Navnit Lal Sakarlal

Vs

Commissioner of Income-tax

Civil Appeals Nos. 1152 to 1156 (NT) of 1978

(S. Ranganathan, V. Ramaswami-II, S. Ranganathan Dayal JJ)

29.10.1991

JUDGEMENT

RANGANATHAN, J.:-

1. Balabhai Damodardas, aged 98 years, executed at will on October 6, 1956, so that, after his death. his property might be "administered as per his desire". The material provisions of the will were as follows:

"2. I have the following properties of my ownership:-

> (a) My individual i.e. personal movable and immovable property which is being assessed in Income-tax as individual.
>
> (b) Whatever right, title and interest have in movable and immovable properties of our joint family.
>
> 3. The above movable and immovable properties I may enjoy, sell or exchange in future, but if by God's Will at the time when I am not alive whatever is left of my individual personal property of my ownership including additions or deletions therefrom after paying my debts, income-tax, super-tax, estate duty, municipal tax etc. and any other outstandings as also medical expenses and expenses for obsequial ceremonies and charity and also my right, title and interest in our joint family movable and immovable properties, in that way all my property when I am not alive shall be taken possession of by my two grandsons Navnitlal Sakarlal and Nandkishore alias Shamubhai Sakarlal and they shall use and enjoy the same as they desire."

There was no executor named in the will.

2. Balabhai Damodardas died on 31-12-57. Thereafter, his son, Sakarlal Balabhai, describing himself as the legal representative of the deceased, furnished returns of income as well as returns of wealth in respect of the estate of the deceased Balabhai Damodardas and he was assessed on the basis of those returns for the assessment years following the death and up to assessment year 1967-68.

3. We are concerned in these appeals with the income-tax assessments of Navnitlal Sakarlal (herein referred to as the 'assessee'), one of the two grandsons of Balabhai Damodardas, to whom the latter

had bequeathed his properties, for the assessment years 1963-64 to 1967-68. The Income-tax Officer took the view that the estate of Balabhai Damodardas had vested in the two grandsons immediately on his death as per the terms of the will. He, therefore, proceeded to assess the assessee and his brother separately in respect of one half of the income from the properties left behind by Balabhai Damodardas. The contention of the assessee, that the estate of the deceased was still under administration and continued to be so till August 5, 1970, and that the income thereof had rightly been assessed, in the earlier years as well as in the years presently under consideration, in the hands of Sakarlal Balabhai as executor, was rejected. The Appellate Assistant Commissioner also confirmed the view taken by the Income-tax Officer, though, for the assessment years 1966-67 and 1967-68 he made some modifications in the assessments with which we are not here concerned.

4. The Income-tax Appellate Tribunal had earlier taken the view, in the wealth-tax assessments of the assessee and his brother for the assessment years 1963-64 and 1964-65, that, on the death of Balabhai Damodardas, the assessee and his brother had become the owners of interests in the estate in accordance with the will and were consequently assessable to wealth-tax in respect of their respective shares in the estate. This view had also been upheld by the Gujarat High Court in its judgment reported as Navnitlal Sakarlal v. C.W.T., (1977) 106 ITR 512. However, when the income-tax appeals for the assessment years 1964-65 to 1967-68 came up before the Tribunal, it took the view that the assessee was not taxable in respect of any part of the income of the estate of Balabhai Damodardas for these assessment years. The additions made in the assessment orders in this respect were deleted.

5. At the instance of the Revenue, the following question was referred to the High Court of Gujarat for its opinion under Section 256(1) of the Income-tax Act, 1961 :

> "Whether the Income-tax Appellate Tribunal was right in law in holding that half share of the income in respect of the estate of late Shri Balabhai Damodardas was not taxable in the hands of the assessee when the estate was being administered by Shri SakarIal Balabhai, having regard to the provisions of Section 168 of the Income-tax Act, 1961?"

This question has been answered by the High Court - its decision has been reported as Navnitlal Sakarlal v. C. I.T. in (1980) 125 ITR 67 : (1978 Tax LR 745) (Guj) - in the negative and in favour of the Revenue. The present appeals have been preferred by the assessee from the High Court's judgment.

