

(1996) 07 MAD CK 0016
In the Madras High Court
Case No : Tax Case No. 966 of 1984

K. Krishnaveni

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 22-07-1996

Acts Referred:

Income Tax Act, 1961 — Section 28, 33(1)A
Wealth Tax Act, 1957 — Section 2(1)

Citation : (1997) 226 ITR 28

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Thanikkachalam, J.—At the instance of the accountable persons the Tribunal referred the following two questions for the opinion of this

Court under s. 64(1) of the ED Act, 1953, hereinafter referred to as the Act :

(1) Whether, on the facts and circumstances of the case, the Hon"ble Tribunal was right in determining the principal value of the house at 25,

Damodaran Street, Madras after deducting of the liability on the life insurance policies and thus allowing exemption on Rs. 29,137 only instead of

Rs. 70,000 ?

(2) Whether, on the facts and circumstances of the case, the Hon"ble Tribunal was right in not allowing the liability of Rs. 40,863 which is secured

on life insurance policies and house property and treating the entire liability as secured on the house ?

2. The deceased, Shri Samraj, died on 25th August, 1979. He owned a property at Damodaran Street, Madras-10, which was used for

residential purpose. The value of this property was adopted at Rs. 70,000 and

there was no dispute about that. Since this was a residential house the accountable person claimed exemption from levy of estate duty under s. 33(1)(n) of the Act. This property was offered as collateral security to the LIC of India where the deceased also took life insurance policies. The deceased also borrowed a sum of Rs. 38,688 as loan from the LIC of India. The accountable person claimed exemption on the value of the residential house valued at Rs. 70,000 and also separately claimed a deduction of the liability of Rs. 38,668. The Asstt. CED deducted the liability to the LIC of India of Rs. 38,668 from the value of the house property and allowed exemption only on the balance which was worked out to Rs. 29,137. Aggrieved, the accountable person filed an appeal before the ACED.

3. The ACED found that s. 44 which related to the deduction referred to debts or encumbrances for which allowance had to be made and that since the property in question was not covered by any of the sub-cls. (a) to (d) of s. 44, the accountable person was entitled to the deduction of the liability separately as well as the exemption of Rs. 70,000 in full under s. 33(1)(n) of the Act. According to him, there was no authority for deduction of the liability from the amount of exemption claimed. Accordingly, he held that the accountable person was entitled to exemption in full as well as deduction for the liability.

4. Aggrieved, the Department filed an appeal before the Tribunal. Before the Tribunal the Department relied on an earlier order of the Tribunal on this aspect in the case of CED vs. Pushparani (EDA 91 Madras 1973-74, dt. 12th December, 1975), wherein, it was held that the exemption allowable under s. 33(1)(n), could be only on the net amount after deducting the liability and not on the full amount. Following the abovesaid decision, the Tribunal held that rights in the property which the deceased had at the time of his death were something short of the full bundle of the ownership including the rights of enjoyment and possession. None the less the property was subject to the interest which is passed to the mortgagee. The property was thus subjected to an encumbrance consequent on the mortgage at the time of the death of the deceased. The Tribunal further held that the provisions of s. 36 were attracted which stipulated how the true value of the property was to be estimated, the

property subjected to a mortgage would fetch only that amount which would be in excess of the encumbrance. For this purpose, it relied on s.

55(1)(g) of the Transfer of Property Act which provides that in the absence of a contract to the contrary the seller is bound to discharge all

encumbrances on the property then existing except where a sale itself is subjected to encumbrance. The encumbrances will have the effect of

depressing the market value. Therefore, it cannot be ignored. Therefore, the Tribunal rejected the assessee's contentions and confirmed the view

taken by the Revenue.

5. Before us, learned counsel for the accountable person submitted that the Tribunal was not correct in setting aside the order passed by the

ACED and restoring the order passed by the Asstt. CED. According to learned counsel, the immovable property in question is a dwelling house

value at Rs. 70,000. It was offered as a collateral security for the amount borrowed on the life insurance policy and also for guarantee to pay the

instalments without fail to the LIC. After the death of the deceased the accountable person is entitled to get the insurance amount minus the amount

borrowed by the deceased on the insurance policies. The property offered as security would get discharged after the death of the deceased. In

such a case it was submitted that the accountable person is entitled to exemption under s. 33(1)(n) of the Act with regard to the dwelling house

valued at Rs. 70,000. So also the accountable person is also entitled to get deduction of Rs. 38,668 being the amount borrowed by the deceased

on the life insurance policies out of the insurance amount payable. In such a case, out of Rs. 1,87,606, Rs. 38,668 is deducted, the balance would

come to Rs. 1,48,938. Therefore, learned counsel submitted that the ACED was correct in permitting the assessee for exemption of the dwelling

house under s. 33(1)(n) of the Act and also for the deduction of Rs. 38,668 from Rs. 1,87,606.

