(1989) 03 KL CK 0044

In the High Court Of Kerala

Case No : Income-tax Reference No. 39 of 1983

T.I. Mathai APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 16-03-1989

Acts Referred:
Estate Duty Act, 1953 — Section 10

Citation : (1990) 183 ITR 490

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : S. Parameswaran, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the accountable person, the Income Tax Appellate Tribunal (in short, "the Tribunal") has referred the following question of law for the decision of this court:

"Whether, on the facts and circumstances of the case, the value of the properties covered by the settlement deed dated 30-8-1124 (M. E.), are includible in determining the principal value of the estate, as property passing on the death of the deceased ?"

2. The assessment to estate duty arose on the death of one T. C. Issac on December 10, 1970. The deceased had executed a settlement deed in 1949, annexure D, dated 30-11-1124 (M. E.), in favour of his children. There was a reservation in the deed stating that the donees shall pay out of the income of the said properties to the donor and his wife annually an amount of Rs. 1,200 and 200 paras of paddy. It was further stipulated that the payment should be made to the donor during his lifetime and thereafter to his widow until her death. The deed contained the stipulation that in case any one of the donees failed to discharge the obligation cast on them, the donor can proceed against the defaulting party and his or their properties. It was also reserved that the donor can also claim and create a charge on the properties to the extent of the arrears.

It was also stipulated that if any default is committed, the donor could enter the property, take the yield and for arrears create a charge on the property and realise the amount due. The Assistant Controller of Estate Duty, in determining the duty payable, held that on the death of the deceased, the value of the properties settled should also be taken into account. He said so, since possession and enjoyment of the properties by the donees was not to the exclusion of the donor. Section 10 of the Estate Duty Act was applied. En appeal, the Appellate Controller accepted the plea of the assessee and held that the provisions in the settlement deed did not create a specific charge. In the second appeal filed before the Tribunal, the Revenue contended that on a proper interpretation of the settlement deed, Section 10 of the Estate Duty Act was attracted, since the gifted properties could not be said to have been possessed and enjoyed by the donees to the exclusion of the benefit arising to the donor under the gift. On an interpretation of the relevant clauses of the settlement deed dated 30-11-1124 (M. E.) and Section 10 of the Estate Duty Act, the Appellate Tribunal held that the deed was one creating an interest in favour of the donor and it restricted enjoyment of the gifted properties by the donees. Applying the principle laid down by the Allahabad High Court in K.C. Srivastava Vs. Controller of Estate Duty, , the Appellate Tribunal held that the deceased donor was not entirely excluded from possession and enjoyment of the gifted properties and so the value of the entire properties under the settlement deed should be included in the estate of the deceased for the purpose of estate duty. It is thereafter, on motion by the accountable person, that the Appellate Tribunal has referred the above formulated question of law for the decision of this court.

3. We heard counsel for the accountable person (applicant) as also counsel for the Revenue. Annexure "D" is the settlement deed dated 30-11-1124 (M. E.). The provisions therein are categoric in holding that the donees should pay out of the income of the properties a particular amount to the deceased during his lifetime and after his demise to his wife. If the donees failed to discharge their obligations, the donor was competent to proceed against the defaulting party or parties or against the properties. Reservation was also made, enabling the donor to create a charge on the properties for arrears and for amounts due. In the light of the above categoric provision in the settlement deed, we have no doubt that the gifted properties cannot be said to have been possessed and enjoyed by the donees to the complete exclusion of the donor or to the exclusion of any benefit arising to the donor under the gift. By the provisions of the settlement deed, an interest in favour of the donor was created restricting the enjoyment of the gifted property by the donees. The donor, and after his lifetime his wife, were entitled to receive certain amounts and paddy. The gift was subject to the obligation to remit such amounts. The donees were obliged to pay the amounts annually. The donor was also enabled to enter the property and take the income therefrom, if default is made in the payment of the amounts. What is more, the donor was enabled to bring the property to sale if the donees committed any default in the payment of amounts due for maintenance to the deceased. On these premises, it

cannot be doubted that the deceased had not been completely excluded from the possession and enjoyment of the gifted properties. The Appellate Tribunal was justified in holding so. There is no error of law.

4. In the light of our conclusion, we answer the question referred to us in the affirmative, against the accountable person and in favour of the Revenue. We should state that the decision of the Allahabad High Court in K.C. Srivastava Vs. Controller of Estate Duty, bears close resemblance to the facts in this ease. In circumstances similar to those in the instant case, the Allahabad High Court held that the entire property passed on death and was liable to estate duty.

5. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

