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Court : Chennai

Decided On : Aug-25-1976

Reported in : [1978]111ITR403(Mad)

Appeal No. : Tax Case No. 102 of 1971 (Reference No. 59 of 1971)

Appellant : T. A. Devaki Ammal

Respondent : Controller of Estate Duty, Madras.

Judgement :

ISMAIL J. - The Income-tax Appellate Tribunal, Madras Bench, under section 64(1) of the Estate Duty Act, 1953, has referred the following question of law for the opinion of this court :

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in upholding the assessment of the value of the life interest in the property of the deceased at No. 267, Nethaji Subash Chandra Bose Road ?'

The facts which have given rise to this question are simple. Under a deed of settlement dated November 18, 1954, Srimathi Vadakapattu Annammal, wife of late Rajavelu Mudaliar, who was the owner of premises bearing door No. 267, China Bazar Road alias Nethaji Subash Chandra Bose Road, Esplanade, Madras, settle the same in favour of two beneficiaries. The first beneficiary was her own daughter, the accountable person, and the second beneficiary is the son of the first beneficiary. Under the terms of the settlement, she reserved a life interest in

her own favour and after her death, the document provided, that the first beneficiary would get a life interest in the property without any power of alienation. The settlement deed further provided that after the death of the first beneficiary, the second beneficiary also will get a life interest without any power of sale, mortgage or any kind of alienation or disposition. It is only after the termination of the life interest in favour of both the beneficiaries, the settlement deed provided for the absolute devolution of the property on the issue of the second beneficiary and, in the absence of any issue to the second beneficiary, on the issue of the first beneficiary. Annammal died on May 2, 1963. The accountable person, namely, the first beneficiary, filed an account on January 22, 1966, declaring therein the value of the life interest of the deceased's property. The Assistant Controller included the value of Rs. 1,00,000 attributable to this property in the assessment made by him on March 20, 1968. In the appeal before the Appellate Controller filed by both the accountable person and one C. D. Jayarama Rao Mudaliar, the executor under the will of the deceased, the contention urged was that such a value was not includible in the duty on the estate. It appears that the stand taken was that even the first beneficiary under the settlement, namely, Devaki Ammal, the accountable person, was given only a life interest in the property without any powers of alienation or disposition and, therefore, the life interest of the deceased in the property was not complete. The Appellate controller, after extracting the provisions in the settlement deed held that the life interest of the deceased in the property extended to the entire income therefrom and that under section 40(a) the principal value of the property is includible in the assessment. Against this order of the Appellate Controller, the accountable person preferred an appeal to the Tribunal. The Tribunal relied on section 12 of the Estate Duty Act, 1953, and held that under that section, the property was exigible to tax. The Tribunal also pointed out that the departmental representative relied alternatively on section 5 of the Act itself, with the result the appeal preferred by the accountable person was dismissed. It is the correctness of this conclusion that is challenged before us in the form of the question referred to this court and extracted already.

The first question for consideration is whether section 12 of the Act is applicable to the case at all as held by the Tribunal. Section 12(1) of the Act states :

'Property passing under any settlement made by the deceased by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor's death...'

There are two provisos to this sub-section and it is not necessary to refer to them for the purpose of this case. In the present case, admittedly the deceased Annammal executed a settlement deed in respect of the property. Equally admittedly she reserved a life interest in the whole of the property for herself. Under these circumstances, in our opinion, section 12(1) clearly applies to this case, unless it can be established that the property did not pass under the settlement deed. The learned counsel for the assessee, in fact, sought to contend that the property did not pass under the settlement. According to the learned counsel, on the death of Annammal one interest came to an end and another interest came into existence. Apart from the fact that this contention is contrary to the accountable person's own stand in the form of accounts filed by her, we are of the opinion that there is no substance in this contention. Even if an interest comes into existence on the death of Annammal, it comes into existence by virtue of the settlement only and not independent of the settlement. As a matter of fact, section 12 is a special provision. Normally, any property passing under a settlement passes from the settlor to the settle when the settlement deed comes into effect and, therefore, the question of that property passing on the death of the settlor would not arise. However, section 12 constitutes a special provision to cover a case where under a settlement the settlor reserves a file interest to himself or herself and in such a case section 12 creates a fiction by providing that the property passing under the settlement should be deemed to pass on the settlor's death. Consequently, we are clearly of the opinion that the present case comes squarely within the language of section 12(1) of the Act and, therefore, the Tribunal was right in holding that the property passed on the death of Annammal and, therefore, was liable to duty.

The learned counsel for the assessee sought to put forward two contentions. One was that this court has to consider whether the case falls within the scope of section 7 of the Act and the second was that this court has also to consider whether the valuation of the property was correct or not. The point about valuation arises because the Assistant Controller as well as the Appellate Controller took the entire value of the property for the purpose of assessing the duty and the learned counsel's contention is the the value of the life interest of Annammal alone should be brought to tax. However, we are unable to entertain either of these contentions because such a case was not put forward before the Tribunal and, therefore, cannot be said to arise out of the order of the Tribunal. A reading of the order of the Tribunal clearly shows that only one case was put forward, namely, no property passed on the death of Annammal and, therefore, no tax, was exigible. It is only with reference to that contention the Tribunal referred to section 12 of the Act and relied on it for the purpose of sustaining the assessment. The order of the Tribunal does not show that any other contention on the basis of section 7 or with regard to the valuation adopted by the authorities below was put forward. The learned counsel himself has admitted that he did not appear before the Tribunal and, therefore, obviously was not in position to assert, that any such contention was put forward and the Tribunal did not consider and deal with the same. In these circumstance, we have to proceed only on the basis of what the order of the Tribunal contained and if we so proceed the only point that was argued before the Tribunal was the exigibility to the tax and that point has been decided by the Tribunal, in our view, rightly against the assessee.

The learned counsel for the assessee relied on the language of the terms in which the question referred to this court has been framed and contended that the question is comprehensive enough to include the question of valuation also. However, if the question is construed as dealing only with exigibility to tax, for the reasons we have already indicated, we answer the question in the affirmative and against the assessee. On the other hand, if the question is construed to include the point regarding the valuation also, we hold that such a question does not arise out of the order of the Tribunal and, therefore, such a question cannot be answered by this court. In these circumstances, on the basis that the question referred to us involves the question regarding the exigibility to duty alone we

answer the same against the assessee and in favour of the department, with costs. Counsel's fee Rs. 500.

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