
(1997) 07 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Case No : Estate Duty Reference No. 2 of 1989

Smt. Dhan Kaur

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 16-07-1997

Acts Referred:

Estate Duty Act, 1953 — Section 59

Citation : (1998) 1 ILR (P&H) 257 : (1999) 236 ITR 210

Hon'ble Judges : N.K. Agrawal, J; Ashok Bhan, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant; R.P. Sawhney, Senior Advocate and S.K. Sharma, for the Respondent

Judgement

N.K. Agrawal, J.—The following question of law has been referred at the instance of the accountable person u/s 64(1) of the Estate Duty Act, 1953 (for short, "the Act").

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in rejecting the accountable person's contention that the reopening of the assessment proceedings was bad in law ?"

2. Joginder Singh died on November 3, 1981. His widow, Smt. Dhan Kaur, filed a return under the Act, furnishing the account of the estate left by her late husband and showing the principal value of half property as assessable under the Act. The assessment of estate duty was made by the Assistant Controller of Estate Duty on February 19, 1983, on one-half of the net estate of the deceased, valued at Rs. 2,54,483. Thus, as intended by the accountable person, the assessment was made on only half of the estate of the deceased. The late Joginder Singh was the karta and sole surviving male coparcener of his Hindu undivided family (HUF). He was survived by his widow and a married daughter. He had left behind 19 acres of agricultural land valued at Rs. 3,12,645 and foodgrains, milch cattle, agricultural implements, etc., valued at Rs. 10,000. The value of half share of the deceased in the agricultural land, milch cattle, etc., was

taken at Rs. 1,61,323 on the ground that the deceased was entitled to only half of the estate and was actually not an absolute owner of the property belonging to the Hindu undivided family.

3. The Assistant Controller of Estate Duty, on an audit objection, reopened the case subsequently by issuing a notice to the accountable person u/s 59 of the Act. A view was taken that the deceased, being the sole surviving male coparcener, was competent to dispose of the entire Hindu undivided family property in whatever manner he liked. The entire property thus belonged to him as an individual as well as karta of the Hindu undivided family. The Assistant Controller then proceeded to assess the entire value of the Hindu undivided family property instead of its half value which had been assessed earlier.

4. No fresh return was filed, in response to the notice issued u/s 59 of the Act, by the accountable person though a reply was filed stating that the assessment had already been made correctly. The Assistant Controller, however, did not accept the plea put forward by the accountable person. The assessment was completed on the entire value of the Hindu undivided family property left by the deceased.

5. In appeal filed by the accountable person, reopening of the assessment was challenged on two grounds. First, that the assessment could not be reopened on the basis of the audit objection and, secondly, that the husband was entitled to only a half share inasmuch as his wife, being a member of the Hindu undivided family, was alive. The Appellate Controller of Estate Duty accepted the appeal on the ground that there were no new facts before the Assistant Controller for reopening the assessment and, therefore, the reopening was not justified.

6. In the Department's appeal, the Tribunal, however, upheld the reopening of the assessment and also took the view that the entire interest in the property, belonging to the deceased, had passed on his death. That part of the order whereby the entire interest of the deceased was held to have passed on his death has, however, not been challenged before us. No opinion is, therefore, being expressed on that part of the order.

7. Shri B. S. Gupta, senior counsel representing the accountable person, has argued that the reopening was bad in law inasmuch as it was based on an audit objection which did not constitute "information" for the purposes of reopening the case u/s 59(b) of the Act. It has been argued by Shri Gupta that the audit report of the Comptroller and Auditor-General of India (CAG) was not admissible as "information" in the hands of the Assistant Controller. It is also pointed out by Shri Gupta that the Assistant Controller, on coming to know about the alleged mistake pointed out in the local audit, looked into the matter and accepted the audit objection initially. However, the Assistant Controller subsequently took the view that the objection was not acceptable. The Inspecting Assistant Commissioner, however, insisted upon the reopening by the Assistant Controller. Shri Gupta has argued that, in such a situation, the Assistant Controller cannot

be said to have any reason to believe, on the basis of the information, that any property chargeable to estate duty has escaped assessment.

