

(1967) 09 MAD CK 0048

In the Madras High Court

Case No : Tax Case No. 199 of 1963 (Reference No. 59 of 1963)

T.S. Rajam

APPELLANT

Vs

Controller of Estate Duty, Madras

RESPONDENT

Date of Decision : 29-09-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Estate Duty Act, 1953 — Section 2(16), 2(19), 26, 26(1), 26(2)

Citation : (1968) ILR (Mad) 685 : (1968) 69 ITR 342 : (1968) 81 LW 244

Judgement

1. The propriety and legality of the exercise of jurisdiction by the revenue u/s 62 of the Estate Duty Act, 1953, is challenged in these proceedings. The relevant facts are as follows :

2. T.V. Sundaram Iyengar, hereinafter referred to as the deceased, died on April 28, 1955. His son, T.S. Rajam, hereinafter referred to as the accountable person, filed the necessary returns. The Assistant Controller of Estate Duty, Madurai, originally assessed the estate of the deceased on February 28, 1957, determining the principle value of the estate at Rs. 3,84,066. Subsequently, by his order dated July 31, 1959, the Assistant Controller rectified the earlier assessment u/s 62 of the Act and revised the principle value of the estate at Rs. 6,12,879. The main item of dispute in this tax relates to the 1,000 shares which the deceased held in Messrs. T.V. Sundaram Iyengar and Sons (Private) Limited. The deceased sold these 1,000 shares to his sons and grandsons on December 6, 1954, for a sum and consideration of Rs. 1,00,000. The Assistant Controller was of the view that the sale was a disposition in favour of relatives within the meaning of section 27 of the Act and was also of the view that the estate has to be re-evaluated taking into consideration the value of the shares as on the date of death of the deceased on the ground that such property should be deemed to have passed on the death of the deceased u/s 27 read with section 9 of the Act. In the course of the such exercise of jurisdiction apparently u/s 62 on the ground that there has been an omission in the valuation of these shares resulting in a mistake apparent from the record as a result of such valuation, the Assistant

Controller considered that the fair value of the shares as on the date of sale should be taken to be Rs. 310 per share and as the full consideration in moneys worth has not been received by the deceased, the estate has to be re-valued so as to bring in such omission which has not been included in the estate as being exigible to tax. The accountable person preferred an appeal to the Central Board of Revenue u/s 63 of the Act against the order dated July 31, 1951, passed by the Assistant Controller, and contended that there was no mistake apparent from the record, nor a mistake in the valuation of any property or any omission of property in the assessment and that the provisions of section 27 read with section 9 of Act were not applicable to the sale of 1,000 shares by the deceased on December 6, 1954. The Board held, after examining the position independently by themselves, that the deceased had sold 1,000 shares to his sons and grandsons within a period of two years before the date of death at the face value of Rs. 100 per share. The Board also found that all the shares have to be evaluated at Rs. 258 as on the date of death of the deceased. The Board was of the view that there had been no significant change either in the position of the company or in the value of shares between the date of sale, namely, December 6, 1954, and the date of death, namely April 28, 1955. It would be equitable to take the fair market value of these shares each at Rs. 258 as on December 6, 1954. They finally concluded that, as these shares were sold to relatives for a consideration which was only partial and not full, the difference between the market value of the shares and the face value should be considered as a gift within the meaning of section 9 of the Estate Duty Act read with section 27. This property not having been returned by the accountable person and thus having escaped the attention of the original officer who assessed the estate, the Board was of the view that the rectification was permissible u/s 62 of the Estate Duty Act. Ultimately, the Board held that a sum of Rs. 1,58,000 has to be added on to the estate on the ground that it was mistakenly omitted to be added by the first officer who took up the assessment proceedings. On application made by the accountable person on May 9, 1960, to refer a case to this court, the Central Board of revenue referred the following two questions for our decision :

1. Whether, on the facts and circumstances of the case, the rectification of the original assessment u/s 62 of the Act was valid in law ?
2. Whether, on the facts and circumstances of the case, the inclusion of the sum of Rs. 1,58,000 as property deemed to pass on the death of the deceased u/s 9 read with section 27 of the Act was in accordance with the law ?
3. When the subject came up before this court on an earlier occasion, it was held that the statement of the case was not sufficient to enable it to dispose of one of the questions referred therein. Therefore, the Board was directed to submit a further statement of the case :

Whether the statement in ground No. 17 in the memorandum of appeal to the Board of Revenue was correct ?

