(1997) 03 SC CK 0066

In the Supreme Court Of India

Case No : Civil Appeal No''s. 2389-90 of 1981 (From the judgment and order dt. 27th February, 1980 of the Karnataka High Court in TRC No. 122 of 1975 and TRC No. 81 of 1977)

H. H. VIJAYABA RAJAMATH and Another APPELLANT

Vs

CONTROLLER OF ESTATE DUTY. RESPONDENT

Date of Decision : 08-03-1997

Acts Referred:
Income Tax Act, 1961 — Section 30, 36, 48, 49

Citation : (1997) 141 CTR 369

Hon'ble Judges : D. P. Wadhwa, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D. P. WADHWA, J. :

This is assessees appeal against the judgment dt. 27th February, 1980 of the Karnataka High Court in two reference cases arising under s. 64(1) of the ED Act, 1953 (for short the Act). In the first reference the Tribunal, Bangalore Bench referred the following five questions to the High Court for its opinion and in the second reference one question was so referred. These are as under :

T.R.C. No. 122/75

(1) Whether, on the facts and in the circumstances of the case, the value of gold was rightly included in the principal value of the estate of the deceased ?

(2) If the answer to the above question is in the affirmative, whether the correct value to be included is on the basis of the market value of gold prevailing in India as on the date of death or the international price of gold as on that date ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the market value of the annuity deposits was to be included in the principal value of the estate of the deceased ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance claimed by the accountable persons under s. 48 of the Act in respect of the death duty paid in U.K., interest paid on death duty in U.K., interest payment to Lloyds Bank in U.K., and loss on devaluation ?

(5) Whether, on the facts and in the circumstances of the case, the amount of Rs. 51,000 which became payable to the advocate and the Chartered Accountant of the deceased subsequent to the date of death as allowable as a deduction under s. 36(1) of the ED Act ?"

T.R.C. No. 81 of 1977

Whether, on the facts and in the circumstances of the case, the principal value of the estate of the deceased had to be determined under s. 36 of the Act having regard to the death duty paid in UK and the estate duty payable under the Act ?"

2. Mr. G. C. Sharma, learned senior advocate for the appellants, has, however, confined his submissions to the question of law as stated in question No. (4) in TRC No. 122/75 and did not press other questions all of which however, have been answered against the appellant.

3. For convenience sake we again set out the question No. 4 as under :

"(4) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance claimed by the accountable persons under s. 48 of the Act in respect of the death duty paid in U.K., interest paid on death duty in UK, interest payment to Lloyds Bank in U.K., and loss on devaluation ?"

Under this question, the appellants who are accountable persons claimed the following deductions under s. 48 of the Act :

Pound Sterling

"Death duty paid in U.K.

95,320.12

Interest paid on delayed payment of that duty

8,034.10

Interest and service charges paid to Lloyds Bank

1,078.25

Solicitors fee paid in London

4,855.55"

This case relates to the assessment of the estate duty of the estate of late H. H. Rajkuverba Dowgar Maharani Saheb of Gondal who died on 14th October, 1968 leaving behind extensive properties both in England and in India. The appellants are her two daughters and are accountable persons under the Act. It is not disputed that for death duty paid in the U.K. relief had already been afforded to the appellants by virtue of an agreement entered into between India and U.K. for avoidance or relief of double taxation with respect to estate duty under s. 30 of the Act. The contention, however, was that under s. 48 of the Act this amount of estate duty paid in U.K. be treated as cost of realising or administering foreign property and thus allowable under s. 48 of the Act. While s. 30 applies to the case of reciprocating country, s. 49 provides for allowances for duly paid in a non-reciprocating country. Secs. 30, 48 and 49 may be reproduced as under :

"30. The Central Government may enter into an agreement with the Govt. of any reciprocating country for the avoidance or relief of double taxation with respect to estate duty leviable under this Act and under the corresponding law in force in the reciprocating country and may, by notification in the Official Gazette make such provision as may be necessary for implementing the agreement.

Explanation. - The expression "reciprocating country" for the purposes of this Act means any country which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating country.

48. Where the Controller is satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of India, he may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

49. Where any property passing on the death of the deceased is situate in a non-reciprocating country and the Controller is satisfied that by reason of such death any duty is payable in that country in respect of that property, he may, subject to such rules as may be made by the Board in this behalf, make an allowance of the whole or any part of the amount of that duty from the value of the property.

