

KALYANI SUNDARAM
v.
ASSISTANT CONTROLLER OF ESTATE
DUTY MADRAS & ANOTHER

MAY 12, 1989

[R.S. PATHAK, CJ. AND B.C. RAY, J.]

Estate Duty Act/Estate Duty Rules, 1958—Sections 17, 19(1), 30(1)(e), 36, 37 & 61/Rule 15—Assessment of Accountable persons—Made—Entire estate duty paid up—Whether rectification of assessment permissible.

Shri Anantharamakrishnan, a reputed industrialist died in Madras on April 18, 1964 intestate leaving behind his widow, Valli, two sons, Sivasailam and Krishnamoorthy and two daughters, Kalyani and Seetha. Some time thereafter, his son Sivasailam, being an accountable person rendered the Estate Duty account. All other heirs i.e. his mother, brother and sisters, who were also accountable persons, being the heirs of the deceased wrote to the Assistant Controller of Estate Duty that as accountable persons they agreed to abide by the accounts rendered by Sivasailam and whatever explanation is furnished by him would be binding on them.

M/s. Amalgamations Private Ltd. is a company which held shares in most of the companies including Simpson and Company Ltd. in which company the deceased Anantharamakrishnan too held shares. By a letter of April 27, 1965, Amalgamations informed the assessing authority that the deceased had transferred property to it in the form of shares and that at the time of his death, he had controlling interest in the Company. On September 13, 1965, the Assessing Authority wrote to Amalgamations that the deceased having transferred 80,377 shares of Simpson, as such Amalgamations was a controlled company within the meaning of s. 17 of the Estate Duty Act and thus the said company had to be regarded as one of the accountable persons in respect of the estate of the deceased. Amalgamations was therefore required to submit an account of the estate. Accordingly Amalgamations filed a return and no objection thereto was taken by any of the heirs.

Treating Amalgamations as a controlled company and in view of the fact that the deceased had control over its affairs, the assessing authority valued the shares as per the provisions of Rule 15 of the Rule framed by

- A the Board under Section 30(1)(e) of the Act. The principal value of the shares was determined of Rs.2,12,29,998 and the duty was computed at Rs.1,67,74,697.58, out of which provisional duty in the sum of Rs.65,50,542.73 had been paid. The assessment order was addressed both to Amalgamations as also to Shri Sivasailam as accountable persons. No appeal was preferred against the said assessment by the
- B accountable persons.

- C K.S. Sundaram husband of the appellant as her agent and constituted power of attorney, on June 11, 1974 wrote to the Assistant Controller seeking certain clarifications. The Assistant Controller referring to the agreement between the heirs of the deceased Anantharamakrishnan that they were bound by the accounts rendered or explanation given by Sivasailam, replied that, since all subsequent proceedings had been completed after discussion with Sivasailam and Amalgamations, the assessment had become final and that it was not possible to enter into any further discussion.

- D On 2nd January, 1975, appellant's husband as agent filed an application under Sec. 61 of the Estate Duty Act, and it was contended by him that the assessment order was vitiated by several errors inasmuch as Rule 15 only prescribed the method of valuation of shares and debentures of the controlled company and the rule was appendage to Sections 36 & 37 of the Act. It was urged that the assessment order
- E did not show any details and therefore a rectification order should be made indicating the exact amount included under Section 17(1) of the Act as the property passing on the death of the deceased. He stated that he required this information to know the precise amount which his principal had to pay to Amalgamations, as the assessment order did not, in terms, indicate apportionment of the duty, for which reason
- F rectification was required.

On January 25, 1975, the Assistant Controller declared by an order that he was unable to find any mistake in the assessment order which called for any rectification and therefore he declined to act under Sec. 61 of the Act.

- G Order passed by the Assistant Controller was challenged in the High Court by means of Writ Petitions. The High Court dismissed the Writ Petitions holding that there was no error apparent on the record and therefore there was no reason for invoking Sec. 61 of the Act. The High Court took the view that proceedings reflected a private dispute
- H between the appellant and other members of the family. Hence this appeal by the appellant.

