

Assistant Controller of Estate Vs. Late Shri J.P. Srivastava

Assistant Controller of Estate Vs. Late Shri J.P. Srivastava

SooperKanoon Citation : sooperkanoon.com/62972

Court : Income Tax Appellate Tribunal ITAT Allahabad

Decided On : Aug-25-1987

Reported in : (1989)29ITD98(All.)

Judge : E Singh, R Swarup

Appellant : Assistant Controller of Estate

Respondent : Late Shri J.P. Srivastava

Judgement :

1. The appeal is by the revenue in which the first ground of appeal is that the Appellate Controller of Estate Duty erred, in cancelling the assessment of estate duty on the ground that the delay in completion of the assessment was not mainly attributable to the assessee. The other grounds of appeal relate to the reduction in the value of different items of properties comprised in the principal value of the estate.

2. In the estate duty assessment order passed by the Assistant Controller of Estate Duty, it has been mentioned that the deceased Sir J.P. Srivastava died on 15-12-1954. The estate duty return was filed showing a minus figure of Rs. 3,85,534 and the same was filed on 28-12-1955. Time for filing of the return was extended up to 30-11-1955. Amongst other filings, the Assistant Controller of Estate Duty noted that in the earlier years, the case was represented by Shri A.B. Tandon, C.A., A.L. Talwar, C.A. and Shri I.S. Nigam, Accountant and Authorised Representative for the accountable persons. He indicated that for later few years,

the case was represented by Shri P.N. Saxena, Advocate and Shri P.K. Das, Accountant. Various details and informations were called for. The accountable persons furnished the details and the available books of account were produced. The assessing officer indicated that the computation of the principal value of the estate was based on various replies, available pieces of information, the details, etc., furnished by the accountable persons as well as information gathered from various sources.

3. He mentioned that the deceased was a businessman having shares in many limited companies and was also in the management of various companies. He also noticed that the deceased was a partner in M/s J.P.Srivastava & Sons. He found that the deceased did not run any business as a proprietor nor he maintained any personal account books and that all the assets and liabilities were in his individual capacity. The assessing officer went on to determine the value of the different properties including immovable and movable properties. Undoubtedly, the estate of the deceased was quite large comprising of various items as discussed at length in the assessment order itself. The total value of the estate was taken at Rs. 26,04,127. Liabilities of Rs. 4,47,008 were disallowed out of the entire claim of the liabilities of Rs. 14,85,981.

Thus, the net principal value of the estate was taken at Rs. 15,65,154.

The assessing officer allowed the funeral expenses, etc., amounting to Rs. 3,500.

4. Amongst other things, the accountable persons preferred appeal before the Appellate Controller raising various grounds which were dealt with by him in the appellate order. The first ground and major ground of appeal were regarding the valuation of landed properties, buildings, shares in different companies, etc. The Appellate Controller dealt with the different items of properties and came to his conclusion as to what should be the value of such property individually. His order is quite comprehensive and detailed. In respect of liabilities the Appellate Controller directed the Assistant Controller to verify the Income-tax liabilities, etc., for which he has given appropriate directions.

5. From the impugned order of the Appellate Controller, it is seen that the point No. 20 was raised by the Accountable Persons to contend that the assessment was barred by time and was arbitrary and completed in hurry and without affording adequate opportunity of hearing under Section 58(3). It was mentioned that there is no provision in the Estate Duty Act regarding the period within which the aforesaid assessment was to be completed. The Accountable Persons submitted before him that as per order recorded in the order sheet dated 25-3-1983, the Accountable Persons requested the Assistant Controller for some more time to submit more evidence regarding the liabilities of the deceased but the Assistant Controller refused to give more time on the ground that the case was pending since long. It was mentioned also that the delay in completing the assessment was entirely on the part of the department and not on the part of the Accountable Persons and that there was a number of occasions in which hearing was not fixed at all for a long time. It was noted also that whatever information required was promptly furnished and, therefore, it was nothing but strange that when a short time was asked for, the department should refuse to grant the request. It was, therefore, contended that fact indicated that the assessment was completed in a great hurry by the present Assistant Controller of Estate Duty and in an arbitrary manner without giving proper opportunity of being heard.

