M.M. Muthiah Vs. Controller of Estate Duty

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Court : Chennai

Decided On : Dec-24-1997

Reported in : [1999]236ITR166(Mad)

Judge : N.V. Balasubramanian and ;P. Thangavel, JJ.

Acts : Income Tax Act, 1961 - Sections 28

Appeal No. : T.C. Nos. 127 and 128 of 1980

Appellant : M.M. Muthiah ; Controller of Estate Duty

Respondent : Controller of Estate Duty; M.M. Muthiah

Advocate for Pet/Ap. : Deokinandan and ;K.M.L. Majele, Advs.

Judgement :

N.V. Balasubramanian J.

1. This is a combined reference both at the instance of the accountable person and at the instance of the Department arising out of the order of the Tribunal in E.D.A. No. 133/Mds of 1972-73 dated August 31, 1978, under the provisions of the Estate Duty Act, 1953 (hereinafter referred to as the 'Act'). The following questions of law have been referred to us :

'1. Whether, on the facts and in the circumstances of the case, the policy No. 83920339 belonged to the Hindu undivided family and section 7 of the Estate Duty

Act would apply to the policy amount

2. Whether on the facts and circumstances of the case in respect of the policy amount of Rs. 1,21,728 received under policy No. 83428875, sections 7 and 14 of the Estate Duty Act would apply in accordance with the proportion of 23100/109725 and 46200/86625 respectively

3. Whether, on the facts and in the circumstances of the case, the inclusion of the lineal descendants' share in the principal value of the deceased's estate in terms of section 34(1)(c) of the Estate Duty Act, 1953, was not proper and so the sum of Rs. 17,17,412 taken for aggregation should be deleted

4. Whether, on the facts and in the circumstances of the case, though the insurance premia in respect of the policies assigned to the relatives of the deceased were paid by the Hindu undivided family yet the policy monies should not be included in the value of the properties belonging to that Hindu undivided family in terms of section 14 read with section 39(3) of the Estate Duty Act

5. Whether the provisions of section 5(1)(xii) of the Estate Duty Act can be applied only to properties belonging to the Hindu undivided family at the time of the death of the deceased and not to properties which are deemed to pass on the death of the deceased ?'

2. The first two questions are at the instance of the accountable person and the questions Nos. 3, 4 and 5 are at the instance of the Department.

3. One A. M. M. Murugappa Chettiar passed away on November 1, 1965, at the age of 63 and he was domiciled in India at the time of his death. His son M. M. Muthiah is the accountable person. In the estate duty proceedings, the Assistant Controller of Estate Duty included, inter alia, the following items of the properties in the principal value of the estate, which are the subject matter in the present tax case reference.

'1. Rs. 7,17,412 being the value of the lineal descendants' share - included under section 34(1)(c) for rate purposes;

2. Rs. 7,014 being the value of insurance policy No. 86048096 assigned in favour of son Sri Muthiah;

3. Rs. 38,002 being the value of insurance policy No. 341216 assigned in favour of daughter V. R. Annapurni;

4. Rs. 1,21,627 being the value of insurance policy No. 8342875 assigned in favour of the deceased's son, two daughters and wife.

5. Rs. 10,871 being the insurance premia paid on the policies on the life of the grandchildren of the deceased; and

6. Rs. 11,474 being the amount due from the policy No. 83920339 (sun life) insurance company ?'

4. The Assistant Controller rejected the contention of the accountable person that the insurance policy amounts formed part of the Hindu undivided family properties. He found that in respect of certain policies, the deceased himself was treating the policy amounts as his individual property by paying premia towards the policies from out of his individual resources and by claiming rebate for the purpose of the income-tax. He also found that in respect of other policies, which have been assigned in favour of the individuals, the amounts realised on maturity of the policies were distributed to the persons in whose favour they have been assigned. He, therefore, held that the claim of the accountable person that the policy amount should be treated as the Hindu undivided family property was not acceptable.

