

(1964) 06 AP CK 0010
In the Andhra Pradesh High Court

Assistant Controller of Estate Duty

APPELLANT

Vs

Nawab Sir Mir Osman Ali Khan

RESPONDENT

Date of Decision : 02-06-1964

Acts Referred:

Estate Duty Act, 1953 — Section 31, 53, 58, 59, 59(b)
Income Tax Act, 1922 — Section 34, 34(1)(b), 35, 35(5)
Income Tax Act, 1961 — Section 34, 35(1)

Citation : (1969) 72 ITR 381

Hon'ble Judges : P. Chandra Reddy, C.J; Narasimham, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an appeal against the order of our learned brother, Chandrasekhara Sastry J., in W.P. No. 667 of 1960 quashing the notice of the Assistant Controller, dated 12th August, 1960, for the levy of enhanced estate duty under the provisions of section 59 of the Estate Duty Act, 1953. It may be noted at the very outset that section 59 has been introduced by the Estate Duty (Amendment) Act of 1958 and came into force on 1st July, 1960.

2. The proceedings before the Assistant Controller pertain to one Ghousunnissa Begum, a step-sister of the Nizam, who died on 30th November, 1955. She was receiving a sum of Rs. 1,000 a month from the trust fund created by the Nizam on 6th August, 1950, referred to as H.E.H. the Nizam's Miscellaneous Trust, for the benefit of his family and dependants. It would suffice to note that Ghousunnissa was receiving this allowance from the trust fund set part under the trust which consisted of (1) a loan of Hali sicca Rs. 4,50,00,000 deposited with the Government of Hyderabad bearing interest at 11/4 %; (2) a Government of India loan of the face value of Rs. 25,00,000 bearing interest at 23/4% and (3) 3% Government of India loan, 1970-75, of the face value of Rs. 8,00,000.

3. Two other step-sisters of the Nizam were also receiving like amounts from the trust fund; but we are not concerned with their affairs now. The trustees were

the accountable persons under the Act. They filed returns under the Estate Duty Act on the death of Ghousunnissa Begum. The Assistant Controller of Estate Duty, Hyderabad, by his order dated 31st March, 1958, assessed the value of the property liable to estate duty at Rs. 6,61,347 and an amount of Rs. 83,519.40 was assessed as the estate duty payable. The accountable persons appealed to the Central Board of Revenue without success, the assessment having been confirmed by an order of the Central Board of Revenue, dated 6th August, 1959.

4. Subsequently, section 59 was enacted giving powers to the Controller (which term included the Assistant Controller of Estate Duty) to reassess the property liable to duty under certain conditions which we would presently refer. Purporting to act under the said provision, the Assistant Controller of Estate Duty issued a notice assessing the property of the deceased at Rs. 7,19,811 as chargeable to estate duty. It is that notice that was impugned in the writ petition on two main grounds: firstly, that section 59 which came into force on 1st July, 1960, after the assessment was confirmed by the appellate authority, could not be given retrospective operation so as to affect assessments which had become final before that date; and, secondly, that assuming that there was such power, there was no material before the Assistant Controller to act in the purported exercise of such power. Both these grounds of attack were upheld by our learned brother and he issued an order quashing the said notice. The department is the appellant.

5. Sri Kondaiah, for the department, has assailed the findings of our learned brother on both the points. The first point that he raised was that it was the date of notice that was material, i.e., 12th August, 1960, and that section 59, which had come into force by then, could be applied. According to him, section 59 must be deemed to have been a part of the enactment with effect from the date when it was introduced and the provision could be availed of for reassessment irrespective of any prior assessment which was made subject only to the provision that the proceedings of reassessment should be commenced within three years of the date of assessment as provided u/s 73A of the Act.

