
(1981) 03 OHC CK 0002

In the Orissa High Court

Case No : Special Jurisdiction Case No. 74 of 1977

Smt. Prakash Kaur

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 11-03-1981

Acts Referred:

Income Tax Act, 1961 — Section 2(16)

Citation : (1981) 7 TAXMAN 224

Hon'ble Judges : R.N. Misra, C.J.;B.N. Misra, J

Bench : Division Bench

Advocate : A. Pasayat, for the Appellant;

Judgement

R.N. Misra, C.J.—Upon the assessee's application u/s 64(2) of the E.D. Act, 1953, this court by order dated January 11,1979, called upon the Appellate Tribunal, Cuttack Bench, to state a case and refer the following questions for the opinion of the court:

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the inclusion of the value of the house property at Rourkela is legal, even though the title to the land was defective and the property was not free from encumbrances?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in fixing the valuation of the property at a multiple of 13 times the net rental, even though, admittedly, the department had fixed the valuation at a much lower figure for the purpose of wealth-tax?

One Joginder Singh along with Jai Singh took a lease of certain lands located at Rourkela from Birabar Naik and others who happened to be members of the Scheduled Tribes and the lease was for a term of 99 years. Smt. Prakash Kaur purchased a portion out of the leasehold from Joginder Singh during her lifetime and constructed a building on the said property between 1966 and 1968 by investing Rs. 39,618. The original lease in favour of the vendors and the sale in

favour of Smt. Prakash Kaur were not evidenced by any registered document. Smt. Prakash Kaur died on October 22, 1974, and the assessee, her husband, being the accountable person, came to be assessed to estate duty. The Asst. Controller included the value of the house as a part of the estate of the deceased and estimated it at Rs. 80,416 on the basis of sixteen times the net rental income receivable from the property. The Appellate Controller upheld the order of the Asst. Controller. The assessee thereupon preferred a second appeal to the Tribunal and maintained that the deceased had acquired no valid title to the property in the absence of a registered document and had no right to transfer the same. Mere possession did not tantamount to ownership. Therefore, the property was not includible in the estate of the deceased. Alternatively, it was claimed that the valuation determined was excessive particularly when the property was not free from encumbrance and there was no justification for adopting a valuation different from the valuation taken for wealth-tax purposes for the same period.

2. The Tribunal found that the deceased was in peaceful possession of the land purchased by her from her brother, Joginder Singh, and had raised a construction five to six years prior to her death. The property had been fetching a sustained rental in the hands of the deceased which was being shown for purposes of wealth-tax and income tax. The Tribunal also took note of the fact that the property had been mutated in the municipal records in her name and she was subjected to holding tax for the property. Relying on the ratio of the decision of the Supreme Court in the case of *Controller of Estate Duty, Gujarat Vs. Hussainbhai Mohamedbhai Badri*, , the Tribunal came to hold that the deceased had interest in the property which did pass on her death to others entitled to succeed thereto. For the purposes of the statute "Property passing on the death of the deceased" has to be taken into account and the beneficial interest held by the assessee did pass upon her death to others in accordance with the personal law of the deceased. The Tribunal, therefore, held that the house property was a part of the estate of the deceased liable to be taxed under the Act.

3. So far as the estimate of valuation was concerned, the Tribunal held that, in view of the defective title to the land upon which the house had been raised, it would be reasonable to estimate its value by multiplying the rental by thirteen times instead of sixteen times. The assessee then contended before the Tribunal by filing a miscellaneous application that there was a defect in the appellate order, inasmuch as the Tribunal omitted to consider the assessee's plea that the department for purposes of wealth-tax assessment had determined the value of the house at a lesser rate than for the purposes of estate duty. There was no justification for this distinction.

4. The decision in *Controller of Estate Duty, Gujarat Vs. Hussainbhai Mohamedbhai Badri*, is a complete answer against the assessee so far as the first aspect is concerned. Section 2(16) of the Act defines the expression "property passing on the death" to include-

.....property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation.....

and the expression "on the death" to include-

.....at a period ascertainable only by reference to the death.

5. The Supreme Court held (p. 152):

The expression "property passing on death" is not a technical expression. In other words, it is not a term of law. The word "passes" means changes hands. To ascertain whether property has passed, a comparison must be made between the persons beneficially interested the moment before the death and the persons so interested the moment after the death.

6. Reliance was placed on the observations of Lord Russell of Killowen in *Scott and Coutts and Co. v. IRC* [1937] AC 174; 2 EDC 579 (HL).

7. The features which have been found in the present case are that the deceased was in peaceful occupation and enjoyment of the property for about six years prior to her death; she had been receiving rental income from the property which she was duly accounting for the purposes of income tax and wealth-tax; and the house stood recorded in the municipal records in her name and was subjected to holding tax. In these circumstances, we find no scope for accepting the assessee's contention that the property was not includible in the estate of the deceased. The first question must, therefore, be answered against the assessee by upholding the decision of the Tribunal as correct.

8. So far as the second question is concerned, as we have already pointed out, the Asst. Controller as also the Appellate Controller had determined the valuation by multiplying the net annual rent by sixteen times. The Tribunal took into account the fact that the title of the deceased was somewhat disputable and, therefore, adopted thirteen times the annual rent. The question which has been referred to us is not as to whether the adoption of thirteen times the annual rental is appropriate. What has been raised before us is whether the department should not have accepted the valuation of the house determined for purposes of wealth-tax for the year in which death occurred, also for the purpose of estate duty. This aspect of the matter was not pointedly dealt with by the Tribunal. The miscellaneous application of the assessee was disposed of by saying:

We do not find any merit in this application. The Appellate Tribunal did not accept the value of the aforesaid property as estimated by the Wealth-tax Officer because it found that the Wealth-tax Officer had adopted a wrong basis in taking into consideration the average cost of construction shown by the assessee and the value on the basis of the rental method. The Appellate Tribunal, on the other hand, considered that the property in question was entirely tenanted and accordingly the rental method was the proper method and that was adopted by the Assistant Controller of Estate Duty. Although the Appellate Tribunal had not

expressed this view in so many words yet it considered the submission of the assessee duly and rejected the same.....

9. Mr. Pasayat, for the assessee, contended that the Tribunal as a fact did not really consider even what has been stated by it at the time of disposing of the miscellaneous application. The valuation of the house had to be made as on October 22, 1974, when the deceased expired. For wealth-tax purposes, the property was valued in the assessment year 1974-75. There are several methods for determining the value of the property, but there is no justification for adopting one process for wealth-tax purposes and another for estate duty purposes when the property is common. There is some force in the submission of Mr. Pasayat. Counsel for the assessee as also for the revenue agreed before us that now that we have answered the main question against the assessee, this aspect of the matter could be left to the Tribunal to be decided after hearing the parties while proceeding to give effect to the opinion on the first question. Accordingly, without expressing any definite view on the second question, we leave it open to the Tribunal to look into the matter again in the light of the assessee's submission and what we have indicated above.

10. To reiterate, the first question is answered against the assessee by saying:

11. On the facts and in the circumstances of the case, the Tribunal was right in holding that the inclusion of the value of the house property was legal.

12. So far as the second question is concerned, we do not propose to answer the same. There will be no order for costs.

B.N. Misra, J.

I agree.