

Kalyani Sundaram Vs. Assistant Controller of Estate Duty-i, Madras

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Court : Chennai

Decided On : Mar-14-1980

Reported in : (1980)16CTR(Mad)201; [1980]126ITR615(Mad)

Judge : N.V. Balasubramanian and ;V. Sethuraman, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 2(12A), 17, 17(1), 19 and 61; Estate Duty (Controlled Companies) Rules, 1953 - Rule 15

Appeal No. : Writ Petition Nos. 4959 and 4960 of 1975

Appellant : Kalyani Sundaram

Respondent : Assistant Controller of Estate Duty-i, Madras

Advocate for Def. : J. Jayaraman, Adv.

Advocate for Pet/Ap. : V.P. Raman, Adv.

Judgement :

Sethuraman, J.

1. These are two writ petitions with a common prayer for the issue of a writ of certiorari or any other appropriate writ to quash the order of the Asst. Controller, the first respondent, dated January 25, 1975, refusing to revise the order, dated January 27, 1970, and also to direct the Asst. Controller by a mandamus to finally

communicate to the WTO concerned that there would be nil assessment as for as the petitioner's share in the 'controlled company' is concerned and give such other directions or orders as may be fit and proper. There was an estate duty assessment consequent on the death of Sri Anantharamakrishnan, a well-known industrialist of this part of the country. He died intestate in Madras on April 18, 1964, leaving behind him his widow by name Valli, his two sons by name Sivasailam and Krishnamoorthy and two daughters, Kalyani and Seetha. The present writ petitions have been filed by the husband and power-of-attorney agent of Kalyani, the first daughter. It is common ground that she became entitled on the death of Anantharamakrishnan to a fifth share in his estate under the provisions of the Hindu Succession Act.

2. Soon after his death, the question of liability to estate duty arose. All the heirs, other than Sri Sivasailam, who were also the accountable persons, wrote to the Asst. Controller on December 15, 1964, as follows :

'We are the other accountable persons to the estate of late Sri. S. Anantharamakrishnan. Sri A. Sivasailam has rendered the estate duty account. We agree to abide by the accounts rendered by him and any explanation furnished by him with regard to estate duty matters will be binding on us.'

3. M/s. Amalgamations Private Ltd., is a company which holds shares in most of the companies of this group, such as Simpson & Co. Ltd. By a letter dated April 27, 1965, M/s. Amalgamations Private Ltd., informed the assessing authority that the deceased had transferred property in the form of shares in M/s. Simpson & Co. Ltd., to it and that the deceased had controlling interest in the said company at the time of his death. On the basis of this information, the assessing authority wrote to M/s. Amalgamations Private Ltd., on September 13, 1965, as follows :

'It is seen that late S. Anantharamakrishnan had transferred 80,377 shares of Simpson and Co., held by him to M/s. Amalgamations Private Ltd., and as such the Amalgamations Private Ltd.,

becomes the controlled company within the meaning of section 17 of the Estate Duty Act. And again by virtue of section 19(1) of the Estate Duty Act as the

controlled company has to be treated as one of the accountable persons for the estate of the above deceased, I am enclosing herewith a notice under section 55 for the account being submitted after duly filled in.'

4. In pursuance of the said letter, M/s. Amalgamations Private Ltd., filed a return, and on its behalf representations were made before the Asst. Controller. During the course of the proceedings, there was no objection raised either by the heirs of Anantharamakrishnan or by M/s. Amalgamations Private Ltd., to the latter also being treated as an accountable person.

5. The estate duty assessment was made after due enquiry on January 27, 1970, and the duty payable by the estate was determined to be Rs. 1,67,74,697.58. By that time provisional duty to the extent of Rs. 65,50,452.73 had been paid leaving a balance of Rs. 1,02,24,244.85. This was directed to be paid in eight equal annual installments commencing from March 15, 1970, subject to the interest payable under s. 17(1) of the E. D. Act. The assessment order was addressed to both Amalgamations Private Ltd., and Sri Sivasailam, both of them being referred to as the accountable persons in the order. In the course of the order, the Asst. Controller referred to ss. 17 and 20 of the Act and observed :

'As pointed out earlier, M/s. Amalgamations Private Ltd., is a controlled company and the deceased had control over its affairs till his death and as such valuation of the shares held by the deceased in such company has to be made in the manner laid down in rule 15 which has been framed by the Board under the power given to it by section 20(1)(e). Since rule 15 of the Controlled Companies Rules is part of the scheme of section 17, the controlled company, viz., M/s. Amalgamations Private Ltd., has to be treated as an accountable person. Hence, the controlled company was required to furnish an account in its capacity as an accountable person under section 19(1).'

6. In response to the notice issued, the company rendered an account on 8-10-1965 admitting therein the shares held by the deceased in M/s. Amalgamations Private Ltd., and other allied concerns as also the amount due to the estate by M/s. Amalgamations Private Ltd. The account rendered by the company was incomplete.

7. After referring to certain assets and liabilities which were shown in the account, and after observing that the principal value of the assets were not given in the account, it was added :

'In their covering letter, however, the company pointed out 'we have long back intimated about the company being a controlled company, vide our letter... dated 27-4-1965. As desired by you now, we are formally filing a return. So far as valuation and other assets are concerned, we have to refer you to the estate duty returns and other data already furnished to you by the legal heirs'.'

8. In para. 3 of the assessment order, the Asst. Controller further observed as follows :

'Since M/s. Amalgamations Private Ltd., is a controlled company and since the deceased had control over the company, it was proposed to value the shares held by the deceased in this company by applying rule 15 of the Controlled Companies Rules.

The accountable persons, however, raised the following objections :

' (1) Rule 15 of the Controlled Companies Rules has been enacted for determining the value of the shares for the purpose of rule 11 of the said Rules and inasmuch as section 17 is not applied in this case, the question of recourse to rule 15 cannot arise.

(2) In any event, rule 15 is void and ultra vires the powers of the Board under section 20 of the Act.

