

(2001) 05 DEL CK 0177

In the Delhi High Court

Case No : Estate Duty Ref. No"s. 1-2/79

Maj. Kapil Mohan L/R of Shri N.N. Mohan

APPELLANT

Vs

The Controller of Estate Duty

RESPONDENT

Date of Decision : 30-05-2001

Acts Referred:

Estate Duty Act, 1953 — Section 2(15), 2(16), 34, 5, 5(1)
Income Tax Act, 1961 — Section 80(J), 80(K)

Citation : (2001) 59 DRJ 599 : (2002) 253 ITR 243 : (2001) 118 TAXMAN 331

Hon'ble Judges : Dr. Arijit Pasayat, C.J.;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. Anoop Sharma and Mr. R.K. Raghvan, for the Appellant; Mr. Sanjeev Khanna, Senior Standing Counsel and Mrs. Prem Lata Bansal, Jr. Standing Counsel, for the Respondent

Judgement

D.K. Jain, J.—In these two cross references u/s 64(1) of the Estate Duty Act, 1953(in short the "Act") the Income Tax Appellate Tribunal, Delhi Bench "D"(in short the "Tribunal") has referred the following questions for opinion of this Court:

At the instance of the Accountable person

"1. Whether on the facts and in the circumstances of the case the Appellate Tribunal was correct in not accepting the plea of the Accountable Person for deducting alleged liability towards the marriage and maintenance expenses of the grand-daughters of the deceased?

2. Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that the aggregation in the principal value of the Estate, of the interest in the joint family property, of all the lineal descendants of the deceased, for the purpose of determining the rate of Estate Duty was legally correct?

3. Whether the Appellate Tribunal was correct in holding that Estate Duty payable

on the value of the Estate should not be allowed as a deduction in arriving at the value of the dutiable estate?

At the instance of the Controller of Estate Duty

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the refund of Rs. 2,27,681/- received by the legal heirs of the deceased consequent on the certificates issued by the Income Tax Officer u/s 80-K between February 1971 and May 1973 did not represent property passing on the death of the deceased and thus was not liable to be included in the dutiable estate?"

2. Shri N.N. Mohan (hereinafter referred to as the deceased) died on 15 July 1969 and as assessment of estate duty under the provisions of Section 58(3) of the Act was made by the Additional Assistant Controller of Estate Duty on 25 April 1975 on Lt.Col. V.R. Mohan (hereinafter referred to as the "Accountable Person"). The principal value of the estate was determined at Rs. 37,55,504/-. Aggrieved by this assessment, the Accountable Person filed an appeal before the Appellate Controller of Estate Duty, who by her order dated 22 November 1975, allowed certain reliefs, though not to the extent prayed for by the appellant. Aggrieved, the Accountable person as also the Revenue preferred appeals before the Tribunal.

3. Shorn of unnecessary details, the facts relating to the questions raised by the Accountable Person are: it was claimed by the Accountable Person that the value of the benefit accruing or arising from the cesser of the co-parcenary interest in the joint family property had been wrongly taken, without making provision for a sum of Rs. 4 lakhs towards the marriage and maintenance expenses of the grand-daughters of the deceased. Taking the view that the marriage expenses of the son's daughters formed only the liability of his branch and not of the whole joint family, the Tribunal held that the deceased had no un-married sisters or daughters at the time of his death and, Therefore, deduction for any liability towards the marriage and maintenance expenses of grand-daughters of the deceased was not allowable.

The Accountable Person claimed that the aggregation of the Principal value of the estate by including the interest of all the lineal descendants of the deceased in the joint family property for the purpose of determining the rate of estate duty u/s 34(i)(c) of the Act, was illegal. However, relying on the decision of the Madras High Court in Pl. S. Rm. Ramanathan Chettiar Vs. Assistant Controller of Estate Duty, and the Andhra Pradesh High Court in N. Krishna Prasad Vs. Assistant Controller of Estate Duty, , the Tribunal held that such aggregation was neither illegal nor unconstitutional.

While computing the principal value of the estate of the deceased, the Accountable Person deducted the amount of estate duty chargeable on the estate as a debt. By placing reliance on the decision of the Karnataka High Court in V. Pramila Vs. Controller of Estate Duty, Bangalore, and the Andhra Pradesh High

Court in Controller of Estate Duty Vs. Estate of Late Omprakash Bajaj, , the Tribunal rejected the claim of the Accountable Person.

