

H.H.Vijayaba Rajamath and Anr.

Vs

Controller of Estate Duty, Karnataka, Bangalore

08.07.1997

(S.C. Agrawal, D.P. Wadhwa JJ)

JUDGMENT

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D.P.WADHWA, J.

1. This is assessee's appeal against the judgment dated February 27, 1980 of the Karnataka High Court in two reference cases arising under Section 64(1) of the Estate Duty Act, 1953 (for short 'the Act'). In the first reference the Income-tax Appellate Tribunal, Bangalore Bench referred the following five questions to the High Court for its opinion and in the second reference one question was so referred. There are as under:

"T.R.C. No.122/75.

- (1) Whether, on the facts and in the circumstances of the case, the value of gold was rightly included in the principal value of the estate of the deceased?
- (2) If the answer to the above question is in the affirmative, whether the correct value to be included is on the basis of the market value of gold prevailing in India as on the date of death or the international price of gold as on that date?
- (3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the market value of the annuity deposits was to be included in the principal value of the estate of the deceased?
- (4) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance claimed by the accountable persons under Section 48 of the Act in respect of the death duty paid in U.K. interest paid on death duty in U.K., interest payment to Lloyds Bank in U.K., and loss on devaluation?
- (5) Whether, on the facts and in the circumstances of the case, the amount of Rs.51,000/- which became payable to the advocate and the chartered accountant of the deceased subsequent to the date of death is allowable as a deduction under Section 36(1) of the Estate Duty Act"?

T.R.C. 81 of 1977

"Whether on the facts and in the circumstances of the case, the principal value of the estate of the deceased had to be determined under Section 36 of the Act having regard to the death duty paid in Untied Kingdom and the estate duty payable under

the Act"?

2. Mr. G.C.Sharma, learned senior advocate for the appellants, has however confined his submissions to the question of law as stated in question No.(4) in T.R.C. No.122/75 and did not press other questions all of which however have been answered against the appellant. For convenience sake we again set out the question No.4 as under:

"(4) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance claimed by the accountable persons under Section 48 of the Act in respect of the death duty paid in U.K. interest paid on death duty in U.K., interest payment to Lloyds Bank in U.K., and loss on devaluation?"  
Under this question, the appellants who are accountable persons claimed the following deductions under Section 48 of the Act: Pound Sterling "Death duty paid in U.K. .. 95,320.12 Interest paid on delayed payment of that duty. .. 8,034.10 Interest and service charge paid to Lloyds Bank .. 1,078.25 Solicitor's fee paid in London. .. 4,855.55"

3. This case relates to the assessment of the estate duty of the estate of late H.H.Rajkuverba Dowgar Maharani Saheb of Gondal who died on October 14, 1968 leaving behind extensive properties both in England and in India. The appellants are her two daughters and are accountable persons under the Act. It is not disputed that for death duty paid in the United Kingdom relief had already been afforded to the appellants by virtue of an agreement entered into between India and United Kingdom for avoidance or relief of double taxation with respect to estate duty under Section 30 of the Act. The contention however was that under Section 48 of the Act this amount of estate duty paid in U.K. be treated as cost of realising or administering foreign property and thus allowable under Section 48 of the Act. While Section 30 applies to the case of reciprocating country, Section 49 provides for allowances for duty paid in a non-reciprocating country. Sections 30, 48 and 49 may be reproduced as under:

"30. The Central Government may enter into an agreement with the Government of any reciprocating country for the avoidance or relief of double taxation with respect to estate duty leviable under this Act and under the corresponding law in force in the reciprocating country and may, by notification in the Official Gazette, make such provision as may be necessary for implementing the agreement.

Explanation.- The expression "Reciprocating country" for the purposes of this Act means any country which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating country.

48. Where the Controller is satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of India, he may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent on the value of the property.

49. Where any property passing on the death of the deceased is situate in a non-reciprocating country and the Controller is satisfied that by reason of such death any duty is payable in that country in respect of that property, he may, subject to such rules as may be made by the Board in this behalf, make an allowance of the whole or any part of the amount of that duty from the value of the property.

Explanation.- In this section, the expression "non-reciprocating country" means any country other than India which has not been declared to be a reciprocating country for the purposes of this Act."

