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

Shaukat Shah Khan Vs. Assistant Controller of Estate

Shaukat Shah Khan Vs. Assistant Controller of Estate

SooperKanoon Citation : sooperkanoon.com/67020

Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Mar-31-1994

Reported in : (1995)54ITD241(Delhi)

Judge : R Mehta, N Raghavan

Appellant : Shaukat Shah Khan

Respondent : Assistant Controller of Estate

Judgement :

1. This is an appeal of the Accountable Persons challenging the order dated 20-3-1991 of the Appellate Controller of Estate Duty, Lucknow as erroneous on facts and in law.

(a) Shri Shaukat Shah Khan, the deceased, died on 20th January, 1975 in London. The Assistant Controller of Estate Duty held that the deceased was domiciled in India, but not a British domicile as claimed on the basis of the judgment dated 12-3-1982 of the Chancery Division of the High Court of Justice, and assessed the duty on the estate of the deceased in the foreign property.

(b) In the Estate of the Indian property, he took the value of half share of the deceased in Kothi and land at 122, Civil Lines in Bareilly in the sum of Rs. 13,63,042 valued by the Government-approved valuer for the entire property by rejecting to adopt the value in its place at Rs. 12,38,397.05 being the compensation awarded by the Land Acquisition Officer for the entire property.

(c) Further, the claim of exemption of Rs. 1,00,000 under Section 33(1)(ii) of the Act was also rejected for the reason that the domicile of the deceased was in dispute.

2.2 On appeal, the Appellate Controller of Estate Duty set aside the first issue to the Assistant Controller of Estate Duty to find out as to whether the deceased was a domicile of India or England at the time of his death after making independent enquiries and verification in regard to the passport of the deceased as to whether it was Indian or British. The finding of the Assistant Controller of Estate Duty on the next two issues in regard to the adoption of the Valuation of the Government-approved valuer pertaining to the Civil Lines property and in regard to the disallowance of exemption under Section 33(1)(ii) of the Estate Duty Act were confirmed by the Appellate Controller of Estate Duty. Hence the instant second appeal by the Accountable persons before us.

3. The learned Counsel for the Accountable person prayed for allowing the appeal by submitting as below: 3.1 The deceased Shaukat Shah Khan died in London on 20-1-1975. The Assistant Controller of Estate Duty has erroneously held the deceased as domiciled in India and not treating him to be of British domicile.

The deceased left India in 1975 for England where he studied at Oriel College at Oxford. In due course, he obtained a B.C.L. Degree in 1939 and M.A. in 1942. His application for British nationality was accepted and was granted on 2-10-1950. As early as 1957, he was taxed in England on the whole of his income including his Indian income as he was both domiciled and resident in England. The deceased in his letter dated 11-7-1967 to his English Accountant Price Water House & Company confirmed that he was domiciled and resident in England, living there for many years. He died on 20-1-1975 leaving his estate in India and London a complete account of which was furnished in the Estate Duty return. The Accountable persons Salim Jahan Begum, Sayeed Jahan Begum and Nadir Shah Khan, who were entitled to inherit the estate, filed the Estate duty returns separately. As these Accountable persons were not in contact with the deceased, who died intestate, they did not have knowledge of his estate in England or his civil status therein. Hence they did not know about the acquisition of British

