Repaka Nagamani Vs. Assistant Controller of Estate Duty, Guntur, A.P. and Others

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SooperKanoon Citation : sooperkanoon.com/437440

Court : Andhra Pradesh

Decided On : Apr-04-2001

Reported in : 2001(4)ALD136; 2001(4)ALT7

Judge : S.R. Nayak and ;S. Ananda Reddy, JJ.

Acts : Estate Duty Act, 1953 - Sections 58(3), 59, 61, 73 (A and 5); Indian Income Tax Act, 1922 - Sections 46(1)

Appeal No. : WP No. 3566 of 1990

Appellant : Repaka Nagamani

Respondent : Assistant Controller of Estate Duty, Guntur, A.P. and Others

Advocate for Def. : Mr. S.R. Ashok, Adv.

Advocate for Pet/Ap. : Mr. T. Ramam, Adv.

Judgement :
ORDER

S. Ananda Reddy, J.

1. This petition is filed praying this Court to call for the records in GIR No.45l-ED, dated 7-9-1982 on the file of the 1st respondent and quash the same by issuing an appropriate writ, order or direction holding that the impugned re-assessment was illegal and against law, as it was passed after the prescribed period of limitation.

2. The petitioner is the accountable person in respect of the estate of late Repaka Viswanatharao, who passed away on 9-2-1978. She filed the return of estate before the Assistant Controller of Estate Duty, valuing the estate at Rs. 2,11,652-00. The 1st respondent-assessing officer determined the principal value of the estate at Rs.3,70-140/- while framing the assessment under Section 58(3) of the Estate Duty Act, 1953 (for short 'the Act'), dated 6-12-1978 and levied the duty of Rs.39,001/-, which was paid by the petitioner. The 1st respondent later initiated re-assessment proceedings by issuing a notice under Section 59 of the Act dated 17-8-1982 calling upon the petitioner to deliver an account of all properties in respect of which estate duty is payable by 25-8-1982. In response to the said notice, the petitioner herein, who was the accountable person, filed a revised return declaring the net principal value of Rs.2,11,652/- as was originally returned. However, re-assessment was framed by order dated 17th September, 1982, determined the net value of Rs.3,90,140/- and the duty payable thereon at Rs. 43,965/- and after adjusting the amount already paid, determined the total at Rs.4,844/-. The petitioner later made an application under Section 61 of the Act, on 17th February, 1983 seeking rectification of the assessment on the ground that the notice issued under Section 59 was issued beyond the period of limitation prescribed under Section 73-A(b) of the Act. Therefore sought for vacating the re-assessment order. According to the petitioner, in response to the said application no orders have been passed by the 1st respondent. However, the petitioner received a communication dated 27-10-1989 whereunder it was informed to the petitioner that as the petitioner failed to comply with the notice of demand, the Assessing Officerproposed to impose penalty under Section 73(5) of the Act, read with Section 46(1) of the Indian Income Tax Act, 1922, for the default and the petitioner was directed to appear either in person or through representation on 9-11-1989. It is stated by the petitioner that in response to the said notice the petitioner made a representation to the Commissioner of Estate Duty complaining of her grievance regarding the framing of re-assessment beyond the period of limitation and non-

disposal of the application filed by the petitioner under Section 61 and also bringing to the notice of the Commissioner about the proposal to levy penalty. The said petition was presented before the Commissioner on 4-11-1989. It is stated by the petitioner that thereafter the 1st respondent did not take any further steps with reference to the proposed action to levy penalty. It is further stated that the petitioner has stated in the re-presentation dated 4-11-1989 to the 1st respondent, about the pendency of the rectification petition filed under Section 61 against the reassessment order. Thereafter also there was no response with reference to the rectification petition filed by the petitioner. But, however, a communication was issued from the office of the 1 st respondent on 9-2-1990 directing the petitioner to pay a sum of Rs.4,844/- together with interest of Rs.3,984/- totalling to Rs.8,828/- without any further delay and failure to pay will entail initiation of coercive steps for the recovery of the amount. The petitioner, therefore, assailing the notice filed the present writ petition.

