Shyamsundar Naskar Vs. Assistant Controller of Estate

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Feb-08-1985

Reported in : (1985)13ITD388(Kol.)

Judge : E Singh, D Sharma

Appellant : Shyamsundar Naskar

Respondent : Assistant Controller of Estate

Judgement :

1. The stay petition was filed by Shri Gourchandra Naskar stating that Shri Shyamsundar Naskar, son of the deceased, was alleged to have filed an estate duty return, on the basis of which the assessment was completed by the Assistant Controller and that the other accountable persons had no knowledge of such return and the said Shri Shyamsundar Naskar also denied to have filed such return. It is stated in the stay petition that in the appeal before the Appellate Controller, an affidavit was filed showing that the other sons of the deceased were denied opportunity to state their point of view. It is, therefore, prayed that the valuation was made in respect of the assets at a very huge figure when the deceased did not leave the property even for meeting their estate duty. It is prayed, therefore, that the said petition may be allowed till the disposal of the appeal.

2. We have heard both the sides. In the course of hearing, it is pointed out that in the estate duty appeal filed by Shri Shyamsundar Naskar, the other accountable

persons did not receive a notice of hearing as alleged by the Assistant Controller, nor have they any knowledge of the return submitted by Shri Shyamsundar Naskar, one of the accountable persons, who is stated to be not in sound mind. It is also the appeal by the accountable person that the valuation of the properties was made at abnormally high rate. It is pointed out by the learned Counsel for the accountable person that he is ready to take up the estate duty appeal also at the present stage. There is no objection also from the side of the revenue for hearing of the estate duty appeal presently.

3. In view of the aforesaid position, we take into account the contentions made in the stay petition, Since the estate duty appeal is being taken up simultaneously, we find that the stay petition of the appellant till the disposal of appeal would become irrelevant.

Accordingly, the stay petition filed by the accountable person is dismissed, as the estate duty appeal in question is being taken up for disposal by us now.

4. As indicated above, the accountable person filed the appeal against the order of the Appellate Controller, who sustained the order of assessment made by the Assistant Controller. In the assessment order under Section 58(3) of the Estate Duty Act, 1953 ('the Act'), it is seen that the deceased, late Atul Krishna Naskar, died on 23-12-1970.

The name and address of the accountable person is given as Shri Shyamsundar Naskar and others of the village Tetulberia. It was mentioned that the return was filed on 13-11-1971, which is pointed out by the learned departmental representative to be not correct as the actual date was 12-11-1971. The value of the estate was shown at Rs. 6,97,072. It was stated in the order that the notice under Section 58(2) was issued and Shri Shyamsundar Naskar, one of the accountable persons appeared and filed some papers, but no further details were furnished. The Assistant Controller pointed out that other accountable persons did not comply with the notice issued to them and as there were little compliance by the accountable persons. The assessment was mainly based on the valuation of land, etc., provided by the accountable person in the return itself. He proceeded to complete the assessment and the duty payable raised was Rs. 1,56,805 net.

5. The appeal went up to the Appellate Controller, who disposed of the appeal by his order dated 3-1-1984 from which it is seen that the name of the appellant was given as late Atul Krishna Naskar. The accountable person was shown as Shri Shyamsundar Naskar. The Appellate Controller noted that the appeal preferred before him was not against the points arising out of the order of the Assistant Controller, but on the ground that the valuation as had been returned in the estate duty filed by Shri Shyamsundar Naskar and that he was not of sound mind. He pointed out that no evidence was shown that Shri Shyamsundar Naskar was not of sound mind. The Appellate Controller also found that all the papers and returns have been signed by the aforesaid Shri Naskar at all stages and on appeal also. He also found that Shri N.C. Banerjee was authorised to appear before the Appellate Controller by Shri Shyamsundar Naskar. He, therefore, concluded that in view of these facts, he found no reasons to treat Shri Shyamsundar Naskar as of unsound mind. He, therefore, dismissed the appeal. Hence, this appeal before us.

6. In the grounds of appeal, it is agitated that the Appellate Controller was not justified in dismissing the appeal despite the fact that the other accountable persons, who are six in number, did not receive any notice of hearing as alleged by the Assistant Controller, nor they had any knowledge of the return submitted by Shri Shyamsundar Naskar. It is also the appeal by the accountable persons that Shri Shyamsundar Naskar, who filed the estate duty return, was not in sound mind. That apart, it is also urged that the valuation of the properties was arbitrarily and abnormally high and that the Appellate Controller failed to consider these facts which have been brought to his notice at the appellate stage. It is the appeal also (sic) that the Assistant Controller failed to ascertain the correct and actual state of affairs and the correct or real value of the properties or to apply the judicious mind in making the assessment. It is submitted by the learned Counsel that Shri Shyamsundar Naskar was of unsound mind and that fact was brought to the notice of the Appellate Controller, who did not consider the materials of the case before coming to the above conclusion, on the basis of which the appeal was dismissed. It is seen that in the paper filed in connection with the stay petition mentioned above, a certificate dated 2-9-1975 from Anchal Pradhan appearing at paper book, has not been apparently placed before the authorities below. This certificate noted that Shri Shyamsundar Naskar, after the death of his father, developed some sort

