

Prem Nath Khandelwal Vs. Assistant Controller of Estate Duty

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Court : Kolkata

Decided On : Feb-23-1970

Reported in : [1970]77ITR949(Cal)

Judge : Banerjee, J.

Acts : [Estate Duty Act, 1953](#) - Section 70; ;Finance Act, 1894 - Sections 6(6) and 8(9); ;Indian Law

Appeal No. : Matter No. 192 of 1969

Appellant : Prem Nath Khandelwal

Respondent : Assistant Controller of Estate Duty

Advocate for Def. : D.K. Sen, Adv.

Advocate for Pet/Ap. : D.K. De, Adv.

Judgement :

Banerjee, J.

1. The petitioner challenges an order passed by the Assistant Collector, 'A' Ward, Estate Duty-cum-Income-tax Circle, whereby the petitioner was asked to pay an interest under Section 70 at the rate of 4%, amounting to Rs. 10,457.48 on the provisional duty of Rs. 42,387.56.

2. The petitioner's case is that one Sri N. Khandelwal died intestate on February 15, 1954, surviving his widow Smt. Mohini Debi. The said Mohini Debi submitted account under Section 52 of the Estate Duty Act and by an order dated 11th March, 1955, a provisional assessment for a sum of Rs. 42,387 on account of estate duty was made. The payment was required to be made on 25th March, 1955. By a letter dated 25th March, 1955, Smt. Mohini Debi prayed for extension of the time to pay such demand. No reply it is alleged of the said letter was given by the revenue authority. On 23rd March, 1956, the Deputy Controller of Estate Duty demanded payment of the estate duty by 28th March, 1956, and by the said letter it was stated that unless the payment is made by March 28, 1956, interest and penalty may be imposed for the default. Thereafter, various letters were written by the revenue authorities to the said Mohini Debi for payment and it was also stated in the said letters that unless payment is made, interest and penalty will be imposed. In the meantime it is alleged that the payments were being made by different instalments. The said Mohini Debi died on May 30, 1963, and by a deed of settlement the present petitioner was appointed a trustee and beneficiary in respect of the property. It appears on 31st December, 1964, the Assistant Controller assessed estate duty to the tune of Rs. 99,313.38 and after giving a credit by a sum of Rs. 22,294 which was paid by the petitioner, the petitioner was asked to pay Rs. 7,718.70. Against the said order of assessment the petitioner preferred an appeal which was partially allowed by the Appellate Controller by his order dated September 29, 1965. Against the said appellate order the petitioner preferred an appeal to the Income-tax Appellate Tribunal and the Appellate Tribunal by order, dated August 12, 1968, allowed the appeal, and due to the appellate order the assessed duty payable was fixed at Rs. 53,076.42. While those proceedings were pending, the petitioner made a payment of about Rs. 77,619 68 by different instalments. In that view of the matter the petitioner was entitled to refund of Rs. 24,000 and odd and in fact the refund was made by the department. On 17th February, 1969, however, the petitioner was served with copy of an order dated 17th of February, 1965, showing the calculation of interest on the provisional assessment for the period between 26th March, 1955, and the 30th December, 1964, alleging that interest under Section 70 of the Estate Duty Act is payable by the petitioner and a recovery certificate No. 1637 was issued

against the petitioner. The petitioner objected to the said demand and moved this court and obtained the rule.

3. Mr. D. K. De appearing for the petitioner contended that unless an order is made under Section 70 of the [Estate Duty Act, 1953](#), imposing interest, no interest can be demanded by the revenue authority and as such the demand of Rs. 10,000 and odd being the interest payable on the provisional assessment is without jurisdiction and illegal. Mr. De argued that no order was made imposing the demand of interest. In fact the revenue authorities only threatened the petitioner that interest and penalty will be levied unless payment is made by a particular date. Mr. De argued that in order to attract Section 70 of the Estate Duty Act which is the only provision for realisation of interest it is necessary to have the satisfaction of the Controller 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 4%. Mr. De argued that the Section 70 presupposes an order after the Controller's satisfaction about the condition imposed by the said Section.

4. Mr. Sen, on behalf of the revenue, however, argued that the payment of interest does not depend on the satisfaction of the Controller but as soon as the provisional assessment is made and duty is quantified the interest is payable at the rate of 4% per annum. If, however, the Controller is satisfied he can postpone the date of payment.

5. The questions for decision therefore are, (1) whether the interest on estate duty is payable even though no order is made in that respect by the Controller, and (2) whether after all the duty levied was paid up could the department demand interest as the duty was paid by instalments. Section 70 of the [Estate Duty Act, 1953](#), runs as follows :

'(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 unpaid 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.'

