Smt. Comilla Mohan Vs. Assistant Controller of Estate

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Court : Income Tax Appellate Tribunal ITAT Allahabad

Decided On : Jul-15-1985

Reported in : (1986)15ITD10(All.)

Judge : P Narain, R Swarup

Appellant : Smt. Comilla Mohan

Respondent : Assistant Controller of Estate

Judgement :

1. The matter relates to the estate duty of the deceased Col. V.R.Mohan, who had died on 28-1-1973. The original assessment in this case was made on 20-4-1974 on the estate valuing Rs. 31,87,565.

Subsequently, the assessment made by the Assistant Controller was examined by the internal audit party of the department. The audit party prepared a note on 15-9-1975. This note was converted into a regular report only on 24-10-1975. The audit pointed out, among others, that wrong exemption of Rs. 1 lakh had been claimed and allowed in the original assessment in regard to a property situated at 23, Gokhale Marg, Lucknow under Section 33(1)(n) of the Estate Duty Act, 1953 ('the Act') that deduction to the extent of Rs. 3,75,000 had been wrongly allowed in computing the deceased's share in the property belonging to the HUF of N.N. Mohan & Sons (bigger HUF) and further that the value of the shares owned by the deceased had not been correctly shown or valued in the original assessment. On the basis of the audit note itself, the Assistant Controller initiated proceedings

under Section 59(b) of the Act. He issued a notice to the accountable person stating that he had reason to believe that property chargeable to estate duty had escaped assessment or had been underassessed. By this notice, he also called upon the accountable person to deliver an account of all property in respect of which estate duty was payable. This notice was issued on 16-9-1975. Vide letter dated 6-12-1975, the accountable person replied to the Assistant Controller that he had not indicated in his notice under which provision of Section 59, he had commenced the proceedings.

The accountable person, however, filed a return. The date of the filing of the return is not clear and that it is also not necessary for our purpose. The Assistant Controller however, informed the accountable person on 14-5-1981 that deduction of Rs. 3,75,000 had been wrongly allowed in computing the value of the assets of the HUF of N.N. Mohan & Sons in regard to marriage, maintenance and education of the girls, that the residential house valued at Rs. 1,37,500 should have been included in full in the assessment and further the shares of some of the companies had also not been properly valued. After hearing the accountable person, the Assistant Controller made the reassessment on 21-5-1981. In this assessment, he enhanced the deceased's share in the assets of N.N. Mohan & Sons (bigger HUF) by Rs. 23,437. Simultaneously he also increased the value of the assets of the lineal descendant for rate purposes by an amount of Rs. 46,874. He also withdrew the exemption of Rs. 1 lakh earlier allowed in the assessment with regard to property at 23, Gokhale Marg, Lucknow. He also enhanced the value of the shares owned by the deceased by Rs. 24,127.

2. The accountable person appealed to the Appellate Controller. There were two submissions before the latter. The first was that the proceedings initiated under Section 59 were invalid and void and, therefore, no legal assessment could be made on the basis of the notice issued under that section to the accountable person. It was next submitted that if the argument regarding the validity of the assessment was not found to be acceptable, then even on merits the assessment made was not correct. The Appellate Controller rejected the first contention. According to him, the audit had merely communicated certain information to the Assistant Controller without expressing any opinion on any question of law and

such information falls within the scope of Section 59(6). In this connection, the Appellate Controller relied on the decision of the Supreme Court in Indian & Eastern Newspaper Society v. CIT [1979] 119 ITR 996 (SC).

3. The Controller (Appeals) then dealt with the various additions separately. He pointed out that the valuer while valuing the property during the course of reassessment proceedings had clearly stated that only a small tenement was reported to have been taken up for construction in the year 1972 and that too was in the middle of construction on the date of the death of the deceased on 28-1-1973.

According to him, therefore, such an incomplete tenement could not be said to have been exclusively used by the deceased for his residence so as to earn exemption under Section 33(1)(n). He also observed that with regard to this property, the accountable person had not correctly disclosed all the material facts fully and truly and, therefore, even the provisions of Section 59(a) were clearly applicable. On this basis alone, he held that the original assessment had been legally, correctly and validly reopened. He finally held that the withdrawal of exemption to the extent of Rs. 1 lakh originally granted to the accountable person was incorrect and required to be corrected.

