

(1985) 04 CAL CK 0013
In the Calcutta High Court
Case No : Matter No. 1126 of 1982

Controller of Estate Duty

APPELLANT

Vs

J.N. Elias and Others

RESPONDENT

Date of Decision : 25-04-1985

Acts Referred:

Estate Duty Act, 1953 — Section 36, 5

Citation : (1986) 53 CTR 28 : (1986) 157 ITR 352

Hon'ble Judges : Dipak Kumar Sen, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Advocate : Sunil Kr. Mitra, for the Appellant;

Judgement

Ajit Kumar Sengupta, J.—This is a reference u/s 64(3) of the Estate Duty Act, 1953. One Mrs. Rachel N. B. Elias died on 30th June, 1969, and Shri M. N. Dutta, executor of her estate, filed an account of the estate and the Assistant Controller completed the assessment on May 24, 1974, determining the net principal value at Rs. 12,55,213. In computing the net principal value, the Assistant Controller, inter alia, valued the life interest in the property at 69, Park Street, Calcutta, at Rs. 5,62,000 as against the value of Rs. 3,94,000 returned by the accountable person based on the valuation of Ms. Talbot & Co., approved valuers.

2. On appeal before the Appellate Controller, he did not accept the valuation shown by the accountable person nor the valuation determined by the Assistant Controller. On the other hand, he held taking due note of the order of the Tribunal in the wealth-tax assessment fixing the rental of the ground floor at Rs. 950 per month as reasonable. He has computed the net annual rental income from the property at Rs. 36,800 after allowing 1/3rd of gross rent for outgoing and applying the multiplying factor at 14 instead of 12.5 adopted by the Tribunal for wealth-tax purposes. Thus, he determined the value of the property at Rs. 5,15,000.

3. On second appeal, the Tribunal accepted the estimation of ground floor rent of

RS. 950 per month as reasonable. It also held that collection charges and repairs as laid down in the Income Tax Act must be taken into account for arriving at the net income from the property. As regards capitalisation, the Tribunal followed the multiplying factor of 12"5 which was adopted in the case of Sri Elias. The Tribunal also pointed out that the deceased had only life interest in the property, whereas Sri Elias had 1/4th share in the house property and, therefore, the Appellate Controller was wrong in not following its decision in the case of Sri Elias. Finally, the Tribunal determined the valuation of the property at Rs. 4,06,962 which was worked out by the approved valuer of the deceased.

4. Being aggrieved by the said order of the Tribunal dated July 24, 1976, the Controller made an application u/s 64(1) of the Estate Duty Act, 1953, requiring the Tribunal to refer as many as five questions stated to be questions of law. The Tribunal observed that none of the questions raised by the Controller involved any legal issue and, accordingly, the said reference application was rejected.

5. Against the said rejection, the Controller moved this court u/s 64(3) of the said Act and upon the said application, rule was issued on the following two questions :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in holding that for the purpose of capitalisation of net rental income in determination of the value of the property, No. 69, Park Street, Calcutta, the multiplying factor of 12"5 years purchase and not 14 years" purchase is reasonable and whether the said finding and/or conclusion is otherwise reasonable and/or perverse ?

2. Whether, on the facts and in the circumstances of the case and having regard to the relevant provisions of the Estate Duty Act, 1953, the Tribunal misdirected itself in law in holding that fractional share in the property of the successor and life interest enjoyed by the deceased set off each other ?"

6. By the order dated 23rd December, 1977, rule was made absolute on the following reframed question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in equating the life interest of the deceased with a fractional ownership and applying the multiplier of 12 1/2 times for the purpose of determining the value of the premises No. 69, Park Street, Calcutta ?"

7. It, however, appears that the said order was drawn up, completed and filed on an entirely different question which does not relate to this matter at all. The said question is as follows :

"Whether, on the facts and in the circumstances of this case, the Tribunal was right in holding that the profits or gains arising from the sale of the goodwill would not be charged to tax under the head "Capital gains" u/s 45 of the Income Tax Act, 1961 ?"

8. Strangely enough, neither the Revenue nor the accountable person pointed out before the Tribunal that that was not the question on which rule was made absolute.

9. The said order was served upon the Tribunal and the Tribunal without enquiring as to how such question could have been raised in an estate duty reference, submitted the statement of the case.

10. We have perused the records in Matter No, 696 of 1977, wherein the rule nisi was made absolute and it appears that due to the negligence and laches on the part of the then advocate-on-record of the Controller, the order making the rule absolute was not properly drawn up, as a result whereof, the question which has been referred to this court by the Tribunal u/s 64(3) of the Act is not the question on which rule was made absolute. Two courses are open to us. We may decline to answer the question referred to us as this question does not arise out of the order of the Tribunal or direct the Department to draw up the order on the correct question on which rule was made absolute on December 23, 1977, as mentioned hereinabove and serve a copy thereof on the Tribunal. The Tribunal would thereafter submit another statement of case on the correct question. This will involve unnecessary delay and expense. Since the statement of case contains all the relevant facts relating to the question on which the rule was made absolute, by consent of the parties, we direct that the amendment be made in the order as drawn up and in the statement of case by substituting the following question for the question which has been referred to this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in equating the life interest of the deceased with fractional ownership and applying the multiplier of 12 1/2 times for the purpose of determining the value of the premises No. 69, Park Street, Calcutta ?"