4. A supplementary statement of the case was submitted by the Central Board of Direct Taxes, New Delhi, and the Board, while reiterating the position stated earlier, has restated the case and observed :

In view of the statement made by the Assistant Controller in the assessment order,..... it may be taken that the account containing the sale of the 1,000 shares had been by him before completion of the assessment.

... The records do not show that the Assistant Controller was informed before making the original assessment on 28th February, 1957, that the sale of 1,000 shares of T.V.S. Iyengar & Sons Ltd. by the deceased was effected at less than market value of the shares as at the time of sale on December 6, 1954. The records also do not show that the Assistant Controller had at any time on or before 28th February, 1957, considered the applicability of sections 9 and 27 of the Estate Duty Act, 1953, in respect of the sale of these 1,000 shares.

5. On ground No. 17, the finding of the Board is that :

The fact of sale of 1,000 shares of T.V.S. Iyengar & Sons Ltd. was known to the Assistant Controller before the assessment dated 28th February, 1957, was completed; but the fact that these sales were effected at less than their market value was not before the Assistant Controller who did not consider the applicability or otherwise of section 9 and 27 of the Estate Duty Act to these sales before making the original assessment.

6. The case once again, after the re-statement of the case by the Board, which we are constrained to say is still incomplete, has been placed before us for rendering our answers on the two questions as originally framed. Though hesitantly, it was mentioned by Mr. Swaminathan, learned counsel for the applicant, that the sanction of the Board was not obtained by the officer before the initiated proceedings to rectify the records u/s 62 of the Act, it was not pressed before us, as apparently such sanction was indeed obtained.

7. We may, at the outset, note the history of the legislation and the scheme of the Estate Duty Act, 1953, in so far as the questions referred to us are concerned. The Estate Duty Bill, 1952, as introduced in the House of the People, did not contain any provision like section 62 of the Estate Duty Act, 1953, hereinafter referred to as the Act. When the Bill was referred to the Select Committee, it was felt that a provision for rectification was necessary. A suggestion was made accordingly, which was later accepted. This is what we find in the present section 62 of the Act. The scheme of the Act is as is usual with any other taxing statute. Section 62 dealing with "rectification of mistakes" relating to valuation for estate duty is sandwiched between sections 61 and 63, the former dealing with the power of the Controller in respect of valuations of the estate and the latter dealing with appeals against determination by the Controller. These sections in Part VII of the Act, dealing with collection of the duty, indeed provide for the machinery for the due and proper collection thereof. Such provisions should be applied to further the remedy and suppress the

mischievous, rather than interpret them so as to avoid the charge. Such provisions ought not to be subject to a rigorous construction but ought to be liberally viewed. Viewed in this context and to achieve the object of the law to charge an estate with duty in accordance with its charging provisions, it is necessary to consider the various limbs of section 62 of the Act before we apply them to the facts of the case.

8. Section 62 runs as follows :

Rectification of mistakes relating to valuation for estate duty. - (1) If, after the determination of the estate duty payable in respect of any estate, it appears to the Controller that, by reason of any mistake apparent from the record or of any mistake in the valuation of any property in any case other than a case in which the valuation has been the subject-matter of an appeal under this Act or of the omission of any property, the estate duty paid thereon is either in excess of or less than the actual duty payable, he may, either on his own motion or on the application of the person accountable and after obtaining the previous approval of the Board, at any time within three years from the date on which the estate duty was first determined -

(a) refund the excess duty paid, or, as the case may be,

(b) determine the additional duty payable on the property :

Provided that where the person accountable had fraudulently underestimated the value of any property or omitted any property, the period shall be six years :

Provided further that no order shall be made under this sub-section unless the person accountable has been given any opportunity of being heard.

(2) Nothing contained in sub-section (1) shall render any person accountable to whom a certificate that the estate duty has been paid is granted liable for any additional duty in excess of the assets of the deceased which are still in his possession, unless the person accountable had fraudulently attempted to evade any part of the estate duty in the first instance.