5. The accountable person preferred an appeal against the order of assessment made by the Assistant Controller, Estate Duty. The Appellate Controller went into the matter in detail. He found that in respect of policy No. 86048096, 341216 and 8342875, the policies were not kept up by the deceased out of his personal resources. In so far as the insurance premium amounting to Rs. 10,871 is concerned, the payment of premium cannot be regarded as a gift and as such, it cannot be included in the principal value of the estate of the deceased. He also deleted a sum of Rs. 11,474 relating to the policy No. 83920339 on the ground that section 14 of the Act was not attracted. He also upheld the contention of the

accountable person that the value of the lineal descendants' share amounting to Rs. 7,17,412 cannot be included for rate purposes.

6. The Department preferred an appeal before the Income-tax Appellate Tribunal. In so far as the aggregation of the lineal descendants' share under section 34(1)(c) of the Act is concerned, the Appellate Tribunal following the decision of this court in Devaki Ammal v. Asst. CED : [1973]91ITR24(Mad) , held that the lineal descendants' share cannot be aggregated for rate purposes.

7. With reference to the inclusion of the amounts covered under the various policies of insured, the Tribunal found a sum of Rs. 1,78,218 was included in the estate by the Assistant Controller and the Appellate Controller deleted the entire sum. The Tribunal considered the inclusion of the policy amounts with reference to each policy separately. In so far as the policy No. 86048096 for a sum of Rs. 7,014 and the policy No. 341216 relating to a sum of Rs. 38,002 were concerned, the Tribunal recorded the finding that the policies were assigned in favour of certain assignees and represented the assets of the assignees. The Tribunal also recorded a finding that the entire premia for both the policies were paid by the Hindu undivided family and the provisions of section 14 of the Act were not attracted to the case. The Tribunal therefore came to the conclusion that the assets belonged to the assignee and could not be regarded as the property of the Hindu undivided family which paid the premia.

8. In so far as the other policy No. 83920339 for a sum of Rs. 11,474 is concerned, the Tribunal held there was only nomination and there was no assignment of policy. The Tribunal also found the entire premium was paid by the Hindu undivided family and the deceased had not kept up the policy. The Tribunal therefore came to the conclusion that the policy amount belonged to the Hindu undivided family and the provisions of section 7 of the Act would apply.

9. In so far as the fourth policy is concerned, the Tribunal found the policy was taken in the year 1947 and it was assigned in favour of the wife, son and two daughters of the deceased in the year 1950 and the Hindu undivided family paid the premia in respect of the policy up to the year 1957. It was also found that the Hindu undivided family paid the premia between 1947 and 1950 and 1951 to 1957

but the deceased paid the premia of the above policy from 1958 to 1965. The Tribunal therefore came to the conclusion that the provisions of section 14 were attracted and a portion of the policy amount should be taken as the property passing in proportion to the premia paid by the individual in respect of the policy kept up for the assignee.

10. As far as the addition of Rs. 10,871 representing the insurance premia paid on the policies on the life of the grandchildren of the deceased were concerned, the Tribunal found that the premia were paid by the family out of its own resources. The Tribunal noticed that fact that the Appellate Controller deleted the addition under section 9 of the Act, but on a different reasoning it came to the conclusion that under the provisions of sub-section (3) of section 39 of the Act, the property cannot be included as the property of the joint family on the score that the provisions of sections 6 to 17 or sections 30 to 33 or sections 44 to 46 of the Act cannot have any application to the provisions of section 39(3) of the Act. The reasoning of the Tribunal is that since the property was not the joint family property at the time of death of the deceased, it cannot come within the purview of section 39(3) of the Act. It is against this order of the Appellate Tribunal at the instance of the accountable person as well as by the Department, the questions of law set out earlier have been referred.

11. So far as the first question of law referred to us is concerned, it is a question referred at the instance of the accountable person and the finding of the Appellate Tribunal is that it was not a case of assignment of the policy in favour of Valliammai Achi wife of the deceased. It was found that there was only nomination made in her favour, and the entire premia were paid by the joint family. We are of the view that in the absence of any intention to show that the family intended that the policy amount should belong to the lady exclusively, we have to uphold the finding of the Appellate Tribunal that the policy amount continued to be the property of the Hindu undivided family.

