

(1998) 04 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No's. 1008 and 1009 of 1989 and WMP No's. 1476 and 1477 of 1989

M. VEDACHALA MUDALLAR and CO. and Another APPELLANT

Vs

ASSISTANT CONTROLLER OF ESTATE DUTY and Another RESPONDENT

Date of Decision : 20-04-1998

Acts Referred:

Citation : (1998) 149 CTR 237

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Division Bench

Judgement

BY THE COURT:

One N. Sundaram, who is the managing partner of M/s M. Vedachala Mudaliar & Co., Chingleput, has filed the WP No. 1008 of 1989. One G.

Venkatarama Naidu, who is the managing partner of MIs M. Vedachala Mudahar & Co., Tindivanam has filed the WP No. 1009 of 1989.

2. Both the writ petitions have been filed for the issue of writ of certiorari to call for the records of the first respondent in his proceedings GI. No. R

2399 dt. 13th Dec., 1988 and to quash the same.

3. Both the learned advocates for the petitioners and also the respondents have submitted that common question 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 firm MIs Vedachala Mudaliar & Co., at Chingleput and at Tindivanam were constituted in the year

1972 w.e.f. 1st April, 1972. The firms were reconstituted on 1st April, 1985. Prior to that, the firms were reconstituted w.e.f. 20th March, 1981 in

which one M. Rajeswari Vedachalam was one of the partners, who died on 19th March, 1981. She had left a will dt. 26th Nov., 1980

whereunder, she had bequeathed her capital and interest in the partnership firm to minor Jagan Mohan and 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 Karman was also a partner in the firm at that time, but subsequently, retired from the partnership and the same was reconstituted w.e.f. 1st

April, 1985. The relevant clause in the partnership deed, dealing with the contribution of capital. being cl. 6 reads as follows :

The amounts standing to the credit of the parties hereto in the accounts of the firm as on 31st March, 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.

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.

5. By the will dt. 26th Nov., 1980, Rajeswari Vedachalam had bequeathed her interest and capital in the partnership firm, which she derived from

her husband Vedachalam in favour of minor Jagan Mohan and minor Murali.

6. The Asstt. CED (2), the first respondent herein, had passed an assessment order in respect of the late Sint. Rajeswari Vedachalam under s.

58(4) of the ED Act, wherein it is stated that the interest of the deceased in tile 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 & Co., the amount available in the partnership

business was added to the principal estate and the first respondent determined the total pri,-~ipal value of the estate and arrived at appro>dmately

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 under s. 55 of the ED Act, the Asstt. CED 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.

7. 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.

8. The first respondent issued a notice under s. 73(5) of the ED Act r/w s. 46(5A) of the IT Act claiming that a sum of Rs. 6,63,600 is due from

the estate of the deceased and from the minors, to whom the properties were bequeathed by Raleswari 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 under s. 46(5A) of the IT Act, 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, dt. 13th Dec.,

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.

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

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

11. Learned senior advocate for the petitioner Mr. V. Ramachandian has submitted that the impugned notice dt. 13th Dec., 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 dt. 13th Dec., 1988. He has

further urged that Rajeswari Vedachalam had bequeathed her properties in the partnership firm as per the registered will dt. 26th Nov., 1980 and

the beneficiaries in the said will are liable to pay the amount claimed in the impugned notice. Though the deceased Raleswari Vedachalam was a

partner in the partnership deed, 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 interest in the partnership business were bequeathed to minors 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.

12. Per contra, the learned advocate for the respondents has submitted that the proceedings taken by the respondent to recover the estate duty is

in the nature of garnishee proceedings. Well, the garnishee proceedings are very well described in the CPC. Order XXI r. 49 of the CPC deals

with attachment of partnership property which reads as follows :

11(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.

As far as this position of law is concerned, there cannot be any quarrel and as such, the estate, if any, of late Raleswari Vedhachalam is 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 late

Rajeswari Vedhachalam available in the hands of the partnership firm. As such, the attachment proceedings taken by the respondents is not sustainable.

13. But, however, the advocate for the respondents urged that the proceedings taken by the respondents is proper, in view of the provisions of s.

46 of the Indian IT Act, 1922 (old Act) which reads as follows :

Mode and time of recovery : (1) when an assessee is in default in making a payment of Income Tax, the ITO 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-s. (1), the ITO 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 ITO 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 therein as if it were an arrear of land revenue".

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

The ITO 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 ITO) 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 ITC), 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 duty by the

taxpayer in respect of arrears of Income Tax and penalty of the whole of the money when it is equal to or less than that amount.

14. A careful reading of s. 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 ITW.

15. 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.

16. The petitioners have submitted that they are not holding the assets and liabilities of the deceased, viz., 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 dt. 13th Dec., 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.

17. In the result, the writ petitions are allowed. No costs. In view of the order

passed in the main writ petition, no order is necessary in the WMPs and the same are closed.

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