

Smt. Bimla Devi Sud Vs. Controller of Estate Duty, M.P., Nagpur and Bhandara, Nagpur

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Court : Madhya Pradesh

Decided On : Sep-19-1968

Reported in : AIR1969MP50; [1969]72ITR630(MP); 1969MPLJ48

Judge : P.V. Dixit, C.J. and ;G.P. Singh, J.

Acts : [Estate Duty Act, 1953](#) - Sections 7, 13 and 14(1); Limitation Act, 1908 - Sections 3

Appeal No. : Misc. Civil Case No. 8 of 1967

Appellant : Smt. Bimla Devi Sud

Respondent : Controller of Estate Duty, M.P., Nagpur and Bhandara, Nagpur

Advocate for Def. : M. Adhikari and ;P.S. Khirwadkar, Adv.

Advocate for Pet/Ap. : Y.S. Dharmadhikari, Adv.

Judgement :

Dixit, C.J.

1. This is a reference under Section 64(1) of the [Estate Duty Act, 1953](#), (hereinafter called the Act), by the Appellate Tribunal (Central Board of Direct Taxes, New Delhi) at the instance of the accountable person. The questions,

which the Tribunal has placed before us for decision, are--

'(1) Whether on the facts and in the circumstances of the case, the sum of Rs. 62,300/- being the realisable value of the National Savings Certificates held in the joint names of the deceased and his wife was property passing on death or deemed to pass on death having regard specially to Section 13 of the Estate Duty Act.

(2) Whether on the facts and in the circumstances of the case, the sum of Rs. 33,694/- being the proceeds of life Insurance policies on the life of the deceased was property passing on death or deemed to pass on death having regard to the provisions of Section 14 of the Estate Duty Act.

(3) Whether on the facts and in the circumstances of the case, the sum of Rs. 19,374/- being debt due to the deceased from M/s Kishandas Shamlal was rightly included in the principal value of the estate of the deceased.'

2. The estate duty assessment pertains to the assessment of the property of Nandlal Sud who died on 26th November 1957. His widow, as the accountable person, furnished to the Assistant Controller of Estate Duty, Nagpur, a statement of the property passing on the death of the deceased. The Assistant Controller included in the property of the deceased liable to estate duty the following items amongst others--

(i) National Savings Certificates of the face value of Rs. 50,000/- purchased by the deceased in the joint names of himself and his wife. The encashable value of these securities was Rs. 62,300/- on the date of death of Nandlal Sud;

(ii) Rs. 33,694/- being the amount of insurance policies on the life of the deceased assigned to his wife; and

(iii) an amount of Rs. 19,374/- being the amount of a debt owed to the deceased by M/s Kishandas Shamlal. The Assistant Controller determined the principal value of the estate left by the deceased at Rs. 4,16,396/- and the estate duty payable at Rs. 30,387.64 P.

3. The accountable person then preferred an appeal before the Appellate Tribunal objecting to the inclusion of the aforestated three amounts in the property of the deceased passing on his death. The accountable person, relying on paragraph 7 of a registered will executed on 15th September 1955 by Nandlal Sud, contended that the amount of the National Savings Certificates and of the insurance policies had been gifted to her by the deceased more than two years before his death and could not, therefore, be regarded as property of the deceased passing on his death to the accountable person. In regard to the debt of Rs. 19,374/- owed by M/s Kishandas Shamlal, the contention of the accountable person was that it had become barred by time and should not have been, therefore, included in the estate of the deceased liable to estate duty. All these contentions were rejected by the Tribunal.

4. Taking first the question of the inclusion of the amount of the National savings certificates in the property of the deceased passing on his death, the paragraph of the will executed by Nandlal Sud, on which the accountable person relies, for contending that the amount had been gifted to her more than two years before her husband's death, is as follows --

'My wife, Shrimati Bimla Devi, has been given the following properties:--

(a) Rs. 50,000/- only; and this amount now stands in the shape of National Savings Certificates in her own name;

(b) My seven life insurance policies for an aggregate sum of Rs. 31,000/- only have been already assigned to her.

The said properties were given to her absolutely and she is full and absolute owner thereof with complete and full powers of disposal at all times before or after my death. She can cash the National Savings Certificate and receive payment herself without anybody's intervention, whatsoever, as also the amounts of the life policies. No person shall have any right to challenge that right of hers in any manner whatsoever.'

