

B.K. Shantiraj Vs. Controller of Estate Duty, Mysore

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Court : Karnataka

Decided On : Oct-05-1966

Reported in : [1968]68ITR166(KAR); [1968]68ITR166(Karn); (1967)2MysLJ129

Judge : K. Bhimiah and ;K.S. Hegde, JJ.

Acts : Estate Duty Rules, 1953 - Rule 14(6); Estate Duty (Amendment) Rules, 1956

Appeal No. : Tax Referred Case No. 29 of 1955

Appellant : B.K. Shantiraj

Respondent : Controller of Estate Duty, Mysore

Advocate for Def. : G.R. Ethirajulu Naidu, Adv.

Advocate for Pet/Ap. : Padubidri Raghavendra Rao, Adv.

Judgement :

Hegde, J.

1. The estate duty assessment pertains to the estate of late Chandraraja Savantha Madda Hegde, who died on 29th June, 1955. Shri B. K. Shantiraj, son of the deceased, furnished to the Assistant Controller of Estate Duty, Bangalore, who was the assessing authority, an account of property passing on the death of the

deceased.

2. The deceased's assets, amongst others, consisted of agricultural lands which were situated in Udipi and Mangalore taluks of South Canara which were all leased to tenants. The accountable person showed the value of these lands in the estate duty return at Rs. 1,71,390. The Assistant Controller considered that the lands were grossly under-valued. The accountable person contended that some lands in those areas were sold for lower prices. The Assistant Controller, however, rejected the accountable person's contention as the extent of the lands sold and their yield was not furnished by him and also as the sales were effected in 1959, i.e., nearly four years after the date of valuation in this case. On the basis of the reports from the Tahsildars, the Assistant Controller fixed the value of those lands at Rs. 3,44,160. The assessment was accordingly completed fixing the principal value of the estate at Rs. 3,95,036. A copy of the assessment order is annexure 'C' and forms part of the case.

3. The accountable person appealed to the Board. When the case came up for hearing, the Board felt that certain further information was necessary for deciding the issue. They, therefore, remanded the case back to the Assistant Controller for further enquiry and report. A copy of the order of remand dated the 21st June, 1960, is annexure 'B' and forms part of the case.

4. After the receipt of the remand report, the Board reheard the appeal. It was contended for the appellant that the valuation of the agricultural lands as made by the Assistant Controller was excessive and not in accordance with rule 14(6) of the Estate Duty Rules as it stood in 1955, which provided for valuation of such lands at twenty times their annual value. Alternatively, it was contended that the valuation of those should have been made according to the accepted methods, i.e., by capitalising the net annual yield or immediate prospective yield of those lands at a reasonable number of years purchase.

5. For the reasons mentioned in paragraph 10 to 14 of their order dated the 13th February, 1962, the Board rejected the accountable person's contention. On the basis of the gross annual yield, as intimated by the Assistant Controller in his report and accepted by the accountable person, the Board fixed the market value

of those lands at Rs. 3,00,000 as worked out in paragraph 15 of their order. A reduction of Rs. 44,160 was accordingly allowed. A copy of the order of the Board is annexure 'A' and forms part of the case.

6. On the facts stated above, the following question of law arises and is referred for the opinion of the High Court of Mysore at Bangalore :

'Whether, on the facts and in the circumstances of the case, the value of the agricultural lands was properly determined at Rs. 3,00,000, having regard to the provision of section 36 of the Estate Duty Act, 1953, and rule 14(6) of the Estate Duty Rules as it stood before its amendment in 1956 ?'

7. This is a reference under section 64(1) of the Estate Duty Act, 1953 (to be hereinafter referred to as the 'Act'). This reference was made at the instance of the accountable person. The question of law referred is :

'Whether, on the facts and in the circumstances of the case, the value of the agricultural lands was properly determined at Rs. 3,00,000 having regard to the provisions of section 36 of the Estate Duty Act, 1953, and rule 14(6) of the Estate Duty Rules as it stood before its amendment in 1956 ?'

