(1983) 11 AP CK 0015

In the Andhra Pradesh High Court

Case No : Case Referred No''s. 159 of 1976, 224 of 1978 and 27 of 1981

P. Indrasena Reddy APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 30-11-1983

Acts Referred:

Estate Duty Act, 1953 — Section 14, 2, 34, 34(3), 44
Income Tax Act, 1961 — Section 147, 254, 61

Citation : (1986) 29 TAXMAN 24

Hon'ble Judges : G. Ramanujulu Naidu, J;A. Raghuvir, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, for the Appellant; M. Suryanarayana Murthy, for the Respondent

Judgement

Raghuvir, J.—The above three references are made to this Court under the Estate Duty Act, 1953 (''the Act'') relevant to the estate of Pingle Venkatrama Reddy, who died on 3-6-1965. The questions in the references relate to three life insurance policies obtained by the deceased. Two of the policies relate to a company, by name, Phoenix Assurance Co. (Bombay company); the third, relates to the Standard Life Insurance Co. (Calcutta company). The question principally is : Whether the proceeds of the policies should be aggregated with the general estate of the deceased, for determination of rate to ascertain the duty payable under the Act. The three policies the assured obtained for Rs. 50,000 each. On the Bombay policies, the assured on 13-10-1941, and, for the second time on 15-10-1981, (sic) had taken loans from the Bombay company. From the statement of facts, it is not known what sums were borrowed. On the Calcutta company policy, the assured obtained on 8-6-1933, a sum of Rs. 30,000 and on 17-11-1951, another sum of Rs. 58,000. The undischarged debts on the policies were ascertained to be Rs. 71,250. The assured, during his lifetime, on 27-9-1954, assigned interest in the policies to his seven grandchildren. The last testament of the deceased was executed on 4-2-1959, and in that, the testator directed that the undischarged debts on the insurance policies be paid from his general estate and not from the proceeds of the policies.

2. The accountable person submitted the return on 30-3-1973. On 12-3-1975, the value of the deceased''s estate, at first, was determined in the amount of Rs. 13,51,296. This sum was varied, in the course of the proceedings, once to Rs. 12,28,010 and again re-fixed at Rs. 14,32,813. The variations were as a result of orders passed by the authorities affecting the three insurance policies. The question was, whether these policies should be aggregated for purposes of rate of duty payable under the Act, or, whether the insurance policies are to be separately assessed. Further, whether the undischarged loan amount of Rs. 71,250 be deducted from the proceeds of the policies. It is convenient to look at the subject of references from the standpoint of orders of the Tribunal for answering the questions.

3. On 12-3-1975, the Tribunal held that the three insurance policies are to be separately assessed. The amounts in the policies are not to be aggregated for rate u/s 34 of the Act. The debts arising out of the three policies were ordered to be deducted from the proceeds of the policies. Three questions thereupon were referred to this Court in the first of the three references. One among them was at the instance of the revenue-whether separate assessment of these policies was proper. The two questions were made at the instance of the account able person-whether the loan amount of Rs. 71,250 be deducted from the general estate; the payment of duty exigible under the Act, whether to be deducted from the estate of the deceased.

4. On 18-8-1975 or 18-10-1975, the Assistant Controller, it is stated, in the course of a discussion with the revenue representative, was ''informed'' that the correct method was to aggregate the proceeds of the policies with the general estate of the deceased. The relevant law was indicated in a Gujarat High Court decision showing two tests laid : One (for short) we refer as ''disclaimer test''; the other, ''test of benefits''. We will return to this subject later with more details. Assessments were thereupon reopened. The proceeds of the policies were aggregated with the general estate. The Tribunal on 27-10-1977, confirmed the order of reopening of the assessments. On facts relevant to the Calcutta policy, it was held, since the assured was not shown to have ''exercised interest'', the Calcutta policy was ordered to be assessed separately. Relevant to reopening of assessment, two questions are referred-whether the reopening of assessments was proper and whether the proceeds of the Bombay policies were to be aggregated. Close on the heels of the order of 30-4-1979, the Tribunal stated it had made a ''mistake'' affecting the Calcutta policy. The Tribunal rectified the ''mistake'' and aggregated also the proceeds of the Calcutta policy. Relevant to the ''mistake'', three questions are referred, one repeating the question of aggregation u/s 34. We find it is convenient to deal with the entire subject in the three references together and indicate our answers at the end of the order.

