**(1989) 03 KAR CK 0033**

**In the Karnataka High Court**

**Case No :** T.R.C. No. 10 of 1981

Controller of Estate Duty — APPELLANT

Vs

M. Nalini Rao — RESPONDENT

**Date of Decision :** 13-03-1989

**Acts Referred:**
Estate Duty Act, 1953 — Section 34, 35 (1), 35 (3), 57

**Citation :** (1990) 81 CTR 247 : (1990) 183 ITR 523 : (1990) 3 KarLJ 537 : (1990) 50 TAXMAN 10

**Hon'ble Judges :** S. Rajendra Babu, J;M. Rama Jois, J

**Bench :** Division Bench

**Advocate :** K. Srinivasan, for the Appellant; S.G. Shivaram, for the Respondent

## Judgement

H. Rama Jois, J.—This is reference u/s 57 of the Estate Duty Act, 1953. The question of law referred for our opinion reads:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the principle laid down in the decision of the Kerala High Court in the case T.R. Jayasankar Vs. Assistant Controller of Estate Duty, would be applicable for giving rebate on agricultural lands u/s 35(3) of the Estate Duty Act, though the said decision related to the application of the provisions of section 35(1) of the Estate Duty Act and the facts were also different?"

2. The undisputed facts of the case are these:

One M. Nagendra Rao died on August 10, 1974. M. Nalini Rao, his wife, was the accountable person. She rendered account relating to the estates of the late M. Nagendra Rao. The deceased had two sons. The elder son had predeceased Nagendra and his 1/3rd interest in the Hindu undivided family had devolved on the mother, Nalini Rao, the accountable person, under the provisions of the Hindu Succession Act, 1956. As a result, only half of the 2/3rd share interest of Nalini Rao in the joint family property passed on to be accountable person on the death of Nalini Rao. The total assets of Nalini Rao, as found by the Assistant Controller of Estate Duty in his order, are: "Summary, Rs. Movables 2,55,166 Immovables 82,760 Agrl. lands 1,29,282 ------------- 4,67,208 ------------- One-third interest of the 1,55,736" deceased

3. The Assistant Controller computed the 1-3rd interest of the deceased as Rs. 1,55,736 and out of that he deducted a sum of Rs. 2,500 u/s 33(1)(c), Rs. 10,000 u/s 33(1)(n) and funeral expenses of Rs. 1,000 in all amounting to Rs. 13,500. The balance of the amount came to Rs. 1,42,236.

4. As according to the charging section 5 read with section 35(1) of the Act read with the Second Schedule, estate duty was leviable on the principle value of Rs. 1,42,236 which passed on to the accountable person on the death of Nagendra Rao. The Assistant Controller of Estate Duty proceeded to compute the tax payable. He, however, had to included the share of the lineal descendants for determine the rate of tax as provided u/s 34 of the Act. Accordingly, he added 1/3rd interest of the lineal descendants for rate purpose which was Rs. 1,55,736. By adding the said amount to the total assets with reference to which the rate of tax payable had to be computed, the aggregate came to Rs. 2,97,972. The Assistant Controller proceeded to compute the tax payable as follows:

Rs. Rs. "Estate duty on 2,00,000 12,000.00 Estate duty on balance 97,972 14,695.00 _____________ Total (average rate 8.95%) 26,695.00 Less: Rebate u/s 33 447.50 (1)(h) Rebate on lineal 13,938.72 14,386.22 descendants share --------------- 12,309.58 Add: Interest under 105.00 section 53 --------------- 12,414.58 Less: Payment already made 3,700.00 --------------- Balance payable 8,714.58" ---------------

5. The order was taken up in appeal before the Appellate Controller of Estate Duty. Before the Appellate Controller of Estate Duty, reliance was placed by the assessee on the judgment of the Kerala High Court in the case of T.R. Jayasankar Vs. Assistant Controller of Estate Duty, That was a case in which the principle value of the estate which passed on to the accountable person on the death of the deceased was less than Rs. 50,000. The Department contended that the value of the asset which passed on to the lineal descendants had to be aggregated in view of section 34 of the Act and after such aggregation, for rate purposes, the accountable person was liable to tax u/s 5 read with section 35(1) of the Act. This contention of the Department was repelled by the Kerala High Court on the ground that, as the principle value of the estate which passed on to the accountable person was less then Rs. 50,000, in view of section 35(1) read with the first item in the Second Schedule according to which no tax was leviable up to Rs. 50,000, the assessee in that case was not liable to pay estate duty under the Act.

