

(1978) 06 KAR CK 0017

In the Karnataka High Court

Case No : Income-tax Referred Cases No's. 1 of 1974 and 132 of 1975

K. Bhoomiamma and Another

APPELLANT

Vs

Controller of Estate Duty, Mysore, Bangalore

RESPONDENT

Date of Decision : 27-06-1978

Acts Referred:

Income Tax Act, 1961 — Section 2 (16), 280 G, 64 (1), 64 (2)

Citation : (1978) 115 ITR 703

Hon'ble Judges : M.K. Srinivas Iyengar, J; E.S. Venkataramaiah, J

Bench : Division Bench

Advocate : S.P. Bhat, for the Appellant; S. Rajendra Babu, for the Respondent

Judgement

Venkataramaiah, J.—Both these reference arise out of the estate duty proceedings consequent on the death of K. Gururajachar who died on February 9, 1969. The Tribunal, Bangalore Bench, has referred, under the E.D. Act, 1953 (hereinafter referred to as "the Act"), the following five questions :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that a sum of Rs. 48,777 on account of annuity deposits was rightly included in the principal value of the estate of the deceased ?

(2) If the answer to the first question is in the affirmative, whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that no deduction should be made out of the value of the annuity deposits on account of Income Tax payable by the legal heirs of the deceased on the instalments of annuity deposits receivable by them ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the estate duty payable on the estate should not be deducted while determining the principal value of the estate of the deceased ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in including the amount of Rs. 51,278 on account of life insurance in the

principal value of the estate of the deceased ? and

(5) Whether, on the facts and in the circumstances of the case, the Tribunal was right in fixing the market value of the property No. 29, Crescent Road, Bangalore, at Rs. 1,28,000 ?"

2. Questions Nos. (1) to (4) set out above are referred under s. 64(1) and question No. (5) is referred pursuant to an order made under s. 64(2). T.R.C. No. 1/74 relates to the first four questions and T.R.C. No. 132/75 relates to the fifth question.

3. Questions Nos. (1) and (2) are inter-related. The deceased had deposited some amounts by way of annuity deposits under the provisions of s. 280G of the I.T. Act, 1961. The Asst. Contr. of E. D. valued the outstanding amount of annuity deposits at Rs. 48,777 on the basis of their commuted value as on the date of the death of the deceased on the ground that the amounts in deposit were likely to be received some time in future. On appeal, the above commuted value of the deposits was reduced by the Appellate Contr. of Estate Duty to Rs. 47,047. There is, therefore, an apparent mistake in regard to the figure in question No. (1) referred by the Tribunal. It should read as Rs. 47,047 instead of Rs. 48,477.

4. Before the Tribunal, it was contended that the amount deposited under s. 280G was not passing on the death of the deceased and even if it was passing, its valuation should have been less than Rs. 47,047 in view of the fact that the accountable persons had to pay Income Tax on the annuity deposit as and when it was realised after the death of the deceased. The Tribunal negatived both the contentions of the accountable persons. At the hearing of these cases no argument was addressed on the first question. It is clear that the beneficial interest in the sums deposited by the deceased under s. 280G of the I.T. Act, 1961, and the right to recover them did pass on the death of the deceased to his heirs and they, therefore, come within the definition and ambit of the expression "property passing on the death of the deceased" as defined in s. 2(16) of the Act. Question no. (1) had been rightly decided by the Tribunal.

5. The second question arises out of the contention raised on behalf of the accountable persons that the valuation of the annuity deposits at Rs. 47,047 made by the Appellate Contr. without taking into consideration the were realised from time to time, was wrong. It is argued before us that since the net amount which would come into the hands of the accountable persons after paying the Income Tax which they were bound to pay under law was far less than Rs. 47,047, the authorities concerned should have fixed the value of the annuity deposits at a lower figure. This argument is not based on any express provision of the Act nor is it supported by any precedent. It is urged that the said contention is based on general principles of valuation of an amount which is likely to be received in future. We find it difficult to agree with the above submission. If the above contention is accepted, then it would lead to the incongruous result of the same amount of annuity deposits being valued differently in the case of

different accountable persons on the basis of the Income Tax they are likely to pay. In the case of those who pay higher rate of Income Tax the value of the same amount of annuity deposit will be less than its value in the hands of those who pay lower rate of Income Tax or no Income Tax. We are of the view that the Income Tax which the accountable person is likely to pay has no relevance to the valuation of the annuity deposits at the time of the death of the deceased.

