(1989) 03 CAL CK 0045

In the Calcutta High Court

Case No : Estate Duty Reference No. 638 of 1973

Controller of Estate Duty APPELLANT

Vs

Sital Prasad De RESPONDENT

Date of Decision : 14-03-1989

Acts Referred:
Estate Duty Act, 1953 — Section 10, 33(1)

Citation : (1991) 192 ITR 218 : (1991) 54 TAXMAN 74

Hon'ble Judges : Suhas Chandra Sen, J;Bhagabati Prasad Banerjee, J

Bench : Division Bench

Advocate : A.C. Moitra and S.K. Chakraborty, for the Appellant;

Judgement

S.C. Sen, J.—The following two questions of law have been referred by the Tribunal to this court u/s 64(1) of the Estate Duty Act, 1953 ("the Act") :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the provisions of Section 10 of the Estate Duty Act, 1953, were not applicable and that the value of the interest that the deceased had in the property transferred to Prakash Umacharan M. E. School in terms of Section 12 of the Estate Duty Act, 1953, alone was includible in the estate of the deceased and not the value of the entire property ?

2. Whether, on the facts and in the circumstances of the case, and on a correct interpretation of Section 33(l)(n) of the Estate Duty Act, 1953, and in view of the fact that the deceased was not residing in the ancestral house at Jagatdal, the Tribunal was right in holding that the share of the deceased in the said house was exempt on the ground that the house was kept for use by the deceased for his residence ?"

2. The brief facts of the case are as follows :

"Manmatha Nath De died on October 3, 1965. By a deed executed on September 30, 1953, he made a gift of a building standing on a plot of land together with certain garden land, tank and homestead land to Prakash Umacharan M. E. School. The deed provided that these properties would vest in the donor or his heirs in case the school became non-existent."

3. The Assistant Controller was of the view that while making the gift to the school, the donor had retained his interest therein and he included the value of this property in the computation of the estate u/s 10 of the Act and valued the property at Rs. 10,000. The Appellate Controller was of the view that the document of gift was actually an arrangement to transfer the use of the property to the school as long as it would continue to run. It was held by the Appellate Controller that what was retained by the donor was merely the right to recover the property in the event of winding up of the school and he estimated the value of such interest at 10 per cent, of the total value, that is, at Rs. 1,000.

4. Both the accountable person and the Assistant Controller went up in appeal before the Tribunal, The Tribunal was of the view that the donor''s interest, if any, was to be included u/s 12 of the Act. In the opinion of the Tribunal, the estimate of the value of such interest at Rs. 1,000 by the Appellate Controller was reasonable. The Tribunal further held that Section 10 had no application in the facts of this case.

5. The Tribunal has also discussed the question of exemption of house property u/s 33(1)(n) of the Act. The Appellate Controller had found that the deceased was living with his son at the time of his death and the property was joint and was occupied by the nephew of the deceased. The Appellate Controller took the view that it was unlikely that the deceased would live in the house. The Appellate Controller rejected the case of the accountable person.

6. The accountable person went up in appeal before the Tribunal before whom it was contended that the house was kept reserved for use and the word "use" in Section 33(1)(n) included a house which was kept reserved for use and it was exempt under the said section. The Departmental representative relied upon the orders of the Appellate Controller and the Assistant Controller. The Tribunal upheld the contention of the accountable person and excluded the sum of Rs. 35,000 from the computation of the value of the estate.

7. In our opinion, there is hardly any merit in the question raised. On an appreciation of all the facts, the Tribunal came to a reasonable conclusion.

8. Hence, both the questions are answered in the affirmative and in favour of the assessee.

Bhagabati Prasad Banerjee, J.

9. I agree.

