

Ashoke Gupta Vs. Assistant Controller of Estate Duty and ors.

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Court : Allahabad

Decided On : Nov-22-1990

Reported in : [1991]188ITR715(All)

Judge : B.P. Jeevan Reddy, C.J. and ;V.N. Mehrotra, J.

Acts : [Income Tax Act, 1961](#) - Sections 147; [Estate Duty Act, 1953](#) - Sections 59

Appeal No. : Civil Miscellaneous Writ Petition No. 118 of 1980

Appellant : Ashoke Gupta

Respondent : Assistant Controller of Estate Duty and ors.

Judgement :

B.P. Jeevan Reddy, C.J.

1. This writ petition is filed by an accountable person against the notice issued by the Assistant Controller, Estate Duty, under Section 59 of the Estate Duty Act proposing to reopen the assessment relating to the estate of the deceased Brij Lal Gupta, father of the petitioner. The death had occurred on February 7, 1976. The petitioner filed return as an accountable person and an assessment was made under Section 58(3) of the Act on March 19, 1977. It is, thereafter, that on July 31, 1979, a notice was issued to the petitioner by the Assistant Valuation Officer under Section 41 of the Act calling upon him to file certain information in connection with the enquiry made by him on the valuation of the house property mentioned therein.

The petitioner objected to the said letter saying that since the assessment has already been made and has become final, there is no occasion for any valuation thereafter. Be that as it may, the impugned notice was issued thereafter on February 25, 1980. The assessment was sought to be reopened only with respect to the valuation placed upon a particular house property mentioned in the assessment order dated March 19, 1977. In the assessment order, nil valuation was placed upon the said house property and that is sought to be revised. After receiving the impugned notice, the petitioner submitted a letter dated March 18, 1980, stating that, from the letter of the Assistant Valuation Officer dated September 27, 1979, it appears that the assessment is reopened on the basis of the observations made by the Inspecting Assistant Commissioner (Audit), Lucknow, and hence, a copy of the said observations may be supplied to him. (A copy of the letter of the Assistant Valuation Officer dated September 27, 1979, is also placed before us. It shows that valuation of the property was being made in the light of the observations made by the Inspecting Assistant Commissioner (Audit), Lucknow.) However, no reply was given to the petitioner's letter dated March 18, 1980, whereupon he approached this court by way of this petition.

2. No counter-affidavit has been filed by the respondents nor the relevant records produced before us. In the circumstances, we have to take the allegations made in the writ petition as uncontroverted, more so when they appear to be supported by the material placed before us by the petitioner. On the basis of the said material, the contention of the petitioner that the assessment is sought to be reopened on the basis of the observations made by the Inspecting Assistant Commissioner (Audit), Lucknow, cannot be said to be without force.

3. Section 59 of the Estate Duty Act is in pari materia with Section 147 of the Income-tax Act, as it stood prior to the 1989 amendment. Under Section 147, it has been held by the Supreme Court that the report of the Audit Officer cannot be treated as information within the meaning of Section 147(b) and such report cannot furnish the basis for reopening of the assessment. The principle is that that decision is applicable to the provisions of Section 59 of the Estate Duty Act. On the record before us, we accept the petitioner's plea that the assessment is sought to be reopened on the basis of the report of the Audit Officer pertaining to the facts

of the valuation and such reopening is bad. The impugned notice is, accordingly, quashed.

4. The writ petition is allowed accordingly.

No costs.

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