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Court : Chennai

Decided On : Oct-13-1972

Reported in : [1973]92ITR195(Mad)

Judge : G. Ramanujam and ;V. Ramaswami, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 2(15), 5, 21, 21(1), 85 and 85(1)' ;Estate Duty Rules, 1953 - Rules 7, 8 and 9; [Constitution of India](#) - Article 14

Appeal No. : Writ Petition No. 1477 of 1968

Appellant : Pl. Vrm. Ramaswamy Chettiar

Respondent : Assistant Controller of Estate Duty

Advocate for Def. : V. Balasubrahmanyam and ;J. Jayaraman, Adv.

Advocate for Pet/Ap. : K.C. Rajappa, Adv.

Judgement :

Ramanujam, J.

1. One Vellayappa Chettiar, a partner of a firm called 'V. PL. Firm', carrying on business at Kuantanang, Malaysia, died on April 16, 1966. He left certain other movable and immovable properties also. His son, the petitioner herein, as the accountable person submitted a return under the [Estate Duty Act, 1953](#),

hereinafter referred to as the Act, to the Assistant Controller of Estate Duty, Madurai, the respondent herein. The respondent completed the assessment on November 29, 1967, computing the net value of the estate at Rs. 1,14,738. In that computation the respondent took into account the deceased's share in the partnership assets which consisted of movable and immovable properties situate in Malaysia which he valued at Rs. 1,12,795. This was done after rejecting the contention of the petitioner that the interest of the deceased as a partner in the assets of the firm, both movable and immovable, situate in Malaysia should be treated as 'foreign property' and excluded from charge. Aggrieved against the order of assessment made by the respondent, the present writ petition has been filed.

2. In this writ petition it is contended that the order of the respondent treating the interest of the deceased in the said foreign firm as a foreign movable and bringing it to charge under the provisions of the Act is *ex facie* illegal and without jurisdiction, that Section 5 read along with the definition of the word 'property' in Section 2(15) enables a tax to be levied only on local 'property passing or deemed to pass on the death of the person', and that they will not enable the foreign property, either movable or immovable, being brought to charge. It is also contended that Section 21, while dealing with foreign property passing on the death of the deceased, makes a distinction between movable and immovable property in the matter of imposition of the charge, that in respect of foreign movable property the charge is made to depend on the domicile of the deceased, while foreign immovable property is completely immune from charge irrespective of the domicile of the deceased, that such invidious distinction between persons owning foreign property on the basis of domicile is discriminatory and violative of Article 14 of the Constitution. It is further urged that the provisions of Section 21(2) and Section 85 enabling the Board to make rules regulating the manner in which the nature and the location of different classes of assets shall be determined constitute an excessive delegation of the legislative power and that Parliament itself ought to have laid down the method and manner of determining the extent of liability under the Act of foreign property and the mode of ascertaining its value, instead of committing it to the arbitrary and unguided discretion of the Central Board. It is also urged that Rules 7(c) and 8(h) of the Estate Duty Rules, 1953, one

treating a share of a partner as movable property even if the partnership owned immovable property, and the other by fixing the local or situs of such share at a place in which the principal place of business is situate, suffer from the vice of excessive delegation and are as such invalid.

3. The revenue, on the other hand, submits that Section 21(1) of the Act does not contravene Article 14 of the Constitution, that it is merely an exemption provision but for which all the foreign properties will be dutiable under the charging section, that Parliament has a constitutional latitude in the matter of selection of property for taxation and has equally wide power of selection for granting exemption from taxation, and that Section 21(1) has made a valid classification between immovable and movable properties situate outside India in the matter of levy of estate duty. On the question of the conferment of the rule-making power to the Central Board under Sections 21(2) and 85, it is the contention of the revenue that Rules 7, 8 and 9 of the Estate Duty Rules, 1953., do not themselves impose a liability on the property situate outside India, but they merely regulate the manner of the determination of the nature and the location of the property, whether situate in India or not, and that, therefore, Rules 7(c) and 8(h) cannot be said to adopt a double standard, as contended by the petitioner.