domicile by the deceased. Hence, they filed the return originally showing that the deceased was domiciled in India. Later when the Bankers and Solicitors of the deceased in England applied for Letters of Administration, the appropriate court in England, after recording evidence in regard to the affidavits filed by the Accountable Persons, found the claim of the Indian domicile of the deceased as misleading on evaluation of evidence of other independent witnesses who were friends of the deceased and attended his funeral. In the final analysis, the Chancery Division of the High Court of Justice gave its verdict to the effect that the deceased acquired domicile of England. A copy of the judgment with full narration of evidence was finished to the Assistant Controller of Estate Duty. The Accountable persons also made amendments in the return showing United Kingdom domicile of the deceased. Unfortunately the Assistant Controller of Estate Duty has not considered the said judgment on the issue of domicile, but wrongly relied on the decision in the case of Sankaran Govindan v. Laxmi AIR 1964 Ker. 244. It was held therein that the rule of res judicata applies to all adjudication in a former suit, which term denotes a suit decided prior to the suit in question whether or not it was instituted earlier thereto. The Assistant Controller of Estate Duty is wrong to say that a foreign judgment is not a judgment, especially when no reason has been assigned for such conclusion drawn by him. In view of the admissibility of the foreign judgment, it becomes conclusive. Hence the question of domicile cannot be re-examined by any other court. The Assistant Controller of Estate Duty proceeded on suspicion and surmises, not being guided by law. Further the law of domicile in Indian Succession Act, Part II, does not apply to Mohammadan as stated in Section 4 of the Indian Succession Act. Hence the findings of the Assistant Controller of Estate Duty are not correct as the deceased was domiciled in United Kingdom as per the decision of the British High Court. The Appellate Controller of Estate Duty is, therefore, totally wrong in setting aside the assessment and restoring the issue to the Assistant Controller of Estate Duty for making necessary enquiries regarding the deceased holding Indian or British passport and thereafter to decide the issue of domicile of the deceased who was held rightly to be having an English domicile of choice by the Chancery Division of the High Court of Justice at England.

3.2 The Assistant Controller of Estate Duty has also taken the value of half share of the deceased in Kothi and Land at 122, Civil Lines in Bareilly in the sum estimated at Rs. 13,63,042. The said property was acquired by the Land Acquisition Officer by paying a total compensation of Rs. 12,38,397. Half of it is the deceased's share at Rs. 6, 19, 198 which only should have been taken. The original return was filed on the basis of valuation report obtained from the approved valuer. Later on, the property was acquired under the Land Acquisition Act. Hence it was revised according to the compensation awarded by the Special Land Acquisition Officer. The Accountable Persons informed the Assistant Controller of Estate Duty that no appeal against the said award was filed. The Assistant Controller of Estate Duty cannot choose to prefer the valuation of Government Approved Valuer just because of the presence of his report valuing half share of the property of the deceased in the sum determined at Rs. 13,63,042 and of the absence of the Accountable persons to exercise their right of appeal against the award granted by the Special Land Acquisition Officer. Hence the Appellate Controller of Estate Duty erred in confirming the valuation of the half share of the deceased in the sum determined at Rs. 13,63,042 as against Rs. 6, 19, 198 being half share of compensation awarded by the Land Acquisition Officer in acquisition. The valuation made by the Valuer lost its force after the award of the Land Acquisition Officer at Rs. 12,38,307 and further adoption of it by the Departmental Valuation Officer in the case of the Accountable person Nadir Shah Khan who held 7/8th of 1 /2 share in the property. Reliance is also placed on the decision in the case of Mrs. Khorshed Shapoor Chenaiv. ACED [1980] 122 ITR 21 (SC).

3.3 Further, the Assistant Controller of Estate Duty has wrongly denied the claim of exemption of Rs. 1,00,000 under Section 33(1)(ii) of the Act for the residence of the deceased. The Assistant Controller of Estate Duty has also incorrectly upheld his reasoning that the said "claim does not qualify the requirement of section when the domicile of the deceased itself is under dispute".

4. On the other hand, the learned representative for the revenue played for dismissal of the appeal by countering as below : 4.1 The Assistant Controller of Estate Duty rightly relied upon the decision in the case of Sankaran Govindan

(supra). It is correctly observed by the Assistant Controller of Estate Duty that a perusal of the letter dated 18-3-1992 of the Solicitor M/s. Maxwell Batley & Co.

at London stating that the deceased was domiciled in England at the time of his death shows that the issue of domicile was contested in England, and it was yet open to file appeal against it. It was proper to hold for the Assistant Controller of Estate Duty that the order of the Estate Duty authorities in England in itself was not sufficient evidence to prove that the deceased was not domiciled in India at the time of his death. His reference to Section 21(1) of the Act and to certain communication in his order rightly raises ambiguity regarding the status of the deceased. The legal position in regard to the Indian Succession Act was not properly examined by the Assistant Controller of Estate Duty, is alone the conclusion of the Appellate Controller of Estate Duty. Only to ascertain whether any appeal was filed against the order of the British High Court and if so, to know its result as well as only to conduct an independent inquiry by verifying the passport of the deceased as to whether it was Indian or British at the time of death of deceased, the Appellate Controller of Estate Duty fairly set aside the assessment order and restored it to Assistant Controller of Estate Duty for a decision de novo on the point of domicile.

