
(1978) 02 AHC CK 0029
In the Allahabad High Court
Case No : E.D.R. No. 660 of 1974

MAKKI MIAN

APPELLANT

Vs

CONTROLLER OF ESTATE DUTY.

RESPONDENT

Date of Decision : 06-02-1978

Acts Referred:

Citation : (1978) 7 CTR 213

Hon'ble Judges : Satish Chandra, J

Bench : Division Bench

Judgement

Satish Chandra, J. - Haji Inayat Hussain had died on 8th February, 1962. His son Makki Mian filed a return of the estate of the deceased. The Assistant Controller passed an ex parte assessment order on 23rd February, 1963 computing the principal value of the estate at Rs. 301,500/-. The accountable person appealed and succeeded. The initial order was set aside and the Assistant Controller was directed to make a fresh assessment. On remand the Assistant Controller passed a fresh order dated 4th March, 1967 computing the principal value of the estate at Rs. 3,55,000/-. The accountable person again went up in appeal. The Appellate Controller confirmed the finding that because of the defaults of the accountable person the Assistant Controller was entitled to pass an ex parte assessment order. The other point pressed before him related to Chand Building. The accountable person asserted that this building had been gifted to his deceased wife more than two years prior to his death, and so, the value of this property ought to have been excluded. The Appellate Controller accepted this submission and remanded the case to the Assistant Controller with the direction to go into all the relevant aspects relating to Chand Building and pass a fresh order according to law with regard to it.

2. After this second remand the Assistant Controller took up the matter again and valued the Chand Building at Rs. 1,00,000/-. We deducted this amount and held that the principal value of the immovable properties came to Rs. 2,54,082/-. The accountable person again went up in appeal. The Appellate Authority

accepted the submission of the assessee that there was no basis for valuing the Chand Building at Rs. 1,00,000/- when the same building had been valued at a higher figure by the Assistant Controller himself on the earlier occasion. He computed the value of the Chand Building by multiplying the annual letting value by twenty, i.e. Rs. 7138/- X 20. He also granted an allowance of 1/6 for repairs in respect of the remaining buildings while computing the principal value of the estates. Ultimately he concluded that the total value of the immovable properties was Rs. 1,52,400/-.

3. The Assistant Controller went up in appeal to the Tribunal. His grievance was accepted. The Tribunal held that the Assistant Controllers second assessment order permitted re-opening of the valuation of Chand Building only and that was done by the Income Tax Officer. The assessee had no legitimate grievance thereafter. The Appellate Authority had no jurisdiction to refix the valuation of the remaining immovable properties all over again. The appeal was allowed and the valuation of Rs. 2,54,082/- as determined by the Assistant Controller in his third assessment order was accepted.

4. At the instance of the assessee the Tribunal has referred the following questions of law for our opinion :-

1. Whether on the facts and in the circumstances of the case the Income tax Appellate Tribunal was justified in holding that the Zonal Appellate Controllers order was without jurisdiction.

2. Whether on the facts and in the circumstances of the case the Zonal Appellate Controller was justified in excluding the correct value of Chand Building from the third assessment."

5. As already seen the Assistant Controller had valued the Chand Building at Rs. 1,00,000/-. The assessee could legitimately feel aggrieved by this valuation. The Zonal Appellate Authority, therefore, decided to entertain this objection and adjudicate it. He held that there was no basis for computing the value at Rs. 1,00,000/-. The Assistant Controller had himself adopted the method of capitalizing the annual letting value of the building by twenty in order to arrive at the principal value of the immovable properties. The Appellate Authority, therefore, adopted the same course. The total annual letting value of all the properties worked out, according to the Assistant Controller at Rs. 17,319/-. In this figure was included an amount of Rs. 7138/-, being the annual letting value of the Chand Building. He, therefore, excluded this sum from the total annual letting value of the remaining eight properties, i.e. Rs. 10,180/-. From this amount he deducted the usual water tax and house tax allowances as well as 1/6 for repairs, and computed the net annual letting value of the properties at Rs. 7670/-. By capitalizing the sum by twenty, the value of the properties came to Rs. 1,53,400/-. It will be seen that the Appellate Authority has not tinkered with or touched the annual letting value of the remaining eight properties. He has accepted the figure reached by the Assistant Controller. Since the Assistant

Controller had taken the annual letting value of all the properties together, the Appellate Authority had to separate the value of the Chand Building, and then make the necessary calculations by computing the annual letting value and deducting from it the usual allowances in respect of house and water tax as well as repairs. This very method was adopted by the Assistant Controller.

6. There is, however, one difference. The Assistant Controller had allowed 1/10th for repairs. The Zonal Appellate Authority, gave an allowance of 1/6th for repairs. To this small extent it can legitimately be accepted that he interfered with the computation of the valuation of the remaining eight properties, because the Income Tax Officer had granted only 1/10th of the annual letting value towards repairs. If the allowances in respect of repairs is taken at ten per cent of the annual letting value, the valuation of the remaining eight immovable properties would work out to Rs. 8286/-, instead of Rs. 7670/- as calculated by the Appellate Authority. The value of the eight immovable properties would hence come to Rs. 1,65,720/-, instead of Rs. 1,53,400/- as computed by the Appellate Authority. To this small extent, of course, the order of the Appellate Authority was outside the purview of the appeal filed by the accountable person. The appellate Authority, however, took the correct value of the Chand Building and was justified in excluding the sum from the third assessment. With these observations we answer the questions referred to us as follows :

1. In the negative, in favour of the assessee and against the Department.
2. In the affirmative, in favour of the assessee and against the Department.
7. The assessee would be entitled to costs which are assessed at Rs. 200/-.