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(2010) 12 AHC CK 0028

In the Allahabad High Court

Case No : Wealth Tax Reference No. 76 of 1990

Commissioner of Wealth Tax	APPELLANT
Vs	
N.L. Bhargava	RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Estate Duty Act, 1953 — Section 22
Hindu Adoptions and Maintenance Act, 1956 — Section 12C

Citation : (2010) 12 AHC CK 0028

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Judgement

1. This wealth tax reference is pending since 1990. It is connected with Estate Duty Reference No. 946 of 1978 raising same issues of fact.

2. We have heard Shri Sambhu Chopra, learned Counsel appearing for the Commissioner of Wealth Tax (CWT). Shri Naresh Chandra Bhargava-Respondent died on 30.4.2002. The CWT filed an application for substitution on which notices were issued. Shri Ballabh Shukla, the Inspector in the office of Addl. Commissioner of Income Tax, Range-2, Allahabad filed affidavit of service on 2.12.2003 including therewith notice served upon the heirs of Shri Naresh Chandra Bhargava. By order dated 7.9.2010 the application for condonation of delay and the application for substitution was allowed. The Respondents have been served personally through the office of the Addl. Commissioner of Income Tax, Range-2, Allahabad. No one has put in appearance on behalf of the Respondent.

3. By order dated 16th January, 1989 this Court directed the Income Tax Appellate Tribunal, Allahabad Bench to draw up the statement of the case and refer following questions of law for the assessment year 1957-58 to 1961-62:

Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that 1/4th of the entire estate left by Shri Niranjan Lal Bhargava at the time of his death, was his separate property representing the

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property inherited by him from his mother?

Brief facts giving rise to this reference are that a wealth tax return was filed by Shri Niranjan Lal Bhargava for the assessment year in question in the status of individual showing net worth for the assessment year as follows:

Assessment years Amount of wealth 1957-58 Rs. 1,48,502/- 1958-59 Rs. 1,43,199/- 1959-60 Rs. 91,003/- 1960-61 Rs. 68,672/- 1961-62 Rs. 2,62,377/-

4. Shri Niranjan Lal Bhargava died on 18.1.1961. His adopted son Shri Naresh Chandra Bhargava filed revised returns after five years declaring net wealth of Rs. 2500/- in all the aforesaid years claiming that his adoptive father had filed earlier returns under a mistaken view of law. Most of his assets declared in the returns belonging to the deceased, were in the capacity of Hindu undivided family and not as individual. In revised returns, he disclosed only 1/3rd share of the property situate at 86, Bahadur Ganj, Allahabad as his son. He relied upon the order of the Income Tax Tribunal dated 27.4.1974 in EDA No. 18 (Alld)/ 1972. In the estate duty proceedings with regard to estate of Shri Niranjan Lal Bhargava, the return was originally filed treating all the property as individual property. Later the return was revised by Shri Naresh Chandra Bhargava in the status of HUF. The Asstt. Controller of Estate Duty found that the status of the deceased was that of individual and completed the assessment. The Appellate Tribunal held that only 1/4th of the property left by Shri Niranjan Lal Bhargava was his separate property, received by him from his mother under a will. The balance was joint in HUF property, in which the deceased had co- parcenary interest. The Tribunal did not accept the finding and that reference on the point made by the Controller of Estate Duty, Allahabad was pending.

5. The Wealth Tax Officer completed the assessment, taking the status of the Assessee as individual. Aggrieved the Assessee went up in appeal. The CWT (Appeals) accepted the contention of the Assessee in his order dated 17th December, 1979 that only 1/3rd share in the premise known as 86 Bahadur Ganj, Allahabad can be taken as individual property.