4.2 The Accountable persons themselves filed the Approved Valuer's report originally and have shown the value in the return. The compensation awarded by the Special Land Acquisition Officer cannot be held to be the market value of the property in question. The Accountable Persons had a right of appeal against the order of the Special Land Acquisition Officer which has been voluntarily forfeited by them. Hence the Assistant Controller of Estate Duty was correct to have relied upon the Approved Valuer's report. Therefore, the Appellate Controller of Estate Duty has rightly sustained the order impugned on this issue.

4.3 Further, the Assistant Controller of Estate Duty was also correct in having denied the claim of exemption of Rs. 1,00,000 under Section 33(1)(ii) of the Act. The Appellate Controller of Estate Duty was also perfect in approving his reasoning that the claim does not qualify requirement of the section, especially when the domicile of the deceased itself was in dispute.

5.1 Rival submissions heard and relevant orders read including the concerned pages of the paper book referred to before us besides the case laws relied upon by the parties. We note that the Accountable Person has filed a copy of the judgment dated 12.3.1982 of the Chancery Division of the High Court of Justice in the case of National West Minster Bank Ltd against the deceased's Accountable Persons herein and five others. A perusal thereof reveals that on the facts of the case the only issue was as to whether the deceased herein died with an Indian or English domicile. After hearing the parties and examining the affidavits filed and the evidence available on record and due discussion on the issue in question, the Hon'ble High Court has declared through its order that the deceased was at his death on 20-1-1975 domiciled in England. The deceased died intestate, unmarried, without issue and without parents. Out of the three appellants before the Appellate Controller of Estate Duty, the first two Accountable Persons are full sisters of the deceased and the third Accountable Person is a nephew of the deceased, being the deceased's brother's son.

These three were the defendants in the proceedings before the High Court of Justice along with the fourth defendant who is the son of the deceased's sister, the fifth to ninth defendants being the sons and daughter of another sister of the deceased. The judgment itself mentions that all parties had experienced difficulty in contacting and getting information from members of the family who live in various parts of India and Pakistan. The Accountable Persons contended before the High Court for an Indian domicile while the rest of the defendants from fourth to ninth contended for an English domicile. There was no dispute that the deceased's domicile of origin was India. Hence it was for the rest of the defendants to establish that the Indian domicile of origin was replaced by English domicile of choice.

5.2 The presumption that a person continues to be domiciled in the country in which he is domiciled and the burden of proving change of domicile varies to strength according to the kind of domicile which is alleged to continue. It is strongest when that domicile is, as in the present case, one of origin. As Lord Macnaughton put it in Winans Attorney General [1904] AC 287 at page 290 : "Domicile of origin differ from domicile of choice only in this, that its character is

