

P. Mohammed Ali Vs. Assistant Controller of Estate Duty and ors.

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Court : Kerala

Decided On : Jun-23-1977

Reported in : [1978]114ITR892(Ker)

Judge : V.P. Gopalan Nambiyar, C.J. and; K.K. Narendran, J.

Acts : Muhammadan Law; [Income Tax Act, 1922](#) - Sections 46; [Estate Duty Act, 1953](#) - Sections 53, 56, 58(4), 59, 73 and 73(5)

Appeal No. : Original Petition No. 2162 of 1974

Appellant : P. Mohammed Ali

Respondent : Assistant Controller of Estate Duty and ors.

Advocate for Def. : P.A. Francis and; P.K.R. Menon, Advs.

Advocate for Pet/Ap. : K.P. Radhakrishna Menon, Adv.

Judgement :

Gopalan Nambiyar, C.J.

1. One Paramboor Unnian died on April 24, 1969. His estate devolved under the Muhammadan law on the petitioner and 11 other legal representatives. As no account of the estate was delivered under Section 53 or Section 56 of the Estate Duty Act a best of judgment assessment was made under Section 58, Clause (4), determining the estate duty payable as Rs. 20,755.50. Exhibit P-I, dated

September 29, 1972, is a copy of the said order. The eleven other legal representatives, excluding the petitioner, challenged exhibit P-1 in O. P. No. 4994 of 197. filed on November 7, 1972, on the ground that the assessment order was passed without notice to all the legal representatives. Exhibit P-2 is a copy of the judgment in that original petition, where proceedings for recovery were challenged. It was observed:

'....it is not necessary to go into the merits of this petition since it is said that reassessment proceedings under Section 59 of the Estate Duty Act has been commenced. Accordingly, this petition is dismissed. No costs.

The sum of Rs. 5,000 deposited as condition for stay pending the dismissal of this petition may be appropriated towards the estate duty that may be found payable. The petitioners agree to this course.' It is stated that there was an application for review (R. P. No. 52 of 1974) of the judgment at the instance of the revenue and that the same was dismissed on the ground that against the dismissal of the writ petition the revenue cannot possibly have any grievance. Neither a copy of the petition for review nor a copy of the order has been exhibited to ascertain the nature of the order and the grounds for review. The Controller issued exhibit P-3 notice dated May 29, 1973, proposing to reassess the estate on the ground that the property chargeable to estate duty had escaped assessment or been under-assessed or been assessed at too low a rate. The petitioner was called upon to submit an account of all the property in respect of which estate duty was payable. By exhibit P-4, the petitioner was summoned to the place and at the time indicated, to produce the documents or other evidence in support of the accounts filed by him under Section 53/56 of the Act, By exhibit P-5 dated March 13, 1974, attention was called to certain discrepancies in the statement of accounts submitted by the petitioner and to the basis on which the officer proposed to value the property. Objections and evidence, if any, were invited. It was at this stage that the petitioner filed this writ petition praying:

'(a) to issue a writ in the nature of mandamus directing the respondents to forbear from recovery of the estate duty relating to the estate of the deceased Parambpor Unnian pending final order of assessment pursuant to exhibit P-3 and in

accordance with law ; and

(b) to issue such other writ, order or direction as the court deems fit to pass in the circumstances of the case.'

2. Counsel for the petitioner contended that under the Muhammadan law, on the death of a deceased owner, his estate devolves eo instanti on the heirs in definite shares ; that the principle of representation is unknown to the Muslim law and that proceedings taken against the estate with notice to some only of the legal representatives cannot be valid and cannot form the foundation for coercive steps. Next, it was argued that the liability of the legal representatives of the deceased was joint and several; that by reason of exhibit P-2 judgment and the undertaking of the revenue recorded therein, the joint and several liability of the remaining 11 legal representatives other than the petitioner had ceased, and, therefore, the joint and several liability of all the legal representatives cannot survive in the petitioner alone or be enforced against him. Lastly, it was contended that the demand notice issued under Section 73 of the Act is for the entire amount of estate duty payable in respect of the whole of the estate of the deceased, and that, therefore, again the proceedings are invalid.

3. We may quote the provisions of Sections 53(3) and 53(5) of the Act:

' 53. Persons accountable and their duties and liabilities.--...

(3) Every person accountable for estate duty under this section 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 :

Provided that the Controller may extend the period of six months aforesaid on such terms which may include payment of interest as may be prescribed.....

