
(1974) 11 MAD CK 0032

In the Madras High Court

Case No : Tax Case No. 85 of 1969 (Reference No. 6 of 1969)

Mrs. Ratnakumari Kumbhat

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 07-11-1974

Acts Referred:

Estate Duty Act, 1953 — Section 16(2), 44, 46, 46(1), 46(2)

Citation : (1975) 101 ITR 572

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : V. Ramachandran, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

1. In this reference u/s 64(1) of the Estate Duty Act, 1953 (hereinafter called "the Act"), the following question has been referred for decision I

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in the view it took that the abatement of debt to the extent of the interest amount of Rs. 1,16,205 was in accordance with the provisions of Section 46(1) read with Section 16(2) of the Estate Duty Act, 1953?"

2. One B. M. Kumbhat died on June 25, 1962. He had on March 31, 1955, gifted Rs. 50,000 to each of his three minor sons, Sumant Kumar, Rajkumar and Sureshkumar. Mrs. Ratnakumari Kumbhat, the mother and guardian of the minors, accepted the gifts on behalf of the minors by a letter dated March 31, 1955. By the same letter of acceptance, she also requested the deceased to keep the money with him as deposit bearing interest at 7 1/2 per cent. In the books of account of the deceased his capital account was debited with a sum of Rs. 1,50,000 and corresponding credits were given in the accounts of the three minors. The deceased also executed three promissory notes promising to repay the deposits with interest at 7 1/2 per cent. By another declaration dated April 7, 1955, the deceased also affirmed the transactions. Interest due on these amounts were credited and withdrawals also were made. The entries in the

minors" accounts as appearing in the books of the deceased were as under :

Account of

Sumanth-kumar Rajkuinar Suresh-kumar Total

Rs. Rs. Rs. Rs.

Amount initially credited on 1-4-55 50,000 50,000 50,000 1,50,000

Interest credited from 1-4-55 to 31-3-1962 36,335

39,935

39,935

1,16,205

Total 86,335 89,935 89,935 2,66,205

Withdrawals 40,000 42,500 -- 82,500

(31-3-61) (30-3-62)

Credit balance as on date of death 46,335 47,435 89,935 1,83,705

3. Mrs. Ratnakumari Kumbhat, as the accountable person, filed a return in which she had claimed the credit balance totalling Rs. 1,83,705 as liability due from the estate. The Assistant Controller of Estate Duty was of the view that in view of the definition in Section 16(2) of the Act, the interest credited to the sons' accounts would also be " property derived from the deceased" within the meaning of Section 46(1)(a) and that the entire sum of Rs. 1,83,705 standing to the credit of the three minors would, therefore, have to be disallowed under the provisions of Section 46(1)(a) of the Act. He was also of the view that for the applicability of Section 46(1)(a) it is not necessary to prove that the property was derived from the deceased with a view to facilitate the giving of the consideration and that it is enough if it is shown that the consideration for the debt or the amount advanced to the deceased was the property itself which was derived by the creditor from the deceased. But we must add at this stage that though the Assistant Controller of Estate Duty was of this opinion he also found that the gifting of Rs. 1,50,000 and the depositing of the money with the deceased as loan carrying interest at 7 1/2 per cent. was the result of the same arrangement, thereby showing that, even at that time, the deposit and loan were contemplated. In respect of the sum of Rs. 82,500 paid by the deceased to Sumanthkumar and Rajkumar, two of the minor sons, towards interest, the Assistant Controller held that since these payments are withdrawals and were made within two years prior to the death of the deceased they would attract the provisions of Section 46(2) and, therefore, that shall also be deemed to pass on the death of the deceased. The result of it was that the Assistant Controller included a sum of Rs. 2,66,205 in the principal value of the estate of the deceased and determined the duty payable.

4. The Appellate Controller of Estate Duty confirmed this order. On a further appeal to the Tribunal, the accountable person did not question the disallowance of the debt to the extent of the sum originally gifted amounting to Rs. 1,50,000 but contended that the disallowance of Rs. 1,16,205 representing the interest accrued was not in order. The Tribunal was of the view, though the revenue did not found its case on Section 46(1)(b), that the instant case would fall within Section 46(1)(b) itself and the entire amount of Rs. 1,16,205 in addition to the sum of Rs. 1,50,000 conceded by the accountable person had to be disallowed. But the Tribunal also considered the revenue's case and expressed the view that both the amount gifted and the interest payable on the deposits would constitute "property derived from the deceased" within the meaning of Section 46(1)(a), read with Section 16(2), and that, therefore, the disallowance of the debt to the extent of the interest amount of Rs. 1,16,205 was also in accordance with law. It may be added that the Tribunal also held that it cannot be said that the gift was not made with a view to enable or facilitate the loan.

