(2006) 04 MP CK 0030

In the Madhya Pradesh High Court

Case No : M.C.C. No. 49 of 1989

Controller of Estate Duty APPELLANT

Vs

Surendra Shanker Singh RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:
Estate Duty Act, 1953 — Section 53(3), 56, 58(4), 60(1), 64(1)

Citation : (2006) ILR (MP) 899 : (2006) 3 MPJR 388

Hon'ble Judges : K.K. Lahoti, J;Dipak Mishra, J

Bench : Division Bench

Advocate : Rohit Arya and Bhagwan Singh, for the Appellant; None, for the Respondent

Judgement

K.K. Lahoti, J.

This is an application u/s 64(3) of Estate Duty Act, 1953 (hereinafter referred to as ''Act'' for short) seeking direction to the Income Tax Appellate Tribunal, Jabalpur to refer the case to the High Court on following question of law (as proposed in the case) :-

Whether on the facts and in the circumstances of the case, the Tribunal was right in among that the return filed by the A.P., after the Expiry of 5 years is no return and therefore the assessment made under the Estate Duty Act is not a valid assessment?

To consider the contention of the applicant it will be appropriate to state facts of the case. The respondent Surendra Shanker Singh, filed a return under the ''Act'' on 9.12.1977 in respect of estate of deceased Virendra Nath Singh. The deceased was an agriculturist at village Chanderpur, Tahsil Sakti, District Bilaspur, erstwhile State of Madhya Pradesh, at present within the State of Chhatisgarh. As per the case, Virendra Singh died on 24.4.1972 and he return was filed after a period of 5 years. The Assistant Controller of Estate Duty (Appeals), Jabalpur vide Annexure A-1 order dated 27.3.1987 assessed the

Estate Duty. The Accountable Person (hereinafter referred to as ''A.P.'' for short) was noticed before the assessment, but he had not appeared before the Assessing Officer so the assessment order Annexure A-1 was passed ex-parte and net principal value of the estate of deceased was assessed as Rs.1,64,813/-. The Assessing Officer found that the return was filed late so penalty proceedings u/s 60(1)(a) of the ''Act'' be also initiated, The Assessment order was passed u/s 58(4) and demand notice and challan was issued. The order of Assessing Officer was challenged by the A.P. before the Controller of Estate Duty (Appeals) Jabalpur. The appellate Authority vide order Annexure-B dated 2.8.1985 found that Virendra Singh died on 26.4.1972 and A.P. filed a voluntarily return on 9.12.1977, which was beyond a period of 5 years and relying on the judgment of Allahabad High Court in Controller of Estate Duty Vs. Bhola Dutt, found that the return was filed beyond the period of 5 years and u/s 73A no proceeding for levy of any such duty can be initiated and set aside the assessment order. In Bhola Putt (supra) the Allahabad High Court held as under:

Under the E.D. Act, 1953, assessment proceedings commence with the filing of the return as prescribed by Section 53(3) and a return could validly be filed within six months of the date of death or within such further time as may be extended by the Asstt. Controller. u/s 56, commencement of the assessment proceedings is by the Controller requiring the accountable person to file the requisite return. Section 58(4) provides that in any case where no return 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. But assessment proceedings under either of these provisions could not validly be commenced after the expiry of the period of limitation prescribed by Section 73A.

Therefore, where the proceedings were sought to be commenced on the basis of the return filed by the accountable person voluntarily after the expiry of the period of limitation of five years laid down b Section 73A, the Asstt. Controller had no jurisdiction to commence the proceedings on the basis of such a voluntary return.

The order of Controller of Estate Duty (Appeals) was challenged before- the Income Tax Appellate Tribunal by the Department. The Trbunal relying on the judgment of Allahabad High Court in Bhola Dutt (supra) decided as under :-

It was after the voluntary return which was filed on 9.12.1977 that the assessment came to be framed on that basis. We are adopting the very same reasons given by the Controller of Estate Duty (Appeals) and relying the very same observations which find place in his order from the book of learned Authors Chaturvedi & Pithisaria and Allahabad High Court decision in the case of Bholadutt. We shall be failing in. our duty in case we do not deal with the case law cited by the learned D.R. which is a Calcutta High Court decision in the case of ASST. CONTROLLER OF ESTATE DUTY, "A" WARD, AND OTHERS Vs. ASHOK

SINGH., which to some extent supports the revenue''s contention but at the most it becomes a matter of two opinions and as per the Supreme Court decision the finding favouring the assessee has got to be relied upon. Therefore, we confirm the order of the Controller of Estate Duty (Appeals) and in the result the appeal is dismissed.