6. It was also contended that even where there was no specific period of limitation provided, it was well settled that there should not be any inordinate delay and the proceedings must be completed within a reasonable time. Different case laws were cited in that regard.

7. It was submitted also that Section 73A of the Act placed limitation for commencement of proceedings or reassessment from which it could be seen that the intention of the Legislature was to prescribe reasonable period of 5 years from the date of death of the deceased for initiation of proceedings for the first assessment and a period of 3 years from the date of assessment, in the case of reassessment. It was thus submitted before the Appellate Controller that the assessment proceedings should be completed within a reasonable time within 8 years or so. Inter alia, it was pleaded, therefore, that the assessment proceedings should be annulled having been barred by time. It may be mentioned here that the

assessment made by the Assistant Controller of Estate Duty under Section 58(3) of the Estate Duty Act was passed on 31-3-1983, whereas the date of death of the deceased was 15-12-1954.

8. The Appellate Controller considered the ratio of those decisions which apparently related to imposition of penalty which had not been levied, within a reasonable time though no specific period was laid down under the Indian Income-tax Act, 1922. Amongst other things, the Appellate Controller considered the decision of the Hon'ble Allahabad High Court in the case of Ram Kishan Baldeo Prasad v. CIT [1967] 65 ITR 491 in which amongst other things and on the facts of that case, it was held that though no period of limitation was prescribed for imposing the penalty, a penalty in respect of the assessment year 1945-46 could have been imposed in August 1957, propriety required a change, circumstances to be taken into, consideration and the responsibility for inordinate delay should be considered, and fastened before levying the penalty or upholding it. There were other decisions of the Hon'ble High Court as well as other High Courts which were considered by the Appellate Controller in his order.

9. The Appellate Controller noted that in the present case Sir J.P.Srivastava died on 15-12-1954 and the assessment was completed on 31-3-1983, i.e., after more than 28 years. Amongst other things, he observed that if it was difficult for an assessee to establish a particular source, it would be extremely difficult rather impossible for the legal heir of the deceased to establish the valuation shown in the statement of account filed about 3 decades ago. The Appellate Controller also considered the provisions of Section 71 of the Estate Duty Act and also commentaries and decisions of other various High Courts relating to that point as evident in the appellate order. After considering all these implications, the Appellate Controller concluded and stated that from the perusal of the above position, it was clear that though no limitation was provided under the Estate Duty Act for completion of assessment under Section 58, nevertheless in the light of the decisions of the Allahabad High Court in the cases of Mohd. Atiq v. ITO [1962] 46 ITR 452, Bisheshwar Lal v. ITO [1970] 75 ITR 698 and Ram Kishan Baldeo Prasad (supra), etc., he held that the assessment for the levy of estate duty has to be completed within a reasonable time. He was of the view that the word

"reasonable time" cannot be stressed beyond a particular stage and has to be determined in the light of the provisions of Section 71. He was, therefore, of the view that the period of limitation cannot be extended beyond 20 years by any stretch of imagination and, therefore, the Assistant Controller was not legally justified in keeping the assessment pending for a period exceeding 20 years. He was of the view that the limitation has to be read along with the provisions of Section 71 and call for strict construction in favour of the assessee so that the assessee is not deprived of his right to property for no fault of his. Accordingly, he held that the assessment which, has not been completed within a reasonable time cannot be sustained and was, therefore, cancelled.

10. The Appellate Controller went onto consider whether the delay could be attributed to the accountable persons. He noted that it was submitted before him that the delay was because of the inaction, on the, part of the department for a long period, for which details were noted in the order itself and the total of such delay works out to 19 years and 9 months or 20 years in round figures. The Appellate Controller considered the decisions of the Hon'ble Kerala High Court in *Dy. CIT v. P.S.B. Paul Pandian* [1981] 128 ITR 809 as well as the decision of the Hon'ble Bombay High Court in 31 ITR 318 (sic).

11. The Appellate Controller noted, that there was nothing on record to indicate that the delay in completion of the assessment was attributable to the accountable persons. He observed that no doubt, the accountable persons may not have filed information on some point in time, but such delay by itself was not much. It was mentioned that one of the reasons for which the assessment had to be kept pending by the assessing officer was that the income-tax assessment of the deceased had not been completed. This reason was not considered by the Appellate Controller for valid reasons unless it could be established that the delay in completion of the income-tax assessment was attributable to the assessee, for which there seems to be no evidence on record.

