

(1992) 10 GUJ CK 0022
In the Gujarat High Court
Case No : ED Ref. No. 4 of 1979

Late Aratgauri C. Jhaveri (A.P. Shri Krishnalal C. Jhaveri)	APPELLANT
Vs	
First Assistant Controller of Estate Duty	RESPONDENT

Date of Decision : 12-10-1992

Acts Referred:

Estate Duty Act, 1953 — Section 11, 64(1)

Citation : (1993) 203 ITR 803

Hon'ble Judges : Sharad D. Dave, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

S.D. Dave, J.—The Tribunal, Ahmedabad Bench "B", while exercising the jurisdiction under s. 64(1) of the ED Act, 1953, has at the instance of the accountable person referred the undermentioned three questions for our answer and reply :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the residuary estate of late Shri C. M. Jhaveri or any part thereof passed on the death of his widow Aratgauri C. Jhaveri under s. 11 of the ED Act, 1953 ?"

"2. Whether, on the facts and circumstances of the case, the Tribunal was right in holding that under the Will of C. M. Jhaveri, the deceased had life interest in the remainder estate, left after discharge of specific legacies without any discretion in the execution regarding disbursement of the income of the estate ?"

"3. Whether, on the facts and in the circumstances of the case, the deceased Aratgauri had interest in possession in the residuary estate under the Will of Shri C. M. Jhaveri ?"

2. The facts in the background of the present reference do not appear to be much in dispute, as the questions in controversy revolve around the interpretation and construction of the last Will and the testament of the testator, with a view to gather his correct and real interest behind the testamentary

disposition.

3. One Shri C. M. Jhaveri by his last Will and testament dt. 28th November, 1946 had bequeathed all his properties to his wife Smt. Aratgauri for her life, without the power of alienation, except for dire need as per clause 11 of the Will. According to clause 12 of the said will, he had appointed his two sons Vaikunthlal and Krishnalal as the executors of this estate. The deceased testator had also made provision for his widowed daughter and her son and for the marriage, etc., of his youngest unmarried daughter Shakuntala, as per clause Nos. 14 and 15 of the said Will. He had also direct under clause No. 17 of the said will that on his wife's death, his two sons Vaikunthlal and Krishnalal would take all his remaining properties in equal shares. The testator Shri C. M. Jhaveri had expired on 14th July, 1950. The above said Will in question was his last Will and testament on which there is no dispute before us. It appears that Smt. Aratgauri had by the deed of assignment dt. 8th June, 1961, assigned her life interest in all the properties given to her under the said Will to her two sons, namely, Vaikunthlal and Krishnalal for an amount of Rs. 10,000. As the deed of assignment had been made within the statutory period of two years of her death which occurred on 27th June, 1961, a brief question had arisen for the consideration of the Revenue as to whether the disposal of the life interest would be liable to the estate duty under s. 11 of the ED Act, 1953.

4. The assessment orders pronounced by the First Asstt. CED, Ahmedabad, dt. 23rd March, 1974 would go to show that on the death of late Smt. Aratgauri who had expired on 27th June, 1961, the estate duty account was filed by the accountable person on 16th October, 1965. According to the accountable person the deceased was having at the best only a life interest as per the Will and this life interest was disposed of by her during her life time before the death, and therefore, according to the accountable person, no part of the estate left by late Shri C. M. Jhaveri the husband of the deceased would pass on her death. It was also contended by the accountable person that, even this life interest of the deceased is accepted as a finding of fact, then also, the above said was not an absolute life interest of the deceased alone as the discretion was given to the executors of the Will to spend the income of the estate for the benefit of the deceased at their discretion. In short, therefore, it was the contention raised on behalf of the accountable person that the deceased Smt. Aratgauri was merely a beneficiary under the Will of the deceased, and that, the executors appointed under the said Will were entitled to spend certain amount for two daughters as indicated in the Will and that, therefore, it could not be said that the deceased was given an absolute life interest in the estate of the deceased. It was also the contention on behalf of the accountable person that, no part of the estate left by the deceased Shri C. M. Jhaveri was liable to estate duty under the relevant provisions of the Act on the death of the deceased Aratgauri. The above said contentions raised by the accountable person came to be negated by the First Asstt. CED, Ahmedabad, by the assessment orders dt. 23rd March, 1974. Thus, the principle value of the estate which according to the taxing authority passed

