
(1979) 03 CAL CK 0019

In the Calcutta High Court

Case No : Appeal No. 348 of 1973 from order of single judge in Matter No. 417 of 1972, dated September 24, 1973

ASST. CONTROLLER OF ESTATE DUTY, "A" WARD, AND
OTHERS

APPELLANT

Vs

ASHOK SINGH.

RESPONDENT

Date of Decision : 16-03-1979

Acts Referred:

Estate Duty Act, 1953 — Section 56, 58(2), 59, 73A

Citation : (1980) 124 ITR 587

Hon'ble Judges : R. N. Pyne, J; Ghose, J; Amiya Kumar Mookerji, J

Bench : Full Bench

Judgement

JUDGMENT OF SINGLE JUDGE

AMIYA KUMAR MOOKERJI J. (24-9-73) - The petitioner is the karta of a joint Mitakshara Hindu family, consisting of himself and his brother. On February 6, 1957, the father of the petitioner, Ganga Singh, died intestate. At the time of death of his father, both the petitioner and his brother were minors. One Prannath Shegal, a maternal uncle of the petitioner, and his brother moved an application in the City Civil Court at Calcutta some time in March, 1967, for appointment of guardian of the minors and the said maternal uncle was appointed as guardian in August, 1968. Jamuna Singh, a paternal uncle of the minors, preferred an appeal in this court being appeal from Original Order No. 642 of 1968. A Division Bench of this court by its order dated September 7, 1970, disposed of the said appeal, holding, inter alia, that in the interest of the minors concerned, the appointment of Prannath Shegal would continue until December 9, 1970, when the elder of the said two minors, namely, the petitioner, would attain majority. It appears that the said guardian, Prannath Shegal, never filed an account of the properties of the deceased, Ganga Singh, in terms of s. 53 or s. 56 of the E.D. Act, 1953, with the estate duty authorities. After attaining majority on the December 7, 1970, the petitioner also did not file any such account of properties with the E.D. authorities relating to the properties left by

the said deceased, Ganga Singh, as he was unaware that such an account was required to be filed under the Act within six months from the date of death of his father. Thereafter, the petitioner filed an application for grant of a succession certificate in the City Civil Court at Calcutta. On July 25, 1972, the learned Chief Judge by his order directed the petitioner to produce a certificate as required under s. 56(2) of the E.D. Act and without which no grant of the said succession certificate could be made. Accordingly, the petitioner was advised to file an account with the E.D. authorities regarding the estate of the said deceased. Ganga Singh, and in August, 1957, the petitioner filed an account of the properties left by the said deceased with the Asst. CED, showing therein the value of the estate approximately at Rs. 52,000. Thereupon, the petitioner received a notice issued under s. 58(2) of the E.D. Act, 1953, dated September 4, 1972, along with the questionnaire, by the respondent No. 1, the Asst. CED, A-Ward, whereby the said respondent No. 1 fixed the date of hearing of the matter on the September 19, 1972. On September 19, 1972, the petitioner appeared before the respondent No. 1 and contended that no proceeding could be initiated in view of s. 73A of the Act, inasmuch as five years had already expired from the date of death of the deceased and as such the respondent No. 1 had no power, authority and jurisdiction to initiate any proceeding under the E.D. Act, 1953, or to issue notice under s. 58(2) of the said Act or to issue any questionnaire thereunder and by doing the same the respondent No. 1 was proceeding entirely without jurisdiction. In spite of the said objections, the respondent No. 1 fixed the next date of hearing on the December 15, 1972. The petitioner being aggrieved by the said notice dated September 4, 1972, issued under s. 58(2) of the Act and the proceeding taken thereunder moved this court in an application under art. 226 of the Constitution and obtained the present rule and also an ad interim injunction restraining the respondent No. 1 from proceeding for the levy of any estate duty under the E.D. Act, 1953, until disposal of the rule.

It is contended by Mr. Deb, appearing on behalf of the petitioner, that in so far as the estate of late Ganga Singh is concerned, admittedly, no proceeding for estate duty has been commenced within the period of five years from the date of his death and no order for assessment has been made under s. 58 of the E.D. Act. In view of the provisions in s. 73A(a) of the said Act, no proceeding can be initiated in respect of the properties and estate of Ganga Singh, since deceased, under the said Act. The Asst. CED, respondent No. 1, is proceeding entirely without jurisdiction and in excess of jurisdiction and illegally assumed jurisdiction under the said Act by issuing the said notice under s. 58(2) of the Act and a questionnaire thereunder and threatening to pass an order under s. 58 of the said Act on the account submitted by the petitioner. Mr. Deb further contended that the only order which the respondent No. 1 could have passed was that, in view of the provisions of s. 73A(a) of the E.D. Act, 1953, no proceeding under the said Act could be commenced in respect of the estate of late Ganga Singh and, as such, no estate duty was payable by the petitioner. According to Mr. Deb, the said notice issued under s. 58(2) of the Act was illegal, invalid and without

jurisdiction and should be quashed.

Mr. Sen appearing on behalf of the revenue raised two points. In the first place, he contended that in the present case no proceeding for the levy of estate duty was commenced by the Assistant Controller but the petitioner for the purpose of obtaining a certificate under s. 56(2) of the Act, voluntarily submitted a statement of account. Although the said account submitted by Mr. Sen was not filed within the time specified sub-s. (3) of s. 53 of the Act, none the less it should be as a valid statement and the Assistant Controller has got jurisdiction to issue a notice under s. 58 of the Act. How could the existence of a statement, Mr. Sen remarked, once it had been filed, be ignored; it was not a mere scrap of paper. In support of his contentions, Mr. Sen relied upon two decisions of the Supreme Court in *The Commissioner of Income Tax, Bombay Vs. Ranchhoddas Karsondas, Bombay*, and *CIT v. Kulu Valley Transport Co. P. Ltd.* [1970] ITR 518.

In *The Commissioner of Income Tax, Bombay Vs. Ranchhoddas Karsondas, Bombay*, , a return showing income below the taxable limit was submitted voluntarily in answer to the general notice under s. 22(1) of the Indian I.T. Act, 1922. It was held to be a valid return upon the view that a return in answer to the general notice under s. 22(1) and under s. 22(3) of the Indian I.T. Act could be filed at any time before assessment and for that there was no limit of time.