5. Section 34 enables aggregation of insurance policies for determining the rate of duty. To be precise, under sub-section (1) of the section : Whether the

Bombay and Calcutta policies fall within the expression, ''property passing on the death of the deceased'', is the issue to be deter mined. The above words are defined in clause (16) of section 2 in the Act to state property, if passes on the death of the deceased, and if it does with reference to the date of death has to be aggregated. In section 14 of the Act, ''policies kept up for a donee'' are dealt with and certain fictions are incorporated in the section as to when a policy is to be kept up; as to when a policy is deemed to pass on the death of the assured. Adverting to clause (16) of section 2 and section 14 it is argued by the accountable person, the assured had no interest in the policies for he had assigned his interest on 27-9-1954, in favour of his seven grand children and, therefore, proceeds of the policies, cannot be aggregated:

Whereas, from the standpoint of the history of the loans raised by the assured, payments made in discharge of the loans, according to the revenue, show that the assured retained and had ''interest'' in the policies. The policies, per force, of their history and evidence on record, have to be aggregated, as the amounts in the policies passed on the death of the assured. This is the broad range of controversy.

6. In the reported decisions, cases relevant to aircraft accidents, where such a controversy was decided, were referred. The decisions, however, have not directly dealt with the instant question. In Smt. Lakshmisagar Reddy Vs. Controller of Estate Duty, , a captain of an aircraft died in an air accident. Compensation was paid to his legal representatives under the Indian Airlines Corporation Employees'' Service Rules and Establishment Orders. The amount of compensation was ordered to be aggregated with the general estate of the captain. this Court applied the test of ''beneficial interest'' (for short) and answered the reference. It was held, the captain had no beneficial interest on the date of the accident in the amount paid to his legal representatives. The case in The Controller of Estate Duty, Delhi Vs. Late A.T. Sahani through L.A. Sahani, New Delhi, is another case of aircraft accident; in that, an employee of the Indian Airlines Corporation died. The compensation was paid to the legal representatives under rule 159 of the Indian Airlines (Plying Crew) Services Rules. The test of ''benefits'' was applied, viz., ''whether the employee had any beneficial interest'' and the question of aggregation was decided by answering such a test. In the third case in CED v. Kasturi Lal Jain [1974] 93 ITR 435 (J. & K.), a passenger in an aircraft died in an accident. Compensation was paid to his legal representatives under the Carriage by Air Act, 1934. It was held, ''the property did not come into existence'', at the time of accident and, therefore, compensation amount, it was held, was not the estate of the passenger. In this case, it may be stated, the test of ''beneficial interest'' was not applied, but the issue was considered from the standpoint of ''existence of the property''. Another case of aircraft accident is in Controller of Estate Duty Vs. Smt. Motia Rani Malhotra, That case is also of a passenger who died in an air accident. This case again was considered from the point of whether the property ''was in existence so as to pass on the death'' to devolve on to the successors. The fifth case of air

accident is in M. Ct. Muthiah and Another Vs. Controller of Estate Duty, The question in this case arose under an insurance accident policy. It was held, the passenger had no ''interest'' in the lifetime of the assured in the money paid to his successors. Another case in Smt. Amy F. Antia Vs. Asst. Controller of Estate Duty, Bombay,) relates to air accident death of a passenger where legal representatives of air-passenger were paid money under a group insurance policy taken out by the employer. The question was answered to hold, the assured was ''possessed of the property'' and he was held ''competent to dispose of the property'' and on that basis that question was answered.

