(1985) 02 KAR CK 0030

In the Karnataka High Court

Case No : Writ petition No 5156 of 1979

S.B. Mamle Desai APPELLANT

Vs

Controller of Estate Duty and Others RESPONDENT

Date of Decision : 21-02-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Estate Duty Act, 1953 — Section 50, 64, 64 (7)

Citation : (1985) 48 CTR 264 : (1985) 155 ITR 667 : (1985) 23 TAXMAN 85

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : G. Chandra Kumar, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Puttaswamy, J.—One Bullappa Basavanthappa Mamle Desai hereafter referred as B. M. Desai of Dharwad District who was the holder of certain "watan" property within the meaning of that term occurring in s. 4 of Bombay Hereditary Offices Act of 1874,was a member of a Hindu Undivided Family (HUF) consisting of himself, his four sons (one of whom is petitioner) and other members of family. Under the Bombay paragana and kulkarni Watans (Abolition) Act of 1950, the said lands were regranted to B.M.Desai.

2. B. M. Desai died on may 26, 1957, and on his death,the petitioner as accountable person under the E. D. Act of 1953 (Central Act 34 of 1953)("the Act"),filed a return before the Assistant Controller of Estate Duty,Hubli ("ACED"), inter alia claiming that only one-seventh share of the deceased in the said watan property which was joint family property had passed on his death and that share alone was assessable to estate duty under the Act and not the entire property. But, the ACED, by his assessment order dated March 11, 1963, held that the entire watan property was the individual property of the decease and had passed on death, determined its principal value at Rs. 7,94,993 and levied a sum of Rs. 1,08,109.30 as estate duty under the Act. Against the said order of the late

Controller of Estate duty, Madras (Appellate Controller), with an application for stay who did not grant the same and ultimately dismissed the said appeal on July 23, 1971.

3. Against the aforesaid orders of the Appellate Controller and the ACED,the petitioner filed an appeal before the Income Tax Appellate Tribunal, Bangalore ("Tribunal"), which by its order date December 5,1973, allowed the said appeal resulting in substantial reduction in the estate duty payable thereto by the petitioner under the Act. Aggrieved by the same, the revenue sought a reference to this court under s. 64 of the Act in T.R.C. No. 54 of 1974. On April 6, 1978, this court answered the question referred in the said reference in favour of the petitioner,which necessarily meant the order of the Tribunal stood affirmed. After the ACED made his assessment and issued the demand notice, but before the Tribunal decided the appeal of the petitioner, the Revenue had collected sum of Rs. 63,221.05 from the petitioner on the different dates. On the termination of the aforesaid reference of this court, the Revenue found that the petitioner was entitled to a refund of Rs. 58,221.05 and accordingly on July 4, 1978 (exhibits F and F1), the ACED refunded the said amount to the petitioner. With this, the matter should have normally ended; but it do not.

4. On October 9. 1978, the petitioner made an application before the Controller of Estate Duty, Bangalore (Controller), claiming payment of interest at rate 12 per cent. (exhibit G) from the date the amounts were paid by him to the date date same were refunded to him. On November 21, 1978 (exhibit H.), the controller rejected the same in these words :

"Sub : Award of interest of refund amount of Rs. 59,792.54 in the matter of estate duty of late sri B. M. Mamle Desai who died on 26-5-1957 Regarding.

Ref : Your petition dated 9-10-1978 claiming interest under s. 64(7) of the Estate Duty Act.

The matter has been examined. u/s 64(7) of the Estate Duty Act, the interest will be admissible if the duty assessment is reduced as a result of reference to the High Court. It is clear from this section that the reference to the High Court envisaged therein is only a reference by the accountable person. In the case of a reference by the Department, there is no question of estate duty assessment reduced as a result of the order of the High Court because in such cases, the assessment is already reduced as a result of the Tribunal''s order.