In *Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd.*, , the assessee filed voluntary returns disclosing loss for the relevant assessment years. But the said returns were not filed within the same time specified in the general notice under s. 22(1) of the Act and the time had not been extended by the ITO and no notice had been served on the assessee under s. 22(2) of the Indian I.T. Act. The question arose whether the assessee could claim the benefits under s. 22(2A) of the Act as he did not comply with the provisions of that section. The Supreme Court held that s. 22(3) is merely a proviso to s. 22(1). Thus, a return submitted at any time before the assessment is made is a valid return.

In my opinion, none of the above decisions referred to by Mr. Sen would be of any assistance to solve the present point involved in the instant case. If the above principles are applied to the present case, let me examine what would be the result.

Under the E.D. Act, there is no provision for issuing a general notice as provided under the I.T. Act. The estate duty is payable on the value of the property which passes or is deemed to pass on the death of a person dying after October 15, 1953. Persons accountable have been enumerated in s. 53 of the Act. So, estate duty is payable on the incidence of a death. Assessments of Income Tax under the provisions of the I.T. Act are quite different. Assuming that the voluntary return filed by the petitioner is not a mere scrap of paper, it is an appropriate account of the property in respect of which estate duty is payable upon the death of the deceased, but where the statute puts a total bar under cl. (a) of s. 73A of

the Act, which reads as follows : "No proceeding for the levy of any estate duty under this Act shall be commenced-(a) in the case 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 payable," then, under what provisions of law that "voluntary account" filed by the petitioner could be determined by the Controller when the very initiation of the proceeding is barred under the statute ? It is well settled that there cannot be any estoppel against the statute. If the Assistant Controller has got no inherent jurisdiction to initiate a proceeding for the levy of any estate duty after the expiration of five years from the date of death of the deceased, simply because a statement of account has been filed by a person accountable to pay estate duty under the Act, for the purpose of a certificate under s. 56(2), it does not confer any jurisdiction upon the Assistant Controller to start or initiate a proceeding under the Act by issuing a notice under s. 58, when the statute imposes a complete bar on the very initiation of any proceeding. In a fiscal statute, as observed by Lord Russel of Killowen :

"The subject is not taxable by inference or analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case." [Duke of Westminster v. IRC [1935] 19 TC 490, 524 (HL)].

In Pandit Ram Narain Vs. The State of Uttar Pradesh and Others, , the Supreme Court made a note of caution against construing expressions used in one Act with references to their use in another Act. The Supreme Court observed that it is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The meanings of words and expressions used in an Act must take their colour from the context in which they appear. In the I.T. Act there are provisions of limitations for assessment and reassessment but there is no such provision similar to that of s. 73A(a) of the E.D. Act, which takes away the operation and application of the entire provisions of the said Act in the case of assessment of estate duty, after the expiration of five years from the date of death of the deceased in respect of whose property estate duty became payable.

The words "assessment" and "procedure for assessment" in the I.T. Act had been interpreted by the Supreme Court having regard to the context in which the expressions were used and the interpretation given by the Supreme Court does not hold good for interpreting the same or similar words occurring in a different statute. The same words or phrases used in different Acts need not, therefore, necessarily carry the same meaning. The meaning that has to be given depends upon the context in which it is referred to.

So, in my opinion, the decisions of the two cases referred to by Mr. Sen have got no bearing upon the point that is required to be decided under s. 73A(a) of the E.D. Act.

Mr. Sen next contended that the notice issued under s. 58 of the Act by which the petitioner was only asked to appear before the Assistant Controller, the

respondent No. 1, and no duty has yet been imposed upon the petitioner. The Assistant Controller could come to the decision as to the applicability of the bar under s. 73A of the Act. If the Assistant Controller held against the petitioner, then he would be entitled to come to this court and ask for relief either restraining the respondent No. 1 from proceeding or to make any further order under the E.D. Act. In other words, Mr. Sen contended that the question of limitation ought to have been raised by the petitioner before the Assistant Controller and that point could not be agitated in a writ proceeding.

In Lalji Haridas Vs. Income Tax Officer and Another, the validity of a notice under s. 34(3) of Indian I.T. Act, 1922, was challenged on the ground that the assessment proceeding was barred by limitation. The Supreme Court observed that the question of limitation can and ought to be raised before the ITO; that was not a point which could be legitimately agitated in writ proceeding. The above view was again re-affirmed by the Supreme Court in Lalji Haridas Vs. R.H. Bhatt and Another, wherein the Supreme Court observed that the jurisdiction conferred on the High court under art. 226 of the Constitution is not intended to supersede the jurisdiction and authority of the ITO to deal with the merits of all the contentions that the assessee may raise before him, and so it would be entirely inappropriate to permit an assessee to move the High Court under art. 226 and contended that a notice issued against him is barred by time. That was a matter which the I.T. authorities must consider on the merits and in the light of the relevant evidence. The said decision of the Supreme Court has been followed by the Kerala High Court in Income Tax Officer, Kottayam Vs. R.M. Subramania Iyer, and this court in PILANI INVESTMENT CORPORATION LTD. Vs. Income Tax OFFICER, "A" WARD, COMPANIES DIST. II, AND ANOTHER., .

In PILANI INVESTMENT CORPORATION LTD. Vs. Income Tax OFFICER, "A" WARD, COMPANIES DIST. II, AND ANOTHER., , B. C. Mitra J. observed (p. 857) : "The two decisions of the Supreme Court... have set at rest any controversy on the question whether an Income Tax Officer has jurisdiction to deal with the question of limitation raised by an assessee. The statute had created a bar of limitation regarding assessment orders in certain cases. The statute has also given the Income Tax authorities the power to make such assessment order in cases where the bar of limitation did not apply. It was for the Income Tax authorities, therefore, to decide whether an assess order could be made having regard to the contentions raised on behalf of the petitioner. It is not, in my view, a case of inherent lack of jurisdiction."

The learned judge has considered the above two decisions of the Supreme Court and his conclusion is that those principles will apply in cases where there is no inherent lack of jurisdiction. But, in the present case, in view of s. 73A(a) of the Act no proceeding for the levy of any estate duty under the said Act could be commenced. Therefore, in a case where s. 73A(a) is attracted there is lack of inherent jurisdiction of the Assistant Controller to commence or initiate any proceeding whatsoever under the E.D. Act. It is true that if there is any

controversy or there is a denial about the date of death of Ganga Singh, in that case, the provisions of cl. (a) of s. 73A would not be applicable and, certainly, the Assistant Controller shall have the jurisdiction to issue a notice under s. 58 of the Act but in the instant case, there is no such denial. Therefore, there is no scope for further enquiry or taking further evidence about the date of death of Ganga Singh. It must necessarily follow that the instant case comes within the purview of cl. (a) of s. 73A of the Act and, as such, the Assistant Controller has got no jurisdiction to issue the impugned notice dated September 4, 1972, under s. 58(2) of the Act. Therefore, I hold that the said notice must be cancelled by a writ of mandamus.

