(1969) 12 KAR CK 0013

In the Karnataka High Court

Case No : T.R.C. No. 6 of 1967

Veerabhadrappa Chigateri APPELLANT

Vs

Controller of Estate Duty, Mysore RESPONDENT

Date of Decision : 04-12-1969

Acts Referred:
Estate Duty Act, 1953 — Section 64 (2)

Citation : (1970) 77 ITR 666

Hon'ble Judges : G.K. Govind Bhat, J;B. Venkataswami, J

Bench : Division Bench

Advocate : V. Krishna Murthy, for the Appellant; S.R. Rajasekharamurthy, for the Respondent

Judgement

Govinda Bhat, J.—This is a reference u/s 64(2) of the Estate Duty Act, 1953, as it is stood before amendment. The question of law referred for our opinion is :

"Whether, in the circumstances of the case, the sum of Rs. 33,000 is liable to be charged in respect of the alleged jewellery owned by the deceased ?"

2. One Sri Murigappa Chigateri died on January 12, 1957, and his son is the accountable person under the Estate Duty Act, and therefore, he filed a statement of account declaring the principal value of the estate of the deceased at Rs. 2,65,904. The Assistant Controller of Estate Duty, Bangalore, determined the net principal value of the estate at Rs. 5,64,304. In arriving at the said value, the Assistant Controller included, inter alia, a sum of Rs. 33,000 alleged to be the value of the jewellery in the possession of the deceased at the time of his death. In the estate duty return the accountable person had shown the value of the jewellery in the possession of deceased at Rs. 2,300 only. The Assistant Controller relied on the fact that the deceased had estimated the jewellery at Rs. 50,000 in the wealth statement furnished by him in connection with his assessment under the Income Tax Act for the assessment year 1952-53. There was a partition between the deceased and his on, the accountable person, on September 27, 1955, under partition deed. Under the said partition deed, it was

shown that the total value of the jewellery at the time of the partition was Rs. 18,700, out of which jewellery worth Rs. 17,000 was shown as the share of deceased jewellery worth Rs. 17,000 as the share of his son. The Assistant Controller asked the accountable person to explain the difference between the valuation of the family jewellery as Rs. 50,000 given in the statement of wealth and subsequent valuation in the portion deed made at Rs. 18,700. The accountable person submitted that he is not in a position to explain as to what had happened to the jewellery and that the deceased might have sold the same. The Assistant Controller did not accept the explanation offered by the accountable person on the view of the law that the burden was on the accountable person on the view of the law that the burden was on the accountable person to explain as to what had happened to the jewellery. On appeal before the Board, the same view was taken and the appeal was rejected.

3. The question is, whether, the accountable person is under a duty to explain as to what has happened to the jewellery shown in the wealth statement of the deceased for the year 1952-53. A similar question arose in Smt. Shantabai Jadhav v. Controller of Estate Duty before the Andhra Pradesh High Court. In the said case also there was a wealth statement that the deceased was in possession of jewellery valued at Rs. 10,000. The deceased died a year and half after making the said statement. It was held that the fact that the jewellery worth Rs. 10,000 existed about a year and half before the death, does not by itself establish that the deceased continued to be the owner of the jewellery at the time of his death. The accountable person cannot be called upon to explain as to what had happened to the jewellery. The burden was on the department to show that at the time of his death the deceased was in possession of jewellery that at the time of his death the deceased was in possession of jewellery worth Rs. 33,000. The partition deed relied on by the Assistant Controller and the board of Revenue shows that the value of the entire jewellery was only Rs. 18,700 and jewellery of that value was partitioned between the father and son. The partition deed as stated earlier was on September 27, 1955, and Murigappa Chigateri died on January 12, 1957. We respectfully agree with the view taken in Shantabai Jadhav''s case. There was no material on which the Controller of Estate Duty and the board of Revenue could have come to the conclusion that the deceased at the time of his death was in possession of the jewellery valued at Rs. 33,000. Therefore the question referred has to be answered in a favour of the assessee and against the department. Our opinion is that there was no material to hold that a sum of Rs. 33,000 is liable to charged in respect of the alleged jewellery owned by the deceased. The assessee is entitled to his costs.

4. Questions answered in favour of the assessee.

