

(1993) 10 GUJ CK 0017
In the Gujarat High Court
Case No : Estate Duty Reference No. 1 of 1979

Jamnaben G. Mistry

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 06-10-1993

Acts Referred:

Estate Duty Act, 1953 — Section 36, 36(1)
Wealth Tax Act, 1957 — Section 2, 44, 6, 7, 7(1)

Citation : (1994) 121 CTR 347 : (1994) 210 ITR 50

Hon'ble Judges : M.B. Shah, J;J.M. Panchal, J

Bench : Division Bench

Advocate : J.P. Shah, for the Appellant; B.J. Shelat, for the Respondent

Judgement

M.B. Shah, J.—The question canvassed at the time of hearing of this matter is limited to what would be the consideration to a purchaser of the property if it is sold in the open market in the context of section 36 of the Estate Duty Act, 1953. Section 36 provides that the principal value of any property shall be estimated to be 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". It is contended that a prudent willing purchaser before offering the price would estimate the value of the property by taking into consideration all the relevant factors including the contingent payments which are required to be made to the to the employees such as gratuity, bonus, etc.

2. The question is required to be decided in the context of an order passed by the Income Tax Appellate Tribunal that the provision for gratuity is not a debt and, therefore, not deductible u/s 44 of the Estate Duty Act. The Tribunal further rejected the claim of deduction of estate duty in the computation of the taxable estate.

3. Being aggrieved by the said decision, the applicant filed an application for making a reference to this court. On that application, the Tribunal has referred the following two questions of law for our opinion :

"1. Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the accountable person was not entitled to the deduction of estate duty in the computation of taxable estate?"

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the actuarially computed liability of Rs. 63,517 was not a rightful deduction as debt or as charge or diminution in value of the estate?"

4. Re. : Question No. 1 :

In the case of P. Leelavathamma (Smt) Vs. Controller of Estate Duty, Andhra Pradesh, Hyderabad, the Supreme Court held that estate duty falling upon property passing on the death of the deceased is not deductible in computing the net principal value of the estate for the purpose of the Estate Duty Act, 1953. The estate duty falling upon property passing upon the death of the deceased had not become a debt or encumbrance until the death of the deceased and is, therefore, not deductible. The same view is taken by this court in the case of Shantaben Narottamdas (A.P. of Late Narottamdas K. Shah) Vs. Controller of Estate Duty, Gujarat, . In that case, the court held that the estate duty is not to be deducted in the computation of the taxable estate. In this view of the matter, in our view, the Tribunal was right in law in holding that the accountable person was not entitled to the deduction of estate duty in the computation of the taxable estate. Hence, question No. 1 is answered in the affirmative, i. e., in favour of the Revenue and against the assessee.

5. Re. : Question No. 2 :

For determining this question, Mr. Shah, learned counsel appearing for the applicant, has vehemently submitted that he was not contending that the provision for gratuity should be deducted as a debt. He submitted that the Tribunal as well as the authorities below ought to have determined the value of the estate on the basis of the criteria provided by section 36, that is to say, the value which the estate would fetch in the open market. It is his contention that a prudent purchaser while purchasing an industrial undertaking or business where there are employees covered by the provisions of the Payment of Gratuity Act or by any voluntary scheme for payment of gratuity or by any award passed by the Industrial Tribunal directing the employer to pay gratuity, would always taken into consideration the contingent liabilities for gratuity which he would be required to provide.

6. As against this, Mr. Shelat, learned counsel for the respondent, vehemently submitted that the question with regard to the deduction on the ground of provision for gratuity is already covered by two decisions of the Supreme Court, viz., Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City, and Bombay Dyeing and Manufacturing Co. Ltd. Vs. Commissioner of Wealth Tax, Bombay, and, therefore, the Tribunal has rightly held that provision for gratuity cannot be deducted in computing the estate. He further submitted that the aforesaid two decisions are affirmed by the Supreme Court in the case of P.

