(1984) 08 BOM CK 0046

Bombay High Court

Case No: Writ Petition No. 82 of 1981

Murlidhar Pusaram		APPELLANT
	Vs	
7th Asst. Controller of Estate Duty and another		RESPONDENT

Date of Decision: Aug. 1, 1984

Acts Referred:

- Estate Duty Act, 1953 - Section 59
- Income Tax Act, 1961 - Section 147

Citation: (1985) 154 ITR 814 : (1984) 19 TAXMAN 315

Hon'ble Judges: S.C. Pratap, J

Bench: Single Bench

Judgement

Pratap, J.

This petition under art. 226 of the Constitution arises out of proceedings under the E.D. Act, 1953 (hereinafter "the Act"), and the question relates to the legality and validity of the notice dated March 18, 1980, issued by the 1st respondent to the petitioner seeking to reopen the assessment in question.

2. The petitioner is the accountable person of deceased Pusaram Ramchandra (hereinafter "the deceased"), who died on September 18, 1969. The deceased was a partner in two firms, viz., (a) M/s. Jawarmal Ramkaran, and (b) M/s. Radhakishan Ramchandra. On April 4, 1970, the petitioner field estate duty return disclosing the total chargeable estate of the deceased at Rs. 3,46,040. In the said return was also categorically disclosed the interest of the deceased in the above two partnership firms. Interest of the deceased in M/s. Jawarmal Ramkaran was valued at Rs. 2,54,548 and his interest in M/s. Radhakishan Ramchandra was valued at Rs. 56,536. In the course of the assessment proceedings, the 1st respondent did not accept the return filed as it was but took into consideration the fact that the goodwill of the aforesaid two partnership firms and the interest of the deceased therein had not

been computed and included in the return though the same constituted a part of the estate of the deceased. The 1st respondent, consequently, valued the goodwill of the two partnership firms and, consistent with the share of the deceased in the partnership firms, allocated his share in the goodwill accordingly and added the said share to the total estate liable to duty. The exemption claimed in relation to annuity deposit was not granted and the amount thereof was also included in the total estate. The order of assessment was passed on March 31, 1977. As per the petitioner''s learned counsel, this order was challenged in appeal to the extent it related to computation of the goodwill and including the share of the deceased therein in the total estate liable to duty and, in appeal, some, modification in the quantum of the goodwill was effected.

3. On March 25, 1980, the petitioner as accountable person received notice dated March 18, 1980, under s. 59 of the Act intimating that the Assistant Controller had reason to believe that property chargeable to estate duty had (a) escaped assessment; (b) been underassessed; (c) been assessed at too low a rate. The petitioner was directed to deliver to the said officer within thirty days an account of all property in respect of which estate duty was payable. The petitioner replied to this notice inquiring of the reasons for issuing the same as also inquiring of the material and the grounds on the basis whereof the belief was formed to the effect that the estate liable to estate duty had escaped assessment. There was no response. Reminders also were of no avail. Hence, this petition challenging the legality and validity of the notice dated March 18, 1980.

4. Hearing submissions of the respective counsel and going through the petition and the affidavit in reply and the authorities to which my attention was invited by Mr. V. J. Pandit, learned counsel for the petitioner, I find the impugned notice to be unsustainable and liable to be set aside and quashed.

5. Apart from the fact that the affidavit in replay to this petition does not disclose any information or any material on the basis of which the impugned notice was issued, even at the hearing of this petition learned counsel for the respondents found himself in an extremely difficult position in this behalf. Indeed, it was obvious that there was absolutely no information nor any material which can be said to constitute the basis on which he can be said to have had reason to believe for issue of the impugned notice.

6. In the absence of any information and material, one can only conjecture the cause for issue of the impugned notice under s. 59 of the Act. The possibilities are two, viz., (a) change of opinion and/or (b) audit objection. Neither of these can render the impugned notice legal and valid. Mere change of opinion is no ground for issue of notice under s. 59 of the Act. Second thoughts or after-thoughts cannot sustain such notice.

7. As regards audit objection, the position is in no way different. But it is best in this behalf to refer to the ruling of the Supreme Court in Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi,

"The opinion of an internal audit party of the Income Tax Department on a point of law cannot be regarded as ''information'' within the meaning of s. 147(b) of the I.T. Act, 1961, for the purpose of reopening an assessment. But although an audit party does not possess the power to pronounce on the law, it nevertheless may draw the attention of the ITO to it. Law is one thing, and its communication another, If the distinction between the source of the law and the communication of the law is carefully maintained, the confusion which often results in applying section 147(b) may be avoided. While the law may be enacted or laid down only by a person or body with authority in that behalf, the knowledge or awareness of the law may be communicated by anyone. No authority is required for the purpose. That part alone of the note of an audit party which mentions the law which escaped the notice of the ITO constitutes ''information'' within the meaning of s. 147(b); the part which embodies the opinion of the audit party in regard to the application or interpretation of the law cannot be taken into account by the ITO. In every case, the ITO must determine for himself what is the effect and consequence of the law mentioned in the audit note and whether in consequence of the law which has now come to his notice he can reasonably believe that income has escaped assessment. The basis of his belief must be the law of which he has now become aware. The opinion rendered by the audit party in regard to the law cannot, for the purpose of such belief, add to or colour the significance of such law. The true evaluation of the law in its bearing on the assessment must be made directly and solely by the ITO."
8. Though this authority is one under s. 147(b) of the I.T. Act, 1961, the ratio thereof squarely applies to the instant case which relates to a notice under s. 59(b) of the Act. Thus even on the assumption that audit objection could possibly be a ground for the impugned notice, even that cannot sustain the said notice.

9. Mr. Pandit, learned counsel for the petitioner, invited my attention to yet another decision of the Supreme Court in Union of India and Others Vs. Rai Singh Deb Singh Bist and Another, and in particular to the following (head note) :

"(i) that the recording of the reasons in support of the belief formed by the Income Tax Officer and the satisfaction of the Central Board of Revenue on the basis of the reasons recorded by the Income Tax Officer that it is a fit case for issue of notice u/s 34(1)(a) are extremely important circumstances to find out whether the Income Tax Officer had jurisdiction to proceed u/s 34(1)(a);

(ii) that since the records were not produced and no reasons were given for not producing them, the circumstances gave rise to an adverse inference against the department; and

(iii) that, on the facts, it was not possible to come to the conclusion that the facts necessary to confer jurisdiction on the Income Tax Officer to proceed u/s 34(1)(a) had been established and the notices had to be quashed."

10. In the result, this petition succeeds and the same is allowed. The notice dated March 18, 1980 (Ex. C), is set aside and quashed. The respondents are restrained from taking any steps in pursuance thereof.

11. Rule is made absolute. In the circumstances, however, there will be no order as to costs.