(1987) 10 AP CK 0005

In the Andhra Pradesh High Court

Case No : Reference Case No''s. 266 and 268 of 1982

B. Narasinga Rao APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 13-10-1987

Acts Referred:

Citation : (1987) 35 TAXMAN 481

Hon'ble Judges : Upendralal Waghray, J;Jeevan Reddy, J

Bench : Division Bench

Advocate : N.V. Ranganadham, for the Appellant; M.S.N. Murthy and Krishna Koundinya, for the Respondent

Judgement

Jeevan Reddy, J.—An identical question is referred in both these cases. The question referred is :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in upholding the addition of the deceased''s 1/10 share of Rs. 34,648 in the bad debts reserve account of Rs. 3,86,477 as passed on the death of the deceased ?"

The question referred in Reference Case No. 268 of 1982 is :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in upholding the addition of the deceased''s 3/18 share of Rs. 64,414 in the bad debts reserve of Rs. 3,86,497 of the firm as passed on the death of the deceased ?"

The matter is arising under the Estate Duty Act, 1953. Two persons, namely, Akula Ramulu and Chandraiah were partners in a firm Sri Ram & Co. The share of Ramulu was 3/18 while the share of Chandraiah was 1/10. While Ramulu died on 4-8-1976, Chandraiah died on 12-2-1977. When the question of valuing the estate on their respective deaths arose in the estate duty proceedings, the Assistant Controller included the disputed item in their respective estates. In the balance sheet of the firm there was a reserve shown at Rs. 3,86,477 which was called bad debt reserve. The amount proportionate to the share of each of the deceased out of the said amount was taken as one of the items constituting the estate of the respective deceased passing on his death. In short, in the case of Ramulu, a sum of Rs. 64,414 representing his 3/18 share in the said sum was taken as one of the items of the estate passing on his death. Similarly, in the case of Chandraiah a sum of Rs. 38,648 representing his 1/10 share in the said bad debt reserve was included in the estate passing on his death. Besides the above, it may be stated, that the Assistant Controller also took the share of the deceased in the goodwill and added that also to their estate.

2. On appeal (in the case of Chandraiah), the appellate authority was of the opinion that according to law the proper mode of valuing the interest of a deceased in a partnership firm is to find out what would be the value of his share if the firm had been dissolved on the date of death of the deceased. He observed that such a method has not been followed in this case. But, he was of the opinion, on a consideration of the relevant facts and in the circumstances of the case, that remand of the matter for doing such exercise was not called for inasmuch as the result ultimately would be the same. Accordingly, he dismissed the appeals. We are not concerned with the other contentions urged before and dealt with by the Appellate Controller. The matter was carried in further appeal to the Tribunal., Before the Tribunal the only contention urged on this aspect was that inasmuch as the said bad debt reserve was actually carried forward in the books, notwithstanding the death of the deceased partner, no share of the deceased could be said to have passed on his death. The Tribunal rejected this contention on the following reasoning. Clause 10 of the partnership deed says that the partnership will not be dissolved on the death of a partner. (Of course the partner ship deed contemplated that on the death of the deceased his heirs or successors will be brought in as partners in his place and as a matter of fact in this case the heirs of both the deceased were brought as partners in their respective places). Merely because no amounts were paid out when the partner died or no share was allocated to the deceased when the accounts were made up, it cannot be said that the share of the deceased in the said reserve could not be included in making the estate duty assessment. It purported to follow a Full Bench decision of the State Vs. Prem Nath, . Thereupon, on the applications of the assessees the questions aforementioned were referred to this Court.

3. The correct method, as rightly pointed out by the Appellate Controller, no doubt, was to find out the value of the share of the deceased partner in the partnership firm on the assumption that there was dissolution of the partnership on that date. This method was, no doubt, not followed by the Assistant Controller. However, having regard to the facts and in the circumstances of the case, the Appellate Controller thought that even if the correct method was followed and proper exercise was done, the result would be the same and, therefore, he thought it unnecessary to remit the matter. This reasoning or opinion of the Appellate Controller was not questioned in second appeal before

the Tribunal. Before the Tribunal only one simple legal argument was urged, namely, that inasmuch as no amount was paid out nor any share was allocated to the deceased when the accounts were made up, no share of bad debt reserve can be included in assessing the value of the estate of the deceased. This was rejected by the Tribunal. It was not argued before the Tribunal that the correct method of valuing the estate was not followed or that in that view the orders of the authorities below should be set aside. Before us, Mr. Ranganadham sought to contend that the proper method as pointed out by the Appellate Controller ought to have been followed and for that purpose the matter should be remitted back to the authorities below. We are, however, not inclined to agree with this contention inasmuch as this contention was never urged before the Tribunal. It cannot be said that the said contention arises from the order of the Tribunal. Above all, the question referred is not that. The question referred is about the justifiability of addition of deceased''s share in the bad debt reserve in the total value of his estate. In view of the argument urged before the Tribunal the said finding: of the Tribunal cannot be said to be unjustified. We may also mention in this regard that the order of the Assistant Controller shows that the share of the deceased either in the capital account or in the stock-in-trade was taken into account. It is probably for this reason the Appellate Controller was of the opinion that even if a fresh exercise was done as required by law, the result would be the same. At this distance of time, therefore, we are not prepared to accede to the contention of the learned counsel for the accountable person. For the above reasons, we, in the particular circumstances of the case, answer the questions referred in the affirmative, i.e., in favour of the revenue and against the accountable persons. There shall be no order as to costs.