(5) Where two or more persons are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole of the estate duty on the property so passing.'

4. Counsel stressed that while under Section 53(3) the account is in respect of 'all the properties in respect of which estate duty is payable', under Sub-section (5) which provides for liability to estate duty, the same is only in respect of 'the property passing on death', and only on 'the property so passing'. This, it was said, can only be the share devolving individually on the heirs on the death of the deceased. Attention was also called to Section 53(1)(a) of the Act, under which any legal representative to whom the property of the deceased passes, is made accountable for the whole of the estate duty on the property, but his liability is restricted only to the assets of the deceased which he received or might have received. Reliance was placed on the decision of one of us (myself) in *Ameen Pillai v. Assistant Controller of Estate Duty* : AIR1966 Ker100 . That decision noticed the judicial interpretation placed on the expression 'passing on death' in the English and Indian decisions. It was ruled that having regard to Section 46(1) of the Indian Income-tax Act, 1922 and Section 73 of the Estate Duty Act, only 'the assessee in default' could be proceeded against and that the petitioners in that case who were not parties to the assessment proceedings were not liable to be subjected to coercive process. Counsel for the revenue rightly stressed the concluding sentence of the judgment where it was stated that nothing contained there-in is to be understood as an expression of opinion against the validity of the assessment or recovery proceedings against those who were parties to the proceedings. The petitioner, we were reminded, was a party to the proceedings. The decision, therefore, has no application.

5. Counsel also called attention to Section 58(4), which is as follows:

'58, Assessment---.....

(4) In any case where no account has been delivered as required by Section 53 or Section 56, or the person accountable fails to comply with the terms of the notice served under Sub-section (2), the Controller shall make the assessment to the best of his judgment and determine the amount payable as estate duty.'

6. It is true that under the Muhammadan law, the deceased's estate devolves *p.o instanti* on his heirs and that the principle of representation is unknown to the Muslim law (See *Achamma v. Yousuff* [1958] KLJ 305 (Ker)). But even then, as

pointed out by counsel for the revenue, the provisions of the Estate Duty Act and the decisions rendered with respect to the same seem to make out sufficiently clear that an assessment can be made in respect of the estate of the deceased and the estate duty payable on the same, as against one of the legal representatives who is an accountable person for the purposes of the Act. His liability would, however, be restricted to the extent of the assets that he derived from the deceased. This is explained in *Commissioner of Income-tax v. Mrs. Indumati Ratanlal* : [1968]70ITR353(Guj) at pages 356 and 357. Dealing with the nature of the liability of the assessee for payment of estate duty, the learned judges of the Gujarat High Court (Bhagwati C.J. and Divan J.) noticed the definition of 'legal representative' in Section 2(12) of the Act; the charging Section, Section 5, the liability for estate duty laid on every legal representative under Section 53, Sub-section (1), of the Act; and the provision in Section 53(5) declaring the joint and several liability of two or more accountable persons. It was explained that, while the liability of every accountable person is a personal liability, it is limited in extent to the assets of the deceased; it was a personal liability and not a liability payable out of the assets of the deceased. Apart from the above decision, counsel for the revenue cited a direct decision of the Allahabad High Court in *Vijay Kumar Kedia v. Controller of Estate Duty* : [1976]104ITR302(All) , where it was pointed out that the liability of legal representatives of a deceased person under the Estate Duty Act is materially different from that under the Indian Income-tax Act. Under the latter Act, a notice to file a return cannot be given to one only of the legal representatives; but under the Estate Duty Act, Section 53 enjoins each and every person on whom any interest in the property passes on death to be an accountable person. Section 58(4) contemplates the making of an assessment after a notice to any such accountable person who had filed the returns. In view of these provisions, it was held by the Allahabad High Court in the above case that an assessment under the Estate Duty Act can be made on the return filed by one of the accountable persons without making the other accountable persons parties to the proceedings. The decision may be compared with the one in *Chooarmal Wadhuram v. Commissioner of Income-tax* : [1971]80ITR360(Guj) cited to us by counsel for the petitioner. It was there ruled that where a person, dies leaving more than one legal representative, the Income-

tax Officer must proceed to assess the total income by serving notices under Section 22(2) or Section 34, on all the legal representatives. If the same is served only on one legal representative, there will be no complete representation of the estate and the proceedings would be invalid. One legal representative may, however, represent the entire estate of the deceased, where, for instance, he was managing the same. In such a case, it would not be necessary to serve notices on all the legal representatives. Again, where the Income-tax Officer bona fide and diligently believes one or more persons to be the only legal representative or representatives of the deceased and initiates proceedings by serving notices on such person or persons, the estate of the deceased may well be bound by the proceedings. There can be no quarrel with these general principles of representation of an estate discussed in the above decisions.

