

(2013) 09 P&H CK 0453

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 7063 of 1994

Kulwant Singh

APPELLANT

Vs

Controller of Estate
Duty-cum-Commissioner of
Income Tax and Another

RESPONDENT

Date of Decision: Sept. 6, 2013

Citation: (2014) 173 PLR 446

Hon'ble Judges: Rajive Bhalla, J; Bharat Bhushan Parsoon, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Rajive Bhalla, J.

The petitioner prays for issuance of a writ of certiorari quashing order dated 20.03.1991 (Annexure P-4), notice dated 20.03.1991 (Annexure P-5) and order dated 29.01.1993(Annexure P-7), respectively. The petitioner also prays for issuance of a writ of mandamus directing the respondents to refund Rs. 14018/- with interest. After assessment of estate duty, the petitioner applied, vide letter dated 29.06.1984, for payment in installments. The petitioner alleges that as authorities did not convey any order whether passed u/s 70 of the Estate Duty Act, 1953 or otherwise (hereinafter referred to as the Act"), the petitioner made payment of estate duty voluntarily according to his convenience and availability of funds. On 21.03.1990, the Assistant Controller of Estate Duty issued a notice calling upon the petitioner to show cause why interest should not be levied u/s 70 of the Act. The petitioner replied vide letter dated 18.04.1990 that interest cannot be charged as no order was passed or received for payment of installments with interest. The Assistant Controller of Estate Duty, vide order dated 20.03.1991, levied interest upon the petitioner leading to issuance of a notice of demand u/s 73 of the Act calling upon the petitioner to pay Rs. 14018/-. The petitioner filed an appeal before the Controller of Estate Duty (Appeals), Jalandhar, which was dismissed, on 29.01.1993.

2. Counsel for the petitioner further submits that as the Assistant Controller of Estate Duty did not pass any order u/s 70 of the Act, allowing installments of estate duty on payment of interest, the impugned demand of interest is illegal and void. The respondents have, at no stage of the proceeding, produced copy of an order passed u/s 70 of the Act, levying interest and merely because the petitioner voluntarily made payment in installments, the respondents are not entitled to raise an inference that an order was passed imposing interest. It is further argued that the respondents have at no stage of the proceedings produced the alleged order imposing interest.

3. No one has put in appearance on behalf of the respondents, but we have perused the reply.

4. A perusal of the reply reveals that the respondents admit that the petitioner filed an application for payment of estate duty in installments. The respondents have, however, averred that an order was passed on 04.07.1984, allowing the petitioner to pay duty in six half yearly installments, subject to payment of interest at the rate of six percent.

5. We have heard counsel for the petitioner, perused the paper book, the reply filed on behalf of the respondents and the impugned orders.

6. Admittedly, the original assessment order requiring the petitioner to pay estate duty did not provide for payment of interest. The petitioner filed an application, on 29.06.1984, for deposit of estate duty in installments. The petitioner has deposited estate duty in installments, but without interest. The petitioner, was served with a notice dated 21.03.1990, requiring him to show cause why he should not pay interest on estate duty deposited. The petitioner filed a reply dated 18.04.1990, raising a specific plea that as no order was ever passed or letter conveyed allowing payment in installments, with interest, the department cannot levy interest. The Assistant Controller of Estate Duty, Jalandhar, vide order dated 20.03.1990, rejected the petitioner's contention by holding as follows:--

The show cause notice was issued to the A.P. that why interest u/s 70 of the Estate Duty Act, 1953, he not charged according to the order of the ACED. The counsel of the A.P has replied that no order/letter was served upon him or the A.P. intimating the results of the application, the A.P has made the payments voluntarily.

From the above chart, it is very clear that the A.P had made the payments half yearly regularly as per directions of the ACED and the facts of citation of Patna High Court quoted are not similar to this case as the regular assessment has been completed on 11.9.85 and the A.P had made the payments of Rs. 60,000/- only as provisional and the balance amount was paid against regular assessment. I, therefore, have no other alternative to reject your application.

