
(1982) 01 AHC CK 0003

In the Allahabad High Court

Case No : Estate Duty Reference No. 129 of 1974

BADRI VISHAL TANDON

APPELLANT

Vs

CONTROLLER OF ESTATE DUTY.

RESPONDENT

Date of Decision : 15-01-1982

Acts Referred:

Estate Duty Act, 1953 — Section 33, 34

Citation : (1982) 30 CTR 316 : (1982) 136 ITR 427

Hon'ble Judges : Satish Chandra, C.J

Bench : Division Bench

Judgement

SATISH CHANDRA C.J. - The Appellate Tribunal had submitted this statement of the case and has referred five questions of law for the opinion of this court. The reference is under the E.D. Act. It relates to the estate of late Sri Ram Mohan Das Tandon, who died on June 27, 1967. His son, Badri Vishal Tandon, filed a return under the E.D. Act. The Asst. controller, in due course, passed an assessment order after making various adjustments. The accountable person went up in appeal and then in further appeal to the Income Tax Appellate Tribunal. Now, three matters are in dispute on which the Tribunal had referred to us five questions of law.

The first matter relates to the inclusions of the deceased shares amounting to Rs. 1,27,098 in Lala Man Mohan Das Trust. The facts are :

Lala Man Mohan Das Tandon died somewhere prior to 1953 leaving behind his widow and five sons, the youngest of whom was Ram Mohan Das Tandon, the deceased. Lala Man Mohan Das was the treasurer of the Allahabad Bank. He had expressed a desire that after his death the treasureship of the bank be carried on by his family members. On his death, Lala Man Mohan Das left certain properties which belonged to him individually. After his death, his wife and his five sons executed a declaration of trust dated May 20, 1953. They created a trust called "Lala Man Mohan Das Trust". The Trust was irrevocable so as any of the sons of late Lala Man Mohan Das continued to function as treasurers of Allahabad Bank.

The properties transferred to the trust were certain securities, shares in companies, cash balances in the bank, etc., totalling a net sum of Rs. 3,17,419-4-8. Clause 6 of the deed of trust provided that the trustees agree to recognize the following members of the family of late Lala Man Mohan Das as beneficiaries of the trust whose shares in the income and profits of the trust shall be as follow :

At serial No. 1 Srimati Chameli Devi (the widow of Lala Man Mohan Das) was mentioned and her share was Rs. 500 per month. Serial No. 2 mentioned another lady of the family, Srimati Tulsa Bibi, with a share of Rs. 40 per month. At serial Nos. 3 to 7 the five sons were mentioned. At serial No. 7 was Lala Ram Mohan Das Tandon (the deceased) and his share was mentioned as "annas 2 of a rupee of the net profits". Clause 7 provided that out of the income of the trust fund Rs. 500 shall be paid every month to the said Smt. Chameli Devi and Rs. 40 per month to Smt Tulsa Bibi for their maintenance. Clause 9 of the trust deed provided that beneficiaries other than the said Smt. Chameli Devi and Srimati Tulsa Bibi shall not be entitled to withdraw from the trust their respective share in the profits except as under :

(1) Rs. 10,000 on the marriage of any daughter or son of any of the present beneficiaries :

(2) The amount of his proportionate share out of the sum exceeding Rs. 5,00,000 in the trust fund.

Clause 19 of the trust deed provided that in case of death of any beneficiary, from 3 to 7 (both inclusive), his heirs directly in line of late Lala Man Mohan Das shall be entitled to receive the share of profits payable to the late, beneficiary. The cl. 20 went on to provide that on the revocation of the trust, the assets of the trust shall be divided equally among the beneficiaries 3 to 7 (both inclusive) mentioned in para. 1 and each beneficiary will be entitled to get his shares of the assets after an adjustment of the withdrawals made by him.

It appears that in order to record the withdrawals, etc., made by the various beneficiaries the trustees maintained separate accounts in the name of each of the beneficiaries. The shares of Ram Mohan Das, the deceased family in the trust as per the balance-sheet as on May 15, 1967, amounted to Rs. 1,27,098. This was included by the Asst. Controller in the valued of the estate of the deceased joint family in order to ascertain his shares in the entire estate.

This inclusion was challenged by the accountable person but was confirmed in appeal as well as by the Tribunal in further appeal.

learned counsel for the accountable person submitted before us that this share was not included in the deceased wealth-tax assessment and so it should have been left out of the estate duty assessment also.

