

**A.N. ShamsuddIn Vs. Assistant Controller of Estate Duty**

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**Court :** Chennai

**Decided On :** Aug-24-1993

**Reported in :** [1994]209ITR542(Mad)

**Judge :** Janarthanam, J.

**Acts :** [Estate Duty Act, 1953](#) - Sections 57, 58 and 70

**Appeal No. :** Writ Petition No. 1197 of 1984

**Appellant :** A.N. Shamsuddin

**Respondent :** Assistant Controller of Estate Duty

**Advocate for Def. :** N.V. Balasubramanian, Adv.

**Advocate for Pet/Ap. :** P.P.S.

**Judgement :**

**Janarthanam, J.**

1. One A. Noor Mohammed of Nidur died on August 14, 1976. An estate duty account admitting a principal value of the estate of Rs. 12,21,992 was stated to have been filed on March 22, 1978, by A. N. Shamsuddin, son of the deceased (petitioner herein). A sum of Rs. 3,11,142.60 was provisionally assessed under section 57 of the [Estate Duty Act, 1953](#) (for short 'the Act'), and a demand notice

under section 73 of the Act thereof was stated to have been served on March 28, 1978, giving time for payment till April 27, 1978, for payment of the same.

2. There were fixed deposits in the names of minor son, A. K. Mohammed Johini, and mother guardian, Halima Bivi, and the petitioner to the tune of Rs. 3,76,804.82 in Indian Bank, Mayuram. Attachment notice under section 73(5) was stated to have been issued on July 13, 1978, to the Indian Bank, Mayuram, and the bank, in its letter dated July 13, 1978, was stated to have undertaken the responsibility by transferring the monthly interest payable on those fixed deposits then and there and to adjust the rest of the liability of estate duty from the principal amounts on the respective dates of maturity of those fixed deposits.

3. The petitioner, it is said, has also requested by letter dated April 25, 1978, for time till July 31, 1978, to pay the provisional demand. A draft for Rs. 30,000 was stated to have been sent by the petitioner on August 2, 1978. Therefore, a show-cause notice had been issued on August 18, 1978, to the petitioner requesting him to pay the duty by getting loan on fixed deposit. The petitioner pleading inability, however, was stated to have sent a draft for Rs. 25,000 on September 14, 1978. Thereafter, he along with his chartered accountant, was stated to have appeared on November 1, 1978, and requested time for payment till December 25, 1978. The condition to grant time till December 25, 1978, was subject to payment of interest at six per cent., from the original due date till date of last payment. This was communicated in writing by letter dated November 17, 1978, to the petitioner.

4. The petitioner failed to adhere to the due date December 25, 1978. A show cause notice was also issued on December 27, 1978. The petitioner, in his letter dated December 27, 1978, requested for three equal monthly instalments from January 31, 1978, to pay the arrears of the provisional demand. He was allowed to pay in three equal monthly instalments by letter dated January 4, 1979. This was also allowed subject to the payment of interest at six per cent. per annum from the original due date till date of payment. The Department somehow or other was able to realise the provisional demand on August 2, 1982.

5. After the collection of the entire provisional duty, a sum of Rs. 36,950 was demanded towards interest by the Assistant Controller, Thanjavur (respondent

herein), in his proceedings, GIR No. 508, dated August 4, 1982. The petitioner, however, by way of written representation objected to his liability for payment of interest on provisional assessment and since no favourable orders had been passed on such representation, he was impelled to resort to the present action praying for issue of a writ of certiorari to quash the said proceedings.

6. Mr. P. P. S. Janarthana Raja, learned counsel appearing for the petitioner, would contend that on a survey of the various provisions adumbrated under the Act, it is rather crystal clear that no provision had been made for automatic running of interest on estate duty leviable and imposition of interest on such duty is permissible in certain contingencies contemplated under the salutary provisions adumbrated under section 70, which if properly construed, would indicate, in rather unmistakable terms, that such imposition of interest is plausible and permissible only when final assessment is made determining the duty leviable and not otherwise.

