Dr. S.D. Suri Vs. Wealth-tax Officer

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Dec-31-1981

Reported in : (1982)1ITD686(Delhi)

Judge : B Lal, S Kapur

Appellant : Dr. S.D. Suri

Respondent : Wealth-tax Officer

Judgement :

1. Both the appeals are by the assessee. The assessment years involved are 1957-58 and 1958-59 with the respective valuation dates being 31-3-1957 and 31-3-1958. The assessments have been framed under Section 16(3) of the Wealth-tax Act, 1957 ("the Act"), and the following common grounds have been taken in respect of both the years : 2. There is no evidence with the department whatsoever that the assessment made was on the date as mentioned in the assessment order. On the other hand, there is strong circumstantial evidence that the assessment had become barred by time and was completed after 31-3-1979.

3. There is no evidence with the department that the demand notices, etc., were issued on 24-3-1979.

4. That the learned AAC erred in law in not annulling the assessment made by the WTO. 5. That notice under Section 16(2) of the Wealth-tax Act was not served on all the legal heirs of Late Shri K.D. Suri.

6. That the learned WTO failed to apply his mind to the facts of the case and did not pass a speaking order.

7. Even on merits the assessment has been pitched at a very high figure under Section 16(5) without any basis or jurisdiction.

8. That the appellant craves leave to amend or file any ground of appeal(s) either before or during the course of hearing which may be necessary.

2. At the outset, we will like to place it on record that the assessments for the assessment years 1957-58 to 1971-72 have been made on the same day as is claimed by the parties, more so, the impugned order of the AAC is also a common consolidated one in respect of the assessment years 1957-58 to 1971-72 but the assessee has preferred appeals only for the two assessment years, viz., the assessment years 1957-58 and 1958-59. The assessments have been framed as, "Dr. S.D.Suri, Legal heir of Late Dr. N.D. Suri, N-8, Defence Colony, New Delhi", as per the title of appeals in the order of the AAC, while as per assessment order, the assessments have been framed as, "Shri S.D.Suri, S/M and on behalf of Shri Narain Dass Suri, E-5, Defence Colony, New Delhi." 3. All the returns, i.e., returns for the assessment years 1958-59 to 1971-72, were filed on 4-2-1966 and those have been filed by the deceased assessee himself and the status claimed was of the individual resident.

4. One of the legal heirs, Shri O.D. Suri along with his counsel Shri M.L. Chopra, appeared before the AAC in appeals against the assessments and the years involved in those appeals, as already stated, are 1957-58 to

1971-72.

5. The AAC set aside the assessments for all the assessment years involved in appeal before him with the direction to the WTO to make assessments de novo after giving proper opportunity to the appellant of being heard and also considering the facts and details furnished by the appellant.

1. The notice under Section 16(2) dated 23-2-1979 was served on Dr.

S.D. Suri on 1-3-1979 for 5-3-1979. The time allowed for compliance was thus very short, and therefore, the assessments made are vitiated and my attention was drawn to the following cases : Mohini Debi Malpani v. ITO [1970] 77 ITR 674 (Cal.) and Munna Lal Murli Dhar [1971] 79 ITR 540 (All.).

2. During the months of February-March and April 1979 Dr. S.D. Suri was confined to bed and was keeping indifferent health. The notices under Section 16(2) were issued in the names of the following persons : Lt. Col. Dr. S.D. Suri, Shri A.D. Suri, Lt. Col. O.D. Suri and Shri B.D. Suri (all legal heirs of Late Dr. N.D. Suri). It has been stated that Shri V.D. Suri died in November 1974.

3. The notice under Section 16(2) should have been served on all the legal heirs of Late Dr. N.D. Suri instead of being served only on Dr. S.D. Suri.

4. The ITO was not justified in passing orders under Section 16(5) as all the relevant details had been furnished to the WTO earlier vide Dr. S.D. Suri's letter dated 13-11-1970 which is on record.

5. The assessments have been made at a very high figure and the value of the two immovable properties : 6, Ratendon Road, New Delhi, and 38, Station View, Chakkary, Simla, have been arbitrarily estimated at very high figures, ignoring the valuation certificate filed in the case of Simla property and the rental details furnished in the case of Delhi property. The same value has been adopted for all the 15 years.

These grounds find mentioned in para 7 of the impugned order of the AAC.7. We have heard the learned counsel for the assessee as also the learned departmental representative at length. We have also perused very carefully the assessment orders for the assessment years 1957-58 and 1958-59 as also the impugned order of the AAC, which is a common consolidated one in respect of the assessment years 1957-58 to 1971-72.

We have also given our due and careful consideration to the paper book placed on our file in two parts, for and on behalf of the assessee.

8. It is an admitted fact and a common ground that one of the legal heirs of the deceased, i.e., son of the deceased, Shri S.D. Suri, has been taking part in the assessment proceedings at various stages before the WTO. The deceased had left four legal heirs (sons) and a widow of predeceased son and, as has been claimed by the assessee, the said widow remarried in 1956. The deceased Dr. N.D. Suri died on 14-1-1972 and he died testate and the Will of the deceased Dr. N.D. Suri is stated to have been challenged by the sons of Shri V.D. Suri (another deceased son) who died in November 1974 and the proceedings are pending in the Delhi High Court.

