(1985) 10 CAL CK 0008

In the Calcutta High Court

Case No : Special Jurisdiction (Estate Duty) Appeal No. 9 of 1976

Assistant Controller of Estate Duty and Others — APPELLANT

Vs

Mukundadas Nundy and Others — RESPONDENT

Date of Decision : 04-10-1985

Acts Referred:
Estate Duty Act, 1953 — Section 70

Citation : (1987) 168 ITR 12 : (1987) 33 TAXMAN 147

Hon'ble Judges : G.N. Ray, J;Dipak Kumar Sen, J

Bench : Division Bench

Advocate : M.L. Bhattacharjee, for the Appellant; D.K. Dey and Debi Day, for the Respondent

Judgement

Sen, J.—On the death of Kristodas Nundy on April 21, 1958, Mukundadas Nundy, Hrishikesh Nundy and Patitpaban Nundy, the joint executors nominated by the deceased by his last will and testament dated February 26, 1958, the accountable persons under the Estate Duty Act, 1953, and the respondents herein, filed an account of the estate of the deceased before the Assistant Controller of Estate Duty, "A" Ward, Estate Duty-cum-income tax Circle, Calcutta.

2. By an order dated February 27, 1959, duty on the said estate was assessed at Rs. 76,341.20 and it was further recorded as follows :

"The court fees that will be paid for taking out the probate will be allowed u/s 62 of the Act after evidence of its payment is produced."

3. Pursuant thereto a demand was raised and a notice dated March 9, 1959, was served on the respondents.

4. It is on record that the respondents on and from March 31, 1959, paid diverse amounts, from time to time, and every month towards the estate duty, which were accepted by the estate duty authorities.

5. On or about June 3, 1959, the respondents as executors applied for the

probate of the will of the deceased. The proceedings were contested.

6. On or about September 10, 1959, the Assistant Controller, Estate Duty-cum-income tax Circle, Calcutta, issued a letter to the accountable persons. It was recorded in the said letter that interest on the outstanding estate duty would be levied at 4% on and from March 22, 1959.

7. By another letter dated March 24, 1961, addressed to the respondents, the Assistant Controller again recorded as follows:

"Ref. your letter dated March 24, 1961. 8. Kindly refer to above. In view of what is stated in your letter, I allow you to pay the balance of duty due in monthly instalments of Rs. 1,000 payable from April 25, 1961. Soon after you obtain the probate, kindly make arrangements to pay the duty in a lump sum.

9. Kindly note that interest will be levied on the outstanding duty as stated in my letter to you dated September 10, 1959."

10. The payments by the respondents towards estate duty as noted continued aggregating to Rs. 50,000 by February 29, 1964. The payments continued thereafter till December 17, 1965, when the last payment was made and the total aggregated to Rs. 64,500.

11. The estate duty authorities insisted thereafter that the respondents should pay the balance of the estate duty as assessed. The respondents, however, contended that the amount which would have to be paid as court fees for obtaining probate of the will would exceed such balance. By a notice dated January 4, 1966, the Assistant Controller called upon the respondents to show cause why a penalty of Rs. 2,000 should not be imposed on them for non-payment of the balance outstanding duty and by an order dated January 13, 1966, a penalty of Rs. 2,000 was imposed on the respondents. On an appeal by the respondents, the Appellate Controller of Estate Duty, Eastern Zone, Calcutta, subsequently set aside the penalty.

12. Probate of the will of the deceased was granted to the respondents and on or about August 16, 1966, the probate duty determined at Rs. 25,893.25 was paid by the respondents. By their letter dated August 30, 1966, the respondents claimed from the Assistant Controller a refund of Rs. 16,052.05 as excess paid towards estate duty.

13. The estate duty authorities took the stand that estate duty as assessed could not be rectified u/s 61 of the Estate Duty Act, to allow relief u/s 50 thereof, as the proceedings had become barred by limitation after five years from the completion of the assessment. They reiterated the demand for the balance of the assessed duty being Rs. 9,841.20.

14. The respondents moved this court under Article 226 of the Constitution. The said application marked Matter No. 649 of 1968 was disposed of by a judgment dated April 13, 1970, directing the estate duty authorities to refund to the

respondent the said sum of Rs. 16,052.05. On a review of the said judgment, on the application of the estate duty authorities, it was recorded that the direction for refund would be without prejudice to the claim of interest payable on the outstanding duty and any proceeding initiated therefore.