Mr. Deb further contended that the petitioner should get a declaration that he was not liable to pay any duty. In a proceeding under art. 226 of the Constitution which is similar to a proceeding under art. 32, this court is competent to grant such a declaration. In support of his contentions, Mr. Deb relied the observations of the Supreme Court in the case of Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, .

In Kochunnis case, the Supreme Court observed that the powers of the Supreme Court under art. 32 are wide enough to make even a declaratory order where that is the proper relief to be given to the aggrieved party, if the impugned Act has taken away the petitioners fundamental right. In that particular case, the Supreme Court made a declaratory order to grant relief to party in an exceptional circumstance.

The Supreme Court did not hold that the court could make a mere declaration, for such a view would be opposed to the plain terms of art. 32 which confers upon the Supreme Court the power "to issue directions, orders or writs" and a mere declaration cannot be said to constitute the issue of a direction, order or writ. The Supreme Court in that case considered a declaration and an injunction to be the proper relief to which the petitioner would be entitled in a suit against respondents Nos. 2 to 17 who were private parties and not the State. The objection was that fundamental rights could not be asserted against private persons and that objection was met by saying that the dispute was between the petitioner on the one hand and the State which, under art. 12, included the Legislature and the respondents Nos. 2 to 17, who claimed rights under the law enacted by the Legislature (State). So, it could not be said that the dispute was between private parties only. The impugned Act was declared void by the Supreme Court and a writ of mandamus was issued restraining the State of Kerala from enforcing its provisions against the petitioner. Therefore, the declaration was ancillary in giving the main relief, namely, a mandamus. It would appear from the language of art. 32 of the Constitution that the sole object of the article is enforcement of fundamental rights guaranteed by the Constitution. In Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , Mukherjea J. (as he then was), observed : "A proceeding under this article (article 32) cannot really have any affinity to what is known as a declaratory suit."

If a particular persons fundamental right is infringed, he can also move an application under art. 226 of the Constitution before the High court. If it is found that such persons fundamental right has been infringed by a particular provision of an Act which is void, in that case, a direction is to be made declaring that the impugned law will not be applicable to that aggrieved person. In the instant case, there is no infringement of fundamental right and no part of an Act is sought to be declared as void. Article 226 is not to be construed so as to replace the remedy available in a declaratory suit. It is not intended to provide to the litigants an easy method of getting redress avoiding the normal procedure in an action brought in the usual course under the general law of the land. Considering the facts and circumstances of the present case, in my view, the petitioner is not entitled to any such declaration as asked for. I find that there is no substance in this point.

In the result, this rule is made absolute, the impugned notice under s. 58(2) of E.D. Act, 1953, dated September 4, 1972, which is annex. "D" to the petition is cancelled by a writ of mandamus. Let a writ in the nature of mandamus be issued.

There will be no order as to costs.

JUDGMENT OF DIVISION BENCH

R. N. PYNE J. - A short, but none the less interesting, point of first impression relating to the construction and interpretation of s. 73A of the E.D. Act, 1953, arises for consideration in this appeal which is directed against a judgment and order of Amiya Kumar Mookerji J., dated September 24, 1983. For a proper appreciation of the point involved in this appeal it is necessary to refer to some of the relevant facts of this case.

The respondent, Ashok Singh (who was the petitioner in the court of the first instance) was at the relevant time the karta of a joint Mitakshara Hindu family consisting of himself and his brother. The respondents father, one Ganga Singh, died intestate on February 6, 1957, when the respondent and his brother were minors. The respondents maternal uncle, one Prannath Shegal, and his brother moved an application in the city Civil Court at Calcutta some time in March, 1967, for the appointment of a guardian of the minors and in August, 1968, the said maternal uncle was appointed as the guardian of the said minors. One, Jamuna Singh, the paternal uncle of the minors, i.e., the respondent and his brother, preferred an appeal to this court against the said order of the City Civil Court and the said appeal was disposed of by a Division Bench of this High Court by its order dated September 7, 1970, holding, inter alia, that in the interest of the minors concerned the appointment of Prannath Shegal as guardian would continue until December 7, 1970., when the elder of the minors, i.e., the respondent herein, would attain majority. The said guardian Prannath Shegal, it appears, never filed any account of the properties of the deceased, Ganga Singh, as required by and in terms of s. 53 and/or s. 56 of the E.D. Act, 1953

(hereinafter referred to as "the Act"), with the estate duty authorities. After attaining majority on December 7, 1970, the respondent also did not file any such account of properties with the CED relating to the properties left by his deceased father, the said Ganga Singh, as the respondent was unaware that such an account was required to be filed under the Act within six months from the date of his father. Thereafter, the respondent filed an application for the grant of a succession certificate in the City Civil Court at Calcutta wherein by an order dated July 25, 1972, the learned Chief Judge of the said court directed the respondent to produce a certificate as required under s. 56(2) of the Act because without the same no grant of succession certificate could be made. It appears that, in the aforesaid circumstances, the respondent was advised to file an account with the estate duty authorities regarding the estate of his deceased father, the said Ganga Singh, and on August 18, 1972, the respondent filed an account of the properties left by his deceased father with the Asst. CED, showing therein the value of the estate approximately at Rs. 52,000. Thereupon the respondent received a notice issued under s. 58(2) of the Act dated September 14, 1972, along with a questionnaire sent by the Asst. CED, A Ward, Calcutta, intimating the respondent that the said officer had fixed the date of hearing of the matter on September 19, 1972. On the fixed date, i.e., September 19, 1972, the respondent appeared before the said Asst. CED and contended that inasmuch as 5 years had already expired from the date of death of the deceased no proceeding could be initiated under the said Act in view of s. 73A thereof and, therefore, the said officer had no power, authority and jurisdiction to initiate any proceeding under s. 73A of the Act or to issue any notice under s. 58(2) of the said Act or to put any questionnaire thereunder and by doing the same the said officer was proceeding entirely without jurisdiction. In spite of the aforesaid objections of the respondent the said officer fixed the date of hearing on December 15, 1972. In the above circumstances, being aggrieved by the said notice dated September 4, 1972, issued under s. 58(2) of the Act and the proceeding taken thereunder, the respondent moved an application under art. 226 of the Constitution challenging the validity of the said notice and the said act of the said officer and obtained a rule nisi and an ad interim injunction restraining the said officer from proceeding with the levy of estate duty under the Act until the disposal of the rule.

