

(1979) 07 MAD CK 0039

In the Madras High Court

Case No : Tax Case No"s. 439 and 440 of 1975 (Reference No"s. 336 and 337 of 1975)

T. Sundaresa Mehta

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 10-07-1979

Acts Referred:

Estate Duty Act, 1953 — Section 33(1), 34(1)

Citation : (1980) 16 CTR 173 : (1981) 127 ITR 107

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; J. Jayaraman, for the Respondent

Judgement

Sethuraman, J.—These two references arise at the instance of the accountable person and the Controller of Estate Duty respectively and the following questions have been referred in the two references :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in rejecting the additional ground raised by the accountable person on the vires of section 34(1)(c) of the Estate Duty Act on the ground that the Tribunal has no jurisdiction to deal with the matter ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the exemption provided in section 33(1)(n) of the Estate Duty Act, 1953, should be allowed in respect of the dwelling house of the Hindu undivided family from the value of the joint family properties before determining the share of the deceased and also that of the lineal descendants, the former for assessment and the latter for aggregation ?"

2. The estate duty assessment came to be made on the death of T. Ranganatha Mehta on 19th December, 1968. He had 1/3 interest in joint family properties. The principal value of immovable properties of the joint family was computed by the Assistant Controller at Rs. 4,02,848. In doing so, he valued the property

bearing door No. 18, Barnaby Road, as follows:

Rs.

Value of the building, including 5 grounds of site appurtenant thereto 1,89,000

Value of site of 11.154 grounds 1,33,848

Total 3,22,848

3. The deceased was residing, along with his family, in No. 18, Barnaby Road, till he died. The Assistant Controller took the value of one-third share of the deceased at Rs. 1,37,596 consisting of one-third share in the immovable and movable properties. Besides, he took two-thirds of the lineal descendants' share at Rs. 2,75,192 for the purpose of arriving at the rate of tax. He completed the assessment accordingly.

4. The accountable person appealed to the Appellate Controller. As regards the value of the residential house, namely, No. 18, Barnaby Road, the Appellate Controller reduced the value as follows:

Rs.

Value of the building including 5 grounds 1,82,402

Value of site of 11.154 grounds 1,33,848

Total 3,16,250

5. The Appellate Controller directed the Assistant Controller to exclude two-thirds of the value of the residential house representing the share of the lineal descendants in the computation of the principal value. He directed also the exclusion of a sum of rupees one lakh from the market value of the residential property as exempt from estate duty assessment.

6. Both the department and the accountable person appealed to the Tribunal. The accountable person contested the valuation of No. 18, Barnaby Road. The Tribunal finally accepted the accountable person's claim and held that its value should be taken at Rs. 2,10,000, based on the valuer's report. The accountable person filed an additional ground before the Tribunal running as follows :

"The Appellate Controller ought to have directed the Assistant Controller to exclude the 2/3rds share of the lineal descendant's share in determining the principal value of the estate as held by the Madras High Court in V. Devaki Ammal Vs. Assistant Controller of Estate Duty, ."

7. The Tribunal held that it was not competent to deal with the issue and, therefore, rejected the additional ground. In the department's appeal it was held that the accountable person was entitled to the full exemption available u/s 33(1) (n) and directed accordingly. The two questions extracted already are those that arise out of this order of the Tribunal.

8. On the first question whether the accountable person could agitate the point regarding the applicability of Section 34(1)(c), the position is as follows :--In *V. Devaki Ammal Vs. Assistant Controller of Estate Duty*, , the validity of Section 34(1)(c) was raised in proceedings under art. 226 of the Constitution. This court held that Section 34(1)(c) violated Article 14 and Article 366(9) of the Constitution. What the accountable person sought to agitate before the Tribunal was that the Appellate Controller should have directed the Asst. Controller to exclude the two-thirds share of the lineal descendant's share in determining the principal value of the estate, as Section 34(1)(c) had been held to be ultra vires by this court in the above decision. The Tribunal is wrong in understanding the additional ground as if it raised any question of vires before the Tribunal. The only attempt on the part of the accountable person was to get the benefit of the declaration of Section 34(1)(c) as ultra vires applied in this case. As the decision had already declared Section 34(1)(c) to be violative of the provisions of the Constitution of India, Section 34(1)(c) could not have been applied to any person in this State. The question of vires was not raised for the first time before the Tribunal and only the principle of the decision which is binding on the Tribunal, was invoked for application in the present case. We, therefore, consider that the Tribunal was not justified in holding that it cannot go into the additional ground as if it raised any question of vires. The Tribunal is, therefore, directed to consider the additional ground in the light of the decision of this court and apply the law enunciated by this court on the point. The first question is, therefore, answered in the negative and against the revenue.

9. The next question raises the point as to whether Section 33(1)(n) has to be applied in the present case. Section 33 occurs in Part III containing exceptions or exemptions from the charge of estate duty. Section 33(1)(n), in so far as it is material, runs as follows :

"To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of property of any of the following kinds belonging to the deceased which passes on his death--.....

(n) one house or part thereof exclusively used by the deceased for his residence, to the extent the principal value thereof does not exceed rupees one lakh if such house is situate in a place with a population exceeding ten thousand, and the full principal value thereof, in any other case."

10. The property now under consideration is situate within the city of Madras and is, therefore, situate in a place with a population exceeding 10,000. The exemption up to a maximum of Rs. 1 lakh is available here. The question is whether the accountable person is eligible for the deduction of rupees one lakh. The interpretation of Section 33(1)(n) came up for consideration in *CONTROLLER OF ESTATE DUTY, MADRAS Vs. ESTATE OF LATE R. KRISHNAMACHARI.*, . In that case also, the deceased was a member of an HUF and the other members of the family were his only son and his wife. The total estimated value of the properties arrived at by applying the principle of Section 36 of the E.D. Act was rupees two

lakhs. Out of this sum of rupees two lakhs, a substantial part was the value of the residential house in which the deceased lived with his son and wife. The question that arose for consideration was whether the accountable person was entitled to the exemption to the extent of rupees one lakh. After discussing the provision, this court pointed out that the value of the residential house had been taken to be Rs. 1,70,000 and that the half share to which the deceased was entitled came to Rs. 85,000. It was, therefore, held that the accountable person could get exemption only to the extent of Rs. 85,000. In other words, the direction in the said case is to value the property as a whole and then ascertain the share of the deceased. If the value of the share of the deceased exceeded rupees one lakh, then rupees one lakh would be eligible for exemption u/s 33(1)(n). If the value of the share of the deceased was less than rupees one lakh, then the entire value would be exempted from the estate duty assessment u/s 33(1)(n). It is this formula that will have to be applied in the present case. As there was some dispute as to what actually represented the value of the residential house, because each authority has given its own value, it is necessary to direct the Tribunal to consider the question of exemption in the light of what we have discussed above. Question No. 2 is accordingly answered in the following manner:--The exemption provided in Section 33(1)(n) should be computed after the value of the share of the deceased is determined and in the light of the decision in *CONTROLLER OF ESTATE DUTY, MADRAS Vs. ESTATE OF LATE R. KRISHNAMACHARI.*, . There will be no order as to costs.