6. At the outset, two aspects which had been raised before the High Court, may be cleared up. In the first place, the contention of the assessee before the High Court was that the decision in the wealth-tax case would not govern the income-tax assessments in view of the provisions contained in Section 168 of the Income-tax Act, 1961, a provision corresponding to which (viz.S.19A) has been introduced in the Wealth-tax Act only on 1-465. The High Court pointed out - and it is common ground before us - that "in view of the distinction between the provisions of the Wealth-tax Act and the Income-tax Act and in view of the fact that, for the relevant years under consideration before the Division Bench which considered the wealth-tax case, namely, assessment years 1963-64 and 196465. Section 19-A was not on the statute book, the decision in the wealth-tax case will not affect the decision in this case except in an indirect manner." The second issue, on which a certain amount of debate took place before the High Court, was as to whether Sakarlal Balabhai could be treated as an 'executor' within the meaning of Section 159 of the Income-tax Act, 1961, considering that the will had not named any executor and that Sakarlal Balabhai had taken charge of the estate and began

administering it voluntarily. On this point, the High Court has held, after discussing the relevant provisions, that SakarIal Balabhai was a person who intermeddled with the estate of the deceased and was, therefore, included in the definition of 'legal representative' for the purposes of the Income-tax Act. On this point also there is no dispute before us.

7. The only question arising for our consideration is about the proper mode of assessment of the income from the properties left by Balabhai Damodardas. The procedure to be followed, when an assessee dies, is set out in Section 168 of the Act. This section reads as follows:

> 168. (1) Subject as hereinafter provided, the income of the estate of deceased person shall be chargeable 'to tax in the hands of the executor,
>
> (a) if there is only one executor, then, as if the executor were an individual; or
>
> (b) if there are more executors than one, then, as if the executors were an association of persons; and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.
>
> (2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.
>
> (3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.
>
> (4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.
>
> Explanation : In this section, "executor" includes an administrator or other person administering the estate of a deceased person.

8. On behalf of the appellant, Sri Salve submits that, where a person dies, the income of the estate of the deceased person is chargeable to tax in the hands of the executor, separate assessments being made on the total income of each completed previous year or part thereof comprised in the period from the 'date of the derth to the date of complete distribution to the beneficiaries of the estate according to their several interests'. He points out that it is now common ground that Sakarlal Balabhai was an 'executor' within the meaning of the Section 168 in respect of the estate of the deceased. The Tribunal nas also given a categorical finding of fact in the following terms:

> "Balabhai Damodardas died on December 31, 1957, leaving behind as his next-of-kin a son, named Sakarial Balabhai, three daughters and a number of grand-children including the appellant assessee and his brother. On the death of Balabhai Damodardas. Shri Sakarlal Balabhai took charge of the properties left behind by the deceased and started administering them. By an order made on December 30, 1961, an amount of Rs.1,04,619 was determined as the estate duty payable on the

> properties passing on the death of Balbhai Damodardas. It is not in dispute that up to the close of the assessment year 64/ 65, part of the estate duty was remaining unpaid and further up to the last day of the accounting year for the assessment year 67/68 which is the last assessment year in appeal, the estate was not distributed or applied for the benefit of the assessee and his brother, the two legatees. As a matter of fact nothing was distributed till 5th August, 1970"

He submits that, on the above finding of fact and the clear terms of S.168(3) and (4), the income of the properties left by Balabhai Damodardas had to be assessed in the hands of Sakarlal Balabhai, commencing from the date of death and at least till the 5th of August, 1970.

9. We are of the opinion that the above contention urged on behalf of the assessee is well founded. There is no dispute that Sakarlal Balabhai was the executor in respect of the estate left by Balabhai Damodardas. There is also no dispute that the income from the properties left by Balabhai Damodardas was assessed in the hands of Sakarlal Balabhai for the assessment years 1958-59 to 1962-63. Nothing has happened since to change the above position. The Tribunal has found that Sakarlal Balabhai was administering the estate as an executor and that the estate was not distributed till the 5th of August, 1970. It has also pointed out that the estate duty payable in respect of the properties passing on the death of Balabhai Damodardas had not been paid till the close of the previous year relevant to the assessment year 1964-65. Though the Tribunal has not set out in detail the manner in which the estate was ultimately distributed, it has given a categorical finding that, as a matter of fact nothing was distributed till the 5th of August, 1970, implying that there was a distribution on that date. The Revenue has not challenged the correctness of this finding of fact either generally or by raising a specific question of law as to whether this finding was based on any material. In the face of these findings by the Tribunal, it is not possible to hold that the administration of the estate was complete in any of the previous years with which we are concerned.