on the death of the deceased Smt. Aratgauri was assessed at Rs. 5,11,000. The above said assessment orders came to be challenged by the accountable person by filing the appeal before the Asstt. CED, Gujarat at Ahmedabad. Similar contentions were raised during the hearing of the appeal on behalf of the accountable person. Anyhow, the Asstt. CED had taken the view that, upon a harmonious reading on the Will it clearly emerges that the deceased Shri C. M. Jhaveri had bequeathed specific and ascertained amount of legacies to several of his relations who have been specifically named in the Will, and that, the balance of the properties left after such legacies were to go to the wife Aratgauri alongwith the specific bequest in sum of Rs. 10,000. Reading the relevant clauses of the Will of the deceased Shri C. M. Jhaveri and especially clause Nos. 17 and 18 also the appellate authority had come to the conclusion that the contentions raised on behalf of the accountable person could not have been accepted. The appellate authority has noticed as a finding of fact that, the deceased Aratgauri in fact enjoyed the entire remainder estate and also the income therefrom as confirmed from the Income Tax and wealth-tax record. It is in this view of the matter that the appeal filed by the accountable person came to be dismissed by the orders dt. 27th May, 1976. The accountable person being aggrieved and dissatisfied with the above said appellate orders had approached the Tribunal, Ahmedabad, Bench "B" by filing the necessary appeal. The above said appeal filed by the accountable person came to be decided and disposed of by the orders dt. 31st Jan., 1978. The Tribunal had also taken the view, that reading the relevant clauses of the Will and the testament of the deceased, it could not have been accepted that the deceased Aratgauri had not got absolute life interest because the discretion was given to the executors of the Will to spend the income for the benefit by the deceased by the testator, and also, because of the further fact that certain provisions were made for the benefit of two daughters of the deceased Shri C. M. Jhaveri. Later on, the necessary application was moved before the Tribunal for having a reference of the aforementioned two questions to this Court under s. 64(1) of the ED Act, 1953. Accordingly, the above said two questions have been referred to us for our answer and reply.

5. Mr. J. P. Shah the learned advocate who appears on behalf of the assessee, has urged that the authorities below have committed an error in coming to the conclusion that the deceased Aratgauri was given an absolute life interest in the estate of the deceased. In the submissions of the learned advocate Mr. Shah the deceased Aratgauri was not given an absolute life interest in the estate of the deceased but, as it becomes clear from the relevant clauses of the Will of the deceased, certain provisions were made for the two daughters of the deceased Shri C. M. Jhaveri and that the executors and the administrators were also entitled to spend the corpus for the benefit of the above said two daughters. It is in view of this position that Mr. Shah has further contended that the taxing authorities had committed an error in coming to the conclusion that the deceased was given an absolute interest in the estate of the deceased, and that, the same

passed to the accountable person on the death of the deceased Smt. Aratgauri. But Mr. Thakore the learned counsel who appears on behalf of the Revenue has urged that, as pointed out by the Tribunal and the taxing authorities below, the Will of the deceased requires to be read harmoniously and when it is so read, it becomes clear that the deceased Aratgauri was given an absolute life interest in the estate of her husband, and that, merely because some provisions were made for the two daughters of the deceased Shri C. M. Jhaveri, it cannot be said that the life interest was not absolute. Mr. Thakore has also, arguing in the same line, contended that because of the abovesaid factual position only it could not be successfully urged on behalf of the accountable person that the deceased Aratgauri was merely a beneficiary under the Will.

6. As indicated by us above, the contention of the accountable person before the taxing authority was that the life interest given to deceased Aratgauri was not absolute one. It requires to be appreciated that no contention has been raised on behalf of the assessee before us regarding the application of s. 11 of the ED Act of 1953. The sole contention which is being canvassed before us, on behalf of the assessee through the learned advocate Mr. Shah is that the life interest given to the deceased Aratgauri was not an absolute life interest because the provisions were made for two daughters of the deceased late Shri C. M. Jhaveri and that, therefore, the position of the deceased Aratgauri was reduced to a position of a mere beneficiary. It is indeed true that the Will of the deceased like any other document requires to be scrutinised as a whole and the harmonious construction would be necessary to cull out the exact intention of the deceased testator. In our opinion, when the Will is read in the above said manner and is construed harmoniously with a view to find out and gather the correct and real intention of the testator, the view taken by the Tribunal and the taxing authorities below appears to be a perfectly justifiable one.

7. When the reference is made to the last Will and the testament of the deceased Shri C. M. Jhaveri at Annexure A it becomes clear that under clause No. 9 a specific bequest in sum of Rs. 10,000 was made in favour of deceased Aratgauri and she was authorised to use the above said amount in any manner which she may like with full and absolute ownership and disposal over the same. Clause No. 11 of the Will makes it clear that the deceased had made a bequest of all his remaining properties to his wife Aratgauri for her life, without power of alienation, except for over and above a specific bequest in sum of Rs. 10,000 all the remaining properties of the deceased were given to Aratgauri for her life time but it was without the power of alienation, except for dire need. The last four words appearing in clause No. 11 namely "except for dire need" would go to show that, though the life interest was given to the deceased Aratgauri, she was also entitled to alienate the property in case of dire need. Anyhow, the above phrase is not the material aspect for our consideration while answering the questions referred to us. The learned advocate Mr. Shah appearing on behalf of the assessee has placed heavy reliance upon clause Nos. 12, 15 & 16 of the Will with a view to canvass the contention that the deceased was mere beneficiary

under the Will and that, she was not given the absolute life interest in the estate of the deceased. Clause No. 12 of the Will speaks of the appointment of two sons Vaikunthlal and Krishnalal as the executors of the estate. It is made clear in clause 12 that the above said two executors shall first pay up the liabilities of the deceased, and thereafter shall manage the estate during the life time of the deceased Aratgauri in the same way as the deceased testator used to do during his life time. This clause No. 12, therefore, would only go to show that two sons, namely, Vaikunthlal and Krishnalal were to act as the executors of the estate, and that, they were required to discharge the liabilities of the deceased first and thereafter they were required to manage the estate during the lifetime of the deceased Aratgauri. This clause, therefore, on the contrary would go to show that the deceased Aratgauri was given the life interest in the estate of the deceased which she was to enjoy during her life time.