4. Before dealing with the merits of the said rival contentions, it is necessary to refer to the relevant provisions of the Act. Section 2(15) defines 'property' as including any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method. We are not concerned in this case with the two Explanations to that definition Section 5(1) which imposes the levy of estate duty is as follows:

'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 land situate in the territories which immediately before the 1st November, 1956, were comprised 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 Section 35.'

5. Section 21 occurs in Part III of the Act dealing with exceptions from charge of duty and it is as follows :

'21. (1) There shall not be included in the property passing on the death of the deceased-

(a) immovable property situated outside India ;

(b) movable property situate outside India at the time of the death unless-

(i) in the case of any property, whether settled or not, the deceased was domiciled in India at the time of his death ; or

(ii) in the case of settled property of which the deceased was a life-tenant, the settlor was domiciled in India at the date the settlement took effect.

(2) The Board may make rules regulating the manner in which the nature and locality of different classes of assets shall be determined for the purposes of this section.'

6. Section 85 deals with the rule-making power of the Central Board and it is in these terms :

'85. (1) Subject to the condition of previous publication and subject to the control of the Central Government, the Board may make rules not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out the purposes of or giving effect to this Act.

(3) All rules made under this Act shall be laid before both Houses of Parliament as soon as may be after they are made.'

7. Rules 7, 8 and 9 are the rules framed by the Central Board in exercise of their power under Sections 21(2) and 85(1) for regulating the manner in which the nature and the location of the different classes of assets shall be determined. Of

these, Rules 7(c) and 8(h) which are being impugned here, are set out hereunder :

Rule 7(c): ' The share of a partner in a partnership shall be treated as an indivisible asset for the purpose of determination of its nature and locality. The share of a partner in a partnership is movable property, notwithstanding that the firm owns immovable property.'

Rule 8(h): 'Shares in a partnership shall be deemed to be situated at the place where the business is principally carried on.'

8. According to the learned counsel for the petitioner, Section 5 read with the definition of 'property' in Section 2(15) imposes the charge only on properties situate in India and foreign movables are sought to be brought in for charge indirectly by bringing in the notion of domicile of the deceased under Section 21. The assumption of the learned counsel that Section 5 will take in only the properties situated in India and not any foreign property is, in our view, without any basis. Section 21 cannot be treated as a charging section so far as foreign movables are concerned as suggested by the learned counsel for the petitioner. In our view it is only a provision for exemption of certain properties from the charge under Section 5. The exemption covers (1) foreign immovable property owned by the deceased, and (2) foreign movable property of the deceased if he was not a domicile of India at the time of his death. We are not inclined to accept the petitioner's contention that Section 5 should be construed as not to have any extra-territorial operation and that, if so construed, foreign movables cannot be brought within the scope of the charging section even on the basis of the domicile of the deceased. The learned counsel refers to the decisions in *Provincial Treasurer of Alberta v. C. E. Kerr*, [1933] A.C. 710 (P.C.) and *Union of India v. Harbhajan Singh Dhillon* : [1972] 83 ITR 582 (SC) in support of his submission that the scope of the legislation is to be gathered from the charging section, that Section 5 of the Act, which is the charging section, read along with the definition of 'property' in Section 2(15), operates only on the property in India passing on the death of the deceased, and that it is only by Section 21, foreign movables are added to the estate of the deceased passing on death and thus brought to charge. We are clear that the petitioner's learned counsel has clearly misconceived the scope of Section 5 as

