

Assistant Controller of Estate Duty

Vs

Prayag Dass Agarwal

Civil Appeal No. 1843 of 1974

(R.S. Pathak, E.S. Venkataramiah JJ)

23.04.1981

JUDGMENT

VENKATARAMIAH, J. –

1. The question which arises for consideration in this appeal by special leave is whether under Section 52 of the Estate Duty Act, 1953 (hereinafter referred to as 'the Act') the Central Government is bound to accept in satisfaction of the whole or any part of the duty payable under the Act at such price as may be agreed upon between the Central Government and the person accountable for estate duty any property passing on the death of the deceased when an application is made for that purpose by such person.

2. On the death of Lala Beni Madho Agarwal which took place on September 29, 1964 his son Prayag Dass Agarwal, the respondent herein filed a statement of account under the Act of the estate passing on the death of the deceased. The estate duty payable in respect of the estate in question was determined at Rs. 3,37,543.40 by the Assistant Controller of Estate Duty, Allahabad by his order dated November 30, 1970. When the appeal filed against the said order was still pending, the respondent made an application under Section 52(1) of the Act on February 16, 1971 to the Central Board of Direct Taxes offering one of the items of property passing on the death of the deceased, namely premises No. 1, Phaphamau Road, Allahabad, whose principal value had been determined by the Assistant Controller at Rs. 2,53,625 in part payment of the balance of estate duty which was still payable by him under the order of assessment. The said application elicited a cryptic reply dated September 16, 1971 from the Under-Secretary of the Central Board of Direct Taxes, the relevant part of which reads as follows : "I am directed to refer to your petition dated February 16, 1971 on the subject mentioned above and to say that your offer is not acceptable."

3. The Assistant Controller, however, wrote to the respondent on October 21, 1971 stating that the respondent could pay the arrears of estate duty payable by him in monthly installments of Rs. 10,000 each beginning from October 29, 1971 subject to payment of interest @ 9% per annum on the arrears outstanding. Thereupon the respondent filed a writ petition before the High Court of Allahabad under Article 226 of the Constitution against the Assistant Controller, the Central Board of Direct Taxes and the Union of India requesting the High Court to issue a writ in the nature of mandamus to the Union of India to consider the application made by him under Section 52(1) on its merits, to negotiate and settle the price of the property offered by him in settlement of part of duty payable by him and to give credit to the extent of the price so determined under the Act. The respondent contended inter alia that Section 52 of the Act conferred a right on an accountable person, if he chose to do so, to offer an item of property passing on the death of the deceased in respect of whose estate, duty was payable under the Act in discharge of the whole or part of such

duty and that it imposed a reciprocal obligation on the Central Government to accept such property and adjust its price as may be agreed upon between the Central Government and the accountable person towards the duty payable. He further contended that the Central Government had no right to refuse to accept the offer so made by the accountable person and that he having made the offer to pay the duty by transfer of the property in question he could not be compelled to pay the duty to the extent of its price. He, therefore, prayed for the issued of appropriate directions to the Central Government to comply with Section 52 of the Act accordingly.

4. On behalf of the Union Government it was inter alia urged that it was not bound to accept an offer made under Section 52(1) of any property and it was within the discretion of the Union Government to reject the offer.

5. The High Court held that if the accountable person exercised the option to pay the estate duty by transferring property, the Central Government could not refuse to accept the offer and insist upon payment by another mode when there was agreement about the price between it and the accountable person. It, however, held that it was not necessary to decide the question whether it was open to the Central Government to refuse the offer of property on a ground other than the price as the impugned order had not disclosed any reason at all for rejecting the offer. Accordingly the High Court directed the Union Government and the Central Board of Direct Taxes to dispose of the application of the petitioner afresh in accordance with law. This appeal is filed against the said decision of the High Court under Article 136 of the Constitution.

