(1986) 02 CAL CK 0019

In the Calcutta High Court

Case No : Matter No. 423 of 1974

Controller of Estate Duty APPELLANT

Vs

Nirmal Kumar Fatehpuria RESPONDENT

Date of Decision : 09-02-1986

Acts Referred:

Estate Duty Act, 1953 — Section 62(1), 73(5)
General Clauses Act, 1897 — Section 8
Income Tax Act, 1922 — Section 46(1)

Citation : (1987) 168 ITR 75

Hon'ble Judges : Shyamal Kumar Sen, J;Dipak Kumar Sen, J

Bench : Division Bench

Judgement

Dipak Kumar Sen, J.—The estate of Kamala Devi Fatehpuria, deceased, was assessed to estate duty u/s 58(3) of the Estate Duty Act, 1953, on January 29, 1970. The accountable person was permitted to pay the duty assessed in monthly instalments by an order dated March 30, 1970.

2. The accountable person, however, failed to pay the instalments in terms of the said order dated March 30, 1970. He did not pay any instalment for the month of April, 1970, and thereafter since August, 1970, stopped paying further instalments.

3. By a letter dated December 5, 1970, the estate duty authority called upon the accountable person to appear on December 22, 1970, to discuss the matter and subsequently a notice dated December 30, 1970, was issued against the accountable person directing him to explain in writing by January 16, 1971, why the scheme of instalment as granted should not be treated as cancelled for default and why penalty should not be imposed for non-payment of the duty.

4. The accountable person did not comply either with the said letter dated December 5, 1970, or the said notice dated December 30, 1970. No further payment was made by the accountable person. By an order dated January 30, 1971, the Assistant Controller, "G" Ward, Estate Duty-cum-income tax Officer,

Calcutta, cancelled the instalment scheme and imposed a penalty of Rs. 10,000 on the accountable person u/s 73(5) of the Estate Duty Act, 1953. It was further directed that in the event the accountable person failed to pay Rs. 65,000 towards the estate duty assessed, by March 15, 1971, a further penalty of Rs. 20,000 would be imposed.

5. Being aggrieved, the accountable person filed an appeal against the said order of penalty before the Appellate Controller of Estate Duty. The Appellate Controller noted that the appeal filed by the accountable person against the order of assessment of estate duty had, in the meantime, been disposed of by the Appellate Controller on January 30, 1971, and relief of Rs. 20,000 had been granted. It was noted further that on December 22, 1970, a representative of the accountable person had appeared before the Assistant Controller concerned to discuss the matter. At that time, it was submitted that the accountable person was unable to make further payment on account of difficulties on his part to secure the said amount. It was further contended that the advocate of the accountable person had fallen sick and was unable to represent the accountable person in the proceedings. The aforesaid contentions of the accountable person were recorded in a letter dated January 16, 1971, which was addressed to the Assistant Controller and was found in the record.

6. The Appellate Controller accepted the contentions of the accountable person and held that the default of the accountable person in not making the payment in terms of the instalment scheme was purely a technical defect as the Assistant Controller had not dealt with the contentions of the accountable person as recorded in his letter dated January 16, 1971. The Appellate Controller, therefore, reduced the penalty to a token sum of Rs. 500 and remitted the balance penalty of Rs. 9,500.

7. Being aggrieved, the Assistant Controller preferred an appeal against the order of the Appellate Controller before the Income Tax Appellate Tribunal. It was contended in the appeal on behalf of the estate duty authorities that the Appellate Controller had erred in entertaining the appeal against the order of penalty inasmuch as at the relevant time, the estate duty as assessed had not been paid by the accountable person. Relying on the proviso to Section 62(1)(a)(iv) of the Estate Duty Act, 1953, it was contended that in view of the said proviso, the Appellate Controller could not have entertained the appeal of the accountable person and reduced the quantum of penalty.

