

**(2002) 08 MAD CK 0195**

**Madras High Court**

**Case No:** Tax Case No. 1149 of 1990 13 August 2002

T.K. SINGARAM

APPELLANT

Vs

CONTROLLER OF ESTATE DUTY

RESPONDENT

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**Date of Decision:** Aug. 13, 2002

**Citation:** (2002) 177 CTR 397

**Hon'ble Judges:** R. Jayasimha Babu, J; K.P. Sivasubramaniam, J

**Bench:** Full Bench

**Advocate:** Sampath Kumar, for the Assessee T.C.A. Ramanujam, for the Revenue, for the Appellant;

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### **Judgement**

@JUDGMENTTAG-ORDER

R. Jayasimha Babu, J.

The questions referred to us arise out of the order of the Tribunal in an appeal under the Estate Duty Act.

2. The duty was levied on the accountable person in respect of the estate of late Smt. Jayalakshmi who died on 21-12-1976. She had during her lifetime acquired in terms of a settlement deed executed by her father on 8-4-1929, and a release deed executed by him in April, 1937, the right to collect for herself the rents and income from the property bearing 84, Purasawalkam High Road, Kilpauk, Madras. The right given to the assessee was described in the release deed in which late Smt. Jayalakshmi is referred to as a release in these terms :

"..... from this date the releasee shall be entitled to collect for herself the rents and income from the said properties as her own income ....."

The right acquired by the deceased Smt. Jayalakshmi was, therefore, the right to receive the whole of the income from the property.

3. The assessing officer invoked section 7 of the Estate Duty Act which deals with interest ceasing on death and after applying the provisions of section 40 read with section 36 of the Act valued the property and levied tax in the sum of Rs. 1,03,571. That amount was reduced marginally in appeal. On further appeal, the Tribunal affirmed the order of the Appellate Collector.

4. At the instance of the assessee, the following two questions have been referred to us :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the submission of the assessee that section 7 of the Estate Duty Act was not applicable to the facts of this case ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the claim of the assessee that the life interest of the deceased is not capable of valuation u/s 40 and hence cannot be included u/s 7 ?"

5. Learned counsel for the assessee contended before us that section 7 of the Act on which the assessing authority relied does not apply to the facts of this case. It was his submission that no interest passed to the children of the deceased on the demise of Smt. Jayalakshmi, as in terms of the settlement, she had only a right to receive income from the property and the right to enjoy the property after her lifetime had already been given to her children under the terms of the settlement deed itself.

6. Section 7 of the Act deems that property in which the deceased or any other person had any interest and which interest ceases on the death of the deceased, to pass, on the deceased's death, to the extent to which a benefit accrues or arises by the cesser of such interest. In this case, the right to enjoy the income of the property was a right which the children of the deceased did not have during the lifetime of the mother. That right is a benefit which accrued to them on the mother's demise. It cannot, therefore, be said that no benefit accrued to the accountable persons after the interest of their mother in the property, which interest was the right to receive the whole of the income from the property ceased, on her death.

7. Learned counsel for the revenue in this context invited our attention to the decision of the Supreme Court in the case of [Commissioner of Wealth Tax Vs. Prince Muffakham Jah Bahadur Chamlijan](#), wherein, the court held that for the purposes of wealth-tax even the inalienable right to reside in the premises is an asset which requires to be valued. The fact that the deceased had herself lived in the premises and did not receive an income therefrom, therefore, does not make any difference for the purposes of determining as to whether she had an interest which extended to receiving the income from the whole of the property, and as to whether her children who became entitled to enjoy the property after her lifetime received a benefit on the cessation on the mother's interest on her death. We, therefore, answer the first question referred to us in favour of the revenue, and against the

assessee.

8. Learned counsel for the assessee submitted that even if a benefit did accrue to the accountable person, nevertheless the duty would not be leviable, as in his submission, it is only the interest which is capable of being valued u/s 40 of the Act that can be subjected to tax. It was his submission that since the deceased had herself lived in the property, there was no actual income and in the absence of such income, the mode of valuation set out in section 40 of the Act would be wholly inapplicable.

9. Counsel in this context invited our attention to certain rulings, none of which is of any assistance to him, as they did not deal with a situation similar to the one with which we are concerned in this case.

10. Section 40 of the Act reads thus :

"Valuation of benefits from interests ceasing on death. The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall

(a) If the interest extended to the whole income of the property, be the principal value of that property., and

(b) If the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended. "

11. This section introduces an artificial mode of valuation of the benefit which accrued to the persons entitled thereto after the cessation of the life interest of the deceased. Although under the terms of the settlement deed which created the life interest, the reversionary interest is specifically given to others and the holder of the life interest at no time had the power to alienate the property, or to encumber it, nevertheless section 40(a) of the Act requires that the whole of the property be valued at its market value for the purpose of levy of duty even when the rights of the deceased did not extend to deal with the whole of the property.

12. The fact that the interest of the deceased extended to the "whole income of the property" is u/s 40 regarded as being sufficient to enable the authorities to levy duty on the market value of the property itself.

13. In this case, it is evident that the deceased did have an interest which extended to the whole income of the property as that is exactly what she was given in terms of the release deed which is required to be read along with the settlement deed to which reference has already been made. The fact that she did not choose to let out and derive an income would not make any difference for the purpose of ascertaining the applicability of section 40 of the Act, as it was always open to the deceased to derive income from the property and to enjoy the whole of such income

exclusively. The decision of the High Court at Bombay in the case of [Jehangir Mahomedali Chagla and another Vs. M.V. Subrahmanian, Additional First Assistant Controller of Estate Duty and others](#), is, therefore, not of assistance to the assessee. In that case, it was found as a fact that the deceased only had a right to reside, but did not possess an interest which extended to the whole income of the property.

14. The second question referred to us, therefore, also is required to be and is answered in favour of the revenue and against the assessee.

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