

Smt. Sitadevi Vs. Commissioner of Income-tax/Controller of Estate Duty

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Court : Madhya Pradesh

Decided On : Jul-26-1996

Reported in : [1997]227ITR856(MP)

Judge : A.R. Tiwari and ;S.K. Kulshrestha, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 55, 59 and 73A

Appeal No. : Income-tax Reference (E.D.R.) No. 11 of 1995

Appellant : Smt. Sitadevi

Respondent : Commissioner of Income-tax/Controller of Estate Duty

Advocate for Def. : A.M. Mathur and ;Saran, Advs.

Advocate for Pet/Ap. : P.M. Chaudhary, Adv.

Judgement :

S.K. Kulshrestha, J.

1. The Income-tax Appellate Tribunal, Indore Bench, Indore, has referred the following question at the instance of the accountable person, arising out of the order of the Tribunal dated October 19, 1994, in EDA No. 9/Ind. of 1989, for the opinion of this court :

' Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in holding that the proceedings under the Estate Duty Act had commenced within five years of the death of the deceased because a notice under Section 55 of the said Act had been issued and served on the accountable person and the issue of such notice saves the bar of limitation created by Section 73A of the said Act ?'

2. One Shri Hiranand expired on July 30, 1981. The Assistant Controller of Estate Duty issued a notice under Section 55 of the [Estate Duty Act, 1953](#) (hereinafter referred to as the 'Act'), on December 19, 1983, to Smt. Sitabai, accountable person, to make compliance by January 20, 1984. Smt. Sitabai failed to comply with the notice and eventually the Assistant Controller of Estate Duty issued notice under Section 59 on June 5, 1987, requiring her to deliver an account of the property by June 26, 1987. The accountable person requested for extension of 15 days on June 22, 1987, but still no account of the estate was filed. The Assistant Controller of Estate Duty, therefore, completed the assessment under Section 58(4) on July 14, 1987, determining the net principal value of the estate passing on the death of the deceased at Rs. 3,76,350.

3. An appeal was preferred to the Appellate Controller of Estate Duty and it was contended that the Assistant Controller of Estate Duty could not have initiated proceedings after the expiry of the period of five years prescribed by Section 73A(a) of the Act. Since the death had taken place on July 30, 1981, notice under Section 59 issued on June 5, 1987, was beyond the period of limitation. The Appellate Controller of Estate Duty annulled the assessment holding that the same was invalid as barred by limitation.

4. The Revenue filed an appeal before the Tribunal and the Tribunal held that the assessment framed by the Assistant Controller of Estate Duty was not barred by limitation as the notice under Section 55 stood issued and served before the expiry of five years from the date of the death of the deceased. The decision of the Calcutta High Court in the case of Assistant CED v. Ashok Singh : [1980]124ITR587(Cal) was also distinguished by the Tribunal. The accountable person, therefore, filed an application under Section 64(1) of the Act to refer the

question of law arising out of the said order of the Tribunal and, hence, the aforesaid question has been referred for the opinion of this court.

5. We have heard the parties and perused the record.

6. The main contention raised on behalf of the accountable person was on the basis of the decision of the Calcutta High Court in *Asst. CED v. Ashok Singh* : [1980]124ITR587(Cal) , which has been reversed by the Supreme Court in appeal in the decision in *Ashok Singh v. Asst. CED* : [1992]196ITR160(SC) . In the said case, their Lordships have considered the decision of the Allahabad High Court in *Padampat Singhania v. CED* : [1980]122ITR162(All) as also another decision of the Allahabad High Court in *CED v. Bholu Dutt* : [1981]130ITR468(All) with approval. In *Padampat Singhania v. CED* : [1980]122ITR162(All) their Lordships have observed (page 166) :

' In the present case, however, we think that it is not necessary to decide the question as to when proceedings for levy of estate duty commence under the Estate Duty Act for reasons to be stated hereafter. As noticed earlier, Smt Usha Devi filed a return on August 16, 1963, in response to a request made by the Department. Although the provision under which the request was made to Smt. Usha Devi has not been stated in the order of the Tribunal or the Appellate Controller, it is apparent that such a request could be made only under Section 55, for, it is under this provision that the Controller can ask an accountable person, and certain other categories of persons to deliver a statement of particulars and accounts, etc., which may be required by the Controller relating to any property which in his opinion formed part of an estate in respect of which estate duty was leviable. As the return was filed on August 16, 1963, the request to do so on behalf of the Department must have been made earlier. Thus, the request on behalf of the Department, which in the circumstances is referable to Section 55, was made much before the expiry of five years from the date of the death of Shyam Hari Singhania. Now, a requisition under Section 55 is made for purposes of valuing the estate of the deceased for purposes of levy of estate duty. The word 'levy' has been interpreted by the Supreme Court in the case of *Asst. Collector of Central Excise v. National Tobacco Co. of India Ltd.* : 1978(2)ELT416(SC) , as embracing

within it the process of assessment and also the imposition of tax. The requisition made under Section 55 is one for assessing the value of the estate of the deceased. Once such a requisition has been made from an accountable person proceedings for levying estate duty can be said to have been started by the Assistant Controller. On this view the estate duty proceedings were not barred by limitation.'

7. In yet another decision, the Allahabad High Court in CED v. Mano-rama Devi : [1980]123ITR322(All) , has observed as under (page 328) :

' So far as the first question is concerned the deceased died on September 23, 1959, and a notice on the accountable person was served on March 5, 1963. In EDR No. 11 of 1977, Padampat Singhania v. CED : [1980]122ITR162(All) we have held that a notice under Section 55 starts proceedings under the Act, and if it has been done before the expiry of five years after the death, the bar of limitation created by Section 73A is saved. As the notice under Section 55 was given and served before the expiry of the period of five years, which in the present case was September 22, 1964, the proceedings for levy of estate duty were validly commenced within limitation.'

8. In the present case, it is not disputed that notice under Section 55 of the Act was issued on December 19, 1983, well within the period of five years prescribed by Section 73A of the Act. The reliance placed by learned counsel on the decision of the Allahabad High Court in CED v. Bholu Dutt : [1981]130ITR468(All) is misplaced inasmuch as the said decision is distinguishable on facts. In the said decision, their Lordships have considered a case where the proceedings were sought to be commenced on the basis of the return filed by the accountable person voluntarily after the expiry of the period of limitation of five years laid down by Section 73A. It was in a situation where the return itself had been filed after five years of the death of the deceased, their Lordships have held that the Assistant Controller had no jurisdiction to commence the proceedings on the basis of such a voluntary return. In the present case, the proceedings stood commenced with issuance of the notice under Section 55 of the Act which was well within the prescribed period of five years.

9. In this view of the matter, the learned Tribunal was right in holding that the proceedings under the Act had commenced within five years of the death of the deceased because a notice under Section 55 of the Act had been issued and served on the accountable person within the limitation prescribed by Section 73A of the Act.

10. The question is, therefore, answered against the accountable person and in favour of the Revenue.

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