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Court : Kerala

Decided On : Aug-12-1966

Reported in : [1968]67ITR838(Ker)

Appeal No. : Income-tax Referred Case No. 69 of 1965

Appellant : Radhakrishna Reddiar

Respondent : Controller of Estate Duty, KeralA.

Judgement :

GOVINDAN NAIR J. - The Central Board of Direct Taxes, New Delhi acting under sub-section (1) of section 64 of the Estate Duty Act, 1953, has made this reference. The questions referred are :

'(1) Whether a penalty under section 56 of the Estate Duty Act, 1953 (as it stood before its amendment in 1958), could be levied before the completion of the estate duty assessment

(2) If the answer to question No. (1) is in the affirmative, whether such penalty could in the facts and circumstances of the case exceed a sum of rupees one thousand ?'

The section under which penalty has been imposed is section 56 of the Estate Duty Act, 1953, as it stood before the amendment of 1958. The section is in these terms :

'56. Any person who without reasonable cause has failed to comply with the provisions of section 53 or section 55 or has failed to comply with the said provisions within the time allowed, shall be liable to pay a penalty of one thousand rupees or a sum equal to double the amount of estate duty, if any, remaining unpaid for which he is accountable, according as the Controller may direct :

Provided that the Controller may reduce the penalty in any particular case.'

On the basis that the accountable person had failed to comply with the provisions of section 53 a penalty was imposed on March 21, 1960, even before an assessment to estate duty, by the Assistant Controller of Estate Duty. The penalty imposed was Rs. 25,000, and it is clear from the order that the Assistant Controller of Estate Duty was applying that part of section 56, which provides for fixing the quantum of the penalty on the basis of the difference between the duty payable and the duty that has been paid. In appeal, the quantum of the penalty has been reduced from Rs. 25,000 to Rs. 5,000. But here again it is the latter part of the section which emphasises the difference between the estate duty payable and the duty paid that has been pressed into service.

Counsel on behalf of the assessee has contended before us that section 56 can have application only after the determination of the estate duty payable by an accountable person. Even in cases where that person had failed to comply with the provisions of section 53 or section 55, the machinery provided by section 51 of the Estate Duty Act, 1953, ought to be utilised and the estate duty determined. Without such determination, it is pointed out, it is difficult is not impossible to postulate the difference between the estate duty payable and that which has been paid which is a condition precedent to determine the quantum of the penalty at any rate for the purpose of the latter part of section 56. It is also urged that the thousand rupees penalty provided in the first part of the section is an alternative to the provision in the second part, which deals with double the difference between the duty payable and the duty paid. It is, therefore, contended that any question of penalty can be determined by the officer only after the estate duty payable has been determined. We are inclined to accept this contention. In the penalty proceedings, it is always necessary to quantify the penalty and that be section 56 has been related to the duty payable, though in certain cases a lump sum is provided for. We cannot conceive the quantum being determined by the officer concerned on a date earlier to the date on which the estate duty payable is fixed. In these circumstances, the order of penalty imposed in this case cannot be sustained. We hold that the order is unsustainable. We answer question No. 1 referred to us in the negative, that is, in favour of the accountable person and against the department. In view of our answer to question No. 1, question No. 2 calls for no answer. We answer the question referred to us in the above terms. There will be no order as to costs.