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(1975) 07 CAL CK 0010

In the Calcutta High Court

Case No : Matter No. 426 of 1972

Navin Chandra Bhimji APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 25-07-1975

Acts Referred:

Estate Duty Act, 1953 — Section 62(1)
Income Tax Act, 1922 — Section 46

Citation : (1979) 116 ITR 465

Hon'ble Judges : Dipak Kumar Sen, J;Deb, J

Bench : Division Bench

Advocate : N.C. Mukherjee, for the Appellant;A. Sengupta and P.K. Mujumdar, for the Respondent

Judgement

D.K. Sen, J.—The facts in this reference u/s 64(1) of the Estate Duty Act, 1953, may be briefly narrated as follows :

One Bhimji Nathubhai died on the 21st August, 1965. Accounts of his estate were filed by the accountable person on the 5th May, 1966, showing a net principal value of Rs. 4,46,348-58. The Asst. CED made a provisional assessment and passed an order accordingly on the 9th May, 1966. The notice of demand was received by the accountable person on the 29th June, 1966, and a sum of Rs. 3,000 was paid. A balance of the demand remained unpaid. A notice dated the 17th January, 1970, was issued by Asst. Controller directing the accountable person to pay the balance and to show cause why on failure to make the payment demanded penalty should not be levied. The accountable person in his reply raised various legal contentions. The Asst. Controller rejected such contentions and levied a penalty of Rs. 10,000 u/s 73(5) of the E.D. Act.

2. The accountable person appealed to the Appellate Controller who found that the appeal itself was not maintainable as the demand had not been paid in accordance with the prov. to Section 62(1) of the E.D. Act.

3. On further appeal to the Tribunal various contentions were raised on behalf of the accountable person including the contention that no penalty should have been levied. The department contended that the appeal was not maintainable. On this preliminary objection, the Tribunal held that the appeal before the Appellate Controller was not maintainable. The appeal was dismissed accordingly. Other factual and legal contentions were not decided.

4. From the order of the Tribunal, the following question has been referred to us :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the accountable person''s appeal before the Appellate Controller was not maintainable ?"

5. Mr. Mukherjee, learned counsel for the accountable person, contended before us that by reason of the repeal of the Indian I.T. Act, 1922, and the enactment of the I.T. Act, 1961, it was not necessary for the accountable person to pay the duty before filing the appeal. He submitted further that Section 62 of the E.D. Act, 1953, has to be read in the context of such repeal. The proviso to that section in substance reiterated the provisions for appeals provided against orders passed u/s 46 of the Indian I.T. Act, 1922. The new enactment, i.e., I.T. Act, 1961, did not contain the said provision of deposit of the penalty levied before appeal (vide Section 221 of the I.T. Act, 1961).

6. The contentions on behalf of the accountable person as indicated above do not appear to us to be of much substance. Section 62 of the E.D. Act, 1953, reads as follows:

" 62. Appeal against orders of Controller.--(1) Any person--(a) objecting-

(i) to any valuation made by the Controller, or

(ii) to any order made by the Controller determining the estate duty payable u/s 58 or Section 59, or

(iii) to any penalty levied by the Controller u/s 60, Section 72 or Section 84, or

(iv) to any penalty imposed by the Controller under Sub-section (1) of Section 46 of the Indian Income Tax Act, 1922 (11 of 1922), as applied under Sub-section (5) of Section 73 for the purposes of estate duty, or

(b) denying his liability to the amount of estate duty payable in respect of any property,

may, within thirty days of the date of the receipt of the notice of demand u/s 73, appeal to the Appellate Controller in the prescribed form which shall be verified in the prescribed manner:

provided that no appeal shall lie under Sub-clause (iv) of Clause (a) unless the duty has been paid before the appeal is filed.

(2) The Appellate Controller may admit an appeal after the expiry of the thirty

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days referred to in Sub-section (1) if he is satisfied that there was sufficient cause for not presenting it within that period.

(3) The Appellate Controller shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing.

(4) The Appellate Controller may-

(a) at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal;

(b) before disposing of an appeal, make such further inquiry as he thinks fit or cause further inquiry to be made by the Controller.

(5) In disposing of an appeal, the Appellate Controller may pass such order as he thinks fit which may include an order enhancing the estate duty or penalty:

Provided that no order enhancing the estate duty payable or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(6) The Appellate Controller shall, on the conclusion of the appeal, communicate the order passed by him to the appellant and to the Controller."

7. Section 73(5) of the said Act reads as follows :

" (5) The provisions of Sub-sections (1), (1A), (2), (3), (4), (5), (5A), (6) and (7) of Section 46 and Section 47 of the Indian Income Tax Act, 1922 (XI of 1922), shall apply as if the said provisions were provisions of this Act and referred to estate duty (including estate duty provisionally assessed) and sums imposed by way of penalty or interest under this Act instead of to Income Tax and sums imposed by way of penalty or interest under that Act and to Controller of Estate Duty instead of to Income Tax Officer."

8. It appears to us that the provision relating to the payment of duty prior to the filing of an appeal as contained in Section 62 of the E.D. Act, 1953, is an independent provision not dependent on Section 46 of the Indian I.T. Act, 1922. It does not appear that this proviso was affected by the repeal of the Indian I.T. Act, 1922, or the re-enactment of the IX Act, 1961. Assuming that in the E.D. Act, 1953, we have to read the corresponding new sections of the I.T. Act, 1961, instead of the old sections of the Indian I.T. Act, 1922, the proviso to Section 62(1) of the E.D. Act, 1953, still remains in force. We cannot accept the contention of Mr. Mukherjee that by implication this proviso should be deemed to have been repealed.

9. In this view of the matter, we answer the question referred in the affirmative and in favour of the revenue. There will be no order as to costs.

Deb, J.

10. I agree.

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