

(1988) 08 GAU CK 0021

In the Gauhati High Court

Case No : Estate Duty Reference No. 1 of 1976

Controller of Estate-Duty

APPELLANT

Vs

Murarilal Sovasaria

RESPONDENT

Date of Decision : 11-08-1988

Acts Referred:

Estate Duty Act, 1953 — Section 33(1), 34(1), 39(1), 39(3)

Citation : (1989) 175 ITR 417

Hon'ble Judges : A. Raghuvir, C.J.; J.M. Srivastava, J

Bench : Division Bench

Advocate : G.K. Talukdar and D.K. Talukdar, for the Appellant; J.P. Bhattacharjee, H. Roy, J. Dolbi and U. Baruah, for the Respondent

Judgement

1. This reference is made under Sub Sub-sectionsection (1) of Section 64 of the Estate Duty Act, 1953. The two questions referred are :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that notwithstanding Section 34(1)(c) of the Estate Duty Act, 1953, the value of the share of the lineal descendants of the deceased in the joint family property was not includible in the estate of the deceased for rate purposes ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the share of the deceased in the value of the goodwill of the firm was not includible in the principal value of the estate passing on the death of the deceased ?"

2. Ram Kumar Sovasaria died at the ripe age of 82 on August 19, 1971, at Tinsukia. This reference relates to his estate. In this case the accountable person is Murarilal Sovasaria.

3. The deceased, during his lifetime, was the karta of a Hindu undivided family. He was a partner of a firm, Sovasaria Motor Parts and Accessories, Tinsukia, up to April 3, 1971. As a karta he was a partner in another firm, Durga Motor Stores

at Gauhati. The Hindu joint family possessed a building referred to as Assam Type Building let out to a tenant. The family owned a dwelling house.

4. The Assistant Controller of Estate Duty at Dibrugarh ascertained the value of movables of the deceased at Rs. 94,434. The value of the joint family properties in respect of which there was cesser was valued at Rs. 61,000 u/s 34(1)(c) of the Act. The share of the lineal descendant of the deceased was ascertained at Rs. 1,03,666. A sum of Rs. 9,450 was added as goodwill of Durga Motor Stores at Gauhati. On appeal by the accountable person, the Appellate Controller of Estate Duty, Eastern Zone, Dibrugarh, allowed the appeal in part. The assessee before that authority referred to a decision of the Madras High Court in *V. Devaki Ammal Vs. Assistant Controller of Estate Duty*, and argued that Section 34 of the Act should not be enforced in ascertaining the value of the estate of the deceased. The second question raised was with respect to goodwill, not to add Rs. 9,450 to the estate of the deceased. The appellate authority followed the Madras High Court decision and deleted the sum of Rs. 1,03,666 but rejected the contentions respects the goodwill of the firm.

5. The accountable person and the Revenue both filed appeals before the Income Sub-sectiontax Appellate Tribunal at Gauhati. The Tribunal confirmed the decision of the appellate authority as respects the decision of Rs. 1,03,666 and deleted the addition of Rs. 9,450 relating to goodwill. Thus, the appeal of the accountable person was allowed. The appeal filed by the Revenue was dismissed. Hence, the two questions in this court.

6. Regarding the first question, we see in *V. Devaki Ammal Vs. Assistant Controller of Estate Duty*, the Madras High Court had struck down Section 34(1) (c) of the Estate Duty Act as discriminatory and, therefore, violative of article 14 of the Constitution. That decision was followed by the appellate authority and by the Appellate Tribunal. We may mention that the Tribunal at Gauhati is not bound by the decision of the Madras High Court but the decision has a persuasive value. The Tribunal has not committed any error if the Madras High Court's decision was followed by them. .

7. In the Supreme Court, this aspect was considered in *East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta*, at p. 1905 where it was observed : "We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding". Since there was no decision of this court, the Tribunal was not wrong in following the Madras High Court decision if it appealed to their good sense.

8. In a case of the Allahabad High Court in [1980] 3 Taxman 232 (*CIT v. Babu Ram Kichha*) it was held that Tribunals in the country are bound to follow the decision of the High Courts, where it is located. It is settled that the Tribunal or the High Court and for that matter, even the Supreme Court cannot declare any

provision ultra vires while exercising power under the Act. But the Allahabad High Court held that the Madras High Court decision is binding all over the country. This, we state, is widely stated.

9. The next case, Commissioner of Income Tax Vs. Vrajlal Manilal and Co., of the Madhya Pradesh High Court, while considering the vires of the Act, considered the decisions of two High Courts, the Madras High Court and the Andhra Pradesh High Court, and agreed with the conclusion of the Andhra Pradesh High Court. The Bombay High Court in Commissioner of Income Tax Vidarbha Vs. Godavaridevi Saraf, referred to the Supreme Court decision which we have cited earlier and stated at page 592 that Section 140A(3) was already declared ultra vires by a competent High Court in the country and the Tribunals acting anywhere in the country have to respect the law laid down by the High Court. We have already considered this aspect earlier when we referred to the Allahabad decision.

10. In exercising jurisdiction as a court of reference, we cannot declare any provision of the Estate Duty Act ultra vires. Therefore, we choose not to follow the decision of the Madras High Court. For the purpose of this case, we do not order the deletion of Rs. 1,03,666 on the ground that Section 34(1)(c) of the Act is ultra vires. That amount has to be reckoned as the estate of the deceased.

11. There is another aspect of the question where a dwelling house of the family was valued at Rs. 1,23,000 and only one-third has been reckoned as the lineal descendants' share. In this regard we follow the reasoning and conclusion reached by the Andhra Pradesh High Court in K. Venugopal Vs. Controller of Estate Duty, --Ed. Andhra Pradesh High Court to which judgment one of us (RAGHUVIR J. as he then was) was a party. In that case, it was held--"the entire value of the residential house has to be exempted u/s 33(1)(n) read with Sections 39(1) and 39(3) of the Act, and once the entire value of the house which is within the limit of exemption allowed u/s 33(1)(n) is exempted," the Revenue authorities will have to compute the tax liability deleting Rs. 42,666. In that view, the first question is answered in the negative, against the assessee and in favour of the Revenue.

12. The second question relates to "goodwill" and it is whether the share of the deceased in the value of the goodwill of the firm computed at Rs. 9,450 is includible in the principal value of the estate passing on the death of the deceased. On this aspect, we are in agreement with the reasoning and conclusion reached by the Madras High Court in S. Devaraj Vs. Commissioner of Wealth-tax, It is not necessary that we should repeat the reasoning in this case over again. Therefore, we hold that the Tribunal was justified in holding that the goodwill of the firm is not to be included.

13. The first question is answered in the negative, in favour of the Revenue, and against the assessee. The second question is answered in the affirmative, in favour of the assessee and against the Revenue.

14. No costs.