

(1998) 04 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No's. 1008 and 1009 of 1989 and W.M.P. No's. 1476 and 1477 of 1989

M. Vedachala Mudaliar and Co. and Another

APPELLANT

Vs

Assistant Controller of Estate Duty and Another

RESPONDENT

Date of Decision : 20-04-1998

Acts Referred:

Estate Duty Act, 1953 — Section 73, 73(5)

Income Tax Act, 1922 — Section 46(5A)

Citation : (2000) 241 ITR 839

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : V. Ramachandran, for K. Mani, for the Appellant; Kala Ramesh, for the Respondent

Judgement

K. Ganaprakasam, J.—One N. Sundaram, who is the managing partner of M. Vedachala Mudaliar and Co., Chingleput, has filed Writ

Petition No. 1008 of 1989. One G. Venkatarama Naidu, who is the managing partner of M. Vedachala Mudaliar and Co., Tindivanam, has filed

W. P. No. 1009 of 1989.

2. Both the writ petitions have been filed for the issue of a writ of certio rari to call for the records of the first respondent in his proceedings GI.

No. R. 2399 dated December 13, 1988, and to quash the same.

3. Both the learned advocates for the petitioners and also the respondents have submitted that common questions of law and facts are involved in

these cases and that, therefore, both the writ petitions may be heard together and a common order may be passed.

4. In both the writ petitions, the partnership firms, Vedachala Mudaliar and Co.,

at Chingelput and at Tindivaman, were constituted in the year 1972 with effect from April 1, 1972. The firms were reconstituted on April 1, 1985. Prior to that, the firms were reconstituted with effect from March 20, 1981, in which one M. Rajeswari Vedachalam was one of the partners, who died on March 19, 1981. She had left a will dated November 26, 1980, whereunder, she had bequeathed her capital and interest in the partnership firm to a minor, Jagan Mohan, and a minor Murali, son of M. V. Kamala Kannan, and they become entitled to their respective interest and capital in the partnership firm on the death of M. Rajeswari Vedachalam. M. V. Kamala Kannan was also a partner in the firm at that time, but he subsequently retired from the partnership and the same was reconstituted with effect from April 1, 1985. The relevant clause in the partnership deed, dealing with the contribution of capital being clause 6 reads as follows :

The amounts standing to the credit of the parties hereto in the accounts of the firm as on March 31, 1985, shall be treated as their respective share capital for this partnership business. However, it is agreed amongst the parties thereto that the party of the first part, in consideration of his agreeing to make available his experience and skill in this trade and in view of his local influence and standing, need not necessarily invest any amount by way of capital for this partnership business.

5. As such, the managing partner is not bound to contribute any capital. It is stated that the partnership firm was carrying on business and filed the returns regularly.

6. By the will dated November 26, 1980, Rajeswari Vedachalam had bequeathed her interest and capital in the partnership firm, which she derived from her husband, Vedachalam, in favour of a minor, Jagan Mohan, and a minor Murali.

7. The Assistant Controller of Estate Duty (2), the first respondent herein, had passed an assessment order in respect of the late Smt. Rajeswari Vedachalam, u/s 58(4) of the Estate Duty Act, 1953, wherein it is stated that the interest of the deceased in the various partnership firms in which she was a partner was included. As Rajeswari Vedachalam succeeded to the interest of her husband in M. Vedachala Mudaliar and Co., the amount available in the partnership business was added to the principal estate

and the first respondent determined the total principal value of the estate and arrived at approximately Rs. 20,00,000 and estate duty thereon at Rs. 6,63,600. As there was no response from the accountable persons of the deceased to the notice issued u/s 55 of the Estate Duty Act, the Assistant Controller has passed an ex parte order. After having passed an order, the first respondent issued a notice of demand to the accountable persons to the aforesaid assessment.

8. It is stated that the firm is in no manner liable to pay the estate duty demanded which is payable by the accountable persons of the deceased. It is also stated that the deceased had left sufficient property, other than her interest in the partnership firm, which would be enough and sufficient to meet the estate duty liability of the deceased. It is therefore stated that the assets of the partnership firm cannot be attached.

