(2010) 12 AHC CK 0020

In the Allahabad High Court

Case No : Estate Duty Reference No. 946 of 1978

Controllar of Estate — APPELLANT

Vs

N.C. Bhargava — RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Estate Duty Act, 1953 — Section 22, 63(6)
Hindu Adoptions and Maintenance Act, 1956 — Section 12
Income Tax Act, 1961 — Section 1, 2, 4, 6, 66
Limitation Act, 1963 — Article 176 , 177

Citation : (2010) 12 AHC CK 0020

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

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. We have heard Shri Sambhu Chopra, learned Counsel for the department. No one has entered appearance for the legal heirs of the Respondent.

2. Shri Naresh Chandra Bhargava-the Respondent in the reference died on 30.4.2002. A substitution application was filed on which notices were issued. Shri Ballabh Shukla, the Inspector in the office of Addl. Commissioner of Income Tax, Range-2, Allahabad has filed affidavit of service on 2.12.2003 enclosing there with notices, which were served by personal service upon the heirs of Shri Naresh Chandra Bhargava. The service was deemed to be sufficient on 3.9.2010.

3. On 7.9.2010 we passed the following order:

Shri Shambhu Chopra, learned Counsel appearing for the department has relied upon Commr. of Income Tax, U.P. and C.P. and Berar, Lucknow Vs. I.D. Varshani, and Additional Commissioner of Income Tax Vs. S. Surjit Singh, in submitting that there is no provision under the IT Act or in the Rules to bring the legal representatives on record where the Assessee dies during the pendency of the reference. Order XXII of the Code of CPC 1908, has not been made applicable to the reference u/s 66 of the IT Act. It was also held that Articles 176 and 177 of the Limitation Act are also not applicable specifically to the Income Tax Reference u/s 66. In case the Assessee dies and no one comes forward to represent him, the Court can direct the CIT to supply to the Registrar the names and addresses of the legal representatives to enable the Registrar to issue fresh notices to them.

In view of the aforesaid principle of law, against which no contrary opinion has been cited, we are of the opinion that the delay condonation application was not required to be filed by the department. The heirs of late Shri Naresh Chandra Bhargava, who died on 30.4.2002 have been brought on record. The notices have also been served on them on personal service of affidavit of Shri Ballabh Shukla, Inspector in the office of Additional Commissioner of Income Tax, Range-II, Allahabad.

List for hearing in the next cause list.

4. By an order dated 9.2.1978 the Court called upon the Income Tax Appellate Tribunal, Allahabad Bench to draw the statement of the case to decide following questions:

1. Whether on the facts and in the circumstances of the case the tribunal''s decision in vitiated in law in ignoring the material on record and holding that three-fourth of the property left by the deceased. Shri Niranjan Lal Bhargava, constituted ancestral property in his hands which became joint Hindu family property on his adopting the accountable person, Shri Naresh Chandra Bhargava, as his son in 1958 and that only the remaining one-fourth was his separate property?

2. Whether on the facts and in circumstances of the case the Tribunal was legally correct in holding that the value of the properties Nos. 59/63, Muthiganj, and R/o Bahadurganj, and the rental accumulations in respect thereof mere not includible in estate of the deceased under the provisions of Section 22 of the Estate Duty Act, 1953?

3. Whether on the facts and in the circumstances of the case, the Tribunal had material to estimate the fair market value of the Additional compensation in respect of Dehradun property at Rs. 6,00,000 even though the additional compensation including interest upto the date of in terms of the appellate courts decree was Rs. 87,4864?

5. The Income Tax Appellate Tribunal, Allahabad Bench (the Tribunal) drew up the statement of the case on 31st July, 1978 and has forwarded it to the court. The matter is on the list since 1991 and has been adjourned on more than 20 dates upto 16.12.2002, on the request of Shri R.R. Agrawal, counsel for the Applicant for reference, or Shri Bharat Ji Agrawal, who was appearing for the opposite parties. He did not appear in the case after Shri Naresh Chandra Bhargava died. Thereafter the matter has been repeatedly listed for orders on the substitution application and delay condonation application. It went out of the list for three years after 26.7.2004 and reappeared on 1.9.2007, and again after

3 years on 3.9.2010. In between the matter has been released by three benches and that is how the reference is pending in the Court for last 32 years.

