

Assistant Controller of Estate Vs. Dr. Gaur Hari Singhania

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Court : Income Tax Appellate Tribunal ITAT Allahabad

Decided On : Oct-16-1990

Reported in : (1991)36ITD407(All.)

Judge : L Aggarwal, O Tripathi

Appellant : Assistant Controller of Estate

Respondent : Dr. Gaur Hari Singhania

Judgement :

1. This is an appeal filed by the Revenue against an order of the Controller of Estate Duty (Appeals) dated 27-4-1988. The Revenue has taken up the following grounds of appeal:- 1. (i) That the Ld. CED(A) has erred in law and on facts of the case in allowing the deduction in respect of wealth-tax liabilities of Rs. 4,54,907 and Rs. 21,91,585 in the status of Individual and HUF respectively.

(ii) That the Ld. CED(A) has erred in law and on facts of the case in accepting the partial partition of the HUF and thereby directing the ACED to exclude the assets of the HUF added in the estate of the deceased because as per provisions of Section 171(9) of IT Act, 1961, no partial partition made on or after 31-12-1978 will be recognised.

(iii) That the Ld. CED(A) has erred in law and on facts of the case in allowing the outstanding liability of Rs. 4,57,448 payable to M/s J.K. Hosiery Factory.

2. The brief facts are that Sir Padampat Singhania died on 18-11-1979, leaving behind certain estates. During the estate duty assessment proceedings, it was contended by the accountable person, Dr. Gaur Hari Singhania, eldest son of Sir Padampat Singhania, that outstanding liability of the wealth-tax in respect of individual estate amounting Rs. 4,54,907 for the assessment years 1975-76, 1976-77 and 1977-78 and wealth-tax liability of Sir Padampat Singhania, HUF, amounting to Rs. 27,91,585 for the assessment years 1967-68 to 1972-73 be deducted while computing the value of the estates left by the deceased. The Assistant Controller of Estate Duty had disallowed the same and observed that Sir Padampat Singhania, HUF, was originally having 1/3rd share in the firm M/s J.K. Bankers. The said firm owned a number of immovable properties which were got valued by the WTO through the Departmental Valuation Cell which resulted in huge appreciation in value of these properties culminating into considerable wealth-tax demand in the case of Sir Padampat Singhania, HUF. The HUF was a partner in the said firm up to the assessment year 1972-73. Later on, the HUF retired from the firm and the deceased became partner in his individual capacity. For this reason, after the assessment year 1972-73 and onwards, there are substantial wealth-tax demands against the deceased in his individual capacity. The deceased remained partner in the said firm in his individual capacity up to the assessment year 1977-78. The ACED has further observed that the wealth-tax liabilities amounting to Rs. 4,54,907 in the case of individual and of Rs. 21,91,585 in the case of HUF are directly related to the assets which should not suffer the burden of estate duty either in the hands of Sir Padampat Singhania, individual, or Sir Padampat Singhania, HUF. He has further observed that the assets are still there and the deceased had voluntarily without any matching consideration abdicated from the ownership of these assets. On these facts, the ACED had disallowed the above liabilities. In appeal filed by the accountable person, the learned Controller of Estate Duty (Appeals) accepted the contention of the assessee and directed the ACED to allow deduction in respect of the wealth-tax liabilities of the deceased HUF for the assessment years 1967-68 to 1972-73 and in individual status for the assessment years 1975-76 to 1977-78 after proper verification of the same. The revenue being aggrieved has come up in appeal before the Tribunal. The learned Departmental Representative has very

vehemently argued out that the order of the ACED was perfectly correct and justified and the order of the learned Controller of Estate Duty (Appeals) is erroneous as, firstly, the assets, which have been abdicated by the deceased, had not resulted into any matching consideration and, secondly, the said assets have not suffered the burden of the alleged liabilities which are claimed to be deducted from the real estate of the deceased for estate duty purposes. He has further pointed out that the partial partition effected by the deceased in the assessment year 1972-73 was a manipulated affair as the said partition is not based on the tax liabilities of the HUF on the other coparceners who were allowed the share by the said partial partition. He has further pointed out that the complete retirement of the deceased from the said firm M/s J.K.Bankers in 1978 was also a managed and manipulated affair so as to devoid the assessee of the escalated valuation and huge appreciation in the valuation of the properties held by the said firm as the deceased had accepted at the time of retirement the valuation of the assets shown in the papers and the balance sheet of the said firm, that is, J.K. Bankers. He has further pointed out that the partial partition effected on 2-7-1979 by the deceased before his death was again a managed affair to dilute his property amongst his sons and wife so as to avoid paying the estate duty in case of death of the deceased. He has thus very vehemently stressed that the order passed by the ACED was perfectly correct and justified and should be restored and that of the Controller of Estate Duty (Appeals) be set aside.

3. On the other hand, the learned counsel for the accountable person has relied upon the order of the learned Controller of Estate Duty (Appeals) and stressed that the order passed was perfectly correct and justified and has been very well discussed giving out all the points justifying the details.