5. At the instance of the accountable person, the above question has been referred.

6. It would be seen from the facts stated that the loan bearing interest at 7 1/2 per cent. was given to the deceased on the same day when he had made a gift of Rs. 1,50,000 to his three minor sons and the entire consideration of Rs. 1,50,000 for the loan consisted of the amount gifted by the deceased. The whole arrangement was treated as three loans from the three minors to the extent of Rs. 50,000 each. In the account of Sumanth kumar, though the total interest as on March 31, 1962, payable was Rs. 36,335, the withdrawal amounted to Rs. 40,000, thereby showing that there was a withdrawal of the entire interest and also a sum of Rs. 3,665 from the principal amount. Similarly, in Rajkumar's account, though he had a credit of a sum of Rs. 39,935 towards interest, he had withdrawn a sum of Rs. 42,500 resulting in withdrawal of a sum of Rs. 2,565 from the principal amount in addition to interest. The question will, therefore, have to be considered on the basis that the original gift and the loan transaction amounted to Rs. 1,50,000 ; there was a payment of interest to an extent of Rs. 76,270 and payment towards principal to an extent of Rs. 6,230 in the accounts of Sumanthkumar and Rajkumar and these payments were within two years from the date of death of the deceased. The total interest accrued on the loan was Rs. 1,16,205.

7. u/s 44 of the Act, in determining the value of an estate for the purpose of estate duty, allowance shall be made for debts and encumbrances incurred or credited by the deceased subject to the condition that they were incurred or credited bona fide for full consideration in money or money's worth wholly for the deceased's own use and benefit. Section 46 imposes certain limitations on the allowance of debts. As the question for consideration hinges on the scope of this section it is necessary to set out the section in full:

"46(1) Any allowance which, but for this provision, would be made u/s 44 for a

debt incurred by the deceased as mentioned in clause (a) of that section, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefore which consisted of-

(a) property derived from the deceased; or

(b) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased : Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in Clause (b) of this subsection, it is proved to the satisfaction of the Controller that the value of the consideration given, or of that part thereof, as the case may be, exceeded that which could have been rendered available by application of all the property derived from the deceased, other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to Sub-section (1) of Section 16 in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess.

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which Sub-section (1) would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that Sub-section has effect on his death shall, unless so paid or applied two years before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, notwithstanding anything in Section 26, be payable in respect thereof, accordingly.

(3) The provisions of Sub-section (2) of Section 16 shall have effect for the purpose of this section as they have effect for the purpose of that section."

8. Sub-section (1) deals with cases where--(1) consideration for the debt consisted of property derived from the deceased ; and (2) consideration for the debt given by any person who was entitled at any time, or amongst whose resources there was at any time, property derived from the deceased.

9. The learned counsel for the revenue contended that the words "property derived from the deceased", in view of Section 46(3) which attracted the definition of those words in Section 16(2), would include not only the sum of Rs. 1,50,000, gifted by the deceased to his minor children but also the income arising therefrom or the interest payable in respect of the same. Section 16(2) reads as follows :

"16. (2) In this section the following expressions have the meanings hereby assigned to them respectively, namely :--

(a) " property derived from the deceased" means any property which was the

subject-matter of a disposition made by the deceased, either by himself alone or in concert or by arrangement with any other person, notwithstanding that the disposition was made for full consideration in money or money's worth paid to him for his own use or benefit, or which represented any of the subject-matter of such a disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions and whether any such intermediate disposition was or was not for full or partial consideration :

Provided that where the first mentioned disposition was for full consideration in money or money's worth paid to the deceased for his own use or benefit and it is proved to the satisfaction of the Controller that the disposition was not part of associated operations which included-

(a) a disposition by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to the deceased for his own use or benefit, or

(b) a disposition by any other person operating to reduce the value of the property of the deceased;

then, in considering whether estate duty should be charged the said first mentioned disposition shall be left out of account as if this provision did not apply in relation to it ;

(b) "disposition" includes any trust, covenant, agreement or arrangement; and

(c) "subject-matter" includes, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition."