more enduring, its hold stronger and less easily shaken off". There has been some judicial conflict of view as to the standard of proof required to rebut the presumption. On the one hand Scarman, J. in a probate case, in the Esta te of Fuld No. 3 [1968] p. 675 at p. 685, stated that the standard of proof was that adopted in civil proceedings, that is to say, proof on the balance of probabilities and not that adopted in criminal proceedings, namely, proof beyond all reasonable doubt. On the other hand, Sir Jocelyn Simon P., in a divorce case, Henderson v.Henderson [1967] p. 77 at p. 80 stated that "the standard of proof goes beyond a mere balance of probabilities", a statement he was to echo at a higher level, albeit obiter, in Steadman v. Steadman [1976] AC 536 at p. 563. There is no doubt that the burden of proving a domicile of origin has been lost is a heavy one. The Hon'ble High Court bore in mind that Scarman, J. in Fuld's case (supra) at p. 686 added this : "Two things are clear: first, that unless the judicial conscience is satisfied by evidence of change of domicile of origin the domicile of origin persists; and that the acquisition of a domicile of choice is a serious matter and not to be lightly inferred from slight indications or casual words". In the Hon'ble High Court's opinion, this last statement of Scarman, J. gives a clue to the legal answer, and this appears to have been the view of Orr, J. in Buswell v. IRC a Tax Case [1974] 1 WLR 1631 where at p. 1637 he seemed to have expressly disapproved of the concept of some intermediate form of proof. It amounted that a Judge has perhaps to be rather more satisfied before displacing a domicile of origin in favour of a domicile of choice. That was precisely the competition in the present case before the Hon'ble High Court. Both the Fuldand the Buswell cases were cited with approval in the later Court of Appeal decision of IRC v. Bullock [1976] 1 WLR 1178.

5.3 The relevant main facts in the case before the Hon'ble High Court were these : The deceased Shaukat was born in India in June 1914 and his father had an Indian domicile of origin, as did Shaukat. In 1935, he came to England where he studied at Oriel College, Oxford reading law and in due course becoming a barrister. He obtained a B.A. in 1938, a BCL in 1939 and M.A. in 1942. He remained in England throughout the Second World War. In 1946, however, he returned to India and remained there for three years, but this was a period spanning his father's last illness and his death in 1948. By early 1949 he returned

to England and lived at Oxford. There are indications that he maintained a close association with his old college. From the end of November 1949 to the beginning of March 1950 he returned to India, but from March 1950 and for the following two years he lived at Oxford and London. In September 1950, he applied for English nationality, giving his address as Oriel College, Oxford, his status as a British citizen without nationality under Section 13 of the British Nationality Act, 1948 by reason of his holding a U.K. passport in which he was described as a British subject by birth, and the fact that he had not done any act to acquire citizenship of any country. He stated that he was ordinarily resident in the U.K. and gave the following particulars of his residence there : "From 4-9-1949 to 25-11-1949 at Iffley Road, Oxford; from 11-3-1950 to 4-9-1950 at 22, Jermyn Street, W. 1 and at 200, Iffley Road, Oxford; have lived continuously in the U.K. from 1935 to 1945 with occasional holidays on the continent; spent 1946 to 1949 in India looking after ailing father who died in 1948; arrived in the U.K. on 28-4-1949 and lived here since except from 25-11-1949 to 11-3-1950 when urgent personal affairs required my presence in India". His application for British Nationality was granted on 2nd October, 1950. From 1950 to 1957, he lived in a flat at Hyde Park and from August 1957 until his death he lived at Portland Place. Following his return from India not long after his father's death he lived in England continuously until his own death with the exception of two business visits to India of four months towards the end of 1960 and a further three months at the end of 1963. It is clear that as early as 1957 he was being taxed in Britain on the whole of his income including his Indian income, on the basis that he was both domiciled and resident in England.

5.4 A striking piece of evidence as to Shukat's intentions, according to the Hon'ble High Court, is to be found in a statement which he himself made in a letter written by him in July 1967 in reply to a letter of 11th July, 1967 from his English accountants, Price Waterhouse & Co., in which they had pointed out that he was being and had been for some years taxed in the United Kingdom on the basis that he was domiciled in England. Their letter had ended as follows : "the tax returns issued to you by the Inland Revenue are for persons domiciled in the United Kingdom, and we therefore, assume that you have taken up residence in England with a view to making your permanent home here for ever, i.e., you have acquired a domicile of choice in the United Kingdom. It would be helpful to us if you could

confirm this position". In answer to this three days later Shaukat wrote a long letter to Price Waterhouse which included the following paragraph: "I also confirm that I am domiciled and resident in this country and have been living here for many years now. The country of my domicile of origin was India as you have rightly assumed". What Shaukat wrote in July 1967, according to the Hon'ble High Court, was a true statement of his intentions which had not only been borne out by his previous pattern of life but which were if anything to be reinforced still further by the pattern which he adopted for the rest of his life. It is only after his death that members of his family come on the scene, in particular Nadir, the third defendant, and Saeed, the first Defendant.

