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Controller of Estate Duty Vs. P.E. Venkitraman

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Court : Kerala

Decided On : Feb-24-1978

Reported in : [1978]115ITR222(Ker)

Judge : V.P. Gopalan Nambiyar, C.J. and; G. Balagangadharan Nair, J.

Acts : Estate Duty Act, 1953 - Sections 50, 61 and 62(1)

Appeal No. : Income-tax Reference No. 63 of 1975

Appellant : Controller of Estate Duty

Respondent : P.E. Venkitraman

Advocate for Def. : C.M. Devan, Adv.

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

Judgement :

Gopalan Nambiyar, C.J.

1. At the instance of the revenue, the Income-tax Appellate Tribunal, Cochin Bench, has referred the following questions for our opinion under Section 64(1) of the Estate Duty Act, 1953:

'(1) Whether a person can, under Section 62(1)(b) of Estate Duty Act, 1953, appeal to the Appellate Controller against an order of rectification passed by the

Assistant Controller under Section 61 of the Estate Duty Act by which the duty payable in respect of the property is enhanced ?

(2) Whether, on the facts and circumstances of the case, the deduction of Rs. 5,15.25 allowed under Section 50 of the Estate Duty Act, 1953, is a mistake apparent from the record within the meaning of Section 61 of the Estate Duty Act, 1953 ?'

2. The deceased, Easwara Iyer, was a member of an undivided Hindu family consisting of himself and his three sons, each having a one-fourth share in the joint family properties. On his death, the said one-fourth share passed, for the purpose of the Estate Duty Act. He had also individual properties in addition to his share in the joint family properties. The assessment to estate duty was completed on 31st May, 1967. The accountable person, viz., one of his sons, had paid Rs. 5,151*25 as court-fee for obtaining succession certificate in respect of the estate of the deceased. At the time of completing the assessment no deduction was allowed in respect of the court-fee paid. By an order of rectification dated July 28, 1967, under Section 61 of the Act, the Assistant Controller deducted the amountof court-fee paid by the accountable person from the value of the estate for the purpose of estate duty. Later on, however, the Assistant Controller seems to have had second thoughts as to whether the accountable person is entitled to credit for the entire amount of court-fee paid, or only to that part of it in proportion to the one-fourth share which alone passes on death. Therefore, another order of rectification under Section 61 of the Act was passed on March 11, 1970, giving credit only to a proportionate court-fee of Rs. 1,600. This resulted in an enhancement of estate duty payable in respect of the property passing on death. The assessee carried the matter in appeal to the Appellate Controller. Objection was taken to the maintainability of the appeal which was overruled. On the merits, the Appellate Controller agreed with the assessee and held that he was entitled to deduction of the entire court-fee. He was further of the view that there was no mistake apparent on the face of the record which would justify a rectification by the Assistant Controller. There was a further appeal to the Tribunal at the instance of the Assistant Controller; The Tribunal sustained the order of the Appellate Controller on the maintainability of the appeal. But, on the merits, the Tribunal also

agreed that the question as to whether the entire court-fee was deductible or only a proportionate part thereof, was not a mistake or error apparent on the face of the record and would not, therefore, attract a rectification order under Section 61 of the Act. This was how the Tribunal summarised its conclusion:

'.....So in short even the question as to what is the court-feeto be paid under the law relating to court-fees in the State of Kerala to obtain a succession certificate in respect of the rights of the deceased in the HUF property, viz., securities, is itself a highly debatable one. So the first deduction of the entire court-fee paid by the accountable person cannot be said to be a mistake apparent from the record if the principles of the Supreme Court judgment in T.S. Balaram, Income-tax Officer v. Volkart Bros. : [1971]82ITR50(SC) are applied to the facts of this appeal. So the Appellate Controller is right in cancelling the order passed under Section 61 of the Estate Duty Act.'

