



Neutral Citation: [2023] UKFTT 539 (TC)

Case Number: TC08842

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

London

Appeal reference: TC/2021/01950

INHERITANCE TAX – whether deceased had acquired a domicile of choice in England and Wales – yes – appeal dismissed

Heard on: 2 November 2022
Judgment date: 14 June 2023

Before

**TRIBUNAL JUDGE FAIRPO
GILL HUNTER**

Between

**AMEET SHAH (AS EXECUTOR OF THE ESTATE OF ANANTRAI MANEKLAL
SHAH DECEASED)**

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr N Mehta, of counsel, instructed by Sopher & Co

For the Respondents: Mr C Stone of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

1. The hearing was held in hybrid form, with one witness (Mr Nirmal Shah) attending remotely from the United States of America (USA) via the Tribunal video hearing system.

Introduction

2. This is an appeal against a notice of determination issued under s221 Inheritance Tax Act 1984 (IHTA 1984) on 6 July 2020, that Anantrai Maneklal Shah (AMS) was domiciled in England and Wales at the time of his death. The appeal was brought by Ameet Shah (AS), an executor of AMS' estate, contending that AMS was not domiciled in England and Wales at the time of his death.

Background

3. The following background facts were not in dispute:

4. AMS was born in 1929 in Karachi. It was not disputed that AMS' domicile of origin was not England and Wales. At the time this was in British India; since the Partition of India in 1947 Karachi has been within Pakistan. AMS' father was born in the province of Gujarat in British India (now part of modern India) and moved to Karachi when he was a child. AMS' mother was born in Karachi. AMS' parents married in Karachi in approximately 1926. AMS' parents then moved to the country now known as Tanzania where some of his mother's family lived. The exact date of the move is unclear; AS' evidence was that it was before AMS was born, as his older sister was born in Tanzania in 1928, and that his mother returned to Karachi for AMS' birth.

5. AMS attended school in Karachi from approximately 1942, living there with a family member. AS stated that this was because the education available in India at the time was better than that available in Tanzania. In 1946 AMS began a university course in Karachi. On the Partition of India on 1947 he moved from Karachi to Gujarat, where he completed his university course. Members of the extended family in Karachi also moved to various places in India on Partition.

6. Following completion of his university course around 1951, AMS returned to Tanzania.

7. Around 1954 he moved to the UK to study pharmacy at university in Sunderland in the UK. After graduation in 1957 AMS returned to live in Tanzania. AS' evidence was that AMS had been offered a job in the UK but returned to Tanzania to be with family as his father had died in early 1957.

8. AMS married in December 1960. His wife was born in Gujarat in 1934, in a village in British (and now modern) India approximately 100 miles from the area where AMS' father's family came from. The marriage took place in Mumbai, India. AMS then continued to live in Tanzania with his wife. They had a daughter, born in 1961, and a son (the appellant), born in 1964.

9. When Tanzania became independent from the UK in 1961 AMS was offered and acquired British citizenship. It was stated that he was required to give up his Indian citizenship in doing so as India does not permit dual citizenship; there was no evidence of AMS having specifically acquired Indian citizenship after Partition. His wife retained her Indian citizenship until she obtained British citizenship at some point in the 1980s.

10. In 1972 AMS, and his family, moved from Tanzania to Mumbai in India as they (along with many others) considered that East Africa was untenable following the difficulties created by the regime in Uganda at the time. He obtained a job with ICI in Mumbai and the family were able to stay with his wife's family in the area.