12. The Appellate Controller went through the order sheet of the estate duty record and noted, that the delay was mainly attributable to inaction on the part of the department, stretching over about two decades. He also noted that non-co-

operation of the assessee at one stage or another cannot be made an excuse for delaying completion of the assessment as the authorities have got ample power to expedite the pace of assessment and to take appropriate action including framing of the best judgment assessment, in case any taxpayer was not co-operating with the said authority for the timely completion of the said assessment.

13. He, therefore, concluded that the delay in completing the assessment not being mainly attributable to the accountable persons and assessment not having been completed in a reasonable time for a fault which squarely lies on the department, cannot be sustained and was, therefore, cancelled. Hence this appeal by the revenue.

14. At the first instance, the learned Departmental Representative submits that the Appellate Controller was not justified in cancelling the assessment after he himself had decided the points on merits in respect of each, and every item of dispute. It is stressed that the Appellate Controller did consider every aspect of the property to be included in the estate of deceased and as such was not justified in concluding that the assessment having barred by time, should be cancelled for which there was no sanction under the law. It is vehemently urged that the Appellate Controller having not given due regard to the provisions of the Estate Duty Act, his order required to be reversed and that of the Assistant Controller required to be maintained. It is submitted that admittedly no time limit has been prescribed by the Estate Duty Act for completion of the estate duty assessment and, therefore, the Appellate Controller went wrong in imposing a condition as done by him in the present case. Amongst other things, it is also submitted that the Appellate Controller went wrong on facts in stating that the delay was mainly due to the inaction of the department; whereas in fact it was the accountable person in their applications who had asked for adjournments on several occasions whenever case was fixed for hearing and that more particularly when the case was fixed for last time, the accountable persons did ask for more time for furnishing the details, evidence, etc., regarding the liability to be deducted from the principal value of the estate. It is vehemently contended on behalf of the revenue that this factual position was totally missed or ignored by the Appellate Controller in drawing his inference that the delay was mainly due to the inaction of the department and the

delay on account of the accountable persons was nominal. Reference is made to different case laws and other decisions of different High Courts. It is also argued at length that it is an accepted principle that the assessee or the accountable persons would have to produce materials, evidences, etc., to support the different entries in the return and all the more when the assets comprised in the estate were of various types of properties, specific information would have to be furnished and in fact the records would show that adjournments were sought for intermittently by the accountable persons so that details could be obtained and furnished. It is reiterated before us that even till the date of assessment of this estate duty, the accountable persons still insisted for further time and that in the circumstances how could the Appellate Controller attributed that the delay was mainly due to the department. It is urged that apart from that, the Appellate Controller was wrong in stating that the assessment was barred as in fact there was no limitation which would bar completion of the estate duty assessment on facts and in law. In short, it is urged that the order of the Appellate Controller on the facts and circumstances of the case requires to be reversed and that of the Assistant Controller may be restored.

15. On the other hand, the learned accountable persons supports the order of the Appellate Controller. Actually, the various submissions made before the Appellate Controller are reiterated here before us also with emphasis being placed on rulings of different High Courts and other authorities in order to stress the claim of the assessee that assessment in the present case having been made after so many years, and beyond reasonable time, should be treated as barred by limitation, as held by the Appellate Controller. Reference is made to the various decisions of different High Courts and different case laws also are referred to. The points noted by the Appellate Controller are highlighted before us, on behalf of the accountable persons to show that the delay was mainly due to the department in finalisation of the estate duty assessment after so many long years. It is submitted that all information, details, evidence, etc, wherever and whenever required by the assessing authority, the same were furnished as noted in the assessment order itself. It is also submitted that it is true that the accountable persons did ask for time on different occasions and that too for good reasons and on this fact alone, nothing would turn out and in fact such short adjournment on different occasions

would not contribute materially to the delay in completion of the proceedings which was due to the inaction and default on the part of the department. Different aspects of the observations and comments made by the Appellate Controller in his order are emphasised and clarified before us as well. It is submitted that it is true that there is no time limit set for completion of the estate duty assessment. But it is pointed out that assessment would have to be done within reasonable time. It is submitted also that reasonable time would have to be considered on the facts of the case. It is pointed out that in the present case, the delay was inordinate and the accountable persons were kept in anxiety for no fault of theirs. It is submitted that the onus lies on the revenue for such delay and in fact the Appellate Controller has noticed and recorded such delay after he has gone through the records of the case, part of which was discussed by him in the appellate order itself.