12. Mr. R. Janakiraman, learned counsel for the accountable person contended that the finding of the Appellate Tribunal is not correct in law. However, we are not able to accept the contention of learned counsel for the accountable person on the

ground that there were no materials placed before the Tribunal to hold that there was an assignment of the policy in favour of the wife of the deceased or there is no evidence to indicate the intention of the joint family which paid the premia that the monies. covered under the insurance policy should belong to the lady member of the family exclusively. In the absence of any material or evidence contra and in the face of nomination in favour of the wife of the deceased, we hold that the property covered under the policy belonged to the joint family and the proportionate share of the deceased in the assets of the joint family is liable to be included under the provisions of section 7 read with section 39 of the Act. Accordingly, the first question referred to us is liable to be answered against the accountable person.

13. In so far as the second question of law that is referred to us is concerned, the issue raised in the second question, is also factual in character. The Tribunal went into the facts of the case and found that though there was an assignment in the year 1950 in favour of the four persons, the deceased paid the premia from the years 1958 to 1965, and the provisions of section 14 of the Estate Duty Act were attracted. Once the provisions of section 14 of the Act are attracted as the deceased partly kept up the policy during the life time of the policy, the proportionate amount of the policy is liable to be included in the estate of the deceased passing under section 14 of the Act. There is no dispute about the proportion arrived at by the Appellate Tribunal applying the provisions of section 14 of the Act and further it is not shown to be in any way incorrect and in view of the factual finding that the deceased kept up the policy, we uphold the order of the Appellate Tribunal that the provisions of section 14 are attracted on the facts of the case and the Tribunal was correct in holding that a part of the policy amount is liable to be included in the estate passing on the death of the deceased. Accordingly, the second question of law referred by the accountable person is also liable to be answered against the accountable person.

14. In so far as the third question of law that is referred at the instance of the Revenue is concerned, though the Appellate Tribunal followed the decision of this court in the case of Devaki Ammal : [1973]91ITR24(Mad) , the said decision of this court has since been reversed by the Supreme Court in Asst. CED v. Devaki

Ammal : [1995]212ITR395(SC) , wherein the Supreme Court upheld the provisions of section 34(1)(c) of the Act holding that the aggregation of the share of the lineal descendants of the deceased, with the share of the deceased in the case of the passing of the deceased's interest in the joint family property is not violative of article 14 of the Constitution. Following the said decision of the Supreme Court, the third question of law referred at the instance of the Revenue is liable to be answered in favour of the Revenue.

15. The fourth question covers two policies, namely policy Nos. 86048096 and 341216. The Tribunal found that there was an assignment of both the policies in favour of the son and daughter of the deceased. The Tribunal also recorded a finding that the entire premia in respect of the policy were paid by the Hindu undivided family. The Tribunal, however, held that since there was an assignment, the policy amounts cannot be taken as the property of the Hindu undivided family.

16. Mr. C. V. Rajan, learned counsel for the Revenue, submitted though there was an assignment, the premia were paid only by the joint family and hence the policies were kept up to the detriment of the joint family and therefore, they are liable to be included in the assets of the joint family.

17. Learned counsel for the Revenue placed reliance on the decision of the Andhra Pradesh High Court in Narayanlal P. Lahoti v. CED : [1968]68ITR849(AP) , wherein the earlier decisions of this court on this topic have been considered and the Andhra Pradesh High Court held that where the joint family funds were used for the payment of insurance premium, there was a detriment to the joint family funds and the policies should be taken as the asset of the joint family.

18. Mr. R. Janakiraman, learned counsel for the accountable person, on the other hand, submitted that it is not open to the Revenue to raise the contention urged before us on the ground that no such contention was raised before the Appellate Tribunal that the amounts are liable to be included in the assets of the joint family, and the Tribunal has proceeded on a correct basis that after the assignment of the policies in favour of the son and daughter of the deceased, the properties cannot be regarded as the joint family properties. Mr. Janakiraman, learned counsel for the accountable person therefore, submitted that this court has no jurisdiction to

decide the controversy raised by learned counsel for the Revenue.

