
(1981) 03 AHC CK 0014

In the Allahabad High Court

Case No : Estate Duty Reference No. 278 of 1979

Controller of Estate Duty

APPELLANT

Vs

Bhola Dutt

RESPONDENT

Date of Decision : 03-03-1981

Acts Referred:

Estate Duty Act, 1953 — Section 53, 53(3), 56, 58(4), 73A

Citation : (1981) 24 CTR 114 : (1981) 130 ITR 468 : (1981) 7 TAXMAN 119

Hon'ble Judges : Satish Chandra, C.J.; K.N. Seth, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; K.B. Jindal, for the Respondent

Judgement

Satish Chandra, C.J.—Shri Ram Krishna Pande died on 29th December, 1971. The accountable person did not file a return under the E.D. Act within six months as prescribe^ by Section 53(3) of the E.D. Act. The Asst. Controller also did not issue any notice to the accountable person requiring him to file the requisite return. The accountable person, however, on his own motion filed the requisite return on 29th January, 1977, i.e., after the expiry of five years from the date of death of the deceased. The Asst. Controller commenced assessment proceedings on that return. During its pendency, the accountable person raised an objection before the Asst. Controller that as the return was filed beyond the period of limitation prescribed by Section 73A of the E.D. Act, it was a nullity and no assessment proceedings could validly be undertaken on its basis. The objection was rejected and in due course the assessment was completed. This view of the Asst. Controller was upheld on appeal. The accountable person then went up in appeal to the Tribunal. The Tribunal held that the return filed by the accountable person could not be treated to be a valid return u/s 53(3) of the Act because it was filed beyond the prescribed period of limitation of six months. Since the Asst. Controller had not issued any notice nor had extended the time for filing the return, the same could not be treated to be a return u/s 53(3) of the Act. The Tribunal further held that Sections 56 and 59 of the Act were equally

inapplicable. Section 73A categorically lays down the period of limitation for the commencement of assessment proceedings under the E.D. Act. The proceedings in this case commenced on the return voluntarily filed by the accountable person but beyond the period of five years prescribed by Section 73A of the Act, hence the same were not maintainable. On this view the assessment order was quashed.

2. At the instance of the Controller, the Tribunal has referred the following question of law for our opinion :

" Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the accountable person could not have, in law, filed the return of estate duty suo motu on 29th January, 1977, i.e., more than six years after the death of the deceased on December 29, 1971, and, therefore, the said return had no legal consequence and gave rise to no proceedings whatever under the Estate Duty Act and, accordingly, no valid assessment on its basis could be made under the said Act ? "

3. Section 73A of the E.D. Act provides :

" 73A. Limitation for commencing proceedings for assessment or reassessment.-- 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....."

4. This provision lays down a clear and categorical bar to the commencement of assessment proceedings. They cannot be commenced after the expiry of five years from the date of death of the deceased.

5. Under the E.D. Act, the assessment proceedings commence with the filing of the return as prescribed by Section 55(3) of the Act and, under it, the return could validly be filed within six months of the date of death or within such further time as may be extended by the Asst. Controller. That provision obviously is not applicable to the facts of the present case. u/s 56 of the Act another method of commencement of assessment proceedings is by the Controller requiring the accountable person to file the requisite return. Yet another method of commencement of assessment proceedings is prescribed by Section 58 of the Act. Sub-section (4) of Section 58 provides that 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. In this provision assessment proceedings could be commenced by the Controller in case the requisite return has not been filed by the accountable person. But to all these modes of commencement of assessment proceeding Section 73A is applicable. Ex

hypothesis assessment proceedings under either of these provisions could not validly be commenced after the expiry of the period of limitation prescribed by Section 73A of the Act. Here, the proceedings were sought to be commenced on the basis of the return filed by the accountable person voluntarily but after the expiry of the prescribed period of five years. In view of Section 73A, the Asst. Controller had no jurisdiction to commence the proceedings even on the basis of such a voluntary return.

6. Our attention was invited to Section 56 of the Act. It is true that Section 56 does not prescribe any period of limitation, but it applies in limited circumstances. Sub-section (1) of Section 56 applies to a case where the executor of the deceased wants a representation certificate. Then alone he is required to file an account of the properties of the deceased to the Controller. Under Sub-section (2), the accountable person is required to produce a certificate from the Controller that the requisite estate duty has been paid in respect of the property for which a succession certificate, is applied for. Proceedings u/s 56 commence when some one desires to have a representation certificate or a succession certificate, not otherwise. In the present case, none of the two situations have occurred. We are, therefore, clear that the assessment proceedings were invalid and were rightly quashed by the Tribunal.

7. We, therefore, answer the question referral to us in the affirmative, in favour of the accountable person and against the department. The accountable person shall be entitled to costs which are assessed at Rs. 200.