of mental disorder for which he was hospitalised some time in 1974. Any way, Shri Gourchandra Naskar, Radheshyam Naskar, the accountable persons have filed an affidavit stating that they were the sons of late Atul Krishna Naskar and that after his death, certain litigation started amongst the heirs and that the affidavit was filed before the Appellate Controller declaring that they did not receive any notice of hearing and that the valuation was abnormally high. It is urged by the learned Counsel that there are four sons and three daughters of the late Atul Krishna Naskar, who are also accountable persons in addition to Shri Shyamsundar Naskar. It is pointed out that the estate duty demand was made against Shri Shyamsundar Naskar and since the same has not been paid, recovery proceedings have been initiated against him. It is vehemently urged that the valuation adopted though on the basis of return was abnormally high as Shri Shyamsundar Naskar signed the blank estate duty return but was not aware that other persons have filled up the details of the properties giving high valuation only to harass the accountable persons. It is urged that it is incumbent on the part of the assessing authorities to ascertain the actual affairs and not to act blindly without referring to the reality of the situation. It is pointed out that the assessment was done under Section 58(3). In brief, it is urged that the appeal by the accountable person may be allowed.

7. The learned departmental representative resists the various submissions made on behalf of the accountable person. It is stated that there is no question of the matter being sent back to the assessing officer as opportunity was given to all the accountable persons and notice was also issued to them, but since they failed to comply with the terms of the notice, the Assistant Controller has to proceed and complete the assessment, accordingly. It is also stated that even there are letters to show that the Assistant Controller wrote to them for furnishing the details. But since no co-operation came forward from them, the assessment had to be completed on the basis of the return itself. It is urged that the claim that Shri Shyamsundar Naskar was of unsound mind was not made at the assessment stage and in fact, this point is a new issue. It is also pointed out that the assessment was made on the basis of the return itself and there was no justification to say that the Appellate Controller erred in sustaining the assessment order. In this connection, it is urged that the fact that persons have not been

treated as accountable persons would not by itself vitiate the assessment proceedings in view of the decision of the Hon'ble Supreme Court in the case of Madan Lal Lohia v. Assistant Controller [1977] 108 ITR 627. The learned departmental representative read out some of the text of the judgment in order to emphasise his claim. On the whole, it is urged that on the facts of the case, the assessment was properly and validly done and the valuation was reasonable and proper and order of the Appellate Controller may, therefore, be sustained.

8. We have perused the orders of the authorities below along with the other papers placed before us for our consideration. We have heard both the sides at length. It is seen that the Assistant Controller has stated in the assessment order that notice was issued by him to other accountable persons. But who were these accountable persons, nothing was brought on record and in fact, the name and address of the accountable person was given in the order as Shri Shyamsundar Naskar and others. He noted that the other accountable persons except Shri Shyamsundar Naskar did not comply with the notice issued to them. But the other accountable persons, namely, Shri Gourchandra Naskar and Shri Radheshyam Naskar filed an affidavit before the Appellate Controller declaring that these two persons did not receive any notice of hearing.

Apart from the fact, no discussion was made in the assessment order as to who were the accountable persons in addition to Shri Shyamsundar Naskar. There is no indication as to who were the accountable persons, who did not comply with the notice and whether such notice was served on them, particularly in view of the assertion in the affidavit stated above, two accountable persons have declared that no notice of hearing was given to them. We understand that the deceased died intestate. In the circumstances, it is necessary to ascertain who are the legal heirs of late Atul Krishna Naskar in view of the provisions of Section 53(1).

In our opinion, each of the persons mentioned in clauses (a), (b) and (c) of Section 53(1) and not merely those in respect of whom assessment was made, would be accountable for the estate duty on the entire property passing on the death of the deceased and is accountability qua with the revenue would not be limited only to the estate duty on the particular passing to him. For this, we may refer to the decision in the case of Madan Lal Lohia (supra) as referred to by the learned departmental representative. Although, the facts of the above decided case were different, yet there are observations and directions of the Hon'ble Supreme Court which would have a bearing on the present issue.

In the case of Madan Lal Lohia (supra), there were two questions as to whether the notice issued by the Assistant Controller for the payment of estate duty to that appellant was a valid notice in respect of the payment of amount of rent relating to the leased premises and whether that notice was a valid notice and would obligate the appellant to pay the amount of rent to the Assistant Controller, whether any penalty could be levied on the appellant for contravention of the terms of the notice. In other words, in that decided case, the assessment had been completed earlier and for the purpose of recovery of the estate duty, the Assistant Controller issued attachment notice to the lessee of the property from whom the rent was receivable by the lessees who were the legal heirs of the deceased, although a son and a daughter of that deceased in their capacity of the executor of the will of the deceased, filed the estate duty account of the property passing on the death of the deceased.

