

(1990) 01 PAT CK 0017

In the Patna High Court

Case No : Taxation Case No's. 203 and 204 of 1980

Controller of Estate Duty

APPELLANT

Vs

Haribux Poddar (Decd.)

RESPONDENT

Date of Decision : 10-01-1990

Acts Referred:

Estate Duty Act, 1953 — Section 61, 62(1)

Citation : (1991) 97 CTR 26 : (1990) 182 ITR 423 : (1990) 51 TAXMAN 313

Hon'ble Judges : G.G. Sohani, C.J.;B.N. Sinha, J

Bench : Division Bench

Advocate : K.K. Vidyarthi and S.K. Sharan, for the Appellant; None, for the Respondent

Judgement

B.N. Sinha, J.—By this reference u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal "B" Bench, Patna, has referred the following questions of law to this court for its opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the order passed by the Assistant Controller of Estate Duty u/s 61 of the Estate Duty Act, 1953, is appealable u/s 62 of the Act ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that, in rectification u/s 61 of the Estate Duty Act, 1953, notices have to be served on all the legal representatives and that service of notice on only one of the legal representatives is invalid ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the question whether Haribux Poddar had only 50% interest in the Hindu undivided family property which passed on his death or he had full interest in the property and the entire property passed on the death of Haribux Poddar was a debatable issue and was not a mistake

apparent from the record which could be rectified u/s 61 of the Estate Duty Act, 1953 ?"

2. The material facts giving rise to this reference briefly are as follows :

One Haribux Poddar died on May 10, 1973. His widow, Smt. Anandi Devi, as the accountable person submitted an account of the property in respect of which estate duty was payable. The Assistant Controller of Estate Duty, Circle Ranchi, upheld the contention of the accountable person that only 1/2 share of the deceased in the property which was that of the Hindu undivided family passed on the death of Haribux. Consequently, while framing the assessment under the Act, only % share of the Hindu undivided family property was taken while computing the principal value of the estate of the deceased. Subsequently, another Assistant Controller was of the opinion that there was a mistake in the order which was apparent from the face of the record. The Assistant Controller held that the deceased was competent to dispose of the entire Hindu undivided family property and, hence, the order of assessment deserved to be rectified. In the meanwhile, as Smt. Anandi Devi, the accountable person, had expired, the Assistant Controller served a notice on Smt. Rampyari Devi, one of the daughters of Smt. Anandi Devi, to show cause why the order of assessment be not rectified. After cause was shown, the Assistant Controller held that inclusion of only half of the Hindu undivided family property for computing the principal value of the estate of the deceased was a mistake apparent on the face of the record. In that view of the matter, the Assistant Controller of Estate Duty recomputed the principal value of the estate of the deceased and a notice of demand was consequently served on Smt. Rampyari Devi. She preferred an appeal before the Appellate Controller which was partly allowed. The Appellate Controller overruled the objection that the appeal before the Appellate Controller was not competent but he held that though there were four legal representatives for the accountable person, notice was served on only one of them, and hence, the order of rectification was liable to be set aside. The Appellate Controller directed the Assistant Controller to issue notices to all the legal representatives and to dispose of the matter in accordance with law. Aggrieved by the order passed by the Appellate Controller, the Revenue as well as the assessee preferred appeals before the Appellate Tribunal. The Tribunal allowed the appeal preferred by the assessee and dismissed the appeal preferred by the Revenue. Aggrieved by the order passed by the Tribunal, the Revenue sought reference and it is at the instance of the Revenue that the aforesaid questions of law have been referred to this court for its opinion.

3. None appeared on behalf of the assessee. Learned counsel for the Revenue contended that the Tribunal erred in holding that an appeal lay from an order passed u/s 61 of the Act. The contention cannot be upheld. In *Controller of Estate Duty Vs. P.E. Venkitraman*, , a Division Bench of the Kerala High Court has held that, if, as a result of the rectification order passed, the accountable person is denying his liability to the estate duty which he has been called upon to pay,

an appeal from an order passed u/s 61 is competent in view of the provisions of Clause (b) of Section 62(1) of the Act. To the same effect is the judgment of the Gujarat High Court in *Controller of Estate Duty Vs. Late Jayantilal Keshav Mehta (Executor, Navinchandra J. Mehta), Late Ansuyaben Sarabhai (By Accountable Person, R.P. Shah) and Late Champaben Sakarlal (By Accountable Person, Nandkishore Sakarlal)*, . Learned counsel for the Revenue brought to our notice the decision of the Patna High Court in *Guru Prasad, Chhattu Ram and Chhattu Ram Horil Ram (P.) Ltd. Vs. Commissioner of Income Tax*, , but that decision deals with the provisions of the Indian Income Tax Act, 1922. -The provisions of Clause (b) of Section 62(1) of the Act are very widely worded and in view of those provisions, it must be held that the Tribunal was right in holding that the order passed by the Assistant Controller u/s 61 was appealable u/s 62 of the Estate Duty Act.

4. It was then contended on behalf of the Revenue that even though notices were not served on the other three legal representatives, the Tribunal should have affirmed the order passed by the Appellate Controller directing the Assistant Controller to serve notices on the other three legal representatives also, so that a fresh order of rectification could be passed. In this connection, we may usefully refer to the following observations of the Gujarat High Court in *Choocharmal Wadhuram (Decd.) (by legal representatives) Vs. Commissioner of Income Tax*, :

"... It would, therefore, seem clear that, where a person dies leaving more than one legal representative, the Income Tax Officer must proceed to assess the total income of the assessee by serving notice u/s 22(2) or Section 34, as the case may be, on all the legal representatives. If the notice is served on only one legal representative, there would be no complete representation of the estate or, to use the words of Salmond, "of the person of the deceased". One only out of several legal representatives would not represent the whole interest of the deceased and if the whole interest of the deceased is not represented before the Income Tax Officer, it is difficult to see how the Income Tax Officer can proceed to assess the total income of the assessee. The assessment must, on principle and authority, be made on those who represent the whole interest of the assessee--his entire estate--and assessment on only one of them who partially represents the estate of the deceased, cannot be regarded as sufficient to bind the estate of the deceased ..."

5. We respectfully agree with the aforesaid observation. There may be cases as pointed out in the aforesaid decision, where, though there are several legal representatives, one may represent the whole interest of the deceased. But that is not the finding in the instant case. Therefore, the Tribunal was right in holding that as notice was served on only one of the legal representatives, the proceedings for rectification were not validly initiated and the order of rectification, therefore, was void.

6. It was then contended that the Appellate Tribunal erred in holding that there

was no mistake apparent on the face of the record and the provisions of Section 61 of the Act were not attracted. The contention cannot be upheld. The Supreme Court has held in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , that a mistake apparent on the record must be an obvious and patent mistake. In the instant case, the question as to what property passed on the death of Haribux Poddar was, as pointed out by the Tribunal, a debatable issue. The Tribunal was, therefore, right in holding that the Assistant Controller had no jurisdiction to rectify the order of assessment.

7. For all these reasons, our answers to the three questions referred by the Tribunal to this court are in the affirmative and against the Revenue. In the circumstances of the case, there shall be no order as to costs.

8. Let a copy of this judgment be forwarded by the office of this court to the Assistant Registrar, Income Tax Appellate Tribunal, Patna.