6. The revenue took up the matter before the Tribunal in WTA No. 167 to 171 (Alld)/1980. The appeals were decided by a common order dated 23.2.1982, in which the Tribunal held that unless the order of the Appellate Tribunal in the estate duty proceedings is altered, modified or reversed by the High Court in reference, it has to be taken that net wealth in the hands of the Assessee was 1/4th of the entire estate. The Tribunal also found that C.W.T. (Appeals) did not dispose of all the grounds raised before it and thus the matter was remanded. The Assessee filed M.A. No. 57 to 61 (Alld)/ 1982 contending that CWT had disposed of all the appeals, dealing with all other grounds as well. The Tribunal thus should not have remanded the matter to WTO. The Tribunal agreed with the contention of the Assessee and by order dated 18.12.1982 the Tribunal directed that the last two lines of the order dated 23.2.1982 remanding the matter be deleted. The matter was restored to WTO (Appeals) to decide the other grounds

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of appeal in the light of findings of the Tribunal.

7. The CWT (Appeals) passed a fresh order dated 18.2.1985 following the order of the Tribunal dated 27.4.1974 in the Estate Duty Proceedings, and held that 1/4th of the entire estate left by the deceased at the time of his death was separate property, representing the property inherited by the Assessee from his mother. The revenue again filed appeal before the Tribunal. After hearing both the sides the Tribunal did not accept the ground that 1/4th of the entire estate left by the deceased at the time of his death was separate property representing the property inherited from his mother. The revenue, thereafter, filed Reference Application No. 197 to 201 (Alld)/ 1980. The Tribunal rejected the reference. The department, thereafter, filed this reference in which aforesaid question has been called.

8. In order to appreciate the questions raised before us, it is appropriate to quote the findings of the Tribunal in its order dated 23rd February, 1982 by which the matter was directed to be decided by CWT (Appeals):

We have considered the rival submissions. The contention raised on behalf of the revenue that if the assessment is completed in wrong hands, it would not preclude its taxation in the hands of the correct Assessee, is well founded. No doubt the fact that assessments of the properties in the hands of the HUF were allowed to become final, is a relevant consideration and it cannot be conclusive and cannot at any rate preclude the assessment of the net wealth in the hands of the right Assessee. Next, it is clear that the learned Commissioner of Appeals could not have taken a view contrary to the one taken by this Tribunal in the estate duty matter of the deceased for the assessment year 1971-72 and 1972-73 referred to above. The categorical finding recorded by the Tribunal in para 14 of the aforesaid order dated 27.7.1974 is that 1/4th of the entire estate left by the deceased at the time of his death was his separate property representing the property inherited by him from his mother. This finding was arrived at on estimate in the absence of account and other details before the Tribunal. Therefore, unless the order of the Appellate Tribunal is altered, modified or reversed by the High Court in reference, it has to be taken that the net wealth in the hands of the Assessee as an individual was 1/4th of the entire estate. The order of the learned Commissioner of (Appeals) is, therefore, set aside and the assessment order for the years in question shall be modified to include 1/4th of the property left by the deceased. The net wealth of the Assessee for the assessment years in question shall have to be assessed accordingly.

9. We heard Estate Duty Reference No. 946 of 1978 on the same day. The reference was allowed. Our findings in the reference are quoted as below:

In C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and Another, the Supreme Court held:

7. The substantial point that requires consideration in the appeal is, whether the properties that Defendant 1 got under the will of his father are to be regarded as

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ancestral or self-acquired properties in his hands. If the properties were ancestral, the sons would become co-owners with their father in regard to them and as it is conceded that the other items of immovable property were mere accretions to this original nucleus, the Plaintiff''s claim must succeed. If, on the other hand, the bequeathed properties could rank as self-acquired properties in the hands of Defendant 1, the Plaintiff''s case must fail. The law on this point, as the courts below have pointed out is not quite uniform and there have been conflicting opinions expressed upon it by different High Courts which require to be examined carefully.

8. For a proper determination of the question it would be convenient first of all to refer to the law laid down in Mitskshara in regard to the father''s right of disposition over his self-acquired property and the interest which his sons or grandsons take in the same. Placitum 27, chap. I Section , 1 of Mitakshara lays down:

It is settled point that property in the paternal or ancestral estate is by birth, though the father has independent power in the disposal of effects other than the immovable for indispensable acts of duty and for purposes prescribed by texts of law as gift through affection, support of the family, relief from distress and so forth; but he is subject to the control of his sons and the rest in regard to the immovable estate, whether ''acquired by himself or inherited from his father or other predecessors since it is ordained, ''though immovable or bipeds have been acquired by man himself, a gift or sale of them should not be made without convening all the sons''.

