MADAN LAL LOHIA

v.

ASSISTANT CONTROLLER & ORS.

April 11, 1977

[P. N. BHAGWATI AND S. MURTAZA FAZAL ALI, JJ.]

Garnishee Proceedings—Estate Duty Act, 1953 (Act 34 of 1953), S. 73(5) r/w. s. 46(5A) of the Income Tax Act, 1922—Scope of.

The appellant, a tenant in the building situate at No. 13 India Exchange Place, Calcutta and belonging to one Rai Bhupathi Nath Deb Bahadur who died on September 23, 1959, was inducted in as a tenant through a registered lease deed dated 5th March 1960 for a period of thirty one years effective from 18th March 1960 and on a monthly rent of Rs. 1,400/- by nine persons who claimed to be the nephews and nieces of the said Bhupathi Nath Deb.

Respondents Nos. 3 and 4 claiming respectively to be the son and daughter of the deceased Bhupathi Nath, in their capacity as executors of the Will dated 20th November 1957 said to have been made by the deceased prior to his death filed an account in form No. ED-1, of the properties including the building at 13 India Exchange Place, in respect of which, according to them estate duty was payable on the death of the deceased. The Assistant Controller of Estate Duty, after assessing the principal value of the estate under s. 58 of the Act determined a sum of Rs. 1,40,090/28 as the amount of duty payable by the accountable persons. Being unable to recover the amount, the Assistant Controller of Estate Duty, in view of the fact that the rent payable by the appellant was *a fortiorari* an amount which in law belonged to the estate issued a notice to the appellant u/s. 73(5) of the Act r/w section 46(5A) of the Income Tax Act, 1922, pointing out that "a sum of Rs. 1,40,090/20 is due from Tulsi Charan Deb and others on account of estate duty as accountable persons to the estate of late Rai Bhupathi Nath Deb" and requiring him to pay forthwith "any amount due from you to or, held by you, for, or on account of the said estate of Bhupathi Nath Deb Bahadur" upto the amount of Rs. 1,40,090/20. The appellant on receipt of the notice paid a sum of Rs. 2800/- being the rent for the months of December 1961 and January 1962. From February 1962 to May 1962, the appellant paid the rent to his lessors on the strength of a notice dated 24th February 1962 from the lessor's attorney to the effect that the Assistant Controller had no jurisdiction to demand from the appellant the rent, since the lessors were not the accountable persons as they were not assessed to estate duty. No further payment of rent, therefore was made either to the lessors or to Revenue; but instead the appellant preferred a claim for refund of Rs. 2800/- on the ground that this payment had been made by him under a bonafide mistake of law. By his order dated 25th March 1964, the Assistant Controller, holding that the appellant had acted in contravention of the notice dated 9th January 1962 issued against him, imposed a penalty of Rs. 3000/- under s. 73(5) of the Estate Duty Act, 1953 r/w. s. 46(1) and required the appellant to pay up the amounts of Rs. 35,000/- and Rs. 3,000/- on or before 6th April 1964. The writ petition filed by the appellant challenging the said order was rejected by the Calcutta High Court.

Allowing the appeal by special leave in part, the Court,

HELD : (1) Two conditions must be fulfilled before penalty can be imposed u/s. 46(1) of the Income Tax Act, 1922 : one is that the person on whom penalty is sought to be imposed must be an assessee and the other is that the assessee must be in default within the meaning of s. 45. Where a garnishee is required by notice issued under sub-section (5A) of section 46 to pay to the Income Tax Officer so much of the money due or which may become due from the garnishee to the assessee or held or which may subsequently be held by the garnishee for or on account of the assessee, as is sufficient to pay the amount due by the tax-payer in respect of the arrears of income tax, he does not become an assessee as defined in section 2, sub-section (2). The garnishee merely pays the amount which is due from him to the assessee and such payment is in discharge of the debt owed by him to the assessee. It is not a payment the liability for which is created under any provision of the Act. There is no provision

A in the Act which by a legal fiction makes him an assessee. Unlike s. 226(3)(x) of 1961 Act, there is no provision in the 1922 Act that the garnishee who fails to comply with the notice issued under sub-s. (5A) of s. 46 shall be deemed to be an assessee in default. No penalty, therefore, can be imposed on a garnishee under sub-s. (1) of s. 46, even if he fails to comply with the notice issued to him under sub-s. 5A of s. 46. [496 G-H, 497 A]

(2) Section 73, sub-sections (1) and (2) of the Estate Duty Act correspond to s. 45(1) of the 1922 Act deeming the accountable person to be in default only on his failure to pay in accordance with the requisition contained in the B notice. Since s. 73, sub-section (5) by incorporating the provisions of sub-sections (1), (1A), (2), (3), (4), (5), (5A), (6) and (7) of s. 46 of the 1922 Act makes them applicable for the purpose of collection and recovery of estate duty, it must follow *a fortiori* that penalty can be imposed on a garnishee, under section 73, sub-section (5) of the Estate Duty Act, 1953 read with section 46, sub-section (1) of the Act of 1922 only, if the garnishee can be said to be an accountable person in default. The garnishee cannot be regarded as an accountable person, since section 2, sub-section (12A) defines 'accountable person' to mean the person accountable for estate duty within the meaning of C the Act and the garnishee does not come within the category of persons specified in sections 53 and 54 as persons accountable for estate duty. There is also no provision in the Estate Duty Act, 1953, deeming a defaulting garnishee as an accountable person in default by a legal fiction. In the instant case the order dated 25th March, 1964, imposing penalty of Rs. 3,000/- on the appellant is outside the power of the Assistant Controller under the Estate Duty Act, 1953. [497 B, D-H]

(3) The plain effect of section 53, sub-s. (1) read with s. 73, sub-sec. (1) D is that when an order of assessment is made not only the accountable person in respect of whom proceeding for assessment has been taken, but also every other accountable person as defined in s. 2(2) and (12A) would be liable to pay the amount of estate duty, limited of course to the assets of the deceased which he actually received or which, but for his own negligence or default, he might have received. [501 C.H, 502 A]

