(1979) 12 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Petition No. 123 of 1976

Vishwanath APPELLANT

Vs

Asst. Controller of Estate Duty RESPONDENT

Date of Decision : 03-12-1979

Acts Referred:
Estate Duty Act, 1953 — Section 59
Income Tax Act, 1961 — Section 147

Citation : (1979) 12 MP CK 0003

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : G.M. Chapekar, for the Appellant; S.C. Bagadiya, for the Respondent

Judgement

Sohani, J.—This is a petition under Articles 226 and 227 of the Constitution.

2. The material facts giving rise to this petition briefly are as follows : The petitioner''s father died on February 25, 1971, and the petitioner being an " accountable person " filed an account of the estate of the deceased passing on his death. The petitioner declared the principal value of the estate passing on the death of his father at Rs. 1,40,542, which included the value of the ope''n plot of land and the house used for the residence of the deceased. The respondent passed an order of assessment on March 30, 1972, granting exemption in respect of the house property, which included the house and the adjoining land, u/s 33(1)(n) of the E.D. Act, 1953, hereinafter referred to as the Act. Thereafter, by another order dated September 26, 1973, the respondent rectified mistakes u/s 61 of the Act. Subsequently, the respondent issued a notice u/s 59 of the Act alleging that he had reason to believe that property chargeable to estate duty had escaped assessment. The petitioner filed a return under protest and raised objection to the jurisdiction of the respondent to initiate proceedings for reassessment. By a letter dated February 4, 1976, the petitioner was informed by the Asst. CED as under :

"Please refer to your objection filed today. The assessment has been reopened because the valuation of properties comprised in the estate were not properly included in the estate inasmuch as the land claimed to be appurtenant to the residential bungalow was much more than the reasonable land which could have been considered to be appurtenant to the bungalow."

3. The petitioner has, therefore, filed this petition challenging the jurisdiction of the respondent to initiate proceedings for reassessment.

4. Now, the only reason shown in the return for the issuance of the notice u/s 59 of the Act was that recorded in the order-sheet dated February 27, 1975, by the then Asst. Controller. The relevant part of that order-sheet is as under :

"The entire land, on which the residential house of deceased stood cannot be said to be land appurtenant to the house. Accordingly, the land which is not appurtenant to the house cannot be exempt along with the house used by deceased for residence. This view of the revenue audi''t incorporated in the relevant audit objection is new information received after the assessment and, hence, the notice u/s 59 issued."

5. The short question for consideration is whether the objection received from the audit department as aforesaid can be said to be such information as would justify the issuance of a notice u/s 59 of the Act.

6. Having heard learned counsel for the parties, we have come to the conclusion that this petition deserves to be allowed. It is not disputed that the notice for reassessment in the instant case has been issued under Clause (b) of Section 59 of the Act, which is similar to the provisions of Section 147(b) of the I.T. Act, 1961. The Supreme Court had occasion to consider in Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, , the question as to whether the view expressed by the revenue audit would constitute "information" on the basis of which notice u/s 147(b) of the I.T. Act, 1961, could be issued. The Supreme Court held that the opinion of an internal audit party of the I.T. Department on a point of law cannot be regarded as "information" within the meaning of Section 147(b) of the I.T. Act, 1961.

7. In view of the aforesaid decision of the Supreme Court, it must be held that the respondent had no jurisdiction to issue notice u/s 59(b) of the Act as the view of the audit as to whether the entire land on which the residential house of the deceased stood could be held to be exempt, cannot constitute " information " within the meaning of Section 59(b) of the Act. In the return, some reference is also made to the circular of the Board clarifying the manner and mode as to how the land appurtenant to a residential building should be exempted u/s 33(1)(n) of the Act. It is, however, not necessary to consider the question as to whether such a circular could constitute " information " for the purpose of issuing a notice u/s 59(b) of the Act because, in the instant case, the only information on the basis of which the notice u/s 59(b) was founded was the view of the audit, as is clear from the order-sheet dated February 27, 1975, recording the information oh the basis of which notice u/s 59(b) was issued. The fact that this was the only

" information " is also clear from the stand taken in para. 7 of the return. The respondent, therefore, in the circumstances of the case, must be held to have no jurisdiction to proceed with reassessment.

8. For all these reasons, this petition is allowed. The proceedings for reassessment commenced by the respondent against the petitioner u/s 59(b) of the Act are quashed. In the circumstances of the case, parties shall bear their own costs of this petition. The outstanding amount of security deposit, if any, shall be refunded to the petitioner.