Mitakshara insists on the religious duty of a man not to leave his family without means of support and concludes the text by saying:

They who are born and they who are yet unbegotten and they who are still in the womb, require the means of support. No gift or sale should therefore be made.

9. Quite at variance with the precept which seems to restrict the father''s right of disposition. over his self- acquired property in an unqualified manner and in the same way as ancestral lands there occur other texts in the commentary which practically deny any right of interference by the sons with the father''s power of alienation over his self-acquired properly. Chapter 1, S. 5, placitum 9 says:

The grandson has a right of prohibition if his un-separated father is making a donation or sale of effects inherited from the grandfather: but he has no right of interference if the effects were acquired by the father. On the contrary he must acquiesce, because he is dependent.

The reason for this distinction is explained by the author in the text that follows:

Consequently the difference is this: although he has a right by birth in his father''s and in his grandfather''s property ; still since he is dependent on his father in regard to the paternal estate and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father''s

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disposal of his own acquired property.

Clearly the latter passages are in flat contradiction with the previous ones and in an early Calcutta case: vide - ''Muddun Gopal v. Ram Buksh'', 6 WR 71 (A), a reconciliation was attempted at by taking the view that the right of the sons in the self-acquired property of their father was an imperfect right incapable of being enforced at law. The question came pointedly for consideration before the Judicial Committee in the case of ''Rao Balwant v. Rani Kishori'' 25 Ind App 54 (PC) (B) and Lord Hobhouse, who delivered the judgment of the Board, observed in course of his judgment that in the text books and commentaries on Hindu Law, religious and moral considerations are oft en mingled with rules of positive law. It was held that the passages in Chap. I, Section 1, verse 27 of Mitakshara contained only moral or religious precepts while these in S. 5, verses 9 and 10 embodied rules of positive law. The latter consequently would override the former. It was held, therefore, that the father of a joint Hindu family governed by Mitakshara law has full and uncontrolled powers of disposition over his self-acquired immovable property and his male issue could not interfere with these rights in any way. This statement of the law has never been challenged since then and it has been held by the various High Courts in India, and in our opinion rightly, that a Mitakshara father is not only competent to sell his self-acquired immovable property to a stranger without the concurrence of his sons: vide - 6 WR 71 (Cal) (A)'', but he can make a gift of such property to one of his own sons to the deriment of another: vide -- ''Sital v. Madho'' 1 All 394 (C); and he can make even an unequal distribution amongst his heirs: vide - ''Bawa Misser v. Rajah Bishen'' 10 WR 287 (Cal) (D).

10. So far the law seems to be fairly settled and there is no room for controversy. The controversy arises, however, on the question as to what kind of interest a son would take in the self-acquired property of his father which he receives by way of gift or testamentary bequest from him, ''vis- a-vis'' his own male issue. Does it remain self-acquired properly in his hands also, untrammelled by the rights of his sons and grandsons or does it became ancestral property in his hands, though not obtained by descent, in which his male issues become co-owners with him? This question has been answered in different ways by the different High Courts in India which has resulted in a considerable diversity of judicial opinion.

It was held by the Calcutta High Court: vide --''6 WR 71 (A) as early as in the year 1863 that such property becomes ancestral property in the hands of his son as if he had inherited it from his father. In the other High Courts the question is treated as one of construction to be decided in each case with reference to its facts as to whether the gifted property was intended to pass to the sons an ancestral or self-acquired property; but here again there is a sharp cleavage of judicial opinion. The Madras High Court has held: vide -''Nagalingham v. Ram Chandra'' 24 Mad 429 (E) that it is undoubtedly open to the father to determine whether the property which he has bequeathed shall be ancestral or self-

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acquired but unless he expresses his intention that it shall be self-acquired, it should be held to be ancestral.