(4) The words "the property passing on the death", appearing in the expression "the whole of the estate duty on the property passing on the death" in sub-E section (1) of s. 53, according to their plain grammatical construction, indicate that every accountable person would be accountable for the estate duty on the entire property passing or deemed to pass on the death of the deceased. [502 C-D]

(5) The argument that having regard to the words "where *any* property passes" appearing in the opening part of the sub-section, coupled with the words "such property so passes", and "*the* property so passing", appearing in the respective sub-clauses, the word "*the*" appearing before the words "property passing F on the death" must again refer to the same property which is referred to in the respective sub-clauses (a), (b) or (c), as the case may be is not well founded, for it ignores one very important circumstance namely, that each of the persons mentioned in sub clauses (a), (b) and (c) is rendered accountable for the whole of the estate duty not merely "on the property so passing", but on "the property passing on the death". [502 D-F]

(6) Where the legislature wanted to refer to the specific property passing on the death of the deceased described in the opening part of the sub-section, the legislature used the words "*such property so passes*" and "the property so pass-G ing" in the sub-clauses (a), (b) and (c), but while imposing accountability for the estate duty, the legislature made a deliberate departure and instead of the words "the property so passing", which were familiar coinage, it used the words "the property passing on the death". This highly significant departure in phraseology clearly indicates that the legislative intent was that each of the persons mentioned in sub-clauses (a), (b) and (c) should be accountable for the estate duty on the entire property passing on the death. It was for this reason that the liability of each of these persons had to be limited to "the assets of the deceased which he actually received or which, but for his own neglect or default, he might H have received". If the liability of each of these persons was only to the extent of the estate duty on the particular property falling within the respective sub-clauses, there was need for limiting it to the assets of the deceased which such person received or ought to have received. [502 F-H, 503 A]

(7) The possibility that an anomaly may arise is only a factor to be taken into account by the court where two interpretations are possible, but where the meaning of a statutory provision is plain, it cannot alter such meaning. Though the trustee of an insurance policy taken out by the deceased under the Married Women's Property Act, 1874 would fall within sub-clause (b) and hence become accountable for the estate duty on the entire property passing on the death, he would not be liable to pay the estate duty out of the policy monies, since the estate of the deceased would have no interest in the policy monies and the policy monies would not form part of the estate of the deceased and his liability as an accountable person would be limited only to the assets of the deceased which he has actually received or which he ought to have received. [503 C-D]

(8) Sub-section (5) of s. 53 merely emphasises the principle of joint and several liability where two or more persons are accountable for estate duty in respect of *any* property passing on the death of the deceased, regardless whether they are so accountable in the same capacity or in different capacities. It would be reading much more in sub-section (5) than what its language warrants to say that this sub-section is consistent only with an accountable person mentioned in sub-clause (a), (b) or (c) of sub-section (1) being accountable only in respect of estate duty on the particular property passing to him on the death of the deceased.

(9) The object of sub-section (5) of s. 53 is to provide that every accountable person shall be liable not only jointly with other accountable persons, but also severally for estate duty in respect of any and every property passing on the death of the deceased. On a proper construction of sub-section (1) of s. 53, read in the context of the other provisions of the Act, each of the persons mentioned in sub-clauses (a), (b) and (c) would be accountable for the estate duty on the entire property passing on the death and his accountability *qua* the Revenue would not be limited only to the estate duty on the particular property passing to him. [503 F, 503 C-D]

(10) In the instant case, the lessors were clearly accountable persons since they admittedly took possession of and intermeddled with the leased premises which formed part of the estate of the deceased. The order of assessment made by the Assistant Controller of Estate Duty was not challenged by the appellant in the writ petition, nor was it decared invalid by a superior authority at the instance of the lessors. Not even any steps appear to have been taken by the lessors for the purpose of challenging the order of assessment. The lessors were in the circumstances, accountable for the whole of the estate duty on the entire property passing on the death of the deceased and hence they were liable to pay the estate duty of Rs. 1,40,0920/20 limited of course to the extent of the leased premises which constituted the asset of the deceased received by them. [504 H, 505 A-B]

(11) Since the rent of the leased premises was payable by the appellant to the lessors under the lease deed and the lessors were liable to pay the estate duty of Rs. 1,40,090/20 it was competent to the Assistant Controller to issue a notice under section 73, sub-section (5) read with section 46, sub-section (5A) of the Act of 1922 requiring the appellant to pay the amount of rent due and to become due in respect of the leased premises. [505 C-D]

(12) The notice dated 9th January 1962 was a valid notice and the appellant was bound to comply with it and to pay to the Assistant Controller the amount of rent due or to become due in respect of the leased premises. Non-mentioning of the lessors in the notice as the persons to whom the amount of rent was due from the appellant in respect of the leased premises does not render the notice invalid or ineffective. What the notice dated 9th January 1962, in substance and effect required the appellant to do was to pay to the Assistant Controller, the amount due or to become due from the appellant to the lessors in respect of the leased premises; that amount could rightly and legitimately be described as amount due to the estate of the deceased so as to be covered by the terms of the notice. [505 H, 507 D]

(13) Questions of fact not raised in the writ petition nor argued before the High Court, cannot be allowed to be agitated for the first time before this Court. [506 B]

A (14) In order that proceeding may be validly taken against a garnishee under section 73, sub-section (5) read with section 46, sub-section (5A), it is not necessary that the accountable person must be deemed to be in default and hence such garnishee proceeding need not be preceded by a notice of demand on the accountable person under sub-section (1) of section 73. [506 G-H]

Third Income Tax Officer, Mangalore v. *M. Damadar Bhat,* 71 ITR 806, followed.

B]Their Lordships expressed their opinion that the view taken in this decision was not correct for three reasons given by them.]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 783 of 1972).

(Appeal by Special Leave from the Judgment and Order dated the 1st December 1969 of the Calcutta High Court in Civil Rule No. C 1274 of 1974).

