

Mrs. Dolly J. Irani Vs. Seventh Asstt. Controller of

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Jul-18-1986

Reported in : (1986)19ITD121(Mum.)

Judge : V Dongzathang, R Sangani

Appellant : Mrs. Dolly J. Irani

Respondent : Seventh Asstt. Controller of

Judgement :

1. This appeal is by the accountable person. The name of the deceased is Shri Rustom B. Najmi. He died on 15-9-1971. The deceased and one Shri Jehangir Irani were together tenants of certain premises situate at 'Dady House' Veer Nariman Road, Bombay. Shri Jehangir Irani shall hereafter be referred to as 'co-tenant'. The rent payable to the owner of the premises was Rs. 809.80 per month at earlier stage. The assessee and his co-tenant sublet the said premises to Raymond Mills Ltd. with effect from 26-9-1969, for a period of ten years on rent of Rs. 5,000 per month. This rent has been described as compensation in the indenture executed on 4-11-1969 in connection with this transaction.

The subletting had been effected after obtaining prior permission of the owner of the premises. The permission was given by the owner on the condition that the deceased and the co-tenant agreed to pay Rs. 1,619.60 per month as rent in place of Rs. 809.60 which was payable earlier. This condition was accepted by the deceased and the co-tenant.

They had further obtained on 23-9-1969 from the Controller of Accommodation, Government of Maharashtra 'no-objection' to the creation of sub-tenancy which was created with effect from 26-9-1969 by indenture dated 4-11-1969.

2. The creation of the said sub-tenancy resulted in surplus of Rs. 3,381 (Rs. 5,000 minus Rs. 1,619.60) per month to the deceased and the co-tenant jointly with effect from 23-6-1969. This surplus would have been ordinarily obtained by the deceased and the co-tenant for 10 years from 23-6-1969. As already stated, deceased died on 15-9-1971. On that date the share of deceased in the said surplus of Rs. 3,381 was 50 per cent, that is to say, Rs. 1,690. The Assistant Controller held that capitalised value of surplus of Rs. 1,690 per month which was to continue till 23-6-1979 would be includible in the property passing on death of the deceased. The plea of accountable person was that the amount includible in respect of the said surplus was Rs. 20,332. This was included by the accountable person in the return.

3. The Assistant Controller found that said figure was on the lower side when the length of period (eight years) up to which surplus was available and the factum of certainty about receiving of said amount in view of consent of owner and no-objection certificate by the Controller of Accommodation for sub-lease are taken into account. He further found that the co-tenant had died nearly one year after the deceased died and as such, as far as co-tenant was concerned, the length of period (seven years) for which the surplus was to last, was less by one year ; even then the said right which was treated as property passing on death was valued at Rs. 1,02,000 in the estate duty assessment of said co-tenant.

According to him the said valuation was within the knowledge of the accountable person and that on these facts proper valuation would be 8/7 of Rs. 1,02,000, i.e., Rs. 1,16,570. He, accordingly, included Rs. 1,16,570 instead of Rs. 20,322 returned by the accountable person. The Controller (Appeals) found no infirmity in the valuation made by the Assistant Controller and the accountable person is in appeal before us.

The first ground in the memo of appeal is directed against this valuation.

4. Before us an altogether new point has been raised. That point is that on the above facts the deceased could not be said to hold any asset and as such, nothing was includible. It is submitted that the deceased was merely a monthly tenant of landlord and not a permanent lessee and as such, said tenancy right would not constitute any 'property' although sub-tenancy which flowed from said tenancy right yielded handsome income to the deceased. We are unable to accept this submission. The word 'property' is a term of the widest import and subject to any limitation which the context may require, it signifies every possible interest which a person can acquire, hold or enjoy. The deceased (along with co-tenant) was tenant of the premises. The deceased enjoyed protection against eviction under Rent Control Act, applicable to him. This tenancy was heritable. The landlord had given consent to sub-tenancy and hence a heritable right to earn profits out of said tenancy had come into existence. On these facts, there is no escape from conclusion that there was property passing on death.

5. The learned representative of the assessee has not brought to our notice any reported decision in which it was held that the right of the deceased in the premises as tenant, who is protected against eviction by Rent Control Legislation and whose landlord had given consent to make profit out of it by subletting and such profit was actually made would not constitute property passing on death. On the other hand, we have a decision of Allahabad High Court in wealth-tax matter, the ratio of which indirectly supports the view which we have taken. That decision is *P.S. Gandhi v. CWT* [1983] 141 ITR 105. It was held therein that where after determination of lease, lessee continues in possession and no action is taken by lessor to evict the lessee, the status of the lessee was that of a tenant holding over and the right of such tenant in the premises of occupation and enjoyment was an asset includible in net wealth. The position of deceased was stronger as far as tenanted premises were concerned. He was not a mere tenant. He was seized of permission given by his landlord to sublet and to enjoy the income derived from subletting. The Government had also granted necessary permission. Hence, the right which the deceased had in respect of the premises constituted property which passed on his death.

6. The next question is as to what should be the value of such right.

Obviously, capitalisation of net income flowing from the right vested in the deceased would be the value of the property passing on death.

The submission on behalf of the assessee was that we should take standard rent as would have been determined if application for such determination had been made to Court of competent jurisdiction as the income derivable from the right which the deceased had in respect of premises and that we should not take rent actually realised from sub-lessee as income flowing from the said right. Reliance was placed on two decisions, viz., *Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee* [1980] 122 ITR 700 (SC) and *Mrs. Sheila Kaushish v. CIT* [1981] 131 ITR 435 (SC). We do not agree with this submission. As already stated, in the present case, subletting has been effected after obtaining no objection to subletting from the Controller of Accommodation, the Government of Maharashtra. The proposed terms of subletting had in substance been approved by competent authority under the Act. In the circumstances, there was no scope for entertaining a belief that the sublessee would be successful in getting the liability to pay rent at agreed rate reduced to nominal figure. Admittedly, no such attempt has in fact been made during the entire period of sub-lease. Hence, actual income derived by way of rent from sub-tenant should be the basis for computing the surplus for capitalisation. As regards the two decisions cited on behalf of the assessee, we are of the opinion that the ratio thereof is not at all applicable to the peculiar facts of this case, where sub-tenancy is created after its terms are approved by the landlord and the Controller of Accommodation, the Government of Maharashtra. We find no error in computation of value of the property which passed on death after considering all the circumstances. We do not agree with the alternate submission to the effect that the value of the deceased's right should be determined at Rs. 44,000 on the footing that maintainable rent would be Rs. 80,000 and after deduction of Rs. 19,435 payable to the landlord the net income would be Rs. 10,565 for which capitalised value would be Rs. 88,000 half of which would be Rs. 44,000. We are of the opinion that actual rent receivable from sub-tenant should form the basis. We are further of the opinion that computation made by the Assistant Controller was in order and no interference therein was warranted on the facts of this case. We, accordingly, confirm the same.

7 to 9. [These paras are not reproduced here as they involve minor issues.]

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