10. It would be seen from the above definitions that the words "property derived from the deceased " would include not the property which was the subject-matter of a disposition made by the deceased but also any annual or periodical payment made or payable under, or by virtue of a trust, covenant, agreement or arrangement. In the instant case, the deceased had gifted a sum of Rs. 1,50,000 to his minor children. It has also been found that the gift and the deposit or taking of loan for interest are all associated operations forming part of an arrangement entered into by the deceased with his children. It is this arrangement that necessitated the payment of interest at 7 1/2 per cent. and, therefore, the interest payable or paid would come within the definition of "subject-matter" in Section 16(2). In our view, therefore, the learned counsel for the revenue is well founded in his contention that the interest payable by the deceased and credited to his sons' accounts would also be "property derived from the deceased" within the meaning of those words in Section 46(1). But we are unable to agree that this resultant position is enough to hold that the entire principle and interest due from the deceased are to be disallowed u/s 46(1).

11. In order that a debt may be allowed u/s 44, it should have been incurred bona fide and for full consideration in money or money's worth. "Debt" is a sum of money due from one person to another. It denotes an obligation on the part of

the debtor to pay a certain sum of money and a corresponding right in another to receive or enforce payment of that money. An obligation to pay arises from a promise from the debtor and such a promise shall be supported by consideration. Now the section requires that the debt shall be supported by full consideration and not merely consideration. That means that the promisee or creditor should have paid the full consideration. This requirement as to consideration could be defeated by the deceased making an unconditional gift and, then, borrowing the amount or value of the gift from the donee. Section 46 is aimed at such transactions. It is, therefore, manifest that the question of abatement u/s 46(1) would have to be considered with reference to the consideration proceeding from the promisee to the deceased.

12. Now, u/s 46(1)(a) any allowance which would otherwise be made for a debt incurred by the deceased shall abate to an extent proportionate to the value of any consideration given for that debt which consisted of property derived from the deceased. Since this clause deals with a case where the property derived from the deceased itself constituting later on as consideration for loan, the derivation of the property of the deceased by the promisee must have either preceded the principal transaction of loan or formed part of an integrated and associated arrangement between the deceased and the creditor. It might be, in so the cases there was some interval between this gift by the deceased and the borrowing by which time the amount gifted might have yielded income and thus the entire money including the income would form part of the property derived from the deceased. In such a case, if the consideration paid consisted of the whole or part of that property, it is with reference to that consideration abatement will have to be made. The consideration for the debt had to proceed from the promisee and what proceeded from the promisee could be only that which was in his possession on the date of loan. We have, therefore, no doubt that what comes within the scope of Section 46(1)(a) is that portion of consideration for the debt which consisted of property which was derived by the promisee from the deceased prior to the principal transaction of loan. In the instant case, on the date when the loan was given to the deceased no accretions had happened to the amount of Rs. 1,50,000 derived by the minors from the deceased. The consideration for the debt therefore consisted of only this sum of Rs. 1,50,000 and not any future interest paid by the deceased.

13. It is only necessary now at this stage to refer to the few cases which generally considered the scope of Section 46(1)(a) of the Act. In *A. Kanda-swami Pitlai v. Controller of Estate Duty*, [1969] 173 ITR 564. this court held :

"Now "debt" to come within the ambit of Section 46(1)(a) should be a debt which satisfies Section 44(a). That means it must be a debt bona fide, for full consideration; and such consideration in money or money's worth should be for the deceased's own use and benefit. If for such a debt consideration constitutes property derived from the deceased, to the extent of such consideration, allowance of the debt will not be made. In other words, there should be a nexus

between a debt which falls u/s 44(a) and the consideration, which must consist of property derived from the deceased. We are unable to spell out any further element necessary for the application of Section 46(1)(a), in the form of the intention, as contended for. We must confess that, at first sight, we felt some difficulty in appreciating the real scope of Section 46(1). This is because, while the policy of the provision is obvious, viz., to avoid evasion of estate duty, the section seeks to overstep that mark, and in its abundant caution, appears to do injustice by disallowing even debts not intended to escape tax. But we can only interpret the statutory provision, having regard to the actual words it has employed."

