
(1965) 10 MAD CK 0002

In the Madras High Court

Case No : Tax Case No. 159 of 1963 (Reference No. 41 of 1963)

Rm. P. Al. A. Alagappa Chettiar

APPELLANT

Vs

Controller of Estate Duty, Madras

RESPONDENT

Date of Decision : 25-10-1965

Acts Referred:

Estate Duty Act, 1953 — Section 64(1)

Citation : (1966) 60 ITR 289

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—This is a reference u/s 64(1) of the Estate Duty Act, which raises a question of deductibility from Indian assets of certain

liabilities incurred by the deceased in Burma creditors resident in India. RM. P. AL. A. Alagappa Chettiar, who is the accountable person,

submitted a return u/s 53 of the Act valuing his fathers estate at Rs. 1,60,667. The Assistant Controller of Estate Duty, Madurai, determined the

value of the movable and the immovable properties of the deceased in India, and as to his foreign assets he found that he left a wealth in Malacca

of the value of Rs. 13,231, and an excess liability in Burma of Rs. 33,594. This liability related to borrowings of the deceased and utilisation

thereof in Burma either for his business of money-lending or purchase of lands. The accountable person claimed to set off this liability against the

Indian assets, which the Assistant Controller disallowed. He also disallowed an alternative claim to deduct a part of this liability from the Malaccan

asset. The Assistant Controller was of the view that the liabilities in Burma could be rightly set off against the Burma assets including agricultural

lands and it was only the unabsorbed balance that could be deducted from the

properties situate outside Burma. He expressed this view, as he said, on the strength of an analogy provided by section 47. On that view, setting off the liability against the value of landed property, namely Rs. 50,000, he arrived at the conclusion that the value of movable belonging to the deceased in Burma as on the date of his death was nil. The Appellate Controller of Estate Duty agreed with him. The Tribunal did likewise except that in its opinion a part of the Burma liability could be set off against the assets available in Malacca and that on that basis the disallowance should be confined only to Rs. 20,365. The Tribunal came to the conclusion on a view slightly different from that of the revenue, which proceeded not precisely on the terms of section 47 but, as we mentioned, on the strength of the analogy provided by that section. The Tribunal's view was this :

No doubt it is true it is not a debt due to persons resident out of the territories to which this Act applies, but in the absence of proof that debt was contracted to be paid in India, we are of the opinion that the assessee is not entitled to claim this deduction.

2. It would thus appear that in the opinion of the Tribunal the terms of section 47 themselves were applicable to the facts of the case. It is the propriety of this view that is canvassed before us for the accountable person.

3. Section 5 is the charging section which levies duty on the principal value of the estate of the deceased that passes on his death. The principal value is to be ascertained as provided by the Act and relates to property including agricultural lands situate in the territories which immediately before November 1, 1956, were comprised in the States specified in the First Schedule to the Act. The States in the First Schedule are those which lie within the territorial limits of this country. Part III provides for certain exemptions from charge of duty, of which foreign property is one.

Section 21 says that the property that passes on the death of a deceased shall not include immovable property situate outside India and also movable property so situate. But, if, at the time of his death, the deceased was domiciled in India movable property situate outside India will be liable to be included in the property of the deceased for the purpose of valuation. Part VI of the Act directs certain deductions in determining the principal value of the deceased's estate. Among the deductions allowed by

section 44 are debts and encumbrances of the deceased. This section does not make any distinction between one kind of debt and another based on situs or residence of persons, to whom they were due from the deceased. But section 47 covers particular kinds of debts incurred in certain circumstances and provides for the procedure for deduction of the same. The section is as follows :

Debts to persons resident in foreign country not to be deducted in first instance except from duty - paid property in that country. An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of India (unless contracted to be paid in India or charged on properties situate within India), except out of the value of any property of the deceased situate out of India in respect of which estate duty is paid; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Controller that the property of the deceased situate in the foreign country in which the person to whom such debts are due resides is insufficient for their payment.

4. Broadly speaking, the scope of this section appears to be to limit in the first instance deduction of the type of debts covered by it from property of the deceased situate out of India in respect of which duty is paid, and if there is any unabsorbed liability still remaining, proportionate repayment of the estate duty will be made. It will be seen, therefore, that, while section 44, by its main part, allows deduction of debts and encumbrances of the deceased, section 47 virtually operates as a proviso thereto. The second part of section 47 proceeds on the basis that the scope of section 44, so far as it concerns the debts of the deceased, is wide enough to cover foreign debts, and the first part of section 47 provides for the procedure and forges certain limitations in the matter of deductions of the particular type of foreign debts. For the section to apply, the debt must be owing from deceased, and it must be to persons resident out of India. If these requisites are satisfied, the debt may first be set off against the property of the deceased situate outside India, provided estate duty is paid in respect of such property. What that would mean will have to be understood in the context of section 21, which lays down what foreign property is exempt from charge of duty and what is not. Immovable property, which lies

outside India, will in no circumstances attract estate duty under the provisions of the Indian Act. If the foreign property, on which estate duty is paid, is insufficient to meet the foreign liability of the kind envisaged by the first part of section 47, the outstanding liability will entitle the estate of the deceased to a refund of proportionate estate duty. This procedure will be inapplicable to debts of the deceased due to persons resident outside India, but under the contract the debt is payable in India or is charged on property situate within India. Likewise, the section will have no application to a foreign debt, which will not fall within the first part of the section. A debt, which was incurred by a deceased outside India but to a creditor resident in India, will be a debt of that type falling outside the scope of section 47. Where, therefore, the debt is not one contemplated by section 47, it will follow that the main part of section 44, so far as it relates to debts, will have full play unrestricted by any limitations. That is because, as we mentioned, section 44, first part, applies to all kinds of debts, whether local or foreign, owing to resident or non-resident creditors, and the purpose of section 47 is no more than to provide for allowance of particular kind of debts in particular circumstances in a particular manner. When that procedure by the terms of section 47 is not attracted, there will, in our opinion, be nothing to stand in the way of the accountable person being entitled to deduction of the foreign liability.

5. In this case there is no dispute that the liability of the deceased in Burma was to creditors, all resident in India. That is not a liability to which section 47 will be applicable, and on the construction we have placed on that section as well as section 44, it follows that the accountable person is entitled to deduction from the Indian assets of the entire Burma liability.

6. There is one other matter, which, before we leave this reference, we must advert to. The Tribunal, on the view that section 47 was applicable, thought that a part of the Burma liability could be set off against the Malaccan asset of the deceased. Why the Tribunal considered that this was permissible is not clear from its order, but a careful reading of the second part of section 47 shows that the unabsorbed liability incurred in a foreign country can be deducted from the property of the deceased, only if it is situate in the foreign country, in which the person, to whom such debt is due, resides, and that, if a creditor does not so reside, the only possibility is that

such unabsorbed liability can be set off only against the Indian assets. We make this observation lest we might be misunderstood in our appreciation of the scope of the second part of section 47 by our silence in regard to it.

7. The revenue, as indicated by us, disallowed deduction of the Burma liability on the strength of an analogy of section 47. In a taxing statute analogies play no part. Whether it is a charge, allowance of a deduction or exemption from a charge, in every one of these case, the revenue will have to follow the direct terms of the statutory provisions. No one can suppose or has supposed that an accountable person can be charged on the principal value of the deceased's estate on the basis of a mere analogy. Just as the revenue will be confined to the terms of the charging section, so too it cannot travel outside the provisions relating to allowance of deduction and decline a deduction on supposed analogy.

8. The reference is answered in favour of the assessee with costs. Counsels fee Rs. 250.

9. Reference answered in favour of the assessee.