
(1982) 12 AP CK 0017

In the Andhra Pradesh High Court

Case No : Case Referred No. 109 of 1977

C. Vanajakshi Venkata Rao and Another

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 08-12-1982

Acts Referred:

Estate Duty Act, 1953 — Section 33(1), 34(1)

Citation : (1983) 143 ITR 1014

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

Bench : Division Bench

Judgement

Jeevan Reddy, J.—At the instance of the accountable persons, the Income Tax Appellate Tribunal referred the following two questions for our opinion, under s. 64(1) of the E.D. Act :

"1. Whether, on the facts and in the circumstances of the case, the exemption allowed u/s 33(1)(n) of the Estate Duty Act is limited only to 1/3 share of the deceased in the residential property ?

2. Whether, on the facts and in the circumstances of the case, for the purpose of determining the rate of estate duty payable on the property passing on the death of the deceased, aggregation of the share of lineal descendants in terms of section 31(1)(c) of the Estate Duty Act is correct ?"

2. The facts in so far as they are relevant for answering the two questions referred are : The deceased was a member of an HUF consisting of himself and his two sons. On his death the accountable persons filed the return showing the value of the 1/3 estate of the deceased, i.e., his 1/3 share in the properties owned by the HUF, at Rs. 94,835. The Asst. Controller, however, disagreed with this valuation, and valued the entire properties held by the HUF at Rs. 9,26,768 and the 1/3 share of the deceased at Rs. 2,87,256. The HUF owned a residential house among other properties and exemption was claimed in respect of the said house under s. 33(1)(n) of the E.D. Act, which was valued at Rs. 94,500. The

estate duty authorities allowed only 1/3 of this amount under s. 33(1)(n). Thereafter, for the purpose determining the rate of estate duty payable on the estate of the deceased, they clubbed the shares of the lineal descendants, i.e., the sons, with the share of the deceased, as contemplated by s. 34(1)(c) of the Act. The assessee complained against both the above courses of action. Their case was that the exemption under s. 33(1)(n) should not be confined to 1/3 share only, but should extend to the entire value of the residential house. They also contended that the shares of the lineal descendants cannot be clubbed with the share of the deceased for any purpose whatsoever including the purpose of determining the rate of estate duty.

3. The Tribunal rejected both these contentions following the decision in Smt. Komanduri Seshamma Vs. Appellate Controller of Estate Duty, , with respect to the first contention and the decision of the Allahabad High Court in Income Tax Appellate Tribunal Vs. Madan Mohan, , with respect to the second contention. Thereupon the accountable persons applied for referring the above two questions to this court, which was done.

4. So far as the first question referred to us is concerned, there can be little doubt, on a reading of s. 33(1)(n) along with s. 39(1), that the exemption must be confined only to the deceased's share in the residential house. Section 33(1)(n) reads :

"33. Exemptions. - (1) To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of property of any of the following kinds belonging to the deceased which passes on his death -

5. (n) one house or part thereof exclusively used by the deceased for his residence, to the extent the principal value thereof does not exceed rupees one lakh if such house is situate in a place with a population exceeding ten thousand, and the full principal value thereof, in any other case."

6. Several High Courts have taken the uniform view that in the case of a residential house owned by an HUF of which the deceased was a member, only his share therein is entitle to exemption and not the (value of the) whole house. This is the view taken by this court in Smt. Komanduri Seshamma Vs. Appellate Controller of Estate Duty, and by the Karnataka High Court in CED v. K. Nataraja [1979] ITR 769.

7. So far as the second question is concerned, the languages of s. 34(1)(c) is quite clear and unambiguous. It reads :

"34. Aggregation. - (1) For the purpose of determining the rate of the estate duty to be paid on any property passing on the death of the deceased, - ..

8. (c) in the case of property so passing which consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkatayam, or Aliyasantana law, also the interests in the joint family property of all the lineal descendants of the deceased member;

9. shall be aggregated so as to form an estate and estate duty shall be levied thereon at the rate or rates applicable in respect of the principal value thereof."

10. The learned counsel for the accountable persons, however, relied upon the decision of this court in *Controller of Estate Duty Vs. Estate of Late Durga Prasad Beharilal* (by accountable person and Others), . Though the said decision apparently appears to support the case of the accountable persons, a close reading of the decision shows that the learned judges did not say that for the purpose of determining the rate, the properties of the lineal descendants should not be determining the rate, the properties of the lineal descendants should not be aggregated with the share of the deceased as contemplated by s. 34(1)(c). The learned judges merely followed the earlier decision of this court in R.C. No 30/74, dated October 19, 1976. We have sent for that decision and have perused it. The paragraph in that judgment, which has indeed been quoted in the aforesaid decision, reads as follows :

