Pranavi Ram Baruva (No. 2) Vs. Assistant Controller of Estate Duty

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SooperKanoon Citation : sooperkanoon.com/124405

Court : Guwahati

Decided On : May-15-1975

Judge : M.C. Pathak, C.J. and D.M. Sen, J.

Acts : Estate Duty Act, 1953 - Sections 73(1); Estate Duty Rules, 1953 - Rule 26(5)

Appeal No. : Civil Rule No. 343 of 1971

Appellant : Pranavi Ram Baruva (No. 2)

Respondent : Assistant Controller of Estate Duty

Advocate for Def. : G.K. Talukdar, Standing Counsel and D.K. Talukdar, Jr. Standing Counsel

Advocate for Pet/Ap. : P. Choudhuri and R.L. Rava, Advs.

Prior history : Pathak, C.J. 1. By this application under Article 226/227 of the Constitution of India the accountable person, petitioner, has challenged the order of penalty passed by the Assistant Controller of Estate Duty, Dibrugarh, under Section 73(5) of the Estate Duty Act, 1953, read with Section 46(1) of the Indian Income-tax Act, 1922. 2. The facts of the case are stated in detail in Civil Rule No. 119 of 1971 (Pranavi Ram Baruva v. Asst. Controller of Estate Duty), in which we have de

Judgement :

Pathak, C.J.

1. By this application under Article 226/227 of the Constitution of India the accountable person, petitioner, has challenged the order

of penalty passed by the Assistant Controller of Estate Duty, Dibrugarh, under Section 73(5) of the Estate Duty Act, 1953, read with Section 46(1) of the Indian Income-tax Act, 1922.

2. The facts of the case are stated in detail in Civil Rule No. 119 of 1971 (Pranavi Ram Baruva v. Asst. Controller of Estate Duty

), in which we have delivered our judgment just now. The impugned penalty order actually arises out of the assessment proceedings under the Estate Duty Act, 1953 , and in Civil Rule No. 119 of 1971 (Pranavi Ram Baruva v. Asst. Controller of Estate Duty), we have quashed the rectified assessment order under Section 61 of the Estate Duty Act passed by the Appellate Conttroller on November 14, 1969. The Assistant Controller of Estate Duty, Dibrugarh, issued notice No. P-29/D/2420 dated 22/23-1-71, for paying a sum of Rs. 1,05,174.90, and interest under Section 53 of Rs. 5,409.10, totalling Rs. 1,10,584, which became payable by the accountable person in respect of the estate of late Parvati Prasad Baruva. The contents of the said notice are as follows:

' Enclosed pleased find herewith the revised assessment order under Section 61 of the Estate Duty Act, 1953, which is self explanatory. Resultantly, a sum of Rs. 1,05,174.90 and interest under Section 53 of Rs. 5,409.10 = Rs. 1,10,584 becomes payable by you. Please pay the amount accordingly on or before 15-2-71 as per challan enclosed.'

3. From the impugned order of penalty it is found that for non-compliance of this notice, the penalty of Rs. 5,000 was imposed on the accountable person. Penalty under the Estate Duty Act is leviable under Section 73. Sub-section (1) of Section 73 reads as follows :

'73. (1) When any estate duty, penalty or interest is due in consequence of any order passed under this Act, the Controller shall serve upon the person accountable or other person liable to pay such duty, penalty or interest a notice of demand in the prescribed form specifying the sum so payable and the time within which it shall be payable. '

4. Sub-section (5) of Section 73 reads as follows:

' 73. (5) The provisions of Sub-sections (1), (1 A), (2), (3), (4), (5), (5A), (6) and (7) of Section 46 and Section 47 of the Indian Income-tax Act, 1922 (11 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. '

5. Section 72 of the Estate Duty Act reads as follows :

' 72. Forms.--All affidavits, accounts, certificates, statements and forms used for the purposes of this Part of this Act shall be in such form

and contain such particulars as may be prescribed by the Board and, if so required by the Board, shall be in duplicate and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed by the Board and any person who wilfully fails to comply with the provisions of this section shall be liable to pay by way of penalty a sum not exceeding rupees one thousand :

Provided that no penalty shall be imposed under this section unless the person concerned has been given a reasonable opportunity of being heard.'

