

(1969) 04 GAU CK 0001
In the Gauhati High Court
Case No : Estate Duty Reference No. 2 of 1966

Nandlal Goenka

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 25-04-1969

Acts Referred:

Estate Duty Act, 1953 — Section 62, 63

Citation : (1970) 77 ITR 796

Hon'ble Judges : S.K. Dutta, C.J;K.C. Sen, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee and S.N. Medhi, for the Appellant; G.K. Talukdar, Senior Govt. Advocate, for the Respondent

Judgement

Sen, J.—In this reference u/s 64(1) of the Estate Duty Act, 1953, hereinafter called the "old Act", provisions whereof apply to the instant case, the following questions have been referred to us for our opinion by the Central Board of Direct Taxes, New Delhi :

" (1) Whether, on the facts and in the circumstances of the case, there was any material for the finding of the Board that the ownership of the properties and shares standing in the name of Shri Nandlal Goenka passed on the death of the deceased ?

(2) Whether, while disposing of an appeal under the provisions of Section 63 of the Estate Duty Act, 1953, at it stood before the amendment in 1958, the Board had the power to enhance the value of one of the properties where the net effect of the Board's order was a reduction in the value of all the properties taken together.

2. The facts arising out of this reference are as follows:

The estate duty assessment pertains to the estate of late Shri Gordhan Das Goenka, who died on the 26th December, 1953. His only son, Nandlal Goenka, furnished an account of the properties which passed on to him on the death of

the deceased, to the Assistant Controller of Estate Duty, Dibrugarh. The Assistant Controller completed the assessment taking the status of the deceased as an individual and determined the principal value of the estate at Rs. 5,64,484 and the estate duty payable at Rs. 63,328.67 P. During the course of the assessment the accountable person claimed that certain properties and shares standing in his name should not be deemed to belong to the deceased. The Assistant Controller negated this contention. On appeal to the Board, it allowed the contention of the accountable person that the correct status of the deceased was that of a karta and it held that only the coparcenary interest of the deceased, i.e., 1/3rd share only in the various properties left by him should be included in the estate duty assessment. The next important fact is about the valuation of various items of properties. In doing so, the Board allowed a reduction of Rs. 95,092 which resulted in the net reduction of Rs. 38,000 as assessed by the Assistant Controller, with the modification that the value of the Ratannagar property was raised.

3. In so far as the first question is concerned, it is not very happily worded. What we understand from it is that certain properties were included in the assessment for which a claim was preferred that they belonged to the accountable person in his individual capacity and not to the joint family, of which the deceased was the karta. These properties were acquired in the name of the accountable person, namely, Nandlal in the year 1946, when he was a minor. This contention was also negated by the Board on the footing that the source of these investments was the undisclosed income of the joint family and not any outside source as claimed by the family. In the circumstances, the Board did not find any merit in the contention, that the properties standing in the name of Nandlal were his own individual acquisitions. This finding was based on a judgment of the Appellate Assistant Commissioner in an Income Tax matter.

Question No, 1

4. On the above findings, we have to decide the point of law whether the properties standing in the name of Nandlal were the properties of the joint family inherited from his father. Mr. J. P. Bhattacharjee has strenuously urged before us that the judgment of the Appellate Assistant Commissioner is not relevant in this case and cannot be treated as material evidence for coming to the conclusion that the disputed properties were the inherited properties of Nandlal Goenka. Against this, Mr. G. K. Talukdar, appearing for the department, has urged that even assuming that the judgment as passed by the Appellate Assistant Commissioner in an Income Tax matter is not relevant, the Board has discussed other facts as appearing in its judgment (vide paragraph 2) in coming to its conclusion. On a perusal of the order, it does not appear to us that the Board relied upon any other evidence excepting the judgment of the Appellate Assistant Commissioner arising out of a proceeding u/s 34 of the Income Tax Act, 1922. Now the question, therefore, arises whether the judgment of the learned Appellate Assistant Commissioner should be the only criterion in determining the

status of the assessee, Nandlal. It will appear that the following ground of appeal was taken before the Board :

" (18) For that the learned officer should not have been prejudiced by the supplementary assessment made u/s 34 of the Income Tax Act for the assessment year 1947-48, proceedings in respect of which were started without any basis or evidence and he should not have overlooked the fact that appeal was already preferred against the said assessment denying liability in respect thereof."

