

**M. J. Joshi Vs. Fifth Assistant Controller of Estate Duty.**

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**Court :** Mumbai

**Decided On :** Mar-08-1985

**Reported in :** [1986]17ITD147(Mum)

**Appeal No. :** E. D APPEAL NOS. 47 AND 62 (BOM.) OF 1983

**Appellant :** M. J. Joshi

**Respondent :** Fifth Assistant Controller of Estate Duty.

**Judgement :**

ORDER

Per R. L. Sangani, Judicial Member - Out of these two appeals one has been filed by the accountable person, while the other has been filed by the department. We shall first deal with the appeal filed by the accountable person. The name of the deceased is Shri J. P. Joshi. He died on 24-11-1979. At the time of his death, he was working as an agent of the Life Insurance Corporation of India Ltd. He was residing in a flat with his wife and other members of his family. One of the properties that passed on his death was the self-occupied flat. The registered valuers report estimated the value of the said flat at Rs. 1,56,040. The accountable person claimed that the wife of the deceased had 25 per cent share in that property by virtue of Shastric Hindu law as a lawfully wedded wife. He relied on certain decisions of the Supreme Court. The claim of the accountable person was not accepted. The Assistant Controller estimated the value at Rs. 1,56,040 and allowed deduction of Rs. 1 lakh under section 33(1) (n) of the Estate Duty Act, 1953

(the Act) and included the balance of Rs. 56,040 in the value of the property passing on death. The valuation made by the Assistant Controller was not accepted by the accountable person. He filed appeal before the Controller (Appeals), and raised several objections regarding the value adopted by the Assistant Controller. It was submitted that the wife of the deceased had a right of maintenance which included right of residence in the flat, and as such, that liability should be deducted. In the alternative, be submitted that the said liability amounted to an encumbrance on the property. All these contentions were rejected by the Controller (Appeals). In the memorandum of appeal filed before us, the first ground raised was that provisions of rule 1BB of the Wealth-tax Rules, 1957 (the 1957 Rules), should be applied in valuing the said flat. The contention on behalf of the department is that the assessee had never made any claim for valuation under rule 1BB before the lower authorities and, as such, the said claim could not be entertained at this stage. Reliance was placed on the decision in Ugar Sugar Works Ltd. v. CIT : [1983]141ITR326(Bom) .

2. The first point, therefore, that we have to consider is whether the accountable person was entitled to raise the plea before us to the effect that the provisions of rule 1BB should be applied for valuation of the self-occupied flat. In the decision in the case of Ugar Sugar Works Ltd. (supra) on which the department had relied, the assessee had claimed development rebate on certain items but that claim was rejected by the ITO. The assessee had filed an appeal to the AAC against other findings of the ITO. He did not challenge the ITO's finding about rejection of the claim for development rebate before the AAC. The claim for development rebate was, therefore, not the subject-matter of appeal before the AAC. The ITO rejected the other grounds raised in the appeal. Against the said rejection, the assessee filed appeal before the Tribunal and in that appeal, the assessee sought to raise by additional ground, the plea regarding development rebate. On these facts, it was held that the grounds regarding development rebate could not be raised before the Tribunal because that ground did not arise out of the order of the AAC. The principle laid down in the said decision would not apply here. The question before the Assistant Controller was as to at what figure the said self-occupied flat should be valued for inclusion in the value of property passing on the death of the deceased. The assessee had challenged the figure of Rs. 1,56,040 which the

Assistant Controller had intended to accept. The assessee wanted that the house should be valued at a lower figure. He raised certain pleas in this regard. Before the Controller (Appeals), he challenged the valuation made by the Assistant Controller. Thus, the question of valuation of the flat arose directly from the order of the Controller (Appeals). It is not a case where the value estimated by the Assistant Controller had not been challenged before the Controller (Appeals) and that the value was being challenged only before the Tribunal. This is a case where the value was being challenged at each stage. Mere fact that touching the valuation rule 1BB should be applied was not raised before the lower authorities would not disentitle the accountable person to raise that plea before the Tribunal particularly when the question of valuation is under consideration before the Tribunal. The plea raised is a legal plea touching the valuation and when the valuation is under challenge, a plea of this nature can be taken before the Tribunal even though it had not been taken before the lower authorities. The question of valuation in all its aspects has to be determined by the Tribunal as a final authority on fact and, as such, all legal pleas pertaining to valuation can be properly raised before the Tribunal. We, therefore, reject the preliminary objection of the department to the effect that the assessee was not entitled to raise the plea in question.

