

Controller of Estate Duty, Gujarat-I

Vs

M. A. Merchant.

Civil Appeals Nos. 2 to 4 of 1975

(CJI R. S. Pathak, Sabyasachi Mukharji JJ)

02.05.1989

JUDGMENT

R. S. PATHAK C.J.I. –

1. The facts in these appeals lie within a narrow compass. One Abdulhussein Gulamhussein Merchant died on February 8, 1959. The accountable persons filed returns under the provisions of the Estate Duty Act, 1953, and an assessment was made by the Deputy controller of Estate Duty on February 26, 1960. The Estate Duty (Amendment) Act, 1958, repealed the original sections 56 to 65. Section 59, which was substituted for the original section 62, made provision for reassessment. It came into force with effect from July 1, 1960. On February 21, 1962, a notice under the new section 59 of the Act was issued to the accountable person concerned of reopening the assessment on the ground that some property has escaped the levy of estate duty. The accountable persons raised objection to the reopening of the assessment under section 59. The Assistant Controller rejected the contentions of the accountable persons and reopened the assessment. Against the order of reassessment, the accountable persons filed three different appeals before the Appellate Controller. The Appellate Controller allowed the appeals and set aside the reassessment orders holding that section 59 under which action had been taken by the Assistant Controller was not retrospective in operation. On appeal by the Revenue, the Tribunal upheld the view of the Appellate Controller relying on the decision of the Bombay High Court in Arvind N. Mafatlal v. T. A. Balakrishnan, Deputy Controller of Estate Duty [1968] 67 ITR 449. Thereafter, three references were made to the High Court at the instance of the Revenue raising the identical question (p. 272 of 101 ITR):

"Whether section 59 of the Estate Duty Act, 1953, is retrospective in operation and if so, in the facts and circumstances of the case, the reopening of the assessment under section 59 of the said Act was bad in law ?"

Section 62 as originally enacted read as follows:

"Rectification of Mistakes relating to valuation for estate duty. -

(1) If, after the determination of the estate duty payable in respect of any estate, it appears to the Controller that, by reason of any mistake apparent from the record or of any mistake in the valuation has been the subject matter of an appeal under this Act or of the omission of any property, the estate duty paid thereon is either in excess of or less than the actual duty payable, he may, either on his own motion or on the application of the person accountable and after obtaining the previous approval of the

Board, at any time within three years from the date on which the estate duty was first determined -

(A) refund the excess duty paid, or, as the case may be,

(b) determine the additional duty payable on the property:

Provided that where the person accountable had fraudulently, under estimated the value of any property or omitted any property, the period shall be six years:

Provided further that no order shall be made under this sub-section unless the person accountable has been given an opportunity of being heard.

(2) Nothing contained in sub-section (1) shall render any person accountable to whom a certificate that the estate duty has been paid is granted liable for any additional duty in excess of the assets of the deceased which are still in his possession, unless the person accountable had fraudulently attempted to evade any part of the estate duty in the first instance."

The provisions of section 59 introduced by the Amendment Act of 1958 are as follows:

"59. Property escaping assessment - 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 deceased under section 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 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, 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 had 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 section 73A, require the person accountable to submit an account as required under section 53 and may proceed to assess or reassess such property as if the provisions of section 58 applied thereto."

The High Court considered the question of law referred to it at great length and after a detailed judgment answered the question in each case in favour of the assessee.

The Revenue now appeals.

The question is whether the newly enacted section 59 of the Estate Duty Act is retrospective in operation so as to affect assessments already completed on accountable persons. It is urged that the new section 59 is substantially similar in content to the old section 62 and, therefore, the new provision must be regarded as retrospective. The contention may be examined.

The Estate Duty (Amendment) Act, 1958, effected a substituted in place of the existing section 56 to 65, and the originally enacted section 62 repealed. The original section 62 provided essentially for the rectification of mistakes apparent from the record or in the valuation of any property or by reason of the omission of any property. The newly enacted section 59 deals with property escaping assessment. The provision is analogous to section 34 of the Indian Income-tax Act, 1922, and section 147 of the Income-tax Act, 1961. It seems to us that the new section 59 endeavors to cover an area substantially different from that treated by the old section 62. The only area which seems common to the two provisions relates to the "omission of any property", but it seems to us that the incidents of the power under section 62 relate to a situation materially different from the incidents of the power contemplated under section 59. The High Court has closely analysed the provisions of the two sections and has come to the conclusion that the power of reassessment conferred by the new section 59 is quite different from the power conferred by the old section 62. We are in agreement with the High Court. The contention on behalf of the Revenue is based on the identity alleged between the new section 59 and the old section 62, and that, therefore, the new section should be regarded as retrospective, cannot be accepted.

As it stands, there are no specific words either which confer retrospective effect on section 59. To spell out retrospectivity in section 59, there must be something in the intent of section 59 from which retrospective operation can be necessarily inferred. We are unable to see such intent. The new section 59 is altogether different from the old section 62 and there is nothing in the new section 59 from which an intent to give retrospective effect to it can be concluded.

The new section 59 came into force from July 1, 1960, much earlier, on February 26, 1960, the assessment on the accountable person had already been completed. There is a well-settled principle against interference with vested rights by subsequent legislation unless the legislation has been made retrospective expressly or by necessary implication. If an assessment had already been made and completed, the assessee cannot be subjected to reassessment unless the statute permits that to be done. Reference may be made to *CED v. Smt Ila Das* [1981] 132 ITR 720 (Cal), where an attempt to reopen the estate duty assessment consequent upon the insertion of the new section 59 of the Estate Duty Act was held infructuous.

We hold that section 59 of the Estate Duty Act is not retrospective in operation and that the reopening of the assessment under section 59 of the Act is bad in law.

In the result, the appeals fail and are dismissed with costs.

Appeals dismissed.

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