8. Since the validity of the audit note was under challenge, this court directed the Department to produce the original order of assessment framed by the Assistant Controller on February 19, 1983, and also the audit note recorded by the Comptroller and Auditor-General of India. An attested copy of the assessment framed by the Assistant Controller was thereupon placed on the record by the Department. Regarding the second, namely, the audit note recorded by the Comptroller and Auditor-General of India, it was reported that the original audit note was not available in the records of the office. However, counsel for the Department placed on record an extract of the audit note recorded by the Comptroller and Auditor-General of India, which had been supplied to him by the Department from its file. Another opportunity was afforded to the Department to produce the original file from which the note of the Comptroller and Auditor-General of India, had been extracted for the consideration of this court. The original audit note was, however, not available.

9. The copy of the extract of the audit note recorded by the Comptroller and Auditor-General of India filed by the Department before this court, reads as under :

"While framing the assessment u/s 58(3) dated February 10, 1983, total value of agricultural land was taken at Rs. 3,22,645 (including foodgrains). The deceased left behind his widow and one married daughter. At the time of assessment, half share of Rs. 1,61,323 was assessed whereas the other half of the value of agricultural land was exempted being the share of the widow in the Hindu undivided family property in the form of agricultural land. The deceased was a sole surviving male coparcerner in a Hindu undivided family governed by the Mitakshara school of Hindu law. As such, the whole of his property, including the coparcenery property, passes on his death. Thus, Rs. 1,61,322 was not assessed. This is a mistake apparent from the record and to be rectified."

10. Shri B. S. Gupta, learned senior counsel for the accountable person, has argued that the aforesaid audit note did not constitute a valid and legal information which could be acted upon for reopening the case u/s 59(b) of the Act. It was necessary that the Assistant Controller must have reason to believe that any property chargeable to estate duty had escaped assessment and such belief must have been entertained by him in consequence of an information.

11. The expression "information" was considered by the Andhra Pradesh High Court in V.S.L. Narasimha Rao and Another Vs. Assistant Controller of Estate Duty, Guntur and Another, . In that case, the assessing authority had assessed the estate of the deceased.

12. Thereupon, the accountable person preferred appeals to the Appellate Assistant Controller of Estate Duty and thereafter to the Appellate Tribunal and obtained substantial relief. Subsequently, the assessing authority issued a notice

to the accountable person with the observation that property chargeable to estate duty had been underassessed. The notice was challenged by filing a writ petition before the High Court. It was held on the facts that the Assistant Controller had reopened the assessment u/s 59(b) of the Act, relying on additional information that came on record at the appellate stage and, since that information was relevant for the purpose of forming a reasonable belief that some property chargeable to duty had escaped assessment, it was held that the basic requirements to assume jurisdiction for reassessment u/s 59 were satisfied.

13. A question about the validity of the reopening of assessment u/s 147(b) of the Income Tax Act, 1961, was examined by the Allahabad High Court in *Sterling Machine Tools Vs. Commissioner of Income Tax*, . In that case, the assessee had been assessed for the assessment year 1965-66. During the course of assessment for the next year, the Income Tax Officer found that on enquiry by the Vigilance Bureau and the board of experts, the actual cost of a centering machine was Rs. 7,331, whereas the assessee had claimed the same at Rs. 9,432. The partner of the firm was confronted with that report and, thereupon the partner gave a note in writing to the Income Tax Officer, stating that the cost was much more and that he was willing to have the income being worked out on the basis. It was held that the submission was the best evidence and did constitute "information" within the meaning of Section 147(b) of the Income Tax Act, 1961.

14. A question of reopening of assessment u/s 59(b) of the Act was examined by the Madras High Court in *V. Pugalagiri Vs. Assistant Controller of Estate Duty*, . Estate duty assessment had been originally made. On receipt of an audit objection based on the valuation of the nursing home of the deceased in the wealth-tax assessment, notice u/s 59(b) of the Act was issued for reopening the estate duty assessment. It was held that the information that the value of the nursing home was higher in the wealth-tax assessment than what had been included in the estate duty assessment could not be treated as "information" for the purposes of Section 59(b), because it had not come to the knowledge of the Assistant Controller after the date of the original order of assessment but was within his knowledge at the time of assessment and was specifically referred to in the original order of assessment itself.

