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**(1996) 10 P&H CK 0093**

**In the Punjab And Haryana At Chandigarh**

**Case No : Estate Duty Reference No. 5 of 1980**

Controller of Estate Duty

APPELLANT

Vs

Vijay Kumar

RESPONDENT

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**Date of Decision :** 07-10-1996

**Acts Referred:**

Estate Duty Act, 1953 — Section 59

**Citation :** (1997) 223 ITR 524

**Hon'ble Judges :** N.K. Agrawal, J; Ashok Bhan, J

**Bench :** Division Bench

**Advocate :** R.P. Sawhney and Mahavir Ahlawat, for the Appellant; B.S. Gupta and Sanjay Bansal, for the Respondent

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## **Judgement**

N.K. Agrawal, J. 1. The following question of law has been referred by the Income Tax Appellate Tribunal, Amritsar (for short, "the Tribunal"), u/s 64 of the Estate Duty Act, 1953 (for short, "the Act"), at the instance of the Controller of Estate Duty, Patiala :

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that reassessment proceedings were invalid ?"

2. The proceedings under the Act were initiated by the Assistant Controller of Estate Duty on the death of Daya Nand Munjal. The accountable person filed details of the principal value of the estate left behind by the deceased. The value of the estate was determined by the Assistant Controller at Rs. 10,85,593. The audit party of the Department, after examining the proceeding, wrote a note as under :

"Nothing has been mentioned as to why the goodwill of the firm has not been added to the P. V. while making assessment of the estate duty. The Assistant Controller of Estate Duty promised to look into the matter."

3. The Assistant Controller, on the basis of the aforesaid note of the audit party, issued a notice to the accountable person u/s 59 of the Act on January 6, 1977.

The audit note was treated as information within the meaning of Section 59(b) of the Act.

4. The deceased, Daya Nand Munjal, was a partner in two firms, namely, Hero Cycle Industries, Ludhiana, and Rockman Cycle Industries, Ludhiana, in his individual status and also a partner in another firm, namely, Munjal Sales Corporation, Ludhiana, in the status of karta of his Hindu undivided family. The Assistant Controller determined the share of the deceased in the value of the goodwill of the aforesaid three firms and then worked out the principal value of the estate thereafter.

5. An appeal was filed before the Controller of Estate Duty, challenging the proceedings u/s 59 of the Act. The plea taken by the accountable person was that the audit note did not constitute information within the meaning of Section 59(b) of the Act. The initiation of proceedings for the purpose of reopening was said to be not at all based on any "information" but was based on the audit note which was in the nature of an ambiguous, unclear and vague opinion regarding the value of goodwill. The plea was, however, rejected by the first appellate authority and, therefore, the accountable person went in further appeal before the Tribunal. The plea, that audit note was not in the nature of "information" within the meaning of Section 59(b) of the Act for the purpose of reopening of the proceedings, found favour with the Tribunal and the value of the goodwill of the three firms was excluded from the principal value of the estate of the deceased.

6. The note of the audit party, as reproduced above, does not give any definite information that the firms, in which the deceased was a partner, did have any goodwill and as to what was the value of the goodwill of each firm. The nature of the observation made in the audit note is simply an uncertain and indefinite remark that the value of the goodwill of the firms has not been added to the principal value of the estate of the deceased and, therefore, the Assistant Controller of Estate Duty made a promise before the audit party to look into the matter. There is no positive remark that the firms in question had certain goodwill in business. The audit party simply raised a query as to why the value of the goodwill of the firms was not added to the value of the estate. This query made it clear that there was no positive information in the possession of the audit party showing that the firms did enjoy goodwill which could be determined in terms of money.

7. Shri R.P. Sawhney, learned senior counsel for the Department, has raised the argument that the value of the goodwill of the business, run by the three firms in which the deceased was a partner, had not been determined by the Assistant Controller while the principal value of the estate had been earlier worked out. The note of the audit party provided information to the Assistant Controller to the effect that the value of the goodwill of the business of the firms had not been included though it formed part of the estate of the deceased. Since it was a case of escaped assessment, a notice u/s 59 of the Act was rightly issued.