14. It is seen from this passage that the consideration for the debt should have consisted of property derived from the deceased in order to attract Section 46(1) (a) which means that the property which constituted consideration shall have been in existence on the date when the debt was incurred. Future interest payable on the loan amid not, therefore, have constitutnd the consideration. The decisions in Smt. Pankumari Kochar Vs. Controller of Estate Duty, , and Gopisetty Chandramouli Vs. Controller of Estate Duty, . were cited at the Bar, but we do not find any discussion of the provisions which need to be considered in this case.

15. A clear exposition is also found in McDougals" Trustees v. Commissioners of Inland Revenue, [1952] 31 A T C 153., dealing with the corresponding provision in Section 31 of the English Finance Act. Regarding the scope of Section 31(1) (a)corresponding to Section 46(1)(a) of the Estate Duty Act, 1953, we find the following passage in the judgment of Lord Patrick:

"Section 31(1) of the Finance Act, 1939, innovated on that position. The section is intricate and involved in expression. It looks back from the date of death to the events of the past. If any of the consideration given for a debt consisted of property derived from the deceased, an abatement is to be made from the allowance proportionate to the value of the property derived from the deceased. This is designed to meet the case where A gives property to B, and B lends the value of the property to A. If, in such a case, A's executors were allowed to deduct the amount of the loan from A's estate for estate duty purposes, a devise would have been found for avoiding the provision that gifts must bear estate duty, if the donor dies within five years of the date of the gift, since the debt would rank for deduction from the deceased's estate, if the debtor died at any time after the gift was made and the debt incurred. The above is case (a) of Section 31(1)."

16. From the foregoing discussions, it will be seen that the original consideration of Rs. 1,50,000 would come within the purview of Section 46(1)(a), but as we have already seen that out of this Rs. 1,50,000, a sum of Rs. 3,665, in the account of Sumanthkuniar, and Rs. 2,565, in the account of Rajkumar, had already been paid before the death and, therefore, these amounts were not subsisting as a debt. Section 46(1)(a) could be applied only to a debt which would be allowed u/s 44 and that section deals with only debts outstanding on

the date of death. This sum of Rs. 6,230 (Rs. 3,665 -f Rs. 2,565) would not, therefore, come for abatement u/s 46(1)(a) and the deductibility of this amount would have to be considered only u/s 46(2) which will be dealt with a little later.

17. We have noticed earlier that though the revenue did not rely on Section 46(1)(b) the Tribunal considered that the accrued interest of Rs. 1,16,205 would also fall u/s 46(1)(b). The learned counsel for the revenue wanted to support this view in this reference. The question referred also does not restrict the consideration to clause (a) alone but generally refers to Section 46(1). Therefore, we proceed to consider this provision.

18. This sub-section deals with a case where neither in whole nor in part the consideration was property derived from the deceased. Clause (b) assumes and proceeds on the basis that Clause (a) is not applicable. In other words, that portion of the consideration which would be covered by Clause (a) would not come under Clause (b). In fact, the word "or" is used after Clause (a) and Clause (b) opens with the words "consideration not being such property as aforesaid". "As aforesaid" refers to Clause (a). The proviso to Clause (b) also makes this position abundantly clear. Under the proviso, for finding out whether the value of the whole or that part of the consideration falling under Clause (b) exceeded that which could have been rendered available by application of all the property derived from the deceased, the property which is included in the consideration given shall be excluded. Property which is included in the consideration given is the one that is dealt in Clause (a). Thus Clause (b) deals with cases where the consideration was not the property derived but given by a person who was entitled to or amongst whose resources there was any property derived from the deceased. This is also the construction placed on the scope of Section 31(1)(a) and (b) of the Finance Act, 1939, in Halsbury's Laws of England, third edition, vol. 15, page 82, which may be usefully extracted below :

"171. Where consideration derived from the deceased.--Where a debt incurred or an encumbrance created by the deceased would be allowable under the foregoing provisions, the allowance must nevertheless be abated if and to the extent that, the consideration given for it consisted of property derived from the deceased. Further, a like abatement must be made where the consideration was given by a person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased. In this latter case, however, if it can be proved that the consideration given by such a person exceeded the amount which could have been rendered available by the application of all the property derived from the deceased, no abatement may be made in respect of the excess. In ascertaining the amount which could have been rendered available, the following property derived from the deceased may be excluded; (1) any such property actually included in the consideration given ; (2) any such property as to which it is proved that the disposition of which it, or the property which it represented, was the subject matter, was not made with reference to, or with a view to enabling or facilitating the giving of the

consideration, or to its recoupment in any manner."

