(1979) 09 AHC CK 0024

In the Allahabad High Court

Case No : Estate Duty Revision Miscellaneous Case No. 11 of 1977

Padampat Singhania and Others APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 26-09-1979

Acts Referred:
Estate Duty Act, 1953 — Section 2(12), 53(3), 55, 58(2), 73A

Citation : (1980) 16 CTR 114 : (1980) 122 ITR 162

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : V.B. Upadhya, for the Appellant; A. Gupta, for the Respondent

Judgement

C.S.P. Singh, J.—The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, has referred the following questions for the opinion of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the estate duty proceedings had not become time-barred in this case in terms of the provisions contained in Section 13A(a) of the Estate Duty Act ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in confirming the order of the Appellate Controller directing the Assistant Controller to re-do the assessment after providing full opportunity of hearing to the karta of the HUF also ?"

2. The dispute relates to the estate of the deceased, Shyam Hari Singhania, who died on the 3rd December, 1960. At the time of his death he owned separate and self-acquired property, and was also a member of a HUF of of which Sir Padampat Singhania, his father, was the karta. Shyam Hari Singhania had no issue, and left behind him a widow, Smt. Usha Devi, and his mother, Lady Ansuiya Devi (class I heirs under the Hindu Succession Act). On the 1st August, 1961, Lady Ansuiya Devi filed a return showing the net value of the estate as Rs. 11,63,629. Later on, the widow, Smt. Usha Devi, also filed a return on 16th

August, 1963, at the request of the department. Sir Padampat Singhania did not file any return at all in respect of the estate of the deceased. On the 14th August, 1969, a notice u/s 58(2) of the Estate Duty Act (hereinafter referred to as "the Act") was issued by the Assistant Controller, and the assessment completed on the 27th June, 1972. Although no formal notice was. given to Sir Padampat Singhania, who was the karta of the HUF of which the deceased was a coparcener, the Assistant Controller passed an assessment order treating him also as one of the accountable persons. As in the present case we are not concerned with the valuation of the estate or the estate duty imposed thereon, it is not necessary to state these facts. An appeal was filed by Sir Padampat Singhania as karta of the HUF, Lady Ansuiya Devi and Smt. Usha Devi. The appellate authority remanded the matter to the Assistant Controller, inter alia, on the ground that the case could not be properly disposed of without notice to Sir Padampat Singhania, who was the karta of the HUF. All the three, persons, who were appellants before the Assistant Commissioner, filed an appeal before the Tribunal. It was urged that the assessments were barred by time in view of Section 73A, inasmuch as no proceedings for the levy of estate duty had been commenced within five years of the death of the deceased. It was also contended that the AAC erred in sending back the case for starting proceedings against Sir Padampat Singhania as karta of the HUF as proceedings against him could not be started after the expiry of five years as set down in Section 73A. Both these contentions have been rejected by the Tribunal. We will deal with the questions seriatim.

3. It is necessary to extract Section 73A in order to answer the first question. This provision is couched in the following terms:

"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."

4. Sri Vibhav Upadhya appearing on behalf of the assessee has urged that Section 73A contemplates a positive act on the part of the statutory authorities for commencing proceedings for levy of estate duty, and inasmuch as in the present case the death had occurred on the 3rd December, 1960, and the first time when action taken by the Assistant Controller was on 14th August, 1969, when a notice u/s 58(2) was issued, the period for the levying of estate duty had run out. It was urged that the filing of a return by the accountable person did not commence the proceeding as contemplated by Section 73A, for that provision postulates action on the part of the Controller and not by the accountable person. Counsel for the department, on the other hand, contended that the filing

of a return commences proceedings for levy of estate duty, and inasmuch as the returns had been filed within five years, the assessments were valid. It was also urged that, in any event, as Smt. Usha Devi had filed a return on 16th August, 1963, i.e., within five years of the death of Shyam Hari Singhania at the request of the department, the assessment was saved. In this context in support of the argument that the filing of a return commences proceedings for levy of tax he invited our attention to a number of cases decided by the various High Courts under the I.T. Act.