6. The value of the estate of the deceased has to be determined as on the date of the death of the deceased and it is not really the value of the estate in the hands of the accountable persons subsequently. We do not find any substance in this contention.

7. The argument advanced in respect in respect of the third question is that the estate duty payable was a first charge on the estate and, therefore, the principal value as determined under s. 36 of the Act should be reduced by the estate duty.

8. The decision of this court in *V. Pramila Vs. Controller of Estate Duty, Bangalore*, has laid down that the estate duty payable in respect of an estate could not be deducted as a debt under s. 44 of the Act. The above decision was attempted to be distinguished by Sri S. P. Bhat, learned counsel for the accountable persons, by stating that he was not claiming allowance of estate duty under s. 44 of the Act, but under s. 36 of the Act. His contention was that the estate duty payable should be treated as an encumbrance and the estate in question should be treated as an encumbered estate and valued as such. We are not impressed by this argument. Estate duty is payable under s. 5(1) of the Act on the principal value of the property passing on the death as computed in accordance with the provision of the Act and not on the principal value of the estate minus estate duty. Estate duty is not an encumbrance created by the deceased or imposed on his estate by law before his death. It cannot be taken into consideration while assessing the principal value of the estate. The learned counsel for the accountable persons, however, depended upon the case, *Mrs. Blanche Nathalia Pinto v. State of Mysore* [1964] 53 ITR 64) in support of the above contention. The above decision was rendered in relation to the provisions of the Karnataka Court Fees and Suits Valuation Act, 1958, and has no bearing on the question involved in this case. Moreover, it is seen from the case of *V. Pramila Vs. Controller of Estate Duty, Bangalore*, referred to above that the above decision had been brought to the notice of this court and it was not relied on in deciding the said case. We also do not find any distinction between the contention now urged before us and the one which was rejected in the case of *Smt. V. Pramila*. We, therefore, reject the above contention.

9. The fourth question relates to the amount realised from the LIC. The deceased had insured his life with the LIC and, under the policies, a sum of Rs. 51,278 became payable on the death of the deceased and was realised. The deceased had borrowed some amount on the security of the said policies and, in that connection, he had assigned the policies in question by way of security in favour of the LIC. Under the transaction, the deceased was liable to pay Rs. 28,684 on

the date of his death. The Asst. Contr. of E.D. while computing the net principal value of the estate added the sum of Rs. 51,278 as amount received from LIC and deducted the sum of Rs. 28,684 as debt allowable under s. 44 of the Act. In substance, what was added to the principal value was the net amount realised by the accountable persons. It is argued that the Asst. Contr. should not have treated the amount realised on account of his policies as part of the estate of the deceased at all, as the policies in question had been assigned to the LIC. There is no substance in this contention as the assignment was only by way of security for the loan taken and the accountable persons were able to receive the sum on account of the policies as the deceased had an interest in them at the time of his death.

10. The last question related to the valuation of the house property which had been purchased by the deceased in the year 1966 for a sum of Rs. 1,27,730. At the time when the property was purchased, there was a building in it and the said building had been rented out on a monthly rent of Rs. 330. The contention of the accountable persons before the Tribunal and before us is that the deceased had paid a fanciful price for the property in question as he was interested in establishing a Kalyanamantapam in that place after demolishing the old building and the price paid was much more than what the property would have fetched. It is further submitted that in these circumstances the property should have been valued by capitalising the rents realised. The Tribunal had declined to accept the case that the deceased had paid a fanciful price for the property. It treated the sum of Rs. 1,27,730 paid by the deceased in the year 1966 as representing the fair market price as the deceased was a business man who knew the market value of properties in Bangalore. Having rejected the said case of the accountable persons, the Tribunal valued the property at Rs. 1,28,000 (by rounding off the actual price paid by the deceased) as on the date of the death of the deceased, i.e., February 9, 1969, nearly 3 years after the purchase. It is, no doubt, true that one of the modes of the computation of the value of a property is the capitalisation of the rental receipt in respect of it. This principle has to be adopted when there is no other better material. In the instant case the Assistant Controller, Appellate Contr. and the Tribunal have all depended upon the best evidence which was the actual price paid for the very same property by the deceased nearly three years before the time of his death.

11. In the circumstances, there was no justification for the Tribunal to apply the capitalisation principle enunciated in the case of Commissioner of Wealth Tax, Mysore Vs. V.C. Ramachandran, .

12. Hence, all the questions are answered in the affirmative.

13. No costs.