It is the fact that by letter dated 20th December, 1977 to Price Waterhouse and Co., the Inspector of Taxes stated that his head office had given a ruling as follows : "It is accepted that your late client was not domiciled in the U.K. at the date of death, 20th January, 1975.

It follows that he was not domiciled in the U.K. during the period of his stay here prior to death which includes the years from 1970-71. The deceased is regarded as resident and ordinary resident in the U.K. for all years involved". The matter is, in the High Court's view, put beyond all possible doubt by an affidavit sworn in support of the fourth Defendant's case for an English domicile of choice by a lady possibly of Italian origin but resident in London who with her husband had known Shaukat since about 1960. The contents of the affidavit of Mrs. Aglaia Helen Togna are detailed in the judgment of the High Court.

The Court found Mrs. Togna's evidence, after due examination, completely convincing. She has no conceivable reason for misinterpreting or stretching the truth, and the picture she gives of Shaukat is, in Court's judgment, consistent and consistent only with having adopted an English domicile of choice. Where it conflicts with the picture which Saeed and Nadir sought to put before the Court, it had no hesitation in preferring the evidence of Mrs. Togna. In the result, therefore, looking at the evidence before it as a whole the High Court was left in no doubt that by the time of his death Shaukat had adopted an English domicile of choice.

5.5 The facts and circumstances of the case clearly convince us that the stand of the Accountable Persons that they were not in the knowledge of the estate in England or his civil status in England and that they did not know about the deceased's acquisition of British domicile cannot be brushed aside. In fact as has been already said, the judgment of the High Court itself mentions that all parties before it experienced difficulty in contacting and getting information from members of the family who live in various parts of India and Pakistan.

The evidence in the affidavit of Mrs. Tonga, according to the Hon'ble High Court which completely relied upon it, also states that the deceased disliked talking about his relatives in India or about anything to do with India and that he became very much annoyed and expressed a dislike of relatives whenever he was questioned about them.

5.6 That apart, as has been already mentioned, the deceased applied for English nationality in September 1950 giving his address as Oriel College at Oxford his status as British Citizen without nationality under Section 13 of the British Nationality Act, 1948 by reason of his holding a United Kingdom passport in which he was described as a British Subject by birth and the fact that he had not done any act to acquire citizenship of any country and that he was ordinarily resident in United Kingdom. Hence it is unnecessary for the Appellate Controller of Estate Duty to set aside the order impugned before him to the Assistant Controller of Estate Duty to find out at this stage as to whether he was holding an Indian passport or British passport.

5.7 We may also point out that the letter dated 24-3-1987 of the Inland Revenue of London addressed to the National West Minster Bank who is the plaintiff in the suit before the High Court of Chancery Division, confirmed that the deceased died domiciled in the United Kingdom as decided by the Courts of the United Kingdom and as such his world-wide estate was subject to Estate Duty and that such duty was paid in full and the letter in correspondence might be felt free to use with the Indian authorities.

5.8 Further, as urged on behalf of the Accountable Person according to Section 13 of the Code of Civil Procedure, 1908, the foreign judgment has become final and

conclusive. Section 13 of the Code of Civil Procedure, 1908 runs as follows:-- Section 13. When foreign judgment not conclusive.--A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-- (a) where it has not been pronounced by a Court of competent jurisdiction; (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable; (d) where the proceedings in which the judgment was obtained are opposed to natural justice; (f) where it sustains a claim founded on a breach of any law in force in India.

As none of the exceptions mentioned above has not even been whispered, either in the assessment order or in the appellate order or even in the stand of the Revenue before us, to have come in the way, the aforesaid foreign judgment, according to the statutory prescription undeF the procedural law, shall be conclusive as to the matter directly adjudicated upon between the same parties or under whom they or any of them claim litigating under the same title.

