(1975) 02 AHC CK 0019

Allahabad High Court

Case No: Estate Duty Reference No. 233 of 1972

Smt. Sarla Devi		APPELLANT
	Vs	
Controller of Estate Duty		RESPONDENT

Date of Decision: Feb. 20, 1975

Acts Referred:

- Estate Duty Act, 1953 - Section 59

Citation: (1976) 103 ITR 652

Hon'ble Judges: K.B. Asthana, C.J; Satish Chandra, J

Bench: Division Bench

Advocate: K.K. Bhattacharya and J.C. Bhardwaj, for the Appellant; R.R. Misra, for the Respondent

Final Decision: Dismissed

Judgement

Satish Chandra, J.
The Tribunal has submitted this statement of the case for the opinion of this court on the following question of law:

"Whether, on the facts and in the circumstances of the case, the proceedings of reassessment u/s 59(b) of the Estate Duty Act, 1953, were invalid and without jurisdiction ?"

2. Shri Kanhaiya Lal died on 3rd April, 1962. His widow, Smt. Sarla Devi, filed a return under the Estate Duty Act, 1953. She claimed, inter alia, that her husband had one-fourth share in the coparcenary properties. The Assistant Controller of Estate Duty, Meerut, felt that the deceased''s share in the coparcenary properties was half because the deceased was the sole surviving coparcener in the bigger Hindu undivided family. He called upon the accountable person by a notice dated February 5, 1963, to show cause why the deceased''s share should not be taken as one-half. The accountable person filed a reply on 23rd February, 1963, and pointed out that her husband''s share would only be one-fourth. The Assistant Controller examined

the matter and upheld the contention of the accountable person.

3. On scrutiny later, the Assistant Controller found that on a correct view of Hindu law the share of the deceased in the coparcenary properties would be, half. He issued notice to the accountable person u/s 59(b) of the Estate Duty Act for reopening the proceedings. The accountable person filed a reply stating that there was no new information in the possession of the Assistant Controller and, therefore, he had no jurisdiction to reopen the assessment under Clause (b) of Section 59. The Assistant Controller repelled the preliminary objection. He held that according to Hindu law the correct share of the deceased in the bigger Hindu undivided family would be one-half and not one-fourth. He further held that in this case the correct position of law came to the notice of the Assistant Controller subsequent to the completion of the original assessment and information, that is, the correct position of law so known led to the belief that the property had escaped assessment on account of adopting wrong share of the deceased in the bigger Hindu undivided family. He, accordingly, included one-half share for assessment purposes.

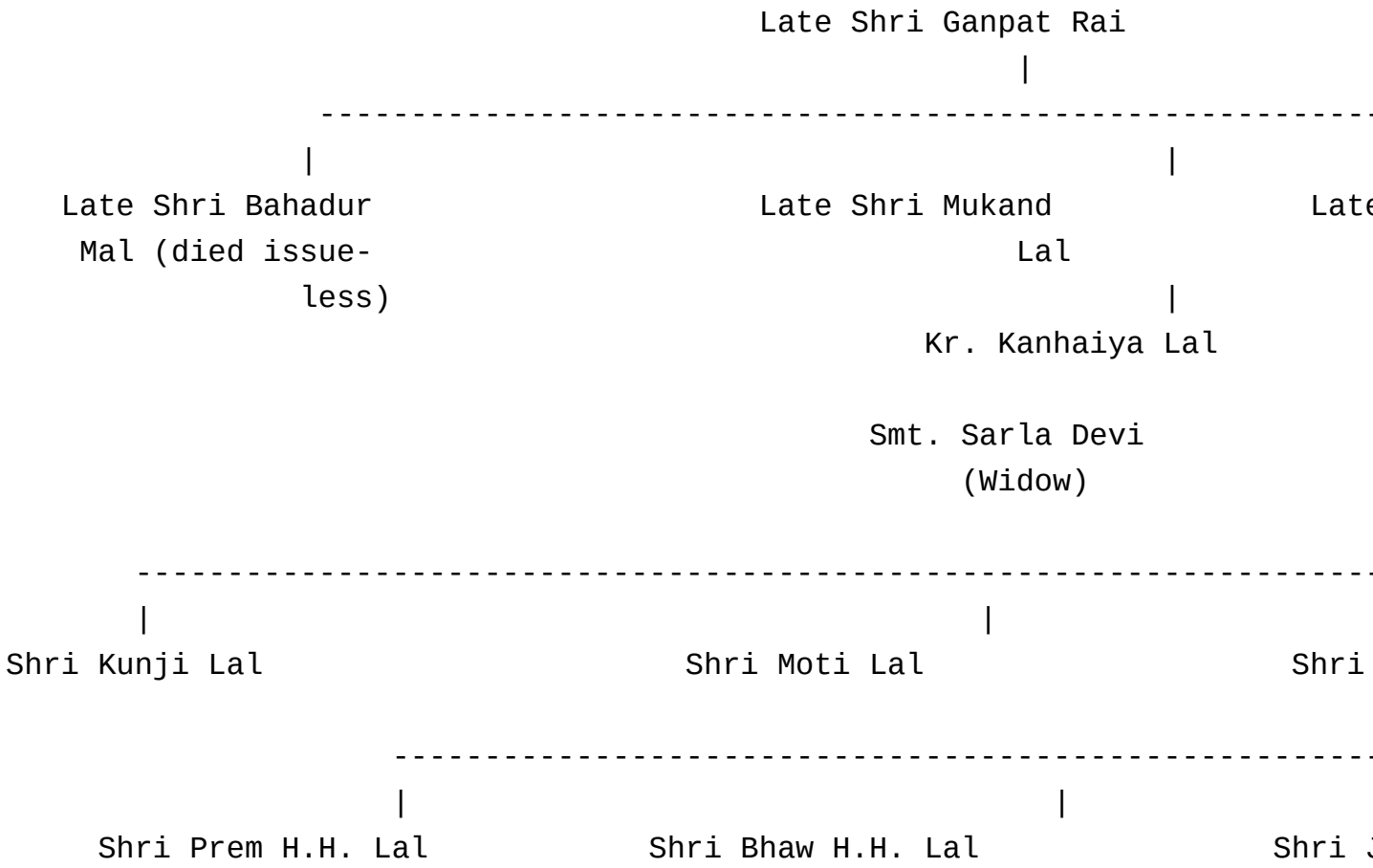
4. The accountable person went up in appeal. The Zonal Appellate Controller held that the facts of the case clearly go to establish that subsequent to the order of assessment on 24th July, 1963, there was no information obtained. This notice for reassessment was invalid and bad in law. He further held that in view of the fact that reopening of the assessment itself had been held to be invalid it was not necessary to decide as to what would be the correct share of the deceased in the coparcenary property. The appeal was allowed.