4. The facts relating to the question referred at the instance of the Revenue are with regard to the inclusion in the principal value of the estate, a refund of Income Tax, amounting to Rs. 2,27,681/-. The deceased was holding substantial number of shares of M/s Mohan Meakin Breweries Ltd., and was getting dividend on them. A part of the dividend was exempt from Income Tax u/s 80K of the Income Tax Act, 1961(in short the "IT Act"). After the death of the deceased, his legal heirs received total refunds amounting to Rs. 5,74,308/-, out of which a sum of Rs. 2,27,681/- represented the amount of refund which became due on account of relief granted u/s 80K of the IT Act and the balance amount of Rs. 6,46,627/- represented refund of taxes paid by the deceased pursuant to the assessment orders, but became refundable consequent upon appeals, filed by him, being decided in his favor after his death. In the estate duty return of the Accountable Person, only the amount of Rs. 3,46,627/- was included and the other amount of Rs. 2,27,681/- was not included on the ground that it did not represent "property" passing on the death of the deceased. The stand of the Accountable Person was that at the time of death of the deceased he had no right to make a claim for relief u/s 80K because in the first instance the claim of the said company u/s 80J had to be adjudicated and accepted by the department and it was only thereafter that the deceased would have become entitled to any relief u/s 80K. As there was no such adjudication in the case of the company till the date of his death, it was claimed, that the deceased had no right to any relief u/s 80K. It was pointed out that initially relief u/s 80J of the I.T. Act was not granted to the company by the assessing officer and the company's appeals against its assessment, denying relief u/s 80J of the IT Act were decided by the Tribunal in the years 1971/1972, when the deceased had already expired on 15 July 1969. Taking cognizance of the fact that the Accountable Person had in fact made a claim for refund on account of relief u/s 80K only after the Income Tax Officer had issued the certificates determining the portion of the dividend issued by the company, which was exempt from tax u/s 80K, between February 1971 and May 1973, the Tribunal held that the said refund did not represent the "property" passing on the death of the deceased.

5. Being aggrieved by the view taken by the Tribunal on the afore-noted issues, at the instance of the Revenue and the Accountable Person, the questions, as set out hereinabove, have been referred.

6. We have heard Mr. Sanjeev Khanna, learned Senior Standing Counsel for the Revenue and Mr. Anoop Sharma, learned counsel for the Accountable Person. At the outset, it was submitted by learned counsel for the Accountable Person that in view of the fact that there is uniformity in views of various High Courts on the first two questions and the issue raised in the third question stands settled by the Apex court in the case of P. Leelavathamma (Smt) Vs. Controller of Estate Duty, Andhra Pradesh, Hyderabad, , against the Accountable Person, the decision

of the Tribunal on the issues raised by the Accountable Person is in order and, Therefore, the reference at the instance of the Accountable Person may be returned un-answered. We order accordingly.

7. Insofar as the reference at the instance of the Revenue is concerned, it was vehemently argued by Mr. Khanna that the right to receive any refund is a "property" within the meaning of Section 2(15) of the Act. As the same was capable of being inherited and transferred, it is deemed to have passed on the death of the deceased in terms of Section 6 of the Act and thus, liable to estate duty. It is urged that the right to receive refund comes into existence on the relevant valuation date and only the quantification of refund is deferred, which is not an essential attribute of "property" under the Act. Support is sought to be derived from a Full Bench decision of this Court in Labh Chand and Another Vs. Controller of Estate Duty, New Delhi, . In support of the proposition that the scope of the term "property" is very wide and it includes any kind of refund due, learned counsel has cited certain decisions of the Supreme Court but we do not propose to burden the judgment by citing them as there is no dispute on the general principle of law laid therein.

8. On the other hand, Mr. Sharma, while supporting the view taken by the Tribunal has contended that in the present case there was on "property" in existence at the time of death of the deceased because the right to receive refund in question was purely contingent as it was dependent on the action on the part of the company. If the company had failed in its appeals, there was no question of the deceased getting any consequential benefit. In support reliance is placed on the decisions of the Bombay High Court in Estate of Late Gen. Sir Shankar S.S.J.B. Rana Vs. Controller of Estate Duty, and Kerala High Court in CONTROLLER OF ESTATE DUTY Vs. H. H. SETHU PARVATHI BAI (ESTATE OF LATE) BY H. H. LAKSHMI BAI., .

9. Thus, the question posed for our consideration is as to whether the amount of refund claimed and received after the death of the deceased, pursuant to the order passed by the Tribunal in the case of the company, accepting its claim u/s 80J of the IT Act constitutes "property" within the meaning of Section 2(15) of the Act.

10. Section 5 of the Act is the charging Section and lays down that estate duty shall be levied and paid upon the principal value of all "property" which passed on the death of a person. Thus, estate duty is livable on "property" which passes on the death of a person. Section 6 of the Act expands the scope of the charging Section and provides that "property" which the deceased was at the time of his death competent to dispose of, shall be deemed to pass on his death. Sub-section (15) of Section 2 of the Act defines the term "property" and inter alia, states that "property" includes any interest in property, movable or immovable. Being an inclusive definition, it extends the concept of "property" beyond what it includes and though clause (15) is not a precise definition of the term "property" but it makes it clear that an interest in movable or immovable

