(1990) 3 BomCR 36 : (1990) 87 CTR 53 : (1990) 186 ITR 578

Bombay High Court

Case No: Estate Duty Reference No. 8 of 1987

Estate of Late Gen. Sir Shankar S.S.J.B. Rana		APPELLANT
	Vs	
Controller of Estate Duty		RESPONDENT

Date of Decision: June 22, 1990

Acts Referred:

- Estate Duty Act, 1953 - Section 2(15), 2(16)
- Income Tax Act, 1961 - Section 156
- Wealth Tax Act, 1957 - Section 18A, 2, 27

Citation: (1990) 3 BomCR 36 : (1990) 87 CTR 53 : (1990) 186 ITR 578

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

T.D. Sugla, J.
In this estate duty reference at the instance of the Department, the Tribunal has referred to this court only one question of law under setion 64(1) of the Estate Duty Act, 1953. The question reads thus :

"Whether, on the facts and circumstances of the case, Income Tax refund of Rs. 13,69,092 payable to the deceased was includible in the estate of the deceased, though it was received, after the deceased"s death, by the accountable person ?"

2. The deceased, late Gen. S. S. J. B. Rana, died on June 4, 1976. The proceedings relate to the estate duty assessment in respect of his estate. The controversy is about the sum Rs. 13,69,092 which received by his legal representativem as refund of the Income Tax and wealth-tax for different assessment years pertaining naturally to periods prior to his death. While, according to the Estate Duty Authorities and the Tribunal, the aforesaid

amount of Rs. 13,69,092 represented the property of the deceased passing on death and was thus chargeable to estate duty, it was the contention of the accountable persons that the refund had become due after the death the deceased and thus was not a "property" passing on death.

3. It is desirable to mention that, out of the aforesaid sum of Rs. 13,69,092, a sum of Rs. 13,39,859 represents refund of Income Tax for the assessment year 1976-77. Facts relating to other amounts of refund are stated to be similar. In the circumstances, it is proposed to refer to the facts pertaining to the above amount of refund only. The deceased had during the financial year ending March 31, 1976, paid Income Tax in advance which was found to be far in excess of his actual Income Tax liability for the year. He died on June 4, 1976. Return of income for the year 1976-77 was filed by his legal heirs and representatives on September 30, 1976. If the returned income was accepted, there would have been a refund of about Rs. 22 lakhs odd. However, on completion of the assessment on July 27, 1979, the amount of refund worked out to Rs. 13,39,859. This amount was subsequently refunded.

4. In order to appreciate the controversy involved herein, we have to first consider the nature of tax paid by an assessee in advance, i.e., whether it is a payment on account or a deposit or whether it is a payment of tax due. Sections 210 and 212 of the Income Tax Act, 1961, are relevant in this behalf. The deceased being admittedly a person previously assessed by way of regular assessment, he was liable to pay advance tax only on receipt of a notice from the Income Tax Officer u/s 156 read with Section 210(1) of the Income Tax Act. We are not concerned in this reference with the provisions under sub-section (2) and (3) of that section. Section 212(3A) requires an assessee to file his own estimate of advance tax payable by him if the tax on his income on the basis of which tax was demanded by the Income Tax Officer was likely to exceed by one-third of such tax. If advance tax is not paid as required under these provisions, the assessee is treated as an assessee in default and as held by this court in the case of Prakash Cotton Mills P. Ltd. Vs. Commissioner of Income Tax, Central Bombay, , even penalty can be imposed for non-payment of advance tax. In the circumstances, it has to be held that the tax paid in advance is neither a payment on account nor a deposit. It is discharge of a legal obligation under the statute. In a similar case that came up before the Supreme Court in the case of Commissioner of Wealth-tax (Central), Calcutta Vs. Standard Vacuum Oil Co. Ltd., , it was held that there was no material difference between the advance tax paid u/s 18A and tax due and paid under a demand notice issued after an assessment. Advance tax demanded and not paid was held to be debt owed by the tax assessee within the meaning of clause (m) of Section 2 of the Wealth-tax Act.