7. At the outset, we would state that the aforesaid three decisions deal with the provision of wealth-tax and deductions under the Wealth-tax Act while computing the net wealth. In the case of Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City, the Supreme Court has negated the claim of the assessee that in computing his net wealth a certain estimated amount should be deducted on account of liability for gratuity to its workmen and staff in accordance with certain awards of the Industrial Court and the Labour Appellate Tribunal made before the relevant valuation date. The court held that the liability of the assessee to pay gratuity to its employees on determination of employment was a mere contingent liability which arises only when the employment of the employee is determined by death, incapacity, retirement or resignation. The liability did not exist in praesenti. The court, therefore, held that the amount claimed could not be deducted as a "debt" in computing the net wealth of the assessee nor can such contingent liability be taken into consideration in computing the net wealth of the assessee u/s 7(2)(a) of the Wealth-tax Act, 1957. Section 2(m) of the Wealth-tax Act, considered by the Supreme Court, is as under (at page 473) :

"net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than, -

(i) debts which u/s 6 are not to be taken into account; and

(ii) debts which are secured on, or which have been incurred in relation to, any property in respect of which wealth-tax is not chargeable under this Act."

8. After considering the aforesaid provision and the contentions, the court held (at page 474) :

"The right to obtain gratuity under the awards arises only when there is determination of employment and not before. The liability does not exist in praesenti; it is contingent upon the determination of employment."

9. Hence, the court held that for determining the wealth there would not be a debt owed and, therefore, it is not required to be deducted. Thereafter, the court considered the provisions of section 7(2)(a) of the Act. The relevant parts are as under (at page 476) :

"(1) The value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date.

(2) Notwithstanding anything contained in sub-section (1), -

(a) where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation dated and making such adjustments therein as the circumstances of the case may require."

10. We may note at this stage that the court was not required to deal with the determination of the value of assets as provided u/s 7(1) of the Act and it has not considered the valuation of any asset on the basis of what it would fetch if sold in the open market on the valuation date. In that case, the court was required to refer to the specific provisions u/s 7(2)(a) for determination of the net value of the assets where the assessee was carrying on a business for which accounts are maintained by him regularly. Sub-section (2) empowers the Wealth-tax Officer to determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustments therein as the circumstances of the case may require. The court referred to the following observations in the case of *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta*,

"Sub-section (2) (a) of section 7 contemplate the determination of the net value of the assets having regard to the balance-sheet and after making such adjustments as the circumstances of the case may require. It does not contemplate determination of the net wealth, because net wealth can only be determined from the net value of the assets by making appropriate deductions for debts owed by the assessee."

11. The court thereafter held (at page 477) :

"The aggregate value of the assets must be computed in accordance with the provisions of section 7. But in the aggregation of the value of all the debts owed by the assessee on the valuation date, section 7 has no operation."

12. Hence, the court held that section 7 does not deal with computation of net wealth. It deals with the computation of the aggregate value of the assets. The aforesaid decision is followed by the Supreme Court in the case of *Bombay Dyeing and Manufacturing Co. Ltd. Vs. Commissioner of Wealth Tax, Bombay*, and *P. Sathrugan Pillai Vs. Commissioner of Wealth Tax, .* In those cases, the court distinguished the decision of the Supreme Court in the case of *Metal Box Company of India Ltd. Vs. Their Workmen, .*

13. In our view, for determining the controversy in the present case, it may be noted that in the aforesaid cases the court has nowhere considered the effect of section 7(1) which empowers the Wealth-tax Officer to determine the value of any asset other than cash on the basis as the what it would fetch if sold in the open market. As stated earlier, where the assessee is carrying on a business for which accounts are maintained by him regularly, sub-section (2)(a) of section 7

empowers the Wealth-tax Officer to determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business.

