
(1968) 09 GUJ CK 0018
In the Gujarat High Court
Case No : Estate Duty Reference No. 1 of 1966

Ravindra Gunvantlal	Vs	APPELLANT
Controller of Estate Duty, Gujarat		RESPONDENT

Date of Decision : 21-09-1968

Acts Referred:

Estate Duty Act, 1953 — Section 12(1), 3(1), 6

Citation : (1969) 74 ITR 498

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

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; J.N. Thakore, for the Respondent

Judgement

Bhagwati, C.J.—This reference under the Estate Duty Act raises a short question affecting the levy of estate duty on certain property

forming the subject-matter of the settlement. The settlement we have to consider was made by one Gunvantlal Jivanlal (hereinafter referred to as

the deceased) and his wife, Bai Jasud, on 27th January 1951. The deceased settled a sum of Rs. 50,000 and certain policies of insurance on his

life of the aggregate value of Rs. 2,00,000 of which the surrender value at the date of the settlement was Rs. 67,413-15-0 and Bai Jasud brought

in a sum of Rs. 50,000 belonging to her in the settlement. The deceased and Bai Jasud were appointed trustees and the settlement declared that

the trustees shall hold the trust funds upon the trusts and subject to the powers provisions declarations and agreements contained in the settlement.

Clauses 3 and 4 of the settlement provided for the disposal of the income after meeting the expenses of management and preservation of

immovable property, if any purchased out of the trust funds and of them clause 3, which is the material clause for the purpose of the present

reference, ran as follows :

3. Subject to the provisions contained in clauses 1 and 2 hereof the trustees shall stand possessed of the settled premises upon trust until the death

of the last survivor of the first settlor and the said Ravindra, Bipin, and Yogesh to apply the net income for and towards the maintenance and

personal support of all or such one or more exclusively of the other or others of the following persons, namely the first settlor, the second settlor,

the children of the first settlor and the widow and issues if any of the sons if any of the first settlor in such manner and if more than one in such

shares and proportions as the trustees may from time to time think proper with power to the trustees in their absolute discretion to pay the whole

or any part of the net income of the settled premises to any one or more of them to the exclusion of the other or other of them.

2. The disposition of the corpus was dealt with in clauses 5, 6 and 7 and sub-clauses (a) and (c) of clause 5 provided as under :

5. (a) From and after the date of the death of the last survivor of them the first settlor, there second settlor and the said Ravindra, Bipin and Yoesh

or the re-marriage of the second settlor if she survive the first settlor and the said Ravindra, Bipin and Yogesh which date is hereinafter referred to

as "the date of distribution", the trustees shall hold the settled premises upon trust to divide the same among the issue of the sons of the first settlor

including the said Ravindra, Bipin and Yogesh per stirpes capita so that each male shall receive twice the share of each female in the same degree

of propinquity.....

(c) If there shall be no issue of any sons or daughters of the first settlor living at the date of distribution then the trustees shall hold the settled

premises or if any share has to be paid to any widows under clause (b) (i) hereof the balance of the settled premises upon trust to dispose of the

same as part of the residue of the estate of the first settlor.

3. Clause 8 is an important provision and it gives rise to considerable controversy between the parties in regard to its interpretation. We shall

therefore set it out in extent so :

8. The trustees may at any time or times at the requester of the first settlor and after his death of the second settlor and after the death of the first

and second settlors at their discretion raise any part or parts not exceeding one

moiety of the vested or expectant share of any child or remoter

issue of the first settlor under the trusts or powers of these presents and any either pay the moneys to be so raised as aforesaid to such child or

remoter issue or otherwise apply the same for his or her advancement preferment or benefit as the trustees shall think fit. The trustees shall at the

request of the first settlor and after his death of the second settlor and after the death of the first and second settlors the trustees may at their

discretion pay out of the income or if necessary out of the corpus of the settled premises such sums as the first or the second settlor as the case

may be from time to time direct or the trustees after the death of the first and second settlor may from time to time think fit for meeting expenses of

illness, medical treatment education and other heavy expenses which cannot be met from any other source for the benefit of the first settlor the

second settlor or any child or remoter issue of the first settlor.