6. Section 5(1) of the Act provides that the case of every person dying after the commencement of the Act there shall, save as expressly provided in the Act, be levied and paid upon the principal value ascertained as per the relevant provisions of the Act of all property, settled or not settled, including agricultural land situate in the territories which immediately before November 1, 1956 were comprised in the States in the First Schedule to the Act which passes on the death of such person, a duty called 'estate duty' at the rates fixed in accordance with Section 35 of the Act. The rates of estate duty are set out in the second Schedule to the Act. The principal value of the property liable for estate duty has to be ascertained in accordance with the provisions in Part V of the Act. The estate duty levied under the Act can be collected as per provisions in Part VII of the Act. Section 51 of the Act states that estate duty may be collected by such means and in such manner as the Central Board of Direct Taxes may prescribe. Rule 18 of the Estate Duty Rules (hereinafter referred to as 'the Rules') made by the Central Board of Direct Taxes in exercise of the powers conferred by sub-section (1) of Section 85 of the Act deals with payment of estate duty. That rule provides inter alia that payment of any duty may be made by delivery of a cheque on a scheduled bank or by a bank draft issued by a scheduled bank or by depositing the amount of duty in the Government Treasury or by adjustment of any refund of income tax, excess profits tax, business profits tax or excess profits tax deposit. Section 52 of the Act as it was originally enacted provided that the Board might prescribe that Government securities could be accepted in payment of estate duty on such items as it thought fit. When it was suggested that a provision corresponding to Section 56(1) of the Finance (1909-10) Act, 1910 as it stood at the time when the Act was enacted could be introduced into the Act, it was not accepted by the Indian Finance Minister. Section 49 of the British Finance Act, 1946 (9 & 10 Geo 6 c. 64) provided that the Commissioners of Inland revenue could accept any property under Section 56 of the Finance (1909-10) Act, 1910 in satisfaction or part satisfaction of any estate duty and amended the latter Act accordingly. Section 56(1) of the British Finance (1909-10) Act, 1910 which was again amended by the British Finance Act of 1949 reads thus :

56. (1) The Commissioners may, if they think fit, on the application of any person liable to pay estate duty or settlement estate duty accept in satisfaction of the whole or any part of such duty any such real (including leasehold) property as may be agreed upon between the Commissioners and that person.

7. The legal position in the United Kingdom as it existed in 1965 insofar as transfer of real and leasehold property in payment of estate duty is concerned is summarized in Dymond's Death Duties (14th Edition) at pages 720-21 thus :

#### D - TRANSFER OF PROPERTY IN PAYMENT OF DUTY

##### (1) Real and leasehold property

By Section 56(1) of the Finance (1909-10) Act, 1910, as extended and amended by Section 49 of the Finance Act, 1946 (which applies to deaths at any time), and the Finance Act, 1949, Schedule XI, Part IV the Commissioner's may, if they think fit, on the application of any person liable to pay any death duties, accept in satisfaction of the whole or part of such duty any such real (including leasehold) property as may be agreed upon between the Commissioners and the accountable person. The Commissioners have the right to accept foreign real or leasehold property, but they are scarcely likely to do so. The property accepted need not itself be liable to duty. It may be accepted in satisfaction of duty on any property, real or personal. No stamp duty is to be payable on the transfer of such property (Finance 1909-10) Act, 1910, Section 56(2). The disposition of any property accepted by the Commissioners is provided for by Sections 50 and 51 of the Finance Act, 1946, under which the Treasury may direct that the land be transferred direct to a body of persons (e.g. the National Trust) or to trustees for such a body, etc., instead of to the Commissioners, and the duty receivable by the latter may be paid out of the National Land Fund established by Section 48 of the Act. It is within the discretion of the Commissioners whether they will accept property under this provision, but the Chancellor of the Exchequer in his Budget statement for 1946 said that he expected the power (which hitherto had not in practice been used) to operate on a substantial scale in the future : it is understood that seventy properties had been taken over up to March 31, 1963. He referred also to the National Trust and the Youth Hostels Association as examples of the bodies not established for profit, and having for their object "the provision, improvement or preservation of amenities enjoyed, or to be enjoyed, by the public or the acquisition of land to be used by the public" to which the land may be transferred. Particulars of properties accepted are given in the Commissioner's Annual Reports.

