MYSORE HIGH COURT

Ethel Rodrigues

Vs

Controller of Estate Duty

Writ Petn. No. 454 of 1962

(K.S. Hegde and Ahmed Ali Khan, JJ.)

08.08.1962

JUDGMENT

Hegde, J.

1. In this petition under Article 226 of the Constitution the petitioner seeks a writ of certiorari or such other appropriate writ, direction or order quashing the order of the Assistant Controller of Estate Duty, Managlore in No. R-1/55-56 dated 19th March 1962 purporting to rectify the original order of assessment made by him on 27-3-1957. It is contended that the Assistant Controller of Estate Duty had no jurisdiction to pass the order in question.

2. The relevant facts are as follows : The petitioner is the widow of the Mr. H.P.P. Rodrgigues who died on 4-8-1955 leaving behind him a, vast estate. In respect of the estate left by the deceased, the petitioner who was the executrix of the will left by Mr. Rodrigues, submitted a return. After scrutinizing the return made and after examining the materials collected by the officers of the Department appointed under Section 41 of the Estate Duty Act (to be referred to as "the Act" hereinafter), the Deputy Collector of Estate Duty, Coimbatore valued the estate of the deceased at ₹ 5,52,824/- and assessed estate duty at ₹ 60,696-69 nP. as per his order dated 27-3-1957. From, the estate duty so assessed, the Deputy Controller deducted a sum of ₹ 11,188/- the amount paid as probate duty. He further inducted a sum of ₹ 11,891.12 nP. which had been voluntarily paid. For the balance amount of ₹ 37,617,57 nP. a demand notice was served on the petitioner. The said amount was duly paid.

3. On 24-3-1960 the Assistant Controller of Estate Duty Bangalore, purporting to act under Section 62 of the old Act (corresponding to Section 61 of the present Act) called upon the petitioner to show cause why the original order of assessment should not be rectified in certain respects. To that proposal the petitioner agreed. Consequently, the Assistant Controller of Estate Duty passed an order rectifying the assessment and as per that order the net valuation of the estate was increased to ₹ 6,36,837/- and the estate duty payable was also correspondingly paid by the petitioner.

4. When the estate duty proceedings were going on before the officials concerned, simultaneously probate proceedings were going on before the District Judge, South Kanara. When the order in these proceedings were communicated to the Collector as required by law, he objected to the valuation of the estate and at his instance the valuation was enhanced to ₹ 7,87,060/-. This valuation evidently came to the knowledge of the Assistant Controller of Estate Duty Bangalore. Thereafter, he issued a notice on 31-10-1961 purporting to act under Section 61 of the Act. The contents of that notice are important and therefore, I shall quote the same :

> "The net principal value of the estate passing on the death of the deceased was determined at ₹ 6,36,83/ for estate duty purposes. 'But the valuation of the estate passing on the death of the deceased carne up before the District Judge in case No. RIA/13 of 59 in O.P. 21 of 56 wherein it was decided by the District Judge by his order dated 30th June 1960 that the net value of the estate works out at ₹ 7,87,060/-. Thus, there is a mistake regarding the valuation of the estate' which requires to be rectified. Instead of taking the net principal value of the estate at ₹ 6,36,837, it will be now taken at ₹ 7,87,060. I am therefore to request you to kindly let me have your objections, if any, in writing within seven days of the receipt hereof. In case no letter is received then it will be presumed that you have no objections for the rectification." (underlining (here in ' ') is ours) :

The petitioner objected to the proposed reticulation. She contended that on the facts stated by the Assistant Controller no case is made out for rectification under Section 61 and no re-assessment under Section 59 was possible as the same was barred by limitation. Her objections were overruled and the Assistant Controller rectified the assessment order as per his order dated 19th March 1962. He came to the conclusion that the appropriate valuation to be placed on the estate of the deceased was the same as that which was placed by the District Judge. He accordingly enhanced the estate duty. The question for consideration is whether this enhancement is in accordance with law.

5. Under Section 36 of the Act, the duty of valuing the estate of a deceased person is left to the Controller. In discharging his duty, he may take the assistance of his subordinates as provided in Section 41 and supplemented by the relevant rules. In other words, he is the authority to value the estate. From the narration of facts made earlier, it is clear that at the first instance the Controller did come to his own conclusion as regards the value of the estate. He has made the change, which is the subject-matter of challenge in this petition, not because to found any mistake apparent from the records of assessment, but because he thought that his valuation was an under-valuation in the light of valuation made by the learned District Judge. Can this be justified under Section 61 of the Act ? Section 61 reads as follows :

> "At any time within five years from the date of any order passed by him or it, the Controller, the Appellate Controller or the Appellate Tribunal may, on his or its own motion rectify any mistake apparent from the record and shall, within a like period rectify any such mistake which has been brought to the notice of the Controller, the Appellate

Controller or the Appellate Tribunal as the case may be, by the person accountable;
....."

