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Controller of Estate Duty Vs. M. Rajendran

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Court : Chennai

Decided On : Nov-11-1997

Reported in : [1999]239ITR322(Mad)

Judge : N.V. Balasubramanian and ;P. Thangavel, JJ.

Acts : Income Tax Act, 1961 - Sections 28

Appeal No. : Tax Case No. 753 of 1984, Reference No. 668 of 1984

Appellant : Controller of Estate Duty

Respondent : M. Rajendran

Advocate for Def. : K.M.L. Majele, Adv.

Advocate for Pet/Ap. : Deokinandan, Adv.

Judgement :
ORDER

1. In pursuance of the directions of this Court, the Tribunal referred the following questions of law under section 64(3) of the Estate Duty Act, 1953, ('the Act'), for our consideration :

'1. Whether, on the facts and in the circumstances of the case, and having regard to the clarification made by the Appellate Tribunal itself in its order in R.A. No. 970 (Mad.) of 1977-78 dated 8-5-1978, the Tribunal, was justified in holding that the

Appellate Controller's order in admitting the appeal is based on the directions given by it and hence it need not go against its direction

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that there is no case for rectification under section 61 of the Estate Duty Act

3. Whether the valuation adopted for wealth-tax assessment cannot provide the basis for adoption of the same value for estate duty assessment ?'

2. The original assessment with reference to the estate of one late Mariappa Mudaliar of Coimbatore was made under the provisions of the Act on 15-2-1971, determining the principal value of the estate passing on the death of the deceased at Rs. 3,13,432. The estate duty assessment comprised of certain immovable properties which are as under :

1. 8/159, 7th Street, Gandhipuramvalue exempt under section 33(1)(n).2. 8/204, 100' Road, Coimbatore-value admitted Rs. 44,6003. 8/170, 7th Street, Gandhipuramvalue admitted and accepted Rs. 21,6004. 7/298 to 300 AvanashiRoad, Coimbatore - valueadmitted is Rs. 56,000 butassessed at Rs. 96,3005. 7/4 and 5 Mariamman KoilSt. Coimbatore - valueadmitted at Rs. 77,000but assessed at Rs. 93,500

3. After completion of the original assessment, the Assistant Controller noticed that for the purpose of wealth-tax for the assessment year 1970-71 the property situate, at 8/204, 100' Road, Coimbatore, was assessed at a sum of Rs. 49,500 and the property situate at 7/298 to 300 Avanashi Road, Coimbatore, was assessed at a sum of Rs. 1,80,000.

The Assistant Controller initiated proceedings to rectify the mistake to bring the value at par with the wealth-tax assessment made for the assessment year 1970-71 in the estate duty assessment also. Accordingly, the Assistant Controller issued a notice to the accountable person. The accountable person raised several objections and the principal objection was that the valuation admitted in the estate duty again was based on valuation report and the Assistant Controller in the

original assessment had not accepted the value of the valuer but deputed his own Inspector and had the building revalued. According to him, the value adopted in the original assessment under the Act was arrived at only after some serious discussion about the value of the property and after taking into account the figures furnished in the wealth-tax assessment. It was also submitted that the value adopted in the wealth-tax assessment was only on ad hoc basis and the accountable person had not challenged the assessment made under the wealth-tax because of the negligible tax effect in the wealth tax proceedings. The Assistant Controller did not agree with the contentions of the accountable person and he held that there are mistakes which are apparent on the face of the record and in this view of the matter, he held that the value for the estate duty assessment should be revised to bring it on par with the value adopted in the wealth-tax assessment. The Assistant Controller passed order under section 61 of the Actrectifying the original assessment.

3A. The accountable person preferred an appeal to the Appellate Controller and the Appellate Controller dismissed the appeal on the ground that the order under section 61 was not appealable. Against the order of the Appellate Controller, the accountable person preferred an appeal before the Tribunal and the Tribunal by its order in ED. No. 45 (Mad.) of 1976-77 dated 29-11-1997 held that if the assessee files an appeal against the original order subsequent to the rectification order made under section 61, the Appellate Controller should condone the delay and admit the appeal.

4. The accountable person thereafter filed an appeal stating that the order revised in the original assessment was contrary to the facts and the rectification was only a change of opinion. The Appellate Controller in the subsequent appeal went into the matter on the merits of the case and he found that for the purpose of wealth-tax, the valuation was determined on the basis of the estimate and the accountable person accepted the wealth-tax assessment because the tax effect was negligible. The Appellate Controller also found that when the accountable person filed the accounts for the purpose of estate duty, he filed one approved valuers's report and the value arrived at by the approved valuer was accepted, for the property at 100 feet Road. She also found that it was later on revised to Rs.

49,500 to be on par with the wealth-tax assessment. Insofar as the property situate at Avanashi Road is concerned, though the valuer had shown the value at Rs. 56,000 the Assistant Controller adopted a sum of Rs. 96,300 as the market value of the property as on the date of death. The sum of Rs. 96,300, according to the Appellate Controller, was arrived at by the Assistant Controller after discussion and after verification of physical features of the property by the Inspector attached to the office of the Assistant Controller. She also found that after the assessment was rectified, the matter was referred to the departmental valuer who has given the report, valuing the property at 100 feet Road at Rs. 53,800 and the value of the property at Avanashi Road at Rs. 1,28,000. The Appellate Controller, therefore, held since there is a great variation in the values adopted by the approved valuer, there is no case for rectification of the assessment and, therefore, the Assistant Controller had no jurisdiction to initiate proceedings under section 61 to rectify the mistake, as if there were certain mistakes apparent on the record.