9. It is also an admitted fact that the copy of the Will was never produced before the WTO although vide letter dated 30-11-1978 Shri S.D.Suri, the son and one of the legal heirs of the deceased, has informed the WTO about the factum of the deceased having executed a Will and having appointed an executor.

10. From the paper book since placed on our file (supplementary paper book), Shri S.D. Suri, the son and one of the legal heirs of the deceased, has informed the ITO vide letter dated 5-3-1979 that "since the executor of Will of my father late Shri N.D. Suri, is my brother Shri A.D. Suri, who is with the UNO in Mexico, it is requested that the notices may kindly be served on him, so that his reply to the notices is given. We believe that it will be more proper if the executor of the Will gives reply to your queries". The copy of the estate duty assessment order, placed on our file at pages 9 and 10 in the supplementary paper book filed by the assessee, speak of

the fact that the accountable person was Shri A.D. Suri. Page 8 of the same paper book also speaks of the fact that the recovery proceedings in respect of estate duty payable on the estate of the deceased was served on Shri A.D. Suri and the address in the said notice reads as, "11 Mill Side Road, Jamshedpur". As per page 8 of the assessee's book filed as paper book No. 1, vide letter dated 30-11-1978, Shri S.D. Suri, the son and one of the legal heirs of the deceased, had informed the WTO about the deceased having made a Will and having appointed an executor of the Will. The fact that Shri A.D. Suri, the fourth son and one of the legal heirs of the deceased, has been appointed as an executor of the Will of the deceased, which Will is made on 19-12-1969, stands corroborated from the copy of the Will placed on our file which forms pages 23 to 25 of the assessee's paper book No. 1.

11. With all the above facts as a background, the question for our decision is as to whether the AAC was justified in setting aside the assessments and directing the WTO to make the assessments de novo or not. The case of these assessees before us is that the assessment should have been annulled whereas the contention of the revenue is that there is a procedural irregularity and not an illegality, hence, the assessments have justifiably on facts and in law been set aside with proper directions for making the assessments de novo.

12. We having heard the learned authorised representative of the parties at length as also having benefit of going through the case law since relied upon before us by the parties, viz., First Addl. ITO v.Suseela Sadanandan [1965] 57 ITR 168 (SC), Jai Prakash Singh v. CIT [1978] 111 ITR 507 (Gauhati), I. M. Thapar v. CIT [1979] 116 ITR 797 (Cal.), CIT v. Anand Prasad [1981] 128 ITR 388 (Delhi), CIT v.Sumantbhai C. Munshaw (Decd.) [1981] 128 ITR 142 (Guj.), CIT v. Roshan Lal and H.H. Malwrani Vijaykunverba Saheba v. CIT, are of the opinion that the facts of the cases in issue in the present two appeals before us are distinguishable with the facts of the case as were in the cases mentioned as above and at least no authority helps the revenue. Since in those cases, the point at issue was as to whether all the legal heirs of a deceased should be served or else some of the legal heirs or one of the legal heirs could represent the estate of the deceased and so on, and so forth, whereas in the present case the pertinent question is that in the face of the deceased having died testate, i.e., having made a Will and having appointed as executor for administration of the deceased's estate, whether there could be assessments on the legal heir and if the assessment's have been made on the legal heirs, whether these are assessments bad in law and merit to be annulled or else it is pure and simple a procedural irregularity, a supervening one, and the AAC has rightly set aside the assessments and directed de novo assessments.

13. The charging section in the Wealth-tax Act, 1957, viz., Section 3 of the Act, reads as under : Subject to the other provisions contained in this Act, there should be charged for every (assessment year) commencing on and from the 1st day of April, 1957 a tax (hereinafter referred to as wealth-tax), in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule.

14. A bare reading of the above section makes it clear that the charge of the Wealth-tax Act has to be on the net wealth and it has to be subject to the other provisions contained in the Act.

15. Chapter V of the Act deals with the topic "Liability to Assessment in Special Cases". Section 19A of the Act in the said Chapter deals with the liability to assessment in the case of executor and it was brought in the statute book, as an amendment by insertion, by the Wealth-tax (Amendment) Act, 1964, with effect from 1-4-1965. The said Section 19A reads as under : 19A. Assessment in the case of executors.-(I) Subject as hereinafter provided, the net wealth of the estate of a deceased person shall be chargeable to tax in the hands of the executor or executors.

(2) The executor or executors shall for the purposes of this Act be treated as an individual.

(3) The status of the executor or executors shall for the purposes of this Act as regards residence and citizenship be the same as that of the deceased on the valuation date immediately preceding his death.

(4) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own net wealth or on the net wealth of the deceased under Section 19.

(5) Separate assessments shall be made under this section in respect of the net wealth as on each valuation date as is included in the period from the date of the death of the deceased to the date of complete distribution to the beneficiaries of the estate according to their several interests.