3. The next question to be considered is whether valuation should be made in accordance with the provisions of rule 1BB. Rules framed under the Act do not contain any special provision for valuation of residential property. Such special provisions are contained only under the Wealth-tax Act, 1957 (the 1957 Act). The question of valuation of the same house as on or about the same date may arise simultaneously in proceedings under the 1957 Act and the 1953 Act. It would be wholly anomalous if the same property is valued at different figures in two different proceedings. The value of the same property should be deemed to be the same whether that value is the subject-matter of consideration under the 1957 Act or under the 1953 Act. It is for this reason that in *CED v. J. Krishna Murthy* : [1974]96ITR87(KAR) , the Mysore High Court has held that for the purposes of estate duty, the shares of companies which are not quoted should be valued in accordance with the provisions of rule 1D of the 1957 Rules. In other words, what has been held is that provisions of 1957 Rules should be made use of in valuation

of property under the 1953 Act. On the same reasoning, provisions of rule 1BB should be applied for valuing the said self-occupied flat in the proceedings under the 1953 Act.

4. The view which we have taken is supported by the decision of the Bombay High Court in *Jehangir Mahomedali Chagla v. M. V. Subramanian*, Addl. First ACED : [1985]155ITR637(Bom) . That case pertains to the estate of late Justice M. C. Chagla, who had bequeathed his flat in favour of his son. At the initial stage, the accountable person did not value the said flat under rule 1BB, however, at the subsequent stage, he sought to value the said flat under rule 1BB. The Assistant Controller did not accept the contention of the accountable person. In the writ petition filed harmonious construction demands that the identical method should be employed for in determining the value under section 36(1) of the Act, even in cases where death has occurred prior to 1-3-1981, on which date sub-section (3) was inserted in section 36 by Estate Duty (Amendment) Act, 1982, under the said provision, valuation was required to be made in accordance with the provisions of the Wealth-tax Rules. It was further held that to accept the claim that the only method of valuation was land and building method would lead to anomalous results; a flat would be valued for the purpose of rule 1BB at one figure and if the assessee died on the next day, then the accountable person would be required to pay duty on a higher valuation for the same flat. It was further held that method provided in rule 1BB was the only possible method for determination of the value of that flat of the deceased under section 36, in spite of the fact that the deceased had died prior to 1-3-1981. The facts of the present case are identical. We, therefore, follow the principle laid down in the said decision of the Bombay High Court and direct the Assistant Controller to make valuation in accordance with the provisions of rule 1BB.

5. It was expressly submitted on behalf of the accountable person before us that if the plea of the assessee regarding rule 1BB was accepted his other objections about valuation should not be considered, and that they should be deemed to have been given up. We, accordingly, do not consider other objections regarding valuation.

6. The next ground raised is that the estate duty payable was an admissible deduction. This plea must be rejected in view of the decision in *Smt. V. Pramila v. CED* : [1975]99ITR221(KAR) . We, accordingly, reject the said ground.

7. We now come to the appeal filed by the department. The deceased had taken ten policies on the lives of his minor son and daughter. The total premia payable was Rs. 5,394,50 per annum. The premium for two years amounted to Rs. 10,789. According to the Assistant Controller, the premium paid during the last two years of the death of the deceased amounted to gift to those children. He relied on section 9(1) read with section 27 of the Act and added the amount of Rs. 10,789. The Controller (Appeals) held that the contract was between the LIC and the deceased and as such, the amount had been paid to LIC. Consequently, there was no gift to minor children and as such provisions of section 9 were not applicable. He, accordingly, directed deletion of the said amount.