15. The Bombay High Court has, in *Commissioner of Income Tax, Bombay City-III Vs. H.D. Dennis and others*, , taken the view that a mere change of opinion, on the material already considered by a reappraisal of the same material is not information. The change must be supported by fresh information obtained from the records. The opinion expressed by the Department or by the Central Board of Direct Taxes is not law. Law is that which is laid down either by the Legislature or judicial decisions and it is the change in such law which constitutes the fresh information.

16. The same High Court had again an occasion to examine the question of reassessment under the Act. In *Union of India and another Vs. Arvind N.*

Mafatlal, Trustee of Seth Hemantbhagubhai Trust and another, , the original estate duty assessment was made on the basis of the Central Board of Direct Taxes circular dated March 26, 1968, which provided that the value of assets forming part of dutiable estate of a deceased individual should be taken at the same value as was determined for the purposes of wealth-tax. The Board revised its stand subsequently by its instructions dated October 29, 1974, wherein it was directed that the earlier circular dated March 26, 1968, did not apply to valuation of shares covered by Section 37 of the Estate Duty Act, 1953. It was held that the subsequent instructions did not represent the decision of the Board on any appeal or other like proceedings but merely represented an opinion of the Central Board. There was, thus, no information on the basis of which a notice of reassessment could be given u/s 59(b) of the Act.

17. The Madhya Pradesh High Court in Arvind Kumar and Another Vs. Income Tax Officer, , has also taken a view that the word "information" meant not only facts or factual material but included "information" as to the true and correct state of the law. The information as to law must be from a formal source, namely, a competent Legislature or a competent judicial or quasi-judicial authority.

18. The Calcutta High Court in Dey's Medical Stores Mfg. (P.) Ltd. Vs. Commissioner of Income Tax, , has upheld the reopening of assessment proceedings u/s 147(b) of the Income Tax Act, 1961, where certain facts had not been brought to the notice of the Income Tax Officer in the course of the assessment proceedings. The fact came to the knowledge of the Income Tax Officer only in the course of the assessment for the subsequent year. It was not a case of reconsideration of the same material already on record.

19. The Patna High Court in COMMISSIONER OF INCOME TAX Vs. SOH KISAN COLD STORAGE. , has observed that "information" need not necessarily spring from a source external or extraneous to the original record. However, having second thoughts or a mere change of opinion by the prescribed authority on the same set of facts and materials on the record would not constitute "information". In that case, the Income Tax Officer had initiated the reassessment proceedings on the same set of facts which he had already taken note of while making the original assessment. It was held to be not permissible.

20. This court had also an occasion to examine a question of reopening in Kulbushan and Brij Bhushan Vs. Controller of Estate Duty, . That was a case where the Assistant Controller had discovered that certain Sections of the Act, which were applicable, had not been applied. It was held that the Assistant Controller was entitled to reopen the assessment.

21. The Supreme Court has examined the validity of reassessment in Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, . That was a case where notice u/s 147(b) of the Income Tax Act, 1961, had been issued by the Income Tax Officer in respect of three assessment years. It was observed that the expression "information" in the context, in which it occurs, must mean

instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment. In that case, the Income Tax Officer was of the view that income, which could have been earned by the assessee was not earned and a part of that income was earned by the Hindu undivided families. That, according to the Income Tax Officer, was brought about by "a subterfuge or contrivance". It was held that, on the materials on the record, the Income Tax Officer had no reason to believe that income chargeable to tax had escaped assessment for the three years in question.

