

(1979) 01 GUJ CK 0008
In the Gujarat High Court

Case No : Estate Duty Reference No's. 8, 18 and 20 of 1978

Controller of Estate Duty

APPELLANT

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)

RESPONDENT

Date of Decision : 19-01-1979

Acts Referred:

Estate Duty Act, 1953 — Section 61, 62(1), 73
Income Tax Act, 1922 — Section 30(1)

Citation : (1979) 117 ITR 51

Hon'ble Judges : B.J. Diwan, C.J.; B.K. Mehta, J

Bench : Division Bench

Advocate : N.U. Raval, for the Appellant; K.C. Patel, for the Respondent

Judgement

Divan, C.J.—Since the question of law referred by the Tribunal for our opinion at the instance of the revenue in each of these three cases is the same and since the Tribunal in its orders, out of which Estate Duty Reference Nos. 18 and 20 of 1978 arise, followed its order in the matter out of which Estate Duty reference No. 8/1978 arises, it will be better to dispose of all the three matters by this common judgment.

The question which is referred in each of these three matters is:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the appeal of the accountable person made against the order of rectification was competent under clause (b) of sub-section (1) of section 62 of the Estate Duty Act, 1953 ?"

2. The facts giving rise to reference No. 8 of 1978 which may be stated for the sake of illustration are that one Jayantilal Keshavalal Mehta died on October 15, 1970. Assessment of estate duty payable on the passing of the property on his death was completed by the Assistant Controller on April 14, 1972, and the

principal value was found to be Rs. 8,01,983. The deceased had been a partner in the firm of firm of Messrs. Pitambar Anandji up to the date of his death. At the time when the original assessment order was passed, an amount of Rs. 36,035 was included in the principal value as being the share income of the deceased from the firm. Later on, the ITO in the Income Tax proceedings of the firm found that the share income of the deceased from the firm of Messrs. Pitambar Anandji was Rs. 51,623. Thereafter, in consequence of that finding of the ITO, the Assistant Controller felt that the share income included in the computation of the principal value was required to be raised by Rs. 15,588. There was another mistake about the assessee's share by the firm's assets. The Assistant Controller rectified both the mistakes by his order dated August 29, 1974, after notice to the accountable person. Against the decision regarding inclusion of the value of Rs. 15,588, the accountable person went in appeal before the Assistant Controller. The Appellate Controller held that no appeal was competent against the order of rectification passed under s. 61 of the E.D. Act and hence he dismissed the appeal as not maintainable. Against the decision of the Appellate Controller, the accountable person went in appeal to the Tribunal and the Tribunal took the view that the appeal was maintainable in view of s. 62(1)(b) of the E.D. Act. The Tribunal distinguished the decision of the Gujarat High Court in *MANDAL GINNING AND PRESSING CO. LTD. Vs. COMMISSIONER OF Income Tax. KESHAVALAL HIRACHAND v. COMMISSIONER OF Income Tax. DIGVIJAY WOOLLEN MILLS LTD. v. COMMISSIONER OF Income Tax.*, on the ground that the decision of the High Court in *Mandal Ginning Co.'s* case was in the context of the provisions of s. 30, sub-s. (1), of the Indian I.T. Act, 1922, where the relevant words were "any assessee... denying his liability to be assessed under this Act", whereas, under s. 62(1)(b), the relevant words are "any person...denying his liability to the amount of estate duty payable in respect of any property". In view of this difference in language, the Tribunal distinguished the decision in *MANDAL GINNING AND PRESSING CO. LTD. Vs. COMMISSIONER OF Income Tax. KESHAVALAL HIRACHAND v. COMMISSIONER OF Income Tax. DIGVIJAY WOOLLEN MILLS LTD. v. COMMISSIONER OF Income Tax.*, and held that the appeal was maintainable under s. 62(1)(b) of the E.D. Act. Thereafter, at the instance of the revenue, the question hereinabove set out has been referred to us for our opinion.

3. In Estate Duty Reference No. 18 of 1978, the question is similar and following its decision in *Jayantilal Keshavlal Mehta's* case, out of which Estate Duty Reference No. 8 of 1978 arises, the Tribunal held that the appeal was maintainable against the order of rectification and a similar view was taken in the matter out of which Estate Duty Reference No. 20 of 1978 arises.