Thereafter the Department filed an application u/s 64(1) of the Act for referring the question of law to the High Court for its opinion. The Tribunal vide order Annexure-F dated 2.11.1988 rejected the prayer of Department for referring the case to the High Court. Before the Tribunal the Department relied on a judgment of Calcutta High Court in the case of ASST. CONTROLLER OF ESTATE DUTY, "A" WARD, AND OTHERS Vs. ASHOK SINGH., in which it is held that the legislative intent is not to apply the limit mentioned in Section 73A of the ''Act'' to cases coming u/s 56 of the Act, and there is no material on record showing that the return of estate duty was filed by the A.P. for grant of representation. Considering aforesaid it is held that the judgment of Calcutta High Court is not applicable and refused to refer the case to the High Court. Thereafter the Department has filed this application to this Court for issuing direction to the Income Tax Appellate Tribunal to refer the question of law to the High Court.

Learned counsel appearing for Department submitted that in the case the factual position is different. The A.P. himself filed a return and the Assessing Officer was right in passing assessment order as return was filed voluntarily, then the provisions of Section 73A of the Act shall not be applicable and the appellate authority and the Tribunal erred in rejecting the assess met order on the question of limitation. There is question of law involved in the cases which deserves to be referred to the High Court and the Tribunal be directed to refer the case to the High Court. The respondent has not caused appearance, in this matter inspite of notice.

To appreciate the contention of the applicant relevant provisions May be seen. Section 73A which relates to the limitation for commencing proceedings for assessment reads thus :-

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

(b) in the case of a reassessment, after the expiration of three years from the date of assessment of such property to estate duty under this Act.

The aforesaid provision is very specific and it provide limitation of 5 years for the first assessment from the date of death of the deceased in respect of whose property estate duty became payable and the assessment proceedings would be barred u/s 73A of the Act. The Legislation has not provided any proviso or exception to the aforesaid Rule and provision of Section 73A is very clear. In this regard it will be appropriate to refer the judgment of Apex Court in Ashok Singh Vs. Assistant Controller of Estate Duty, Calcutta and others, wherein the Apex Court considering the similar question held this :-

If, therefore, the object of Section 73-A is unambiguous to bar the commencement of any proceeding for levy after the period of five years in the case of first assessment, we do not think we can dilute the rigor of Section 73-A by introducing a construction not warranted in the situation. If it was the intention of the Parliament to provide exceptional cases making Section 73-A inapplicable to such cases- nothing would have been easier than to have so, expressed. The language u/s 73-A is imperative. It demands of no doubt that there -6-cannot be two limitations (i) in a case where the assesses files a belated return and (ii) in a case where the applicant seeks a succession certificate. In such a case where the assesses, as in the instant case, seeks a certificate from the Controller, all that the Controller has to say is, that no such certificate could be issued since in view of the statutory bar u/s 73-A. In this context, Section 56 will have to be given meaning and life. He who cleans to the letter of the law cleans to the dry bone; that would be against the spirit of the Act

The Apex Court held that the provision of Section 73-A is unambiguous to bar the commencement of any proceeding for levy of estate duty after the period of 5 years. The aforesaid provision does not require any consideration in any circumstances and the period of limitation cannot be extended in any manner. Even in the case where the assesses files a belated return, may be voluntarily.

In view .of aforesaid settled law by the Apex Court the appellate authority and the Income Tax Tribunal has rightly held that the return filed by A.P. was beyond the period of limitation of 5 years and the assessment order passed by the Assistant Controller of Estate Duty Jabalpur was without jurisdiction. In view of aforesaid settled law in our considered opinion no question of law arises in this case. The prayer of the Department for directing the Income Tax Appellate Tribunal to refer the case on the aforesaid question of law has no merit and accordingly it is rejected. No. order as to costs.