S. C. Majumdar and *Mrs. Laxmi Arvind,* for the appellant.

G. C. Sharma and *P. L. Juneja,* for the respondent.

The Judgment of the Court was delivered by

D BHAGWATI, J.—This appeal by special leave raises a short question of law as to the scope of granishee proceeding under section 73, sub-section (5) of the Estate Duty Act, 1953 read with section 46(5A) of the Indian Income-Tax Act, 1922. A brief narration of the facts giving rise to the appeal would be sufficient to explain the background against which the question arises for determination in the appeal.

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One Raj Bhupati Nath Dev Bahadur died on 23rd September, 1959 leaving considerable movable and immovable properties which included *inter alia* a building situate at No. 13, India Exchange Place, Calcutta. Respondents Nos. 3 and 4 claiming respectively to be the son and daughter of the deceased delivered to the Assistant Controller of Estate Duty an account in form ED-1 of the proper- F ties in respect of which, according to them, estate duty was payable on the death of the deceased. The account was filed by respondents Nos. 3 and 4 in their capacity as executors of the Will dated 20th December, 1957 said to have been made by the deceased prior to his death. The Assistant Controller issued notice under section 58, sub-section (2) to respondents Nos. 3 and 4 as accountable persons and after hearing them, made an order dated 23rd September, 1960 G assessing the principal value of the estate of the deceased and determining a sum of Rs. 1,40,090.20 as the amount payable as estate duty. It appears that the Assistant Controller was not able to recover the amount of estate duty from respondents Nos. 3 and 4, since most of the estate of the deceased consisted of immovable properties which were let out to different tenants and according to respondents Nos. 3 and 4, rent was not being paid to them by the H tenants. One of the immovable properties left by the deceased, namely, the building situate at No. 13, India Exchange Place, Calcutta was in the possession of the appellant. According to the

appellant, it had been let out to him by nine persons who were the nephews and nieces of the deceased and who claimed to be the heirs of the deceased on the basis that the deceased died without making any Will and did not leave any widow or son or daughter surviving him. The lease given to the appellant by these nine persons, who may for the sake of convenience be hereinafter referred to as the lessors, was under a registered deed dated 5th March, 1960 and it was a lease for a period of thirty-one years with effect from 1st March, 1960 carrying rent at the rate of Rs. 1,400/- per month. Since the leased premises—that is how we propose to describe the building leased to the appellant by the lessors—admittedly belonged to the estate of the deceased, the rent payable by the appellant was *a fortiori* an amount which in law belonged to the estate and hence the Assistant Controller issued a notice dated 9th January, 1962 to the appellant under section 73, sub-section (5) of the Estate Duty Act, 1953 read with section 46, sub-section (5A) of the Indian Income-Tax Act, 1922 (hereinafter referred to as the Act of 1922) pointing out that "a sum of Rs. 1,40,090.20 is due from Shri Tulsi Charan Deb and others on account of estate duty as accountable persons to the estate of late Rai Bhupati Nath Deb" and requiring him to pay forthwith "any amount due from you to or, held by you, for, or on account of the said estate of Bhupati Nath Deb Bahadur" upto the amount of Rs. 1,40,090.20 as also "to pay money which may subsequently become due from you to them or which you may subsequently hold for or on account of them upto the amount of arrears still remaining unpaid, forthwith on the money becoming due or being held by you as aforesaid, as such payment is required to meet the amount due by the accountable person in respect of arrears of estate duty". It was stated in the notice that any payment made by the appellant in compliance with the request contained in the notice would in law be "deemed to have been made under the authority of the accountable person" and the receipt of the Assistant Controller "will constitute a good and sufficient discharge of his liability to the person to the extent of the amount referred to in the receipt". The appellant, on receipt of the notice, paid the rent for the months of December, 1961 and January 1962 aggregating to Rs. 2,800/- to the Assistant Controller and informed the lessors about the same. The lessors, by their attorney's letter dated 24th February, 1962, however, contended that the notice issued by the Assistant Controller against the appellant was ineffectual, since the lessors had not been assessed to estate duty by the Assistant Controller as accountable persons and the Assistant Controller was, therefore, not competent to require the appellant to pay to him the amount of rent which was due from the appellant to the lessors and moreover, the notice required the appellant to pay only such amount as was due from the appellant to respondents Nos. 3 and 4 as accountable persons and since the amount of rent was due from the appellant to the lessors and not to respondents Nos. 3 and 4, the appellant was not liable to pay the amount of rent in respect of the leased premises to the Assistant Controller. The appellant, acting on this letter of the lessors' attorneys, did not pay any further rent to the Assistant Controller but paid rent for the months from February to May 1962 to the lessors. No further payment of

A rent was thereafter made by the appellant either to the Assistant Controller or to the lessors. Since the appellant did not pay any rent to the Assistant Controller for the period subsequent to January 1962 in defiance of the notice dated 9th January, 1962, the Assistant Controller issued a notice dated 5th March, 1964 to the appellant requiring him to show cause why penalty in the sum of Rs. 10,000/- should not be levied for the default committed by B him. The appellant addressed a letter dated 13th March, 1964 pointing out that the accountable persons mentioned in the notice dated 9th January, 1962 were "Shri Tulsi Chandra and Others", that is, respondents Nos. 3 and 4 and the appellant had no concern or connection with these accountable persons nor was any amount due from him to them and hence the notice dated 9th January, 1962 was misconceived. The appellant also called upon the C Assistant Controller to refund the sum of Rs. 2,800/- paid by him in respect of rent for the months of December 1961 and January 1962 on the ground that this payment had been made by him under a *bona fide* mistake of law. This explanation furnished by the appellant was found unacceptable and the Assistant Controller passed an order dated 25th March, 1964 holding that rent for the months commencing from March 1962 and ending with March 1964 aggre- D gating to Rs. 35,000/- had been paid by the appellant to the lessors in contravention of the notice dated 9th January, 1962 issued against him and imposing a penalty of Rs. 3,000/- under section 73, sub-section (5) of the Estate Duty Act, 1953 read with section 46(1) of the Act of 1922 and requiring the appellant to pay up the amounts of Rs. 35.000/- and Rs. 3,000/- on or before 6th April, 1964. The appellant thereupon filed a writ petition in the High Court E challenging the validity of the proceedings adopted by the Assistant Controller under section 73(5) of the Estate Duty Act, 1953 read with s. 46(5A) of the Act of 1922 for recovery of the amount of estate duty from the appellant as also the legality of the Order dated 25th March, 1964 imposing penalty of Rs. 3,000/- on the appellant. The High Court, by a judgment dated 1st December, 1969, rejected the writ petition and hence the present appeal by special leave F obtained from this Court.