well as Section 21. Section 5 covers all properties, whether situate in India or outside, and Section 21 excludes certain foreign properties from the operation of Section 5. But for the exclusion contained in Section 21(1), all foreign movables and immovables also would be taken in by Section 5. Though the principle laid down in *Provincial Treasurer of Alberta v. C.E. Kerr* and *Union of India v. Harbhajan Singh Dhillon* cannot be taken exception to, those decisions will not help the petitioner when he says that Section 5 confines the charge only to properties in India and it is only Section 21 which provides for a charge in respect of foreign movables. The petitioner's contention that Section 5 can operate only in relation to movables and immovables situated in India having regard to the definition of 'property' in Section 2(15) is based on the assumption that Parliament can make a law only in relation to properties situate within India and not in respect of foreign properties. The learned counsel seeks support for such an assumption from the decisions in *In re Hindu Women's Rights to Property Act* and *Thangappan v. Subadra* [1971] 2 M.L.J. 220 (Mad.) *In re Hindu Women's Rights to Property Act* was a case where the Federal Court, while dealing with the definition of 'property' in the Hindu Women's Rights to Property Act, 1937, stated that though the definition of 'property' appears to be wide, it would not cover agricultural land in respect of which State legislatures alone were competent to make laws. The following observation in that case is pertinent:

'If the word 'property' necessarily and inevitably comprises all forms of property, including agricultural land, then clearly the Act went beyond the powers of the legislature; but when a legislature with a limited and restricted power makes use of a word of such wide and general import the presumption must surely be that it is using it with reference to that kind of property with respect to which it is competent to legislate and to no other.'

9. In that case, the court was concerned with the scope of the relative jurisdiction of the Central and the State legislatures, and that decision cannot be construed as laying down that a sovereign legislature such as the Indian Parliament can make a law only with regard to a property situate within its territory. In *Thangappan v. Subadra* the court was concerned with relative legislative powers of two State legislatures which are not sovereign, and, therefore, it held that the State

legislature had power to legislate only in respect of persons or properties within the State and that it had no power to legislate in respect of persons or properties situate within another State. That decision also cannot apply to the situation on hand, where we have to construe the legislative competence of a sovereign legislature.

10. It is well-established that generally words in a statute are to be construed with reference to the powers of the legislature which enacts it. Lord Esher M.R. said in *Colquhoun v. Heddon*, [1890] 25 Q.B. 129. (C.A.):

'It seems to me that, unless Parliament expressly declares otherwise, in which case, even if it should go beyond its own rights as regards the comity of nations, the courts of this country must obey the enactment, the proper construction to be put on general words used in an English Act of Parliament is, that Parliament was dealing only with such persons or things as are within the general words and also within its proper jurisdiction, and that we ought to assume that Parliament (unless it expressly declares otherwise) when it uses general words is only dealing with persons or things over which it has properly jurisdiction.'

11. It is true that a subordinate or non-sovereign legislature cannot legislate on any subject-matter which has no relevant territorial connection whatever with its territories. Even in respect of such subordinate legislatures, it has been repeatedly held that it is within the competence of those legislatures to make any fact, circumstance, occurrence or thing in or connected with their territory, the occasion for the imposition of a tax liability or any other liability on any person residing or domiciled therein. Thus, though it may be possible to challenge the power of a non-sovereign legislative body to make a law having extra-territorial operation on the ground that it is contrary to the principles of international law, the powers of Indian Parliament, which is sovereign, are subject to no such limitation.

12. In *A.H. Wadia v. Commissioner of Income-tax*, [1949] 17 I.T.R. 63 the Federal Court held that the validity of an enactment imposing a tax cannot be challenged on the ground that it is extra-territorial in operation, if there is a connection between the person who is subjected to the tax and the country imposing the tax, but that such connection must be a real one and the liability sought to be imposed