16. At the time of hearing, it is submitted that although there was no period of limitation prescribed for completing the assessment under the Estate Duty Act, but such power of making an assessment must be exercised within reasonable time must be determined on the facts of the case and nature of the order. Reference is made to the unreported judgment of the Hon'ble Supreme Court in the case of State of Gujarat v. Patel Raghav Nath [Civil Appeal No. 723 of 1977 dated 21-4-1969], extract of which has been given in the paper book on behalf of the assessee. Reference is also made to the decision of the ITAT, A Bench, Allahabad in the case of British India Corpn. Ltd., dated 24-3-1973 in which similar situation has crept in and the point relating to inordinate delay of making assessment, was decided in favour of the assessee, on the facts of the case, copy of the Tribunal's order is placed in our file. It is submitted, therefore, that as far as the limitation point is concerned, the Appellate Controller was justified in cancelling the assessment as barred by limitation and his order on the facts of the case may be sustained and the appeal by the revenue having no merits may be dismissed. It is pointed out that if this point of limitation is held in favour of the revenue, then the learned counsel for the accountable persons would also like to submit his arguments in respect of the merits of the points of the case.

17. We have gone through the orders of the authorities below along with other papers placed in the paper book for our consideration. We have also taken into account various submissions on different points of the issue involved. As indicated earlier, the deceased Sir J.P. Srivastava died on 15-12-1954 and the estate duty return was filed on 28-11-1955.

The assessment order was passed on 31-3-1983 running into 34 pages. We have gone through the assessment order in which detailed discussion has been made in respect of the various properties and liabilities of the deceased. In fact, there were various types of landed properties, gifts, etc., involved in addition to various shares held by the assessee in various companies. The deceased held ordinary or preference shares in as many as 34 different companies. The accountable persons filed statement of reports of valuer in respect of various items which the Assistant Controller took into consideration. In certain cases break-up method was also considered in respect of valuation of certain unquoted shares. As indicated earlier, the minus gross value of the estate was returned at Rs.3,85,534; whereas the gross value of the estate was determined at Rs. 26,04,127, against which, the liability of Rs. 14,85,981 was claimed. Thus, one could see the magnitude and the extent of the various properties involved in the present estate.

Naturally, accountable persons would have required time to obtain various papers, details, evidence, etc., to be produced before the assessing officer in support of the return. On his part also, the assessing officer would have needed sufficient time to take up such matters. On this point, we may remind ourselves that the Legislature made provision for time within which any proceeding either assessment, penalty, etc., could be initiated and finalised under the Income-tax Act, Wealth-tax Act, etc. But as far as the completion of the estate duty assessment once validly initiated, there is no time limit prescribed. We do not intend to say that the Legislature was oblivious of this aspect of the matter. On the contrary, because of the implications and ramifications of estate duty matters, the Legislature in its wisdom has not put any time limit within which assessment proceedings could be finalised. In fact, the estate duty is not payable in respect of each and every estate that passes on the death of a person. But only certain estates above certain limit which would be subject to estate duty assessment.

18. The Appellate Controller somewhere in his order has mentioned that the time taken by the accountable persons, if at all, in the form of adjournment, etc., would work out to about 9 years, whereas the rest of the period was attributable to the Assistant Controller of Estate Duty.

It appears that the above time of 9 years was the aggregate of the number of days or weeks for which time was applied for and allowed. But one has to remember that when the case is fixed by the assessing officer for hearing, few days or weeks would have to be given advance so that the person concerned could appear on the date so fixed. But before the date so fixed, the assessing officer would not be in a position to complete the assessment proceedings. In other words, the time from the date of fixation to the date of hearing of the parties concerned, would also be attributable to the accountable persons as this time was not available to the assessing officer for passing the order. In that view of the matter, the time taken by the revenue would not be as much as assumed by the Appellate Controller. From the details placed before us, it is seen that the accountable persons did ask for time on different occasions which all the more added to the lengthening of the period for completion of assessment. In fact, as indicated in the first ground of appeal before the Appellate Controller, the accountable persons contended that the assessing officer erred in not giving the assessee more time and opportunity to furnish details of other items and liabilities. In other words, the accountable persons still wanted more time although many years have passed but the Appellate Controller conveniently overlooked this aspect of the matter.

