
(1990) 186 ITR 449

Bombay High Court

Case No: Estate Duty Reference No. 32 of 1976

Controller of Estate
Duty

APPELLANT

Vs

Hira Lal Tirath Ram
Narang

RESPONDENT

Date of Decision: June 8, 1990

Acts Referred:

Excise Duty Act, 1953 " Section 44

Citation: (1990) 186 ITR 449

Hon'ble Judges: T.D. Sugla, J; Sujata V. Manohar, J

Bench: Division Bench

Advocate: G.S. Jetley, S.E. Dastur, for the Appellant;

Judgement

Mrs. Sujata Manohar, J.

The following two questions have been referred to us u/s 64(1) of the Estate Duty Act, 1953, in respect of the

estate of one Jaikishan Naran :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the accountable person was entitled to a

deduction of liability of Rs. 2,64,725 arising on account of a joint agreement dated May 1, 1944, with Bharat Bank Ltd., in arriving at the dutiable

value of the estate of the deceased ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal ought to have held that the interest in the joint family property of the

lineal descendants of the deceased was not includible for the purpose of determining the rate of estate duty to be paid on the property passing on the death of the deceased ?

2. The deceased and one Bhagwandas Mehra entered into an agreement with Bharat Bank Ltd., on May 1, 1944, as a result of which they agreed

to act as guarantee brokers for the bank in respect of transactions introduced by them. The liability of the deceased and Bhagwandas Mehra under

this agreement to the bank was joint and several. Under this agreement, Bharat Bank Ltd., in 1946 advanced to Messrs. Ashok Woollen Mills,

Amritsar, a certain amount which was guaranteed by the deceased and Bhagwandas Mehra. The liability of the deceased and Bhagwandas Mehra

under this agreement to the bank was joint and several.

3. The bank filed a suit against Messrs. Ashok Woollen Mills, Amritsar, and its partners for recovery of the amount so advanced by the bank

together with interest. On August 31, 1963, the bank obtained a decree for the sum of Rs. 2,19,062 against the principal debtor together with

interest thereon at 6 per cent. per annum. One of the partners of Ashok Woollen Mills died in the meanwhile. The bank took proceedings against

the remaining partners and the legal heirs of the deceased partner for recovery of the decretal debt. The bank, however, could not recover any

amount.

4. The bank, thereupon, issued a notice on May 30, 1965, calling upon the guarantors to make good the liability under the said guarantee

agreement of May 1, 1944. A second notice was issued by the bank on the guarantors on October 19, 1967. The total claim of the bank by this

time was Rs. 5,29,450.

5. The deceased died on December 30, 1967. On the date of his death, the claim of the bank in respect of the above transaction was Rs.

5,29,450.

6. The accountable person claimed deduction of the entire amount of Rs. 5,29,450 from the estate of the deceased. In the alternative, the

accountable person claimed deduction of at least 1/2 of the said amount, in view of the fact that the deceased as well as Bhagwandas Mehra were

jointly and severally liable to the bank in respect of the said amount. The Assistant Controller negated this claim. The Tribunal, however, allowed

the accountable person to deduct half of this amount from the estate of the deceased.

7. The accountable person had also contended before the Tribunal that the value of the shares of the lineal descendants was not includible for the

purpose of determining the rate of estate duty payable on the property passing on the death of the deceased. The Tribunal negated this

contention.

8. In view, however, of the Tribunal's order permitting the accountable person to deduct half the said amount from the estate of the deceased, the

accountable person had no estate duty liability. Hence, he did not file a reference against the Tribunal's order. However, as the Revenue assailed

the Tribunal's order by raising the first question, it is the contention of the accountable person that it is now open to him to raise the question of

calculating the rate of estate duty also. Hence, the second question has also been referred to us.

9. In respect of the first question, Mr. Jetley drew our attention to section 44 of the Estate Duty Act, 1953. u/s 44(a) of the said Act, debts

incurred by the deceased which were incurred or created bona fide for full consideration in money or money's worth wholly for the deceased's

own use and benefit and which are to take effect out of his interest are liable to be deducted from the value of the estate of the deceased. u/s

44(b), however, an allowance shall not be made for any debt in respect of which there is a right to reimbursement from any other estate or person,

unless such reimbursement cannot be obtained.

10. In the present case, the agreement of May 1, 1944, whereby the deceased and Bhagwandas Mehra agreed to act as guarantee-brokers of the

bank, was an agreement for full consideration. The liability which has arisen as a result of the guarantee which was given by the deceased and

Bhagwandas Mehra and on the basis of which the bank advanced the said amount Ashok Woollen Mills, Amritsar, is also a guarantee for full

consideration. Therefore, this is a liability which is to be deducted from the estate of the deceased.

11. In this connection, Mr. Dastur has relied upon a decision of the Calcutta High Court in the case of Rupchand Mullick and Another Vs.

Controller of Estate Duty, , under which the Calcutta High Court has held that a debt owed by the deceased arising from a guarantee given by the

deceased is a liability which can be deducted from a guarantee given by the deceased is a liability which can be deducted from the estate of the

deceased. He also relied upon a decision of the Madras High Court in the case of Controller of Estate Duty Vs. A.V.S. Private Ltd. and Others,

S. Vijaymmal (Decd.) and Another and Sri Hari Mills (P.) Ltd., . In our view, therefore, a liability which has arisen as a result of a contract of

guarantee is a liability which can be deducted from the value of the estate of the deceased.

12. It was contended by Mr. Jetley that the deceased as a guarantor will not become liable to the bank unless it could be established that the

principal debtor is unable to pay the amount. He, therefore, submits that the liability had not ripened on the date of the death of the deceased. This

submission cannot be accepted. u/s 128 of the Contract Act, the liability of a surety is co-extensive with the liability of the principal debtor. As a

guarantor, the deceased was liable to pay the said amount to the bank. The deceased, however, was entitled to reimbursement of the amount from

the principal debtor. In the present case, however, the bank had already taken recovery proceedings against the principal debtor and was not able

to recover any amount. The deceased, therefore, could not obtain any reimbursement from the principal debtor.

13. The liability of the deceased, however, and of Bhagwandas Mehra is joint and several. Hence, in view of the provisions of section 44(b) of the

Estate Duty Act, 1953, the Tribunal has, in our view, rightly held that the accountable person can claim deduction of half the amount from the value

of the estate of the deceased.

14. Question No. (1) is, therefore, answered in the affirmative and in favour of the accountable person.

15. In respect of question No. (2), Mr. Jetley contends that in view of the decision of the Supreme Court in Commissioner of Income Tax, Kerala

Vs. V. Damodaran, it is not open to the assessee to raise this question. Mr. Dastur, however, contends that, as a result of the Tribunal's order, the

accountable person has no estate duty liability and hence he could not have filed a reference before this court in respect of that question. We need

not examine this contention. In view of the answer which we have given to question No. (1), it is not necessary for us, in any event, to answer

question No.(2) because, on account of our answer to question No. (1), no estate duty is payable by the accountable person. We, therefore,

decline to answer question No. (2).

16. In the circumstances, there will be no order as to costs.