5.9 Further, Section 11 of the CPC is also relevant in this context which runs as below: S.11. Res judicata.--No court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

5.10 The aforesaid judgment of the High Court was filed by the Accountable person before the Assistant Controller of Estate Duty as well as the Appellate Controller of Estate Duty during the course of respective proceedings and was made a part of the record thereof.

Unfortunately this was never considered by the Assistant Controller of Estate Duty nor appreciated by the Appellate Controller of Estate Duty, when especially it cannot be refuted that it was a substantial evidence and proof in the matter of the deceased holding an English domicile which is a crucial question in the instant

appeal before us as was in the suit before the Hon'ble High Court. No reason has also been assigned in the orders impugned that such a foreign judgment is not a judgment having force. Thus, non-acceptance or non-appreciation of the findings of the High Court of Justice, Chancery Division, is clearly an apparent mistake of law. The question as to whether such judgment has been appealed against or not is a matter for the Revenue to demonstrate against the Accountable person. So long and so far it is unable to establish that it was appealed against in which an adverse finding was given, the presumption and inference is that it has become final as the onus is on the Revenue to prove it otherwise.

5.11 In fact in strict legal parlance Dr. G.C. Cheshire, a distinguished Jurist, in his treatise on Private International Law, VII Edition at page 564 says as below: The requirement of finality means that the judgment must be final in the particular court in which it was pronounced (Per Scrutton, L.J. in Beatty v. Beatty 1924 I.K.B. 807 @ 815 and 816). It does not mean that there must be no right of appeal, nor even the stronger fact that an actual appeal is pending in the foreign country, is a bar to an action brought....

5.12 We may also further add here that the submission on behalf of the Accountable Person was that the said judgment of the Chancery Division of the High Court of Justice had become final as it has not been challenged, which the Revenue could not controvert before us nor any of the facts pertaining to the domicile of the deceased. Further, brushing aside cannot be easily made with reference to the submissions on behalf of the Accountable Persons that no useful purpose would be served by setting aside the matter to the Assistant Controller of Estate Duty regarding verification of passport as there is no evidence available as on date in regard to the passport of the deceased and further that the observation of the Appellate Controller of Estate Duty that the Assistant Controller of Estate Duty has not properly examined the legal position in regard to the Indian Succession Act serves no purpose as the Indian Succession Act is not applicable to either Hindus or Muslims, 5.13 That apart even in our view, the facts and circumstances of the case in the light of the foreign judgment convinces us that the deceased was having the English domicile of choice by him. This issue of domicile gave us an opportunity to make an excursion into the field of Private International

Law. Every person begins life as infant, and, therefore, as a dependent person. When he becomes an independent person on his attaining majority he will find himself in possession of a domicile, which will in most cases be his domicile of origin. He can then obtain or retain for himself by his own act and will a legal home or domicile different from the domicile of origin, which is called a domicile of choice. For the acquisition of domicile of choice two factors are essential (a) residence in the State in which a domicile is alleged to be acquired, and (b) the intention of permanent residence there. Thus, the domicile of choice may be defined as that which every independent person can acquire by the combination of residence (factum) and intention of permanent or indefinite residence (animus manendi).

Though both the factum and animus manendiare essential necessities, the latter is the more vital requirement. As the question of domicile is a question of fact and intention, particular attention, therefore, is due to the nature both of the requisite fact, viz., residence and requisite intention. Residence may be defined as habitual physical presence in a place or country. The residence which goes to constitute domicile certainly need not belong in point of time. As per Lord Cranworth in Bell v. Kennedy [1868] LR I Sc. & Di v. 307 (HL), if the intention of permanently residing in a place exists, a residence in pursuance of that intention, however short, will establish a domicile. Intention may be defined as the present intention of permanent or indefinite residence in a given country, or the absence of any present intention of not residing permanently or definitely in a given country.

(a) The intention must amount to a purpose or choice. The domicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place. As per Lord Westbury in the celebrated case of Udny v. Udny [1869] LR I Sc. & Di v. 441 (HL), it must not be prescribed or dictated by any external necessity.

(b) The intention must be intention to reside permanently, or for an indefinite period.

(c) The intention must be an intention of abandoning, i.e., of ceasing to reside permanently in the country of the former domicile.

