(1980) 12 DEL CK 0031

In the Delhi High Court

Case No : Estate Duty Appeal No. 1 of 1977

Rajbans Behari Lal and Others APPELLANT

Vs

The Additional Assistant Controller of Estate Duty, New Delhi RESPONDENT

Date of Decision : 05-12-1980

Acts Referred:

Citation : (1981) 19 DLT 225 : (1982) 134 ITR 619 : (1981) 6 TAXMAN 89

Hon'ble Judges : Leila Seth, J;D.K. Kapur, J

Bench : Division Bench

Advocate : M.B. LAL and M.L. Varma, for the Appellant;

Judgement

Leila Seth, J.

(1) This Estate Duty reference, at the instance of the accountable persons, has been referred to us for our opinion by the Appellate Tribunal u/s 64 of the Estate Duty Act, 1953 (to be referred to in brief as "the Act"). The question of law is :

" WHETHER on the facts and in the circumstances of the case, the 6067 shares of Delhi Cloth and General Mills Company Limited were deemed to pass on the death of the deceased u/s 13 of the Estate Duty Act?"

(2) Mrs. Nand Rani Mathur has three sons Mr. Mohan Behari Lal, Mr. Rajbans Behari Lal and Mr. Gopal Behari Lal. She also owned 6067 shares of the Delhi Cloth and General Mills Co. Limited.

(3) In November, 1971 she divided these shares equally into three blocks of 2022 shares each and got each block registered jointly in the name of herself and one of her sons. The remaining extra share was, however, registered jointly in her name and that of her youngest son. About eight months thereafter, Mrs. Nand Rani Mathur died on 25th June, 1972.

(4) On 20th December, 1972, the estateduty return was filed. The accountable persons claimed that these shares valued at Rs. 2,80,053.00 were outside the ambit of Section 6 of the Act and, Therefore, not subject to duty.

(5) The argument was, that as the deceased was not competent to dispose of these shares without the concurrence of the particular joint owner, they could not be deemed to pass on the deceased''s death. However the Assistant Controller of Estate Duty held that in view of Sections 9, 10 and 13 of the Act, these shares were deemed to pass on the deceased''s death. The sum of Rs. 2,80,053.00 would, Therefore, be includable in the estate and subject to duty.

(6) The accountable persons appealed to the Zonal Appellate Controller of Estate Duty. He rejected their appeal and held that the matter was directly covered by the provisions of Section 13 of the Act.

(7) On further appeal to the Tribunal, the Zonal Appellate Controller''s order was confirmed. The tribunal held that cases of joint ownership of shares are akin to those of joint operation of bank accounts and the provisions of Section 13 of the Act would apply.

(8) Mr. Mohan Behari Lal, an advocate as also one of the petitioners submitted on behalf of himself and his two brothers as follows :

1.Since the deceased was incompetent to dispose of the Delhi Cloth and General Mills shares on her own at the time of her death these shares could not be deemed to pass on her death in terms of Section 6 of the Act.

2.Since the deceased had not made a gift of the shares to her sons Sections 9 and 10 of the Act were not attracted.

3.The provisions of Section 13 bare not applicable as the arrangement entered into by the deceased did not involve the creation of a trust nor was there any direction that the shares should pass by survivorship on her death.

4.None of the provisions of the Act were attracted and these shares could not, Therefore, be held to be a part of the estate.

(9) In order to appreciate these contentions it is necessary to examine the provisions of the Act. The preamble states that this is an Act to provide for the levy and collection of estate duty. Section 5 is the charging section. It provides, inter alia, that estate duty is to be levied and paid at a rate fixed in accordance with Section 35, upon the principal ascertained value of all property passing on the death of a person.

(10) The expression ''property'' has been defined in Section 2(15) of the Act. Section 6 reads:

" PROPERTY which the deceased as at the time of his death competent to dispose of shall be deemed to pass on his death."

