

Controller of Estate Duty Vs. Murarilal Sovasaria

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Court : Guwahati

Decided On : Jul-28-1989

Judge : A. Raghuvir, C.J. and J.M. Srivastava, J.

Acts : [Estate Duty Act, 1953](#); [Constitution of India](#) - Article 141; Estate Duty Rules, 1953 - Rule 7

Appeal No. : Estate Duty Reference No. 1 of 1976 (Supplement)

Appellant : Controller of Estate Duty

Respondent : Murarilal Sovasaria

Advocate for Def. : J.P. Bhattacharjee and Y. Doloi, Advs.

Advocate for Pet/Ap. : D.N. Choudhury and K.H. Choudhury, Advs.

Prior history : A. Raghuvir, C.J. 1. The origin of the instant proceedings is in the opinion or order of this court passed on August 11, 1988, in Estate Duty Reference No. 1 of 1976 . As the reference was disposed of by that order, we call the instant proceedings as a supplemental order. 2. In Reference No. 1 of 1976, two questions were referred to the court The instant proceedings related to the second question which pertained to the share of the goodwill of a partner of a dissolved firm, Ram Kumar Sova

Judgement :

A. Raghuvir, C.J.

1. The origin of the instant proceedings is in the opinion or order of this court passed on August 11, 1988, in Estate Duty Reference No. 1 of 1976 . As the reference was disposed of by that order, we call the instant proceedings as a supplemental order.

2. In Reference No. 1 of 1976, two questions were referred to the court The instant proceedings related to the second question which pertained to the share of the goodwill of a partner of a dissolved firm, Ram Kumar Sovasaria. The goodwill was ascertained as Rs. 9,450 by the Revenue. The second question was whether Rs. 9,450 formed part of the estate of the deceased, Ram Kumar Sovasaria, in proceedings under the [Estate Duty Act, 1953](#). That question was answered in favour of the accountable person on August 11, 1988. The decision is reported in (CED v, Murarilal Sovasaria). There was a clerical error in one of the sentences of the order. The relevant sentence reads as follows (at p. 421) : 'We are in agreement with the reasoning and conclusion reached by the Punjab and Haryana High Court in : [1973]90ITR400(Mad) (S. Devaraj v. CWT).'

3. The Company Law Institute of India Private Ltd., Madras, informed their reporter at Gauhati for onward transmission to this court of their letter to the reporter. That letter sets out the error and reads as follows : 'In the copy of the judgment received from you in CED v. Murarilal Sovasaria, Estate Duty Reference No. 1 of 1976 decided on August 11, 1988, which has been published on page 417 of volume 175, Income Tax Reports, in the penultimate paragraph of judgment (xerox copy of the relevant page is enclosed for your ready reference), on the question of includibility of the share of the value of goodwill in the principal value of the estate of the deceased, there appears to be some discrepancy. The above discrepancy lies in the fact that the decision follows the conclusion reached by the Madras High Court in the case of S. Devaraj v. CWT : [1973]90ITR400(Mad) . But a reference to the Madras High Court decision will show that the said question has been answered against the assessee and in favour of the Revenue as may be seen from the concluding para in page 409 on the above question. Moreover, the above question of goodwill has already been decided in favour of the Department and

against the assessee by the Supreme Court in its decision in CED v. Mrudula Nareshchandra : [1986]160ITR342(SC) in which the Madras High Court decision in CED v. Ibrahim Gulam Hussain Currimbhoy : [1975]100ITR320(Mad) was impliedly approved and which, in turn, relied on the above-cited Madras High Court decision in S. Devaraj v. CWT : [1973]90ITR400(Mad) referred to by the Gauhati High Court, in its decision. Under the circumstances, it would be highly appreciated, if the matter is brought to the notice of the honourable judges for clarifying the correct position.'

4. We, at the inception, wish to express our gratitude to the Company Law Institute for pointing out our mistake. This court, having read the letter, informed the Revenue and learned counsel for the accountable person on June 6, 1989, and the two were invited for a debate on the following :

'The following letter has been received from the Company Law Institute of India Private Ltd. The letter explains itself. Whether this court has power to rectify the mistake and other cognate questions will be heard in the court on Friday, June 16, 1989. The subject-matter will be posted for hearing. Kindly take notice of the same.'

