

H.M. Jaffar Vs. Assistant Controller of Estate Duty

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Court : Karnataka

Decided On : Nov-07-1979

Reported in : [1980]124ITR443(KAR); [1980]124ITR443(Karn)

Judge : M.K. Srinivas Iyengar, J.

Acts : [Estate Duty Act, 1953](#) - Sections 61, 70 and 70(2)

Appeal No. : Writ Petition No. 3781 of 1975

Appellant : H.M. Jaffar

Respondent : Assistant Controller of Estate Duty

Advocate for Def. : S.R. Rajasekharamurthy, Adv.

Advocate for Pet/Ap. : G. Sarangan, Adv.

Judgement :

Srinivasa Iyengar, J.

1. In this petition, the order of the Assistant Controller of Estate Duty, Mangalore, dated February 17, 1975 (Ex. E), purporting to be under s. 61 read with s. 70 of the E.D. Act, 1953, is challenged.

2. The petitioner is the accountable person who filed the return in respect of the estate consequent on the death of one Habibullah on January 9, 1963. An

assessment order was made on December 25, 1961, a copy of which has been filed as Ex. A. The principal value of the estate of the deceased was valued at Rs. 14,28,450. The total tax payable was calculated at Rs. 2,58,840.41 and after giving deduction to the amount that had been paid under s. 57, the balance payable was Rs. 2,18,600.48. This was directed to be paid on or before January 31, 1967, and demand notice and challan were also sent along with the copy of the order. This order did not contain any direction in regard to the payment of interest. There was an appeal against this assessment to the Appellate CED. On the ground that the duty had been allowed to be in arrears, he caused notices to be issued under s. 46(5A) of the Indian I.T. Act. The petitioner filed a writ petition, W.P. No. 1736 of 1967 challenging the notices issued. An interim order against the enforcement of the notices was made and, ultimately, the writ petition was disposed of by consent of parties on June 6, 1969. The parties were agreed that the payment of the outstanding amount was to be made in five equal instalments. It was spread a period of 2 1/2 years from the date of the order. The first instalment had to be paid on July 6, 1967, the next instalment on December 12, 1969, and the remaining three instalment within the interval of six months from that day. It would appear that except for a short delay, the tax due was paid up. The Appellate CED disposed of the appeal on March 22, 1971, and the Asst. CED made a consequential order giving effect to the order of the Appellate CED on May 18, 1971. There was a reduction in the tax payable about Rs. 2,000. After giving effect to the amount paid up, it transpired that there was a balance of Rs. 37,751.60 due by way of tax on May 18, 1971. It transpired that the Asst. CED made an order imposing interest on March 28, 1972. This was challenged before this court in W.P. No. 1679 of 1972. It had been contended that the proceedings taken to levy interest under s. 70(2) was untenable and the order had been made without affording an opportunity to be heard. This court by its order dated February 1, 1974, set aside that order with liberty reserved to the Asst. CED to make a fresh order after affording a reasonable opportunity to the petitioner. Thereafter, the other was made on February 17, 1975, which is challenged in this writ petition.

3. The petitioner had preferred a further appeal to the Income-tax Appellate Tribunal against the order of the Appellate CED. The Tribunal decided the appeal on December 21, 1974. Some reliefs had been allowed to the accountable person.

The order made on February 17, 1975, and impugned in this writ petition, was one made without taking into account the relief that had been granted by the Appellate Tribunal. The order, Ex. E, shows that the tax payable after giving deduction to the amount paid under s. 57 was Rs. 2,16,101.22 and the amount paid up amounted to Rs. 2,16,100.48. It was shown that the balance of estate duty payable was Rs. 0.74. A calculation of interest due was made and it was stated to be Rs. 20,812.20. Thereafter, the Asst. CED made an order giving effect to the Appellate Tribunal's order, a copy of which has been filed as Ex. G. That shows that the estate duty payable after giving deduction to the amount paid under s. 57 was Rs. 2,14,551.67. Therefore, it is clear that if the order of the Tribunal had been given effect to at the time the order, Ex. E, was made, there would have been no balance of amount due by way of estate duty and in fact the amount paid would to some extent be an over-payment, as in the computation made under Ex. G after appropriating the payments made towards the interest calculated, also the net amount payable is shown as Rs. 18,868.40. I may also mention here that after the filing of this writ petition, the enforcement of this demand was stayed subject to the petitioner depositing 50% of the amount and the petitioner deposited 50% of that amount.

4. It is further relevant to mention here that the accountable person sought for a reference of certain questions to this court and there were references which were numbered as Tax Revision Case No. 133/75 and Tax Revision Case No. 80/77 [H. M. Jaffer v. CED : [1980]123ITR586(KAR)]. These references were answered by the judgment of this court dated June 12, 1979. The effect of this judgment is that certain properties which were treated as properties passing on death were to be excluded. Thus, by giving effect to the judgment of this court in those references, the estate duty liability would get reduced considerably and, according to the rough calculation made by the learned counsel for the petitioner, the estate duty would be only about Rs. 1,25,610 or sometime less than that if certain rebates are properly calculated.