There are two questions which arise for determination in this appeal : first, whether the notice dated 9th January, 1962 issued by the Assistant Controller to the appellant was a valid notice under which the appellant was bound to pay the amount of rent G in respect of the leased premises to the Assistant Controller, and secondly, even if the notice dated 9th January, 1962 was a valid notice and it obligated the appellant to pay the amount of rent to the Assistant Controller, whether any penalty could be levied on the appellant for contravention of the terms of the notice. The first question is not free from difficulty but the second is relatively simple and hence it would be convenient to begin first with a discussion H of the second question. Now, at the date when the notice dated 9th January, 1962 was issued by the Assistant Controller, the Act of 1922 was in force and hence the notice was issued under section 73, sub-section (5) of the Estate Duty Act, 1953 read with section

46(5A) of the Act of 1922. Section 73, sub-section (5) of the Estate Duty Act, 1953 provides *inter alia* that the provisions of sub-sections (1), (1A), (2), (3), (4), (5), (5A), (6) and (7) of section 46 of the Act of 1922 shall apply as if the said provisions were provisions of Estate Duty Act, 1953 and referred to estate duty and sums imposed by way of penalty or interest under the Estate Duty Act, 1953 instead of to income-tax and sums imposed by way of penalty or interest under the Act of 1922 and to Controller of Estate Duty instead of to Income Tax Officer. Section 46 of the Act of 1922 lays down the mode and time of recovery of income-tax and two sub-sections of this section are material, namely, sub-sections (1) and (5A) which read as follows :

> "(1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty." and
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> "(5A) The Income-tax Officer may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the assessee at his last address known to the Income-tax Officer) require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Income-tax Officer, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the tax-payer in respect of arrears of income-tax and penalty or the whole of the money when it is equal to or less than that amount.
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> The Income-tax Officer may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.
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> Any person making any payment in compliance with a notice under this sub-section shall be deemed to have made the payment under the authority of the assessee and the receipt of the Income-tax Officer shall constitute a good and sufficient discharge of the liability of such person to the assessee to the extent of the amount referred to in the receipt.
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> Any person discharging any liability to the assessee after receipt of the notice referred to in this sub-section shall be personally liable to the Income-tax Officer to the extent of the liability discharged or to the extent of the liability of the assessee for tax and penalties, whichever is less.

A If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Income-tax Officer, further proceeding may be taken by and before the Collector on the footing that the Income-tax Officer's notice has the same effect as an attachment by the Collector in exercise of his powers under the proviso to sub-section (2) of section 46.

B Where a person to whom a notice under this sub-section is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Income-tax C Officer."

The penalty under sub-section (1) of section 46 can obviously be imposed on an assessee only when the assessee is in default in making payment of income tax and under section 45, the assessee would be deemed to be in default when he fails to pay the amount of income tax specified as payable in a notice of demand served, *inter alia*, D under section 29 within the time mentioned in the notice of demand or if no time is so mentioned, then on or before the first day of the second month following the date of service of the notice of demand. Thus, two conditions must be fulfilled before penalty can be imposed under section 46, sub-section (1) : one is that the person on whom penalty is sought to be imposed must be an assessee and the other is that the assessee must be in default within the E meaning of section 45. Where a garnishee is required by notice issued under sub-section (5A) of section 46 to pay to the Income-tax Officer so much of the money due or which may become due from the garnishee to the assessee or held or which may subsequently be held by the garnishee for or on account of the assessee, as is sufficient to pay the amount due by the tax payer in respect of the arrears of income tax, he does not become an assessee as defined in section F 2, sub-section (2). That sub-section defines an assessee to mean a person by whom income tax or any other sum of money is payable under the Act and the amount which the garnishee is required to pay to the Income Tax Officer in virtue of a notice under sub-section (5A) of section 46 is not "income tax or any other sum of money—payable under this Act". The garnishee merely pays the amount which is due from him to the assessee and such payment is in discharge of G the debt owned by him to the assessee. It is not a payment the liability for which is created under any provision of the Act. The garnishee is thus not an assessee within the meaning of the definition of that term in section 2, sub-section (2) nor is there any provision in the Act which by a legal fiction makes him an assessee. The Act also does not contain any provision that the garnishee who fails to comply with the notice issued under sub-section (5A) of section H 46 shall be deemed to be an assessee in default. It is interesting to compare the provisions of the Act of 1922 with the corresponding provisions of the Income-tax Act, 1961 (hereinafter referred to as the Act of 1961). Clause (x) of sub-section (3) of section

