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Shaik Hassan Vs. Assistant Controller of Estate Duty

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Court : Karnataka

Decided On : Sep-12-1968

Reported in : [1969]71ITR344(KAR); [1969]71ITR344(Karn); (1968)2MysLJ433

Judge : A.R. Somnath Iyer and ;Ahmed, JJ.

Acts : Estate Duty Act, 1953 - Sections 53(3) and 57

Appeal No. : Writ Petition No. 1899 of 1966

Appellant : Shaik Hassan

Respondent : Assistant Controller of Estate Duty

Advocate for Def. : S.R. Rajasekhara Murthy, Adv.

Advocate for Pet/Ap. : K. Srinivasan, Adv.

Judgement :

Somnath Iyer, J.

1. A certain Shaik Abdul Kadar, who was a resident of Goa, died on April 2, 1963, and his son, who is the petitioner, produced an account under section 53(3) of the Estate Duty Act, 1953, in which he stated that the value of the estate in respect of which estate duty was payable was Rs. 26,000. In a covering letter with which that account was delivered, he enumerated the gifts which had been made according

to him by the deceased, Shaik Abdul Kadar, before the extension of the Indian laws to the Goa territory.

2. The assistant Controller of Estate Duty then made a provisional assessment under section 57. In the course of the order which he made, he stated that the petitioner had admitted that the value of the estate of the deceased, in respect of which estate duty was payable, was Rs. 14,42,509 and that, therefore, the tax which could be provisionally determined as payable by the petitioner was Rs. 1,83,196.83.

3. It is this provisional assessment which is challenged in this writ petition, and it is contended that the Assistant Controller of Estate Duty was not right in thinking that the petitioner had made any admission that the property of the deceased in respect of which estate duty was payable was of the value of Rs. 14,42,509.

4. Under section 57 of the Estate Duty Act, a provisional assessment should be founded on the account delivered under section 53(3), which provides that every person accountable for estate duty shall deliver an account in the prescribed form of all the properties in respect of which estate duty is payable.

5. We have seen the account delivered by the petitioner, and, according to that account, the value of the property which according to the petitioner bears estate duty was only Rs. 26,000. So, according to that account, no estate duty was at all payable.

6. It is true, as pointed out by Mr. Rajasekhara Murthy appearing for the Assistant Controller of Estate Duty, that in the account delivered under section 53(3), the petitioner did refer to some gifts made by his farther and that subsequently he stated the values of the property so gifted. But the account to which section 57 refers and which is required to be delivered under section 53(3) is the account which reflects the value of the property in respect of which estate duty is admittedly payable, and so the enumeration of other properties which, according to the account delivered, the deceased no longer owned when he died, could not form the foundation of a provisional assessment under section 57 of the Act.

7. So, we set aside the impugned provisional assessment made by the Assistant Controller.

8. No costs.

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