Manmohan Dass Kapur and anr. Vs. Assistant Controller of Estate Duty

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Court : Himachal Pradesh

Decided On : Mar-27-1991

Reported in : [1991]192ITR474(HP)

Judge : Devinder Gupta and; D.P. Sood, JJ.

Acts : Estate Duty Act, 1953 - Section 50; ;Court Fees Act

Appeal No. : C.W.P. No. 37 of 1981

Appellant : Manmohan Dass Kapur and anr.

Respondent : Assistant Controller of Estate Duty

Advocate for Def. : Inder Singh, Adv.

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

Judgement :

Devinder Gupta, J.

1. In the present writ petition, the petitioners have sought the quashing of the order, annexure 'G', passed by the respondenton August 29, 1980, refusing to allow relief to the petitioner in the payment of the entire court-fees paid for obtaining probate.

2. Smt. Lila Wati Kapur, mother of petitioner No. 1, expired on May 23, 1958. She had executed a will on April 10, 1958, creating a trust known as 'Lila Wati Kapur Trust, Shimla'. The trust is petitioner No. 2 and petitioner No. 1 has been named in the will as sole executor and to manage the property of the deceased as well as the income of the trust. Petitioner No. 1 filed an estate duty return under the provisions of the Estate Duty Act, 1953 (Act No. 34 of 1953) (hereinafter to be called as 'the Act'), and the respondent on March 28, 1959, framed an estimate on the total estate amounting to Rs. 3,26,642 after giving credit for a sum of Rs. 3,750 for succession certificate fees and Rs. 20,382.24 on account of provisional demand under Section 57(2) and a demand for Rs. 1,114.05 was created.

3. Petitioner No. 1, in the meanwhile, had filed a petition under Sections 222 and 276 read with Section 300 of the Indian Succession Act in the Punjab and Haryana High Court at Chandigarh for grant of probate to the estate of the deceased. The said probate petition (Probate No. 7 of 1977) was decided on March 1, 1978, in which the estate of the deceased was determined as Rs. 3,27,642. In pursuance of the order passed by the Punjab and Haryana High Court, petitioner No. 1 paid a sum of Rs. 13,106 towards court-fees for obtaining the probate. Petitioner No. 1, thereafter, on October 25, 1978, approached the respondent with an application under Section 50 of the Act claiming a refund of Rs. 13,106 being the amount of additional probate duty paid for obtaining full representation for the, entire estate. After exchange of a lot of correspondence, the respondent, on August 29, 1980, passed the impugned order declining to grant any relief to the petitioner. The ground on which the respondent declined to give any relief to the petitioner was that there was no mistake apparent on the face of the records which could be rectified by him under Section 61 of the Act and, as the case of the petitioner was not covered by the said section, the relief in the payment of court-fees could not be granted t6 him. Petitioner No. 1, thereafter, approached this court with a prayer to quash annexure 'G' order and to direct the respondent to refund the said sum of Rs. 13,106.

4. The respondent has contested the writ petition by urging that, as the assessment had been completed on March 28, 1959, and the petitioner was allowed relief from estate duty for the amount of court-fees already paid by him,

even if the petitioner had paid court-fees subsequently, there was no provision in the Act for giving relief to the petitioner and the powers contained in Section 61 of the Act were not required to be exercised as there was no mistake apparent on the face of the record.

5. We have considered the arguments advanced by learned counsel for the parties and perused the record of the case. Section 50 of the Act provides for relief from estate duty where court-fees have been paid for obtaining refund to the estate of the deceased and it says as under :

'Where any fees have been paid under any law relating to court-fees in force in any State for obtaining probate, letters of administration or a succession certificate in respect of any property on which estate duty is leviable under this Act, the amount of the estate duty payable shall be reduced by an amount which is equal to the court-fees so paid.'