7. It is seen, like questions u/s 4 of the Finance Act, 1804, arose in the United Kingdom. The question of aggregation was deter mined in Attorney-General v. Pearson [1924] 2 KB 375. In this case, the insurance policies were held to fall within the first part of section 4. The test was specified, to hold, whether the deceased ''had no living interest in the policy''. The question, thus, was answered from ''living interest'' of policy. The word ''interest'' in that case was stated to contain ''well-understood legal meaning''. This method of approach of determining ''interest'' in insurance policy was approved by the House of Lords in the case of Tennant v. Lord Advocate [1939] 1 All ER 672. The case in Bharatkumar Manilal Dalal Vs. Controller of Estate Duty, Gujarat, was yet another case where it was held that the assured had ''interest'', in the insurance policies. Policies, therefore, were ordered to be aggregated, following another (different) test. This was the case which led to ''reopening'' of assessments on 18-8-1975 or 18-10-1975. The Assistant Controller reopened the assessment after discussion with the revenue representative. In that case, the test of ''disclaimer'' was adopted by the Gujarat High Court, adumbrated in the decision in Hodson''s Settlement, In re : Brooks v. Attorney-General [1939] Ch. 343 (CA). The test of disclaimer was adopted to determine whether the deceased had or had not any ''interest''. One question should be asked, so it is stated in that test: ''In whose favour there would be a resulting interest if all the beneficiaries were to disclaim''. The answer, if it shows on facts, the policy amounts revert to legal representatives. Then, it was held, the deceased had interest in the property. This test, it is seen, is different from the ''existence'' of property test or the test referred, for short, as ''beneficial interest'' test.

8. In the instant case, it is argued by the accountable person, that ''there is difference between policy money that is paid after the death of the assured'' and the ''very policy'', therefore, it is argued, the assured had no interest in the three policies. This difference is preferred for acceptance from the standpoint of an editorial note contained in Estate Duty Cases 1886-1958, Vol. 2, page 683, where the difference adumbrated by the accountable person is referred to as ''interest provided by the settlor was the policy moneys and the policy itself. The distinction is obscure; as to how such a distinction leads to the determination of question of ''interest'' of the assured is not clear in the note.

9. To sum up the facts relevant to the policies : the policies on 29-9-1954, were

assigned to the seven grandchildren of the assured. If the ''disclaimer test'' is to be applied after the assignment, the answer is obvious and no discussion is necessary to show the assured had interest in the proceeds of the three policies, for in that test, the interest devolves on the legal representatives of the deceased. The history of loans and the evidence of repayments of loans also shows, the assured had ''interest'' in the policies and such a property passed on the death of the deceased.

10. The next question relates to the order of reopening of assessment. The Assistant Controller, in his order on 18-8-1975 or 18-10-1975, states during discussion with a representative of the revenue, he was ''informed'' that the correct approach or correct application of the ''law'' was to aggregate the policies with the general estate of the deceased. This ''information'' led to the reopening of the assessment. The decision in Bharatkumar Manilal Dalai''s case (supra) was the decision referred to and the policies were aggregated. It is argued by the accountable person, the circumstances referred to by the Assistant Controller do not constitute ''information'' within the meaning of section 59 of the Act and, therefore, the confirmation order of the Tribunal was in error in accepting ''the circumstances'' as ''information'' within the meaning of section 59. Section 59 of the 1953 Act corresponds to section 34 of the Indian income tax Act, 1922 (''the 1922 Act'') and section 147 of the income tax Act, 1961 (''the 1961 Act''). The cases arising u/s 147 recently are fully reviewed in Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, and numerous decisions of the State High Courts and a decision of the Supreme Court, it was held, did not lay down correct law. The correct ''law'', it was pointed out, ordinarily, ''law'' is to include ''norms or guiding principles having legal effect and legal consequences... Law may be statutory law or judge-made law..." ''The declaration set forth in the judgment or exposition in itself bears the character of law''.

11. In the instant case, the Assistant Controller followed the declaration set forth in the judgment in Bharatkumar Manilal Dalal''s case (supra) where disclaimer''s test was referred to. Applying the tests to the facts of the case, therefore, he construed, discussion with the revenue representative resulted in ''information'' within the meaning of section 59.

12. The view of the Assistant Controller was confirmed by the Tribunal. We hold, the Assistant Controller was not in error to have construed the decision in Bharatkumar Manilal Dalal''s case (supra) indicating the correct view of law. Reopening of the assessment, therefore, was not improper. It is in this regard, the Learned Counsel cited various decisions of the State High Courts touching on the word, ''information'' in section 59. All decisions were cited and reviewed in Indian & Eastern Newspaper Society''s case (supra). Therefore, we do not think it is necessary to refer to them as that will merely add to the bulk of the judgment.

