

(1990) 06 BOM CK 0077

Bombay High Court

Case No: Estate Duty Reference No. 18 of 1976

Controller of Estate Duty

APPELLANT

Vs

M. Charitakis and Dr. G.B.
Ramasarma

RESPONDENT

Date of Decision: June 15, 1990

Acts Referred:

- Excise Duty Act, 1953 - Section 5, 50

Citation: (1990) 186 ITR 490

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 u/s 64(1) of the Estate Duty Act, 1953, at the instance of the Department, the Tribunal has referred three questions of law to this court of opinion. The questions read thus :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the entire probate court-fee of Rs. 8,42,709.50 is deductible u/s 50 of the Estate Duty Act, 1953, from the estate duty payable and not only so much of it as relatable to the properties or portions thereof actually brought to tax under the provisions of the Estate Duty Act, 1953 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that relief u/s 50 of the Estate duty Act, 1953, has to be allowed if court fees are paid in respect of the property which is exempt from payment of estate duty u/s 33 of the estate Duty Act, 1953 ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in allowing relief u/s 50 of the Estate Duty Act, 1953, in respect of certain items

of property which were not charged to estate duty under the provisions of the estate Duty Act, 1953 ?"

2. It is evident from the above questions of law that the real question involved in this reference is only one, namely :

Whether court-fee paid on the estate of the deceased is to be allowed as deduction from the estate duty payable on the estate passing on death u/s 50 of the Estate Duty Act in full XFFD; or whether it is to be allowed in proportion to the value of the properties actually included in the principal value of the estate ?"

3. It is pertinent to mention that it is not clear from the record as to why there is a difference in the principal value of the estate taken for probate court-fee purpose and taken for estate duty assessment. What is stated by the Assistant Controller of Estate Duty is only this, that, as against the valuation of the movable and immovable property of the deceased according to the schedule of the assets at Rs. 1,18,98,168.15, the estate duty assessment has been made taking the principal value of the estate at Rs. 79,51,367. So observing, the Assistant Controller has allowed deduction in respect of probate court-fee of Rs. 3,57,740 as against actual court-fee paid of Rs. 8,42,709.50.

4. In the absence of material indicating the reasons for the difference in the value taken for probate court-fee purpose and estate duty purposes, it may not have been possible for this court to answer the question. However, Shri Dastur stated that we might assume for the purpose of this reference that the difference could be due to (1) valuation of certain movable or immovable properties, and (2) some items of properties being fully or partly exempt u/s 33.

5. Placing reliance on the Andhra Pradesh High Court decision in the case of [GUNDA BHASKARA RAO Vs. CONTROLLER OF ESTATE DUTY.](#), and the Karnataka High Court decision in the case of [S.N. Parthasarathy Vs. Controller of Estate Duty, Karnataka](#), , Shri Jetley submitted that the Assistant Controller was fully justified in allowing deduction on account of probate court-fee paid by the assessee in proportion to the properties on which the estate duty was actually levied. It was Shri Jetley's submission that if a particular item of property is not included in the computation of the principal value of the estate for any reasons including Section 33, it should be held that estate duty was not leviable in respect of that item of property.

6. Shri Dastur, learned counsel for the assessee, took us through these two decisions to show that these decisions were not applicable in the facts of the case and, in any event, the ratio of the Andhra Pradesh High Court decision in [GUNDA BHASKARA RAO Vs. CONTROLLER OF ESTATE DUTY.](#), followed the view taken by the Tribunal. He also invited our attention to another decision of the Kerala High Court in the case of CED v. P. E. Venkitraman [1978] 115 ITR 222, where a contrary view was stated to have been taken. Shri Dastur then referred to Sections 50 and 5 to show that both sections referred to estate duty leviable. Estate duty is leviable on

property passing on death. Section 33, on the other hand, merely provides that no estate duty shall be payable in respect of properties mentioned in that section belonging to the deceased which passes on death. He submitted that unless it was possible to say that any of the properties on which probate court-fee had been paid was not a property that passed on death, it could not be said that any part of the probate court-fee would be referable to a property on which estate duty was not leviable.

7. Section 50 of the Estate Duty Act reads thus :

"50. Relief from estate duty where court-fee have been paid for obtaining representation to estate of deceased. - Where any fees have been paid under any law relating to court-fees in force in any State for obtaining probate, letters of administration or a succession certificate in respect of any property on which estate duty is leviable under this Act, the amount of the estate duty payable shall be reduced by an amount which is equal to the court-fees so paid."

8. The deduction is provided in respect of court-fees which are paid in respect of any property on which estate duty is leviable. But the deduction is from the estate duty payable. Section 5 which is a charging section provides that estate duty shall be leviable and paid upon the principal value of all properties, whether settled or not, passing on the death of such a person. It is clear that both Section 5 and Section 50 refer to the estate duty leviable. There being no dispute that the entire property in respect of which probate court-fee has been paid is property which passed on the death of the deceased, it cannot be accepted that any portion of the probate court-fee was paid in respect of the property on which estate duty was not leviable. Considered in this manner, the provision in Section 33 that, in respect of certain kinds of property mentioned in that section, no estate duty shall be payable, appears to us to be a matter of computation of the principal value of the estate. Merely because estate duty is not payable on a property wholly or partly u/s 33, it does not follow that estate duty is not leviable on that property u/s 5.

9. In all the three cases, the deceased were members of joint Hindu families. For the purpose of obtaining succession certificate, court-fees had to be paid on the value of the property of the joint Hindu family and not only on the interest of the deceased. It was held by the Andhra Pradesh and Karnataka High Courts that since no estate duty was leviable on the property of the joint Hindu family other than the interest of the deceased, it could not be said that the estate duty was leviable on the entire property of the Hindu undivided family. It was for this reason that only the proportionate probate court-fee was held deductible from the duty payable. On the other hand the Kerala High Court held that it was not possible to apportion the court-fee payable for obtaining a succession certificate and the court-fee payable on the property on which estate duty was not payable. In any event, as stated by us above, the facts in the present case are different and none of the three decisions are, therefore, applicable in this case. All the same, as rightly pointed out by Shri

Dastur, the ratio of the Andhra Pradesh High court decision supports the view taken by the Tribunal. This is evident from the following observations made by the court in the penultimate paragraph of the judgment (p. 314) :

10. In this view, the other contention that because the word "leviable" is used in Section 50, estate duty is leviable on the entire value of the estate including that of the coparceners who are alive, and, therefore, the court fee paid to recover the amount due to all the coparceners including the one on whose death his share is deductible, does not arise. The court-fee which has to be deducted u/s 50 is in respect of any property of the deceased upon which estate duty is leviable under the Act, and from that duty which is leviable, the amount which is equal to the court-fees so paid in respect of the share of the property of the deceased had to be deducted. Thus, the word "leviable" is used in relation to that which is leviable, had there not been any provision for deduction. It is only after the various variations and deductions that are permissible that estate duty could be levied and till then it can only be described as leviable. We think that the provisions of Section 50 do not admit of any doubt and the view taken by the estate duty authorities is clearly warranted."

11. Having regard to the discussion above, we are in agreement with the Tribunal that the deduction u/s 50 of the Estate Duty Act was allowable in respect of probate court-fee in full. Accordingly, we answer the referred question in paragraph 2 thus :

12. The entire court-fee was allowable as deduction from the estate duty payable.

13. No order as to costs.