(3) If rule 15 is applied in a manner resulting in a valuation which is different from the fair market value, then the rule would be void as contrary to the provisions of section 36 of the Act.

(4) Computation under rule 15 is not mandatory but is only one of the methods suggested with a view to arriving at a fair market value'.'

9. Even on the basis that r. 15 was valid, further submissions were made.

10. The Assistant Controller pointed out in dealing with these objections in his order as follows :

'The total number of shares in M/s. Amalgamations Private Ltd., is 39,000 and the deceased owned the entire shares. The fact that M/s. Amalgamations Private Ltd., was a controlled company and that all its shares were held by the deceased and as such he had the control of its affairs till his death cannot be denied by he accountable person. Since he continued to exercise control over the affairs of the company till his death, the conditions prescribed in rule 15(1)(a) is fully satisfied. Since M/s. Amalgamations Private Ltd., is a controlled company and inasmuch as the deceased had control over its affairs till his death, the valuation has to be done only under rule 15 of the Controlled Companies Rules and not under any other section. To this extent, rule 15 is mandatory. Thus, the accountable person's contention that rule 15 is not mandatory and is only one of the methods suggested with a view to arriving at a fair market value cannot be accepted.'

11. He referred to s. 20 which empowered the Board to make rules respecting the controlled companies generally, and particularly to r. 20(1)(e) which empowered the Board to make rules prescribing the manner in which the shares and debentures of any such company passing upon the death of the deceased are to be valued for estate duty. The expression 'any such company' was construed as meaning 'a controlled company' within the meaning of s. 17, and as M/s. Amalgamations Private Ltd., was a controlled company, and the deceased had control over its affairs, the valuation of the shares held by the deceased in such a company, it was held, could be made only in the manner laid down in r. 15 framed by the Board. The Asst. Controller rejected the plea that r. 15 could be applied only to a case where s. 17(1) was applied. In his view, if the conditions prescribed in r. 15 were satisfied, it could be applied even independently of s. 17(1). The validity of the rule was not gone into by him as, according to him, he was only a creature of the statute. After disposing of all the contentions raised by the accountable persons before him, he stated in his order :

'The arguments discussed above were put to the accountable persons and after considerable discussions, in their letter dated 5-1-1970 addressed to the Controller

of Estate Duty, Madras, they have agreed to the valuation of 39,000 shares held by the deceased in M/s. Amalgamations Pvt. Ltd., and 10,575 shares held by him in M/s. Simpson & Co. Ltd., applying rule 15 of the Controlled Companies Rules.'

12. The details of the working were discussed with the accountable persons' representatives including that of Amalgamations and were checked by him. Thereafter, the principal value of the estate was determined to be Rs. 2,12,29,998. The duty thereon came to Rs. 1,67,74,697.58 as stated earlier. There was no appeal against the assessment by any of the accountable persons.

13. On June 11, 1974, the husband and agent of the petitioner wrote to the Assistant Controller seeking certain clarifications regarding the assessment. On June 25, 1974, the Assistant Controller in his reply referred to the authority given by the petitioner to Sri Sivasailam and also the specific agreement to abide by the accounts rendered by him and to be bound by any explanation given by him. In view of the said authorisation, the Asst. Controller pointed out that all subsequent proceedings were conducted and completed by discussion with the said Sri Sivasailam and M/s. Amalgamations Pvt. Ltd., the other accountable person, who was also given full opportunity of being heard. As the assessment was completed after full discussion with persons authorised in the above manner and as the assessment had not become final, it was not possible according to the Asst. Controller to enter into any discussion with reference to the basis of working of the assessment, as required by the petitioner's husband as her agent. He, therefore, regretted his inability to furnish the particulars called for by the latter. He referred the petitioner, for any particulars, to Sri Sivasailam who was to the person authorised by her.

14. On January 2, 1975, the petitioner's husband as agent, filed an application purporting to be under s. 61 of the E. D. Act. He stated that a scrutiny of the assessment order showed that M/s. Amalgamations Pvt. Ltd., had been held to be an accountable person besides Sri Sivasailam, that the reasoning adopted was that under s. 29(1)(e), the Board was empowered to make rules prescribing the manner in which the shares and debentures were to be valued for estate duty, that r. 15 of the Controlled Companies Rules was framed for valuing such shares and

that consequently M/s. Amalgamations Pvt. Ltd., was an accountable person under s. 19(1). It was stated in the application that r. 15 prescribed only the method of valuation of shares or debentures of controlled companies and that it was only an appendage to ss. 36 and 37 dealing with valuation of shares of companies for the purpose of estate duty. Unless there was a transfer of property, presumably without consideration by the deceased to M/s. Amalgamations Pvt. Ltd., and any benefit accrued to the deceased from the company, s. 17(1) would not, in the view of the applicant, be attracted. It was, therefore, pointed out that the finding in the assessment order that M/s. Amalgamations Pvt. Ltd., was to be treated as an accountable person because of the transfer of shares to it was not correct. It was stated that if any transfers were made by the deceased and if any portion of the assets of M/s. Amalgamations Pvt. Ltd., was required to be included in terms of s. 17(1), then, of course, the company would become an accountable person under s. 19 and the amount which it has to pay as duty would be proportionate to the slice of the assets included under s. 17(1) in the estate determined as passing on the death of the deceased. It was further stated :

'The assessment order does not show any detail on this point. You will please pass a rectification order as to what is the exact amount included under section 17(1) as the property passing on the death of the deceased.'

15. This information was said to be required to enable him to work out the amount which his principal had to pay to M/s. Amalgamations Pvt. Ltd., by way of reimbursement of the duty. If the order had itself apportioned the duty, the difficulty would not, in his view, have arisen. Unfortunately, as the order did not give this allocation, he was requesting for rectification of the assessment to give the amount included under s. 17(1) separately so that he could make the calculation himself. According to him, there was a mistake of law which was glaring and obvious and which had to be rectified and his submission was that there could be such a rectification under s. 61 in the present case.

