
(1970) 03 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 757 of 1969

V.S.L. Narasimha Rao and Another

APPELLANT

Vs

Assistant Controller of Estate Duty, Guntur and Another

RESPONDENT

Date of Decision : 04-03-1970

Acts Referred:

Estate Duty Act, 1953 — Section 53, 59, 73A
Income Tax Act, 1922 — Section 34(1)

Citation : AIR 1971 AP 36 : (1971) 80 ITR 662

Hon'ble Judges : Venkateswara Rao, J;Gopal Rao Ekbote, J

Bench : Division Bench

Advocate : S. Parvata Rao, for the Appellant; T. Ananta Babu, for the Respondent

Judgement

Gopal Rao Ekbote, J.—This is an application under Article 226 of the Writ off prohibition restraining the respondents from proceeding with the enquiry in pursuance of a notice dated 31-1-1967.

2. The relevant facts are that the petitioners are real brothers. Their father Sri Venuir Satyanarayana Rao died on 2-12-1957 leaving an estate liable to estate duty under the Estate Duty Act (XXXIV of 1953), hereinafter the return, According to the petitioner all the relevant facts were disclosed and brought to the notice of the Assistant Controller of Estate Duty.

3. The assessing authority, by its order dated 27-6-1964, assessed the estate of the deceased at Rs.2, 99, 765 and imposed a duty of Rs.20, 546.16 P. Since the petitioners had paid Rs. 1,491.83 P. by way of advance, the balance was paid by them on 13-8-64.

4. They wee however, not satisfied with the order of the assessing authority. Therefore, they preferred an appeal to the Appellate Assistant Commissioner of Estate Duty. The appellate authority, by its order dated 19-9-1965, gave some reliefs, the chief among which was a relief to the extent of Rs.21, 312/- from the principal value of the estate towards maintenance allowance to the petitioners

widowed mother. The principal contention before the appellate authority was whether the property is joint family property or was the self-acquired property of the deceased. That contention was negative by the assessing authority as well as the appellate authority.

5. Against that order of the appellate authority, the petitioner preferred an appeal to the Appellate Tribunal. The tribunal in its order dated 1-6-67 gave substantial reliefs. It found that several of the properties were not self-acquired but were joint family properties.

6. While the matter stood thus, the petitioners were served with a notice dated 31-1-1967. The notice ran as under:-

"Whereas I have reason to believe that property chargeable to estate duty has been "under assessed" you are hereby requested to deliver tome no later than 25-2-67 an account of all property in respect of which estate duty is payable."

The petitioners, after obtaining some time, submitted a return on 19-1-969. As the assessing authority was not satisfied with the return, the authority wrote a letter on 19-2-1969 asking for some more information. It is at this state that the petitioners filed the writ petition.

7. The principal contentions wee three fold. It was firstly contended that the notice is vague and does not comply with the requirements of Section 59 of the Act. Secondly the assessing authority had no jurisdiction to re-open the matter decided by it, particularly when the entire material was before it while passing the first order. It was contended that merely because the primary authority has changed its opinion it cannot reopen the matte once decided by it. The third contentions that the notice dated 31-1-67, it ignored because of its non-compliance with section 58, and the second letter dated 19-2-69 is treated as the notice u/s 59. then the commencement of re-assessment proceedings would be barred by limitation in view of Section 73A of the Act.

8. Taking up for consideration the first contention, it becomes necessary to read Section 59 of the Act.

"If the controller,

(a) has reason to believe that by reason of the omission or failure on the part of the person accountable to submit an account of the estate of the decade u/s 53 or Section 56 or to disclose fully and truly all material facts necessary for assessment any property chargeable to estate duty has escaped assessment by reason of under-validation of the property included in the account or of omission to include therein any property which ought to have been included or of assessment at too low a rare or otherwise. or

(b) has, in consequence of any information in his possession, reason to believe notwithstanding that there has not been such omission or failure as is referred to in clause (a) that any property chargeable to estate duty has escaped

assessment, whether by reason of under-valuation of the property included in the account or of omission to include therein any property which ought to have been included, or of assessment at too low a rate or otherwise.

He may at any time, subject to the provisions of S.73-A require the person accountable to submit an account as required u/s 53 and may proceed to assess or erases such property as if the provisions of Section 58 applied thereto."