There is no provision for the transfer of land by a person other than accountable person, and the acquisition price cannot exceed the amount of the duty.

The Commissioner's powers extend to the acquisition of foreign immovable property, but are scarcely likely to be exercised in respect of it.

8. The position in the United Kingdom appears to be more or less the same even after the former estate duty was replaced by the new tax known as capital transfer tax by the British Finance Act, 1975 (vide Section 22 of the Finance Act, 1975). The relevant part of paragraph 17 of the Schedule 4 to that Act reads thus :

17. (1) The Board may, if they think fit, on the application of any person liable to pay tax accept in satisfaction of the whole or any part of it any property to which this

paragraph applies.

(2) This paragraph applies to any such land as may be agreed upon between the Board and the person liable to pay tax.

(3) This paragraph also applies to any objects which are or have been kept in any building -

(a) If the Board have determined to accept or have accepted that building in satisfaction or part satisfaction of tax or estate duty, or . . . (see HALSBURY'S STATUTES OF ENGLAND (Third Edition) Vol. 45 at page 1870)

9. Section 52 of the Act was substituted by a new Section 52 by the Direct Taxes (Amendment) Act, 1964. The new section reads thus :

52. Payment of duty by transfer of property - (1) The Central Government may, on an application of the person accountable for estate duty, accept in satisfaction of the whole or any part of such duty any property passing on the death of the deceased at such price as may be agreed upon between the Central Government and that person, and thereupon such person shall deliver possession of the property to such authority as may be specified by that government in this behalf.

(2) Notwithstanding anything contained in any other law for the time being in force, on the date the possession of the property is delivered to the authority under sub-section (1) -

(i) the property shall vest in the Central Government; and

(ii) the Central Government shall, where necessary, intimate the registering authority concerned accordingly;

and the authority shall administer the property in such manner as the Central Government may direct.

(3) Where the price referred to in sub-section (1) exceeds the aggregate of the amounts due under this Act in respect of the estate of the deceased, the excess shall be applied in the following order to the payment of any tax, penalty, interest or other amount -

(i) which the legal representative of the deceased is liable to pay in respect of the income, expenditure or wealth of, or gift made by, the deceased under any of the Acts referred to in clause (c) of Section 2 of the Central Boards of Revenue Act, 1963;

(ii) which the executor is liable to pay under any of the Acts aforesaid in respect of the estate of the deceased for the period of the administration of the estate;

(iii) which the person beneficially entitled to the property in question is liable to pay under any of those Acts;

and the balance, if any, shall be paid to the accountable person.

10. In the 'notes on clauses' annexed to the Bill which ultimately became the Direct Tax (Amendment) Act, 1964, it was stated :

Sub-clause (b) seeks to substitute the provisions of Section 52 of the Estate Duty by a new provision, enabling the Central Government to accept at an agreed price, the assets comprised in a state passing on the death of the deceased towards payment of the estate duty, if the accountable person so offers. Provisions is also made that any balance of the price left after satisfying the amounts due under the Estate Duty Act will be adjusted against amounts due under the other direct taxes Acts from the deceased, his estate and the accountable person beneficially entitled to the asset in question in that order.