16. On January 25, 1975, the Asst. Controller wrote in reply to his letter or application as follows :

'I have carefully gone through your application for action under section 61 of the Estate Duty Act. I find that there are no mistake to be rectified in the assessment order passed earlier. In the circumstances, I am unable to take any action in the matter referred to.'

17. It is this order that has given rise to the writ proceedings.

18. In the affidavit in support of the writ petitions, it is stated that the order dated January 25, 1975, refusing to revise the assessment under s. 61 was not a speaking order, that the order gave no reason for the decision not to revise, and that the statement that there were no mistakes to revise was itself an error apparent on the face of the record, particularly when the requirement of s. 17 of the Act, namely, a transfer to a controlled company and the enjoyment of a benefit from such company, were not at all found by the Asst. Controller either in his original order or subsequently. The Asst. Controller ought to have, the affidavit stated, allowed the revision petition and found that s. 17 of hoe Act did not apply in view of the absence of a transfer by the deceased to the controlled company of any property and the enjoyment of any benefit by him from the controlled company. It was also stated that, in any event, the Asst. Controller ought to have made an apportionment, if he found that the controlled company was an accountable person by virtue of ss. 17 and 19 under the formula (Benefits/net income) X Assets : under rr. 11 and 14. It was also stated that all the authorities were in error in thinking that r. 15 of the Controlled Companies Rules imposed a liability for estate duty and that it was forgotten that liability to pay estate duty arose only under s. 5. In para. 11(8) it was added :

'All the authorities including some text book writers on the subject are in error in assuming that if shares in a controlled company are purchased for cash, there is transfer of property within the meaning of section 17 of the Act, forgetting that whereas in the United Kingdom the Estate Duty Act was amended after the decision in *St. Aubyn v. Attorney-General*[1951] 2 All ER 473; 3 EDC 292, there has been no such amendment in India.'

19. In the submission of the petitioner, the company could not be made an accountable person under s. 19 of the Act.

20. Originally the respondents to the writ petitions were the Asst. Controller and the other four heirs of the deceased. Subsequently, M/s. Amalgamations Pvt. Ltd., was also added as a respondent.

21. A supplemental affidavit was filed by the husband and the agent of the petitioner to make two points, clear; it was explained that, firstly, the petitioner was not in any way questioning the assessment order as to the estate duty and its quantum, and, secondly, that all the five heirs of the deceased were accountable persons liable to pay estate duty in accordance with their share in the estate. It was admitted that four of them had given an authority to Sri Sivasailam to represent the estate, before the estate duty authorities. It was further added :

'All that the petitioner is claiming in the writ petition is that either M/s. Amalgamations Private Ltd., should be removed from the array of accountable persons because the conditions of section 17(1) of the Estate Duty Act are not satisfied and in event if M/s. Amalgamations Pvt. Ltd., is to remain an accountable person, the order should specify the proportion of estate duty for which M/s. Amalgamations P. Ltd., is liable. This is very important with regard to the adjustment of rights of the five heirs inter se and allocation of the liability for duty rateably on the assets.'

22. Counter-affidavits have been filed by the Asst. Controller and also by M/s. Amalgamations Pvt. Ltd. As regards the submissions that the order under s. 61 was a non-speaking order, it was stated in para. 7 et seq of the counter-affidavit of the Asst. Controller :

'The order passed by the Assistant Controller dismissing the petitions under section 61 could not be described as a non-speaking order. The contention that cash purchase of shares in a controlled company will not amount to a transfer of property within the meaning of section 17 of the Act gives rise to a debatable issue which cannot be gone into in the rectification proceedings.

8. The order of the assessing authority dated 25-1-1975 had held that there was no mistake apparent from the record. The assessment order had clearly stated that M/s. Amalgamations Private Ltd., was a controlled company within the

meaning of section 17 and an accountable person under section 19. There was no need for the assessing authority to repeat what was already agreed to and accepted by the accountable persons.'

23. It is unnecessary to refer to the other counter-affidavits or to the reply affidavits filed in these cases.

24. The learned Advocate-General, who appeared on behalf of the writ petitioner, submitted that in the absence of resort to resort to s. 17, the controlled company could not be an accountable person under s. 19, merely because the value of shares held by the deceased in the controlled company is computed under r. 15 of the Controlled Companies Rules. He further submitted by reference to the provisions of the Act that r. 15 did not at all apply in this case and that, therefore, M/s. Amalgamations Pvt. Ltd., should not have been treated as an accountable person at all. As this was, according to him, a patent error, it should have been rectified by the Asst. Controller.

25. The learned counsel for the Asst. Controller contended that the company was rightly treated as an accountable person and that in any event, there was no apparent error which could be rectified under s. 61.

26. In the light of these contentions, it is necessary to find out whether there is any apparent error in this case which should have been rectified by the Asst. Controller.

27. In this context, we shall refer to a few of the relevant provisions of these Act. Section 17 is one of the special provisions relating to transfers of properties to companies.

Section 17(1) provides :

'17. (1) Where the deceased has made to a controlled company a transfer of any property... and any benefits accruing to the deceased from the company accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his death to an extent determined in accordance with sub-section (2).

(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net income of the company for the said years...'

Section 19(1) provides :

'19. (1) The following persons shall be accountable for the duty payable on the death of the deceased by virtue of section 17, namely :- (a) the company;...'

28. It is not necessary to refer to the rest of the clauses or sub-sections of s. 19.

29. Section 2(12A) defines 'person accountable' or 'accountable person' as meaning 'the person accountable for estate duty within the meaning of this Act, and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of the principal value of the estate of the deceased'.

30. Section 53 sets out the duties and liabilities of the accountable persons. Under sub-section (3) every person accountable for estate duty should, within six months of the death of the deceased, deliver to the Controller an account in the prescribed form and verified in the prescribed manner of all the properties in respect of which estate duty is payable. Where two or more persons were accountable, then s. 53(5) provides as follows :

'Where two or more persons are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole of the estate duty on the property so passing.'