It is true that the assessing officer can pass an ex parte order best judgment if a particular person is not co-operative. But in a case like the present one, the assessing officer keeping in view the various details needed for the assessment, could not have passed a best judgment or rather passing of such an order would be worst judgment order. We are satisfied that many details have been brought out in the assessment order as furnished by the accountable persons or as collected by the assessing officer in bringing out this estate duty assessment order. Of course, there might be some gap of delay here and there but from that it could not be inferred that inaction was due entirely to the department. One has to look to the overall aspects of the entire circumstances. As pointed out by the

learned counsel for the accountable persons, the Hon'ble Supreme Court in the case of Patel Raghav Nath (supra) has held that although there was no period of limitation, but power must be exercised in a reasonable time and the length of the reasonable time must be determined on the facts of the case, and the nature of the order. In the instant case, reasonable time had to be given to the accountable persons concerned. In our opinion, the accountable persons had to be given adequate and reasonable time to produce materials, etc., and that time should be reasonable and proper.

From the orders of the authorities below as pointed out earlier, it is seen that the assessing officer declined to give more time to the accountable persons as the matter has been pending for so long. In fact, because of the resoluteness of the assessing officer concerned, the assessment was finalised and estate duty was computed. Had he conceded to the further requests of the assessee for more time, the completion of the assessment would have been further delayed. For this, the Appellate Controller had no comment to give.

19. We have gone through the details cited on behalf of the accountable persons in which certain rulings were given regarding the reasonableness of the time within which certain proceedings should have been completed. Most of those cases related to penalty proceedings. But the present case before us is of assessing estate duty payable being a direct tax on the estate passing on the death of a person. By delaying assessment proceedings, collection of tax is automatically delayed and in such a situation, it is the revenue that suffers and not the assessee concerned, unlike penalty which is being thrust on the assessee. Had the estate duty assessment been completed earlier, so much tax would have gone to the department's account. The accountable persons would naturally be aware of the tax or duty payable. Interest of the assessee is not prejudiced or endangered by prolonging assessment proceedings. By prolonging assessment proceedings, collection of the revenue is delayed. The Hon'ble Supreme Court in the case of CIT v. Central India Industries Ltd. [1971] 82 ITR 555 amongst other things and on the facts of the case, held that equitable considerations are not relevant in interpreting provisions of a taxing statute. From the circumstances available in this case before us, the fact that the department might have delayed completion of

assessment would not by itself confer a right on the accountable persons to insist that the estate duty assessment having been completed after so many years should be cancelled as it was done by the Appellate Controller in the instant case. This is more so when there is no such provision under the law within which estate duty assessment should be finalised. One has to read the provisions as they are. The provisions of the Estate Duty Act as far as initiation and completion of assessment proceedings are concerned, are quite clear. There is no scope for importing into the statute words which are not there, as such importation would not to construe, but to amend the statute. This is the view of the Hon'ble Supreme Court in the case of Smt. Tarulata Shyam v. CIT [1977] 108 ITR 345. It was also held therein that even if there be a "casus omissus", the defect can be remedied only by legislation and not by judicial interpretation. But the Appellate Tribunal in the instant case, has overstepped his jurisdiction in holding that the Appellate Controller was not legally justified in keeping the assessment pending for a period exceeding 28 years; whereas in fact there was no legal provision that no assessment proceedings should be kept pending for a period exceeding 20 years. From the reading of the impugned order, it is clear that the Appellate Controller inferred that as the assessment which had not been completed within a reasonable time but much beyond and in the light of these case laws referred to by him, deserved to be cancelled.

