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Court : Karnataka

Decided On : Jan-30-1974

Reported in : ILR1974KAR450; [1975]99ITR221(KAR); [1975]99ITR221(Karn); 1974(2)KarLJ60

Judge : G.K. Govind Bhat, C.J. and ;M.K. Srinivas Iyengar, J.

Acts : Wealth Tax Act, 1957 - Sections 2

Appeal No. : T.R.C. No. 7 of 1972

Appellant : V. Pramila

Respondent : Controller of Estate Duty, Bangalore

Judgement :

Govinda Bhat, C.J.

1. One Shri B. S. Varadaraja Shetty died on May 6, 1965, leaving behind him a large estate. The accountable person had claimed before the Assistant Controller the liabilities amounting to Rs. 2,59,757, the details of which were not available in full at that time. There was income-tax liability of Rs. 90,000, full details of which were not furnished, In fact, a sum of Rs. 22,627 was due for payment for the assessment year 1964-65 as per the Income-tax Officer's order dated March 15, 1969. That was allowed. Further, there was a claim of Rs. 2,560 as liability to pay estate duty. The Assistant Controller held that there was no provision in the Estate

Duty Act for allowing estate duty liability which arose after the deathof the deceased. Accordingly, the Assistant Controller disallowed the claim.

2. Being dissatisfied with the order of the Assistant Controller, the accountable person went in appeal before the Appellate Controller of Estate Duty. It was argued before him that the estate duty payable on the estat of the deceased should be allowed as a deduction from the gross duty payable. The learned counsel referred to Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth-tax.

3. The appellate Controller held that the above cited case arose, inter alia, on an interpretation of section 2(m) of the Wealth-tax Act. The Appellate Controller held that the case had no application as it was under the Wealth-tax Act. The charge under that Act was on the net wealth of the individual and Hindu undivided family on the corresponding date commencing from the assessment year 1957-58. It was a tax due by the individual or Hindu undivided family. It was in that context that the Supreme Court interpreted the words 'debt owed'. The Appellate Controller further wen on to say that the duty payable on the principal value of an estate under the Estate Duty Act cannot be considered to be a debt incurred by the decease. Section 44 provided the deductions under the Act and unless its strict requirements were satisfied, there could be no deductions. Taking note of section 5, the duty was not payable by the deceased himself but by his successor. Estate duty is a liability attaching to the estate of a deceased individual which had to be discharged by the countable person. Holding that view, the Appellate Controller dismissed the appeal.

4. Against the order of the Appellate controller the accountable person went in appeal before the Tribunal. It was contended before the Tribunal that the property passed with the charge and as such the duty payable was deductible from the principal value of the estate. Reliance was also placed on Mrs. Blanche Nathalia Pinto v. State of Mysore. It was urged by the accountable person's counsel that immediately on the death of a person, estate duty became exigible in respect of the property which passed on his death. When it came to the hands of the executor it was and estate which was already burdened with liability to pay the

estate duty.

5. The Tribunal had an earlier occasion to deal with an identical question which arose before it in E. D. A. No. 143/67-68. There, the Tribunal held that the estate duty payable by the accountable person never fell for deduction from the principal value of the estate.

6. The authorised representative referred to section 74 of the Act which laid down that the estate duty payable in respect of property movable or immovable passing on the death of the deceased shall be a first charge on the immovable property so passing.

7. The Tribunal held that estate duty fell upon the property passing on the death apart from its destination. The levy and payment of estate duty occurred not at the point of succession to property but of the passing of property by the death of a person. However, when valuing the market value of the estate a willing purchaser would have to take into consideration the estate duty payable on it. So the estate duty payable being a charge on the property deflated the market value and to that extent the necessary allowance became factually accorded. The Tribunal held that the case referred to, i.e., Blanche Nathalia Pinto v. State of Mysore, by the learned ounsel was not relevant as the decision had proceeded on a phraseology of the relevant sections of the Mysore Court Fees an suits Valuation act and the procedure laid down therein. In the case before the Tribunal it had to see whether estate duty payable by the accountable person fell for deduction in his hands under section 44 of the Act. As there was no existing debt at the time when the deceased died, no deduction for the estate duty payable on his estate would be allowable. There was no liability before the death of the deceased. It was further held by the Tribunal that no doubt in the hands of the executor the estate came already burdened with liability to pay the estate duty. It washing the course of the passing of the estate that the existence of the liability emerged and not prior to it.