(1985) 02 CAL CK 0014

In the Calcutta High Court

Case No : Matter No. 77 of 1979

Controller of Estate Duty APPELLANT

Vs

Sunanda Bose RESPONDENT

Date of Decision : 20-02-1985

Acts Referred:

Citation : (1985) 49 CTR 16 : (1985) 153 ITR 384 : (1985) 23 TAXMAN 41

Hon'ble Judges : Dipak Kumar Sen, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Judgement

Ajit Kumar Sengupta, J.—In this reference u/s 64(1) of the E.D. Act, 1953, at the instance of the CED, 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 the sum of the Rs. 25,000 being the estimated compensation payable by the Government of West Bengal on acquisition of agricultural land of the deceased in 1953 is not includible in the principal value of the deceased under the provisions of the Estate Duty Act, 1953 ?"

2. The facts of this case are briefly stated hereafter:

"The deceased, Sri Sushil Kumar Roychowdhury, died intestate on November 1, 1963. The agricultural land of the deceased in excess of 25 acres was acquired by the Government of West Bengal in 1955. The Assistant Controller of Estate Duty observed that the compensation from the Government of West Bengal had not been settled and that compensation roll had not been prepared and the matter was still pending in the High Court. He estimated the compensation at Rs. 25,000 payable by the Government of West Bengal on acquisition of the agricultural land and included the same, in the principal value of the estate of the deceased. In appeal, the Appellate Controller of Estate Duty excluded the estimated compensation as no compensation roll had been prepared even after ten years of the acquisition.

3. Before the Tribunal, it was urged by the departmental representative that the deceased was entitled to compensation on the acquisition of the agricultural land. The learned counsel for the accountable person pointed out that even at the time of hearing of the appeal, no compensation roll had been prepared and that on the basis of the decision in the case of Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab, , the deceased was not entitled to any compensation. The Tribunal following the decision in the case of CWT v. Mahatab did not find any force in the contention of the departmental representative. The Tribunal, therefore, affirmed the order of the Appellate Controller of Estate Duty.

4. In the case of Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab, , the question was whether the right to compensation under the West Bengal Estates Acquisition Act, 1953, constitutes an asset within the meaning of the W.T. Act, specially where such compensation under the West Bengal Estates Acquisition Act has neither been determined nor paid. There the WTO assessed the right of the assessee to receive compensation of the zamindari properties of the assessee which had vested in the State in 1954, under the provisions of the West Bengal Estates Acquisition Act, 1953, at Rs. 32 lakhs. On appeal, the AAC reduced the value of the assessee''s right to receive compensation to rupees three and a quarter lakhs rejecting the assessee''s contention that on the relevant dates of valuation, the assessee had no right to receive any compensation from the Government and holding that the assessee had an actionable claim assessable to wealth-tax. On further appeal, the Appellate Tribunal held that under the West Bengal Estates Acquisition Act, 1953, the compensation was payable only to the intermediary whose right was acquired by the Government, after the compensation roll was prepared and finally published u/s 21 of the Act, and as the compensation roll had not been prepared and published, the assessee had no right on the valuation date to receive any compensation for the acquisition of his estate and that the assessee had no actionable claim which had a hypothetical market value on the valuation date, and, accordingly, deleted, the valuation of rupees three and a quarter lakhs from his net wealth as on the material valuation dates. On a reference to the High Court, this court held that although the assessee''s rights vested in the State immediately on the notification u/s 4 of the West Bengal Estates Acquisition Act, under the provisions of that Act, there was no legal right yet in the assessee to compensation, which right would arise only on the final publication of the compensation assessment roll, as rightly held by the Appellate Tribunal. In the definition of "assets" in the W.T. Act, the words "property of every description" are qualified by the words "movable or immovable", and, consequently, properties which do not ordinarily answer the test of movability or immovability; such as intangible rights or incorporeal rights, will not be assets within the meaning of the W.T. Act. Where agricultural land has been taken away and has vested in the State under the Act, but where the final compensation assessment roll has not been prepared and published and the compensation officer has not

calculated the amount, if any, at all payable to the assessee, then this inchoate right is not yet a legal right which can be regarded as an "asset" within the meaning of Section 2(e) of the W.T. Act. Not being an asset, the mechanism of valuation provided in Section 7 of the W.T. Act will not apply.