19. Now, Clause (b) is in two parts. The 1st part deals with a case where the consideration for the debt was given by any person who was at any time entitled to any property derived from the deceased. The other part deals with a case where the consideration for the debt was given by any person amongst whose resources there was at any time any property derived from the deceased. It is significant to note that the language employed in this clause would cover a wide range of transactions.

20. In respect of both the categories the words "at any time" are used, thereby showing that it is immaterial when the promisee became entitled to or amongst whose resources included any property derived from the deceased. Thus, what was required to render a transaction amenable to this clause was possession or holding of property derived from the deceased at some time either before or after the principal transaction of loan. The only limitation is that which is provided in the proviso. Under that proviso any consideration which is in excess of the total value of the property derived, by the creditor from the deceased, until the date of death of the deceased would alone escape abatement. Of course, in considering the total value of the property derived, the property which itself constituted part of the consideration given shall have to be excluded. This is also subject to the condition that there is a nexus between the loan transaction and the property derived. This is the irresistible conclusion we have reached on a plain reading of the section. Any other consideration would, in our opinion, easily defeat the very object and purpose of the provision. For a person could easily avoid payment of estate duty by so arranging the transaction of loan first and later on transferring his properties to the creditor. But even under Clause (b) what comes for abatement is the consideration paid for the loan. Consideration is the amount that proceeded from the creditor to the deceased. Abatement is not of the value of the property derived from the deceased but the consideration paid to the extent it did not exceed the value of the property derived.

21. In *A. Kandctswami Ptlai v. Controller of Estate Duty*, already referred to, one of the questions related to the applicability of Section 46(1)(b). Relating to this question the facts in that case were these. The deceased had gifted to each of his two sons a sum of Rs. 70,000 on July 31, 1952, by drawing the amount from the credit balance in his favour with a firm in Bombay in which the sons and four other persons were partners. The sons invested the amounts gifted to them in a different firm in which they alone were partners. As a result of continuous operation on his account with the Bombay firm, the deceased had incurred liability to that firm to an extent of Rs. 1,29,068. The sons discharged this liability of their father and claimed the sum of Rs. 1,29,068 as a debt due from their father to them. When this debt due from the deceased was sought to be deducted as an allowance u/s 44(a) the estate duty authorities disallowed the claim on the ground that the debt clearly fell within the ambit of Section 46(1)(b). Dealing with this question this court observed:

"But it is indisputable that the sons of the deceased having received the gift of Rs. 1,40,000 and discharged the father's debt due to the firm, Section 46(1)(b) would be attracted. The sons answer the description of "any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased". The two sons were entitled to the sum of Rs. 1,40,000 which came from their father as gift, and that sum is certainly amongst the resources of the two sons. Either way, Section 46(1)(b) would be applicable. Mr. Bala-gopal for the accountable persons, however, says that, unless there is interposition of persons between the deceased and the person from whom he had borrowed, Section 46(1)(b) would not be attracted. This contention is not justified by the language of the provision. It does not contemplate any such interposition as a condition for its application."

22. An admirable instance where the applicability of Section 31(1)(b) of the U.K. Finance Act, 1939, came up for consideration was in McDougal's Trustees v. Commissioners of Inland Revenue. In 1937, the deceased bought some landed property from some trustees and had it conveyed by the trustees to the Lord Provost, Magistrates and Council of the City of Edinburgh and their successors in office as representing the community of the said city. The conveyance contained the stipulation that the property was to be used for all time as a public park and pleasure or recreation ground for the benefit of the citizens of the city and for no other purpose. The price that the deceased paid to the trustees was ? 11,000 and the deceased obtained a loan from the city of ? 11, 300 to cover the price and incidental expenses. Interest was also charged on the loan but it was agreed that no interest would be paid during the lifetime of the deceased and that the loan and the accrued interest should be repaid on his death. As security for the repayment of the loan and interest the deceased also assigned certain stocks. The finding of the court was that the gift of the land to the city and the loan to the deceased were related in the closest possible way and the formed part of one transaction. The deceased's executors included the value of the stocks which was shown as security for the loan, as an asset in the inventory and claimed to deduct ? 13,364 7s. 8d. which was the net sum repayable to the city u/s 7 (corresponding to Section 44 of our Estate Duty Act). The Inland Revenue contended that the transaction was caught by Section 31(1) in that the consideration for the debt was given by a person (the city) who was entitled to or amongst whose resources were included property derived from the deceased, the landed property given for the park. By a majority judgment the Court of Sessions (Scotland) held that the transaction is covered by the provisions of Section 31(1)(b). Regarding the scope of Section 31(1)(b) the learned Lord Patrick observed :

" Case (b) under the section is where any of the consideration given for the debt, not being property derived from the deceased, which is case (a), was given by a person who was at any time entitled to or amongst whose resources there was at any time included any property derived from the deceased. The emphasis is mine. In such a case there is to be a similar abatement from the allowance made in respect of the debt.