2. In you case,t is seen that the refund has been issued on 17-3-1978 itself while giving effect to the order of the Appellate Tribunal of Estate Duty. The effect of the High Court order dated 6-4-1978 is only to confirm the order already passed by Tribunal. In these circumstances, section 64(7) does not apply and interest as claimed by you cannot be granted."

5. In this petition under article 226 of Constitution, the petitioner has challenged the validity of s. 64(7) of the Act, the order of the controller and has sought for

writ in the nature of mandamus to the respondents to make payment of interest as claimed in his application dated April 10, 1978.

6. First, the petitioner has urged that s. 64(7) of the Act should be so interpreted as enabling payment of interest to an accountable person when there is an order made in his favour by the Tribunal also. If this construction of s. 64(7) is not accepted,then the petitioner would say that provision in so far as it picks up and treats distinctively, only the cases of reductions occasioned by an order made by an High Court, would be violative of article 14 of the Constitution and should be struck down. Lastly, the petitioner has urged that he was entitled for payment of interest under the Interest Act of 1839 (Act XXXII of 1839) ("the Interest Act").

7. The respondents have resisted this writ petition.

8. Sri G.Chandra Kumar, learned counsel for the petitioner, has contended that s. 64(7) of the Act should be so interpreted as entitling as accountable person for payment of interest on amount refunded to him in pursuance of an order made by the Tribunal.

9. Sri K. Srinivasan, learned senior standing counsel appearing for the respondents, has urged that the plain languages of s. 64(7) of the Act did not permit the construction suggested by the petitioner.

10. The very first rule on the construction of the statues where the language is plain has been neatly set out by Maxell on the Interpretation of statues (eleventh edition), chapter -1, Preliminary Survey, in these words :

"A statue is will of legislature, and the fundamental rule of interpretation to which all others are subordinate, is that a statue is to be expounded ''according to the intent of them that made it.'' If the words of the statue are in themselves precise unambiguous,no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of legislature."

11. The progressive rule of construction of statues very felicitously expressed by Lord Denning in Seaford Court Estates Limited v. Asher [1949] 2 All ER 155 at p. 164, approved by the Hon''ble Supreme Court in State of Karnataka and Another Vs. Hansa Corporation, , reiterated by a Full Bench of this court in C. Arunachalam Vs. Commissioner of Income Tax, Karnataka, Bangalore, donse not also permit a court to re-write a section. As ruled by the Court in Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, it is not open to a court to legislate in the guise of interpretation. Bearing these principles, it is now necessary to ascertain the true scope and ambit of s. 64(7) of the Act, which is the only provision that provides for payment of interest on refunds.

12. Section 64(7) of the Act, that is material reads thus :

"Where the amount of any reassessment is reduced as a result any reference to the High Court, the amount, If any, over paid 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 of such refund until the disposal of the appeal in the Supreme Court."

13. This section is clear and unambiguous language provides for payment of interest even the estate duty is reduced or refund is made only as a result of reference to a High Court under the preceding provisions of that section and in no other situation at all. A deliberate provisions made by the legislature to meet or deal with particular situation cannot be extended to all and every situations. When the legislature in its wisdom provides of payment of interest only on the basis of an order made by a High Court in a reference under s. 64 of the Act, a court cannot read that provision as also comprehending a situation arising out of an order made by the Tribunal and the first appellate authority under the act. Any such attempt will be really usurpation of the power of legislation under the thin guise of interpretation. For these reasons, I have no hesitation in holding that the construction suggested by Sri Chandra Kumar cannot be accepted.

14. The above finding itself projects next connection which in effect is that a provision that denies the benefit of interest to those that have succeeded before the Tribunal brings about a hostile discrimination as between persons who become entitled to refund as a result of an order of High Court in the proceedings of reference on the one hand and those who become entitled to refund as an order made by the Tribunals on the other. In support of his connection ,Sri Chandra Kumar has strongly relied on ruling of the Madras High Court in G.D. Narendra Vs. Commissioner of Income Tax,

15. Sri Srinivasan has urged that s. 64(7) of the decidedly conferring a benefit on those whose assessments are reduced as a result of a reference to a High Court uniformly was violative of article 14 of the Constitution.