Dismissing the appeal the Court,

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HELD: All the heirs other than Sisivaism had agreed that as accountable persons they would abide by the accounts rendered by Sivasailam and any information furnished by him with regard to the estate duty matter would be binding on them. The appellant cannot be heard now to dispute the quantum of liability and the basis on which the liability was computed. Nor is it open to her to contend that it is not Amalgamations which is liable to pay the duty, but the duty is payable by the heirs of the deceased. The assessment had become final and no appeal against it had been attempted. [239C-D]

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The appellant acquiesced wholly and completely in the assessment to estate duty being made on Amalgamations. [239E]

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The assessment was completed in 1970 and the entire estate duty has now been paid up. It was only after the entire estate duty was paid that the appellant filed the application for rectification on January 2, 1975. [239E-F]

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The question whether the assessment was justified on Amalgamations or should it have been taken against the heirs of the deceased stands concluded now and upon all the facts and circumstances of the case it was not permissible for the appellant to have recourse to Sec. 61 of the Act in order to re-open the case, as there was no mistake apparent on the record. [240D-E]

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That this litigation was woven around a private dispute among the family members. [239G]

Hari Vishnu Kamath v. Syed Ahmed Ishaque and Others, [1955] 1 SCR 1104, 1123; *Hind Trading Company v. Union of India & Anr.*, [1969] 2 SCR 533; *M.K. Venkatachalam, Income-tax Officer and Another v. Bombay Dyeing and Manufacturing Co. Ltd.*, [1958] 34 ITR 143, 149-50; *Commissioner of Income-tax, Madras v. Mr. P. Firm Muar*, [1965] 1 SCR 815, 822 and *Thungabhadra Industries Ltd. v. The Government of Andhra Pradesh*, [1964] 5 SCR 174, 180, referred to.

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2319-2320 of 1981.

From the Judgment and Order dated 14.3.1980 of the Madras High Court in Writ Petition Nos. 4959 and 4960 of 1975.

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A Soli J. Sorabjee, Harish N. Salve, S. Ganesh, Mahapatra, P.S. Shroff and Mrs. P.S. Shroff for the Appellant.

N.A. Palkhiwala, Gauri Shanker, S.C. Manchanda, J.B. Dadachanji, Mrs. A.K. Verma, D.N. Mishra, M.S. Harau, Ram Chandran, Mrs. J. Ramachandran Ms. A. Subhashini and C.V. Subba Rao for the Respondents.

The Judgment of the Court was delivered by

C PATHAK, CJ. These appeals by special leave are directed against the judgment and order of the High Court of Madras dismissing the writ petitions filed by the appellant against the refusal of the first respondent to rectify an assessment order and pass consequential directions.

D Shri Anantharamakrishnan, a reputed industrialist in Tamil Nadu, died intestate in Madras on 18 April, 1964. He left behind his widow, Valli, his two sons, Sivasailam and Krishnamoorthy and two daughters, Kalyani and Seetha. Some time after his death, Sivasailam, as an accountable person rendered the estate duty account. All the heirs, other than Sri Sivasailam, who were also accountable persons wrote to the Assistant Controller of Estate Duty on 15 December, 1964 that as accountable persons they agreed to abide by the accounts rendered by Sri Sivasailam and any explanation furnished by him with regard to the Estate Duty case would be binding on them.

F Messrs. Amalgamations Private Ltd. (shortly referred to as 'Amalgamations') is a company which holds shares in most of the companies including Simpson and Company Ltd. (shortly referred to as 'Simpson') of the group. By letter dated 27 April, 1965 Amalgamations informed the assessing authority that the deceased had transferred property in the form of shares in Simpson to it and that the deceased had controlling interest in that company at the time of his death. On 13 September, 1965 the assessing authority wrote to Amalgamations that the deceased had transferred 80,377 shares of Simpson, and therefore Amalgamations was a controlled company within the meaning of s. 17 of the Estate Duty Act. By virtue of s. 19(1) of the Estate Duty Act the controlled company had to be regarded as one of the persons accountable for the estate of the deceased. Amalgamations was required to submit an account of the estate. Amalgamations filed a return before the Assistant Controller.

