(1958) 03 CAL CK 0030

In the Calcutta High Court

Case No : Original Side Appln.

In the Goods of Durga Charan Mitter

Date of Decision : 17-03-1958

Acts Referred:
Estate Duty Act, 1953 — Section 50, 53, 53(3), 56, 57

Citation : AIR 1958 Cal 403 : (1959) 36 ITR 1

Hon'ble Judges : R.S. Bachawat, J

Bench : Single Bench

Advocate : S.K. Hazra, for the Appellant; B.L. Pal, for the Respondent

Judgement

R.S. Bachawat, J.—In this case the grant of representation was applied for after 6 months of the death of the deceased.

2. The applicant has not produced before the Court any certificate from the Controller to the effect either that the estate duty payable in respect of the property of the deceased has been or will be paid or that none is due, as the case may be.

3. The point in issue is whether the applicant is entitled to an order for grant of representation in the absence of any certificate from the Controller.

4. Section 57, of the Estate Duty Act,1953 provides as follows:

57. Executor to specify all chargeable property with affidavit of valuation. In all cases in which a grant of representation is applied for within six months of the death of the deceased,

(a) the executor of the deceased shall, to the best of his knowledge and belief, specify in an appropriate account annexed to the affidavit of valuation filed in Court u/s 19-I of the Court-fees Act, 1870 (7 of 1870), all the property in respect of which estate duty is payable upon the death of the deceased and shall deliver, a copy of the affidavit with the account to the Controller, and

(b) no order entitling the applicant to the grant of representation shall be made upon his application until he has delivered the account prescribed in Clause (a) and has produced a certificate from the Controller u/s 60 or Section 67, that the estate duty payable in respect of the property included in the account has been or will be paid, or that none is due, as the case may be.

5. Plainly Section 57 applies only in a case where a grant of representation is applied for within six months of the death of the deceased. In the event of an application being made within six months from the death of the deceased the executor is required to file an appropriate account of all the property in respect of which the estate duty is payable and he is not entitled to an order for grant of representation until he has delivered such an account and has produced a certificate from the Controller that the estate duty payable in respect of the property included in the account has been or will be paid, or that none is due, as the case may be.

6. The prohibition made by Sub-section (b) of Section 57 against grant of representation until production of the certificate of the Controller is confined to a case where the application for grant of representation is made within six months of the death of the deceased. This is clear from the opening words of Section 57 as also from the structure of Sub-section (b) of Section 57. No reference is made in Section 57(b) to the delivery of account required by Section 53(3) from every person accountable for estate duty within six months of the death of the deceased or such later time as the Controller may allow.

7. By Section 53(3) of the Estate Duty Act it is the duty of every person accountable for his estate duty to deliver to the Controller an account of the property in respect of which estate duty is payable within six months of the death of the deceased or such later time as the Controller may allow. That duty arises even when the application for grant of representation is made to Court 6 months after the death of the deceased. Section. 56 of the Act provides a penalty for default of compliance with the provisions of Section 53. There is, however, no provision in the Act which prohibits the grant of representation until production of the certificate of the Controller, in a case where application for the grant is made after six months from the death of the deceased. Sections 50, 60, 67 and 73 of the Act provide for the mode of collection, payment of duty and furnishing of security for such payment on delivery of the account, certificate of payment of duty and penalty for non-payment, and recovery of duty and penalties. These provisions, however, do not touch the point in issue and do not make the certificate of the Controller a condition precedent to the grand of representation in case such grant is applied for after six months from the death of the deceased.

8. Section 19-1 of the Court-fees Act also makes payment of the court-fees mentioned in item No. 11 to the first schedule to the Court-fees Act a condition precedent to the making of an order for the grant of representation. That section, however, does not make payment of the estate duty a condition precedent to the grant of representation.

9. In this view of the matter I must hold that the applicant is entitled to a grant of re presentation even though ho has not produced any certificate from the Controller to the effect either that the estate duty has been or will be paid or that none is due.