9. Thus, the section vests in the Controller jurisdiction to rectify (a) any mistake apparent from the record, (b) any mistake in the valuation of any property in any case other than a case in which the valuation has been the subject of an appeal under the Act and (c) any omission of any property. The Controller might rectify such above mistakes or omission either suo motu or on application of the aggrieved person and after obtaining the previous approval of the Board. In normal cases, the period of limitation for the exercise of such jurisdiction is three years; but where the accountable person had fraudulently under-estimated the value of the property or omitted any property, the period is six years. In any event, the accountable person has to be heard before any order is passed by the Controller. Section 62(2) is not relevant for consideration in the instant case.

10. The problem posed is whether the accountable person in the instant case can

be subject to further estate duty in relation to the estate of Sri T.V. Sundaram Iyengar on the ground that the revenue discovered a mistake in the earlier assessment proceedings and such mistake has to be rectified. Taxing statutes sometimes are highly sophisticated and artificial. Yet they have to be strictly construed as there cannot be any intendment in a tax. To answer the questions referred to us, an analysis and elucidation of the words "mistake", "mistake apparent from the record", and "rectification" as understood in taxing laws with particular references to section 62 of the Act is necessary.

11. "Mistake" is an ordinary word, but in taxation law, it has a special signification. It is not an arithmetical or clerical error alone that comes within its purview. It comprehends errors which, after a judicious probe into the record from which it is supposed to emanate, are discerned. It is difficult to axiomatise and lay down dictas for the discovery of a mistake from official records. The word "mistake" is inherently indefinite in scope, as what may be a mistake to one may not be one for another. It is mostly subjective and the dividing line in border areas is thin and indiscernible. Indeed, it is imponderable due to its inherent indefiniteness. It is something which a duly and judiciously instructed mind can find out from the record. It may be that sometimes an argument, though not a complex study, may be required to find it out. But that by itself is not the test to discountenance it as being not a mistake apparent from record. In the ultimate analysis, the conclusion a well equipped and trained judicial mind will reach after scrutinising the record, will govern and his finding whether it is a mistake or not has to be accepted.

12. The judicial precedents under the analogous provision in the Income Tax Act, namely, section 35, may be usefully referred to. Section 35 enables rectification to be made of any mistake apparent from the record either on his own motion by the Commissioner or the Appellate Assistant Commissioner or by the Appellate Tribunal on their own motion or when such a mistake is brought to their notice by an assessee. Interpreting this section, Gentle C.J. and Yahya Ali J. in *Commissioner of Income Tax v. O.R.M.SM.SV. Sevugan* observed as follows :

Section 35 has limited application..... Clearly that section does not enable an order to be reversed by revision or by review but permits only some error, which is apparent on the face of the record, to be corrected.

13. Their Lordships of the Supreme Court in *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* were of the opinion that, where an error is far from self-evident, it ceases to be an apparent error. In the words of Rajagopala Ayyangar J. in *Subbaraja Mudaliar v. Commissioner of Income Tax* :

The jurisdiction of the officer to rectify a mistake is dependent on the mistake being apparent from the record. It is no doubt true that a mistake capable of being rectified u/s 35 is not confined to clerical or arithmetical mistakes. On the other hand it does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof.

14. The Supreme Court in *Master Construction Co. (P.) Ltd. v. State of Orissa* expressed the view that an error which is apparent on the face of the record should be one which is not an error which depends for its discovery on elaborate arguments on questions of fact or law. More succinctly the problem has been posed and answered by the learned judges of the Supreme Court in *Income Tax Officer, Alwaye v. Asok Textiles Ltd.* The following observation at page 735 makes the position clear :

The learned judges of the High Court seem to have fallen into an error in equating the language and scope of section 35 of the Act with that of Order XLVII, rule I, Civil Procedure Code. The language of the two is different because according to section 35 of the Act which provides for rectification of mistakes the power is given to the various Income Tax authorities within four years from the date of any assessment passed by them to rectify any mistake apparent from the record and in the CPC the words are an error apparent on the face of the record and the two provisions do not mean the same thing. This court in *Maharana Mills (Private) Ltd. v. Income Tax Officer, Porbandar* had laid down the scope of section 35 at page 358 in the following words :

The power u/s 35 is no doubt limited to rectification of mistakes which are apparent from the record. A mistake contemplated by this section is not one which is to be discovered as a result of an argument but it is open to the Income Tax Officer to examine the record including the evidence and if he discovers any mistake he is entitled to rectify the error provided that if the result is enhancement of assessment or reducing the refund then notice has to be given to the assessee and he should be allowed a reasonable opportunity of being heard.

