
(1991) 03 CAL CK 0019
In the Calcutta High Court
Case No : Matter No. 985 of 1982

Controller of Estate Duty

APPELLANT

Vs

Patrick Gillam Sandy's Lumsdaine

RESPONDENT

Date of Decision : 04-03-1991

Acts Referred:

Estate Duty Act, 1953 — Section 61

Citation : (1992) 197 ITR 186

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : R.C. Prasad, for the Appellant;R.N. Dutta, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 64(3) of the Estate Duty Act, 1953, the following question of law has been referred to this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in holding that there was no mistake apparent from the records within the meaning of Section 61 of the Estate Duty Act, 1953?"

2. Shortly stated, the facts are that, in the original assessment, the Controller of Estate Duty took the value of the shares of M/s. Williamson Magor and Co. Ltd. at Rs. 101.61 per share. Subsequently, he issued a notice u/s 61 to modify the assessment on the ground that the break-up value has been wrongly computed at Rs. 101.61 and that the same should have been valued at Rs. 162.27 as per the Wealth-tax Rules, 1957. The respondent objected to the rectification proceedings. It was contended that the valuation of the shares shown in the original estate duty assessment was based on the valuation made by M/s. Lovelock and Lewes, that the said valuation was accepted by the Assistant Controller and that the present rectification proceedings are initiated only due to change of opinion with regard to the valuation of shares. The Assistant Controller of Estate Duty did not accept the submissions. He held that there was a mistake apparent from the records. According to the balance-sheet as on December 51,

1967, of M/s. Williamson Magor and Co. Ltd., the break-up value of the shares as per the Wealth-tax Rules, 1957, came to Rs. 162.27 per share and not Rs. 101.62 per share. Accordingly, he rectified the estate duty assessment order. He also rectified the excess relief granted u/s 50.

3. Against the order of the Assistant Controller made u/s 61 of the Estate Duty Act, 1953, an appeal was preferred to the Appellate Controller by the accountable person. The Appellate Controller held that even if there was a mistake in valuation, it cannot be said that such mistake was apparent from the records as, conceivably, there might be more than one opinion on the applicability of the Wealth tax Rules, 1957, to the valuation of shares under the Estate Duty Act, 1953. Thus, he cancelled the order u/s 61 to the extent it related to the valuation of the shares of M/s. Williamson Magor and Co. Ltd. He, however, upheld the order to the extent the rectification order related to the withdrawal of relief u/s 50.

4. The Department came up in appeal before the Tribunal and took up an additional ground of appeal that no appeal lay against an order u/s 61 of the Estate Duty Act, 1953, and that the Appellate Controller was wrong in entertaining the appeal. The departmental representative firstly submitted that no appeal lay to the Appellate Controller against an order made u/s 61 of the Estate Duty Act, 1953, that the appeal preferred before the Appellate Controller was incompetent and that the order of the Appellate Controller was invalid and should accordingly be cancelled. He further submitted that the mistake was apparent from the records and that the provisions of Section 61 were clearly applicable. He submitted that the Wealth-tax Rules, 1957, were applicable to the estate duty proceedings also for the purpose of valuing the shares. Thus, there was a clear mistake in the original estate duty assessment order in determining the value of the shares.

5. On behalf of the respondent, it was urged that though the order was u/s 61, still it was an appealable order as the accountable person was objecting to the valuation made by the Controller, that the provisions of Section 62(1)(a)(i) would be applicable and that, under that provision, an appeal was entertainable in respect of the valuation made. Thus, he submitted that since the appeal related to valuation, the Appellate Controller was justified in entertaining the appeal and that his order was a valid order. Coming to the Department's contentions relating to the additional ground, he submitted that if no appeal lay to the Appellate Controller u/s 62 against the order made u/s 61, then no appeal could be preferred by the Department to the Appellate Tribunal and that the appeal preferred by the Department before the Tribunal should be dismissed as incompetent. Coming to the merits, he submitted that there was no mistake apparent from the records and that the provisions of Section 61 could not be invoked. Further, the question of valuation and applicability of the Wealth-tax Rules, 1957, to the estate duty proceedings formed a highly debatable issue and the provisions of Section 61 could not be invoked for the purpose. In reply, the

learned departmental representative submitted that, u/s 63 of the Estate Duty Act, 1953, an appeal lay to the Appellate Tribunal against an order of the Appellate Controller made u/s 62. Since the order of the Appellate Controller under appeal was one made u/s 62, it was urged that the appeal preferred by the Department was competent and that the respondent's objection should not be entertained.

