

# **Controller Of Estate Duty, Gujarat ... vs M.A. Merchant Accountable Person ... on 2 May, 1989**

**Equivalent citations: 1989 AIR 1710, 1989 SCR (2) 987, AIR 1989 SUPREME COURT 1710, (1989) 3 JT 177 (SC), (1989) 44 TAXMAN 274, (1989) 77 CURTAXREP 177, (1989) 177 ITR 490, 1989 SCC (SUPP) 1 499**

**Author: R.S. Pathak**

**Bench: R.S. Pathak, Sabyasachi Mukharji**

PETITIONER:

CONTROLLER OF ESTATE DUTY, GUJARAT I, AHMEDABAD.

Vs.

RESPONDENT:

M.A. MERCHANT ACCOUNTABLE PERSON OF LATE SHRI A.G MERCHANT, M

DATE OF JUDGMENT 02/05/1989

BENCH:

PATHAK, R.S. (CJ)

BENCH:

PATHAK, R.S. (CJ)

MUKHARJI, SABYASACHI (J)

CITATION:

1989 AIR 1710                      1989 SCR (2) 987

1989 SCC Supl. (1) 499 JT 1989 (3) 177

1989 SCALE (1) 1479

ACT:

Estate Duty Act, 1953: Sections 56-65--Valuations for estate duty--Rectification of mistake--Reopening of assessment made under section 59--Permissibility of--Effect of the Estate Duty (Amendment) Act, 1958.

HEADNOTE:

The respondents who were the accountable persons filed returns under the Estate Duty Act, 1953, and an assessment was made by the Deputy Controller of Estate Duty--Appellant on 26th February, 1960.

The Estate Duty (Amendment) Act, 1958 repealed the original sections 56 to 65. Section 59 which substituted for the original section 62 made provision for re-assessment. It

came into force with effect from 1st July, 1960.

On 21st February, 1962, a notice under the new section 59 of the Act was issued to the respondents for re-opening the assessment on the ground that some property had escaped the levy of estate duty. The respondents raised objections but the same were rejected by the Assistant Controller who reopened the assessment.

Against the aforesaid order three different appeals were filed by the respondents before the Appellate Controller, who allowed the appeals. set aside the reassessment order 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 A.N. Mafatlal v. Deputy Controller of Estate Duty, [1968] 67 I.T.R. 449.

Thereafter. at the instance of the Revenue 3 references were made

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to the High Court raising the indetical question whether section 59 was retrospective in operation and reopening of the assessment under section 59 was bad. The High Court analysed the provisions of the new section 59 and the old section 62. came 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. and answered the question in each case in favour of the assessee.

The Revenue appealed to this Court. On the question: whether the newly enacted section 59 of the Estate Duty Act is retrospective in operation so as to affect the assessment already completed on the accountable persons.

Dismissing the appeals, the Court

HELD: 1. Section 59 of the Estate Duty Act is not retrospective in operation and reopening of the assessment under section 59 of the Act in the instant case is bad in law. [993D]

2. The Estate Duty (Amendment) Act. 1958 effected a substantial change in the parent Act. Sections 56 to 65 were substituted in place of the existing sections 56 to 65. and the originally enacted section 62 was 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. [992D-E]

3. The newly enacted section 59 deals with properly 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. The new Section 59 endeavours to cover a substantially different area 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 the incidents of the power under section 62 relate to a situation materially different from the incidents of the

power contemplated under section 59. [992E-F]

4. There are no specific words which confer retrospective effect to section 59 as it stands. To spell out retrospectivity in section 59 there must be something in the intent to section 59 from which retrospective operation can be necessarily inferred. There is no such intent. [992G-H]

5. The new section 59 is altogether different from the old section

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62 and there is nothing new in the new section 59 from which an intent to give retrospective effect to it can be concluded. [992H; 993A]

6. There is a well-settled principle against interference with vested right by subsequent legislation unless the legislation has been made retrospective expressly or by necessary implication. If an assessment has already been made and completed, the assessee cannot be subjected to re-assessment unless the statute permits that to be done. [993B-C]

7. The new section 59 came into force from 1st July, 1960. Much earlier, on 26th February, 1960. the assessment on the accountable persons in the instant case had already been completed. So. there can be no question of reopening the assessment. [993B]

Controller of Estate Duty, West Bengal v. Smt. Ila Das and Others, [1981] 132 I.T.R. 720 relied on.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 2-4 of 1975.

From the Judgment and Order dated 8th 9th November 1973 of the Gujarat High Court in Estate Duty Reference Nos. 2, 3 and 4 of 1971.

Dr. V. Gauri Shankar and Miss A. Subhashini for the Appellant.

V.S. Desai, Mrs. A.K. Verma and Joel Peres for the Respondents.

The Judgment of the Court was delivered by PATHAK, CJ. The facts in these appeals lie within a narrow compass. One Abdulhussein Gulamhussein Merchant died on 8 February, 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 26 February, 1960. The Estate Duty (Amendment) Act, 1958, repealed the original sections 56 to 65. Section 59, which substituted for the original s. 62, made provision for reassessment. It came into force with effect from 1 July 1960. On 21 February, 1962 a notice under the new s. 59 of the Act was issued to the accountable person concerned for reopening the assessment on the ground that some property had escaped the levy of estate duty. The accountable persons raised objections to the reopening of the assessment

under s. 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 s. 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 *A.N. Mafatlal v. Deputy Controller of Estate Duty*, [1968] 67 I.T.R. 449. Thereafter three references were made to the High Court at the instance of the Revenue raising the identical question:

"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 s. 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 of any property in any case other than a case in which the valuation has been the subject matter of an appeal under the 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) determined 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 will 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. Properly 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 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 infor-

mation 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 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 s. 59 of the Estate Duty Act is retrospective in operation so as to affect the assessment already completed on the accountable persons. It is urged that the new s. 59 is substantially similar in content as the old s. 62 and therefore the new provision must be regarded as retrospective. The contention may be examined.

The Estate Duty (Amendment) Act, 1958 effected a substantial change in the parent Act. Ss. 56 to 65 were substituted in place of the existing ss. 56 to 65, and the originally enacted s. 62 was repealed. The original s. 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 s. 59 deals with property escaping assessment. The provision is analogous to s. 34 of the Indian Income Tax Act, 1922 and s. 147 of the Income Tax Act, 1961. It seems to us that the new s. 59 endeavours to cover a substantially different area 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 s. 62 relate to a situation materially different from the incidents of the power contemplated under s. 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 s. 59 is quite different from the power conferred by the old s. 62. We are in agreement with the High Court. The contention on behalf of the Revenue based on the identity alleged between the new s. 59 and the old s. 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 to s. 59. To spell out retrospectivity in s. 59, then, there must be something in the intent to s. 59 from which retrospective operation can be necessarily inferred. We are unable to see such intent. The new s. 59 is altogether different from the old s. 62 and there is nothing in the new s. 59 from which an intent to give retrospective effect to it can be concluded. The

new s. 59 came into force from 1 July, 1960. Much earlier, on 26 February, 1960 the assessment on the account- able 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 has already been made and completed, the assessee cannot be subjected to re-assessment unless the statute permits that to be done. Reference may be made to Controller of Estate Duty, West Bengal v. Smt. Ila Das and others, [1981] 132 I.T.R. 720 where an attempt to reopen the Estate Duty assessment consequent upon the insertion of the new s. 59 of the Estate Duty Act was held infructuous. We hold that s. 59 of the Estate Duty Act is not retro- spective in operation and that the reopening of the assess- ment under s. 59. of the Act is bad in law.

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

N.V.K.

Appeals dismissed.