

PETITIONER:
NAWAB MIR BARKAT ALI KHAN BAHADUR

Vs.

RESPONDENT:
CONTROLLER OF ESTATE DUTY

DATE OF JUDGMENT: 08/10/1996

BENCH:
S.P. BHARUCHA, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.B. Majmudar, J.

This appeal by certificate of fitness to appeal granted by the High Court of Judicature. Andhra Pradesh under Section 65 of the Estate Duty Act, 1953 (hereinafter referred to as 'the Act') is moved by the appellant accountable person who has felt aggrieved by the answers given by the High Court against him on five out of six questions referred by the income-Tax Appellate Tribunal, Hyderabad for opinion of the High Court under Section 64(1) of the Act. The following six questions were so referred:

"1. Whether on the facts and in the circumstances of the case, the sum of Rs.1.56.971 relating to the Estate of late Mazharunnisa Begum is includible in the estate of the deceased as passing under Sec.5 of the Estate Duty Act.

2. Whether on the facts and in the circumstances of the case, the sum of Rs.8.23.697, representing the amount spent on the construction of quarters of dependants and Khanazadas, is includible in the estate of the deceased under Sec.9 of the Estate Duty Act.

3. Whether on the facts and in the circumstances of the case the sums of Rs.12,61,649 and Rs.8,85,850 representing respectively sale proceeds of the property known as 'persi polis' belonging to Prince Kuaram Jan and shares of Hindustan Motors Ltd; belonging to the Dependants and Khanazadas Trust were held by the deceased in a fiduciary capacity and whether they are not includible in the estate of the deceased under Sec.22 of the Estate Duty Act.

4. If the answer to the above question is in the negative, whether on the facts and in the circumstances of the case, the claim for the allowance of the sums of Rs.12,61,649 and Rs.8,85,850 as debts due was hit by limitation imposed by Section 49 of the Estate Duty Act.

5. Whether on the facts and in the circumstances of the case, for purposes of determining under Sec.36 of the Estate Duty Act the Principal value of the estate passing on the death of the deceased, the amount of estate duty payable is liable to be taken into account and the principal value of the estate should be reduced accordingly or whether the amount could be deducted as a 'debt' under Sec.44 of the Estate Duty Act.

6. Whether on the facts and in the circumstances of the case, the sum of Rs.5,01,460 being the value of properties in the occupation of Sahabzadas and Sahebzadis was includible in the hands of the deceased as property passing."

So far as Question No.3 is concerned it was answered in favour of the appellant. Consequently in the present appeal we are concerned with Questions Nos.1.2.4.5. and 6 as aforesaid. At the time of final hearing of this appeal learned counsel for the appellant fairly stated that Question No.5 is covered against the appellant by a decision of this Court in the case of P. Leelavathamme (Smt) v. Controller of Estate Duty. Andhra Pradesh, Hyderabad (1991) 2 SCC 299. Therefore, it will have to be answered against the appellant and in favour of the respondent. We shall now deal with the remaining questions which were pressed for our consideration.

Question No.1

It has to be noted that the appellant accountable person was called upon by the authorities under the Act to furnish appropriate return disclosing net value of the estate of the erstwhile Nizam of Hyderabad Mir Osman Ali Khan, who died on 24th February 1967. The Assistant Controller computed the value of the estate at Rs.3.69 Crores by making several additions. Question No.1 refers to the addition of Rs.1.56.971/- pertaining to the estate of one Mazharunnisa Begum who died on 18th June 1964. The Assistant Controller of Estate Duty was of the view that said Begum was the wife of late Nizam. He drew this inference from the fact that late Nizam impleaded himself as her legal representative after her death in Original Suit No.14 of 1958 on the file of the High Court relating to the administration of Kurshud Jahi Paiga. He also recorded in his order that the representative of the accountable person had agreed for inclusion of this amount. In appeal by the accountable person the submission of the appellant that said Begum was not the wife of late Nizam, was rejected. The said decision which resulted into reference of Question No.1 to the High Court, came to be affirmed by the High Court. The High Court came to be affirmed by the High Court. The High Court noted that it was not in dispute that late Nizam was

closely associated with the said Begum and they were living like husband and wife. That after his death the Nizam took several legal proceedings holding out that he was the husband of said Begum. Nizam himself in several proceedings mentioned her as his wife. On this evidence, therefore, the High Court rightly came to the conclusion that Mazharunnisa Begum was the wife of late Nizam and consequently the amount relating to her estate passed on to Nizam after her death and, therefore, was rightly includible in the estate of late Nizam. The aforesaid finding of the High Court is well sustained on evidence on record and calls for no interference. Question No.1 is, therefore, answered against the appellant and in favour of the respondent. That takes us to the consideration of Question No.2.