11. Let us now analyst Section 52 of the Act. A proceeding under Section 52 does not commence until an application is made by the person accountable for estate duty. It is entirely at his option whether a property passing on the death of the deceased should be transferred so that its price can be adjusted towards payment of the estate duty. The Central Government cannot compel him to do so. When the accountable person voluntarily applies to the Central Government, the section says that the Central Government may accept property offered in satisfaction of the estate duty as such price as may be agreed upon between it and the accountable person. Section 52 of Act does not say that the Central Government shall do so but it may do so. The question in this case is whether the Central Government is bound to do so. We shall revert to this question later on. Then the price of the property has to be agreed upon between the Central Government and the accountable person. The price so agreed upon should naturally relate to the date on which agreement takes place and it cannot certainly be the principal value of the property determined in the estate duty proceedings. This provision may perhaps indirectly act as a deterrent against excessive valuation of the property in the estate duty proceedings because when the question of determination of its price under Section 52 of the Act arises there ought not to be a wide disparity between the principal value determined in the estate duty proceedings and what is offered by the Central Government as the price under Section 52. When once the price is agreed upon, then the accountable person is bound to deliver possession of the property to such authority as may be specified by the Central Government. On such delivery the property vests in the Central Government without any further formality. Sub-section (3) of Section 52 of the Act provides that where the price agreed upon exceeds the amounts due as estate duty, the excess amount shall be applied to the payment of any tax penalty, interest or other amount payable in the order mentioned in clauses (i) to (iii) thereof. If after adjusting all such dues, any balance still remains, such balance shall be paid to the accountable person.

12. The Act is a fiscal statute principally intended to levy and collect estate duty which when collected has to be disbursed in accordance with Part XII of the Constitution. It is not a law providing for acquisition of a property forming part of the estate of the deceased. Part VII of the Act in which Sections 51 and 52 occur only provides the machinery for collection of the duty. Whereas Section 51 of the Act authorises the Board a prescribe the means and manner in which the estate duty may be collected, Section 52 gives the option to the accountable person to offer a property passing on the death of the deceased so that its price may be adjusted towards the payment of the estate duty. Rule 18 Rules made by the Board pursuant to Section 51 enables the accountable person to discharge his liability in one or more ways mentioned therein and there the Central Government is left with no choice about them. Payment of duty in any of the said ways discharges the liability of the accountable person under the Act. Section 52 of the Act, however, appears to be an alternative

mode by which such liability can be discharged but it has some distinguishing features. Indisputably the price of the property offered thereunder has to be agreed upon between the Central Government and the accountable person which introduces an element of consensus into the proceeding. But the point on which the parties are at issue in this case whether the Central Government is bound to accept a property offered by the accountable person under Section 52 and initiate proceedings to settle its price by negotiation. The language of the statute prima facie does not compel the Central Government to do so. The section is in the nature of an enabling provision authorised the Central Government to accept a property in lieu of estate duty payable subject to the conditions mentioned in it. It is true even enabling words in a statute which confer a discretionary power may have to be interpreted as compulsory where they amount to words clearly intended to effectuate a legal right. But ordinarily such words are permissive only. In the instant case the very fact that there is a need for an agreement upon the price of the property between the Central Government and the accountable person makes the power of the Central Government under Section 52(1) of the Act discretionary and permissive. Any other meaning may lead to impractical and incongruous result. The Central Government cannot be compelled to accept the property in discharge of the estate duty when no agreement is possible in its price, and when law does not provide for a machinery to determine the price when there is no agreement. The history of the corresponding legislation in the United Kingdom and the language of Section 52 read with the 'notes on clauses' attached to the relevant Bill extracted above suggest that the Central Government has the option either to accept or reject the offer made by an accountable person under Section 52. This has to be so having regard to the administrative difficulties involved in the matter. As mentioned earlier, the Act is a fiscal statute intended to collect duty and not to acquire property. If Section 52 of the Act is held to be mandatory then the Central Government will be obliged to acquire properties in several parts of India where it may not find any use for them and spend money on their managements and upkeep and arrange for their disposal. The cost of administration involved in the Act in that case possibly may be much more than the duty realisable under the Act. Further if such is the construction to be placed then what happens if the price of the property offered is more than the duty payable ? Then in every such case, the government would be compelled to acquire property by paying to the accountable person the amount which is in excess of the duty and other sums payable under Section 52(3)(i) to (iii) even when it does not need such property. Surely such could not have been the intention of the Parliament. We are of the view that on a plain construction do Section 52 of the Act, the Central Government may at its discretion either accept the property offered under Section 52 or may not if the circumstances so warrant. The accountable person cannot claim that the Central Government is bound to accept such property. The power of the Central Government under Section 52 is purely administrative and discretionary. The High Court was in error in holding that if an assessee wanted to pay the estate duty by transferring property, the government could not refuse to accept the offer and insist upon payment by another mode, provided there was agreement on the price of the property between the government and the assessee.