(11) Section 7 deals with interests ceasing on death and Sections with gifts mortis cause. Sections 9 and 10 also deal with gifts. The former with gifts made within certain period before death and the latter whenever made where the donor is not entirely excluded. Section 11, deals with limited interests disposed

of within a specified period before death and Section 12 with settlements reservations. Section 13 which deals with the joint investments is the really relevant provision in this case. It is as follows:

"WHERE a person, having been absolutely entitled to any property or to the fun js with which any property was purchased, has caused it to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, either by himself alone, or in concert, or by arrangement, with any other person so that the beneficial interest in some part of that property passes or accrues by survivorship on his death to the other person, the whole of that property shall be deemed to pass on the death."

(12) In order to substantiate his first submission, Mr. Mohan Behari Lal relied on a letter dated 18th July, 1973 addressed to him, from the Delhi Cloth and General Mills Co. Limited. This letter which had been produced before the Zonal Appellate Controller of Estate. Duty reads :

" PLEASE refer to your letter dated the 18th July, 1973. Unless and until all the shareholders of the shares sign and transfer deed, the shares in question cannot be transferred in the name of any other person. We hope this would meet with your requirement."

(13) On a perusal of Section 6 set out above, it is clear that it can only be attracted in a case where it is shown that the deceased had disposing capacity over the property. But from the letter of the company it is clear that the deceased could not have transferred these shares of her own violation without the consent of the joint owner. It is, Therefore, apparent that she was not competent to dispose of these shares at the time of her death and these shares cannot be deemed to have passed on her death, in terms of Section 6.

(14) Sections 9 and 10 deal with gifts. There is no gift of a specific portion of the property to another. There is also no suggestion by either side that the transfer of these shares in November, 1971 was by way of gift. In fact, the deceased transferor continued in joint possession and contained to enjoy the property as before the transfer. Therefore, we need not deal with these provisions.

(15) The main point in issue in this case is the question of applicability of Section 13, Section 14 has been set out earlier.

(16) There are three conditions provided in Section 13. These are :

(I)the deceased must have been absolutely entitled to the property or to the funds with which the property was purchased : (ii) the deceased must have transferred the property to or it vests in himself/herself and another jointly; and, (iii) the beneficial interest in some part of that property passes or accrues by survivorship to the other person on the deceased''s death.

(17) It would appear to us that in the present case, on the admitted facts, all the three conditions have been satisfied.

(I)The deceased as the absolute owner of 6067 shares of the Delhi Cloth and General Mills Company Limited. (ii) She had in November 1971 transferred three blocks of shares to joint named of herself and another. The record of the Delhi Cloth and General Mills Company Limited reflected each both of shares as being held in the joint names of the deceased and one or other of her sons. (iii) On the death of their mother, the beneficial interest in the shares passed to the accountable persons. The Tribunal as, Therefore, justified in rejecting the contention of the accountable persons for exclusion of this amount from the value of the estate.

(18) A reference was made to some case law. However, there appears to be no case dealing with a joint holding of shares. But there are cases of joint bank accounts and National Savings Certificates jointly held.

(19) In Smt, Denabai Bomah Shah v. Controller of Estate Duty, Andhra Pradesh, 66 I.T. 385, the Andhra Pradesh High Court held, that the amounts standing in the joint account of the deceased, his wife and his daughters, were property passing on the death of the deceased, in the absence of proof that any of the joint holders contributed funds, and are reliable to be assessed to Estate Duty u/ s 13 of the Estate Duty Act.

(20) In Commissioner of Income Tax, Ahmedabad Vs. Bhavnagar Trust Corporation (P.) Ltd., , the Punjab and Haryana High Court, held that a current account which was originally in the name of the deceased alone, but had been converted into a joint account in the name of the deceased and his wife, came fairly and squarely within Section.

(21) In Smt. Bimla Devi Sud Vs. Controller of Estate Duty, M.P., Nagpur and Bhandara, Nagpur, , the Madhya Pradesh High Court held that National Savings Certificates which continued to stand in the joint names of. the deceased and his wife even after the date of the alleged gift to her would be includible in the estate of the deceased by reason of Section 13 of the Act as the beneficial interest in them arose to the wife by survivorship.

(22) In view of the fact, as above noticed, that all the requirements of Section 13 of the Act have been fulfilled ,the question referred to us has to be answered in the affirmative and against the accountable persons. The department will be entitled to its costs. Counsel''s fee Rs. 250.00