4. We have heard the parties at length and have also carefully perused the entire facts and record. It is admitted that the deceased owned property in his individual capacity and in the capacity of HUF. There is sufficient evidence on record that a partial partition was effected on 16-3-1972 whereby interest in the firm (J.K. Bankers) covering the capital standing to the capital account and rights and obligations of a partner in the said firm was divided amongst various coparceners. The said partial partition was evidenced by means of deed executed by the

deceased, a copy of which has been filed in the compilation. The said partial partition was also recognised by the Department as per order made under Section 171 of the Income-tax Act, 1961, copy of which has also been filed in the compilation. Consequently on the partial partition, change in the constitution of the above-said firm was also effected and a deed of fresh partnership was made on 3-10-1972. A copy of the said partnership deed has also been filed in the compilation and a reference to its preamble in Clauses 5 and 6 may be made which are reproduced below:- Whereas Sir Padampat Singhania party hereto of the First part was a partner in his capacity as the karta of the HUF known as Sir Padampat Singhania HUF....

And whereas the said Sir Padampat Singhania party hereto of the First part divided his interest, rights and obligations in the firm by way of partial partition amongst Sir Padampat Singhania (Individual), Shri Gopal Krishna Singhania party hereto of the Seventh part, Dr. Gaur Hari Singhania party hereto of the Eighth part and Shri Govind Hari Singhania party hereto of the Ninth part in equal proportion with effect from 16th day of March, 1972.

Clause 5 : That the parties hereto of the 7th, 8th, 9th and 1st parts hereby accept the position of the firm's assets, rights and interest revealed by the firm's books and other records as at 15th March, 1972.

Clause 6 : That the parties hereto of the 7th, 8th, 9th and 1st parts hereby accept the position of the firm's liabilities and obligations as revealed in the firm's books and other records as at the 15th March, 1972.

5. On the abovementioned facts, it is clear that the deceased was a partner representing his HUF up to the assessment year 1972-73 and from assessment year 1973-74 onwards he was a partner in his individual capacity. The deceased retired from the said firm on 19-3-1977. As a result of his retirement, there was again a change in the constitution of the said firm. In this way, it is also clear that the deceased was a partner in his individual capacity from the assessment years 1973-74 to 1977-78. The retirement of the deceased from the said firm had taken place more than two years before his death as he died on 18-11-1979.

6. It is not disputed that as per wealth-tax assessment for the assessment years 1967-68 to 1972-73, the deceased was assessed in the status of HUF and from 1975-76 to 1977-78 in the status of individual and huge wealth-tax liability has been determined and a certificate for such outstanding demand dated 6-1-1986, issued by the ITO, Central Circle, Kanpur, has also been filed in the compilation. From the above facts, it stands established that the outstanding wealth-tax liabilities relate to the period when the deceased was a partner in the said firm representing his HUF up to the assessment year 1972-73 and in individual status for the assessment years 1975-76 to 1977-78. Section 44 of the Estate Duty Act, 1953 provides that in determining the value of the estate for the purpose of estate duty, allowance shall be made for funeral expenses (not exceeding Rs. 1,000) and for debt and encumbrances.... Consequently, any liability for debts and encumbrances on the estate has to be allowed as deduction while determining the value of an estate for purposes of estate duty. In this connection, reference may be made to Estate Duty Law, second edition, 1983 by Chaturvedi and Pithisaria. At pages 813 and 814 the following commentary appears in the said book:- Page 813 - Looking at the problem from the standpoint of a businessman observed the Supreme Court in *Kesoram Industries and Cotton Mills Ltd. v. CWT* 'or looking at the question from a commonsense view, one will reasonably hold that the net wealth of an assessee during the accounting year is the income earned by him minus the tax payable by him in respect of that income.... This Court has, on more than one occasion, emphasised the fact that the real income of an assessee has to be ascertained on commercial principles subject to the provisions of Income-tax Act'. Their Lordships observed that there was nothing in the Wealth-tax Act 'to come to a conclusion which is unjust on the face of it'. There is nothing in the Estate Duty to come to a different conclusion, and the income-tax payable by or on account of deceased's income has to be deducted in the computation of value of his dutiable estate. Even an instalment of advance tax was held to be deductible in the computation of net wealth of a person.

Page 814 : In matters of estate duty, all income-tax assessed and/or penalty imposed which remained unpaid on the date of death is a 'debt' and is liable to be deducted.

