

(1967) 06 CAL CK 0015
In the Calcutta High Court
Case No : Matter No. 234 of 1962

Anant Kumar Hazra

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 01-06-1967

Acts Referred:

Estate Duty Act, 1953 — Section 36, 41
Evidence Act, 1872 — Section 101, 102, 103, 104

Citation : AIR 1967 Cal 629 : (1968) 1 ILR (Cal) 617

Hon'ble Judges : K.L. Roy, J;B.N. Banerjee, J

Bench : Division Bench

Advocate : D. Pal and Pranab Pal, for the Appellant;B.L. Pal and D. Gupta, for the Respondent

Judgement

Banerjee, J.—This is a reference, u/s 64(1) of the Estate Duty Act, 1953, made in circumstances hereinafter stated.

2. One Satish Chandra Hazara died on July 28, 1956. At the time of his death he owned various movable and immovable properties. The Assistant Controller of Estate Duty Calcutta who was the assessing authority, determined the principal value of the estate at Rs. 6,60,597 and the duty payable thereon as Rs 83,180 10 P.

3. In arriving at the principal value of the estate, the Assistant Controller:

(1) added back a sum of Rs 35,000 to the amount of "cash in house" namely a sum of Rs. 10,216 only as shown in the statement of account in Form E D 1 on the following ground:

"On an examination of the deceased's bank accounts it is found that the deceased made huge withdrawals just a few months before his death. As to what happened to these withdrawals, the accountable person could not explain. In view of this an addition of Rupees 85,000 is made to the cash in the house as shown in E. D. 1".

(2) estimated the value of the share of the deceased in a partnership concern known at Biri Trading Company, in the following manner.

"(i)

Balance to the credit of the deceased's Capital Account

... Rs. 8,17,245/-

(ii)

Deceased's share in the Goodwill of the firm estimated at

... Rs. 1,40,000/-

Less:

Shown in Balance sheet ... Rs. 6,000/-

Rs. 1,39,000/-

(3) estimated the marketable value of premises No. 34A and 34B, Bhupendra Bose Avenue, Calcutta at Rs. 1,40,000.

(4) estimated the market value of premises Nos. 22 to 27, ward No. 3, Bally Municipality at Rs. 47,500.

We are not concerned with the other items of valuation made by the Assistant Controller.

4. Aggrieved by the order of the Assistant Controller, in respect of the four items hereinbefore stated, the accountable person appealed before the Central Board of Revenue, to which the appeal lay under law as it then stood. The Board repelled the objection of the accountable person to the add back of Rs. 38,000 to "cash in house" with the following observation:

"The appellant's Advocate contended that the deceased was suffering from cancer and that heavy withdrawals from the Bank had been utilised for his medical treatment. I find that a withdrawal of Rs. 62,317 was made from the bank about a month and a half before the date of death. The appellant's Advocate was unable to produce any medical bills and other evidence in support of the explanation that this amount was used for meeting the cost of medical treatment. I, therefore, confirm the finding of the Assistant Controller."

5. The Board reduced the estimated value of the share of the deceased in the goodwill of Biri Trading Partnership from Rs. 1,45,000 to Rs. 1,24,000 with the following observation:

"The Assistant Controller had fixed the value of the deceased's share in the goodwill at Rs. 1,45,000. The appellant's Advocate contended that one of the departments of the firm, namely. Leaves Department became defunct during the lifetime of the deceased, and, therefore, the profits of that department should be

ignored for the purpose of arriving at the goodwill. On going through the figures supplied by the appellant and the Assistant Controller and after taking into account all relevant factors, I determine the deceased's share in the goodwill at Rs. 1.24,000 which figure will be substituted for Rs. 1.45.000 adopted by the Assistant Controller."

6. The Board also reduced the valuation of the two buildings at Bhupendra Bose Avenue from Rs. 1,40,000 to Rs 1,23,000 and of the houses at Bally from Rs. 46,500 to Rs. 31,000.

7. In the result, the Board reduced the principal value of the estate by about Rs. 64,000.

8. Dissatisfied with the order of the Board, the accountable person prayed for a reference of certain questions of law to this Court. The questions as suggested by the accountable person did not appeal to the Board. Ultimately, however, the Counsel for the accountable person agreed to have a reference of the following questions only to this Court:

"(1) Whether on a proper construction of Sub-sections (3) and (4) of Section 63 of the Estate Duty Act, the Board was justified in law in disposing of the appeal adversely to the appellant on the question of disputed value of various items of property without either referring the question to arbitration under the said Sub-section (4), of its own motion, or giving the appellant an opportunity to require the Board to refer the question to arbitration?

(2) Whether, on the facts and in the circumstances of the case, there was any evidence to support the addition of a sum of Rs. 35,006 on account of "cash in the house"?

(3) Whether the valuation of goodwill made by the Board was according to law?

