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Court : Chennai

Decided On : Apr-30-1958

Reported in : AIR1959Mad87; [1958]34ITR1(Mad); (1958)2MLJ447

Judge : Rajagopalan and ;Balakrishna Ayyar, JJ.

Acts : Estate Duty Act, 1953 - Sections 63(6) and 70

Appeal No. : Writ Petn. No. 35 of 1958

Appellant : M.L. Yacoob Sheriff

Respondent : Additional Assistant Controller, Estates Duty Cum Income-tax Circle, Madras

Advocate for Def. : C.S. Rama Rao Sahib, Adv.

Advocate for Pet/Ap. : M.R.M. Abdul Kareem, Adv.

Disposition : Appeal dismissed

Judgement :

Rajagopalan, J.

1. On the death of Lalu Mean Sahib, his estate in the hands of his heir, the petitioner, was assessed to duly under the previsions of the Estate Duly Act, Act XXXIV of 1953, and the Additional Assistant Controller, assessed the sum payable as duty at Rs. 5812.51. The total value of the estate was estimated at Rs. 1,71,139. The Additional Assistant Controller negatived the claim of the petitioner that a sum of Rs. 88,000 ought to be deducted on the ground that this represented the debts payable by the deceased to two of his children. Against the decision of the Additional Assistant Controller the petitioner preferred an appeal to the Central Board of Revenue, availing himself of the statutory right under Section 63 of the Act. Pending disposal of the appeal, the petitioner asked the Additional Assistant Controller for stay of the collection of the duty imposed.

Though the real question in dispute in the appeal was whether the petitioner's claim for the deduction of Rs. 88,000 was well founded the position is that, if that claim is allowed, the total value of the deceased's estate would fall below the statutory minimum of Rs. 1,00,000 and no duty would be payable at all. In response to the petitioner's request the Additional Assistant Controller informed him that the proportional duty on the sum in dispute in the appeal Rs. 88,000 worked out to Rs. 3283-52. The Additional Assistant Controller was prepared to stay collection of that amount. He insisted on payment of the balance of Rs. 2528-69, & he informed the petitioner that in default of payment before 15-1-1958 coercive steps would he taken to collect that amount of Rs. 2528-69.

2. The petitioner applied under Art. 226 of the Constitution for the issue of a writ of mandamus to restrain the Additional Assistant Controller from collecting any amount as estate duty.

3. It was on the provisions of Section 63(6) that the learned counsel relied in support of his contention, that in the circumstances of this case he was entitled to an absolute stay of collection, merely on the ground that the appeal preferred against the decision of the Additional Assistant Controller is pending disposal. Section 63(6) runs:

'Notwithstanding that an appeal has been filed before the Board, so much of the estate duty as is not in dispute shall be payable by the appellant.'' Merely, for the

purpose of comparison we shall set out the provisions of Section 64(9) which runs:

'Notwithstanding that a reference has been made under this section to the High Court or to tile Supreme Court, estate duty shall be payable in accordance with the determination matte by the Board.'

4. The normal rule of course, is that an appeal does not operate proprio vigore to stay the operation of the order appealed against. We are unable to accept the contention put forward by the learned counsel for the petitioner that Section 63(6) gives a statutory recognition to a departure from this principle and that effect of Section 63(6) is that where an appeal has been filed, to the extent the duty is in dispute, there shall be an absolute stay of collection. In the circumstances of this case we have pointed out that, though the value of the estate liable to duty in dispute in appeal is only Rs. 88,000, if that claim is allowed, no duty would be payable at all.

In our opinion, all that Section 63(6) provides for is that, apart from Section 70 of the Act there should be no discretion left and the amount demanded becomes payable if that is not the subject-matter of any appeal at all. With reference to what constitutes the subject-matter, the discretion left to the competent authority to proceed with the collection or to stay collection is left intact. Of course, if there is an order of a competent authority, that would be effective in staying collection.

If there is no such order of stay, the mere pendency of the appeal does not by itself operate as a stay or bar the enforcement of the liability under the order appealed against. Section 70 of the Act specifically provides for stay of collection or payment in instalments. Section 70 could well be invoked, though it does not expressly refer to proceedings which are the subject-matter of appeal. Under Section 64(9), it is not for the collecting authority to refrain from collecting, though a reference is-pending in the High Court or Supreme Court, because the statutory provision is that the amount becomes payable despite the pendency of such a reference.

5. As we said, we are unable to construe Section 63(6) as imposing an absolute bar on collection of the amount due, if the correctness of the amount is challenged

in appeal.

6. The rule is discharged and the petition is dismissed with cost. Counsel's fee Rs. 150.

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