7. From the every perusal of the above commentary, it is clear that income-tax payable by or on account of deceased's income has to be deducted in the computation of value of his dutiable estate. Even any instalment of advance-tax was held to be deductible in the computation of net wealth of the person. At page 814, there is a reference of a decision of Hon'ble Mysore High Court, in *M. Lakshamma v. CED* [1964] 53 ITR (ED) 20, wherein it was held that in the matters of estate duty, all income-tax assessed/or penalty imposed, which remained unpaid on the date of death, is a debt and is liable to be deducted. The provision of Section 2(m)(iii) of Wealth-tax Act provides that while computing the net wealth, the amount of the tax, penalty or interest, payable in consequence of any order passed under or in pursuance of Wealth-tax Act or any law relating to taxation of income or profits or the Estate Duty Act, the Expenditure Tax Act, or the Gift-tax Act, which is outstanding on the relevant date and is claimed by the assessee in appeal, revision or other proceeding as not being payable by him, is to be excluded. There is no such corresponding provision in the Estate Duty Act. Consequently, the provisions of Section 2(m)(iii) of the Wealth-tax Act cannot be imported in computing the net estate of the deceased for the purposes of Estate Duty Act. In the case of Estate Duty Act, Section 44, which will be operative and thus provides a deduction to be allowed while computing the net estate of the deceased under this Section of debts and encumbrances have to be allowed. Here in this case, admittedly all this liability of wealth-tax in the capacity of karta of the HUF and in his individual capacity is nothing but a debt and encumbrance on the estate and there is no scope for the revenue but to allow the same while computing the net estate of the deceased for the purposes of estate duty. Accordingly, we are of the opinion that the learned Controller of Estate Duty (Appeals) was perfectly correct and justified in directing the ACED to allow the same after proper verification. The issue is decided accordingly.

8. The next ground is that the learned CED(A) had erred in accepting the partial partition of the HUF and thereby directing the ACED to exclude the assets of the HUF added in the estate of the deceased. The brief facts are that the deceased on 2-7-1979, much before his death, effected a partial partition of his HUF and transferred certain assets to respective partners. As per partial partition made on 2nd July, 1979, the deceased divided 41,572 equity shares of Raymonds Woollen

Mills Ltd., valued at Rs. 15,38,164 and jewellery, valued at Rs. 3,91,212, which earlier were owned by the HUF. The said partition had taken place amongst the deceased in his individual capacity, Shri Gopal Krishna Singhania, HUF, Dr. Gaur Hari Singhania, HUF and Shri Govind Hari Singhania, HUF. The income-tax proceedings of the deceased HUF for the assessment year 1980-81, had not admitted of the partial partition on account of introduction of Section 171(9) whereby any partial partition made on or after 31-12-1978 was not to be recognised. The ACED thus had not accepted the alleged partial partition accordingly and included the entire assets in the estate of the deceased. In appeal, the learned Controller of Estate Duty (Appeals) accepted the contention of the accountable person and deleted the said addition. The revenue being aggrieved, has come up in appeal before the Tribunal.

9. The learned Departmental Representative has very vehemently argued out that under Section 171(9) of the Income-tax Act, 1961, partial partition after 31-12-1978 had been held to be not cognisable by the Department. Consequently, he has stressed that even for estate duty purposes, the same should not have been accepted by the Controller of Estate Duty and the order to the contrary be quashed and that of the ACED be restored. On the other hand, the learned counsel for the accountable person has relied upon the order passed by the learned Controller of Estate Duty.

10. We have heard the parties at length and carefully perused the entire facts on record. It is no doubt correct that Section 171(9) of the Income-tax Act has provided that any partial partition made on or after 31-12-1978 was not to be recognised and consequently in the subsequent income-tax proceeding, the said partial partition was also not accepted. But there is no corresponding provision in the Estate Duty Act. Section 171(9) is a deeming provision and can be applied only to cases of income-tax and not to any other alive Taxation Law. In absence of any specific provision, it is just simple and ordinary Hindu Law which has to be applied by which the assessee is admittedly governed. Under Hindu Law, there is no prohibition for a partial partition. In this case, there is sufficient evidence to prove that a partial partition had taken place and the same is not disputed. The only dispute was about the legal position of that partition. As there is no

corresponding provision to Section 171(9) of the Income-tax Act, 1961 or the Estate Duty Act, we are of the opinion that the said deeming provision cannot be imported to estate duty matters as under Hindu Law, the karta of a HUF can make a partial partition at any time, the deceased was perfectly competent to do the same. Besides, there is also one more circumstance in the case which goes in favour of the deceased. Section 171(9) of the Income-tax Act was introduced on the estate from 1-4-1980 with retrospective effect from 31-12-1978.

Admittedly, the partial partition had taken place on 2-7-1979 and even the deceased had died on 18-11-1979. Under these circumstances, the assessee by no stretch of imagination could be said to have anticipated such a problem in his mind. Taking all these circumstances into consideration, we are of the opinion that the order passed by the learned Controller of Estate Duty (Appeals) was perfectly correct and justified and the order of the ACED to the contrary was not correct.

The issue is decided accordingly.

11. The last ground is that the learned CED(A) had erred in law in allowing the outstanding liability of Rs. 4,57,448 payable to M/s J.K.Hosiery Factory. This issue is covered by the decision of the Tribunal.

Admittedly, the Tribunal, B-Bench, Allahabad, by their order dated 17-3-1986 in WTA No. 114 and 115(All.) of 1980 for the assessment years 1976-77 and 1977-78 had allowed a deduction of the said amount as outstanding liability. Similar order is also alleged to have been followed by the Tribunal for the assessment years 1978-79 and 1979-80.

When the said liability has been allowed in the income-tax assessment, the same has to be allowed while computing the net estate of the deceased. We, therefore, are of the opinion that the order passed by the learned Controller of Estate Duty (Appeals) on this point was perfectly correct and justified. The issue is decided accordingly.

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