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**Court :** Chennai

**Decided On :** Mar-13-1978

**Reported in :** [1981]132ITR871(Mad)

**Appeal No. :** Tax Case No. 375 of 1974 (Reference No. 188 of 1974)

**Appellant :** Rm. Arunachalam

**Respondent :** Controller of Estate Duty, Madras.

**Judgement :**

RATNAVEL PANDIAN J. - The following question is referred by the Income-tax Appellate Tribunal, Madras Bench 'B', Madras, under the provisions of s. 64(1) of the E.D. Act, 1953 (hereinafter referred to as 'the Act'), at the instance of the accountable person, for the opinion of this court :

'Whether the Tribunal was right in holding that the estate duty payable in respect of the estate of the deceased, AR. RM. Umayal Achi, was not an admissible deduction in computing the principal value of the estate ?'

The accountable person is one Sri RM. Arunachalam, who is the adopted son of Smt. AR. RM. Umayal Achi, who passed away on August 20, 1964. The accountable person is also the residuary legatee by the will dated July 20, 1961, executed by the said Umayal Achi. During the hearing of the appeal before the Tribunal, an additional ground was raised with the permission of the Tribunal, and it was contended on behalf of the appellate that immediately on the death of

Umayal Achi taking place, the estate duty became a charge on the property and if the true market value of the estate had to be estimated under the provisions of s. 36 of the Act, the estate duty payable would have to be deducted and that the estate duty payable should itself have been allowed as a deduction in computing the principal value of the estate. This plea was opposed by the departmental representative who drew inspiration from the ratio of the judgment of this court in *In re Mrs. Constance Lubeck* : [1970]78ITR199(Mad) and it was contended that no such deduction was permissible. The Tribunal agreed with the contentions of the revenue and rejected the plea of the assessee. Hence, this reference.

Mr. Subramaniam, counsel for the assessee, would contend that if the true market value of the property had to be determined under the provisions of s. 36 of the Act, the estate duty payable would have to be deducted. He drew the attention of this court to the decision of the Mysore High Court in *Mrs. Blanche Nathalia Pinto v. State of Mysore* [1964] 53 ITR 64 wherein, while examining the computation of the court-fee payable under s. 53 of the Mysore Court-Fees and Suits Valuation Act of 1958, on an application by the executor for the grant of a probate, the High Court of Mysore observed that if any estate duty was payable under the Act in respect of such asset, the estate duty so paid or payable should be deducted from the estimate so made and what remained after such deduction was the amount on which court-fee was payable.

Learned counsel for the revenue, resisting the above contention, would submit that the liability to pay estate duty cannot be said to be an incumbrance, nor can it be said to have been created by the deceased, and, therefore, the estate duty was not deductible from the value of the estate passing on the death of the deceased. In support of her contention, the following decisions were relied upon, namely, (i) *In re Mrs. Constance Lubeck* : [1970]78ITR199(Mad) *Smt. Pramila v. CED* : [1975]99ITR221(KAR) *CED v. Estate of Late Om Prakash Bajaj* : [1977]110ITR263(AP) and *Smt. Shantaben Narottamdas v. CED* : [1978]111ITR365(Guj) .

In *Pramilas* case, a Division Bench of the Karnataka High Court, while considering the question about the determination of the value of the property passing on the

death under the provisions of the Act, held that the estate duty payable on the estate of the deceased person was not liable to be deducted under s. 44 of the Act, thereby confirming the order of the Tribunal in that case which had distinguished the decision in *Blanches* case [1964] 53 ITR 64 on the ground that the said decision had proceeded on a Phraseology of the provisions of the Mysore Court-Fees and Suits Valuation Act, while in the case before it, the question was whether the estate duty payable was deductible under s. 44 of the E.D. Act.

The decision in *Blanches* case [1864] 53 ITR 64 came up for consideration before a single judge of the Madras High Court in *Constance Lubecks* case : [1970]78ITR199(Mad) , wherein the question arose whether the estate duty payable on an asset which vested in the executor was an item to be deducted from the value of the estate in ascertaining the market value for the purposes of court-fee under the Madras Court-Fees and Suits Valuation Act, 1955. *Palaniswamy J.*, disagreeing with a view expressed by the Mysore Court in *Blanches* case, held that though estate duty was legally payable out of the estate of the deceased, it was not a debt due and owing from the deceased and, hence, could not be included as an item to be deducted from the value of the estate in ascertaining the market value for the purpose of calculation of court-fee chargeable on the application for the grant of probate or letters of administration under s. 56(1)(a) of the Madras Court-Fees and Suits Valuation Act, 1955.

In *CED v. Estate of Late Om Prakash Bajaj* : [1977]110ITR263(AP) , the Andhra Pradesh High Court took the view that the estate duty payable on an estate is not a 'debt or incumbrance' within the meaning of s. 44 of the Act and, hence, it is not deductible while computing the principal value of the estate and that the liability for payment of the estate duty is a personal liability of the accountable person and not a liability of the estate itself and, hence, it cannot be said that it is debt contemplated by s. 44 of the Act.

The Gujarat High Court in *Shantaben Narottamdass* case : [1978]111ITR365(Guj) had the opportunity of referring to the various decisions mentioned above except *CED v. Estate of Late Om Prakash Bajaj* while examining the scope of ss. 44 and 74 of the Act. In this decision, the said High Court explained the position of law

and finally held that the expressions 'debts' and 'incumbrances' in s. 44 of the Act referred to debts and incumbrances created by the deceased during his lifetime and the liability to pay estate duty, even if it were created by statute, could not be said to be an incumbrance nor could it be said to have been created by the deceased, and, therefore, the estate duty was not deductible from the value of the estate passing on the death of the deceased.

We are in full agreement with the view expressed by the Gujarat High Court in Shantabens case : [1978]111ITR365(Guj) . We, accordingly, hold that the estate duty payable on the estate of the deceased in the hands of the accountable person is not deductible, and answer the reference in the affirmative and against the accountable person and in favour of the revenue. The revenue will have its costs. Counsels fee Rs. 250.

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