It must be to go to reside in some other place as the new place of domicile or the place of new domicile.

(d) The intention need not be an intention to change allegiance. The intention to reside permanently or settle in a country is not the same thing as the intention or wish to become a citizen of that country.

5.15 It would also be relevant to quote Dr. G.C. Cheshire, Member of the Institute of International Law, in his treatise on Private International Law, VII Edition, at page 153, as below : It is impossible to lay down any positive rule with respect to the evidence necessary to prove the intention. All that can be said is that every conceivable event and incident in a man's life is relevant and an admissible indication of his state of mind. It may be necessary to examine the history of his with most scrupulous care, and to resort to even hearsay evidence where the question concerns the domicile that a person, now deceased, possessed in his life-time (Scappaticci v. A.G. 1955 I All. E.R. 193 n). Nothing must be overlooked that might possibly show the place which he regarded as his permanent home at the relevant time (Chitty, J. In Re Craignish, 1892 III Ch. 180). No fact is too trifling to merit consideration.

5.16 In regard to the point urged by the Accountable Person that the Appellate Controller of Estate Duty has no power to set aside the case to Assistant Controller of Estate Duty for making further inquiries under Section 62(4)(b) of the Estate Duty Act, as was given to the CIT (Appeals) under the Income-tax Act, as Section 62(4)(b) clearly stipulates that the Appellate Controller may before disposing of an appeal, make such inquiry as he thinks fit or cause further inquiry to be made by the Controller, we are of the opinion that it has substantial force not deserving to be brushed aside in a lighter vein, especially when the Revenue before us could not throw any light against such submission of the assessee that the Appellate Controller of Estate Duty has no power to set aside but if at all only a limited power of remand. In any event, we are of the dpinion that this point is only incidental when we have held on the main issue that the foreign judgment (supra), is binding and conclusive, particularly when as per Section 14 of the CPC, the Court should presume upon the production of any document purporting to be a

certified copy of the foreign judgment that such judgment was pronounced by a Court of competent jurisdiction unless the contrary, which has not arisen in the instant case, appears on the record, but such presumptionmay be displaced by proving want of jurisdiction which has also not been questioned in the case in question.

5.17 We may also further add that the Assistant Controller of Estate Duty relied upon the decision in the case of Sankaran Govindan (supra).

But both the parties before us failed to note the fact, which we noticed when we were perusing Section 13 of the CPC cited before us, that the aforesaid case travelled to the Hon'ble Supreme Court reported in [1975] 3 SCC 351. While it was dealing with the succession to properties and moneys of an Indian dying intestate in England in 1950 and the question of his domicile of origin and choice as well as the foreign judgment obtained operates as res judicata in the light of Section 13 of the Code of Civil Procedure, 1908, on when foreign judgments are not conclusive, Section 41 of the Evidence Act, 1872 on relevancy of certain judgments in probate etc., jurisdiction, and Article 5 of the Constitution of India on citizenship at the commencement of the Constitution, it held that it is a well-established proposition in Private International Lawihat unless a foreign Court has jurisdiction in the international sense, a judgment delivered by that Court would not be recognised or enforceable in India and further that if the foreign judgment was obtained by fraud or if the proceedings in which it was obtained were opposed to natural justice, it willnot operate as res judicata. As no question of want of jurisdiction or fraud has been raised or charged against, the conclusiveness of the foreign judgment and the principle of res judicata come into force.

5.18 Under these circumstances, though we were contemplating in our mind at the outset that this matter may require verification by the Assistant Controller of Estate Duty, by thus upholding the order of the Appellate Controller of Estate Duty, in the ultimate analysis after due deliberation of the rival submissions and for the reasons discussed above in the light of the Private International Law into which we had to make an indepth excursion inevitably in regard to the issues of Domicile of Origin, Domicile of choice and Foreign judgments, we have no other go than

setting aside the order impugned which has restored the matter to the file of the Assistant Controller of Estate Duty for deciding de novo the issue of inclusion of the value of deceased's assets depending upon the outcome of carrying out the directed inquiries and verification. Thus and, therefore, we direct the Assistant Controller of Estate Duty to implement the relief granted by us as prayed for by the Accountable person in regard to the first three grounds of appeal raised before us.