8. Section 59 of the Act reads as under :

" 59. Property escaping assessment. -- If the Controller, -

(a) has reason to believe that by reason of the omission or failure on the part of the person accountable to submit an account of the estate of the deceased u/s 53 or Section 56 or to disclose fully and truly all material facts necessary for assessment, any property chargeable to estate duty has escaped assessment by reason of undervaluation of the property included in the account or of omission to include therein any property which ought to have been included or of assessment at too low a rate or otherwise, or

(b) has, in consequence of any information in his possession, reason to believe notwithstanding that there has not been such omission or failure as is referred to in Clause (a) that any property chargeable to estate duty has escaped assessment, whether by reason of undervaluation of the property included in the account or of omission to include therein any property which ought to have been included, or of assessment at too low a rate or otherwise,

he may at any time, subject to the provisions of Section 73A, require the person accountable to submit an account as required u/s 53 and may proceed to assess or reassess such property as if the provisions of Section 58 applied thereto."

9. It would be thus clear that proceedings on the ground of escaped assessment can be initiated under Clause (b) of Section 59 if the Assessing Officer had any information in his possession and, in consequence of that information, he has reason to believe that any property chargeable to estate duty had escaped assessment, whether by reason of undervaluation or of omission to include therein any property which ought to have been included.

10. A Full Bench of this High Court had an occasion to examine a question of goodwill of a firm in State Vs. Prem Nath, . It was held that goodwill of a firm was an asset of the firm and the share of the deceased partner in the goodwill devolved, on his death, upon his legal representatives. Shri Sawhney, placing reliance on the said decision, has argued that, since the value of the goodwill had not been included in the principal value of the estate of the deceased at the time of assessment of the estate duty, it was legitimate to do so by reopening the proceedings. It is argued by Shri Sawhney that the audit note was correctly treated and construed as an information for the purpose of reopening the proceedings. While levying estate duty, the Assistant Controller had not given any reason in the earlier order as to why goodwill of the firms had not been included in the principal value of the estate. It was the note received from the audit party which provided an information to the Assistant Controller that the value of the goodwill of the business of the firms had escaped assessment. It is also pointed out that the accountable person had already filed details of the goodwill of the firms in his letter dated March 23, 1973. Since this letter was available on the record, it also amounted to an information. However, a bare perusal of the audit note made it clear that the audit party was not in possession

of any material whatsoever while raising a query as to why the goodwill of the firm had not been added to the principal value of the estate. If the audit party had certain information, that would have been mentioned in the audit note. On receipt of the audit note, the Assistant Controller recorded his satisfaction as under :

" This is a copy of the audit report in the case of Shri Daya Nand Munjal. In this case, both the points regarding correct assessment of appreciation in the value of buildings and regarding the assessment of goodwill require thorough consideration. Notice u/s 59(b) of the Estate Duty Act should be issued. The accountable person's both items have escaped assessment."

11. The reasons recorded by the Assistant Controller on the basis of the audit report do not make a mention of the letter dated March 23, 1973, which is said to have been filed by the accountable person, giving therein the details of the goodwill of the firms. Therefore, the said letter, not having been mentioned either by the audit party or by the Assistant Controller, would not form the basis of any information.

12. The Bombay High Court had an occasion to examine the question relating to reassessment under the Act in Ramesh Chandrasen Ashar and another Vs. K.M. Barshiwala, Addl. 1st Asst. Controller of Estate Duty and another, . That was a case where the accountable person had submitted an account of the estate of the deceased, which included 81 shares held by the deceased in a company, valued at Rs. 1,217.23 per share based on the report of a valuer. However, the Departmental valuer valued the shares at Rs. 1,693 per share, inclusive of goodwill and appreciation of assets, which was accepted by the accountable person and estate duty was paid accordingly. The Assistant Controller of Estate Duty reopened the assessment u/s 59 of the Act on the ground that, while valuing the shares, certain mistakes had occurred. Those mistakes had been pointed out to the Assistant Controller upon a revenue audit. It was held that the Assistant Controller had, upon the communication of the revenue audit, changed his opinion as to the details of the valuation of the shares and such change of opinion did not constitute information within the meaning of Section 59 of the Act.

