

(1976) 01 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 469 of 1973

Bettiah Estate

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 28-01-1976

Acts Referred:

Estate Duty Act, 1953 — Section 58, 61, 70

Citation : (1977) 108 ITR 210 : (1976) 9 PLJR 451

Hon'ble Judges : S.K. Choudhuri, J;H.L. Agrawal, J

Bench : Division Bench

Advocate : Kailash Ray and Sheo Kumar Singh, for the Appellant; D.P. Rajgarhia and B.N. Prasad, for the Respondent

Judgement

1. The petitioner in this writ application, namely, the Bettiah Estate under the court of wards, has obtained a rule from this court as to why the order dated February 16, 1973, passed by the Assistant Controller, Special Estate Duty-cum-income tax Circle (respondent No. 2), purported to be passed u/s 61 of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), rectifying some purported mistakes in the order of regular assessment made on February 17, 1968, a copy of which is annexure "1" and the consequent demand in pursuance of the above impugned order dated February 16, 1973, a copy of which is annexure "2", should not be quashed and cancelled. The relevant facts are these i Smt. Janki Kuer, the Maharani of Bettiah Estate, died on November 27, 1954, when the estate was under the court of wards, Bihar. After her death a return was filed by the manager on February 14, 1958 (wrongly stated in the writ petition as February 11, 1958), in the office of the Assistant Controller (respondent No. 2) declaring the principal value of the properties owned and possessed by the late Maharani at Rs. 62,55,683 who made a provisional assessment on the same day on the basis of the declared principal value raising a demand of Rs. 19,03,523 payable by February 28, 1958. This demand, however, was not paid according to the time fixed under the provisional order and was paid on three different dates by instalments of Rs. 2,63,523 on March

31, 1958, Rs. 16,05,806 on November 8, 1958, and the balance of Rs. 34,194 on November 19, 1958.

2. The provision for making a provisional assessment is contained in Section 57 of the Act which empowers the Controller to make in a summary manner a provisional assessment of the estate duty payable by the person delivering the account on the basis of the account delivered, at any time I after the receipt of the account by him under Sub-section (2) of Section 57 of the Act. Upon making of the provisional assessment, the assessee has to pay to the Controller, or furnish security to his satisfaction for the payment of the estate duty, in accordance with the provisional assessment and the Controller thereupon is to grant him a certificate 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. No appeal has been provided against the order of provisional assessment and the amount paid in pursuance of the provisional assessment is to be deemed to have been paid towards the regular assessment as and when made u/s 58 of the Act. In this case, the regular assessment was completed on February 17, 1968, on the principal value of Rs. 1,25,39,657 thereby creating a demand of Rs. 44,17,113 (wrongly mentioned in the copy of the order, annexure "1", as Rs. 43,19,855).

3. Now comes the order which is under challenge, namely, annexure "1", which was passed on February 16, 1973, by respondent No. 2. By this order he purported to add a sum of Rs. 46,016 as interest said to have left to be included through oversight while making the final order of assessment u/s 58 of the Act on account of "deferred payments of the provisional demand". It has been mentioned in the impugned order that "on the final assessment the demand had to be created including the interest chargeable u/s 70 on deferred payment of the demand raised earlier... It is only the mistake that crept in creating the original demand on February 17, 1968", which was purported to be rectified in pursuance of the provisions contained in Section 61 of the Act.

4. In order to appreciate the question raised for our consideration, we may refer to the provisions of Section 70 which appears to be the only provision in the whole of the Act which contemplates imposition of interest where the Controller allows postponement of payment of demand. It provides that 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. It is manifest from the provision of Section 70 that the power in the Controller to impose interest can be exercised only under the express terms of Section 70, i.e., where payment of the estate duty is postponed for a definite period which period is also fixed and prescribed under Sub-section (2) of Section 70 itself. It is also clear that there is no similar provision for running of interest on estate duty after the provisional assessment

payable before the order u/s 70 is made. Section 61 lays down that at any time within five years from the date of any order passed by him or it, the Controller, the Appellate Controller or the Appellate Tribunal may, on his or its own motion, rectify any mistake apparent from the record and shall within a like period rectify any such mistake which has been brought to the notice of the Controller or the other two authorities mentioned above, as the case may be, by the person accountable. From the provision contained in Section 61 it is abundantly clear to us that the power to rectify a mistake must be apparent from the record and is apparently a question of jurisdiction. In other words, if the mistake sought to be rectified under the provisions of Section 61 is not a mistake apparent from the record, there is no authority in the Controller to correct the same under the provisions of Section 61 of the Act. We have already said earlier that there is no provision in the Act which authorises running of interest on the provisional assessment. It, therefore, must be held that there was no mistake committed by the Controller in making the order of regular assessment on February 17, 1968, by omitting to include the disputed interest of Rs. 46,016 as thought by respondent No. 2 to be chargeable u/s 70 on the deferred payments on the provisional demand through oversight.

5. Having examined the provisions and the scheme of the Act, we feel satisfied that the order of regular assessment which was completed on February 17, 1968, without taking into consideration any amount of interest was a just and valid order and respondent No. 2 has misdirected himself in thinking that interest was chargeable on the provisional assessment also u/s 70 of the Act on account of deferred payment of the provisional assessment. It is, therefore, abundantly clear that, on the facts of this case, there was absolutely no scope for exercising any power of rectification of a mistake u/s 61 of the Act. We are fully supported in our views by a decision of the Calcutta High Court in *Prem Nath Khandelwal Vs. Assistant Controller of Estate Duty*, . The learned judge in the said case, after making a comparable examination of the Estate Duty Act in question and the Finance Act, 1894 (U.K.), has pointed out the difference between the English and the Indian law on the subject and has laid down that the Estate Duty Act, as it is, makes no provision for automatically running of interest as in the English Act and such interest does not begin to run unless there is an order u/s 70 of the Act after the time of payment by instalment is allowed. In the present case, no order could be made u/s 70 at the time of the passing of the final order of assessment u/s 58 of the Act as, in our view, the stage for making an order u/s 70 must follow after the making of the final order of assessment.

6. It is not necessary to refer to the statements made in the counter-affidavit of the respondents as this position is not disputed and Mr. Rajgarhia appearing for the respondents could not point out any material to support the order in question. The impugned order contained in annexure "1" is a speaking order and the reasons on which the order has been made is unsustainable in law. We would, accordingly, cancel and quash the same by a writ of certiorari. Annexure "1" having been quashed, the demand on the basis of this order contained in

annexure "2" must also be quashed.

7. In the result, this application succeeds and the impugned order contained in annexure "1" and the demand (annexure "2") are hereby quashed and cancelled. The petitioner will be entitled to costs. Hearing fee, Rs. 150 only.