9. The contention on the basis of Section 59 is that unless the notice specified the property in regard to which the allegation is made that it has escaped assessment. The notice would not be valid. The argument was elaborated with the assistance of Section 53 of the Act. We are, however, not impressed with this argument, Section 59 merely empowers the Controller to re-asses the property which has escaped assessment to duty under the Act. Under of governing clause of that section, the Controller has to merely require the person accountable to submit an account as required u/s 53. Section 53 relates to the persons accountable and their duties and liabilities. It has no bearing on the questions as to what should be the contents of a notice to be given u/s 59 for the purpose of reassessment. Section 53 declares that the persons mentioned therein would be accountable for to whole of the estate duty on the property passing on the death of the decade. It only requires the accountable persons to file a full and air return after the death of the decade. We have therefore necessarily to be guided by section 59 alone and, as stated earlier, the section merely requires the Controller to ask the person accountable to submit an account as required u/s 53. Beyond that no duty issue upon the Controller. It I true that it would be describe to mention, if possible at the state in the notice as to Controller. has escaped the assessment. But if it is remembered that Section 59 empowers him to require the persons accountable to submit an account as required u/s 53 in which account it becomes the duty of the accountable person to fully and fairly describe all the assets left by the decade it could not difficult to realise that at the state in any case the statute does not cast any responsibility upon the Controller to give the details of the property which according to him has escaped assessment. It is true that during the course of the re-assessment proceedings the accountable person will have to be told as to what property has escaped the assessment so that he might meet the point raised by the Controller. That however it not a pre-condition for the however, it not a pre-condition for the authority to issue a notice requiring the accountable person to file a return. The latter part of the operative portion of Section 59 makes this position further clear when it ways that the Controller "may proceed to assess or re-assess such property as if the provisions of sec. 58 applied thereto." Now such property means only the property which has escaped assessment. That property may be noticed as having escaped the assessment before a notice is issued or during the course of re-assessment. It would therefore not be proper to insist upon the details of the property to be given in the notice requiring the accountable person to file a return under Sec. 53. In any case, the section does not require it and is not a condition precedent of revalidate of a notice. It is true that if even during

the proceedings of reassessment, the mind of the Controller is not made known to the accountable persons and if on account of that they had no reasonable opportunity to put their point of view, the proceedings will be quashed on the ground that the matter was decided without providing them a fair and full hearing. But that is altogether a different matter. On that basis it cannot be validly contended that the notice u/s 59 itself must necessarily state what property, according to the Controller had escaped assessment. We are therefore satisfied on a fair reading of Section 53 and 59 that the contention raised before us has no force.

10. The second contention in regard to limitation may be considered at this stage because it is closely connected with the first question already considered. According to Section 73-A, Clause (b) the period of limitation in the case of a re-assessments fixed at three years and its commencement is the date of assessment of such property to estate duty under the Act. It is true that if the first notice dated 31-1-1967 is considered as not a notice within the purview of the Act and if the letter dated 19-2-1969 is treated as a notice u/s 59, then the proceedings of re-assessment would be barred by limitation. But we are not inclined to accept this argument as correct. We have already held that the notice u/s 59 and there can be no doubt in regard to its validity or effectiveness. Moreover, the later letter dated 19-2-1969 is not a notice u/s 59 at all. The letter itself takes note of the fact that a notice u/s 59 and that is why after obtaining some time they submitted or return. The return may be the same as they had already filed, or may not be the same as they had already filed, or may not be the same. It is hardly a relevant factor. What is material is that the petitioners themselves accepted the validity of the notice dated 31-11-1967 and submitted to the jurisdiction of the Controller by asking adjournments and then by filling a return. The letter dated 19-2-1969 seeks only further information as the Controller was not satisfied with the fullness or fairness of the return submitted by the petitioners.

11. On both these grounds, therefore, the question of limitation cannot be said arise in this case. We do not therefore experience any difficulty in rejecting that contention.

12. The real contention, however in this petition is as to whether the Controller has jurisdiction to commence e-assessment proceeding u/s 59. A close and analytical reading of Section 59 would disclose that to the facts of the preset case it is Cl. (b) of that section which is applicable and not Cl. (a). To what extent the learned Advocates appearing for the petitioners have no objection. If we then take into consideration clause (b), it will be evident that before the Controller assumes jurisdiction two things must be satisfied. Firstly, he must have some information in his possession, and secondly, as a consequence of the information he must have reason to believe that any property chargeable to estate duty has escaped assessment. Such an escapement, however may have occurred either by reason of under-valuation of the property included in the

account or because of omission to include therein any property which ought to have been included or of assessment at too low a rate or other wide. Unless, therefore, the existence of some information in possession of the Controller is provided and unless the information has rational nexus with the reason to believe that any property chargeable to estate duty has escaped assessment, the Controller will not be in a position to assume jurisdiction to commence reassessment proceedings.