7. Mr. N. V. Balasubramanian, learned junior standing counsel for Income-tax representing the respondent, did not dispute the position as to there being no provision under the Act for automatic running of interest on the estate duty leviable. But he would, however, contend that the language and phraseology employed in section 70 of the Act are so unambiguous and in crystal clear a fashion as is not possible to give an interpretation in such a convenient and contumacious fashion, as had been contended by learned counsel for the petitioner and the construction and interpretation of sub-sections (1) and (2) of the said section would lead to the one and only interpretation that imposition of interest on estate duty leviable is permissible at any stage-either provisional or final-inasmuch as there are no words or phraseologies employed therein restricting imposition or charging of interest on such duty leviable.

8. Arguments-in-opposition of either counsel, as penned above, may now fall for consideration and discussion.

9. In order to appreciate the question raised, it is better, I think, to refer to the provisions of sections 57, 58 and section 70. Section 57 deals with power to make provisional assessment in advance of regular assessment and it runs as under :

'57. (1) Estate duty shall be due from the date of the death of the deceased, and the Controller may, at any time after the receipt of the account delivered under section 53 or section 56, proceed to make in a summary manner a provisional assessment of the estate duty payable by the person delivering the account on the basis of the account so delivered.

(2) Upon a provisional assessment being made under sub-section (1), the person so assessed shall pay to the Controller, or furnish security to the satisfaction of the Controller for the payment of the estate duty, if any, payable on the provisional assessment, and the Controller shall thereupon grant him a certificate that such duty has been or will be paid or that none is due, as the case may be, in respect of the property mentioned in the certificate.

(3) After regular assessment has been made under section 58 any amount paid towards the provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular assessment.

(4) No appeal shall lie against a provisional assessment made under sub-section (1), but nothing done or suffered by reason or the consequence of any such provisional assessment shall prejudice the determination on the merits of any issue which may arise in the course of the regular assessment under section 58.'

10. Section 58 dealing with assessment is couched as under :

'58. (1) If the Controller is satisfied without requiring the presence of the person accountable that an account delivered under section 53 or section 56 is correct and complete, he shall assess the principal value of the estate of the deceased, and shall determine the amount payable as estate duty.

(2) If the Controller is not so satisfied, he shall serve a notice on the person accountable, either to attend in person at his office on date to be specified in the notice, or to produce or cause to be produced in that date, any evidence on which the person accountable may rely in support of his account.

(3) The Controller, after hearing such evidence as the person accountable may produce and such other evidence as he may require on any specified points, shall,

by order in writing, assess the principal value of the estate of the deceased and determine the amount payable as estate duty.

(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.'

11. From what has been extracted as above, it is thus clear that the Controller is empowered under section 57 to make in a summary manner a provisional assessment of the estate duty payable by the person delivering the account on the basis of the account delivered, at any time after the receipt of the account by him under sub-section (2) of section 57. Upon the making of the provisional assessment the assessee had to pay to the Controller, or furnish security to his satisfaction, for the payment of the estate duty, in accordance with the provisional assessment and the Controller thereupon is to grant him a certificate that such duty has been or will be paid or that none is due, as the case may be, in respect of the property mentioned in the certificate. No appeal has been provided against the order of provisional assessment and the amount paid in pursuance of the provisional assessment is to be deemed to have been paid towards the regular assessment as and when made under section 58.

12. Section 70, which contemplates imposition of interest, where the Controller allows postponement of payment on terms, reads as under :

'70. (1) Where the Controller is satisfied that the estate duty leviable in respect of any property cannot, without excessive sacrifice, be raised at once, he may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent., or any higher interest yielded by the property, and on such other terms as he may think fit.

(2) Notwithstanding anything contained in sub-section (1), estate duty in respect of immovable property may at the option of the person accountable be paid in four equal yearly instalments or eight equal half-yearly instalments with interest at the rate of four per cent. per annum or any higher interest yielded by the property from

the date on which the first instalment is payable and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being upheld with such interest to the date of payment may be paid at any time and in case where the property is sold shall be paid on the completion of the sale and if not so paid shall be recovered in the manner specified in section 73.'

13. The section, as extracted above, consists of two sub-sections. The first sub-section is relatable to estate duty leviable in respect of 'any property', whereas sub-section (2) is in respect of 'movable property'. Worthy it is to note at this juncture that sub-section (2) commences with a non obstante clause, viz., 'Notwithstanding anything contained in sub-section (1) '. Under sub-section (1), if the Controller is satisfied that the estate duty leviable cannot be raised at once without any excessive sacrifice in respect of any property, he may allow postponement of payment for such period and to such extent and on payment of such interest not exceeding four per cent., or any higher interest yielded by the property and on such other terms as he may think fit.

