

Dharmatma Saran Kothiwal Vs. Assistant Controller of Estate Duty

Dharmatma Saran Kothiwal Vs. Assistant Controller of Estate Duty

SooperKanoon Citation : sooperkanoon.com/470518

Court : Allahabad

Decided On : Sep-10-1986

Reported in : (1987)63CTR(All)248; [1988]172ITR122(All)

Judge : K.C. Agrawal and ;R.P. Singh, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 53(3), 61, 62 and 70; [Income Tax Act, 1961](#) - Sections 139(8); [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 624 of 1982

Appellant : Dharmatma Saran Kothiwal

Respondent : Assistant Controller of Estate Duty

Advocate for Pet/Ap. : K.B. Jindal and ;Shambhu Chopra, Advs.

Judgement :

K.C. Agrawal, J.

1. Sahu Shiva Shakti Saran Kothiwal, father of the petitioner and respondent No. 2 died on June 5, 1975. The petitioner filed the estate duty return on June 3, 1977. In between the death and the filing of the return, the petitioner has alleged that he had applied to the Assistant Controller, Lucknow, to supply to the petitioner an Estate Duty Return Form D.E.I, which was done on May 6, 1976.

2. On receipt of the estate duty return, the Assistant Controller, Lucknow, respondent No. 1, made a provisional assessment under Section 57 of the [Estate Duty Act, 1953](#) ('the Act'), and created a demand of Rs. 2,12,872. The petitioner filed an objection dated June 21, 1977, against the provisional assessment showing various mistakes that had crept in it. The Assistant Controller completed the regular assessment under Section 58 of the Act on March 14, 1981. The petitioner again found certain mistakes in the final assessment order and, therefore, an application purporting to be under Section 61 of the Act was made on his behalf. The prayer made in this application was as follows :

'A challan for Rs. 12,522 may kindly be issued. A challan for Rs. 52,522 may be issued to Parmatma Saran. No interest is chargeable under Section 53(3) as no order on the assessee's application dated June 3, 1976, was passed. Interest under Section 70 may kindly be scaled down pro rata after giving credit for all the amounts realised from the Life Insurance Corporation. The interest should be calculated at the rate of 4 per cent, and not at the rate of 6 per cent, as was done by your office. '

3. Without disposing of this application, a demand notice dated January 21, 1982, was issued to the petitioner under Section 73 of the Act. The recovery certificate was, however, returned. In the meantime, the audit party of the Accountant-General pointed out some mistakes in the assessment order framed under Section 58 on August 21, 1981. Respondent No, 1 in pursuance of the audit report, issued a notice calling upon the petitioner to appear before him on the date mentioned therein. The notice was in respect of two items. Out of these two items, we are concerned with only one and the same is mentioned below :

'Why the liability for Rs. 16,106 allowed in original assessment should not be disallowed as such the income arriving after death June 5,1975, assessable for 1976-77 would be liability (sic). Date fixed February 23, 1982.'

4. In pursuance of the notice for rectification issued under Section 61 of the Act, the petitioner appeared before respondent No. 1 who on June 18,1982, passed the impugned order rectifying the mistake in the order. It was noted:

' In reply the assessee's counsel appeared and stated that he has no objection to the proposed rectification. Accordingly, the assessment is revised. '

5. The petitioner was dissatisfied with the order dated June 18, 1982, under Section 61. Consequently, he moved an application dated July 31, 1982, against the rectification ordered on June 18, 1982. The petitioner alleged that the withdrawal of deduction of Rs. 16,106 allowed in the original assessment as a debt due on the estate of the deceased in respect of income-tax liability for 1976-77 was unjustified. The petitioner also alleged that the rate of interest as laid down in Section 70 of the Act was 4 per cent, and not 6 per cent, at which rate the interest had been calculated. On June 18, 1982, itself, on which date the rectification was ordered, the Assistant Controller called upon the petitioner to deposit the amount and further warned that in case the amount was not paid on or before the date specified, the petitioner would be liable under Sub-section (1) of Section 46 of the Indian Income-tax Act, 1922, as applied to estate duty under Sub-section (5) of Section 73 of the Estate Duty Act to a penalty which could be as much as the duty due.

