In Re: Mrs. Constance Lubeck

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Court : Chennai

Decided On : Apr-03-1970

Reported in : [1970]78ITR199(Mad)

Judge : Palaniswamy, J.

Acts : Estate Duty Act, 1953 - Sections 50; Madras Court Fees and Suits Valuation Act, 1955 - Sections 55(1) and 56(1)

Appeal No. : Diary No. 5959 of 1969

Appellant : In Re: Mrs. Constance Lubeck

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : King & Partridge

Judgement :

Palaniswamy, J.

1. This office note raises an important question on court-fee. The point is whether estate duty payable on an estate, which vests in the executor, is an Hern to be deducted from the value of the estate in ascertaining the market value for the purpose of court-fee under the Madras Court-fees and Suits Valuation Act, 1955 (Madras Act XIV of 1955)., hereinafter referred to as the Act. The matter has arisen in this way. The petitioner, National and Grlndlays Bank Ltd., Madras, has

applied for the grant of probate of the will of one Mrs. Constance Lubeck dated 25-1-1968. Along with the petition, an affidavit of assets, as contemplated under Section 55 of the Act, is filed. In annexure 'B' of the affidavit of assets a sum of Rs. 11,043.46 is shown as provisional estate duty under the heading 'Amount of debts due and owing from the deceased payable by law out of the estate'. The office felt a doubt whether estate duty is a debt due from the deceased and whether it can be deducted from the value of the estate for the purpose of payment of probate duty. When this position was pointed out, the advocate for the petitioner, relying upon the decision of the Mysore High Court in Mrs. Blanche Nathalia Pinto v. State of Mysore, [1964] 53 I.T.R. 64 . contended that the estate duty is a debt and should be deducted from the market value of the estate. That decision no doubt supports the contention urged on behalf of the petitioner. The question is whether that decision lays down the correct law.

2. The relevant provisions of the Act may. be adverted to. Omitting Subsection (2), which is not relevant, Sub-section (1) of Section 55 reads thus:

'55. (1) Every application for the grant of probate or letters of administration shall be accompanied by a valuation of the estate in duplicate in the form set forth in Part I of Schedule III.'

3. Omitting portions which are not relevant, Section 56 reads thus:

'56. (1)(a). The fee chargeable for the grant of probate or letters of administration shall comprise:

a fee at the rate or rates prescribed in Article 6 of Schedule I, computed

(a) where the application is made within one year of the date of death of the deceased, on the market value of the estate on such date; or

(b) where the application is made after the. expiry of one year from such date, on the market value of the estate on the date of the application:. ...

(2) For the purpose of the computation of fee--(a) the value of the items mentioned in Annexure B to Part I of Schedule III shall be deducted from the value of the

estate :....'

4. The form of valuation is prescribed and it is given in Part I of Schedule III. The relevant portion of the affidavit reads thus:

'1. I(A.B.)..... solemnly affirm/make oath and say that I am the executor or one of the executors or one of the next of kin of...............

deceased, and that I have truly set forth in Annexure A to this form of valuation all the estate of which the above named deceased died possessed or to which he was entitled at the time of his death, and. which has come, or is likely to come, to my hands.'

5. Annexure A in that schedule prescribes the form of valuation of themovable and immovable property of the deceased. In that form variousitems are described. Omitting items which are not relevant, the relevantportion reads thus:

' Annexure-A.Valuation of the movable and immovable property of deceased............ Immovable property consisting of ....(State description and market value on the date of the death of the deceased or on the date of the application, as the case may be).

----------Total----------Deduct items shown in Annexure B in the manner provided in sub-section (2) of sec. 56

----------Net value of the estate----------'Annexure B. reads thus: Annexure-B. Schedule of debts, etc.Rs.Amount of debts due and owing from the deceased legally payable out of the estate.Amount of expenses connected with funeral rites and ceremoniesAmount of mortgage incumbrances Property held in trust not beneficially or with general power to confer a beneficial Interest..Other property not subject to duty..------------TotalRs.------------

6. It would be seen from annexures 'A' and 'B' of Schedule III that in determining the net value of the estate, upon which the court-fee is payable, the legislature had indicated all the items of debts which are liable to be deducted. The question is whether the estate duty is an amount of debt due and owing from the deceased

and legally payable out of the estate. It is true that estate duty is legally payable out of the estate of the deceased. But is it a debt due and owing from the deceased? There can be no two opinions on the answer to this question, the answer being that the estate duty was certainly not a debt due and owing from the deceased. The legislature has taken care to specify what debts are liable to be deducted from the market value of the property for the purpose of arriving at the net value of the estate. The amount of expenses connected with the funeral rites and ceremonies and the amount of mortgage encumbrances are debts which are liable to be deducted from the value of the estate. Though the amount of expenses connected with funeral rites and ceremonies is one to be incurred after the death of the owner of the estate, the legislature has made specific provision that the said amount also is liable to be deducted as a debt.