Various contentions were advanced on behalf of the parties before Amiya Kumar Mookerji J., who heard the said application. It was mainly contended on behalf of the petitioner in the said application, i.e., the respondent in this appeal, that in view of the provisions of s. 73A(a) no proceeding under the Act could be commenced in respect of the estate of late Ganga Singh after the expiry of 5 years from the date of his death and as such no duty was payable. Inasmuch as the proceeding for levy and realisation of estate duty in respect of the estate of the said Ganga Singh became barred after 5 years from the date of his death the respondent should get a declaration that he was not liable to pay any duty. On behalf of the department it was contended that though in the present case no

proceeding for levy was commenced by the department yet the respondent for the purpose of obtaining a certificate under s. 56(2) of the Act voluntarily submitted a statement of account and although such statement was not filed within the time specified in sub-s. (2) of s. 53 of the Act, none the less, it should be regarded as a valid statement and the Assistant Controller had jurisdiction to issue a notice under s. 58(2) of the Act. Amiya Kumar Mookerji J., however, by his judgment and order dated September 24, 1973, allowed the said application and made the rule nisi absolute. His Lordships held that in the instant case in view of s. 73A(a) of the Act no proceeding for levy of any estate duty under the Act could be commenced and that in a case where the said section was attracted there was lack of inherent jurisdiction of the Asst. Controller to commence or initiate any proceeding whatsoever under the E.D. Act. The instant appeal has been preferred by the department against the aforesaid judgment and order of Amiya Kumar Mookerji J.

Substantially the same contentions as were urged before the court of the first instance were urged before us in this appeal.

Counsel for the appellants has contended that s. 73A(a) of the Act does not in any way affect the jurisdiction of the Asst. CED to complete the assessment of estate duty on the basis of an account filed under s. 56 read with s. 53 of the Act. No period of limitation is prescribed in the Act for completion of such assessment. It was further contended that s. 73A was introduced only to prescribe a period of limitation for initiation of proceedings by the E.D. authorities under s. 59 of the Act. According to counsel s. 73A only bars the initiation of proceedings by the department. If all the proceedings under the Act were barred then a different language would have been used, that is to say, instead of "no proceedings under the Act" or "no proceedings for assessment under the Act" would have been used. The expression "no proceedings for the levy of any estate duty" really point out the limited scope of the section and, therefore, proceedings under s. 56 are not covered. The expression "first assessment" occurring in cl. (a) of s. 73A, according to counsel, refers to the assessment under s. 59 where originally there is no assessment of estate duty at all and, therefore, estate duty had escaped assessment.

Counsel has further submitted that the proceeding under s. 56 is not a proceeding for the levy of duty but a proceeding for grant of representation which follows after filing of accounts. According to counsel when an assessment is made as a result of the proceedings taken under s. 56 that cannot be said to be a proceeding for the levy of duty. Here proceedings are taken for the benefit of the applicant. Proceedings under s. 56 include proceedings for assessment and such proceedings are for the benefit of the applicant. It is also the submission of the counsel that the question of limitation regarding proceedings under the Act can neither be raised nor be decided in these proceedings under art. 226 of the Constitution. It was further submitted that the conduct of the assessee in the facts and circumstances of this case would disentitle him to any relief under the

Act. Counsel for the appellant has further submitted that initially there was no provision in the Act for the initiation of proceedings by the department in the case of properties escaping assessment and such a provision was introduced in the Act by the 1958 amendment. It has also been submitted that unless there is a provision in the Act limiting the time for an assessment it may be completed at any time. Counsels further submission is that no time-limit is fixed for the completion of a regular or reopened assessment under the Act. According to counsel, in the Act there is no provision parallel to s. 139(2) of the I.T. Act, 1961.

Counsel for the appellant has also submitted that s. 58 applies to both types of assessment. It is submitted that under the Act proceedings can be initiated either at the instance of the revenue or at the instance of the accountable person. Section 73A is applicable only to proceedings initiated under s. 59 because this section says that initiation of proceedings is subject to s. 73A. Counsels submission is that neither s. 53 nor s. 56 says that it is also subject to s. 73A. It is pointed out by the counsel that s. 73A of the Act is parallel to s. 139 of the I.T. Act. It is also the submission of the counsel that while interpreting the Act the purpose of the Act is to be kept in view and such construction should be adopted which would effectuate the purpose of the Act and not to defeat the same. In this connection, counsel has referred to the difference between the charging section and the machinery section of the Act. Reference has been made by counsel to ss. 56, 57, 58 and Form ED. 2 and it has been submitted that it is for the accountable person to see that the machinery under s. 56 or s. 57 is set in motion by him because he is required to get a certificate under s. 57. These provisions show that the bar of s. 73A would not apply when the accountable person files an account and as a result thereof proceedings are initiated.

It has also been submitted by counsel for the appellants that the liability to charge arises under the provisions of the statute. Next step is the computation of tax for which liability has already accrued. Provisions relating to assessment are machinery and any irregularity therein may be either waived by the party or regularised subsequently. Any error in the procedure would not affect the validity of the assessment save and except in cases where there is positive limitation against the completion of the assessment. It is further submitted that there is no bar to the assessment after 5 years. Thereafter, if there is any bar regarding the machinery section the assessee can waive the same. It is the submission of the counsel that like s. 153 of the I.T. Act there is no corresponding provisions in the E.D. Act providing for an absolute bar to an assessment after the time limit. According to counsel as there is no bar for a person to come under s. 56 or s. 57 for obtaining a certificate. Further, the legislature thought that as there was no specific bar regarding the assessment, an assessee can at any time approach the revenue authorities for getting the certificate. So long as the assessment, counsel has submitted, is not barred, it is open to the assessee to come forward and initiate proceedings by waiving the conditions regarding time.