must be pertinent to that connection, and that such connection can be founded on the residence of the person or business connection within the territory of the taxing State or the situation within the State of the money or property from which the taxable income is derived. The Federal Court also pointed out that, in any event, Parliament's legislative competence to levy income-tax even without a real territorial connection cannot be questioned by any Indian courts. As has been held in *British Columbia Electric Railway Co. v. King*, [1946] A.C. 527 (P.C.) and *Wadia v. Commissioner of Income-tax* whenever it shall appear, by a proper construction of an Act of Parliament that extra-territorial operation was intended, the courts in India must give effect to such an Act, without questioning the competency of Parliament with reference to any rule of international law. What the municipal court is concerned with is the competence of the legislature according to its constitutional powers, and even though it appears that it would not be possible to enforce the law outside the territory of the country, the municipal court cannot declare the law to be invalid on that account, but must enforce the law with the machinery available to it. It is true that, under international law, it is not competent for a State to enact laws in respect of foreigners beyond the jurisdiction of that State. But whatever be the weight of an extra-territorial law the municipal courts of the State which passed the law are bound to obey them, leaving it to the Government to justify its action with other countries. The Judicial Committee had expressed in *British Columbia Electric Railway Co. v. King*, [1946] A.C. 527:

'A legislature which passes a law having extra-territorial operation may find that what it has enacted cannot be directly enforced, but the Act is not invalid on that account and the courts of its country must enforce the law with the machinery available to them.'

13. Therefore, when a sovereign legislature, such as the Indian Parliament, expressly or impliedly manifests an intention to legislate with extraterritorial effect, the Indian courts must give effect to it, regardless of any law of the comity of nations. The question, therefore, is whether Parliament had intended to impose the charge of estate duty in respect of properties situate outside India.

14. Dymond on Death Duties, 14th edition, at page 1029, traces the history of estate duty legislation in England and states that under Sections 1 and 2 of the Finance Act, 1894, estate duty was payable prima facie in respect of all property passing or deemed to pass on death without reference to its situation, but by Section 2(2) of the Finance Act, 1923, and by Section 24 of the Finance Act, 1936, had later limited the duty in respect of properties situate out of Great Britain in certain circumstances. At page 1026, he points out that there is a fundamental distinction between property situate in Great Britain in relation to which the charge is unlimited and property not so situate in relation to which specific restrictions are imposed. While dealing with the scope of the charge in relation to property situate outside Great Britain it is pointed out that the relevant test is to find out whether the deceased was domiciled in Great Britain or elsewhere and whether the proper law of the disposition or devolution under which the property passes is the law of Great Britain. The charge, under the estate duty has to be determined, according to the author, from the situs of the property, domicile of the person and the proper law of disposition or devolution of such property. It is, therefore, clear that the Finance Act of 1894 levied estate duty in respect of properties passing on death or deemed to pass on death without reference to their situation, that it is only by the Finance Act of the year 1923 a limitation was imposed on the charge for duty and that it has never been contended that the charge under Finance Act, 1894, should be confined to properties situate only in Great Britain.

15. In *Philipson Stow v. Inland Revenue Commissioners*, [1961] A.C. 727 : [1963] 49 I.T.R. 21, Lord Radcliffe stated:

'So long as the provisions of Section 2(2) were operative, I think that it would have been impossible to say that in no circumstances could real property abroad attract a claim to estate duty if a passing took place, since there were known cases in which legacy or succession duty were exacted in respect of it.'

16. In the light of what has been stated above, let us consider the scope of sections read with Section 2(15). There are no words either in the definition of 'property' in Section 2(15) or in Section 5 to limit their operation to properties situate in India alone. Therefore, they have to be taken to cover all properties

passing on death, whether they are located inside or outside the Indian territory. It is only by virtue of Section 21(1)(a), immovable property situate outside India is excluded from the definition of 'property passing on death of the deceased'. Similarly, by Section 21(1)(b), movable property situate outside India is excluded from the charge, if the deceased was not domiciled in India at the time of his death. Section 21 is a provision for exception from the charge of duty and this corresponds to Section 2(2) of the U.K. Finance Act of 1849 and Section 24 of the U.K. Finance Act of 1936. But for the exception contained in Section 21, all foreign properties, both movable and immovable, will come under the charge.

17. As a matter of fact, Section 28(1) of the U.K. Finance Act of 1962 extends the charge of duty to foreign movable property subject to certain minor exceptions in respect of inter vivos transactions effected before May 10, 1962. The legislative history in the United Kingdom, so far as estate duty is concerned, shows that the charge of duty is dependent on the domicile of the deceased at the time of his death, whether the law of disposition or devolution under which the property passes is the law of/ Great Britain or the law of some other country.