Section 74 provides :

'74. (1) Subject to the provisions of section 19, the estate duty payable in respect of property, movable or immovable, passing on the death of the deceased, shall be a first charge on the immovable property so passing... in whomsoever it may

vest on his death after the debts and encumbrances allowable under Part VI of this Act; and any private transfer or such property shall be void against any claim in respect of such estate duty.'

Section 76 enacts thus :

'76. If a person accountable under section 53 pays any part of the estate duty in respect of any property not passing to him, it shall, where occasion requires, be repaid to him by the trustees or owners of the property.'

Section 61, which is the provision now under consideration, runs as follows :

'61. At any time within five years from the date of any order passed by him..... the Controller,..... may, on his..... own motion, rectify any mistake apparent from the record and shall, within a like period, rectify any such mistake which has been brought to the notice of the Controller..... by the person accountable : Provided that no such rectification shall be made which has the effect of enhancing the estate duty payable unless the person accountable has been given a reasonable opportunity of being heard in the matter.'

31. Thus, the question for consideration as set out earlier is whether there is any mistake apparent from the record in the present case. This mistake was stated to be the inclusion of M/s. Amalgamations Private Ltd., as an accountable person. The learned Advocate-General relied on a passage in the decision in T. S. Rajam v. CED : [1968]69ITR342(Mad) in support of his submission that there was an apparent error in this case. The relevant passage occurs at p. 349, which runs as follows :

"Mistake' is an ordinary word, but in taxation law, it has a special signification. It is not an arithmetical or clerical error alone that comes within its purview. It comprehends errors which, after a judicious probe into the record from which it is supposed to emanate, are discerned. It is difficult to axiomatise and lay down dictas for the discovery of a mistake from official records. The word 'mistake' is inherently indefinite in scope, as what may be a mistake to one may not be one for another. It is mostly subjective and the dividing line in border areas is thin and

indiscernible. Indeed, it is imponderable due to its inherent indefiniteness. It is something which a duly and judiciously instructed mind can find out from the record. It may be that sometimes an argument, though not a complex study, may be required to find it out. But that by itself is not the test to discountenance it as being not a mistake apparent from record. In the ultimate analysis, the conclusion a well equipped and trained judicial mind will reach after scrutinising the record, will govern and his finding whether it is a mistake or not has to be accepted.'

32. This passage finds a place in a decision on the following facts. The deceased sold within two years before his death certain shares in a private limited company to his sons and grandsons for Rs. 1 lakh. The Asst. Controller took the view that the sale was a disposition in favour of relatives within the meaning of s. 27 of the E. D. Act and rectified the order which originally did not take this aspect into consideration and had fixed the value of each share at Rs. 310 as on the date of death and brought the difference in value as property passing on death. On appeal, the Central Board of Revenue adopted a value of Rs. 258 per share. On a reference to this court, it was held that the rectification was valid. In the course of the judgment, it was observed thus (p. 360) :

'If the officer omitted to evaluate the shares in a manner known to law and if this is found by the second officer, while exercising his jurisdiction under section 62, it does not lie in the mouth of the accountable person to argue that such a re-scrutiny by the second officer and re-evaluation of the shares, which has been omitted to be aggregated, cannot be under-taken. If this contention were to be countenanced, it would result in the creation of a barrier to the revenue at all material time to re-open a mistake in the value of property, though patent and obvious.'

33. The first officer was found to have accepted the consideration as shown by the deceased without bestowing any thought as to whether it represented the fair and full price of the shares. On the facts it was held that there was a mistake in the valuation which could be rectified.

34. The observations found in this decision cannot be taken out of the context and applied to all situations. This decision was subsequently distinguished in Addl. CIT

v. Shree Shankar & Co. : [1979]118ITR636(Mad) . After the decision in T. S. Rajam v. CED : [1968]69ITR342(Mad) , there has been a pronouncement of the Supreme Court in T. S. Balaram, ITO v. Volkart Brothers : [1971]82ITR50(SC) . That case arose under s. 154 of the I.T. Act, 1961. The expression used in the said provision is 'any mistake apparent from the record'. In that case, rectification proceedings were initiated on the ground that there was a mistake apparent from the record inasmuch as the firm had not been charged at the maximum rate of tax under s. 17(1) of the Indian I.T. Act, 1922. The firm and its partners applied to the court under art. 226 of the Constitution and the High Court held that the original assessments were prima facie in accordance with law and that, at any rate, there was no obvious or patent mistake in those orders of assessment and that the officer was, therefore, incompetent to pass the order of rectification. The matter was taken on appeal to the Supreme Court and it was observed at page 53 :

'A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions..... A decision on a debatable point of law is not a mistake apparent from the record-see Sidhramappa Andannappa Manvi v. CIT : [1952]21ITR333(Bom) . '

35. It follows that the mistake must be an obvious and patent mistake and not something which has to be established by a long drawn process of reasoning where there may be conceivably two opinions.

36. In the present case, the affidavit itself shown in para. 11(8), which has already been extracted, that all the authorities including some textbook writers were in error in assuming that if shares in a controlled company were purchased for cash there was a transfer of property within the meaning of s. 17 of the Act. Thus, while the authorities and textbook writers were taking one view, the writ petitioner was canvassing for another view to be taken on the construction of s. 17. This submission clearly demonstrates that there is scope for a debate on the construction of s. 17. If M/s. Amalgamations Private Ltd., is a company to which s. 17 applies, then it would certainly follow that 19 could be applied. But whether s. 17 applies to M/s. Amalgamations Private Ltd., is, on the writ petitioner's own

showing, a debatable point. The writ petitioner would contend that s. 17 would have to be applied only to those cases where the transfer of any property is for other than cash consideration. So long as the point is not free from doubt, the petitioner cannot bring the case within s. 61, as if there was an apparent error. The error, if any, would be a debatable error and cannot be said to be an apparent error.