14. In the case of Metal Box Company of India Ltd. Vs. Their Workmen, the Supreme Court considered the question as to whether computation of bonus payable to the employees under the Payment of Bonus Ordinance, after deducting certain depreciation including provision for gratuity, was in accordance with the Payment of Bonus Ordinance. It was contended by the employees of the company that the company had wrongly reduced the gross profits and the available surplus and the amounts for provision of gratuity, etc., should be added back for the purpose of computation. Dealing with gratuity, the court held that two questions arise for determination, i.e. :

(1) Whether it is legitimate in such a scheme of gratuity to estimate the liability on an actuarial valuation and deduct such estimated liability in the profit and loss account while working out its net profits; and

(2) if it is, whether such appropriation amounts to a reserve or a provision.

15. The court held that if the amount is taken as a reserve, obviously the amount has to be added back while computing the gross profits. The court further observed (at page 62)

"In the case of an assessee maintaining his accounts on mercantile system, a liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business regard being had to the accepted principles of commercial practice and accountancy. It is not as if such deduction is permissible only in case of amounts actually expended or paid. Just as receipts, though not actual receipts but accrued due are brought in for Income Tax assessment, so also liabilities accrued due would be taken into account while working out the profits and gains of the business."

16. The court thereafter considered the decision in the case of Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City, and held that the decision turned on the question whether an estimated liability under gratuity schemes framed under industrial awards amounted to debts and could be deducted while computing the net wealth. The court held, in view of the terms of section 2(m) of the Wealth-tax Act, that as the liability to pay gratuity was not in praesenti but would arise in future on the termination of service, i.e., on retirement, death or termination, the estimated liability under the schemes would not be a debt and, therefore, could not be deducted while computing the net wealth. Thereafter, the court held that the question the required consideration in that case was whether, while working out the net profits, a trader can provide from his gross receipts his liability to pay a certain sum for every additional year of service which he receives from his employees. The court replied in the affirmative as under (at page 64) :

"This, in our view, he can do, if such liability is properly ascertainable and it is

possible to arrive at a proper discounted present value. Even if the liability is a contingent liability, provided its discounted present value is ascertainable, it can be taken into account. Contingent liabilities discounted and valued as necessary can be taken into account as trading expenses if they are sufficiently certain to be capable of valuation and if profits cannot be properly estimated without taking them into account. Contingent rights, if capable of valuation, can similarly be taken into account as trading receipts where it is necessary to do so in order to ascertain the true profits."

17. The court finally held that an estimated liability under gratuity schemes even if it amounts to a contingent liability and is not a debt under the Wealth-tax Act, if properly ascertainable and its present value is fairly discounted is deductible from the gross receipts while preparing the profit and loss account. The court observed that this was recognised in trading circles and that there was no rule or direction in the Bonus Act which prohibits such a practice. The court has further observed as under (at page 68) :

"If under the Income Tax Act an estimated liability ascertainable with substantial accuracy can be taken into account for arriving at the true profits and gains, there is no reason why the same cannot be done under the Bonus Act unless there is no reason why the same cannot be done under the Bonus Act unless there is any provision therein forbidding such a practice recognised by commercial accountancy."

18. The same would be the position while determining the market value u/s 36(1) of the Estate Duty Act, which is as under :

"36. (1) The principal value of any property shall be estimated to be 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."

19. From the aforesaid decision, it is apparent that if the contingent liability is capable of valuation it can always be taken into consideration for determining the value of the estate and a prudent businessman while purchasing the business in the open market would always take into consideration such contingent liabilities and arrive at the proper discounted value (on the basis of scientific valuation). There is no prohibition under the Estate Duty Act which provides that such provision is not to be taken into account or is to be added while computing the net estate of the deceased. No provision is pointed out by learned counsel for the Revenue that there is such prohibition under the Estate Duty Act, Section 44 provides for grant of allowance for funeral expenses, debts and encumbrances and that debts specified in clauses (a) to (d) shall not be allowed. Clauses (a) to (d) apparently do not deal with the provision for gratuity. There is no section providing that the provision made for gratuity is not to be taken into account for determining the principal value of any property as a whole and that the market value is to be determined by ignoring the provision made for payment of gratuity. Sub-section (2) of section 36 only provides that in estimating the principal value

u/s 36(1) the Controller shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time. For deciding the market value, the question is not whether such estimated liability arising under the gratuity scheme or the awards amounts to a debt or not. Even if the liability is a contingent liability and if the discounted present value is ascertainable, it is required to be taken into account for determining the market value.