19. We have carefully considered the submissions of learned counsel for the parties. We are not able to accept the contention of learned counsel for the accountable person that this court has no jurisdiction to decide the controversy whether the policy amounts can be regarded as individual property or joint family property. The very issue before the Tribunal at the time of hearing of the appeal was whether the property can be regarded as joint family property or not as the premia were paid by the joint family. Therefore, when the precise question of the inclusion of the amount was before the Tribunal and where the Tribunal has recorded a finding that the policy amounts did not belong to the joint family but to the assignee, we are of the view that this court has the necessary jurisdiction to decide the question whether the policy amounts can be regarded as the property of the joint family or not.

20. The question when the amounts covered under the insurance policies can be included in the hands of the joint family or in the name of a person in whose name the policies stand, came up for consideration before this court in several decisions particularly in Karuppa Gounder v. Palaniammal : AIR1963 Mad245 Venkata Subba Rao v. Lakshminarasamma : AIR1954 Mad222 and Seethalakshmi Ammal v. CED : [1966]61ITR317(Mad) . The Andhra Pradesh High Court in Narayanlal P. Lahoti v. CED : [1968]68ITR849(AP) , cited supra, after considering the earlier decisions of this court as well as the decision of the Supreme Court in the case of Parbati Kuer v. Sarangdhar [1959] 29 Comp Cas 68 laid down the following test to determine when the property can be regarded as the joint family property and when it can be regarded as the individual property :

'It would appear from a review of the above cases, that in every case where joint family funds are used for payment of premia of a life insurance policy, there is a detriment to the joint family, but that is not the sole criterion. If joint family funds are advanced to members of the coparcenary for their individual benefit, there is, though strictly speaking, a detriment to the joint family, none the less the intention with which that money is advanced and the use of it by the individual for his own benefit would determine the character of the income or the amounts earned

therefrom. No doubt, there should be proof aliunde of such an intention and the treatment of any income earned from such an advancement.'

21. Applying the test laid down by the Andhra Pradesh High Court, it is clear that where the funds of the family were utilised for the purpose of payment of premia to the policy, it can be said that there is a detriment to the joint family assets, but that would not be sufficient to characterise the policy amount received as a joint family property as it is open to the joint family to advance money to a member of the family and in that case, the intention at the time of advancing the money by the joint family to a member would be relevant. Therefore, where certain funds of the family were advanced by the family to the individual, who can use it for his own benefit the policy amount may not be regarded as joint family property, but to arrive at such a conclusion there must be independent proof to show that the joint family had advanced the money to the individual and the individual also treated the policy amount as his individual property. The Tribunal has merely recorded the finding that the family funds were used for the payment of premia, but because of the assignment by the deceased, it cannot be regarded as the joint family property. Notwithstanding the assignment, we are of the view that it is for the accountable person to establish by cogent materials or evidence that the funds utilised for the payment of premia were advanced to the son and daughter of the deceased and the advances were for the benefit of the son and daughter. Since there is no evidence on this aspect, by the accountable person before the Tribunal to prove that the funds used for the payment of premia were in the nature of advance by the joint family to the member and in the absence of any evidence from the accountable person, there is no difficulty in holding that the payment of premia was detriment to the joint family funds. The Tribunal, no doubt, noticed the law on the subject, but, however, has not gone into the further question whether in spite of the assignment, the property could be regarded as the joint family property. As we have already seen, the question whether the property can be regarded as a joint family property or individual property would depend upon the intention on the part of the joint family at the time of advancing the money, and the use of the same by the individual for his own benefit. Since the Tribunal has not considered the question in the light of the law laid down by this court, we are of the view that the Tribunal shall consider the entire question whether the policy

amounts can be regarded as the property of the joint family or that of the assignee. In this view of the matter, in so far as the two policies are concerned which are the subject-matter of question No. 4, the Tribunal should consider the question whether the policy amounts can be included in the property of the joint family and whether any portion of them can be deemed to pass under section 7 of the Act.