37. The non-applicability of r. 15 of the Controlled Companies Rules is also the basis for the writ petitioner contending that there was a patent error in the assessment order. Rules 15 provides, in so far as it is material, as follows :

'15. (1) Where for the purposes of estate duty there pass, on the death of a person, shares in, or debentures of, a controlled company, then, if -

(a) the deceased had the control of the company at any time during the three years ending with his death;..... the principal value of the shares or debentures, in lieu of being estimated in accordance with the provisions of sub-section (1) of section 36 of the Act shall be estimated by reference to the net value of the assets of the company in accordance with the provisions of the next succeeding sub-rule.'

38. Sub-rule (2) provides for the basis for the ascertainment of the net value of the assets of the company. While according to the writ petitioner r. 15 of the Controlled Companies Rules prescribes only the method of valuation of the shares or debentures of the controlled company and that it was only an appendage to ss. 36 and 37 and the proper rules to be applied would be r. 4 read with r. 11 the learned counsel for the Asst. Controller contended that r. 15 could be applied in cases of 'controlled companies' such as the one here, even if the question of benefit had not been or had not to be gone into.

39. Section 17 is one of the provisions intended to counteract avoidance of estate duty in cases where properties are transferred to a company of which the deceased had control. There is a definition of 'controlled company' in s. 17(4) providing that any company would be a controlled company, if it is controlled by less than five persons. That the deceased virtually was the beneficial owner of all the shares in this company does not appear to have been disputed. In the case of

such companies, special rules have been framed so as to enable valuation of the property deemed to pass. Rules 5 to 10 of the Controlled Companies Rules deal with the method of valuation based on benefits. There are other rules like r. 15 which provides for the valuation of the shares in or debentures of a controlled company. Prima facie there appears to be nothing wrong in r. 15 being applied, where there is no benefit derived by the person who transferred the share to the company. Whether the other rules suggested by the petitioner as applicable to the present case apply or not one which can be said to be free from doubt, especially when there is no benefit accruing to or derived by the deceased.

40. In the submission of the petitioner, s. 19 would apply to make the company an accountable person only if s. 17 was actually applied. We have already extracted s. 17. There are two stages in applying that provision. The Asst. Controller has to find out who the accountable person is, so that he could proceed against him. At that stage, he could only look into the question whether there was any transfer of property to a controlled company by the deceased. Whether there was a benefit to the deceased is not a matter which will always be apparent or lie on the surface. The type of persons against whom this provision is designed do not always act in the open. To require the Asst. Controller to invoke the provisions only after he finds : (1) transfer of property; and (2) enjoyment of benefit, would practically render the provisions useless. Such a view would also open up vistas of tax evasion as a person would then have only to transfer properties to, and exercise control over, the company without disclosing any tangible benefits to him to avoid its application. These aspects cannot be lost sight of in construing s. 17 and the Rules.

41. When once there is a finding or information on the question of transfer of property by the deceased, then the Asst. Controller can treat the company as an accountable person. He would have to go into the question of benefits accruing to the deceased from the company in the course of further investigation of the facts. At any rate, it cannot be postulated as a clear proposition of law that the two conditions have to be satisfied even when notice to file a return is issued. It at the stage of issue of notice, there was any dispute as to the liability of the company to be taken as an accountable person, then the Asst. Controller would have to

determine the dispute. In the present case, there was no such dispute raised by the controlled company and, therefore, it was open to the Asst. Controller to proceed on the basis that the provisions of s. 17(1) were attracted. There cannot be said to be any apparent error when the Asst. Controller treated M/s. Amalgamations Pvt. Ltd., as an accountable person, especially when it submitted to his jurisdiction without any protest.

42. There was also a submission that the tax liability should be apportioned among the accountable persons and that this is a patent error in the assessment order. There is no provision brought to our notice which requires this being done by the Asst. Controller. This submission goes also against the grain of s. 53(5) which provides that the liability is joint and several. Section 76 confers a right of reimbursement on a person who pays any duty in respect of any property not passing to him. It enables the person paying the tax getting reimbursed Section 76 does not require anything being done by the Asst. Controller so as to confer this right of reimbursement. Whoever wants reimbursement would have to work out his rights elsewhere. We are not concerned with any question of reimbursement sought by Amalgamations in respect of the tax admittedly paid by it. Thus, there is no error, much less a patent error, on this aspect either.

43. Having regard to all these features, I do not find that there is any error which can be called as an apparent error and which would justify the application of s. 61 of the E. D. Act.

44. There was some discussion during the hearing as to what would be the consequence in so far as the assessment is concerned, even assuming that the writ petitioner succeeds in the petitions. It was pointed out that the estate duty had already been paid and that no useful purpose would be served by the rectification of the said order deleting the name of M/s. Amalgamations Pvt. Ltd., from the array of accountable persons. An order for rectification, it was urged, should serve some useful purpose and should have some connection with the assessment. It was said that there was none and that, therefore, there should be no resort to that provision. It was also suggested that some extraneous issues were behind these proceedings and that this court should not be allowed to be used as an instrument

or pawn for that purpose. In the view taken above about the existence of a rectifiable error, it is not necessary to go into this aspect further and to examine whether the present writ proceedings are only an academic exercise or an exercise in futility or whether they are used as a medium for setting some domestic differences of opinion.

45. The writ petitions are accordingly dismissed with costs to the first respondent. Counsel's fee Rs. 500 one set.

Balasubrahmanyam, J.

46. I concur with my learned brother in dismissing the writ petitions. I do so for reasons which may be briefly set out as under :

The petitioner's case is that the assessment to estate duty exhibits a manifest mistake. The error, according to her, lay in the Asst. Controller's treating Amalgamation Private Ltd., as an accountable person, when the assessment itself had not been framed by virtue of s. 17(1) of the E. D. Act. The question is, whether the petitioner is right and the assessment is wrong.

