

**G. Krishnan Vs. Assistant Controller of Estate Duty and anr.**

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**Court :** Kerala

**Decided On :** May-24-1994

**Reported in :** [1994]210ITR665(Ker)

**Judge :** T.L. Viswanatha Iyer, J.

**Acts :** [Estate Duty Act, 1953](#) - Sections 70 and 70(2)

**Appeal No. :** O.P. No. 1559 of 1991-I

**Appellant :** G. Krishnan

**Respondent :** Assistant Controller of Estate Duty and anr.

**Advocate for Def. :** P.K. Ravindranatha Menon, Sr. Adv. and; N.R.K. Nair, Adv.

**Advocate for Pet/Ap. :** T.P. Varghese, Adv.

**Judgement :**

**T. L. Viswanatha Iyer, J.**

1. The petitioner's father, one Govinda Menon died on October 18, 1981, leaving behind immovable properties of a value which made the estate liable for payment of duty under the [Estate Duty Act, 1953](#) (the Act). The Assistant Controller of Estate Duty, Earnakulam, completed the assessment of the petitioner on July 29, 1983, determining the principle value of the estate liable for duty at Rs. 6,40,580.

Demand was made for Rs. 82,174 as the balance of estate duty payable after crediting the provisional duty of Rs. 25,000 paid by the petitioner. The petitioner paid a further sum of Rs. 10,272 and sought the facility of paying the balance amount in instalments under Section 70(2) of the Act, which was allowed by the proceedings, exhibit P-1, and the petitioner was permitted to pay the amount in eight half-yearly instalments from February 6, 1984, inclusive of interest. The petitioner simultaneously challenged the assessment in appeal which was partly allowed by the Appellate Controller on November 23, 1984, reducing the principal value by Rs. 1,85,000. The order was implemented by the Assistant Controller of Estate Duty by Ms proceedings, exhibit P-2, dated January 5, 1985, fixing the duty payable at Rs. 53,845. Deducting the amounts already paid provisionally and in instalments, demand was made for a further amount of Rs. 445 which was paid by the petitioner on February 22, 1985. By this payment no further amounts remained to be paid by way of estate duty under the assessment as modified in appeal.

2. The Revenue challenged the appellate order in appeal before the Appellate Tribunal. The appeal was successful in part and the principal value became Rs. 5,68,580 and the estate duty payable thereon Rs. 85,574. The order of the Tribunal is dated September 29, 1989. The balance duty payable was Rs. 32,328 for which demand was made along with an amount of Rs. 8,848 by way of interest under Section 70 (vide exhibit P-3 dated December 6, 1989). The petitioner paid the balance amount of duty and sought waiver of the interest demanded by his petition, exhibit P-5. The request was, however, rejected by the Assistant Controller by his proceedings, exhibit P-6, dated July 17, 1990, on the ground that the petitioner had opted for payment of the duty in instalments and, therefore, interest was payable under Section 70 of the Act. The petitioner's subsequent request to the Commissioner of Income-tax did not meet with any success, being rejected by the proceedings, exhibit P-8.

3. In this writ petition, which challenges exhibits P-6 and P-8 in their entirety, the only ground seriously urged is that no interest could run during the period when the order of assessment stood modified in appeal, till it was restored in part by the Appellate Tribunal's order on September 29, 1989. The tall claim put forward in the writ petition (which no doubt was not pressed) that no interest at all is chargeable,

cannot stand because the petitioner had opted for payment in instalments and under that provision, the instalments facility is liable to be granted only subject to payment of interest. The only question for consideration therefore is what is the effect of the first appellate order on the running of interest.

4. I have already noted that the balance demand got reduced to a mere Rs. 445 by virtue of this order which the petitioner promptly paid. It is also seen from the pleadings that the petitioner had paid the instalments (inclusive of interest) properly in accordance with the tenor of exhibit P-1, so that at the time the order was passed by the Appellate Controller, the amount due under the assessment was being discharged as permitted by the order under Section 70. In that event, the decision of the Division Bench in ITO v. A. V. Thomas and Co. : [1986]160ITR818(Ker) must come into play and interest does not run during the period the liability ceased to exist during the operation of the Appellate Controller's order till it was set aside in part by the Tribunal. In A V. Thomas and Co.'s case : [1986]160ITR818(Ker) , the assessee had paid the amount demanded as per the order of assessment and therefore it was held that there was no liability on his part to pay interest during the period the first appellate order granting relief to the assessee was in force. No doubt, the case was one under Section 220(2) of the Income-tax Act, 1961. But the principle of the decision can be applied here. The petitioner had complied with the demand as per the order of assessment and had paid the instalments due as permitted by exhibit P-1. The further small amount of Rs. 445 which became payable under the Appellate Controller's order was also paid. Interest is payable only because of Section 70 of the Act and when there was no amount payable towards duty, the question of paying interest under section 70 during the period of operation of the Appellate Controller's order does not arise, as there was no further amount payable as per the order, exhibit P-1. The assessee paid the small further amount due as soon as it was demanded after the Appellate Controller's order. I am, therefore, of the view that no interest could run during the period the order of the Appellate Controller was in force. The demand for interest made on the petitioner by the revised order, exhibit P-3, requires modification to this limited extent.

5. The original petition is, therefore, allowed in part. I direct the first respondent to modify the order, exhibit P-3, in so far as it claims interest from the petitioner, by deleting that part of the interest which relates to the period when the Appellate Controller's order was in force, upto September 29, 1989, and confining it only to the rest of the period.

6. There will be no order as to costs.

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