(1986) 02 CAL CK 0022

In the Calcutta High Court

Case No : Matter No. 217 of 1973

Controller of Estate Duty APPELLANT

Vs

Shyamal Bikash Sett RESPONDENT

Date of Decision : 06-02-1986

Acts Referred:
Estate Duty Act, 1953 — Section 53, 53(1), 62

Citation : (1987) 59 CTR 139 : 90 CWN 739 : (1986) 162 ITR 231 : (1987) 33 TAXMAN 406

Hon'ble Judges : M.G. Mukherji, J;D.K. Sen, J

Bench : Division Bench

Advocate : A.C. Moitra and S.K. Mukherjee, for the Appellant;None, for the Respondent

Judgement

M.G. Mukherji, J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953, at the instance of the Revenue.

2. The questions of law that have been referred are as follows :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Sri Shyamal Bikash Sett was entitled to prefer an appeal against the order of the Assistant Controller of Estate Duty before the Appellate Controller u/s 62 of the Estate Duty Act, 1953 ?

If the answer to question No. 1 be in the affirmative then :

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the appeal filed by Shyamal Bikash Sett before the Appellate Controller without its being accompanied by a certified copy of the assessment order or the demand notice, was proper ? "

3. One Sushil Kumar Sett died on September 20, 1964. An assessment under the Estate Duty Act was made on March 31, 1969. This was pursuant to a statement of account of the estate filed by one Swamp Bikash Sett, the eldest son of the

deceased. Shyamal Bikash Sett, the youngest son of Sushil and a step-brother of Swarup, filed an application before the Assistant Controller of Estate Duty on September 3, 1969, for a copy of the assessment order and the notice of demand. The Assistant Controller replied on October 13, 1969, that he could not be given a copy of the assessment order and the notice of demand since neither had the return been filed by Shyamal nor had his name appeared on the assessment order.

4. Shyamal, however, filed the appeal without the relevant assessment order or the demand notice on October 29, 1969. The Appellate Controller held that the eldest and the major brother in the joint family, viz., Swarup, had authority to deliver an account of his deceased father''s estate and the appeal by Shyamal could not be entertained as it was not filed by one who had been recorded in the departmental proceedings as an accountable person.

5. Shyamal preferred a further appeal before the Tribunal and submitted, inter alia, that the dismissal of the appeal by the Appellate Controller was arbitrary and illegal and that he should have gone into the merits of the appeal. The legality of the assessment was also questioned before the Tribunal on the ground that where an assessment was made, all the legal representatives ought to have been served with the order of assessment and in the absence of such a service, the entire assessment should be regarded as void. The Revenue contended that Shyamal had not featured at any stage of the assessment proceedings and, therefore, was incompetent to prefer any appeal. The Tribunal, however, held him to be a person who as a son of the deceased was entitled to be deemed as an accountable person u/s 53 of the Act and as such Shyamal was also entitled to impugn the assessment. The Tribunal, however, did not think it necessary to decide the question as to whether the assessment was proper and legal, since it would be a matter to be decided in all finality by the Appellate Controller, once the appeal was held to be competent.

6. The further contention of the Revenue was that even if an appeal of Shyamal was entertainable, as one filed by a competent person, still the appeal was not properly filed before the Appellate Controller. The Tribunal found it evident from the letter dated October 13, 1969, that Shyamal Bikash Sett had not been furnished with the assessment order or the notice of demand. The Tribunal held that depriving Shyamal of an opportunity to get the said documents would be negating his right to prefer an appeal. The Tribunal thus rejected the objection and restored the appeal to the file of the Appellate Controller, directing the Appellate Controller to consider the appeal on merits in accordance with law. The Controller of Estate Duty thereafter initiated this reference being u/s 64(1) of the Estate Duty Act, 1953.

7. The main contention of the Revenue was that Shyamal was not the person who had filed the return. The return was filed by his elder step-brother, Swarup. Shyamal not having appeared at any stage of the assessment proceedings, it was contended that he had been properly excluded from filing or participating in

any appeal. We are unable to accept this contention. However, Section 53(1)(a) of the Act provides that every legal representative to whom the property of the deceased passes shall be " accountable " for the whole of the estate duty, though he might have received a part of the estate. Shyamal, as a son of the deceased was admittedly an accountable person under the Dayabhaga School of Hindu law by which the deceased was governed on intestate succession. Section 62 of the Act provides for appeals against the orders of the Controller. Any person objecting to any of the items as set out in Clauses (i) to (iv) of the said Section 62 could prefer an appeal. Obviously, a person having some interest in the estate has been conferred with a right of appeal against the order of the Controller. Thus, Shyamal is an accountable person u/s 53 of the Act and having an interest in the estate has a right to prefer an appeal against the assessment. The fact that his elder brother, also an accountable person, filed the return when Shyamal was a minor would not take away such right.

8. Under the general law, whether a person is a party to a proceeding or not, he would have a right to prefer an appeal against a judgment or order which prejudicially or adversely affects him.

9. We are thus of the opinion that the order of the Tribunal is correct and lawful and calls for no interference from us.

10. For the above reasons, question No. 1 is thus answered in the affirmative, in favour of the assessee and against the Revenue. The second question is also answered in the affirmative, in favour of the assessee and against the Revenue.

11. There will be no order as to costs.

D.K. Sen, J.

12. I agree.