"So far as this aspect of the case is concerned, we are of the opinion that the amount of Rs. 74,882, being the entire value of the residential house in which the deceased had one-third share, the deceased's 1/3 share will have to be exempted as per the provisions of section 33(1)(n) of the Estate Duty Act. So far as the balance of the value is concerned, it is not in dispute that the two sons of the deceased are the coparceners and they would take two-thirds share in the house as coparceners. In these circumstances, the share of the two coparceners cannot be brought into the estate of the deceased. So, having given exemption u/s 33(1)(n) to the extent of the share of the deceased and having held that, after deducting the one-third share of the deceased, the balance cannot be accounted in the estate of the deceased as that two-thirds share belongs to the coparceners, we find that the entire amount of Rs. 74,880 cannot be included in the estate of the deceased for the reason mentioned above."

11. A reading of the above extract shows that the question that was referred to this court in R.C. No. 30/74 was not concerned with the aggregation of the properties under s. 34(1)(c) for the purpose of determining the rate of estate duty. The only question referred was whether under s. 33(1)(n) the exemption should be confined to the share of the deceased in the residential house belonging to the joint family or should of the deceased in the residential house belonging to the joint family or should the exemption extend to the entire value; and this court held that the exemption operates only to the extent of the share of the deceased. Having stated so, of course, the learned judges further observed :

"the balance cannot be accounted in the estate of the deceased as that two-thirds share belongs to the coparceners. "The words "property of any of the following kinds belonging to the deceased which passed on his death" in s. 33(1) make it clear that exemption can be claimed under that sub-section only in respect of that property, (1) which belongs to the deceased, and (2) which passes on the death of the deceased. Though certain items of property are mentioned in cls. (a) to (p) of the sub-section, they have to be considered as

having reference to the interest of the deceased in those properties and not to the interest of others.

12. Even though "one house" is referred to in s. 33(1)(n), in the case of coparcenary property exemption can be claimed only in respect of the interest of the deceased in that house and not in respect of the whole house in which the surviving coparceners also have interest. Hence, exclusion of the entire value of the house at the stage of valuation under s. 39 is not called for. The principal value of all the properties of the deceased should be first ascertained in accordance with the rules contained in the Act, including s. 39, and then the value of items in respect of which estate duty is not payable under ss. 25, 26, 27, 28, 29, 32, and 33(1) (a) to (p) should be determined. While computing estate duty deduction should be given in respect of the value of these items on which estate duty is not payable.

13. Section 34(1)(a) dealing with aggregation for the purpose of determining the rate of duty, provides that all property passing on the death other than property exempted from estate duty under cls. (c), (d), (e), (i), (j), (l), (m), (mm), (n), (o) and (p) of sub-s. (1) of s. 33 should be aggregated for the purpose of rate of estate duty. Wherever the property so passing consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law, s. 34(1)(c) requires that the interest in the joint family property of all the lineal descendants of the deceased member should also be so aggregated. Section 34(1)(c) merely enables aggregation of the interest of the lineal descendants for the purpose of determining the rate at which estate duty is leviable on the principal value of the estate of the deceased and does not authorise the levy of any estate duty on the interest of the lineal descendants. Its purpose is, therefore, a restricted one.

14. Therefore, where the residential house belongs to a HUF governed by the Mitakshara law, only the share of the deceased in such house is exempt from estate duty under s. 33(1)(n). For the purpose of determining the rate of estate duty the value of the property passing on his death under s. 34(1)(a), but the value of the shares of all the lineal descendants of the deceased in the coparcenary property including the residential house has to be aggregated under s. 34(1)(c) without any reference to any exemption u/s 33(1)(n) of the Act."

15. To the same effect are the decisions of the other High Courts : vide T. Sundaresa Mehta Vs. Controller of Estate Duty, , Gunvantlal Keshavlal Vs. Controller of Estate Duty, Gujarat, , Smt. Gunvantibai Vs. Controller of Estate Duty, and Controller of Estate Duty Vs. R.S. Gwalre, . The Karnataka High Court reaffirmed the principle of Controller of Estate Duty, Mysore Vs. K. Nataraja, , in a subsequent decision in Controller of Estate Duty, Karnataka Vs. N. Ramachandra Bhat, .

16. In view of the above uniform authority and the clear language of s. 34(1)(c), we must hold that the Revenue was right in clubbing the values of the share of

the two sons (who are undoubtedly lineal descendants of the deceased) with the value of the share of the deceased for the purpose of determining the rate of estate duty on the estate of the deceased, as contemplated by s. 34(1)(c).

17. For the above reasons we must answer the first question referred to us in the affirmative, in favour of the Department and against the assessee. Similarly, we must also answer the second question in the affirmative, in favour of the Department and against the assessee. Referred case is answered accordingly. No costs.