8. It was contended on behalf of the accountable person that the penalty in the instant case had been imposed by the Assistant Controller u/s 46(1) of the Indian Income Tax Act, 1922, read with Section 73(5) of the Estate Duty Act, 1953. The Indian Income Tax Act, 1922, stood repealed at the relevant time, and, therefore, the provisions of Section 8 of the General Clauses Act, 1897, came into operation. Under the said section of the General Clauses Act, corresponding provisions of the Income Tax Act, 1961, would apply. While the provisions of Section 221 of the Income Tax Act, 1961, are in pari materia with

the provisions of Section 46(1) of the Indian Income Tax Act, 1922, there is no provision corresponding to the first proviso to Section 30(1) of the Indian Income Tax Act, 1922, in the Income Tax Act, 1961.

9. The Tribunal accepted the contentions of the accountable person and held that if the corresponding provision of the Income Tax Act, 1961, was applied in place of Section 46(1) of the Indian Income Tax Act, 1922, then the appeal before the Appellate Controller should be held to be competent. The Tribunal also held on merits that the order of the Appellate Controller was correct. The appeal of the Assistant Controller of Estate Duty was dismissed.

10. On an application of the Revenue u/s 64(1) of the Estate Duty Act, 1953, the Tribunal has referred the following question as a question of law arising out of its order for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, and on a proper interpretation of Section 8 of the General Clauses Act, 1897, and Section 62(1)(a)(iv) of the Estate Duty Act, 1953, the Tribunal was justified in holding that the order passed by the Assistant Controller u/s 73(5) of the Estate Duty Act, 1953, read with Section 46(1) of the Indian Income Tax Act, 1922, was appealable?"

11. At the hearing before us, learned advocate for the accountable person drew our attention to two orders of the Income Tax Appellate Tribunal, dated April 7, 1971, and September 25, 1971. By the first order, the Tribunal, in an application made in the appeal filed before it by the accountable person against the order of assessment of the estate duty, passed an ad interim order of stay of recovery of the assessed duty on condition that the accountable person would deposit a sum of Rs. 10,000 by the first week of June 1971, and a further sum of Rs. 50,000 by August 31, 1971.

12. By the second order dated September 25, 1971, which was passed on a further application by the accountable person dated August 28, 1971, in the said appeal pending before the Tribunal, the Tribunal recorded that the initial deposit of Rs. 10,000 had been made by the accountable person as directed by its earlier order dated April 7, 1971, and granted further time till January 1972, to deposit the balance amount of Rs. 50,000.

13. Copies of the aforesaid orders were produced before us at the hearing without any objection from the Revenue and considered by us. We direct that the copies of the said orders be kept on record.

14. Relying on the aforesaid orders of the Tribunal dated 7th April and 25th September, 1971, learned advocate for the accountable person contended that inasmuch as under the said orders the payment of the assessed estate duty had been kept in abeyance on condition that, the accountable person paid only two payments of Rs. 10,000 by the first week of June 1971, and Rs. 50,000 by January 1972, it followed that the requirement of the proviso to Section 62(1)(a)(iv) of the Estate Duty Act, 1953, was not attracted as the entire amount of duty

as assessed was not required to be paid before the appeal was filed or, in any event, before the appeal came to be disposed of by the Appellate Controller.

15. In support of his contentions, learned advocate for the accountable person relied on the following decisions :

(a) Controller of Estate Duty Vs. Estate of Late M. Kuppuswami Naicker, . In this case, for non-payment of estate duty within the time allowed, the Assistant Controller imposed a penalty against the accountable person. The accountable person preferred an appeal against the order of penalty and also applied to the Assistant Controller for permission to pay the amount of duty in instalments. The Assistant Controller permitted the accountable person to pay a part of the duty in monthly instalments and kept the collection of balance duty in abeyance.

When the appeal against the levy of penalty was taken up, the first instalment had been paid in accordance with the order of the Assistant Controller. The Assistant Controller dismissed the appeal in view of the proviso to Section 62(1)(a)(iv) of the Estate Duty Act, 1953.

