Siloo Homee Mistry Vs. Second Assistant Controller of Estate Duty.

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SooperKanoon Citation : sooperkanoon.com/359447

Court : Mumbai

Decided On : Jun-25-1984

Reported in : [1984]10ITD391(Mum)

Appeal No. : ED APPEAL NO. 2 (BOM.) OF 1982

Appellant : Siloo Homee Mistry

Respondent : Second Assistant Controller of Estate Duty.

Judgement :
ORDER

Per Shri. D. V. Junnarkar, Accountant Member - Though the accountable persons have filed this appeal on various grounds, the only ground pressed at the time of the hearing is that the Appellate Controller had erred in not granting exemption under section 33(1) (n) of the Estate Duty Act, 1953 (the Act) in respect of one-fourth share of the deceased for the part of the house exclusively used by the deceased for his residence at Fatehgunj, Baroda. The facts of the case are that the deceased along with his three brothers inherited the house at Fatehgunj in Baroda from their father. Three of the brothers continued to reside in the property, whereas the deceased, who was a ground engineer in the Air India, used to be at the place of his duty all over the world. When on leave he would come and reside in the property at Baroda. In the assessment proceedings, the Assistant Controller overruled the plea on behalf of the accountable persons for relief under section 33(1) (n) and included the entire value of the deceased's share in this building in the principal value of the estate. On an appeal by the accountable persons, the accountable persons appeal was dismissed by the Appellate Controller on the plea that the accountable persons had failed to convince him as to how the house at Baroda was exclusively used by the deceased for his residential purposes, when he was employed by Air India and was residing with his family at Bombay.

2. The accountable persons are, therefore, in further appeal before the Tribunal on the ground that this was the only house owned by the deceased and he was residing at Bombay and other places for the purpose of his duty in rented houses. As regards the objection on behalf of the revenue to the effect that the house should have been in the exclusive occupation of the deceased, the learned counsel for the accountable persons has invited our attention to the observations of Dr. V. Balasubramanian in his law & Practice of Estate Duty as under :

'The house or the separable part of it should be exclusively used by the deceased for his residential purposes. The expression exclusively is unhappy since if made to qualify deceased the nearest noun, the exemption would be available only where the deceased stays exclusively in the house, i.e., alone without any other person, not even his wife and children. When a member of a Hindu undivided family dies the exemption would be denied to him in that case. It would appear that the exemption is intended to be given to a property used exclusively as a residence rather than as an office or as business premises.'

The learned counsel has also invited our attention to the following observation by Shri D. H. Nanavati in his treatise on The Estate Duty Act, third edn. :

'The clause provides that in order to gain the exemption, the house must have been exclusively used by the deceased for his residence. These words might, at first blush, appear to suggest that the benefit of the exemption would not be available unless the deceased resided in the house alone and that, therefore, the exemption would be lost if the deceased resided in the house even with, for example, his wife and children and/or his dependents. Apart from the fact that it was obviously not the intention of the Legislature to so restrict the operation of the exemption, the language of the clause itself also cannot be so construed. The words exclusively used govern, not merely the words the deceased, but the entire expression by the deceased for his residence, and thus qualify the purpose for which the house is to be put to; so as to restrict the availability of the exemption to the extent that the property was used by the deceased (whether with or without others like the members of his family and dependents) for residential purposes as opposed to other purposes, e.g., for an office. Thus, if the deceased also maintained an office in the house belonging to him and in which he resided, the exemption would be restricted to that portion of the house used by the deceased (whether with or without others) for his residence. At the same time, it is not sufficient merely that the house was used for residential purposes. It is further necessary that the house should have been used by the deceased (whether with or without others) for his residence. Thus, if the deceased let out a portion of his house and resided himself (with his family) in the remaining portion, the exemption would be restricted to the portion used by him (with his family) for his residence.' (p. 457)

On behalf of the revenue, reliance is placed on the orders of the authorities below. Further, reference is made to the fact that under section 33(1) (n) it was necessary that the house was used by the deceased for his residence. This meant that unless the deceased personally resided there exclusively, the exemption under section 33(1) (n) was not available in the estate duty assessment.

3. We have carefully considered the facts and circumstances of the case and the arguments on either side. The fact is that the deceased was a co-owner with his three brother of the residential property at Baroda. He was occupying it along with his brothers whenever on leave or was otherwise in Boroda. The learned departmental representative has not been in a position to substantiate his argument by any judicial authority, whereas the learned counsel for the accountable persons has been able to support his arguments by two learned commentators to the effect that what was necessary was that the property should be used exclusively for residence. It was not necessary that the property should have been used for the exclusive residence of the deceased. If such a restrictive meaning was placed on the clause, even if the deceased resided in the property with his wife and children, the accountable person would be denied the relief under section 33(1) (n). This certainly could not have been the intention of the

Legislature. In our opinion, the orders of the lower authorities require to be reversed. They are, accordingly, reversed. The relief will be granted to the accountable persons in respect of the value of the one-fourth share in the property at Baroda used by the deceased for his residence.

4. In the result, the appeal is partly allowed.