It will be seen that this paragraph of Nandlal Sud's will merely contains a recital that the amount of the National Savings Certificates has been given to the accountable person absolutely. That recital by itself is no proof of the fact that the amount of the National Savings Certificates had been gifted by the deceased to his wife more than two years before his death. In fact, as the Tribunal has found, no evidence whatsoever was produced before it by the accountable person to establish the alleged gift. On the other hand, the facts found by the Tribunal altogether militate against there being any gift of the amount of the National Savings Certificates by Nandlal Sud to his wife. It was not disputed before the Tribunal that the National Savings Certificates had been purchased by the deceased out of his own moneys. It has been found as a fact that the Certificates were purchased between the years 1949 to 1951 and stood in the joint names of the deceased and his wife. If the amount of Certificates had been gifted absolutely by Nandlal Sud to his wife, then the Certificates would have been transferred to her name exclusively. But this was not done. The accountable person made no attempt whatsoever to show that after the alleged gift her name alone was entered in respect of the Certificates. Indeed in the memorandum of appeal, which the accountable person filed before the Tribunal, one of the grounds raised was that--

'the amount of Rs. 62,300/- which is the encashable value of the National Savings Certificates could not be treated as the property of the deceased, particularly in face of the fact that the amount of Rs. 50,000/- in the National Savings Certificates was in the name of Smt. Bimla Devi along with that of the deceased.'

It is plain that this ground was taken on the acceptance of the position that the National Savings Certificates stood in the joint names of the accountable person and the deceased at the time of his death. These being the facts, Section 13 of the Act, which runs thus--

'13. Where a person, having been absolutely entitled to any property or to the funds with which any property was purchased, has caused it to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, either by himself alone, or in concert, or by arrangement, with any other person so that the beneficial interest in some part of that property passes or accrues by

survivorship on his death to the other person, the whole of that property shall be deemed to pass on the death'

comes into play. It will be seen that this provision applies where (a) a person is entitled absolutely to any property or to the funds with which the property was purchased; (b) he transferred the property to the joint ownership of himself and another; (c) with the result that the beneficial interest in some part of the property accrues or arises by survivorship to the other person on his death. If these three conditions are satisfied, then the whole property is deemed to pass on the death of the person who was the absolute owner of the property prior to the transfer. Here, all these conditions are found to exist in regard to the National Savings Certificates. They were purchased by the deceased out of his own funds; the certificates stood in the joint names of the deceased and his wife; and the beneficial interest in the entire lot of Certificates arose to the accountable person by survivorship. It must, therefore, be taken that the amount of the National Savings Certificates passed on the death of Nandlal Sud. The Tribunal, therefore, rightly rejected the contention of the accountable person for exclusion of this amount from the property passing on the death of the deceased.

5. In regard to the amount of Rupees 33,694/- under insurance policies on the life of the deceased, the policies, as found by the Tribunal, were no doubt assigned by Nandlal Sud to his wife. The recital in paragraph 7 of the will is of no avail whatsoever for showing that the amount payable under the insurance policies had been gifted away to the accountable person by the deceased even before his death or before the amount became payable on his death. In paragraph 7 of the will there is only a recital of the fact that seven insurance policies on the life of the deceased had been assigned to Nandlal Sud's wife. The Tribunal has found as a fact that the policies on the life of the deceased were wholly kept up by him for the benefit of his wife to whom the policies had been assigned. On this finding, the Tribunal held that by virtue of Section 14(1) of the Act the amount of the insurance policies must be deemed to have passed on the death of the assured.

6. Shri Dharmadhikaree, learned counsel appearing for the accountable person, however, submitted that Section 14(1) of the Act could not be applied when there

was no evidence to show that after assignment the policies were wholly kept up by the deceased for the benefit of his wife to whom the policies had been assigned. Learned counsel suggested that if all the premiums in respect of the policies had been fully paid up before the assignment, then there would not be 'keeping up' of the policies within the meaning of Section 14 of the Act. Section 14(1) is as follows--

'14. (1) Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit, shall be deemed to pass on the death of the assured.'