13. The Bombay High Court had again an occasion to examine a question of reassessment but that was a case u/s 147(b) of the Income Tax Act, 1961. It was held in Raja Bahadur Motilal P. Ltd. Vs. K.R. Vishwanathan, ITO and another, that, since the reassessment proceedings had been initiated on the ground that the parties, from whom the assessee had made purchases as well as those to whom the sales had been made, were found to be non-genuine parties, the same could not be upheld as there was no communication as to whether and in what context those parties were found to be non-genuine parties. There was no evidence that the transactions were bogus.

14. This High Court examined a question relating to the use of the audit note in

reassessment under the Wealth-tax Act in Commissioner of Wealth-tax Vs. Smt. Savitri Devi and Another (L/R of Nemi Chand Jain), . The proceedings had been reopened by the Wealth-tax Officer on the basis of an audit objection that certain interest amount on the mortgage money had escaped assessment in the estate duty case of the deceased. The Wealth-tax Officer, on that audit objection, initiated proceedings u/s 17(1)(b) of the Wealth-tax Act. It was noticed that the assessee had duly disclosed the interest amount in his wealth-tax return. The audit note was treated to be not "information" as postulated in Section 17(1)(b) of the Wealth-tax Act.

15. The question of reopening u/s 59 of the Act has been examined by the Allahabad High Court also in Ashoke Gupta Vs. Assistant Controller of Estate Duty and Others, . After noticing that Section 59 of the Act was in pad materia with Section 147 of the Income Tax Act, 1961, as it stood prior to the 1989 amendment, it was held that the report of the Audit Officer could not be treated as "information".

16. The question of reassessment and reopening has been examined by the Supreme Court in Chhugamal Rajpal v. S.P. Chaliha [1971] 79 ITR 603. The Income Tax Officer had completed the assessment after enquiry. The assessee had produced the books of account and also a statement giving full names and addresses of the various creditors. However, a notice u/s 148 of the Income Tax Act was issued, initiating reassessment proceedings. The Income Tax Officer had relied upon certain communication received by him from the Commissioner of Income Tax, from which it appeared that the creditors were name-lenders and the loan transactions were bogus. The Income Tax Officer did not mention any material which was before him. Since the Income Tax Officer had not come to a prima facie conclusion that the loan transactions were not genuine transactions and had only a vague feeling that they might be bogus transactions, such a conclusion was held to be not sufficient.

17. The Supreme Court has again examined the question of reassessment on the basis of subsequent information, in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, . That was a case under the Income Tax Act. It was held that, for the reopening of an assessment, there must be a rational connection or relevant bearing on the information of the belief. The rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee. It was observed that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening the assessment but, at the same time, it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income. The observations of the Supreme Court thus make it very clear that the information, in order to empower the assessing authority to

reopen the proceedings, must be definite, clear and unambiguous information.

18. In *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, it has been laid down by the Supreme Court that the opinion of an internal audit party of the Income Tax Department, on a point of law, cannot be regarded as "information" within the meaning of Section 147(b) of the Income Tax Act for the purpose of reopening an assessment. But, although an audit party does not possess the power to pronounce on the law, it nevertheless may draw the attention of the Income Tax Officer to it. Law is one thing, and its communication another. If the distinction between the source of the law and the communication of the law is carefully maintained, the confusion which often results in applying Section 147(b) may be avoided.

19. The observations made by the Supreme Court in *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, and *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, make it amply clear that the Assessing Officer must have, in his possession, such material which is substantive, definite and certain. In the present case, the information by way of audit note was more in the nature of a query rather than an information. The audit party did not make a mention of any document or record on the basis of which the query was raised in the audit note as to why the goodwill of the firms had not been added to the value of the estate of the deceased. Therefore, the audit note did not constitute "information" within the meaning of Section 59 of the Act. The observations of the audit party were more in the nature of an assumption or a guess. The promise made by the Assistant Controller before the audit party, that he would look into the matter, does not also make out a case for reopening of an assessment. The audit party raised a query and, in response thereto, the Assistant Controller of Estate Duty, made a promise to look into the matter. This did not constitute information so as to empower the Assistant Controller to reopen the proceedings under the Act.

20. The question is, therefore, answered in the affirmative and against the Department.