20. In the case of Vazir Sultan Tobacco Co. Ltd., Hyderabad and Others Vs. Commissioner of Income Tax, Andhra Pradesh, Hyderabad, the Supreme Court referred to the aforesaid decisions and observed that ordinarily an appropriation to gratuity reserve will have to be regarded as provision made for the contingent liability. If the provision is made by adopting a scientific method such as actuarial valuation, then such appropriation would constitute a provision representing fairly accurately a known and existing liability for the year in question. This would be clear from the following discussion in the aforesaid case (at page 574) :

"Ordinarily an appropriation to gratuity reserve will have to be regarded as a provision made for a contingent liability, for, under a scheme framed by a company the liability to pay gratuity to its employees on determination of employment arises only when the employment of the employees is determined by death, incapacity, retirement or resignation or even (cessation of employment) certain to happen in the service career of every employee; moreover, the amount of gratuity payable is usually dependent on the employee's wages at the time of determination of his employment and the number of years of service put in by him and the liability accrues and enhances with the completion of every year of service; but the company can work out on an actuarial valuation its estimated liability (i.e., discounted present value of the liability under the scheme on a scientific basis) and make a provision for such liability not all at once but spread over a number of years. It is clear that if by adopting such scientific method any appropriation is made, such appropriation will constitute a provision representing fairly accurately a known and existing liability for the year in question; if, however, an ad hoc sum is appropriated without resorting to any scientific basis, such appropriation would also be a provision intended to meet a known liability, though a contingent one, for, the expression "liability" occurring in clause 7(1)(a) of Part III of the Sixth Schedule to the Companies Act includes any expenditure contracted for and arising under a contingent liability; but if the sum so appropriated is shown to be in excess of the sum required to meet the estimated liability (discounted present value on a scientific basis) it is only the excess that will have to be regarded as a reserve under clause 7(2) of Part III to the Sixth Schedule."

21. With regard to Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City, the court, after considering the ratio laid down therein, observed

(at page 576) :

"It will thus appear that this court was of the view that though such a liability is a contingent liability and, therefore, not a "debt" u/s 2(m) of the Wealth-tax Act, it would be deductible under the Income Tax Act while computing the taxable profits; in other words different considerations would apply to cases arising under the Wealth-tax Act and the Income Tax Act."

22. Thereafter, the Supreme Court referred to and relied upon the following observations in the case of Metal Box Company of India Ltd. Vs. Their Workmen,

"In the instant case, the question is not whether such estimated liability arising under the gratuity schemes amounts to a debt or not. The question that concerns us is whether while working out the net profits, a trader can provide from his gross receipts his liability to pay a certain sum for every additional year of service which he receives from his employees. This, in our view, he can do, if such liability is properly ascertainable and it is possible to arrive at a proper discounted present value. Even if the liability is a contingent liability, provided its discounted present value is ascertainable, it can be taken into account. Contingent liabilities discounted and valued as necessary can be taken into account as trading expenses if they are sufficiently certain to be capable of valuation and if profits cannot be properly estimated without taking them into account."

23. Following the aforesaid decision, the Madras High Court in the case of Commissioner of Wealth-tax and Others Vs. S. Ram and Others, held that the principle is that where a gratuity provision is based on a scientific or actuarial valuation and it truly reflects the discounted present value of the assessee's future liability as a whole towards his employees, then such a provision must be regarded as a "here and now" liability and not as a contingent one for determining the value of the property. The court further held that payment of gratuity from the point of view of the liability to a workman may be a contingent liability but when on a scientific and actuarial basis, an employer makes a provision for gratuity, such a provision must be regarded as a present, direct and minimum liability of the company for the reason that it represents the present discounted value of the employer's commitment as a whole to pay the workmen gratuity as and when it becomes liable. The court distinguished between "provision for gratuity" and "reserve for gratuity" on the basis of discussion by the Supreme Court in the case of Vazir Sultan Tobacco Co. Ltd., Hyderabad and Others Vs. Commissioner of Income Tax, Andhra Pradesh, Hyderabad, . The court finally held that such a provision for gratuity must be deducted in arriving at the net value of the estate.