Under this provision, when an insurance policy is kept up by the deceased wholly for the benefit of a donee, whether nominee or assignee, then the whole of the policy-money shall be deemed to pass on the death of the assured. To 'keep up' an insurance policy means to keep it 'live' by regular payment of the premiums which is the normal method of keeping up a policy. If the premiums are not paid as and when they fall due, then the policy lapses and is not 'kept up'. Section 14(1) is somewhat analogous to Section 2 (1) (c) of the English Finance Act, 1894. A detailed analysis of Section 2(1) (c) of the English Act is to be found in the decision of the House of Lords in *Barclays Bank Ltd. v. Attorney-General*, 1944 AC 372. It will be sufficient here to reproduce what Lord Wright said about the import of 'keeping up' a policy and of Section 2 (1) (c) of the English Act. In his speech, Lord Wright observed--

'I think that keeping up' a policy according to the ordinary use of language connotes payment of the premiums, which is the normal method of keeping up a policy. This generally involves periodical payments, and, though a single premium policy is not unknown, that would have the effect not so much of keeping up a policy as establishing its operation once and for all. The Act did not, apparently, contemplate this contingency, but, however that may be, the insertion of the words 'in proportion to the premiums paid by him' is necessary to deal with the case where the deceased did not himself wholly keep up the policy but only did so

partially. In that case the death duty is to fall on the deceased's estate in proportion to the premiums paid by him. The change in expression from 'kept up' to 'premiums paid' is necessary to give the basis of apportionment, but at the same time it identifies 'paying the premiums' with keeping up the policy. It is not necessary to speculate why this apportionment was provided for. The language of the sub-section seems sufficiently plain. It supports the view that when the Act refers to keeping up the policy it means the method of paying the premiums as they fall due.'

It is thus plain that if the deceased kept up the policies wholly for the benefit of his wife to whom the policies had been assigned, then the entire amount of the policies must be deemed to have passed on the death of the assured. The Tribunal has found that the policies were on the life of the deceased and were kept up by him. Before the Tribunal, the accountable person made no attempt whatsoever to show that after the assignment the policies were not kept up by the deceased by paying any premium amount and that it was the assignee wife who thereafter paid the amount of the premium or that even before the assignment the amount of all the premiums in respect of the policies had been paid. The burden of proving that the amount of the policies either wholly or partly did not pass on the death of the assured was clearly on the accountable person who claimed the exclusion of that amount from the property of the deceased passing on his death. It is noteworthy that even in the memorandum of appeal filed before the Tribunal the assessee did not raise the contention that the policies had not been kept up by the deceased. The ground taken in the memorandum of appeal by the accountable person for the exclusion of the insurance amount was formulated thus--

'Regarding the Insurance amount of Rs. 33,694/- it should have been seen that the said amount was duly assigned by the insured in favour of his wife before more than two years of his death. The amount having been so assigned could not have constituted the property of the deceased and consequently the insurance amount was not liable to Estate Duty assessment.'

In our judgment, on the facts found by the Tribunal it must be held that under Section 14(1) of the Act the whole amount of the insurance policies passed on the death of the assured and could not, therefore, be excluded from the property of the deceased passing on his death and liable to estate duty.

7. The Tribunal was also right in rejecting the accountable person's contention with regard to the exclusion of Rs. 19,374/- due to the deceased from M/s Kishandas Shamlal. The accountable person founded the claim for exclusion solely on the ground that it had become barred by time. The Tribunal held that even though by the law of limitation the right of the deceased to take civil action for recovery of the debt was extinguished, the debt itself was not extinguished; that in income-tax proceedings M/s Kishandas Shamlal had stated that the firm was in a position to repay the loan amount and that the firm had also shown the debt amount as a liability even as late as 31st October 1959. In our judgment, the Tribunal was right in coming to the conclusion that it did on this point. The matter seems to be concluded by the decision of the Privy Council in Commissioner of Income Tax, C. P. & Berar v. S. M. Chitnavis, AIR 1932 PC 178 = 6 ITC 453. In that case the Privy Council said--

'Whether a debt is a bad debt, and if so at what point of time it became a bad debt, are questions which in their Lordships' view are questions of fact, to be decided in the event of dispute by the appropriate tribunal and not by the ipse dixit of anyone else. The mere fact that a debt was incurred at a date beyond the period of limitation will not of itself make the debt a bad debt; still less will it fix the date at which it became a bad debt. A statute barred debt is not necessarily bad; neither is a debt which is not statute barred necessarily good. The age of the debt is no doubt a relevant matter to take into consideration. In every case it is a question of fact to be determined after consideration of all relevant circumstances.'

It is clear from these observations of the Privy Council that the finding of the Tribunal that the debt in question did not become a bad debt is a finding of fact. On that finding, the contention of the accountable person that the amount of Rs. 19,374/- should have been excluded from the property of the deceased passing on his death and liable to estate duty was rightly rejected.

8. In conclusion, all the three questions referred to us for decision are answered in the affirmative. The accountable person shall pay costs of this reference. Counsel's fee is fixed at Rs. 250/-.

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