On the facts it was held by a Division Bench of the Madras High Court that by reason of the order of the Assistant Controller keeping the payment of the duty assessed in abeyance and granting permission to make the payment in instalments, it could not be said that the estate duty was due within the meaning of the said proviso to Section 62(1). It was held that as the accountable person had complied with the direction for payment of the balance estate duty in instalments, the said proviso to Section 62(1) was satisfied. The High Court affirmed the direction of the Tribunal which had remanded the matter to the Appellate Controller for disposing of it on merits.

(b) CONTROLLER OF ESTATE DUTY, MADRAS Vs. ESTATE OF LATE CHANDRAVADANAM AMMAL AND ANOTHER., . In this case, an appeal filed by an accountable person against the order of the Assistant Controller of Estate Duty imposing a penalty was dismissed by the Appellate Controller on the ground that the duty had not been, paid by the accountable person at the time of the filing of the appeal and the appeal was incompetent. On further appeal, the Tribunal held that the appeal was competent inasmuch as when the appeal was taken up for hearing by the Appellate Controller, the Assistant Controller had allowed time to the accountable person for payment of duty.

17. On a reference, the decision of the Tribunal was upheld by the Madras High Court which held that the proviso to Section 62(1) of the Estate Duty Act, 1953, had been satisfied as the demand for payment of duty had been modified. Following its earlier decision in the case of Estate of late Controller of Estate Duty Vs. Estate of Late M. Kuppuswami Naicker, , the Madras High Court held that it was open to the Appellate Controller to treat the appeal as if filed on the date when it was taken up for hearing by condoning the delay.

18. On the question of interpretation of Section 73(5) of the Estate Duty Act,

1953, read with Section 46(1) of the Indian Income Tax Act, 1922, and sections of the General Clauses Act, 1897, learned advocate submitted that the question has been settled so far as this court is concerned by a decision of the Division Bench of this court in Navin Chandra Bhimji Vs. Controller of Estate Duty, . I was a party to the said decision, where it was held that the first proviso to Section 62(1)(a)(iv) of the Estate Duty Act, 1953, was an independent provision and not dependent on Section 46 of the Indian Income Tax Act, 1922, and was, therefore, not affected by the repeal of the Act of 1922.

19. Learned advocate for the accountable person, however, submitted that the question should be answered in favour of the accountable person not on the interpretation of the aforesaid sections of the Estate Duty Act, 1953, the Indian Income Tax Act, 1922, and the General Clauses Act, 1897, but taking into account the two orders of the Income Tax Appellate Tribunal by which directions were given for payment of the duty in instalments and the entire amount had not become due to be paid.

20.We note that the said two orders of the Tribunal, dated April 7, and September 25, 1971, had not been brought to the notice of the Tribunal by the accountable person. The Tribunal did not have any occasion to consider the effect of the said two orders directing stay of recovery of the duty assessed. It remains to be ascertained whether at the relevant time when the Appellate Controller took up the hearing of the appeal, the accountable person had complied with the directions of the Tribunal contained in the said orders and also whether the amount of duty could be said to have become due and had remained unpaid at the time when the appeal was taken up for hearing. On ascertainment of the aforesaid, it would be open to the accountable person to take advantage of the said two decisions of the Madras High Court noted hereinabove. It will not be proper for us sitting in a reference to consider new facts, though on record, which had not been considered by the Tribunal and answer the question referred on the basis of the same.

21. For the reasons as above, we answer the question as follows;

We hold that only on an interpretation of Section 8 of the General Clauses Act, 1897, Section 62(1) and Section 73(5) of the Estate Duty Act, 1953, and Section 46(1) of the Indian Income Tax Act, 1922, it cannot be held that an appeal filed by the accountable person against the order of the Assistant Controller was maintainable without payment of the duty assessed and due. The answer is returned accordingly with the direction to the Tribunal that in disposing of the matter, it should take into account the said two orders dated April 7 and September 25, 1971, passed by the Tribunal and determine whether any estate duty was due and remained unpaid at the material time. The Tribunal will hear the parties on this aspect, if necessary.

22. The reference is disposed of as above. There will be no order as to costs.

Shyamal Kumar Sen, J.

23. I agree.