15. Thus, therefore, it is clear that a complicated argument is neither plausible nor has to be countenanced for the purpose of ascertaining whether the mistake, which may be either of law or of fact, is apparent from the record. To a somewhat similar, but of a wider import, is the following passage appearing in *Income Tax Officer v. S.K. Habibullah*. This passage is indeed referred to in *Ethel Rodrigues v. Assistant Controller of Estate Duty* The passage is this :

The power of rectification may be exercised subject to two conditions : (1) that there is a mistake apparent from the record of the assessment, and (2) that the order of rectification is made within four years from the date of the assessment sought to be rectified. The mistake which may be rectified need not be in the order itself; it may be in any part of the record or proceeding of assessment of the assessee.

16. Another test, but slightly couched in different language, has been laid by the Supreme Court in *K.M. Shanmugam v. S.R.V.S. (P.) Ltd.* The following observation of the Supreme Court brings home the well-laid formula for deduction of mistakes and for rectification of the same; namely, it depends upon the equipment of a particular judge to discover whether on a fair probe into the

record, such a mistake does appear and if such mistake is so apparent in the record, it has to be rectified out of the four corners of law. Discussing the test laid down by Das Gupta J. in *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* that "an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record", the learned judges of the Supreme Court in the case cited, observed :

The learned judge (Das Gupta J.).....lays down the complex nature of the arguments as a test of an apparent error of law. The test also may break, for what is complex to one judicial mind may be clear and obvious to another; it depends upon the equipment of a particular judge. In the ultimate analysis the said concept is comprised of many imponderables : it is not capable of precise definition, as no objective criterion can be laid down, the apparent nature of the error, to a large extent, being dependent upon the subjective element. So too, in some cases, the boundary between error of law and error of fact is rather thin..... The question whether the said errors are errors of law or fact cannot be posited on a priori reasoning, but falls to be decided in each case. We do not, therefore, propose to define with any precision the concept of error of law apparent on the face of the record; but it should be left, as it has always been done, to be decided in each case.

17. On a fair conspectus of the ratio of the various decisions of this court and the Supreme Court, it is now clear that for a rectification of an error which is said to be apparent from the face of the record, the mere complexity of the problem or that genuine argument is necessary to discover the same may not by themselves be sufficient to oust the jurisdiction of a tribunal to rectify such a mistake. If, however, it could be discerned with some precision after a fair probe into the assessment records and a reasonable and probable conclusion can be arrived at, that the courts conscience has been shaken, in that there appears an error on record which has to be certainly corrected, then it would appear that the jurisdiction of the tribunal vesting with power to rectify such mistakes arises. As has been repeatedly pointed out, it is very difficult to state where the jurisdiction begins and where it ends. One thing, however, emerges from the discussion above. The essence of rectification is to bring the order which was expressed and intended to be in pursuance of the existing law, into harmony with such law. It presupposes a particular state of affairs and it requires proof that by such a mistake the final order fails to give proper effect of the law and its functions. Once the tribunal or authority is able to predicate with certainty as to in what manner and how the order suffers by a mistake apparent on its record supported by irrefragable evidence, then it would indeed enable them to bring the order complained against or impugned against in conformity with law and the facts in the record.