5. These facts show the issue in the supplemental proceedings. Whether or not goodwill of a dissolved partnership firm forms part of the assets of a deceased partner is no more *res integra*. In CED v. Mrudula Nareshchandra : [1986]160ITR342(SC) the apex court held that the goodwill of a firm on the death of a partner does not 'evaporate or disappear' and passes on like other assets of the deceased and is to be quantified under Clause (c) of Rule 7 of the Estate Duty Rules. The decision of the apex court is opposed to what we recorded in the order on August 11, 1988. But our order was passed *per incuriam* as : [1986]160ITR342(SC) was not cited at the debate and, therefore, we were not aware of the contents of the decision. The Punjab and Haryana High Court, which we followed, held that goodwill cannot be included to the estate of the deceased. That case was reversed by a Full Bench decision of that court. We were not aware of the Full Bench case of the Punjab and Haryana High Court. There were cases of Gauhati, Madras, Bombay, Gujarat and Calcutta High Courts. The reference to

these cases all are found considered in the Supreme Court decision and when we say that that decision binds this court under Article 141 of the Constitution, we will be mentioning what is obvious under the Constitution. But we were not aware of the decision.

6. Before this court, in the original debate, two cases were cited. One was of the Punjab and Haryana High Court (not Full Bench) and another of the Madras High Court. The two courts had taken opposite views. We followed the decision of the former High Court and answered the question in favour of the accountable person. By an inadvertent error, the parties in the Madras case were typed instead of parties in the Punjab and Haryana case. We invited a debate, whether this court is possessed of power to correct the decision under Article 141 and can follow the Supreme Court after opinion was signed and delivered as it happened in the case. This is the lis in the supplemental proceedings.

7. The correction of a clerical error does not cause any difficulty. In India, such errors are called clerical errors or inadvertent errors. Such errors can be corrected by recourse to Section 152 of the Code of Civil Procedure wherever that Code is applied. That section reads as under :

'152. Amendment of judgments, decrees or orders.--Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties.'

8. In England, similar errors are called slips or omissions. Slips are corrected by recourse to Order 28, Rule 11 of the Rules. The Annual Practice (1949), pages 495 and 496, were referred in a Privy Council case from Ceylon in *Piyaratana Unnanse v. Wahareke Sonuttara Unnanse* [1950] AC 561 where the scope and ambit of the provision corresponding to our Section 152, viz., Section 189(1) of the Code of Civil Procedure, was referred to and considered.

9. The Privy Council held that the general rule is that courts which passed orders are functus officio after orders are pronounced. No error can be corrected however wrong it may be after the judgment or order is pronounced. The correction of

orders, if any, should be made in appeal. This was emphasised in that case as a general rule. The slip rule (Order 28, Rule 11) pointed out is an exception to the general rule. The origin of the slip rule was explained as found entrenched in the inherent powers of the courts to carry out decisions. What was shown as an exception covered a narrow area and the general principle that errors are to be corrected in appeal was in no way affected by the slip rule. Thus, it was emphasised that the slip rule provided only expeditious and simple means of rectifying an obvious error under the inherent powers of courts : Section 189 of Ceylon Civil Procedure Code or our rule in Section 152, Civil Procedure Code. Thus, courts can correct clerical or inadvertent mistakes.

10. The ratio of the decision furnishes an illustration. In the instant case, perforce and of necessity, we wish to refer to the argument before the Privy Council to show that the slip rule does not provide a remedy in many instances and covers only a narrow area. Before the Privy Council, the construction of a judgment was the issue. Two interpretations were put on the judgment. The District Judge interpreted the judgment in one way. (The District Judge who interpreted was a successor-judge. The judgment was passed by his predecessor-in-office). On appeal, the Supreme Court of Ceylon interpreted it in the opposite way and allowed the appeal. The contention before the Supreme Court of Ceylon was that the judge inadvertently did not decide the question. The Privy Council held that the dispute in the case was not whether the judgment held one thing and the decree recited another. The decree, it was shown, was in conformity with the judgment. The judge who interpreted the predecessor's judgment was not right in the conclusion that the District Judge decided a question. The Privy Council held that the District Judge had good reasons for not deciding the question as it would have been inappropriate to have decided it. It was not a case where the issue, inadvertently, was not decided. In such a controversy, inherent powers of courts have no play whatever. We have referred to the argument advanced to show that at times omission does not warrant alteration of the judgment. We think the Privy Council case is a good illustration that the inherent power of courts does not provide a remedy in all cases and repeat that the slip rule covered only a narrow area and parties should have recourse to the general rule and correct the errors in appeal.

11. Whether under fiscal enactments like the Income-tax Act and the Estate Duty Act courts possess inherent power as on today is not in doubt as that issue is decided by the apex court in the affirmative in Jaipur Mineral Development Syndicate v. CIT : [1977]106ITR653(SC) . The view expressed by the Allahabad High Court to the contrary was reversed. There is a judgment of the Kerala High Court and Seth Mathuradas v. CIT covered these aspects. We refrain from dealing with the cases in detail as the apex court considered the cases and the subject is no more open.

