
(1968) 11 AP CK 0009

In the Andhra Pradesh High Court

Case No : Case Referred No. 20 of 1965

Smt. Pankumari Kochar

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 25-11-1968

Acts Referred:

Estate Duty Act, 1953 — Section 10, 46, 46(1)

Citation : (1969) 73 ITR 373

Hon'ble Judges : Jaganmohan Reddy, C.J; Ramachandra Rao, J

Bench : Division Bench

Advocate : C. Mallikarjuna Rao, for the Appellant; T. Anantha Babu, for the Respondent

Judgement

Jaganmohan Reddy, J.—The Central Board of Direct Taxes has referred the following three questions for our opinion :

" 1. Whether, on the facts and in the circumstances of the case, the sum of Rs. 85,000 being the value of properties settled in trust for the Surajmal Poonan Chand and Pratap Chand Charities has been rightly included in the estate u/s 10 of the Estate Duty Act ?

2. Whether, on the facts and in the circumstances of the case, the sum of Rs. 1,65,253 being the value of properties gifted by the deceased has been rightly included u/s 10 of the Act, in the chargeable estate of the deceased ?

3. Whether, on the facts and in the circumstances of the case, the liability of Rs. 6,857 due to Smt. Leelavathi, the liability of Rs. 20,721 (in various accounts) and the liability of Rs. 2,701 on account of the Surajmal Poonam Chand and Pratap Chand Charities have been rightly disallowed in computing the principal value of the estate left by the deceased ? "

2. The facts leading to the formulation of these three questions are:

One Surajmal Poonam Chand died on 13th January, 1957, leaving his widow,

Smt. Pankumari, who was the accountable person. The deceased, it may be stated, was the sole surviving coparcener of a joint Hindu family known as "Dhirji Ghandanmall & Sons" which carried on business as bankers and money-lenders. The Assistant Controller of Estate Duty, noticed during the course of assessment that certain items among others which formed part of the estate of the deceased have not been included "in, the estate duty return submitted by her.

3. These properties were:

(a) Properties settled in trust by the deed dated 24th January, 1952, for the Surajmal Poonam Chand and Pratap Chand Charities (herein after referred to as S. P. P. Charities).

(b) Sums amounting to Rs. 1,06,405 lent out by the deceased in the name of Smt. Pankumari Bai.

(c) Properties valued at Rs. 2,11,253 gifted by the deceased to his wife and other relatives, which are detailed in the statement of the case:

Rs.

Properties gifted to Smt. Pankumari Bai 1,01,000

Properties gifted to Smt. Guman Kumari 25,253

Properties gifted to Anupchand Gulecha 10,000

Properties gifted to Smt. Sabha and Rajendra (grand children of deceased's brother) 15,000

1,51,253

Properties gifted to Usha and Veena 20,000

Properties gifted to Anoopal 20,000

Properties gifted to Smt. Lilavathi Bai, daughter of deceased's brother (gift claimed to have been made in 1945) 20,000

2,11,253

4. As regards the first item, it was claimed on behalf of the accountable person that, as the properties were transferred by the deceased to the S. P. P. Charities more than 5 years prior to his death, they should not be considered as passing on his death. The Assistant Controller, however, found that, though the properties were nominally vested in the trustees by the trust deed, the deceased exercised complete control over both the corpus and income of the trust. It was also found that the donations made out of the trust funds were more of the nature of personal donations than those of an independent trust. The Assistant Controller valued the properties settled for the S. P. P. Charities at Rs. 2,15,000 and included the same in the estate of the deceased.

5. As regards the money-lending business carried on in the name of the accountable person, it was claimed that Smt. Pankumari Bai came from a rich family and had received large sums as gifts from her parents from time to time. It was accordingly contended that the capital invested in the money-lending business was her " stridhan " and so the same could not be, considered as passing on the death of the deceased. It was, however, found by the Assistant Controller that Smt. Pankumari had received a sum of Rs. 25,000 from her father-in-law out of the Hindu undivided family funds. He further found that Smt. Pankumari had no separate money-lending business as she had no separate licence in her name. The accounts relating to the money-lending business were also found not reliable. Besides, it was found that some of the loans were advanced in the joint names of the deceased and his wife. For these reasons given in the order, the Assistant Controller held that the money-lending business belonged to the deceased himself and accordingly included the sums invested in that business in the estate of the deceased.