The Tribunal has found :

"There is no dispute or doubt that the deceased family has a share in the trust property. The deceased share therein certainly passed on his death."

The Tribunal further held :

"Since the value of the deceased share has to be included in the estate duty assessment, we are of the opinion that on a notional basis the family's share in the trust property as per the latest balance-sheet of the trust before the dated of his death should be taken into account."

learned counsel for the accountable person submitted that the deceased share in the trust property was a contingent interest. It was not a beneficial interest and so it could not be included to find out of value of the estate of the deceased joint family in order to ascertain his share in the entire estate. learned counsel did not dispute the findings that the deceased family, as such, had a share in the trust property and its income. the deceased was the persons nominated who was entitled to receive the income and, after his heir who was in line with Man Mohan Das was mentioned as the one entitled to receive payment of share. The deceased had a present continuing interest to receive a share of the trust properties if and when revoked. This interest passed on his death. Such an interest could not be characterised as a contingent interest. In our opinion, the authorities below rightly added the currently available value of such an interest in the value of the estate of the deceased joint family with a view to ascertain his share in the entire estate.

The next questions relates to Madho Kunj property. The Asst. Controller valued this property at Rs. 4,87,682. The Zonal Appellate Controller reduced it to Rs. 3,86,660. He held that this property consisted should be computed by capitalising the net annual value at 20 times and adding thereto the value of the excess open land. The value of the property by capitalising the net rental at 20 times was computed at Rs. 86,660. The Appellate Controller then observe :

"The total area of land was 1,58,994 sq. ft. The covered area was 27,540 sq.feet. For covered area of 27,540 sq. feet, I will consider it reasonable if the land appurtenant to that area is taken at 58,994 sq feet. Thus, there was an excess area of open land approximating to 1,00,000 sq. feet which was capable of being development on an investment at future date."

He then considered that it will be reasonable if the value of the land is estimated at Rs. per sq. foot.

On this basis the value of the excess area of land approximating to 1,00,000 sq. feet will come to Rs. 3,00,00,000. The total value of the property was, therefore, taken at Rs. 3,86,660.

This finding was challenged before the Tribunal on the ground that the appellant could not sell the excess land because the municipality had earmarked it for a park and forbade the appellant from selling it for residential houses. This submission was repelled by the Tribunal. It held :

"We do not agree with the submission of the learned counsel that the open land available in his property had no market value because the appellant is not allowed to sell it for the purposes of house construction. Even if it is reserved for a park, the appellant is bound to get its market value as compensation from the municipality when the land is acquired. In this view of the matter and considering the locality of the property, we are of the opinion that the value of the land taken at Rs. 3 per square foot by the Zonal Appellate Controller is quite reasonable and we see no reason to interfere."

The Tribunal then went on to hold that the capitalization of the buildings should be at 15 times the net rental.

Learned counsel for the accountable person has submitted that the Tribunal misunderstood the submission and misconceived the true factual position. The deceased had applied to the municipal board for permission to construct residential houses on the open land but the same was refused and the plan submitted rejected on the ground that the land, where buildings were proposed to be constructed, had been left for purposes of park or lawn (open land) for the other houses. By the other houses were meant the seven blocks of houses which surrounded the open area. The municipal board did not evince any desire or interest in reserving the land for development it as a municipal park. there was, hence no possibility of the municipality acquiring the land with a view to develop it as a park. The municipal board, on the other hand, rejected the development plans submitted by the deceased on the ground that the open area had been left to be used as such or as a park for the other houses in the Ahata. In this situation, the value of the land was not less, or more, than the value of that portion of the land which the departmental authorities have treated as land appurtenant to the seven blocks of buildings in this Ahata and on that ground did not value it separately. learned counsel further submitted that the proposed plan for development this area as well as the order of the municipal board refusing to sanction it were filed and formed part of the record of this case.

But unfortunately these documents do not form part of this case. Instead of calling for a supplementary case we think it will be more appropriate if this aspect of the matter engages the attention of the Tribunal because apparently the Tribunal, according to the learned counsel, was under some factual misapprehension.

learned counsel submitted that on the calculation made by the Zonal Appellate Controller the excess open area would not work out to 1,00,000 sq.feet but only to 72,460 sq. ft. A clear clerical error seems to have crept into the judgments of the Appellate Controller as well as the Tribunal. Learned counsel also submitted that there was no material on record in support of the finding that the value of the open area be taken at Rs. 3 per sq. foot. These latter have not been specifically referred to us but since the matter is going back, it will be open to the Tribunal to permit these points being raised and decided, if the Tribunal so thinks fit.

