
(1968) 09 GUJ CK 0010
In the Gujarat High Court
Case No : Estate Duty Reference No. 5 of 1966

Official Trustee	Vs	APPELLANT
Controller of Estate Duty		RESPONDENT

Date of Decision : 25-09-1968

Acts Referred:

Estate Duty Act, 1953 — Section 12, 5

Citation : (1969) 73 ITR 512

Hon'ble Judges : P.N. Bhagwati, J; B.J. Divan, J

Bench : Division Bench

Advocate : K.H. Haji, for the Appellant; J.M. Thakore, for the Respondent

Judgement

Divan, J.—In this reference u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as the Act), the following question has been referred us by the Central Board of Direct Taxes :

"Whether, on the facts and in the circumstances of the case, Rs. 4,50,660 representing the entire value of the trust properties is chargeable to estate duty as property passing on the death of the deceased u/s 5 of the Act, or deemed to pass on the death of the deceased u/s 12 of the Act, or only 65 per cent. thereof or 50 per cent, thereof."

2. The facts giving rise to this reference are as follows :

The reference arises out of the estate duty assessment concerning the estate of Miss Mary K. Nariman (hereinafter referred to as the deceased), who died on June 13, 1958. By a deed, dated March 23, 1936, the deceased and her sister, Jarbanoo, who pre-deceased Mary, settled certain shares and securities of the then value of Rs. 2,48,000 on trust; and the official trustee of Bombay was appointed the trustee of the settlors. Under the trust deed, the net income of the trust was to be paid to the settlors during their respective lives absolutely and on and after the death of the survivor to their brother, Prof. R. K. Nariman, for life and after his death to the trustees of the Parsi Panchayat, Surat, for charitable

purposes, thereafter by a deed of modification, dated December 29, 1944, it was provided that a quarterly payment of Rs. 375 should be made to the Parsi Panchayat even during the lifetime of the settlors; and this amount was subsequently raised to Rs. 825 per quarter. Jarbanoo died on September 22, 1954, leaving Mary, the deceased, with whom we are concerned in the instant case, as the sole surviving settlor, and her brother, Prof. Nariman, as the reversionary life tenant. On November 24, 1954, the deceased and her brother jointly executed a deed of renunciation and modification. Under the terms of that deed, the quarterly payment to the Parsi Panchayat was raised to Rs. 900; Prof. Nariman renounced his reversionary interest completely and thereby accelerated the secession to the property by the Parsi Panchayat; and thirdly, Mary, the deceased, relinquished and renounced her right and interest in the income of the trust fund to the extent of 35 per cent. thereof or such larger percentage as might be required to bring up the amount payable to the Parsi Panchayat to Rs. 3,600 per year. Thereafter, the deceased died on June 13, 1959, and the official trustee, as the accountable person, furnished the account of the property passing on the death of the deceased to the Assistant Controller. Before the Assistant Controller it was contended that as the deceased was entitled to 65 per cent. of the income at the time of her death, only 65 per cent. of the trust properties passed on her death u/s 5 of the Act. It was held by the Assistant Controller that the entire value of the trust properties was chargeable to estate duty as property deeming to pass on the death of the deceased u/s 12 of the Act. The accountable person thereupon preferred an appeal before the Board; and the question which was agitated in appeal was regarding the inclusion of the entire value of the trust properties in the estate of the deceased under the provisions of section 12 of the Act. It was also contended in the alternative before the Board that even if a joint settlor can be brought within the scope of section 12, only the absolute interest which such settlor had in the trust property before the settlement would be chargeable to duty; and, accordingly, only 50 per cent. of the value of the trust corpus was chargeable. The Board rejected both the contentions of the accountable person and it was held that section 12 was properly applied and that the entire value of the trust corpus was properly included in the estate of the deceased. It was also held by the Board that u/s 5 also the entire property in which the life interest of the deceased subsisted passed on her death and no relaxation could be allowed for the annuity in favour of the Parsi Panchayat, which ceased on the death of the deceased. Thereafter, at the instance of the accountable person, the above question has been referred to us.

3. It may be mentioned that, according to the order passed by the Assistant Controller in the present proceedings, in paragraph 6 it has been stated that before the assessment in the present case was taken up, the estate duty assessment of Jarbanoo was completed by another assistant Controller of Estate Duty and, in that case, the Assistant Controller raised the duty on 50 per cent. of the corpus minus the value of the corpus proportionate to product the annuity of Rs. 825 per quarter payable to the Parsi Panchayat as it was then payable. It is,

therefore, clear that in the estate duty proceedings relating to the estate of Jarbanoo, the revenue proceeded on the footing that Jarbanoo had brought in 50 per cent. of the property settled upon trust in 1936, the remaining 50 per cent. having been brought in by Mary, the deceased concerned in the instant case.

