(1984) 01 BOM CK 0059

In the Bombay High Court

Case No : Writ Petition No. 949 of 1980

Ramesh Chandrasen Ashar and another — APPELLANT

Vs

K.M. Barshiwala, Addl. 1st Asst. Controller of Estate Duty and another — RESPONDENT

Date of Decision : 19-01-1984

Acts Referred:
Estate Duty Act, 1953 — Section 59

Citation : (1984) 39 CTR 136(1) : (1984) 148 ITR 1 : (1984) 17 TAXMAN 61

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. This petition impugns a notice of reopening of assessment issued under s. 59 of the E.D. Act, 1953.

2. One, Kasturbai Chandrasen Ashar, died on October 11, 1975. Her husband as the accountable person submitted an account for the purpose of estate duty to the Department. The estate included 81 shares of the International Cotton Corporation (P) Ltd., a private limited company. Based upon a valuation report, the value of these shares was shown at the rate of Rs. 1,217.23 per share. There was correspondence in regard to this value. Ultimately, the Department valued the share at Rs. 1,693 inclusive of goodwill and appreciation of assets estimated at Rs. 262. The accountable person accepted this valuation and the estate duty required to be paid upon the assessment was duly paid.

3. The accountable person died on October 18, 1978.

4. On May 1, 1980, a notice was addressed to the accountable person by the Add. 1st Asst. Controller, Bombay, in respect of the estate of the late Kasturbai. He stated that he had reason to believe that property chargeable to estate duty had (a) escaped assessment, (b) been under-assessed. The notice required that an account of all the property in respect of which duty was payable should be submitted within 30 days. On May 11, 1980, the chartered accountants of the

petitioners asked the Asst. Controller for particulars as to why the notice had been issued. There was no response. On August 14, 1980, this petition was filed by the sons of Kasturbai and her late husband impugning the notice.

5. There is no affidavit in reply, but a copy of the reasons recorded by the Asst. Controller for reopening the assessment has been tendered. It records that in valuing the shares of the Private limited company mentioned above, certain mistakes therein set out had occurred. Mr. Joshi, learned counsel for the Department, fairly stated that "mistakes" had been pointed out to the Asst. Controller upon a revenue audit.

6. It is clear now in law that audit objections do not furnish information to the tax authorities which enable them to reopen assessments under the W.T. Act, 1957, I.T. Act, 1961, E.D. Act, 1953, etc., Mr. Joshi, submitted that what was pointed out by the revenue audit to the Asst. Controller in the present case was information upon which he was entitled under s. 59 of the E.D. Act to reopen the assessment to estate duty of Kasturbai''s estate. I cannot agree. What it comes to is this : upon the communication by the revenue audit, the Asst. Controller changed his opinion as to the details of the valuation of the shares of the private limited company, and such change of opinion does one not constitute information within the meaning of the section.

7. The notice, accordingly, must be set aside. The petition is made absolute in terms of prayer (a) of the petition, with costs. Rule accordingly.