4. Clause 9 was relied upon before the Central Board of Direct Taxes on behalf of the revenue but no reliance was placed upon it before us and it

is therefore not necessary to make any reference to it. Some reference power on the deceased to give directions to the trustees in the certain

matters but in our view it is not a material clause and nothing turns upon it. Clause 11 was the next clause on which the strongest reliance was

placed on behalf of the revenue and it made the following provision :

11. The first settlor shall have power in addition to the general power contained in the last preceding clause from time to time to direct the trustees

in the management of the trust here created :

(a) to allow him and/or the second settlor to live from time to time in any part or parts of any immovable property comprised in the settled premises

free of rent;

(b) to direct any part or parts of the settled premises to be let or given in the occupation of any person free of rent or upon such rent and upon

such condition as the first settlor may in his absolute discretion think fit;.....

5. Clause 14 constituted the deceased sole managing trustee during his life and it was provided by that clause that the managing trustee shall have

the sole and absolute management of the trust funds and he shall not be accountable or responsible to anyone for the same. Clause 19 provided

that all question arising in the management or administration of the trusts and powers under the settlement and all difference of opinion amongst the

trustees shall be disposed of in accordance with the opinion of the deceased during his life. These are the relevant provisions of the settlement

having a bearing on the determination of the question arising on the reference. Before we proceed further, we may point out at this stage that

though the trust funds originally settled upon trust consisted of a sum of Rs. 50,000 and policies of insurance settled by the deceased and a sum of

Rs. 50,000 settled by Bai Jasud, it appears that at some point of time which does not appear clearly on the record, the trustees invested a part of

the trust funds in the purchase of an immovable property known as Jasud Mansion, with the result that at the date of the death of the deceased the

trust funds comprised, inter alia, the said immovable property namely, Jasud Mansion.

6. The deceased died on 16th December, 1953, and the question arose as to what was the principal value of the estate of the deceased on which

estate duty was exigible under the Estate Duty Act. The Assistant Controller determined the principal value of the estate of the deceased at Rs.

8,21,755 and in arriving at this figure he included a sum of Rs. 2,38,325 representing the value of the properties which formed the subject-matter

of the settlement at the date of the death of the deceased. The Assistant Controller took the view that the properties which formed the subject-

matter of the settlement at the date of the death of the deceased fell within section 12(1) since under the settlement an interest in those properties

for life was reserved to the deceased and they must therefore be deemed to have passed on the death of the deceased. The eldest son of the

deceased who was the accountable person thereupon preferred an appeal to the Central Board of Direct Taxes complaining against the inclusion

of the value of the properties forming the subject-matter of the settlement. Several contentions were raised by the accountable person against the

applicability of section 12(1) which was the provision under which the value of the properties forming the subject-matter of the settlement was

included in the principal value of the estate by the Assistant Controller. But out of those contentions barring one, all were rejected by the Central

Board of Direct Taxes. The one contention which found favour with the Central Board of Direct Taxes was that section 12(1) could not possibly

be invoked for the purpose of including the value of the property settled by Bai Jasud, for that section had applicability only to property passing

under a settlement made by any person other than the deceased. The Central Board of Direct Taxes thus excluded the property settled by Bai

Jasud from the operation of section 12(1) but the ultimate decision was still against the accountable person for the Central Board of Direct Taxes

took the view that that property was, by reason of clause 8, 10 and 11 of the settlement property which the deceased was at the time of his death

competent to dispose of and was therefore covered by section 6. The Central Board of Direct Taxes also held that even if section 12(1) was not

applicable to the properties settled by the deceased, section 6 in any view of the matter, applied of the same reasons for which it applied to the

property settled by Bai Jasud and the value of those properties was therefore includible in the principal value of the estate of the estate of the

deceased. There was also an alternative contention urged on behalf of the accountable person an that was a contention of the last resort, that even

if section 12(1) was applicable the properties which could be deemed to have passed on the death of the deceased were not the properties in the

state of investment in which they existed at the date of the death of the deceased but the properties which were originally settled on trust by the

deceased. This contention was also rejected by the Central Board of Direct Taxes. This decision of the Central Board of Direct Taxes is

challenged before us on behalf of the accountable person in the present reference and the question which we are asked to determine is :

Whether, on the facts and in the circumstances of the case, the value, as on the death of the deceased, of all or any part of the properties settled

under the deed dated 27th January 1951, was liable to inclusion in the principal value of the estate of the deceased as property deemed to pass on

his death u/s 6 and/or 12 of the Estate Duty Act, 1953 ?

