

(1983) 02 AP CK 0008

In the Andhra Pradesh High Court

Case No : Case Referred No. 30 of 1978

A. Suhasini

APPELLANT

Vs

Controller of Estate Duty, Andhra Pradesh

RESPONDENT

Date of Decision : 24-02-1983

Acts Referred:

Estate Duty Act, 1953 — Section 2(15), 27, 9

Citation : (1983) 37 CTR 81 : (1984) 145 ITR 220

Hon'ble Judges : K. Punneya, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; M. Suryanarayana Murthy, for the Respondent

Judgement

Jeevan Reddy, J.—Four questions are referred to us under s. 64(1) of the E.d. Act, namely :

"1. Whether, on the facts and in the circumstance of the case, there was a disposition of the property within the meaning of secs. 9 and 27 of the Estate Duty Act, to the extent of Rs. 24,112 which could be included in the principal value of the estate ?

2. Whether, on the facts and in the circumstances of the case, the maintenance and educational expenses for the unmarried daughters are deductible expenses from the total value of the estate for the purpose of levying estate duty ?

3. Whether, on the facts and in the circumstances of the case, the maintenance expense of the widow of the deceased is not deductible from the principle value of the estate of the deceased for duty purposes ?

4. Whether, on the facts and in the circumstances of the case, the estate duty payable on the estate of the deceased is to be deductible from the principle value of the estate for the purpose of levying estate duty ?"

2. Of the four questions, questions 2, 3 and 4 are concluded against the

accountable person by the decision of this court in Controller of Estate Duty Vs. Smt. P. Leelavathamma, as has been fairly stated by the counsel for the accountable person. The learned counsel, however, stated that this court has granted leave to appeal to the Supreme court against the aforesaid decision and that the matter is now pending in the Supreme Court. He, therefore, requested that we should also grant leave to appeal to the Supreme Court in so far as those three questions are concerned. It is, therefore, not necessary for us to refer to or deal with the said three questions. We shall, therefore, confine ourselves to question No. 1.

3. The deceased, A. Raghurami Reddy, constituted a coparcenary along with his father and brother. The father died on June 8, 1959, leaving behind him his widow, two sons, including the deceased, A. Raghurami Reddy, and two daughters. After the death of the father, the widow and the two daughters executed a relinquishment deed with respect to the share to which they were entitled under the Hindu Succession Act in favour of the two sons. On December 2, 1963, the two brothers divided their properties among themselves.

4. During his lifetime the father had borrowed a sum of Rs. 75,196 from the deceased and as sum of Rs. 26,972 from the other son, Malla Reddy. While partitioning the properties among themselves on December 2, 1963, the two brother relinquished their respective debts due from the estate to them and divided the properties in equal shares. The result was that the deceased relinquished a large amount due to him from the estate than his brother. The deceased died on November 11, 1964, i.e., within two years of the partition.

5. The Asst. Controller was of the opinion that half the difference between the amount relinquished by the deceased and the amount relinquished by his brother has to be included in the principal value of the deceased's estate under ss. 2(15) and 27 read with s. 9 of the E.D. Act. He was of the opinion that inasmuch as the relinquishment occurred within two years of the death, it must be treated as a gift. On appeal, the Appellate Controller agreed with the Asst. Control and dismissed the appeal. The accountable person appealed to the Tribunal. The Tribunal too agreed with the stand taken by the Department and held that the relinquishment of his larger debt due to him from the estate by the deceased, at the time of partition, amounts to a disposition within the meaning of Explan. 2 to s. 2(15), and is liable to be treated as a gift as contemplated by s. 9. The Tribunal, however, held that s. 27 has no application to the facts of the case.

6. Sri S. R. Ashok, the learned counsel for the accountable person, contend before us that what had happened in this case was that the two brothers voluntarily gave up the debts due to them from the joint family and thereafter divided the properties. He submitted that the Tribunal has not recorded any finding to the effect that there was an understanding or an agreement between the two brothers whereunder they had relinquished the debts due to them so as to attract s. 9. According to the learn counsel, to attract s. 9 what is necessary is that the transaction must be of such a nature as to constitute "an immediate gift

inter vivos". He contend that inasmuch as there are no two parties to the relinquishment here but that each brother voluntarily and unilaterally gave up the debts due to him, s. 9 is not attracted. The counsel also contended that there is no finding by the Tribunal that it is a case of unequal partition.

