

V. Venkataraman Vs. Controller of Estate Duty, Madras

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Court : Chennai

Decided On : Nov-17-1959

Reported in : AIR1960Mad305; [1960]38ITR1(Mad)

Judge : Rajagopalan and ;Ramachandra Iyer, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 2(12-A), 5(2) and 64(1)

Appeal No. : Tax Case No. 17 of 1958, (Reference No. 8 of 1958)

Appellant : V. Venkataraman

Respondent : Controller of Estate Duty, Madras

Advocate for Def. : Mr. Rama Rao Sahib

Judgement :

(1) The following question has been referred under S. 64(1) of the [Estate Duty Act, 1953](#):

"Whether on the facts and in the circumstances of the case, estate duty was correctly levied on the agricultural lands situate in the Madras State." The fact relating to this reference are as follows: One V. Vaidyanatha Aiyar, who owned in his individual capacity agricultural lands in the Madras State, houses and other assets, died on 17-4-1955. The applicant, who is an accountable person within the meaning of S. 2(12-A) of the Estate Duty Act 1953, submitted the account of the estate left by the deceased to the Assistant Controller of Estate Duty, Madras, who

determined the principal value of the estate at Rs. 1,43,990. That sum included a sum of Rs. 67,520, the value of the agricultural lands owned by the deceased.

The applicant claimed that there could be no levy of estate duty on the value of the agricultural lands, and that he was entitled to a rebate of estate duty on the value thereof from out of the duty fixed for the value of the entire estate. This claim was made on the basis of certain facts which may now be referred to. The [Estate Duty Act, 1953](#), which for the sake of brevity will hereafter be referred to as the Act came into force on 15-10-1953. The Act levied a duty on the value of the property constituting the estate of a deceased person.

A distinction was, however, made in the Act between agricultural land and other property. In the computation of the value of the estate for the levy of the duty, the value of the agricultural lands situate within a State could be included only if that State was mentioned in the schedule I to the Act. Under the provisions of the Act as enacted, Madras was not one of the States mentioned in the first Schedule; the result was that under the provisions of the Act in its original form, there could be no levy of estate duty on the value of agricultural lands situate in that State.

But the Constitution and the Act provided for the States which had not been included, to come into Schedule I. On 2-4-1955, the Madras State legislature passed a resolution, adopting the Estate Duty Act in respect of agricultural lands in that State. The Central Government issued a notification in accordance with S. 5(2) of the Act which had the effect of adding Madras State to the first schedule thereto. The notification was published in the Gazette of India on 11-6-1955.

(2) The case for the applicant is that, as the inheritance to the estate of the deceased had opened before the date of the publication of the notification, when alone the provisions of the Estate Duty Act became operative with respect to the agricultural lands, no duty would be payable in respect of them. The Assistant Controller of Estate Duty, Madras, overruled the claim for exemption of duty in regard to the agricultural lands. That view was upheld by the Central Board of Revenue. That authority, however, has referred the matter for the opinion of this court under S. 64(1) of the Estate Duty Act.

(3) The only question for consideration is whether the estate duty can be levied on the agricultural lands owned by the deceased in the State of Madras, death having taken place prior to the publication of the notification under S. 5(2).

(4) The Act enables the levy of a duty in the case of death of a person owning properties upon the value of the estate as a whole. The duty prescribed by the Act is a graduated one levied ad valorem and imposed on the principal value of the aggregate estate which passed on the death of a person, the nett principal value being the total value of all the items (subject to certain exceptions and allowances) owned by the deceased after deducting the encumbrances thereon and the debts (if any) due by the deceased, after making a reasonable provision for the funeral expenses. S. 5 which imposes the charge runs:

"5. Levy of estate duty--(1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied, and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural lands situate in the States specified in the first schedule to this Act, which passes on the death of such person, a duty called 'estate duty' at the rates fixed in accordance with S. 35.

(2) The Central Government may, by notification in the Official Gazette, add to the names of any other States to the first Schedule in respect whereof resolutions have been passed by the Legislature of those States adopting this Act under clause (1) of Art. 252 of the Constitution in respect of estate duty on agricultural lands situate in those States, and on the issue of any such notification the States so added shall be deemed to be States specified in the first Schedule within the meaning of sub-sec. (1)."