3. The questions of law have been referred at the instance of the revenue.

4. On the first question, we are of the opinion that an appeal is competent to the Appellate Controller against the order of rectification passed by the Assistant Controller. Section 62(1) of the Act provides :

'62. Appeal against orders of Controller.--(1) Any person-

(a) objecting-

(i) to any valuation made by the Controller, or

(ii) to any order made by the Controller determining the estate duty payable under Section 58 or Section 59, or

(iii) to any penalty levied by the Controller under Section 60, Section 72 or Section 84, or

(iv) to any penalty imposed by the Controller under Sub-section (1) of Section 46 of the Indian Income-tax Act, 1922 (11 of 1922), as applied under Sub-section (5) of Section 73 for the purposes of estate duty, or

(b) denying his liability to the amount of estate duty payable in respect of any property,

may, within thirty days of the date of the receipt of the notice of demand under Section 73, appeal to the Appellate Controller in the prescribed form which shall be verified in the prescribed manner: Provided that no appeal shall lie under Sub-clause (iv) of Clause (a) unless the duty has been paid before the appeal is filed.'

5. It was contended for the revenue that there was neither any determination of the estate duty payable under Section 58 or Section 59, nor any assessment to penalty, nor any objection to valuation to attract Clause (a) of Section 62(1). While this may be so, we are of the opinion that the appeal is squarely covered by Clause (b) of Section 62(1) of the Act. The said clause is widely worded and if as a result of the rectification order passed, the accountable person was denying his liability to the estate duty which he was called upon to pay, that is sufficient to attract the right of appeal conferred by Section 62(1)(b). The view taken by the Appellate Controller and by the Appellate Tribunal on the maintainability of the appeal was, therefore, correct.

6. Turning now to the second question, we are in agreement with the Tribunal and the Appellate Controller that there was no mistake or error apparent on the face of the record to justify a rectification and that the order of rectification was, therefore, unsustainable. We say so on two grounds J First that the question whether, in respect of the facts disclosed, the entire court-fee could be claimed deduction of, or only a proportionate part thereof representing the share of the deceased passing on death, is at least a debatable question. So that, it is difficult, if not impossible, to posit that there was a mistake or error apparent on the face of the record. We are further of the view that if the legal position in regard to this aspect of the matter had to be examined and had to be pronounced upon, it should be decided in favour of the accountable person by holding that there is no provision of law which would justify a person entitled only to one-fourth of estate taking out an application for succession certificate in respect of the entire estate, to confine payment of court-fee only to the one-fourth share in which he was interested. The Tribunal has noticed certain provisions of the Court-fees Act and of the Indian

Succession Act, from which it is sufficiently clear that for applying for a succession certificate in respect of an estate of the deceased it was necessary to pay court-fee on the value of the entire estate. Court-fee having thus been paid by the accountable person, the question of deduction is governed by Section 50 of the Estate Duty Act, which reads :

'50. Relief from estate duty where court-fees have been paid for obtaining representation to estate of deceased.--Where any fees have been paid under any law relating to court-fees in force in any State for obtaining probate, letters of administration or a succession certificate in respect of any property on which estate duty is leviable under this Act, the amount of the estate duty payable shall be reduced by an amount which is equal to the court-fees so paid.'

7. The section makes it clear that the fee paid under any Jaw relating to court-fee for obtaining succession certificate in respect of any property on which estate duty is leviable, is liable to be deducted for purpose of estate duty. On the terms of the section, we are unable to confine the expenditure or the deduction only to the proportionate part of the court-fee proportionate to the share of the deceased which passes on his death and in regard to which estate duty has to be assessed. Our attention was called to Sections 5, 6, 7 and 39(1) of the Act. These make clear the position as to what is the quantum of the interest that passes on death. But the liability to deduction is governed by Section 50 of the Act and by the provisions of the Indian Succession Act and the Court-fees Act. On these provisions, we think that the accountable person was entitled to deduction of the payment of the entire court-fee.

8. In the result, we answer question No. 1 in the affirmative, i.e., in favour of the accountable person and against the department and question No. 2 in the negative, i.e., in favour of the accountable person and against the department. We make no order as to costs.

9. A copy of this judgment under the seal of the court and the signature of the Registrar will be communicated to the Appellate Tribunal as required by law.

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