8. Clause No. 14 of the Will says that, the son-in-law of the deceased Shri C. M. Jhaveri, namely, Ravivadan Mangaldas Marfatia has expired leaving behind the widow Subhadra and a minor son Sudhir. Clause No. 15 says that the testator, therefore, set apart an amount of Rs. 15,000 only out of his estate, with a direction to the executors by saying that instead of setting apart a sum of Rs. 15,000 and to invest the same in the safe securities, the executors may set apart proper and safe securities which the deceased was possessed of at the time of his death. It is further directed in clause No. 15 that the executors are required to utilise the income of the above said corpus, namely, Rs. 15,000 for the welfare of the widowed daughter and her minor son Sudhir. It is also further clarified that in case of necessity the executors and trustees are empowered to utilise the whole or part of the object. Mr. Shah has urged before us with great vehemence that the word "corpus" occurring in clause 15 relates to the entire estate left by the deceased and not only a trust in sum of Rs. 15,000. By raising this contention Mr. Shah wanted to urge that the entire estate left behind the deceased in which the deceased Aratgauri was given a life interest was open for executors and trustees for the use and application for the benefit of the widowed daughter and the minor son. Mr. Shah also wanted to urge that, a person like deceased Shri C. M. Jhaveri would never think of setting apart a meagre sum of Rs. 15,000 only for the maintenance, education and welfare of the widowed daughter and her minor son. But the later portion of this clause No. 15 would go to show very clearly that, both daughter Subhadra and minor son Sudhir were likely to get all the properties from the father of the deceased Ravivadan and that he was a reasonably well off man. Anyhow, an amount of Rs. 15,000 was being set apart for the above said purposes by the deceased out of extra caution as stated by the testator himself in the concluding portion of clause No. 15 of the Will.

9. Clause No. 16 says that an amount of Rs. 20,000 is being set apart for the unmarried daughter Shakuntala for her maintenance. This clause also while making the provisions for unmarried daughter Shakuntala says that, in case of necessity the corpus of the amount also can be utilised for the benefit of

unmarried daughter Shakuntala. But once again it has been made specific and clear, as has been done in the previous clause also that, if the income of the corpus of an amount of Rs. 20,000 is not being utilised for the said purpose, the same shall revert to the wife's life interest in the property left behind by the deceased Shri C. M. Jhaveri. Therefore, both the above said clauses, namely clause Nos. 15 & 16 on which Mr. Shah has placed heavy reliance would go to show that two "trusts" were created by the said clauses for an amount of Rs. 15,000 and Rs. 20,000 for the widowed daughter and her son and for the unmarried daughter respectively. The reference of the word "corpus" cannot be understood as connoting the entire corpus or the life interest which was being bequeathed to the deceased Aratgauri by her husband. Upon a close reading of the entire Will and especially all the aforementioned relevant clauses and upon a proper construction thereof it becomes clear, that the deceased was given the life interest in the property and that, it was an absolute life interest. Ordinarily she was to enjoy the outcome or the income of the life interest, but in case of dire need she was also to alienate the life interest which was bequeathed in her favour by her deceased husband. In case of the two small amounts or their income not being utilised for the purposes stated as above, even the corpus and the income therefrom, were also desired to be added to the life interest which was being granted to the deceased Aratgauri. In view of this position, reading the Will as a whole and trying to gather the correct and real intention of the deceased, the contention raised by Mr. Shah, the learned advocate for the assessee, cannot be accepted. In our opinion, therefore, the Tribunal and the taxing authorities were perfectly justified in the expression of the view that the residuary estate of the deceased testator passed on the death of the deceased Aratgauri. We shall, therefore, have to say that the Tribunal was right in holding that the residuary estate of the Shri C. M. Jhaveri passed on the death of his widow Aratgauri under s. 11 of the ED Act, 1953. It is also clear that in the facts and circumstances of the case, the Tribunal was perfectly justified in holding that, under the Will of the deceased Shri C. M. Jhaveri, deceased Aratgauri was having the life interest in the entire estate. In the same way we shall have to say that, in the facts and circumstances of the case, the deceased Aratgauri had interest in possession in the residuary estate under the Will of her deceased husband Shri C. M. Jhaveri.

10. In view of these findings and conclusions of ours, all the above said three questions shall have to be replied and answered in Affirmative against the assessee and in favour of the Revenue. We, accordingly, do hereby answer and reply the above said questions with no orders as to costs.