(5) The power to legislate for the purpose of levying the estate duty is given under the Constitution to the Union and State legislatures with reference to the subjects which are within their respective legislative competence. Art. 366(9) of the Constitution defines "estate duty" thus:

" 'estate duty' means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or

under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass:"

Item 87 of list I of the 7th Schedule to the Constitution runs:

"estate duty in respect of property other than agricultural land"

Item 48 in List II of the 7th Schedule states:

"Estate duty in respect of agricultural land." Under Art. 246 of the Constitution, the Parliament would have exclusive power to make laws with respect to the matters enumerated in list I of the 7th Schedule. Therefore, Parliament would have power to legislate in regard to estate duty only in respect of a property other than agricultural land. If, therefore, Parliament enacts a statute imposing duties on the estate of a deceased person, the enactment would charge or reach only those properties which was within its competence to legislate, and this would be so even if the Statute used expressions wide enough to include other properties over which it was not competent to legislate. Vide *Blackwood v. Queen*, 1882-8 A. C. 82.

The power to legislate with respect to estate duty on agricultural lands, to which inheritance opened on the death of a person, is vested in the Legislature of the State where the property is situate. Such a power cannot be delegated in the absence of a constitutional provision to the Parliament. In *re Delhi Laws Act, 1912*, 1951 SCR 747 (941): (AIR 1951 SC 332) (387) Mahajan J. (as he then was) observed at p. 941 (of SCR): (at 387 of AIR) 'It is implicit in the demarcation of legislative fields that one Legislature cannot, by delegation of subjects that are exclusively within its field, clothe the other with legislative capacity to make laws on that subject, as it will amount to an infringement of the Constitution itself.'

The Constitution, however, provides an exception to the Rule in Art. 252 which declares:

"252(1), If it appears to the legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Arts. 249 and 250 should be regarded in such

States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States it shall be lawful for parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies be amended or repealed by an Act of the legislature of that State.'

(6) In considering Art. 252 Mahajan J. stated in 1951 SCR 747 at p. 944: (AIR 1951 SC 332 at p. 388):

"Art. 252 is a somewhat peculiar provision. Under it Parliament can legislate for two or more States with their consent. This is a form of exercise of legislative power by Parliament as a delegate of the State as by its consent alone Parliament gets the power of legislation."

(7) The Article envisages the enactment of uniform State legislation upon subjects over which the States have exclusive powers in relation thereto. Such uniformity would be very necessary when in regard to a particular subject like Estate Duty both the Parliament and the States have powers to legislate over distinct portions of an estate. Thus, notwithstanding the provisions of Art. 246, Art. 252 would render it possible for the Parliament in certain circumstances to make laws in regard to subjects exclusively within the legislative competence of State. To entitle the parliament to so legislate the legislatures of more than one State should be of opinion that the Parliament should legislate on the subject for these States, and pass a resolution to that effect.

The law thus made by the Parliament would govern those States which had previously agreed to it. It would be open to other States to adopt that legislation, and this they could do by merely passing a resolution in their legislatures. The pattern of legislation ordinarily takes one of the two forms: (I) it may be a self-

contained enactment, the familiar type of legislation, and (2) it may adopt an enactment of any other legislature by incorporating the provisions thereof to its own enactment. Examples of that type are: The Hindu Women's Rights to Property Act, 1937 and the Musalman Law Personal (Shariat) Application Act, 1937, which were enacted by the Central legislature.

The provincial legislature adopted those enactments subsequently with respect to agricultural lands. But in the case of such Acts the State legislature passed their own enactments adopting the procedure prescribed by Art. 196 et seq of the Constitution. The adoption of a Central enactment by a State legislature under Art. 252 is of a different type in that a mere resolution of the legislature of the State would make the Central Act applicable to that State.

