

**D.S. Mistry Vs. Third Assistant Controller of**

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**Court :** Income Tax Appellate Tribunal ITAT Mumbai

**Decided On :** Apr-26-1990

**Reported in :** (1990)34ITD264(Mum.)

**Judge :** S Kapur, M Ajinkya

**Appellant :** D.S. Mistry

**Respondent :** Third Assistant Controller of

**Judgement :**

1. In this appeal by the accountable person, two grounds are raised.

The second ground objecting to the confirmation of the addition of Rs. 9,340 in respect of shares purported to have been owned by the deceased was not pressed by Shri Sarkari at the time of hearing of (he appeal.

This ground is, therefore, dismissed as not pressed.

2. The first and the substantial ground is that the CED(A) erred in not granting full exemption from estate duty in respect of a sum of Rs. 83,195 bequeathed to institutions referred to in Section 10(22) of the Intact, 1961, as per the provisions of Section 33(2) of the E.D. Act read with Notification No. GSR 513 dated 29-4-80.

3. It would appear that donations amounting to Rs. 83,185 were made to the institutions referred to in Section 10(22) of the I.T. Act in respect of which complete exemption was claimed before the revenue authorities Under Section 33(2) of the

E.D. Act. Both the ACED as well as the CED(A) took the stand that only properties mentioned in Section 34(1)(a) of the E.D. Act were fully exempted and all other properties would have to be included in the property passing on death for the purpose of calculating the rate of duty. It is against this finding that the present appeal has been filed before the Tribunal.

4. S.33(1) of the E.D. Act enumerates various types of properties belonging to the deceased on which no estate duty shall be paid. The properties enumerated in Clauses (a) to (p) of Sub-section (1) of Section 33 are not to be included in the property passing on death.

Section 33(2) of the E.D. Act reads as under: Section 33(2): If the Central Government is of the opinion that in respect of any class of property or class of persons the circumstances are such that some relief in addition to the relief's provided in Sub-section (1) should be given, it may, by notification in the Official Gazette, make any exemption, reduction in rate or other modification in respect of estate duty in favour of any such class of property or the whole or any part of the property of any class of persons, and any notification so issued shall be laid before both Houses of Parliament as soon as may be after it is issued.

5. Shri Sarkari referred to the above section and vehemently argued that this section provided for relief in the form of exemption, reduction in rate or other modification in respect of estate duty in favour of any class of property or any part of the property to be specified in the Notification in the Official Gazette. Now, the Notification No. GSR 513 dated 29-4-1980 grants exemption in respect of donations made to educational institutions, hospitals etc. The CED(A) has taken the stand that since in the Notification the expression used is 'no estate duty shall be payable' that expression should be interpreted to mean 'the donations so made should be included in the property passing on death for rate purpose'.

6. While challenging this finding of the CED(A) Shri Sarkari argued that property is aggregated in Section 34 and Section 35 of the E.D. Act only if the estate duty was leviable and, therefore, the property on which estate duty was not chargeable or which was exempt from estate duty, was also exempt from aggregation.

7. The short question for consideration is whether the donations made to the approved institutions would come for aggregation Under Section 34(1) of the E.D. Act where the exemption conferred by the Notification would be in the nature of double exemption or where it would be interpreted as ' exemption restricted to calculating the rate'.

8. The departmental representative referred to Section 34(1)(a) and pointed out that this clause did not refer to Section 33(2) under which, admittedly, such relief was being claimed. He further argued that Section 33(2) provided for relief in addition to the relief already provided in Sub-section (1) of Section 33 and that sub-section provided for complete exemption in respect of certain properties which was total inasmuch as such properties were not to be included at all for the purpose of aggregation. The additional relief which was contemplated Under Section 33(2), therefore, was a relief in addition to this type of total exemption.

9. We have considered both the submissions and have also carefully gone through the order of the CED(A). The CED(A) has referred to the language used in various sections like Sections 21,22,23,24,25,26,29,29A and 32, which provide double exemption in respect of certain types of properties. He also referred to Section 34(1)(a), the relevant portion of which has been reproduced by him in his order. All this discussion is to be seen in para 4 of the order of the CED(A). In para-5, the CED(A) has drawn the conclusion that the expression 'no estate duty shall be payable' only means that 'the rate worked out for other independent provisions of the Act will not be applied on the value of that particular asset', i.e., the estate duty leviable on the value of that particular asset will not be payable but it does not say that the property will be doubly exempt from the property passing on death.

10. We have carefully considered the submissions made in this behalf by Shri Sarkari. Section 33(1) of the Estate Duty Act enumerates special types of properties like household goods, books, wearing apparel, works of art, heirlooms, which are exempt from estate duty in the sense that the principal value of these properties is not to be included even for determining the rate of estate duty. The exemption under Section 33(2), however, has to be interpreted with reference to the language used in the notification issued from time to time. We find that the

relevant notification for the present purpose is Notification No. GSR 513 dated 29th April, 1980. This notification is in connection with relief to properties bequeathed to educational institutions and hospitals. The expression used in this notification is 'no estate duty shall be payable'. Similar expression is used in an earlier notification No. GSR 461 dated 27th March, 1973, in terms of which exemption has been granted from estate duty of any one building belonging to and in occupation of a de-recognised Ruler. Now, when we turn to Section 34 which deals with aggregation, we find that Clause (a) of Sub-section (1) of Section 34 specifically says that all property passing on death other than property exempted from estate duty under Clauses (c),(d),(e),(i),(j),(1),(m),(mm),(n),(o) and (p) of Sub-section (1) of Section 33 is to be considered for aggregation. That means the properties mentioned in the abovementioned clauses of Section 33(1) are not to be considered as properties passing on death. Now, Sub-section (2) of Section 34 reads as under: Where any such estate as is referred to in Sub-section (1) includes any property exempt from estate duty, the estate duty leviable on the property not so exempt shall be an amount bearing to the total amount of duty which would have been payable on the whole estate had no part of it been so exempt, the same proportion as the value of the property not so exempt bears to the value of the whole estate.

The Explanation to Section 34(2) says that for the purposes of this sub-section, "property exempt from estate duty" means any property which is exempt from estate duty under Section 33, any agricultural land and interests of all coparceners other than the deceased in the joint family property of a Hindu family governed by Mitakshara, etc.

This would mean that the property, which is to be treated as exempt from estate duty under Section 33, is to be included for the purpose of aggregation. However, on such property, estate duty will not be leviable. Sub-section (2) provides that the estate duty leviable on the property not exempt shall be calculated on a proportionate basis. This by implication would mean that the term "the property exempt from estate duty", which as we have seen while considering the Explanation to the section means property which is exempt from estate duty under Section 33, is a property on which exemption to the extent provided in the

notification issued under Section 33(2) of the Act has to be granted (vide page 657 of Chaturvedi & Patisserie's ESTATE DUTY LAW, Second Edition 1983). The extent of exemption allowed by this notification, in our opinion, is in respect of rate of estate duty and is not a total exemption of the type considered in respect of properties which are enumerated in various clauses of Section 33(1). We are, therefore, inclined to accept the interpretation put by CED(A).

The order of the CED(Appeals) is confirmed and the appeal of the assessee dismissed.

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