11. About a year later AMS moved from India to the UK and his wife and children followed a few months later.
12. In 1973 AMS' mother also moved to the UK as her four sons were all living in the UK at the time.
13. AMS worked as a pharmacist from his arrival in the UK. He bought a pharmacy business in 1975 and acquired the freehold of the shop in 1981. He sold the business in 1994 and then worked as a locum pharmacist until at least 1997. The freehold of the shop was sold sometime after the business was sold.
14. AMS' daughter, who lived with her parents, died in December 2009 and his wife died in January 2010. AMS spent two months in intensive care in the spring of 2010, as a result of pneumonia. Some time after 2010 he had both knees replaced, a pacemaker fitted and also had cataract operations.
15. AMS sold his house (acquired in 1974) in December 2010 and then, following a short stay with his son, moved into a rented flat in London near to AS and his family.
16. In February 2012 AMS invested funds in a non-UK company which was a private investment entity making investments in UK commercial property.
17. Also in 2012 AMS moved into a flat in London which had been purchased by AS as an investment, in the same building as the flat he had previously been renting.
18. In 2013 AMS travelled to Canada and made two trips to the USA to visit family.
19. In 2014 AMS made two wills, one under UK law for UK assets and one under Indian law for non-UK assets. On 8 July 2014 he was also registered as an Overseas Citizen of India.
20. In 2015 AMS travelled to the USA again to visit family.
21. AMS died on 7 June 2016.
22. AMS made two trips to India after moving to the UK in the early 1970s: he travelled to India for two weeks to attend the marriage of his son, AS, in 1992 and travelled to India for approximately three weeks in December 2010/January 2011. On this occasion he visited his wife's village for five days but spent most of his stay in Mumbai. The family otherwise only took short vacations in the UK, sometimes staying with AMS' siblings.
23. AMS had seven siblings. Two of his sisters married in India and remained there through their adult lives. Three of his brothers now live in the USA, having moved there after living in the UK for varying amounts of time after leaving Tanzania. One of his sisters lives in the UK, having moved from Tanzania in about 1976 with her family. Another sister lives in India and the USA, having spent most of her adult life in the USA.

Evidence

24. There was very little documentary evidence available; AS' evidence was that his father tended to communicate by telephone rather than in writing.
25. A DOM1 form was provided, which had been completed by AMS in connection with AS's own domicile status, and was prepared to support a contention that AMS had a domicile of origin in India. However, the form was not provided to HMRC.
26. We consider that the form is not particularly reliable, as some of the answers are not consistent with other evidence. For example, the form states that AMS undertook "periodic trips for pleasure" outside the UK between 2001 and 2011; AS was unaware of any trips taken outside the UK by AMS during that time other than the visit in late December 2010/January

2011. Mr Sopher, who was present when the form was completed, did not recall any detailed discussion with AMS as to when and where these trips had taken place.

27. In the DOM1 form, AMS stated that he had “retained accommodation” in India and provided the address of his brother-in-law’s flat in Mumbai. AMS’s evidence was that this was an open offer from his uncle to stay which had been available since the family moved to the UK. Although the DOM1 form indicates that the place was “kept available for [AMS] occupation”, there was no specific space set aside for AMS; the flat had spare rooms which would have been available if AMS had done to stay.

28. The form also states that AMS’ reason for coming to the UK was “education for my children” which is an option in the list of examples in the associated question. AS’s evidence was that AMS came to the UK because he could not continue in his role at ICI in Mumbai, and most of his siblings were then in the UK.

29. The form states that AMS intended to leave the UK in the future when he had “sorted [his] personal affairs and [his] health allows”. There is no reference to wanting to see his grandsons go to college which was stated, at this time, to be a key reason for his delaying a move to India. The form does not say where he intended to go, only that he intended to leave the UK.

30. Overall, we consider that the answers given on this form reflected answers that AMS thought would be helpful rather than being unequivocal statements of his intentions.

31. AMS’ made two wills, one under English and Welsh law and one under Indian law. The wills both stated that he was domiciled in “the Republic of India” but we do not consider that this any more conclusive evidence of his domicile than the contents of the DOM1 form. Neither will contains any further reference to India.

32. We were provided with a copy of AMS’ passport, and an earlier passport, and his certificate of registration as an overseas citizen of India.

Witness evidence

33. We heard from AS’s wife and AMS’ brother, Nirmal Shah. Evidence was also provided by AS’s wife, Mrs Shah, and Mr Sopher, a tax adviser to AS. We have set out the family evidence in the discussion below.

34. Mr Sopher’s evidence was that he had met AMS in the context of providing advice to AS and had not advised AMS personally. He had met AMS in March 2011 when the DOM1 was completed in his presence. During the preparation of the DOM1 he had discussed with AMS the latter’s desire to move to India and the steps that would need to be taken for this. These steps included making separate wills, and the possibility of moving investments offshore for tax.