7. A perusal of the above extract reveals that the Assistant Controller of Excise Duty has not referred to any order passed, u/s 70 of the Act, much less an order dated 04.07.1984 levying interest but has raised an inference from payment of half yearly installments that these payments were deposited pursuant to directions issued by the Assistant Controller of Excise Duty. The appeal filed by the petitioner was dismissed by holding as follows:--

5. I have carefully considered the rival submissions. Admittedly, the payments

This was in pursuance of an applicant on for grant of installments dated 29th June, 1984. According to the Ld. Counsel for the appellant the above payments had been made voluntarily and not in pursuance of any order granting installments. This contention is based on the plea that the A.O. had failed to bring any such order, letter to the notice of the appellant. In this regard, it is observed that the very sequence of events i.e. Application for grant of installments dated 29th June, 1984 and making of the payments to Rs. 20,000/- each after interval of six months shows that the payments have been made in pursuance to a scheme for grant of installments. Hence, just because the letter/order granting those installments is not available on record, you would not mean that the said payments had been made voluntarily and not in accordance with grant of installments. In this view of the matter, I hold that the payments of Estate Duty had been made in pursuance of an order/scheme granting installments even if no such order is available. Coming to the next objection that the interest is not chargeable in view, of the decision of Hon"ble Patna High Court, mentioned supra, it is observed that the said decision pertained to a case where the payments had been delayed of provisionally assessed duty. In the case of the appellant the payments pertained to a regular assessment and hence the facts are entirely different Similarly the decision of Hon"ble Calcutta High Court cited supra also deals with a situation where the matter related to the payments of installments of provisionally assessed amount Here again, in the case of the appellant the demand arose as a result of regular assessment. Since the said demand was paid in installments the charging of interest u/s 70 of the E.D. Act 1953 was justified. Accordingly, the charging of interest is confirmed.

To conclude the appeal is held to be not maintainable and is also dismissed on merits.

8. A perusal of the above extract reveals that the Controller of Estate Duty(Appeals) has held that no letter/order granting installments and imposing interest is available on record but this alone does not raise an inference that installments were not paid pursuant to an order passed by the authority.

9. A perusal of paragraphs 4 and 5 of the reply reveals that the respondents have, for the first time, made reference to an order dated 04.07.1984, allowing the petitioner to pay estate duty in six half yearly installments along with interest at the rate of 6% per annum. The respondents have, however, not appended a copy of the

order with the reply.

10. An order was, therefore, passed on 13.02.1995 directing counsel for the revenue to produce the record, so as to verify whether an order dated 04.07.1984 was actually passed. The respondents have not produced the record or a copy of order dated 04.07.1984 and in fact no one is present on their behalf.

11. A perusal of the impugned orders reveals that neither the Assessing Officer nor the Appellate Authority refer to any specific order passed u/s 70 of the Act much less an order dated 04.07.1984, allowing the petitioner to deposit payment in installments with interest. In fact the Assessing Officer and the Appellate Authority have admitted that such an order is not available on record. The respondents have for the first time, in their reply, made reference to an order dated 04.07.1984, but without appending or producing a copy of the order. The mere fact that the petitioner deposited estate duty in six monthly installments does not raise an inference that such an order was indeed, passed. Section 70 of the Act empowers the Controller to allow postponement of payment on such interest, not exceeding four percent or any higher interest yielded by the property and on such other terms as the Controller may deem fit. The levy of interest must, therefore, be preceded by an order postponing payment of estate duty by allowing the assessee to pay estate duty in installments whether four equal yearly installments or 8 equal half yearly installments, with interest. The absence of an order passed u/s 70 of the Act and the inability of the revenue to place any such order on record, whether before the Assessing Officer, the Appellate Authority or before this Court, disentitles the revenue to claim interest. At this stage, it would be necessary to clarify that liabilities, in taxing statutes cannot be fixed by inference as to orders that may or may not have been passed. The absence of an order apportioning liability to pay interest, disentitles the revenue to claim interest. In view of what has been stated hereinabove, the writ petition is allowed, the impugned orders are set aside and the respondents are directed to refund Rs. 14108/-, to the petitioner.