(8) In the case of a legislation by the State itself, its terms would be as enacted by it; in the case of one adopted under Art. 252 the legislation would be in terms of what was enacted by the Parliament. In the former case it would be open to the legislature to enact a retrospective legislation; for instance if the State legislature itself were to enact Estate Duty legislation with respect to agricultural lands situate within it, it can levy a duty retrospectively. In *Bappu Iyer v. Ranganayaki*, a question arose as to the retrospective operation of the Madras Act 26 of 1947 which extended the Central Act (Hindu Women's Rights to Property Act, 1937) to agricultural lands in the State.

It was held that the Act was a declaratory one, and that in the absence of the saving clause which limited the retrospective operation it would have operated from the time when the Central Act began to operate. But that principle would not apply if the State Legislature were to adopt a Central Act under Art. 252. The provision in the Constitution merely enables the adoption of the Central Act, and not any addition to or subtraction therefrom. The retrospective operation consequent on the adoption of a Central Act would therefore depend on two factors: (1) the provisions of Art. 252 and (2) the provisions of the Central Act which had been adopted.

(9) On the terms of Art. 252, the Central Act, if adopted by a State legislature could, at the earliest, operate only from the date of the resolution of the State

legislature. The language employed is consistent only with a prospective operation of the statute. That apart, there being no constitutional power in the Parliament to legislate with respect to a subject, exclusively within legislative competence of a State legislature, it must be held that the statute could operate only after such power is acquired by means of the resolution of the concerned State legislature. In *Zamorin of Calicut v. Estate Duty Controller*, , a Bench of this Court, to which one of us was a party, held that no estate duty would be leviable on agricultural lands in the Madras State, the owner of which died prior to the date of the resolution of the State legislature, that is, on 2-4-1955.

(10) Art. 252 of the Constitution is an enabling one; while it prescribes the period from which an adopted legislation could operate, it does not interfere with the power of the Parliament to enact as to from when it should thereafter operate. To put in other words, it would be open to the Parliament to enact that the Act should apply from a later date than the date of passing of the resolution. This is what Parliament did in enacting S. 5 of the Estate Duty Act. S. 5(1) which is the charging provision authorises the levy of a duty on agricultural lands situate in the States mentioned in schedule 1 to the Act.

For the charging provision under S. 5(1) to apply, the State in which the agricultural lands are situate should be brought within that schedule. Sec. 5(2) provides for cases of States not entered in schedule I, that, those States which subsequently adopt the Estate Duty Act with respect to the agricultural lands in them on passing a resolution under Art. 252. A State which is not in schedule I could be deemed to be included in it only by the operation of S. 5(2). That section creates a fiction, under which the adopting State is deemed to have been included in the schedule on a notification being published by the Central Government.

It would follow that S. 5(1) would apply only after the date of the publication of the notification and not immediately on the date of the resolution by the State Legislature. The matter can be viewed in another way as well. When the Madras Legislature adopted the [Estate Duty Act, 1953](#), with reference to the agricultural lands within it, it adopted it with all its provisions; that is to say, that the Madras State should be deemed to be included in the first schedule only on the date of the

publication of the notification by the Central Government under S. 5(2), and that the liability to duty would arise only from that date.

(11) Mr. Rama Rao Sahib the learned counsel for the respondent, contended that the result of the adoption of the Estate Duty Act by the Madras legislature would normally make it applicable to the agricultural lands in the State as and from the date of the Act; but that as the Central Legislature had no power to legislate with respect to the agricultural lands in a State till the resolution of the State legislature adopting it, the retrospective operation beyond that date would fail, and subject to that there would be retrospective operation. The true rule, according to the learned counsel, is that the adoption of a Central Act by a State legislature should be held to be declaratory of the law of the State, which would mean that the Central Act would apply to the adopting State as from the date it came into force.

The learned counsel contended that that principle was recognised by S. 5(2) of the Act which created a fiction, and emphasising the fact that but for the fiction the Act would operate from 15-10-953. That fiction could have no effect in the operation of the Act from the date of the Resolution which is permissible under the Constitution. He relied in this connection upon a passage in "Statute law" by Craies, at page 364, namely.

