(1982) 03 BOM CK 0041

In the Bombay High Court

Mrs. Mohini K. Advani APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 27-03-1982

Acts Referred:
Estate Duty Act, 1953 — Section 44

Citation : (1983) 32 CTR 101 : (1983) 144 ITR 931

Hon'ble Judges : M.N. Chandurkar, J;M. Jagannatha Rao, J

Bench : Division Bench

Judgement

Chandurkar, J.—One, Mr. K. U. Advani,. died on 24th January, 1966. During his lifetime he had made gifts of the value of Rs. 3,09,320. In the return filed by the accountable person, the gross value of the properties of the deceased including the value to the gifts made inter vivos was shown to be Rs. 34,06,150. Liabilities were shown to the tune of Rs. 64,04,110. Thus, in the returns, the net value of the properties was shown at a minus figure of Rs. 29,97,960.

2 The Assistant Controller found that there was a deficit in the principle value of the free estate because the liabilities were Rs. 64,04,110 as against the free estate of Rs. 33,33,080. He, however, found that the value of the total gifts under s. 9 and the gifts to the accountable persons including insurance amounts paid for the policies taken, under the Married Women''s Property Act, within one year from the date of death came to Rs. 7,37,874. he computed the estate duty on this amount of Rs. 7,37,874. This assessment has been upheld by the Appellate Controller as well as by the Tribunal having regard to the provision of s. 44 of the E. D. Act, except that this value of the property passing on other titles was computed at Rs. 6,18,052.

3. On these facts the following questions has been referred by the Tribunal to this court under s. 64(1) of the E. D. Act, 1953 :

"Whether, on the facts and in the circumstances of the case, the deficit of Rs. 30,71,030 was liable to be set off against the sum of Rs. 6,18052 ?"

4. Mr. Metha, appearing on behalf of the accountable persons, has contended that estate duty is payable on the principal value of the estate as a whole, ascertained at the time of the death of the deceased, and this principal value of the estate must be arrived at by deducting the debts and liabilities outstanding again the deceased from the total principal value of the estate. The argument in short is that the authorities under the Act should have held that, since the property passing under other titles is must less that the outstanding liabilities, no estate duty would be payable by the accountable persons.

5. This argument, in our view, is plainly contrary to the provisions of s. 44 which is the only relevant provisions to determine whether the liabilities could be deducted from the properties passing under other titles. In so far as it is relevant, section 44 reads as follows :

"In determining the value of an estate for the purposes of estates duty, allowance shall be made for funeral expenses (not exceeding rupees one thousand) and for debts and incumbrances; but an allowance shall not be made _

and any debts or in-cumbrances for which an allowance is made shall be deducted from the value of the property liable thereto..."

6. Causes (a), (b), (c) and (d0, which we have not reproduced, refer to the allowance which shall not be made for determining the value of the an estate of the purposes of determining the estate duty. We are not concerned with any one of these. We ate concerned with the meaning to be given to the word "thereto" used in s. 44. The argument appears to be that the word "thereto" has reference to the estate liable to estate duty. one, it is cleat that if any deduction have to be made for the proposes of determining the value of an estate do of the purposes of the estate duty, such deductions will have to be permissible only under s. 44 of the E. D. ACt. If a deduction is not permissible under the provision of s. 44, then the accountable persons will not be entitled to claim that such deduction should be made. On a plain resigned of s. 44 apart from the allowance for funeral expenses, deduction is permissible for debts and incumbrances". However, the latter part of s, 44 specifies the property from the value of which the value of the debts and incumbrances has to be deducted. The last part of s. 44 provides that any debt or in-cumbrances for which an allowance can be made shall be deducted from the value of the property liable thereto. The words "from the value of the property liable thereto" clearly indicate the property out of which the deductions are to be made. When the reference is to the "property liable thereto", what is indicated is that the property must be liable of debts and incumbrances. In other words, what the section contemplates is that any debt or in-cumbrances for which allowance is made shall be deductible only from the value of the property liable to such debts and incumbrances. The object of the section is very clear that only such property as can be proceed again for recovery of a debt or enforcement of an in-cumbrances will alone be the property from the value of which the debt or the value of the in-cumbrances will be deducted. If the property is such that is is not liable for any debts or incumbrances then the value

