

(2003) 02 RAJ CK 0030

In the Rajasthan High Court

Case No : Estate Duty Reference No. 1 of 1987

Smt. Urmila Ranka

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Wealth Tax Rules, 1957 — Rule 1BB

Citation : (2003) 183 CTR 153 : (2003) 262 ITR 321

Hon'ble Judges : Y.R. Meena, J;Khem Chand Sharma, J

Bench : Division Bench

Advocate : N.M. Ranka and Rajkumar Yadav, for the Appellant; R.B. Mathur, for the Respondent

Judgement

1. On an application filed u/s 64(6) of the Estate Duty Act, 1953, the Tribunal has referred the following questions for the opinion of this court :

"Whether the Tribunal was right in law in holding that the deceased had 1/3rd share in Nahata Bhawan, Chopasani Road, Jodhpur, and the said share passed on the death of the deceased ?

Whether the Tribunal was right in law in not computing the value of Nahata Bhawan in accordance with the provisions of Rule 1BB of the Wealth-tax Rules, 1957 ?

Whether the Tribunal was right in law in not applying multiple of ten on the net maintainable rent while computing value of Nahata Bhawan ?

Whether the Tribunal was right in law in determining interest of the deceased in Nahata Bhawan at Rs. 2 lakhs ?"

2. In the case in hand, the facts are that one Shri Prakashmal Nahata died on September 6, 1970. There are eight accountable persons. Smt. Urmila Nahata was the wife of the deceased and she filed the estate duty return in respect of the properties, which according to her belong to her husband, on which estate

duty was payable. The said accountable person has declared 1/3rd share in Nahata Bhawan, Chopasani Road, Jodhpur, at Rs. 98,000, which includes the property of the deceased, Prakashmal Nahata. The Estate Duty Controller issued notices under Sections 59 and 55 to other accountable persons, who are the successors to the property of the deceased, Prakashmal Nahata.

3. One of the accountable person, Ghanshyam Nahata, claimed before the Assistant Controller that Nahata Bhawan was trust property and the deceased was one of the beneficiaries in the income of the property in "Nahata Bhawan" to the tune of 1/3rd during his life time, therefore, the deceased had no interest or ownership in the Nahata Bhawan, therefore, no estate duty should be charged on 1/3rd share of the Nahata Bhawan on the death of Shri Prakashmal Nahata.

4. The Assistant Controller did not accept the claim of the accountable person, Ghanshyam Nahata, that 1/3rd share of the Nahata Bhawan does not pass on to the successor on the death of Shri Prakashmal Nahata. Thereafter the statements were recorded and necessary documents were examined by the Assistant Controller and he gave the finding in para. 15 of his order that till the date of death the accumulations and income accrued in the books of Nahata Bhawan Trust, which passed according to him to Smt. Urmila u/s 5 of the Estate Duty Act, but possession and the enjoyment of the property remained with Gyanmal Nahata and the legal heirs of Kistur Chand Nahata.

5. He accordingly came to the conclusion that all of them were legal heirs and accountable persons of the deceased. In para. 19 of his order, he has valued the property to the tune of Rs. 6,30,000 and the share of the deceased comes to Rs. 2, 10,000.

6. In appeal before the Appellate Controller of Estate Duty, the view taken by the Assistant Controller of Estate Duty has been affirmed. Even the Tribunal also has affirmed the conclusion reached by the Assistant Controller of Estate Duty that the deceased, Prakashmal Nahata was having 1/3rd share in the Nahata Bhawan and on his death the property passes to the heirs of Prakashmal Nahata, The value also has not been disturbed by all the three authorities.

7. Thereafter a miscellaneous application has been moved by the accountable persons that the property in question be valued as per Rule 1BB of the Wealth-tax Rules and multiplier should be taken ten times of the part of the property, which has been passed on to the accountable persons. That miscellaneous application also has been rejected by the Tribunal.