47. In seeking to answer this question, I think it is important to keep three things clear in our minds. There is first the question whether Amalgamations is a controlled company for purposes of the E. D. Act. Then there is the question whether the assessment in this case is one made under s. 17(1) of the Act. Lastly, there is the question whether Amalgamations can be rendered liable under the assessment as an accountable person.

48. On the first question there never was any doubt in the mind of any one concerned with this assessment that Amalgamations was a controlled company. It is a private company, and not a company in which the public are substantially interested. It is a holding company, and not a subsidiary of another. And it has always been under the control of not more than five persons at a time. The statutory definition, therefore, fits it to perfection.

49. A controlled company under the E. D. Act may come in for discussion in estate duty proceedings in one of two ways. An individual might die possessed of shares in a controlled company, and in the context of an assessment to estate duty of the properties passing on his death, which would include those shares as well, a question might arise touching the valuation of such shares. The Act and some of the Rules made thereunder have provided for a special formula for valuation of controlled company shares, familiarly known as the 'break-up value' method. This method involves the valuer having first to go into a valuation of the net assets of the controlled company itself, and then proceed to arrive at the value of the deceased's shareholdings, as a proportionate slice of the controlled company's assets. In this special procedure for share valuation, the controlled company has necessarily to participate in the assessment proceedings and stand attendance on the assessing authority. It is, however, important to notice that while this procedure for break-up value of shares very much involves the participation of the controlled company in the assessment of its deceased shareholder, no liability whatever to estate duty thereby attaches either to the company or to its assets. The duty, on the contrary, only attaches to the shares in the hands of the deceased's legal persona; representatives such as heirs, executors or administrators.

50. But there is yet another, and more important, although somewhat less frequent, context of estate duty assessment in which a controlled company may be called upon to face the music before the taxing authorities. That is provided by s. 17 of the Act, and by a set of special rules framed under the Act going by the name of Controlled Companies Rules. The section and the Rules together form a formidable complex of estate duty assessment. The sum and substance of these provisions is that the yoke of estate duty directly descends on the veritable assets of the company itself. No doubt, even for this extraordinary statutory measure to be invoked against a controlled company, a mortal must first breathe his (or her) last. For, nothing stirs in estate duty without a dead body, and s. 17 is no exception. The only difference is that under this section the basis of charge is not the deceased's shareholdings in the controlled company. The basis, rather, is the deceased having transferred some property of his at some time to the company. Once this is found, the section begins to operate; and the rest of the proceeding is

merely occupies with the determination of the precise quantum of liability which the company has to pay. The quantification part of the assessment consists in comparing the benefits which the deceased has been deriving from the company, on the one hand, with the annual income of the company, on the other, both calculated over a three year period immediately before the deceased's death. The ratio between the two, namely, the deceased's benefit and the company's income, is then applied to the value of the net assets of the company. If, for instance, the value of the benefits amounts to half the net income of the company, then one-half of the company's assets is regarded as the measure of the property liable to estate duty. Further, the duty so determined is declared under the statute to be a first charge on the company's own assets. The Act accordingly makes provision for treating the company itself as an accountable person to the extent that liability is fixed on the company by an application of the special provisions of s. 17. This brief discussion of the nature and pattern of assessments under s. 17 leads to the next aspect of the inquiry in this case, namely, whether the assessment in question was one made under that section. This was the point which the learned Advocate-General argued for the petitioner. But the point was robbed of much of its controversy when the assessment order, on the very face of it, showed that the Asst Controller had not proceeded to levy assessment in this case under s. 17(1) on the basis of any transfer of property by the deceased to the company or on the basis of a comparison between the company's income and the value of the benefits derived by the deceased. The Asst. Controller, no doubt, took note of the company being a controlled company, but that was only for the limited purpose of determining the valuation of the deceased's shares in the company, which is quite different from making an assessment under s. 17(1).

51. The point which remains to be considered is : When the assessment was not made one under s. 17(1), can Amalgamations be treated as an accountable person, even on the footing that it was a controlled company The learned Advocate-General referred to s. 19, and said that even a controlled company can be held liable, as such, as an accountable person only where these duty is payable 'by virtue of section 17'. He quoted these words from s. 19(1)(a) with emphasis, and urged that two things flow from this provision : (i) that the accountability of a controlled company arises only where duty becomes payable

by virtue of s. 17; and (ii) the accountability, even in such a case, is limited only to the quantum of duty determined as payable under that provision. He urged that since the assessment in this case was not made under s. 17, Amalgamations cannot be held liable for the duty levied under that assessment, to any extent whatever, as an accountable person.

52. I accept the arguments of the learned Advocate-General in so far as it bears on the construction of s. 17 and s. 19(1) and the interconnection between the two. It agrees that a controlled company against whom an assessment is made under s. 17 would be liable as a person accountable to the duty levied under that assessment. But I do not accept the further contention that since the assessment in this case was not one under s. 17(1), Amalgamations cannot be treated as an accountable person at all. On the contrary, I think the company can be properly so treated, having regard to the whole course of the assessment proceedings in this case, and having regard to the other provisions in the Act.

53. Under the scheme of the E. D. Act, all property passing or deemed to pass on the death of a deceased person are chargeable to estate duty on their principal value [see s. 5 read with s. 3(3)]. All properties so passing or deemed to pass shall be aggregated so as to form one estate, and duty is leviable on a graduated scale on the principal value of the estate [s. 34(1)]. The principal value of any dutiable property shall ordinarily be its market value. [See s. 36]. As for shares held by a deceased shareholder in a controlled company, their valuation is to be governed by prescribed Rules. [See s. 20(e)]. The Rules prescribe the break-up value method for valuation of shares in controlled companies (see r. 15 of the Controlled Companies Rules). Every incorporated company is under a duty to furnish particulars of the interest held by a deceased person in its share capital or debentures. (See s. 84). Besides, every company to which a deceased had made a transfer of property within the meaning of s. 17 has to furnish statements of such particulars as the Controller requires by notice. (See s. 55). For the purposes of all these provisions, s. 2(12A) defines an accountable person, or its variant 'person accountable', as including every person in respect of whom any proceeding under this Act has been taken for the assessment of the principal value of the estate.