5. The revenue preferred an appeal before the Tribunal challenging the order of the Appellate Controller. The revenue has raised three grounds. The first ground was that the appeal against the order under section 61 did not lie, the second ground of challenge was that there were mistakes apparent on the record and the third ground of challenge was that the value adopted in the wealth-tax assessment should be estimated for the estate duty also. The Appellate Tribunal considered the grounds raised by the revenue and held that with reference to the first ground regarding maintainability of the appeal the Tribunal had already given a direction to admit the appeal against the original order of assessment and since the Appellate Controller had admitted the appeal after condoning the delay, the appeal was held to be maintainable.

5A. Insofar as the second ground of challenge regarding the question whether there was mistake apparent on the record or not, the Appellate Tribunal entirely agreed with the Appellate Controller and held that the figure in the wealth-tax assessment cannot conclude the matter but the wealth-tax assessment could be considered only as a relevant material. It also found that in the wealth-tax assessment the figures were adopted on an ad hoc basis which would not enable the Assistant Controller to rectify the order of assessment. The Appellate Tribunal

also held that merely because the accountable person did not challenge the wealth-tax assessment due to the low tax incidence of the wealth-tax, it cannot be said that the value shown in the wealth-tax assessment has become final or conclusive which would give jurisdiction to the Assistant Controller to rectify the order of assessment. The Appellate Tribunal also held that the valuation done in the original assessment proceedings was reasonable and there is nothing to show that it did not reflect the market value of the property passing on the death of the deceased.

6. The revenue has challenged the order of the Tribunal and on the basis of the direction of this Court, the Appellate Tribunal has stated a case and referred the question of law cited supra. Insofar as the first question is concerned, we are of the opinion that the Tribunal has come to a correct conclusion in holding that the Appellate Controller was justified in admitting the appeal based on the direction given by the Tribunal. We find that the Tribunal in the earlier order dated 23-11-1977 had directed the Appellate Controller to admit the appeal if the assessee filed an appeal against the original order subsequent to the rectification made under section 61 and the Appellate Controller was also directed to condone the delay and admit the appeal. The Appellate Controller subsequently condoned the delay and admitted the appeal. Therefore, it cannot be said that the Appellate Controller exceeded her jurisdiction in condoning the delay and admitting the appeal. Mr. C. V. Rajan, the learned counsel appearing for the revenue, contended that an appeal cannot be preferred against an order passed under section 61 and, therefore, the appeal filed by the accountable person did not lie. We are unable to accept the arguments of the learned counsel for the revenue. In the case of Vedan tham Raghaviah v. Third Addl. ITO : [1963]49ITR314(Mad) this Court held that once an order of rectification was passed, the assessment itself was modified and what remained was not the order of rectification but only the assessment as rectified. The above proposition of law laid down by this Court in Yedantham Raghaviah's case (supra) was subsequently followed by this Court in the case of S. Arthanari v. First ITO : [1972]83ITR828(Mad) wherein this Court reiterated that in cases where the assessment orders are rectified, the original orders whose mistakes and errors are corrected no longer hold the field. The above two decisions of this Court were followed by an order of a learned Judge of the

Calcutta High Court in the case of Jeewan Lal (1929) Ltd. v. Addl. CIT : [1977]108ITR407(Cal) wherein the learned Judge held that when the assessment order of the ITO was rectified under the relevant provisions of the Act, the order in existence was the order as rectified.

7. Following the above three decisions, we are of the opinion that after the order of rectification by the Assistant Controller what remains is the original order as rectified and when the accountable person preferred an appeal, it has to be construed that the accountable person filed an appeal against the original order as rectified by the Assistant Controller under section 61 and it cannot be said that the accountable person has filed an appeal against an order based on section 61. Since the accountable person has filed an appeal against the order as rectified, the Tribunal was justified in holding that the appeal filed against the original order as rectified is maintainable.

8. Insofar as the second question relating to rectification of the mistake is concerned, the Appellate Controller has given cogent reasons for coming to the conclusion that there are no mistakes apparent on the record for rectification. The Appellate Controller found that when the accountable person filed the accounts for estate duty purposes, the value reflected in the accounts was supported by the report of the approved valuer. With reference to the property situate at 100 feet Road, it was valued at Rs. 44,600 and it was revised to Rs. 49,500 to be on par with the wealth-tax assessment. Insofar as the property situate at Avanashi Road is concerned, the accountable person has valued the property at Rs. 56,000 which was also based on the report of an approved valuer. The Assistant Controller in the original assessment proceedings did not accept the value shown by the accountable person. He deputed his own Inspector, who inspected the property and after discussion, the value of the property was enhanced from a sum of Rs. 56,000 to Rs. 96,300. The Assistant Controller further found that the value of the property adopted by the departmental valuer after the order passed under section 61 was also not in accordance with the value determined in the wealth-tax assessment proceedings. The Appellate Controller as well as the Tribunal positively found that the value adopted in the wealth-tax assessment proceedings was an ad hoc sum and the accountable person accepted the wealth-tax

assessment because of the meagre tax effect in the wealth-tax assessment. Therefore, we are of the view that when the valuation was determined in the estate duty proceedings on the basis of a valuation report and after much discussion and after inspection of the property, it cannot be said that there were certain mistakes apparent on record which should be rectified as there are no glaring omissions in the mode of valuation of the property or in the adoption of the value of the property. The figure shown in the wealth-tax assessment proceedings was found to be an ad hoc figure and those assessment orders cannot constitute a ground for the Assistant Controller to initiate proceedings to rectify the mistake. Accordingly, we are of the view that the Appellate Tribunal was correct in holding that there is no case for rectification under section 61 and further on the facts of the case, it was light in holding that the valuation adopted for wealth-tax purposes cannot provide the basis to initiate the rectification proceedings on the facts of the case. In this view of the matter, we answer all the questions referred to us in the affirmative and against the department. However, in the circumstances of the case, there will be no order as to costs.

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