(1996) 09 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Estate Duty Case No. 1 of 1980

Controller of Estate Duty APPELLANT

Vs

Ujjagar Singh RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Estate Duty Act, 1953 — Section 59, 64(3), 73A
Estate Duty Rules, 1953 — Rule 24

Citation : (1997) 225 ITR 987

Hon'ble Judges : N.K. Agrawal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : R.P. Sawhney and Sanjay Goyal, for the Appellant; A.K. Mittal, for the Respondent

Judgement

Ashok Bhan, J.—This is a petition u/s 64(3) of the Estate duty Act, 1953 (hereinafter referred to as "the Act"), filed by the Controller of Estate Duty, Patiala (hereinafter referred to as the Revenue), for directing the Income Tax Appellate-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 Appellate Tribunal was right in law in holding that the proceedings were not commenced within the statutory period as provided u/s 73A of the Estate Duty Act, 1953 ?

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the 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 Appellate Tribunal was right in cancelling the assessment ?"

2. One Kulwant Singh died on March 2, 1969. In the survey register, the Assistant Controller of Estate Duty (hereinafter referred to as ACED) made an

entry on February 27, 1973, "issue notice". A notice No. 1243 u/s 59(a) of the Act is stated to have been issued on June 5, 1973 (postal registration No. 935) in the name of Ujjagar Singh though the names of all the accountable persons as mentioned in the ACED''s order are as follows :

"Ujjagar Singh, Joginder Singh, Rajinder Singh, Surjeet Singh, Smt. Tej Kaur, Smt. Amar Kaur".

3. Service of notice u/s 59 of the Act is denied by Ujjagar Singh. A notice under Rule 24 of the Estate Duty Rules was served on Ujjagar Singh on April 23, 1974, and thereafter a return was filed on June 5, 1974. On behalf of the accountable persons two fold objection was taken that is :

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

(ii) that the provisions of Section 59(a) read with Section 53 of the Act make it abundantly clear that notice u/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.

4. 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 the correctness of the 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. The orders of the authorities below were set aside. It was held that no estate duty was leviable.

5. The 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, a 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 Nos. (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 questions Nos. (i) to (iii) reproduced in paragraph 1 (at page 988) of this judgment along with the statement of case to this court for its

opinion. No costs.