
(1982) 10 AHC CK 0042

In the Allahabad High Court

Case No : Estate Duty Reference No. 282 of 1982

Smt. Sheila Prasad

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 14-10-1982

Acts Referred:

Estate Duty Act, 1953 — Section 2(16), 5(1)

Estate Duty Act, 1953 — Section 2(16), 5(1)

Estate Duty Act, 1953 — Section 2(16), 5(1)

Citation : (1983) 33 CTR 224 : (1983) 142 ITR 315

Hon'ble Judges : H.N. Seth, J; B.N. Sapru, J

Bench : Division Bench

Advocate : K.B. Jindal, for the Appellant; M. Katju, for the Respondent

Judgement

H.N. Seth, J.—At the instance of the accountable person, Smt. Sheila Prasad, the Income Tax Appellate Tribunal, Allahabad, has made this reference soliciting the opinion of this court on the following question of law :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that a sum of Rs. 28,574 refunded by the Income Tax Department to the widow of the deceased several years after the death of the deceased was the estate of the deceased passing on his death to the accountable person in terms of Section 5(1) of the Estate Duty Act, 1953 ?"

2. The facts in so far as they are material for the purpose of this reference application are that Col. Ajit Prasad secured his premature retirement from Army in February, 1970 ; he got his pension commuted for a sum of Rs. 54,452. Out of this amount, Col. Ajit Prasad was paid only a sum of Rs. 33,714, because the remaining amount of Rs. 20,708 was retained and made over to the Income Tax Department u/s 226(2) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), towards the amount of Income Tax outstanding for the assessment years 1957-58 to 1968-69, on the basis of the ex parte assessment orders passed u/s 144 during his lifetime. Col. Ajit Prasad died on 1st September, 1971, and

thereafter, his widow, Smt. Sheila Prasad, the accountable person, moved the Commissioner of Income Tax u/s 264(1) for setting aside the ex parte assessment orders passed against Col. Ajit Prasad. She also moved the CBDT u/s 119 praying for a condonation of the delay in presenting the aforesaid application. The CBDT condoned the delay. The Commissioner also accepted her application u/s 264(1), Accordingly, fresh assessments were made on her under Sections 143(3)/159 as legal representative of her husband. As a result of revised assessment she was not only refunded the aforesaid amount of Rs. 20,708 but also got a further sum of Rs. 7,856 being extra tax deducted from the annual salary of the deceased while he was in service (total Rs. 28,574).

3. Before the Asst. Controller, the contention on behalf of the accountable person was that since these amounts were received by her after November, 1973, they could not be deemed to have accrued to the deceased and should not be added to the estate left by him. However, the Asst. Controller did not accept this contention. He took the view that the refund was due to the deceased because the amount was attached incorrectly and as a result of the assessment in the lifetime of the deceased, had the deceased lived, he would have secured these refunds. He, therefore held that the refund of Rs. 28,574 was due to the deceased at the time of his death.

4. In appeal the Appellate Controller, Lucknow, held that had proper orders been passed and deduction made accordingly, there would have been no question of refund on that account. He further held that the amount was refundable to the accountable person and the whole thing started because the deceased had deposited that amount. Accordingly, he held that the amount in question was rightly taxed and included by the Asst. Controller in the estate of the deceased.

5. In second appeal, the Income Tax Appellate Tribunal affirmed the order of the Appellate Controller in this regard. Aggrieved, the accountable person has got the aforementioned question of law referred to this court for opinion.

6. Sri Jindal, learned counsel for the accountable person, contended before us that once the amount of tax assessed had been realised from the deceased that amount ceased to be his property. So long as the deceased was alive, he never raised any claim to that amount and it could not be treated as forming part of his estate that passed on his death. It was because of the sole efforts made by the accountable person after the death of her husband that the delay in making the applications for setting aside the ex parte assessment was condoned, the ex parte assessments against her husband were set aside and the said amount was refunded to her. Had the accountable person not made all the efforts, the amount of Rs. 28,574 would never have been refunded. It is thus obvious that the deceased never became entitled to receive the said sum and it cannot be treated as forming part of the estate of her husband which passed on his death.

7. We are not able to accept this submission. It is clear that the application for condoning the delay in making the request for setting aside the ex parte

assessments made against the deceased under the I.T. Act as also that for setting aside such assessment was made by the accountable person in her capacity as heir and legal representative of her deceased husband. Subsequently after setting aside the ex parte assessment made against her husband it was his liability to pay Income Tax during the relevant years that was due and the amount realised from him in excess of what was due from him was ordered to be refunded. While receiving the sum of Rs. 28,574 what the accountable person received was the amount that was due to her deceased husband. It is true that as the ex parte assessment order made against the deceased had not been set aside during his lifetime, it was not possible for the deceased to receive that asset in his lifetime and his right to receive the same depended upon the contingency of the ex parte assessment orders being set aside and fresh assessment being made and that such contingency happened long after his death. However, Section 2(16) of the E.D. Act has defined property passing on the death as including property passing either immediately on the death or after an interval either certainly or contingently or either originally or by way of substitutive limitation and that the phrase "on the death" includes the period ascertainable only by reference to death. It is thus clear that even if the right of the deceased to receive the sum of Rs. 28,574 depended upon some contingency and that contingency took place some time after his death none the less the property in the said sum would be taken to have passed to the accountable person on the death of her husband. In this view of the matter, we are of opinion that the sum of Rs. 28,574 was rightly treated by the estate duty authorities as forming part of the assets of the deceased which passed on his death to the accountable person in terms of Section 5(1) of the E.D. Act, 1953.

8. The question referred to us for opinion is accordingly answered in the affirmative and in favour of the Department. The parties are directed to bear their own costs.