

K. Hilal Vs. Appellate Controller of Estate Duty and anr.

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Court : Chennai

Decided On : Mar-13-1979

Reported in : [1979]120ITR61(Mad)

Judge : Ramanujam and ;Ratnavel Pandian, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 9 and 60(1)

Appeal No. : Writ Petition No. 3824 of 1975

Appellant : K. Hilal

Respondent : Appellate Controller of Estate Duty and anr.

Advocate for Def. : J.Jayaraman and ;Nalini Chidambaram, Advs.

Advocate for Pet/Ap. : T.S. Ramu, Adv.

Judgement :

Ramanujam, J.

1. The petitioner herein is aggrieved by the order of the first respondent (Appellate Controller of Estate Duty, Southern Zone, Madras) dated 31st March, 1975, levying a penalty of Rs. 34,000 under Section 60(1)(c) of the E. D. Act, 1953, for concealing the particulars of the property of the deceased and deliberately furnishing inaccurate particulars thereof.

2. The petitioner's father, one G.S.A. Kareem, died in or about December, 1970. Even before his death, on March 1, 1970, he had executed a settlement deed in favour of his son and daughter, in respect of house sites in 14, Balakrishna Pillai Road, Teynampet, Madras, also known as 85-A, Mount Road, Madras-18. The petitioner herein, as an accountable person, filed a return to the Asst. CED in respect of the properties left by the deceased. In the return filed by him, he gave the value of the property at No. 85-A, Mount Road, Madras-18, as Rs. 1,72,600. This value was returned on the basis of the approved valuer's report fixing the market value of the land at Rs. 7,000 per ground. The Asst. CED, Madras, rejected the value of the land at Rs. 7,000 per ground, and adopted the value at Rs. 11,000 per ground and completed the assessment on that basis. The petitioner took the matter in appeal to the first respondent contending that the value of Rs. 11,000 per ground, adopted by the second respondent, was not justified.

3. While the said appeal was pending, the said vacant land in 85-A, Mount Road, Madras, was sold at the rate of Rs. 37,000 per ground in the year 1973. When the appeal was taken up, the sale of the property at Rs. 37,000 per ground by the petitioner was brought to the notice of the Appellate Controller. Based on the said information, he issued a notice for enhancement of the value and, after hearing the objections of the petitioner, adopted the valuation of Rs. 37,000 per ground. That enhanced valuation adopted by the first respondent has not been taken in appeal before the Tribunal and that has become final.

4. The first respondent, however, after disposing of the appeal, issued a notice under Section 60(1)(c) to the petitioner to show cause why penalty should not be levied under that provision for concealing the particulars of the property of the deceased and for deliberate furnishing of inaccurate particulars thereof. The petitioner made representation to the said notice and contended that there is no concealment of any particulars, that all particulars had been furnished in the return, that even the value of Rs. 7,000 per ground given in his return was based on concrete materials, such as the approved valuer's report, the value given in the land acquisition proceedings in relation to a portion of the same property at an earlier stage, and also the market value fixed under the Urban Land Tax Act by the

urban land tax authorities, that, in the circumstances, cannot be said to be a deliberate furnishing of inaccurate particulars, and that the value given by him is in fact a fair market value. However, the appellate authority felt that the petitioner is guilty of concealment of the particulars of the property of the deceased and of deliberately furnishing inaccurate particulars thereof, and levied a penalty of Rs. 34,000. Since there is no statutory appeal against the order passed by the first respondent levying penalty in the course of the appeal proceedings, the petitioner has come before this court invoking its jurisdiction under Article 226 of the Constitution of India.