16. The scope and the ambit of the article 14 of the Constitution has been explained by the Supreme Court in large number of cases. In are The Special Courts Bill In Re: The Special Courts Bill, 1978, a Bench of seven learned judges speaking through Chandrachud C.J., reviewing all the earlier cases, has restated its scope and ambit in all its aspects. In The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another, and R.K. Garg and Others Vs. Union of India (UOI) and Others, , the Supreme Court has restated the principles that should guide courts in examining the validity of a taxation provision when same is challenged as violative of article 14 of the Constitution. Bearing the principles stated in these cases, it is necessary to examine the challenge of the petitioner based on article 14 of the constitution.

17. Section 64(7) of the Act conferring a distinctive benefit only on those persons whose case are dealt with by a High Court on a reference under that provision

and not others, does not violate the constitutional pledge and equality before the law or the equal protection of the law. The cases of those that are dealt with by a High Court belong to a separate class by itself. As I apprehend, one of the objects with which the Legislature has made provision for payment of interest only to those cases that are dealt with by a High Court on a reference made at the instance of the accountable person is that finality is reached and only in such cases, a reasonable interest as may be decided by the Controller should be allowed to such person.. But in other cases of appellate authority under the Act, that is not the position. At any rate those persons belong to a separate and distinct class and they cannot put themselves up on par with the other class. In matters of taxation , the Legislature enjoys a very wide power of classification. When one examines the validity of s. 64(7) in the light of the settled principles, it is difficult to hold that the provision is violative of article 14 of Constitution.

18. In G.D. Narendra Vs. Commissioner of Income Tax, , on which a very strong reliance has been placed by Sri chandra Kumar , the question that arose before the court was whether the court fee paid on probate of the estate passing to an accountable person after the determination of the principal value of the estate and the payment of the estate duty thereto was deductible to the extent provided in s. 50 of the Act. On that question, Rama Prasad Rao J. (as his Lordship then was), came to the conclusion that the words "have been paid" occurring in s. 50 of the Act should be interpreted as payments made at the later stage also. With respect, this conclusion reached by the court is in accord with certain accepted cannons of construction, the learned judge proceeded to observe thus (p.651) :

"The word ''paid'' in section 50 has to be understood in the context and in the light of of the chapter for which the provision has been made as ''payable''. Otherwise an unsatisfactory state of affairs would result. Relief from estate duty can be only be obtained by persons when they have paid the court-fee prior to the imposition of the estate duty and for the others who pay such relief can be given. This would amount to discrimination under article 14 of Constitution and any interpretation which revolts against any provision of the Constitution of India ought not to be thought of or given effect to."

19. With great respect, I am unable to agree that these observations can be taken to have enunciated any principle of general application. Even otherwise, with great respect, I regret my inability to fall in line with that view as the principle of "reading down" a provision to sub stain its constitutionality cannot be invoked and applied to the present case.

20. On the above discussion, I think I must reject this contention of Sri chandra Kumar.

21. Sri Chandra Kumar has lastly contended that the petitioner was entitled to receipt of interest at the rate claimed by him under the Interest Act or the principles governing the same. In support of his contention, Sri Chandra Kumar

has strongly relied on the ruling of the High Court of Madras in Mahumadeen Abdul Saffur Rowther v. Hamida Bivi Ammal ILR [1919] Mad 661.

22. Sri Srinivasan has urged that the cases of the refunds are not regulated by the Interest Act. In support his contention, Sri Srinivasan has strongly relied on the ruling of the High Court of Bombay in Municipal Borough v. Vadilal AIR 1944 Bom 233.

23. The Interest Act, omitting the permeable that is not necessary to notice, contains only one section and the same reads thus :

"1. Power of court to allow interest. - It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law."

