

P. Leelavathamma (Smt)

Vs

Controller of Estate Duty Andhra Pradesh, Hyderabad

Civil Appeal No. 822 of 1978

(K. Ramaswamy, N. M. Kasliwal, Dr. T. K. Thommen JJ)

15.02.1991

JUDGMENT

THOMMEN, J. –

1. This appeal by certificate arises from the judgment of the Andhra Pradesh High Court dated March 23, 1977 in Estate Duty Case No. 6 of 1975. Answering the questions referred to it against the appellant and in favour of the revenue, the High Court held that, in computing the net principal value of the estate for the purpose of the Estate Duty Act, 1953 ("the Act"), the appellant was not entitled to deduct either the estate duty payable on the estate or the amount attributable to the maintenance of the wife of the deceased.

2. The appellant's counsel, Mr. T. A. Ramachandran, submits that the duty payable on the estate of the deceased is an encumbrance on the estate, being a first charge on the property passing on the death, and is, therefore, deductible in terms of Section 44 of the Act. According to counsel, all properties passing on the death of the deceased are encumbered to the extent of the duty payable by reason of the charge created by Section 74 of the Act and that duty has to be deducted from the total value of the estate which is subjected to the levy of duty in terms of Section 5. Counsel further submits that the amount attributable to the maintenance of the wife during the life of her husband must also be treated as a debt deductible under Section 44.

3. Mr. S. C. Manchanda, appearing for the revenue, submits that the claim of the appellant has no warrant in the law and is totally unsupported by any judicial decision. He submits that estate duty falls upon the property passing upon the death. The property at the time of the passing was not encumbered by the duty, for duty became payable only upon it passing and was, therefore, not a liability to which the estate was subjected during the life of the deceased. It became so encumbered only subsequent to and consequent on the death. He further submits that there is not the smallest foundation for the claim for deduction in respect of the maintenance of the wife during the life of the husband, as contended by the appellant's counsel, for the estate was never charged with the amount attributable to the maintenance of the wife. A wife's claim for maintenance either during the life of her husband, or subsequent to the death of her husband, is not a charge on the property and is not a deductible amount in terms of the Act.

4. We shall first deal with the claim for deduction of estate duty. Section 5 of the Act, insofar as it is material reads :

"5. Levy of estate duty. - (1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be

levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural land.... which passes on the death of such person, a duty called "estate duty" at the rates fixed in accordance with Section 35.

#(2) * * *##

5. Sub-section (1) of Section 5 imposes a duty upon the net principal value ascertained of "all property" which passes on the death of a person. All properties passing on a death, other than those which are exempted from duty (see Sections 21 to 33), are, for the purpose of levy under the Act, aggregated in to one estate, which is the "property" on which duty is levied at the rates applicable in respect of its principal value (Sections 34 and 35), but subject to the deductions permitted under Part VI of the Act.

6. The properties are valued, for the purpose of levy under the Act, in accordance with the provisions of Part V. Section 36 says that the principal value of any property shall be estimated to be the price which, in the opinion of the Controller, such property would fetch if sold in the open market at the time of the death of the deceased.

7. Part VI of the Act contains Sections 44 to 50-B dealing with deductions in determining the chargeable value of the estate. Section 44 says that, in determining the value of an estate, allowance has to be made for funeral expenses not exceeding rupees one thousand and for debts and incumbrances. The section, however, provided that no allowance shall be made in respect of matters enumerated under clauses (a) to (d) of that section.

8. The "debts and encumbrances" mentioned in Section 44 are, as a general rule, debts and encumbrances incurred before the death of the deceased. Certain exceptions are, however, specifically provided in Section 44 and the other provisions of Part VI. Reasonable funeral expenses, cost of realising or administering foreign property, allowance for duty paid in a non-reciprocating country, relief from estate duty where court fees have been paid in any State for obtaining probate, letters of administration or succession certificate, and, relief from estate duty where tax has been paid on capital gains are, in the specified circumstance, allowable deductions in the determination of the value of the estate for the purpose of estate duty, notwithstanding that such liabilities arose subsequent to the death. In no other cases does the Act postulate deduction or allowance for any debt or encumbrance incurred subsequent to the passing of the property upon the death. Significantly, estate duty payable on the estate of the deceased is not one of those exceptions of the general rule.

9. Section 53 makes certain persons accountable for the whole of the estate duty on the property passing on the death. These are the legal representatives, trustees, guardians, committees or other persons in whom any interest in the property or the management thereof is at any time vested. They are accountable for the whole of the estate duty on the property passing on the death of the deceased, but their liability is limited to the assets of the deceased which they have actually received or which, but for their own neglect or default, they might have received. Any default or concealment on their part in the discharge of their duties will make them liable for the penalty provided under Section 60.