226 of the Act of 1961 provides in clear and explicit terms that if the garnishee, to whom a notice under sub-section (3) is sent, fails to make payment in pursuance thereof to the Income Tax Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice. But no such provision is to be found in the Act of 1922. It is, therefore, obvious that no penalty can be imposed on a garnishee under sub-section (1) of section 46, even if he fails to comply with the notice issued to him under sub-section (5A) of section 46. Now the scheme of collection and recovery of estate duty under the Estate Duty Act, 1953 is substantially the same as that under the income-tax law. Section 73, sub-sections (1) and (2) of the Estate Duty Act, 1953 correspond to section 45, sub-section (1) of the Act of 1922. These two sub-sections provide that where any estate duty, penalty or interest is due in consequence of any order passed under the Act, the Controller shall serve upon the person accountable or other person liable to pay such estate duty, penalty on interest, a notice of demand in the prescribed form specifying the sum and the time within which it shall be payable and any amount specified as payable in the notice of demand shall be paid within the time, at the place and to the person mentioned in the notice, or if no time is so mentioned, then on or before the first day of the second month following the date of service of the notice and any person accountable failing so to pay shall be deemed to be in default. The Estate Duty Act, 1953 also, therefore, contemplates issue of a notice of demand to the accountable person after an order of assessment is made under the Act and it is only when the accountable person fails to pay in accordance with the requisition contained in the notice of demand that he is to be deemed to be in default. Section 73, sub-section (5) then incorporates the provisions of sub-sections (1), (1A) (2), (3), (4), (5), (5A), (6) and (7) of section 46 and makes them applicable for the purpose of collection and recovery of estate duty. It must follow a *fortiori* that penalty can be imposed on a garnishee under section 73, sub-section (5) of the Estate Duty Act, 1953 read with section 46, sub-section (1) of the Act of 1922 only if the garnishee can be said to be an accountable person in default. But, for like reason as those discussed while dealing with the provisions of the Act of 1922, the garnishee cannot be regarded as an accountable person, since section 2, sub-section (12A) defines 'accountable person' to mean the person accountable for estate duty within the meaning of the Act and the garnishee does not come within the category of persons specified in sections 53 and 54 as persons accountable for estate duty. There is also no provision in the Estate Duty Act, 1953 deeming a defaulting garnishee as an accountable person in default by a legal fiction. It is, therefore, difficult to see how an order imposing penalty could be passed against the appellant, even if the notice dated 9th January, 1962 was a valid notice under which the appellant was bound to pay the amount of rent in respect of the leased premises to the Assistant Controller and he failed to do so. The order dated 25th March, 1964 imposing penalty of Rs. 3,000/- on the appellant must, therefore, be held to be outside the power of the Assistant Controller under the Estate Duty Act, 1953 and it must be quashed and set aside.

A That takes us to the consideration of the first question as to the validity of the notice dated 9th January, 1962. We have already referred to the relevant provisions of this notice, but it would be desirable to recapitulate them here. The notice starts with the recital of the fact that a sum of Rs. 1,40,090.20 is due from respondents Nos. 3 and 4 on account of estate duty "as accountable persons to the estate of late Bhupati Nath Deb Bahadur". This recital states very clearly that B the amount of Rs. 1,40,090.20 is due on account of estate duty payable on the death of the deceased. Then it goes on to require the appellant to pay to the Assistant Controller the amount which is due or may become due from him to the estate of the deceased or which is held or may subsequently be held by him for or on account of the estate of the deceased upto the amount of Rs. 1,40,090.20. Here the C amount which the appellant is called upon to pay to the Assistant Controller is the amount due or to become due to the *estate* of the *deceased*. The purpose for which such amount is required to be paid is to meet "the amount due by the accountable person in respect of the arrears of estate duty" and the appellant is intimated that any payment made by him in compliance wih the notice would in law be "deemed to have been made under the authority of the account- D able person" and the receipt of the Assistant Controller would constitute good and sufficient discharge of the liability of the appellant "to the accountable person." The argument of the appellant was that the words "accountable person" here in the context meant respondents Nos. 3 and 4 and since the amount of rent was payable by him to the lessors and not to respondents Nos. 3 and 4, the notice was inoperative and did not obligate him to pay the amount of rent to the Assistant E Controller. This argument may, at first blush, appear a little attractive, but a close look at the scheme and relevant provisions of the Estate Duty Act, 1953 would be sufficient to repel it.

The Estate Duty Act, 1953 has been enacted in exercise of the legislative power conferred under Entry 87 of List 1 of Seventh Schedule to the Constitution and it provides for levy and collection of F estate duty in respect of property. The charge of estate duty is imposed by section 5 which provides that in the case of every person dying after the commencement of the Act, there shall be levied and paid upon the principal value of property, settled or not settled which passes on the death of such person, a duty called "estate duty" at the rate fixed in accordance with section 35. What property shall be deemed to pass on the death of a person is laid down in sections 6 to G 16 which occur under the heading "Property which is deemed to pass". Sections 17 to 20A enacts special provisions relating to transfers to controlled companies and there are certain exceptions to the charge of estate duty enumerated in sections 21 to 33. The aggregation of property and rates of estate duty are provided in sections 34 and 35. The node of determination of the principal value of the property passing on the death of a person is dealt with in sections 36 to 43 and certain H deductions and allowances to be made in determining the principal value of the estate are to be found in sections 44 to 50-B. Then follow a catena of sections providing for collection of estate duty. Section 53 lays down as to who shall be accountable for estate duty and what

shall be the duties and liabilities of such person and it reads as follows : A

"53 (1) Where any property passes on the death of the deceased—

(a) every legal representative to whom such property so passes for any beneficial interest in possession or in whom any interest in the property so passing is at any time vested, B

(b) every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested, and C

(c) every person in whom any interest in the property so passing is vested in possession by alienation or other derivative title,

shall be accountable for the whole of the estate duty on the property passing on the death but shall not be liable for any duty in excess of the assets of the deceased which he actually received or which, but for his own neglect or default, he might have received : D

x x x x

(3) Every person accountable for estate duty under this section shall, within six months of the death of the deceased, deliver to the Controller an account in the prescribed form and verified in the prescribed manner of all the properties in respect of which estate duty is payable : E

Provided that the Controller may extend the period of six months aforesaid on such terms which may include payment of interest as may be prescribed.