10. On behalf of the Revenue, Sri Manchanda vehemently contends that the will contained a direct and simple bequest in favour of the assessee and his brother. He submits that there was nothing in the estate to be administered and that the properties directly vested in the two legatees immediately in equal shares. According to his submission, the mere fact that Sakarlal Balabhai purported to take charge of the estate and administer it and was prolonging the so-called administration by delaying the payment of estate duty and the handing, over of the properties to the only two legatees, cannot postpone the vesting of the estate in the two beneficiaries. It is submitted that there was no complicated process of administration called for in the present case. He submits that the intervention of Sakarlal Balabhai was part of a device to postpone a direct and immediate vesting of the income and the properties in the hands of the legatees in view of the high rates of tax applicable to their individual assessments and to cordon off the income and the estate into a separate assessment, purportedly on a so-called executor. He submits that the Court should not encourage attempts of this type to avoid the legitimate incidence of taxation and that, in the circumstances, the answer given by the High Court to the reference should be upheld.

11. There are a number of difficulties in accepting the contention put forward by Shri Manchanda. In the first place, the contention, in its present form, has not been put forward at any of the earlier stages. There is nothing in the statement of facts or in the orders of the authorities to indicate that there was any deliberate attempt on the part of the executor to postpone the distribution of the estate. As we have mentioned earlier, Balabhai Damodardas died on 31-12-57 and the assessment to estate duty of the estate passing on his death was completed on December 30, 1961. There is nothing to indicate that the assessment proceedings were in any way delayed by the executor or the

other legal representatives. A substantial part of the estate duty had been paid by October or November 1963. There is nothing to suggest that the payment of the balance of the estate duty was delayed deliberately by the executor.

12. Again, the submission that there was nothing in the estate to be administered and this process was being deliberately prolonged by the executors and the legatees is not based on the record. Though a reference has been made to the estate duty liabilities being outstanding, there is nothing to show that the only thing that remained to be done was the payment of estate duty and that nothing else remained to be done. There is no information on record before us as to the various assets and liabilities of the estate shown by the executor. No attempt has been made to find out whether there was any other outstanding liabilities and when these were discharged. We have mentioned earlier that the Tribunal has found that something was done towards the distribution of the estate in 1970 and it is not the suggestion of the Department that this finding is based on no material. It is, therefore,not possible to allow the counsel for the Revenue to raise this contention at this stage.

13. Proceeding on the premise that only the estate duty liability was outstanding, a contention appears to have been put forward for the Revenue that the discharge of the estate duty laibility is the personal liability of the residuary legatees and is no part of the duties of the executor. This argument has been accepted by the High Court. On behalf of the asessee, it is submitted that the discharge of the estate duty liability in respect of the estate of the deceased is one of the primary functions of an executor and that the administration of the estate cannot be said to be complete until the estate duty liability is properly provided for, vide C.I.T. v. Ghosh, (1986) 159 ITR 124 : (1985 Tax LR 1348) (Cal). We are of opinion that there is force in the appellant's contention. It seems that, under the English Law, estate duty is regarded as part of the "testamentary expenses" in respect of certain kinds of property: [See Williams on Executors and Administrators, 14th Edn., Vol.1, pp. 452-4]. The Estate Duty Act makes the executor one of the accountable persons. Under S.55, he has. to deliver an account of the estate passing on the death. He is accountable, under S.53, for the whole of the estate duty on the property passing on the death though he will not be liable for duty in excess of assets of the deceased which he actually received or which, but for his own neglect or default, he might have received. He is jointly and severally liable for the whole of the duty along with other accountable persons. It is true that this does not necessarily mean that the ultimate incidence of the duty will ultimately fall, on him always. But he has to consider ways and means of paying the duty and, though he may or may not be able to pay off the entire estate duty before distributing the estate, he will be exposing himself to a great risk if he does not make adequate arrangements for the due payment of the duty, before distributing it. The proposition enunciated in the cases referred to by the High Court that the estate duty is a personal liability of the heirs and is not a debt or encumbrance deductible in computing the principal value of the estate - a proposition now settled by the decision of this Court in Leelavathamma v. C.E.D., (1991) 188 ITR 803 (SC) or the fact that the estate duty is a charge on the immovable properties passing on death do not detract from the duties and responsibilities of the executor, as an accountable person, to make satisfactory arrangement is for the payment of the estate duty. It is, therefore, difficult to accept the view of the High Court that the fact of a part of the estate duty liability being outstanding should be ignored in deciding the issue as to whether administration is complete.