(4) Whether there was any evidence to support the Board's valuation of house property at No. 34A and B. Bhupendra Bose Avenue. Calcutta ?"

9. Now, so far as the question No. 1 is concerned, it is not the case of the accountable person that he ever prayed for a reference of the disputed value to arbitration. Dr. Pal, learned counsel for the assessee, realised that regard being had to the conduct of the accountable person before the Board, the answer to the question must be given in the affirmative. He did not, therefore, press for an answer to the question.

10. So far as question No. 4 is concerned, the Board reduced the valuation by a considerable amount. Dr. Pal realised that after the reduction in valuation, he should not press for an answer to question No. 4 also.

11. We are thus left with question Nos. 2 and 3 only

12. In regard to question No. 2, Dr. Pal submitted that an accountable person was liable to disclose only such cash as came in his hand, after the death of the

person whose estate become dutiable on death. If immediately before the death, the deceased person had squandered away huge sums of money, the accountable person was not liable for the money squandered away. He, therefore, submitted that the onus lay heavily upon the Revenue to show that the amount shown by the accountable person in form E. D. 1 was wrong and that more cash was left in the house than what was disclosed. In our opinion, in the facts and circumstances of this case, the argument made by Dr. Pal cannot be upheld. It is not disputed, that within a month and a half, prior to the date of death, the deceased person withdrew Rs. 63,817 from his bank. The accountable person claims to know what the deceased person did with the money. He explained that the money withdrawn by the deceased was utilised for medical treatment of the deceased, who was suffering from cancer. This was the version of the accountable person and he was bound to prove this version. Thus, even if there was any initial burden upon the Revenue, the burden shifted upon the accountable person and he was to prove how much, out of the money withdrawn, was spent for medical treatment of the deceased and what remainder was left. The Revenue authorities did not disbelieve that the deceased person was suffering from cancer. They did not also disbelieve that some money, out of the withdrawals, may have been spent in the medical treatment of the deceased. They were not, however, prepared to believe that a sum of Rupees 1 0,216 out of the huge withdrawal of Rupees 62,317 was left and the balance was spent in the medical treatment of the deceased, within so short a period as about a month and a half. Since the accountable person could not produce the medical bills and other evidence in support of the story of expenditure, the Revenue made an estimate of medical expenditure and according to that estimate allowed Rupees 27,817 as medical expenses and the balance of the withdrawals, namely, a sum of Rs. 35,000 was directed to be added back to the principal value of the estate. This estimate was no doubt rough and ready and possibly erred in favour of the accountable person. Dr. Pal, however, could not show that anything more than what was estimated by the Revenue authorities was spent for medical treatment of the deceased person. We do not, therefore, feel that the Assistant Controller or the Central Board of Revenue were wrong in adding back a sum of Rs. 35,000 to the principal value of the estate under the head "cash in hand". There was indeed no direct evidence in support of the addition but regard being had to the financial position of the deceased, the nature of his illness and the period during which the withdrawals from banks were utilised in his medical treatment, we feel that there were enough circumstantial evidence to support the addition of Rs. 35,000 on account of "cash in house". In the view that we take, we answer question No. 2 in the affirmative.

13. Turning now to question No. 3, the valuation of the goodwill of the firm Biri Trading Company, we find that the valuation was arrived at in much too offhand a fashion. Valuation of goodwills, like valuation of any other property, must be made objectively. Such valuation does not depend upon the subjective satisfaction of the Revenue authorities. e Assistant Controller estimated the value

of the goodwill at Rs. 1,45,000. The order does not disclose any basis for the assessment. Nevertheless, the objection to the estimate by the accountable person was confined to one point only, namely, that the profits of the Leaves Department of the business, which had become defunct, should have been excluded when valuing the goodwill. The objection was not wholly ignored by the Central Board of Revenue and the Board reduced the valuation from Rs. 1,46,000 to Rs. 1,24,000, it is said, "taking into account all relevant factors". The order does not, however, disclose what relevant factors the Central Board of Revenue took into consideration or what were the figures, which were taken into consideration for the purpose of valuation. The order by the Central Board of Revenue is not a speaking order. The reasons given by the Board do not enlighten us in any way as to the propriety of the valuation. It is desirable that in matters of valuation, exact information should be given to this Court as to the basis of the valuation. That is what is absent in this case. We, therefore, feel that it does not appear that the valuation of the goodwill, as made by the Board, was according to law. We answer the question accordingly.

14. Thus, question No. 2 is answered in the affirmative and question No. 3 is answered in the manner hereinbefore indicated, namely, that it does not appear that the valuation of the goodwill was made according to law. Questions 1 and 4 were not pressed for reasons noticed hereinbefore.

15. In view of the divided success, we do not make any order as to costs.

K.L. Roy, J.

16. I agree.