(1996) 09 P&H CK 0135

In the Punjab And Haryana At Chandigarh

Case No : ED Case No. 1 of 1980, September 9, 1996.

CONTROLLER OF ESTATE DUTY — APPELLANT

Vs

UJAGAR SINGH. — RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:
Estate Duty Act, 1953 — Section 64(3)

Citation : (1997) 137 CTR 577

Hon'ble Judges : Ashok Bhan, J

Bench : Division Bench

Judgement

ASHOK BHAN, J. :

This is a petition under s. 64(3) of the ED Act, 1953 (hereinafter referred to as the Act) filed by Controller of Estate Duty, Patiala (hereinafter referred to as the Revenue) for directing the Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the Tribunal) for referring the following three questions along with the statement of the case stated to be arising out of the order of the Tribunal :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the proceedings were not commenced within the statutory period as provided under s. 73A of the ED Act, 1953 ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that non-issuing of notices to all the accountable persons is fatal to the commencement of the proceedings ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in cancelling the assessment ?"

2. One Kulwant Singh died on 2nd March, 1969. In the survey register, the Asstt. Controller of Estate Duty (hereinafter referred to as ACED) made an entry on 27th Feb., 1973 issue notice. A notice No. 1243 under s. 59(a) of the Act is stated to have been issued on 5th June, 1973 (Postal Registration No. 935) in

the name of Ujagar Singh though names of all the accountable persons as mentioned in the ACEDs order are as follows :

"Ujagar Singh

Joginder Singh

Rajinder Singh

Surjeet Singh

Smt. Tej Kaur

Smt. Amar Kaur".

Service of notice under s. 59 of the Act is denied by Ujagar Singh. A notice under r. 24 of the ED Rules was served on Ujagar Singh on 23rd April, 1974 and thereafter a return was filed on 5th June, 1974. On behalf of the accountable persons two fold objection was taken that is :

(i) That there being no service within five years period as provided under s. 73A of the Act, the return dt. 5th June, 1974 procured or filed in compliance to notice under s. 24 could not authorise the ACED to frame any valid assessment; and

(ii) that the provisions of s. 59(a) r/w s. 53 of the Act make it abundantly clear that notice under s. 59(a) of the Act must be served on all the accountable persons, at least, which are known to the ACED. The alleged issue of notice being in the name of only one accountable person, the assessment must be quashed.

The pleas raised by the accountable persons were not accepted and after determining the value of the estate of the deceased, estate duty was ordered to be levied. In appeal, the order of the ACED regarding correctness of levy was upheld but on the question of quantum, it was partly allowed. In appeal before the Tribunal, it was held that the initiation of proceedings was beyond limitation. It was also held that it was mandatory to serve notice on all the accountable persons known to the ACED and not one of them. Orders of the authorities below were set aside. It was held that no estate duty was leviable.

3. Revenue filed a petition for referring the three questions of law reproduced in the earlier part of this judgment for the opinion of this Court along with the statement of the case which was also rejected. In view of the Full Bench decision of this Court in Jai Hanuman Trading Co. Pvt. Ltd. Vs. The Commissioner of Income Tax, Patiala and Another, question as to whether limitation is to start with reference to issuance of notice or from its service is a question of law. Counsel appearing for the Revenue as well as for the assessee are agreed that the question as to whether notice has to be given to all the accountable persons to commence the proceedings or that the service on one of the accountable persons is sufficient has not been decided either by this Court or by the Supreme Court of India. Questions No. (i) and (ii) thus do arise from the order of the Tribunal which need consideration by this Court. Question No. (iii) being consequential

also arises from the order of the Tribunal. Accordingly we direct the Tribunal to refer Question No. (i) to (iii) reproduced in para 1 of this judgment along with the statement of case to this Court for its opinion. No costs.