"Where a statute is passed for the purpose of supplying an obvious omission in a former statute, or, as Parke, J. said in *R. v. Dursley*, (1832) 3 B; and Ad. 465 (469) to explain 'a former statute, the subsequent statute has relation back to the time when the prior Act was passed. Thus, in *Attorney General v. Pougett*, (1816) 2 Price 381, 392, it appeared that by 53 Geo. 3 C. 33, a duty was imposed upon hides of 9 s. 4 d. but the Act omitted to state that it was to be 9 s. 4 d. per cwt. and to remedy this omission 53 Geo. 3 Ch. 105 was passed.

Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9 s. 4 d. per cwt. but Thompson C. B. in giving judgment for the Attorney General, said, "The duty in the instance was in fact imposed by the first Act, but the gross mistake of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act, but that had reference to the former

statute as soon as it passed, and they must be taken together as if they were one and the same Act." That principle is only an illustration of the rule, that declaratory and remedial legislations are generally retrospective. Vide also Maxwell, 10th Edn. page 222. As observed in Crawford's Statutory Construction.' Art. 74.

"they (declaratory enactments) resemble interpretation clauses, and their paramount purpose is to remove doubt as to the meaning of existing law, or to correct a construction considered erroneous by the legislature."

(12) The adoption of the Estate Duty Act by the Madras State legislature cannot amount to a mere declaratory enactment or one to supply an obvious omission in that Act. The question of omission would arise only when the legislature passing the main Act makes an omission, which it is competent to rectify; in such a case the principle is that the rectification is deemed to have been made as from the date of the main enactment. But that principle would have no application where the omission is the result of lack of legislative competence. The power to legislate with respect to the Estate Duty in respect of agricultural lands is with the State legislature, and when that legislature exercises that power in whatever manner it might be, it would be a new legislation and not supplying the omission in a previous Central legislation. In exercising its powers, the statute will be the one imposing a financial burden or tax on the subject, and that could prima facie have only prospective operation.

(13) The Estate Duty Act, on its terms, would only have a prospective operation. The effect of the notification under S. 5(2) is to amend schedule I by including therein the name of the State. The question to be considered then is, as to when a statute on its terms having prospective operation would apply to a subject brought within its provisions as a result of an amendment thereto. The rule of construction in such a case is stated in Crawford's Statutory Construction, 1940, at page 597, Art. 295:

"As with statutes generally, an amendment will have no retrospective operation, unless its forms clearly indicate a different intention. There is also a presumption that amendments are effective prospectively. Consequently, rights acquired under a statute before its amendment are not affected, unless the amending statute,

expressly or by necessary implication so provides. But if the legislative intent requires it, retrospective operation must be given to the amendment."

In Article 306, at page 622, it is stated:

"Amendatory statutes are subject to the general principles discussed elsewhere herein relative to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no application to prior transactions, in the absence of an expressed intent or an intent clearly implied to the contrary. Indeed, there is a presumption that an amendment shall operate prospectively."

(14) To sum up, a Central Legislation adopted by a State under Art. 252 of the Constitution cannot have application to that State retrospectively from a date earlier than the date of the resolution of the concerned State legislature adopting it; its operation in that State would further depend on the terms of the enactment adopted. If under the terms of an enactment so adopted the State is brought within its ambit only from a particular date (e. g. date of publication of notification under S. 5(2) of the Act), the Central Act adopted would have operation only from that date with respect to the State so adopting.

(15) There is nothing in the Act to make the operation of the Act retrospective either by express words or necessary implication to a date earlier than the date of the publication of the notification under S. 5(2); it must follow that the duty will be leviable in regard to the agricultural lands of a deceased only in case of his death after the publication of the notification by the Central Government under S. 5(2), that is, 11-6-1955.

(16) In the present case, the deceased died in April 1955, sometime prior to the coming into force of the Estate Duty Act in respect of the agricultural lands in the Madras State; the applicant would be entitled to a rebate of duty with respect to the value of the agricultural lands situate in the Madras State. The question referred to us is answered in the negative. The applicant will be entitled to his costs. Counsel's fee Rs. 250/-.

(17) Answer accordingly.

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