PETITIONER:
TRUESTEES OF H.E.H. NIZAM'S PILGRIMAGE MONEY TRUST, HYDERABA

Vs.

RESPONDENT:
THE COLLECTOR OF ESTATE DUTY, HYDERABAD

DATE OF JUDGMENT: 21/07/1998

BENCH:
SUJATA V. MANOHAR, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U DG M E N T

Mrs. Sujata V. Manohar, J.

The appellants are the trustees of H.E.H. Nizam Pilgrimage Money Trust, Hyderabad. On 2.11.1950, H.E.H. Nizam of the erstwhile State of Hyderabad created a trust under which the settlor set apart Government of India Loan Securities of the face value of Rs.22.20 lakhs yielding an annual income of Rs. 66,600/- for certain charitable and religious purposes. The relevant clause of this settlement is Clause 3(c). The relevant provisions of Clause 3 are as under:

"3. The Trustees shall hold and stand possessed of the Trut Fund UPON TRUST :-

(a) To manage the Trust Fund and to recover the interest and other income thereof;

(b) To pay and discharge out of the income of the Trust Fund all expenses and charges for collecting and recovering the income of the Trust Fund and all other costs, Charges, incidental to the trusts of these presents and the administration thereof;

(c) During the lifetime of the Settlor to defray the expenses of Haj of the Settlor and of such of the members of his family as he may take with him and of their visit and pilgrimage to various Mohmmedan Shrines and holy places in Hedjaz and Iraq and for making

> religious offerings and expending moneys for charitable purposes at such places and for such other religious or charitable purposes as the Settlor in his absolute discretion may from time to time think fit and require out of the income as well as the corpus of the Trust Fund in such manner and to such extent as the Settlor may from time to time direct and for all or nay of such purposes as aforesaid to pay such moneys out of the income or the corpus of the Trust Fund as the Settlor may from time to time require."

The settlor appointed himself as one of the trustees along with other trustees. The settlor died on 24.2.1967. The Assistant controller of Estate Duty held that the settlor was not completely excluded from enjoying the benefit of the corpus of the trust and hence under Section 10 of the Estate Duty Act, 1953 the property which was the subject matter of the settlement was includible in the estate of the deceased. On appeal, the Appellate Controller of Estate Duty also held Section 10 to be applicable. In second appeal before the Tribunal, three contentions were raised on behalf of the revenue invoking Section 12 as a more relevant section, and submitting that under Section 12 also the property which was the subject matter of the settlement was includible in the estate of the deceased. This contention was upheld by the Tribunal.

From the decision of the Tribunal, the following question was referred to the High Court under Section 64(1) of the Estate Duty Act, 1953:

> "Whether on the facts and in the circumstances of the case, the trust property of the value of Rs.13,57,205/- is liable to be included in the estate duty assessment of the deceased as property deemed to pass - (a) either under Section 12 of the Estate Duty Act, (b) or under section 10 of the Estate Duty Act?"

The High Court held that Section 10 of the Estate Duty Act, 1953 was not attracted but Section 12 was attracted. Therefore, the subject matter of the settlement had been rightly included in the estate of the deceased. The present appeal has been preferred before us under a certificate granted by the High court.

Considerable arguments were advanced before the High Court on the question whether a property settled on trust, as in the present case comes within the definition of "settled property" under Section 2(19) of the Estate Duty Act, 1953. The High Court has held in the affirmative. There is no dispute before us that the property which is the subject matter of the trust in the present case can be considered as settled property as defined in Section 2(19).

The first question is, whether Section 10 of the Estate Duty Act, 1953 is attracted in the present case. Section 10 is as follows:

> "10. Gifts whenever made where donor not entirely excluded - Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that bona fide possession and enjoyment of it was not immediately assumed by the done and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise:
>
> Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gift, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death:
>
> Provided further....."

This section, as its marginal note suggests, deals with gifts whenever made where the donor is not entirely excluded. Under the main part of the section, any property taken under any gift, if bona fide possession and enjoyment is not immediately assumed by the done and retained by him to the exclusion of the donor, would be property deemed to pass on the donor's death to the extent of such retention of benefit. This section also provides that if any benefit in the property given as a gift is retained by the donor by contract or otherwise, that benefit shall be deemed to pass on the donor's death. The proviso lays down that if after the date of the gift, either by means of an express surrender of the retained benefit by the donor or otherwise, the property is enjoyed to the exclusion of the donor for at least two years before his death, such property shall not be deemed to pass on the death of the donor. In the present case, the settlor, H.E.H. Nizam of Hyderabad, never, in fact, enjoyed any benefit under the said trust at any time. Therefore, there can be no application of Section 10 in the present case, in any event.

