(1979) 07 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Writ Petition No. 722 of 1975

Jabbar Mal Duggar — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 20-07-1979

Acts Referred:

Estate Duty (Amendment) Act, 1958 — Section 29
Estate Duty Act, 1953 — Section 64(7)

Citation : (1980) 123 ITR 276 : (1979) RLW 522 : (1979) WLN 362

Hon'ble Judges : C.M. Lodha, C.J;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : H.P. Gupta, for the Appellant; L.R. Mehta and Rajendra Mehta, for the Respondent

Judgement

C.M. Lodha, C.J.—By this petition under Article 226 of the Constitution of India, the petitioner has challenged the correctness of the order dated April 14, 1975, by the Central Board of Direct Taxes (annex. " G ") and also order dated June 7/9, 1975, passed by the Controller of Estate Duty, Rajasthan I, Jaipur (annex. " I "), u/s 64(7) of the Estate Duty Act, 1953 (hereinafter to be referred to as "the Act"), whereby the said authorities refused the petitioner''s prayer for payment of interest on the amount overpaid as estate duty.

2. The petitioner is the son of the deceased, Budh Mal Duggar, who expired on March 17, 1954. The petitioner and his mother, Smt. Dhanni Devi, widow of Budh Mal Duggar, being the accountable persons, furnished an account of the property owned by the deceased, Budh Mal. The Dy. CED, Delhi, held that the entire property left by the deceased, Budh Mal, would be deemed to have passed on his death to the accountable persons. Accordingly, the Deputy Controller determined the principal value of the property as Rs. 26,75,288, and the duty payable thereon, Rs. 6,03,986''15 by his order dated October 30, 1958. The accountable persons filed appeal to the Central Board of Direct Taxes (hereinafter to be referred to as " the Board ") against the order of the Deputy Controller, which,

was decided on December 30, 1961. The Board allowed certain reductions but upheld the finding of the Deputy Controller that the entire property in the hands of the deceased passed on his death to the accountable persons or, at any rate, will be deemed to have passed on his death. Dissatisfied with this finding of the Board, the accountable persons presented an application requiring the Board to refer to the High Court the question of law arising out of its order. The Board allowed the application and stated the case for the opinion of the High Court of Rajasthan at Jodhpur on the following question of law arising out of the Board''s order:

" Whether, in the facts and circumstances of the case, the entire property held by the deceased was correctly included in his estate as property passing or deemed to pass on his death for purposes of estate duty ? "

3. The High Court decided the reference by its order dated November 30, 1971, and held that only one-third of the family properties should be deemed to have passed on the death of the deceased, Budh Mal. The CED, Rajasthan, filed an application before the High Court for leave to appeal to the Supreme Court but the same was dismissed by this court on July 26, 1972.

4. The amount of the assessment having been reduced as a result of the reference to the High Court the accountable persons applied to the Asst. CED for refund of the estate duty overpaid together with interest. The department refunded Rs. 4,66,194, being the amount overpaid by the accountable persons, but refused to pay any interest on the amount overpaid, vide annexs. "G" and "I". The petitioner''s mother, Smt. Dhanni Devi, died on April 29, 1975, and, hence the petitioner has filed this petition challenging the impugned orders, annexs. " G " and " I ".

5. The short point arising for decision in this case is whether the CED was justified in refusing payment of interest on the amount overpaid. The answer to this question depends upon the interpretation of Section 64(7) of the Act, as amended by Section 21 of the Estate Duty (Amendment) Act, 1958 (No. 33 of 1958), which will hereinafter be referred to as the Amendment Act

6. Section 64(7) of the Act reads as under:

" 64. (7) Where the amount of any assessment is reduced as a result of any reference to the High Court, the amount, if any, over-paid as estate duty shall be refunded with such interest as the Controller may allow unless the High Court, on intimation being given by the Controller within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to the Supreme Court, makes an order authorising the Controller to postpone payment of such refund until the disposal of the appeal in the Supreme Court. "

7. The Amendment Act received the assent of the President on September 19, 1958. Section 1(2) of the Amendment Act provides that the Act shall come into force on such date as the Central Government may, by notification in the Official

Gazette, appoint. The E. D. (Amend.) Act, 1958, came into force on July 1, 1960, vide Notification No. GSR 656, dated May 30, 1960*

8. Mr. H. P. Gupta, learned counsel for the petitioner, contended that sub-s, (7) of Section 64 is a beneficial provision and once the High Court has reduced the amount of assessment, the Controller has no option but to implement the order by refunding the amount in respect of which relief has been given by the High Court, with such interest as the Controller may allow and that the provision does not differentiate between the assessments made prior to July 1, 1960, and the assessments made subsequent to July 1, 1960, and, therefore, the order rejecting the claim for interest is contrary to the requirements of Sub-section (7) of Section 64 of the Act. In this connection, it has been urged that the CED has not correctly interpreted Section 29 (savings) of the Amendment Act. In support of his submission, the learned counsel has placed reliance on M.S. Narayanacharlu Vs. Assistant Controller of Estate Duty,

9. Section 29 of the Amendment Act reads as under :

" 29. Savings--Nothing contained in Section 21 shall affect--

(a) any appeal pending before the Board in respect of any order made by the Controller before the commencement of this Act; or

(b) any right or remedy by way of appeal which has accrued to any person in respect of any order made by the Controller before such commencement ;

and any such appeal may be disposed of and further proceedings taken in relation thereto and any such right or remedy may be enforced as if this Act had not been passed."

