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Court : Allahabad

Decided On : Nov-24-1967

Reported in : [1968]70ITR418(All)

Appeal No. : Miscellaneous Reference No. 840 of 1963

Appellant : Kunwar Madan Mohan Singh

Respondent : Controller of Estate Duty, U. P.

Judgement :

JUGDISH SAHAI J. - This reference has been made to this court under section 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as the Act) and the following two questions of law have been submitted to this court for its opinion :

'1. Whether the finding of the Board that there was not sufficient cause for the delay in filling the appeal, is vitiated by a consideration of material not relevant to the enquiry

2. Whether, on the facts and in the circumstances of the case, the Board was justified in refusing to admit the appeal ?'

The facts as given the statement of the case are : Hari Har Bux Singh was the Taluqedar and proprietor of Dhanawa and Dherhiyari Estate in Gonda district. He died on the 17th of September, 1954. Kunwar Madan Mohan Singh is the accountable person of the estate of the deceased Hari Har Bux Sigh. Kunwar

Madan Mohan Singh did not file a valid account of the property in respect of the estate of Hari Har Bux Singh under section 53(3) of the Act. The Assistant Controller of Estate Duty, Variance, after giving Kunwar Madan Mohan Singh an opportunity of being heard, determined the principal value of the estate of Hari Har Bux Singh, deceased, at Rs. 6,72,849 (net) and imposed a duty of Rs. 85,819.80 nP. Kunwar Madan Mohan Singh filed an appeal in the Central Board of Revenue by post. The appeal was received in the office of the Board of Revenue on the 23rd of August, 1960. The period of limitation for the filing of the appeal was up to the 3rd of August, 1960. On an enquiry from the Board of Revenue as to why the appeal had been filed beyond the period of limitation, Kunwar Madan Mohan Singh submitted written submission on the 27th of October, 1960, explaining the delay in the filing of the appeal.

The Board of Revenue was not satisfied with the explanation submitted by Kunwar Madan Mohan Singh. It held that sufficient cause for filing the appeal beyond the period of limitation provided by law had not been made out. It, therefore, dismissed the appeal on the 21st of July, 1961.

At the instance of Kunwar Madan Mohan Singh this reference has been made by the Board of Revenue to this court.

In this written submission Kunwar Madan Mohan Singh had stated that he went to Delhi early in June, 1960, to consult his counsel for filing an appeal against the decision of the Assistant Controller. The counsel asked him (Kunwar Madan Mohan Singh) to collect certain papers and he (Kunwar Madan Mohan Singh) left Delhi in order to collect the required papers so that he could meet the counsel with the papers on the 31st of July, 1960, as arranged between him and the counsel. It is clearly stated in the written submissions that on the 23rd of July, 1960, Kunwar Madan Mohan Singh was suddenly taken ill with typhoid and remained unconscious for a period of one full month from 23rd July, 1960, and that when his mental balance was restored to him, he sent his brother (Kunwar Madan Mohan Singh being adopted in a different family) to his causal in Delhi with necessary papers to file the appeal. The Board of Revenue, while dealing with the question that the delay had been sufficiently explained, observed as under.

'While I may accept the evidence about the illness, there is nothing to show why the appellant should have delayed matters so long and left it to the end of the limitation period for filing the appeal. Again when the appellant fell ill, he could have instructed his people who had been appearing before the Assistant Controllers in the course of proceedings before them to approach the counsel at Delhi to file the appeal. On reading the medical certificates I am not prepared to believe that he was unconscious from the very start of the illness and unable to give such direction to his employees or relation.... In all the circumstances of the case I am not satisfied that the appellant was prevented by any sufficient cause from filling the appeal within the statutory period.'

The facts as disclosed in the statement of the case have been reproduced above. We now proceed to deal with the first question referred to us.

Sub-section (2) of section 63 of the Act as it stood at the relevant time read as follows :

'63. (2) The Board may admit an appeal after the expiry of ninety days referred to in sub-section (1) if it is satisfied that there was sufficient cause for not presenting it within that period.'

The provision is analogous to section 5 of the Indian Limitation Act. We have extracted from the order of the Board of Revenue the passage dealing with the question as to whether delay had been sufficiently explained or not. The Board of Revenue has proceeded on an assumption that Kunwar Madan Mohan Singh had to show as to why he delayed matters up to the end of June or 23rd of July, 1960. In other words, the Board of Revenue wanted Kunwar Madan Mohan Singh to explain the delay of every day falling in the period commencing from the date of the order of the Assistant Controller and ending with the 3rd of August, 1960. In doing so, the Board of Revenue has misconceived the legal position. It is well-settled that the failure of appellant to account for his non diligence during the whole of the period of limitation prescribed for the delay for the appeal does not disqualify him from praying for the condonation of delay under section 5. Where the appellant did not file the appeal till the last day of limitation, and as he fell ill on the last day of limitation filed the appeal thereafter asking for the delay to be excused, it was held by the Supreme Court that his want of diligence till the last day of limitation would not disqualify him from applying for the excusing of delay (See Ramlal v. Rewa Coalfields Ltd.). It is clear that the Board of Revenue has misconceived the law and has decided the question as to whether Kunwar Madan Mohan Singh had or had not sufficient cause for filling the appeal belatedly, wrongly, and on considerations not relevant for the decision of the question. We therefore, answer question No. 1 in the affirmative in favour of the assessee and against the department.

We have already given the facts and the circumstances of the case from the statement of the case submitted by the Board of Revenue. We have already shown above that the Board of Revenue proceeded on the irrelevant considerations while dealing with the question whether or not sufficient cause had been established for filing the appeal belatedly. Inasmuch as the Board of Revenue itself has accepted the evidence of the assessee, Kunwar Madan Mohan Singh, that he fell ill with typhoid on the 23rd of July, 1960, the Board of Revenue should have found the explanation furnished by the assessee for filing the appeal belatedly, sufficient. The Board of Revenue has also said that it was not prepared to believe that Kunwar Madan Mohan Singh became unconscious from the very start of the illness and was unable to give directions to his employees or relations. Even it Kunwar Madan Mohan Sigh did not become unconscious on the first day of illness, i.e. 23rd July, 1960, that would not have justified the Board of Revenue to have held that there was no sufficient explanation for the delay in the filing of the appeal. The Board of Revenue has not recorded any finding as to on what date Kunwar Madan Mohan Singh became unconscious, through it has accepted the letters evidence that he fell ill with typhoid on the 23rd of July, 1960. Assuming that Kunwar Madan Mohan Singh became unconscious three or four days after the 23rd of July, 1960, that would not in any way alter the legal position that he had only to furnish cause as to why he did not file the appeal on the 3rd of August, 1960. Between the 23rd of July, 1960, and the 3rd of August, 1960, there were as many as 11 days and, if on any one of these 11 days Kunwar Madan Mohan Singh became unconscious, his explanation for the delay in the filing of the appeal would stand fully substantiated. The Board of Revenue approached this question also from a wrong legal angle.

For the reasons mentioned above, we would answer the second question referred to us in the negative in favour of the assessee and against the department. As no one has appeared on behalf of the assessee, we make no order as to costs.