
(2005) 09 MP CK 0038
In the Madhya Pradesh High Court
Case No : IT Ref. No. 5 of 1995

Assistant Commissioner of Wealth Tax	APPELLANT
Vs	
Smt. Mrinalini Devi Puar	RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Income Tax Act, 1961 — Section 168
Wealth Tax Act, 1957 — Section 19, 19(4), 19A, 27(1)

Citation : (2006) 202 CTR 69 : (2006) 286 ITR 607

Hon'ble Judges : S.K. Kulshreshtha, J; Ashok Kumar Tiwari, J

Bench : Division Bench

Advocate : R.L. Jain and Veena Mandlik, for the Appellant; G.M. Chafekar and D.S. Kale, for the Respondent

Judgement

1. The Tribunal, Indore, has referred the following question u/s 27(1) of the WT Act, 1957 for the opinion of this Court :

Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the sum of Rs. 4,71,589, which represents the loan advanced by the executor of the estate to the estate of the deceased before distribution of the assets is an admissible deduction, although the executor of the estate happens to be the sole legal heir of the deceased?

2. The Department sought reference of the said question in the following circumstances.

3. The assessee was assessed to the wealth-tax, it is not disputed, in her individual capacity as also as an executor of the estate of her husband, late Shri Anandrao Paur. The relevant valuation date for the assessment year under the consideration was 31st March, 1982. During the assessment proceedings, the assessee claimed that for the payment of estate duty, the executor of the estate of the deceased in her personal capacity, had advanced a loan of Rs. 4,71,589 to the estate and, accordingly, claimed deduction to the said extent. It was claimed

that since distribution of the estate of the deceased was being administered by the assessee, the loan advanced to the estate was an admissible deduction. The claim was, however, turned down by the AO.

4. On appeal to the CWT(A), he observed that since the assessee as executor of the estate had inherited the entire estate of her late husband, the deduction could not be allowed. The matter was carried further before the Tribunal. It was contended that provisions of Section 168 of IT Act were *pari materia* (with) Section 19A of the WT Act and, therefore, a person actually administering the estate, was required to be treated as an executor, even if no Will was executed and the deceased had died intestate.

5. The Department resisted the claim of the assessee. It was emphasized that the assessee being the sole legal heir of the deceased had inherited the entire estate and it would be wrong to hold that she had advanced loan to the estate. It was also contended that payment of tax in respect of the estate of the deceased was the personal liability of the assessee and in case the assessee's contention is accepted, it would tantamount to the advancement of loan to her ownself.

6. The Tribunal, however, came to the conclusion that contention advanced on behalf of the assessee was substantiated by the decision reported in Commissioner of Income Tax, Bombay City-II Vs. Usha D. Shah, , Commissioner of Income Tax Vs. Mrs. A. Ghosh, and Commissioner of Income Tax Vs. Bakshi Sampuran Singh, and upheld the claim for deduction of Rs. 4,71,589.

7. Being aggrieved, the Revenue made an application for reference of the abovesaid question and hence, the case has been referred to this Court.

8. Learned senior counsel for respondent has raised a preliminary question to the maintainability of the reference. His objection is, that in view of the direction of CBDT to the effect that in the matters not involving revenue above Rs. 30,000, reference should not be made, this case should not have been referred, and the reference deserves to be dismissed at the threshold without answering the question.

9. Learned senior advocate for the Department, however, contended that on account of multiple proceedings concerning the same assessee in regard to more or less similar question, there are four appeals and, therefore, the amount involved is much more than the amount of Rs. 30,000 fixed by the Board. In view of the fact that concerning the same assessee, there are other proceedings which involve the amount in excess of the amount prescribed by the Board, we are of the view that the preliminary objection of the assessee has no substance.

10. Another question raised by the learned Counsel is that since the wealth-tax matters of the individual wealth of the assessee have been decided by the Tribunal Ahmedabad in which the matter with regard to the amount for which the deduction was being claimed, has also been decided and the Department has not preferred any appeal, the Department is estopped from raising the same issue.

11. It seems that in the proceedings before the Tribunal at Ahmedabad, this amount was excluded and thereafter the deduction was claimed in the present proceedings. It, therefore, does not appear that this amount has been taxed in the hands of the assessee in relation to her wealth as an individual. There is nothing before us to impel us to come to the conclusion that the Department is trying to fix the amount twice.

12. Coming to the merits of the case, we find that it is not disputed, in the question formulated by the Tribunal, the Tribunal has proceeded on the assumption, that a sum of Rs. 4,71,589 was expended on taxes, etc. to make the property of her late husband free from liability.

13. Learned counsel for the assessee has submitted, that as an executor u/s 19A, the liability will have to be adjudged in the hands of the executor only after the estate is fully administered. In this regard, he has referred to the decision reported in *Navnit Lal Sakarlal Vs. Commissioner of Income Tax*, and invited the attention to the passage which reads as under :

Younger L.J. (afterwards Lord Blanesborough) in *Barnardo's Homes v. Special Commissioners* (1921) 2 AC 1 stated the law in these terms : "Until the residue is ascertained, and until its existence as net residue has been acknowledged by the executor, either by payment to the residuary legatee, or if the residue be settled, by the appropriation of a fund to meet the settled residue, the residuary legatee has no interest in any specific part of that which subsequently becomes residue as a specific fund to meet the settled residue, the residuary legatee has no interest in any specific part of that which subsequently becomes residue as a specific fund but his right is, until that moment of time arrives, to have the estate administered in due course". The House of Lords affirmed the decision of the Court of Appeal on the ground above stated....

The residuary legatee might be interested in the estate subject to the payment of debts and legacies, but he did not become the proprietor or owner of the residue except when a residue had been ascertained which on completion of administration, is made over to him by the executors.

The question in each case is, has the administration reached a point at which you can infer that the administration has been completed, the residuary estate has been assessed to and the residuary estate, therefore, became vested in trustees, be they the executors themselves or strangers?

14. We may add that this decision has been relied upon by both the parties. From the above decision it is manifest that question of charging wealth-tax in the hands of executor in his capacity as individual arises only after the estate has been fully administered and the residue becomes available to the individual. We may here refer to Section 19A of the WT Act :

19A. (1) Subject as hereinafter provided, the net wealth of the estate of a deceased person shall be chargeable to tax in the hands of the executor or

executors.

(2) The executor or executors shall for the purposes of this Act be treated as an individual.

(3) The status of the executor or executors shall for the purposes of this Act as regards residence and citizenship be the Same as that of the deceased on the valuation date immediately preceding his death.

(4) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own net wealth or on the net wealth of the deceased u/s 19....

15. From Sub-section (4), it is clear that the assessment of an executor under this section is required to be made separately from the assessment of his own net wealth or of the net wealth of the deceased u/s 19.

16. Thus, examined from any perspective, it cannot be held that the amount paid on taxes and other matters in respect of property of the deceased husband of the assessee, would become part of the wealth she received as a legatee and she was not entitled to its deduction.

17. We are, therefore, of the view that Tribunal was right in holding that the sum of Rs. 4,71,589 which represented the loan advanced by the executor of the estate of the deceased before distribution of the assets was an admissible deduction, even though the executor of the estate happened to be the sole legal heir of the deceased.

The question is, thus, answered in favour of the assessee and against the Department.