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Case No 224/1985

IN THE SUPREME COURT OF SOUTH AFRICA
APPELLATE DIVISION

In the matter between:

COMMISSIONER FOR INLAND REVENUE

Appellant

and

ESTATE LATE M.H. BULMAN

Respondent

CORAM: RABIE CJ, JOUBERT, TRENGOVE, VAN HEERDEN
JJA et GALGUT AJA

HEARD: 25 AUGUSTUS 1986

DELIVERED: 28 NOVEMBER 1986

JUDGMENT

/VAN HEERDEN JA ...

VAN HEERDEN JA:

The late C D Bulman died on 20 September 1973.

His widow and sole heiress, Minnie Hayes Bulman ("the deceased"), died on 1 August 1980 and her estate included 14 items of property which had also formed part of her husband's estate.

On 28 September 1982 the Master of the Supreme Court, acting on behalf of the appellant, issued an assessment for estate duty on the respondent in his capacity as executor of the deceased's estate. In determining the amount of duty payable the Master made allowance for a rebate of R27 065,39 in respect of the said 14 items. This rebate was purportedly calculated in accordance with the proviso to the First Schedule to the Estate Duty Act 45 of 1955.

The respondent lodged an objection against the assessment in terms of s 24 (1) of the Act. He contended that the allowance should have been R36 279,12

/and ...

and that the duty payable in terms of the assessment was therefore some R9 000 in excess of the duty actually payable. The objection was disallowed and the respondent thereupon appealed to the Transvaal Income Tax Special Court in terms of s 24 (2) of the Act. The appeal was upheld and with the necessary leave the appellant in turn appealed to this Court.

S 2 (1) of the Act provides that estate duty shall be charged in respect of the estate of every person who dies on or after 1 April 1955. In terms of s 2 (2) the duty shall be charged upon the dutiable amount of the estate and shall be levied at the rates set out in the First Schedule. S 5 prescribes how the value of property included in an estate is to be determined, and according to s 4 the net value of an estate is arrived at by making a number of deductions from the total value of all such property. In terms of s 4 A the dutiable amount of an estate is the net

/value ...

value thereof minus certain rebates.

The First Schedule makes provision for rates of duty which increase on a progressive block system as the dutiable amount of the estate increases. Thus, when that amount does not exceed R50 000 the rate of duty is 10 per cent. On the next block, where the dutiable amount is more than R50 000 but does not exceed R100 000, the rate is 13%. The prescribed rates increase progressively until the dutiable amount exceeds R400 000. At that level duty becomes leviable at the maximum rate of 35%.

In so far as the proviso to the First Schedule is material for the purposes of this appeal, it reads as follows:

"Provided that where duty becomes payable upon the value of any ... property ... and duty has, upon the death of any person (hereinafter referred to as the first-dying person), who died within ten years prior to the death of the deceased, become payable upon the value of that ... property

/the ...

the duty attributable to the value of that ...
 property ... but not exceeding ... an amount
 equal to the value on which duty has become
 payable on the death of the first-dying person,
 shall be reduced by a percentage according to
 the following scale:

if the deceased dies within
 two years of the death
 of the first-dying person .. 100 per cent

.....

if the deceased dies more
 than six years, but not
 more than eight years
 after the death of the
 first-dying person .. 40 per cent

.....

subject to a maximum reduction equal to so much
 of the duty previously payable upon the death
 of the first-dying person as is attributable to
 the value of that ... property ..."

(I shall refer to property included in the estate of
 the second-dying which also formed part of the estate
 of the first-dying as duplicated property.)

/Since ...

Since Bulman died some seven years before the deceased, it was common cause that the duty attributable to the value of the 14 items, as part of the deceased's estate, fell to be reduced by 40%. It was also common cause that in determining the amount of the rebate the value to be attributed to those items was R262 302. The parties differed, however, as to the basis upon which the duty attributable to that value was to be determined, and that was the only issue debated in the court a quo and in this Court.

The appellant's contention was that the duty attributable to the inclusion of the value of duplicated property in the estate of the second-dying is to be calculated on a pro rata or proportionate basis. That basis calls for a determination of the ratio which the net value of the duplicated property has to the net value of the total estate of the second-dying (cf

/Meyerowitz ...

Meyerowitz, The Law and Practice of the Administration of Estates, 5th ed, p 486). If the ratio is 1:3 then one third of the total duty falls to be reduced by the prescribed percentage (in casu, 40%).

The respondent, on the other hand, contended that the attributable duty is the increased duty brought about by the inclusion of the duplicated property in the estate of the second-dying. In order to determine the amount of the increased duty a calculation has to be made of the hypothetical duty leviable on a dutiable amount arrived at with the exclusion of the value of such property from the net value of the estate. The difference between the amount of duty so calculated and the duty leviable on the full dutiable amount of the estate of the second-dying represents, according to the respondent's contention, the increased duty attributable to the value of the duplicated property.

The phrase "the duty attributable to" also

appears in s 13 (1) of the Act. S 13 (2), however, specifically provides how such duty is to be determined. By contrast, the proviso to the First Schedule does not prescribe any method of determining the duty attributable to the value of the duplicated property.