14. Under sub-section (2), if the accountable person exercises the option to pay the estate duty leviable relatable to immovable property either in four equal yearly instalments or eight equal half-yearly instalments, he may be allowed by the Controller to do so with interest at the rate of four per cent. per annum or any higher interest yielded by the property from the date on which the first instalment is payable and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly.

15. The effect to be produced by combined reading of the provisions adumbrated under sections 57, 58 and 70 of the Act bristles to these :

The estate duty becomes due from the day of the death of the deceased. The power inheres in the Controller to make in a summary manner provisional assessment of the estate duty payable by the person delivering the account on the basis of such account. The amount payable on such assessment becomes immediately due. The amount so assessed, if paid, is given credit at the time of final assessment to be made. No appeal on such provisional assessment shall be

allowed obviously on account of the fact that such assessment is made only on the basis of the acceptance of the account so delivered. The estate duty leviable in respect of 'any property' may also be postponed, if the Controller is satisfied that such a duty cannot be raised at once without any excessive sacrifice. If the payment is postponed, levy if interest in such payment is permissible at the specified rates, taking into account the contingency of the situation of the case. In the case of estate duty leviable in respect of 'immovable property', an option is given to pay the amount either in four equal yearly instalments or eight equal half-yearly instalments with interest as applicable to 'any property'. Thus, the estate duty leviable is recoverable at any stage, either provisional or final, inasmuch as there are no express or explicit fetters on the collection of such duty and recovery may be effected in the manner indicated by the sanguine provisions adumbrated under section 73.'

16. In the case on hand, there is no controversy that the estate duty became due on and from August 14, 1976, the date of death of the deceased. Yet another fact, about which there cannot be any dispute, is that the accountable person, namely, the petitioner, filed a return on March 22, 1978, admitting the principal value of the estate at Rs. 12,21,992 and on such basis, the provisional assessment to the tune of Rs. 3,11,142.60 had been made and a notice of demand for payment of the said amount had been served on him on March 28, 1978, giving him time for payment till April 27, 1978. Since the demand was not complied with, attachment notice under section 73 of the Act in respect of certain fixed deposits to the tune of Rs. 3,76,804 had been issued on July 13, 1978, to the Indian Bank, Mayuram, which in fact on such attachment having been made, has undertaken the responsibility of transferring the monthly interest payable on those deposits, and to adjust the rest of the liability of the estate from the principal amounts on the respective dates for their maturity.

17. Subsequently, the petitioner appeared to have offered certain payments and requested for time to clear the arrears of estate duty provisionally assessed in three equal monthly instalments agreeing to pay interest at six per cent. per annum from the original due date till date of payment. It was on such a condition that postponement of payment had been allowed, obviously on account of the fact

that for the estate duty leviable, if the deposits in the banks were foreclosed, excessive sacrifice could not at all be avoided to the estate, in the sense of forgoing of interest due on such deposits. In such a state of affairs, the claim of interest to the tune of Rs. 36,950 on such instalment payments by the Assistant Controller of Estate Duty. Thanjavur (the respondent herein) could not at all be stated to be not in conformity with the statutory provisions adumbrated under the Act.

18. No doubt, it is true that learned counsel for the petitioner, in support of his argument, placed reliance on the Division Bench decision of the Patna High Court in Bettiah Estate v. Union of India : [1977]108ITR210(Patna) which took the view that only when the assessment is complete, levy of interest is permissible in law.

19. Per contra, learned junior standing counsel for the Income-tax Department appearing for the respondent, drew my attention to the Division Bench decision of the Karnataka High Court in Smt. Jayakumari v. Assistant CED : [1991]191ITR273(KAR) and the view taken thereto is expressed as below after extracting section 10 of the Act (at page 277) :

'A careful reading of the above section clearly discloses that it applies to any case where payment of estate duty is involved and that payment is postponed. It does not limit itself only to the final assessment.'

20. In view of my discussion as above, I am in entire agreement with the views expressed by the Division Bench of the Karnataka High Court. Therefore, I am constrained to respectfully agree to disagree with the views expressed by the Division Bench of the Patna High Court.

21. The writ petition as such deserve to face dismal failure. Accordingly, the same is dismissed. Rule nisi issued shall stand discharged. There shall, however, be no order as to costs in the circumstances of the case.