7. One of the points which might well arise for consideration of this question is whether even if section 12(1) applied in relation to the properties

settled by the deceased, what is it that passed on the death of the deceased ? Did the trust fund originally settled by the deceased, namely the sum

of Rs. 50,000 and the policies of insurance pass or did the immovable property known as Jasud Mansion and the properties into which the trust

fund was converted pass ? The learned counsel for the accountable person did raise this question and relying on the decision of the House of

Lords in *Sneddon v. Lord Advocate*, contended that even if section 12(1) applied, the property which much be deemed to have passed not the

death of the deceased would be the trust fund originally settled on trust by the deceased and not the trust fund in the state of investment in which it

was found at the death of the deceased. But when it was pointed out to him that this contention even if valid, would not make such difference to his

client in terms of financial liability he wisely did not press this contention. We therefore say no more about it. During to the arguments urged on

behalf of the accountable person, the first question which arises for consideration is whether the properties forming the subject-matter of the

settlement could be deemed to have passed on the death of the deceased u/s 12(1). The determination of this question obviously depends on a

true interpretation of section 12(1). That section reads as follows :

12. (1) 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 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 :.....

8. There are two provisos to this section but they are not material and we need not therefore refer to them. Now, it is clear on a plain reading of

section 12(1) that it cannot possibly apply to property settled by Bai Jasud. Section 12(1) in terms refers to property passing under any settlement

made by the deceased and its applicability must be held limited to properties settled by the deceased. Obviously, therefore, section 12(1) cannot

be invoked by the revenue for the purpose of bringing in the property settled by Bai Jasud within the description of property passing on death and,

indeed, it must be said in fairness to the learned Advocate-General that this was not seriously disputed by him on behalf of the revenue. The

question of applicability of section 12(1), therefore, remains to be considered only in relation to the properties settled by the deceased.

9. Now, in order to attract the applicability of section 12(1), property comprised

in the settlement must be property in which "an interest in such property for life or any other period determinable by reference to death is reserved". It is now well-settled and beyond controversy as a result of the decision of the Bombay High Court in *Khatizabai Mohomed Ibrahim v. Controller of Estate Duty*, that the requirement of section 12(1) would be satisfied howsoever large or small the reserved interest may be and whether it is definite in extent or indefinite. See *Channel J. in Attorney-General v. Earl Grey* :

Any interest however small will do, provided it issues out of such property - that is, out of property sought to be taxed.

10. There are no words which define or delimit the quality or quantity of "interest" is reserved to the settlor in the property settled upon trust, section 12(1) would apply even though such interest may be small or indefinite in extent. Let us examine in the light of this discussion whether any interest in the properties forming the subject-matter of the settlement, for life or any other period determinable by reference to death was reserved to the deceased under the settlement.

11. The revenue relied upon clauses 3 and 8 of the settlement for the purpose of showing that interest in the settled properties for life was reserved to the deceased under the settlement. Reference was also made to clause 11, sub-clause (a) and (b), of the settlement but in the view we are

taking as to the interpretation of clauses 3 and 8, it is not necessary to discuss the impact of clause 11, sub-clause (a) and (b). Clause 3 created a discretionary trust in regard to the income of the settled properties and it provided that, until the death of the last survivor of the deceased and his

three sons, the trustees shall apply the net income "for and towards the maintenance and personal support of all or such one or more exclusively of

other or others" of the deceased, his wife, his children and the widow and issues, if any, of any of his sons "in such manner and if more than one in

such shares and proportions as the trustees may from time to time think proper with power to the trustees in their absolute discretion to pay the

whole or any part of the net income of the settled premises to any one or more of them to the exclusion of the other or others of them". The

trustees were thus given a discretion in regard to the application of the net income of the settled properties and in exercise of such discretion, they

could pay the whole of the net income or such part of it as they thought fit, to the deceased. This, said the revenue, clearly amounted to an interest

in the settled properties for life. The accountable person, on the other hand, urged that clause 3 did not confer any definite interest on the deceased

: all that was reserved to the deceased was a mere possibility of sharing in the income of the settled properties depending on the exercise of

discretion by the trustees in his favour and this could not be regarded as an interest in the settled properties. The premises of the argument was

that, if the obtaining of a benefit depends on the will of a third party, no interest can be said to be conferred until the will of the third party is

exercised so as to confer the benefit : mere possibility of getting a benefit cannot be regarded as an interest in the settled properties. This argument,

plausible though it may seem, in our opinion is not well founded and must be rejected. Our reasons for saying so are as follows :