35. Mr Sopher did not provide any detailed evidence as to AMS’ plans and said that he had understood that AMS needed to sort out what his plans were and to organise himself to go to India in administrative terms.

36. Mr Sopher had provided AMS with a recommendation as to a lawyer who could deal with AMS’ wills. Mr Sopher confirmed that he would advise anyone with non-UK assets to have a will in the jurisdiction where the assets were located, even if the individual was UK domiciled, to make administration of the estate easier in those jurisdictions. Mr Sopher confirmed that he did not know what efforts had been made by AMS to implement any move to India after the preparation of the DOM1 in 2011.

Appellant's submissions

37. The appellant submitted that AMS had not acquired a domicile of choice in England and Wales as he had always intended to return to India. It was contended that he had left India in 1973 because he was unable to find secure employment there and had discovered that employment prospects were much stronger in the UK. It was submitted that he intended to return to India at the end of his working life in the UK.

38. Following the sale of his business, it was submitted that AMS still intended to retire to India but continued to work as a locum and so could not yet move to India because he wanted to place the family in a good financial position. He did not want to raise capital by selling the family home because his daughter was living there. His daughter became seriously ill in 2005 and AMS and his wife cared for her until she died in late 2009. It was submitted that this caring obligation, and his wife's death shortly after in early 2010, delayed AMS' plans to move to India. After the death of his wife, however, AMS became ill and was hospitalised for between one and two months. He moved to AS' house after leaving hospital. It was submitted that he still intended to return to India when he was well enough to do so and had arranged accommodation in India; this intention was declared in a DOM1 form prepared in March 2011.

39. The appellant submitted that AMS' long residence in the UK was not determinative of having acquired domicile of choice in the UK. It was submitted that it was important that this be balanced with his continued connections to India to be clear whether his intention had become one of settling finally in England (as set out in *Holliday v Musa* [2010] EWCA Civ 335 at [23]).

40. It was submitted that AMS had a definite intention to return to India on the occurrence of a specific contingency, his retirement. This plan had to be changed but, it was submitted, not given up because of other events including the ill health of his daughter and then his wife, and the completion of his grandchildren's education. It was submitted that AMS had taken concrete steps to return to India but became ill before he could realise his intention. It was contended that his intention to return was not just a vague possibility, or a nebulous sentiment about dying in the land of his fathers.

HMRC submissions

41. HMRC's case was that AMS had acquired a domicile of choice in England and Wales at some point after 1973 and had not abandoned it by the date of his death.

42. HMRC contended that any connections that AMS had with India were weak. Even if he could be said to have a domicile of origin in India, he did not maintain any clear strong links to India. Although there were said to be contingencies on which AMS planned to move permanently to India, including retirement, no such move took place. HMRC considered that there were three key points during his life at which AMS could have undertaken a permanent move to India but did not:

- (1) on leaving Tanzania in 1972;
- (2) on the sale of his business in 1994 or retirement from full time work in 1997;
- (3) following the deaths of his daughter and wife.

43. On each of these occasions HMRC contended that AMS had the opportunity and the means to move permanently to India but chose not to do so. On the first occasion, AMS even moved to India but left for the UK relatively shortly afterwards. In later years he chose to travel to the USA and Canada but did not make any trips to India.

44. HMRC submitted that his actions were inconsistent with the appellant's contentions that AMS intended to move permanently to India. AMS had only visited India twice during the 43

years that he lived in the UK and HMRC contended that, given AMS' age, state of health and family connections in the UK in particular, it was not realistic to infer that he planned to move away from close family and the country in which he was settled, to a part of India that he did not know and where he had no family. AMS' structuring of his investments was contended to be an endeavour to move his wealth offshore for IHT purposes rather than as preparation for a move to India.

Discussion

45. As with most domicile cases, there was little dispute as to the facts of AMS' life. The task for us is to make a global evaluation of all the relevant facts to draw inference from those facts as to AMS' intentions. The inference must be drawn on the balance of probabilities (*Barlow Clowes* [68]).