3. The learned Counsel for the petitioner contended that the 1st respondent being a quasi-judicial authority while framing the re-assessment has to conform to the provisions of the Act. According to the learned Counsel, the original assessment was framed on 16th December, 1978 while notice for re-assessment was issued on 17-8-1982. It is stated that a period of three years is prescribed for initiation and completion of re-assessment proceedings under Section 73A(b) of the Act. As admittedly, the notice itself was issued beyond the period of three years, the action of the 1st respondent in initiating and framing the re-assessment is beyond the period of limitation and therefore the said re-assessment order is void and illegal order, which cannot be enforced against the petitioner. The learned Counsel also stated that the petitioner did not object to the reassessment at the time of framing the assessment as the petitioner was not aware of the provisions of limitation and therefore immediately thereafter filed an application under Section 61 of the Act on 17-2-1983 for rectification of the assessment so as to cancel the assessment and dropping of the re-assessment proceedings. But no action was taken, though the 1st respondent was under an obligation to dispose of the said application. Therefore, it is contended that the action of the 1st respondent in issuing a notice of demand on 9-2-1990 has no legal force and it cannot be enforced against the petitioner.

4. The learned Standing Counsel appearing for the respondents, on the other hand, supported the action of the 1st respondent, it is stated that re-assessment was framed as early as on 7th September, 1982. The petitioner has got a remedy of appeal against the said re-assessment. As the petitioner failed to file any appeal assailing the validity of the said re-assessment, it is not open to the petitioner to approach this Court bypassing the statutory remedies that are available. Though no counter has been filed on behalf of the respondents denying the allegations, the learned Counsel for the respondents stated that the rectification petition filed by the petitioner under Section 61 was rejected and the same was communicated to the petitioner on 4-3-1983. Therefore, there is no merit in the petitioner's contention that his applicationmade under Section 61 was not disposed of. The learned Counsel also contended that the petitioner has not raised any objection as to the period of limitation at the time of framing of re-assessment and it is not open to the petitioner to raise such a contention at a later stage, that too in a writ petition filed before this Court. Therefore, sought for dismissal of the writ petition as devoid of any merit.

5. Heard both sides and considered the material on record.

6. The dispute is 'Whether the reassessment order framed by the 1 st respondent was barred by limitation?

7. It is the case of the petitioner that original assessment was framed on 6-12-1978 and later a notice under Section 59 was issued on 17-8-1982 calling upon the petitioner to file an account of all the properties in respect of the estate. In response to the said notice, the petitioner no doubt filed a return declaring the same principal net value of the estate. However, assessment was framed determining the principal net value at Rs.3,90,140/- and the tax payable thereon at Rs.43,965/-. The contention of the petitioner is that the reassessment is barred by limitation and therefore the petitioner filed an application under Section 61 of the Act for rectification of the assessment. As the said application was not disposed of, the petitioner was under the impression that her application would be considered on merits and decided in her favour. But, however, subsequent proceedings were initiated by the 1st respondent proposing to levy the penalty by his communication

dated 27-10-1989. Though no further action was taken in response to the said notice, but, however, they have issued a communication dated 9-2-1990 demanding the payment of arrears, which is assailed before this Court. No doubt the petitioner has got a statutory remedy of appeal against the original order of re-assessment, but however, the petitioner did not file any appeal. But at the same time, the petitioner did not keep quiet but made an application under Section 61 of the Act seeking rectification of the assessment, which was not at all disposed ofby the 1st respondent. Therefore, the petitioner is justified in assailing the demand dated 9-2-1990. As the petitioner's application under Section 61 of the Act is not disposed of by the 1st respondent, a direction could be given to the 1st respondent to dispose of the said application, but at this belated hour it would be proper to drive the petitioner again to approach the 1st respondent, who has not taken any steps to dispose of the application filed as early as on 17th February, 1983. Therefore, we are inclined to go into the merits of the matter. The facts are not in dispute. Admittedly, the original assessment was framed on 6-12-1978. Notice under Section 59 was issued on 17-8-1982. Re-assessment was framed on 7-9-1982. Section 73-A prescribes the limitation for commencement of the proceedings for re-assessment, which reads as under :--

'73-A. Limitation for commencing proceedings for assessment or reassessment:- No proceedings for the levy of any estate duty under this Act shall be commenced-

(a) in the case of a first assessment, after the expiration of five years from the date of death of the deceased in respect of whose property estate duty became payable; and

(b) in the case of reassessment, after the expiration of three years from the date of assessment of such property to estate duty under this Act.'

8. A perusal of clause (b) shows that in the case of re-assessment the period of limitation is three years from the date ofassessment of such property to estate duty. As admittedly no proceedings were initiated and re-assessment was framed within the period of three years from the date of original assessment, the re-assessment is clearly barred by limitation and therefore the same is liable to be quashed.

9. Accordingly, the re-assessment dated 7th September, 1982 as well as consequential demand dated 9-2-1990 are quashed.

10. The writ petition is accordingly allowed. No costs.