13. The next question is with regard to the order of the Tribunal of 30-4-1979,

relevant to a mistake in the order of 27-10-1977, of the Tribunal. The evidence relating to the loans obtained by the assured, in the order, was referred : One on 8-6-1933, for a sum of Rs. 33,000 and the assured has repaid the loan. The other loan on 17-11-1951, in the sum of Rs. 58,000 was obtained by the assured and was repaid. The Tribunal, as to this evidence, stated, ''we have overlooked the evidence on record and gave an erroneous judgment'' and rectified the mistake by their order on 30-4-1979. The rectification order was issued by the Tribunal u/s 61 of the 1953 Act which corresponds to section 35 of the 1922 Act, and section 254 of the 1961 Act. Section 61 enables ''rectification of any mistake apparent from the record''. The analogous provisions of the 1961 Act, viz., the words, ''mistake apparent on the record'' in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, were interpreted. The Supreme Court in this case left open the question of distinction in the expressions ''error apparent on the face of the record'' and ''mistake apparent on the face of the record''. The decision shows what constitutes ''mistake''. In the instant case, the evidence on record was ignored by the Tribunal and the order of the Tribunal stated that there was a mistake. It is not argued that there was no evidence available on record leading to the rectification of the mistake and, therefore, we hold, section 61 enabled the Tribunal to rectify the mistake.

14. Following the discussion, we answer the questions referred in the three references:

Case Referred No. 159 of 1976:

Question : Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that there should be separate assessments in respect of each of the three insurance policy amounts assigned by the deceased in favour of his grandchildren (at the instance of the revenue) ?

Answer : The Tribunal was not justified to order separate assessments. The answer, in favour of the revenue.

Question : Whether the loan amount of Rs. 78,400 taken on the insurance policies by the deceased is liable to be deducted as a debt u/s 44 of the Act from the general estate as distinct from the separate estate of the three insurance policies ?

Answer : In view of the earlier answer, this question does not arise : so need not be answered. Question : Whether the estate duty payable is liable to be deducted while computing the net estate exigible to duty (at the instance of the accountable person) ?

Answer: This question is covered against the accountable person in Controller of Estate Duty Vs. Estate of Late Omprakash Bajaj,

Case Referred No. 224 of 1978:

Question : Whether, on the facts and in the circumstances of the case, the

Tribunal was correct in holding that the Assistant Controller could reopen the assessment u/s 59(b) ?

Answer : The answer is in the affirmative, in favour of the revenue.

Question : If the answer to question No. 1 is in the affirmative, whether the two insurance policies could be assessed as separate estates u/s 34(3) ?

Answer : The insurance policies have to be aggregated. The answer is against the accountable person.

Case Referred No. 27 of 1981:

Question : Whether, on the facts and in the circumstances of the case, the Tribunal has acted within its jurisdiction in allowing the department''s appeal and reversing its earlier order passed on 27-10-1977 ?

Answer : The answer is in the affirmative : The Tribunal was within its jurisdiction.

Question : Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount of Rs. 1,39,284 in respect of Standard Life Assurance Co. policy was to be included in the main estate of the deceased u/s 34(3) ?

Answer : The aggregation is proper. The answer is against the accountable person.

Question : Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that section 34(3) was not applicable ?

Answer : The aggregation u/s 34 is proper. The answer is against the accountable person.

It is represented in Reference Case No. 159 of 1976, where an identical question was the subject of decision in Estate of Late Omprakash Bajaj''s case (supra) in respect of which this Court granted leave to appeal to the Supreme Court. The Learned Counsel for the assessees made an oral request for leave to appeal to the Supreme Court. While this request is not opposed as respects question No. 3 by the Learned Counsel for the revenue, it was requested, leave may be restricted only to that question. It is not desirable on the facts of the case to restrict leave to some or one question. We, therefore, certify, that this is a fit case for appeal to the Supreme Court under the Act.