

Subol Kumar Chandra Vs. Assistant Controller of Estate

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Oct-23-1986

Reported in : (1986)19ITD853(Kol.)

Judge : B Mitra, S Jain

Appellant : Subol Kumar Chandra

Respondent : Assistant Controller of Estate

Judgement :

1. Appeal of the accountable person before the Appellate Controller was posted for hearing on 16-5-1984 for which he applied for an adjournment. The Appellate Controller observed as under : I however find that the signature on the application for adjournment signed as Subol Kumar Chandra is evidently different from the signature filed with Forms ED-9 and 9A and also the enclosure. It is, therefore, evident that there has been impersonation either in the application which has been filed for adjournment of the appeal which has been filed. I remand the appeal to the Assistant Controller to verify all these together and find out as to whether the appeal is filed by wrong person or that the application has been filed by the wrong person and find out the reason and notices for what is evidently an impersonation. The Assistant Controller is also directed to take my file from this office for conducting the necessary matters.

The appeal was thus disposed of. Aggrieved by the said order of the Appellate Controller the accountable person has come up in appeal. He has questioned the

manner in which the appeal has been disposed of.

2. None appeared for the accountable person and, therefore, we did not have advantage of hearing him. We heard the learned departmental representative.

3. The manner in which the appeal has been disposed of by the learned Appellate Controller is not warranted by law. Section 62 of the Estate Duty Act, 1953 permits that the Appellate Controller may before disposing of an appeal, make such further enquiry as he thinks fit or cause further enquiry to be made by the Controller. The said section also lays down that in disposing of an appeal, the Appellate Controller may pass such order as he thinks fit which may include an order enhancing the estate duty or penalty. These provisions do not envisage delegation of such power by the Appellate Controller to the Controller which former himself is required to exercise. The question as to whether the appeal has been properly instituted or not has to be decided by the Appellate Controller himself and he cannot leave that matter for decision in the hands of the Controller. No such questions can be remitted for enquiry to the Controller which are within the competence of the Controller to decide. Even the power of the Appellate Controller to order further enquiry to be made by the Controller even in respect of such matter which the Controller is competent to dispose of, is not unfettered. A remand can be ordered only when the Appellate Controller/appellate authority is unable to reach any conclusion from the material on record and further enquiry is needed. The Appellate Controller may no doubt, pass such order as he thinks fit but such order should be within the realm of his jurisdiction. He cannot abdicate his own function into the hands of the lower authority.

4. Order of the Appellate Controller is, therefore, set aside and the appeal is referred back to him for disposal according to law.

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