Controller of Estate Duty Vs. Nirmal Kumar Roy

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Court : Kolkata

Decided On : Jun-04-1980

Reported in : (1980)18CTR(Cal)170,[1981]128ITR593(Cal)

Judge : Sabyasachi Mukharji and ;Sudhindra Mohan Guha, JJ.

Acts : Estate Duty Act, 1953 - Sections 12 and 27

Appeal No. : Matter No. 499 of 1972

Appellant : Controller of Estate Duty

Respondent : Nirmal Kumar Roy

Advocate for Def. : Manas Banerjee, Adv.

Advocate for Pet/Ap. : S. Sen and ;Ajit Sengupta, Advs.

Judgement :

Sabyasachi Mukharji, J.

1. In this reference under Section 64(3) of the E.D. Act, 1953, the. following questions have been referred to this court:

'1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the trust came into effect during the lifetime of the deceased ?

2. Whether, on the facts and in the circumstances of the case, and having regard to the fact that the deceased resided in one of the trust properties before his death, the Tribunal is right in holding that there was no reservation of interest by the deceased in the property within the meaning of Section 12(1) of the Estate Duty Act, 1953?

3. Whether, on the facts and in the circumstances of the case, and on a correct interpretation of the deed of trust, the Tribunal is correct in holding that the trust did not have amongst its purposes the maintenance of the sons of the deceased ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in holding that the word 'and' appearing in the Explanation to Section 12(1) of the Estate Duty Act, 1953, was not used in a disjunctive sense and that the reservation of interest for the maintenance must be both for the settlor and his relatives ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the word 'children' appearing in Section 27(7) of the Estate Duty Act, 1953, would not include adults?'

2. These questions arose on the demise of one Rishikesh Roy on the 29th July, 1962. During his lifetime he executed a deed of trust on the 10th February, 1954. The properties in the 3rd and 4th schedules to the said trust were settled on trust. Under the said term, during the lifetime of the settlor and his wife, Sm. Purnasashi Dassi, the trustees were to hold the properties in the 3rd schedule upon the trust declared under part II, Clause 6, that is, the settlor's five sons were to be the beneficiaries with reference to the said property. This document was considered not to be clear enough to bring about the settlor's intention. So, soon thereafter, on the 26th November, 1954, another deed of trust was executed which provided that the trustees shall hold the trust properties in the 3rd and 4th schedules of the deed of trust dated the 10th February, 1954, even during the lifetime of the settlor and his wife, Sm. Purnasashi Dassi, upon trust therein mentioned. It would be proper, in our opinion, to set out the terms upon which the trustees were to hold the property which are as follows :

'1. I do hereby confirm that the said trustees, Nirmal Kumar Roy and Sankar Lal Roy, shall hold the trust properties described in the third and fourth schedules of the said deed of trust dated the 10th day of February, 1954, and a list whereof is also set out in the schedule hereunder during the lifetime of myself (settlor) and my said wife, Sm. Purnasashi Dassi, upon trust therein mentioned.

2. The rents and issues and profits arising out the said trust properties including half share in the business of Roy Cousin & Co. all fully described in the third and fourth schedules of the said deed of trust dated the 10th day of February, 1954, and a list whereof is also set out in the schedule hereunder written during the lifetime of myself (settlor) and/or my wife, Sm. Purnasashi Dassi, shall be. collected and realised by the said trustees, Nirmal Kumar Roy and Sankar Lal Roy, who after first deducting therefrom all municipal rates, taxes, rents, revenues and other outgoings due and payable in respect of same and charges for repairing and reconstruction of same and also all other costs and charges incurred for realisation and collection thereof will distribute and divide the balance thereof at their discretion equally among my five sons, viz., Profulla Kumar Roy, Nirmal Kumar Roy, Sankar Lal Roy, Sachindra Nath Roy and Samir Kumar Roy so that each of my said sons will get an equal share thereof.

3. I do hereby otherwise confirm the said deed of trust dated the 10th day of February, 1954, in all other respects and as regards all its provisions and implications therefrom.'

