
(1971) 02 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 510 of 1970

M.S. Narayanacharlu

APPELLANT

Vs

Assistant Controller of Estate Duty

RESPONDENT

Date of Decision : 15-02-1971

Acts Referred:

Estate Duty Act, 1953 — Section 64(7)

Citation : (1972) 1 AnWR 48 : (1972) 85 ITR 25

Hon'ble Judges : Venkateswara Rao, J;Obul Reddi, J

Bench : Division Bench

Advocate : A. Siva Rao, for the Appellant; P. Rama Rao, for the Respondent

Judgement

Obul Reddi, J.—This writ petition is directed against the order of the Assistant Controller of Estate Duty, Guntur-4, dated January 23, 1970, informing the petitioner that in the absence of any provision for payment of interest in the Estate Duty Act prior to its amendment in 1958, which came into force with effect from July 1, 1960, he is not entitled to the payment of interest claimed by him.

2. The petitioner's father, M.V. Narasimhacharlu, died on May 3, 1955, at Guntur leaving behind him his four undivided sons. His eldest son, M.S. Narayanacharlu, the petitioner herein, is the accountable person and he filed a return showing that the properties which the deceased possessed belonged to the Hindu undivided family and that he had only 1/5th share therein and as such the estate duty is leviable only on the 1/5th share of his deceased father. The Assistant Controller was not inclined to accept the statement that the properties left behind by Narasimhacharlu were the joint family properties of which Narasimhacharlu was the karta as, in his view, the properties constituted the deceased's separate and self-acquired properties by reason of his having become entitled to the same under a will executed by his father. The Assistant Controller, accordingly, determined the principal value of the estate of the deceased at Rs. 3,13,895 and levied estate duty of Rs. 20,775.25. Then an

appeal was preferred to the Central Board of Direct Taxes and the Board by its order dated October 11, 1960, fixed the net principal value of the estate of the deceased, Narasimhacharlu, at Rs. 2,73,375 on which sum the estate duty was levied. The petitioner paid the estate duty by instalments in accordance with the directions of the Board. Aggrieved by the order of the Board, the petitioner moved for a reference to this court as regards the nature of the properties left by his deceased father. This court answered the reference holding that the estate of the deceased, M. V. Narasimhacharlu, was ancestral in his hands and, therefore, the properties "obtained the character of joint family properties of the deceased and his four sons on the date of the death of the deceased". As a consequence of the judgment of this court, only 1/5th share of the entire estate passed on the death of the deceased to his heirs and that alone became liable to be assessed under the Act. The Central Board directed the Assistant Controller, by its order dated April 10, 1965, to implement the decision of this court. The Assistant Controller while determining the amount refundable to the petitioner at Rs. 13,204.90 directed payment of that amount. This was done by the Assistant Controller without notice to the petitioner, with the result that the petitioner could not make his representation as to the payment of interest which, according to him, he was entitled to by virtue of Sub-section (7) of Section 64 of the Act. He then made an application inviting the attention of the Assistant Controller to rectify his order and direct payment of interest as the assessment was reduced as a result of the decision of the High Court on a reference made to it. The Assistant Controller, as already noticed, rejected this claim for interest, and hence this petition.

3. Mr. A. Siva Rao, the learned counsel appearing for the petitioner, contended that Sub-section (7) of Section 64 is a beneficial provision introduced by Act XXXIII of 1958 and brought into force on July 1, 1960, and all that this provision contemplates is that there should be reduction of the amount assessed consequent on a reference to the High Court and once the High Court reduces 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 assessments made prior to July 1, 1960, and 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.

4. Mr. P. Rama Rao, the learned counsel appearing for the respondent, sought to contend that Sub-section (7) is not made retrospectively applicable to assessment proceedings initiated prior to July 1, 1960, and is only prospective in its application, in the absence of the provision having been made, expressly or impliedly, retrospectively applicable and as such the petitioner is not entitled to claim the benefit of the amended provision which provides for payment of interest on the sum overpaid by him. To appreciate the relative contentions, it is necessary to quote Sub-section (7) of Section 64 of the Act. It reads :

"Where the amount of any assessment is reduced as a result of any reference to the High Court, the amount, if any, overpaid 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."

5. This is not a case where the Controller prayed for leave to appeal to the Supreme Court against the judgment of this court. The requirements of Sub-section (7) of Section 64 are these : (i) there must be a reference to the High Court u/s 64(1) of the Act; and (ii) such reference should result in reduction of the assessment. If these two requirements are satisfied, it is peremptory on the part of the Controller to refund the amount overpaid with such interest as he may allow in his discretion. 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 benefit of 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 (see *Kamakshya Narain Singh of Ramgarh v. Commissioner of Income Tax* [1947] 15 ITR 311. We have, therefore, no hesitation in holding that the Assistant Controller was in error in declining to award interest on the ground that there is no provision for payment of interest in the Estate Duty Act prior to its amendment in 1958. The respondent is directed to pay such interest on the amount overpaid by the petitioner as he may consider reasonable. A writ of mandamus shall accordingly issue to the respondent. The writ petition is allowed with costs. Advocate's fee, Rs. 150.