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Controller of Estate Duty Vs. Tej Kaur Bedi (Decd.) and ors.

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Court : Chennai

Decided On : Apr-15-1996

Reported in : [1997]226ITR892(Mad)

Judge : K.A. Thanikkachalam and;N.V. Balasubramanian, JJ.

Acts : Estate Duty Act, 1953

Appeal No. : Tax Case No. 1238 of 1979 (Reference No. 776 of 1979)

Appellant : Controller of Estate Duty

Respondent : Tej Kaur Bedi (Decd.) and ors.

Advocate for Def. : P.P.S. Janardhana Raja, Adv.

Advocate for Pet/Ap. : S.V. Subramaniam, Adv.

Judgement :

K. A. Thanikkachalam, J.

1. In pursuance of the direction given bythis court in T. C. P. Nos. 404 and 405 of 1977, the Tribunal referred thefollowing questions for the opinion of this court under Section 64(3) ofthe Estate Duty Act, 1953 : ..

' 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that a sum of Rs. 3,09,933 being the deceased's share in the

unaccounted profits of the firm of South India Steel Rolling Mills for the assessment years 1962-63 to 1967-68 could not be included in the principal value of the estate of the deceased

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the possession of the deceased's share of undisclosed profits in the firm, South India Steel Rolling Mills, was not proved in this case ?'

2. The deceased died on March 3, 1968. The deceased was a partner in the firm, South India Steel Rolling Mills. At the time of the death, the deceased, Shri M. S. Bedi, was the proprietor of Dily White Launderers and Dry Cleaners and a partner in three firms and especially in South India Steel Rolling Mills. Smt. Tej Kaur Bedi, the accountable person herein, is the wife of the deceased. In the course of estate duty assessment proceedings, the Assistant Controller of Estate Duty found that in the income-tax assessment of the firm, South India Steel Rolling Mills, Madras, a sum of Rs. 6,19,867 was added towards suppression of profits, etc., for the assessment years 1962-63 to 1967-68. The half share of the deceased worked out to Rs. 3,09,933. The Assistant Controller of Estate Duty called for objections, if any, from the accountable person for adding the share ofthe deceased in the suppressed profits of the firm. In reply, the accountable person claimed that if it were to be included the liability for the same should be deducted. However, the Assistant Controller of Estate Duty included the same in the principal value of the estate of the deceased and he refused to allow any liability as no details for the claim of liability have been furnished.

3. The accountable person filed an appeal before the Appellate Controller of Estate Duty on this point. The Appellate Controller held that the inclusion of Rs. 3,09,933 having been conceded by the accountable person and to allow the liability if details were furnished by the accountable person.

4. Aggrieved, the accountable person filed a second appeal before the Appellate Tribunal and contended that the inclusion of Rs. 3,09,933 was not sustainable in law. It was urged before the Tribunal that simply because in the income-tax assessment an addition was made on the ground that such amount represented

the undisclosed profits, it cannot be stated that the Department has proved that such amounts remained with the deceased on his death to be passed on to the accountable person. Learned counsel relied on the decision of the Income-tax Appellate Tribunal, Cuttack Bench, Camp at Madras, in E. D. A. No. 88/Mad. of 1972-73 decided on March 3, 1975, wherein it was held that simply because the intangible additions were made, it does not follow that the deceased had obtained the share of such undisclosed profits. It was further pointed out that there was no material to come to the conclusion that the deceased was in possession of such intangible additions at the time of his death and that the burden was on the Department to prove it. The Tribunal further pointed out that in this case there is nothing on record to show that the alleged undisclosed profits remained with the deceased at the time of his death. Accordingly, the Tribunal held that there is no material to support the addition of Rs. 3,09,933 and directed deletion of the same from the principal value of the estate.

5. Before us learned senior standing counsel for the Department contended that the accountable person agreed before the authorities below for the addition of Rs. 3,09,933, in the principal value of the estate of the deceased. Learned senior standing counsel pointed out that in the firm's accounts undisclosed income was spread over for a period of six years. The total comes to Rs. 6,19,867. The deceased was having a 50 per cent. share of profit in the firm. Therefore, Rs. 3,09,933 was added in the principal value of the estate. According to learned senior standing counsel these amounts must have been remained with the deceased either as cash inhand or in the form of some investments, not disclosed to the Department. Therefore, according to learned senior standing counsel inasmuch as no objection was raised for adding this amount in the principal value of the estate before the authorities below, it is not now open to the accountable person to contend that Rs. 3,09,933 should be deducted from the principal value of the estate. Learned senior standing counsel further submitted that there is no evidence on record to show whether the amounts spread over for six years still remained in the hands of the firm so as to enable the Department to say that these undisclosed profits belonged to the deceased on the date of his death. For this purpose, learned standing counsel pleaded to remit back this appeal to the file of the Tribunal for gathering materials on this aspect and dispose of the same on the

merits.