46. There are no statutory provisions that set out the circumstances in which a person acquires a domicile of choice. It is a matter which has been the subject of considerable case law, and we reminded ourselves the key issues and considerations which have been established by the higher courts.

47. In *Re Fuld* [1968] P 675, Scarman J noted (at p684F onward) that

“(1) The domicile of origin adheres-unless displaced by satisfactory evidence of the acquisition and continuance of a domicile of choice; (2) a domicile of choice is acquired only if it is affirmatively shown that the propositus is resident in a territory subject to a distinctive legal system with the intention, formed independently of external pressures, of residing there indefinitely. If a man intends to return to the land of his birth upon a clearly foreseen and reasonably anticipated contingency, e.g., the end of his job, the intention required by law is lacking; but, if he has in mind only a vague possibility, such as making a fortune (a modern example might be winning a football pool), or some sentiment about dying in the land of his fathers, such a state of mind is consistent with the intention required by law. But no clear line can be drawn; the ultimate decision in each case is one of fact-of the weight to be attached to the various factors and future contingencies in the contemplation of the propositus, their importance to him, and the probability, in his assessment, of the contingencies he has in contemplation being transformed into actualities. (3) It follows that, though a man has left the territory of his domicile of origin with the intention of never returning, though he be resident in a new territory, yet if his mind be not made up or evidence be lacking or unsatisfactory as to what is his state of mind, his domicile of origin adheres....”

48. Scarman J also noted (at p685D) with regard to the burden and standard of proof:

“...It is beyond doubt that the burden of proving the abandonment of a domicile of origin and the acquisition of a domicile of choice is upon the person asserting the change... What has to be proved is no mere inclination arising from a passing fancy or thrust upon a man by an external but temporary pressure, but an intention freely formed to reside in a certain territory indefinitely. All the elements of the intention must be shown to exist if the change is to be established: if any one element is not proved, the case for a change fails. The court must be satisfied as to the proof of the whole; but I see no reason to infer from these salutary warnings the necessity for formulating in a probate case a standard of proof in language appropriate to criminal proceedings ... Two things are clear-first, that unless the judicial conscience is satisfied by evidence of change, the domicile of origin persists: and secondly, that the acquisition of a domicile of choice is a serious matter not to be lightly inferred from slight indications or casual words.”

49. A domicile of choice is acquired by the combination of residence in a territory and an intention to remain there permanently (*Barlow Clowes International Limited (in liquidation) and others v Henwood* [2008] EWCA Civ 577 at [8(vi)]). There was no dispute that AMS was resident in England and Wales from 1973 until he died. The question is whether he formed an intention to remain here permanently.

50. Although HMRC have not identified a single event or moment in AMS' life at which he might have made his decision to remain in England indefinitely, that is not a fundamental weakness. An intention to remain does not have to be a Damascene moment, and can develop over a relatively long period of time. It is helpful in this context to bear in mind the statement by Mummery LJ in *Agulian and another v Cyganik* [2006] EWCA Civ 129 at [46(1)] that:

“Although it is helpful to trace ... life events chronologically and to halt on the journey from time to time to take stock, this question cannot be decided in stages. Positioned at the date of death ... the court must look back at the whole of the deceased's life, at what he had done with his life, at what life had done to him and at what were his inferred intentions in order to decide whether he had acquired a domicile of choice in England by the date of his death. Soren Kierkegaard's aphorism that “Life must be lived forwards, but can only be understood backwards” resonates in the biographical data of domicile disputes.”

51. In the following paragraph, Mummery LJ also expressly warned of the dangers inherent in a domicile case of

“isolating individual factors from all other factors present over time and treating a particular factor as decisive”.

52. Further, he warned (at [13]) that

“It should also be borne in mind that, in a case of proof of the subjective intentions of a person who has died, little weight is attached to direct or indirect evidence of statements or declarations of intention by the person concerned. Subjective intentions have to be ascertained by the court as a fact by a process of inference from all the available evidence about the life of the person, whose domicile is disputed.”

53. AMS clearly lived for a considerable length of time in England; he had been here for 43 years when he died and had rarely left the UK during that time. Length of residence alone is, of course, not determinative of an intention to reside here indefinitely although it is a starting point. In considering this, we agree with *Holliday v Must* that

“it is important to place in the balance any continued connections with [the country of domicile of origin] so as to be able to be clear whether his intention has become one of settling finally in England, abandoning [the domicile of origin]”.

