they have effect for the purpose of that section."

7. The background of this provision may be briefly noticed. The deceased may during his lifetime transfer properties by way of gifts to persons in whom he is interested. The result would be, subject to the provision of the Act, an exclusion of those items of properties, which had gone out prior to the relevant period antecedent to his death. The deceased may, however, seek to get the benefit of the property that he has transferred by way of gift by obtaining loans from the donees and get deduction for the loans also. The effect of Section 46 is to disallow debts to the extent of the property traceable to the deceased.

8. We have first to see whether Section 46(1)(a) applied here. If that provision applied, then Clause (b) thereof would have no scope for application. The disjunctive "or" separating Clauses (a) and (b) and the words "not being such property as aforesaid " occurring in Clause (b) would clearly show that the two clauses are mutually exclusive. If Clause (a) should operate to that extent, the

application of Clause (b) is ruled out. This is what has already been decided by a Bench of this court, to which one of us is a party, in *Rainakumari Kumbhat v. CED*. This case has not yet been reported in any other series (reported in *Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty*,).

9. So we have to see whether the consideration for the debt of Rs. 22,820 could be said to be from any property derived from the deceased. The basis for the contention on behalf of the accountable person that Clause (a) did not operate here was that the property, viz., 19, Venkatachala Mudali Street, remained intact and that the deceased had not got any benefit from that property. In the submission of the learned counsel the receipts by way of interest and their deposit could not be said to be "property derived from the deceased". This contention overlooks sub- Section (3) of Section 46. It is provided therein that Section 16(2) would have effect for the purpose of Section 46, as it has effect for Section 16 itself. Section 16(2) defines certain expressions. One of those expression is "property derived from the deceased". This expression has been defined as meaning any property which was the subject-matter of a disposition made by the deceased. The word "subject-matter" has been defined in Section 16(2)(c) as including, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition.

10. In *Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty*, , to which we have just alluded, the facts are as follows: The deceased, in that case, made a total gift of Rs. 1,50,000 at the rate of Rs. 50,000 to each of his three sons. They deposited this amount with him for interest at 7 1/2% per annum. The gift was on 31st March, 1955, and the donor died on 25th June, 1962. The interest payable to the three sons came to Rs. 1,16,205. Two of the sons had withdrawn Rs. 82,500. This sum of Rs. 82,500 represented the withdrawal not only of the whole of the interest payable to them, but also of a part of the principal. The Asst. Controller disallowed the balance of the amounts to the credit of the three sons which totalled Rs. 1,83,705 as on the date of his death, u/s 46(1)(b) of the Act. The Appellate Controller confirmed the disallowance. The Tribunal, on appeal, relied on Section 46(1)(a) read with Section 16(2) in support of the disallowance of not only the principal sum of Rs. 1,50,000, but also the further sum representing undrawn interest. When the matter came to this court on reference, this court observed as follows (p. 579 of 101 ITR):

"In the instant case, the deceased had gifted a sum of Rs. 1,50,000 to his minor children. It has also been found that the gift and the deposit or taking of loan for interest are all associated operations forming part of an arrangement entered into by the deceased with his children. It is this arrangement that necessitated the payment of interest at 7 1/2% and, therefore, the interest payable or paid would come within the definition of "subject-matter" in Section 16(2). In our view, therefore, the learned counsel for the Revenue is well founded in his contention that the interest payable by the deceased and credited to his sons' accounts would also be "property derived from the deceased" within the meaning

of those words in Section 46(1). "

11. This passage is a direct answer to the contention of the learned counsel for the accountable person. In *Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty*, , there was an agreement to deposit the interest at 7 1/2% simultaneously with the gift. It is this circumstance which brought into operation Section 16(2) (c). In this case, the donees were minors. They were represented by their guardian, the donor himself. As the E.D. Act was not then in force, there was nothing to prohibit the donor from getting the rents in deposit or loan and repay them whenever needed by the donees. The deposit of the rent has continued right from the commencement, so that it cannot be treated to be a casual instance unassociated with the gift. This is thus a case u/s 46(1)(a).

12. The learned counsel for the accountable person submitted that even for the purpose of applying Section 46(1)(a), there must be a contemporaneous intention at the time of making the gift to get back the income from the property on the part of the donor. This contention has to be negated in view of the earlier decision of a Bench of this court in *A. Kandaswami Pillai (deceased) (by legal representative) and Ahmed Haji Mohammed Vs. Controller of Estate Duty*, . In that case several years prior to the death of one Arunachala, belonging to an HUF, there were gifts of agricultural lands to three members of the family. The family managed the lands for the ladies. The agricultural lands were sold in 1957 for Rs. 16,500 and the sale proceeds were credited to their accounts. The amount due to the ladies out of the sale proceeds was the subject of claim of deduction as debt. The claim had been negated by the estate duty authorities and also by the Tribunal. When the matter came before this court the contention on behalf of the accountable person was that there was no simultaneous intention on the part of the donor, at the time of making the gift, to get back the property comprised therein at a later date in the form of a liability so that the provision would apply (see p. 567 of 73 ITR). This contention was negated. At page 570 it was observed as follows :

"Reading Section 46(1) with the other provisions of the Act.....we have not found possible or permissible to construe the section as being confined to a debt which was incurred pursuant to an intention evinced by the donor at the time of making the donation, to incur the debt. "