15. On January 16, 1971, the Assistant Controller addressed a letter to the respondents as follows :

"I find from my records that a sum of Rs. 4,817.25 being duty/ interest/penalty in respect of the estate is still outstanding and no payments are being made by you in time.

You are hereby requested to appear before me at 12.20 at 10, Middleton Row, Calcutta-16, on January 28, 1971, and to show cause in writing why an order imposing penalty should not be made u/s 73(5) of the Estate Duty Act read with Section 46(1) of the Indian Income Tax Act, 1922. If you fail to avail yourself of this opportunity of being heard on the aforesaid date, I may be constrained to impose penalty upon you without any further reference to you."

16. By their letter dated January 25, 1971, the respondents replied to the said letter contending that nothing remained due or outstanding.

17. By his letter dated February 5/14, 1972, the Assistant Controller rejected the contentions of the respondents and reiterated the demand. Proceedings were thereafter initiated against the respondents under the Public Demands Recovery Act, being 1973, was issued by the Certificate Officer, 24-Parganas, to the respondents directing them to appear and show cause why their properties should not be put to sale or distress or arrest warrant would not be issued against them for non-payment of the demand.

18. On November 16, 1973, the respondents again moved this court under Article 226 of the Constitution, challenging the claim and demand of the estate duty authorities for the said sum of Rs. 4,817.25 and the proceedings initiated by them for recovery thereof. A rule nisi was issued on the said application on November 16, 1973. By a judgment and order dated September 23, 1975, the rule was made absolute and the impugned demand and the proceedings initiated thereon were quashed.

19. The learned judge in the first court found that only after an order was made in Matter No. 649 of 1968 directing the estate duty authorities to refund the excess amount to the respondents, the interest alleged to be payable by the latter was quantified. Following Prem Nath Khandelwal Vs. Assistant Controller of Estate Duty, , which was cited, it was held that the Estate Duty Act, 1953, did not provide for automatic running of interest and unless an order was made u/s 70 of the Act, the interest would not run on the assessed duty. It was noted that in the instant case, an order for payment of interest was made on November 20, 1970, long after the correct amount of assessed duty was paid.

20. The present appeal is from the said judgment and order dated September

23, 1975. It is a matter of record that in the instant case, the estate duty was assessed at Rs. 76,341.20 and the amount of Rs. 25,873.25 was paid by way of probate duty. Therefore, the respondents as accountable persons were entitled to relief u/s 50 of the Estate Duty Act and were required to pay only Rs. 50,467.95 on account of estate duty. Adding up the payments which were made by the respondents on and from March 31, 1953, it appears that the payments made up to March 31, 1964, aggregated to Rs. 52,100. All payments made thereafter were, therefore, in excess of the estate duty payable if relief was to be given u/s 50 of the Estate Duty Act.

21. The decision in Prem Nath Khandelwal Vs. Assistant Controller of Estate Duty, was cited before us. It was held in that case by a learned judge of this court that unless an order was made u/s 70 of the Estate Duty Act, interest would not start running on the estate duty as assessed. The same view has been taken by the Patna High Court in BETTIAH ESTATE Vs. UNION OF INDIA AND ANOTHER., and by the Karnataka High Court in H.M. Jaffar Vs. Assistant Controller of Estate Duty, .

22. It also appears to us that even if an order u/s 70 of the Act had been made in time, interest would only be payable on an amount of Rs. 50,467.95 at the rate of 4% on and from February 27, 1959, till March 31, 1964, on the reducing principal. The amount would be less than what is being claimed by the authorities and would not exceed Rs. 2,000. We also take note of the fact that the estate duty authorities have withheld the refund of Rs. 16,230.05 from 1966 and only after an order was passed in Matter No. 649 of 1968, the refund was made.

23. We do not see any reason to differ from the view taken by this court in Prem Nath Khandelwal Vs. Assistant Controller of Estate Duty, . In any event, the amount in dispute being insignificant, we do not see any reason to interfere with the judgment and order under appeal in the facts and circumstances. We dispose of the appeal by affirming the judgment and order of the first court without any order as to costs.

G.N. Ray, J.

24. I agree.