13. When once it is held that the power of the government under Section 52 of the Act is administrative and discretionary, it follows that the said power should be exercised subject to the same limitations which govern all such administrative and discretionary powers. The Central Government or the authority which is competent to take a decision should exercise its discretion bona fide and in good faith by addressing itself to the matter before it and should not allow itself to be influenced by extraneous and irrelevant considerations. The question should not be disposed of in an arbitrary or capricious way. In this case, the court can only ask the authority concerned to exercise the discretion vested in it but it cannot be asked to exercise it in a particular way. On this question we approve the decision of the Andhra Pradesh High Court in Chella Rama Bhupal Reddy

v. Central Board of Direct Taxes ((1977) 108 ITR 695).

14. The true legal position may be summarised thus. What Section 52(1) does is to set forth one more mode in which estate duty may be recovered. It is provision made specially for the recovery of estate duty. It enables the government to recover the duty in accordance with that mode. The other statutory modes prescribed under Section 51 and specified in the Rules are those where recourse by the accountable person obliges the Revenue to accept the payment made in any of those modes and to treat it, by compulsion of statute, as satisfaction of the dues. The peculiarity of the mode provided under Section 52(1) is that while recourse to it by the accountable person does not automatically imply satisfaction of the dues, there is the duty cast on the Revenue to consider the application by the accountable person offering an item of property as a mode for satisfying the dues. The government must consider the application on its merits and in the exercise of sound administrative judgement. Ordinarily in every contract for the purchase of property there are two stages : (1) In the first stage, there is complete freedom to the parties to decide whether one should enter into negotiations with the other at all and in that regard the law takes no account of the reason of any party for not choosing to entertain the proposal for sale made by the other however arbitrary, illogical or irrelevant the reason may be. (2) The second stage follows the entertaining of the proposal and the actual negotiations between the parties which may or may not fructify in a contract. Section 52(1) now under consideration is concerned with the first stage, and differs in this from the complete freedom to entertain the proposal in that the proposal made under Section 52(1) by the accountable person must be considered by the Central Government and any decision taken by it on that question must proceed on considerations which are relevant and bona fide. The price of the property is, however, left to be determined by agreement in the event of the government deciding to accept the offer made by the accountable person. This forms part of the second stage.

15. In the instant case, the High Court was, however, right in holding that it had not been shown that the competent authority had properly exercised its discretion. In the counter-affidavit filed by the Assistant Controller of Estate Duty, some reasons were given in support of the decision of the Board. That counter-affidavit is of no use for the deponent could not speak on behalf of the Central Government or the Board. In the counter-affidavit of Balbir Singh, Secretary, Central Board of Direct Taxes and Deputy Secretary to the Government of India, two principal grounds were mentioned for rejecting the offer - one, that the Central Government was not bound to accept the offer and two, that it had been shown that "the cash in hand, cash at bank, book debts, business profits, rent and share of the deceased in the firm of Ramnarain Lal Beni Madho amounted to Rs. 4,57,462 which amount was more than sufficient to pay the entire estate duty demand". On the other hand the respondent contended in his reply affidavit that he had no liquid cash to pay the estate duty as it had been invested in business. But there appears to have been no further probe into the question. It is also obvious that the Board proceeded on the assumption that its discretion was unfettered even by considerations relevant to administrative law. In these circumstances, we feel that there was no proper exercise of the discretion by the Board

16. We, therefore, affirm the direction issued by the High Court but subject to the observations made above and direct the Board to dispose of the application afresh in accordance with law.

17. The appeal is accordingly disposed of. No costs.

</html