9. The first respondent issued a notice u/s 73(5) of the Estate Duty Act read with Section 46(5A) of the Indian Income Tax Act, 1922, claiming that a sum of Rs. 6,63,600 is due from the estate of the deceased and from the minor, to whom the properties were bequeathed by Rajeswari Vedachalam. The first respondent called upon the petitioner to pay the amount, as it is due under the estate duty of the deceased. It is stated that u/s 46(5A) of the Indian Income Tax Act, 1922, he is entitled to recover the estate duty from the accountable person. That only in the said circumstances, a notice in GI. No. R. 2399 dated December 13, 1988, was issued calling upon the petitioner to pay the entire estate duty payable by the accountable person. Aggrieved by the same, the petitioners preferred the present writ petitions.

10. The respondents have not chosen to file any counter.

11. I heard the rival submissions of the learned advocates for the petitioners and also the respondents.

12. Learned senior advocate for the petitioner Mr. V. Ramachandran has submitted that the impugned notice dated December 13, 1988, is illegal, inoperative and unsustainable under law. He has submitted that the petitioners' partnership firm is not an accountable person and that, therefore, the partnership firm, as such, is not liable to pay the amount demanded by the first respondent in the impugned notice dated December 13, 1988.

He has further urged that Rajeswari Vedachalam had bequeathed her properties

in the partnership firm as per the registered will dated November 26, 1980, and the beneficiaries in the said will are liable to pay the amount claimed in the impugned notice. Though the deceased, Rajeswari Vedachalam, was a partner in the partnership the estate duty claimed by the respondents is not against the partnership firm as such, and it is the amount payable by the individual partners and, in this case, Rajeswari Vedachalam, whose interests in the partnership business were bequeathed to the minor, Jagan Mohan and minor Murali. As such, the amount demanded by the respondents as against the partnership business to recover the amount said to be due by the individual is not proper and valid.

13. Per contra, the learned advocate for the respondents has submitted that the proceedings taken by the respondents to recover the estate duty is in the nature of garnishee proceedings. Well, the garnishee proceedings are very well described in the Civil Procedure Code. Order XXI, Rule 49, of the Civil Procedure Code, 1908, deals with attachment of partnership property which reads as follows :

(1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

14. As far as this position of law is concerned, there cannot be any quarrel and, as such, the estate, if any, of the late Rajeswari Vedachalam, available in the hands of the petitioners' partnership firm alone is liable for attachment. But, the petitioners have submitted that there is no such estate of the late Rajeswari Vedachalam, available in the hands of the partnership firm. As such, the attachment proceedings taken by the respondents is not sustainable.

15. But, however, the advocate for the respondents urged that the proceedings taken by the respondents are proper, in view of the provisions of Section 46 of the Indian Income Tax Act, 1922, (the old Act) which reads as follows :

46. Mode and time of recovery.--(1) When an assessee is in default in making a payment of Income Tax, the Income Tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

(1A) For the purposes of Sub-section (1), the Income Tax Officer may direct the recovery of any sum less than the amount of the arrears and may

enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be

recovered shall not exceed the amount of the arrears payable.

(2) The Income Tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee,

and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified there in as if it were an arrear of

land revenue.

16. Further, Section 46(5A) of the Act reads as follows :

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 tax-payer 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.

17. A careful reading of Section 46(5A) of the Act would definitely suggest what is the amount liable for attachment. It is well defined that :

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.

18. As such, unless or otherwise, the petitioners hold the estate of the deceased, they are not liable to pay the amount demanded by the

respondents. The learned advocate for the respondents also relied upon the decision reported in T. T. P. Beepathumma Vs. Special Deputy

Tahsildar (Arrears Collections) and Another, , and the said decision is not

applicable to the case on hand.

19. The petitioners have submitted that they are not holding the assets and liabilities of the deceased, viz., the accountable persons in this case, and,

as such, the action taken by the first respondent to recover the amount from the petitioners' firm is not justified. The argument advanced on behalf

of the petitioner has got to be accepted in all force and that, therefore, I come to the conclusion that the respondents are not entitled to attach the

assets and liabilities of the petitioners' firm. As such, the impugned notice dated December 13, 1988, directing the petitioners to pay the entire

estate duty payable by the accountable persons has got to be quashed and the same is hereby quashed.

20. In the result, the writ petitions are allowed. No costs. In view of the order passed in the main W. P., no order is necessary in the W. M. Ps.

and the same are closed.