6. On the other hand, learned counsel appearing for the accountable person submitted that the deceased was a partner with a 50 per cent. share of profits in the firm, South India Steel Rolling Mills. The deceased died on March 3, 1968. On the date of his death, this sum of Rs. 3,09,933 was not available in the hands of the deceased either as cash or as securities. In the case of the firm, the sum of Rs. 6,19,867 was found as undisclosed profits for a period of six years, which was, therefore, spread over for six years backwards. Under such circumstances, it cannot be said that on the date of the death of the deceased what was found as undisclosed profits six years back would be available in his hands at his disposal. According to learned counsel such intangible additions made in the income-tax assessment of the firm cannot be said to be the estate passing on the death of the deceased immediately after his death. In order to support this contention, learned counsel relied upon a decision of this court in CED v. Smt. N. Kunjammal : [1983]141ITR1(Mad) . According to the facts arising in that case, as certain cash credits in the books of the business of the deceased could not be satisfactorily explained, the accountable persons agreed to the assessment of the peak credit and this was spread over the years 1959-60 to 1966-67, on a petition filed under Section 271(4A) of the Income-tax Act, 1961. In the estate duty proceedings, the Assistant Controller of Estate Duty rejected the contention of the accountable persons that the loans were really genuine loans which had been subsequently repaid and the settlement was effected with the Department in order to purchase peace, and accordingly included the amount as property passing on the death of the deceased, after giving certain deductions on the ground that some amount could have been spent by the deceased. The Appellate Controller, on appeal, in effect confirmed this order. The Tribunal, however, held that the actual existence of assets to the extent of the additions made hadto be established and the mere fact that the accountable person had agreed to an order under Section 271(4A) including the amounts as undisclosed income could not be taken as an admission on their part that cash or investment of that value existed on the date of death of the deceased. The Tribunal, accordingly, deleted the addition on the ground that there was no material to support the addition. On these facts, a question arose whether the Tribunal was right in holding that the unproved hundi credits offered

for assessment under Section 271(4A) of the Income-tax Act, 1961, could not be added to the principal value of the estate of the deceased for estate duty purpose While answering this question, this court held that (page 8) : 'the period during which the income was added as from undisclosed sources, was up to March 31, 1966, and the deceased having died on November 26, 1968, more than 1 1/2 years after the period of the assessment, it was not possible to say that the income from undisclosed sources as assessed by the Income-tax Department, continued to exist as an asset either in the form of cash or as investment on the date of the death of the deceased. It may be that the deceased himself has spent the cash or other assets before his death. So far as the accountable persons are concerned, they cannot be expected to know as to what happened before the death of the deceased in relation to any particular asset. As already stated, merely from the factum of settlement by the accountable persons with the Department under Section 271(4A), the addition has been made to the principal value of the estate for the purpose of estate duty, without any other material. As has been pointed out in the decisions referred to above, unless the assets are shown to have existed on the date of the death of the deceased, the value of those assets cannot be included in the principal value of the estate for the purpose of estate duty. In this case, there is absolutely no material to indicate that the undisclosed income which has been assessed as a result of the settlement arrived at under Section 271(4A) continued to exist in the form of cash or other asset till the date of the death of the deceased, and unless the existence of such an asset is established by the Revenue, which is its duty, the onus does not shift to the accountable persons to explain as to what had happened to the assets. If the assets have continued to exist on the death of the deceased, then, of course, the onus will shift to the accountable persons to explain as to what had happened to the assets and how they had been dealt with. On the facts of this case, we are not able to say that the existence of the assets at the time of the death of the deceased has been duly established.' Similarly, the Supreme Court in CWT v. J. K. Jute Mills Co. Ltd. : [1984]146ITR552(SC) , held that 'Where the assessee had made secret profitsin the past no presumption can be raised that they continued to be held by the assessee subsequently on a valuation date falling after the lapse of a sufficiently long period of time'.

7. According to the facts arising in the present case in the income-tax assessment of the firm in question for the assessment years 1962-63 to 1967-68 an amount of Rs. 6,19,867 was added towards suppression of profits. These amounts were stated to be not accounted for in the books of the firm. The Department sought to include a half share of this amount, viz., Rs. 3,09,933, in the principal value of the estate since according to the Department such amount must have remained with the deceased either as cash on hand or in the form of some investments not disclosed to the Department. According to the accountable person, simply because in the income-tax assessment an addition was made on the ground that such amount represented the undisclosed profit it cannot be stated that the Department has proved that such amount remained with the deceased on his date of death to be passed on to the accountable person. In the account books relating to the firm in question for the assessment years 1962-63 to 1967-68, it was seen that during the assessment years 1962-63, 1963-64, 1964-65, 1965-66 and 1966-67 up to August 31, 1968, the firm had four partners and subsequently it had only two partners. Therefore, the Tribunal pointed out that even if the intangible additions were to be made, only 1/4th of the amount said to be the undisclosed profit alone can be added in the principal value of the estate. It remains to be seen that six years after the death of the deceased in the assessment of the firm intangible additions were made since the firm failed to disclose the profits for those years. Accordingly, the profits estimated by the Department were spread over for the six years backwards. Under such circumstances, it is doubtful whether the deceased would have had any cash or any investment on the date of his death as shown in the firm's assessment belonging to the partners which additions were made on the basis of the estimate. Thus, on a careful consideration of the facts arising in this case, in the light of the decisions cited supra, we are of the opinion that the Tribunal was correct in holding that the sum of Rs. 3,09,933 cannot be included in the principal value of the estate of the deceased. The Tribunal also pointed out that there was no material to support that the deceased was having the profits mentioned in the accounts of the-firm which were found out six years after his death. Therefore, we hold that there is no infirmity in the order passed by the Tribunal in excluding the sum of Rs. 3,09,933 from the principal value of the estate.

8. Inasmuch as several years had elapsed and the Estate Duty Act was repealed and no evidence was produced by the Department to show that the undisclosed income shown in the firm's account books were available in the hands of the deceased at the time of his death, the remittal of this appeal would render no assistance either to the Department or to the assessee. In that view of the matter, we are unable to remit back this matter as requested by learned senior standing counsel appearing for the Department.

9. In that view of the matter, we answer the questions referred to us in the affirmative and against the Department. No costs.

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