(1993) 02 GAU CK 0020

In the Gauhati High Court

Case No : Civil Rule No. 368 of 1987

Banwarilal Sikaria APPELLANT

Vs

Assistant Controller of Estate Duty and Others RESPONDENT

Date of Decision : 23-02-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Estate Duty Act, 1953 — Section 70, 70(1)

Citation : (1993) 201 ITR 79

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : Ashok K. Saraf, S. Mitra and K.K. Gupta, for the Appellant; K.N. Choudhury, for the Respondent

Judgement

Manisana, J.—In this application under Article 226 of the Constitution of India, the petitioner has challenged the order of the Assistant Controller of Estate Duty at Guwahati made on November 27, 1986, u/s 70 of the Estate Duty Act, 1953 ("the Act" for short), imposing interest at 12 per cent. per annum on the petitioner.

2. The facts. Late Kamala Devi Sikaria. the mother of the petitioner, died on May 15, 1979, at Guwahati. Late Kamala Devi left a will and the petitioner Banwarilal Sikaria is the " person accountable " or " accountable person " under the Act. The Assistant Controller of Estate Duty ("the Controller" for short) by assessment order dated November 28, 1980, u/s 58(3) of the Act determined the value of the property left by the deceased Kamala Devi at Rs. 7,85,860.00 and the estate duty payable at Rs. 1,57,518.00.

3. Accordingly, a notice of demand dated November 28, 1980, for a sum of Rs. 1,57,518.00 was issued by the Controller to the petitioner. On receipt of the notice of demand, the petitioner, vide letter dated March 19, 1981, requested the Controller for issue of a challan for Rs. 17,518.00 and to allow the petitioner to pay the balance amount in ten equal quarterly instalments on the ground of

financial stringencies. By his letter dated March 27, 1981, the Controller allowed payment of the estate duty demanded by three instalments subject to payment of interest to be determined afterwards. The first instalment of Rs. 25,000 was payable on March 31, 1981. The second and third instalments of Rs. 66,259 each were payable on May 30, 1981 and June 30, 1981, respectively. On March 30, 1981, the petitioner deposited a sum of Rs. 25,000. But he could not deposit the balance amount in terms of the order allowing to pay by instalments. Therefore, the Controller wrote a letter dated July 28, 1981 and July 30, 1981, asking the petitioner to pay remaining instalments with interest within a week from the date of receipt of the letter failing which action for recovery would be taken subject to initiation of penalty proceedings u/s 73(5) read with Section 46(1) of the Income Tax Act. The petitioner, by a letter dated March 5, 1982, informed the Controller that, out of Rs. 1,57,518, a sum of Rs. 45,000 had already been paid and requested the Controller to allow him to pay the balance amount of Rs. 1,12,518 in twelve (12) equal instalments. On March 18, 1982, the Controller replied to the letter directing the petitioner to pay a sum of Rs. 27,518 within March 25, 1982, and, thereafter, the request for instalments would be considered. The petitioner deposited the aforesaid amount of Rs. 27,518. But, by another letter dated March 14, 1983, of the Controller, the petitioner was again asked by the Controller to pay the whole of the balance amount, i.e., Rs. 90,000, within seven days of the receipt of the letter. The earlier assessment was reopened and reassessed under order dated September 5, 1984, determining the value of the estate at Rs. 7,95,920 and payment of Rs. 1,60,766 was demanded. In the meanwhile, the petitioner had paid a total sum of Rs. 92,518 against the original demand of Rs. 1,57,518. But a notice of demand dated October 17, 1984, for payment of Rs. 68,258, after the adjustment of Rs. 92,518 paid by the petitioner, was issued in terms of the reassessment order dated September 5, 1984. On July 31, 1985, the petitioner informed the Controller that the entire amount of estate duty payable by the petitioner under the original order dated November 28, 1980, had already been paid.