The third matter raised in this reference is in relation to the residential house. Property No. 55, Rani Mandi, Allahabad, was treated as the residential property of the deceased family. this property was valued at Rs. 20,000 which is not disputed. the accountable persons contention was that since it was residential property it was exempt from estate duty under s. 33(1)(n) of E.D. Act. No part of its value could be taken into account. the departmental authorities were in error in excluding only the deceased share. The entire value should have been excluded. We find substance in this submission.

The authorities below have aggregated the value of two shares of the lineal descendants for rate purpose.

Section 34(1) provides for the determination of the rate of estate duty to be paid on any property passing on the death of the deceased. Section 34(1) provide :

"34. (1) For the purposes of determining the rate of the estate duty to be paid on any property passing on the death of the deceased -

(a) all property so passing other then property exempted from estate duty under clauses (c),(d),(e),(i),(j),(l),(m),(mm),(n),(o) and (p) of sub-section (1) of section 33;

(b) agricultural land so passing, if any, situate in any State not specified in the First Schedule; and

(c) in the case of property so passing which consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law, also the interest in the joint family property of all the lineal descendants of the deceased member;

shall be aggregated so as to form one estate and estate duty shall be levied thereon at the rate or rates applicable in respect of the principal value thereof."

It will be seen that the property exempt from estate duty under the above-mentioned clauses of s. 33(1) has to be excluded from being considered for purposes of determining the rate. Section 33(1) provide :

"33. (1) To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of the property of any of the following kinds belonging to the deceased which passes on his death-...

(n) one houses or part thereof exclusively used by the deceased for his residence, to the extent the principal value there of does not exceed rupees one lakh if such house is situate in a place with a population exceeding ten thousand, and the full principal value thereof, in any other case."

Under this provision, the residential house of the deceased is exempt to the extent of Rs. 1,00,000 or the full principal value thereof, as the case may be. There is no finding that the deceased was using only a part of the residential house for his residence. Under cl. (n), the principal value up to Rs. 1,00,000 was

exempt. Hence the value of the residential house could not be taken into account for determining the rate because cl. (a) of s. 34(1) specifically excludes it.

It was, faintly urged that under cl. (c), the interest in the joint family property of the lineal descendants of the deceased member, in the case of a property consisting of coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara was liable to be included. In our opinion cl. (c) will not apply to those properties which are covered by the exclusionary provision in cl. (a). Properties which are exempt from estate duty under the mentioned clauses of s. 33(1) go outside the purview of the aggregation for determining the rate. Such properties cannot be taken into consideration even if they consist of a coparcenary interest. In other words, cl. (c) will not apply to those properties which are specifically exempt under cl. (a) of s. 34.

In the result, the position is that even for rate purposes the value of the lineal descendants share in the residential houses cannot be included.

We should now state the actual questions referred for our opinion They are :

"1. Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the proportionate share to the extent of two annas in a rupee was liable to be included while computing the estate of the family of which the deceased was a member from Lala Man Mohan Das Trust and the share of the deceased was liable to estate duty.

2. Whether, in view of the finding that the beneficiaries were entitled to share the trust property on the revocation of trust, the Tribunal was right in holding that on a notional basis, the family's share in the trust amounting to Rs. 1,27,098 was liable to be included as the property passing on the death of the deceased ?

3. Whether, on the facts and circumstances of the case and having regard to the owners right the Tribunal was right in its decision that apart from the value of buildings and the land appurtenant thereto, the excess or surplus land in the property known as Madho Kunj was liable to be valued separately ?

4. Whether the Tribunal was right in holding that exemption in respect of residential house was available to the proportionate share of the deceased and not in respect of the entire value of the house in which the deceased resided ?

5. Whether the Income Tax Appellate Tribunal was right in its view that the contention of the appellant in respect of exemption claim for residential property was misconceived as the value of the residential property was not liable to be included along with the value of other properties of the purposes of ascertaining the deceased share having regard to the direction of the Zonal Appellate Controller of Estate Duty in that regard ?"

The first two questions are answered in favour of the revenue and against the assessee. The fourth and fifth questions are answered in favour of the assessee and against the department. Questions No. 3 is left unanswered. The matter is

sent back to the Appellate Tribunal with a direction that it will re-hear the appeal on the matter relating to Madho Kunj property, in the light of the observations made above. In view of the divided success, the parties will bear their own costs.

The fee of the learned counsel for the department is, however, assessed at Rs. 200.