There is an important proviso to case (b) where the whole or any part of the consideration given for the debt was given by any person, who was at any time entitled to or amongst whose resources there was at any time included, any property derived from the deceased, that is to say in any (b) case, the Commissioners are set to do another sum in arithmetic. They have to compare A, the value of the consideration given for the debt, with B, the value of the consideration which could have been rendered available by application of all the property derived from the deceased. If A exceeds B, an abatement from the allowance is to be made in respect of the excess. For example, if A, the value of the consideration given for the debt, was ₹6,000 and B, the property derived from the deceased consisted of three separate items given at three different times, and ₹6,000 exceeds the sum of the items included in B, there is to be no abatement from the allowance in respect of the excess. Most important is the provision that in doing the sum the Commissioners are not to include in B any property the disposition of which was not made with reference to, or with a view to enabling or facilitating the provision of the "other interest", that is to say of the consideration for the debt. I take that to mean, and the Inland Revenue in the debate before us agreed, that in (b) cases there is not to be an abatement conditioned by any property derived from the deceased, whose disposition was not made with reference to, or with a view to enabling or facilitating the provisions of, the consideration given for the debt. In more popular language, the allowance is not to be decreased in (b) cases in respect of gifts wholly unrelated to the creation of the debt."

23. This decision clearly supports the view which we have expressed earlier. But the learned counsel for the revenue contended that in McDougal's Trustees case, the entire amount of ₹13,364 7s.8d. which was the net sum repayable to the city on the date of death was held to be not allowable thereby showing that not only the loan but also the interest paid on the loan would be covered by the provisions of Section 46(1). He also contended that we have to interpret and understand Section 46(1) with reference to the intention and need of such a provision to prevent avoidance of duty. If the consideration for the loan could form the subject-matter of rebate, the provision in Section 46(1) could be easily defeated and the estate duty avoided, by so arranging the rate of interest at such high a rate that would even cover any abatement under that provision. For instance, if the deceased had gifted Rs. 10,00,000 and then borrowed the sum and the interest payable on the date of death was equivalent to Rs. 10,00,000 though the entire consideration of Rs. 10,00,000 would be subject to abatement, still the outstanding interest which had to be allowed u/s 44 will leave no estate for the purpose of estate duty. It is true that the true meaning of the words in the provision has to be found in relation to the objects sought to be achieved or the mischief sought to be prevented. But this rule of interpretation does not warrant bringing in of something which was not covered by the plain words used in the provision. As we have already stated, abatement is only with reference to the consideration given for the debt, which would have otherwise been entitled to

an allowance u/s 44 and not the value of the property derived from the deceased. If a person could avoid the payment of duty even now that would amount to a lacuna in the Act which would have to be remedied only by the legislature and the courts are not entitled to bring in something which was not covered by the provision on the supposed intention or object of the provision as an anti-tax avoidance measure. We are also unable to agree with the learned counsel that in the McDougal's Trustees case, above referred to, the entire sum of ₹ 13,364 7s.8d. was disallowed. It is seen by the answers given by the Inland Revenue in those proceedings, which are extracted in the dissenting judgment of the learned Lord Mackay, that the Inland Revenue only contended that ₹ 11,000 out of the consideration of ₹ 11,300 alone was not deductible and not the entire amount found due as on the date of death of the deceased. Though the loan was ₹ 11,300 the claim for abatement was restricted to ₹ 11,000 because of the proviso to Section 31(1)(b) which restricted the abatement to the value of the property derived by the city. It is true that the head-note to the decision reported as if no deduction of ₹ 13,364 7s.8d. was held permissible but that does not appear to be borne out by the facts. In fact, in the judgment of the learned Justice Clerk it was stated that the learned judges are not going into details as to the adjustments of figures. There was also no discussion as to whether the consideration alone could form the abatement or the entire amount that was found due at the date of death. We are of the view, that only that portion of the consideration which would either have constituted the consideration itself or proportionate to the value of the assets derived by the person paying the consideration alone could be the subject-matter of rebate u/s 46(1).