54. We note also Arden LJ's comments in *Barlow Clowes* [at 93] that it is not universally the case that a domicile of origin is retained because it is associated with a person's native character. For example, a person may not have any real connection with the country of their domicile of origin because they were brought up elsewhere. The adhesiveness of a domicile of choice in each case will always turn on its own specific facts and it is necessary to consider whether the standard of proof might be affected by the level of a person's attachment to his or her domicile of origin.

55. We were provided with very little evidence to support the contention that AMS maintained close ties to India and find that the evidence of his life in the UK shows little clear connection with India. We note AS' evidence that AMS sent gifts to family in India, and

remained in contact with them, but consider that this could equally support an intention to maintain a connection with family rather than a connection with India more generally. There was no evidence that AMS read Indian newspapers, or watched or listened to Indian media, for example. AS' evidence was that the family attended a Jain temple in London because his mother was very religious, and that this attendance was monthly rather than weekly because she did not drive. That is, the attendance was something that was important to AMS' wife rather than to AMS. There was no evidence that AMS went to temple alone after his wife died.

56. Although AMS was said to attend Navnat (a Jain association) events, no detail was provided other than that he was a member of their bridge club later in life. We consider, in context, that this is more likely to indicate an interest in playing bridge rather than a particular intention for a connection with India. AS thought that AMS passed his time visiting the library, reading newspapers, watching television; there was no reference to any of this being related to India. Neither of AMS' wills sets out any particular funeral arrangements, and neither includes any request for any ceremony in India.

57. We also note that, although NS said that he and AMS would speak every 2-3 weeks, NS was unable to describe any clear interest taken by AMS in India and even later discussions about Bangalore were such that NS said that he did not know what AMS was thinking about whether he might move to Bangalore.

58. AMS did not stay long in India after his move there from Tanzania in 1972; we note AS' statement that AMS wanted to stay but was unable to find work in India after his role at ICI proved difficult to sustain. We consider that, if AMS had a close connection to India, it is likely that he would have found alternative work there at that time. It seems more likely to us that he chose to move to the UK to be closer to his brothers when the role at ICI foundered. The submission made that AMS had discovered that employment prospects were stronger in the UK at this time was not supported by any evidence and we consider it unlikely that AMS 'discovered' this when he had previously been offered employment in the UK following his studies here. We also note that there was no evidence that AMS made any attempt to regain his Indian citizenship at this time.

59. AMS returned to India for only two short trips after moving to the UK around 1973. These two trips were both connected with events relating to his immediate family: his son's marriage and ceremonies to honour his wife after her death. He subsequently travelled to the US and Canada to visit siblings but did not make any other trips to India. We note AS accepted in the hearing that AMS had both the time and the means to visit India, particularly after retirement, but did not do so. He was unable to provide any explanation for this other than to say that he believed AMS felt financially insecure and did not want to take any holidays, although AMS' wife and daughter travelled frequently to India. No clear evidence of AMS' financial position during these years was provided. AMS' estate amounted to £2.48m, being approximately £680,000 in UK assets and £1.8m in overseas assets. AS was unable to say how these assets had accumulated, other than approximately £500,000 being likely to be from the sale of the family home, although he thought his father had been disappointed with the amount received for the sale of the business.

60. AS also compared his father's intentions to his own desire to visit Burma: he considered that, simply because he had not yet visited Burma, it was not possible to infer that he did not want to do so. Similarly, he said that it was not possible to infer from his father's lack of visits to India that he did not want to move there. There is, of course, a substantial difference between an intention to go on vacation to a particular location and an intention to move permanently to another country.

61. Mrs Shah stated that she thought that AMS wanted to go to India to be with his mother's family and to be with people that he knew; however, none of the evidence particularly supports this. There was no evidence that he had any particularly close links to his mother's family. He did not visit them, and there was no evidence that any such family members had visited the family in the UK. Mrs Shah's evidence was also that AMS' wife wanted to return to India and we heard that she visited India regularly with her children; however, her intention cannot be attributed to AMS.