The Madras view has been accepted by a Full Bench of the Patna High Court: vide - Bhatwat Shukul Vs. Mt. Kaparni, and the latest decision of the Calcutta High Court on this point seems to be rather leaning towards it: vide - ''Lala Mukti Prasad v. Sm. Iswari'' AIR 1920 Cal 746 (G). On the other hand, the Bombay view is to hold such gifted property as self- acquisition of the donee unless there is clear expression of intention on the part of the donor to make it ancestral: vide - ''Jugmohan Das v. Mangal Das'' 10 Bom 528 (H), and this view has been accepted by the Allahabad and the Lahore High Courts: vide ''Parsotam v. Janki Bai'' 29 All 354 (I) and ''Amarnath v. Guran'' AIR 1918 Lah 394 (J). This conflict of judicial opinion was brought to the notice of the Privy Council in -''Lal Ram Singh v. Deputy Commissioner of Partapgarh'' AIR 1923 PC 160 (K), but the Judicial Committee left the question open as it was not necessary to decide it in that case.

11. In view of the settled law that a Mitakshara father has absolute right of disposition over his self- acquired property to which no exception can be taken by his male descendants, it is in our opinion not possible to hold that such property bequeathed or gifted to a son must necessarily, and under all circumstances, rankas ancestral property in the hands of the donee in which his sons would acquire co- ordinate interest. This extreme view, which is supposed to be laid down in the Calcutta case: vide - ''6 W. R. 71 (A)'' referred to above, is sought to be supported on a two-fold ground. The first ground is the well known doctrine of equal ownership of father and son in ancestral property which is enunciated by Mitakshara on the authority of Yagnavalkya. The other ground put forward is that the definition of "self-acquisition" as given by Mitakshara does not and cannot comprehend a gift of this character and consequently such gift cannot but be partible property as between the donee and his sons.

12. So far as the first ground is concerned, the foundation of the doctrine of equal ownership of father and son in ancestral property is the well known text of Yagnavalkya: vide Yagnavalkya Book 2, 129 which says:

The ownership of father and son is co-equal in the acquisitions of the grandfather, whether land, corody or chattel.

It is to be noted that Vijnaneswar invokes this passage in Chap. I, Section 5 of his work, where he deals with the division of grandfather''s wealth amongst his grandsons. The grandsons, it is said, have a right by birth in the grandfather''s estate equally with the sons and consequently are entitled to shares on partition, though their shares would be determined ''per stirpes'' and not ''per capita.

This discussion has absolutely no bearing on the present question. It is undoubtedly true that according to Mitakshara, the son has a right by birth both in his father''s and grandfather''s estate, but as has been pointed out before, a distinction is made in this respect by Mitakshara, itself. In the ancestral or

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grandfather''s property in the hands of the father, the son has equal rights with his father. While in the self- acquired property of the father his rights are unequal by reason of the father having an independent power over or predominant interest in the same: vide Mayne''s Hindu Law, 11th Edition, page 336. It is obvious however, that the son can assert this equal right with the father only when the grandfather''s property has devolved upon his father and has become ancestral property in his hands. The property of the grandfather can normal vest in the father. as ancestral property it and when the father inherits such property on the death of the grandfather or receives it, by partition, made by the grandfather himself during his life-time. On both these occasions the grandfather''s property comes to the father by virtue of the latter''s legal right as a son or descendant of the former and consequently it becomes ancestral property in his hands.

But when the father obtains the grandfather''s property by way of gift, he receives it not because he is a son or has any legal right to such property but because his father chose to bestow a favour on him which he could have bestowed on any other person as well. The interest which he takes in such property must depend upon the will of the grantor. A good deal of confusion, we think, has arisen by not keeping this distinction in mind. To find out whether a property is or is not ancestral in the hands of a particular person, not merely the relationship between the original and the present holder but the made of transmission also must be looked to; and the property can ordinarily be reckoned as ancestral only if the present holder has got it by virtue of his being a son or descendant of the original owner. The Mitakshara, we think, is fairly clear on this point. It has placed the father''s gifts under a separate category altogether and in more places than one has declared them exempt from partition. Thus, in Chap. I, Section 1. placitum 19 Mitakshara refers to a text of Narada which says: "Excepting what is gained by valour, the wealth of a wife and what is acquired by science which are three sorts of property exempt from partition; and any ''favour conferred by a father''."