In *MANDAL GINNING AND PRESSING CO. LTD. Vs. COMMISSIONER OF Income Tax. KESHAVALAL HIRACHAND v. COMMISSIONER OF Income Tax. DIGVIJAY WOOLLEN MILLS LTD. v. COMMISSIONER OF Income Tax.*, , the Gujarat High Court held (see Headnote):

"When an order of rectification is passed u/s 35(1) it undoubtedly rectifies the assessment u/s 23 and is a part of the procedure for ascertainment and imposition of tax liability. But the enhanced tax liability which results owes its validity to the exercise of power u/s 35(1) and not to the exercise of power u/s 23. There is no mandate that when the Income Tax Officer rectifies an assessment u/s 35(1) he must follow the procedure laid down in sections 22 and 23 as laid down in section 34, nor is there any fiction created by the statute that when an assessment is rectified in exercise of the power conferred u/s 35(1), the rectified assessment shall be deemed to be an assessment u/s 23 or shall be treated as an assessment u/s 23."

It was further held (ibid):

"When section 30(1) of the Indian Income Tax Act, 1922, uses the words "any assessee...denying his liability to be assessed under this Act", the word "assessed" is used in a comprehensive sense to mean subjected to the whole procedure for ascertaining and imposing liability on the taxpayer. There is nothing in section 30(1) to indicate that a narrow meaning should be given to the word "assessed". On the contrary, the words "under this Act" clearly show that the reference here is to the whole procedure laid down in the Act for imposing liability on the taxpayer. The denial of liability to be assessed may be in respect of the whole income or any part of the income. It may be based on any ground, whether of fact or law, and it may be total denial of liability or denial of liability under particular circumstances. But the denial must be of the liability to be assessed under the Act and not merely under any particular provision of the Act. When an assessee claims that he is not liable to be proceeded against u/s 35(1) he is not denying his liability to be assessed under the Act. His objection is only against a proceeding for assessment under the particular provision of the Act."

4. Under the E.D. Act, s. 62, sub-s. (1), there is no direct provision providing for appeal against an order of rectification, but under s. 62(1)(b) "any person.....denying his liability to the amount of estate duty payable in respect of any property may, within thirty days of the date of the receipt of the notice of demand under s. 73, appeal to the Appellate Controller in the prescribed form which shall be verified in the prescribed manner". The proviso to sub-s. (1) of s. 62 is not material for the purpose of this judgment. It is clear that the wording of s. 62(1)(b) is totally different from the wording of s. 30, sub-s. (1), of the Indian, I.T. Act, 1922. Here the wording is not "denying his liability to be assessed to estate duty" but "denying his liability to the amount of estate duty payable in respect of any property". Once an order of rectification under s. 61 of the E.D. Act is passed, it is clear that the liability to estate duty is increased and it is open to an accountable person to deny his liability to the amount of estate duty payable in consequences of the order of rectification. Under these circumstances, the wide amplitude of the language of s. 62(1)(b) cannot be cut down in any manner as is sought to be done by the revenue. The Gujarat High Court in *MANDAL GINNING AND PRESSING CO. LTD. Vs. COMMISSIONER OF*

Income Tax. KESHAVLAL HIRACHAND v. COMMISSIONER OF Income Tax. DIGVIJAY WOOLLEN MILLS LTD. v. COMMISSIONER OF Income Tax., decided the appealability against an order of rectification on the interpretation of the word "assessed" occurring in s. 30, sub-s. (1), of the Indian I.T. Act, 1922. There are no such words to be found in s. 62(1)(b) of the E.D. Act and the Tribunal was, therefore, right in coming to the conclusion to the conclusion that the decision in MANDAL GINNING AND PRESSING CO. LTD. Vs. COMMISSIONER OF Income Tax. KESHAVLAL HIRACHAND v. COMMISSIONER OF Income Tax. DIGVIJAY WOOLLEN MILLS LTD. v. COMMISSIONER OF Income Tax., cannot apply to the interpretation of s. 62(1)(b) of the E.D. Act.

5. We may incidentally point out that in CED v. P. E. Venkitraman [1978] 115 ITR 222, the Kerala High Court has also taken the same view as we are taking. At page 225 of the report, V. P. Gopalan Nambiyar C.J., speaking for the Division Bench of the Kerala High Court, observed (p. 225):

"It was contended for the revenue that there was neither any determination of the estate duty payable under s. 58 or s. 59, nor any assessment to penalty, nor any objection to valuation to attract clause (a) of section 62(1). While this may be so, we are of the opinion that the appeal is squarely covered by clause (b) of section 62(1) of the Act. The said clause is widely worded and if, as a result of the rectification order passed, the accountable person was denying his liability to the estate duty which he was called upon to pay, that is, sufficient to attract the right of appeal conferred by section 62(1)(b)."

6. Under these circumstances, the view on the point of law taken by the Tribunal in each of these three matters was correct and the provisions of s. 62(1)(b) were correctly interpreted by the Tribunal and it was rightly held that an appeal lay to the Appellate Controller against the decision of the Assistant Controller's order of rectification. In the result, we answer the question referred to us in the affirmative, that is, in favour of the accountable person and against the revenue. The Controller will pay the costs of each of these three references to the accountable person concerned.