(1986) 02 PAT CK 0015

In the Patna High Court

Case No : Tax Case No. 201 of 1976

Paras Nath Singh APPELLANT

Vs

Assistant Controller of Estate Duty RESPONDENT

Date of Decision : 20-02-1986

Acts Referred:
Estate Duty Act, 1953 — Section 64(2)
Income Tax Act, 1961 — Section 260

Citation : (1986) 53 CTR 241 : (1986) 159 ITR 199 : (1987) 30 TAXMAN 444

Hon'ble Judges : Uday Sinha, J;Nazir Ahmad, J

Bench : Division Bench

Advocate : Lal Narain Sinha and Susheel Chandra Sinha, for the Appellant; B.P. Rajgarhia and S.K. Sharan, for the Respondent

Judgement

Uday Sinha, J.—This is a reference u/s 64(2) of the Estate Duty Act, 1953. The question referred to us for our opinion is as follows :

" Whether, on the facts and in the circumstances of the case or evidence on record, the Tribunal was justified in including the value of Sita Ram Sadan at Boring Road in the estate of late Kedarnath Singh as his individual income on the footing that it was his personal property ?"

The facts, as appear from the statement of the case, are that Kedarnath Singh died on September 18, 1960, leaving behind several assets including a house in the town of Patna known as " Sita Ram Sadan " on Boring Road. This house is the bone of contention between the assessee and the Revenue. The stand of the Revenue is that it was part of the estate of the deceased " individual " and passed on his death to his son, Paras Nath Singh, the accountable person. The stand of the assessee was that this house was the joint property of the Hindu undivided family of the deceased and hence only his interest in the house passed to his heirs on his death. The Assistant Controller, the Appellate Controller as well as the Appellate Tribunal have rejected the stand of the assessee. Hence, the present reference before us at the instance of the assessee after the Tribunal had rejected the application for making a reference to this court.

2. Learned counsel for the assessee has submitted with his usual eloquence and punch that the Tribunal was in error in the view that it took.

3. Some facts which need be stated here are that the land on which the house stands was purchased in the name of Paras Nath Singh, the son of the deceased, in 1939. The building was constructed in 1941-42 by the deceased. Paras Nath Singh, the accountable person, was recorded in the municipal records. It is not in controversy that Paras Nath Singh had no income of his own to construct the building. Parties are at one in contending that although the property stood in the name of Paras Nath Singh, it was not his exclusive property, but that it was a benami. According to the Revenue, it was benami of the deceased " individual". According to the assessee, it was benami of the Hindu undivided family of which the deceased was the karta. It is not in controversy that there was a Hindu undivided family of which the deceased was the karta. The deceased was employed as Tahsildar-cum-Manager of Amawan Tekari Raj. In that post, he had individual income also. Thus, the deceased had individual income as well as income from his Hindu undivided family consisting of himself and his sons. Another significant aspect is that the deceased was possessed of another house at village Murgawan. This house had always been treated as joint family property house whereas the house " Sita Ram Sadan " at Patna had always been shown by the deceased in his Income Tax returns as his individual property.

4. Upon these facts, it has to be decided whether the house was rightly held to be individual property of the deceased and which passed to the accountable person on the death of the deceased. Mr. L.N. Sinha, learned counsel for the assessee, submitted that the Appellate Controller having found that the Hindu undivided family had an income between Rs. 15,000 to Rs 20,000 from the zamindari and Rs. 1,500 to Rs. 5,000 from Kastkari, it failed to appreciate that the burden of establishing that the property fell within the taxing statute was on the Revenue. According to him, the Tribunal further failed to appreciate that the point at issue, whether the benami character of the purchase was for the benefit of Kedarnath Singh, had not been established by the taxing authority. His stand was that the accountable person had taken up the position that it was Hindu undivided family property, only in rebuttal of the stand of the Revenue that it was individual property of the deceased. If the benami character was not established, nor the nature of the purchase on behalf of the joint family, then, no part of the property could enter into the calculation of the liability of the estate of the deceased. The sum and substance of the submissions urged on behalf of the assessee was that if there was an Hindu undivided family and if there was nucleus sufficient for the acquisition of the house in question, the assessee had discharged his onus of establishing that it was Hindu undivided family property and that it was for the Revenue to show that it was not so. According to Mr. Sinha, the fact that the deceased was showing this property as his individual property in his Income Tax returns could not change the nature of the Hindu

undivided family property.

5. The submission is attractive but devoid of substance. It is true that the deceased had property. For the sake of argument, I shall assume that it was sufficient for acquisition of this house property, i.e., there was adequate nucleus. Even so, that does not conclude matters. There is no bar on a member of a joint Hindu family or the karta acquiring separate property --separate from the Hindu undivided family. In this case, it will be appreciated that there are some very glaring circumstances staring at the assessee in the face. The first is that the deceased had personal/separate income apart from the income from the Hindu undivided family property. This was by virtue of his service in the Tekari Raj. The second is that there is/was a house at Murgawan which the deceased accepted as Hindu undivided family property. The third circumstance is that the deceased who was the karta of the Hindu undivided family was the best person to say which property was Hindu undivided family and which property was separate acquisition. He, in his Income Tax returns year after year, showed this property--Sita Ram Sadan--as individual property and Murgawan house as Hindu undivided family property. There cannot be a better evidence of the separate classification of the property. It is nobody''s case that the deceased had animosity or any reason to characterise this property as individual property when he was showing the other property as Hindu undivided family property.

6. Thus, there are materials to show that this property was the individual property of the deceased.

7. The above conclusion is based upon the assumption, as stated earlier, that there was adequate nucleus for acquisition of the house at Patna. No material, however, has been produced by the accountable person to show that the assumption is well sustained. No accounts have been produced to show that there was any surplus for the acquisition/construction of the house. The mind is tempted to imagine that an estate of 105 acres of land could in all probability provide the nucleus for construction of the house at Patna, but there is no scope for us to imagine. There is nothing on the record to show the nature of the land and the income therefrom. There is nothing on the record to show that there was any surplus at the time of the acquisition. In that view of the matter, there is nothing on the record to show that the house "Sita Ram Sadan" was Hindu undivided family property.

8. The sum total is that there were materials/circumstances from the record to show that " Sita Ram Sadan " was individual property of the deceased. No material was produced before the Revenue to show that it was Hindu undivided family property. The volition of the deceased in including this house in his individual Income Tax returns is a very telling circumstance and speaks volumes against the accountable person.

9. I cannot conclude this judgment without referring to the submission urged on behalf of the assessee based on the benami character of the property. The

submission was that the Department having alleged that the property was benami of Kedarnath Singh, individual, the onus was upon it to establish that benami character. The submission lacks substance. It is not in controversy that the house was benami. The assessee as well as the Revenue both alleged that the property did not belong to Paras Nath Singh, the accountable person, but it was benami. Thus, it is obvious that the property was benami. In that view of the matter, the question of onus has no relevance. Further, the materials produced by the Department prove conclusively that the house was the individual property of the deceased which formed part of his estate which passed on the death of Kedarnath Singh to his son. Paras Nath Singh the accountable person.

10. For the reasons stated above, the Tribunal was justified in including the value of " Sita Ram Sadan " at Boring Road in the estate of late Kedarnath Singh on the footing that it was his personal property. The question referred to us is, therefore, answered in favour of the Revenue and against the assessee. The reference is disposed of accordingly with costs. Hearing fee Rs. 150 payable by the assessee.

11. Let a copy of this judgment be transmitted to the Income Tax Appellate Tribunal in terms of Section 260 of the Income Tax Act, 1961.

Nazir Ahmad, J.

12. I agree.