54. The record of the assessment proceedings in this case shown some distinguishing features. In the first place, while an estate duty account was filed by Sivasailam, to which all the other heirs of the deceased, including the petitioner, subscribed their acceptance, the Asst. Controller himself took the initiative and issued a notice to Amalgamations under s. 55 of the Act proposing to invoke against the company s. 17(1) in view of the fact that the deceased had transferred property to the company. The company protested, but filed an estate duty account, nevertheless. Subsequently, while the assessment proceedings were still under way, the company appears to have applied to the Central Board of Direct Taxes, apparently under s. 69 of the Act, seeking for the Board's intervention in the assessment. It is quite possible that the Board intervened and directed the further course of the assessment. It may even be that the Asst. Controller himself had considered one of two alternative modes of assessment which, perhaps, was open to him under r. 11 of the Controller Companies Rules. However it came, when the assessment finally emerged, it came to pass that the company was not directly charged with duty on its assets, as it was on proposed under s. 17, but the charge was laid on the deceased's shares, and the assets of the company figured only incidentally and for the limited purpose of evaluation of the shares. It seems to me that, in the events that happened, Amalgamations was correctly treated as an accountable person, and, non the less so, for the fact that the final assessment was not a charge on its assets under s. 17. It is enough for purposes of the definition of s. 2(12A) that the company was a person against whom the Asst. Controller had taken some proceedings for assessment. It matters little that the final assessment did not turn out to be the one which had been mooted earlier in the course of assessment proceedings.

55. The learned Advocate-General urged two points against this position. He said that the definition of accountable person in s. 2(12A) is a general provision, whereas s. 19(1)(a) is a special provision, and he invoked the familiar rule of construction that the special excludes the general. I do not see how this rule of the special overriding the general can at all be applied in a case such as the present where s. 19(1)(a) cannot apply at all. If we once rule out s. 19(1)(a) altogether as inapplicable, what remains for application is only one provisions, one general and one special, that we are obliged to choose the latter under that well-known rule of

construction. But where we have on hand only one provision, we have to see whether it applies or not. Section 19(1)(a) may be a special provision, where both that provision and s. 2(12A) might come in for application. But, on the facts of this case, when s. 19(1)(a) does not enter into the reckoning at all, there is no question of reading s. 2(12A) as a general provision.

56. The next point urged by the learned Advocate-General was that the Asst. Controller, for his part, however, had not relied on s. 2(12A). He cited the following passage from the assessment order to show that the Asst. Controller was under the mistaken impression that the company could be rendered accountable under s. 19(1) even on the basis of the present assessment which was not one made under s. 17(1).

'Since rule 15 of the Controlled Companies Rules is part of the scheme of section 17, the controlled company, viz., Amalgamations Pvt. Ltd., has to be treated as an accountable person.'

57. The learned Advocate-General said that the passage discloses a palpable error. I accept that the Asst. Controller is wrong when he held that since r. 15 is a part of the scheme of s. 17, s. 19(1)(a) would render the controlled company concerned an accountable person. In the first place, r. 15 is not within the framework or scheme of s. 17. The two provisions deal with quite different things altogether. Section 17 is concerned with a direct assessment on the controlled company's assets. The company is liable and its assets are a first charge in such an assessment. Rule 15, on the other hand, is concerned with an incidental aspect of valuation. In the context of the valuation question, the controlled company's assets come in as a standard of reference. But the assessment itself in such a case is not on the company or on its assets. The subject-matter of the assessment is the shares which a shareholder of the controlled companies does possess. The company is not liable for the duty based on the share valuation. The company's assets are by no means charged for the payment of that duty.

58. The further question is, whether the Asst. Controller's view of r. 15 of the Controlled Companies Rules and of its impact on s. 17 and s. 19(1)(a) and the conclusion drawn by him from his view of these provisions to the effect that

Amalgamations is an accountable person can at all be regarded as a mistake apparent from the record, within the meaning of s. 61 of the Act

59. The expression 'mistake apparent from the record' occurs in very many statutes, especially those relating to taxation. It has come in for judicial consideration in innumerable cases. It is after said that an error cannot be an apparent error if it requires elaborate argument, both for the cognition of the error and for its correction. I think this is another way of saying that there is a difference between a wrong decision on the one hand, and a manifest mistake, on the other. A wrong decision, in my view, is a matter of conviction. The decision may relate to the evaluation of evidence or the determination of a point of law. But whether a court or a tribunal takes a particular view of the facts or leans in favour of a particular construction of the statute, it does so out of conviction. It may go wrong in its findings. It may go wrong in its statutory construction. But in either case, the error is a matter of its conviction. This idea is sometimes overstated by legal writers when they say that a court has jurisdiction to decide rightly as well as jurisdiction to decide wrongly. However one may regard these errors of conviction of courts and tribunals, they cannot be regarded as mistakes apparent from the record. Where a court or a tribunal comes to a conclusion according to its lights, and not by inadvertence or absent-mindedness there can be no apparent mistake. For, the mistake must be capable of being readily recognised as such either by the tribunal or the court concerned or by any one else in their position. Where it takes a considerable argument to convince a court or tribunal that it had gone wrong in its order there would be no error apparent from the record.

60. It is no doubt true that s. 61 would cover not merely clerical or arithmetical mistakes, but other kinds of manifest errors such, for instance, as howlers - as when one says that the earth is flat. Incidentally, there are even now some people called flat-earth is flat. Incidentally, there are even now some people called flat-earth-men who do not believe that the earth is spherical. Be that as it may, so far as the assessment order in this case is concerned, it seems to me that there is no 'apparent error which can be said to have crept into the order', as the process is after described. I have earlier held that the Asst. Controller was wrong in holding that r. 15 of the Controlled Companies Rules renders applicable s. 19(1)(a) to

controlled company. When I said so, all I did was to overrule his view of the statutory provisions. The Asst. Controller had also expressed the view that r. 15 is a part of the scheme of s. 17. I have said that this is a wrong view of the section and a wrong view of the scheme. But what I said by way of criticism or of review does not mean that what the Asst. Controller had committed was a mistake, much less an apparent mistake. What was involved was a far deeper thing, an error in his conviction.