10. Section 74 says that estate duty payable in respect of property, passing on the death of the deceased, is a first charge on the property so passing. Any claim in respect of such duty is not liable

to be defeated by any private transfer or delivery of such property. Any such private transfer or delivery is void against such a claim. Section 74 reads :

"74. Estate duty a first charge on property liable thereto. - (1) Subject to the provisions of Section 19, the estate duty payable in respect of property, movable or immovable, passing on the death of the deceased, shall be a first charge on the immovable property so passing (including agricultural land) in whomsoever it may vest on his death after the debts and incumbrances allowable under Part VI of this Act; and any private transfer or delivery of such property shall be void against any claim in respect of such estate duty.

(2) A rateable part of the estate duty on an estate, in proportion to the value of any beneficial interest in possession in movable property which passes to any person (other than the legal representative of the deceased) on the death of the deceased shall be a first charge on such interest :

Provided that the property shall not be so chargeable as against a bona fide purchaser thereof for valuable consideration without notice.

#(3) * * *###

11. The scheme of the Act, as the above provisions indicate, is to levy estate duty upon the net principal value of all property, as aggregated and ascertained under the Act, and which passes on the death of the person who was competent to dispose of such property at the time of his death (Section 6) or which is deemed to pass on his death (Sections 7 to 17). The expression "passes on the death" denotes change in the title or possession of the whole property taking place at the death. It is immaterial to whom the property passes. "The question ... is not to whom has the property passed, the question is whether it has passed at all" per Lord Blanesburgh, *IRC v. Crossman* (1937 AC 26 : (1936) 1 All ER 762). "Estate duty falls upon the property passing upon a death..." per Lord Loreburn, L. C., *Winans v. Attorney General* [1910 AC 27]. The levy is upon the principal value of such property ascertained as provided under the Act. Property changes hands at the time of death, by reason of the death, and, therefore, subsequent to the death. The imposition of the charge under the Act does not arise until the death has actually occurred and the property has, thereupon, passed.

12. The liability to pay estate duty is fastened on the persons accountable. But their liability is limited to, and will not exceed, the assets of the deceased actually received by them, or which, but for their neglect or default, they might have received. Apart from the personal liability cast on the persons accountable, and their liability to penalty in the event of default or concealment, the duty payable is charged on the property itself and any private transfer or delivery is void against any claim in respect of such duty. Essentially and basically, therefore, the duty is a burden on the estate and that burden is fastened on the estate upon the death of the deceased. During his life, no liability under the Act arose or could arise.

13. Subject to the limitations and exceptions statutorily specified, the allowable deductions in the determination of the chargeable value of the estate are the debts and encumbrances incurred before the death of the deceased. Estate duty falling upon property passing upon the death had not become a debt or encumbrance until the death of the deceased, and is, therefore, not deductible.

14. This view is consistent with the conclusion reached on the point by various High Courts (V.

Pramila v. Controller of Estate Duty, (1975) 99 ITR 221 (Kant); Shantaben Narrottam Das v. Controller of Estate Duty, (1978) 111 ITR 365 : 1978 TLR 115 (Guj); Govind Prasad v. Controller of Estate Duty, (1981) 127 ITR 642 (All); RM. Arunachalam v. Controller of Estate Duty, (1981) 132 ITR 871 (Mad); Bhawani Shanker Bagaria v. Asstt. Controller of Estate Duty, (1982) 137 ITR 801 : 1982 Tax LR 579 (Gau); Controller of Estate Duty v. Bipinchandra N. Patel, (1990) 186 ITR 29 (Bom)). This conclusion was adopted by the Andhra Pradesh High Court in Controller of Estate Duty v. Estate of Late Omprakash Bajaj ((1977) 110 ITR 263 : 1977 TLR 882) and it was that decision which was followed by that High Court on this point in the judgment under appeal. The High Court, in our view, rightly disallowed the claim for deduction of the estate duty in the computation of the net principal value of the estate.

15. As regards the claim for deduction of the amount attributable to the maintenance of the wife of the deceased during his life, there is no evidence or any finding to show that the estate had been burdened with any such debt or encumbrance by reason of the husband's failure to act up to his statutory obligation to maintain his wife [see Section 18(1) of the Hindu Adoptions and Maintenance Act, 1956]. The wife is of course a sharer of the assets left behind by her husband (see Section 8 of the Hindu Succession Act, 1956). This claim was also, in our view, rightly disallowed by the High Court. In the circumstances, for the reasons we have stated, the appeal is dismissed. However, we do not make any order as to costs.

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