(1978) 08 PAT CK 0017

In the Patna High Court

Case No : Taxation Case No. 81 of 1973

Controller of Estate Duty APPELLANT

Vs

Madan Lal Bhimsaria RESPONDENT

Date of Decision : 28-08-1978

Acts Referred:

Estate Duty Act, 1953 — Section 33(1)
Wealth Tax Act, 1957 — Section 5(1)

Citation : (1980) 121 ITR 482

Hon'ble Judges : Shiveshwar Prasad Sinha, J;S. Sarwar Ali, J

Bench : Division Bench

Advocate : Badri Prasad Rajgarhia and S.K. Sharan, for the Appellant; M.P. Agarwalla and B.N. Agarwalla, for the Respondent

Judgement

Shiveshwar Prasad Sinha, J.—At the instance of the Controller of Estate Duty, Bihar, Patna, the Patna Bench of the Income Tax Appellate Tribunal has referred the undermentioned question u/s 64(1) of the E.D. Act, 1953, for the opinion of this court:

"Whether, on the facts and in the circumstances of this case, the property holding No. 70 could be exempt u/s 33(1)(a) of the Estate Duty Act (hereinafter referred to as '' the Act'') ? "

2. The relevant facts are as under :

3. The deceased, Shriniwas Bhimsaria, died on the 20th January, 1963. In the return filed for estate duty purposes the accountable person did not include the property at holding No. 70, Ward No. 2 of Saharsa Municipality in the estate of the deceased. According to the accountable person, the said property is a public property being a dharamshala which had been endowed for public charitable purposes. In order to support that claim the accountable person stated that the municipality had made it tax-free and it had come under the purview of the Bihar Religious Trust Board which had levied tax on it. The Asst. CED did not accept the

accountable person''s plea on the ground that this property had been included in the properties bequeathed under a will executed by the deceased on the 23rd April, 1954. The said property would, therefore, be deemed to pass on the death of the deceased. In such a view of the matter, the value of the said property, as determined by the Asst. CED, was included in the principal value of the estate of the deceased.

4. The Appellate'' Controller confirmed the order of the Assistant Controller in so far as it concerned the inclusion of the said property in the estate of the deceased.

5. On further appeal to the Income Tax Appellate Tribunal, exemption of the said property from duty was claimed u/s 33(1)(a) of the Act.

6. It may be stated that under this provision of the Act a property which has been gifted by the deceased for a public charitable purpose, within a period of six months before his death, of the value of Rs. 2,500, is exempted from duty.

7. The Tribunal was referred to the order of wealth-tax assessment for the assessment year 1968-69 in which the said property had been granted exemption from the levy of wealth-tax in terms of Section 5(1)(i) of the W.T. Act.

8. u/s 5(1)(i) of the W.T. Act any property held by an assessee under trust or other legal obligation for any public purposes of a charitable or religious nature in India is exempt from the levy of wealth-tax. Such exemption of the said property, the Tribunal observed, had been accepted by the department. The Tribunal then held that the property at holding No. 70 was held by the deceased for charitable purposes. Therefore, it was exempted u/s 33(1)(a) of the Act. The value of the said property was directed to be excluded from the principal value of the estate of the deceased.

9. It is on these facts that the above question has been referred for the opinion of this court.

10. I may, at the very outset, observe that the question, as referred by the Tribunal, does not cover the real controversy between the parties. Fact of the matter is that having regard to the valuation of the dharamshala as estimated by the Asst. CED, provisions contained in Section 33(1)(a) of the Act would hardly be applicable. This provision covers a property whose valuation is only twenty-five hundred. Naturally, therefore, a property whose valuation was above that figure will not be covered by this section. This is another reason why the question, as referred, has got to be reframed.

11. On the facts, as detailed above, the real controversy between the parties relates to the includibility or otherwise of the property, at holding No. 70, Ward No. 2 of Saharsa Municipality, in the estate of the deceased. In other words, the real controversy between the parties is whether the deceased, at the time of his death, had the power of disposition over the said property. In such a view of the matter, the question is reframed as under :

"Whether, on the facts and in the circumstances of this case, the Tribunal was justified in excluding the value of the property standing on plot No. 70, Ward No. 2 of Saharsa Municipality from the estate of the deceased ?"

12. According to the departmental authorities whatever might have been the nature of the property, since the property had been bequeathed under the will dated 23rd April, 1954, by the deceased, the deceased must be deemed to have retained the power of disposition over it and consequently the property did pass on the death of the deceased.

13. According to the accountable person, however, the said property had already been endowed for public, religious and charitable purposes and was being used by the general public as such, the property being a dharamshala where the public at large could come and stay. The deceased having thus endowed the property for public, religious and charitable purposes must be held to have divested himself of the right of disposition over the property. Thus, the controversy between the parties relates to the true interpretation of the will dated 23rd April, 1954. A true copy of the will has been provided in the paper book. The narration relevant to the property in question is to this effect:

14. The testator has acquired several properties by dint of his own labour. He has acquired a business which is run in the firm name of Harchand Rai Bansidhar in partnership with certain persons (whose names need not be mentioned). He has also established a dharamshala at Saharsa and it is his desire that the said property shall for ever remain a dharamshala.

15. In respect of this will the executor had desired that a probate shall be taken out by the beneficiary. The beneficiary, it may be stated, is the accountable person here. I have not been able to find in what manner it can be said that the said dharamshala has been bequeathed to the accountable person under the said will. All that is expressed in the said will is a desire on the part of the executor that the dharamshala shall for ever remain a dharamshala. The said dharamshala, therefore, does not get bequeathed to the accountable person. If anything is bequeathed with regard to the dharamshala it is a desire of the executor that the dharamshala shall for ever remain a dharamshala and nothing else but a dharamshala. That the said property has been used for public, religious and charitable purposes has been found as a fact by the Tribunal. The Tribunal has held, relying upon the order passed in the W.T. assessment for the assessment year 1968-69, that the property has been held for charitable purposes and has been exempt from levy of wealth-tax u/s 5(1)(i) of the said Act.

16. Learned counsel for the department submitted that mere reference to the wealth-tax order did not tantamount to giving a finding on the relevant fact. According to him the Tribunal should have applied its mind to all the facts and surrounding circumstances and should have then given its finding with regard to the nature of the property, as to whether it was a property which had been endowed for public, religious and charitable purposes.

17. It is true that while dealing with this question the Tribunal has relied mainly upon the W.T. assessment order. I do not, however, think that the finding of the Tribunal relating to the public charitable nature of the endowment gets vitiated in any way. The Tribunal''s finding is after due consideration of the matter considered in the W.T. assessment. The W.T. assessment can form a good basis for finding the nature of a particular property. In my opinion, the Tribunal''s finding is neither perverse nor unreasonable having been based upon the order of the WTO. The said dharamshala has been treated to be one of a public, religious and charitable nature. The character of the said property cannot deviate for the purpose of E.D. assessment. The character of the property will always remain the same, notwithstanding the Act under which duty was to be levied on it. The Tribunal was, therefore, correct in holding that the property standing at holding No. 70 ward No. 2 of Saharsa Municipality was a property endowed for the purpose of public, religious and charitable purposes over which the deceased was not left with any power of disposition. Necessarily, therefore, the said property cannot be deemed to pass on the death of the deceased.

18. The question, as reframed, is accordingly answered in the affirmative. There will be no order as to costs.

S. Sarwar Ali, J.

19. I agree.