7. Our attention was called by counsel for the revenue also to the decision in *K. P. Mathew v. Agricultural Income-tax Officer* : [1974]96ITR121(Ker) , where it was recognised by a learned judge of this court, that an assessment to agricultural income-tax can validly be made against some only of the legal representatives without issuing notice to the others. Reference was made in that decision to the decision of the Supreme Court in *Mrs. Suseela Sadanandan's case* : [1965]57ITR168(SC) , regarding bona fide representation of the estate by one or some of the legal representatives, and to the decision in *Andhra Bank Ltd. v. Srinivasan* : [1962]3SCR391 , which had pointed out that if different intermeddlers can represent an estate, different legatees can represent it, and that this is possible despite their holding the estate in different parcels.

8. In the light of the principle of the above decisions, it is not possible for us to hold that the proceedings initiated against the petitioner and sought to be continued against him are wholly without jurisdiction or invalid. We would not be justified in declaring so at this stage or in these proceedings.

9. Section 73, Sub-section (5), of the Estate Duty Act, attracts the provisions of Sections 46 and 47 of the Indian Income-tax Act, 1922. The section is as follows :

'73. Notice of demand and recovery of ditty, penalty, etc.--.....

(5) The provisions of Sub-sections (1), (1A), (2), (3), (4), (5), (5A), (6) and (7) of Section 46 and Section 47 of the Indian Income-tax Act, 1922 (11 of 3922), shall apply as if the said provisions were provisions of this Act and referred to estate duty (including estate duty provisionally assessed) and sums imposed by way of penalty or interest under this Act instead of to income-tax and sums imposed by way of penalty or interest under that Act and to Controller of Estate Duty instead of to Income-tax Officer.'

Section 46 of the Indian Income-tax Act having been attracted to the case, the petitioner must seek his remedies, if any, under the provisions of the said section, and prefer his objections, if any, to the attachment under the said section if it is open and permissible to do so. We do not find any ground at this stage or in these proceedings to grant the reliefs prayed for.

10. Objection was raised that the estate duty demanded from the petitioner is the duty payable in respect of the entire estate of the deceased, that the petitioner would not in any event be liable for the same; and that for that reason the attachment proceedings are invalid. The attachment proceedings themselves are not before us, and it is not possible for us to say about the scope or nature of the attachment or the interest sought to be attached. Besides, we have the authority of the decision of a Division Bench of this court in *Isha Beevi v. Tax Recovery Officer* : [1971]80ITR82(Ker) that if the attachment is made in respect of a larger amount than what can be recovered from the persons sought to be proceeded against, that would not make the proceedings invalid. The decision was affirmed by the Supreme Court in *Isha Beevi v. Tax Recovery Officer* : [1975]101ITR449(SC) , although no reference was made to this principle. As stated already, no records have been exhibited to show the nature and extent of the interest sought to be attached.

11. Counsel for the petitioner stated that now that reassessment notice under Section 59 was issued, and that O.P. No. 4994 of 1972 was dismissed by exhibit P-2 judgment on that basis, it will be open to the revenue to net in the entire field covered by the assessment proposed by exhibit P-5 and that the petitioner and other legal representatives would not raise limitation in bar of the proposed

reassessment. This was sworn to by the petitioner by his affidavit dated March 11, 1976, and exhibits P-6(l) to P-6(l 1) were filed as supporting affidavits of the other legal representatives. Counsel for the revenue was not prepared to avail himself of this offer and pleaded want of instructions. We were not prepared to offer time for the purpose. Counsel stated that by R.P. No. 52 of 1974 the revenue had endeavoured to clear some misconceptions, but in the absence of the petition or other material, we cannot accept this. We should have thought that the revenue need not fight shy of accepting the offer made on affidavits to treat the reassessment notice, as one for original assessment, and to waive the plea of limitation. But the revenue apparently suspects a snag where we are inclined to see none; and we cannot compel it to agree to the offer. We have, therefore, dealt with the arguments.

12. In the result, subject to the remedy, if any, of the petitioner to object to the attachment under Section 46(2) of the Indian Income-tax Act, 1922, and under the procedure attracted to proceedings taken under the said provision, we dismiss this writ petition with no order as to costs.

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