

(1986) 01 MAD CK 0053

In the Madras High Court

Case No : Tax cases No's. 1635, 1636, 1637 and 1638 of 1977

N. Sastha and Others

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 21-01-1986

Acts Referred:

Estate Duty Act, 1953 — Section 17, 17(1), 34(1), 39(1)

Citation : (1986) 162 ITR 216

Hon'ble Judges : M.N. Chandurkar, C.J.; Venkataswami, J

Bench : Division Bench

Advocate : C.V. Mahalingam, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

Chandurkar, C.J.—One S. Nelliappan died on July 18, 1961. In the course of assessment proceedings under the Estate Duty Act, 1953, the Assistant Controller of Estate Duty found that the deceased, who was carrying on motor transport business, has transferred that business to M/s. Pioneer (P.) Ltd. in 1946. In consideration of the transfer, the deceased was allotted 4,000 shares in the said company and his son, Sastha, was allotted 1,000 shares. The three accounting years previous to the death of Nelliappan ended on August 15, 1958, August 15, 1959, and August 15, 1960. the deceased had received an amount to Rs. 10,000 on August 15, 1958, as dividend from M/s. Pioneer Motors (P.) Ltd. Admittedly, this dividend was payable in respect of the year ending on August 15, 1958. The Tribunal has recorded a finding that the business which was transferred to M/s. Pioneer Motors (P.) Ltd. did not belong to the deceased in his individual capacity, but only to the Hindu undivided family of the deceased and his sons. The Assistant Controller held that since it was the deceased who had transferred the motor transport business, section 17(1) of the Estate Duty Act was attracted and the sum of Rs. 10,000 having been received within a period of three years preceding his death, that must be treated as benefit received by the deceased. Finding that the assets of the company as per its balance-sheet amounted to Rs. 78,336, the Assistant Controller deducted a sum of Rs. 7,835

being the value of the shares held by the deceased in accordance with rule 11(3) (b) of the Controller Companies Rules and arrived at the figure of Rs. 70,501 as the value of the slice to be included in the estate of the deceased.

2. The Appellate Controller upheld the view that section 17 of the Estate Duty Act was attracted to the facts of the case. But he took the view that since the company did not make any profits during the three year period before the death of the deceased and did not have any income, the sum of Rs. 70,501 had to be excluded from the computation. The matter was taken in appeal to the Income Tax Appellate Tribunal by the Assistant Controller in so far as this question was concerned. The Tribunal took the view that the condition precedent for the applicability of section 17(1) of the Estate Duty Act was that the deceased must have made a transfer to the transport company and since, in the instant case, the transfer in law was only by the Hindu undivided family represented by the karta, there was no scope for the application of section 17(1) at all. The Tribunal took the view that there was nothing in section 17 of the Estate Duty Act to show that it would be applicable to a transfer made by the deceased not in his individual capacity but in a representative capacity. The Tribunal, therefore, held that section 17 of the Estate Duty Act would not be applicable to a case of transfer of property by a karta of a Hindu undivided family to a controlled company. The deceased, Nelliappan, also held some shares in Messrs. Palkulam Estate (P.) Ltd. The valuation of those shares was done in accordance with the decision of the Tribunal in the connected appeals which arose out of the proceedings for assessment to estate duty in respect of the estate of the deceased brother of Nelliappan. Following that decision, the Tribunal took the view that the value of the shares held by the deceased in M/s. Palkulam Estate (P.) Ltd. should be arrived at by the application of rule 15 of the Estate Duty (Controlled Companies) Rules and had to be further discounted by 15 per cent. The Revenue was dissatisfied with the relevant findings recorded against it. A finding was also recorded by the Tribunal negating the contention of the accountable persons that estate duty payable was to be deducted in computing the principle value of the estate. Arising out of this order of the Tribunal, three questions were referred to this court for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, estate duty payable is to be deducted in computing the principle value of the estate ?

2. Whether, on the facts and circumstances of the case, Rs. 70,501 being the value of the assets of the company, M/s. Pioneer Motors (P.) Ltd., could be included in the computation of the principle value of the estate of the deceased on the ground that they are deemed to have passed on his death u/s 17(1) of the Estate Duty Act ?

3. Whether, on the facts and in the circumstances of the case, the value of the share of the lineal descendants of the deceased in the properties of the Hindu undivided family could not be included u/s 34(1)(c) of the Estate Duty Act ?

3. The first question is referred at the instance of the accountable persons and the other two questions are referred at the instance of the Revenue.