5. This ground clearly shows that the impugned judgment of the Appellate Assistant Commissioner on which the Board and the Estate Duty Officer relied upon could not have been treated as a final judgment and as such, implicit reliance thereon was uncalled for. Further, it appears that the Board did not discuss the merits of the ground stated before and as such it cannot be said that the judgment of the Appellate Assistant Commissioner should be treated as a very strong material to negative the contention of Nandlal.

6. In this reference, a judgment of the Tribunal has been filed in which it appears that the judgment of the Appellate Assistant Commissioner was on this matter set aside and the assessee's contention as now taken before the Board was upheld. We are not going to take any notice of this judgment as it is for all purposes an additional evidence, which is required to be considered by the Board alone in coming to a finding of fact. But since the judgment of the Appellate Assistant Commissioner as stated before us was in a nebulous condition, it was unsafe for the Board to rely upon the same in coming to the conclusion that the properties were the heritable properties of the son of the deceased, Gordhan Das Goenka. In such circumstances, it may easily be said that practically there was no evidence before the Board, on which such a conclusion could be arrived at. It is undoubtedly true that the High Court is not concerned with the sufficiency of evidence on a reference. It is only if there is no evidence which would justify the decision of the Board, that a question of law would arise which would invoke the advisory jurisdiction of the High Court. On an overall consideration of the matters presented before us and hearing the arguments of the learned counsel, we are of the view, that the finding of the Board was arrived at on no evidence at all. As such, the question No. 1 as posed before us is answered in the negative.

Question No. 2.

7. It will appear that a property in Ratannagar in Rajasthan, the value whereof was initially taken at Rs. 6,500, but on receipt of a full valuation report from the Assistant Controller of Estate Duty, Jaipur, the valuation of this property was estimated to be Rs. 32,000. In spite of it, the valuation of the property was taken by the Assistant Controller of Estate Duty at Rs. 6,500, but after bearing the arguments of the learned advocates, the estimated valuation of this property was raised by the Board to Rs. 18,500 as against Rs. 6,500, previously assessed in the assessment. Undoubtedly, as appearing from the statements of the case,

there was a total reduction of valuation of the properties, but the question which requires our consideration is whether under the appropriate provisions of the Estate Duty Act, it was justifiable on the part of the Board to increase the valuation of the said property. Section 63 of the old Act provides for appeal against determination by the Controller. It appears that, amongst others, the Central Board of Revenue can entertain appeal of any valuation made by the Controller, order determining tire duty payable, order payment of penalty u/s 56, make any final order or adjudication, having the effect of imposing a liability or an obligation to pay duty in respect of any property, order imposing liability for account in respect of any property and order refusing to grant certificate of discharge or other certificate under the Act. The provisions in this Section 63, or the provisions u/s 62 which relate to rectification of mistakes relating to valuation for estate duty, do not confer any jurisdiction upon the Board to enhance the valuation of a particular property on an appeal by an accountable person, although overall reduction may be ordered. Mr. Talukdar has urged that since there has been no raising of the valuation of all the properties by the Board, it cannot be said that the assessee, Nandlal, has been prejudiced thereby and as such, the Board had jurisdiction to increase on its own conclusion, the valuation of any particular item of property. For the purpose of the appeal, such a finding may not adversely affect the accountable person, but in the long run, and in subsequent proceedings, etc., both under the Estate Duty Act and the Income Tax Act, such a valuation may recoil on the assessee, Nandlal. Accordingly, in our opinion, it is not open to the Board to raise any ground which would work adversely to the assessee and which makes his position in so far as Ratannagar property is concerned worse than what it was in the order appealed against. This matter might have been gone into by the Board if the department had appealed against the valuation of a particular property which came under the operation of the Estate Duty Act. In such circumstances, we are not inclined to hold that the Board in this regard proceeded in accordance with law. Accordingly, this question No. 2 is answered in favour of the assessee, Nandlal, and in the negative. The assessee will get costs, hearing fee being assessed at Rs. 100.

S.K. Dutta, C.J.

8. I agree.