(1991) 03 BOM CK 0008

In the Bombay High Court

Case No : Estate Duty Reference No. 13 of 1977

Controller of Estate — APPELLANT

Vs

Bank of India — RESPONDENT

Date of Decision : 19-03-1991

Acts Referred:
Estate Duty Act, 1953 — Section 59

Citation : (1991) 192 ITR 606

Hon'ble Judges : T.D. Sugla, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : Dr. V. Balasubramanian, for the Appellant; P.J. Pardiwala, for the Respondent

Judgement

T.D. Sugla, J.—This is a reference at the instant of the Department. u/s 64(1) of the Estate Duty Act, 1953, the Income Tax Appellate Tribunal has referred to this court the following two question of law :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal erred in holding that the Assistant Controller appeared to have reopened the assessment under both the clauses of section 59 ?

2. Whether, on the fact and in the circumstances of the case and after having held that the assessment had been reopened u/s 59(a) for the purpose of withdrawing the deduction u/s 33(1)(n), it was competent for the Tribunal to hold and /or the Tribunal rightly held that the proceedings appeared to have been reopened also u/s 59(b) ?"

2. It may, at the outset, be mentioned that question No. 1 referred to our court by the Tribunal is not happily worded. In fact, the question suggested by the Department referred to in paragraph 10 itself is a better question and brings out the real controversy between the parties. Accordingly, we reframe the first question as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Assistant Controller of Estate Duty had not validly initiated proceedings either u/s 59(a) or 59(b) of the Estate Duty Act, 1953, in the instant case ?"

3. The facts on record clearly indicate that the Bank of India, while filing the estate duty returns in respect of the estate of the deceased, has clearly and categorically stated that the deceased had a life interest in trust property and, on that basis, claimed deduction u/s 33(1)(n) of the Estate Duty Act. This claim was allowed originally. Merely because, subsequently, the internal audit party of the Accountant-General raised objections, the accountable person cannot be blamed for not disclosing fully and truly all material facts necessary for assessment. We are, therefore, in agreement with the Tribunal that the estate duty assessment could not have been reopened u/s 59(a). As regards section 59(b) also, the factual position appears to be that the assessment was reopened on the basis of an objection raised by the internal audit party of the Accountant-General. It is not shown as to whether this objection was based on any fact or any law, in the sense of a provision in the Act or a legal pronouncement. This appears to be a mere opinion of the audit party. As held by the Supreme Court in the case of Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, , such opinion by the internal audit party does not constitute "information" within the meaning of section 59(b).

4. Accordingly, we answer the first question so reframed in the affirmative and in favour of the accountable person.

5. As regards the second question, counsel are agreed that, in view of our answer to the first question, it need not be answered. The second question is, therefore, not answered.

6. No order to costs.