24. The heading and the language of this section in clear terms empowers only courts and not the authorities functioning under the Act or any other enactment to award interest in the circumstances completed therein. The court referred to it in Interest Act can only be interpreted as civil courts that have power to adjudicate and decide monetary claims and not authorities functioning under the Act or any other law. On this construction of the section , the claim for interest founded on the Interest Act cannot be upheld.

25. Section 1 of the Interest Act empowers courts to award interest on debts or ascertained sums or cases governed by contracts and not to cases of refunds under a taxation measure as under the E.D.Act. The cases of refunds arising under the taxation measures are not regulated be the Act at all.

26. In Municipal Borogh''s case AIR 1944 Bom 233, the High Court of Bombay was dealing with a claim for a payment of interest on refund of taxes made to the respondent plaintiff in pursuance of a decree of a civil court which was allowed by the trial court. On revision, Beaumont C.J. reversing the decree of the trail court, expressed thus (p.233) :

"Under the interest Act (Act 32 of 1839), which introduced into India, the English Interest Act, 3 and 4 Will.IV, c.42, the court can allow interest if the amount claimed is certain which is payable at a certain time by virtue of a written instrument. But it is clear that the terms of that Act do not apply to the present case. This court having made no order for payment, there is no written instrument under which interest is payable. It is, however, contended that interest can be claimed on the principle of the justice , equity and good conscience ,as was suggested by the High Court of Madras in Mahumadeen Abdul Saffur Rowther v. Hamida Bivi Ammal ILR [1919](Mad) 661 . But, it seems to me that the recent decision of the Privy Council in AIR 1938 67 (Privy Council) is opposed to that view. The court there held in that in a case which does not fall within the Interest Act, interest cannot be allowed by way of damages; it may be allowed where there is an agreement for the payment of interest, or, it is payable by the usage of trade having the force of of law. But, there is nothing of that in this case. the law has been altered in England by s. 3, Law Reform (Miscellaneous Provisions) Act, 1934, but that alteration of the law has not been introduced into British India, and in the circumstances, it seems to me that the court has no power to allow interest in a case of this sort."

27. In reaching the above conclusion, the learned judge expressed the view that the Privy council in AIR 1938 67 (Privy Council) had disapproved the principles enunciated by the High Court of Madras in Mahumadeen Abdul Saffur Rowther''s case ILR [1919] Mad 661 . It appears appropriate to prefer the views expressed by the Privy Council in AIR 1938 67 (Privy Council) and High Court of Bombay in Municipal Borogh''s case AIR 1944 Bom 233. For these reasons, I would prefer the views of Beaumont C.J.

28. On the above discussions, it follows that the claim of the petitioner founded on the Interest Act cannot be accepted. I, therefore , reject the same.

29. When refunds are made in pursuance of an order of Tribunal or the first appellate authority under the Act, it is just and reasonable interest on such refunds as in the United States of America (vide Chapter 13, pages 1262-1263 of World Tax Series-Taxation in the United States published by Harward Law School, 1963 Edition). But, that is matter primarily for the Legislature to decide and provide for. But, till then also , this court in exercise of its prerogative powers will not be Justified in directing the payment of the interest. As to what was done by the Supreme Court in Elpro International Ltd. Vs. Joint Secretary, Govt. of India, Ministry of Finance and Others, in exercise of its special jurisdiction under article 136 of Constitution in particular , having regard to the conditions imposed while granting special leave to appeal and the facts and circumstances of that case, cannot be taken as enabling this court to award interest in exercise of its own limited powers under article 226 of the Constitution. I,therefore, find it difficult to award interest in exercise of the powers conferred on this court under article 226 of the Constitution.

30. As all the contentions urged for the petitioner fail, this writ petition is liable to be dismissed I, therefore, dismiss this writ petition and discharge the rule. But, in the circumstances of the case, I direct the parties to bear their own costs.