4. The Revenue has also sought a reference in respect of two more questions. The Tribunal having declined to make a reference, the Revenue had applied to this court u/s 64(3) of the Estate Duty Act, 1953, and this court directed the Tribunal by an order dated December 13, 1983, to refer two more questions for the opinion of this court. Accordingly, the Tribunal has now referred the following two questions which are numbered serial wise as Nos. 4 and 5 :

"4. Whether in view of article 3(c) of the articles of association of the company, M/s. Palkulam Estate Limited, the value of the shares held by the deceased therein arrived at by the application of rule 15 of the Estate Duty (Controlled Companies) Rule should be further discounted by 15% ?

5. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding and had valid materials to hold that the value of the benefit slice of the assets of the company cannot be worked out u/s 17(2) of the Estate Duty Act in the case of the deceased and that, therefore, no portion of the assets of the company can be included in the principal value of the estate ?"

5. So far as question No. 1 is concerned, we have already negated the contention of the accountable persons in the connected reference, being T. C. Nos. 1417 to 1421 of 1977, decided today and have followed the view taken in RM. ARUNACHALAM Vs. CONTROLLER OF ESTATE DUTY, MADRAS., . Accordingly, question No. 1 is to be answered in the negative and against the accountable persons.

6. In so far as question No. 3 is concerned, it is fairly conceded on behalf of the Revenue that the question is concluded against the Revenue by a decision of this court in V. Devaki Ammal Vs. Assistant Controller of Estate Duty, . In that decision, this court has held that though section 34(1)(c) of the Act clubs the interest of the lineal descendants in the joint family property with the interest of the deceased passing on death, the tax is not actually levied on the interest of the deceased passing on death as rebate is given in sub-section(2) of that section for the tax referable to the interest of lineal descendants. It was pointed out that by including the lineal descendants' share also in the estate of the deceased, it brings about a different tax effect and imposes higher tax burden on the property passing on death in case the deceased had left lineal descendants notwithstanding sub-section(2). The Division Bench has held that section 34(1)(c) infringes article 14 of the Constitution of India and it is unreasonable to fix the rate of tax with reference to the interest of the lineal descendants of the deceased in the case of a Mitakshara family especially when that interest does not pass on death. In view of this decision which settles the law as far as this court is concerned, the Revenue is not entitled to rely on the provisions of section 34(1)(c). Accordingly, the question will have to be answered in the negative and against the Revenue.

7. So far as question No. 2 is concerned, the argument of learned counsel for the Revenue is that even though the transport business, which was transferred to M/s. Pioneer Motors (P) Ltd. belonged to the Hindu undivided family, so long as the joint family continued, the manager, in this case the deceased, has wide powers to alienate the business and in so far as the provisions of section 17(1) of the Estate Duty Act were concerned, the interest of the deceased in the business which was transferred must necessarily attract the provisions of section 17(1) of the Estate Duty Act. Reliance was placed on the definition of "property", in section 2(15) of the Act which undoubtedly includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method. Reference was then made to the provision in section 39 of the Estate Duty Act which deals with valuation of interest in coparcenary property ceasing on death. u/s 39, it is provided that the value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which ceases on the death of a member thereof shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death. Learned counsel contends that the principle of section 39 should also be applied for the purpose of computing the value of the share for the purpose of section 17(1) of the Estate Duty Act. Therefore, according to learned counsel for the Revenue, at least the interest of the deceased must be taken into account for the purposes of section 17(1) of the Estate Duty Act.

8. Now, at the threshold, it has to be pointed out that section 39(1) of the Estate Duty Act has to be read along with the provisions of section 7(1) of the Act. When section 7(1) specifies the interest ceasing on death, a special reference is made to a coparcenary interest in the joint family property of a Hindu family governed by the "Mitakshara, Marumakkattayam or Aliyasanthana law". By making a special reference to the interest of the deceased in the coparcenary property, such interest of the deceased has been expressly made an interest which is to be treated as property passing on the death of the deceased. Section 39 is only a machinery provision for working out the extent of the interest in respect of which the substantive provision in the matter of passing of that interest on the death of the deceased as made in section 7(1) is to be worked out. That is the limited purpose of section 39(1) of the Estate Duty Act and it has no relevance whatsoever so far as section 17 is concerned.