6. No direct authority has been cited to us in support of the proposition contended for. But the learned counsel has relied on certain observations in *Income Tax Officer, Companies District 1, Calcutta and Another Vs. Calcutta Discount Co. Ltd.*, dealing with section 34 of the income tax Act, which is in *pari materia*. It was observed in that case thus:

The plain effect of the substitution of the new section 34 with effect from the 30th March, 1948 (by the income tax and Business Profits Tax (Amendment) Act (48 of 1948)) is that from that date the income tax Act is to be read as including the new section as a part thereof and if it is to be so read, the further effect of the express language of the section is that, so far as cases coming within clause (a) of sub-section (1) are concerned, all assessment years ending within eight years from the 30th March, 1948, and from subsequent dates, are within its purview and it will apply to them, provided the notice contemplated is given within such eight years.

and further thus:

The question is not one of retrospective operation at all but a question of what the section says and how far the section, having come into force on the 30th March, 1948, extends by its own words. Had the section merely created a right in favour of the income tax Officer to issue a notice in respect of escaped or under-assessed income and not included a provision as to the period up to which, computed from the end of the assessment year concerned, the right could be exercised, a question might conceivably arise as to whether it was intended to be retrospective in operation, but in view of its clear terms, the section gives rise to no such question.

7. It is seen that u/s 34 of the income tax Act, before the amendment made by Act 48 of 1948, the income tax Act Officer, had power to issue a notice in respect of escaped or under-assessed income, but he could do so within a period of four years, whereas under the section as amended, he could issue a notice under certain conditions within a period of 8 years. But the reasoning in this case was not accepted by a Bench of this court in KANUMARLAPUDI LAKSHMINARYANA CHETTY AND OTHERS Vs. FIRST ADDITIONAL Income Tax OFFICER, NELLORE., That case raised the question of the application of sub-section (5) of section 35 of the Indian income tax Act, 1922. The section related to rectification of mistakes in assessment. Under the section, as it was, the concerned authority might, within four years from the date of the assessment, rectify any mistake apparent from the record; but, by an amendment Act, 25 of 1953, a new sub-section (5) was inserted. Under the amendment, if on assessment or reassessment of a firm any reduction or enhancement is made in the income of the firm, and it is found that the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner or, though included, it was not correct, the assessment could be reopened and corrected on the basis of the assessment of the firm within four years from the date of the final order passed in the case of the firm. The said sub-section (5) further provided that the inclusion of the share of the partner in the assessment or the correction thereof shall be deemed to be a rectification of mistake apparent from the record within the meaning of the section. The said sub-section came into force on 1st April, 1952. In that case the assessment became final by 18th March, 1948, before the amendment came into force. The question, therefore, arose whether the income tax Officer had power to reopen the assessment made on 18th March, 1948, by availing of the amendment which was sub-section (5). It was held that the income tax Officer had no jurisdiction to reopen the assessments finally made before 1st April, 1952, on the basis of the provisions of sub-section (5), inserted by the amendment Act, 1953. Subba Rao C.J., as he then was, who spoke for the Bench, stated thus:

It is, therefore, manifest that before the amendment came into force, the assessment on the assessee had become final and it could not have been rectified on the ground of a mistake apparent from the record, and, therefore,

the, assessees have acquired a vested right against any interference with the finality of the assessment made on them.

8. The said view was referred to with approval by the Supreme Court in *Income Tax Officer, V Circle, Income Tax Officer, V Circle, Madras, and Another Vs. S.K. Habibullah*, In the said case, the Supreme Court pointed out that the power of rectification conferred by section 35(1) of the income tax Act might be exercised subject to two conditions: (1) that there was a mistake apparent from the record of the assessment, and (2) that the order of rectification was made within four years from the date of the assessment sought to be rectified. It was also pointed out that the said section, before the introduction of the new sub-section (5) on 1st April, 1952, could not be resorted to by the income tax authorities for rectification of the assessments of the assessee, for there was no error apparent from the record of those assessments relating to that particular assessee. It was held by the Supreme Court thus:

The provision enacted by clause (5) is not procedural in character; it affects vested rights of the assessee.

9. It was further held that:

Clause (5) therefore confers an additional power of rectification upon the income tax authorities and in the absence of compelling reasons we will not be justified in upholding the exercise of the power to assessments of firms which have been completed before the date on which the power was invested.

10. The said view of the Supreme Court has also been reiterated in *Second Additional Income Tax Officer, Guntur Vs. Atmala Nagaraj and Others*, That was also a case u/s 35 of the Indian income tax Act. It was said in unmistakable terms thus:

Section 35(5) is not applicable to final assessments made before 1st April, 1952, either expressly or by implication.

11. It was further held that:

Sub-section (5) of section 35 was not applicable to cases where the assessment of the partner was completed before 1st April, 1952, even though the assessment of the firm was completed after 1st April, 1952.