3. The trustees appointed under the deed were the first two sons of the settlor. The effect of the trust deed was that the income derived from the said properties should be collected by the trustees and after meeting the charges, the balance should be applied at the direction of the trustees amongst the five sons of the settlor so that each of them would get equal share thereof. The result of the two documents was to allow the trustees to distribute the income at their discretion to the sons of the settlor during his lifetime and during the lifetime of his wife.

4. In this reference we are mainly concerned with premises No. 23/2, Shib Sankar Mallik Lane, being item No. 1 of the third schedule to the said trust deed. After the lifetime of the settlor and his wife this property was to be absolutely taken by the

sons of the settlor. The Asst. Controller considered that the property was deemed to pass under Section 12 of the E.D. Act, 1953, as, in his view, the settlor had reserved to himself an interest as contemplated by that provision.

5. The accountable person appealed to the Appellate Controller, who held that the trust was for the maintenance of the relatives of the deceased and it came within the scope of Section 12. He agreed also with the other reasons given by the Asst. Controller.

6. There was a further appeal to the Tribunal. The Tribunal held that if the first document alone was there, there was some possibility of accepting the stand of the revenue that the trust came into existence after the lifetime of the settlor and his wife as there was no disposition made as regards the income during the lifetime of the settlor. But the deed of rectification altered the position. The Tribunal was of the view that the two deeds read together resulted in the transfer of the properties to the trustees and the payment of the income at the discretion of the trustees to the sons of the settlor equally and there was no scope for the contention that the trust came into existence only after the lifetime of the settlor and his wife. We agree with this finding of the Tribunal on the reading of the two trust deeds. In view of the recital of the trust deed it appears to us that there was a present transfer of the property and an effective disposition of the income of the trust during the lifetime of the settlor and his wife and they had not reserved any interest in the property. The Tribunal also considered the implication of the Explanation to Section 12(1) of the Act. It held that from the recitals it was clear that there was no reservation of any benefit for the maintenance of himself by the settlor. It was also held that there was no reservation of any interest in the property for the maintenance of his relatives. The Tribunal also was of the view that the expression 'children' in Clause 27 would not include adult sons of the settlor. Upon this the Tribunal accepted the assessee's contention that Section 12 was not attracted and as such this property did not pass on the death of the settlor.

7. Section 12 of the E.D. Act, 1953, so far as it is material for our present purpose, provides as follows :

'12. (1) 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 ;'

8. The second proviso to the said section is also relevant which provides as follows:

'Provided further that a house or a part thereof comprised in such settlement made in favour of the spouse, son, daughter, brother or sister, shall not be deemed to pass on the settlor's death by reason only of the residence therein of the settlor except where a right of residence is reserved or secured directly or indirectly to the settlor under the settlement or under any collateral disposition.'

9. The Explanation to Section 12 is to the following effect:

'Explanation.--A settlor reserving an interest in the settled property for the maintenance of himself and any of his relatives (as defined in Section 27) shall be deemed to reserve an interest for himself within the meaning of this section.'

10. In the instant case, there was no reservation of any interest by the settlor in the property, in the sense, no reservation of any right of residence nor any reservation of any right to revoke the deed of trust. Even if it be held that the expression 'children' included adult, since there was a reservation of interest in the settled property for the maintenance of such relatives, as denned under Section 27 of the E.D. Act, such maintenance, in our opinion, must be both for the settlor and his relatives. In this case there was no such reservation because there was no reservation in favour of the settlor. The principle of the section, in our opinion, is well settled and is in consonance with the principles reiterated by the Supreme Court in the case of CED v. R. Kanakasdbai : [1973]89ITR251(SC) and the decision of the Gujarat High Court in the case of Kikabkai Samsudin v. CED : [1969]73ITR241(Guj) . In that view of the matter, in our opinion, question No. 1

should be answered in favour of the accountable person and against the revenue, in the facts and circumstances of this case.

11. For the reasons aforesaid, question No. 2 must also be answered in the affirmative and in favour of the accountable person. In view of the reasons mentioned before, question No. 4 must be answered in the negative and in favour of the accountable person. In that view of the matter questions Nos. 3 and 5 are of academic interest in this case and it is not necessary for us to enter into these controversies and we decline to answer them. We, therefore, answer the questions in the manner indicated above. In the facts and circumstances of this case, parties will pay and bear their own costs.

Sudhindra Mohan Guha, J.

12. I agree.