**(1997) 01 P&H CK 0159**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Estate Duty Case No. 2 of 1980

Controller of Estate Duty APPELLANT

Vs

Jatinder Kumar RESPONDENT

**Date of Decision :** 14-01-1997

**Acts Referred:**
Estate Duty Act, 1953 — Section 64

**Citation :** (1998) 149 CTR 243 : (1998) 230 ITR 585 : (1997) 94 TAXMAN 25

**Hon'ble Judges :** V.K. Bali, J;N.K. Agrawal, J

**Bench :** Division Bench

**Advocate :** R.P. Sawhney and Devi Dayal, for the Appellant; None, for the Respondent

## Judgement

N.K. Agrawal, J.—This is a petition made by the Controller of Estate Duty, Haryana u/s 64(3) of the Estate Duty Act, 1953, seeking a direction to the Income Tax Appellate Tribunal to refer the following two questions to this High Court for opinion :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the notice u/s 59(a) of the Estate Duty Act, 1953, expressed in the joint names of ''Jatinder Kumar--Pushpinder Kumar, etc., sons of the late Shri Sumat Prashad of Kalka'' could not be validly served on Shri Jatinder Kumar alone ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the person accountable means all the accountable persons and not any of the accountable persons ?"

2. The facts, in brief, are that Shri Sumat Parshad died on November 17, 1968. A notice u/s 59 of the Estate Duty Act, 1953, was issued by the Assistant Controller of Estate Duty on February 16, 1972, in the names of Jatinder Kumar and Pushpinder Kumar, sons of the deceased. The aforesaid accountable persons were required to file an account of the properties left by the deceased. However,

 

the notice was not complied with and, therefore, the Assistant Controller issued further notices. Jatinder Kumar appeared on November 26, 1975, and claimed that the proceedings have become time-barred. This plea was not accepted on the ground that the proceedings had been validly commenced within the limitation period of 5 years from the date of death of the deceased. Thereafter, the accountable person failed to appear and an assessment was made ex parte, creating a demand of Rs. 6,000. An appeal filed before the Controller of Estate Duty was rejected but the second appeal, filed by the accountable person before the Tribunal, was also on the ground that a common notice had been issued to two persons jointly. The Tribunal took notice of the fact that, since a notice was issued jointly in the names of Jatinder Kumar--Pushpinder Kumar, that was not sufficient service on the two accountable persons. There was no evidence on the record to show that the notice had been served on any accountable person. Since there was no service of notice on the accountable person, it had the effect of rendering the assessment bad.

3. From the above facts, it appears that the controversy related to the question of service of notice. It was a question relating to a fact and, therefore, in our opinion, the controversy does not give rise to a question of law.

4. In the result, the application, filed by the Revenue, is rejected on the ground that no referable question of law arises from the order of the Tribunal and the questions, sought to be referred, do not give rise to a question of law to be answered by this court.

 