18. Having thus found the circumstances under which a mistake within the meaning of section 62 of the Act can be rectified, we shall now consider the

range of such mistake, which could come within the mischief of the same. We have already grouped them under three heads. Mistake which is apparent is obvious. A mistake as to valuation may be apparent or may be latent; an omission may be wanton or accidental. In the latter two cases of mistakes, there is scope for such a mistake to be a lurking one; both the accountable person and the revenue might have applied initially their minds and the issue might have escaped their attention. Even then it would be a lurking one which can be corrected. Even so, in the case of an omission, no question of application of mind by either arises. It is implicit in the fasciculus of sections of which section 62 forms part, that even an improper valuation or an omission to properly evaluate may be viewed as a rectifiable mistake. The object of the Act, as is seen from the Statement of Objects and Reasons, is to impose an estate duty on property passing or deemed to pass on the death of a person. The charge is on the property passing and the rate of tax depends on the value of the estate. Section 62 follows section 61. Even a valuation by the Controller u/s 61 can be corrected if such evaluation is on a mistaken basis, u/s 62. We are satisfied that section 61 and section 62 are not mutually exclusive. The Act is concerned with valuation of property which passes on death. In this connection, reference can usefully be made to section 2(16) which defines property passing on death and to sections 6 and 9 which, inter alia, deal with property which is deemed to pass on death but which is subject to the imposition of estate duty under Part II of the Act and sections 26 and 27 in Part III, thereof dealing with exceptions from charge of estate duty. Therefore, when the Controller (a) mistakes in the adoption of the date when the property has to be valued, (b) commits an error in not including a property which is deemed to pass on death, (c) erroneously fails to bring into the net of taxation a gift, which would normally be includible in the estate, and (d) fails to visualise an element of bounty in a given transaction, which part is made exigible to tax, then all, which are only illustrative and not exhaustive, would be mistakes, which can be rectified. Such rectification is however subject to the guiding principles already indicated by us.

19. Mr. Swaminathan, learned counsel for the accountable person, contends that if viewed in the light as above, it might mean that a power of revision is rolled up in section 62 of the Act, along with the power to rectify. We do not agree. If an obvious error, a lurking mistake, or an omission leading to a mistake is discovered from the records, it can be and ought to be corrected and rectified, so as to bring to tax such property which has or is deemed to have passed on the death of an individual and which has to be aggregated for quantifying the value of the estate and for fixing the rate of duty. It has to be remembered that the word "omission" appearing in section 62 of the Act has a wider connotation and it has to be fully implemented so as to bring to tax any property which has been omitted to be aggregated for purposes of levy of duty on the date of death.

20. In one sense it borders on escapement. That this is so is clear from the fact that section 62 has later been amended so as to make this object more expressive by providing two independent sections, sections 59 and 61, in the

Estate Duty Act, 1953, as amended in 1958. As it is necessary to interpret section 62, without causing violence to the main intendment, scope and object of the Act, we are of the view that any mistake falling under the group designed by us as above is bound to be rectified u/s 62.

21. Thus even if rectification as is normally understood is possible in the instant case, it has to be examined whether the mistake is a rectifiable mistake u/s 62 of the Act. The transfer of the 1,000 shares made by the deceased on December 6, 1954, for a stated consideration of Rs. 100 each is admittedly to his sons and grandsons who are characterised as relatives u/s 27(7) of the Act. If the disposition is to a relative, section 9 is attracted, making it as a gift subject to such deductions as envisaged in section 27. Mr. Swaminathan, learned counsel for the accountable person, contends, (1) that the transaction is not a disposition made by the deceased in favour of a relative within the meaning of section 27(2) that the sale is a bona fide one fully supported by consideration in money or moneys worth, (3) that the fiction envisaged in section 27 which contemplates the treating of the transaction as a gift u/s 9 of the Act does not arise, and (4) that the Assistant Controller who made the initial assessment did apply his mind to section 27 and, therefore, to section 9, and therefore the second officer cannot find in the records any mistake, much less a rectifiable mistake within the meaning of section 62. On the other hand, the case of the revenue is that having regard to the wide and expressive provisions of the Act, the disposition made by the deceased in favour of his sons and grandsons do come within the net of taxation as it is a sale to a relative with an element of bounty involved in it and that the full consideration has not been received by the deceased. Mr. Balasubrahmanyam contends that the word "disposition" includes a sale and the records do not explicitly make out that the first officer applied his mind fully and considered the impact of sections 26, 27 and 9 of the Act on the admitted facts and circumstances of the case. Even the Central Board of Revenue who were specifically directed to furnish an additional statement of the case on this aspect, have not pointedly adverted to certain necessary details. We, with the assistance of counsel, waded through the records. We are not satisfied that there is full warrant for the submission that the first officer did consider the subject in the light of the three stated sections as above. No doubt, in one of the letters dated December 10, 1955, section 27 is referred to by the officer, who had the full particulars about the nature of the transaction. That by itself cannot rule out the possibility of the Assistant Controller making a mistake either in evaluating the transfer for purposes of aggregation u/s 34 of the Act or by omitting the deal without making it exigible to estate duty. We are not convinced that the Assistant Controller completed the assessment on February 28, 1957, accepting the submission that the sales are outside the purview of sections 27 and 9 of the Act.