8. In this connection, the accountable person relied on the provisions of section 9(2) (b). That provision laid down that the provisions of sub-section (1) of section 9 shall not apply to gifts which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, subject to a maximum of Rs. 10,000 in value. The deceased was admittedly maintaining the children. In the normal course of such maintenance, it was quite natural for him to take out policies on their life. In these circumstances, the premia paid should be deemed to be payments made as part of normal expenditure of the deceased. Consequently, only Rs. 789 out of Rs. 10,789 was liable to be added. It was stated on behalf of the accountable person before us that he had no objection on addition of Rs. 789. We, accordingly, modify the order of the Controller (Appeals) and hold that an amount of Rs. 789 alone is liable to be added in respect of premia paid on the life of the children. In view of the above submission, on behalf of the accountable person, we do not deem it proper to go into the broad question whether the premia paid within two years of the death, in the circumstances of the present case, amount to gift to minor children under section 9(1). We leave that question open.

9. The next point to be decided is whether the amount representing renewal commission was liable to be included in the value of the property passing on

death. The deceased was working as agent in the LIC. He received commission in respect of policies secured through his agency. The commission payable by the LIC to the deceased was certain percentage of premium received by the LIC. Each policy usually ran for several years. Consequently, premium on each policy was payable periodically either annually or half yearly or quarterly. The assessee was entitled to commission on all subsequent payments of premiums on particular policy. This commission has been termed as renewal commission. After the death of the assessee, the said commission is being received by the assessee's heirs. The Assistant controller was of the opinion that the renewal commission which the deceased was to receive in subsequent years constitute property passing on death. He sought information from LIC about the renewal commission. The LIC gave the following certificate :

'Certified that the value as on 24-11-1979, the date of death of Shri Jayantilal P. Joshi of the future renewal commission payable on the policies, particulars relating the policy number, name of life assured, date of commencement of policy, table and term of assurance, sum assured, annual premium and rate of renewal commission whereby are given in attached statement, is estimated to be Rs. 63,257.35 (Rupees sixty-three thousand two hundred fifty-seven and paise thirty-five only).'

The Assistant Controller, on the basis of the certificate, added Rs. 63,257.35 in the value of the property passing on death. In the appeal filed by the accountable person, the Controller (Appeals) observed that future commission had no element of certainty and that it represented only contingent interest that cannot pass on death. He, therefore, deleted the said amount. The department has challenged the said deletion.

10. The learned representative for the accountable person has brought to our notice the fact that under the usual agreement of agency, it is specifically stipulated that every agent would advise every policy holder in respect of the policy and would endeavour to ensure that every installment of premium was remitted by the policy holder to the Corporation and that he would also endeavour to prevent lapsing of policy or its conversion into a paid up policy. Failure to

discharge these functions would result in termination of agency. In these circumstances, according to the learned representative for the accountable person, the amount of renewal commission could not be termed as property passing on death. We specifically asked the learned representative for the accountable person whether an agent would be entitled to receive the renewal commission on policies effected through his agency, even if the agency was subsequently terminated. It was pointed out to us that payment of renewal commission by the policy depended solely on payment of instalments of premium by the particular policy holders and that the fact that the agent himself did not make any endeavour subsequently would not disentitle the agent to receive the renewal premium. The accountable person was in fact receiving the renewal premium from the LIC. In these circumstances, it cannot be gainsaid that the deceased had no beneficial interest in the renewal commission receivable on the policies effected by him during his lifetime. That beneficial interest would constitute property passing on his death.

11. The next question to be decided is as to what amount should be included under this head. It is the actuarial value as on the date of death in respect of the said renewal commission, which would constitute property passing on death. Such actuarial valuation would take into account the future contingencies about lapsing of certain policies. The parties were not in a position to state before us whether the figure of Rs. 63,257.35 mentioned in the certificate of the LIC represented actuarial valuation or not. If it did not represent actuarial valuation, the assessee would be entitled to obtain such valuation and submit for inclusion. We, therefore, set aside the order of the Controller (Appeals) on this point and restore the matter to the Assistant Controller with direction to give opportunity to the accountable person to produce such material as he considers necessary on this point and include the value of the beneficial interest in the renewal commission as on the date of death of the deceased.

12. In the result, both the appeals are partly allowed.