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(1958) 04 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 35 of 1958

M.L. Yacoob Sheriff — APPELLANT

Vs

Additional Assistant Controller, Estates duty cum Income Tax Circle, Madras — RESPONDENT

Date of Decision : 30-04-1958

Acts Referred:
Estate Duty Act, 1953 — Section 63(6), 70

Citation : AIR 1959 Mad 87 : (1958) 34 ITR 1 : (1958) 2 MLJ 447

Hon'ble Judges : Rajagopalan, J;Balakrishna Ayyar, J

Bench : Division Bench

Advocate : M.R.M. Abdul Kareem, for the Appellant; C.S. Rama Rao Sahib, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—On the death of Lalu Mean Sahib, his estate in the hands of his heir, the petitioner, was assessed to duly under the

previsions of the Estate Duly Act, Act XXXIV of 1953, and the Additional Assistant Controller, assessed the sum payable as duty at Rs.

5812.51. The total value of the estate was estimated at Rs. 1,71,139. The Additional Assistant Controller negatived the claim of the petitioner that

a sum of Rs. 88,000 ought to be deducted on the ground that this represented the debts payable by the deceased to two of his children. Against

the decision of the Additional Assistant Controller the petitioner preferred an appeal to the Central Board of Revenue, availing himself of the

statutory right u/s 63 of the Act. Pending disposal of the appeal, the petitioner asked the Additional Assistant Controller for stay of the collection of

the duty imposed.

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Though the real question in dispute in the appeal was whether the petitioner''s claim for the deduction of Rs. 88,000 was well founded the position

is that, if that claim is allowed, the total value of the deceased''s estate would fall below the statutory minimum of Rs. 1,00,000 and no duty would

be payable at all. In response to the petitioner''s request the Additional Assistant Controller informed him that the proportional duty on the sum in

dispute in the appeal Rs. 88,000 worked out to Rs. 3283-52. The Additional Assistant Controller was prepared to stay collection of that amount.

He insisted on payment of the balance of Rs. 2528-69, & he informed the petitioner that in default of payment before 15-1-1958 coercive steps

would he taken to collect that amount of Rs. 2528-69.

2. The petitioner applied under Art. 226 of the Constitution for the issue of a writ of mandamus to restrain the Additional Assistant Controller from

collecting any amount as estate duty.

3. It was on the provisions of Section 63(6) that the learned counsel relied in support of his contention, that in the circumstances of this case he

was entitled to an absolute stay of collection, merely on the ground that the appeal preferred against the decision of the Additional Assistant

Controller is pending disposal. Section 63(6) runs:

Notwithstanding that an appeal has been filed before the Board, so much of the estate duty as is not in dispute shall be payable by the appellant.''''

Merely, for the purpose of comparison we shall set out the provisions of Section 64(9) which runs:

Notwithstanding that a reference has been made under this section to the High Court or to tile Supreme Court, estate duty shall be payable in

accordance with the determination matte by the Board.

4. The normal rule of course, is that an appeal does not operate proprio vigore to stay the operation of the order appealed against. We are unable

to accept the contention put forward by the learned counsel for the petitioner that Section 63(6) gives a statutory recognition to a departure from

this principle and that effect of Section 63(6) is that where an appeal has been filed, to the extent the duty is in dispute, there shall be an absolute

stay of collection. In the circumstances of this case we have pointed out that, though the value of the estate liable to duty in dispute in appeal is only

Rs. 88,000, if that claim is allowed, no duty would be payable at all.

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In our opinion, all that Section 63(6) provides for is that, apart from Section 70 of the Act there should be no discretion left and the amount

demanded becomes payable if that is not the subject-matter of any appeal at all. With reference to what constitutes the subject-matter, the

discretion left to the competent authority to proceed with the collection or to stay collection is left intact. Of course, if there is an order of a

competent authority, that would be effective in staying collection.

If there is no such order of stay, the mere pendency of the appeal does not by itself operate as a stay or bar the enforcement of the liability under

the order appealed against. Section 70 of the Act specifically provides for stay of collection or payment in instalments. Section 70 could well be

invoked, though it does not expressly refer to proceedings which are the subject-matter of appeal. u/s 64(9), it is not for the collecting authority to

refrain from collecting, though a reference is-pending in the High Court or Supreme Court, because the statutory provision is that the amount

becomes payable despite the pendency of such a reference.

5. As we said, we are unable to construe Section 63(6) as imposing an absolute bar on collection of the amount due, if the correctness of the

amount is challenged in appeal.

6. The rule is discharged and the petition is dismissed with cost. Counsel''s fee Rs. 150.

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