

Khathija Beevi Vs. Assistant Controller of Estate Duty and Another

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Court : Chennai

Decided On : Jan-21-1994

Reported in : [1995]217ITR114(Mad)

Judge : Rangarajan, J.

Acts : [Estate Duty Act, 1953](#) - Sections 61

Appeal No. : Writ Petition No. 1789 of 1979

Appellant : Khathija Beevi

Respondent : Assistant Controller of Estate Duty and Another

Advocate for Def. : N.V. Balasubramaniam, Adv.

Advocate for Pet/Ap. : Janarthana Raja, Adv.

Judgement :

Rangarajan, J.

1. This petition is directed against the order of the Assistant Controller of Estate Duty refusing to rectify the assessment. The matter relates to the estate of the late Abdul Aziz. The accountable person claimed that a sum of Rs. 27,500 being a debt due by the deceased to one Natesa Padayachi was allowable as a deduction in computing the principal value of the estate. That question came up for

consideration before this court in T.C.O.P. No. 173 of 1977. The court observed that learned counsel for the petition was not in a position to show that the sum was actually a debt due to Natesa Padayachi by the deceased. At the same time, this court observed :

'In case the suit is decreed as against the estate, then we consider that the assessee may approach the authority concerned so as to get a deduction in the manner contemplated by law.'

2. The suit was actually decreed on September 30, 1978. Thereupon, the assessee made an application on October 17, 1978, seeking deduction of the amount decreed. By order dated March 24, 1979, the Assistant Controller of Estate Duty said that sine the evidence to revise the assessment was not filed within five years from the date of the assessment order, the request to revise the assessment order cannot be considered. The contention of the petitioner is that since the decree itself was passed by the court beyond five years from the date of assessment order, the bar of limitation ought not to be applied in this case. The Revenue resisted this by pointing out that the High Court has only stated that the accountable person may approach the authority in the manner contemplated by law and as section 61 of the Estate Duty Act provided a period of limitation of five years, the accountable person's application was not required to be considered. I see no force in this objection of the Revenue. After all, the debt having been decreed, the Revenue cannot dispute the fact that the accountable person is entitled to the deduction. The Revenue is not expected to take a technical plea against such a deduction on the ground of bar of limitation. It is obvious that the accountable person could not produce the decree within five years as the decree itself came into existence after five years. In such circumstances, there have been instances where the Central Board of Direct Taxes itself has instructed the Income-tax Officer to waive the bar of limitation and allow the relief.

3. Moreover, it can also be considered to be a rectification implicit in the direction of the High Court which is to be carried out by the Assistant Controller of Estate Duty and a rectification to be carried out under that the power under section 61 of the Act. In the interests of justice, I consider that the order of the Assistant

Controller should be quashed and a mandamus be issued directing the Assistant Controller to consider the application of the assessee. Accordingly, the impugned order is quashed with a direction to the Assistant Controller of Estate Duty to consider the application of the assessee on the merits without raising the question of bar of limitation. The writ petition is ordered in the above terms. No costs.

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