12. In *Attorney General v. Heywood*, an identical section, namely, section 38(2) (c) of the Customs and Inland Revenue Act, 1881, came up for

consideration and the question was whether in case of a discretionary trust where the trustees are given an absolute discretion to apply the income

for the benefit of one or more to the exclusion of others of the settlor and his wife and children, an interest in the settled property for life could be

said to be reserved to the settlor within the meaning of section 38(2)(c). The court consisting of Stephen and Wills JJ. held that, notwithstanding the

powers conferred upon the trustees of depriving the settlor of the benefit of the settled property at their discretion, an interest in such property for

life was reserved to the settlor and section 38(2)(c) was attracted. Wills J. observed in an argument of unimpeachable logic :

The word "interest" is capable of different meanings, according to the context in which it is used or the subject-matter to which it is applied. If the

contention for the defendants is right nobody has any interest in the property settled, and yet the whole fund was to be held for the benefit of three

classes of persons, the husband, the wife, and the children; and the sum of the benefits conferred on all these three classes taken together, being the

sum of three nothings amounts to nothing, whereas, on the other hand, it must necessarily comprehend the whole interest in the fund. This is simply

a *reductio ad absurdum*. The application of the word "interest" is not confined to a vested or a necessarily contingent interest. The Act was settlor

here could only be deprived of the benefit he would otherwise get under the settlement by the exercise of the power of depriving him of such

benefit which was vested in the trustees so deprived him he would necessarily get a benefit.

13. This decision came to be considered by the Court of Appeal in England in Attorney-General v. Farrell. That was also a case of discretionary

trust and the question was : what is the meaning of the word "interest" in section 38(2)(c) of the Customs and Inland Revenue Act, 1881 ? Lord

Hanworth M. R. said :

Does the chance that the deceased had of receiving some money before the trustees paid over the surplus rents and profits to his brother Edward

constitute an interest within the meaning of section 38, sub-section (2) (c) ? I confess the matter is one by no means free from difficulty and doubt,

but in Attorney-General v. Heywood, which was decided forty-three years ago by two distinguished judges, Stephen and Wills JJ., it was held that

where in a settlement a discretionary trust was given to trustees to apply income for the benefit of the settlor, his wife, any future wife and any

children, an interest was taken by the settlor which was sufficient to bring the case within this sub-section (2) (c).... I am unwilling to indicate

dissent from, still less to overrule, a case which has stood now for so long a period of time,..... I think it is too late for us to reopen the question

which was decided in attorney General v. Heywood;

14. And following that decision, the learned Master of the Rolls said :

.... I think that for the purposes of the interpretation of section 38, sub-section (2) (c), it must be held that where there is a discretionary trust, a

possible object of that trust holds an interest within sub-section (2) (c).

15. Greer L. J. felt some doubt about the correctness of the decision in Attorney-General v. Heywood but he pointed out that since that, decision

had stood since the year 1887, a period of forty-three years, it would not be right "after all these years for the court to entertain the notion that it is

a case liable to be reversed on appeal". Romer L. J. agreed with the view in Attorney-General v. Heywood that the prospect of an object of a

discretionary trust sharing in the income, the subject-matter of the discretionary trust, is an interest of that person in the property from which the

income is derived, and stated that in his opinion it was rightly so decided. The

Court of Appeal thus clearly affirmed the view taken in *Attorney-*

General v. Heywood. We find that this view has also been recently approved by the House of Lords in *Gartside v. Inland Revenue*

Commissioners.

16. If this be the true meaning of the word "interest" in section 38(2)(c) of the Customs and Inland Revenue Act, 1881, as interpreted by judicial

decisions in England, it is reasonable to assume that the legislature, when it enacted section 12(1) of the Estate Duty Act framing it in the same

language as section 38(2)(c), intended that the word "interest" in section 12(1) should also have the same meaning. If the legislature intended that

the word "interest" should have a narrow or technical meaning so as to exclude discretionary trusts of the type found in *Attorney-General v.*

Heywood and *Attorney-General v. Farrell*, the legislature, we have no doubt, would have used appropriate language to effectuate such intention.