9. In the present case, however, it is seen that more basic facts are required to be brought on record as indicated briefly above. In fact, the Appellate Controller has not dealt with various issues made by the accountable person before disposing the appeal. In our opinion, it is necessary that other accountable persons should be given reasonable opportunity of being heard before completion of any proceeding either by the Assistant Controller or by the Appellate Controller. True, the Assistant Controller noted that there was no compliance from the other accountable persons. But he was not indicated who were those accountable persons. We are of the opinion, that those persons should have been made party of the proceedings after making proper enquiries on the point. This is particularly necessary in view of the observation of the Hon'ble Supreme Court in the case of Madan Lal Lohia (supra), which appears at page 642. Inter alia, it was observed by the Hon'ble Supreme Court that it would be harsh if the revenue were to proceed only against one accountable person for recovery of the whole of the estate duty, leaving out others to whom some property may have passed, because

that would drive the accountable person who was required to pay the duty in respect of the property not passing to him, to attach proceedings against the owner of that property and it would foster unnecessary litigation. It was observed by the Hon'ble Supreme Court that there is a practice for the Estate Duty Officer to apportion the estate duty amongst the different accountable persons in accordance with their respective interests in the property and seeks to recover from such persons only that part of the estate duty which is payable in respect of the property passing to him and that the Hon'ble Court expressed its trust and hope that the Estate Duty Officer continues to follow that practice even under the law as interpreted in that paragraph of the decision cited earlier. If this observation and expectation of the Hon'ble Supreme Court should be made effective and operative, it is all the more desirable to bring on record all the legal heirs and other accountable persons on record as otherwise, it would be difficult for the Estate Duty Officer to apportion the estate duty payable by the different accountable persons, legal heirs, etc. On the facts available before us, it is seen that there are other accountable persons, apart from Shri Shyamsundar Naskar. Of course, it is pointed out by the learned departmental representative that there are other accountable persons also who signed their estate duty returns jointly. There is no indication in the assessment order whether two accountable persons who have signed the return did or did not comply with the terms of the notice. The Appellate Controller on the other hand, in his short order as briefly discussed earlier, dismissed the appeal by the accountable persons. The facts available before us and as borne out by the orders of the authorities below are so inadequate that it is difficult for us to decide the case either way. That apart, it may be mentioned here that in the case of Madan Lal Lohia (supra), the assessment order was not challenged by that assessee nor was declared invalid by the competent authority and, therefore, in the circumstances of that case, the order of the assessment was taken to be valid for the purpose of the matter pending before the Hon'ble Supreme Court. But the facts before us in the present case are different as the assessment order itself is being challenged on more than one ground. It is true that when the order of the assessment is made, not only the accountable person in respect of whom the proceedings for the assessment has been taken but also every other accountable persons would be liable to pay the duty, limited of course to the assets of the deceased which passed to that accountable person. But in the instant case, there is no such basic or relevant facts on record to ascertain who were the accountable persons and what property passed and to whom passed. It is necessary also to take into account the definition of the word 'legal representative' as defined in Section 2(12) of the Act, which includes also any person who takes possession of or intermeddles with, the estate of deceased person or any part thereof, for all these reasons and in the circumstances of the case, we find that the order of the Appellate Controller made before us cannot be sustained. In fact, as indicated earlier, basic and elementary and correct facts are to be brought on record, which we do not find even in the order of the assessment made by the Assistant Controller. 10. It may be mentioned here also that the accountable persons, the learned Counsel submits that inspite of the value of the properties shown at higher figure in the estate duty return, it is incumbent on the part of the assessing officer to ascertain the correct state of affairs and to make the assessment, accordingly, even if such correct value may be below the returned value. There is force in the submissions. In a return whether for the wealth-tax or the estate duty etc., many points were furnished including valuation. But inspite of the verification given by the assessees concerned, the assessing authority has the obligation to ascertain the correct state of affairs and has the power to enhance or to make suitable additions in appropriate cases. This would show that the return itself could not be the only basis for making the assessment. In fact, it has been held by the Hon'ble Supreme Court that it is not what has been shown by the asses-see in the return or in the statement that would be conclusive as it is incumbent on the part of the assessing authority to consider the reality and factual aspect of the matter before coming to any conclusion. For this, we may refer to the decision in the case of Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363 (SC) and Sutlej Cotton Mills Ltd. v. CIT [1979] 116 ITR 1 (SC). In the instant case, of the estate duty it has to be ascertained what was the market value of the property at the time of death of the deceased as per Section 36(1) of the Act.

11. In the premises, we deem it fit to set aside the orders of the authorities below and to direct the Assistant Controller to dispose of the assessment afresh in accordance with law and after giving the concerned accountable persons and legal

representatives an opportunity of being heard and after taking into account the observations noted by us above. The assessment order, therefore, is set aside for fresh disposal as indicated above.

12. In the result, the stay petition of the accountable person is dismissed and the appeal by the accountable person is treated as allowed for statistical purposes.