5. In the present case, however, we think that it is not necessary to decide the question as to when proceedings for levy of estate duty commence under the E.D. Act, for reasons to be stated hereafter. As noticed earlier, Smt Usha Devi filed a return on 16th August, 1963, in response to a request made by the department. Although the provision under which the request was made to Smt. Usha Devi has not been stated in the order of the Tribunal or the Appellate Controller, it is apparent that such a request could be made only u/s 55, for, it is under this provision that the Controller can ask an accountable person, and certain other categories of persons to deliver a statement of particulars and accounts, etc., which may be required by the Controller relating to any property which in his opinion formed part of an estate in respect of which estate duty was leviable. As the return was filed on 16th August, 1963, the request to do so on behalf of the department must have been made earlier. Thus, the request on behalf of the department, which in the circumstances is referable to Section 55, was made much before the expiry of five years from the date of the death of Shyam Hari Singhania. Now, a requisition u/s 55 is made for purposes of valuing the estate of the deceased for purposes of levy of estate duty. The word "levy" has been interpreted by the Supreme Court in the case of Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., , as embracing within it the process of assessment and also the imposition of tax. The requisition made u/s 55 is one for assessing the value of the estate of the deceased. Once such a requisition has been made from an accountable person proceedings for levying estate duty can be said to have been started by the Assistant Controller. On this view the estate duty proceedings were not barred by limitation.

6. Coming now to the second question. The circumstances under which the Appellate Controller directed the Assistant Controller to pass a fresh assessment order after providing an opportunity to the karta of the HUF have already been detailed. Sri Vibhav Upadhya appearing on behalf of the assessee has, however, contended that inasmuch as no notice was given-by the Assistant Controller to Sir Padampat Singhania who was the karta of the HUF when the assessment order was made, the appellate authority could not remand the matter for starting proceedings for assessment against Sir Padampat Singhania. It was urged that such an order would be hit by Section 73A, for it would amount to starting proceedings for assessment against the karta of the HUF after the expiry of five years from the date of death of Shyam Hari Singhania. This contention is

misconceived. In the first place, although Section 53(3) of the Act requires every person accountable for estate duty of the deceased to deliver to the Controller, an account in the prescribed manner of all the properties of the deceased, yet the proceedings for levy of estate duty on the estate of the deceased is a single proceeding. The Act does not contemplate separate proceedings for levy of estate duty in the event of separate accounts being filed by a number of persons, who may be accountable. The bar of limitation contained in Section 73A applies only in a case in which the proceedings for assessment have not commenced within five years of the date of death. Once they have commenced within five years of the date of death even in respect of one of the accountable persons, the bar of Section 73A will not operate in cases where during the course of these proceedings the Assistant Controller directs other accountable persons to file accounts. Sir Padampat Singhania being the karta of the HUF was an accountable person as he was one of the legal representatives of the deceased as contemplated by Section 2(12). Thus, in view of Section 53(3), he had to file an account of the estate of the deceased. But the mere fact that he had not filed the account earlier or that the, Appellate Controller directed the Assistant Controller to pass a fresh assessment order after giving an opportunity to be heard, would not attract the bar of Section 73A. In the case of Madan Lal Lohia Vs. Assistant Collector and Others, , the Supreme Court has held that the Assistant Controller need not wait for all the accountable persons to file the accounts and can make a final order in respect of the amount payable as estate duty on the account submitted by any one of the accountable persons, and on such an order being passed not only the accountable person in respect of whom proceedings for assessment had been taken but also every other accountable person would be liable to pay the amount of estate duty limited to the assets of the deceased which each of the other accountable person has received. Thus, on the assessment order being passed by the Assistant Controller on the basis of the valuations given by the two ladies, Sir Padampat Singhania also became liable for payment of the estate duty qua the share of Shyam Hari Singhania in the assets of the HUF. This being the position and as no opportunity had been given by the Assistant Controller while making the final assessment, although in view of the pronouncement of the Supreme Court no such opportunity need have been given, the order passed by the Appellate Controller directing such an opportunity to be given was correct. The decision of the Kerala High Court in the case of Ameen Pillai Rawther Hassan Kari Rawther and Another Vs. Asst. Controller of Estate Duty, Ernakulam and Others, , in so far as it lays down that no liability for estate duty can be imposed on persons who have not been made parties to the proceedings, does not, in view of the pronouncement of the Supreme Court in Madan Lal Lohia Vs. Assistant Collector and Others, , lay down the correct law.

7. We, accordingly, answer both the questions in the affirmative, in favour of the department and against the assessee. The department is entitled to its costs, which are assessed at Rs. 200. Counsel''s fee is also assessed at the same figure.