Question No.2

This question pertains to the inclusion of a sum of Rs.8,23,697/-. It was the amount spent on the construction of quarters for dependents and Khanazadas of late Nizam in the open land surrounding the King Kothi Palace. This property was gifted on 21st March 1957 by an instrument in writing registered in favour of Nizam's grandson Prince Mukarram Jah. Simultaneously with the gift the late Nizam took on lease the entire King Kothi Palace subject to payment of rent and a lease deed was duly registered. While the property was in his occupation, the Nizam constructed on the open land in King Kothi Palace some quarters for occupation of certain descendants of the Nizam's family known as dependants and khanazadas. The Assistant Controller of Estate Duty on evidence found that a sum of Rs.8,23,697/- spent by late Nizam over the construction of quarters amounted to a gift by the deceased within two years immediately preceding his death and, therefore, this amount was includible in the estate of late Nizam by virtue of the fiction contained in Section 9 of the Act. This finding was upheld by the Tribunal and it resulted into the aforesaid question which was referred for opinion of the High Court. The High Court referred to the evidence on record and concluded that even though the Khanazadas had right of occupation and the buildings were given to them for that purpose no liability was attached to them towards the cost of construction. And that liability was discharged by the late Nizam by meeting the cost and, therefore, to that extent this would be taken as an extinguishment at the expense of deceased Nizam of a debt or other right and, therefore, it amounted to disposition or property by the late Nizam within two years of his death and consequently under the fiction of Section 9 of the Act the property is deemed to have passed on his death. The High Court also noted the stand taken by the concerned accountable person in wealth tax proceedings wherein it was submitted that the quarters after construction were handed over to the Khanazadas and the Nizam had divested himself of the right over them and as such they were in the nature of gifts made by him to the Khanazadas. Once the said stand was taken by the accountable person in wealth tax proceedings obviously the cost of these constructions had to be taken as gifts made by the Nizam to the Khanazadas and as the said disposition of property was within two years of his death, in the present estate duty proceedings there was no escape from the conclusion that these gifted amounts by fiction of Section 9 of the Act were deemed to be property passing on his death. Question No.2 in our view was rightly answered against the appellant by the High Court. The said answer calls for no interference in this appeal. That takes us to the consideration of Question No.4 which has a direct

linkage with the answer given by the High Court to Question No.3 in favour of the appellant.

Question No.4

While answering Question No.3 in favour of the appellant the High Court has noted that the sale proceeds of the property known as 'persi polls' at Bombay which belonged to Principle Mukarram Jah and shares of Hindustan Motors Limited belonging to dependents and Khanazadas were held by the deceased in fiduciary capacity and, therefore these amounts held in trust by the late Nizam were not includible in his estate under Section 22 of the Act. Once that finding was reached by the High Court in favour of the appellant. it is difficult to appreciate how Question No. 4 could have been answered against the appellant, Question No.4 centers round the applicability of Section 46 of the Act. The said Section seeks to impose limitation for excluding from allowances and deductions available under Section 44 of the Act the amounts of debts incurred by the deceased as mentioned in clause (a) of Section 44 under the circumstances mentioned in Section 46. Now before such exclusion can be effected it should be shown that the concerned amount was a debt incurred by the deceased. The amounts of Rs.12,61,649/- and Rs.8,85,850/- were held by the deceased Nizam as trust money on behalf of the concerned beneficiaries. These trust amounts lying deposited with the late Nizam could not form part and parcel of his estate. Consequently there would remain no occasion to include these amounts in his estate. Only on this ground, therefore, these amounts were required to be excluded. There was jural relationship between Nizam on the one hand and these beneficiaries on the other, who were the equitable owners of these amounts only as trustees and beneficiaries. No debtor-creditor relationship existed between them. Consequently Section 46 was out of picture. In our view the High Court, therefore, was not justified in treating these amounts as debts due from the Nizam to the concerned beneficiaries and in invoking Section 46(1) in that connection. It could not be said that the claim for allowances of the aforesaid sums was hit by the limitation imposed by Section 46 of the Act. Question No.4. therefore, will have to be answered in favour of the appellant and against the respondent. That takes us to the consideration of the last question.

Question No.6

It refers to an amount of Rs.5,01,460/- being the value of the properties in the occupation of Sahebzadas and Sahebzadees. The said amount was included by the Assistant Controller as property passing on the death of the deceased Nizam. The High Court has answered the said question against the appellant relying on decision of the High Court in Commissioner of Income Tax v. Barkat Ali Khan 1974 (12) T.L.R. 90. The said decision was confirmed by this Court in the case of Commissioner of Income-Tax v. Nawab Mir Barkat Ali Khan (1991) 188 I.T.R. 231. In our view as there is no clear evidence on record to show that the aforesaid amount represented the value of properties which were occupied by way of full ownership by the said Sahebzadas and Sahebzadees, the said amount was rightly included in the estate of the deceased. On the scanty material on record, it is not possible for us to take any view contrary to the one taken by the High Court as well as by the authorities below. Question No.6. therefore, will also have to be answered against the appellant and in favour of the respondent.

In the result this appeal stands partly allowed only with reference to the answer to Question No.4. However it will stand dismissed so far as the answers given by the High

Court against the appellant on the remaining questions are concerned. Orders accordingly. There will be no order as to costs.

JUDIS