Lalit Khanna Vs. Controller of Estate Duty and ors.

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SooperKanoon Citation : sooperkanoon.com/456508

Court : Allahabad

Decided On : Apr-08-1993

Reported in : [1994]207ITR955(All)

Judge : Om Prakash and ;A.N. Gupta, JJ.

Acts : Estate Duty Act, 1953 - Sections 62 and 73(4)

Appeal No. : Civil Miscellaneous Writ Petition No. 460 of 1993

Appellant : Lalit Khanna

Respondent : Controller of Estate Duty and ors.

Judgement :

1. Against the order of the Assistant Controller of Estate Duty, Roorkee, the petitioner filed an appeal before the Appellate Controller, Estate Duty, Lucknow, and then made an application for stay, which is annexed to the supplementary-affidavit. On such application, the petitioner was informed of an order dated March 10, 1993, passed by one Income-tax Officer (S) for Commissioner of Income-tax that his stay application had been rejected by the Commissioner. No copy of the order, if any passed by the Commissioner on the stay application has been filed. By order dated March 17, 1993, passed on the writ petition, we directed the petitioner to file a copy of the order passed by the Commissioner of Income-tax, as referred to in the order dated March 10, 1993.

2. The petitioner has filed a supplementary-affidavit dearly stating that pursuant to this court's order dated March 17, 1993, an application for obtaining a copy of the order, as referred to in the order dated March 10, 1993, was made, but no copy of any other order has been supplied to him.

3. Upon perusal of Section 73(4) of the Estate Duty Act, it appears that when an accountable person files an appeal under Section 62, the Controller may in his discretion treat such person as not being in default during the pendency of the appeal. It appears from the marginal endorsement dated February 18, 1993, made on the stay application by the petitioner, that the stay application was returned for presentation before the Assistant Controller and then the Assistant Controller passed order dated March 10, 1993, informing the petitioner that his prayer for stay had been rejected by the Commissioner.

4. We are unable to understand the queer procedure being followed by the authorities on the stay application made by the petitioner. When the petitioner made an application for stay before the Appellate Controller, Estate Duty, Lucknow, then it was duty to decide the stay application in accordance with law. From Section 73(4), it appears that, prima facie, power is vested in the Controller to suspend the demand during the pendency of appeal and it is not understandable as to why such jurisdiction was abdicated by the Controller.

5. After hearing the parties, the petition is disposed of finally, directing the Appellate Controller, Estate Duty, Lucknow, before whom the petitioner's appeal is pending, to decide the stay application made by the petitioner within three weeks from the date a certified copy of this order is produced before him by the petitioner in accordance with law, which the petitioner undertakes to produce within one week from today.

6. Until the decision on the stay application of the petitioner, further recovery proceedings will remain stayed. If the petitioner fails to take steps as aforesaid, then the stay order will stand vacated.

7. A certified copy of this order may be given to counsel for the parties on payment with 24 hours.