
(1979) 10 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petitioner No. 106 of 1975

M.P. Jayaram

APPELLANT

Vs

Assistant Controller of Estate Duty

RESPONDENT

Date of Decision : 23-10-1979

Acts Referred:

Estate Duty Act, 1953 — Section 53, 58, 59, 73 A (b)

Citation : (1980) 121 ITR 661

Hon'ble Judges : M.K. Srinivas Iyengar, J

Bench : Single Bench

Judgement

Srinivasa Iyengar, J.—In this writ petition, the notice issued by the Asst. CED, Mangalore, dated September 6, 1974, under s. 59 of the Estate Duty Act, 1953, is challenged. The notice is produced as Ex."N" along with the writ petition. This was in relation to the estate of one M. R. Puttaswamaiah, who died on July 12, 1968. An assessment to estate duty had been made on November 30, 1970, a copy of which has been produced as Ex. "C". It transpires that in regard to certain items that had been included, a notice under s. 59 of the Act had been issued and a reassessment was made on February 18, 1972. A copy of that order has been produced as Ex."F". The petitioner is the accountable person who had filed returns in the first instance. The challenge to the notice, Ex."N", is on the basis of sub-clause (b) of s. 73A of the E.D. Act. Section 73A states as follows :

"No proceedings for the levy of any estate duty under this Act shall be commenced -

(a) in the case of a first assessment, after the expiration of five years from the date of death of the deceased in respect of whose property estate duty became payable; and

(b) in the case of a reassessment after the expiration of three years from the date of assessment of such property to estate duty under this Act."

2. The contention is that the assessment having been made on November 30,

1970, no proceedings for reassessment could be commenced after the expiry of November 30, 1973, and the notice now issued is without jurisdiction.

3. Section 59 of the Act which makes provision for reassessment is to the effect that subject to the provisions of s. 73A, the Controller may require the person accountable to submit an account as required under s. 53 and may proceed to assess or reassess such property as if the provisions of s. 58 applied thereto.

4. Shri G. Sarangan, learned counsel for the petitioner, submitted that the section is clear and the notice issued on September 6, 1974, is beyond the period of three years from the date of assessment. He pointed out that s. 73A was introduced by the E.D. (Amend.) Bill, 1958, which was passed by Parliament and in the Notes on Clauses it had been explained that the object of introduction of clause (b) was that no reassessment proceedings shall be commenced after the expiry of three years from the date of completion of the original assessment. He also referred to the decision of the High Court of Andhra Pradesh reported in *Merla Sitarama Prasad Vs. Assistant Controller of Estate Duty and Another*, .

5. Quite apart from the Notes on Clauses at the time of introduction of the Bill, it appears to me that the provision in sub-clause (b) of s. 73A is clear that the date of assessment referred to therein is the date of the original assessment under the E.D. Act. The section itself prescribes a period beyond which an assessment or reassessment cannot be commenced. Sub-clause (a) refers to a first assessment. It appears to me to be obvious that the date of assessment referred to in sub-clause (b) is the date of first assessment mentioned in sub-clause (a). This is because the section itself was making provision for a first assessment and for a reassessment. It may be that there can be more than one reassessment, but all those reassessments must be commenced within the period of three years from the date of first assessment. Any contrary view would lead to absurdity. For example, if a reassessment it permitted without regard to the date of first assessment it would be possible to go on with reassessment proceedings endlessly issuing a notice under s. 59 every two years after each reassessment. This could not have been the intention of the legislature at all as an optimum period of five years has been fixed even for first assessment from the date of the death of the person whose estate became liable for estate duty. Sri S. R. Rajasekhara Murthy suggested the date of assessment could be construed as the date of the last completed reassessment also. I am unable to accept this submission.

6. I find support for my above view from the decision of the Andhra Pradesh High Court in *Merla Sitarama Prasad Vs. Assistant Controller of Estate Duty and Another*, referred to above. In that case, a contention had been raised that because the accountable person had preferred an appeal, the period of three years should be computed from the date of the appellate order. This was rejected by the Andhra Pradesh High Court. Their Lordships said that the expression "the date of assessment" in s. 73A(b) meant the date of completion of the initial assessment.

7. For the reasons stated above I hold that the notice, Ex. "N". issued by the respondent dated September 6, 1974, is beyond the period prescribed under s. 73A(b) of the Act and he could not commence any proceedings for reassessment as three years had elapsed from the date of first assessment. Accordingly, the notice dated September 6, 1974, is quashed and the respondent is restrained from taking any proceedings pursuant to the said notice.

8. Parties shall bear their own costs.