H No objection was raised by the heirs of the deceased or by Amalgama-

tions to the latter being treated as an accountable person.

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After due enquiry the assessment of Estate Duty was completed on 27 January, 1970 and the duty payable by the estate was determined at Rs. 1,67,74,697.58, of which provisional duty had been paid in the amount of Rs. 65,50,452.73 leaving a balance of Rs. 1,02,24,244.85. The assessment order was addressed to Amalgamations as well as Sri Sivasailam as accountable persons. The Assistant Controller of Estate Duty proceeded on the basis that Amalgamations was a "controlled company" and the deceased had control over its affairs, and therefore valuation of the shares held by the deceased in the company had to be made in the manner laid down in Rule 15 framed by the Board under s. 30(1)(e) of the Estate Duty Act. The principal value of the assets was determined at Rs. 2,12,29,998 and the duty was computed at Rs. 1,67,74,697.58. There was no appeal against the assessment by any of the accountable persons.

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Kalyani Sundaram, one of the daughters of the deceased and the appellant before us, became entitled to the death of Anantharamakrishnan to a fifth share in his estate under the Hindu Succession Act. Her husband, K.S. Sundaram, as her agent constituted by power of attorney, wrote on 11 June, 1974 to the Assistant Controller seeking certain clarifications regarding the assessment. The Assistant Controller replied on 25 June, 1974 referring to the specific agreement of the accountable persons to abide by the accounts rendered by Sri Sivasailam and to be bound by any explanation given by him. The Assistant Controller referred to the fact that all subsequent proceedings had been completed after discussion with Sri Sivasailam and Amalgamations and as the assessment had now become final it was not possible to enter into any discussion concerning it.

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On 2 January, 1975 the appellant's husband as agent filed an application under s. 61 of the Estate Duty Act contending that the assessment order was vitiated by several errors inasmuch as Rule 15 prescribed only the method of valuation of the shares and debentures of the controlled company and the Rule was an appendage to ss. 36 & 37 of the Act, that unless property was transferred without consideration by the deceased to Amalgamations and some benefit accrued to the deceased from the company s. 17(1) of the Act would not be attracted, that the decision to treat Amalgamations as an accountable person because of the transfer of shares rested on the transfer of shares made by the deceased, that on a number of aspects of the case the assessment order did not show any detail, and therefore a rectification

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- A order should be made indicating the exact amount included under s. 17(1) of the Act as the property passing on the death of the deceased. He required this information, he said, to enable him to work out the amount which his principal had to pay to Amalgamations by way of reimbursement of the duty. If the apportionment of the duty had been effected by the order itself, he said, the need for rectification would not have arisen.
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- Section 61 empowers the Controller "to rectify any mistake apparent from the record" at any time within five years from the date of the order passed by him. On 25 January, 1975 the Assistant Controller passed an Order declaring that he was unable to discover any mistake which called for rectification in the assessment order and therefore he declined to act under s. 61 of the Act. This order was challenged by the writ petitions out of which the present appeals arise.
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- The High Court dismissed the writ petitions. Sethuraman, J. held that there was no apparent error, and therefore no reason for invoking s. 61 of the Act and Balasubramanyan, J. in a concurring judgment, held likewise and also dealt with other aspects of the case. Both learned Judges were of the view that the proceeding reflected a private dispute between the appellant and other members of the family, and that the forum and remedy selected by the appellant were not appropriate for that purpose.
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- The fundamental question in these appeals is whether the appellant is right in invoking s. 61 of the Act.
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- Learned counsel for the appellant contends that the heirs of the deceased on whom the estate devolves are liable to pay estate duty attributable to the property which falls to their respective shares and that if an accountable person pays any part of the estate duty in respect of any property not passing to him he is entitled to reimbursement by the person entitled to such property. This, says learned counsel, has no application in respect of the duty payable by virtue of s. 17 of the Act, which provides that the slice of the assets of a controlled company shall be deemed to pass on the death of the deceased for the purposes of estate duty and the slice will be included in the property passing on his death if the deceased made a transfer of that property to the controlled company and benefit accrued to the deceased in the three years ending his death. The slice of the assets of the controlled company does not come to any heir; therefore no heir is called upon to pay the amount of estate duty attributable to the inclusion of that slice
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in the chargeable estate. By s. 19 the controlled company itself is liable to pay the corresponding amount of estate duty. In the present case, however, learned counsel urges, no slice of the assets of Amalgamations has been included in the estate of the deceased by the assessing authority as property deemed to pass on the death of the deceased and therefore the demand issued to the controlled company constitutes a mistake apparent from the record. The application of Rule 15 is also contested and this, according to learned counsel, is a clear mistake committed by the Controller. It is urged that there is a mistake apparent from the record in the directions requiring Amalgamations to pay the entire amount of estate duty.