12. Our learned brother has referred to a number of decisions of Madras, Bombay and Patna, which adopted the view of this court and we do not consider it necessary to refer to those decisions once again in view of the observations in the Supreme Court decision referred to above.

13. Shri Kondaiah has invited our attention to the decision of the Supreme Court in *COMMISSIONER OF Income Tax, MADRAS Vs. JANABA MOHAMMAD HUSSAIN NACHIAR AMMAL.*, In that case the relevant assessment year was 1942-43. The proceedings u/s 34 of the Indian income tax Act, 1922, were initiated with the issue of a notice on 25th July, 1949. The assessee's contention was that the

initiation of proceedings on 25th July, 1949, was invalid as the department's right to revive the assessment was governed by the old section 34 where the period of limitation prescribed was only four years in the case of a failure to file a return and that period having expired on 31st March, 1947, and the amending Act of 1948 (XLVIII of 1948) having come into force on 30th March, 1948, the eight years' period provided therein could not be invoked. The High Court upheld that contention. The Supreme Court, by a majority, held to the contrary. The following are the pertinent observations:

It is true that in the present case when the notice was issued and the assessment made, the time to do either under the law as it stood before the 1948 amendment had expired. It may be that that law would have applied to it if the 1953 Act had not been passed. It may also be, as was said in the Calcutta Discount Co.'s case (*supra*), that, by itself, the 1948 amendment of section 34 would not have permitted assessment proceedings in respect of 1942-43 to be commenced in 1949 when under the previous law the time to issue a notice and to make an assessment for that year had expired before the 1948 amendment had come into force. All this, however, is to no purpose. No such question arises here. The legislature had undoubtedly the power to make section 34 as amended in 1948 apply to an assessment for 1942-43 by giving it retrospective operation in spite of the time to issue a notice and to make an assessment fixed by the pre-existing law having expired before the amendment came into effect. The question really is one of interpretation, namely, whether the legislature had given such retrospective operation.

How it seems to me that section 31 of the 1953 Act clearly gives section 34 of the principal Act as amended in 1948 such retrospective operation. It plainly makes section 34 as so amended applicable to assessments for years ended before the amendment came into force. It does not say that section 34 as amended is to apply to assessments for these years only when the time to issue the notice or make the assessment in respect of these years under the pre-existing law had not expired. It applies the amended section 34 "to any assessment... for any year ending before the 1st day of April, 1948, in any case where proceedings... were commenced...after the 8th day of September, 1948 "....

In my view, for these reasons, section 34 of the principal Act as amended in 1948 applies to the notice issued and the assessment order made in this case. Both of them are valid u/s 34 as so amended.

14. It is manifest that the entire reasoning is based on the amendment having been given retrospective operation.

15. Sri Kondaiah argued that the particular words in the section (section 59 of the Estate Duty Act) to wit,

he may at any time, subject to the provisions of section 73A, require the person accountable to submit an account as required u/s 53 and may proceed to assess

or reassess such property as if the provisions of section 58 applied thereto

are susceptible of an interpretation that the only limitation to the Controller acting is the limitation of time for the commencement of the proceedings for reassessment as provided u/s 73A and that, if that condition was fulfilled, reassessment could have been properly made. The point raised is not free from difficulty; but we feel that we are not now called upon to express our final opinion on this matter, as we may appropriately rest our decision in this case on the assumption that the Controller has that power.

16. The case is rested here on the footing that there was information in the possession of the assessing authority within the meaning of section 59(b) of the Act. That section is in these terms:

59. If the Controller,--....

(b) has, in Consequence of any information in his possession, reason to believe notwithstanding that there has not been such omission or failure as is referred to in clause (a) that any property chargeable to estate duty has escaped assessment, whether by reason of under-valuation of the property included in the account or of omission to include therein any property which ought to have been included, or of assessment at too low a rate or otherwise, he may at any time, subject to the provisions of section 73A, require the person accountable to submit an account as required u/s 53 and may proceed to assess or reassess such property as if the provisions of section 58 applied thereto.