6. The facts narrated in the statement of facts by the Tribunal are given as follows:

Pt. Niranjan Lal Bhargava died on 18.1.1961 leaving Shri Naresh Chandra Bhargava, Avinash Chandra Bhargava and Smt. Prabha Bhargava as heirs and legal representative of his estate through his will dated 13.12.1960. He delivered a statement of account in the wealth tax proceedings giving the principal value of his estate at Rs. 6,90,249/-including agricultural property; non-agricultural property; stock, shares and debentures, cash in bank, life insurance, business assets including shares and partnership and good will, household goods and others. The statement of assets were revised on 9th September, 1966 by Smt. Asharfi Devi and Shri Naresh Chandra Bhargava, (the accountable persons) through which they declared their assets as that of HUF. The principal value of the assets was also revised. The Asstt. Controller observed that along with revised statement of account a letter was filed stating that Pt. Govind Ram Bhargava, father of Niranjan Lal Bhargava had died in the year 1900. At that time Shri Niranjan Lal Bhargava was only 11 years old. The business was started from out of the funds received by him as share in the estate left by Pt. Govind Ram. Pt. Bishambhar Nath executed a registered deed of relinquishment on 3.10.1914 in which he had mentioned that the business was started from the funds of Pt. Niranjan Lal Bhargava, the sole owner of the entire business. The money belonged to Late Shri Bishambhar Nath. Shri Niranjan Lal and he were looking after the business.

Smt. Janaki Devi, the mother executed a registered will bequeathing all her remaining cash and share of property, which she may possess at the time of her death to Pt. Niranjan Lal Bhargava in 1905. The relinquishment deed of Bishambhar Nath and the will of Smt. Janaki Devi are registered documents. On 16th January, 1958 Pt. Niranjan Bhargava adopted Shri Naresh Chandra Bhargava. The adoption was registered. Immediately after the adoption Pt. Niranjan Lal Bhargava, he formed a HUF with Shri Naresh Chandra Bhargava. The entire business and properties of Pt. Niranjan Lal Bhargava acquired or expanded were from ancestral funds. The Asstt. Controller referred to the will of late Pt. Niranjan Lal Bhargava dated 13.12.1960, wherein it was stated that he appoints Shri Naresh Chandra Bhargava, his sister''s daughter''s son as the executor of the last will and all the properties, which he possessed or which he may possess at the time of his death and acquired by him, and which he was entitled to dispose of in any manner either by will or by deed. In the will it was stated that he possessed certain properties detailed in the will besides bank account in the name of Late Bishambhar Nath, and Late Niranjan Lal in his personal name. In the will he claimed that he will remain the owner of the entire property till his life time and after his death the property will pass, in a way as disposed in para 12 of the will.

The Asstt. Controller recorded that he made certain queries to which no reply was filed till 11.11.1969. Considering the various please of the accountable person he did not accept the contention that the properties owned and possessed by Late Niranjan Lal Bhargava were his individual property. The properties passed on the death as bequeathed by him. He also did not agree that some properties could not be included in the estate duties and did not accept the value of the properties in the statement of account. With the result he computed the net principal value of the estate at Rs. 42,12,618/-on which assessment was made and state duty was payable.

In the appeal the Zonal Appellate Controller accepted the main contention of the accountable person that the properties possessed, owned and enjoying by Pt. Niranjan Lal Bhargava were ancestral property in his hands and that he had only 1/3rd share in such ancestral property. Against the order of Zonal Appellate Controller, the department filed an appeal in the Tribunal on the ground that the property possessed, owned and enjoyed by Shri Niranjan Lal Bhargava did not bear the character of ancestral property in his hands. The department alleged that Late Pt. Govind Ram (father of Late Pt. Niranjan Lal Bhargava) did not inherit from his father all the properties owned and possessed by him. The properties bequeathed by him to his wife Smt. Janaki Devi, and his sons through Kisori Lal and Shri Niranjan Lal Bhargava, through a will, which was probated, were self acquired properties of late Pt. Govind Ram. Shri Niranjan Lal Bhargava had received the properties from Pt. Govind Ram. The properties, which had fallen to his share were individual properties of which he was absolute owner. Smt. Janaki Devi had executed a will and the entire estate left by her came to Pt. Niranjan Lal Bhargava through her will. He, therefore, owned and possessed the properties as exclusive owner irrespective of the fact, whether these came to him through the wills of Pt. Govind Ram and Late Janaki Devi. The Tribunal held that the property left by Pt. Govind Ram was his individual self-acquired property and not ancestral property.