11. Let the order and the statement of case be amended on a signed copy of the order within two weeks from date.

12. It has been contended by the learned advocate appearing for the Controller that the Tribunal was not right in equating the life interest of the deceased with fractional ownership. He has also submitted that the Tribunal should not have applied the multiplier of 12 1/2 times for the purpose of determining the value of the premises in question. He has relied on a decision of the Supreme Court in the case of Rustom Cavasjee Cooper Vs. Union of India (UOI), , where the Supreme Court held that the method of determining the value of property by the application of an appropriate multiplier to the net annual income or profit is a satisfactory method of valuation of lands with buildings where the land is fully developed and the income out of the property is the normal commercial and not a controlled return or a return depreciated on account of special circumstances. It was further laid down that in determining the appropriate rate of the net profits, the return from gilt-edged securities may, unless it is otherwise found not suitable, be adopted. Learned advocate, therefore, submits that in this case, the

Tribunal should have adopted the method approved by the Supreme Court. He has also relied on another decision of the Supreme Court in the case of State of Kerala Vs. P.P. Hassan Koya, . There, the Supreme Court held that the method which was generally resorted to in determining the value of the land with buildings, specially those used for business purposes, is the method of capitalisation of return actually received or might reasonably be received from the land and the buildings. The Supreme Court also observed as follows (p. 1203) :

"It cannot be laid down as a general rule applicable to all situations and circumstances that a multiple approximately equal to the return from gilt-edged securities prevailing at the relevant time forms an adequate basis for finding out the market value of the land. But, in this case, the trial court and the High Court were of the view that a multiple based on a return from the gilt-edged securities was the approximate multiple for determining the value of the property under acquisition, and no ground has been suggested for not accepting the basis and the rate of capitalisation adopted by them."

13. Mr. R. N. Dutta, learned advocate for the accountable person, has on the other hand contended that on the facts and in the circumstances of this case, the Tribunal was justified in equating life interest with fractional ownership. He has further submitted that the question of valuation of a property is essentially a question of fact. He has relied on the decision of the Supreme Court in the case of Commissioner of Wealth Tax, Patna Vs. Raghubar Narain Singh, , where the Supreme Court held that the market value of an asset would be a question of fact but if the Tribunal has arrived at a conclusion by taking wrong principles into consideration, then such a finding would not bind the High Court.

14. We have considered the rival submissions. The Tribunal found that in the case of D.N. Elias who had 1/4th share in the property in question, the multiplying factor was determined by the Tribunal at 12 1/2 years" purchase. The Tribunal then proceeded to hold thus :

"In that case (D. N. Elias), he was owning 1/4th share. In the case of the deceased, she was enjoying life interest only. Thus, the two set off each other. In this regard, the Appellate Controller was, in our opinion, wrong in not following the Appellate Tribunal's order in the case of Shri Elias."

15. In view of the provisions of Section 5 of the Act, life interest itself passes on death. Section 5 is not concerned with the title or ownership. Once the interest itself passes u/s 5, the entire property covered by the interest is to be valued in accordance with the provisions of Section 36 of the Act. Where the interest ceases on the death of the deceased and benefit accrues or arises by reason of the cesser of such interest, the provisions of Section 40 will be attracted for the purpose of valuation. It appears that in this case, the departmental authorities as well as the Tribunal proceeded on the footing that the property passed on the death of the deceased u/s 5 of the Act. The Tribunal was not, therefore, justified

in equating life interest with fractional ownership.

16. Since the property has passed u/s 5, the principal value of the property covered by the interest has to be determined in accordance with the provisions of Section 36. Although we do not approve the reasoning of the Tribunal, the determination of the valuation of the premises in question by applying a particular multiplier cannot be said to be erroneous on the facts and in the circumstances of this case.

17. Before the Assistant Controller, the accountable person submitted a valuation report from Talbot & Company showing the valuation of the property in question at Rs. 3,94,000. This valuation report was not accepted by the Assistant Controller. The property was valued by the departmental valuer at Rs. 5,62,000 which was accepted by the Assistant Controller. The Appellate Controller did not accept any of the valuation reports. He arrived at a net rental of Rs. 36,800 and capitalised it at 14 years" purchase which came to about Rs. 5,15,000. The Tribunal dealt with the question of valuation in the following terms :

"Learned counsel for the assessee had placed before us a computation of the valuation of the gross annual rental income at Rs. 55,200 and reduced therefrom Rs. 22,643 to arrive at the net maintainable annual rent at Rs. 32,557. This was capitalised on 8% return to arrive at the valuation of Rs. 3,94,000. The difference lies mainly due to the deduction on account of repairs at Rs. 9, 195 by the approved valuer whereas the learned counsel in his computation deducted Rs. 7,013 with reference to the bona fide annual value. It may be mentioned here that the approved valuer deducted the amount on account of repairs by taking 1/6th of the gross annual rent of Rs. 55,172, which was clearly wrong. In these circumstances, the valuation shown by the learned counsel at Rs. 4,06,962 should be taken as the valuation of the property situated at 69, Park Street, Calcutta-16."

18. The Tribunal has applied the multiplier of 12 1/2 times for the purpose of determining the valuation of the premises No. 69, Park Street, Calcutta. The Tribunal observed that the difference between the two valuations was mainly due to the method adopted for arriving at the net rental of the property. The multiplying factor did not make such difference to the valuation. What is the market value of an asset as on the date of the death of the deceased is essentially a question of fact. It cannot be said on the facts of this case that the Tribunal took into consideration any wrong principle in determining the market value of the premises in question u/s 36 of the Act. In the question raised, the principles of valuation have not been questioned.

19. In the premises aforesaid, we answer the question by saying that the Tribunal was not right in equating the life interest of the deceased with fractional ownership. However, the Tribunal was right in applying the multiplier of 12 1/2 times for the purpose of determining the valuation of the premises No. 69, Park Street, Calcutta.

20. The Controller shall pay the costs of this reference.

Dipak Kumar Sen, J.

21. I agree.