6. As regards the properties gifted by the deceased it was found that all the gifts except the one to Smt. Lilavathi Bai were made on the 24th October, 1953, i.e., one day prior to the day on which the Estate Duty Act came into operation. The Assistant Controller found that the deceased retained complete control over the gifted properties, collected rents and also utilised the same for his own purposes. He, therefore, held that the gifted properties detailed in paragraph 3(c) were includible in the estate of the deceased. Apart from this, deductions in respect of certain liabilities were also claimed:

(a) Credit balance in various accounts on account of accumulation of rents from gifted properties : Rs. 20,721

(b) Other liabilities detailed as below :

Rs.

Smt. Pankumari 1 ,08,689

Smt. Gumankumari 21,526

Smt. Hemalata Bai 12,857

Sri. A. Motilal 10,999

Smt. Mankunwar Bai 10,256

Smt. Lilavathi Bai 6,857

1,71,184

(c) Liabilities to S. P. P. Charities Rs. 2,701.

7. The Assistant Controller, however, held that these claims could not be allowed in view of the provisions of Section 46(1) of the Act. In any case the accountable person appealed to the Board and contended that the value of the property

settled on trust to the S.P.P. Charities should not be included as, under the trust, no benefit was reserved to the settlor and certain powers were exercised by the deceased only, in his capacity as trustee. It was further contended that the income from the trust properties were kept by the deceased in his business free of interest and that he did not charge any collection fee for the work of collection. The Board, however, rejected the accountable person's contentions and for the reasons mentioned in paragraph 5 of the order, held that Section 10 was rightly invoked to include the value of the properties of the S.P.P. Charities. The value of the properties was, however, reduced to Rs. 85,000. As for the money-lending business, it was argued on behalf of the accountable person that the money invested belonged to her and that this position had been accepted for Income Tax purposes. The Board, however, rejected these contentions and for the reasons stated in paragraphs 10 and 11 of the order held that the money-lending business in the name of Smt. Pankumari actually belonged to the deceased.

8. In regard to the properties gifted by the deceased as enumerated in paragraph 3(c) above, it was argued before the Board that the gifts were genuine and that the deceased had no control over the properties gifted by him and that the rents were collected by him merely as a measure of convenience. The Board, for reasons stated in paragraph 14 of the order, held that the provisions of Section 10 clearly applied to all the properties except that gifted to Smt. Lilavathi. The Board, however, reduced the value of the properties to Rs. 1,65,253.

9. In so far as the liabilities disallowed by the Assistant Controller are concerned it was contended on behalf of the appellant that the Assistant Controller was not justified in including the value of the properties u/s 10 and at the same time disallowing u/s 46 the liabilities to the extent of Rs. 20,271 on account of accumulated rent in respect of gifted properties. For the reasons stated in paragraph 16 of the order, the Board held that the provisions of Section 46 were rightly applied. So far as the liabilities of Rs. 2,701 representing the amount payable to S.P.P. Charities Trust are concerned, the Board held that, since the properties settled were included in the estate of the deceased, the amounts representing rent accumulations could not be treated as genuine liabilities. As for the liabilities of Rs. 1,71,184 the Board held that all the items except the item of Rs. 6,857 shown as payable to Smt. Lilavathi Bai were allowable. In regard to the sum of Rs. 6,857 the Board found that as early as in 1945 the deceased had gifted a property worth Rs. 20,000 to Smt. Lilavathi and that there was nothing to show that there was no connection at all between the gift made in 1945 and the above loan of Rs. 6,857. It was accordingly held that this loan was rightly disallowed u/s 46. The question whether the money-lending business belonged to the deceased or to Pankumari Bai being one of fact was not referred.

10. The first question which arises for determination to our mind is simple, viz., whether in fact a trust was created or not. During the course of the arguments, the learned advocate for the assessee, Sri Mallikarjuna Rao, referred us to the

trust deed, the terms of which show that the deceased had out of his free will and consent decided to donate certain properties of the value of Rs. 1,50,000 (H.S.) for the objects mentioned separately in that deed. We are not concerned either with the nature of the properties or the objects for which the trust was said to be created because, as we said earlier, it is necessary first to examine whether in fact a trust has been created. It is only when a trust has been created, the question whether it falls u/s 10 would arise. In the trust deed, in paragraph 4, the deceased had stated thus :

" The donor shall convey the properties specified above herewith to the trustees and the said trust shall be permanent and irrevocable. The heirs and other legal representatives of the donor, if any, shall not be entitled to any claim of the said properties made over to the trust nor any vested interest or right to abrogate the trust deed. "