F

(4) Where the person accountable knows of any property which he has not included in his account because he does not know its amount or value, he may state that such property exists, but he does not know the amount or value thereof and that he undertakes, as soon as the amount and value are ascertained to bring a supplementary account thereof and to pay both the duty for which he may be liable in respect of such property and any further duty payable by reason thereof for which he may be liable in respect of the property mentioned in the original account. G

(5) Where two or more persons are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole of the estate duty on the property so passing." H

A The words 'legal representative' occurring in clause (a) of sub-section (1) of section 53 are defined in section 2, sub-section (12) to mean :

> "a person who in law represents the estate of a deceased person, and includes—
>
> (i) an executor,
>
> B (ii) as regards any obligation under this Act, any person who takes possession of, or intermeddles with, the estate of a deceased person or any part thereof, and
>
> (iii) where the deceased was a coparcener of a Hindu family, the manager for the time being of the family;"

C Another expression which occurs in section 53 and other provisions of the Act is 'person accountable' or 'accountable person' and that is defined under section 2, sub-section (12A) to mean :

> "the person accountable for estate duty within the meaning of this Act, and includes every person in respect of whom any proceeding under this Act has been taken for the assess-
> D ment of the principal value of the estate of the deceased :"

The power to make provisional assessment in advance of regular assessment is conferred under section 57 which reads as follows :

> "57(1) Estate duty shall be due from the date of the death of the deceased, and the Controller may, at any time
> E after the receipt of 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
> F 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.
>
> G (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.
>
> x x x x"

Section 58 provides for the making of regular assessment and confers
H power on the Controller to assess the principal value of the estate of the deceased and to determine the amount payable as estate duty. Then there are provisions relating to reopening of assessment, penalty for default or concealment and rectification of mistakes in the assess-

ment. Section 62 provides *inter alia* that any person objecting to any valuation made by the Controller, or to any order made by the Controller determining the estate duty payable under section 58 or section 59 or denying his liability to the amount of estate duty payable in respect of any property, may within thirty days of the date of receipt of the notice of demand under section 73, appeal to the Appellate Controller and the Appellate Controller is given the power to dispose of the appeal. Then a further appeal is provided to the Appellate Tribunal under section 63 followed by a reference to the High Court under section 64 and an appeal to the Supreme Court under section 65. There are certain other provisions following on these sections which are not material for our purpose until we come to section 73 to which we have already referred. The last section which is material is section 74 which provides that, subject to the provision of section 19, the estate duty payable in respect of property, movable or immovable, passing on the death of the deceased shall be a first charge on the immovable property so passing, in whomsoever it may vest on his death, after the debts and encumbrances allowable under Part VI of the Act. This is broadly the scheme of the Estate Duty Act, 1953 and it is in the light of this scheme that we have to determine the question which arises for consideration in this appeal.

A B C D

It is clear from the resume of the provisions of the Estate Duty Act, 1953 which we have given above that under sub-section (3) of section 53 every person accountable for estate duty under sub-section (1) of that section is liable to deliver to the Controller within six months of the death of the deceased an account of *all properties* in respect of which estate duty is payable on the death of the deceased. There may be and in many cases there would be more than one person accountable for estate duty under sub-section (1) of section 53 and the obligation to deliver an account of all the properties in respect of which estate duty is payable would be on each of the persons so accountable. But one out of several accountable persons may deliver an account to the Controller under sub-section (3) of section 53 and that would be sufficient to empower the Controller to proceed under section 57, sub-section (1) to make a provisional assessment of the estate duty payable by such accountable person on the basis of the account so delivered and when such provisional assessment is made, the accountable person "so assessed" would be liable under sub-section (2) of section 57 to pay to the Controller" the estate duty, if any, payable on such provisional assessment. The amount of estate duty provisionally assessed would be payable only by the accountable person on whom the provisional assessment is made. The Controller would thereafter be entitled under section 58 to make an order of regular assessment assessing the principal value of the estate of the deceased and determining the amount payable as estate duty. When an order of assessment is made, not only the accountable person in respect of whom proceeding for assessment has been taken, but also every other accountable person would be liable to pay the amount of estate duty, limited of course to "the assets of the deceased which he actually received or which, but for his own negligence or default, he

E F G H

might have received". That is the plain effect of section 53, sub-section (1) read with section 73, sub-section (1). It may be noticed that so far as the estate duty payable on provisional assessment is concerned, sub-section (2) of section 57 provides that "the person so assessed" shall pay the amount of such estate duty to the Controller, but when we turn to sub-section (1) of section 53 and section 73, sub-section (1), we find that the words "the person so assessed" are absent in both these provisions and the liability to pay the amount of estate duty due in consequence of an order of assessment made under the Act is on every "person accountable", irrespective whether assessment is made on him or not. But here a question of some difficulty arises, namely, whether each of the accountable persons in sub-clauses (a), (b) and (c) in section 53, sub-section (1) is accountable for estate duty on the entire property passing on the death of the deceased or only for the estate duty on the particular property falling within the respective sub-clauses which passes on the death. The difficulty is created on account of the words "the property passing on the death" appearing in the expression "the whole" of the estate duty on the property passing on the death" in sub-section (1) of section 53 These words, according to their plain grammatical construction, would seem to indicate that every accountable person would be accountable for the estate duty on the entire property passing or deemed to pass on death of the deceased. But it was argued on behalf of the appellant that having regard to the words "where *any* property passes" appearing in the opening part of the sub-section coupled with the words *"such* property so passes" and *"the* property so passing" appearing in the respective sub-clauses, the word 'the' appearing before the words "property passing on the death" must again refer to the same property which is referred to in the respective sub-clause (a), (b) or (c), as the case may be. This argument, plausible though it may seem, is not well founded, for it ignores one very important circumstance, namely that each of the persons mentioned in sub-clauses (a), (b) and (c) is rendered accountable for the whole of the estate duty not merely "on the property so passing" but on "the property passing on the death". Where the legislature wanted to refer to the specific property passing on the death of the deceased, described in the opening part of the sub-section, the legislature used the words "such property *so* passed" and "the property *so* passing" in sub-clauses (a), (b) and (c), but while imposing accountability for the estate duty, the legislature made a deliberate departure and instead of the words "the property so passing", which were familiar coinage, it used the words "the property passing on the death". This departure in phraseology is highly significant and clearly indicates that the legislative intent was that each of the persons mentioned in sub-clauses (a), (b) and (c) should be accountable for the estate duty on the entire property passing on the death. It was for this reason that the liability of each of these persons had to be limited to "the assets of the deceased which he actually received or which, but for his own neglect or defualt, he might have received". If the liability of each of these persons was only to the extent of the estate duty on the particular property falling within the respective sub-clauses, there was no need for limiting it to the assets of the deceased which such per-