6.1 Now coming to the fourth ground of appeal, we note that the Asstt.

Controller of Estate Duty has chosen his preference to the value reported by the Government approved valuer as the accountable persons have informed that they have not exercised their right of appeal against the award of the Special Land Acquisition Officer. This was just confirmed by the Appellate Controller of Estate Duty without any discussion thereon. The stand of the accountable person is that the proceedings of land acquisition begun during the life-time of the deceased. The notification under Section 4(1) of the Land Acquisition Act was issued on 2-12-1972 and the award was made on 26-3-1977. That therefore the land which was compulsorily acquired during the life-time of the deceased cannot form part of his estate but the right to receive compensation therefor at the market value on the date of notification for acquisition which could accrue to the deceased would be the property that could pass on his death, in accordance with the principle laid down in the cases of Mrs. Khorshed Shapoor Chenai (supra) and CED v. Estate of Late Mohd. Sultan [1981] 127 ITR 277 (AP). While thus, praying for the determination of the compensation at Rs. 6, 19, 198 being half of the award in respect of the deceased's share in the immovable property in Civil Lines at Bareilly, it was also brought to our notice that the value of 29/34th share of Shri Nadir Shah Khan, the first accountable person herein, for wealth-tax purposes was determined at Rs. 7,48,200 by the Valuation Officer to whom the reference was made by the Wealth-tax Officer. That the Valuation Officer based his valuation on the compensation awarded by the Special Land Acquisition Officer. That therefore half share of the deceased herein in the Bareilly property should also be taken on the same basis as taken in the case of the first accountable person herein. It was stressed that such a different valuation is against law and propriety of the case.

Strength was also drawn further from the decision in the case of Estate of G. Rama Swamy Naidu v. CED [1970] 76 ITR 559 (Mad.), holding that the contents of a wealth-tax return order in a wealth-tax assessment proceedings which has become final are relevant material on which reliance can be placed by the Tribunal to decide an issue under the Estate Duty Act, particularly while reckoning the value of the Estate that was passed or is deemed to have passed on the death of a deceased.

6.2 After a careful analysis of the issue on the facts and circumstances of the case as highlighted by the rival submissions and in the light of the ratio decidendi rendered in the aforesaid case laws relied upon by the assessee, we are of the considered opinion that the stand of the accountable person has substantial force. We, therefore, set aside the order of the Appellate Controller of Estate Duty which simply confirms the order of the Asstt. Controller of Estate Duty. We thus hold that the choice of preference given to the value reported by the Government Approved Valuer than the award by the Special Land Acquisition Officer just because no appeal was filed against such award/is totally erroneous. We thus sustain also this ground of appeal of the accountable persons.

7. Now coming to the last ground of appeal, we note, the Appellate Controller of Estate Duty has held that the Asstt. Controller of Estate Duty was correct in denying the claim of exemption of Rs. 1,00,000 under Section 33(1)(rc) of the Act as the claim did not qualify the requirement of the section, when the domicile itself of the deceased was under dispute. In our opinion the reason of the confirmation of rejection of this claim is wrong when the order impugned has set aside the issue of domicile to the Asstt. Controller of Estate Duty. However, as the issue of domicile has been set at rest by us as the domicile of choice of the deceased and the deceased died on 20th January, 1975 as domiciled in England and further that only compensation was awarded for the construction of a residential house in Bareilly, and in view of the fact of non-compliance of the specific requirement of the statutory provision that one house or part thereof should have been exclusively used by the deceased for his residence to claim the exemption of rupees one lakh, the stand of the accountable persons that a sum of Rs. 48,383 being the half share of the deceased in the sum of Rs. 96,767 being the compensation awarded

for the construction of residential house does not survive. In this view of the matter, the last ground of appeal of the accountable person in regard to claim of exemption under Section 33(1)(n) is rejected by us.

8. In the result, the appeal of the accountable persons is partly allowed.

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