61. The Asst. Controller in his impugned order had rejected the petitioner's application on this very ground, namely, that there was no error apparent from the record of the assessment, only he had said so without discussion.

62. There are a few other impediments in the way of accepting the petitioner's thesis that the assessment order deserves to be rectified under s. 61. In her application before the Asst. Controller, the petitioner asked for the following rectification :

'You will please pass a rectification order as to what is the exact amount included under section 17(1) as the property passing on the death of the deceased.'

63. I have no doubt whatever that this prayer is pure rhetoric, and could not have been seriously intended, for the whole gravamen of the petitioner's charge against the assessment in her application under s. 61, as in the writ petitions before us, is that this is no assessment at all under s. 17(1). What is the point then in asking the Asst. Controller to rectify the assessment by separately chalking out the company's liability under s. 17(1), excepting to imply that, try as he might, the Asst. Controller cannot produce any such rectification within the framework of his assessment

64. It seems to me that there is a sense in which the cognition of error and its amenability to correction should go hand in hand. Section 61 of the E. D. Act, and similar provisions in other taxing statutes, have conferred the power on the taxing authorities only to the end that the error which has been brought to their notice cries aloud to be rectified. The intention is rectification, not the substitution of new errors for the old. Hence, unless the rectification claimed tends to make the order

error-free, there would be no point in the exercise of the power at all. In the present case, even if the error in the assessment order, assuming it to be apparent, were that the Asst. Controller had regarded r. 15 s part of the scheme of ss. 17 and 19(1)(a), a mere correction of that error would be to no purpose, because the position of the company as an accountable person under s. 2(12A) has got to be reckoned with. A rectification which does not go into this further question would be no rectification at all. For this reason also, it is not possible to deal with the petitioner's application under s. 61 on its limited terms.

65. In these writ petitions, the petitioner asks for the following relief :

'to quash the order of the respondent dated 25-1-1975 refusing to revise the assessment order dated 27-1-1970 and also to direct the respondent by a mandamus to finally communicate to the Wealth-tax Officer concerned that there will be nil assessment so far as the petitioner's share in the controlled company is concerned.'

66. It seems to me that this prayer tends to confound the issue still further. I had earlier referred to the petitioner's prayer in the rectification application. That prayer, even if seriously meant, went no farther than a rectification of the estate duty assessment. What the petitioner now asks for, from this court in a direction to the Asst. Controller, is to communicate in a certain fashion with the WTO having jurisdiction over the petitioner's wealth-tax assessment.

67. We are not, at the present moment, sticklers for traditional forms of prerogative writs. We are nowadays used to innovations like certiorari mandamus. But even stretching the new forms of writs to their utmost, I do not see where the direction which the petitioner seeks, for asking the Asst. Controller to get in touch with the WTO could be fitted into, in the context of the present proceedings. In a certiorari, pure and simple, the impugned order can be quashed. In a mandamus, par excellence, the authority concerned can be directed to her and determine. Combine the two in one, and still a hyphenated certiorari-mandamus issuing for the from this court can only go on the subject-matter before the inferior tribunal. It cannot transcend those limits, save perhaps, in very extraordinary cases like those where Part III of the Constitution is invoked. I have earlier pointed out that even

the prayer in the petitioner's rectification application is based on the attitude that such a rectification would be well-nigh impossible within the framework of the assessment. There can, therefore, be no question of this court granting a writ of the kind asked for in these petitions.

68. One notable feature of these writ petitions is the array of parties and their attitudes. The petitioner alone, among the deceased's heirs, has recently taken cudgels against the assessment order. Sivasailam, who filed the estate duty account, and Amalgamations, which initially was called in to answer a notice under s. 17(1), not only support the assessment, they also vehemently oppose the writ petitions. I have earlier referred to the consent which the petitioner and the other heirs of the deceased had given to Sivasailam to represent them all in the estate duty proceedings. It is now stated in the counter-affidavit filed by Sivasaila that the petitioner was at every stage apprised about the progress and the direction of the assessment proceedings. The company had paid the provisional demand for estate duty while the assessment was pending, and the final demand under the assessment order subsequently by means of installments, mostly by borrowing from outside. Every time this happened, the petitioner was taken into confidence in the counsels of the company. She had actually lent her name along with others even to guaranteeing the loans raised by the company in their behalf. The assessment made by the Asst. Controller was in every respect an agreed assessment. It had not been appealed against by any party. Even in the present writ petitions, the petitioner does not question the correctness of the assessment or the quantum of the estate duty in so far as the deceased's estate is concerned. In these circumstances, to allow her to make a right about face now and challenge the assessment order on the slender thread of rectification, in so far as the liability on the company is concerned, would be to cited to a passing whim and not to entertain a genuine grievance.

69. There is also a serious question of locus standing involved in the petitioners' claim. On all accounts, it is the company which must feel aggrieved if the demand for duty on it under the impugned assessment order were found illegal. In point of fact, however, the company not only abides by the assessment, but swears that it is the only correct method of adjusting the liability, in the circumstances. The

petitioner might, for all I know, murture a grievance against the company for accepting an impost of this kind without question. But rectification of the assessment order is not the right way for the petitioner to settle her private scores either with the company or with those in control of its affairs.

70. These latter considerations also bear on the question of this court's discretion, and all of them undoubtedly seem to me to be against the granting of the rule in the writ petitions.

71. For all the reasons stated above, I agree with my learned brother in his order dismissing the writ petitions. I also agree with his direction for costs.

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