son received or ought to have received. The appellant, however, contended that if this construction of sub-section (1) of section 53 were accepted, it would lead to consequences which could hardly have been intended by the legislature. He pointed out by way of an example that a trustee of an insurance policy taken out by the deceased under the Married Women's Property Act, 1874, which policy is exempt from payment of estate duty by reason of the total amount payable thereunder being Rs. 50,000/- or less, would become accountable and consequently liable to pay, out of the policy monies, the estate duty payable in respect of the free estate of the deceased—to the extent of the whole of the policy monies in the hand of the trustee—even though the Married Women's Property Act expressly provides that the estate of the husband is not to have any interest in the policy monies. It is not necessary for us to decide whether such an anomaly would arise or not, because the possibility that an anomaly may arise on a particular construction is only a factor to be taken into account by the court where two interpretations are possible, but where the meaning of a statutory provision is plain, it cannot alter such meaning. Moreover, it appears to us *prima facie* that no such anomaly would arise on the interpretation which we are inclined to accept, because it seems that though the trustee of the insurance policy would fall within sub-clause (b) and hence become accountable for the estate duty on the entire property passsing on the death, he would not be liable to pay the estate duty out of the policy monies, since the estate of the deceased would have no interest in the policy monies and the policy monies would not form part of the estate of the deceased and his liability as an accountable person would be limited only to the assets of the deceased which he has actually received or which he ought to have received. The appellant then relied on the language of sub-section (5) of section 53 and pointed out that even that sub-section refers to the point and several liability of an accountable person "in respect of *any* property *passing* on the death of the deceased", only to the extent of "whole of the estate duty on the property so passing" and urged that if under sub-section (1) of section 53 every accountable person were to be accountable for the whole of the estate duty on the entire property passing or deemed to pass on the death of the deceased, sub-section (5) would be rendered superfluous. But we do not think this is a correct way of looking at sub-section (5) because what this section does is merely to emphsise the principle of joint and several liability where two or more persons are accountable for estate duty in respect of *any* property passing on the death of the deceased, regardless whether they are so accountable in the same capacity or in different capacities. It would be reading much more in sub-section (5) than what its language warrants to say that this sub-section is consistent only with an accountable person mentioned in sub-clause (a), (b) or (c) of sub-section (1) being accountable only in respect of estate duty on the particular property passing to him on the death of the deceased. The object of sub-section (5) is to porvided that every accountable person shall be liable not only jointly with other accountable persons, but also severally, for estate duty in respect of any and every property passing on the death of the deceased. Sub-section (5) does not, therefore, in our opinion, militate against the construction which we are inclined

A to place upon sub-section (1). In fact section 76 clearly postulates that an accountable person may have to pay estate duty in respect of a property not passing to him and provides for his indemnification in such a contingency by saying that if a person accountable under section 53 pays any part of the estate duty in respect of any property not passing to him, it shall, where occasion requires, be repaid to him by the trustees or owners of that property. If an accountable per-
B son mentioned in sub-clauses (a), (b) or (c) of sub-section (1) were liable for estate duty only in respect of the particular property passing to him, there would be no need for such a provision as section 76, because in such an even there would be no question of payment by an accountable person of estate duty in respect of any property not passing to him. The provision for indemnification enacted in section 76 clearly suggests that an accountable person
C being liable for estate duty on the entire property passing on the death may have to pay estate duty even in respect of a property not passing to him, but in such a case he would be entitled to be reimbursed by the trustees or owners of that property in respect of the amount of estate duty paid by him. We are, therefore, of the view that on a proper construction of sub-section (1) of section 53, read in the context of the other provisions of the Act, each of the persons mentioned in sub-clauses (a), (b) and (c) would be accoun-
D table for the estate duty on the entire property passing on the death and his accountability *qua* the Revenue would not be limited only to the estate duty on the particular property passing to him. Though we are taking his view as a matter of construction, we must point out that it would be very harsh indeed if the Revenue were to proceed only against one accountable person for recovery of the whole of the estate duty, leaving out others to whom some property or the other
E may have passed, because that would drive the accountable person who is required to pay the estate duty in respect of the property not passing to him, to adopt proceedings against the owner of that property for recovery of the amount of estate duty so paid by him and that would unnecessarily foster litigation, apart from causing hardship to the accountable person and involving him in considerable waste of time and money. We think it would be desirable if the
F Estate Duty Officer himself apportions the estate duty amongst different accountable persons in accordance with their respective interests in the property and seeks to recover from each accountable person only that part of the estate duty which is payable in respect of the property passing to him. We are told that this is the practice which is at present being followed by the Estate Duty Office and we hope and trust that the Estate Duty Officer will continue to follow the same
G practice even under the law as interpreted by us.

Now let us consider the position of the lessors in the light of the aforesaid discussion of the law. The lessors are clearly-accountable persons since they admittedly took possession of and intermeddled with
H the leased premises which formed part of the estate of the deceased and if their contention is correct—and we must assume it to be so since that was the case of the appellant—the leased premises passed to them