6. After hearing both the parties to the dispute, the Tribunal decided as follows :

"We have considered the rival submissions. The dispute in this case is with regard to the valuation of the shares of M/s. Williamson Magor and Co. Ltd. In the original estate duty assessment order, the Assistant Controller of Estate Duty adopted the valuation at Rs. 101.61 per share which has been rectified by an order dated December 28, 1972, made u/s 61 of the Estate Duty Act, 1953, adopting the value at Rs. 162.27 per share. Section 62(1)(a) reads as under :

"Appeal against orders of Controller.--(1) Any person-

(a) objecting-

(i) to any valuation made by the Controller, or ...

(other sub-clauses are not extracted as they are not applicable)

may, within thirty days of the date of the receipt of the notice of demand u/s 73, appeal to the Appellate Controller in the prescribed form which shall be verified in the prescribed manner".

7. Under the above provision, it is clear that, if the valuation made by the Controller is objected to, then an appeal is entertainable against the valuation made by the Controller. In this case, the dispute is with regard to the valuation of shares of M/s. Williamson Magor and Co. Ltd. Hence, an appeal with respect to the valuation made by the Assistant Controller is entertainable u/s 62(1)(a)(i). Thus, an appeal preferred by the accountable person to the Appellate Controller in the instant case was a competent one and the Appellate Controller was perfectly justified in entertaining the appeal. Hence, the objection raised by the Department cannot be sustained. We are unable to agree with the departmental representative that since the order is one made u/s 61, the " appeal before the Appellate Controller was incompetent. Even though the order is one made u/s 61, since the accountable person objects to the valuation made, an appeal is entertainable u/s 62(1)(a)(i). Thus, the appeal preferred before the Appellate Controller was a competent one and the order of the Appellate Controller was a valid order.

8. The dispute is with regard to the valuation of the shares. According to the Assistant Controller, the value of shares as per the Wealth-tax Rules, 1957, comes to Rs. 162.27 on the basis of the balance-sheet as on December 31, 1967, of M/s. Williamson Magor and Co. Ltd., but not Rs. 101.61 per share adopted in the original estate duty assessment order. The question whether the

Wealth-tax Rules, 1957, could be applied to the proceedings under the Estate Duty Act, 1953, for the purpose of valuation of shares is a highly debatable issue. Further, the respondent's valuation was based on the valuer's certificate which was practically accepted by the Assistant Controller in the original assessment proceedings. Thus, it is not a case where there was an arithmetical mistake in the calculation which could be rectified u/s 61. There is no obvious mistake which is apparent from the record for invoking the provisions of Section 61 of the Act. Further, it was a highly debatable issue whether the Wealth-tax Rules, 1957, would be applicable or not to the estate duty proceedings. Thus, the provisions of Section 61 cannot be invoked in the present case. In the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , the Supreme Court held as under :

"It was not open to the Income Tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding u/s 154 of the Income Tax Act, 1961. A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions."

9. The above ratio laid down by the Supreme Court clearly applies to the facts of the instant case. Thus, in our view, the Appellate Controller was perfectly justified in cancelling the order made u/s 61 to the extent it relates to the valuation of shares of M/s. Williamson Magor and Co. Ltd. We do not find any merit in the appeal.

10. In the result the appeal is dismissed.

11. Against the said finding, the Department preferred an application u/s 64(1) of the Estate Duty Act, 1953, raising the following questions :

"1. Whether, on the facts and in the circumstances of the case and having regard to the fact that the Assistant Controller made no change in the method of valuation of the shares and, by his order u/s 61 of the Estate Duty Act, 1953, merely rectified an arithmetical mistake in the valuation of the shares made in the original assessment, the Tribunal was correct in upholding the decision of the Appellate Controller cancelling the said order ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in holding that there was no mistake apparent from the records within the meaning of Section 61 of the Estate Duty Act, 1953 ?

3. Without prejudice to questions Nos. (1) and (2), whether the Tribunal was correct in holding that an appeal lay to the Appellate Controller against the order made by the Assistant Controller u/s 61 of the Estate Duty Act, 1953?"

12. The Tribunal, however, referred only one question as follows :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that an appeal lay to the Appellate Controller against

the order made by the Assistant Controller u/s 61 of the Estate Duty Act, 1953?"