In fact, the Appellate Controller did not sustain the estate duty assessment and had cancelled the same. We are of the opinion that the Appellate Controller has imported such limitation which was not in the statute itself which is contrary to the view expressed by the Hon'ble Supreme Court in the case noted above. Even after considering the significance of the words "reasonable time", the Hon'ble Supreme Court has stressed that the reasonableness should have a nexus with the facts of the case and the nature of such order. The Appellate Controller did not appreciate the extensiveness and the vastness of the various assets of the estate of the deceased, for which details would have to be given by the accountable persons which have to be verified by the assessing officer in his turn. Having done that, the Assistant Controller in the present case has assessed the estate as indicated above as against a minus figure shown in the return, though such assessment is subject to appeal.

20. In the instant case before us, proceedings were started timely as soon as the return of estate duty was filed by the accountable persons.

It is nobody's case that there was undue delay in initiating the proceedings. On behalf of the department before us, it is stated that the delay was due to the various factors as discussed briefly somewhere in the preceding paragraphs. It is also not a fact that after the return was filed, no action was taken processing the various items before passing the estate duty assessment order. From the details furnished, it is seen that hearing was given from time to time. There were occasions in which the accountable persons asked for time which was given. It may be true that there were changes of incumbents which by itself would have an effect in continuing hearing of assessment proceedings. But we cannot call such a situation as inaction on the part of the revenue.

21. In the instant case before us, there was no dispute that the assessing officer had a jurisdiction to initiate to proceed and to complete the estate duty assessment proceedings. The exercise of the power would be referable to a jurisdiction which conferred validity upon it and not to a jurisdiction under which it would be nugatory. For this proposition, we may refer to the decision of the Hon'ble Supreme Court in the case of L. Hazari Mai Kuthiala v. ITO [1961] 41 ITR 12. In the instant case, it cannot be said that the assessment order of the Assistant Controller was invalid or time barred merely because it was not made within the time considered by the Appellate Controller to be reasonable in the instant case. As indicated earlier, initiation of the assessment proceedings in the instant case was not in dispute.

22. We have gone through all the decisions cited by both the sides at the time of hearing and we have got immense benefits for our consideration in dealing with the present dispute before us.

Considering the totality of the facts and circumstances of the case as well as the various details available on record, we are of the opinion that the period of the delay cannot be said to have not been explained by the department. In fact, it is a sound rule of interpretation that statute should be so construed as to prevent the mischief and to advance the remedy according to the true intention of the makers

of the statute--Sevanlilal Maneklal Sheth v. CIT [1968] 68 ITR 503 (SC). In connection with the estate duty matters, the Hon'ble Madras High Court in the case of CED v. Amarlal [1984] 147 ITR 248, on the facts of the case, held that the Court, in construing the statutory provisions, cannot take into consideration the hardship that may be caused in a particular case. It is true that if the assessment is delayed, the accountable persons may not know their liability or may not be able to meet the estate duty payment afterwards. But such consideration cannot be taken into account. As indicated earlier, there is no provision in the Estate Duty Act within which assessment should be completed. In other words, the assessment has to be completed within the provisions made in the Act, notwithstanding anything different or to the contrary contained in the general law relating to that matter. This is the view of the Hon'ble Madhya Pradesh High Court (Full Bench) in the case of Girdharilal Nannelal v. CIT [1984] 147 ITR 529. Assessment proceedings, in our opinion, should be considered to be machinery provisions. In the case of CIT v. National Taj Traders [1980] 121 ITR 535, the Hon'ble Supreme Court, on the facts of the case, held that strict interpretation would not apply to machinery provisions. It was held that the principle that the fiscal statute should be construed strictly, is applicable only to taxing provisions, such as charging provisions or a provision imposing penalty and not to those parts of the statute which contain machinery provisions. Similar view was expressed by the Hon'ble Madras High Court (Full Bench) in CIT v. K.S.Vaidyanathan [1985] 153 ITR 11.

23. In view of what we have discussed above, we are of the opinion that the Appellate Controller came to the wrong conclusion that the assessment of estate duty having been made after so many years beyond reasonable time as determined by him, cannot be sustained and was, therefore, to be cancelled. We cannot support his view. Thus, this part of the order of the Appellate Controller is reversed and that of the Assistant Controller is maintained.

24. In view of what we have decided in respect of limitation issue, we shall now proceed to deal with the merits of the case. We have gone through the orders of the authorities below for our consideration along with the various submissions made by both the learned representatives of the revenue as well as of the accountable persons.