5. The next pertinent question is as to when does the right to refund arise. As stated earlier, the return of income for the assessment yera 1976-77 was filed on September 30, 1976, i.e., about three months after the death. Even then, we will assume for the present that the deceased, on the last day of the financial year, i.e., March 31, 1976, could be aware of the fact that day of the Income Tax payable by him for the year was much less

and that he was entitled to refund. The question will still be whether this awareness amounts or can in law amount to an accrual of a right to refund in the nature of "property" or whether it was only a right to claim. It is true that the word "porperty" has been defined in Section 2(15) of the Estate Duty Act, in very wide terms. While dealing with the concept of "porperty" under the Estate Duty Act, the Supreme Court in M. Ct. Muthiah and Another Vs. Controller of Estate Duty, Madras, , agreeing with the views of the Jammu and Kashmir High Court in the case of Controller of Estate Duty Vs. Kasturi Lal Jain and Mohini Devi Muju, , at page 791, observed that insurance money in the case of an accident policy became property on the happening of a specified contingency. That property arose on the death of the deceased during the subsistance of the policy. The property came into being on that contingency after death. Therefore, no property can be deemed to pass on the death of the deceased as no property existed at the time of the death. Under the circumstances, it will be reasonable to assume that, in order to fall within the expression "property" and "property passing on death", the property in some shape or the other must exist at the time of the death. In the present case, the deceased could not have claimed any refund until the assessment was completed and the refund became due as a result of that assessment. This is evident from the fact that, on the basis of the return, the amount of refund would have been more than Rs. 22,00,000. It is nobody"s case that that amount was "property" at the time of death. The amount due on copletion of the assessment alone is considered "property" for the purpose and rightly so as it could not be said with certainty that any amount by way of refund would be due until the finalisation of assessment. All these events were to happen and happened in this case subsequent to the death of the deceased. It cannot, therefore, be accepted that just because, on the basis of the returned income for the financial year ending March 31, 1976, the deceased would be entitled to refund of a particular amount, the right to refund, as distinct from a mere right to claim, had accrued to the deceased before June 4, 1976.

6. The Gujarat High Court had occasion to consider this question in wealth-tax proceedings in the case of Commissioner of Wealth-tax, Gujarat-III Vs. Arvindbhai Chinubhai, . In that case, the assessment proceedings were pending on the valuation date. The court observed that even assuming that there was likelihood of refund in the future and the likely amount of refund might be an asset, it was not capable of avaluation on the valuation date and such an asset was not capable of being ascertained. The Rajasthan High Court considered that very question in the case of Commissioner of Income Tax Vs. Rangnath Bangur (Decd. by L. RS.), . Applying the Supreme Court decisions in Commissioner of Wealth-tax (Central), Calcutta Vs. Standard Vacuum Oil Co. Ltd., and Assam Oil Co. Ltd. Vs. Commissioner of Wealth Tax (Central), Calcutta, , it was held that the assessee had no claim or title to the refund prior to the date on which the assessment was completed and, therefore, the amount of refund was not an asset in the hands of the assessee on the valuation date. It is true that the Madras High Court in the case of T.V. Srinivasan Vs. Commissioner of Wealth-tax, took a contrary view. However, in a subsequent decision reported in R.N. Goenka Vs. Commissioner of Wealth-tax, , the court doubted its decision in T.V. Srinivasan Vs. Commissioner of

Wealth-tax, and, directed the Tribunal to refer the question of law to it u/s 27 of the Wealth-tax Act. In a different context, the Kerala High Court in the case of Her Highness Setu Parvati Bayi, Maharani of Travancore Vs. Commissioner of Wealth-tax, , held that the assets on the valuation date are "net dividend" and not "gross dividend", the tax deducted at source from the dividend not being an asset on the valuation date.

7. The Allahabad High Court had occasion to considered this question in an estate duty case. The case is Smt. Sheila Prasad Vs. Controller of Estate Duty, . Referring to the definition of the exprssion "property passing death" in Section 2(16), the court held that even though assessment was completed long after the death, the amount of refund was referable to the death and, therefore, was "property passing on death" includible in the principle value of the estate. It is pertinent to mention that the Allahabad High Court considered this very question again in Controller of Estate Duty Vs. Maharani Raj Lakshmi Kumari Devi, . The earlier decision in Smt. Sheila Prasad Vs. Controller of Estate Duty, was not brought to the notice of the court. It was held that the amount of refund as a result of assessment completed after the death was not "property passing on death" and, therefore, not includible in the principle value of the estate.