In holding for the respondent the court a quo reasoned as follows:

" The word 'attributable' in 'The Compact Edition of the Oxford English Dictionary' bears the meaning inter alia 'owing to or produced by'.

If the word 'attributable' is given its ordinary dictionary meaning, it could only mean the duty produced by the inclusion of the value of the property in the estate of the second-dying - in this case the appellant. The inclusion of the value of any property in an estate, having regard to the progressive increase in the rate of duty, results in a liability for additional duty which is directly attributable to that property.

We are of the opinion that the only method of determining the duty which has resulted from or been caused by the inclusion of the value of the property in the estate, is by determining the amount of duty that would have been payable in the estate if the value of the property of

/the ...

the first-dying had not been included in the dutiable amount of estate and comparing that with the amount of duty that would be payable if the value of such property is included. The difference represents the duty which is attributable to the inclusion of the value of the property of the first-dying in the estate of ... of the second dying ..."

The court found some support for its conclusion in the decisions in Maskalik v Levett 1947 (4) S A 321 (W) at 324-5, and Mans v Le Riche 28 S A T, C 86, 92-3. Those decisions were, however, concerned with contractual indemnities couched in language entirely different from that of the proviso, and in my view they do not have a bearing on the interpretation of the phrase under consideration.

Nor, in my opinion, is the dictionary meaning of the word "attributable" upon which the court relied of any assistance in resolving the issue in this appeal since, whether the pro rata basis or the increased duty formula is adopted, duty will be "owing to" or "produced

/by" ...

by" the inclusion of the duplicated property in the estate of the second-dying. The meaning of "attributable" is indeed clear but does not provide the answer to the question whether the legislature intended that duty should be attributed to the value of such property as an amount distinct from, and added onto, the remainder of the net value of the estate, or as an amount which forms an integral and inseparable part of the total net value.

On the approach of the court a quo the value of duplicated property is regarded as the top portion, and not merely as part, of the net value of the estate of the second-dying. Hence the top bracket of the duty leviable is attributed to the inclusion of that value in the estate, as is illustrated by the following example.

The net value of the estate of the second-dying is R300 000 and the dutiable amount (allowing for the

/standard ...

standard rebate of R50 000) is R250 000. The duty leviable on that amount is R40 000. The value of duplicated property is R140 000 and if this amount is excluded from the net value of the estate the dutiable amount is R110 000 and the duty leviable thereon R13 100. On an application of the respondent's increased duty formula, which was adopted by the court a quo, the duty attributable to the value of the duplicated property is R26 900 (i.e., R40 000 - R13 100), whilst the duty attributable to the remainder of the net value of the estate - which is R20 000 more than the value of the said property - is only R13 100.

It is important to bear in mind that duty is levied upon the dutiable amount of an estate and not upon the separate values of items of property included in the estate. Hence duty can be said to be attributable to the value of a specific item only in the sense that, as an integral portion of the net value of the

/estate ...

estate, it contributes proportionately to that value and therefore also to the dutiable amount. There is accordingly no warrant for regarding the value of duplicated property as the top portion of the net value of the estate of the second-dying for the purpose of determining the duty attributable to it.

The following example serves to demonstrate the fallacy inherent in the approach of the court a quo. Assume that the estate of X (the second-dying) includes two properties of equal value, A and B, inherited respectively from the estates of Y and Z who both died less than ten years before X. If the increased duty formula is applied to the value of A, the top bracket of the duty leviable in the estate of X will be attributed to that value. And if it is applied in regard to B, that same top bracket will be attributed to B's value. The result may then well be that the aggregate of the duty attributed to the

/values ...

values of A and B will exceed the total duty leviable in the estate of X, and that no duty can be attributed to the value of other assets included in the estate. Such a glaring anomaly can obviously not arise if a proportionate share of the total duty is attributed to the value of each property.

Counsel for the respondent submitted that because of two limitations contained in the proviso the anomaly is more apparent than real. Those limitations are, firstly, that the value of duplicated property for the purpose of the proviso may not exceed the value allocated to such property in the estate of the first-dying and, secondly, that the rebate calculated in accordance with the percentage scale may not exceed the amount of duty attributable in that estate to the value of the duplicated property. It is obvious, however, that the submission does not provide an answer in cases where the limitations are of no practical significance.

/And ...

And in other cases the limitations will not serve to remove the anomaly but will merely reduce its extent.

The above considerations lead me to the conclusion that the legislature intended that the duty attributable to the value of duplicated property should be determined on a pro rata basis. I consequently find it unnecessary to deal with submissions of counsel for the appellant relating to the concluding portion of the proviso which, so it was argued, support the appellant's basic contention.

Counsel for the appellant intimated that in the event of the appeal being upheld no order as to the costs thereof should be made. He moreover conceded that due to an arithmetical error the rebate reflected in the Master's assessment should have been R30 779,57 instead of R27 065,39.

The appeal is allowed and the order of the court a quo is set aside. The matter is, however, referred

back to the appellant for reassessment in accordance
with his counsel's concession.

H.J.O. VAN HEERDEN JA

RABIE CJ

JOUBERT JA

TRENGOVE JA

GALGUT AJA

CONCUR