

(2005) 02 AHC CK 0099
In the Allahabad High Court
Case No : E.D.R. No. 210 of 1987

Controller of Estate Duty

APPELLANT

Vs

Smt. Shakuntla Agrawal

RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Estate Duty Act, 1953 — Section 33(1), 36, 36(1), 36(2), 36(3)
Estate Duty Rules, 1953 — Rule 14
Wealth Tax Act, 1957 — Section 7(4)

Citation : (2005) 02 AHC CK 0099

Hon'ble Judges : R.K. Agarwal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Shambhu Chopra and S.C, for the Appellant; K.N. Kumar, for the Respondent

Judgement

Prakash Krishna, J,

1. The Income Tax Appellate Tribunal, Allahabad has referred the following question of law u/s 64(1) of the Estate Duty Act, 1953 (here in after referred to as the Act) for opinion to this Court:-

"Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in holding that the value of the properties in question should be determined in accordance with the provisions of the W.T. Act and rules made thereunder?."

2. Briefly stated the facts giving rise to the present reference are as under:-

3. One Shri Raja Babu Agrawal expired on 29th November, 1978. He was the owner of 12 house properties and was a regular wealth tax assessee. Respondent Smt. Shakuntla Agrawal filed Estate Duty return. She is wife of deceased Raja Babu Agrawal. The value of the 12 houses was declared in the return at Rs. 4,25,672/- as per the report of the approved valuer. Before the Assistant Controller of the Estate Duty, the accountable person claimed exemption of Rs. 1

lac out of the total value of the said properties. The Assistant Controller of Estate Duty did not accept the report of the approved valuer submitted by the accountable person and referred to the Valuation Officer u/s 41 of the Act, who valued the said properties at Rs. 20,09,650/-. Taking the value of the said properties at Rs. 20,09,650/-, the estate duty was determined. The accountable person claimed the applicability of Section 36(3) of the Act for determining the value of the properties, but was not accepted by the Assistant Controller of the Estate Duty. The order determining the estate duty was challenged by accountable person by way of appeal before Appellate Controller of Estate Duty. The Appellate Controller of Estate Duty adopted the valuation of the said properties as was done by the Assistant Controller of the Estate Duty subject to the grant of relief of Rs. 1 lac u/s 33(1)(n) of the Act for the self occupied portion of the building. The accountable person filed a second appeal before the Tribunal and questioned the determined value of the properties on the ground that the value of the said properties should be determined in accordance with the principles of the Wealth Tax Act and under the Rules made thereunder. This contention was accepted by the Tribunal.

4. Heard Sri Shambhu Chopra, the learned standing counsel for the department and Sri K.N. Kumar, learned Counsel for the accountable person.

5. Challenging the legality and propriety of the order passed by the Tribunal, the learned standing counsel submitted that the Tribunal has wrongly placed reliance upon the decision of Bombay High Court in the case of Jehangir Mahomedali Chagla and another Vs. M.V. Subrahmanian, Additional First Assistant Controller of Estate Duty and others, . The said ruling is distinguishable and is not applicable to the facts of the present case in as much as in that case the point for determination was with regard to the valuation of one house property only. On the other hand the learned counsel for the accountable person submitted that Section 36(3) of the Act should be read with Section 33(1)(n) of the Act. The section provides exemption for one residential accommodation upto Rs. 1 lac.

6. We have given careful consideration to the respective submissions of the learned counsel for the parties. It is appropriate to quote Section 36(3) of the Act which reads as follows:-

"Notwithstanding anything contained in Sub-section (1) or Sub-section (2), the principal value of one residential house or part thereof belonging to the deceased (which the accountable person may at, his option specify in writing in this behalf shall be -

(a) where the value of such house or part included in computing the net wealth of the deceased for the purposes of making an assessment under the Wealth-tax 1957 (hereafter in this Sub-section to as the Wealth-tax Act) in respect of his net wealth on the valuation immediately preceding the date of death, the value as taken by the Wealth-tax tax Officer for the purposes of such assessment; and

(b) in any other case, the value of such house or part --

(i) on the said valuation date; or

(ii) where such house or part was constructed, acquired or otherwise became the property of the deceased after the said valuation date, on the date of his death, as determined the Controller in accordance with the provisions of the Wealth-tax Act and the rules made thereunder and for this purpose, in a case where the provisions of Sub-section (4) of Section 7 of that Act apply, the provisions of that Sub-section shall have effect as if the words "throughout the period of twelve months immediately preceding the valuation date", occurring therein, had been omitted and as if the references therein to the option of the assessee had been references to the option of the accountable person.

Explanation 1. -- Where the value adopted to be the value of a house or part in accordance with the provisions of Clause (a) of this Sub-section is subsequently varied by an order in any proceeding under the Wealth tax Act, the value as so adopted shall be deemed to be a mistake apparent from the record within the meaning of Section 61 and the Controller shall rectify the order, if any, passed by him, by substituting for the value as so adopted the value as so varied and the provisions of the said section shall apply accordingly, the period of five years specified in that section being reckoned from the date of the order under the Wealth-tax Act varying the value of the house or part.

Explanation 2. -- For the purposes of this sub-section, the expressions "net wealth, valuation date" and "Wealth-tax Officer shall have the same meanings as in the Wealth-tax Act)

7. The Act provides the mode for estimating the principal value of the property and according to the Section 36 the same shall be estimated for the price which in the opinion of the Controller it would fetch if sold in the open market at the time of the deceased's death. For the purposes of the valuation, Rule 14 of the Estate Duty Rules provides that a Controller may accept the valuation as shown in the account delivered by the accountable person or may if he is not satisfied with the valuation shown therein, either himself a valuation thereon on his own estimate or appoint a person to determine the valuation of the properties. In the case in hand, it is clear that the Assistant Controller was not satisfied with the valuation shown by the assessee. He consequently referred the matter for estimating the value of the 12 house properties at market price at the time of the deceased death. Section 36(3) of the Act on its plain language talks about valuation of the one property, at the option of accountable person as per rules under the Wealth Tax Act The said section does not say that for the purposes of valuation of more than one properties under the Act, the valuation as determined under the Wealth Tax Act would be applicable. The star case on which the accountable person placed strong reliance i.e. the case of J.M. Chhagla and Anr. (supra) of Bombay High Court on a close reading, is distinguishable. Therein the valuation of only one property was involved. In view of the specific provision u/s 36(3) of the Act for the valuation of one property can be as per the provisions of Wealth Tax Act, excludes by necessary corollary that the properties if they are

more than one should also be similarly valued.

8. Strong reliance was also placed upon the case of Controller of Estate Duty Vs. Smt. Dropadi J. Nagpal, . The said case is also distinguishable for the same reasons as the case of J.M. Chhagla and Ors. (supra) is Question of valuation of only one immovable property known as" Nagpal Hotel" was involved therein. It was not a case dealing with question of valuation of more than one house properties or plurality of properties.

9. In view of the above discussion we are of the view that the Income Tax Appellate Tribunal was not correct in holding that the valuation of all the properties in question should be determined in accordance with the provisions of the Wealth Tax Act and the rules made thereunder. Therefore, we answer the question referred to us in negative i.e. in favour of the Department and against the accountable person. however, no order as to costs.