22. In so far as the last question is concerned, it relates to a sum of Rs. 10,871 representing the insurance premia paid on the policies of the grandchildren of the deceased. The Tribunal found that the entire premia, were paid by the family from out of its funds. The Assistant Controller of Estate Duty in the order of assessment, invoked the provisions of section 9 of the Act and included the deceased's share of Rs. 5,436 and the lineal descendants' share amounting to Rs. 5,435, totalling a sum of Rs. 10,871. He added the lineal descendants' share as a property passing under other titles. The Appellate Controller in appeal, however, held that there was no gift at all and the policy or the payments cannot be brought to duty under section 14 of the Act. The Appellate Tribunal confirmed the order of the Appellate Controller on the ground that the property was not existing as a joint family property on the date of death of the deceased and it became the property of the assignee and therefore, the provisions of section 39(3) of the Act cannot be invoked. The Tribunal relied upon the decision of the Andhra Pradesh High Court in the case of Gunda Bhaskara Rao v. CED : [1968]67ITR309(AP) , and the decision of this court in the case of CED v. Estate of Late R. Krishnamachari : [1978]113ITR200(Mad) , to come to the conclusion that the provisions of section 39(3) of the Act cannot be invoked to include the property deemed to pass under other provisions of the Act. The Revenue has challenged the finding of the Appellate Tribunal. It is seen that the entire premia were paid by a joint family and applying the principles of law earlier laid down by the decision of the Andhra Pradesh High Court in Narayanlal P. Lahoti v. CED : [1968]68ITR849(AP) , it has to be seen in each case whether the premia paid were detriment to the joint family or whether they were meant as advance to the grandchildren and what was the intention at the time of handing over of the money and whether it was meant for the benefit of the assignee. If the money was advanced to the detriment of the joint family, then the property would be regarded as a joint family property, and if it was meant as an advance, then the amount, to the extent it was advanced can be

regarded as the joint family property. In both cases, the share of joint family property belonging to the deceased would be deemed to pass, and the question will be only as regards the quantum and value of the property belonging to the joint family. The Tribunal, apparently, has proceeded on a wrong basis that the provisions of section 9 of the Act were invoked and therefore, the provisions of section 39(3) cannot be invoked again. The Tribunal omitted to notice that the Appellate Controller has deleted the addition made under section 9 of the Act which was the subject matter of the challenge before the Appellate Tribunal, and when the amount was deleted under section 9 of the Act, the Tribunal erroneously proceeded on the basis that the amount was already included under section 9 of the Act and therefore, it cannot again be included under section 39 of the Act. Since we are holding that the Tribunal has not considered the question whether the amount can be regarded as the joint family property, the matter has to be examined by the Appellate Tribunal. If the Tribunal comes to the conclusion that the premia paid were to the detriment of the joint family, and there was no advance by the family, the policy amount will be regarded as a joint family property and the provisions of section 39(1) and section 39(3) of the Act would squarely apply. On the other hand, if the Tribunal comes to such a conclusion that the premia paid were meant as advances and intended for the benefit of the assignee, then, the policy amount cannot be regarded as the property of the joint family, but to the extent there was a debt due to the joint family, if any, that amount can be regarded as the joint family property, In both the situations, some property will be available, and it would be deemed to pass as the property belonging to the joint family under the provisions of section 7 read with section 39 of the Act. Therefore, we direct the Appellate Tribunal to consider the question afresh in the light of the observations made by us and to determine the extent of the property passing on the death of the deceased. Accordingly, the fifth question referred to us at the instance of the Revenue is also liable to be answered in favour of the Revenue subject to the above directions.

23. Accordingly, we answer the questions of law referred to us in the following manner :

First question is answered in the affirmative and against the accountable person.

Second question is answered in the affirmative and against the accountable person.

Third question is answered in the negative and in favour of the Revenue.

Fourth question is answered in the negative and in favour of the Revenue.

Fifth question is answered in the negative and in favour of the Revenue. However, in the circumstances of the cases, there will be no order as to costs.