(6) In computing the net wealth on any valuation date under this section, any assets of the estate distributed to, or applied to the benefit of, any specific legatee of the estate prior to that valuation date shall be excluded, but the assets so excluded shall, to the extent such assets are held by the legatee on any valuation date, be included in the net wealth of such specific legatee on that valuation date.

Explanation : In this section, 'executor' includes an administrator or other person administering the estate of a deceased person.

16. Admittedly, the returns in the case of the deceased assessee were filed after Section 19A was brought in the statute book and is applicable.

17. Since the deceased died testate and according to his Will specific person was appointed as an executor for administering the estate of the deceased, the assessments could be framed in accordance with law, viz., Section 19A as it stood at the relevant time and as it is reproduced above.

18. Admittedly, the assessment have not been framed on the executor insofar as wealth-tax assessments are concerned while the estate duty assessment has been framed on the executor and the date of the estate duty assessment order is 7-12-1976 as against the date of 9-3-1979 when the wealth-tax assessment has been framed.

19. The assessments have not been framed in accordance with law within the meaning of Section 3 read with Section 19A and admittedly so the assessments are erroneous, one being not in accordance with law and according to the observations of their Lordships of the Supreme Court in the case of CIT v. Central India Industries Ltd. [1971] 82 ITR 555 at page 560, "no one gets a vested right in an erroneous order".

20. That being so the assessments under appeal having not been made in accordance with law, it is not an irregularity much less a supervening one but is an illegality which vitiates the assessments ; hence, merit to be annulled. We hold so with the result that the assessments for the assessment years under appeal stand annulled and the impugned order of the AAC stands ratified to that extent.

21. So far so good, there have been 15 assessments and the impugned order of the AAC is also common consolidated one in respect of all the 15 assessments but the assessee has come up in appeal only for two years. It is a well known maxim of law that insofar as taxing statutes are concerned, there is no estoppel.

22. The fact that one of the legal heirs has been taking part in the proceedings before the WTO will also not come in the way of the assessees, since their Lordships of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. v. State of Vttar Pradesh[1979] 118 ITR 326 at page 339 observed as under : ... 'There is no presumption in this country that every person knows the law : it would be contrary to common sense and reason if it were so'. Scrutton L.J. also once said : 'It is impossible to know all the statutory law, and not very possible to know all the common law'. But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in Evans v. Bartlam [1937] AC 437 :'. . , the fact is that there is not and never has been a presumption that every one knows the law.' There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application'. It is, therefore, not possible to presume, in the absence of any material placed before the Court, that the appellant had full knowledge of its rights to exemption so as to warrant an inference that the appellant waived such right by addressing the letter dated 25th June, 1970. We, accordingly, reject the plea of waiver raised on behalf of the State Government.(p. 339)
23. In view of the above facts, there being no waiver and there being no estoppel in law vis-a-vis taxing

statute and the assessments having not been made in accordance with law, the assessment, as already stated, stands annulled. Since the tax has to be imposed and recovered in accordance with due process of law and in the circumstances of the assessee's cases in appeal before us, the legal heirs much less one of them, could not be subjected to wealth-tax in the face of there being an executor of the deceased to administer the estate.

24. In the case of D.R. Dhanwatey v. CIT [1956] 29 ITR 257 (Nag.), it has been held that the knowledge on the part of one ITO is knowledge of the entire department and under the circumstances and on the facts of the assessee's case, the estate duty assessment was framed on the executor of the Will of the deceased in the year 1976 while wealth-tax assessments have been framed on the legal heirs in the year 1979 and the assessing officer under all allied taxes remain the same, i.e., the ITO, simply under different enactmets they are titled as under that enactment, viz., under the Wealth-tax Act, the ITO is known as WTO and under the Estate Duty Act, the ITO is known as Assistant Controller.

The assessing officers, i.e., the basic functionaries, remain the same.

If the estate duty assessment could be framed on the executor of the Will of the deceased, the assessments under the Wealth-tax Act could also be framed likewise and this has not been done ; hence assessments are not in accordance with law and the department cannot turn back and contend that non-filing of copy of Will is an excuse for framing the assessments on legal heirs although, as stated earlier vide assessee's letter as per page 8 of the assessee's paper book placed on our file, it was brought to the notice of the WTO that the deceased has made a Will and has appointed an executor.

25. Finally, in the case of Ashutosh Banik v. CIT [1981] 132 ITR 544, the Gauhati High Court has held that the assumption of jurisdiction by an assessing officer is not a procedural matter, since assumption of the jurisdiction goes to the root of the matter ; hence, on the facts of the assessee's cases, the WTO could not have assumed jurisdiction over the son-one of the legal heirs* of the deceased for assessment purposes-in respect of the estate/net wealth of the deceased assessee in the face of there being a Will and an executor of the Will.

26 The net result is, that the assessments stand annulled, the impugned order of the lower authorities stand modified accordingly and the other grounds taken by the assessee become of mere academic interest, rather infructuous, and are not being dealt with.