Moreover, it is always proper to construe an ambiguous word or phrase in the light of the mischief which the provision is obviously designed to

prevent and the reasonableness of the consequences which follow from giving a particular construction. Here, if "interest" were given a narrow or

technical meaning, it would be very easy to defeat the obvious purpose of the provision by setting up a discretionary trust and choosing trustees

who might be expected to exercise their discretion in favour of the settlor. On the other hand, no unreasonable consequence would follow if the

word were given a wider meaning, so as to include possible benefit that would come to the settlor in a certain event, namely, in the event of the

trustee deciding that he should have the whole or part of the income. We are therefore of the view that, where a settlor is one of the objects of a

discretionary trust and the trustees are given absolute discretion to pay the income of the settled properties to one or more of the objects to the

exclusion of the others, the settlor has an interest in the settled properties within the meaning of section 12(1) and he must be held to have reserved

to himself an interest in the settled properties for life sufficient to bring his case within section 12(1). On this view, even if clause 3 stood alone, it

would be sufficient to attract the applicability of section 12(1) but here there is an additional feature which clinches the determination of the

question and leaves no scope for argument. The deceased was the managing

trustee under clause 14 and under clause 19 the trustees were obliged to exercise their powers in accordance with the opinion of the deceased. The deceased had therefore a controlling voice in the exercise of the powers of the trustees and by mere exercise of his volition he could have the whole of the net income paid over to himself. So long as the deceased was alive, the discretion conferred on the trustees was futile, for it could not be exercised against the volition of the deceased. The deceased had therefore clearly an interest in the settled properties for life reserved to him under the settlement.

17. Clause 8 also compels us to reach the same conclusion. That clause in its second part provided that the trustees shall at the request of the deceased pay out of the income or if necessary out of the corpus of the settled properties such sums as the deceased may from time to time direct for meeting expenses of illness, medical treatment, education and other heavy expense which cannot be met from any other source for the benefit of the deceased, his wife or any child or remoter issue of the deceased. The deceased could therefore at his will require the trustees to pay out of the income or if necessary out of the corpus such sums as he might from time to time direct for his own benefit. This power given to the deceased was a course not exercisable unconditionally for it could be exercised only for the purpose of meeting "expenses of illness, medical treatment, education and other heavy expenses, he could require the trustees to pay to him such sums as he might from time to time direct out of the income or if necessary out of the corpus of the trust properties. The deceased had therefore under clause 8 an interest in the trust properties, limited though it was by the specification of the contingencies for which he could require the trustees to make payment to him out of the income and, if necessary, out of the corpus. We must therefore hold that since an interest in the settled properties for life was reserved to the deceased under the settlement, section 12(1) applied and the properties settled by the deceased must be deemed to have passed on the death of the deceased.

18. That takes us to the next question whether the properties settled on trust, whether settled by the deceased or by his wife, fell within the ambit and coverage of section 6. Now, on the view taken by us as regards the applicability of section 12(1), it is unnecessary to consider whether

section 6 also applied in the case of properties settled by the deceased but the argument in regard to the applicability of section 6 was common as

regards both kinds of properties and, therefore, whatever we say as to the applicability of section 6 in regard to property settled by Bai Jasud

would equally apply in regard to the properties settled by the deceased. Section 6 deals with the class of properties deemed by law to pass on the

death of the deceased and it says :

Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.

19. Section 6 would therefore apply in the case of properties forming the subject-matter of the settlement if it can be shown by the revenue that the

deceased was, at the time of his death, competent to dispose of those properties. The argument of the revenue was that by reason of clauses 8 and

10 of the settlement, the deceased had power to dispose of the settled properties and he was therefore competent to dispose them of within the

meaning of section 6. We shall presently examine clauses 8 and 10 but, before we do so, it would be convenient to refer to section 3(1) (a) which

explains when a person shall be deemed competent to dispose of property. Section 3(1)(a) reads :

3. (1) For the purposes of this Act, -

(a) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he

were sui juris, enable him to dispose of the property.

20. Here it was not the case of the revenue that the deceased had any general power which would enable him to dispose of the settled properties

and the argument was only a limited one, namely, that the deceased had such an estate or interest in the settled properties as would enable him to

dispose of those properties. It, therefore, becomes necessary to inquire whether under clauses 8 and 10 the deceased had such an estate or

interest as would enable him to dispose of the settled properties.

21. We will first dispose of the argument based on clause 10. That clause obliges the trustees to act in all matters according to the directions of the

deceased and also provides that the trustees shall be bound, if the deceased so requests, to execute and do all such acts, deeds and things for the

sale or demise or any other dealing with the settled premises as he shall require.

We do not think this provision confers any estate or interest on the deceased such as would enable him to dispose of the settled properties. It merely says that the trustees shall be bound to act according to the instructions of the deceased in the administration and management of the settled properties and if the deceased requires them to deal in any particular manner with the settled properties in the course of the administration or management, they shall be bound to do so. The clause does not empower the deceased to require the trustees to so dispose of the trust properties that they go out from the settlement altogether. We fail to see how this clause can avail the revenue for bringing the case within section 6.