It seems to us that all the heirs other than Sisivaislam had agreed that as accountable persons they would abide by the accounts rendered by Sisivaislam, and any information furnished by him with regard to the estate duty matter would be binding on them. The appellant cannot be heard now to dispute the quantum of liability and the basis on which the liability was computed. Nor is it open to her to contend that it is not Amalgamations which is liable to pay the duty, but the duty is payable by the heirs of the deceased. The assessment has become final and no appeal against it has been attempted. It was for the benefit of the heirs that there was general agreement to have the assessment made on Amalgamations and indeed when the assessment was completed and finalised, no objection was taken. The appellant acquiesced wholly and completely in the assessment to estate duty being made on Amalgamations. No separate assessment was made on the appellant nor on the other heirs. The assessment was completed in 1970 and the entire estate duty has now been paid up. It was only after the entire estate duty was paid that the appellant filed the application for rectification on 2 January, 1975.

It was contended by learned counsel for the private respondents that the appellant enjoyed no *locus standi* in order to maintain the application under s. 61 and these appeals thereafter, but we do not propose to enter into this question.

Further, it appears that this litigation is woven around a private dispute among the family members. That is hardly any justification for invoking s. 61 of the Act.

We have carefully perused the reasons given individually by the two learned Judges of the High Court and we are in complete agreement with them that there is no mistake apparent on the record.

- A In support of the contention that there was a mistake apparent on the record, learned counsel has referred us to *Hari Vishnu Kamath v. Syed Ahmed Ishaque and Others*, [1955] 1 S.C.R. 1104, 1123; *Hind Trading Company v. Union of India & Anr.*, [1969] 2 SCR 533; *M.K. Venkatachalam, Income-Tax Officer and Another v. Bombay Dyeing and Manufacturing Co. Ltd.*, [1958] 34 ITR 143, 149-50 and *Commissioner of Income-Tax, Madras v. Mr. P. Firm, Muar*, [1965] 1 S.C.R. 815, 822 but having regard to the facts of the case before us we do not find anything in those cases which can be of assistance to the appellant.
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- C Learned counsel for the appellant states that having regard to the terms of the order granting special leave to appeal the appellant is justified in requesting the court to consider the issues on the merits. We are unable to spell out such intent of the Court from the terms of the order granting special leave to appeal. We do not think that the observations of the Court in *Thungabhadra Industries Ltd. v. The Government of Andhra Pradesh*, [1964] 5 S.C.R. 174, 180 affect the position before us.
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- E The real question is whether the assessment was justified on Amalgamations or should it have been taken against the heirs of the deceased. In our opinion, that question stands concluded now and upon all the facts and circumstances of the case we do not think it permissible for the appellant to have recourse to s. 61 of the Act in order to re-open the case.

The appeals are dismissed, there is no order as to costs.

Y.L.

Appeals dismissed.