4. He also agreed with the Assistant Controller that no deduction could be allowed for any provision either for the marriage of the female members or for their maintenance from the value of the estate belonging to the HUF of N.N. Mohan & Sons. In this connection, he relied on the decision of Karnataka High Court in CED v. N. Ramachandra Bhat [1980] 123 ITR 841. He also maintained an addition of only Rs. 4,687 in the value of certain shares. Their value was declared at nil and was also so adopted in the original assessment. However, on the basis of the wealth-tax assessment, the value was taken at Rs. 4,687.

5. The accountable person is now in appeal before us. The first submission of the learned counsel for the accountable person before us also was that the reopening of the assessment was illegal and invalid.

He contended that there was no material with the Assistant Controller to form a belief that there was any escapement from assessment of any property chargeable to estate duty or by reason of undervaluation of any property included in the account. He further submitted that although it was not necessary for the Assistant Controller to record his reasons for forming any such belief under Section 59 but at the same time, it was necessary that from records there must be an indication for such reasons leading to the formation of his belief about the escapement or undervaluation of property in the assessment.

According to him, the notice itself issued under Section 59 must record such reasons. Tracing out the history of the case, he pointed out that no such reason was shown in the notice issued by the Assistant Controller on 16-9-1975. He also submitted that the accountable person had pointed out this lacuna to the Assistant Controller on 6-12-1975 and that she was apprised of the reasons only as late as on 14-5-1981.

He made a grievance of the fact that nothing was done between 1975 and 1981. In this connection, he referred to the decision of the Delhi High Court in New Bank of India Ltd. v. ITO [1982] 136 ITR 679.

6. The learned counsel for the accountable person made another serious allegation. His contention was that since the audit report itself was prepared on 24-10-1975, the ITO could not have any reason to believe that there was any escapement of any property from assessment on 16-9-1975 on which date he had issued the notice to the accountable person.

7. On behalf of the department, reliance was placed on the order of the Commissioner (Appeals). Besides, it was also pointed out that the deceased was occupying another house in Lucknow which was provided to him by his employer and that in his income-tax return perquisite value of such house was also included. According to the learned departmental representative, therefore, this went to show that he was not residing at 23, Gokhale Marg, Lucknow. He also submitted that incompleteness of the house itself went to show that it was incapable of being used as residence. He also pointed out that the land on which the house was being constructed was agricultural land for which exemption was claimed by the

deceased in his return of wealth-tax for the assessment year 1972-73.

8. Before we proceed further, we will like to dispose of the above contention of the learned counsel for the accountable person. We have already stated above that even, according to him, it was not necessary for the Assistant Controller to record his reasons for initiating the proceedings under Section 59. That being the position, it cannot be said that there was any lacuna in the notice dated 16-9-1975 referred to above. We have also looked into the audit report. It was prepared on 15-9-1975. The circumstances go to show that it was this report which came into the possession of the Assistant Controller. He, therefore, initiated proceedings under Section 59 on 16-9-1975 itself. Merely because it was converted into a formal report on 24-10-1975 is no ground to hold that it could not be made the basis of initiating the assessment proceedings against the accountable person.

9. It was conceded before us by the learned departmental representative that the action had been taken under Section 59(6). We, therefore, have to examine this section and see whether the action taken by the Assistant Controller was in accordance with law. Section 59(b) states that if the Controller has, in consequence of any information in his possession, reason to believe that any property chargeable to estate duty has escaped assessment, whether by reason of undervaluation of the property included in the account or of omission to include therein any property which ought to have been included, he may, at any time, require the person accountable to submit an account as required under Section 53 of the Act and may proceed to assess or reassess such property as if the provisions of Section 58 applied thereto. Certainly, the Assistant Controller had in his possession the report of the audit, which gave him information that the accountable person had wrongly made the claim of exemption of Rs. 1 lakh under Section 33(1)(n) which required to be withdrawn. While doing so, the audit did not express its opinion about the interpretation of any law. It only communicated to the Assistant Controller that the house at Gokhale Marg, Lucknow was not in a condition which could be exclusively used by the deceased for his residence. Reliance by the Appellate Controller on the decision of the Supreme Court in Indian & Eastern Newspaper Society's case (supra) in our opinion, is quite apt. He has rightly pointed out that the principle laid down by the Supreme Court in the