13. The said reference, being Matter No. 250 of 1977 Controller of Estate Duty Vs. Sri Patrick Gillam Sandy's Lumsdaine, came up for hearing before this court and, by the judgment dated February 9, 1989, the said question was answered in the affirmative and in favour of the assessee.

14. The Department made a miscellaneous application before the Tribunal in connection with the Tribunal's order dated November 7, 1975, where it has been stated as follows :

"The above Departmental appeal has been decided by the "B" Bench of the Tribunal on November 7, 1975.

15. It has been stated in paragraph 6 of the Tribunal's order that the valuation at Rs. 101.61 per share was rectified by the Assistant Controller of Estate Duty by his order dated July 18, 1972, when the value of Rs. 162.27 per share was adopted. There were two rectification orders passed by the Appellate Assistant Controller u/s 61 on July 18, 1972, when the value adopted was Rs. 165.28 per share and the second one was on December 28, 1972, when the value adopted was Rs. 162.27.

16. In paragraph 7, it has been stated by the Tribunal that the respondent's valuation was based on the valuer's certificate which was accepted by the Assistant Controller in the original assessment proceedings and that it was not a case where there was an arithmetical mistake in the calculation which could be rectified u/s 61. The correct position is that the assessee filed a copy of the valuer's report valuing the share at Rs. 99.991 per share but the same was not accepted by the Assistant Controller who valued it at Rs. 101.61 per share. It is requested that the Tribunal may kindly pass an order rectifying the mistakes which have crept in the order."

17. The departmental representative urged that there was a mistake and that the mistake was apparent from the record of the Tribunal and, therefore, the order of the Tribunal should be rectified. The assessee's counsel, on the other hand, urged that there was no mistake and hence the miscellaneous application should be dismissed. The Tribunal observed as follows :

"We have considered the rival contentions advanced by both the sides. On going through the materials on record at the time of the hearing of the departmental appeal and the arguments then advanced by the departmental representative, we find that an entirely new case is sought to be made out by the departmental representative before us now. The basis of the valuation of the shares in question at the time of the original assessment was not detailed by the departmental representative then. He, in fact, proceeded on the basis that the Assistant Controller sought to rectify the valuation of the shares on the basis of the Wealth-tax Rules, 1957, for the first time in his order u/s 61 of the Estate Duty Act, 1953. In fact, it was common ground that it was so. It was for that reason that

the Tribunal held that the applicability of the Wealth-tax Rules, 1957, to the computation of the value of the shares under the Estate Duty Act, 1953, was a debatable issue which could not be brought within the purview of Section 61 of the Estate Duty Act, 1953. No doubt, there was some small difference between the value of each share as shown by the accountable person and that adopted by the Assistant Controller in the original assessment order. But that was so negligible that the case proceeded on the footing that the Assistant Controller had practically accepted the value as shown by the accountable person. In this connection, we may refer to the paper book filed at the time of the appeal hearing and particularly to the letter written by the Assistant Controller on May 6, 1972, to the solicitor of the accountable person which is reproduced below :

"With reference to the above letter, I regret to inform you that the name of the deceased has been wrongly stated as P. G. S. Lumsdaine, instead of C. C. Sandy's Lumsdaine.

Secondly, I am sorry that the principal value has been wrongly stated as Rs. 1,30,569 in my letter dated April 27, 1972, in place of Rs. 1,90,569.

I differ from your observation that I have changed my opinion with regard to the valuation of 1,794 shares in Messrs. Williamson Magor and Co. from Rs. 101.60 per share to Rs. 162.27 per share.

I cannot accept the contention that, merely because it was valued by Messrs. Lovelock and Lewes and accepted by the Wealth-tax Officer, it cannot be revalued by me on the basis of the Wealth-tax Rules, 1957.

Regarding relief u/s 50 of the Estate Duty Act, 1953, I find that the uncashed dividend amounting to Rs. 7,873 has suffered taxation at the time of the original assessment dated March 19, 1971, whereas it has suffered probate duty on uncashed dividend of Rs. 21,034.65 and hence naturally probate duty on the balance uncashed dividend should be deducted from the gross probate duty of Rs. 7,802.50.

However, the hearing of the above matter will be taken up on June 6, 1972, at 11 a.m. when you are requested to represent the matter."