4. The Controller issued a notice dated July 18, 1985, to the petitioner proposing to charge interest at 12 per cent. u/s 70 of the Act and directing the petitioner to appear on or before August 8, 1985, if he had any objection. The petitioner made written objections on August 6, 1985, stating the following : The payment of estate duty was extended from time to time and the payments were made within the extended period. Interest could not be charged after the whole duty had been paid. The notice for payment of interest was not maintainable in view of Section 70 of the Act. The estate left by the deceased was further reassessed by exercising powers u/s 41 of the Act at Rs. 2,42,040 and a demand of an additional amount of Rs. 33,504 was made. Being aggrieved by the order of reassessment, the petitioner had preferred an appeal before the Tribunal, which is pending for disposal. However, on November 27, 1986, the Controller made an order charging the petitioner with interest at 12 per cent. per annum for delay in payment of estate duty. Hence this petition.

5. Mr. Ashok Saraf, learned counsel for the petitioner has submitted that the Controller made the order for payment of interest without jurisdiction, as no order for payment of interest could be made after the assessed amount of duty had been paid.

6. The question which arises for consideration is whether the Controller had the jurisdiction to impose interest on the accountable person on the assessed amount of estate duty after it had been paid, though it was paid part by part at the convenience of the petitioner.

7. Section 70 of the Act is the only section providing for payment of interest while allowing postponement of recovery of duty for a definite period. However, it is not disputed that Sub-section (2) of Section 70 of the Act is not required to be discussed in the present ease. Sub-section (1) of Section 70 of the Act runs thus :

"Where the Controller is satisfied that the estate duty leviable in respect of any property cannot, without excessive sacrifice, be raised at once, he may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent., or any higher interest yielded by the property, and on such other terms as he may think fit."

8. On a reading of Sub-section (1) of Section 70, it is clear that, under Sub-section (1), the Controller is authorised to allow postponement of the recovery of estate duty on payment of prescribed interest and on such other terms as he may think fit, when the Controller is satisfied that estate duty assessed cannot, without excessive sacrifice, be raised at once. The intendment of the Legislature is to allow the accountable person reasonable time to raise necessary funds for discharging the liability to duty where estate duty cannot be raised at once except by sale of property at excessive sacrifice due to adverse market conditions (see objects and reasons). Proceeding further, the expression " on such other terms as he may think fit " indicates, inter alia, that Section 70 authorises the Controller to extend time for payment or to allow payment of the demand in instalments, and to direct the mode of payment of interest. This being the position, the Controller must specify the rate of interest when allowing payment of estate duty in instalments ; therefore, there is no provision for automatic imposition of interest.

9. Coming to the case on hand, the petitioner was allowed to pay the estate duty in three instalments subject to payment of interest to be determined afterwards, that is the petitioner was allowed to pay the estate duty in instalments without specifying the prescribed interest. The petitioner paid the first instalment and failed to pay the second and third instalments, but no proceeding for recovery of the estate duty was initiated though the petitioner was threatened saying that, if the balance amount was not paid within a week, action for recovery would be taken in addition to penalty proceedings. Thereafter, the petitioner again requested the Controller to allow him to pay the unpaid amount of estate duty by instalments. The Controller directed the petitioner to pay the sum of Rs. 27,518

and thereafter the request of the petitioner to pay the unpaid amount of duty by instalments would be considered. The petitioner paid a sum of Rs. 27,518 but the Controller had not considered payment of the balance amount by instalments. In the meanwhile, the petitioner has paid the whole amount of estate duty bit by bit at the convenience of the petitioner and not on the direction of the Controller. It has already been stated that the postponement of recovery of estate duty or allow payment of the demand in instalments may be allowed on payment of specified interest. But no such order was made by the Controller. Therefore, while the whole of the assessed amount of duty had been paid, though the payment was made at the convenience of the petitioner, the question of imposition of interest on the amount paid by the petitioner did not arise. A similar view was adopted in Prem Nath Khandelwal Vs. Assistant Controller of Estate Duty, and H.M. Jaffar Vs. Assistant Controller of Estate Duty, I respectfully agree with the view taken in the above-referred cases. For these reasons, the order imposing interest by the Controller subsequent to payment of the demand was made without jurisdiction.

10. In the result, the petition is allowed, the impugned order of the Assistant Controller of Estate Duty at Guwahati made on November 28, 1980, is quashed. No costs.