

Smt. Jayakumari Vs. Assistant Controller of Estate Duty

Smt. Jayakumari Vs. Assistant Controller of Estate Duty

SooperKanoon Citation : sooperkanoon.com/380323

Court : Karnataka

Decided On : Feb-05-1991

Reported in : (1991)94CTR(Kar)274; ILR1991KAR856; [1991]191ITR273(KAR); [1991]191ITR273(Karn)

Judge : S. Mohan, C.J. and ;Shivaraj V. Patil, J.

Acts : [Income Tax Act, 1961](#) - Sections 28

Appeal No. : Writ Appeal No. 523 of 1989

Appellant : Smt. Jayakumari

Respondent : Assistant Controller of Estate Duty

Advocate for Def. : K.M.L. Majele, Adv.

Advocate for Pet/Ap. : Deokinandan, Adv.

Judgement :

S. Mohan, C.J.

1. The short facts leading to this appeal are as follows :

The estate duty of the deceased, Smt. H. H. Rajkuverba Maharani of Gondal came up for assessment. The death occurred on October 14, 1966. Therefore, the due date within which the return ought to have been filed is April 13, 1967. Extension

was prayed for by the accountable person for filing the return. Such extension was granted by a letter dated November 22, 1967. The return was filed on January 5, 1968. On January 6, 1968, a provisional assessment to estate duty was made Rs. 6,67,615. The accountable person prayed for instalments. Whereupon, the appellant was ordered to pay the duty in instalments, on November 29, 1968, under section 70(1) of the Estate Duty Act, 1953 (hereinafter referred to as 'the Act'). This was with effect from January 5, 1968, viz., the date on which the return was filed. Thereafter, the final assessment was made on November 30, 1972, estimating the duty at Rs. 63,15,970. On January 1, 1973, an application for instalments was filed and that was granted on February 22, 1973. Thereupon, the proceedings of the Assistant Controller of Estate Duty, Bangalore, dated November 30, 1978 were made to the following effect :

'No 60/66-67

Office of the Asst. Controller of Estate Duty,

Unity Building, Annex,

Bangalore,

dated 30-11-1978.

PROCEEDINGS OF THE ASST. CONTROLLER OF ESTATE DUTY,
BANGALORE

Sri R. Venkataramana Iyer, M.Sc.

Asst. Controller of Estate Duty.

Sub: Estate of late Sri H. H. Rajkuberba Maharani of Gondal -Regarding.

ORDER UNDER SECTION 70 OF THE ESTATE DUTY ACT

In this case, the accountable persons were allowed to pay the duty in instalment scheme as provided under section 70 of the Estate Duty Act, 1953, subject to payment of interest. As such, interest under section 70 on the belated payments is

charged as under :

Rs. Duty as per order dated February 20, 1978 48,37,392 Interest under section 70
provisional duty 57,208 Interest under rule 42 provisional duty 2,07,955 Interest
under section 70 on regular duty (now charged) 3,97,981 ----- 55,00,436 Less:
duty paid 51,77,555 ----- Balance payable 3,22,881 ----- (Sd.)

R. Venkataramana Iyer,

Asst. Controller of Estate Duty,

Bangalore.

To,

1. H. H. Vijayabha Rajamatha of Bhavanagar,

Kailas, Peddar Road,

Bombay.

2. H. H. Jayalluman of Wadhawan,

No. 1, Cunningham Road,

Bangalore.

INTEREST UNDER SECTION 70 FOR YEAR ENDING Rs. 31-3-1973 48,71,731 31-3-
1974 1,24,90,131 31-3-1975 1,10,50,531 31-3-1976 53,12,031 31-3-1977 31,56,231 31-3-1978
23,60,907 7-8-1978 5,46,700 ----- Total 3,97,88,100 ----- (Sd.)

R. Venkataramana Iyer,

Asst. Controller of Estate Duty,

Bangalore.'

2. This was appealed against. The Appellate Controller by his order dated January 29, 1982, confirmed the order passed by the Assistant Controller of Estate Duty,

Bangalore. The matter was taken to the Appellate Tribunal in E.D.A. No. 13/(Bang)1/1982 with regard to the payment of interest. The Tribunal was of the view that no appeal would lie and, in the result, the appeal was dismissed. This was questioned in W.P. No. 18655 of 1984. The matter came up before our learned brother, Justice Rajendra Babu.