22. We now turn to clause 8 on which the strongest reliance was placed on behalf of the revenue for the purpose of attracting the applicability of section 6. The revenue contended that this clause gave to the deceased such an estate or interest as would enable him to dispose of the settled properties, for the deceased could, in exercise of his power under this clause require the trustees to hand over to him for his benefit the entire corpus of the settled properties and he could then dispose them of in such manner as he liked. The revenue pointed out that in order to determine whether the deceased was competent to dispose of the settle properties, it was not necessary that he should be able to do so straightaway by a single act. It was sufficient, said the revenue, if the power to dispose of the settled properties was dependent upon a step which could be taken by the deceased at his own will, as for example where he reserved to himself the power to make the settled properties his own, for in such case he would always require the trustees to transfer or hand over the settled properties to him and he could then dispose them of in such manner as he thought fit. This part of the argument of the revenue is unexceptionable and there can be no doubt that in order that the deceased may be competent to dispose of the settled properties it is not necessary that the power to dispose should be exercisable by the deceased straightaway without anything more. If the power to dispose of the settled properties can become available to the deceased by taking a step which he can take at his own will, he must still be regarded as competent to dispose of the settled properties, for he has merely to take the requisite step in the exercise of his absolute volition and then having obtained the settled properties

he can dispose them of as he thinks fit. If, therefore, on a true construction of clause 8 the deceased could require the trustees to hand over to him for his own benefit the entire corpus of the settled properties, it would indubitably follow that he was competent to dispose of the settled properties, for he would have merely to take the preliminary step of obtaining the settled properties from the trustees in exercise of his absolute power in order to be able to dispose them of in such manner as he liked. The question is whether under clause 8 the deceased could at his will require the trustees to hand over to him the entire corpus of the settled properties.

23. Now it is clear on a plain reading of clause 8 that the deceased could require the trustees to pay out of the income or if necessary out of the

corpus such sums as he might from time to time direct for his own benefit but this power conferred on the deceased was not exercisable

unconditionally. It was hedged in by conditions in that the deceased could require payment for his benefit only for meeting "expenses of illness,

medical treatment, education and other heavy expenses which cannot be met from any other source". It is no doubt true that if any of these

contingencies was satisfied - if any of these purposes existed - the quantum of the amount which the trustees could be required to pay was at the

discretion of the deceased and the deceased could, subject of course to the requisition not being unreasonable, require the trustees to pay such

amount as he thought fit. But if any of these conditions was not satisfied - if, for example, payment was required to be made by the deceased for

any other purpose - the trustees could resist the will of the deceased and refuse to make payment. These conditions therefore limited the power of

the deceased to require the trustees to make payment out of income or corpus of the settled properties and it could not therefore be said that the

deceased had absolute power exercisable at his will to require the trustees to hand over the entire corpus of the settled properties to him for his

benefit so that he could dispose it of in such manner as he liked. The revenue however urged that the last of these conditions denoted by the words

other heavy expenses" was vague and nebulous and under its guise the deceased could call for payment of an amount representing the entire

corpus of the settled properties and therefore the power of the deceased must be

construed as an absolute and unlimited power. But this contention cannot be accepted, for in the juxtaposition of the words "expenses of illness, medical treatment, education", the words "and other heavy expenses" cannot be regarded as vague or nebulous or as affording a thin disguise for the deceased to appropriate the entire corpus of the settled properties. The words "other heavy expenses", in the context in which they occur, clearly mean necessary personal expenses, heavy in their nature and of a kind similar to illness, medical treatment and education. We are therefore, of the view that clause 8 did not confer any estate or interest in the deceased such as would enable him to dispose of the settled properties in such manner as he liked. We must accordingly hold that the deceased was not competent at the time of his death to dispose of the settled properties and the settled properties did not fall within the mischief of section 6.

24. Our answer to the question referred to us therefore is that the value, as on the death of the deceased, of the properties settled by the deceased under the settlement dated 27th January, 1951, was liable to inclusion in the principle value of the estate of the deceased as property passing u/s 12(1) of the Estate Duty Act, 1953, while the value of the property settled by Bai Jasud under the said settlement was not liable to inclusion in the principal value of the estate of the deceased as property deemed to pass on his death earlier u/s 6 or section 12 of that Act. There will be no order as to costs of the reference.