Sri T. Krishna Rao, the learned counsel for the assessee-petitioner, contended that the Assistant Controller did not discover any mistake, apparent or otherwise, from the records of assessment; but he changed his opinion about the valuation of the estate because some other authority had valued the estate differently. According to him, such a procedure is not justified by Section 61. This contention appears to me to the sound. What is relevant under Section 61 is the discovery of an apparent mistake in the records of assessment and not in any other record. Section 61 of the Act corresponds to Section 35(1) of the Indian Income-tax Act. The language of the two sections is more or less identical. Construing the scope of Section 35(1) of the Indian Income-tax Act, this is what was observed by Shah, J. who spoke for the Supreme Court in *Income-fax Officer v. S.K. Habibullah*[1]*;*

> "Section 35(1) empowers the Income-tax authorities to rectify mistake apparent from the record of certain orders passed by them. The clause (omitting parts not material) provides that the Income-tax Officer may at any time within four years from the date of any assessment order passed by him on his own motion rectify any mistake apparent from the "record of the assessment". The power of rectification may be exercised subject tot two conditions :
> (1) that there is a mistake apparent from the record of the assessment, and
> (2) that the order if rectification is made within four years from the date of the assessment sought to be rectified. The mistake which may be rectified need not be in the order itself; it may be in any part of the record of proceeding of assessment of the assessee. But for the purpose of assessment an individual and a firm are distinct entities and even if an individual is a partner of the firm, a mistake discovered because of something contained in the assessment of the firm is not a mistake apparent from the record of assessment of the individual partner. In *Lakshminarayana Chetty v. First Additional Income-tax Officer, Nellore*[2]*,* in dealing with the question whether the record of the assessment of the firm may be regarded as the record of the assessment of the individual partner, Subba Rao, C.J. speaking for the Court observed, and, "in our judgment, correctly : -
> 'But it is said that Section 35 of the Act even without the amendment would have enabled the Income-tax authorities to reopen the assessment on the ground that there was a mistake apparent from the record. But from the record of final assessment, it is impossible to say that there was a mistake apparent from the record, for the assessing authority accepted a certain figure as representing the share of the assessee in the firm and made a final assessment.

[1] All 1962 SC 918
[2]1956-29 ITR 419

> The mistake is not in the record but by a subsequent assessment of the firm, it
> was discovered that the earlier assessment was wrong to the extent of the assessee share in the firm. It is not a mistake apparent from the record bat a mistake discovered from the disposal of another case.

Section 35(1) of the Income-tax Act could not therefore be resorted to by the Income-tax authorities for rectification of the assessment of the assessee, for there was no error apparent from the record of those assessments." The ratio of this decision very strongly supports the contention advanced on behalf of the petitioner. The assessing authority thought that the facts of the present case come within the rule laid down by the Supreme Court in *Income-tax Officer, Always v. Asok Textiles Ltd*[3]*.,* That case is clearly distinguishable. In that decision, the Supreme Court held that the Income-tax Officer can under Section 35 of the Act examine the records and if he discovers that he had made a mistake, he can rectify the error, and the error which can be rectified may be an error of fact or an error of law. In that case, the scope of Section 35 of the Income-tax Act vis-a-vis the scope of Order 47, Rule it Civil Procedure Code was considered by the Court. I do not think that that decision is of any assistance in deciding the controversy mentioned above.

6. On the facts and circumstances found by the Assistant Controller, this case may come within the ambit of Section 59 of the Act and not Section 61. Section 59 of the Act reads :

> "59. 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 undervaluation 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 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 Section 73-A require the person accountable to submit an account as required under Section 53 and may proceed to assess or re-assess such property as if the provisions of Section 58 applied thereto."

7. Section 73-A lays down that :

> "No proceedings for the levy of any estate duty under the Act shall be commenced :
> (a) in the cases of a first assessment, after the expiration of five years from the date of death of the deceased in respect of whose property estate duty became

[3] AIR 1961 SC 699

> payable; and
> (b) in the case of a re-assessment, after the expiration of three years from the date of assessment of such property to estate duty under this Act."

In the present case, the Department could take no assistance from Section 59 in view of the bar of limitation provided under Section 73-A. As already stated, the case does not fall within the ambit of Section 61.

8. The learned counsel for the revenue contended that though ordinarily "record" would mean "record of assessment", in the case of estate duty, the record of the probate proceedings are as "record of assessment". For this contention, he relied on Section 50 of the Act, which says :

> "Where any fees have been paid under any law relating to Court-fees in force in any State for obtaining probate, letters of administration or a succession certificate in respect of any property on which estate duty is livable under this Act, the amount of the estate duty payable shall be reduced by an amount which is equal to one half of the Court-fees so paid."

To elaborate the contention of the learned counsel for the revenue :- In order to determine the estate duty recoverable, the assessing officer must find out the gross estate duty due and the deductions to be made from the same and there after arrive at the net estate duty recoverable; to find out the amount deductible, the record of the probate proceedings will have to be looked into; therefore, the record in the probate proceeding should also be considered as a part of the 'record' of assessment. Ingenious as this argument is I do not think that there is any strength in it. For the purpose of determining the estate duty livable, the record in the probate proceeding is not relevant. It is only after the estate duty due is determined the question of deduction arises. The question of deduction has nothing to do with the determination of the estate duty due. The operation of Section 50 comes in at a stage after the estate duty is determined. Hence, - when acting under Section 61, the only 'record' that the assessing authority can look into is the 'record' relating to' the assessment and not any other "record."

9. For the reasons mentioned above, this petition is allowed and a writ of certiorari is issued quashing the impugned order of rectification. Under the circumstances of the case, we direct the parties to bear their own costs.
Petition allowed.