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Smt. Repaka Nagamani Vs. Assistant Controller of Estate Duty and ors.

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Court : Andhra Pradesh

Decided On : Apr-04-2001

Reported in : [2001]250ITR93(AP)

Appeal No. : Writ Petition No. 3566 of 1990 4 April 2001

Appellant : Smt. Repaka Nagamani

Respondent : Assistant Controller of Estate Duty and ors.

Advocate for Pet/Ap. : T. Ramam,. *for the Accountable Person* S.R. Ashok, *for the Controller*

Judgement :

S. Ananda Reddy, J.

This writ petition is filed praying this court to call for the records in G.I.R. No. V-451-ED, dated 7-9-1982, on the file of the first respondent anduash the same by issuing an appropriate writ, order or direction holding that the impugned reassessment 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 the late Repaka Viswanatharao, who passed away on 9-2-1978. She filed the return of the estate before the Assistant Controller of Estate Duty, valuing the estate at Rs.

2,11,652. The first 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 (hereinafter referred to as 'the Act'), dated 6-12-1978, and levied the duty of Rs. 39,001, which was paid by the petitioner. The first respondent later initiated reassessment 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 at Rs. 2,11,652 as was originally returned. However, reassessment was framed by order dated 17-9-1982, determining the net value at 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 17-2-1983, seeking rectification of the re-assessment on the ground that the notice issued under section 59 was issued beyond the period of limitation prescribed under section 73A(b) of the Act, and, therefore, sought for vacating the reassessment order. According to the petitioner, in response to the said application no orders have been passed by the first 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 officer proposed 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 a representative on 9-11-1989. It is stated by the petitioner that in response to the said notice the petitioner made a representation to the Controller of Estate Duty complaining of her grievance regarding the framing of reassessment 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 first 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 representation dated 4-11-1989, to the first 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 first 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 said notice filed the present writ petition.

Learned counsel for the petitioner contended that the first respondent being auasi-judicial authority while framing the reassessment has to conform to the provisions of the Act. According to learned counsel, the original assessment was framed on 16-12-1978, while notice for reassessment was issued on 17-8-1982. It is stated that a period of three years is prescribed for initiation and completion of reassessment 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 first respondent in initiating and framing the reassessment is beyond the period of limitation and therefore the said reassessment order is void and illegal, which cannot be enforced against the petitioner. 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 reassessment proceedings. But no action was taken, though the first respondent was under an obligation to dispose of the said application. Therefore, it is contended that the action of the first respondent in issuing a notice of demand on 9-2-1990, has no legal force and it cannot be enforced against the petitioner.

3. Learned standing counsel appearing for the respondents, on the other hand, supported the action of the first respondent. It is stated that reassessment was framed as early as on 7-9-1982. The petitioner has got a remedy of appeal against the said reassessment. As the petitioner failed to file any appeal assailing the validity of the said reassessment, 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, 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 petitioners contention that his application made under section 61 was not disposed of. Learned counsel also contended that the petitioner has not raised any objection as to the period of limitation at the time of framing of reassessment 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.

Heard both sides and considered the material on record.

The dispute is 'Whether the reassessment order framed by the first respondent was barred by limitation ?'

It is the case of the petitioner that the original assessment was tramped 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 net principal value of the estate. However, assessment was framed determining the net principal 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 the merits and decided in her favour. But, however, subse uent proceedings were initiated by the first 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 reassessment, but, however, the petitioner and not file any appeal. But at the same time, the petitioner did not keepuiet but made an application under section 61 of the Act seeking rectification of the assessment, which was not at all disposed of by the first respondent. Therefore, the petitioner is justified in assailing the demand dated 9-2-1990. As the petitioners application under section 61 of the Act is not disposed of by the first respondent, a direction could be given to the first respondent to dispose of the said application, but at this belated hour it would not be proper to drive the petitioner again to approach the first respondent, who has not taken any steps to dispose of the application filed as early as on 17-2-1983. 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. Reassessment was framed on 7-9-1982. Section 73A prescribes the limitation for commencement of the proceedings for reassessment, which reads as under :

'73A. 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 a reassessment, after the expiration of three years from the date of assessment of such property to estate duty under this Act.'

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

Accordingly, the reassessment dated 7-9-1982, as well as conse uential demand dated 9-2-1990, areuashed.

The writ petition is accordingly allowed. No costs.

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