(1986) 05 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 507 of 1981

Controller of Estate Duty APPELLANT

Vs

Purandas Sindhwani RESPONDENT

Date of Decision : 01-05-1986

Acts Referred:
Estate Duty Act, 1953 — Section 2, 2(15), 2(16), 44, 5

Citation : (1988) 173 ITR 239

Hon'ble Judges : J.S. Verma, Acting C.J.;B.M. Lal, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; G.N. Purohit, for the Respondent

Judgement

J.S. Verma, Actg. C.J.

1. As a result of a direction of this court, the Tribunal has stated the case and referred for the decision of this court the following question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing deduction of Rs. 1,27,747 towards excise duty and penalty ?"

2. The material facts are these. The deceased, Narayandas, had 75 per cent. share in the partnership firm, Punjab Soap Works, Jabalpur, in addition to some other movable assets. The Assistant Controller disallowed the deduction of Rs. 1,27,747 claimed as the share of the deceased in the amount of excise duty and penalty which was outstanding against the firm at the time of his death. On appeal, the Tribunal allowed this deduction of Rs. 1,27,747 while determining the net principal value of the estate of the deceased. Aggrieved by the view taken by the Tribunal, the Controller applied to the Tribunal for a reference of the above question of law to this court for its decision. The Tribunal having rejected that application, the Controller approached this court which then directed the Tribunal to state the case and refer the above question of law for the decision of this court. This is how this question arising out of the Tribunal''s order has come up

for decision by us.

3. It may be stated at the outset that it is common ground that the appeal filed by the firm to assail the demand of excise duty and penalty which was then pending has since succeeded and this entire liability has been quashed. The result is that the liability of the deceased which was calculated at the sum of Rs. 1,27,747 did not survive and admittedly no such payment was made by the deceased during his lifetime or thereafter out of his estate. In such a situation, the question is whether even then this amount of Rs. 1,27,747 claimed as a deduction from the net value of the estate of the deceased should be allowed as a "debt" u/s 44 of the Estate Duty Act, 1953 ("the Act").

4. The contention of learned counsel for the accountable person is that independent of the outcome of the pending appeal challenging the demand of excise duty and penalty from the firm, the amount was a "debt" and, therefore, the share of the deceased therein should be deducted from his estate for determining its net value. In our opinion, the contention cannot be accepted.

5. Section 44 says that in determining the value of an estate for the purpose of estate duty, allowance shall be made for funeral expenses and for debts and encumbrances. It is obvious that unless the amount of which deduction is claimed as a debt of the deceased is payable by him, no such deduction can be given. There is no dispute that no such payment was made by the deceased in the present case and such a demand made from the firm of which the deceased was a partner was challenged in an appeal which also has been subsequently allowed and the total demand has been set aside. In our opinion, Section 44 has not only to be understood as using the word "debt" as it is understood in legal parlance but it has also to be read along with Section 5 of the Act and the definitions given in Clauses (15) and (16) of Section 2 of the Act. Section 5 relates to levy of estate duty and it says that the same shall be levied and paid upon the principal value ascertained as hereinafter provided of all property which passes on the death of such person. "Property" is defined in Section 2(15) while "property passing on the death" is defined in Section 2(16). Read together these provisions indicate that the levy of estate duty, according to Section 5, is on the principal value of all property which passes on the death of such person which means the property which ultimately constitutes, the estate of the deceased taking into account also the debts and encumbrances which result in reduction of the estate to that extent. In a case like the present where the deceased was admittedly not required to make the payment nor is such a payment required to be made out of his estate after his death, the total liability having been set aside, there can be no legitimate ground to permit such a deduction while determining the principal value of the property passing on his death for the levy of estate duty. In the present case, when the estate of the deceased was neither encumbered to this extent nor was it liable to be reduced on account of the deduction claimed by the accountable person, it would be extremely unreasonable to hold that this amount was even then a liability of the deceased

so as to permit its deduction as a debt from his estate. We have not been shown any provision in the statute which requires taking a view different from this ordinary and logical view. It is unnecessary for us to refer to the decisions cited at the bar since none of them is directly on the point and we prefer to base our decision on this common sense view contrary to which nothing has been shown from the statute.

6. Consequently, the reference is answered in favour of the Controller and against the accountable person as under:

"The Tribunal was not justified in allowing deduction of Rs. 1,27,747 as a debt u/s 44 of the Estate Duty Act, 1953."

