

Smt. Kalyani Sundaram

V

Assistant Controller of Estate Duty, Madras and Another

Civil Appeal Nos. 2319-2320 of 1981

(CJI R. S. Pathak, B. C. Ray JJ)

12.05.1989

JUDGMENT

PATHAK, C. J. –

1. These appeals by special leave are directed against the judgment and order of the High Court of Madras dismissing the writ petitions filed by the appellant against the refusal of the first respondent to rectify an assessment order and pass consequential directions.

2. Shri Anantharamkrishnan, a reputed industrialist in Tamil Nadu, died intestate in Madras on April 18, 1964. He left behind his widow, Valli, his two sons, Sivasailam and Krishnamoorthy and two daughters, Kalyani and Seetha. Some time after his death, Sivasailam, as an accountable person rendered the estate duty account. All the heirs, other than Sri Sivasailam, who were also accountable persons wrote to the Assistant Controller of Estate Duty on December 15, 1964 that as accountable persons they agreed to abide by the accounts rendered by Sri Sivasailam and any explanation furnished by him with regard to the estate duty case would be binding on them.

3. Messrs Amalgamations Private Ltd. (shortly referred to as 'Amalgamations') is a company which holds shares in most of the companies including Simpson and Company Ltd. (shortly referred to as 'Simpson') of the group. By letter dated April 27, 1965 Amalgamations informed the assessing authority that the deceased had transferred property in the form of shares in Simpson to it and that the deceased had controlling interest in that company at the time of his death. On September 13, 1965 the assessing authority wrote to Amalgamations that the deceased had transferred 80,377 shares of Simpson, and therefore Amalgamations was a controlled company within the meaning of Section 17 of the Estate Duty Act. By virtue of Section 19(1) of the Estate Duty Act the controlled company had to be regarded as one of the persons accountable for the estate of the deceased. Amalgamations was required to submit an account of the estate. Amalgamations filed a return before the Assistant Controller. No objection was raised by the heirs of the deceased or by Amalgamations to the latter being treated as an accountable person.

4. After due enquiry the assessment of estate duty was completed on January 27, 1970 and the duty payable by the estate was determined at Rs. 1,67,74,697.58, of which provisional duty had been paid in the amount of Rs. 65,50,452.73 leaving a balance of Rs. 1,02,24,244.85. The assessment order was addressed to Amalgamations as well as Sri Sivasailam as accountable persons. The Assistant Controller of Estate Duty proceeded on the basis that Amalgamations was a "controlled company" and the deceased had control over its affairs, and therefore valuation of the shares held by the deceased in the company had to be made in the manner laid down in Rule 15 framed by the Board under Section 30(1) (e) of the Estate Duty Act. The principal value of the assets was

determined at Rs. 2,12,29,998 and the duty was computed at Rs. 1,67,74, 697.58. There was no appeal against the assessment by any of the accountable persons.

5. Kalyani Sundaram, one of the daughters of the deceased and the appellant before us, became entitled on the death of Anantharamakrishnan to a fifth share in his estate under the Hindu Succession Act. Her husband, K. S. Sundaram, as her agent constituted by power of attorney, wrote on June 11, 1974 to the Assistant Controller seeking certain clarifications regarding the assessment. The Assistant Controller replied on June 25, 1974 referring to the specific agreement of the accountable persons to abide by the accounts rendered by Sri Sivasailam and to be bound by any explanation given by him. The Assistant Controller referred to the fact that all subsequent proceedings had been completed after discussion with Sri Sivasailam and Amalgamations and as the assessment had now become final it was not possible to enter into any discussion concerning it.

6. On January 2, 1975 the appellant's husband as agent filed an application under Section 61 of the Estate Duty Act contending that the assessment order was vitiated by several errors inasmuch as Rule 15 prescribed only the method of valuation of the shares and debentures of the controlled company and the rule was an appendage to Sections 36 and 37 of the Act, that unless property was transferred without consideration by the deceased to Amalgamations and some benefit accrued to the deceased from the company Section 17(1) of the Act would not be attracted, that the decision to treat Amalgamations as an accountable person because of the transfer of shares rested on the transfer of shares made by the deceased, that on a number of aspects of the case the assessment order did not show any detail, and therefore a rectification order should be made indicating the exact amount included under Section 17(1) of the Act as the property passing on the death of the deceased. He required this information, he said, to enable him to work out the amount which his principal had to pay to Amalgamations by way of reimbursement of the duty. If the apportionment of the duty had been effected by the order itself, he said, the need for rectification would not have arisen.

