Nawab Ghazi Jung Vs. the Assistant Controller of Estate Duty, Hyderabad

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SooperKanoon Citation : sooperkanoon.com/428013

Court : Andhra Pradesh

Decided On : Apr-28-1964

Reported in : AIR1965AP218; [1965]56ITR8(AP)

Judge : Gopalakrishnan Nair, J.

Acts : Estate Duty Act 1953 - Sections 57(1), 70(2), 73(1), and 73(2)

Appeal No. : Writ Petn. No. 119 of 1964

Appellant : Nawab Ghazi Jung

Respondent : The Assistant Controller of Estate Duty, Hyderabad

Advocate for Def. : C. Kondiah, Adv.

Advocate for Pet/Ap. : Y.V. Anjaneyulu, Adv.

Judgement :
ORDER

(1) The petitioner is an 'Accountable person' within the meaning of Sec. 53 of the Estate Duty Act (hereinafter referred to as the Act). The property in respect of which he has to pay estate duty belonged to his wife who died on 30-9-1955. She was one of the several heirs of late Nawab Salar Jung. The petitioner as the person to whom the property passed on the death of his wife, filed an account on 10-2-1961 declaring Rs. 1,300/- as the value of the property . But subsequently it

was found that his deceased wife had a 6 1/2 / 192 share in the Salar Jung Estate. This share was valued by the Assistant Controller (Respondent) at Rs. 4,84,713/-. To this was added the sum of Rs. 1,300/- which represented the value of the personal belongings of the petitioner's deceased wife. The respondent assessed the duty on the estate at Rs. 49,152/-. Of this, Rs. 23,109/- represented the duty on immovable property . A notice of demand under Sec. 73(1) of the Act was served on the petitioner on 25-7-1963 and he was called upon to pay the duty by the fifteenth of August, 1963.

After making some comparatively small payments towards the duty, the petitioner applied to the respondent to permit him to exercise the option of paying the duty, payable by him on immovable property, in four equal annual instalments. This application was based on Sec. 70(2) of the Act. The contention of the petitioner was that the first of the four yearly instalments contemplated by Section 70(2) was payable of 15-8-1963 which was the date fixed in the demand notice served under Sec. 73(1) for payment of estate duty. But the respondent did not accept this position. He took the view that the crucial date was the date of the death of the petitioner's wife. This date was 30-9-1955. As, much more than four years had elapsed from that date, the Assistant Controller held that the petitioner was not entitled to claim the benefit of Sec. 70(2) of the Act. It is this order that is now impugned by the petitioner in these proceedings. He asks for a writ of Mandamus to to compel the Assistant Controller to forbear from collecting the estate duty in one lump sum in disregard of Sec. 70(2) of the Act. The Department resists this Writ Petition and supports the impugned order passed by the Assistant Controller.

(2) The question that falls for consideration relates to the true scope and meaning of Sec. 70(2) of the Act which reads ;

'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 Sec. 73.'

The words 'from the date on which the first instalment is payable' are key words. A reference to Section 73(1) and 73(2) is useful to elucidate the position. These sections are 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.'

(2) Any amount specified as payable in a notice of demand issued under Sub-sec. (1) shall be paid within the time, at the place and to the person mentioned in the notice, or if no time is so mentioned then on or before the first day of the second month following the date of service of the notice and any person accountable falling so to pay shall be deemed to be in default.'

Section 73(1) requires that the demand notice should fix the time within which the duty shall be payable. Sub-section (2) contemplates a case where no such time is stipulated in the notice. In that case, the duty is to be paid on or before the first day of the second month following the date of service of the notice. And if on the date specified in the notice under Sec. 73(1) or on the date statutorily fixed by Section 73(2) the duty is not paid, the accountable person shall be deemed to be in default. These provisions indicate beyond reasonable doubt that the duty becomes payable on the date specified in the notice or on the date contemplated by Sec. 73(2) of the Act. It does not become payable at an earlier date. No doubt, Sec. 57(1) of the Act states that estate duty 'shall be due from the date of the death of the deceased'. But this is more or less in the nature of a declaration ; it declares the time at which the liability to pay estate duty comes into being. It does not deal with the date of actual payment of the duty.

The date of actual payment will arrive only after the property is valued, the duty is assessed and a notice of demand is issued. What Sec. 70(2) does is to give an option to the accountable person to pay the duty in respect of immovable property in four equal yearly instalments instead of in a lump sum on the date specified in the notice or prescribed by sub-section (2) of Sec. 73. Therefore, the date on which the first instalment is payable as referred to in Sec. 70(2) is the date which is mentioned in the notice under Sec. 73(1) of the date which is statutorily fixed under Sec. 73(2). The dates for payment of the other three instalments which Sec. 70(2) speaks of must be computed on this basis. The interpretation put upon Sec. 70(2) by the Assistant Controller does not appear to give effect to the plain words of the section. It also disregarded the provisions of Sec. 73(1) and 73(2). Further, it does not appear to make a distinction between a liability existing and it being quantified in terms of money and rendered payable on a specified date.