At this stage itself we may also note Article VI of the Agreement for avoidance of double taxation under Section 30 of the Act entered into between the Government of India and the Government of United Kingdom of Great Britain and Northern Ireland. It is as under:

"Article VI. (1) Where one contracting Government imposes duty on any property which is not situated in its territory but it situated in the territory of the other Contracting Government, the former Government shall allow against so much of its duty (as otherwise computed) as is attributable to that property a credit (not exceeding the amount of the duty so attributable) equal to so much of the duty imposed in the territory of the other Contracting Government as is attributable to such property.

(2) Where each Contracting Government imposes duty on any property which is situated-

(a) in the territory of both Governments, or (b) outside both territories. each Government shall allow against so much of its duty (as otherwise computed) as is attributable to that property a credit which bears the same proportion to the amount of its duty so attributable or to the amount of the other Contracting Government's duty attributable to the same property, whichever is the less, as the former amount bears to the sum of both amounts.

(3) For the purposes of this Article, the amount of the duty of a Contracting Government attributable to any property shall be ascertained after taking into account any credit, allowance or relief, or any remission or reduction of duty, otherwise than in respect of duty payable in the territory of the other Contracting Government." On the basis of the provisions as contained in Section 30, 48 and 49 and Article VI of the agreement aforesaid question No.4 was answered in the affirmative in favour of the revenue and against the accountable persons. Mr. Sharma, learned counsel for the appellants, accountable persons, submitted that Section 30 had nothing to do with the computation of income and that scope of Sections 30 and 48 was different. He said Section 30 only provided for the avoidance or relief of double taxation with respect to estate duty leviable under the Act and under the corresponding law in force in the reciprocating country while Section 48 provided for allowing any additional expense incurred in administering or realising property by reason of the property being situated out of India. According to Mr. Sharma, the estate duty paid in U.K. would be an additional expense allowable under Section 48 of the Act. We, however, do not think that Mr. Sharma is right in his submission. As a principle, in *P. leelavathamma Vs. Controller of Estate Duty* (1991) 188, ITR 308 it has been held by this court that estate duty falling upon the estate passing on the death of the deceased is not deductible in computing the net principal value of the estate for the purposes of the Act. Section 49 of the Act contradicts the stand taken by Mr Sharma. this section applies where any property passing on the death of the deceased is situate in a non-reciprocating country and the controller of estate duty may make an allowance of the

whole or any part of the amount of the estate duty payable in the non-reciprocating country from the value of the property. That would, however, be subject to certain rules which we are not concerned, if we read Sections 48 and 49 together it is difficult to appreciate the argument of Mr. Sharma that where there is an agreement under Section 30 of the Act the estate duty payable in the reciprocating country is nevertheless to be deducted or given an allowance from the value of the property left by the deceased. It is not the case of the appellant that under Section 30 of the Act in terms of the agreement between the two Governments, i.e., the Government of India and the Government of United Kingdom, relief has not been granted to the appellants under Article VI of the agreement. Allowance of the estate duty paid in U.K. was given in the estate duty payable in this country. An amount of pound sterling 75,320.12 as the death duty paid in U.K. cannot be treated as an expense for which the appellants are entitled to claim as an additional expense in administering or in realising the property falling under Section 48 of the Act. The appellants are only entitled to deduction of the death duty paid in England out of the estate duty payable as computed by the authorities under the Act in this country. It is difficult to accept the argument of the appellant that relief granted by way of avoidance of double taxation is not a relief under the provisions of the Act and that there is a distinction between the relief under the agreement entered into by virtue of the provisions of Section 30 and the relief to be given under Section 48 of the Act.

4. As regards the interest paid on delayed payment of the death duty in England and interest on service charges paid to the Lloyds Banks, the Tribunal has held that no material was produced "either before the lower authorities or before us to show that these amounts would not have been incurred if the property was in India and not in U.K. In this connection it is necessary to note that the property in U.K. consisted of certain deposits and war bonds which could be easily realised. We see no justification for allowing the claim in respect of these two items." This finding of the Appellate Tribunal has not been questioned by the appellants. So far as the amount of pound sterling 4,855.55 towards Solicitor's fee in London is concerned the Appellate Controller of Estate Duty held that it was an additional expense in administering or in realising the property by reason of the property being situate outside India and deduction was therefore allowed.

5. Accordingly, we do not find any merit in these appeals and the same are dismissed. No costs.