

Rati Lal J. Jani Vs. Assistant Controller of Estate

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Court : Income Tax Appellate Tribunal ITAT Allahabad

Decided On : Oct-23-1986

Reported in : (1989)28ITD409(All.)

Judge : B Nath, O Jain

Appellant : Rati Lal J. Jani

Respondent : Assistant Controller of Estate

Judgement :

2. Shri Jaya Shanker D. Jani had expired on 30th December, 1979. The return of estate duty was filed by his legal representative, who is the appellant before us. The estate of the deceased includes a residential house situated at Morvi, in the State of Gujarat. Its value was determined at Rs. 47,000. The A.P. had claimed exemption in respect of that house under Section 33(l)(n) of the Estate Duty Act. The exemption claimed was denied by the Asstt. Controller of Estate Duty on the ground that the deceased was not residing at Morvi, but he was residing at Kanpur. The A.P. went up in appeal before the Appellate Controller of Estate Duty but remained unsuccessful. As such, he has come up in appeal before us.

3. Shri K. K. Dixit, the learned counsel for the appellant has contended that the deceased was a native of Gujarat State and had shifted to Kanpur, that at Kanpur, he was residing in a rented accommodation and he was maintaining the residential house at Morvi for his exclusive residence and he used to visit Morvi quite often and had been staying in that house. He also submitted that the said house had not

been rented out and was in the exclusive use and occupation of the deceased. In that connection, he has invited our attention to the copy of the will of the deceased dated 30th August, 1979, a copy of which has been filed before us. That will recites that the executant of the will has a residential pukka house at Morvi, it has been damaged by floods and that he often resides in that house as well. On the strength of these facts Shri Dixit has submitted that the deduction under Section 33(l)(n) is available to the A.P. and the orders of the authorities below are not sustainable. Against this, Shri Srivastava, Sr. Departmental Representative has argued that, at the time of his death, the deceased was a resident of Kanpur and not of Morvi. He has also submitted that the house of Morvi had been damaged by floods and was not habitable. In any event, placing reliance on the copy of the approved valuer's report, it has been submitted that the house of Morvi had become dangerous and was not safe for habitation. Shri Srivastava has also submitted that the papers filed by the appellant before us, which were not there before the authorities below should not be read in evidence.

4. We have considered the rival contentions. It is true that the papers that have been filed before us, except the copy of the will and the report of the approved valuer, had not been produced before the authorities below. No permission has been sought to file such papers as additional evidence before us. We are, therefore, of the opinion that such papers should not be read in evidence and we hold accordingly.

5. Deduction under Section 33(l)(n) of the Estate Duty Act is available to an A.P. in respect of one house or part thereof exclusively used by the deceased for his residence. In the instant case, there can be no doubt that the deceased was owning a residential house at Morvi.

According to the recitals in the will of the deceased, the said house was being used by him for his own residence. The recitals further indicate that the deceased used to live in that house quite often. No material has been brought on record to suggest that the said house was being used by someone else or had been let out by the deceased. We are, therefore, of the view that the deduction under the said section should have been allowed to the appellant. The words "exclusively used by

the deceased for his residence" occurring in the section cannot be taken to mean that the deceased must remain present at all times inside the house. The mere fact that the deceased was also living at Kanpur and had a residence at that place as well, will not disentitle the A.P. to claim exemption in respect of the deceased's house at Morvi.

6. It is understood that the house at Morvi had been damaged by floods.

That fact is borne out from the recitals in the will of the deceased.

However, on that basis, it cannot be held that no structure was in existence at the relevant time. The report of the approved valuer shows that the structure was in existence. However, Shri Srivastava referring to the description of the structure in the approved valuer's report, has argued that serious cracks had occurred in the walls of the structure and for that reason, the house had become dangerous and was not habitable. We are unable to accept the argument. The mere fact that serious cracks had occurred in the walls of the house would not disentitle the A.P. to get the relief, which is otherwise available to him. Even if the house had become quite unsafe for human habitation, then too, in our opinion, it would not lose the character of residential house.

7. In view of the above discussions, we find that the appellant is entitled to the exemption under Section 33(1) (n) of the Estate Duty Act, in respect of the residential house at Morvi and we hold accordingly.

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