12. We, however, set out the illustrations recorded in the decision as they are apposite (at p. 657 of 106 ITR) : 'The courts have power, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the court. To hold otherwise would result in quite a number of cases in gross miscarriage of justice. Suppose, for instance, a party proceeds towards the High Court to be present at the time the reference is to be taken up for hearing and on the way meets with an accident. Suppose, further, in such an event, the High Court passes an order declining to answer the question referred to it because of the absence of the person who meets with an accident. To hold that in such a case the High Court cannot recall the said order and pass an order for the disposal of the reference on merits, even though full facts are brought to the notice of the High Court, would result in obvious miscarriage of justice. It is to meet such situations that courts can exercise, in appropriate cases, inherent power. In exercising inherent power, the courts cannot override the express provisions of law.'

13. Learned counsel for the Revenue, in the instant case, argued that this court is a court of record under Article 215 of the Constitution and referred to Shri Umed v. Raj Singh, : [1975]1SCR918 wherein it is said that to perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. 'A judge ought to be wise enough to know that he is fallible, and therefore ever ready to learn ; great and honest enough to discard all mere pride of opinion, and follow truth wherever it may lead ; and courageous enough to acknowledge his errors' (para 27). Learned counsel for the Revenue also relied on Antulay v. R. S. Nayak : 1988 CriLJ1661 wherein it is held that a superior court can correct its own error brought

to its notice either by way of petition or ex debito justitiae : Rubinstein's Jurisdiction and Illegality and Halsbury's Laws of England, 4th edn., Vol. 26, page 297, para 578 and page 300, the relevant notes 8, 11 and 15 ; Dias on Jurisprudence, 5th edn., pages 128 and 130 ; Young v. Bristol Aeroplane Co. Ltd. [1944] 2 All ER 293. The case of Under Article 143 of the [Constitution of India](#), In re, : AIR 1965 SC745 was also cited in support of his submission that superior courts of record are entitled to determine for themselves questions about their own jurisdiction. They can correct their own mistakes and once the court comes to the conclusion that it is within their jurisdiction, the range of the jurisdiction also should cover to correct mistakes. Halsbury's Laws of England, Vol. 9, p. 349, was relied on to show that no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so.

14. In this case, we make it clear that inherent powers cannot be invoked for amending the order as we are sure that by exercising power under the Constitution, this court can correct the error under Article 141 of the Constitution : '(Law declared by the Supreme Court shall be binding on all courts within the territory of India).' But, Article 141, in our view, is entrenched with some limitations. The judgment of the Supreme Court delivered before the day when the courts passed the order alone are relevant even if such judgments are not cited, and only such judgments enable the courts to rectify the mistakes. A like question arose in the judgment reported in Surajmull Choteylal v. CIT : [1978]114ITR130(Cal) where the Calcutta High Court on June 27, 1974, followed Raghunath Prasad Poddar v. CIT : [1973]90ITR140(SC) . That case was reversed on July 31, 1975, in Davenport and Co. P. Ltd. v. CIT : [1975]100ITR715(SC) . Thereupon, the Revenue made an application that the judgment and order of this case which was passed on June 27, 1974, be rectified, modified or reviewed. The Calcutta High Court declined. What that court said in deciding that issue we respectfully adopt (p. 132 of 114 ITR) :

'There cannot be review of an order which was right when made on the ground of a subsequent decision of the Supreme Court.. . The learned advocate for the appellants drew our attention to the observations of the Full Bench of the Kerala High Court in the case of K. Ahamad v. CIT : [1974]96ITR29(Ker) and he relied on

the observations of the Full Bench at page 34 of the report. There, the Full Bench was concerned with certain obvious errors in the judgment. Admittedly, such errors had crept in the judgment and the court held it had power to rectify such errors.'

15. The Calcutta High Court, no doubt, rejected the petition as 'belated' as the notice of motion was taken out on July 1, 1976. It was stated that the senior authorised representative drew the notice of the Commissioner of Income-tax, West Bengal, on January 16, 1976, to the views of the Tribunal when its attention was drawn to the subsequent decision of the Supreme Court. On the above facts, there was no sufficient explanation for the delay, and, therefore, the application was belated. We should not be understood to have adopted this reasoning in the instant case. What we hold is that cases of the Supreme Court which were delivered earlier to the decision sought to be corrected are alone relevant and not the subsequent decisions. Two allied or cognate principles we have in our mind -- one is power to review and the other is the doctrine of per incuriam. We do not intend to survey, these two doctrines in view of our conclusion under Article 141 of the Constitution.

16. We follow the decision in *CED v. Mrudula Nareshchandra* : [1986]160ITR342(SC) and correct the opinion or order pronounced on August 11, 1988. We answer the second question in the reference in favour of the Revenue and against the accountable person. The Revenue to place cases in which the earlier order was followed for correction if they deem fit to do so.

J.M. Srivastava, J.

17. I agree.

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