Counsel has further submitted that in the instant case the notice dated

September 4, 1972, under s. 58(2) of the Act has been challenged. This notice has been issued pursuant to the account filed by an accountable person under s. 53 or s. 56(2) of the Act. The officer has merely issued a notice under s. 58(2) for clarification of certain points arising out of the accounts filed by the accountable person. This is a notice which he is bound to give pursuant to the account filed by the accountable person. The officer concerned has acted in accordance with law in issuing the notice. The accountable person cannot be heard to say that the officer concerned cannot give notice pursuant to the account filed by him. Therefore, according to counsel, this application is premature. Counsel has submitted that if s. 73A applies to both regular assessment and escaped assessment then there is no necessity to mention s. 73A in s. 59. According to counsel, by his own action in filing accounts under s. 56 for the purpose of obtaining a grant of representation from the civil court, the accountable person not only invited the jurisdiction of the Controller to make an assessment (apart from the question of acquiescing to the exercise of his jurisdiction), but he made the adoption of the course of action laid down under s. 58(2) by the Controller inevitable. Therefore, the Controller had no option but to take action under s. 58 of the Act. Such proceedings, according to counsel, have been commenced by the accountable person and it is being continued by the department and the inevitable result is the adoption of the course laid down in s. 58(2). It is also submitted that the respondent's conduct would disentitle him to any relief under art. 226. Referring to prayer (b) at page 74 of the paper book, counsel submitted that the accountable person accepted the City Civil court's order, which is at page 22 of the paper book, and did not prefer any appeal against the same. Further, in the instant case, there is no question of inherent lack of jurisdiction because s. 73A is not grafted upon s. 53 and s. 56, and where there is no patent lack of jurisdiction after invoking the jurisdiction of the Asst. Controller the accountable person cannot now complain after filing the account. It is submitted that after the filing of the account it is inevitable for the Asst. Controller to issue a notice under s. 58(2) of the Act.

In support of the above submissions, counsel has referred to the following cases, to wit : The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi, , The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, , Chatturam v. CIT [1947] 15 ITR 302 , Commissioner of Income Tax Vs. Srimati Minabati Agarwalla, , Anandji Haridas and Co. (P.) Ltd. Vs. S.P. Kushare, S.T.O. Nagpur and Others, , Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others, , P.C. Saxena Vs. The State, , Lalji Haridas Vs. R.H. Bhatt and Another, , Essex County Council v. Essex Incorporated Congregational Church Union [1963] AC 808 (HL), Giusti Patents and Engineering Works Ltd. v. Maggs [1923] 1 Ch 515 (Ch D), Kifayatullah Khan v. Registrar of Co-operative Societies [1956] AIR 1956 Hyd 129, PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)., and Mahabir Prasad Poddar Vs. Income Tax Officer, "B" Ward and Others, .

Counsel for the respondent has submitted that the application of s. 73A is not

limited to proceedings initiated under s. 59 only because the language of s. 73A is "levy of any estate duty under this Act", not "under section 59". The section does not say "proceedings u/s 59" or "commencement of proceedings by the Controller". Therefore, by s. 73A all proceedings for levy are barred. According to counsel s. 73A does not mean that only the commencement of proceedings by the department under s. 58(4) or s. 59 is barred.

If s. 73A was limited in its application to s. 59 then it would have been differently worded like s. 139 of the I.T. Act. According to counsel, there is no ambiguity in the opening portion of the section. It is further submitted that there are three modes for commencement of proceedings for the levy of estate duty under the Act. First, by s. 53(3). Under this section, the proceeding commences. In the E.D. Act there is no provision parallel to that of s. 139(2) of the I.T. Act, 1961, or s. 22(2) of the Indian I.T. Act, 1922. In the old Act there was a provision for public notice. Secondly, commencement of the proceedings is under s. 56(1) or (2). Thirdly, where no account is filed under s. 53 or s. 56 the Controller may resort to s. 59 which also prescribes a mode of commencement of the proceedings for levy of estate duty. Explaining why s. 73A is not mentioned in s. 53 or s. 56 of the Act, counsel has submitted that under s. 59 commencement of proceedings is by a notice as required by that section and in order to put a limit upon the time within which commencement may be made, specific mention of s. 73A is made in s. 59. Counsel has referred to and pointed out the difference between s. 139 of the I.T. Act and s. 73A of the E.D. Act and submitted that the scope of s. 73A is wider than that of s. 139 of the I.T. Act. Explaining why the expression "first assessment" is used in s. 73A counsel has submitted that under the Act there are three modes for commencing proceedings, i.e., ss. 53, 56 and 59. According to counsel, under the Act, there may be a first assessment, second assessment and reassessment. Counsel has submitted that under the old s. 59 (corresponding to the present s. 73A) the period of limitation for commencing proceedings under s. 53(3) or previous s. 61(2) was 12 years from the date of death. Regarding proceedings under old s. 57. Which is new s. 56, the period of limitation was six months. Under present s. 73A a uniform period of limitation for commencement of the proceedings is provided for. It is further submitted that in cases where proceedings are barred under s. 73A if a certificate is required under s. 56 for obtaining a grant of representation then the Controller will issue a certificate to the effect that proceedings are barred and, therefore, no duty is payable. It is further submitted that s. 73A is a bar to the commencement of proceedings and not a bar of limitation like the provision in other Acts and, therefore, it cannot be said to be procedural. Counsel has also submitted that no intention is expressed in s. 73A that it is limited in its application only to s. 59. It is further submitted that only in case of ambiguity the legislative history of the statute may be gone into. Referring to cl. 27 of the Estate Duty Bill counsel has submitted that the clear intention of the section is to fetter the commencement of the proceedings for all kinds of assessment. Counsel in support of his above contentions has referred to the following cases, to wit : Janapada Sabha

Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another, , Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, , COMMISSIONER OF AGRICULTURAL Income Tax Vs. SULTAN ALI GHARAMI., and D. P. Wadia and Sons v. CIT [1964] 50 ITR 761 .