11. Now it is clear from this clause that the donor intended to convey the properties which belonged to him to the trustees, i.e., himself as managing trustee and seven others, though all of them are related to him. Whether the donor had in fact executed a conveyance transferring the immovable property to the trustees, viz., himself and seven others, does not appear from the statement of the case. For that reason, we had asked the learned advocate for the assessee whether any such document was in fact executed, because if there was any such document we were prepared to call for a further statement of the case, otherwise there was no point in further prolonging our answer to the reference. Sri Mallikarjuna Rao, after obtaining an adjournment and after making enquiries and under instructions, now informs us that no such document was executed, but nevertheless contends that in fact no document was necessary because the donor who was the managing trustee was declaring himself to be the trustee under the trust deed. When it is stated in the deed that the donor shall convey the properties to the trustee he had intended that deed as a conveyance to himself as trustee and since he is the managing trustee, there is no need for a separate conveyance in favour of himself and other trustees. We are unable to accept this contention for the simple reason that apart from the fact that that clause envisages conveyance not only to himself but to the other trustees, when it uses the expression " the said properties made over to the trust ", there can be no valid trust unless the property is conveyed to all the trustees because the legal title vests in the trustees while the beneficial ownership is in others. We can well understand where there is a sole trustee who is also the owner of the property not conveying the property to himself because there is no need for transfer as he is not only the legal owner but also the sole trustee. In such circumstances, a mere declaration would be sufficient to change the nature of his possession from that of an owner to that of a trustee. There is no need for any overt act except declaration of trust. But where a body of trustees other than the owner himself or including the owner is to be vested with the title, then that property must be conveyed to that body of persons including the owner. Their lordships of the Supreme Court have stated in *Tulsidas Kilachand Vs. The*

Commissioner of Income Tax, Bombay City I, :

" No doubt, under sections 5 and 6 of the Indian Trusts Act, if the declarer of the trust is himself the trustee also, there is no need that he must transfer the property to himself as trustee; but the law implies that such a transfer has been made by him, and no overt act except a declaration of trust is necessary. The capacity of the declarer of trust and his capacity as trustee are different and after the declaration of the trust, he holds the assets as a trustee. Under the Transfer of Property Act, there can be a transfer by a person to himself or to himself and another person or persons. "

12. In this case, the intention of the deceased is to convey the property to himself and others which has not in fact been effected, and since this intention is not proposed to be effectuated under a will and it being not a case where he himself is the solo trustee, the trust can only be created by a transfer inter vivos to a trustee or trustees. If the trust relates to immovable property, the transfer or declaration must be by a document registered according to the law of registration. If it relates to movable property then no registration is needed. In this view, the deceased had not divested himself of the property and, therefore, he must be said to have died possessed of those properties. Section 10, therefore, will apply and the estate duty authorities have quite properly included them in the estate of the deceased. This finding is also supported by ample material.

13. The second question in our view is a question of fact, because there is ample evidence on which both the Assistant Controller of Estate Duty as well as the Tribunal could come to the conclusion that, notwithstanding the gift made a day or two prior to the coming into force of the Estate Duty Act, the transfer in fact took effect only after the coming into force of the Act. Nonetheless, there was evidence of the deceased himself being in enjoyment of the properties. In other words, he collected rents, utilised the rental income for his own business and purpose. There is also no evidence of any exclusive possession and enjoyment by the donee. In view of this, we think the estate duty authority's finding cannot be challenged.

14. In so far as the third question is concerned the Board had held that the liabilities were traceable to original gifts given by the deceased and therefore, stand excluded u/s 46 of the Estate Duty Act. The contention of the appellant was that the Assistant Controller was not justified in including the value of the gifted property u/s 10 and, disallowing liabilities to the extent of Rs. 20,721 on account of accumulated rents in respect of gifted properties. These accumulated rents are in the personal account of the donees in the books of the deceased. The Assistant Controller had, in not allowing the liabilities, relied upon the provisions of Section 46(1)(b). It is common ground that the resources of these parties in whose personal accounts the accumulated rents have been credited included properties derived from the deceased. In these circumstances, the Board considered that the provisions of Section 46 are attracted and have been

rightly applied. We do not find any reason to differ from this conclusion because they are based on facts, viz., that these are liabilities of the deceased in respect of the properties gifted by him, and therefore Section 46(1)(a) of the Estate Duty Act applies, which is as follows :

"46. (1) Any allowance which, but for this provision, would be made u/s 44 for a debt incurred by the deceased as mentioned in Clause (a) of that section, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefore which consisted of--

(a) property derived from the deceased ..."

15. These liabilities are in respect of properties derived from the deceased and have been rightly disallowed.

16. In the result, our answers to all the three questions is in the affirmative and against the assessee, with costs. Advocate's fee, Rs. 250.