7. Reliance is placed upon the form of affidavit which is required to be filed and the relevant portion of it has been extracted above. That affidavit no doubt refers to the estate as the estate of which the deceased died possessed of or to which he was entitled at the time of his death and which has come or likely to come to the hands of the applicant applying for probate. The estate should be not merely the estate of which the deceased died possessed of or to which he was entitled when he died but also of the estate which has come or is likely to come to the hands of the executor. Therefore, even if there was any estate which was in the possession of the deceased or to which he was entitled at the time of his death, if that estate had not come or was not likely to come to the hands of the executor, it is not necessary for the executor to include that asset in assessing the value under Section 55 of the Act. The question is whether on account of that recitalwhich the executor-applicant is required to make in swearing to the affidavit, the estate duty, which is not a debt required to be included in annexure 'B', can be included in arriving at the net value of the estate. The plain meaning of the words found in annexure 'B' dealing with the schedule of debts has to be given effect to, and if the expression 'debt due and owing from the deceased' is given its natural and plain meaning, there is no room for the argument that estate duty, which was certainly not a debt due and owing from the deceased, is also a debt to be included merely because it is a debt which is legally payable out of the estate of the deceased.

8. The Mysore High Court was dealing with similar provisions of the Mysore Court-fees and Suits Valuation Act, 1958. Sections 52 and 53 that Act correspond, word for word, to Sections 55 and 56 of the Madras Act. The Mysore Court-fees Act also contains Schedule III consisting of Part I with annexures 'A' and 'B' containing similar language as we find in Schedule III of the Madras Act. In the case before the Mysore High Court, the district judge, against whose decision the appeal was taken, took the view that in the computation of the court-fee, the estate duty and paid by the petitioner should be taken into consideration. After referring to Sections 52 and 53 of the Mysore Court fees Act and the relevant portion of Schedule III containing the affidavit, the Bench consisting of Somnath Iyer and Kalagate JJ. held :

'The scheme of the Estate Duty Act and of its provisions makes it clear that immediately on the death of a person, estate duty becomes exigible in respect of his property which passes on his death. The liability comes into being even before it passes and what brings into existence that liability is the death of the person to whom the property belongs. In that situation, to whomsoever the property may pass, the property which so passes is the property on which the liability for the payment of estate duty had already become fastened, and it is that property with the burden whose market value has to be determined under the provisions of Section 53 of the Court-fees and Suits Valuation Act.'

9. Sub-section (2) of Section 53 of the Mysore Court-fees Act corresponds to Sub-section (2) of Section 56 of the Madras Court-fees Act. This provision lays down that for the purpose of computation of the fee, the value of the items mentioned in annexure 'B', Part I of Schedule III, shall be deducted from the value of the estate. As already noticed, estate duty cannot be brought under the category of a debt due and owing from the deceased which is provided for in that annexure. Placing reliance upon this provision, it was contended before the Mysore High Court that subsection (2) specified the only deduction to be made from the value of the estate and if these deductions were of the amounts which represented the debts of the deceased, it was impossible for the petitioner to sustain the (1) [1964] 53 I.T.R. 64contention that the estate duty which was not a debt payable by the deceased could be deducted from such value. Rejecting this contention, the Bench observed

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'But this submission overlooks the provisions of Section 53(1) which contain the plainest indication that the deductions to be made under Subsection (2) are the further deductions to be made from the market value of the estate which has come or was likely to come to the hands of the executor and that that estate is an estate burdened with the liability to pay the estate duty.'

10. With great respect to the learned judges, I am unable to share this view. From the mere use of the expression 'market value' it does not mean that certain liabilities to which the estate is subject should be deducted in the first instance and that further, deductions should be made of the items mentioned in annexure 'B'. 'Market value' is the value which a willing purchaser would be prepared to pay for a property to a willing seller. The property may be burdened with liability. But the liability cannot reduce the market value. It is a matter of adjustment between the purchaser or the seller on the one hand and the holder of the (encumbrance on the other in regard to the payment of the amount due under the encumbrance. There is no warrant for the inference that the deductions of the items mentioned in annexure 'B' are only further deductions to be made after meeting the estate duty or any other liability which may not come within the four corners of the items described in annexure 'B'. From the value arrived at by adding the items given in annexure 'A', what is required to be deducted are only the items shown in annexure 'B'. It is not provided that in calculating the market value under annexure 'A', the value of the property after deducting any liability thereon should alone be shown. Reading the scheme of Sections 55 and 56 and annexures 'A' and 'B' of Schedule III of the Madras Act, I have no doubt in holding that estate duty is not a debt due and owing from the deceased and is not an item which can be deducted from the market value of the property for the purpose of arriving at the net value of the estate.

11. In this connection, reference may be made to Section 50 of the Estate Duty Act which provides that where any fees have been paid, under any law relating to court-fees in force in any State for obtaining probate, letters of administration or succession certificate in respect of any property for which estate duty is leviable

under that Act, the amount of estate duty payable shall be reduced by an amount which is equal to the court-fees so paid. From the provision, it is reasonable to infer that the legislature has taken note of the fact that in the determination of the market value of the estate for the purpose of obtaining probate or letters of administration, the estate duty payable in respect of the estate would not have been taken into (1) [1964] 53 I.T.R. 64, consideration and that relief should be given to a person who has already paid court-fees for obtaining probate or letters of administration.

12. I find that the estate duty payable is not an item of debt to be included in annexure 'B' of Schedule III of the Act and that the position taken up by the petitioner in the instant case is not correct. The office will accordingly return the petition for making necessary corrections and for payment of necessary court-fee in the light of the foregoing observations.