5. It is contended by Sri Sarangan, learned counsel for the petitioner, that the proceedings taken by the respondent are without jurisdiction. His argument is that there was no mistake apparent on record which could be rectified by taking

recourse to s. 61. There was no mistake on record as such and the E.D. Act does not prescribe an automatic imposition of interest on the duty payable. The only provision for imposing interest is to be found in s. 70 which consists of two clauses. It is as follows :

'70. (1) Where the Controller is satisfied that the estate duty leviable in respect of any property cannot, without excessive sacrifice, be raised at once, he may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such other terms as he may think fit.

(2) Notwithstanding anything contained in sub-section (1), estate duty in respect of immovable property may at the option of the person accountable be paid in four equal yearly instalments or eight equal half-yearly instalments with interest at the rate of four per cent. per annum or any higher interest yielded by the property from the date on which the first instalment is payable and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid with such interest to the date of payment may be paid at any time and in case where the property is sold shall be paid on the completion of the sale and if not so paid shall be recovered in the manner specified in section 73.'

6. It is indisputable that there was no order under s. 70(1) as such, though in the order, Ex. E, the Assistant Controller attempted to say that some instalments had been granted both under ss. 70(1) and 70(2). It is clear that there was no such order under s. 70(1) actually. The Appellate CED had taken proceedings under s. 46(5A) of the Indian I.T. Act very soon after the assessment order and that had been challenged in this court in W.P. No. 1736 of 1967. Even at the time an order was made on March 28, 1972, which was challenged in W.P. No. 1579 of 1972, that purported to impose interest only under s. 70(2) and not under s. 70(1). There is nothing on record to show that there was any such satisfaction as is contemplated under s. 70(1) by the Asst. CED to make an order thereunder.

7. As stated earlier, W.P. No. 1736/67 was disposed of on the consent of both the parties. That order did not make any provision for payment of interest. The Asst.

CED did not himself make any order under s. 70 or stipulate for payment of any interest, subject to payment of which only, instalments were to be granted.

8. It was, however, argued by Sri Rajasekharamurthy that the order made by this court on June 6, 1969, by implication may be considered as an order under s. 70(2). It is not possible to put such a construction on the order. Any stipulation for payment of interest is glaringly absent in that order. It is also clear that instalments allowed were not in circumstances contemplated under s. 70(2) or in accord therewith. The payment was spread over a period of 2 1/2 years only. Section 70(2) contemplates an order by the Controller who should fix up the rate of interest and that the amount to be paid together with interest should be added to each instalment. All these factors cannot be read into the order of the High Court or treated as existing by way of implication merely on the existence of s. 70(2) without application of the mind by the Assistant Controller by himself. Though an order had been made under s. 70(2) on March 28, 1972, that was quashed as having been made in violation of the principles of natural justice. Therefore, the only effective order would be the one made on February 17, 1975.

9. It was argued by the learned counsel for the petitioner, that since by that time the entire duty payable, even as per the order of the Appellate Tribunal, had been paid up and no amount was outstanding, the imposition of interest could not have been made at that stage as if the estate duty was in arrears. Reliance was placed on a decision of the High Court of Calcutta in the Case of Prem Nath Khandelwal v. Assistant CED : [1970]77ITR949(Cal) . That decision lays down that there must be an order of the Controller in regard to the payment of interest as required under s. 70 and without such an order, there was no liability to pay interest as the Act does not make any provision for payment of interest automatically. A further question that was canvassed before that High Court was whether the department can demand interest after all the duty levied had been paid up, because the duty was paid by instalments. The High Court held that no such demand could be made. It was observed that s. 70 was the only section providing for payment of interest and there was no other section and such interest does not begin to run unless there be an order under s. 70 of the E.D. Act, 1953, after the time for payment by instalment is allowed. The High Court further observed as follows (p.

954) :

'In the present case, the order under section 70 of the Act was made after the assessed amount of duty was paid up and such nothing was due on the date the order was made on which the interest could be levied and as such section 70 of the [Estate Duty Act, 1953](#), in terms does not apply.'

10. I entirely agree with the observations made in the said case. As pointed out earlier, by the time the impugned order was made on February 17, 1975, the duty as would have been payable consequent on the order of the Appellate Tribunal, had been more than paid up. There was no question of allowing payment being made in instalments and imposition of interest as a consequence thereof. As indicated earlier, consequent on the decision of this court in the references, the accountable person would be entitled to a refund of a considerable amount. Having regard to the facts and circumstances of the case it is clear that there was no error in any order which was required to be rectified under s. 61, and the order levying interest, as has been done by the impugned order, is not warranted by the terms of s. 70(2) of the E.D. Act.

11. Accordingly, the order, Ex. E, is quashed and the rule is made absolute. Parties shall, however, bear their own costs.

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