24. Mr. Shah, learned counsel appearing for the assessee, pointed out that, against the aforesaid decision of the Madras High Court, a SLP filed by the Revenue has been rejected by the Supreme Court by its order dated January 22, 1990 [1990] 181 ITR 227.

25. In our view, considering the aforesaid judgments, for working out the principal value on the basis of section 36 of the Estate Duty Act, the provision for gratuity is required to be taken into consideration. The principal value of the property is to be estimated on the basis as to what price it would fetch if sold in the open market at the time of the death of the deceased. For determining the market value of the property, the principles that have to be applied are those which are part of the commercial practice or which an ordinary businessman would resort to at the time of estimating the price of the property. He would take into consideration the plus and minus factors, i.e., its peculiar advantages and disadvantages or drawbacks, and would estimate the value with reference to its commercial value rather than with reference to any abstract legal rights or the provisions for deductible debts u/s 44 of the Estate Duty Act. Therefore, a willing purchaser, who is a businessman, would certainly take into account the provision for gratuity which is required to be made and its discounted present value. That means the value in the open market would be determined by taking into consideration all its existing advantages and disadvantages and possible eventualities.

26. The Supreme Court has also dealt with a similar question in the case of Commissioner of Wealth Tax, Bihar, Patna Vs. Maharaja Kumar Kamal Singh, . In that case, the court considered the provisions of sections 7 and 2(m) of the Wealth-tax Act, 1957, and held that both the provisions must be read harmoniously, but they apply to two different stages. Section 7 relates to the estimation of the market value of the asset, while section 2(m) enjoins that from the estimate arrived at u/s 7, the debts owed by the assessee are to be deducted. Such debts owed would be computed in accordance with section 2(m) but the estimation of the value of an asset is on the basis of the price which the asset would fetch in the open market taking into consideration the view-point of a willing purchaser. The court pertinently observed (at page 210) :

"But in estimating the value of the assets, this possibility, which is indeed in the nature of an obligation of the Compensation Officer, is a hazard, a clog or a hindrance which, if a proper estimate is made u/s 7(1) by the Wealth-tax Officer, he has to take into consideration. It is not a question of deducting the debt but a question of estimation of the value of the asset in question."

27. Thereafter, the Supreme Court distinguished the decision in the case Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City, by holding that this decision is not relevant at all. The court further observed that the possibility of deduction of the dues of the assessee for agricultural Income Tax u/s 4(c) of the Bihar Land Reforms Act from the compensation money is a factor that affects the price or value of the compensation money receivable by the assessee under the Bihar Land Reforms Act and until it has been finally determined that no arrears of agricultural Income Tax are payable at all, will remain a hindrance and the value of which must be quantified and deducted before a proper estimate of the value of the asset, viz., money receivable by the

assessee, is prepared. The court held that this factor is to be taken into consideration in estimating what it would fetch in the open market. The court negated the contention of the Revenue that by this method it was permitting indirectly deduction of a debt which was prohibited by the legislation. The court held that section 7 and 2(m) of the Act apply at two different stages. Section 7 is the estimation of the market value of the asset whereas section 2(m) enjoins that from the same the debt owed by the assessee is to be deducted. The debt owed would be computed in accordance with section 2(m) but the estimation of the value of the asset is on the basis which such asset would fetch in the open market taking into consideration the view-point of a willing purchaser.