of those debts and incumbrances will not be deducted for the purposes of determining the value of the estate liable too estate duty. Gift made inter vivos by a deceased is no doubt treated as property passing on the death of the deceased by a deeming fiction created by the statute, btu property absolutely gifted to the done and thus belonging to him cannot be property against which debts or incumbrances can be enforced unless there is a charge created on such property. No such charge is created in the instant case. The estate of the value of the Rs. 6,18,052 is the property against the which the creditors of the deceased cannot proceed because the property did not belong to the decease at the time of his death. Having regard to the specific provision in s. 44, no error can be founding the view taken by the authorities under the E. D. Act and the Tribunal hat the deficit outstanding liabilities of the value of the Rs. 30,71,000 cannot be allowed to be deducted from the properties passing under other titles, the value of which has been estimated at Rs. 6 lakhs odd.

7. The provisions of s. 44 of the E. D, Act, 1953, are analogous to the provision of s. 7(1) of the Finance Act, 1894, in England, Section 7(1) read as follows (See Green''s Death Dates, 6th edn., p. 823) :

"In determining the valued of an estate of the purpose of estate duty allowance shall be made for reasonable funeral expense and for dents and incumbrances; but an allowance shall not be made-...

and any debt or in-cumbrances for which an allowance ifs made shall be deducted from the value of the land or other subjects of property liable thereto."

8. This section fell for consideration in In re Barnes (decease) [1938] 2 KB 684; 2 EDC 652. The deceased in that case, within a periods of three years before his death, made gifts or property and cash amounting in value to a total of 185,101. The total value of the property which he left behind at the time of his death and which consisted of certain waiting apparel and two deferred and one ordinary share, was 13. he owed debuts amounting to 90,390. The containing on behalf of the accountable persons was that in determining the principal value to the property passing on the death of the decease for the purposes of estate duty, all the property of the decease must be aggregated to form one estate, and allowance made for the funeral expenses of the decease and his debts and incumbrances, within the meaning of the Finance Act, 1894, a contention similar to the one advance before us. This contention was rejected by Lawrence J. with the following observations (2 EDC 652 at 656) :

"I think the words of the section contemplate liabilities of the estate which are met out of the estate, and I think that the last three lines of s. 7 sub-s. 1, in their natural meaning are inconsistent with the appellant''s case. in do not see how, tin determining the value of an estate, allowance can be made for debts beyond the value of the assets out of which the debts are to be met. if it an unnatural use of words, in may view, to speak of making an allowance for a minus quantity in determining value."

9. This decision was affirmed by the Court of Appeal in In re Barnes (Deceased) [1939] 1 KB 316; 2 EDC 657, where Sir Wilfrid Greens M. R. In an extremely brief judgment spread over only 12 lines stated that he could not improve on the language of Lawrence J. who had given reasons for th view which he took.

10. Section 44 was also considered by the Mysore High ? Court in Controller of Estate Duty, Mysore Vs. R.R. Srinivasa Murthy, . While construing s. 44, the Division Bench of the Mysore High Court held that is was clear from s. 44 of the E. D. Act that, in regard to certain debts, no allowance can be made and in respect of debts and incumbrances for which allowance has to be made, they should be deducted from the valid of the property liable thereto.

11. Apart from the fact that wee are supported in the view which we have taken by the Court of Appeal In England and a division bench of the Mysore High Court, even on a plain construction we are unable to see how any different view can be taken. In the view which we have taken, the question referred has to be answered in the negative and against, the accountable persons. The accountable persons to pay the costs of this reference.