7. Section 61 empowers the Controller "to rectify any mistake apparent from the record" at any time within five years from the date of the order passed by him. On January 25, 1975 the Assistant Controller passed an order declaring that he was unable to discover any mistake which called for rectification in the assessment order and therefore he declined to act under Section 61 of the Act. This order was challenged by the writ petitions out of which the present appeals arise.

8. The High Court dismissed the writ petitions. Sethuraman, J. held that there was no apparent error, and therefore no reason for invoking Section 61 of the Act and Balasubramanyan, J. in a concurring judgment, held likewise and also dealt with other aspects of the case. Both learned Judges were of the view that the proceeding reflected a private dispute between the appellant and other members of the family, and that the forum and remedy selected by the appellant were not appropriate for that purpose.

9. The fundamental question in these appeal is whether the appellant is right in invoking Section 61 of the Act.

10. Learned counsel for the appellant contends that the heirs of the deceased on whom the estate devolves are liable to pay estate duty attributable to the property which falls to their respective shares and that if an accountable person pays any part of the estate duty in respect of any property not passing to him he is entitled to reimbursement by the person entitled to such property. This, says learned counsel, has no application in respect of the duty payable by virtue of Section 17 of the Act,

which provides that the slice of the assets of a controlled company shall be deemed to pass on the death of the deceased for the purposes of estate duty and the slice will be included in the property passing on his death if the deceased made a transfer of that property to the controlled company and benefit accrued to the deceased in the three years ending his death. The slice of the assets of the controlled company does not come to any heir; therefore no heir is called upon to pay the amount of estate duty attributable to the inclusion of that slice in the chargeable estate. By Section 19 the controlled company itself is liable to pay the corresponding amount of estate duty. In the present case, however, learned counsel urges, no slice of the assets of Amalgamations has been included in the estate of the deceased by the assessing authority as property deemed to pass on the death of the deceased and therefore the demand issued to the controlled company constitutes a mistake apparent from the record. The application of Rule 15 is also contested and this, according to learned counsel, is a clear mistake committed by the Controller. It is urged that there is a mistake apparent from the record in the directions requiring Amalgamations to pay the entire amount of estate duty.

11. It seems to us that all the heirs other than Sivasailam had agreed that as accountable persons they would abide by the accounts rendered by Sivasailam, and any information furnished by him with regard to the estate duty matter would be binding on them. The appellant cannot be heard now to dispute the quantum of liability and the basis on which the liability was computed. Nor is it open to her to contend that it is not Amalgamations which is liable to pay the duty, but the duty is payable by the heirs of the deceased. The assessment has become final and no appeal against it has been attempted. It was for the benefit of the heirs that there was general agreement to have the assessment made on Amalgamations and indeed when the assessment was completed and finalised, no objection was taken. The appellant acquiesced wholly and completely in the assessment to estate duty being made on Amalgamations. No separate assessment was made on the appellant nor on the other heirs. The assessment was completed in 1970 and the entire estate duty has now been paid up. It was only after the entire estate duty was paid that the appellant filed the application for rectification on January 2, 1975.

12. It was contended by learned counsel for the private respondents that the appellant enjoyed no locus standi in order to maintain the application under Section 61 and these appeals thereafter, but we do not propose to enter into this question.

13. Further, it appears that this litigation is woven around a private dispute among the family members. That is hardly any justification for invoking Section 61 of the Act.

14. We have carefully perused the reasons given individually by the two learned Judges of the High Court and we are in complete agreement with them that there is no mistake apparent on the record.

15. In support of the contention that there was a mistake apparent on the record, learned counsel has referred us to *Hari Vishnu Kamath v. Syed Ahmed Ishaque*, *Hind Trading Company v. Union of India*, *M. K. Venkatachalam, ITO v. Bombay Dyeing and Manufacturing Co. Ltd.* and *CIT v. M. MR. P. Firm, Muar*, but having regard to the facts of the case before us we do not find anything in those cases which can be of assistance to the appellant.

16. Learned counsel for the appellant states that having regard to the terms of the order granting special leave to appeal the appellant is justified in requesting the court to consider the issues on the merits. We are unable to spell out such intent of the court from the terms of the order granting special leave to appeal. We do not think that the observations of the court in *Thungabhadra Industries Ltd. v. Government of Andhra Pradesh* affect the position before us.

17. The real question is whether the assessment was justified on Amalgamations or should it have been taken against the heirs of the deceased. In our opinion, that question stands concluded now and upon all the facts and circumstances of the case we do not think it permissible for the appellant to have recourse to Section 61 of the Act in order to re-open the case.

18. The appeals are dismissed, there is no order as to costs.

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