The question of applicability of s. 73A to proceedings under s. 56(2) of the Estate Duty Act came up for consideration before the Delhi High Court in the case of P.C. Saxena Vs. The State, . In that case, in 1966, the appellant applied in the court of the Subordinate Judge for grant of a succession certificate to realise various debts and securities of the deceased who had died on October 28, 1959. The Subordinate Judge granted certificate subject to the production of a certificate of clearance in respect of estate duty under s. 56(2) of the E.D. Act. The appellant thereupon applied for exemption from complying with the condition for production of the clearance certificate in respect of estate duty claiming that, in view of s. 73A of the Act, no proceedings could be commenced for the levy of estate duty on the estate of the deceased after the expiry of 5 years from his death. The subordinate judge rejected the application for exemption. The appellate court while dismissing the appeal preferred against the said decision of the Subordinate Judge held that the civil court did not possess any jurisdiction or discretion to waive the condition under s. 56(2) of the Act which was a condition precedent to the grant of the representation or succession certificate. Further, the bar imposed by s. 73A of the Act could not be claimed by a party who sought a succession certificate and applied to a civil court for the grant of representation or succession certificate and he was bound to fulfil the statutory conditions, without any exception, before obtaining the certificate. At page 109 of the report, it is observed as follows :

"In my opinion, the provisions of section 73A are applicable where the Controller wishes to initiate proceedings himself for levy of estate duty without any other circumstances or consideration. But the said limitation would probably not be attracted to a case where the party itself approaches the Controller or approaches the court for grant of a succession certificate. It may be emphasised that section 56(2) of the Act does not admit of any exception and it specifies that in all cases in which a grant of a succession certificate is applied for, a copy of the application shall be furnished. Section 57 further provides that after the receipt of the account delivered u/s 56 the Controller may then at any time proceed to make a provisional assessment of the estate duty. The two provisions of law have been inserted at the same time by the amending Act and they must be reconciled and, in my opinion, on the construction I am accepting, they are consistent with each other. If a party does not want to obtain any representation or any succession certificate and does not move the civil court, the estate duty authorities have to govern themselves by section 73A and other provisions of law applicable for levy of estate duty. But, should a party approach the court for grant of succession certificate and should the application be within time and otherwise in order, a mandatory duty has been cast on the party to furnish a copy of the accounts in cases governed by clauses (a) and (b) of sub-section (1)

and a copy of the application under sub-section (2) of section 56 to the Controller. In either case, whether governed by sub-section (1) or sub-section (2), the party is bound to produce a certificate from the Controller to the effect that estate duty has been or will be paid or that none is due. The civil court does not possess any jurisdiction or discretion to waive the aforesaid condition which is precedent to the grant of representation or succession certificate. So, there is no escape for a party to comply with the mandatory conditions prescribed by section 56 of the Act. It may be noticed that while section 73A prescribes a time limit and the proceedings u/s 59 of the Act have specified that they are subject to the provisions of section 73A, no such provision or expression occurs in section 56. The limitation of six months contained in the corresponding provision in the Act prior to the amendment has been deleted and now the provision governs all cases for grant of succession certificate or representation and section 57(1) contains the expression that the Controller may proceed to make in a summary manner a provisional assessment at any time after the receipt of information u/s 56. It is, therefore, clear that the bar imposed by section 73A cannot be claimed by a party who seeks to obtain a succession certificate and applies to the civil court for grant of representation or succession certificate and so he is bound to fulfil the statutory conditions before obtaining the certificate without any exception."

At page 110 of the report, the court further observed thus :

"My observations about the non-application of section 73A to voluntary payments of the estate duty by a party must necessarily be tentative because the authorities under the Estate Duty Act are not represented before me. I have, however, no doubt that, in view of the mandatory provisions of section 56, the parties are not excused from complying with the provisions of law and furnishing a copy of the application to the Controller. It will, however, be for the Controller to deal with the said application according to law and furnish the requisite certificate. If the Controller finds that, in view of section 73A, he cannot make the assessment, it will be open to him to furnish the certificate that in the circumstances of the case no estate duty is due. This will certainly relieve the party of the obligations imposed by section 56(2) of the Estate Duty Act and the conditions specified in the order of the court while disposing of the application for grant of certificate."

Counsel for the respondent relied on the above observation of the Delhi High Court at page 110 of the report. The said observations, however, appear to be obiter dicta as contended on behalf of the department.

In this appeal we are really concerned with the question as to whether the period of limitation mentioned in s. 73A of the E.D. Act, 1953, applies to cases coming under s. 56. In other words, we are concerned with the scope and application of s. 73A. The main controversy as stated earlier, is whether by s. 73A only the initiation of the proceedings by the Controller for levy of the estate duty under s. 59 of the Act is barred after the expiry of the periods mentioned in cls. (a) and

(b) of s. 73A or whether proceedings for levy of estate duty initiated pursuant to the application made for grant of representation or succession certificate as provided in s. 56 of the Act are also barred after five years from the date of death of the deceased. In other words, whether s. 73A would also apply to and govern the cases coming under s. 56.

It is, therefore, necessary to consider the ambit and scope of s. 73A and the effect of its application to cases coming under s. 56. For that purpose, it is necessary to refer to the scheme of the Act.

Section 73A is to be read and understood in the context of the other relevant provisions of the Act and the E. D. Rules, 1953. Therefore, to understand properly the scope and effect of the above section a brief reference to the relevant provisions of the Act and the E.D. Rules appears to be necessary.

Estate Duty Act, 1953, came into force on October 6, 1953. Thereafter, it was amended by the E.D. (Amend) Acts of 1958 and 1960. Reference is made hereunder to the relevant provisions of the Act as amended.

Part II of the Act deals with imposition of estate duty. Section 5 of the Act provides for levy of estate duty.

Part VII of the Act is headed as "Collection of the duty" and it consists of 24 sections, i.e., ss. 51 to 73A. Amongst other amendments, ss. 56 to 65 of the Act as originally enacted was substituted by new sections by the Amending Act of 1958. Reference is made to the relevant amended sections of Part VII of the Act.

Sub-section (1) of s. 53 speaks of the various persons who are accountable for the estate duty in respect of the property that passes on the death of the deceased.

Sub-section (3) provides that :

"Every person accountable for estate duty under this section shall, within 6 months of the death of the deceased, deliver to the Controller an account in the prescribed form and verified in the prescribed manner of all the properties in respect of which estate duty is payable :

Provided that the Controller may extend the period of six months aforesaid on such terms which may include payment of interest as may be prescribed."

