(1994) 09 SC CK 0114

In the Supreme Court Of India

Case No : Civil Appeal No. 3360 Of 1984

Nita Taneja (Smt) APPELLANT

Vs

Asstt. Controller and Another RESPONDENT

Date of Decision : 07-09-1994

Acts Referred:
Estate Duty Act, 1953 — Section 61

Citation : (1995) 123 CTR 592 : (1995) 211 ITR 462 : (1995) 3 SCC 206 Supp

Hon'ble Judges : S. C. Sen, J;K. S. Paripoornan, J;B.P. Jeevan Reddy Reddy, J

Bench : Full Bench

Final Decision : allowed

Judgement

1. Heard learned Counsel for the parties.

2. This appeal is preferred against the judgment of the Patna High Court see Smt. Nita Taneja Vs. Asst. Controller of Estate Duty and Others, dismissing the writ petition filed by the appellant. The matter arises under the Estate Duty Act, 1953.

3. One, B.P. Taneja, died on March 29, 1970. His wife, the appellant herein, filed a return as an accountable person stating that only half the estate held by the deceased passed to her inasmuch as she was entitled to the other half. The return filed by her was accepted by the authority with certain modifications. Later, on October 26, 1977, the Assistant Controller issued a notice u/s 61 of the Estate Duty Act proposing to rectify the assessment order. According to this notice, on the death of the deceased, the entire estate passed and not merely half of it. The appellant filed objections contending, inter alia, that the mistake, if any, was not a mistake apparent from the record warranting invocation of the power of rectification u/s 61 of the Estate Duty Act. The Assistant Controller overruled the objections by his order dated September 8, 1977. In this order, the Assistant Controller did not specifically deal with the objections raised by the appellant that since there was no mistake apparent from the record, the power of

rectification could not be exercised. The appellant questioned the order of the Assistant Controller by way of a writ petition filed in the High Court. The High Court dealt with the other points raised by the appellant but refused to deal with the submission that the power of rectification was not available (inasmuch as there was no error from the record) on the ground that the said issue was not dealt with by the Assistant Controller. The said order is questioned in this appeal.

4. From the order of the Assistant Controller, it does not appear that a personal hearing was given to the appellant. Be that as it may, the fact remains that he did not deal with the objection aforesaid which was expressly raised by the appellant in her memorandum of objections/ explanation. The very same objection was repeated in the High Court. Though we cannot say that the High Court was not justified in the view it has taken on the said question, we are of the opinion, having regard to all the facts and circumstances of the case, that it would be appropriate if we dealt with the said question on the merits. We have taken into consideration the meagre amount of tax involved, the fact that the matter relates to the estate of a person who died in 1970 and the further fact that the Act has since been repealed.

5. We are not satisfied that this was a case where the power of rectification could have been invoked. According to the school of Hindu law governing the parties herein, the appellant was entitled to a share if a partition had taken place during the lifetime of the deceased. Whether she was entitled to demand a partition, we are not sure. In such a situation, if the order of assessment accepted that she had half a share and that only the deceased's half interest passed on his death, it cannot be said that the order suffers from an error apparent from the record which is amenable to rectification u/s 61 of the Estate Duty Act. At best, it was a debatable question. On this ground alone and without expressing any opinion on the facts of the case, we allow this appeal and set aside the order of the Assistant Controller dated September 8, 1977. There will be no order as to costs.