5. In this writ petition, the petitioner has attacked the constitutional validity of Section 60 of the E. D. Act, 1953, in so far as that section does not provide for any appeal against the orders of penalty imposed by the Appellate Controller or the Appellate Tribunal, while an appeal has been provided under the statute against the orders of the CED imposing penalty in the course of the assessment. It is also contended by the learned counsel for the petitioner that there is in fact no concealment of any particulars of the property of the deceased, nor was there any deliberate furnishing of inaccurate particulars thereof. Apart from the above two contentions, a new contention has also been urged before us, at the time of hearing of the writ petition. That point was not raised even as a ground in the affidavit filed in support of this writ petition. That contention is this : Section 60(1)(c) will apply only to concealment of particulars of properties which the deceased died possessed of at the time of his death, and not in respect of properties which he has parted with either by way of gift or by way of settlement during his lifetime. In support of this contention, the learned counsel relies on the decision of a Bench of this court in *CED v. Gowrishankar Damani* : [1977]109ITR649(Mad) . Perhaps this contention was not raised in the affidavit filed in support of the writ petition, as the above decision was not available at that time. Being a legal contention, we are not in a position to shut out the petitioner's argument on the basis that it is a new contention.

6. Section 60(1)(c) of the E.D. Act, 1953, uses the phrase 'concealed the particulars of the property of the deceased or deliberately furnished inaccurate particulars thereof'. The contention put forward by the petitioner is that the property

in question, which was the subject-matter before the first respondent, and in respect of which the complaint of 'concealment' is made, was not the property of the deceased as it had been transferred by him, under a settlement in favour of his son and daughter, that on the date of the death of the deceased, the deceased did not die possessed of the property, and that on that day the property was the property of the settlees and not of the deceased.

7. Mr. Jayaraman, learned counsel for the revenue, would say that the property of the deceased should be so understood as to include the property deemed to pass on the death of the deceased under Section 9. No doubt, Section 9 says that the property taken under a disposition made by the deceased purporting to operate as an immediate gift, inter vivos, within two years of the death of the deceased shall be deemed to pass on his death. According to Section 9, though the property has already passed from the deceased to the donee, for the purpose of the E. D. Act, the property shall be deemed to pass only on the death of the deceased. But this fiction created for the purpose of assessment cannot be extended for the purposes of levy of penalty under Section 60(1)(c), for that provision does not attract the deeming provision contained in Section 9.

8. This is the view taken in *CED v. Gowrishankar Damani* [1971] 109 ITR 649 . In that case, there was a settlement by the deceased prior to his death, attracting Section 12 of the Act. In the return submitted by the accountable person the entire property which was the subject-matter of the settlement by the deceased, was not disclosed and when penalty was levied under Section 60(1)(c) on the ground that the accountable person had concealed the particulars of the properties of the deceased, this court took the view that Section 60(1)(c) will not stand attracted to such a situation. That section can be invoked only when there is a concealment of the particulars of the property, which the deceased died possessed of on the date of the death and not the properties which had passed on to third parties by a transaction, inter vivos, entered into by the deceased, while he was alive. The same principle will apply to this case as well. There, the transaction came under the purview of Section 12 of the E. D. Act. Here, the transaction comes under the purview of Section 9. But that will not make any difference to the application of the principles laid down in that case. In that case, the non-disclosure of the property

settled by the deceased before his death was held not to attract Section 60(1)(c). Here, it is an a fortiori case, where the particulars of the property covered by Section 9 had been disclosed but the complaint, however, is that the fair market value of the property had not been disclosed in the return. If Section 60(1)(c) is not to apply to a case where the particulars of the property are not given, naturally it cannot be applied to a case where the accountable person had furnished inaccurate particulars. On the facts and circumstances of this case, therefore, the principles laid down in *CED v. Gowrishankar Damani* : [1977]109ITR649(Mad) will squarely apply.

9. In this view, we have to set aside the order of penalty holding that Section 60(1)(c) cannot be applied to the facts of this case. Having regard to the fact that we are holding that the penalty cannot be levied under Section 60(1)(c) by the appellate authority in the circumstances of the case, it is unnecessary for us to consider the petitioner's contention based on the invalidity of Section 60(1)(c).

10. The writ petition is allowed: There will be no order as to costs.

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