18. Under our Act also, the liability to estate duty on movable property depends upon the domicile of the deceased and, therefore, the charge on foreign movable property also is based on the domicile of the deceased under Section 21(1)(b) which provides that the movable properties situated outside India shall not be included in the property passing on the death of the deceased unless the deceased is a domicile of India at the time of his death. If a person is domiciled in India, its laws will have sufficient nexus to operate on his assets wherever situate and income wherever it accrues. The fact that under Section 21 certain foreign properties are exempted from charge does not mean that the Indian Parliament has no power to legislate on such properties owned by persons domiciled in India. Parliament in its wisdom has chosen to exempt from the charge under Section 5 foreign immovable properties, and foreign movables if the owner was not a domicile of India at the time of his death. The word 'foreign property' has not been expressly used in any section of the Act though Section 21 is headed 'foreign property'. Sections 21, 47 and 48 have used the words 'property situate out of India' to describe 'foreign property'. Such property indicates the situs abroad.

Consequently, the property of a foreigner situate in India cannot be described as foreign property. Since the foreign situs of the property gives rise to certain consequences, foreign property has accordingly been dealt with in certain ways in Sections 20, 21, 30, 47 and 48. According to these provisions, if the situs of the property is outside India, then the domicile of the deceased person is made the basis for the charge in respect of movable properties, and complete exemption is given to immovable properties. If the property is situate in India, duty is levied irrespective of the fact that the property has some foreign attributes. The time of ascertaining the location of the property is the time of the death which gives rise to the charge.

19. It is well established that under the private international law the State has got the right to levy estate duty on movable property situate within its territorial jurisdiction even if the deceased was a person domiciled abroad. It is also the recognised rule of international law that the law governing devolution of immovable property is *lex situs* and the law governing devolution of the immovable property is *lex domicile*, and it is this principle which is embodied in Section 21(1) of the Act for determining the extent of the chargeability of foreign properties under the Act. According to Section 21(1)(b), movable properties situate outside India are dutiable if the deceased was domiciled in India at the time of his death. We are, therefore, of the view that the petitioner's contention that Section 21(1) so far as it refers to the domicile of the deceased at the time of his death as the basis for the chargeability of duty on foreign movables is invalid as being discriminatory, has no substance, and has to be rejected.

20. In Article 366(9) of the [Constitution of India](#) 'estate duty' has been defined as 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 law so to pass. That definition refers to all properties passing upon death or deemed so to pass. This definition of 'estate duty' occurring in the Constitution cannot be cut down to have operation only to the properties actually situate within the territories of India. Article 245(2) confers unlimited extra-territorial jurisdiction upon the Union Parliament and

removes the fetter imposed in this respect upon the federal legislature by the Government of India Act, 1935.

21. The further contention put forward by the petitioner is that Sections 21(2) and 85(1) enabling the Central Board to frame rules regulating the manner in which the nature and location of different classes of assets shall be determined for the purposes of Section 21 amounts to an excessive delegation of the legislative power, and that Rules 7, 8 and 9 framed by the Board in exercise of that rule-making power are, therefore, invalid. We are not able to accept this contention. The nature and locality of different classes of assets will naturally differ, depending upon various factors, and the statute itself cannot be expected to provide the mode of determining the nature and locality of all assets. It has, therefore, left those matters to be determined by the rules framed by the Board. But the Board will have to naturally determine the nature and locality of the various classes of assets in accordance with the general law of the land, or on the basis of certain settled principles known to and recognised by the international law. As a matter of fact, Rule 7 providing for the determination of nature of property, Rule 8 providing for the determination of the location of movable property and Rule 9 providing for the determination of the location of immovable property are all in accord with the principles of general law. The rules framed by the Board cannot be said to be vitiated either by excessive delegation or by arbitrariness so long as those rules are consistent with the settled principles under the general law of the land as also the international law.