Explanation. - In this section, the expression "non-reciprocating country" means any country other than India which has not been declared to be a reciprocating country for the purposes of this Act."

At this stage itself we may also note art. VI of the agreement for avoidance of double taxation under s. 30 of the Act entered into between the Govt. of India and the Govt. of United Kingdom of Great Britain and Northern Ireland. It is as under :

"Art. VI. (1) Where one contracting Government imposes duty on any property which is not situated in its territory but is situated in the territory of the other contracting Government, the former Government shall allow against so much of its duty (as otherwise computed) as is attributable to that property a credit (not exceeding the amount of the duty so attributable) equal to so much of the duty imposed in the territory of the other contracting Government as is attributable to such property.

(2) Where each contracting Government imposes duty on any property which is situated :

(a) in the territory of both Governments, or

(b) outside both territories,

each Government shall allow against so much of its duty (as otherwise computed) as is attributable to that property a credit which bears the same proportion to the amount of its duty so attributable or to the amount of the other contracting Governments duty attributable to the same property, whichever is the less, as the former amount bears to the sum of both amounts.

(3) For the purposes of this article, the amount of the duty of a contracting Government attributable to any property shall be ascertained after taking into account any credit, allowance or relief, or any remission or reduction of duty, otherwise than in respect of duty payable in the territory of the other contracting Government."

On the basis of the provisions as contained in ss. 30, 48 and 49 and art. VI of the agreement aforesaid question No. 4 was answered in the affirmative in favour of the Revenue and against the accountable persons. Mr. Sharma, learned counsel for the appellants, accountable persons, submitted that s. 30 had nothing to do with the computation of income (sic) and that scope of ss. 30 and 48 was different. He said s. 30 only provided for the avoidance or relief of double taxation with respect to estate duty leviable under the Act and under the corresponding law in force in the reciprocating country while s. 48 provided for allowing any additional expense incurred in administering or realising property by reason of the property being situated out of India. According to Mr. Sharma, the estate duty paid in U.K. would be an additional expense allowable under s. 48 of the Act. We, however, do not think that Mr. Sharma is right in his submission. As a principle in P. Leelavathamma vs. CED (1991) 188 ITR 803 (SC) it has been held by this Court that estate duty falling upon the estate passing on the death of the deceased is not deductible in computing the net principal value of the estate for the purposes of the Act. Sec. 49 of the Act contradicts the stand taken by Mr. Sharma. This section applies where any property passing on the death of the deceased is situate in a non-reciprocating country and the CED may make an allowance of the whole or any part of the amount of the estate duty payable in the non-reciprocating country from the value of the property. That would, however, be subject to certain rules with which we are not concerned. If we read ss. 48 and 49 together it is difficult to appreciate the argument of Mr. Sharma that where there is an agreement under s. 30 of the Act the estate duty payable in the reciprocating country is nevertheless to be deducted or given an allowance from the value of the property left by the deceased. It is not the case of the appellant that under s. 30 of the Act in terms of the agreement between the two Governments, i.e., the Government of India and the Govt. of U.K., relief has not been granted to the appellants under art. VI of the agreement. Allowance of the estate duty paid in U.K. was given in the estate duty payable in this country. An amount of pound sterling 95,320.12 as the death duty paid in U.K. cannot be treated as an expense for which the appellants are entitled to claim as an additional expense in administering or in realising the property falling under s. 48 of the Act. The appellants are only entitled to deduction of the death duty paid in England out of the estate duty payable as computed by the authorities under the Act in this country. It is difficult to accept the argument of the appellant that relief granted by way of avoidance of double taxation is not a relief under the provisions of the Act and that there is distinction between the relief under the agreement entered into by virtue of the provisions of s. 30 and the relief to be given under s. 48 of the Act.

4. As regards the interest paid on delayed payment of the death duty in England and interest on service charges paid to the Lloyds Bank, the Tribunal has held that no material was produced "either before the lower authorities or before us to show that these amounts would not have been incurred if the property was in India and not in U.K. In this connection, it is necessary to note that the property in U.K. consisted of certain deposits and war bonds which could be easily realised. We see no justification for allowing the claim in respect of these two items". This finding of the Tribunal has not been questioned by the appellants. So far as the amount of pound sterling 4,855.55 towards solicitors fee in London is concerned the ACED held that it was an additional expense in administering or in realising the property by reason of the property being situate outside India and deduction was therefore, allowed.

5. Accordingly, we do not find any merit in these appeals and the same are dismissed. No costs.