62. It was said that AMS had always intended to go to India when he retired; he retired from full time locum work in 1997 and from part-time locum work within a few years after (at best; the evidence was not particularly clear as to these dates). He did not go to India after he retired apart from a short visit in late 2010 to honour his late wife. There was no clear reason given for AMS not leaving at that time: he had ceased working so presumably had the financial security required. It was suggested that his wife's health prevented them from leaving, but there was no detailed evidence as to her state of health until after their daughter died in 2009. We also had witness evidence that health care in India was good and so it seems unlikely that this would have formed a barrier to a move to India for the couple before 2009.

63. It was suggested that AMS might not have wanted to move when he retired because he wanted to provide more security for his daughter and also that he did not want to leave her homeless by selling the family home in the UK to make the move. There was no clear evidence of this (particularly the latter statement), and we consider that it was witness speculation rather than something which had been clearly stated by AMS. It does not seem particularly likely given AS' evidence that his sister was doing well, as a computer scientist, before she became ill in 2005. Her estate when she died in 2009 also amounted to over £1.6m, which further makes it unlikely that AMS needed to provide her with any particular security or that she needed to live in the family home. We also note that AS stated in the hearing that his sister expected to live with her parents until they died. Although he subsequently said that his parents intended to live with his sister until they moved to India, we consider that his first statement is more likely to be correct in the context of all of the available evidence.

64. A further explanation given for AMS remaining in the UK after the death of his daughter and his wife was his attachment to his grandsons; AS stated that AMS had decided not to move to India until his grandsons had each left for college. There was no explanation as to why AMS would then choose to leave the UK and move a considerable distance away from family that he was said to be very attached to. We also note that AMS did not include any such intention in his DOM1, which was completed in 2011, by which time both grandchildren were at secondary school and, according to AS, AMS had formed this intention. Whilst we consider that the DOM1 is of limited value overall, we do consider that if AMS had such an intention, it would have been logical for him to make reference to it rather than include a vague intention to move when his personal affairs permitted. We also note that Mr Sopher's evidence was that he understood that AMS needed to sort out what his plans were which, we consider, indicates that he had not formed any clear plan to move to India at the time the DOM1 was completed.

65. We find therefore that AMS had limited connections with modern India, and (for the avoidance of doubt) effectively none with Pakistan. He was an infant in Karachi before the family moved to Africa. He subsequently spent three years or so in high school in Karachi. His experience of being in India was that he had spent three or four years at college in Gujarat; he had married in Mumbai; he moved to Mumbai for less than a year on leaving Tanzania; he gave up his Indian citizenship in 1961 in order to take up British citizenship. His life in London showed limited connections. None of this suggests any particular attachment to India.

66. Balancing AMS' long residence in England with his connections to India, we find that AMS had acquired a domicile of choice in England at some point after 1973. Any intentions he had to move to India were, we find, at best vague. We do not consider that there is evidence from which we can infer that he had a clear intention to move on retirement.

67. AS's evidence was also that AMS had formed an intention of moving to India around 2010, when he said that AS's father-in-law (JS) had made the offer of sharing accommodation. This contention further supports our conclusion that any intention to move following retirement was vague, as we consider that the statement that there was a formation of an intention to move in 2010 indicates that there was no clear intention to move before that date.

68. AS stated that AMS intended to move to India, initially to live with JS and then, following JS' death, to live in JS' property with the permission of JS' son. A letter written (to 'whom it may concern'; given the date, this letter was obviously not written in response to any communication with AMS) by JS's son, Mikesh Shah, on 28 June 2018 states that JS had made the invitation to share his property in a retirement village to AMS in 2012, after JS' wife had died. Mrs Shah's evidence in the hearing was that in 2010/11, JS had suggested to AMS that he could buy a property in the same place. Her evidence was also that in 2012, after his wife died, that JS had suggested that AMS could share his property. We note that AS' witness statement describes JS as a widower in late 2010/11 and that JS had suggested during AMS' visit in 2010/11 that they should live in the same property and share expenses.

