(1975) 04 MAD CK 0014

In the Madras High Court

Case No : Tax Case No. 213 of 1969 (Reference No. 69 of 1969)

Kaja Mian Wakf Estate APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 29-04-1975

Acts Referred:

Estate Duty Act, 1953 — Section 12, 62, 62(1), 62(2), 73(5)

Citation : (1977) 106 ITR 98

Hon'ble Judges : V. Sethuraman, J;V. Ramaswami, J

Bench : Division Bench

Advocate : T. Srinivasan, for S.M. Amjad Nainar, for the Appellant; J. Jayaraman, for the Respondent

Judgement

V. Ramaswami, J.—This reference has been made u/s 64(1) of the Estate Duty Act and relates to the estate of the late N. M. Kaja Mian

Rowther. The Deputy Controller of Estate Duty sought to include in the principal value of the estate passing on the death of the deceased, the

properties comprised in Messrs. Kaja Mian Wakf Estate, Trichy. The muthavalli of that wakf, as the accountable person, contended that the

deceased had no interest in the wakf properties and that Section 12 of the Estate Duty Act is not attracted. But the Deputy Controller of Estate

Duty overruled this objection and included the wakf property also in the principal value of the estate passing. He also overruled another contention

of the accountable person that the entire value of the share of Mohamed Mian Rowther & Co. (P.) Ltd. is not includible in the principal value of

the estate passing, as the deceased had only 33 shares out of 495 and that it was not a controlled company attracting the provisions of Section 17

of the Act. Thus, both the value of the property belonging to the wakf and the total assets of Mohamed Mian Rowther & Co. (P.) Ltd. were

included in the principal value of the estate by an order dated March 28,1962. There was an appeal to the Appellate Controller of Estate Duty, but

without any success. On a further appeal, the Tribunal held that the properties covered by the wakf are not includible in the dutiable estate of the

deceased and that so far as the assets of Mohamed Mian Rowther & Co. (P.) Ltd. are concerned, only the value of the 33 shares held by the

deceased was includible in his estate. This order of the Tribunal is dated June 23, 1966. At the instance of the revenue, the question relating to the

includibility of the wakf property in the dutiable estate was referred to this court and the view of the Tribunal was confirmed and this decision is

reported in Controller of Estate Duty Vs. K.A. Kader and Others, .

2. As per the order of assessment by the Deputy Controller of Estate Duty, the duty payable was Rs. 5,71,348''34. The muthavalli of the wakf as

the accountable person in respect of the wakf estate was served with a notice u/s 73 on April 5, 1962, demanding the payment of a sum of Rs.

3,29,710.60 being that part of the estate duty payable in respect of the wakf estate held by the Deputy Controller as passing u/s 12. Time for

payment was granted till October 31, 1964, or the date of disposal of the appeal filed by the muthavalli against the order of assessment, whichever

is later. The appeal was disposed of on September 2, 1964. There was further adjustment with reference to some land compensation and other

recoveries and the balance of estate duty payable by the wakf was only Rs. 1,48,039-91. Since this amount was not paid as per the demand

within the due date, the Assistant Controller of Estate Duty initiated proceedings for levying penalty and ultimately levied penalty of a sum of Rs.

5,000 u/s 73(5) of the Act by order dated November 19, 1965. The muthavalli as the accountable person in respect of the wakf property filed an

appeal before the Appellate Controller of Estate Duty against this order levying penalty. The appeal was dismissed by the Appellate Controller

summarily on the ground that the muthavalli had defaulted in payment of the duty before presenting the appeal as required by the proviso to Section

62(1) of the Act and that, therefore, the appeal was incompetent. This view of the Appellate Controller was confirmed by the Tribunal. At the

instance of the accountable person, the following question has been referred to this court:

Whether, in the facts and circumstances of the case, the Tribunal was justified in rejecting the accountable person''s contention that Section 46(1)

of the Indian Income Tax Act, 1922, having been repealed by the Income Tax Act, 1961, the levy of penalty u/s 73(5) of the Estate Duty Act,

1953, read with Section 46(1) of the Indian Income Tax Act, 1922, was illegal ?

3. It may be seen from the foregoing facts that the real controversy before the Appellate Controller and the Tribunal related to the maintainability of

the appeal against the penalty order and in the view taken by the Appellate Controller and the Tribunal that the appeal is not maintainable, the

merits of the case were not gone into. We, therefore, reframe the question in order to bring the real controversy between the parties in the question

before us. We, accordingly, reframe the question as follows :

Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in holding that the appeal before the Appellate Controller

was not competent ?

4. It may be seen from the facts stated above that by order dated June 23, 1966, the Tribunal had, in the appeal against the assessment

proceedings, held that the wakf property did not pass u/s 12 and was not includible in the principal value of the estate of the deceased. This view

was also confirmed by this court in the reference which is reported in Controller of Estate Duty Vs. K.A. Kader and Others, . The result of the

order of the Tribunal was that the wakf property could not have been included by the Deputy Controller of Estate Duty in the estate of the

deceased. Therefore, there was no question of payment of any duty by the muthavalli as the accountable person in respect of this wakf property.

Further, it was brought to our notice that when the appeal was pending before the Tribunal, in the assessment proceedings, the muthavalli

(accountable person) had obtained an order of stay of collection of estate duty on March 5, 1966, even before the Appellate Controller of Estate

Duty disposed of the appeal against the penalty order as incompetent. The Appellate Controller should have taken note of the said order and even

if the appeal was incompetent, he should have considered the question of excusing the delay u/s 62(2), which he had not done. Further, the effect

of the order of the Tribunal setting aside the inclusion of the wakf property in the estate of the deceased was that even on the day when the Deputy

Controller of Estate Duty gave the order of assessment, no duty was payable. In other words, the setting aside takes effect from the date of the

order of the Deputy Controller of Estate Duty. If so construed, no duty was payable in respect of the wakf property, so that, even on the merits,

no penalty could be levied. A fortiori, the appeal filed against the penalty order could not have been dismissed as not maintainable on the ground

that the duty had not been paid, which was not legally leviable. The result is that the appeal before the Appellate Controller was maintainable and

the view of the Tribunal that it was not maintainable is incorrect. We, accordingly, hold that the Tribunal was not justified in holding that the appeal

was not competent. We answer the reference as reframed in favour of the accountable person. The result of it is that the Tribunal will now go into

the appeal on merits. The accountable person will be entitled to the costs of this reference. Counsel''s fee Rs. 250.