The parties before us have, therefore, focused their arguments on Section 12 of the Estate Duty Act, 1953. The relevant Provisions of Section 12 are as follows:

> "12. Settlements with reservation.-
> (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:

provided that the property shall not be deemed to pass on the settlor's death by reason only that any such interest or right was so reserved if by means of the surrender of such interest or right the property is subsequently enjoyed to the entire exclusion of the settlor and of any benefit to him by contract or otherwise, for at least two years before his death:

Provided further.....

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.

(2)....."

In the present case under the settlement the property has been transferred absolutely to the trustees. However, under Clauses 3 of the settlement, the trustees are directed, during the lifetime of the settlor, to defray the expenses of Haj of the settlor and all such members of his family who may accompany him on pilgrimage to various Mohammaden Shrines and holy places in Hedjaz and Iraq and for making religious offerings and expending money for charitable purposes. The said clause also provides for expending income as well as part of the corpus of the trust fund for religious and charitable purposes as the settlor may direct. Can this be considered as the settlor retaining interest in the settled property for life or any other period determinable by reference to his death? The Explanation to Section 12 expressly provides that where a settlor reserves an interest in the settled property for the maintenance of himself or any of his relatives, he shall be deemed to reserve an interest in the settled property for himself within the meaning of Section 12(1). In the present case, however, the settlor has not reserved any right to receive maintenance either for himself or for any of his relatives. Hence the Explanation is not relevant here. However, the settlor is entitled to have Haj expenses of himself and any accompanying family members paid out of the trust fund. The settlor has also reserved the right to direct the religious and charitable purposes on which the trust fund may be spent. These are not benefits which accrue directly to the settlor himself, as in the case of his own maintenance. The pilgrimage expenses, however, of the deceased and any accompanying family members are to be defrayed out of the trust fund if an when the settlor goes on such a pilgrimage. As a matter of fact the deceased never went on any pilgrimage as specified in Clause 3(c) and did not receive any benefit directly or indirectly under the said trust. In our view, the direction in the trust deed that the expenses of the settlor for pilgrimage performed for religious purposes, be paid out of the trust fund, will not be equivalent to reserving an interest in the property for life. Nor will payment towards religious and charitable purposes at the direction of the settlor constitute a reservation of any interest by the settlor for himself in such property for life.

Our attention in this connection has been drawn to a decision of this Court in the case of Controller of Estate Duty V. R. Kanakasabai and Ors. (89 ITR 251). In that case, the deceased had executed separate deeds of settlement in favour of his sons, grandsons, daughter and wife, settling properties severally in favour of the respective beneficiaries absolutely and with full power of alienation. The deeds in favour of the sons and grandsons, however provided for payment of Rs.1,000/- per annum to the settlor; and the deed in favour of the Daughter provided for the maintenance of the settlor and his wife during their lifetime. It was held by this Court that Section 12 was wholly inapplicable to the facts of the case. On the question of applicability of Section 12, the Court observed as follows:

> "So far as the applicability of section 12(1) is concerned, it is nobody's case that the beneficiaries became entitled to the properties settled on them after the death of the deceased. There is no support for the contention of the revenue that an interest in the properties settled was reserved to the deceased during his lifetime or for any period after the properties were settled; nor is there any provision in the deeds enabling the deceased to reclaim the property or its possession under any circumstance. None of the conditions laid down in section 12(1) are attracted to the provisions contained in the deeds of settlement."

On the applicability of Section 10, the Court considered whether the donor had retained in the property gifted, any benefit to himself by contract or otherwise. The Court said that the deceased should be entirely excluded from the property or from any benefit by contract or otherwise. Provisions for annual payments and maintenance made in the deeds were not charged on the properties settled. Hence, the deceased could not be said to have retained any interest in the properties settled. Therefore, Section 10 was not applicable. In the present case, the deceased has not retained any benefit to himself. As we have set out already, Section 10 in any case, will not be attracted in the present case.