22. We shall now consider the tenability of the argument of the accountable person that the transfer of shares on December 6, 1954, is not a disposition and in any event, it is fully supported by consideration and no element of bounty is involved. Section 2(19) while refining "settled property" provides that settlement

means any disposition including a dedication or endowment whereby property is settled. On the strength of this, it is argued that section 27 which deals with a disposition cannot include a sale and therefore the sale of shares in the instant case is excluded. Section 27 runs as follows :

27. Dispositions in favour of relatives. - (1) Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of section 9 as a gift unless -

(a) the disposition was made on the part of the deceased for full consideration in money or moneys worth paid to him for his own use or benefit; or

(b) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only; and references to a gift in this Act shall be construed accordingly :

Provided that where the disposition was made on the part of the deceased for partial consideration in money or moneys worth, paid to him for his own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

(2) Where the deceased has made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of this section as consideration for the disposition made by the deceased

23. Then section 9 reads as follows :

Gifts within a certain period before death. - (1) Property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been bona fide made two years or more before the death of the deceased shall be deemed to pass on the death :

Provided that in the case of gifts made for public charitable purposes the period shall be six months.....

24. Section 26 also may be usefully quoted :

26. Property passing by reason of a bona fide purchase for full or partial consideration in money. - (1) Subject to the provisions of section 27 and section 46 estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a bona fide purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or moneys worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the

use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or moneys worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

25. On a fair reading of the above sections, it is impossible to accept the meaning which the accountable person wants to place on the word "disposition". No doubt, the word is not defined. But there is no positive indicia in the Act to shackle the popular meaning of the word. It has necessarily a wide connotation. It is only used as expressive of any transfer inter vivos or by operation of law. To say that a disposition can only mean a settlement taking the hint from section 2(19) would be to limit unduly the true meaning of the word. A settlement is illustrative of the species of disposition known to law, but cannot be an equation thereof and certainly not exhaustive. In the words of Lord Macnaghten in *Duke of Northumberland v. Attorney-General* :

In many cases the purpose of the Act would be defeated unless you give to the term disposition the largest possible signification - not only so, but the Act shows on the face of it that the terms disposition includes a sale.

26. The ratio in the above case is equally applicable to the Indian Act as the provisions of the Estate Duty Act in India and in the United Kingdom are in *pari materia*. The language of section 26 of the Act contemplates a purchase and incidentally a sale; yet the expression "disposition" is used. Ordinarily, a settlement is not made for consideration in money or moneys worth. Section 9 literally elaborates what a disposition can be. It may be by transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise. Thus, settlement is not interchangeable with disposition and vice versa. "Disposition" includes a settlement, but settlement is not the only way to dispose. We are therefore of the view that a sale is comprehended in the expression "disposition" appearing in section 27 of the Act.

27. At this stage it has to be considered whether the disposition of the shares by the deceased intrinsically involve an element of bounty in it.

28. The transaction with which we are concerned is a sale of shares by the father to the sons and grandsons. Before we embark upon the issue whether the money or moneys worth, which represented the consideration of the deal, is adequate or otherwise, as a matter of fact, it is necessary to vivify the transaction in the light of the specific provisions of the Act. We have indicated that the object of the Act is to evaluate the estate of the deceased properly after duly aggregating it. If, in the process, the revenue fails to include a property from such a reckoning and under-estimates a property, in both the cases, there is a faulty assessment of the quantum of the estate. Such a quantitative inaccuracy may sometimes lead to an