4. In the instant case, on the face of the deed of settlement of March 23, 1936, no indication whatsoever has been given as to whether Mary and Jarbanoo were tenants-in-common or were joint-tenants with right of survivorship to the property which they settled on trust by that document, nor is there any material to show whether each of them brought shares and securities of equivalent value in order to constitute the trust fund settled upon trust by that property. It is true that it is possible to read this deed of settlement of March 23, 1936, as a joint settlement created by two settlors; and there is nothing, on the face of the trust deed, to trace the distinct identity of the property which was brought in by Mary, the deceased. It is, therefore, possible to argue that each of the two settlors had an interest in the entire corpus of the property settled upon trust and, therefore, section 12 should apply to the entire corpus of the trust in the hands of the official trustee at the time of the death of the deceased. We are not expressing any opinion of that question and we are not deciding that question in the instant case. We wish to make it clear that our decision in the instant case should not be interpreted as expressing any opinion one way or the other on this question. We proceed in the instant case on the footing of the stand which was taken up by the Estate duty Officers in the proceedings arising in connection with the estate duty payable on the estate of Jarbanoo, viz., that 50 per cent. of the corpus of the trust found was held to have been brought in by Jarbanoo, the remaining 50 per cent. having been brought in by Mary, both having done so at the time when the trust deed was executed on March 23, 1936.

5. u/s 12 of the Act, property passing under any settlement made by the deceased by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor's death.

6. In *Khatizabai Mohomed Ibrahim v. Controller of Estate Duty*, the Bombay High Court has interpreted the provisions of section 12 : and it was held in that case that in the case of a settlement of property in which the settlor has reserved to himself for life any interest, however small, although less may pass on the death of the settlor by application of the general rule laid down in section 5 of the Estate Duty Act (viz., only the interest which was reserved) the legislature has by exacting section 12 ruled that the whole of such property of the settlor, the subject-matter of the settlement (and not merely the interest so reserved) shall nonetheless be deemed to pass. This decision of the Bombay High court having been delivered prior to May 1, 1960, is binding on us and we are also in full

agreement with that decision; and following this decision in Khatizabai's case, we hold that so far as 50 per cent. of the corpus in the instant case was concerned, it must be deemed to have passed on the death of Mary because she had reserved life interest to herself in the income of the property by the deed of settlement of March 23, 1936. It is true that under the document of renunciation and modification of November 24, 1954, Mary renounced and relinquished her right, title and interest to the extent of 35% at least in the entire income of the trust property; but qua that share of the income which was referable to 50% of the trust fund, the principle laid down in Khatizabai's case would apply and, therefore 50% of the corpus traceable to the share originally brought in by Mary in 1936 must be deemed to pass u/s 12 of the Act.

7. Regarding the remaining 50% of the corpus, which was brought in by Jarbanoo, after Jarbanoo's death on September 22, 1954, Mary was entitled to receive the entire income from the trust fund, or to put it otherwise, was entitled to receive the entire income traceable to 50% of the corpus originally brought in by Jarbanoo. By the deed of November 24, 1954, Prof. Nariman relinquished and renounced his claim, right, title and interest in the income of the trust fund to which he might become entitled on the death of Mary, the deceased; and the result was that by this relinquishment and renouncement of his right and interest, Prof. Nariman obliterated himself so far as this deed of trust was concerned and after Mary's death, the trustees of the Parsi Panchayat became entitled to the entire income from the trust fund. However, by the same document of November 24, 1954, Mary also relinquished and renounced her right and interest in the trust property and in the income of the trust fund to the extent of 35% of the income or to such larger percentage as might be required to bring up to Rs. 3,600 per year, the amount payable to the trustees of the Parsi Panchayat at Surat and by this deed of November 24, 1954, Mary further directs that during the remainder of her lifetime, 35% or other percentage as relinquished shall be paid by the official trustee out of the income of the trust fund to the trustees of the Parsi panchayat, who were to utilize the same in the particular manner laid down in the document. It is clear from paragraph 1 of the declaration contained in this document of November 24, 1954, that after the execution of that deed, Rs. 3,600 per year or 35% of the net income of the trust whichever was higher was to be paid to the trustees of the Parsi Panchayat for charitable purposes and at least to the extent of 35% in the income of the trust fund, Mary had no right, title and interest in the income.

8. In *Attorney-General v. Beech* the tenant for life of settled property with a power of appointment appointed the property to her son subject to her own life interest; by a subsequent deed she surrendered her life interest to the trustees of the settlement "to the end and intent that such life interest may merge in the interest in remainder of" her son; and died more than 12 months after the surrender; and it was held by the House of Lords that the property did not pass on the death of the tenant for life to the remainderman within the meaning of section 2, sub-section 1(b) of the Finance Act, 1894, and that estate duty was

not payable by the remainderman under that Act. Earl of Halsbury L. C. observed in his speech :

"The question here is whether upon a conveyance inter vivos of the interest that the mother possessed, that falls with the language of the statute, "property passing by death." When the mother had passed her life estate by a conveyance inter vivos to her son, would anybody in the world, untainted by technical views, have said that that estate passed from the mother to the son upon death ? Death had nothing to do with it. The moment that conveyance was made the son was completely master of the situation, and he might have sold the property the very next day. Then in what sense has it passed on the death ? That seems to me to dispose of the question u/s 1..... That which passed the property, which did operate upon the property that passed, was the conveyance inter vivos which vested the property passed in the person to whom it was conveyed, independently of and having no relation to the death at all."