6. It is not disputed by the respondent that the refund claimed by the petitioner is with respect to the additional amount of court-fees paid by the petitioner under the provisions of law relating to court-fees. The only contention of the respondent is that, since Section 50 merely permits deduction of the stamp duty paid and not the duty which becomes payable, the petitioner is not entitled to the refund and as, on the day when assessment was made, the petitioner had not paid the additional amount of court-fees, he is not entitled to refund. In so far as the power of rectification of mistakes is concerned, it is submitted that there was no mistake apparent on the record which could have been rectified.

7. Learned counsel for the Revenue placed reliance upon a decision of the Calcutta High Court in Bhubaneswar Sarkar v. Union of India [1965] 57 ITR 31 (for full reports see : [1965]58ITR1(Bom)) and learned counsel for the petitioners sought support from a decision of the Madras High Court in G. D. Narendra v. CIT : [1972]85ITR647(Mad) and urged that the relief contemplated under Section 50 of the Act has to be granted in cases where court-fees have been paid for obtaining refund to the estate of the deceased where such payment of court-fees is anterior or posterior to the date when the estate duty assessment is finalised. It has further been urged that the claim for this relief based on the actual fact of payment of

probate duty cannot be treated as a rectification of a mistake under Section 61 of the Act and merely because there is no prescribed procedure in the Act or the rules for grant of certain relief, courts should not be so insensitive as not to give such relief if the justice of the case so requires and if the purpose of the statutory provisions has to be achieved and advanced.

8. After having gone through both the decisions, we are, with respect, unable to persuade ourselves to agree with the view taken in Bhubaneswar Sarkar's case : [1965]58ITR1(Bom) , and the reasoning given while taking such a view. Section 50 is, in fact, a statutory provision for according relief in the payment of estate duty and the relief is to the extent of the amount of court-fees paid in accordance with the provisions of the relevant Court Fees Act for obtaining representation to theestate of the deceased either by obtaining probate or letters of administration or a succession certificate. There is no period of limitation prescribed for obtaining such a relief. Merely because proceedings for assessment of estate duty are completed earlier in point of time, it is no ground as not to give the statutory relief when, subsequently, further court-fees become payable. The word 'relief' means relieving a person from an obligation. Merely because there is no prescribed procedure in the Act or the Rules for achieving the purpose, courts should not be so insensitive to their duty as not to give such relief if the justice of the case so requires. In this view of the matter, we are in agreement with the ratio of the judgment in G. D. Narendra's case : [1972]85ITR647(Mad) .

9. We may also make reference to Circular No. 354, dated March 8, 1983 (see [1983] 142 ITR 117, issued under the authority of the Central Board of Direct Taxes, wherein the Board has accepted the decision rendered in G. D. Narendra's case : [1972]85ITR647(Mad) . The text of the circular reads as under :

'Subject : Section 50 of the Estate Duty Act, 1953 -- Relief from estate duty where court-fees have been paid for obtaining probate --Clarification regarding.

The Madras High Court have, in the case of G. D. Narendra v. Controller of Estate Duty : [1972]85ITR647(Mad) , held that relief under Section 50 of the Estate Duty Act, 1953, in respect of court-fees paid, cannot be denied solely on the ground that the limitation under Section 61 of the Act for rectification of estate duty assessment has expired. Section 50 casts a statutory obligation upon the Controller of Estate Duty to allow such relief and the time-limit specified in Section 61 has no application in such cases.

2. The Board have accepted the Madras High Court decision.

(Sd.) P. Ranganathan

Under Secretary, Central Board of Direct Taxes

10. A circular of this kind issued by the Central Board of Direct Taxes would be binding on the officers and persons employed in the execution of the Act by virtue of the provisions of Section 5(8) of the Act. The binding nature of such circulars issued by the Board was considered by the Supreme Court in the case of K. P. Varghese v. ITO : [1981]131ITR597(SC) .

11. In view of what we have stated above, the impugned decision of the respondent, Annexure 'G', cannot be sustained in law and has to be quashed. The writ petition as such is allowed. The order, Annexure 'G', passed by the respondent on August 29, 1980, is quashed and set aside with a further direction to the respondent to refund the sum of Rs. 13,106 paid by the petitioners on account of estate duty towards the estate of late Smt. Lila Wati.

12. No costs.