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Court : Allahabad

Decided On : Sep-06-1972

Reported in : [1973]91ITR160(All)

Judge : R.L. Gulati and ;H.N. Seth, JJ.

Acts : Estate Duty Act, 1953 - Sections 52; Estate Duty Rules, 1953 - Rule 18

Appeal No. : Writ Petition No. 27 of 1972

Appellant : Prayag Dass Agarwal

Respondent : Assistant Controller of Estate Duty and ors.

Advocate for Def. : Deokinandan, Adv.

Advocate for Pet/Ap. : B.C. Dey, Adv.

Judgement :

Gulati, J.

1. This is a petition under Article 226 of the Constitution.

2. One Lala Beni Madho Agarwal of Allahabad died on September 29, 1964. His estate became liable to estate duty under the Estate Duty Act, 1953 (No. 34 of 1953). The petitioner is his son and is an accountable person under the Act. He filed a statement of accounts declaring the value of the estate of the deceased

liable to estate duty at Rs. 4,96,196. The first respondent, the Assistant Controller of Estate Duty, Allahabad, assessed the value of the estate at Rs. 20,27,189 and determined the estate duty payable at Rs. 3,37,543.40. The petitioner has filed an appeal against the assessment which is still pending. The petitioner has already paid a sum of Rs. 79,429-40 towards the duty and a sum of Rs. 2,58,114 still remains payable.

3. The estate of the deceased which was subjected to duty, includes an item of immovable property known as premises No. 1, Phaphamau Read, Allahabad. This premises consists of one main building and several outbuildings and a large area of land. Under the Defence of India Act, the Government of India requisitioned the open land on all the four sides of the main building, leaving only the main building, the out-buildings and an approach road. The main building was at one time occupied by the State of Uttar Pradesh but after the Central Government requisitioned the openland, the State Government vacated it. It is now lying vacant. This building had been valued for purposes of the estate duty at Rs. 2,53,625. The petitioner by his letter dated 16th February, 1971, addressed to the second respondent, the Central Board of Direct Taxes, Government of India, New Delhi, offered to transfer the said building to the Government of India towards the payment of the balance of the estate duty. The Central Board of Direct Taxes has by its letter dated September 16, 1971, declined to accept the offer. Thereafter the Assistant Controller of Estate Duty, Allahabad, by his letter dated October 21, 1971, allowed the petitioner to pay the arrears of duty in instalments of Rs. 10,000 per month during the pendency of his appeal and the balance within two months after the decision of the appeal. The petitioner is aggrieved.

4. His contention is that under Section 52 of the Act he has a right to offer in satisfaction of the estate duty any item of the immovable property of the deceased upon which duty has been levied and the Government is obliged to accept the offer. He has accordingly prayed for the following reliefs:

' (1) to issue a writ of mandamus or any other suitable writ, order or direction directing the Central Government to consider the offer of the petitioner for payment of estate duty by transfer of immovable property being the premises No. 1,

Phaphamau Road, Allahabad, and to negotiate and settle the price of the said property and to give credit of payment of the estate duty by such transfer of property.

(2) to issue a writ of certiorari or any other suitable writ, order or direction quashing the notice No. 32-B/ED dated October 21, 1971, issued by the respondent No. 1.

(3) to grant to the petitioner such other or further relief or reliefs as the court may deem fit and proper. '

5. Section 52, so far as it is material for our purpose, reads :

'52. Payment of duty by transfer of property.--(1) The Central Government may, on an application of the person accountable for estate duty, accept in satisfaction of the whole or any part of such duty any property passing on the death of the deceased at such price as may be agreed upon between the Central Government and that person, and thereupon such person shall deliver possession of the property to such authority as may be specified by that Government in this behalf. '

6. The contention on behalf of the petitioner is that although Section 52 seems to confer discretion upon the Central Government to accept or not to accept property towards the payment of estate duty, yet the discretion is coupled with a duty to accept such an offer whenever made by an accountable person provided there is no disagreement on the price of the property. In other words, what is contended is that the discretion vested in theGovernment is coupled with a duty and, therefore, the word ' may ' used in Section 52 must be construed to mean ' must ' or ' shall '. The learned counsel has cited a large number of authorities in support of this proposition but it is not necessary to notice them all. It is a well-settled principle of interpretation of statutes that the use of the word ' may ' in statutory provisions would not by itself show that the provision is directory in nature. In most cases the legislature may use the word ' may ' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word 'may ', one has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the word has been used, the purpose and the advantages sought to be achieved by the use of

that word and the like. It would be sufficient to refer to the following observations of the Supreme Court in State of Uttar Pradesh v. Jogendra Singh:

' There is no doubt that the word ' may' generally does not mean ' must' or ' shall'. But it is well settled that the word ' may ' is capable of meaning ' must' or ' shall' in the light of the context. It is also clear that where a discretion has been conferred upon a public authority coupled with an obligation, the word ' may ' which denotes discretion should be construed to mean a command, '

7. Now, in order to determine as to whether the word ' may ' used in Section 52 is mandatory or permissive, we must ascertain the intention of the legislature having regard to the context and the purpose which was sought to be achieved by this provision.