22. The Supreme Court had again an occasion to examine a question relating to "information", in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, . The assessee, in that case, owned a building in which a conference hall and rooms were let out on rent to its members as well as to outsiders. Certain other services were also provided to the members. The income from that source was assessed to tax all along as income from business. In the course of auditing the Income Tax records pertaining to the assessee, the internal audit party expressed the view that the money realised by the assessee on account of the occupation of its conference hall and room should not have been assessed as income from business. It said that an assessment should have been made under the head "Income from property". The Income Tax Officer treated the contents of the report as "information" in his possession for the purpose of Section 147(b) of the Income Tax Act, 1961, and reassessed the income on that basis. It was held that the opinion of the audit party on a point of law could not be regarded as "information" enabling the Income Tax Officer to initiate reassessment proceedings u/s 147(b). The Income Tax Officer had, when he made the original assessment, considered the provisions of Sections 9 and 10 of the Indian Income Tax Act, 1922. Any different view taken by him afterwards on the application of those provisions would amount to a change of opinion on material already considered by him. It was further observed as under (page 1003) :

"But although an audit party does not possess the power to so pronounce on the law, it nevertheless may draw the attention of the Income Tax Officer to it. Law is one thing, and its communication another. If the distinction between the source of the law and the communicator of the law is carefully maintained, the confusion which often results in applying Section 147(b) may be avoided. While the law may be enacted or laid down only by a person or body with authority in that behalf, the knowledge or awareness of the law may be communicated by anyone. No authority is required for the purpose."

23. In *A.L.A. Firm Vs. Commissioner of Income Tax, Madras*, , the Supreme Court has upheld the reopening of assessment after noticing that the Income Tax Officer, at the time of the original assessment, had looked at the facts and accepted the assessee's contention that the surplus was not taxable but, in doing so, he had obviously missed to take note of the law laid down in the case

of G. R. Ramachari and Co. Vs. Commissioner of Income Tax, Madras, . It was also noticed that there was nothing to show that the case had been brought to the notice of the Income Tax Officer. When he, subsequently, became aware of the decision, he initiated proceedings u/s 147(b). The material which constituted "information" and on the basis of which the assessment was reopened was the decision in G. R. Ramachari and Co. Vs. Commissioner of Income Tax, Madras, . This material was not considered at the time of the original assessment.

24. Keeping in view the interpretation of the law on the subject of reopening of an assessment, the facts in the present case appear to be not at all in favour of the Department. The audit note recorded by the Comptroller and Auditor-General of India did not refer to any judicial opinion or provisions of law. The audit note spoke about the deceased being the sole surviving male coparcener and, on that basis, it was observed that a mistake apparent from record had occurred in the assessment and that was to be rectified. Since half of the coparcenary property had been assessed, it was treated to be a mistake. As has been observed by the Supreme Court in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, , the opinion of the internal audit party on a point of law cannot be regarded as "information" for the purposes of reopening an assessment. The audit party did not possess the power to pronounce on the law. It may only draw the attention on the Income Tax Officer to it. That part alone of the note of an audit party which mentioned the law which escaped the notice of the Income Tax Officer constituted "information". The part which embodies the opinion of the audit party in regard to the application or interpretation of the law cannot be taken into account by the Income Tax Officer. In every case, the Income Tax Officer must determine for himself what is the effect and consequence of the law mentioned in the audit note. In the light of this observation of the Supreme Court, the audit note in the present case, does not constitute an "information". As has been seen earlier, the Assistant Controller had initially accepted the audit objection but, later on, he took the view that the objection was not acceptable. However, the Inspecting Assistant Commissioner insisted upon the reopening of the assessment and then the Assistant Controller proceeded to reopen the case. In these circumstances, the reopening of the assessment is found to be not based on noticing a provision of law but on an advice/instruction from the audit party/Inspecting Assistant Commissioner. The Assistant Controller had, in the original assessment order, discussed the question of share of the deceased in the agricultural land. Thereafter, one half share was treated to belong to the deceased and the value of that share was brought under the levy of estate duty. Therefore, the Assistant Controller had taken notice of the right of the deceased in the Hindu undivided family property and a change of opinion would not enable the Assistant Controller to reopen the assessment. The audit note, as already seen, points out to a mistake apparent from the record, which was required to be rectified. Thus, the audit note did not constitute "information" within the meaning of Section 59(b) of the Act.

25. The question of law, referred to this court, is, therefore, answered in the

negative, i.e., in favour of the assessee and against the Department.