above case was that although the law may be enacted or laid down only by a person or body with authority in that behalf, yet the knowledge or the awareness of the law may be communicated by anyone and that that part of the audit note, which mentioned the law, which had escaped the notice of the officer, constituted 'information' within the meaning of Section 147(6) of the Income-tax Act, 1961 corresponding to Section 59(6) of the Estate Duty Act. This point has now been clarified by the Kerala High Court in the case of G. Ameer v. CED [1984] 150 ITR 443. It was held in this case that where an assessment is sought to be reopened on the basis of information furnished by audit objection, if what was supplied by the audit party was merely information and the assessing authority treating it as such information proceeded to assess there would be no objection to such a course. Objection could be taken only if the audit party expressed a view on the materials and the assessing authority adopting that view decided to reopen the assessment. There is another case of Madras High Court in M.A. Murugappan v. CWT. In this case internal audit party had pointed out the omissions and commissions of the WTO. It was held that the audit report should be taken to constitute sufficient information within the meaning of Section 17(1)(b) of the Wealth-tax Act, 1957 corresponding to Section 59(b) of the Estate Duty Act. In the present case, the audit merely informed the Assistant Controller that the house at 23, Gokhale Marg, Lucknow was in the process of construction and only a small tenement costing about Rs. 12,000 had been constructed which was unfit for human residence and, therefore, it was wrong to say that the deceased exclusively used it for his residence. On the basis of this information, Section 33(1)(n) was not attracted and the exemption could not be allowed or if it had already been allowed it was clearly a mistake resulting in underassessment. Vide separate discussion, we have also upheld the view of the lower authorities that the above house was certainly not in a position to be exclusively used for the residence of the deceased. That being the position, the reopening of the assessment under Section 59(b) on this score alone is in order.

10. We now briefly deal with the withdrawal of exemption under Section 33(1)(n) itself. We have already stated above that exemption to the extent of Rs. 1 lakh can be allowed from the estate duty from the value of a house if it is established that it was exclusively used by the deceased for his residence. We have already stated

above that as per the report of the Valuation Officer, only a sum of Rs. 12,000 had been spent in constructing a tenement. The construction was taken up in 1972 itself and it was in the middle of construction that the owner died on 28-1-1973. The construction was incomplete on the date of the death. On these facts, the only conclusion that can be drawn is that it could not be exclusively used by the deceased for his residence. What to say of exclusive use, it could not, at all, be used for any residence. There is no evidence on record to suggest, as was contended before us, that the deceased was using it for his residence either p artly or even for a short time.

11. We do not think that the decision of Delhi High Court in S. Hamam Singh Suri v. CBDT [1984] 145 ITR 159 is of no help to the accountable person. The cited case related to a residential house. The ITO merely held that the house in question lacked amenities and could not have been occupied. The Court held that there was no proof that the assessee had not lived in the house prior to its sale and that lack of amenities in the house would not constitute proof that the assessee had not lived there. The assessee had admitted that he had lived in the house for one and a half years. The Court also observed that even assuming that the assessee had made an incorrect statement that he lived in the house for two years, it only meant that he told a lie on a matter of no substance and which did not affect the assessment. The position before us is entirely different. We have already pointed out above that the house under consideration was in the process of construction, that only a sum of Rs. 12,000 had been spent on construction till the death of the deceased and only a small tenement or structure could be raised. There is vast difference between a property which is incomplete and a property which lacks amenities. While the former cannot physically be occupied, the latter can be occupied. Even apart from that considering the status of the deceased and the fact that he was already occupying another house provided by its employer, it would be futile to hold that he was occupying a small incomplete tenement also. We, therefore, hold as a fact that the house was not in the occupation of the deceased and obviously, therefore, the exemption of Rs. 1 lakh claimed and allowed was incorrect. The orders of the lower authorities withdrawing such exemption have, therefore, to be upheld and we do so.

12. We now deal with another and more important aspect of the matter.

The deceased was a member of the HUF of N.N. Mohan & Sons. In the original return while computing the value of the estate belonging to this HUF, the accountable person had claimed deduction of Rs. 3,75,000 on account of provision for the marriage, maintenance and education of female members of the family as no such deduction was permissible under Section 33(k) read with Section 39(3) of the Act. This view was adopted by the Assistant Controller. He excluded the sum of Rs. 3,75,000 from the value of the estate and accordingly enhanced the value of the deceased's share proportionately. The enhancement was upheld by the Appellate Controller.

