
(1979) 08 MAD CK 0050

In the Madras High Court

Case No : Tax Case No. 673 of 1975 (Reference No. 476 of 1975)

Controller of Estate Duty

APPELLANT

Vs

S. Sachidanandam and Another

RESPONDENT

Date of Decision : 06-08-1979

Acts Referred:

Estate Duty Act, 1953 — Section 58(4), 62(5)

Citation : (1980) 123 ITR 524

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; None, for the Respondent

Judgement

1. In this reference u/s 64(1) of the E.D. Act, the following questions have been referred for the opinion of this court:

" 1. Whether, in disposing of an appeal preferred against an assessment made u/s 58(4) of the Estate Duty Act, it is open to the Appellate Controller to consider fresh evidence for the purpose of rectifying the estimate made by the Assistant Controller and if so, whether there are any limitations in the exercise of such power ?

2. Whether, on the facts and in the circumstances of the case, the order of the Appellate Controller has been rightly upheld ?"

2. The estate duty assessment came to be made on the death of one R. Kannan on 3rd March, 1963. The deceased was carrying on business under the name and style of " Radhakrishna Service " and " Radhakrishna Mobile Service Station ". He owned lands and houses. He left behind him his only son, Anantharama Krishnan, two married daughters and an unmarried daughter. His wife had pre-deceased him on 7th January, 1962.

3. The deceased and his wife executed a settlement deed on 12th October, 1961, by and under which the house and ground bearing No. 15 in Fourth Main Road,

Gandhi Nagar, Adayar, Madras, were settled on their son. By another settlement deed executed on the same date the deceased settled on his son the house and ground bearing door No. 5/3, Lattice Bridge Road, Tiruvanmiyur and certain other properties. On 8th January, 1963, he executed a deed of trust in respect of the business carried on by him and also the properties covered by the aforesaid two settlement deeds. This trust deed was executed with a view to make provision for management of the properties during the minority of his son. He constituted himself and his son-in-law, Sachidanandam, as trustees. There were other provisions made in the trust deed, to which it is unnecessary to refer.

4. The trustees had not delivered any account, in the prescribed form and verified in the prescribed manner, of all the properties passing on the death of the deceased, as required by Section 53(3) of the Act. A notice u/s 55 was issued on 21 st January, 1964, to the trustees. After repeated remainders the surviving trustee, Sachidanandam, filed an account on 4th July, 1964, disclosing the principal value of the deceased's estate at Rs. 89,117. As this statement was not in the prescribed form, he was requested to file an account in the prescribed form. But this request was not complied with. On 31st July, 1968, the Assistant Controller made the assessment determining the principal value of the estate of the deceased to the best of his judgment on the information available from the records. He determined the principal value of the estate as Rs. 4,37,433 and levied Rs. 42,61495 as duty. In arriving at the principal value, he took the capital of the deceased in the businesses at an estimated figure of Rs. 1,80,000 and the value of the Adayar and Lattice Bridge properties at Rs. 67,000 and Rs. 1,50,000 respectively.

5. Sachidanandam preferred an appeal before the Appellate Controller of Estate Duty contending that the Assistant Controller was not justified in making the assessment u/s 58(4) of the Act and that the value of the properties covered by the settlement deeds and the trust deed should not have been included. The valuation of the properties was also questioned. The Appellate Controller, while confirming the Assistant Controller's view that the assessment had to be made u/s 58(4) went into the inclusion in the estate duty assessment of the property bearing door No. 15, Fourth Main Road, Gandhinagar, Adayar. He upheld the plea of the accountable person that the said house belonged only to the wife of the deceased and that it could not be deemed to have passed on the death of the deceased. The sum of Rs. 67,000 being the value of the said house, was deleted.

6. As regards the capital of the deceased in the businesses, he recomputed it and determined it at Rs. 1,37,279 and in doing so, he held that two loans of Rs. 10,000 taken from two individuals were genuine. He reduced the valuation of the two buses to Rs. 35,000 as against Rs. 50,000 taken by the Assistant Controller. The estimate of profit derived by the deceased from the business during the period of 1st April, 1962, to 3rd March, 1963, was also reduced from Rs. 30,000 as estimated by the Assistant Controller to Rs. 25,000.

7. Against this order of the Appellate Controller dated 30th August, 1969, the

department appealed to the Tribunal contending that the Appellate Controller, having held that the assessment u/s 58(4) was justified, should not have reduced the quantum of the principal value of the estate. The Tribunal considered this question and came to the conclusion that in the absence of a provision for setting aside an assessment made to the best of judgment u/s 58(4) as in the I.T. Act the Appellate Controller had ample powers not only to take into consideration the materials on record but also to make such further enquiries as he thought fit. The result was that the appeal filed by the revenue against the order of the Appellate Controller was dismissed. The two questions referred arise out of this order of the Tribunal.