8. In this case we are concerned with the estate that passed on the death of one Sri Chandraraja Savantha Madda Hegde, who died on 29th June, 1955. According to the accountable person, the value of the agricultural properties left by him is Rs. 1,71,390, but according to the revenue, its value is Rs. 3,00,000. Ordinarily, the value of a property is a question of fact. But the same has to be valued according to law. In this case we have to see whether the property in question has been valued in accordance with law.

9. One of the controversies between the parties is as to whether certain properties, which stand registered in the name of the deceased, were really his properties on the date of his death. According to the accountable person, they had ceased to be his properties, as other had acquired title by adverse possession on those properties. Whether that assertion is true or not, has not been investigated into. The revenue has proceeded on the basis that as the khata of the property stood in

the name of the deceased, he must be held to be the owner of that property. It is not a correct approach. It is a notorious fact that at least in the district of South Kanara, khata of the properties stand in the name of the person and the property is in the actual possession of others. That apart, if the contention of the accountable person that third parties and acquired title to these properties by adverse possession is true, the fact that the khata of the properties stand in the name of the deceased does not make them the properties of the deceased for the purpose of the Act or any other purpose. The question whether those properties can be said to have 'passed' within the meaning of section 5 of the Estate Duty Act, has got to be decided on its own merits. That had not been done.

10. The next question, if we may say so, the more important question, is as to how to value the agricultural properties of the deceased. The revenue has valued those properties on the following basis :

11. They first ascertained the gross income of the property in kind, i.e., in terms of murras of rice per year, thereafter determined the value of the same in terms of money and finally capitalised the annual money value determined on the basis of twenty years' purchase.

12. This method does not appear to be in accordance with law.

13. Section 36 of the Act provides that the principal value of any property shall be estimated to be the price which in the opinion of the Controller it would fetch if sold in the open market at the time of the deceased's death. If this section had stood by itself, then probably the method adopted by the revenue could have been justified. But then, section 41 provides that, subject to the provisions of the Act, the value of any property for the purpose of estate duty shall be ascertained by the Controller in such manner and by such means as may be prescribed, and if he authorises a person to inspect any property and to report the value thereof for the purpose of the Act, that person may enter upon the property and inspect it at such reasonable time as may be prescribed.

14. The rule that bears on the subject is rule 14(6). It says :

'In the case of any agricultural land the principal value shall not ordinarily exceed twenty times of the annual value as assessed for the purpose of land revenue.'

15. It may be noted that the proviso to that rule was not in existence at the time of the death of the deceased in this case. Therefore, the revenue could not have taken any assistance from that proviso. All that we have to see whether the agricultural lands of the deceased were valued in accordance with rule 14(6) as it stood at the time of the death of the deceased.

16. The revenue proceeded on the erroneous basis that, as the land revenue in the district of South Kanara had been settled as early as in 1930, the land revenue basis cannot be considered as a correct basis. The fact that survey and settlement had taken place in most place in India years ago must have been within the knowledge of the rule making authority at the time the Rules were made. But, if in spite of it, the rule in question was framed, that means that the rule making authority wanted that agricultural properties should be valued on the basis of rule 14(6), despite the fact that at the time that rule was made the annual value fixed for the purpose of land revenue was disproportionately small compared to its annual value as on the date the rule was framed. It may be the rule making authority wanted to value agricultural properties at a concessional rate or they wanted a definite basis for its valuation and not to leave that question to the vagaries of the valuers or the assessing authorities, taking into consideration the fact that the agriculturists are mostly illiterate. Hence, it was not open to the authorities under the Act to refuse to adopt the land revenue basis on the sole ground that the annual value of agricultural properties had sharply risen after the survey and settlement. To act otherwise is to ignore the mandate of the rule. According to the accountable person, in the district of South Kanara 1/4th to 1/6th of annual net income was fixed as the land revenue. The correctness of this statement has to be examined by the revenue. Suffice it to say that no case is made out to take the present case out of rule 14(6).

17. For the reasons mentioned above, we hold that the valuation made by the revenue is not in accordance with law. Hence, our answer to the question referred to us is that, on the facts and in the circumstances of the case, the value of the

agricultural lands was not properly determined at Rs. 3,00,000, having regard to the relevant provisions of law.

18. The department to pay the costs of this reference. Advocate's fee Rs. 250.

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