Section 55 of the Act provides, inter alia, that every person accountable for estate duty shall, if required by the Controller, deliver to him and verify, to the best of his knowledge and belief, a statement of such particulars together with such accounts, documents, evidence of information as the controller may require relating to any property which he has reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

Section 56 of the Act deals with the cases of grant of representation of the deceased and under the section grant of representation, etc., are not to be made

unless particulars are furnished to the Controller. The section reads as follows :

"(1) In all cases in which a grant of representation is applied for -

(a) the executor of the deceased shall, to the best of his knowledge and belief, specify in an appropriate account annexed to the affidavit of valuation filed in court u/s 19-I of the Court-Fees Act, 1870, all the property in respect of which estate duty is payable upon the death of the deceased and shall deliver a copy of the affidavit with the account to the Controller, and

(b) no order entitling the applicant to the grant of representation shall be made upon his application until he has delivered the account prescribed in clause (a) and had produced a certificate from the Controller under sub-section (2) of section 57 or section 67 that the estate duty payable in respect of the property included in the account has been or will be paid, or that none is due, as the case may be.

(2) In all cases in which a grant of a succession certificate is applied for, a copy of the application shall be furnished by the applicant to the Controller and no order entitling the applicant to the grant of such a certificate shall be made upon his application until he has produced a certificate from the Controller under sub-section (2) of section 57 or section 67 that the estate duty payable in respect of the property mentioned in the application has been or will be paid, or that none is due, as the case may be."

Section 57 of the Act provides, inter alia, for provisional assessment by the Controller upon receipt of the accounts delivered under s. 53 or s. 56 and for the grant of a provisional certificate.

Section 58 which deals with the assessment of estate duty is as follows :

"58. Assessment. - (1) If the Controller is satisfied without requiring the presence of the person accountable that an account delivered u/s 53 or section 56 is correct and complete, he shall assess the principal value of the estate of the deceased, and shall determine the amount payable as estate duty.

(2) If the Controller is not so satisfied, he shall serve a notice on the person accountable, either to attend in person at his office on a date to be specified in the notice, or to produce, or cause to be produced on that date, any evidence on which the person accountable may rely in support of his account.

(3) The Controller, after hearing such evidence as the person accountable may produce and such other evidence as he may require on any specified points, shall, by order in writing, assess the principal value of the estate of the deceased and determine the amount payable as estate duty.

(4) In any case where no account has been delivered as required by section 53 or section 56, or the person accountable fails to comply with the terms of the notice served under sub-section (2), the Controller shall make the assessment to the best of his judgment and determine the amount payable as estate duty."

Section 59 deals with cases of property escaping assessment and it is in the following terms :

"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 u/s 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 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, 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 73A, require the person accountable to submit an account as required u/s 53 and may proceed to assess or reassess such property as if the provisions of section 58 applied thereto."

Section 67 provides for the grant of certificate of payment of estate duty and it provides as follows :

"Where the amount of estate duty determined by the Controller as payable on an assessment made u/s 58 has been paid by the person accountable, the Controller shall, on application by that person, grant to him a certificate to that effect."

Section 72 provides that affidavits, accounts, certificate, statements and forms used for the purposed Part VII of the Act shall be in such form and contain such particulars as may be prescribed by the Board.

Section 73A of the Act, with which we are mainly concerned in this case, provides for the period of limitation for commencing proceedings for assessment or reassessment and it is as follows :

"No proceedings for the levy of any estate duty under this Act shall be commenced -

(a) in the case 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 payable; and

(b) in the case of a reassessment, after the expiration of three years from the date of assessment of such property to estate duty under this Act."

Brief reference to the relevant rule of the E.D. Rules, 1953 (hereinafter referred

to as "the Rules"), may now be made.

Rule 20 prescribes the form of account required to be delivered under ss. 53(3), 53(4) and 56(1)(a) and also in cases where a grant or representation is not required but an exemption from duty is claimed by reason of the smallness of the estate under the Act in cases where death occurred before the commencement of the Amending Act of 1958 and r. 20A provides for the aforesaid kinds of form of account where death takes place on or after the commencement of the Amending Act of 1958. Rule 26 prescribes the forms of the certificate. Certificate under s. 67 or s. 68 or s. 69 of the Act shall be in Form E.D. 4. A discharge certificate 4 and E.D. 6 are as follows :

E.D. 4.

GOVERNMENT OF INDIA

ESTATE DUTY

Controller of Estate Duty, Circle No. the 19.

Certificate u/s 67, 68 or 69

(See rule 26)

In the Estate of Official Reference No. E. D./File 19.

It is hereby certified that the full estate duty has been paid in respect of the property hereinafter described as passing on the death of late of who died on the day of 19.

The property hereinbefore referred to

Seal of office Controller of Estate Duty

Secretary. Central Board of Direct Taxes.

E.D. 6.

GOVERNMENT OF INDIA

ESTATE DUTY

AAIE(See rule 26(4))

Office of the Controller of Estate Duty, Circle No. the 19.

Discharge Certificate where no duty is payable

In the Estate of Official Reference No. E.D./File 19.

It is hereby certified that there is no claim for Estate Duty under the Estate Duty Act, 1953, in respect of the property hereinafter described as passing on the death of late of who died on the day of 19.

The property hereinbefore referred to

Date :

Assistant*

Controller of Estate Duty.

Place :

Deputy*

Relevant sections of the Act before the 1958 amendment were as follows :

Old Section 57

"In all cases in which a grant of representation is applied for within six months of the death of the deceased -

(a) the executor of the deceased shall, to the best of his knowledge and belief, specify in an appropriate account annexed to the affidavit of valuation filed in court under s. 19-I of the Court Fees Act, 1870 (VII of 1870), all the property in respect of which estate duty is payable upon the death of the deceased and shall deliver a copy of the affidavit with the account to the Controller, and

(b) no order entitling the applicant to the grant of representation shall be made upon the application until he has delivered the account prescribed in clause (a) and has produced a certificate from the Controller u/s 60 or section 67 that the estate duty payable in respect of the property included in the account has been or will be paid, or that none is due, as the case may be."

Old section 59 "No proceeding for the levy of any estate duty under this Act shall be commenced after the expiration of twelve years from the date of death of the deceased in respect of whose property estate duty became leviable."

Old section 61(2) "In any case where no account has been delivered as required by section 53 or clause (a) of section 57, the Controller may cause an account of the property passing on the death of the deceased to be prepared in such manner and by such means as he thinks fit and may call upon any person who in his opinion is accountable for the payment of estate duty in respect of the property to accept such account, and if that person does not accept the account or his liability, the Controller may determine the estate duty payable by that person."