13. Now, it cannot be in doubt that the fulfillment of these two basic requirements constitute jurisdictional facts or the primary facts the decision on which depends the assumption of jurisdiction by the Controller. Section 59 does not make the Controller the final arbiter of these basic facts. It is open to a court to examine whether there was any information in his possession and that that information was rationally connected with the formation of opinion or belief by the Controller that any property has escaped assessment. It is only in his limited field that the court can make enquiries. It is not concerned with the correctness or otherwise of the information nor it has jurisdiction to consider whether the information in the possession of the Controller is adequate or sufficient to constitute reasonable belief. It is for the Controller to consider those questions. If there is information of the opinion required by that section then the enquiry by the court ends of it cannot probe any further into that jurisdiction question.

14. In this case, our attention was drawn to the note by which the Controller commenced the reassessment proceeding. In so far as relevant, it reads:-

"According to the settlement deed executed on 4-1-42 by the uncle of the deceased, Shri Siva Subbarao, the whole extent of these site measuring 1373 Sq. Yds. was settled in favour of the decedent. During the appeal hearing, the party had filed a printed paper book relating to a suit between the deceased's brother and uncle and in that statement of the deceased was recorded in the Lower Court. In this statement On 8-8-46, the deceased had stated that he had realised money for the construction of the house and the Gruhapravesam done sometime in 1940. It is also stated that both these houses viz., Shiva Nivas, and Markandeya Nivas cost the decedent about Rs. 50,000/- as on the date of suit viz., 1943. The rent from this property has also been collected by the deceased as is apparent from the settlement and the claim for the deduction of a liability of Rs. 16,834/-. Some of the facts have already been referred to in Para 20 of the Appellate order dated 16-9-95."

The Controller then observed:-

"Relying on this additional information which has come on record at the appeal stage, I reopen assessment u/s 59 of the Act."

15. It is immediately clear that the Controller had two pieces of information before him; (1) the deposition of the deceased in which he had given the details of the cost incurred in constructing the two houses; and secondly the appellate order dated 16-9-65 dealing with the question in regard to the property.

16. In regard to the first piece of information, the contention of Sr. Parvatha Rao, the learned counsel for the petitioner, was that the entire material including the deposition referred to in the note was before the Controller at the time of the original assessment. It is only on the basis of that material that the Controller reached the conclusion that the house in question that is Shiva Nivas. did not belong to the deceased but belonged to his second son and that is why o estate duty was imposed treating that as the assets of the deceased. This was brought out in the reply affidavit and obviously the respondent had no occasion to meet that. It is however, denied that the deposition or even the printed that the deposition or even the paper book was before the Controller at the time of the original assessment. Thus except the assertion and the denial, there is no other material to show that the Controller had the deposition and the other printed paper book before him when he passed the original assessment order, It is therefore difficult to accept the contention that the Controller had before him the information which he is now trying to rely upon.

17. In regard to the second piece of information, it can hardly be doubted that it could not have been before the Controller when he passed the original assessment order. It is from his original assessment order that an appeal was preferred and the Appellant Assistant Commissioner passed the order in appeal. It is in the appeal that the appellate authority found that the house belonged to the deceased and that is why the deduction in regard to the rent which was made by the petitioners was disallowed by the appellate authority. It is also not doubted that on a further appeal to the Tribunal the claim of rent was disallowed even by the Tribunal finding that the house belonged to the deceased.

18. The short question, therefore for our consideration is whether these facts found by the higher tribunals among to information within the meaning of Section 59 of the Act.

19. In the connection, it must be remembered that there is a material difference between a power to act on information u/s 59 and a power to revise ones own order. Section 59 postulate that the information must have been in the possession of the Controller after he had passed the original assessment order. And it is only on such information that he is entitled to act if the information was already with him. Then section 59 would not permit him to apply his mind to the same assessment with view to correct his own mistakes. It is plain that on the same material the Controller would have no jurisdiction to revise his order merely because he happens to change his opinion or holds a different opinion from that held by his predecessor. Thus the test in such cases would be to see whether the Controller in revising his order is really acting in pursuance of an information which is relived by him from an external source for the first time after he had parted with the assessment proceedings.

20. It is now fairly settled that no rigid approach can be made in regard to the kind or nature of the information. The information may be in reference to facts or may be in reference to the position of law. The information in regard to facts or

law may also come to his notice from the order of the appellate authority or the tribunal. The distinction, which is sought to be made before is, that such an information must be received not from the order in the same proceedings which went in appeal to the appellate authority or the tribunal but must have been received from an independent other proceeding has no valid basis. What Section 59 requires is that information must be in possession of the controller subsequent to the assessment order and we have already seen that such an information can be gathered from any order of the appellate authority or of the tribunal whether in the same proceedings or from any other proceedings. It may, even consist of a different view taken of the facts or law on the record by a higher tribunal on appeal from the Income Tax Officer's decision.