6. In the present case, relying on the said decision the assessee contended that, as the value of the asset which passed on to the assessee was only Rs. 1,42,236, the assessee was entitled to the rebate allowed u/s 35(3) of the Act. The

 

contention of the Department was that, as the value of the asset after aggregation for the purpose of rate u/s 34(1)(c) exceeded Rs. 2 lakhs, the provisions of section 35(3) were not attracted. That contention was repelled by the Appellate Controller of Estate Duty and he directed the Assistant Controller of Estate Duty to modify the accordingly. That view was affirmed by the Tribunal.

7. Sri H. Raghavendra Rao, learned counsel for the Revenue, contended that, as the value of the estate after aggregation for rate purpose u/s 34 exceeded Rs. 2 lakhs, sub-section (3) of section 35 was not attracted.

8. In order to appreciate the contention, it is necessary to set out the provisions of section 35(1), (3) and the Second Schedule to the Act:

"35. (1) The rates of estate duty shall be as mentioned in the Second Schedule...

(3) Notwithstanding anything contained in sub-section (1) and the Second Schedule, where any property passing on the death of any person consists wholly or in part of agricultural land and the principal value of the estate does not exceed rupees two lakhs, there shall be allowed by way of rebate -

(a) in the case of an estate which consists wholly of agricultural land, a sum representing one-fourth of the estate duty payable; and

(b) in the case of an estate which consists in part only of agricultural land, a sum representing one-fourth of the estate duty payable on that part of the estate which consists of agricultural land, the duty on such part being in sum which bears to the total amount of estate duty the same proportion as the value of the agricultural land bears to the value of the estate."

9. Section 5 is the charging section. According to that provision, in the case of every person dying after the commencement of the Act, estate duty at the rate fixed in accordance with section 35 has to be paid in respect of the principle value which passed on the death of such person by the accountable person except to the extent saved by other specific provisions of the Act.

10. Sub-section (1) of section 35 prescribes the rate of estate duty and provides that rate shall be as mentioned in the Second Schedule.

11. According to the Second Schedule, no tax is payable in a case where the principal value of the estate does not exceed Rs. 50,000. Different slabs are prescribed at items 2 to 9 of the Schedule.

12. Section 34 of the Act, however, provides, that for the purpose of determining the rate of tax payable under the Act, not only the principal value of the estate which passed on to the accountable person on the death of the deceased is to be taken into account but also the interest in the joint family property of all the lineal descendants should be taken into account. As stated earlier, in the present case, while the principal value of the estate which passed on to the accountable person was computed at Rs. 1,42,236 for rate purposes, 1/3rd of the share of the lineal descendants which was Rs. 1,55,736 was added and, as a result, the

 

aggregate value for the purpose of fixation of rate was Rs. 2,97,972 though it is inaccurately described in the order of the Assistant Controller as the net principal value.

13. The wording of sub-section (3) of section 35 which comes up for interpretation on this case which is extracted earlier, in our opinion, is clear. The sub-section gets attracted only to cases where the principal value of the estate which passed on to the accountable person on the death of the deceased person does not exceed Rs. 2 lakhs. In such a case, according to clause (a), if the estate consists wholly of agricultural land, 1/4th of the estate duty payable has to the given as rebate. According to clause (b), where an estate passing on the death of a person to an accountable person was both agricultural land and non-agricultural land, the rebate of estate a duty payable should be given in the same proportion which the value of the agricultural land bears to the value of the estate and equal to a sum representing one-forth of the estate duty payable.

14. The short question for consideration in this case is whether the principal value of the estate which passed on to the accountable person exceeded Rs. 2 lakhs or not. As stated earlier, it does not. The principal value of the estate which passed on to the accountable person was only Rs. 1,42,236. Therefore, rebate as provided for under clause (b) had to be given to the accountable person for the reason the estate consisted of both agricultural and non-agricultural land.

15. The contention of the Revenue, however, is that the principal value of the estate exceeds Rs. 2 lakhs and, therefore, the provisions of sub-sections (3) of section 35 are not attracted to this case. The mistake which the Revenue has committed in making that submission is that, in the present case, the principal value of the estate was Rs. 2,97,972. The said value, as is evident from the facts stated earlier, is the value arrived at after adding the value of the share of the lineal descendants only for rate purposes as required u/s 34 of the Act. What is overlooked is that, for the purpose as required under sub-section (3) of section 35, what is relevant is only the principal value of the estate which passed on to the accountable person. In this case it is only Rs. 1,42,236. The lineal descendants'' interests which is required to be added for the rate purposes u/s 34 has no bearing on the provisions of sub-section (3) of section 35 of the Act. The non-obstinate clause in sub-section (3) refers only to the principal value of the estate passing on the death of any person and not the value arrived at after adding the value of the share of the lineal descendants which is relevant only for rate purposes as provided by section 34 of the Act. Therefore, there is no merits in the contention of the Revenue.

16. For the aforesaid reasons, we answer the question referred for our opinion in the affirmative and against the Revenue.

 