property would be "property" for the purposes of the Act. The term "property" is one of very general meaning - wide and comprehensive. It is used in a wide sense in the same way as it has been used in the Transfer of Property Act, 1882. It brings within its ambit all the tangible and intangible property which a person can possess or from which he can derive a benefit, which is capable of being reduced to money value. In *The New York Breweries Company Limited v. The Attorney General*, (1899) AC 62, it was observed that "property" is not something necessarily connected with physical possession, capable of being transferred by manual delivery only. Chosen-in-action though not capable of physical possession, are "property" as they are capable of being legally transferred by execution of the appropriate documents of transfer. In *Dewan Labh Chand's case*(supra), heavily relied upon by learned counsel for the Revenue, it was observed that for the purpose of the Act, "property" must not be restricted to the lifetime of the deceased who must not be divested of it on his death; it must be capable of being inherited by his legal representatives. For the levy of estate duty u/s 5(1) of the Act, the term "property" shall be deemed to pass even if it is not personally held by the holder before his death provided he was competent to dispose of the same within the ambit of Section 6 of the Act.

11. In *M. Ct. Muthiah and Another Vs. Controller of Estate Duty, Madras*, , while dealing with the concept of "property" under the Act, the Supreme Court observed that insurance money in the case of an accident policy became payable on the happening of a specified contingency. The "property" emerged on the death of the deceased during the subsistence of the policy. Therefore, no "property" can be deemed to pass on the death of deceased as no "property" existed at the time of death of the deceased.

12. According to the ratio of the said decision, in order to fall within the expression "property" as defined in Section 2(15) of the Act, the "property" in some form or other must exist at the time of death of the deceased, which can pass on his death. Sub-section (16) of Section 2 speaks of "property passing on the death" as including property passing either immediately on the death or after an interval, either contingently or contingently and either originally or by way of substitutive limitation. So, what is important is that the "property", whether tangible or intangible must have legal existence at the time of death, and it is not necessary that it should be "definite", "ascertained" or "determined". An immediate quantification is not an essential attribute of "property" under the Act.

13. A conjoint reading of the afore-noted provisions would show that it is the "property passing on the death" of the deceased, which would be subjected to estate duty and that what passes must be "property" at the time of death.

14. The answer to the question posed, Therefore, would primarily depend on whether the refund in question satisfies the criteria of "property" in the Act. The pertinent question would be whether in the instant case the deceased had any right to ask for refund based on his claim u/s 80K. In other words, had any legally enforceable right to claim the said refund accrued to the deceased at the

time of his death?

15. In the instant case, the Tribunal had noted that even at the time of death of the deceased the fate of company's claim u/s 80J was uncertain as deceased's claim was dependent on such as uncertain contingency. It was not a case where only the quantum of refund was uncertain. The Tribunal has recorded a finding of fact that the claim for refund was not even postulated before the death of the deceased, and it was in fact made after his death. As noticed by the Tribunal, originally the company's claim u/s 80J was not allowed by the Department and it was only as a result of the orders passed by the Tribunal between February 1971 and March 1972 that the company's claim u/s 80J was accepted. Thereafter, between February 1971 and May 1973, the Income Tax Officer issued certificates determining the portion of the dividend issued by the company, which was exempt from tax u/s 80K of the IT Act. It was only after these certificates were issued by the ITO that the legal heirs of the deceased preferred claim for refund based on relief u/s 80K in respect of the dividend received by the deceased from that company. In the light of the facts found by the Tribunal, we are in agreement with the Tribunal that as on the date of death, namely, 15 July 1969, it could not be said that the deceased had a right to make a claim for relief u/s 80K, as the claim of the company u/s 80J was itself in jeopardy. We, Therefore, hold that the refund of Rs. 2,27,681/- received by the legal heirs of the deceased consequent upon the certificates issued by the ITO between February 1971 and May 1973 did not represent "property" passing on the death of the deceased and, Therefore, it was not liable to be included in the principal value of the estate.

16. The Full Bench decision of this Court in Dewan Labh chand's case(supra), heavily relied upon by learned counsel for the Revenue, does not advance the case of Revenue. In that case, while answering the question whether the compensation payable to a displaced person under the Displaced Person (Compensation and Rehabilitation) Act, 1954 was a "property" within the meaning of the Act, in the affirmative, the Court took into consideration three material facts, namely: (i) the displaced persons were holding verified claims, (ii) there was no uncertainty regarding the title of the displaced persons to the compensations and (iii) it was an in-defensible statutory right conferred on them by the Act of 1954, which is not the case herein. As noted above, in the instant case the right to claim refund accrued only when the company advised its shareholders to claim relief u/s 80K and not earlier.

17. For the foregoing reasons, it has to be held that the refund in question received by the legal heirs of the deceased cannot be said to be "property" passing on the death of the deceased and is, Therefore, not liable to be include in his estate for the purpose of levy of estate duty.

18. In the result, the question referred at the instance of the Revenue is answered in the affirmative, i.e., in favor of Accountable Person and against the Revenue and the reference made at the instance of the Accountable Person is returned unanswered.

19. There will, however, be no order as to costs.