

## ANDHRA PRADESH HIGH COURT

Hella Rama Bhupal Reddy

Vs

Central Board of Direct Taxes

(Kondaiah, J.)

23.09.1975

### JUDGEMENT

#### **Kondaiah, J.**

( 1. ) THE petitioner, an accountable person, seeks this court to quash the order of the Central Board of Direct Taxes, New Delhi, in its F.No. 313/12/73-Ed dated February 6, 1974, and to direct the Central Board of Direct Taxes to accept his offer to transfer agricultural lands detailed in his petition dated February 17, 1973, in accordance with the provisions of Section 52 of the Estate Duty Act, 1953.

( 2. ) THE facts, which are not only not in dispute but lie in a short compass, may be stated : THE petitioner's father, one Challa Venkatarami Reddy, died on November 2, 1969, leaving behind him a considerable estate consisting of movable and immovable properties, which is liable to estate duty as per the provisions of the Estate Duty Act, 1953 (hereinafter called "the Act"). THE petitioner, who is the accountable person under the Act, filed a statement of account declaring the value of the estate of his deceased father. THE Assistant Controller of Estate Duty, after due and proper enquiry, passed an order of assessment on January 27, 1973, assessing the total value of the estate of late Venkatarami Reddy at Rs. 7,77,569 which included the value of agricultural lands worth Rs. 4,17,695 and other immovable properties valued at Rs. 1,03,250 and levied an estate duty of Rs. 1,54,971.18 After adding interest payable under Section 70(2) of the Act read with rule 42 of the Estate Duty Rules, 1953 (hereinafter called "the rules"), a total demand of Rs. 1,53,362.25 has been raised by the Assistant Controller of Estate Duty. After deducting an amount of Rs. 67,298.50 paid towards provisional estate duty, the balance demand outstanding amounted to Rs. 96,067.25 On February 17, 1973, the petitioner submitted an application under Section 52 of the Act to the Secretary, Ministry of Finance, Government of India, New Delhi, offering Ac. 76-44 cents of agricultural lands situate in different villages in the districts of Kurnool and Mahboobnagar and whose value has been adopted in the estate duty assessment at Rs. 99,132 for acceptance towards the balance of estate duty due and payable by him. In the meanwhile, the total value of the deceased's estate was reduced by the appellate authority from Rs. 7,77,569 to Rs. 7,35,504 on the basis of which a fresh demand for the estate duty payable along with interest has been raised. We need not specifically indicate the actual arrears of duty as it is not material for the purpose of this application. THE Central Board of

Direct Taxes, the 1st respondent herein, on a consideration of the facts and circumstances, regretted their inability to accept the offer of the petitioner under Section 52(1) of the Act and informed him accordingly by its communication dated February 6, 1974. Hence, this writ petition. The sum and substance of the contentions of the learned counsel Sri P.A. Chowdari for the petitioner is three-fold : (1) Section 52 of the Act which empowers the Central Government to accept the offer of any property passing on the death of the deceased, towards the whole or any part of the estate duty, is mandatory as the Central Government is bound and obliged to accept the offer but has no discretion to reject the same. (2) The impugned order is not a speaking order and the reasons assigned in the counter-affidavit for rejection of the petitioner's application under Section 52 of the Act cannot be looked into for testing the validity of the order. (3) The provisions of Section 52 have been enacted to alleviate the difficulty or hardship caused or created to accountable persons who are unable to dispose of property, by providing for an additional mode of payment of estate duty besides the modes of payment enumerated in Rule 18 of the Rules, and, therefore, the reasons assigned in the counter-affidavit in support of the Government's conclusion are untenable and unjustified. This claim of the petitioner is resisted by the learned standing counsel for income-tax department, Sri P. Rama Rao, contending, inter alia, that Section 52 is not only not mandatory but clothes the Central Government with absolute power and discretion either to accept or reject the offer made by an accountable person and the exercise of that power in one way or the other is not justiciable and in any event the respondents are justified in rejecting the offer made by the petitioner herein and his very title to the agricultural lands offered in the application is in a nebulous state in view of the statutory provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, whereunder the State of Andhra Pradesh is declared to be the owner of all agricultural lands in excess of the ceiling limit and the prohibition imposed on alienations of agricultural lands by landholders like the petitioner herein, and the absence of any Governmental establishment or machinery to maintain and manage agricultural lands in this State. The petitioner's counsel replied that there is nothing like unbridled absolute discretion not reviewable by courts in a socialistic democratic country like ours. Upon the respective contentions advanced on behalf of the contending parties, the following two questions arise for decision. "(1) Whether the provisions of Section 52 of the Act are mandatory and no discretion to reject the offer made by an accountable person is left to the Central Government as contended by the petitioner, or the Central Government is clothed or invested with absolute power and discretion either to accept or reject the offer as urged by the respondents? (2) Whether or not, on the facts and in the circumstances of this case, the Central Board of Direct Taxes is justified in refusing to accept the offer made by the petitioner-accountable person under Section 52 of the Act., or the impugned order is liable to be quashed?" ( 3. ) WE shall first take up the question relating to the scope, meaning and application of the provisions of Sub-section (1) of Section 52 of the Act, which reads as follows : "52. (1) The Central Government may, on an application of the person accountable for estate duty, accept in satisfaction of the whole or any part of such duty any property passing on the death of the deceased at such price as may be agreed upon between the Central Government and that person, and thereupon such person shall deliver possession of the property to such authority as may be specified by that Government in this behalf." Sub-section (2) to Section 52 is not material for the present controversy as it comes into play on the delivery of possession of the property to the concerned authority under Sub-section (1) thereof. Hence, it has no relevance or application for