6. On the other hand, learned standing counsel for the Department while supporting the order passed by the Tribunal submitted that when the

property was offered as security for the loan obtained from the LIC, the loan obtained viz., Rs. 38,668 should be deducted from the value of the

property. It was further submitted that when the property was offered as security, the value of the property would get depressed to the extent of

the security offered. Again it was submitted that the deduction of Rs. 38,668 cannot be granted since that is the loan amount received by the

deceased. In order to support this line of argument learned counsel relied on a decision reported in the case of Commissioner of Wealth Tax,

Gujarat Vs. Shirinbanoo, , and in the case of Premier Electro Mechanical Fabricators Vs. The State of Tamil Nadu, .

7. We have heard learned counsel for the accountable person and also learned standing counsel for the Department. In so far as the house

property at 25, Damodaran Street, Madras 10 is concerned, it is valued at Rs. 70,000. The deceased was using this house property as a dwelling

house. Therefore the accountable person claimed exemption under s. 33(1)(n) of the Act. Under the abovesaid provision, if the value of the

dwelling house is less than Rs. 1 lakh, it would be deemed to be an exempted asset in the matter of levying estate duty. Therefore, the claim made

by the accountable person is perfectly justified. The accountable person is entitled to claim the dwelling house as an exempted asset under s. 33(1)

(n) of the Act.

8. The deceased also took four insurance policies and on those policies the assessee also took a loan from the LIC of India to an extent of Rs.

38,668. The deceased died on 25th August, 1979. On the death of the deceased the LIC is liable to pay the insurance amount to the accountable

person. The total insurance amount payable by the LIC comes to Rs. 1,87,606 out of which the loan taken by the deceased is to be deducted. If

Rs. 38,668 is deducted out of Rs. 1,87,606 the balance would come to Rs. 1,48,938 which is the insurance amount passing on the death of the

deceased.

9. Instead of that, the Tribunal, considered that the security as a matter of fact would depress the value of the property. As soon as the death

occurred, the accountable person is entitled to the insurance amount and the collateral security offered for the loan would also gets discharged.

Therefore, on the death of the deceased, the property would be without any encumbrance. In such a case, the value of the property would not get

diminished on account of the security which was offered earlier. In these circumstances, the Department cannot deduct Rs. 38,668 out of Rs.

70,000 since this amount of Rs. 38,668 was already deducted out of the

insurance amount payable by the LIC of India to the legal heirs.

10. For the purpose of the proposition that if a property is offered as security, the value of the said property would get diminished to the extent of

the security offered, the learned standing counsel relied on a decision in the case of CWT vs. Smt Shirinbanoo (supra) wherein while considering s.

7, Schedule Part I Part A, cl. (c) - Part B r. 2 as it stood before amendment by Finance Act, 1970 of the WT Act and WT Rules the Gujarat High

Court held that the Tribunal was perfectly justified in reaching the conclusion that while estimating the value of an encumbered asset in the particular

assessment year under reference the assessee was entitled to claim deduction of the amount of mortgage debt in evaluating the encumbered asset.

11. Another decision relied on by learned standing counsel was that reported in the case of CIT vs. K. S. Vaidyanathan (supra). This is a Full

Bench decision of this Court wherein while considering the provisions of s. 2(1) (sic) of the WT Act, 1957 this Court held that if the entire asset is

completely excluded in the computation of the net wealth duty in question obtained on the security of the said asset cannot be deducted in

computing the net wealth. Similarly when a debt is incurred or acquired in relation to a property which is only partially exempted from wealth-tax,

that portion of the debt which is attributable to the portion of the property exempted from wealth-tax cannot be deducted in the computation of the

net wealth of the deceased.

12. It remains to be seen that the above decisions were rendered while considering the ascertainment of the net wealth in accordance with the WT

Act. There is no corresponding provision as such as occurred in the WT Act is in the ED Act. Further even if according to the Department, the

creation of security would depress the value of the property, in the present case, on the death of the deceased, the legal heirs of the deceased are

entitled to the insurance policy amount and the security offered would get discharged. Therefore, after the death of the deceased, the property

would be free from encumbrance. In view of these factual positions, the Tribunal was not correct in stating that the dwelling house was mortgaged

and, therefore, the mortgage amount should be deducted from the value of the property.

3. Learned counsel for the accountable person did not dispute the inclusion of the

Housing Board amount amounting to Rs. 1239 and the property

tax amounting to Rs. 956 and these two amounts are deductible from the value of the property at 25, Damodaran Street, Madras-10. In that view

of the matter we hold that the Tribunal was not correct in coming to the conclusion that Rs. 38,668 should be deducted out of the value of the

dwelling house.

14. Inasmuch as the questions framed and referred by the Tribunal do not reflect the true issue that is involved in the present case, we would like to

reframe the questions as under :

Whether, on the facts and the circumstances of the case, the Tribunal was right in determining the principal value of the house at No. 25,

Damodaran Street, Madras-10 after deducting the liability on the life insurance policies amount of Rs. 38,668 instead of allowing the same as

deduction from the policy amount received by the accountable person ?

15. In view of the foregoing discussion we answer the question referred to us in the negative and in favour of the accountable person/applicant. No

costs.