13. This matter is also in appeal by the accountable person before us.

We have heard the parties. We are of the opinion that the withdrawal of the deduction of Rs. 3,75,000 is not proper. It is no doubt correct that the Karnataka High Court in the case of N. Ramachandra Bhat (supra) relied on by the Appellate Controller has taken a view in favour of the department. It was held in this case that if an HUF governed by the Madras School of Mitakshara law, the wife of the karta has no share in the family properties during his lifetime. Her right to maintenance is a personal right which can be enforced against the property of the family by the creation of a charge on it but it is not a proprietary right and the claim by itself does not amount to a charge until it is fixed by the Court or by an agreement between her and the holder of the estate. Where there is no plea of any such decree or agreement, no allowance can be made in lieu of the maintenance right for purposes of estate duty. However, a contrary view was taken by the Madras High Court in the case of CED v. Dr. B. Kamalamma (1984] 148 ITR 434. It was held in this case that a girl born in a Hindu family is entitled to look to the family property for defraying the expenses for her marriage and she could enforce the right against the family property. This right arises from her membership in the joint family and from her inherent right in the family property as an unmarried daughter. The liability of the family property in this regard is independent of the father's personal obligation to get the daughter married. The provision for the marriage of unmarried daughters in Hindu family being

enforceable against ancestral property, it has got to be deducted as a debt or encumbrance under Section 44 of the Act, wherever the dutiable estate includes ancestral property of the deceased.

Consequently, the liability of the ancestral or coparcenary property of a Hindu to pay for the marriage expenses of unmarried daughters in the family would be a proper debt deductible under the general provisions of Section 44, wherever the deceased died possessed of such property.

In our opinion, the present case is fully governed by the principle laid down in the above case. The Assistant Controller wrongly applied the provisions of Section 33(1)(k) to the case. The same view is expressed by Dr. Paras Diwan and B.K. Diwan in their book HUF a Tax Entity and Tax Planning Device, p. 289, 1983 edn. This is also the view expressed in paragraph No. 304 of Hindu Law by Mulla, 1982 (Fifteenth edn.). The said paragraph is quoted below: Property available for partition.--(1) In order to determine what property is available for partition, provision must first be made for joint family debts which are payable out of the joint family property, personal debts of the father not tainted with immorality, maintenance of dependent female members and of disqualified heirs, and for the marriage expenses of unmarried daughters. Where a partition takes place between the sons, provision must also be made for the funeral ceremonies of the widow and mother of the last male holder. After this is done, an account must be taken of the joint family property in the hands of the manager and other members of the family, according to the rule laid down in the next following section. (p. 426) 14. At best it could be said that there is divergence of views on the issue. In such a situation, the view favourable to the assessee must prevail. The Supreme Court in the case of CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 had held that if the Court finds that the language of a taxing provision is ambiguous or capable of more meanings than one, then the Court has to adopt that interpretation which favours the assessee. Respectfully following this principle, we hold that the deduction of Rs. 3,75,000 while computing the deceased's share in the property belonging to the HUF of N.N. Mohan & Sons cannot be withdrawn.

The proportionate additions to the extent of Rs. 23,437 and Rs. 46,874 are, therefore, deleted.

15. We now deal with the last addition relating to increase in the value of some of the shares. The addition, as sustained by the ACED, is only of Rs. 4,687. This addition relates to shares of H.P. General Finance (P.) Ltd. (150), Solon Food Products (P.) Ltd. (100), and Hindustan Miniature Lamps (125). The value of these shares was shown at nil in the estate duty return on the ground that the company had been suffering losses and had not declared any dividend. It is no doubt correct that in the wealth-tax assessment some value was attached to these shares even though none was declared by the deceased himself.

However, after examining the facts of this case, we are satisfied that the claim of the accountable person that they (the shares) did not have any marketable value cannot be seriously assailed. In any case, the addition is too petty to be dealt with in somewhat detail. We, therefore, as a fact, hold that the value of shares taken originally was correct and did not require any change.