6. The petitioner thereafter filed the present writ petition on November 2, 1982, in this court. The prayer made in the writ petition was for quashing of the order under Section 61 of the Act dated June 18, 1982, and also for prohibition commanding the Assistant Controller not to charge any interest for belated filing of the return and/or late payment of the estate duty demand.

7. Coming to the second prayer relating to late payment of the estate duty demand, it may be stated that the case of the petitioner was that the rate of interest charged at the rate of 6 per cent, was excessive and regressive, and, therefore, the charging of interest at that rate on the amount remaining unpaid was incorrect. This interest had been charged from the petitioner for his failure to pay interest for the period in between making of the provisional assessment made in June, 1977, and the regular assessment made in 1981.

8. Under Section 70, respondent No. 1 was entitled in law to charge interest at the rate of 6 per cent, per annum. We do not accept the contention of the petitioner's counsel that while charging the interest at the rate of 6 per cent., respondent No. 1

acted against any known principles and rules and as such the order imposing interest at that rate was incorrect. The power to charge interest involves an element of discretion and as this discretion has not been arbitrarily, illegally or wrongly exercised, this argument has no substance and is liable to be rejected.

9. The second argument of the petitioner's counsel was that the liability of Rs. 16,106 for income-tax dues for the assessment year 1976-77 was a debt due on the estate of the deceased under Section 44 of the Act and was rightly deducted in the assessment order dated March 24, 1981, and, as such, the Assistant Controller committed an error apparent on the face of the record in wrongly withdrawing it by means of the order under Section 61 on June 18, 1982. This has been contested on behalf of the Revenue by asserting that the petitioner was not entitled to the deduction of Rs. 16,106 from the estate of the deceased and since it had been wrongly allowed, the mistake, being apparent on the face of the record, could be corrected by means of an order under Section 61. Since the order passed under Section 61, by which deduction of Rs. 16,106 allowed in the original assessment as a debt due on the estate of the deceased, had been withdrawn, the remedy of the petitioner lay in filing an appeal under Section 62 of the Act. Consequently, the remedy of appeal having been provided by the statute itself, it is not possible to interfere under Article 226 of the Constitution. The petitioner knew about his right of appeal.

10. In *Assistant Collector of Central Excise v. Dunlop India (P.) Ltd.* : 1985ECR4(SC) , it has been held by the Supreme Court that article 226 has not been meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as, for instance, where the very vires of the statute is in question, that recourse may be had to Article 226 of the Constitution, but then the court must have good and sufficient reason to bypass the alternative remedy provided by a statute. It held further (p. 176):

' Surely matters involving the revenue where statutory remedies are available are not such matters. '

11. In the instant case, there was a remedy provided as against the order passed under Section 61, Counsel was not right in submitting that since the writ had been entertained and admitted for admission, this court had no power to reject it on the preliminary ground mentioned above. This submission has no substance. If the court can reject a writ petition on the basis of an alternative remedy merely because it has been admitted, it is not understandable as to what is that legal principle which debars the court from rejecting the same on the ground of adequacy of alternative remedy at the time of hearing of the writ petition. There is not much of a difference between the two proceedings so as to justify the court to decline to reject the writ petition on this ground. We may note here that in the counter-affidavit filed on behalf of the Revenue on August 10, 1983, this plea of alternative remedy had been taken. The petitioner had no justification, therefore, for arguing that the writ petition should not be rejected on this ground.