5. The department took the dispute to the Income Tax Appellate Tribunal. The Tribunal held that in the instant case "information" was obtained by the Assistant Controller from other enquiries or research into the law made by him subsequent to the previous assessment. The Assistant Controller had jurisdiction to reopen the assessment under Clause (b) of Section 59. Since the Zonal Appellate Controller had not decided the question as to the correct share, the case was remanded to him for a decision of this issue in accordance with law.

6. At the instance of the assessee the Tribunal has submitted the question of law mentioned above.

7. The only question that requires our consideration relates to the jurisdiction to reopen the assessment under Clause (b) of Section 59. Under this clause the Controller can reassess if in consequence of any information in his possession he has, inter alia, reason to believe that any property chargeable to estate duty has escaped assessment. The controversy between the parties is whether the material on which the Assistant Controller proceeded to reassess was "information in his possession" within the meaning of Clause (b). Before considering the true legal significance of the terra "information" we may indicate the factual position.

8. At the time of the original assessment the accountable person put forward the following pedigree which was accepted by the Assistant Controller:



9. The Assistant Controller took the view that the deceased Kanhaiya Lal was the sole surviving coparcener of his branch of the Hindu undivided family. He called upon the accountable person to show cause why the deceased''s share in the undivided coparcenary properties be not taken at one-half as against one-fourth declared by the accountable person because the whole of his property including the coparcenary property will pass to his heirs by succession : vide Mulla''s Hindu Law, 12th edition, paragraphs 257 and 34(2)(ii), which for estate duty purposes passed u/s 5 of the Estate Duty Act, 1953. The accountable person filed a reply pointing out that the deceased was not the sole coparcener of the Hindu undivided family as no complete partition of the assets of the bigger Hindu undivided family had been effected till the date of his death and the joint properties of the bigger Hindu undivided family continued to be joint. It was pointed out that as no partition had been effected regarding the immovable properties between the various coparceners, the deceased was not entitled to dispose of the coparcenary properties as a separate property and under those circumstances paragraphs 257 and 34(2)(ii) of Mulla''s Hindu Law were not applicable to his case. The Assistant Controller held that on a further examination the accountable persons''s contention was found to be correct. As the immovable properties of the bigger Hindu undivided family remained joint, other coparceners, that is, the nephews of the deceased retained their coparcenary interest in the same and consequently the deceased was not the

sole surviving coparcener. In this view the deceased''s share in the bigger Hindu undivided family was taken at one-fourth.