18. From the above letter, it would be clear that the case itself proceeded on the basis that the valuation of the shares by M/s. Lovelock and Lewes was accepted by the Wealth-tax Officer and that the Assistant Controller was seeking to revalue the shares u/s 61 on the basis of the Wealth-tax Rules, 1957. The departmental representative did not point out to us at that time that this letter was written under a misapprehension and that the rectification sought to be made by the Assistant Controller u/s 61 of the Estate Duty Act, 1953, was nothing but an attempt to rectify a pure and simple arithmetical error.

19. We, therefore, are not in a position to accept the contention of the departmental representative, Shri Goswami, which differs totally from that of the departmental representative who argued at the time of the hearing of the appeal.

20. The miscellaneous application does not provide a forum for either party to the dispute to reargue the appeal and make good the deficiencies in the presentation of the case at the time of the appeal hearing. In this connection, we may refer to *Shew Paper Exchange Vs. Income Tax Officer, "C" Ward and Others*, wherein it has been held that "the Tribunal has no inherent power to review its order and that such a power is not provided by the statute."

21. Against the order of rejection of the other questions, the Revenue made an application u/s 64(3) of the Act and, upon such application, the question as set out hereinbefore has been referred to this court.

22. As we have already indicated, the Tribunal, by its order dated November 7, 1975, decided the question which was raised on merits and rejected the same. The Department thereafter came before this court u/s 64(3) and the only question which was allowed was the question which we have already referred to, but no reference was allowed on the first question which was proposed, viz., as to whether there was any change in the method of valuation of the shares. We have asked for the records and, by consent of the parties, records were produced before this court. There was some confusion regarding the rectification order. It appears that the original rectification order was passed on July 18, 1972, taking the valuation of the shares at Rs. 165.28 although, in the show-cause notice u/s 61, the Assistant Controller proposed enhanced valuation of the shares at Rs. 162.27 because there was a further mistake. It was sought to be rectified by the order passed on December 28, 1972, valuing the shares at Rs. 162.27. It is true that, from the records, it appears that there was no change in the method adopted for the valuation of the shares. The accountable person filed returns along with the balance-sheet showing valuation of the shares arrived at on the basis of the break-up method. This valuation was accepted by the Assistant Controller with a little variation. According to him, in arriving at the break-up value, certain adjustments in the balance-sheet figures have not been taken into account and, accordingly, after adjustment, the value was enhanced from Rs. 101.61 to Rs. 162.27. In vain we have searched the record to find out what was the adjustment made in the balance-sheet for arriving at the break-up value. The accountable person was not also informed as to what adjustments were required to be made in the balance-sheet figures for the purpose of arriving at the value of the shares. The Tribunal was not strictly justified in saying that there was a change in the method of valuation but whether, in a particular case, the balance-sheet figures would require adjustment or not would necessarily involve further investigation into facts. There may be also conceivably two opinions on the question whether, on the facts of the particular case, such adjustment was necessary or not, having regard to the nature of the company and its assets.

23. In our view, since there is no intrinsic evidence as to whether such adjustments were made in accordance with any recognised principles and in view of the fact that the accountable person was not given any notice of such adjustment to be made apart from showing that the value of the shares required

modification, the order of rectification cannot be sustained. The Assistant Controller in his show-cause notice dated April 27, 1972, has indicated the following :

"The said principal value consists of, inter alia, value of 1,794 shares of M/s. Williamson Magor and Co. Ltd., at the break-up value of Rs. 101.61. The amount of Rs. 7,802.15 has also been deducted u/s 50 from the gross duty."

24. In our view, therefore, on the facts of this case, it cannot be said that there was any mistake borne out from the records. We may also add that it is true that the accountable person did not prefer any appeal against the rectification order dated December 28, 1972, as the appeal against the rectification order passed on July 18, 1972, was already before the Tribunal and the accountable person was not aggrieved inasmuch as the value was reduced from Rs. 165.27 to Rs. 162.27. The Tribunal has also, on the application of the accountable person, recorded that it was in fact an appeal which was decided by them against the order dated July 18, 1972, read with the order dated December 28, 1972, in other words, against the operative order dated December 28, 1972, which was considered by the Tribunal.

25. For the foregoing reasons, we are of the view that the Tribunal was right in holding that there was no mistake borne out from the record. Accordingly, the question in this reference is answered in the negative and in favour of the accountable person.

26. There will be no order as to costs.

Shyamal Kumar Sen, J.

27. I agree.