(1969) 12 CAL CK 0018

In the Calcutta High Court

Case No : Civil Rule No. 1274 of 1964

Madan Lal Lohia APPELLANT

Vs

Assistant Controller of Estate Duty, "A" Ward and Others RESPONDENT

Date of Decision : 01-12-1969

Acts Referred:

Constitution of India, 1950 — Article 227
Estate Duty Act, 1953 — Section 2(12A), 62(1), 73
Income Tax Act, 1922 — Section 46(1), 46(5A)

Citation : (1972) 85 ITR 99

Hon'ble Judges : Chandra Narayan Laik, J;Anil Kumar Sinha, J

Bench : Division Bench

Advocate : S.K. Bose and Sudhindra Kr. Kar, for the Appellant; Manas Nath Roy and A.K. Choudhury, for the Respondent

Judgement

A.K. Sinha, J.—In this rule the petitioner prays for cancellation of an order imposing penalty of Rs. 3,000 in the first instance for nonpayment of Rs. 35,000 as estate duty by the Assistant Controller on 25th March, 1964, under the Estate Duty Act. Shortly put, the facts are as follows :

The petitioner is a lessee in respect of premises No. 13, Indian Exchange Place, Calcutta, which belonged to one Rai Bhupati Nath Deb Bahadur who died on September 23, 1959. After his death, proceedings were taken under the Estate Duty Act by the Assistant Controller and an assessment was made to the extent of Rs. 1,40,090.20. For realisation of this amount, a notice purporting to be one u/s 73 of the Estate Duty Act, 1953, read with Section 46(5A) of the Income Tax Act, 1922, dated January 9, 1962, was given by the respondent No. 1. In the said notice it was stated that a sum of Rs. 1,40,090.20 was due from one Tulsi Charan Deb and others on account of estate duty as "accountable person" to the estate of the said Bhupati Nath Deb Bahadur, since deceased.

2. It is stated that after this notice the petitioner made two payments of Rs. 1,400 each, the said amounts being rents for December, 1961, and January,

1962, respectively, to this landlord in respect of the said premises No. 13, Indian Exchange Place, Calcutta.

3. Since payment was made to the landlords and not to the Assistant Controller, in spite of notice u/s 46(5A), by the petitioner, impugned order was ultimately made to the notice (sic) to the petitioner by the Assistant Controller of Estate Duty imposing penalty of Rs. 3,000 and demanding a payment for Rs. 35,000 being the arrear rents along with penalty of Rs. 3,000. That is how the petitioner, being aggrieved, has come up to this court.

4. In our view this rule ought to be discharged on a preliminary ground. u/s 62(1)(a)(iv) of the Estate Duty Act any person objecting "to any penalty imposed by the Controller under Sub-section (1) of Section 46 of the Indian Income Tax Act, 1922, as applied under Sub-section (5) of Section 73 for the purpose of estate duty" may prefer an appeal to the Appellate Controller. In this case the petitioner who was a lessee was served with a notice u/s 46(5A) of the Indian Income Tax Act, and it is clear that he had the remedy to prefer an appeal against the above order dated March 25, 1964, passed by the Assistant Controller imposing penalty of Rs. 3,000 and demanding a payment of Rs. 3,000 from him.

5. The petitioner, in spite of the above provisions, not having preferred an appeal, we are reluctant to interfere in this matter under Article 227 of the Constitution.

6. Even on merits we are satisfied that there is no substance. The only point placed before us on behalf of the petitioner was that the petitioner was a lessee under certain persons who were not treated by the Assistant Controller under the Estate Duty Act in proceedings for assessment of Estate Duty as "accountable persons". It was, therefore, urged that the landlords of the petitioner not being "persons accountable" or "accountable persons" within the meaning of Sub-section (12A) of Section 2 of the Estate Duty Act, the petitioner was not bound by the notice u/s 46(5A) of the Income Tax Act to pay the amount of assessed estate duty to the concerned officer. From the provisions of Sub-section (12A) of Section 2 the Act it seems to us quite clear that the "persons accountable" or "accountable persons" mean a person accountable for the estate duty within the meaning of this Act and not only those persons in respect of whom only a proceeding under this Act has been taken for the assessment of duty in respect of the estate of the deceased.

7. On the admitted position of the parties it is clear that the petitioner''s alleged lessors are, no doubt, intermeddlers with the estate of the deceased and as such accountable for the estate duty. In any event, the petitioner has, at least, interest in the matter. He might have a business to question the correctness of the proceedings u/s 46(5A) and the legality of notice issued upon him pursuant thereto for payment of the assessed estate duty out of the rents payable by him to the landlords but there is no dispute that the premises in question belonged to Rai Bhupati Nath Deb Bahadur, since deceased, and the petitioner is bound to

pay rents as a lessee. So, in any view of the matter, it is clear that the petitioner was liable to comply with the provisions of Section 46(5A) of the Income Tax Act. In our opinion, therefore, the order complained of, passed by the Assistant Controller, was correctly made.

8. We are told by Mr. Bose, learned advocate for the petitioner, that there is an appeal pending in this court where also the questions raised in this rule are awaiting court''s decision if not directly, at least collaterally. This is also a point which goes against the petitioner and there cannot be any question of interfering with the order under Article 227 of the Constitution.

9. In the result, the petition fails. The rule is accordingly discharged. In the facts and circumstances of this case, we direct the petitioner to pay costs which is assessed at six gold mohurs. All interim orders are vacated.

10. Let the records go down early.

Laik, J.

11. I agree.