10. In the reassessment order the Assistant Controller stated that under the Estate Duty Act property belonging to the Hindu undivided family are deemed to have been partitioned on the date of the death of the deceased in order to determine the share of the deceased in the coparcenary property. He observed that on scrutiny it was found that there was a mistake of law inasmuch as a wife never gets a share on a partition during the lifetime of her husband until partition is between the father and his sons or if the father is dead then between the sons. In this case the deceased had no son and, therefore, there was no question of his wife getting a share on partition. In fact on his death his wife, Sarla Devi, has stepped into the shoes of her husband and would be entitled to the half share of her husband; According to the pedigree, the correct share of the deceased was only one-half. The coparceners being, (1) Kr. Kanhaiya Lal, son of Shri Mukand Lal, and (2) sons of Shri Kundan Lal.

11. It is apparent that during the course of the original assessment proceedings the fact that Kr. Kanhaiya Lal had no sons was known to the Assistant Controller. In the original assessment order he had mentioned that at a partial partition in the family, under which the businesses were partitioned, the immovable properties continued to remain joint. The Assistant Controller, however, took the view that since the deceased was the sole coparcener in his branch of the Hindu undivided family his entire share passed to his heirs by succession: vide Mulla''s Hindu Law, 12th edition, Sections 257 and 34(2)(ii). In paragraph 257 aforesaid it has been provided that a person, who for the time being is the sole surviving coparcener, is entitled to dispose of the coparcenary property as if it were his separate property.

12. Under paragraph 34(2)(ii) it has been laid down that if the deceased was at the time of his death the sole surviving member of a coparcenary, the whole of his property, including the coparcenary property, will pass to his heirs by succession.

13. The accountable person, however, satisfied the Assistant Controller that the deceased was not the sole surviving coparcener because there was no partition with regard to the immovable properties of the Hindu undivided family. The deceased was, therefore, not the sole surviving coparcener as his uncle''s sons were the other coparceners. It is apparent that the examination at that stage was whether the deceased was the sole surviving coparcener so that his entire share would pass by succession.

14. Subsequently, the Assistant Controller found that for the purposes of determining the share of the deceased in the coparcenary properties a partition is deemed to have taken place on the date of his death for estate duty purposes. He also found that on such a partition the wife of the deceased would not have got a share because there was no son. Under the Hindu law the wife gets a share where

there is. a partition between the father and sons and not otherwise. Therefore, the share of the deceased was half.

15. It is apparent that this legal aspect was not canvassed or examined before the Assistant Controller during the original assessment proceedings. At that time the question of share was examined from an entirely different legal standpoint. The Tribunal has found that in the instant case the information was obtained by the Assistant Controller from other enquiries or research into law made by him subsequent to the assessment. It is obvious that the Assistant Controller was unaware of the legal position on the basis of which he initiated reassessment proceedings at the time of drawing up the original assessment. He became aware of the legal position as a result of his research into law subsequent to the assessment order. The question that requires consideration is whether this acquisition of knowledge as to the true legal position applicable to the facts of the case is information in the possession of the Assistant Controller within the meaning of Clause (b) of Section 59.

16. In Assistant Controller of Estate Duty v. Nawab Sir Mir Osman Ali Khan Bahadur [1969] 72 ITR 373, the Supreme Court held that it has not been disputed, and can indeed not be disputed, that the provisions of Section 59 are in pari materia with Section 34 of the Indian Income Tax Act, 1922, and Section 147 of the Income Tax Act, 1961. This would mean that the decisions interpreting the term "information" occurring in those provisions will be applicable to a case u/s 59 of the Estate Duty Act.

17. In Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, , the Supreme Court held that the knowledge from an external source concerning facts or particulars, or as to the law relating to a matter bearing on the assessment means "information". It was further held that even though the information may be such which could have been obtained during the previous assessment from an investigation of the material on record, or the facts disclosed, thereby, or from other enquiry or research into facts or law, but was not in fact obtained, the jurisdiction of the Income Tax Officer is not affected.

18. Thus, if some material is obtained by research into law which research was not done earlier or which material was not in fact obtained earlier, such material would, according to this decision of the Supreme Court, be " information."

19. In Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa, . the Supreme Court held that the word "information" includes information as to the true and correct state of law, and so would cover information as to relevant judicial decisions. The term " information " really means knowledge about any fact or as to the legal position.

