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(2003) 04 AHC CK 0136

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 756 of 2000

Yadavendra Pal Singh APPELLANT

Vs

Assistant Controller of Estate Duty and Another RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:
Estate Duty Act, 1953 — Section 58(3), 61, 64

Citation : (2003) 263 ITR 60 : (2004) 139 TAXMAN 57

Hon'ble Judges : Sudhir Narain, J;D.P. Gupta, J

Bench : Division Bench

Advocate : Malaya Kumar Shukla, for the Appellant; A.N. Mahajan, for the Respondent

Final Decision : Disposed Of

Judgement

1. The petitioner in this writ petition seeks a mandamus commanding the respondents to pay interest to the petitioner on Rs. 13,78,111 at the rate of eight per cent. from January 1, 1986, up to February 8, 1999, and at the rate of 12 per cent. thereafter up to April 13, 2000, which is the date of the refund order.

2. The version of the petitioner is that the assessment order was passed u/s 58(3) of the Estate Duty Act, 1953, by order dated October 23, 1984. The assessment order was amended u/s 61 of the Act vide order dated December 11, 1985, by the Assistant Controller of the Estate Duty. A notice of demand was issued for a sum of Rs. 13,78,111 by the Assistant Controller of the Estate Duty. The petitioner is alleged to have deposited the said amount. Thereafter, the petitioner preferred an appeal and the appeal was allowed and the order of the Assistant Controller of the Estate Duty was set aside. The Department preferred an appeal against the said order. An application for reference was filed by the Department before the Income Tax Appellate Tribunal which also rejected on April 13, 1996. An application for reference was also dismissed by the High Court on February 8, 1999. The petitioner was refunded Rs. 13,78,111 on April 13, 2000. The petitioner is now claiming interest on the said amount, as aforesaid.

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3. We have heard Sri Malaya Kumar Shukla for the petitioner, and Sri A. N. Mahajan for the respondent.

4. Learned counsel for the petitioner has submitted that the petitioner is entitled to the interest u/s 64 of the Estate Duty Act and that the amount has not been paid, therefore, he is entitled to the interest u/s 64(7) of the said Act. Section 64(7) of the said Act read as follows :

"(7) Where the amount of any assessment is reduced as a result of 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 payment of such refund until the disposal of the appeal in the Supreme Court."

5. Sri A. N. Mahajan, learned counsel for the respondent, submits that the payment of the interest is under the discretion of the Controller.

6. In our view, the Controller is bound to permit the payment of interest and the discretion is only in regard to the rate of interest.

7. Considering the facts and circumstances of the case, instead of remanding the matter, we direct that the petitioner shall be entitled to the simple interest at the rate of six per cent. on the amount which has remained with the respondent. The respondent will pay the interest within two months from the date of submission of certified copy of this order before him.

8. With the aforesaid direction, the writ petition is disposed of.

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