for beneficial interest in possession and in any event interest in the leased premises became vested in them on the death of the deceased. The order of assessment made by the Assistant Controller was not challenged by the appellant in the writ petition nor was it at any time declared invalid by a superior authority at the instance of the lessors. Not even any steps appear to have been taken by the lessors for the purpose of challenging the order of assessment. The order of assessment must, therefore, be taken to be valid for the purpose of the present proceedings. The lessors were in the circumstances accountable for the whole of the estate duty on the entire property passing on the death of the deceased and hence they were liable to pay the estate duty of Rs. 1,40,090.20 limited of course to the extent of the leased premises which constituted the asset of the deceased received by them. Since the rent of the leased premises was payable by the appellant to the lessors under the lease deed and the lessors were liable to pay the estate duty of Rs. 1,40,090.20, it was competent to the Assistant Controller to issue a notice under section 73, sub-section (5) read with section 46, sub-section (5A) of the Act of 1922 requiring the appellant to pay the amount of rent due and to become due in respect of the leased premises. Now it is true that in the notice dated 9th January, 1962, the lessors were not mentioned as the persons to whom the amount of rent was due from the appellant in respect of the leased premises but that does not render the notice invalid or ineffective. What the notice dated 9th January, 1962 in substance and effect required the appellant to do was to pay to the Assistant Controller the amount due or to become due from the appellant to the lessors in respect of the leased premises; that amount could rightly and legitimately be described as amount due to the estate of the deceased so as to be covered by the terms of the notice and hence under the notice the appellant was liable to pay the arrears of rent and the amount of future rent in respect of the leased premises to the Assistant Controller to the extent of Rs. 1,40,090.20. The appellant in fact rightly understood his obligation under the notice dated 9th January, 1962 and paid 2 months rent aggregating to Rs. 2,800/- to the Assistant Controller and it is only thereafter that he refused to make further payment of rent, presumably with a view to obliging the lessors. This was clearly in breach of the requisition contained in the notice dated 9th January, 1962.

Before we close, we must refer to one other contention urged on behalf of the appellant, namely, that no notice of demand having been issued under section 73, sub-section (1) to the lessors, the amount of estate duty, though due in consequence of the order of assessment made by the Assistant Controller, was not payable by the leasors and consequently no notice under section 73, sub-section (5) read with section 46, sub-section (5A) of the Act of 1922 could be issued against the appellant requiring him to pay the amount of rent due from him to the lessors and the notice dated 9th January, 1962 was accordingly invalid. The Revenue put forward a two-fold argument in reply to this contention. The first answer made by the Revenue was that this contention was at no time raised in the writ petition nor was it urged before the High Court and since it rested on a question of fact as to

A whether notice of demand under section 73, sub-section (1) was served on the lessors before issuing the notice dated 9th January, 1962, it could not be allowed to be raised for the first time at the hearing of the appeal before us. This answer, in our opinion, affords complete refutation to the contention of the appellant. The question whether notice of demand was served on the lessors under section 73, sub-section (1) before issue of the notice dated 9th January, 1962 is essen-
B tially a question of fact and if it has not been raised in the writ petition, nor argued before the High Court, it cannot be allowed to be agitated for the first time before this Court. Secondly it was urged that, in any event, notice under section 73, sub-section (5) read with section 46, sub-section (5A) of the Act of 1922 could be validly issued against a garnishee without service of notice of demand on the accountable person under sub-section (1) of section 73 and hence the notice dated
C 9th January, 1962 could not be assailed as invalid of the ground that it was not preceded by a notice of demand on the lessors under section 73, sub-section (1). Suppose for this contention was sought to be drawn from the decision of this Court in *Third Income-Tax Officer, Mangalore* v. *M. Damodar Bhat.*(1) Now, this was a decision given with reference to sub-section (3) of section 226 of the Act of 1961 which corresponds to section 46, sub-section (5A) of the Act of 1922
D The question which arose for determination was whether action under section (3) could be taken only where the assessee was in default and this Court held that in a proceeding under section 226, sub-section (3), it was not necessary that the assessee should be in default or should be deemed to be in default. This Court, speaking through Shah, J., pointed out: "Section 226, however, provides other methods of recovery and there is no reference in section 226 (3) to any default
E on the part of the assessee. Section 226(3) merely states that the Income-tax Officer may, *at any time or from time to time'*, by notice in writing require any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Income-tax Officer either forthwith so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount. In a proceeding under sec-
F tion 226(3) of the new Act, therefore, it is not necessary that the assessee should be in default or should be deemed to be in default and no such condition or limitation is imposed by the language of that sub-section." If this decision lays down the correct law on the subject—and since this is a decision given by a Bench of three judges of this Court, it must be regarded as binding upon us—it must be held, while interpreting the corresponding provisions of sub-sections (1),
G (2) and (5) of section 73 of the Estate Duty Act, 1953 read with section 46, sub-section (5A) of the Act of 1922 that, in order that proceeding may be validly taken against a garnishee under section 73 sub-section (5) read with section 46, sub-section (5A), it is not necessary that the accountable person must be deemed to be in default and hence such garnishee proceeding need not be preceded by a notice of demand on the accountable person under sub-section (1) of section
H 73. We must, however, point out that we are taking this view because the decision in *Third Income-Tax Officer, Mangalore* v.

(1) 71 I.T.R. 806.

Damodar Bhat (supra) binds us, though we do feel that the view taken in this decision is not correct. In the first place, the decision seems to have overlooked the fact that it is only when a notice of demand is served on the assessee under section 156 and the period for payment of tax mentioned in it expires that the tax becomes payable by the assessee and it is only then the Income-tax Officer can proceed to recover it from the assessee. The garnishee proceeding under section 226, sub-section (3) is merely one of the modes of recovery prescribed by law and it is difficult to see how it can be resorted to before the tax has become payable by the assessee. Secondly, sub-section (3) of section 226 permits garnishee proceeding to be taken for recovery only of 'arrears' and no tax be said to be in arrears until the expiry of the period for payment of tax specified in the notice of demand, and thirdly, the concept of recovery by any mode whatever before the expiry of the time allowed for payment of tax is foreign to the whole scheme of recovery both under the Act of 1961 and the Act of 1962 But, as we have pointed out, the decision in *Third Income Tax Officer, Mangalore* v. *M. Damodar Bhat* (supra) is binding upon us and it affords a complete answer to the contention of the appellant.

We must, in the circumstances, hold that the notice dated 9th January, 1962 was a valid notice and the appellant was bound to comply with it and to pay to the Assistant Controller the amount of rent due or to become due in respect of the leased premises.

We accordingly allow the appeal in part and issue a writ quashing and setting aside the order dated 25th March, 1964 in so far as it imposes penalty of Rs. 3,000/- on the appellant, but so far as the notice dated 9th January, 1962 is concerned, we uphold its validity and reject the appeal. There will be no order as to costs throughout.

S.R. *Appeal partly allowed.*