incorrect charge both in rate and in the totality of its value. Section 27 prescribed a rule of evidence. The non-obstante requirement u/s 27 prescribed a rule of evidence. The non-obstante requirement u/s 27 has to be literally satisfied to take out a given transaction from its mischief. If the disposition was made on the part of the deceased for full consideration in moneys worth paid to him for his own use and benefit, then it would be outside the purview of section 27. If it is otherwise and if the disposition is in favour of a relative, the presumption embodied in section 27 operates and makes it a gift u/s 9. The shares having been sold by the deceased to his sons and grandsons, normally the presumption begins to operate and makes it a gift, thus clubbing by such a statutory procedural impact, the transaction with an element of bounty. Of course, this is a presumption, Has this presumption been rebutted in this case ?

29. To answer this query, the surrounding circumstances of the disposition and the primary facts attendant upon it have to be examined. Learned counsel for the accountable person is unable to explain as to why a sum of Rs. 100 was adopted in December, 1954, as the value of the shares, though a few months later, i.e., on the date of valuation of the estate, for purposes of estate duty the accountable person agreed to a value of Rs. 258 per share as regards other similar shares, which admittedly passed on the death of the deceased. The insignia of a commercial transaction is prima facie absent in the deal. When the deceased was disposing of the shares to his sons and grandsons and if such disposition is within two years of his death, as in this case, the burden of proof that full consideration of money or moneys worth passed is on the accountable person. No satisfactory explanation is forthcoming, as to why the value adopted fell short of the normal admitted price of the shares, though it was on a date a few months later. Full consideration means fair price, and partial consideration is something which falls short of the fair price. The contention of the learned counsel for the accountable person is that the price as fixed and received by the parties, even though relatives, must be taken for granted to be the fair price and such a price is not open to review and criticism by the revenue authorities. This is far from being the intendment of the Act. If parties closely knitted together by blood stipulate a price, as the consideration for a disposition and this were to be the be all and end all of all discussions regarding the adequacy of the price paid, we fail to see how sections 26 and 27 can at all be pressed into service. They will be rendered otiose and they need not appear in the statute book at all. Both the sections appear in Part III of the Act dealing with exceptions from charge of duty. One such exception as provided in section 26 is in relation to a transaction which is supported by full consideration in money or moneys worth. If what is stated in the document of disposition is to be unqualifiedly accepted as the consideration, the significance of the expression "full consideration in money" in section 26(1) and "partial consideration in money" in section 26(2) fades into insignificance. Further, the consideration cited in the document of disposition shall be allowed as a deduction from the value of the property for the purposes of estate duty both u/s 26 and u/s 27 of the Act. If, therefore, the consideration received in the deed of

disposition is the only factor to be considered, as contended, full effect cannot be given to the scope and meaning of the text of sections 26 and 27 amongst others. Such internal legislative construction of the sections being available intrinsically in the sections themselves, they are of the highest value and prevail over other extrinsic aids to interpret them. All a priori considerations should be eschewed, if within the four corners of the sections, the four corners of the section, the meaning is clear and discernible. We are, therefore, unable to accept such a reasoning of the learned counsel for the applicant that the consideration cited in the deed of disposition is and can only be the guide for reckoning the consideration for the same.

30. The argument was also addressed on a slightly different perspective. Even though the sale is to a relative, unless it could be held that it is an unreal sale and one which is tainted with suspicion, the question of adequacy or otherwise of the consideration does not arise. If this argument is accepted, it would in effect be introducing into the language of sections 26 and 27 something which they do not contain and which, in our opinion, they do not postulate. The observations of the eminent judge Rowlatt J. in *In re Baroness Bateman* may be usefully quoted :

The question is whether the object of the transaction was really on the one side to get money for goods by disposing of the goods in the future, and on the other side to pay money and obtain goods..... Partial consideration is opposed to full consideration in money or moneys worth, which means that the full fair price has been paid and that nothing is left over for gift or natural love and affection or any other consideration. In other words it is the full and fair value as between buyer and seller, while partial consideration means something less than that.

31. As pointed out by the House of Lords in *Attorney-General of Ontario v. Perry* :

... a gift does not cease to be gift although there is some consideration for it received by the donor.