21. We are fortified in our view by a decision of the Supreme Court in *R.B. Bansilal Abirchand Firm Vs. Commissioner of Income Tax, Madhya Pradesh*, . The following observations are relevant for our purpose:-

"When the first assessment of the assessee's income was made by the Income Tax Officer. the Income Tax Officer's information was that the assess was a partner in Bisesar House and that the interest had been received in the capacity of a partner. It was only after the Tribunal and the High Court gave their decision in the proceedings for assessment to tax of Bisesar House that the Income Tax Officer came to know that the interest was not being received by the assess-firm in the capacity of a partner, but in its capacity of a financier advancing moneys to Bisesar House as a banker. It is true that if the facts had been properly considered at the time of the first assessment the Income Tax Officer might have discovered the correct position and might have come to the conclusion that the assess-firm was not receiving interest as a partner, but this circumstance that such a decision could have been arrived at does not mean that at the time when the Income Tax Officer started proceedings u/s 34 (1) (b) he was acting on the information received from the decisions of the Tribunal and the High Court in the assessment proceedings of Bisesar Houses. It was not a case where the Income Tax Officer on his own initiative and on the material which was before him at the time of the first assessment changed his opinion correct conclusion was brought to his notice by the decision of the Tribunal and the High Court a that must be held to be information as a consequence of which he came to believe that the provisions of Section 34 (1) (b) were attracted."

22. In the *Assistant Controller of Estate Duty v. Nawab Sir Mire Osman Ali Khan*. C.A.No. 835 of 1966, D/- 23-8-1968 S(SC) the same question under the Act again came up before the Supreme Court. The argument was that any matter of fact or law which may come to the notice of the appellant after the making of assessment including a finding by a higher authority would be "information" for the purpose and within the meaning of Section 59. In that case the predecessor in office of the appellant had adopted a wrong mode of valuation and the opinion expressed by the Central Board of Revenue about the correct mode was "information" which reasonable belief that the property assessed to estate duty

had been under valued. The High Court of Andhra Pradesh held that a mere expression of opinion by the Board of Revenue did not amount to "information" within the meaning of Section 59 of the Act. Disagreeing with the view and accepting the argument the Supreme Court held:-

"When the expression "information" is understood in the sense of instruction or knowledge derived from an external source concurring facts or particulars or as to law relating to a matter bearing on the assessment it is difficult to be how determination of validation for the purpose of assessment of estate duty would not squarely fall within the meaning of the expression "information" in the context in which occurs in Section 59 of the Act."

We are not at all impressed by the argument that the first decision referred to is distinguishable because the decision of the Tribunal or the Higher Court was given in a connected proceeding and not in the same proceeding. We have already pointed out that that hardly makes any difference in the situation. It is needless to point out that the said decision relates to the status of an assess, the principle underlying being the same, It would apply even to a case where the property has escaped assessment.

23. Some feeble attempt was made to point out that there is material difference between sections 34 (1) (b) and Section 59. But on a comparison of these two provisions of law, in so far as we are concerned we do not find any difference at all between the two provisions of law. They are in part material and consequently the decision of the Supreme Court first referred to above applies squarely to the facts of the present case. The recent to the facts of the present case. The recent Supreme Court decision referred to above in this behalf held:

"It has not been disputed and can indeed not be disputed that the provisions of Section 59 are in part material with section 34 of the Income Tax Act 1922 and Section 147 of the Income Tax Act 1961.

24. The two pieces of information thus are information within the provision of Section 59 of the Act and it can hardly be doubted that the information which came into possession of the Controller for the first time after he had parted with the case are relevant for the purpose of forming a reasonable belief that some property chargeable to estate duty has escaped assessment Thus the basic requirements to assume jurisdiction u/s 59 are thoroughly satisfied in the present case. We do not therefore find any substance in this contention also.

25. Our attention was then drawn to the question that there is no valid ground to revise the decision arrived at by the Tribunal in regard to maintenance. But it would not be proper for us to consider that question here. The petition is for the issue of a writ of prohibition and in such a case the only duty of this Court is to see whether the Controller has jurisdiction to re-assess the property. and once it is found that he has such jurisdiction, it is open to the petitioners to raise all objection including the objection in regard to maintenance before the Controller and we have no reason to believe that he would not dispose of the objections

raised before him after giving full opportunity to the petitioners in accordance with law.

26. Since no other contention was raised, the writ petition fails and is dismissed with costs. Advocate's fee Rs. 250/-.

27. Petition dismissed.