(1997) 01 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Estate Duty Case No. 2 of 1983

Controller of Estate Duty APPELLANT

Vs

Gurbachan Singh RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:
Estate Duty Act, 1953 — Section 59, 60(1), 64(1), 64(3), 73A

Citation : (1998) 146 CTR 277 : (1999) 235 ITR 62

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : None appeared for accountable person, RP.P. Sawhney and Devi Dayal, for the Appellant;

Judgement

G.S. Singhvi

1. By this order we are disposing of the petition filed u/s 64(3) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), for directing the Income Tax Appellate Tribunal, Chandigarh Bench, to make a reference of the questions of law framed by the petitioner to the High Court for its opinion :

In response to the notice issued by the Assistant Controller of Estate Duty u/s 59 of the Act, Shri Gurbachan Singh and Shri Jas-want Singh, accountable persons of the late Shri Devi Singh filed a statement of account on July 18, 1977. By an order dated July 30, 1977, the Assistant Controller of Estate Duty declared the dutiable estate of the deceased at Rs. 2,41,861 and directed the issue of demand notice and challan and the initiation of penalty proceedings u/s 60(1)(a). Shri Gurbachan Singh, one of the accountable persons, filed an appeal before the Appellate Controller of Estate Duty and challenged the order of the Assistant Controller on the ground that the notice issued by the Assistant Controller was barred by limitation and also on the ground that reasonable opportunity was not granted to the accountable person. The appellate authority rejected the first ground of challenge but upheld the plea of Gurbachan Singh that reasonable opportunity was not given to him. Accordingly, it remanded the case to the

Assistant Controller to pass a fresh order after giving reasonable opportunity to the accountable persons. The order of the appellate authority was challenged by Shri Gurbachan Singh before the Appellate Tribunal. Vide its order dated March 3, 1983, the Tribunal accepted the contention raised on behalf of Gurbachan Singh that the proceedings were barred by time. It held that the proceedings u/s 59 can be treated to have commenced only when notice is served upon the accountable persons and mere issuance of notice is not sufficient.

2. The petitioner filed an application u/s 64(1) of the Act before the Tribunal for reference of the question of law to the High Court. After hearing the representatives of the parties, the Tribunal rejected the application by holding that no referable question of law arises in the case.

3. We have heard Shri R. P. Sawhney, learned counsel for the petitioner, and have perused the various orders filed along with the petition.

4. From the record of the case, it is borne out that Devi Singh had died on April 26, 1972. Notice u/s 59(a) was issued on March 25, 1977, to Gurbachan Singh. Notices to other two accoutable persons were issued on July 11, 1977. The appellate authority, before whom the respondent Gurbachan Singh had filed appeal against the order of the Assistant Controller, rejected his plea that the initiation of proceedings was barred by the period of limitation prescribed u/s 73A of the Act. However, the Tribunal upheld this objection. The point which requires consideration by this court is what is the point of time when the proceeding u/s 59(a) is deemed to have commenced. In our considered opinion, the following referable question of law arises in this case :

"Whether the period of limitation specified in Section 73A commences from the date of issuance of notice u/s 59(a) or from the date of service of such notice upon the accountable person and whether, on the facts and in the circumstances of the cases, the Appellate Tribunal is right in holding that notice issued u/s 59(a) is barred by limitation and whether the Tribunal is correct in law in setting aside the order of assessment framed by the Assistant Controller of Estate Duty ?"

5. Accordingly, the petition is allowed. The Tribunal is directed to draw up a statement of the case and refer the abovementioned question to this court along with the records.