22. The petitioner's main attack is on Rule 7(c) which treats the share of a partner in a partnership as movable property, notwithstanding that the firm owns immovable property. It is said that the interest of a partner in a firm owning immovable property has been arbitrarily taken as a movable property with a view to bring such interest under the charging section read with Section 21(1)(b). We find that the said rule merely restates the position under the general law. It has been held by the Supreme Court in *Narayanappa v. Bhaskara Krishnappa* : [1966]3SCR400 that the interest of a partner in partnership property' during the subsistence of the partnership is movable property even though the firm had immovable property as part of its assets and the reason for taking that view is that

under Section 29 of the Partnership Act, the partner has got only a right to receive the share of profits so long as the partnership subsists. In that case, their Lordships of the Supreme Court approved the view taken in Venkataratnam v. Subba Rao, I.L.R. [1926] Mad. 738 ; A.I.R. 1926 Mad. 1040 wherein this court, after discussing all the relevant decisions on the point, both English and Indian, held that an unregistered deed of release by a partner of his share in the partnership business is admissible in evidence, even where the partnership owns immovable property and that though a partner may be a co-owner in the partnership property, he has no right to ask for a share in the property but only that the partnership business should be wound up including therein the sale of immovable property and to ask for his share in the resulting assets. In Commissioner of Gift-tax v. M.K.K.R. Muthukaruppan Chettiar : [1969]72ITR1(Mad) (Mad.) a Hindu undivided family consisting of the assessee and his minor son owned shares in house properties and business assets and outstandings due in India and also shares in a partnership business in Burma and Penang, the total of which was valued at Rs, 9,08,000 as on September 2, 1958, on which date there was a partition in which the assessee retained Rs. 70,000 in cash with him as his share and the balance of the family assets was allotted to the share of the minor son. The partition was recognised under Section 25A of the Indian Income-tax Act, 1922. In respect of gift-tax proceedings, the assessee contended that the share of the family as a partner in the foreign firms should be regarded as movable property within the meaning of Section 5(1) of the Gift-tax Act. Though the Income-tax Officer did not accept that contention, the Appellate Assistant Commissioner and the Tribunal accepted the same and gave relief to the assessee on that basis. On a reference to this court at the instance of the revenue, this court, following the decision of the Supreme Court in Narayanappa v. Bhaskara Kisknappa, held that whatever be the character of the property brought in by the partners or acquired in the course of the business, it became the property or trading assets of the firm and a partner was entitled in law only to a share of profits and that the subject-matter of the family partition being the share owned by the family in the foreign firms and not the immovable properties per se which constituted the business assets of these firms, Section 5(1) has no application-and the allowance granted by the Appellate Assistant Commissioner and the Tribunal

in respect of the immovable properties owned by the foreign firms was not sustainable. In *G. Annamalai Chettiar v. Controller of Estate Duty* : [1969]74ITR743(Mad) . a right to receive compensation for the immovable property acquired from the deceased by the Government of Burma and which was outstanding was held to be movable property. From the above decisions, it appears to be well-settled that the share of a deceased in a partnership is a movable property, even though the firm owned immovable properties. Rule 8 merely sets out the principles of general law regarding the situs of movable property, and Rule 9 likewise sets out the. situs of immovable property and these rules also accord with the general law relating to the fixation of situs of movable and immovable properties. We do not, therefore, find in Rules 7 to 9 any departure from the principles of the general law as to the nature and location of the/properties. Even in the absence of the said rules the authorities have to fix the nature and location of the properties in accordance with general law. In this view, we have to reject the contention of the petitioner that Rules 7, 8 and 9 framed under the rule-making power given to the Central Board under Section 21(2) read with Section 85(1) are invalid.

23. Having rejected all the contentions put forward by the petitioner in this case, the writ petition has to be dismissed and it is accordingly dismissed with costs Counsel's fee Rs. 250.

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