14. The High Court has also expressed the view that the administration of the estate should be deemed to be complete as the estate should be deemed to be complete as the estate could and ought to have been handed over by the executor to the legatees. It has accepted this submission because, in its view, the executor had postponed the actual distribution between the two residuary legatees though all debts had been discharged and the residue could have been easily ascertained. Applying

the test propounded by Viswanatha Sastri, J., in Raghavalu Naidu and Sons v. C.I.T. (1950) 18 ITR 787: (AIR 1950 Madras 790 at p. 798) viz.

> "[C]an it be said that the residuary estate had taken concrete shape and could and should have been handed over by the executors to the persons beneficially entitled but for the fact that the estate is settled in trust and vested in the executors as trustees?"
>
> the High Court held (1978 Tax LR 745 at p. 752):
>
> "Under these circumstances, the only conclusion that could be drawn is that by the commencement of the period that is under consideration, the residuary estate must be deemed to have been ascertained and the residuary estate must be said to have taken concrete shape and should have been handed over by Sankarlal, the father of the assessee. Administraton had reached such a point that one can infer that the administration had been completed and the residuary estate had been ascertained or was capable or easily capable of being ascertained."

15. We find it difficult to accept this conclusion. Even leaving the estate duty out of account, it is difficult to see how the High Court could have reached this conclusion. Having regard to the nature of the properties left by Balabhai Damodardas, it is clear that the executor had certain steps to take before he could wash his hands off the administration of the estate. The movable properties and the immovable properties belonging to Damodardas in his individual capacity had to be divided into two equal shares and handed over to the two beneficiaries. A perusal of the assessment order also indicates that Balabhal Damodardas had a half share in a firm known as Mangaldas Balabhai and Co. It appears that Sankarlal Balabhai, as executor, conttinned to derive a half share from the firm. There is no information on record as to how this share in the firm held by Balabhai Damodardas was disposed of. It was part of the duties of the executor to make arrangemerits regarding the devolution of the share of Balabhai Damodardas in the firm say, for example, by having the two legatees taken in as partners in respect of a one-fourth share each in the firm. In the absence of any such steps, the asset in question cannot be deemed to have vested in the beneficiaries. In fact, even in what may be described as much clearer situations and where the executor was also the sole beneficiary, it has been held that the administration is not , complete vide, C.I.T. v. Bakshi Sampuran Singh, (1982) 133 ITIT 650 (Punj & Har) and C.I.T. v. Ghosh (1986) 159 ITR 124 : (1985 Tax LR 1348)' (C al).

16. Section 168(3) makes it clear that the executor will continue to be assessed until the estate is distributed among the beneficiaries equally according to their several interests. This provision does not enact anything different from the pre-existing law on the subject which has been clearly enunciated by Viswanatha Sastri, J. in Raghavalu Naidu (AIR 1950 Madras 790) cited earlier, in these words (at pp. 796, 797 & 798):