determining the scope and meaning of the provisions of Section 52(1). Nor have the provisions of Sub-section (3) to Section 52 any bearing to provide a clue for the decision of the point at issue as it deals with a case where the price referred to in Sub-section (1) exceeds the aggregate of the amounts due under the Act in respect of the estate of the deceased and indicates the mode of application of the excess amount towards the payment of any tax, penalty, interest or other amount. Hence, Sub-sections (2) and (3) need not detain us any longer. Reverting to Section 52(1), it must be said that it is in Part VII of the Act, which provides for the collection of duty. Section 51 says that estate duty may be collected by such means and in such manner as the Central Board of Direct Taxes may prescribe. The Central Board of Direct Taxes has promulgated certain rules providing for the method and manner of collection of estate duty. Those rules are not only statutory but provide guidelines for the departmental authorities in the collection of estate duty. Section 52(1) may conveniently be divided into two parts. The first part relates to the factum of application by an accountable person to the Central Government offering any property passing on the death of the deceased for acceptance towards the whole or any part of estate duty due and payable by him and the exercise of the power vested thereunder by the Central Government either to accept or reject the offer so made by the concerned accountable person. It is pertinent to notice that the accountable person is obliged to offer under this provision only such "property passing on the death of the deceased" but not any other property possessed or owned by him. The offer also must emanate from the accountable person who is due and liable to pay estate duty to the Government and such offer must be towards the arrears of estate duty. The Central Government is not invested with suo motu power to accept any property in satisfaction of the whole or any part of the estate duty due and payable by an accountable person but it has to step in and move in the matter only on the accountable person initiating the proposal in writing offering any property passing on the death of the deceased towards the estate duty due and payable by him. On the filing of an application by the accountable person, the Central Government "may ... accept in satisfaction of the whole or any part of such duty", the property so offered, provided the price of the same has been agreed upon between both the sides. The sovereign Parliament invested the power to accept the offer of an accountable person on an application made under Section 52(1), only with the Central Government and none else. The condition precedent for acceptance by the Central Government of the property so offered towards the whole or any part of the estate duty is an agreement between the parties with regard to its price. Where there is no agreement between the Central Government and the accountable person in the fixation of the proper price of the property, the deal must be held to have failed. In case of an agreement between the parties relating to the price of the property and the acceptance by the Central Government of the offer made by the accountable person, the latter part of that sub-section which provides for the delivery of possession of such property shall come into play. The use of the words "and thereupon" in Section 52(1) supports the aforesaid view. After the agreement with regard to the price and the acceptance of the offer by the Central Government a statutory duty and obligation is cast on the accountable person to deliver possession of the property to such authority as may be specified by the Central Government in that behalf. The second part of Section 52(1) would come into operation only after a successful agreement with regard to the price of the property offered and the acceptance of the offer by the Central Government, but not otherwise. Hence, the second part of Sub-section (1) of Section 52 does not throw much light to construe the nature and character of the power vested in the Central Government under the first part thereof, except for the use of the word "shall" pertaining to

delivery of possession, the impact of which we shall advert to a little latter. Reverting to the first part of Sub-section (1) of Section 52, we shall consider the nature and character of the power vested in the Central Government. Much stress is laid by either side on the use of the word "may" therein. According to Sri P.A. Chowdary, the word "may" must be read as "shall and must" and a statutory duty and obligation is cast on the Central Government to invariably accept the offer made by an accountable person. Sri P. Rama Rao asserted that the word "may" must be meant as permissive and thereby investing the Central Government with an absolute and unbridled power and discretion either to accept or reject the offer so made by the accountable person. In order to appreciate the scope of the respective contentions of the parties, we may notice a few passages in the text books of learned authors, which elucidate the expressions "may", "must" and "shall". Maxwell on the Interpretation of Statutes (12th edition, page 234) says : "In ordinary usage, 'may' is permissive and 'must' is imperative, and, in accordance with such usage, the word 'may' in a statute will not generally be held to be mandatory. In some cases, however, it has been held that expressions such as ' may ' or 'shall have power' or 'shall be lawful' have--to say the least--a compulsory force, and so their meaning has been modified by judicial exposition." ;