28. Similarly, in the case of *Controller of Estate Duty, Gujarat-I, Ahmedabad Vs. Smt. Mrudula Nareshchandra*, the Supreme Court dealt with the question as to whether or not the goodwill of the partnership firm in a case where it was specifically stipulated in the partnership agreement that the partner dying shall have no right whatever in the goodwill of the firm, is to be taken into account for determining the value of his estate. The court dealt with the provisions of section 2(15), 2(16) and 36 of the Estate Duty Act. The court thereafter referred to clause (10) of the partnership deed, which provided that the firm shall not stand dissolved on the death of any of the partners and the partner dying shall have no right whatever in the goodwill of the firm and so long as the partnership firm exists, goodwill as an intangible asset will belong to all the partners. In that context, the court held that the goodwill of the firm after the death of the dying partner does not get diminished or extinguished. Whoever has the benefit of that firm has the benefit of the value of that goodwill. The relevant observations of the court are as under (at page 351) :

"It is clear, therefore, that goodwill exists up to the death among the partners, if it does, then the property in the goodwill will also exist in the partners. After his death, the partner shall have no right. It means to convey that, as a result of inheritance, the heirs of the partners will not get any share but it cannot evaporate nor can the parties by agreement defeat the rights of the Revenue. The very moment life ceases, the right of the deceased in the asset ceases and at that moment, the property shall pass and/or shall be deemed to pass on. Jawaharlal Nehru in *The Discovery of India* quotes Aurobindo Ghose thus :

"Aurobindo Ghose writes somewhere of the present as 'the pure and virgin moment,' that razor's edge of time and existence which divides the past from the future, and is, and yet, instantaneously is not. The phrase is attractive and yet what does it mean? The virgin moment emerging from the veil of the future in all its naked purity, coming into contact with us, and immediately becoming the soiled and stale past. Is it we that soil it and violate it? Or is the moment not so virgin after all, for it is bound up with all the harlotry of the past?" (1983 Impression page 21).

So, therefore, in that razor's edge of time and existence which divides the past from the future, and is, and yet, instantaneously is not, the property indubitably

passes on, to whom depends upon the facts and circumstances of a particular case. If property exists, as it must, and the clause does not and indeed cannot say that goodwill vanishes, then the share of the partner exists. If that is so, then the title to that property cannot be in the vacuum."

29. The court finally held that the share of the deceased in the partnership did not evaporate or disappear. It went together with the other assets and should be valued in the manner contemplated under the Act or the Rules framed thereunder. In the present case also, applying the said analogy, it can be said that, if there is a contingent liability for gratuity, it will not disappear or evaporate because of the deceased's death. It is required to be scientifically evaluated and its discounted present value is to be taken into account before deciding the market value of the estate. Hence, if there is provision for gratuity which is determined scientifically or on actuarial basis, then that amount is required to be deducted before arriving at the market value of the estate.

30. In the result, it can be held that, while determining the market value of the estate, the authority has to estimate on the basis as to what price it would fetch if sold in the open market. A prudent purchaser or businessman would take into consideration the plus and minus factors before offering a price. Apart from other facts which he may take into consideration, he is bound to consider the liability to pay gratuity to the employees. He may work out that liability by a scientific method or on the basis of actuarial valuation which would constitute all these factors, he would determine the market value of the estate. As stated earlier, at this stage for determining the value of the property, section 44 would have no application. That question for deduction of amount of debt or encumbrance would arise only when the value of the estate for the purpose of estate duty is determined and, as stated above, that determination would be on the basis of the market price. For determining the market price, as stated earlier, all the liabilities are required to be taken into consideration including the provisions for gratuity which scientifically assessed at its discounted present value. That liability for gratuity may be either under the statutory provision or under the industrial awards or by contract.

31. Hence, question No. 2 is answered partly in the affirmative and partly in the negative. It is held that the Tribunal has erred in law in holding that the actuarially computed liability of Rs. 63, 517 was not a rightful deduction as diminution in the value of the estate. The Tribunal rightly held that, for the said amount, deduction on the basis that it is a debt or charge cannot be allowed. Still, however, on account of the said liability, there would be diminution in the value of the estate, which is required to be fixed u/s 36(1) of the Estate Duty Act and, therefore, deduction is required to be allowed.

32. Reference is answered accordingly with no order as to costs.