24. It may also be noticed at this stage that it is the view of the learned judges in McDougal's Trustees case, and also text book writers that in respect of cases falling under Clause (b) no abatement shall be made if it were shown that the disposition under which the property was derived was not made with reference to or with a view to enabling or facilitating the provisions of the consideration for the debt. In other words, the loan transaction must have been in the contemplation of the parties at the time of making the gift. This view has been expressed in view of the proviso to Clause (b). But this Court in *A. Kandaswami Pillai v. Controller of Estate Duty* did not favour this construction of the proviso and held that it was not possible or permissible to construe the section as being confined to a debt which was incurred pursuant to an intention evinced by the deceased at the time of making the gift to incur the debt. All the same, this court expressed the view that there should be a nexus between the incurring of the debt and the gift.

25. The foregoing discussions would show that Clause (a) would apply only to a case where the whole or part of the consideration for the debt consisted of the property derived from the deceased whereas Clause (b) would apply to a case where the consideration did not consist of the property derived from the deceased but such consideration was paid by a person who was at any time entitled to or amongst whose resources there was included any property derived

from the deceased. Secondly, Clause (a) would apply to a case only where the property was derived from the deceased prior to or as part of the arrangement of the principal transaction of loan while for the applicability of Clause (b) the principal transaction of the loan and payment of consideration need not necessarily be prior to the creditor becoming entitled to the property derived from the deceased. The derivation of the property of the deceased by the person providing the consideration could be at any time prior to the death of the deceased. In both cases of Clause (a) and (b) the abatement of the consideration was only to the extent of the value of the property derived from the deceased and any excess of consideration would be outside the purview of that section.

26. If we apply these principles to the instant case we find that no part of the interest accrued could be subjected to abatement u/s 46(1) of the Act.

27. Section 46(2) provides that money paid or applied towards satisfaction or discharge of a debt in the case of which Sub-section (1) of Section 46 would have had effect on his death if the debt had not been satisfied or discharged or in reduction of a debt in the case of which that Sub-section has effect on his death, shall, unless so paid or applied beyond two years before the death, be treated as property deemed to be included in the property passing on the death. It would be seen, therefore, that the debt to the extent of the consideration which consisted of the property derived from the deceased within the meaning of Section 46(1)(a) and in the case of Clause (b) to the extent of the consideration falling within the total value of the property derived shall be treated as property deemed to be included in the property passing on the death even though it had been paid and discharged and was not subsisting on the date of death, provided the payment was within two years before death. Therefore, the conditions for the applicability of Sub-section (2) of Section 46 are: (1) the consideration for the debt shall have been as would have abated u/s 46(1) if the same had not been paid and discharged, and (2) payment towards satisfaction or discharge of that debt shall have been within two years. The Assistant Controller of Estate Duty and the appellate authority treated that the entire sum of Rs. 82,500 paid to Sumanthkumar and Rajkumar within the period of two years would come within the provisions of Section 46(2). We have already pointed out that only that portion of the consideration for the debt which consisted of the property derived from the deceased would fall within Section 46(1)(a) which means that only the sum of Rs. 1,50,000 would have formed the consideration within the meaning of that provision. We have already seen that out of the sum of Rs. 82,500 a sum of Rs. 76,270 was paid in discharge of the interest payable on the loan and only a sum of Rs. 6,230 went in discharge of the principal amount. Therefore, only this sum of Rs. 6,230 which formed part of Rs. 1,50,000 could have been dealt with u/s 46(2). Thus, u/s 46(1)(a), Rs. 1,43,770 would be disallowable and, u/s 46(2), Rs. 6,230 had to be disallowed. The result would be, by the operation of Section 46(1)(a) and 46(2), the entire consideration of Rs. 1,50,000 has to be disallowed. No part of the interest payable on the loan would be covered by the provisions of Section 46(1). The total interest accrued in this case was Rs.

1,16,205. This could not be disallowed u/s 46(1). But we have to point out, lest we may be misunderstood, that since out of this, a sum of Rs. 76,260 had already been paid before death, only the balance of Rs. 39,935 outstanding would come for allowance u/s 44 of the Estate Duty Act, 1953. We answer the reference accordingly. The parties will bear their respective costs.