69. Mikesh Shah stated in his witness statement that, after his father's death in 2014, he inherited the property and offered to extend the same arrangement to AMS, that he live there and share expenses. Mikesh Shah also stated that AMS had said that he would make plans to visit, and then to move, once his youngest grandson started university in 2017. He expected AMS to make the "initial trip" in the winter of 2017/2018. AS, in contrast, considered in his witness statement that AMS would have permanently moved to Bangalore by Autumn 2017.

70. NS' evidence considered that AMS had first started to talk about a move to India after he sold his house, when NS asked why he was renting a flat after the sale rather than buying a new property. AMS wanted flexibility and not to worry about risk as he didn't know what he was going to be doing, and might want to go to India. NS thought that this was in late 2010. NS said that this was the most substantive discussion on the topic between them; NS' evidence was that he otherwise heard snippets about unspecified arrangements. NS had not pursued the conversation about India much, as their conversations were generally about their immediate family, their siblings. He and AMS had not generally talked about wider matters such as AMS' plans for the future.

71. NS said that he thought that AMS was seriously considering going to spend some time in India; he amended this statement to say that he thought AMS would love to live 'there'. NS thought that this would probably be in Bangalore as this was where JS was living and the weather was good there. AMS had not shared any specific plans with him. Given the general uncertainty, and NS' clear evidence that AMS had not shared any specific plans with him, we consider that it is more likely that AMS told him that he was considering a visit rather than that he expressed a clear intention to move permanently to India.

72. We also note that Mrs Shah's evidence was that AMS required regular carer visits in the UK, generally five visits per week from 2010 onwards. AS confirmed in his witness statement that AMS had a housekeeper/carer. Mrs Shah stated that she organised the carers for AMS and ran his home, going there every couple of days and speaking to the carer each day. She would sometimes go food shopping for AMS. Even when he was well, she would generally go once a week to check on him, although he also visited the family each Saturday.

73. It was not entirely clear from this evidence the extent to which AMS required care at home throughout the years from 2010 onwards but we find that AMS had regular carer visits (noting the reference to a housekeeper/carer, for example) throughout that period. He was also visited at least weekly by Mrs Shah as well as visiting his family each Saturday.

74. Part of Mrs Shah's evidence was that the move to India would enable AMS to obtain better care in India than in the UK, where care was expensive. However, Mrs Shah also stated in the hearing that she considered India was very expensive, suggesting that accumulating funds for a move was a reason why AMS might have continued to work as a locum after retiring from full time work. Given the conflicting statements, we have not given any particular weight to this as it appears to be Mrs Shah's own views rather than evidence of AMS' views.

75. This evidence needs to be borne in mind when considering the evidence which was put forward for an intention to move to Bangalore at a point in time where he was already dealing with significant health issues: he had no family in the area and no friends in the area either. His connections with India were, as noted above, very limited.

Considering all the evidence across AMS' life

76. Taking all of the evidence into account across the course of his life, we consider that AMS settled permanently in England and had, at most, only a vague and floating idea of moving to India at some point. The submissions that he intended to move on retirement or, later, on his grandsons' going to college and that these were contingencies which were "clearly foreseen and reasonably anticipated" were not supported by the evidence of AMS' life overall.

77. As set out above, we consider that AMS had no significant connections to India and there was no evidence that he made any plans to facilitate a move on retirement. In the event, he did not move to India on retiring. His wife may have had a closer connection to India, as AS' evidence was that she returned to India regularly to see family and had grown up in part of what is now modern India. However, her connection cannot be attributed to AMS and we consider that such a connection may have influenced any comments he made about the possibility of retiring to India. In the event, AMS did not move to India on retirement.

78. Overall, we consider that the evidence shows that what was important over the course of his life to AMS was his close family. He returned to Tanzania after school and university; he returned again after university in the UK to be with family after his father's death rather than take up a job offer in the UK; he moved to the UK, where most of his siblings were, after his short move to Mumbai. Family holidays once in the UK were primarily to visit, or be with, family. He was said to be very attached to his grandsons, born in 1996 and 1999. His wills leave his estate to his son, daughter in law and grandsons, with NS and his successors as residuary beneficiary. There is no gift made in either will to any person in India, or to any organisation associated with India.