13. The result is that the provisions of Section 46(1)(a) are attracted to the said sum of Rs. 22,820.

14. The learned counsel for the accountable person contended that Section 46(1) (b) of the E.D. Act is not attracted in view of the proviso thereto. The further contention was that unless there was an intention on the part of the deceased to get back the property in some form or other, the said provision would not be attracted. He relied on the absence of any nexus between the gift and the deposit of Rs. 22,820 in the concern of the deceased. For the Revenue the submission was that the only nexus contemplated by Section 46(1)(b) was the

presence of the property of the deceased in the hands of the donee and that the question of intention was absolutely irrelevant to the whole provision. On the aspect, it was observed in Mrs. Ratnakumari Kumbhat Vs. Controller of Estate Duty, as follows :

"It may also ,be noticed at this stage that it is the view of the learned judges in McDougal's Trustee's case [1952] 31 ATC 153 and also the text book writers that in respect of cases falling under Clause (b) no abatement shall be made if it were shown that the disposition under which the property was derived was not made with reference to or with a view to enabling or facilitating the provisions of the consideration for the debt. In other words, the loan transaction, must have been in the contemplation of the parties at the time of making the gift. "

15. In the view that we have taken, viz., Section 46(1)(a) applies, we do not however, think it necessary to go further into any application of Section 46(1)(b) or the proviso thereto. The question has, therefore, to be answered in the affirmative and against the accountable person.

16. The next question is regarding a sum of Rs. 20,000. The relevant facts are as follows :

As on the date of the death of the deceased a sum of Rs. 10,000 each were standing to the credit of the accounts of his two daughters Amina Bai and Khatoon Bai. These amounts came out of the gift made by the deceased to them. The gifts originated in the shape of fixed deposits in the name of his daughters. But these fixed deposits were encashed by them and shortly before his death, the two daughters brought back the sum of Rs. 10,000 each as deposits in their names in the proprietary concern of the deceased. The Asst. Controller and the Appellate Controller included the said amount in the assessment of the estate by way of disallowance u/s 46(1) of the Act. The question referred on these facts is as follows :

" Whether, on the facts and circumstances of the case, the debts amounting to Rs. 20,000 due to the two daughters of the deceased u/s 46(1) of the Estate duty Act is valid in law? "

17. In this case there is no scope for any refinement as to whether the property in the shape of these deposits, totalling Rs. 20,000, could be said to be " property derived from the deceased". It is not in dispute that these two sums, Rs. 10,000 each, were the very gifts made by the deceased in favour of his daughters. Originally they were in the shape of fixed deposits, but later on these fixed deposits were encashed and brought into the proprietary concern of the deceased. Even in the case of the conversion of the property it was held in A. Kandaswami Pillai (deceased) (by legal representative) and Ahmed Haji Mohammed Vs. Controller of Estate Duty, , that the provision of Section 46 would be attracted to the converted property. In other words, the change in the property, originally gifted, is no ground for the non-application of Section 46. Whatever applied to the original property would apply to the substituted

property. It would follow that the disallowance of Rs. 20,000 was proper u/s 46(1) (a). This question has also to be answered in the affirmative and against the accountable person.

18. The last question referred to is as follows :

"Whether on the facts and circumstances of the case, the inclusion of the two sums of Rs. 23,500 and Rs. 59,112 by invoking Section 46(2) of the Estate Duty Act, is valid in law ? "

19. We have earlier referred to the gift of the property in Venkatachala Mudali Street to the two sons of the deceased and to the deposit of the rents collected from the property. A sum of Rs. 22,820 was to the credit of the donees in this account as on the date of death. But this was only the balance left after the withdrawal of Rs. 23,500 on various dates by the two sons during a period of two years preceding the death as contemplated by Section 46(2) of the E.D. Act.

20. The deceased had gifted to another son, Ismail Bhai, another property bearing No. 20, Venkatachala Mudali Street, in 1951. The market value of this property at the time of the gift was Rs. 84,700. Out of the income received from the property Ismail Bhai deposited several amounts in the proprietary concern of the deceased. Part of these debts amounting to Rs. 59,112 were discharged by the deceased within two years preceding his death.

21. The Asst. Controller added back and disallowed these two amounts, viz., Rs. 23,500 and Rs. 59,112, in the E.D, assessments relying on Section 46(2) of the Act. The order of the Asst, Controller in respect of the estate duty has been confirmed on appeal by the Appellate Controller and also by the Appellate Tribunal.

22. The short point for consideration is whether Section 46(1) is attracted to the facts herein. We have already extracted Section 46(1) in full. Sub-section (2) relates to the payment by the deceased in satisfaction or discharge of a debt or incumbrance. If the debt or incumbrance was liable to come within the scope of Sub-section (1) so as to be disallowed as debts if they remained undischarged, then they would be treated as property deemed to be included in the property passing on the death if the discharge or satisfaction took place within the period of two years. The object of this provision is to counter avoidance of estate duty, (1) by transferring properties by way of gifts ; (2) by keeping the whole or part of the value by way of loan or debt; and (3) by discharging the loan or debt within a period of two years. If the loan had been outstanding, then Section 46(1) would have applied to justify the disallowance of the debt as such outstanding as on the date of the debt. The attempt at avoiding Section 46(1) by repayment within the statutory period is sought to be foiled by Section 46(2). So long as the repayment was within the statutory period, it would, to the extent of the repayment, have to be treated as property deemed to be included in the property passing on that death. In view of the fact that we have held that the income from the property comes, on the facts, within the scope of Section 46(1)

(a), it would follow that Section 46(2) is attracted with reference to the two amounts mentioned in the question. We have, therefore, to answer the third question also in the affirmative and against the accountable person. The Revenue will have its costs. Counsel's fee Rs. 250.