

Deepak Sharma Vs. Assistant Controller of Estate

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Court : Income Tax Appellate Tribunal ITAT Chandigarh

Decided On : Apr-09-1984

Reported in : (1984)10ITD260(Chd.)

Judge : S Chander, F Rustagi

Appellant : Deepak Sharma

Respondent : Assistant Controller of Estate

Judgement :

1. The sum and substance of all the grounds in both these appeals is to dispute the levy of penalties under the Estate Duty Act, 1953 ('the Act') for non-deposit of provisional tax demand which was made by the Assistant Controller and the same having been confirmed by the Appellate Controller in the course of the accountable person's first appeal for both the penalties on the basis of his finding that until payment of provisional tax demand, appeals filed were not maintainable.
2. The facts in the background pertaining to the issue are in short compass. As per return of estate duty filed by Mr. Deepak Sharma, a provisional demand of Rs. 37,102 was created and when the accountable person was required to deposit the same, he vide his letter dated 13-3-1980 submitted to the Assistant Controller that the said amount of Rs. 37,102 may kindly be recovered out of two life insurance policies of the deceased, respectively, for Rs. 23,000 and Rs. 8,000, numbers of which were given in the said letter. Since, the LIC authorities, as per the order of the Assistant Controller levying the penalties, admitted only liability of Rs. 2,446 for

balance amount of estate duty in sum of Rs. 32,210, the Assistant Controller levied a penalty of Rs. 3,400 on 21-10-1980 and again of Rs. 5,000 on 10-2-1982. Though efforts were still on to recover the amounts from the LIC on 14-5-1982 and 15-4-1983, the Assistant Controller further recovered a sum of Rs. 21,262 and Rs. 1,152, respectively, from the LIC.³ When the two appeals disputing the levy of penalties of Rs. 3,400 and Rs. 5,000 came to be heard by the Appellate Controller, he on 3-11-1982 and 4-11-1982, respectively, disposed of the two appeals holding that the same are not maintainable as he observed that only Rs. 2,446 as part payment of the estate duty amount was paid by the accountable person.

4. While disputing this action of the Appellate Controller, the learned counsel for the accountable person, Mr. S.K. Goel, relied on the cases of *Kaja Mian Wakf Estate v. CED* [1977] 106 ITR 98 (Mad.), *CED v. Estate of Late M. Kuppuswami Naicker* [1977] 110 ITR 127 (Mad.) and *CED v. Estate of Late Chandravadanam Ammal* [1978] 111 ITR 50 (Mad.), against which the learned senior departmental representative, Mr. R.K. Bali, beside relying on the orders of the two lower authorities, placed his reliance on the cases of *Jibanitosh Ghatak v. ACED* [1974] 95 ITR 486 (Cal.), *Navin Chandra Bhimji v. CED* [1979] 116 ITR 465 (Cal.) and *T.T.P. Beepathumma v. Special Deputy Tahsildar* [1982] 134 ITR 488 (Ker.).

5. After taking into consideration the rival submissions, we find the following facts, which are uncontroverted : (ii) The deceased, Shri Romesh Dutt Sharma, who died on 9-6-1979 held the following two policies numbering 23643630 for Rs. 23,000 and 23266432 for Rs. 8,000.

(iii) On 13-3-1980 when the accountable person was required to explain non-deposit of provisional tax, he made a request to the Assistant Controller to collect the same from the LIC. (iv) Initially the Assistant Controller collected Rs. 2,446 from the LIC and, therefore, for balance he levied the penalties consecutively twice, viz., of Rs. 3,400 and Rs. 5,000.

(v) The Assistant Controller subsequently collected Rs. 21,262 on 14-5-1982 and Rs. 1,152 on 15-4-1983.

(Vi) The two appeals of the accountable person were decided by the Controller, respectively, on 3-11-1982 and 4-11-1982.

On the basis of the above stated uncontroverted facts, the Controller was not justified to dismiss the two appeals of the accountable person on the basis that the same were not maintainable.

6. In the case of Kaja Mian Wakf Estate (supra), when stay for deposit of estate duty was obtained by the accountable person, their Lordships of the Madras High Court held that the Appellate Controller should have taken note of the said order of stay and even if the appeal was incompetent, he should have considered excusing the delay under Section 62(2) of the Act. In the instant case, for a sum of Rs. 24,860 there is no dispute that the said amount had reached the Government treasury before two appeals were dismissed having been held as non-maintainable.

Therefore, it was a stronger case for condonation of delay. In another decision of Estate of Late Chandravadanam Ammal (supra), when the Assistant Controller had granted time, it was considered enough basis for condonation of delay till the date, time was granted. Again, the instant case is on stronger footing. As stated above, two-thirds of the amount had already reached the Government treasury. The third case is also of the Madras High Court, Estate of Late M. Kuppuswami Naicker (supra), in which instalments were granted by the Assistant Controller and the same having been complied with, it was held that the proviso to Section 62(1) was satisfied. Reliance of the learned departmental representative on the three cases, referred to above, is misplaced because they are entirely on different issue. Once the Assistant Controller had been requested to recover the amount from the LIC and he could recover to the extent of about Rs. 25,000, the accountable person could not be treated in default for the entire amount and levying of two penalties on the basis of non-deposit of Rs. 4,656 was hardly called for. There is no controversy about the fact that the progress of recovery of estate duty from the LIC by the Assistant Controller was not even intimated to the accountable person as stated at bar by the learned counsel for the accountable person. The accountable person was all through pressed for total amount inclusive of penalties,

which was certainly very harsh, when actually the accountable person could be required to pay only the balance, which he ultimately paid before coming to the Tribunal in a sum of Rs. 12,000 or so. Then on the basis of these two facts, two consecutive penalties were hardly called for on the peculiar circumstances of this case when major amount was to be recovered from the LIC and was actually recovered, though subsequently.

However, we are hardly concerned with the merit because the Appellate Controller has dismissed the appeals having been found non-maintainable for non-deposit of the estate duty on provisional assessments. We, therefore, restore back both the matters to his file with a direction to adjudicate the same de novo on merit, after giving a full opportunity to the accountable person and taking into consideration all the above stated facts.

7. In the result, both the appeals are treated as allowed for statistical purposes.

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