3. Learned counsel appearing for the petitioner urged that the direction to pay interest on provisional assessment was bad. In any event, under section 70 of the Act, interest cannot be demanded after the payment of the duty of August 7, 1978 and, therefore, the order dated November 30, 1978, is bad in law. The learned single judge held that part of levy of interest on regular duty at Rs. 3,97,981 was liable to be quashed. Accordingly, he set aside the said demand and retained the rest; hence, the appeal.

4. It may also be stated that sum of Rs. 2,07,955 being interest under rule 42 was paid. Now the dispute is only with reference to Rs. 57,208. The argument before us is that there is no scope for levy of interest on provisional assessment. In support of the same, reliance is placed on the decision in *Bettiah Estate v. Union of India* : [1977]108ITR210(Patna) . It is argued on the strength of this ruling that only when the assessment is complete, levy of interest is permissible in law.

5. In opposition to this, learned counsel for the respondent submits that section 57 of the Act takes care of a situation in relation to provisional assessment. Where, therefore, the provisional assessment was made on January 6, 1968, at Rs. 6,67,615 and if the accountable person prayed for instalments and thereby postponed payment of this duty, it is open to the assessing authority to demand interest not exceeding 4% by virtue of the powers conferred on him under section 70(1) of the Act. It is further submitted that both the sub-sections, namely, sub-sections (1) and (2) of section 70 of the Act, operate in different fields, and, therefore, the levy is perfectly valid. The ruling in *Bettiah Estate v. Union of India* : [1977]108ITR210(Patna) was a case relating to rectification under section 61 of the Act. There, the question arose whether after rectification of the assessment, interest could be demanded under section 70(2) of the Act. The court answered the question in the negative. That case has no application.

6. On a careful consideration of the above, we are in entire agreement with the argument advanced on behalf of the Revenue. Section 57 of the Act deals with power to make provisional assessment. The facts narrated above would clearly show that, consequent upon the return filed by the accountable person on January 5, 1968, a provisional assessment was made on January 6, 1968. At that stage, the accountable person prayed for payment in instalment. The effect of it is that payment of estate duty was postponed to a later date. It was under these circumstances, by an order dated November 29, 1968, that section 70(1) was invoked. We may now usefully extract the said sub-section which reads as under :

'Section 70. - Where the Controller is satisfied that the estate duty livable 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.'

7. A careful reading of the above section clearly discloses that it applies to any case where payment of estate duty is involved and that payment is post-poned. It does not limit itself only to the final assessment.

8. As rightly contended on behalf of the Revenue, the two sub-section, namely, sub-sections (1) and (2), operate in different fields. That is evident from the use of the non obstante clause in sub-section (2). Therefore, we are unable to accept the contention of the appellant. The ruling in Bettiah Estate v. Union of India : [1977]108ITR210(Patna) is a case that relates to rectification under section 61 of the Act. There the question which arose was whether after the regular assessment there could be payment of interest under section 70(2). The court held that the same was not permissible. But the situation here is entirely different and is governed by section 70(1) of the Act. As a matter of fact, at pages 211 and 212 in Bettiah Estate v. Union of India : [1977]108ITR210(Patna) , it is stated thus :

'The provision for making a provisional assessment is contained in section 57 of the Act which empowers the Controller to make in a summary manner a provisional assessment of the estate duty payable by the person delivering the account on the basis of the account delivered, at any time after the receipt of the

account by him under sub-section (2) of section 57 of the Act. Upon making of the provisional assessment, the assessee has to pay to the Controller or furnish security to his satisfaction for the payment of the estate duty, in accordance with the provisional assessment and the Controller thereupon is to grant him a certificate that such duty has been or will be paid or that none is due, as the case may be, in respect of the property mentioned in the certificate.'

9. Therefore, in so far as it was held that only an error apparent on the face of the record could be rectified under section 61 of the Act after the regular assessment was made, there was no possibility of payment of interest under section 70(2) of the Act. Hence, this case is entirely distinguishable.

10. In the result, we dismiss the writ appeal. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com