10. In M.S. Narayanacharlu Vs. Assistant Controller of Estate Duty, the court observed as follows (p. 27):

" There is nothing in Sub-section (7) of Section 64 which limits its application to assessment proceedings initiated subsequent to the date it was brought into force. It is immaterial when the assessment proceedings were initiated, as all that is required to entitle an assessee to the benefited this provision is that there should be reduction of the estate duty determined by the Board as a result of the reference to the High Court. The right to ask for refund of the overpaid estate duty with interest thereon accrues to the assessee as a result of the reference to the High Court being answered in his favour and that right is not dependent upon the date when Sub-section (7) was brought into force. The Controller is only given the discretion with regard to the rate of interest and it is not within his powers to deny interest on the overpaid amount refundable to the assessee. It is significant that it is during the pendency of the assessment proceedings that this beneficial provision of Sub-section (7) was introduced by Parliament, and if pending the litigation or pending the appeal or reference, the legislature has enacted it, the deciding Tribunal must give effect to it."

11. The learned counsel for the revenue, however, urged that Section 29 of the Amendment Act, which has a material bearing on the point, was not noticed in M.S. Narayanacharlu Vs. Assistant Controller of Estate Duty, It is submitted that if Section 29 of the Amendment Act had been brought to the notice of the learned judges, the result of the case would have been different. It would, therefore, be proper to examine the effect of Section 29 of the Amendment Act.

12. When we analyse Section 29 of the Amendment Act, it comes to this ;

(i) Any appeal pending before the Board from an order by the Controller, before the commencement of the Amendment Act, will not be affected in any way by the provisions of Section 21.

(ii) Remedy by way of appeal which has accrued to any person in respect of any order made by the Controller before the commencement of the Amendment Act, shall not be affected.

(iii) Any right which has accrued to any person before such commencement, shall not be affected.

(iv) Any appeal pending before the Board before the commencement of the Act, would be disposed of according to the original Act and not according to the amended Act.

(v) Further proceedings taken in relation to such appeal shall also be disposed of as if the Amendment Act had not been passed.

(vi) Any right accrued to any person before such commencement may be enforced as if the Amendment Act had not been passed.

(vii) Remedy by way of appeal available to a person before the commencement of the Amendment Act may be enforced as if the Amendment Act had not been passed.

13. To sum up, the impact of Section 29 is that all appeals pending before the commencement of the Amendment Act, shall be decided and disposed of, as if this Act had not been passed, so also the remedy by way of appeal available to a person before the commencement of the Act may be availed of after the commencement of the Act, as if the Amendment Act had not been passed. However, this does not mean that any further relief provided by virtue of the Amendment Act to the assessee after the disposal of the appeal and further proceedings will not be available to him. It is true that Section 64(7) is not retrospective but prospective, i.e., it will be applicable to cases where the cause of action for a particular relief has arisen after the coming into force of the Amendment Act.

14. Now, in the present case, even though the Deputy Controller had completed the assessment proceedings on October 30, 1958, the appeal filed by the accountable persons was pending before the Board when the Amendment Act came into force. The fact that an appeal was pending against the assessment, is

a material one. The assessment proceedings had not come to an end nor they were dead. The accountable persons had kept the proceedings alive by filing an appeal and the proceedings were thus pending for decision. The appeal filed by the accountable persons was undoubtedly disposed of as if the Amendment Act had not been passed The reference to the High Court was made in the same manner and the reference too was disposed of as if the Amendment Act had not been passed. But the cause of action for getting interest on the overpaid amount accrued to the assessee only when the High Court came to the conclusion that the amount of estate duty had been overpaid. This finding gave rise to the petitioner''s right to get the refund of the amount overpaid with such interest as the Controller may allow. Thus, in our opinion, the petitioner''s right to get refund arose only after the decision of the reference by the High Court, and, therefore, Section 29 has no application to the present case.

15. The CED seems to be labouring under the impression that since the assessment was completed by the Deputy Controller, on October 30, 1958, before the coming into force of the Amendment Act, the provisions of Section 64(7) would not be attracted. This impression does not seem to be correct.

16. The result is that we allow this writ petition, set aside the orders dated April 14, 1975, (annex. " G ") and June 7/9, 1975 (annex. " I ") and hereby direct that accountable person or persons, as the case may be, shall be paid such interest on the amount of estate duty overpaid, as the Controller may allow. There will be no order as to costs.