> "Chapter VII of the Indian Succession Act, 1925, succinctly defines the duties of executors. Shortly stated, it is their duty to clear the estate - to pay the debts, funeral and testamentary expenses and the pecuniary legacies, and to hand over the assets specifically bequeathed to the specific legatees. When all this has been done, the balance left in the executor's hands is the residue and must be, paid over to the residuary legatees under, Section 366 of the Succession Act or held in It . rust for them, if the directions in the will require the residue to be so held. Section 211 (1) of

the Succession Act constitutes the executor of a deceased person his legal representative for all purposes and vests all the property of the deceased in the executor. Though no time limit is fixed by the section for the duration in the office of executor with its powers and rights, and in this sense an executor remains an executor for an indefinite time, the property, which he has in the estate that devolves upon him and over which his powers extend, does not remain his indefinitely. By his assent to the disposition in the will they become operative, the executor is pro tanto divested of the property which was his virtute officii and the legatees have vested in them as owners, the property in the subject-matter of the bequests, Under Sections 332 and 333 of the Succession Act the assent of the executor to a legacy may be express or implied from his conduct. By assent is meant not that the executor concurs in the dispositions in the will but that he assents to the disposition taking effect upon the specific property if the bequest is specific, upon the sum of money if it is pecuniary or upon the residue brought out by the executor at the end of the administration, if it is a residuary bequest. There is the same necessity for the executor's assent to a bequest of the residue as to a bequest of a specific or pecuniary legacy, So soon as he assents to the dispositions of the will - and the assent may be expressed or implied from his conduct - they become fully operative and the title of the legatees becomes absolute. If there are trusts declared or created by the will in respect of the subject-matter of the bequest the trusts take effect on such assent, the estate vested in the executor as such is divested and vests in the trustees of the will. The fact that the executors are themselves the trustees does not make any difference. Nor does the fact that the bequest is of the residue affect the point, once the residue has been ascertained in due course of administration. See Attenborough v. Solomon, (1913) AC 76.

xxx xxx xxx

The decision in Lord Sudeley v. Attorney-General, (1897) AC 11 is authority for the position that even if the trustees and executors happen to be the same persons, until the claims of the testator's estate for his debts and testamentary expenses and the pecuniary and specific legacies have been satisfied, the residue does not come into actual existence. It is a non-existing thing, until that event - has occurred. The probability that there will be a residue is not enough, but it must be actually ascertained. Dealing with a trust of the residuary estate Lord Halsbury, L.C., observed : 'Even if the trustees and executors happen to be the same persons, until the estate is fully administered until the thing has been ascertained, until the trust fund has been constituted, the thing of which the trustees are trustees has not been ascertained. Till then the right of the residuary legatee is to require the executors to administer the estate completely.'

xxx xxx xxx

Younger, L. J. (afterwards Lord Blanesborough) in Barnardo's Homes v. Special Income-tax Commissioners (1921) 2 AC 1, stated the law in these terms :

'Until the residue is ascertained, and until its existence as net residue has been acknowledged by the executor, either by payment to the residuary legatee, or if the residue be settled, by the appropriation of a fund to meet the settled residue, the

> residuary legatee has no interest in any specific part of that which subsequently becomes residue as a specific fund but his right is, until that moment of time

arrives, to have the estate administered in due course. The House of Lords affirmed the decision of the Court of Appeal on the ground above stated.

xxx xxx xxx

The residuary legatee might be interested in the estate subject to the payment of debts and legacies, but he did not become the proprietor or owner of the residue except when a residue had been ascertained which on corn dministration, is made over to him by the executors.

The question in each case is, has the administration reached a point at which you can infer that the administration has been completed, the residuary estate has been ascertained, the bequest of the residue has been assessed to and the residuary estate therefore became vested in trustees, be they the executors themselves or strangers?

In other words, can it be said that the residuary estate had taken concrete shape and could and should have been handed over by the executors to the persons beneficially entitled but for the fact that the estate is .settled in trust and vested in the executors as trustees ?"

(Emphasis added)

We have, therefore, to look at the factual position and find out whether the executor has ascertained the residue and acknowledged its existence. Even taking it that the last sentence of the above quotation goes a little further and enables the Court to "deem" the administration to have come to an end where the facts clearly show that everything nccessary has been done in this regard, it is difficult to accept the conclusion of the High Court in the present case that the administration must be deemed to have come to an end in the face of the factual findings in the case which have been referred to earlier.

17. For the reasons discussed above , we are of the opinion that the High Court, in the circumstances of the case, should not have interfered with the Tribunal's finding and that the question referred should have been answered in the affirmative and in favour of the assessee. We, therefore, allow the appeals and answer the above question in the affirmative. The assessee will be entitled to his costs.

Appeals allowed.

</html