8. Section 52 occurs in Part VII of the Act which deals with the collection of the estate duty. Section 51 provides that the estate duty may be collected by such means and in such manner as the Board may prescribe. Rule 18 of the Estate Duty Rules, 1953, enumerates the following methods of payment:

(i) by delivery of cheque on a scheduled bank.

(ii) by delivery of bank draft issued by a scheduled bank.

(iii) by depositing the amount of the duty to the credit of the Central Government at a Government treasury, etc.

(iv) by adjustment of any refund of income-tax, excess profits tax, etc.

9. Section 52, prior to its amendment, provided that the Government securities may be accepted iu payment of the estate duty. By Act No. 31 of 1964, Section 52 in its present form was introduced. It permits the payment o.:. duty by transfer of all kinds of property. The statement of objects and reasons appended to the Bill, which introduced the aforesaid amendment, reads :

'The object of this Bill is to amend the Income-tax Act, 1961, the Estate Duty Act, 1953, and the Expenditure-tax Act, 1957, with a view to remove unintended hardship and providing relief to assessees in certain cases.'

10. It is thus clear that the intention behind the introduction of this provision was to alleviate hardship and provide a relief to the assessees.

11. It is a matter of common knowledge that when a deceased does not leave enough cash but leaves property, the accountable person finds it difficult to raise funds for the payment of the estate duty. In such circumstances he may not be able to dispose of the property or may not obtain adequate price. Certainly, this causes great hardship to the assessees. In order to alleviate this hardship the present Section 52 was introduced. The provision was obviously intended for the benefit of the assessees and he cannot be deprived by the Government of this benefit arbitrarily by refusing to accept the property in payment of the estate duty. It appears that the Government is bound to accept the property in satisfaction of estate duty provided there is an agreement between the Government and the assessee with regard to its price.

12. Shri Deokinandan, the learned counsel for the department, on the other hand, contends that Section 52 was intended merely to enable the Central Government to accept property in lieu of cash in satisfaction of the demand for estate duty. It did not cast any duty upon the Central Government to accept property as and when offered. We cannot accept this argument. If it is merely an enabling provision, it possibly cannot be said to alleviate any hardship to an assessee or to provide relief to him. Such an interpretation would be clearly against the intention of the legislature as expressed in the objects and reasons quoted above. To us it appears that Section 52 contains an additional mode of payment of estate duty, besides those enumerated in Rule 18. The fact that this section occurs in Chapter VII, which deals with the collection of the estate duty strongly supports the view that this provision was meant to afford an additional mode of collection of duty.

13. Rule 18 confers an option upon the assessee to pay estate duty in any of the modes enumerated therein. The Government has no option in the matter. Likewise, Section 52 is also an additional mode and option lies with the assessee and not with the Government. If an assessee wants to pay the estate duty by transferring property, the Government cannot refuse to accept the offer and insist upon payment by another mode, provided there is agreement on the price of the

property between the Government and the assessee.

14. A question then arises as to whether it would bo open to the Government to refuse the offer of property on a ground other than the price. Inour opinion, it is not necessary to decide this question, because in the impugned order the Central Board of Direct Taxes has disclosed no reason whatsoever. If the Board was not willing to accept the property at the price at which it had been valued by the Estate Duty Officer, it was open to the Government to make a counter offer or if it was not willing to purchase for any other reason, such a reason should have been disclosed in the order itself. The impugned order reads :

' I am directed to refer to your petition dated February 16, 1971, on the subject mentioned above and to say that your offer is not acceptable. '

15. This kind of order is certainly not contemplated by the law. The order on the face of it is a non-speaking order and is arbitrary. In the counter-affidavit of Shri N. B. Singh, the Assistant Controller of Estate Duty, Allahabad, an attempt has been made to explain the reasons for rejecting the assessee's offer. In the first place, Sri N. B. Singh is not the proper person who can supply reasons for an order passed by the Central Board of Direct Taxes. Secondly, the reasons disclosed by him appear to us to be wholly irrelevant. The first reason is that the petitioner was possessed of sufficient liquid assets from which the payment of the estate duty could be made. In the rejoinder-affidavit, it has been explained by the petitioner that money is all invested in a running business, which includes assets along with its goodwill and that it is not possible to draw money from the business without closing it down. The second reason disclosed is that the petitioner has not accepted the valuation of the property inasmuch as he has appealed against it. To our mind that is no reason at all for refusing to accept the property. It was open to the Board to accept the property on the price which is ultimately fixed on appeal. Yet another reason pointed out in the counter-affidavit is that the petitioner has been afforded relief by the grant of instalments for payment of the estate duty. To us that circumstance appears to be wholly irrelevant. If the petitioner had a right to pay the estate duty in the shape of property, the facility of payment in cash by instalments is no substitute for it. In the circumstances we are clearly of the

opinion that the order passed by the Central Board of Direct Taxes rejecting the petitioner's offer to transfer property in payment of estate duty is patently erroneous.

16. We, accordingly, allow this petition and quash the order of the Central Board of Direct Taxes dated September 16, 1971. We further direct the respondents to deal with the petitioner's offer contained in his letter dated 16th February, 1971, in accordance with law and in the light of the observations made above. The petitioner is entitled to the costs of this petition.

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