8. Section 58 of the E.D. Act provides for the assessment of the principal value of the estate of the deceased and the determination of the amount payable as estate duty. Where no account has been delivered as required by Section 53 or Section 56 or the person accountable fails to comply with the terms of the notice served under Sub-section (2) of Section 58, the Controller is required to make the assessment to the best of his judgment and determine the amount payable as estate duty. Section 62 provides for an appeal against the order of the Controller, which term includes " Assistant Controller ". Section 62 provides that any person objecting to any valuation made by the Controller or to any order made by the Controller determining the estate duty payable u/s 58 or Section 59 or denying his liability to the amount of estate duty payable in respect of any property, may within thirty days from the date of receipt of the notice of demand u/s 73. appeal to the Appellate Controller in the prescribed form, and verified in the prescribed manner. The powers of the Appellate Controller in disposing of an appeal are specified in Sub-section (5) of Section 62 and it runs as follows :

" In disposing of an appeal, the Appellate Controller may pass such order as he thinks fit which may include an order enhancing the estate duty or penalty:

Provided that no order enhancing the estate duty payable or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement."

9. From the above resume of the provisions relating to the assessment and appeal, it would be clear that the Act does not make any distinction between the scope and jurisdiction of the Appellate Controller in regard to the assessment made by the Assistant Controller under any particular provision. In other words, whatever may be the Sub-section under which the assessment came to be made, the Appellate Controller has the same powers in disposing of an appeal against such assessment.

10. Under the I.T. Act, the corresponding provision for the making of a best judgment assessment in the absence of compliance by the assessee to make the return or to respond to a notice is Section 144. In such a case, the ITO has power to make the assessment to the best of his judgment. Section 146 provides for an assessee making an application to the ITO within one month from the date

of service of a notice of demand issued in consequence of the assessment. The assessee may show that he was prevented by sufficient cause from making the return required or that he did not receive the notice issued under the relevant provisions or that he had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of any notice referred to in the provision. In such cases, the assessee can pray for a cancellation of the assessment, and the ITO, if he was satisfied about the existence of such a ground, shall cancel the assessment and proceed to make a fresh assessment in accordance with the provision of Section 143 or 144 of the I.T. Act, 1961. Even in respect of appeals arising out of the orders of assessment made to the best of judgment u/s 144 or its corresponding provision in the Indian I.T. Act of 1922, it has been held in *M. M. Muthuwappa Vs. Commissioner of Income Tax, Madras*, that there is nothing in any of the relevant provisions of the Act which places any fetter upon the right of the assessee to deny his liability to be assessed in the appeal before the AAC. It was also pointed out that the powers of the AAC were far greater than those of the Tribunal and that the entire assessment was before him. Though in a case to which Section 27 of the 1922 Act (corresponding provision in Section 146) might be attracted his jurisdiction might be limited somewhat, it was held that nothing in Section 31 (corresponding to Section 246) or any other provision stood in the way of the assessee questioning the assessment u/s 23(4) in the same manner as in other assessments. At page 1122, this court observed ;

" There is nothing to suggest that a ground of appeal taken by the appellant becomes incompetent solely for the reason that that particular ground was not advanced before the Income Tax Officer at the time of the assessment."

11. The legal position under the I.T. Act may be explained as follows: In a case, where the assessee is assessed u/s 144 he can both file an appeal against the order u/s 144 and also take up the matter before the ITO u/s 146. There is a right of appeal against the order u/s 146 also. In an appeal against the order u/s 146 the jurisdiction of the AAC will be limited to finding out whether the ITO had exercised his powers properly in making the best judgment assessment. In an appeal against an order u/s 144, apart from going into the question as to whether the assessment was properly made u/s 144, the right of appeal is as expansive as it is against an assessment u/s 143 :

If even with reference to the provisions of the I.T. Act, which contain another remedy by way of an application to the ITO to set aside a best judgment assessment, the powers of the appellate authority are not different, the legal position will be a fortiori in a case arising under the E.D. Act which does not contain any provision for setting aside an ex parte assessment by the Assistant Controller himself.

12. The provisions of the E.D. Act are similar to or identical with those contained in the W.T. Act in relation to an assessment on the best of judgment made by the corresponding assessing authority. In *Jwaladutt Jiwankumar Vs. Commissioner of*

Wealth Tax, , the Calcutta High Court went into the question of the jurisdiction of the AAC as to whether he was confined only to the materials on record at the time of the assessment or whether he could make such enquiries as he thought fit and examine the assessment in the light of those materials. The Calcutta High Court pointed out that in disposing of an appeal against an assessment u/s 16(5) of the W.T. Act, 1957, the AAC need not confine himself only to the available materials on record at the time of the assessment and that he could make such enquiries as he thought fit and gather in such enquiries materials for examining the correctness of the assessment.

13. We agree with this decision of the Calcutta High Court in delineating the amplitude of the powers of the appellate authority in dealing with a best judgment assessment. In the present case, the Appellate Controller was justified in examining the valuation of the individual items of the includibility of any particular item of property, whether it was eligible to tax or not, taking into account the provisions of the Act; and the exercise of the powers by the Appellate Controller in this case cannot be considered to be erroneous, Unfortunately, the respondent though served, was not represented. But Mr. J. Jayaraman, the learned counsel for the Controller of Estate Duty, brought to our notice all the aspects that could have been placed before us if the accountable person had appeared.

14. The questions referred to us are accordingly answered in the affirmative and in favour of the accountable person. There will be no order as to costs.