6. Rule 26 of the Estate Duty Rules, 1953, prescribes the forms and Rule 26(5)(a) roads as follows :

' Except where it is issued in pursuance of an order under Section 20A or Sub-section (1) of Section 57, the notice of demand under Section 73 shall be in Form

E.D. 7 and shall be accompanied by the assessment Form E.D. 8:...'

7. The Forms E.D. 7 and E.D. 8 are prescribed.

8. Section 46(1) of the Indian Income-tax Act, 1922, reads as follows:

'When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, u sum not exceeding that amount shall be recovered from the assessee by way of penalty. '

9. So, as provided under Section 46(1)of the Indian Income-tax Act, 1922, when an accountable person is in default in making a payment of estate duty, then the Assistant Controller may in his discretion impose some penalty in addition to the duty assessed. Therefore, there must a default first in making the payment and to make out a default, a notice of demand under Section 73(1) of the Estate Duty Act must be served on the accountable person and this notice must also be in the prescribed form, as laid down by Rule 26 of the Estate Duty Rules. Unless a notice of demand in the prescribed form is served on the accountable person, it is doubtful whether the accountable person can be said to be in default in payment of the duty, because law requires that the demand notice must be in the prescribed form.

10. Clauses (3) and (4) of the prescribed Form E.D. 7 are as follows :

' 3. If the amount is not paid on or before the date specified above, please note that you will be liable under Sub-section (1) of Section 46 of the Indian Income-tax Act, 1922, as applied to estate duty under Sub-section (5) of Section 73 of the Estate Duty Act, 1953, to a penalty which may be as great as the duty due from you.

4. If you intend to appeal against the assessment/penalty you may present an appeal to the Appellate Controller within thirty days of receipt of this notice in the form prescribed under Section 62 of the Estate Duty

Act, 1953, duly verified as laid down in that form, but no appeal will lie against an order under Sub-section (1) of Section 46 of the Indian Income-tax Act, 1922, as applied under Sub-section (5) of Section 73 of the Estate Duty Act, 1953, unless the duty has been paid before the appeal is filed.'

11. The above two clauses are not found in the demand notice served in the instant case. In consideration of the provisions of Section 73 and the other relevant provisions, we find that in order to assume jurisdiction to impose penalty for default in payment of duty a demand notice in the prescribed form must be served on the accountable person. Otherwise, the authority concerned may not have jurisdiction to impose penalty for default. This is because before an accountable person may be made liable for default in payment of duty, he must be specifically informed what amount is due from him and what may be the consequence of default in payment and also what remedies he may have against the assessment or imposition of penalty. These salutary provisions in the demand notice are to warn the accountable person against default which may invite penalty. In the instant case, however, we find that before imposing the penalty the demand notice in the prescribed form was not served on the accountable person.

12. That apart, we find that the demand notice dated 22/23-1-71, quoted hereinabove, speaks of revised assessment under Section 61 of the Estate Duty Act. That order of rectification passed under Section 61 of the Act by the Appellate Controller was challenged in this court which was the subject-matter of Civil Rule No. 119 of 1971 (Pranavi Raw Baruva (No. 1) v. Assistant Controller of Estate Duty) in which we have delivered our judgment today, and that revised assessment under Section 61 of the Estate Duty Act passed by the Appellate Controller has been quashed. So the demand that was made in the demand notice dated 22/23-1-71 is no longer a valid demand in its entirety and that being so the imposition of penalty for non-compliance of that demand notice also must fall through. In any view of the matter, we find that the impugned order of penalty is not sustainable in law. Accordingly, we quash the impugned order of penalty. The petition is accordingly allowed and the rule is made absolute. There will be no order as to costs.

D.M. Sen, J.

13. I agree.