12. The third ground argued by learned counsel for the petitioner was that a writ in the nature of mandamus be issued directing the Assistant Controller to issue separate challans to the petitioner and respondent No. 2 for Rs. 18,948 and Rs. 58,948, respectively, the basis of his argument being that since the petitioner had already paid a major portion of his share and the liability of the petitioner and respondent No. 2 being joint, the same should be divided equally and proportionately. This, counsel urged, would be just and fair to the Department as much as to the petitioner and respondent No. 2. We are unable to accede to this request. The liability for payment of estate duty on the petitioner and respondent No. 2 was joint and several. It is open to the Revenue to realise the amount of estate duty from one of them or from both. Mandamus can be issued by the court directing the authority to act in accordance with law. To call upon respondent No. 1 to issue two challans in the terms prayed for would be issuing a mandamus which is illegal and against the provisions of the Act.

13. The last submission of the petitioner's counsel was about the invalidity of the order in so far as interest was charged for belated filing of the return. Counsel urged that interest under the proviso to Sub-section (3) of Section 53 could be charged if respondent No. 1 had extended the time for filing the return and would have made the extension subject to the condition of payment of interest. As no

extension had been granted, the charging of interest was unjustified, being not supported by any provision in the Act. It may be noted here that the application for extension made by the petitioner for filing of the return was rejected by the Assistant Controller on June 5, 1976, and while doing so, he remarked ;

' Please note that you shall be liable to pay interest in accordance with the provisions of Sub-section (1) of Section 139 of the Income-tax Act, 1961.'

14. There is no provision (in the Estate Duty Act) as there is in the Income-tax Act, for charging of interest for belated filing of the return. By means of any subsequent amendment, the provisions of Sub-section (8) of Section 139 of the Income-tax Act have not been applied to the proceedings under the Estate Duty Act. Under Section 60(1)(a) of the Act, the Assistant Controller may be entitled to take penalty proceedings as against a person who has not filed the return within time. But, that is a proceeding separate in nature having involved and different consequences than charging of interest. In this case also, while making the regular assessment order, respondent No. 1 had directed :

' Penalty proceedings under Section 61(1)(a) of the Estate Duty Act have been initiated separately. Issue notice...'

15. We are unable to find any provision in the Act which entitles respondent No. 1 to impose interest of Rs. 15,093 for belated filing of the return. In the counter-affidavit, charging of interest has been justified on the basis of Section 53. We have not been able to get anything from this section which confers power on respondent No. 1 to charge interest for late filing of the return. A statutory authority created by an Act has only those powers which are conferred on it by the statute. It cannot assume powers which Parliament or the Legislature has not given to it. In the Income-tax Act, Parliament specifically provided in Subsection (8) of Section 139 for charging of interest for belated returns. Under this Act, interest is automatic irrespective of the assessee's applying for time or of the Income-tax Officer allowing time.

16. Sub-section (3) of Section 53 provides that every person accountable for estate duty shall, within six months of the death of the deceased, deliver to the

Controller an account in the prescribed form and verified in the prescribed manner of all the properties in respect of which estate duty is payable. This period of six months can, however, be extended under the proviso appended to it. The proviso confers power on the Controller to extend the period of six months on such terms which may include payment of interest. Under this provision, therefore, if extension is not applied for under Sub-section (3) of Section 53, it is mandatory to file the return within six months of the death of the deceased. The accountable person, however, can apply for extension which can be allowed subject to payment of interest.

17. We, consequently, find that in a case where no order for extension of time is made subject to the payment of interest, the Controller has no power to charge the same on the basis of the proviso to Sub-section (3) of Section 53. The Act does not provide for charging of interest in such a case. Consequently, the interest could not be charged and the levy of Rs. 15,093 was unauthorised and illegal.

18. It may be noted here that in the first application for correction made under Section 61, the petitioner had taken it as a ground stating that no interest was chargeable under Section 53(3) as no order on the assessee's application dated June 3, 1976, was passed. It appears that this application remained un-disposed of.

19. In the circumstances, we allow the writ petition in part and hereby issue a mandamus directing respondent No. 1 not to charge Rs. 15,093 as interest for late filing of the return. There shall be no order as to costs.

20. Petition partly allowed.