8. Heard learned counsel for the parties.

9. Mr. Ranka, learned counsel for the petitioner, has not seriously pressed the issue involved in question No. 1, but he submits that when there is no specific provision or rule in the estate duty act as to how to value the property, which has passed to the accountable persons, the value can be taken as per Rule 1BB of the Wealth-tax Rules. He has placed reliance on the decision of the Bombay High

Court in the case of Madhusudan Dwarkadas Vora Vs. Superintendent of Stamps, He further submits that multiplier should be taken ten times of the part of the property and for that he has placed reliance on the decision of this court in the case of Commissioner of Wealth-tax Vs. Vallabh Das,

10. Mr. Mathur, learned counsel for the Department, has supported the reasons given by the Tribunal for valuing the Tribunal (sic). Whether 1/3rd share of the Nahata Bhawan has been passed on to the accountable persons or not, that has been considered by the Tribunal at page 12 of its order under the heading "Nahata Bhawan". Considering the material, the Tribunal has given the following findings, which read as under :

"The wife of the deceased has also returned 1/3rd share in Nahata Chamber Trust in the estate duty return of the property, passing on the death of her husband. Shri Gyanmal Nahata, however, contests that the said property did not pass on the death of Prakashmal. The order of the Tribunal in wealth-tax appeals shows that on the consideration of Clauses 3, 5, 10 and 15 of the trust deed, Bombay Bench "C" of the Tribunal had held vide its order dated August 8, 1959, that the trust was a revocable trust within the meaning of the first proviso to Section 16(1)(c) of the Indian Income Tax Act, 1922, and, therefore, the trustees would not be assessable in their capacities as trustees or beneficiaries but in their capacities as settlors or transferors. Delhi Bench "B" of the Tribunal vide its order dated May 3, 1969, in wealth-tax appeals held that the Revenue was not justified in making assessments by applying Section 21(4) of the Wealth-tax Act. The Wealth-tax Officer had, therefore, held that wealth-tax had to be levied on the individual shares of the persons on whose behalf the assets were held under the trust. Para. 2 of the order of the Tribunal in the wealth-tax appeals for the assessment years 1962-63 to 1970-71 on page 7 of the records that there is no dispute on this point. The dispute arose only regarding the valuation of Nahata Bhawan. In the light of these facts, looking to the historical treatment of the trust deed and the trust properties, it is clear that the deceased owned 1/3rd share of the Nahata Bhawan property which passed on his death. Incidentally, it was conceded before us that on the death of the deceased's brother, Kistoormal, in 1969, 1/3rd share of Nahata Bhawan was held to pass on his death and there was no dispute about it."

11. Considering the reasons given by the Tribunal and the material on record, we find no reason to interfere in the order of the Tribunal holding that 1/3rd share in Nahata Bhawan has passed to the accountable persons on the death of Shri Prakashmal Nahata.

12. Questions Nos. 2, 3 and 4 relate to valuation of 1/3rd share in Nahata Bhawan, which has passed to the accountable persons. Admittedly, there is no rule or provision under the Estate Duty Act to value the property passing on death to the accountable persons. The Bombay High Court in the case of Madhusudan Dwarkadas Vora Vs. Superintendent of Stamps, observed as under :

"The petitioner for probate is obliged, by virtue of item 10 of Schedule I of the Bombay Court Fees Act, 1959, to pay court fees on the value of the property in respect of which the grant is sought. Where such property is a house, its value, i.e., the price it would fetch if sold in the open market, on the date of the death must be determined in the same manner as it would for the purpose of estate duty, that is to say, by an application of the principles laid down in Rule 1BB of the Wealth-tax Rules, 1957, made under the Wealth-tax Act, 1957."

13. Considering the facts specially when no specific rule or provision is under the Estate Duty Act for valuing the property, which passes to the accountable persons, Rule 1BB of the Wealth-tax Rules, 1957, is a well recognised rule for valuing the property. Therefore, we see no reason as to why the property should not be valued as per Rule 1BB of the Wealth-tax Rules, 1957, in this case.

14. Shri Ranka also brought to our notice that while applying the rent capitalisation method for valuation of the property, this court recently has applied ten times multiplier in the case of Commissioner of Wealth-tax Vs. Vallabh Das,

15. Considering the view that when in Jaipur we have applied ten times of multiplier of the rent received, in Jodhpur there cannot be more than that, therefore, we are of the view that while applying Rule 1BB of the Wealth-tax Rules, ten times multiplier of the rent received be taken for valuing 1/3rd share of the deceased in the Nahata Bhawan.

16. In the result, we answer question No. 1 in the affirmative, i.e., in favour of the Revenue and against the assessee-accountable person.

17. So far as questions Nos. 2, 3 and 4 are concerned, we answer all these questions in the negative, i.e., in favour of the accountable person and against the Revenue.

18. Reference so made stands disposed of accordingly.