79. The evidence that AMS considered the possibility of moving to Bangalore was not wholly consistent. AS stated that he had been invited to share JS' property in 2010. However, as the evidence of JS' children was that JS did not move to Bangalore until 2012, it is more likely that the possibility was something that would have been considered by AMS from around 2012.

80. We consider that if AMS did consider the possibility moving to Bangalore he did not do so with any seriousness that meant that he could be said to have abandoned his domicile of choice in the UK. He obtained overseas citizenship status from India in 2014 but that was not a firm commitment to leaving and placed no obligation on him to go to India. There was no explanation as to why AMS had not sought to gain Indian citizenship, rather than obtain this overseas citizen status. Further, AMS had not, for example, made any moves to establish a

bank account in India or otherwise set up any financial arrangements consistent with an intention to live in India rather than England. In contrast, he had retained significant funds in the UK in bank accounts and investments.

81. The overseas investments which he made in 2012, without professional advice, are also clear indicators of such an intention. AS stated that AMS had decided to invest in opportunities which AS had been considering himself; his evidence was that AMS had wanted to invest in a neutral jurisdiction as he did not trust the Indian government and that he had multiple objectives in making the investment, not just a possible move to India. The investments were, obviously, equally capable of supporting AMS' life in the UK. Even if AMS did not trust the government, we consider that he would still have needed to be able to access some income in India to finance his day to day life, but had not made any arrangements to do so before he died.

82. We do not agree that the sale of the family home was made in order to move to India: NS' evidence was that the sale was because AMS considered the house was too large and he did not know what he was going to be doing, and so would rent a place in order to have flexibility. NS' evidence was also that a move to India would only "probably" be to Bangalore and that AMS had not shared any specific plans to go there. We consider that, if AMS had a clear intention to move to India, this is something which he would have discussed in more detail with his brother.

83. Overall, we do not consider that the evidence shows a clear intention by AMS to move to Bangalore (or, indeed, anywhere else in India). The witness evidence is inconsistent as to dates and we consider that, at best, it shows that AMS was considering a visit to Bangalore to view the retirement village there. We note that Mikesh Shah extended the offer in 2014 and AMS did not opt to visit the location at any time, even though he had travelled to the USA and Canada in 2013 and would return to the USA in 2015. We do not consider that, looking at AMS' life as a whole, we could infer that he would be likely to form an intention to move permanently to a location that he had never visited and, after 2014, where he had no close connections. His earlier moves as an adult had generally been to where his family was, rather than to moving to an unknown area with no nearby family. We note, for example, that he returned to Tanzania rather than take up a job offer in the UK after his studies in Sunderland.

84. We do not consider that it is likely that, at his age and in somewhat indifferent health, AMS would have moved from a flat that was close to his son's house, where he had security as his son owned the property, where he was visited at least once a week by his family who also organised his carers and sometimes shopped for him, to a place that he had never visited, far from any members of his family.

85. In the circumstances, we conclude that considering all of the circumstances of his life, AMS had settled with the intention of remaining permanently in England and so acquired a domicile of choice in England and Wales at some point after 1973. We consider that it is not possible to infer that AMS had subsequently formed a clear and definite intention of leaving England and moving to India at any time thereafter and so find that he did not abandon this domicile of choice before the date of his death.

Conclusion

86. On balance, reviewing all of the facts available to us, we conclude that AMS had settled and intended to remain in England and Wales permanently such that he had acquired a domicile of choice in England and Wales and had not abandoned that domicile of choice before his death. The appeal is therefore dismissed.

87. The parties also made submissions as to AMS' domicile of origin. HMRC contended that AMS had a domicile of origin in Pakistan, and AS contended that AMS had a domicile of

origin in India. There was limited evidence as to AMS' family background other than that his grandfather had moved to Karachi from Gujarat before AMS' father was born.

88. Given our conclusion above, we do not need to make any decision as to his domicile of origin and we note that, as there is a relevant inheritance tax double tax treaty with both India and Pakistan, the question appears to be academic and so we have not addressed these submissions further.

Right to apply for permission to appeal

89. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**ANNE FAIRPO
TRIBUNAL JUDGE**

Release date: 14 JUNE 2023