7. The Tribunal referred to the recital in the Trust Deed executed in 1952, and concluded as follows:

The deceased considered the property to be his self-acquired or separate property because there was no coparcener but he was never in doubt that the property received by him from his father was ancestral property. As regards property received by the deceased from his mother under the will, the Tribunal held that according to Hindu Law the property received by a person from female ancestors, including mother, is always his separate property. Observing that the extent of property acquired by the deceased upto 1927 with the aid of the property received by him from his father Pt. Govind Ram, was not known, the Tribunal concluded that the reasonable inference would be that the deceased also utilized the property received by him from his mother in his business which ultimately enabled him to save and accumulate and leave the big fortune in 1961 as at the time of his death. After consideration of the various arguments, the

Tribunal finally came to the conclusion that the deceased received some property (the extent of which is the absence of evidence was only to be estimated) from his mother which he utilised in his business along with the property he came to possess in 1927, and the estate left by him was the result of all such activities. The Tribunal estimated the estate attributable to the assets received by the deceased from his mother at one-fourth of the entire estate left by him at the time of his death. This was held to be the separate property of the deceased.

Regarding the balance of three-fourth properties owned by Shri Niranjan Lal Bhargava, the Tribunal held that the will left by Pt. Govind Ram could not be taken at its face value as a sale or disposition. It held that the will left by Pt. Govind Ram was not eloquent as to whether late Niranjan Lal Bhargava would get the properties bequeathed to him for his absolute benefit to the exclusion of his heirs. In these circumstances, the Tribunal held that the intention of the donor has to be inferred by reading the relevant facts and also the other concurrent circumstances. It further held that Pt. Kishori Lal had lost the confidence of his father. Pt. Govind Ram whose primary anxiety was that his entire estate should not be managed by his son Pt. Kishori Lal as karta or otherwise. Pt. Niranjan Lal Bhargava was a minor at the time of his father''s (Pt. Govind Ram''s) death. As such the Tribunal observed that ordinarily Pt. Govind Ram would not have thought of depriving the heirs of the deceased at a time when they were not even in existence. It was further observed that in their view the will left by Pt. Govind Ram was only a family arrangement for the properties left by him. In other words, the Tribunal held that inspite of the will, the properties that passed on to late Pt. Niranjan Lal Bhargava after the death of his father, Pt. Govind Ram, were in the form of properties inherited and they bore the character of the ancestral property in the hands of Pt. Niranjan Lal Bhargava.

8. The Tribunal relied upon C.M. Arunachala Mudaliar v. C.A. Nurugnatha Mudaliar and Anr., AIR 1953 SC 475 and held that inspite of fact tht Niranjan Lal Bhargava made a will that did not alter the ancestral character of the property, the property devolved upon Shri Naresh Chandra Bhargava from Pt. Niranjan Lal Bhargava, bear the character of ancestral property. The Tribunal held that Pt. Govind Ram was Dhusar Brahmin hailing from Gurgaon in Punjab and according to the customs prevailing in their family the adoption of Shri Naresh Chandra Bhargava aged 22 years at that time, who was the deceased''s sister''s daughter''s son by Late Pt. Niranjan Lal Bhargava was not invalid. On the adoption of the accountable person the ancestral property of the deceased became joint Hindu family property. The deceased came to possess a coparcenary interest in it. The mere fact that the deceased dealt with the property as individual did not make any difference. The property was to continue to have its own legal character.