The words 'estate duty in respect of immovable property may at the option of the person accountable be paid in four equal yearly instalments' occurring in Sec. 70(2) presuppose the existence of an order of assessment which has ascertained and specified the sum of money payable as estate duty. If the total sum of money to be paid is not known, it will obviously be impossible to pay it 'in four equal yearly instalments'. It is the notice of demand under Sec. 73(1) that informs the person accountable of the sum of money to be paid by him as estate duty. Section 70(2) can therefore come into play only after the notice of demand under Sec. 73(1) is issued.

(3) Mr. Kondaiah for the Department however argues that the crucial date for purpose of Sec. 70(2) is 'The date of the death of the deceased' when the liability springs into being according to Sec. 57(1). This argument completely ignores, instead of seeking to meet, the reasons mentioned above. If Mr. Kondaiah's interpretation is accepted, Sec. 70(2) will become practically a dead letter in a case where the assessing authority takes more than four years from the date of death of the deceased to complete the assessment . It is not unoften that proceedings for assessment of estate duty take more than four years to complete. Therefore, the construction contended for by Mr. Kondaiah will practically defeat the purpose of Sec. 70(2). A substantial benefit which that Section purports to

grant to a person cannot be defeated by mere delay on the part of the assessing authority to complete the assessment . The Legislature could not have intended such a result. Yet, if the construction put forward on behalf of the Department is accepted, that would be the result.

(4) Besides, even if Sec. 70(2) is not there, a person like the petitioner will have to pay the estate duty only on the date indicated by Sec. 73(1) or (2). But if he is to get the benefit of Sec. 70(2) which the legislature plainly intended to confer on him, should he go back to a much anterior date for computing the period of time during which the duty can be paid under that section in four equal yearly instalments It does not hold to reason to say that if the payment is to be made in a lump sum, the date contemplated by Sections 73(1) and 73(2) will be the proper date, but if the payment is to be made in instalments under Sec. 70(2), the date will be the date of the death of the deceased. There is no warrant for adopting two different dates in the matter of payment of estate duty. The true intention of the legislature appears to be that what is payable on a particular state in a lump sum may be paid in four equal annual instalments beginning from that date.

I think Sec. 70(2) has to be construed accordingly. I must add that a provision in a fiscal statute which is intended for the benefit of the tax payer must be construed liberally in favour of the tax payer with a view to ensuring the benefit to him and not in a narrow and pedantic manner with an eye to deprive him of the benefit. From this angle also, I think the construction contended for by the petitioner has to be accepted. It follows that one-fourth of Rs. 23,109/- became payable by the petitioner on 15th August 1963, and another one-fourth on 15th August 1964. The rest of the amount has to be paid by him in two equal instalments, one on the 15th August 1965 and the other on the 15th August, 1966. The respondent will be entitled to collect the duty only on this basis. The petitioner will of course be liable to pay also interest as prescribed in Sec. 70(2). If the petitioner has not already paid the portion of the estate duty which became payable on 15-8-1963 and 15-8-1964, it will be open to the respondent to realise it from him by taking all proceedings available to him under the Act.

(5) There is one other matter which has now to be dealt with. It is that a sum of Rs. 75,213/- which was due to the deceased for her share of the Jagir commutation amount has not yet been paid by the Government . The contention of the petitioner is that until the amount is received by him, it ought not to be regarded as part of the property of his deceased wife which passed to him on her death. But the petitioner has already preferred an appeal in respect of this matter to the Appellate Controller at Delhi. Therefore, the merits of this matter cannot be gone into in this writ petition . Indeed, the petitioner's learned counsel has not asked me to go into the merits of this claim . What he wants is that the proportionate duty payable on this sum of money should not be collected from him pending the appeal. I do not think that I should exercise the discretion of granting a stay of collection of a portion of the estate duty. This discretion legitimately belongs to the Assistant Controller under Sec. 73(4) of the Act. It is open to the petitioner to approach the Assistant Controller and get appropriate relief.

(6) Though the petitioner claimed in the petition a stay of collection of the estate duty payable on another sum of Rs. 72,206/-, his learned counsel does not press it, and it is therefore unnecessary to consider it.

(7) This Writ Petition is allowed in part as indicated above. As the petitioner has succeeded substantially in this writ petition, I direct the respondent to pay the costs of the petitioner . Counsel's fee Rs. 100/-.

(8) Petition allowed.