7. For a proper appreciation of the contentions of the learned counsel, it is necessary to notice the finding record by the Tribunal which are set out in the statement of case.

8. According to the statement of the case, at the time of his death, the father owed the aforesaid two sums to his two sons. The two sons, after the death of the father, divided all the assets of the father equally between them. It is further found that "While partitioning the father's estate, the two brothers relinquished their respective debts due from the estate and divided the assets in equal shares. Thus the deceased had relinquished a larger amount due from the father's estate than that due to his brother".

9. It is on the above finding that we have to determine the true nature of the transaction and to determine what actually happened on the date of the partition, namely, on December 2, 1963.

10. In a partition, the parties have to divide both the assets and liabilities equally. An unequal partition amounts to a disposition and to a gift within the meaning of s. 9 of and Explain. 2 to clause (15) of s. 2 of the Act, as held by the Supreme Court in *Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal*, . When partition their father's estate the two brother relinquished their debts, one son in a sum of Rs. 75,196 and the other in a sum of Rs. 26,976 and this was obviously in pursuance of an understanding. But for an understanding among themselves, the deceased would not have given up a substantially higher debt due to him and thereby suffered a prejudice. He was well entitled to claim that his debt should come out of the estate, that similarly the debt due to his brother should also come out of the estate and that only then the balance will be divided equally. The fact that he did not do so must be ascribed to an understanding amount the brothers. In the circumstances, there is no scope for the theory that they unilaterally relinquished the debt due to each of them and that then they divided the properties among themselves. It is not possible to disassociate the relinquishment of debts from the partition. Doing so would be unrealistic, and would indeed be contrary to the finding of the Tribunal. It is evident that by such relinquishment there was an unequal partition between the brother, namely, the younger brother took a larger share; and to the extent of difference it has to be treated as a gift applying the decision of the Supreme Court aforesaid.

11. Now with respect of the connection that the Tribunal has not specifically recorded any finding regarding the existence of an understanding or an agreement between the brother, this is, in our opinion, too technical an argument. the Tribunal has clearly found that this relinquishment was effected by the brothers at the time of partition. In other words, it was one single

transaction. There can be no partition without an understanding or an agreement between the concerned parties. If the division of the properties was under or in pursuance of an agreement, the giving up of debts must also be ascribed to the same understanding.

12. Sri. S. R. Ashok relied upon an observation of the Tribunal in para 8 of its judgment : "Here it is not a case of partition, but it is a case of relinquishment of one's right to certain debts...." True, such an observation was made while dealing with the decision in SMT. CHERUKURI ESWARAMMA Vs. CONTROLLER OF ESTATE DUTY., cited before it. But on account of this observation, the main finding of the Tribunal cannot be ignored. The position would probably have been different, if there had been a reasonable interval between the relinquishment and the partition. In such a case, the learned counsel could legitimately invoke the principle of the Madras, High Court in A.N.K. Rajamani Ammal Vs. Controller of Estate Duty, , but such an attempt in the present circumstances, in our opinion, cannot be entertained.

13. For the above reasons, we answer question No. 1 referred to us in the affirmative, that is, in favour of the Department and against the accountable person. Question No. 2 is answered following the principle of the decision of this court in Controller of Estate Duty Vs. Smt. P. Leelavathamma, in the negative, that is to say, that the maintains and educational expenses for the unmarried daughters are not deductible expenses. Similarly question No. 3 is also answered in the negative, that is, against the assessee following the same decision and so also question No. 4 No costs.

14. The learned Counsel for the accountable person makes an oral request for the grant of leave to appeal to the Supreme Court in so far as questions Nos. 2, 3 and 4 are concerned. since we have followed the decision of this court against which this court has granted leave to appeal to the Supreme Court, we too certify that these three questions constitute a fit case for appeal to the Supreme Court within the meaning of s. 65(1) of the E.D. Act. A certificate shall accordingly issue.