8. Shri Jetley, learned counsel for the Department, contended that the decision rendered under the Wealth-tax Act were distingushable inasmuch as the expressions "property" and "property passing on death" had definite meanings under the Estate Duty Act, being defined under Sections 2(15) and 2(16) of the Estate Duty Act. He laid great emphasis on the fact that though Income Tax dues on the valuation date or on the date of death, for the period immediately prior to death or valuation date, must of necessity be computed after the death or valuation date, as the case may be, yet such dues are admittedly teated as the liability of the assessee/deceased on such dates. There is no good reason why a different standrd should be applied wihle considering the question of refund. In support of his contentions Shri Jetley placed reliance on a Full Bench decision of the Delhi High Court in the case of Labh Chand and Another Vs. Controller of Estate Duty, New Delhi, , the Mysore High Court decision in the case of M. Lakshmamma v. CED [1964] 53 ITR 20 and the Suprim Court decision in the case of Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, . Referring then to the provisions of Section 238(2) of the Income Tax Act, he stated that, on the death of a person, his legal heirs were entitled to received any refund due to the deceased. This right, not only to claim but also to receive refund, passed on the death of the deceased. What was postponed is only the ascertainment of the quantum of it till the completion of the assessment.

9. The expression "property" has not been defined in the Wealth-tax Act. The expression "asset" is defined in the Section 2(e) of the Wealth-tax Act to inculde property of every description movable or immovable except specified properties. Both expressions are defined in the widest possible terms. There is thus no material difference between "asset" under the Wealth-tax Act and "property" under the Estate Duty Act.

10. In any event, the Supreme Court held in M. Ct. Muthiah and Another Vs. Controller of Estate Duty, Madras, , in the context of an "accident policy" :

"The property in this case is the sum of Rs. 2 lakhs which became receivable by the nominee or the legal representative of the deceased because of the death of the deceased in an air accident during the subsistence of the policy. The right to the sum arose because (a) the deceased died, (b) in air accident, (c) during the subsistence of the policy, that property was not there before. Therefore, the property came into being on that contingency after death. In our opinion, therefore, no property can be deemed to pass on the death of the deceased."

11. In the circumstances, unless it is possible to say that there was some amount due by way of refund as of right at the time of the death, it will not be "property" under the Estate Duty Act. Until the completion of the assessment, the deceased or his heirs had no right to claim refund as whether or not there would be any refund due would depend upon the completion of the assessment. The assessment could have resulted in a further demand rather than any refund. The fact that the refund due was found to be Rs. 13,39,859 as against Rs. 22,00,000 odd on the basis of the returned income supports our view that until the completion of the assessment, nothing was certain. In the circumstances, it is not possible to accept Shri Jetley"s contention that, on the date of death, the deceaased had or can be said to have had any right to claim refund. There was no "property" in existence at the time of the death of the deceased. No doubt, the definition of the expression "property passing on death", superficially looked at, gives an impression that even a refund due as a result of assessment completed after the death may, on account of its reference to a period before death, is "property passing on death" within the meaning of Section 2(16). Since, however, a mere right to claim refund, if ultimately found due, cannot be held to be "property" u/s 2(15), it cannot certainly fall under the expression "property passing on death" merely because that expression partakes within it of an ascertainment subseuent to but with reference to death.

12. The Gujarat and Rajasthan High Courts in cases (supra) have admitedly held that refund falling due as a result of the assessment order or any other after the valuation date is not an "asset" on the valuation date under the Wealth-tax Act. The Madras and Allahabad High Courts have taken conflicting views in the matter. Having regard to the Supreme Court decision in M. Ct. Muthiah and Another Vs. Controller of Estate Duty, Madras, , in our judgment, a mere right to claim refund which may or may not materialise is not "property" within the meaning of Section 2(15) of the Estate Duty Act. Once it is held that it is not property, the question of its passing on death could not arise.

13. In view of the discussion above, we answer the question referred to us by the Tribunal in the negative and in favour of the accountable person.

14. No order as to costs.