On a careful consideration of the Scheme of the Act it appears to us that the application of s. 73A to cases coming under s. 56 would make the latter section unworkable and if s. 73A applies to cases under s. 56 then no grant of representation or succession certificate can be made after the expiry of five years from the date of death of the deceased where there had not been any assessment of estate duty earlier or where an application for grant of representation or for succession certificate is made three years after the date of assessment of property and the question of reassessment arises because in such cases the conditions laid down in s. 56 for the purpose of grant of representation

or succession certificate cannot be fulfilled as stated hereinafter.

From the relevant provisions of the Act it appears that where the grant of representation or succession certificate becomes necessary it is obligatory for the executor of the deceased or the person claiming representation or the applicant for a succession certificate to deliver to the Controller a copy of the affidavit with the account or a copy of the application for succession certificate and no order for the grant of representation or succession certificate shall be made until the account or copy of the application is submitted and the Controller's certificate under s. 58(2) or s. 67 is produced. Here it should be noted that the provisions of the corresponding old section, i.e., s. 57, applied only when a grant of representation (which according to s. 2(18) means probate of a will or letters of administration) was applied for within six months of the death of the deceased. It should also be noted that the time-limit of six months was specifically mentioned in the old section and the section had no application to cases of grant of succession certificates.

The conditions of s. 56 required to be complied with when an application for the grant of representation or succession certificate is made are mandatory and do not admit of any exception. It is incumbent upon a party who wants a grant of representation or succession certificate to comply with the conditions as laid down in s. 56. After receipt of the account delivered under s. 56 the Controller may proceed to make a provisional assessment under s. 57. Under that section estate duty shall be due from the date of death of the deceased and the Controller may at any time after the receipt of the account proceed to make in a summary manner a provisional assessment, of estate duty. Thereafter, when the person so assessed pays to the Controller or furnishes security to the satisfaction of the Controller for the payment of estate duty, if any, payable on the provisional assessment, the Controller shall grant a certificate to the effect that such duty has been or will be paid or that none is due, as the case may be, in respect of the property mentioned in the certificate. Regular assessment is, however, made under s. 58. Under that section when the Controller is satisfied without the presence of the accountable person that the amount delivered under s. 56 is correct and complete he shall assess the value of the estate and determine the amount payable as estate duty. Sub-section (2) of s. 58 empowers the Controller to call for personal attendance of or production of document by the accountable person. Sub-s. (3) of s. 58 provides for the making of an assessment after evidence is produced by the accountable person, sub-s. (4) empowers the Controller to make the best judgment assessment in cases where either no account is delivered or when there is failure to comply with the notice under sub-s. (2). It, therefore, appears that after the 1958 amendment, according to the provisions of s. 56, in all cases and without any exception, no grant of representation or succession certificate shall be made unless the account or the copy of the application is delivered to the Controller and a provisional certificate under s. 57(2) or a final certificate under s. 67 of the Act is produced. Therefore, if the time-limit mentioned in s. 73A of the Act is made to apply to

cases covered by s. 56 then in cases where five years have expired after the death of the deceased or where three years have passed after the assessment made previously and there is a question of reassessment, no grant of representation or succession certificate can be made because the Controller cannot issue a certificate under s. 57(2) or s. 67 unless there is an assessment and the assessed duty has been paid or provided for or he comes to the conclusion that no duty is payable in respect of the property passing on the death of the deceased. In other words the mandatory provisions of s. 56 cannot be fulfilled.

It has been contended on behalf of the respondent that in cases where five years have expired from the date of death of the deceased or where three years have expired from the date of first assessment and there is a question of reassessment the Controller will give a certificate to the effect that there is no claim of estate duty or that no duty is due from the accountable person. It should, however, be noticed that under the relevant provisions of the E.D. Act and the E.D. Rules (namely, ss. 57 and 67 and r. 26) certificate can be given only after the assessment and depending upon the result of thereof. The prescribed forms of certificate are E.D. 4 and E.D. 6 which have been set out earlier. Form E.D. 6 cannot apply to cases like the instant one because here it cannot be said that there is no claim for estate duty under the Act. The claim remains but cannot be enforced. Section 73A does not do away with the liability of the accountable person for payment of duty, it only bars the initiation of proceedings for levy of duty. Therefore, if the liability remains but proceedings cannot be initiated there is no question of full payment of duty. In such cases it cannot also be stated in the certificate by the Controller that there is no claim of estate duty from the accountable person.

Therefore, if s. 73A is so construed as to apply to and govern a case coming under s. 56 then the latter section would become inapplicable in certain cases as mentioned above. Not only that, such a construction of s. 73A would also be in conflict with the provisions of the Indian Succession Act whereunder no time-limit is fixed for making an application for the grant of representation or succession certificate. Therefore, in removing the bar of 6 months from the section, which was in the corresponding old s. 57, by the 1958 amendment the legislative intent appears to be that in all cases of application for the grant of representation or succession certificate, the provisions of s. 56 would apply. It, therefore, appears that the bar of limitation as provided in s. 73A is not applicable to cases where the application is made for the grant of representation or succession certificate and the account or the copy of the application is delivered to the Controller as required by s. 56.

The language of s. 73A should be also be noted. It states that : "No proceedings for levy of any estate duty under this Act shall be commenced...." This, in our opinion, means, as contended on behalf of the appellant, only those cases where the initiation or commencement of the proceedings for the levy of estate duty is

at the instance of the Controller such as under s. 59 or s. 58(4) of the Act where no account is delivered or there is question of property escaping assessment. It should also be noticed that although s. 73A is specifically mentioned in s. 59 yet that section is not mentioned in s. 56. This shows that the legislative intent is not to apply the limit mentioned in s. 73A to cases coming under s. 56 of the Act. Section 73A, therefore, does not apply to cases where proceedings commence in consequence of an application for the grant of representation or succession certificate. Under s. 56 the initiation or commencement of the proceeding is not at the instance or behest of the Controller but it follows upon the submission of account or copy of application by the accountable person and what the Controller is required to do is in a regular manner, upon receipt of such account or copy of the application. Therefore, in such cases there cannot be any commencement or initiation of proceedings for the levy of duty.

The observation made by us herein are strictly on the basis of and limited to the facts of the instant case, i.e., where an application for the grant of representation is made by the accountable person and a copy of the affidavit with the account is delivered to the Controller in compliance with the provisions of s. 56 of the Act.

In the above view of the matter we are unable to agree with the view of the learned judge of the court of the first instance. The appeal is, therefore, allowed. The orders under appeal are set aside. Rule nisi is discharged. Interim order, if any, will stand vacated. There will, however, be no order as to costs.

GHOSE J. - I agree.