6. The estate duty was for the first time introduced in India with the enactment of the [Estate Duty Act, 1953](#), which came into force on 15th October, 1953. It appears that the Indian legislature took the English Finance Act of 1894 as the model of the [Estate Duty Act, 1953](#). From a glance at the provisions of the Indian and English Acts it would be dear that the Indian Act is a verbatim copy of the English Act. For the decision of the case before me, however, it is required to consider Sections 6(6) and 8(9) of the Finance Act of 1894. The said sections are as follows:

'6. (6) Interest at the rate of three per cent, per annum on the estate duty shall be paid from the date of the death upto the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens, and shall form part of the estate duty.

8. (9) Where the Commissioners are satisfied that the estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they 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 terms, as the Commissioners think fit.'

7. The U. K. Finance Act of 1894, makes a provision for imposing interest on the property on which the estate duty is leviable at the rate of 3% per annum in Section 6(6) of the Finance Act of 1894. It is provided in Section 8(9) of the said Act that the Commissioners may allow payment to be postponed for such period

and on payment of interest not exceeding 4% and on such other terms if the Commissioners are satisfied that the estate duty leviable cannot be immediately raised without excessive sacrifice. The only difference between Section 8, Sub-section (9), of the Finance Act of 1894, and Section 70 of the Estate Duty Act is that whereas in the Finance Act the authority is a Commissioner, in the Estate Duty Act of 1953 the authority is a Controller. The Finance Act of 1894 makes a provision in Section 6(6) that the interest shall be paid from the date of the death upto the date of delivery of the Inland Revenue affidavit or account or expiration of 6 months after the death whichever first happens. Thereafter, under the Finance Act, 3% interest begins to run from the date of death or from such period as is, mentioned in Section 6 of the Finance Act of 1894. In the Estate Duty Act of 1953, however, no such provision for the running of interest is to be found.

8. Mr. Sen argued that Section 70 makes it clear that interest will run from the date when the estate duty leviable in respect of the property is assessed for payment of provisional taxes and any delay in payment after the provisional tax has been assessed entails running of interest at the rate of 4% per annum.

9. It appears that under the U. K. Finance Act of 1894 the interest runs at the rate of 3% on the estate duty leviable on the property under Section 6(6) of the Act and under Section 8(9) of the said Act, if the commissioners are satisfied that in order to raise the said duty at once excessive sacrifice is to be made, they may allow payment to be postponed for such period, to such extent, and on payment of interest not exceeding 4% or higher interest yielded by the property and on such term as the commissioners may think fit and proper. Therefore, in order to attract the provision of Section 8(9) of the said Finance Act of 1894, the commissioners must be satisfied that the estate duty leviable in respect of the property cannot be raised at once without excessive sacrifice before allowing the payment of duty postponed. In any case under the English Act the interest at the rate of 3% will run on the duty under the provision of Section 6(6) of the Act. In the Estate Duty Act of 1953, however, there is no provision for running of interest as provided in the English Act and as such unless an order is made under Section 70 of the Act, in my opinion, the interest does not run on the assessed duty. In the present case the order for interest was made after all the demands of the estate duty was

realised and in fact refund to the extent of Rs. 24,000 had to be made by the revenue authorities to the petitioner on that score. It is conceded by Mr. Sen that Section 70 of the [Estate Duty Act, 1953](#), is the only section for payment of interest and there is no other section. It is stated by Mr. Sen, however, that the payment of duty by instalments and acceptance by the revenue of the said instalments presupposes order under Section 70 of the Act but he could not point out a specific order made in that respect before allowing payment by instalments. On the other hand, Mr. De pointed out that there was always a threat for imposition of interest and no order imposing the payment of interest was made and, therefore, the respondent cannot now contend, that allowing payment by instalment amounts to an order of payment of interest. The writing of letters saying that unless payment is made by a particular date interest would be levied, does not debar the respondent from realising interest if it could be shown that under the law the interest runs, as there can be no estoppel against the statute. But, as I am of the view that the Estate Duty Act of 1953, as it is, makes no provision for automatic running of interest as in the English Act, such interest does not begin to run unless there be an order under Section 70 of the [Estate Duty Act, 1953](#), after the time of payment by instalment is allowed. In the present case the order under Section 70 of the Act was made after the assessed amount of duty was paid up and as such nothing was due on the date the order was made on which the interest could be levied and as such Section 70 of the [Estate Duty Act, 1953](#), in terms does not apply.

10. In that view of the matter the rule is made absolute. The impugned order asking the petitioner to pay interest on the estate duty and the recovery proceedings are quashed. There will be no order as to costs.