9. In the course of his speech in this case, Lord Watson pointed out :

"My Lords, the present case is said to fall within sub-section 1(b) of that section 2. I only read the first part of it; the rest is inapplicable : "Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest". Now, there are two points in that definition in regard to which the present case utterly fails. "Property in which the deceased or any other person had an interest ceasing on the death of the deceased" - that is an interest in him or her or another at his or her death which did not cease except with his or her lifetime. Now, with regard to the property in question here, it is a right of life-rent which was not in the deceased at the time of her death; she had parted with it months before, and accordingly, having so parted with it by a deed inter vivos, it follows that, in the words of the remaining part of the definition, no benefit accrued or arose by the cesser of her interest."

10. Applying the principles of that decision in the instant case, it is clear that so far as 35% of the trust fund brought in by Jarbanoo was concerned, that 35% share passed by the deed inter vivos, viz., by the document of November 24, 1954, and not on the death of Mary. After November 24, 1954, it was not open to Mary, the deceased, to claim anything more than 65% of the income of the trust fund and hence it is only 65% of the portion brought in by Jarbanoo that can be said to have passed under the provisions of section 5 of the Act. We have already indicated above that u/s 12 that which was brought in by Mary herself must be deemed to have passed on her death and on the interpretation that we have just now put upon the act of renunciation and relinquishment by Mary, 65% of the share brought in by Jarbanoo in 1936 passed on the death of Mary in 1959.

11. In *Limbtion's Marriage Settlement, In re : May v. Inland Revenue Commissioners*, the Court of Appeal applied the principle of the earlier decision of the House of Lords in *Cowley v. Inland Revenue Commissioners*, as interpreted

by the decision of the House of Lords in *De Trafford v. Attorney-General*, and it also held that the decision of the Court of Appeal in *Attorney-General v. Glossop* was no longer good law after the decision of the House of Lords in *De Trafford's* case. As a result of the decision of the House of Lords in *Cowley's* case as thus interpreted, it is clear that where income is given to a life-tenant out of a particular property and an annuity is also payable out of the rest of the income or, as it is sometimes mentioned in the deeds of this kind, the income has been directed to be paid to the life-tenant subject to the payment of the annuity, and on the death of the life-tenant the entire property is to pass in a particular manner, then, under these circumstances, under the rule in *Cowley's* case, the estate duty is payable on the whole of the property and not merely on that part of the property representing the excess of the income of the trust fund over the slice or portion of the trust fund, which can be said to have been produced or represented the annuity. In the instant case, the Central Board has applied the principles in *Cowley's* case, as interpreted by the House of Lords in *De Trafford's* case, and as explained by the Court of Appeal in the case of *Lambton's Marriage Settlement, In re : May v. Inland Revenue Commissioners* and held that the entire property in which the life-interest of the deceased subsisted passed on her death u/s 5 without any deduction for the annuity, which ceased on her death.

12. This approach of the Central Board was erroneous because whatever the provision might have been prior to November 24, 1954, it cannot be said that after the execution by the deceased and her brother, Prof. Nariman, of the deed of modification and renunciation of November 24, 1954, what was payable by the official trustee to the trustees of the Parsi Panchayat was not an annuity, but a definite portion of the income of the trust fund was set apart for the benefit of the Parsi Panchayat, Surat, viz., Rs. 3,600 or 35% of the income of the trust fund whichever was higher. Under these circumstances, the instant case is not a case of income payable to a life-tenant subject to payment of an annuity nor was this a case of a direction that out of the income of the trust fund during the life-time of the life-tenant, a particular sum was payable every year; but under the deed of November 24, 1954, Rs. 3,600 or 35%, whichever was higher, was definitely payable in prescient to the trustees of the Parsi Panchayat, and, therefore, during the life-time of Mary all that remained to her was her right to receive 65% of the income of the trust fund.

13. What passed on Mary's death was not the entire income of the trust fund but only 65% of the income of the trust fund at the most, the remaining 35% of the income having already been given by the document of November 24, 1954, to the trustees of the Parsi Panchayat. The death of the settlor had nothing to do with the right to receive 35% of the income and, therefore, that 35% must be left out while ascertaining the value of the estate of the deceased.

14. The question then arise whether 65% of the entire estate or 65% of the share referable to Jarbanoo can be said to have been passed on the death of Mary. We have already indicated in the course of this judgment that qua 50% of

the trust fund referable to the property brought in by Mary, section 12 is applicable and, therefore, 50%, by operation of section 5 of the Act, only 65% of that 50% representing Mary's death; and thus out of the entire corpus, 50% representing Mary's share plus 32 1/2% (65% of the 50% share of Jarbanoo) can be included in the value of the estate of the deceased.

15. We, therefore, answer the question referred to us as follows :

"The entire value of the trust properties is not chargeable to estate duty but only 82 1/2% (65% of the 50% share of Jarbanoo) can be included in the value of the estate of the deceased.

We, therefore, answer the question referred to us as follows :

"The entire value of the trust properties is not chargeable to estate duty but only 82 1/2% thereof is chargeable to estate duty."

16. In the special circumstances of this case, there will be no order as to costs.