Chapter 1, Section 4 of Mitakshara deals with effects not liable to partition and property "obtained through the father''s favour" finds a place in the list of things of which no partition can be directed: vide Section 4, placitum 28 of Mitakshara. This is emphasised in Section 6 of chapter I which discusses the rights of posthumous sons or sons born after partition. In placitum 13 of the section it is stated that though a son born after partition takes the whole of his father''s and mother''s property, yet if the father and mother has affectionately bestowed some property upon a separated son, that must remain with him. A text, of Yagnavalkya is then quoted that "the effects which have been given by the father and by the mother belong to him on whom they are bestowed": vide Yagnavalkya 2, 124.

13. It may be noted that the expression ''obtained through favour of the father'' which occurs in placitum 28, Section 4 of Mitakshara is very significant. A

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Mitakshara father can make a partition of both the ancestral and self-acquired property in his hands any time he likes even without the concurrence of his sons: but if he chooses to make a partition, he has got to make it in accordance with the directions laid down in the law. Even the extent of inequality, which is permissible as between the eldest and the younger sons, is indicated in the text: vide Mit. chapter I. Section 2. Nothing depends upon his own favour or discretion. When, however, he makes a gift which is only an act of bounty, he is unfettered in the exercise of his discretion by any rule or dictate of law. It is in these gifts obtained through the favour of the father that Vijnaneswar, following the earlier sages, declares the exclusive right of the sons. We hold, therefore, that there is no warrant for saying that according to the Mitakshara, an affectionate gift by the father to the son constitutes ''ipso facto'' ancestral property in the hands of the done.

10. In the same judgment we find answer to the question whether Mitakshara father is competent to provide by way of gift or a will disposition over his self-acquired property. The Supreme Court held that the interest which the son will take in such property will depend upon the terms of the grant. If there are no clear words describing the kind of interest, which the donee is to take the question would be one of construction, and the Court would have to collect the intention of the donor from the language of the document taken along with surrounding circumstances in accordance with the well-known canons of construction of documents.

11. The judgment of the Supreme Court in C.N. Arunachala (Supra) has been followed by the Supreme Court in its subsequent judgment in Commissioner of Income Tax, Madhya Pradesh Vs. Maharaja Bahadur Singh and Others, and by the High Court in Ratan Lal Vs. Ramesh Chandra and Others,

12. The Tribunal found that there was more than sufficient evidence on record to show that when Pt. Gobind Ram had migrated from Agra to Allahabad, he did not bring any assets to form any corpus back at Agra. He was employed in Board of Revenue and engaged himself in money lending business. He acquired several properties from his individual income, which are subject matter of assessment. He was not happy with his elder son. Shri Niranjan Lal Bhargava was minor, when he had died in the year 1900. Shri Niranjan Lal Bhargava received properties from his father under his will as well as the property from his mother Smt. Janaki Devi, in or about in the year 1927 on her death under a will executed by her in the year 1905. Shri Niranjan Lal Bhargava did not have a son. He adopted his sister''s daughter''s son on 16.1.1958, by a deed of adoption, when the adopted person was 22 years old. He also executed a will on 13.12.1960,

13. which was registered bequeathing a few properties to his sister''s son and his wife Smt. Prabha Devi wife of Shri Naresh Chandra Bhargava. The entire residuary estate was given to Shri Naresh Chandra Bhargava absolutely. There was civil litigation in which he examined himself as witness and had filed

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affidavits in statement and affidavits in a miscellaneous case. He had admitted that Budh Sen did not possess any property. He had only one house in Agra and a small Zamindari, which was sufficient for his needs. The entire property was acquired by Pt. Gobind Ram, who had given up all the claims in the property of his father. Pt. Gobind Ram was not happy with his other son Kisori Lal, who had fallen in bad company and had thus executed the will. In all these documents there was no mention of any joint family or the joint family funds. The trust appear to have been created, for the purposes of saving taxes. The properties of the trust were enjoyed without any rent and their income was reflected in the accounts of Shri Niranjan Lal Bhargava.

