
(1996) 02 MAD CK 0168

In the Madras High Court

Case No : Tax Case No"s. 1164 and 1165 of 1982

Controller of Estate Duty

APPELLANT

Vs

Lucy Pandiaraj

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1996) 222 ITR 623

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Thanikkachalam, J.—Tax case No. 1164 of 1982 is filed by the Department, whereas Tax case No. 1165 of 1982 is filed by the Accountable person. At the instance of both the Department and the Accountable person, the Tribunal referred the following questions for the opinion of this Court under s. 64(1) of the Estate Duty Act, 1953 :

By the Department :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that while ascertaining the deceased's share of interest in (i) Farm Tea Estates Syndicate and (ii) Corsley Estates the sum of Rs. 1,44,164 being the provision for gratuity should be allowed as a liability and consequently the share of the deceased should be diminished by a proportionate amount ?"

By the accountable person :

Whether, on the facts and in the circumstances of the applicant's case the Tribunal was right in law in holding that the accountable person was not entitled to claim in computing the value of the estate of the deceased the estate duty payable as a liability ?"

2. One Shri G. T. Pandiaraj died on 26th July, 1971, leaving an estate which inter

alia consisted of interest in two partnership firms viz., (1) Farm Tea Estates Syndicate, and (ii) Corsley Estates. In computing the interest in the partnership, Mrs. Lucy Pandiaraj, the Accountable person claimed the gratuity liability in respect of these two estates, aggregating to Rs. 1,44,164 and this was disallowed by the Asstt. Controller of Estate Duty on the ground that these were not debts which had crystallised at the time of death. The Appellate Controller, however, allowed the appeal on the ground that on an earlier occasion the Tribunal had allowed such a deduction in another order. On further appeal, the Tribunal upheld the allowance on the ground that it was a statutory liability which is certain and not contingent though not immediately payable. Since it was not the case of the Asstt. Controller that the liability claimed is not based on actuarial or scientific principles, this, according to the Tribunal, could not have been disallowed.

3. Insofar as question No. 2 referred to at the instance of the Accountable person is concerned, it is covered by the decision of the Supreme Court in *P. Leelavathamma (Smt) Vs. Controller of Estate Duty, Andhra Pradesh, Hyderabad*, wherein the Supreme Court held that the estate duty falling upon property passing on the death of the deceased is not deductible in computing the net principal value of (sic - under) the Estate Duty Act, 1953. Accordingly, we answer question No. 2 referred to us in the affirmative and against the accountable person. Insofar as question referred to us at the instance of the Department is concerned it relates to gratuity liability. At the time of hearing before the appellate authority, the accountable person pointed out that the gratuity liability to the tune of Rs. 1,44,164 should be allowed as a deduction. The Estate Duty Officer rejected the claim of the assessee on the basis of the decision of the Supreme Court in the cases of *Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City*, and *Bombay Dyeing and Manufacturing Co. Ltd. Vs. Commissioner of Wealth Tax, Bombay*. On appeal before the Appellate Controller, relying upon an earlier order of the Tribunal, wherein it was held that gratuity liability should be allowed as a deduction from the total principal value of the estate, the Accountable person further contended that the statutory liability is an allowable deduction from the principal value of the estate. The assessee further filed a working of the details of the gratuity amount payable to the total value of Rs. 1,63,918.50 p., as on the date of death. Following the decision of the Tribunal in the cases cited by the assessee, the Appellate Controller held that the gratuity liability is deductible from the total principal value of the estate. However, the Assistant Controller of Estate duty was directed to verify the figures and to allow the amount as a deduction. On further appeal, the Tribunal held that the gratuity liability should be allowed as a deduction since it is a statutory liability, which is certain and not contingent, though not immediately, payable. Since it is not the case in the Departmental appeal that such a liability as allowed by the first appellate authority is not in accordance with the actuarial or scientific principles, the Tribunal upheld the order of the first appellate authority.

4. Learned standing counsel appearing for the Department submitted that inasmuch as the Appellate Controller has directed the Asstt. Controller to verify and allow the claim, such a direction should be restored. The remains to be seen that before the Appellate Controller, the Accountable person has produced a working sheet showing as to how the gratuity liability was worked out on the basis of scientific and actuarial method. The appellate authority could have easily verified the same, if there is any doubt in his mind with regard to the working of the gratuity liability. This was not done. Therefore, it would lead to the a conclusion that the working sheet furnished by the assessee contained the correct ascertainment of the gratuity liability on scientific and actuarial method. Hence, we do not find that there is any need or necessity for again requesting the Appellate Controller to verify the same. In the decision in Commissioner of Wealth-tax and Others Vs. S. Ram and Others, , a Division Bench of this Court has held that in ascertaining the partner's interest in a firm under the break-up value method, as provided in WT rules, provisions for gratuity based on actuarial valuation is to be deducted.

5. In view of the abovesaid decision of this Court and in view of the fact that the Department has not contended before the Tribunal that the Accountable person has not ascertained the gratuity liability on the basis of actuarial and scientific method, we consider that there is no infirmity in the order passed by the Tribunal on this aspect. Accordingly, we answer the question referred to us in the affirmative and against the Department. No costs.