20. In Anandji Haridas and Co. (P.) Ltd. Vs. S.P. Kushare, S.T.O. Nagpur and Others, the Supreme Court considered the question whether "information" should be from

outside source and not which could be gathered by the assessing authority from his own records. The court referred approvingly to the decisions of the Kerala High Court in United Mercantile Co. Ltd. Vs. Commissioner of Income Tax, Kerala, where it was held that "to inform" means to impart knowledge and a detail available to the Income Tax Officer in the papers filed before him does not by its mere availability become an item of information. It is transmuted into an item of information in his possession only if, and only when, its existence is realised and its implications are recognised, la Anandji''s case, the position was that the assessee had not filed the quarterly returns under the Sales Tax Act. This fact was known to the assessing authority. The assessing authority wanted to initiate proceedings for reassessment on the ground that the turnover for the relevant periods had escaped assessment. The Supreme Court held that the knowledge of the fact that the appellants had not submitted their quarterly returns constituted an information to the assessing authority although this fact was known to it from the very beginning. In the light of this decision it is apparent that the realisation that a different legal aspect is applicable to the facts of a case obtained as a result of further scrutiny into the state of law would be information, provided that particular legal position was not known or realised at the time of the original assessment, In the present case the legal position that the wife will not have a share where there is no son was not either canvassed or realised by the Assistant Controller. He came to know of this legal position as a result of further research or scrutiny into the law. Knowledge was derived from an external source, namely, the study of the law and the knowledge was in relation to a new legal position which was applicable to the facts of the case.

21. The knowledge was such which led the Assistant Controller to reach to the formation of belief that some property had escaped assessment. In Maharaj Kumar Kamal Singh v. Commissioner of Income Tax, the Supreme Court held that the case where the assessing authority has reason to believe that certain income has escaped assessment includes the cases where income has not been assessed due to inadvertence or oversight. Thus, knowledge obtained as a result of research into law which was not known previously even though on account of inadvertence or oversight, would none the less be knowledge on the basis of which a belief about escapement could be formed.

22. In R.B. Bansilal Abirchand Firm Vs. Commissioner of Income Tax, Madhya Pradesh, , the Supreme Court held that if knowledge is derived from a subsequent decision of the Tribunal or the High Court or the Supreme Court as to the correct position it would be information from an external source conferring jurisdiction. Similarly, knowledge obtained from the information of the Central Board of Revenue was held to be "information" within the meaning of Section 59 of the Estate Duty Act in Assistant Controller of Estate Duty, Hyderabad Vs. Nawab Sir Mir Osman Ali Khan Bahadur, H.E.H. the Nizam of Hyderabad and Others, . In our opinion information derived from research into law on which standard text books are available would clearly mean knowledge derived from an external source within the meaning of

these decisions.

23. In Thakur Das Tej Prakash Vs. Income Tax Officer, D-Ward and Another, the Income Tax Officer found that in the original assessment he committed a mistake in applying Section 24(2) of the Indian Income Tax Act, 1922. He initiated reassessment proceedings. This court held that the inadvertence in making an assessment would bring a case within Section 34(1)(b) and if an error is discovered after the assessment was made that is information subsequent to the original assessment. It relied upon another decision of this court in ASGHAR ALI MOHAMMAD ALI Vs. COMMISSIONER OF Income Tax., where it was held :

"Where in the original assessment the Income Tax Officer had omitted to consider and apply to the facts of the case the relevant statutory provision, it is open to the succeeding Income Tax Officer when that omission is noticed by him, to proceed u/s 34 to assess the income which has escaped assessment. When the succeeding officer comes to notice the omission of his predecessor he must be held to have information in his possession within the meaning of Section 34."

24. In our opinion the same position would obtain with regard to omission to consider and apply the correct principle of law to the facts of the present case.

25. Learned counsel for the accountable person submitted that in law the assessment proceedings could not be reopened because the Assistant Controller has changed his opinion on a question of fact or law. Reliance was placed upon Commissioner of Income Tax, West Bengal II Vs. Dinesh Chandra H. Shah and Others, . In this case it was held that the officer sought to justify the reopening of the assessment merely on the ground of change of opinion which was not permissible. Reliance was also placed upon a decision of the Calcutta High Court in Diamond Sugar Mills Ltd. Vs. Income Tax Officer, "C" Ward and Others, . In that case it was on facts held that the officer had changed his opinion on the same point and so he was not entitled to reopen the proceedings. These cases are distinguishable. In the present case the precise aspect of law on which the proceedings were sought to be reopened was neither canvassed nor was any opinion held or expressed by the Assistant Controller at the time of the original assessment. He, according to the finding of fact, came to know of that aspect because of research made subsequent to the original assessment. This is not a case of change of opinion.

26. In our opinion, the Assistant Controller had jurisdiction to reassess u/s 59(b) of the Estate Duty Act and our answer to the question referred to us is in the negative, in favour of the department and against the assessee. The Controller of Estate Duty would be entitled to costs, which are assessed at Rs. 200. We, however, express no opinion on the merits of the question which, according to the decision of the Tribunal, will now be decided by the Zonal Appellate Controller.