25. The first dispute is regarding the valuation of the agricultural land at Rs. 2,260. Having regard to the area, location and the facts available, we are of the opinion that the Appellate Controller is justified in adopting the value of the above property at Rs. 2,260. No interference is called for.

26. The next item is regarding the valuation of the plot of land at Khalasi Lines, Kanpur. The value was shown at Rs. 15,875 which was purchased in 1943 for Rs. 8,056 and Rs. 7,700. In the assessment, Rs. 44,400 was taken after considering the ratio of appreciation in 20 years, and that too after considering Rs. 6 per sq. yd. as the market value. The accountable persons submitted before the Appellate Controller that the rate was excessive. It was insisted that the value cannot be more than Rs. 3 per sq. yd. on the facts of the case. The Appellate Controller adopted the rate at Rs. 4.50 per sq. yd. This rate appears to be reasonable and no interference is necessary.

27. In respect of the value of Nishat Manzil, Bhopal, the accountable persons showed the value at Rs. 75,000 which was assessed at Rs. 2,20,000. The accountable persons submitted before the Appellate Controller that it was wrong for the assessing officer to base his valuation on the basis of the report of valuation by the Executive Engineer which was made on incorrect facts. It was submitted also that the submissions of the accountable persons were not properly considered. The Appellate Controller found that some portion of the property was let out subsequently in the year 1959. The value adopted in the assessment was found to be excessive by the Appellate Controller even after considering the fact that the land had been sold 4 years later and that too to a sister concern for Rs. 2,18,840. He inferred that obviously the value of the land at the time of death of the deceased cannot be as high as Rs. 2,20,000. He determined the value of the property at Rs. 1,70,000 as fair and reasonable. This, according to us, is quite justified. No interference is called for.

28. The deceased held shares of J.P. Srivastava & Sons (Bhopal) Ltd. which facts were similar to the shares held by the deceased in M/s.

J.P. Srivastava & Sons Ltd., Madhya Pradesh. Both the Assistant Controller and the Appellate Controller have dealt with this point at length in their respective

orders, which we need not repeat here.

Amongst other things, the Appellate Controller in his appellate order observed that there was a vast fluctuation of profits and uncertainty of the conditions on the date of valuation which prevented any reasonable estimation of prospective profits and dividends from those shares. The Appellate Controller took into account various methods for ascertaining the value of shares which were not quoted. He noted that there were various methods, like net assets method, ordinary method, valuation as a running method and reference to recent sales, etc. In respect of the value of the shares held in J.P. Srivastava & Sons (Bhopal) Ltd., the Appellate Controller allowed relief of Rs. 36,606 by adopting the value taken in the assessment order after allowing reduction of 13 1/2 per cent after considering the fluctuation of profits and other reasons as noted by him in the appellate order. In our opinion, this reduction on the facts of the case is quite reasonable. No interference is called for.

29. The next item for consideration is regarding the reduction of Rs. 2,04,066 in the value of shares of Sir J.P. Srivastava & Sons Ltd. Here also, it was noticed that there was vast fluctuation of profits.

Application of break-up-value method was also considered. The Appellate Controller has given his reason before he allowed the claim of the accountable persons to some extent. The Appellate Controller held that it would be fair and reasonable to determine the value of those shares on the average of the net assets method and yield method and he has directed the Assistant Controller to determine the value of the assets and unquoted shares held by these companies on break-up valuation basis. The Appellate Controller has also on same reasonings allowed relief of Rs. 8,780 in the value of the shares of New Bhopal Textiles Ltd. We have gone through his decision and the basis adopted by him. In our opinion, the valuation in respect of these two items was quite reasonable and fair. No interference is called for.

30. In respect of the value of shares of Sir J.P. Srivastava & Sons (Rampur) Ltd., the Appellate Controller allowed relief of Rs. 35,673.

Here also we would adopt the similar reasonings as taken by the Appellate Controller. The facts of the case as in other itmes have been discussed by him in the appellate order at length. The reduction, in our opinion, was quite justified.

31. The reduction of Rs. 7,500 is also appealed against by the revenue.

After considering the facts available and the materials brought on record, this reduction is reasonable.