32. An ingenious argument was advanced by the accountable person, that as the shares are not quoted in the share market, being shares in a private limited company, it has no market value and therefore the consideration agreed to be received by the vendor in connection with the sale of such shares, should be deemed to be the fair and full value thereof. This argument is developed on the basis of the following passage in *Dymonds Death Duties*, fourteenth edition, 1965, at page 254 :

The adequacy and extent of the consideration, which would be immaterial if the question were one of validity of contract, may therefore be an important factor in discovering the true nature of the transaction for estate duty purposes, it is submitted that a further relevant factor is the nature of the property disposed of; if this was property, such as Government securities, whose value was readily ascertainable and which could readily have been sold for full value in a free market, a transfer at even a high proportion collateral consideration) as a partial gift, since it is difficult to conceive that such a transaction could take place

without a conscious intention of partial bounty on the part of the transferor and a conscious receipt of bounty on the part of the transferee.

33. But there is a fallacy in the argument. What is contemplated by the legislature, when it used the expression "full consideration in money or moneys worth" in sections 26 and 27, is whether the price paid is fair. The Supreme Court, while interpreting a similar expression in the Income Tax Act, in *Commissioner of Income Tax v. George Henderson and Co. Ltd.* held :

The expression full value means the whole price without any deduction whatsoever and it cannot refer to the adequacy or inadequacy of the price bargained for.

34. In the process of evaluation, if the revenue or the Tribunal or even the court comes to the conclusion that there is abundant evidence that the full price has not been paid for the sale, an irresistible presumption can be drawn that there is an element of bounty in the transaction and particularly so because it is a deal between relatives. Courts are not to be illusioned by the nomenclature adopted by the parties as regards a disposition. Merely because it is a sale, it does not shut all doors of a fair investigation into the fact whether the full and fair price for the disposition has been paid. The transaction has to be fully analysed. In the words of Lord Esher M.R. in *Attorney-General v. Worrall*.

..... the court has to determine what the real nature of the transaction was, apart from legal phraseology and the forms of conveyancing.

35. The revenue contends that in the instant case, the consideration paid falls short of even the actuarial or accountants valuation of the shares as disclosed in the balance-sheets of the company ending with December, 1954. It is not disputed that the onus, in this case, is on the accountable person to establish that full price or the true money equivalent of the 1,000 shares has been paid, or even otherwise to establish that "what is given is a fair equivalent for what is received". The only way the accountable person attempted to discharge the onus is to show that the first officer had all relevant material before him and that he even referred in the correspondence to section 27 and, therefore, there is as it were an equitable estoppel against the revenue to re-open the question as to valuation. There can be no estoppel against statute. If the officer omitted to evaluate the shares in a manner known to law and if this is found by the second officer, while exercising his jurisdiction u/s 62, it does not lie in the mouth of the accountable person to argue that such a re-scrutiny by the second officer and re-evaluation of the shares, which has been omitted to be aggregated, cannot be undertaken. If this contention were to be countenanced, it would result in the creation of a barrier to the revenue at all material times to re-open a mistake in the value of property, though patent and obvious.

36. What has been done by the first office first to accept the consideration as shown by the deceased. No independent thought was bestowed to consider whether it represented the fair and full price of shares. There is, therefore, an

omission of valuation in accordance with accepted judicial practice. Further, the mandate under the Estate Duty Act is to value the estate that passes or is deemed to pass on the date of death of the deceased. In so far as the 1,000 shares are concerned, the first officer did not do so. In fact, the accountable person has agreed that the value of each share of the company is Rs. 258 on the date of death. The Tribunal therefore was right in accepting the application of the doctrine adumbrated in sections 9 and 27 of the Act, as was done by the second officer. One observation, however, has to be made before we answer the two queries referred to us. It does not appear from the record that the accountable person did really have an opportunity to prove as to what would be the fair price of the shares on the date of sale. This opportunity is indeed necessary in the interests of justice. Being confident that such a fair opportunity would be given by the revenue, we are not dwelling at length on this aspect and indeed it is not essential to do so to render our answers.

37. We, therefore, answer both the queries in the affirmative and against the assessee. This tax case is therefore dismissed with costs. Counsels fee Rs. 250.

38. Questions answered in the affirmative.