The application of Section 12 was considered by this court in the case of Dipti Narayan Srimani v. Controller of Estate Duty, West Bengal (172 ITR 477). In this case, the settlor executed two deeds of trust. In the first deed, the settlor transferred to himself four items of property to be held on trust: (1) to set apart 1/4th of the net income for effecting certain additions and alterations to the property; (2) to make over another 1/4th of the net income to the shebait of a deity; (3) to apply 1/4th of the net income to certain charities; and (4) to apply the remaining 1/4th for the personal benefit of the settlor during his lifetime and to his heirs thereafter. In the second deed, the settlor transferred six other items of property to himself and his son as trustees: (1) to pay 1/4th of the net income to the shebait of another deity, (2) to spend 1/4th on charities, and (3) to utilise the balance of one-half for the development of two of the properties and after completion of

development, for the benefit of the settlor during his lifetime and his heirs thereafter. The settlor provided one room in one of the properties for his residence free. The settlor also constituted himself as shebait during his lifetime and thereafter his heirs were to be the she baits of the two deities. This Court held that Section 12(1) was attracted. It, inter alia, observed that the reservation of interest so as to attract Section 12(1), had to be in the property comprised in the settlement as such. mere collateral benefits reserved by the settlor emanating from some other property or from other source, independent of the property so settle, would not attract this section. But in the case before the Court, the benefits reserved emanated from the very property constituting the subject matter of settlements and could not be said to be collateral in their nature. The Court observed, (page 487,) that having regard to the special nature of the office of a shebait and the rights and interests that go with it, it is possible to contend that when a settlor endows property to an idol and reserves the right of shebaitship to himself, he would be reserving an interest in the property. distinguishing the earlier judgment of this court in controller of Estate Duty, Bihar V, Mahant Umesh Narain Puri (135 ITR 139), this Court said that the position of an elected Mahant in Math properties was different. In that case, no interest passes on the death of a Mahant duly elected, and Section 12 is not attracted. But the case of a settlor who himself endows property to an idol and constitutes himself as shebait is obviously different. The Court, however, did not finally pronounce on the effect of reservation of shebaitship by a settlor in the context of Section 12(1). In the English cases which have been referred to in the said judgment, the settlors had reserved a benefit to themselves, their wives or children in the income of the settled property for their maintenance. The English court observed that this amounted to an interest in the settled property.

The Explanation to Section 12 expressly takes care of such a situation by providing that a settlor reserving a right to receive maintenance for himself or any of his relatives from the settled property or its income shall be deemed to reserve an interest in the settled property for himself within the meaning of that section. Any other kind of an indirect benefit to the settlor under the trust in certain eventualities will not amount to reservation of an interest in the settled property by the settlor for himself.

In the case of Ravindra Gunvantilal v. controller of Estate Duty, Gujarat, the Gujarat High Court (P.N. Bhagwati, CJ, as he then was and Divan, J.) considered a case where there was a joint settlement by the deceased and his wife in respect of certain properties belonging separately to each of them. The deceased and his wife were appointed as trustees and the settlement deed provided that until the death of the last survivor of the deceased and his three sons, the trustee shall apply the net income for and towards maintenance and personal support of all or such one or more exclusively of the other or others of the deceased, his wife, his children and widow and issues, if any, of any of his sons. Th application was to be in such shares and proportions as the trustee may from time to time think proper. The trustees also had the absolute discretion to pay the whole of the net income of the settled property to any one or more of these persons to the exclusion of others. The Gujarat High Court held that where a settlor is one of the objects of a discretionary trust and the trustees are given an absolute discretion to pay the income of the settled

properties to one or more of the objects to the exclusion of others, the settlor has an interest in the settled properties within the meaning of Section 12(1) and he must be held to have reserved to himself an interest in the settled properties for life sufficient to bring his case within section 12(1).

In the present case, the settlor does not appear to have reserved for himself any interest which would be sufficient to bring his case within Section 12(1). All the cases which have been cited before us are cases in which the settlor had, in some form or the other, reserved the right to receive income or part of it from the settled property during his lifetime either by way of maintenance or in a similar form. Such is not the case here. Provisions of section 12(1) would not, therefore, be attracted to the present trust created by the settlor during his lifetime. This will be more so since, in fact, the settlor did not receive any amount from the said trust during his lifetime. Nor did he undertake any pilgrimage.

In the order of the Appellate Commissioner, there was also a reference to a release deed executed by the settlor relinquishing all his powers which would be beneficial to him in the various trusts created by him. This trust was also covered by the release deed. However, apart from this bare reference to a Release Deed, no attempt has been made to bring the release deed on record. No arguments have been advanced on this aspect. We are, therefore, not examining this question from the point of view of the execution of a release deed by the settlor. Looking, however, to the language of Section 12(1), the facts in the present case do not indicate that any interest within the meaning of Section 12 was retained by the settlor in the settled property for life or any other period determinable by reference to his death. Hence Section 12(1) is not attracted.

The appeal is, therefore, allowed and the impugned order of the High Court is set aside. The question referred is answered in the negative and in favour of the appellant. There will, however, be no order as to costs.