9. So far as property No. 59/63, Muthiganj and 80, Bahadurganj, Allahabad are concerned, it was stated by the accountable person, before the Asstt. Controller that these were earmarked by Pt. Govind Ram for charitable purpose. The

deceased was only managing them without any right in them. The Asstt. Controller found that these houses were recorded in the name of Pt. Kisori Lal and Niranjan Lal in municipal records. The rent was realised by the Firm M/s Bishambhar Nath Niranjan Lal. In his statement of oath, Pt. Niranjan Lal in Suit No. 52 of 1957 had stated that the management and possession of these properties was with Pt. Niranjan Lal Bhargava and after his death the management and possession was given to Shri Naresh Chandra Bhargava. The Asstt. Controller found that since he was enjoying the properties, and the rental income, these were his individual properties. In appeal the Zonal Appellate Tribunal excluded the value of these properties, from the estate of the deceased. The Tribunal held that rental income of the property and the value was never included in the income tax and wealth tax assessment. Since the disposition of these properties was made by the deceased father, neither the value nor the rental accumulation were includible in the estate. The Tribunal ultimately rejected the plea of the revenue on this point.

10. With regard to additional compensation in respect of Dehradun property, it was held that the property was acquired by the State of Uttar Pradesh in 1957 and compensation of Rs. 1,94,029/-was awarded. The compensation was not accepted. In appeal the Civil Judge decided in favour of Shri Bhargava awarding an additional compensation of Rs. 7,18,126/- and interest of Rs. 3,64,028/-. When Pt. Niranjan Lal Bhargava died in 1961, Shri Naresh Chandra Bhargava was substituted in his place. The additional compensation and interest was received by him in two installments i.e. in December 1965 and January, 1966. The Asstt. Controller accordingly added back the sum of Rs. 11,82,155/-to the principal value of the estate of the deceased, which included interest for the period subsequent to the date of the death of the deceased in 1961. He held that the amount of compensation of Rs. 7,18,126/-was to be included in the estate of the deceased. The interest paid, however, after 18.1.1961 was not to be included in the estate. The Tribunal held that value of the additional compensation together with interest amounted to Rs. 8,74,864/-in the year 1965 and the value of the property as on the date of the death in 1961 was lower. Since the value was lower, the Tribunal estimated the same at Rs. 6 lacs. In doing so the Tribunal took into account the expenditure involved therein and the risk in fighting the appeal.

11. The facts gathered from the impugned orders can be summarised as follows:

Late Pt. Budh Sen was a resident of Agra. His son Late Govind Ram migrated to Allahabad. He received certain properties from his mother Smt. Janaki Devi on her death in the year 1927, under a will executed by her in 1905. Their son Shri Niranjan Lal Bhargava inherited and acquired all the properties. He did not have any son. On 31.10.1952 he executed a deed of trust for the advancement of education and for benefit of his community and set apart cinema building known as Niranjan Cinema for that purpose.

In 1958 late Shri Niranjan Lal Bhargava adopted Shri Naresh Chandra Bhargava, his sister''s daughter''s son (the accountable person). The adoption deed was executed on 16.1.1958. He also executed a will on 13.12.1960, which was registered. He bequeathed a few of his properties to his sister''s son Avinash Chandra Bhargava and his wife Smt. Prabha Devi. The residuary estate was given to Shir Naresh Chandra Bhargava absolutely. In his will he had referred to Shri Naresh Chandra Bhargava as his sister''s daughter''s son and not his adopted son. Shri Niranjan Lal Bhargava expired on 17.1.1961. Shri Naresh Chandra Bhargava had initially filed his first estate duty return on 5.9.1961 (in the same years when his father as died) showing the entire property left by the deceased as his own and separate property. The revised return was filed by him after 5 years on 9.9.1966 claiming that the estate left by the deceased was joint Hindu family property and that the deceased has only a coparcenary interest therein.