5. In the case of Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa, , one of the questions before the Supreme Court was whether any part of the amount fixed as compensation payable to the assessee under the Bihar Land Reforms Act was liable for inclusion in the total wealth of the assessee. There, the Supreme Court held that under the Bihar Land Reforms Act, 1950, as soon as the estate or tenure of a proprietor or tenure-holder vests in the State, he becomes entitled to receive compensation. The right to receive compensation from the State is a valuable right. The fact that the compensation is not payable immediately and its payment might be spread out over a period of 40 years, would be relevant only for the purpose of evaluating the right to compensation. The right to receive compensation, even though the date of payment is deferred, is property and constitutes an "asset" for the purpose of the W.T. Act, 1957.

6. In a subsequent decision of the Supreme Court in the case of Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, , the question as regards the nature of the right to receive compensation for lands compulsorily acquired came up for consideration. There, the Supreme Court, following the judgment in the case of Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa, , held that the lands which are compulsorily acquired by the Government during the lifetime of the deceased cannot form part of his estate but the right to receive compensation therefore at market value on the date of the notification for acquisition which would accrue to the deceased would be property that would pass on his death. Before the Supreme Court, counsel for the accountable person contended that the right, to receive further compensation would become property only when the claim would be accepted finally by the court and till the enhanced compensation became payable by reason of final adjudication of the court, no property could be said to have come into existence and certainly it was not in existence at the date of death. It was also argued that it would run counter to all principles of direct taxation to regard the amount decreed subsequently by the final court as property having come into existence retrospectively on the relevant date (being the date of death under the E.D. Act and valuation date under the W.T. Act) though, in fact, it did not exist on that date, and in this behalf reliance was placed, inter alia, on the decision of the Calcutta High Court in the case of Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab, . The Supreme Court, however, followed the decision in the case of Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa, , and did not express any opinion on the decision of this court in the case of Mahatab.

7. The contention of the Revenue is that, in view of the decision of the Supreme Court in the case of Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and

Orissa, and Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, , the decision of this court in the case of Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab, stands impliedly overruled and, accordingly, the right to receive compensation must be deemed to be property which passes on the death of the deceased and is includible in the principal value of the estate left by the deceased.

8. We are not, however, impressed by the contention of the Revenue. The Supreme Court in Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa, , did not express any opinion with regard to the correctness of the decision in the case of Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab, . The Supreme Curt in the case of Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa, observed as follows :

"Mr. Kolah has invited our attention to a decision of the Calcutta High Court in the case of Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab, , wherein that court held that till the final publication of the compensation assessment roll under the West Bengal Estates Acquisition Act, the assessee had no legal right to compensation and the same could not be included in the definition of ''assets'' in the Wealth-tax Act. It is, in our opinion, not necessary to express any view with regard to the correctness of that decision. Suffice it to say that the decision in that case proceeded upon the assumption that the provisions of the West Bengal Estates Acquisition Act, 1953, were materially different from those of the Bihar Land Reforms Act. It was, in fact, on that ground that the learned judges of the Calcutta High Court distinguished the case of Maharaj Kumar Kamal Singh Vs. The Commissioner of Wealth Tax, as well as the decision of the Patna High Court which is now the subject-matter of the present appeal."

9. The Supreme Court has not expressed the view that the provisions of the West Bengal Estates Acquisition Act, 1953, are not materially different from those of the Bihar Land Reforms Act. It is true that on principle there cannot be any difference in the character and quality of the right to receive compensation from the State upon the estates being vested in the State under the Land Reforms Act of Bihar and the Estates Acquisition Act of West Bengal. But having regard to the fact that neither in the case of Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa, , nor in the case of Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, , the Supreme Court expressed any doubt as to the correctness of the decision in the case of Mahatab, we have to hold that the Tribunal was right in following the decision in the case of Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab, .

10. For the aforesaid reasons, we answer the question in this reference in the negative and in favour of the accountable person. There will be no order as to costs.

11. Counsel for the Revenue has made an oral application for leave to appeal to

the Supreme Court. In our opinion, the following substantial question of law arises in this case.

"Whether the right to receive compensation for lands compulsorily acquired under the West Bengal Estates Acquisition Act, 1953, would be property passing on the death of the deceased and as such includible in the principal value of the estate of the deceased under the provisions of the Estate Duty Act, 1953 ?"

12. We, accordingly, certify that this is a fit case for appeal to the Supreme Court u/s 65 of the E.D. Act, 1953.

13. Let the certificate be drawn up and issued separately.

Dipak Kumar Sen, J.

I agree.