17. It is argued for the department that the observations in the appellate order of the Central Board of Revenue constitute the information on which the Controller could proceed to reassess. We may appropriately refer to the case set out in the counter-affidavit of the Controller:

Para. 9. ...In the instant case, the apparent undervaluation of the deceased's interest, which was pointed out by the appellate authority is sufficient information to constitute a reason to make this respondent reasonably believe that there was an escapement of assessment by reason of undervaluation, and justify the initiation of the reassessment proceedings u/s 59 of the Act.

18. The appellate order is one of confirmation of assessment as already made. The observations relied on are as under:

In the calculation which I have made in paragraph 7 above, I have assumed the yield from the loan only at 11/4%, i.e., the interest has not been grossed up as in the calculation made by the Assistant Controller. According to the method adopted in paragraph 7, the value of the securities of the face value of Rs. 4.5 crores (O.S.) came to Rs. 3,06,83,760 I.G., i.e., 78%. The valuation adopted by the Assistant Controller comes to 52% as against the estimate of 40% to 50% made by the stock brokers. For the reasons already given by me in paragraph 7 above, I am of the opinion that the correct value should be 78%. However, I find that there is some force in the argument advanced by the appellant's

representative against any enhancement being made by the Board in appeal proceedings. I refrain therefore from making the proposed enhancement in the value of 1 the securities and confirm the value adopted by the Assistant Controller.

19. There can be no doubt that the appellate authority expressed an opinion, which, however, was not given effect to. We would be straining the language of the section if we take in also the opinions expressed as constituting information.

20. Our learned brother rightly posited the question whether the expression of opinion by the Central Board of Revenue was information within the meaning of section 59(b) of the Act. After careful consideration he held that such an opinion could not be information within the meaning of section 59(b) of the Act. We are in agreement with our learned brother on this question.

21. Sri Kondaiah, the learned counsel for the department, placed reliance on Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa, where it was held that:

The word "information" in section 34(1)(b) included information as to the true and correct state of the law, and so would cover information as to relevant judicial decisions.

22. In the case originally the income tax Officer, following the decision of the Patna High Court in RAJA BAHADUR KAMAKSHYA NARAIN SINGH Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA., omitted to bring to assessment for the year 1945-46, the sum of Rs. 93,604 representing interest on arrears of rent due to the assessee in respect of agricultural land on the ground that the amount was agricultural income. Subsequently, the Privy Council, on appeal from that decision, held that interest on arrears of rent payable in respect of agricultural land was not agricultural income, and, as a result of that decision, the income tax Officer initiated reassessment proceedings u/s 34(1)(b) of the income tax Act and brought the amount of Rs. 93,604 to tax.

23. We do not see that the instant case presents any similarity to the one cited to us. On the contrary, it has been held consistently that information expressed on the same facts could not be information. In COMMISSIONER OF Income Tax, MADRAS Vs. JANAB S. KHADERWALLI SAHIB., a Bench of the Madras High Court observed this:

It is clear that a mere change of opinion based on the same facts and figures which were present to the mind of the income tax Officer at the time of the original assessment does not amount to discovery. The discovery must be the result of definite information, that is to say new information that has come to the knowledge of the income tax Officer. The income tax Officer cannot act under this section even though the taxpayer has escaped assessment if he is acting on information which was already in his possession and within his knowledge. Unless it can be said that there is fresh information which was not in his

possession at the time when the original assessment was made, action u/s 34 of the income tax Act is riot justified. The mere fact that a different opinion on the same facts was taken by somebody else is not definite information leading to discovery on the part of the income tax Officer who was in possession of the same facts and entire facts at the time of the original assessment.

24. Ananthalakshmi Ammal Vs. Commissioner of Income Tax, Madras, reiterated the same view. It was observed in that case thus:

That appellate decision with nothing more will not amount to definite information within the meaning of section 34 of the Act to enable the income tax Officer to exercise the powers conferred on him by section 34 with reference to the same set of facts.... The facts for consideration remained the same. Only his erroneous decision was eliminated. It was nothing more than a change of opinion on the same set of facts, though the change in this case was apparently forced by the decision of the Tribunal. There was no definite information or any discovery in consequence of such information within the meaning of section 34.

25. We are of the same opinion. We, therefore, affirm the finding of our learned brother that a mere expression of opinion by the Central Board of Revenue does not amount to information within the meaning of section 59(b) of the Estate Duty Act. As we have said above, the decision in this case could be properly rested on this finding. We find, therefore, no grounds for interference. The appeal is dismissed with costs.