9. Section 17 refers to a transfer of any property by the deceased in favor of a controlled company. From the category of property which is covered by section 17(1), an interest limited to cease on the death of the deceased or property which he transferred in a fiduciary capacity is excluded. This exclusion is not of much relevance for our present purpose. What is important is that section 17(1) contemplates transfer of a property by the deceased. Necessarily, it contemplates a transfer of property owned by him to a controlled company and

the benefits must accrue to the deceased from the company as a result of such transfer. What is emphasized in section 17(1) is that a transfer of the property must be by the deceased and benefits must also accrue to the deceased. In the instant case, admittedly, the property, namely, the transport business, did not belong to the deceased alone. The business admittedly belonged to the Hindu undivided family consisting of the deceased and his sons. If any benefits in the nature of dividend is received by the deceased as a result of the transfer of the business, then the title to the dividend amount vests in the Hindu undivided family as such. On a plain construction of section 17(1) of the Act, it is difficult to hold that the transferor of the motor transport business was the deceased in his individual capacity. Undoubtedly, the deceased may have transferred the business as manager of the joint family, but that does not make him the transferor because the property did not exclusively belong to him. He acts as karta for and on behalf of the Hindu undivided family and in law, therefore, the transferor was the Hindu undivided family. If the capacity of the deceased was only that of a manager of the Hindu undivided family, notwithstanding the fact that he was a member of the Hindu undivided family, the position in law was not that he was the owner of any particular part of the property. In *Controller of Estate Duty, Madras Vs. Alladi Kuppuswamy*, , the Supreme Court, after referring to the decision of the Supreme Court in *State Bank of India v. Ghamandi Ram* AIR 1969 SC 1380, has laid down the incidents of Hindu coparcenary. The Supreme Court observed as follows (p. 449) :

"Thus, analysing the ratio of the aforesaid case regarding the incidents of a Hindu coparcenary, it would appear that a Hindu coparcenary has six essential characteristics, namely :

- (1) that the lineal male descendants up to the third generation acquire an independent right of ownership by birth and not as representing their ancestors;
- (2) that the members of the coparcenary have the right to work out their rights by demanding partition;
- (3) that until partition, each member has got ownership extending over the entire property conjointly with the rest and so long as no partition takes place, it is difficult for any coparcener to predicate the share which he might receive;
- (4) that as a result of such co-ownership, the possession and enjoyment of the property is common;
- (5) that there can be no alienation of the property without the concurrence of the other coparceners unless it be for legal necessity;jand
- (6) that the interest of a deceased member lapses on his death and merges in the coparcenary property."

10. The third characteristic stated by the Supreme Court that until partition, each member has got ownership extending over the entire property conjointly with the rest and so long as no partition takes place, it is difficult for any coparcener to

predicate the share which he might receive, is, in our view, relevant so far as the present case is concerned. The deceased, in his capacity as the manager of the Hindu undivided family, could not on the date of the transfer predicate any particular share of property which he might have received. If his share on the date of the transfer was not capable of ascertainment, then it would not be possible to say that he had transferred any property to the controlled company. Section 17(1) of the Estate Duty Act does not refer to any interest in the coparcenary property as section 7 or 39 does. It would not, therefore, be possible to stretch section 17(1) so as to bring within it the transfer by the Hindu undivided family. It is not possible, therefore, to find any infirmity in the finding recorded by the Tribunal that in law the transfer of the transport business was by the Hindu undivided family and, therefore, section 17(1) of the Estate Duty Act was not attracted. Accordingly, question No. 2 is answered in the negative and against the Revenue.

11. In so far as question No. 4 is concerned, we have already held in the connected proceedings in respect of the estate duty assessment of the brother of the deceased (T. C. Nos. 1417 to 1421 of 1977) (*supra* p. 190) that the value of the shares in the same company arrived at by the application of rule 15 of the Estate Duty (Controlled Companies) Rules, 1953, has to be further discounted by 15 per cent. Following that decision, question No. 4 has to be answered in the affirmative and against the Revenue.

12. So far as question No. 5 is concerned, in view of our finding on question No. 2, consideration of this question becomes wholly unnecessary.

13. Accordingly, the questions are answered as follows :

Question No. 1 in the negative and against the accountable persons;

Question No. 2 in the negative and against the Revenue;

Question No. 3 in the negative and against the Revenue;

Question No. 4 In the affirmative and against the Revenue; and

Question No. 5 not necessary to answer in view of our answer to question No. 2.

14. We have been informed that the reference made by the Tribunal in respect of question Nos. 4 and 5 has not yet been numbered as a tax case. Since the principal question referred arises out of the same order of the Tribunal, which is the subject-matter of this case. (T. C. No. 1635 to 1638 of 1977), we have dealt with the two questions not referred with the consent of learned counsel on both sides. Number the tax case referred to above immediately. In view of the equal success and failure by the parties, we make no order as to costs.