14. We do not find that there was any evidence to establish the customs of Dhusar Brahmin of Punjab for taking a 22 year old person, who was the sister''s son in adoption. The adoption on 16.1.1958 was clearly illegal and invalid u/s 12(c) of the Hindu Adoption and Maintenance Act, 1956. The reliance upon the will and not adoption deed, was made as alternate plea to save the property, but that would not convert the property into joint Hindu family property. There was no question separating the properties received by the deceased, under the will of her mother Smt. Janaki Devi on her death in the year 1927. There is absolutely no evidence nor there was any suggestion on the part of accountable person that Shri Niranjan Lal Bhargava or thereafter Shri Naresh Chandra Bhargava, one of the legatees in the will had, at any time, treated these properties and maintained accounts of these properties as HUF properties. All of them were businessmen running successful business for 60-70 years. It cannot be said that they were not aware of the benefits of taxation of HUF properties.

15. We also find substance in the arguments of Shri Sambhu Chopra that there was absolutely no evidence to rebut the presumption raised in the documents discussed by the Tribunal relating to the year 1901, 1905, 1927, 1958 and 1960. The nature and description of the properties in these documents was not explained on record.

16. The orders passed by the Zonal Appellate Controller were not binding upon the Tribunal. The facts and circumstances and the validity of the findings of the Zonal Appellate Controller could be called into questions, when sufficient evidence was led by the revenue to establish that entire properties of the deceased were individual properties.

17. The deceased was fully aware of the nature of the properties and had filed the returns treating all the properties as individual properties in his hand. Shri Naresh Chandra Bhargava, succeeding to the properties under the will, which has not been questioned by the revenue, appears to have got the idea, for the first time to save wealth tax and estate duty, and filed revised return after 5 years of the death of his father on 9.9.1966 claiming entire property left by the deceased as joint Hindu family property. It is apparent that the purpose of revised return was to avoid estate duty and wealth tax. He appears to have succeeded in getting some orders in his favour and thus kept the proceedings pending, for

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decision in the High Court for almost 35 years.

18. We have not gone into the question of valuation as revenue has not challenged either the basis or the method of valuation of the properties relied upon by the Tribunal.

19. The questions for which the statement of the case was called from the Tribunal are answered as follows:

1. The Income Tax Appellate Tribunal erred in law in ignoring the evidence on record, in holding that 3/4th of the properties left by late Shri Niranjan Lal Bhargava constituted ancestral property in his hands, which became joint Hindu family properties, inherited by accountable person leaving only 1/4th as his separate property. The overwhelming evidence and the legal inference from these documents is clearly in favour of revenue.

2. The value of the property No. 59/63, Mutthi Ganj and residence at Bahadur Ganj and the rental accommodation thereof, were to be included in the estate of the deceased u/s 22 of the Estate duty Act, 1953.

3. The Tribunal did not commit any error in law to exclude interest payable on the additional compensation of Rs. 6 lacs, in respect of Dehradun property received by the accountable person after the death of the deceased on 18.1.1961. The interest could not be treated as property of the deceased as it had accrued after his death, inherited by the accountable person. The estimate of the compensation of Rs. 6 lacs upto the death of the deceased was justified."

20. On the aforesaid reasons recorded in Estate Duty Reference No. 946 of 1978, we answer the reference as follows:

The Tribunal erred in law in ignoring the evidence on record in holding that 3/4th of the properties left by late Shri Niranjan Lal Bhargava constituted ancestral property in his hands, which became joint Hindu family properties, inherited by accountable person leaving only 1/4th as his separate property. The legal inference from the evidence on record is clearly in favour of the revenue.

21. The question called for is answered as above. The file will be remitted back to the Commissioner of Wealth Tax, Allahabad for calculating the Wealth Tax, payable by, and to be realised from the heirs of the accountable person.

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