32. The next item is regarding the reduction by Rs. 10,155 in respect of the value of book debts of Indian Bobbin Ltd. The value was assessed at Rs. 20,311. It was noted that the said company incurred losses in the past and had no sufficient asset to meet the claim of the creditor.

Certain papers were placed in the paper book to support the claim of the assessee. The appeal by the revenue is that there was no justification for the Appellate Controller to reduce the book value to 50 per cent of the above amount. It is seen from the director's report placed before us that this company was not able to continue its business on account of its liability and the board of directors decided to close down the factory from 16th December, 1953. Thus, having regard to the entirety of the facts and practical side of the situation, we are of the opinion that 50 per cent reduction of the value allowed by the Appellate Controller cannot be said to be excessive or arbitrary.

The same is sustained.

33. The accountable persons have also claimed liability as deduction on various scores. Certain liabilities were disallowed by the assessing officer. The issues were taken up before the Appellate Controller, who allowed deduction of Rs. 41,065 in respect of liability to J.P.Srivastava & Sons and Rs. 43,000 in respect of Rampur Finance Corporation (P.) Ltd. In the assessment order, various points in respect of these claims were mentioned, Before the Appellate Controller certain points were raised by the accountable persons which the Appellate Controller reproduced the same in the impugned order.

According to him, the explanation given by the Authorised Representative stood verified from the accounts. Accordingly, he held that the disallowance made was not justified. After hearing both the sides and after we have gone through the orders of the authorities below for our consideration, along with the connected papers, we are of the opinion that this point requires to be restored to the file of the Appellate Controller for fresh disposal after meeting various aspects of the matter as made out by the Assistant Controller in the assessment order. It is seen also that this sum of Rs. 41,065 is somewhat linked up with Rs. 43,000 being liability claimed as deduction in respect of Rampur Finance Corporation, as discussed by the Assistant Controller.

We consider that it would be necessary for the Appellate Controller to deal with the various points raised in the assessment order and to pass a speaking order after giving both the sides reasonable opportunity of being heard. Accordingly, this part of the order of the Appellate Controller is set aside for fresh disposal.

34. The next item of liability is of Rs. 2,25,000 as liability claimed to be due to J.P. Srivastava. In the assessment order, the assessing officer noted that he asked the accountable persons to prove the genuineness of the liability. He noted that it was clear that the deceased borrowed money from Lady Kailash Srivastava and on that account interest was regularly considered under the head "other sources". The accountable persons give extract from the wealth-tax orders of Lady Kailash which has been shown as a loan to the deceased.

He noted that a like liability of Lady Kailash was shown to be due to Mr. J.K. Srivastava, son of the deceased. The accountable persons furnished explanation which was reproduced in the assessment order. The assessing officer found no documentary evidence to establish the existence of the liability. He noted that it was noticed that the deceased had been giving considerable gifts to the son from time to time and this fact would go to show that there was no loan payable by the deceased to the son and the whole story of the liability was a bogus one. The claim was disallowed.

35. The accountable persons took up the matter before the Appellate Controller who dealt with the aspects of the matter and found that the assessee had

furnished various statements and facts to show that the liability was supported by the orders of assessment made by the WTO concerned for those earlier years. The Appellate Controller considered the wealth-tax orders in the case of the son for the assessment year 1957-58 in which a loan and advance to the extent of Rs. 2,10,542 due from the deceased, was included in the net wealth of the son. The Appellate Controller on the reasons and on the findings noted by him in the impugned order found that the liability was very much there. He was of the view that the fact that the deceased was in the habit of giving gift to his son and other's, would not mean that there was no debt at all on account of the accountable persons. He, therefore, allowed the claim of this liability.

36. We have heard both the sides and we have gone through the orders of the authorities below along with other papers placed before us for our consideration. We find that the Appellate Controller did consider the various aspects of the matter and material facts found by the WTO in the assessment orders before giving the above relief. In our opinion, the order of the Appellate Controller on the point is quite valid and reasonable. No interference is called for.

37. The last item of the liability is in respect of payments due to different clubs of Rs. 1,758. We have heard both the sides and we have gone through the orders of the authorities below for our consideration.

Having regard to the facts brought out in the orders of the authorities below, we find that the relief was quite proper.

38. In the result, the appeal by the revenue is treated as partly allowed for statistical purposes.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com