The revenue submitted that there was no direct evidence to support the contention that late Pt. Budh Sen of Agra was a man of substantial means, and that his son Govind Ram had inherited any assets from him. The first documentary evidence available on record is an arbitration agreement dated 12.1.2001 between the mother of Shri Niranjan Lal Bhargava and his brother Pt. Kishori Lal Bhargava in which there is a recital that Shri Govind Ram, the ancestor of the executant died leaving behind Kishori Lal (major) and Niranjan Lal (minor) as his son and Smt. Janaki Bibi, his wife as heirs along with properties specified in the document as self-acquired properties. The second document is an award dated 12.3.2001 given by the Arbitrator, which became decree of Court. In the award it was stated that Govind Ram was the owner of entire cash and money deposited in the bank and also the houses and it all was a self-acquired property of Gobind Ram and these two documents namely the arbitration agreement and the arbitration award between the parties, which became the decree of the Court clearly established that the property in question was the self-acquired property of Late Gobind Ram.

A Misc. Suit No. 52 of 1957 was filed alleging that the property left by Shri Gobind Ram was joint Hindu family property. Late Shri Niranjan Lal Bhargava was examined and re-examined for a number of days by the Wakil Commissioner. He made a statement before the Wakil Commissioner, the English translation of which has been quoted in the order of the Tribunal as follows:

My father Pt. Gobind Ram was resident of Agra. He left Agra and came to Allahabad. Whatever properties and moneys he left the same were his self acquired and the same were not ancestral. He did not take any share or interest in his father or grand father''s properties. I or Kishori Lal or his sons have neither any possession nor interest in the ancestral properties left at Agra. Those properties were given to my uncle Chandrika Prasad. Now his descendants were in possession of those properties.

Then in reply to one of the questions late Pt. Niranjan Lal Bhargava had stated before the vakil Commissioner:

...but my father Pt. Govind Ram who had separated from his family at the age of about 12 years had not taken even a ''Lutia'' from the family. This I have heard from my father and mother....

Similarly, he stated at other stage:

''I have held that when my father was turned he had been turned out only with a Dhoti and Kurta and Pt. Budh Sen had not given him anything. I have heard that when my father had been turned out he used to live upon tuitions and he prosecuted his studies also with the help of same.

12. The Tribunal further found that Shri Naresh Chandra Bhargava (the accountable person) had filed an affidavit in Misc. Case No. 48 of 1961, Ram Babu Bhargava and Ors. v. Jagdish Narain Bhargava and Ors. stating that Late Shri Budh Sen was not a man of substantial means, and none of his properties were inherited by Shri Gobind Ram and Shri Jagannath Prasad. The properties meager as they were, were inherited by his son Chandrika Prasad, who was succeeded of his daughter''s son, and the descendants of Chandrika Prasad alone are in its possession. Late Shri Gobind Ram left Agra at an early age, settled at Allahabad, and by his learning entered into public service in the Board of Revenue. He accumulated fortune in the cheap time from out of money lending business.

By the gains of borrowing and money lending he acquired all the properties and left them at the time of his death, as his self-acquisitions. Both Shri Jagannath Prasad and Shri Gobind Ram were separate from their father.

13. The Tribunal further quoted the extract from the objections filed by Shri Niranjan Lal Bhargava and others in the same Misc. Case No. 48 of 1961 as follows:

18. That Budh Sen was possessed not of such property he was possessed of only one house at Agra and a small Zamindari which was sufficient for his bare needs.

19. That treatment of Budh Sen was harsh with Govind Ram and Jaganath Pd.

20. This was the case with Jagannath Pd. also who subsequently left Agra without taking anything.

21. That Jagannath Pd. ceased to be a member of Joint Hindu family who never lived with Budh Sen nor got any property by inheritance from Budh Sen. He was exclusive owner of his own property of which he made a will. It is totally false to say that Govind Ram formed joint family with Jagannath Pd.

22. That after the death of Jagannath Pd. Kishori Lal and Bishambhar Nath obtained a probate in respect of will made by him.

23. That Govind Ram gave up all claim in the property of his father ever since and only Chandrika Pd. succeeded him as sole survivor Govind Ram and Jagannath Pd. had already separated and had no claim in the property of Budh

Sen, Govind Ram and Jagannath Pd.

14. The Additional Judge in Misc. Case No. 48 of 1961 framed several issues. The issue as to whether the properties, which were subject matter of the will of Gobind Ram were joint Hindu family properties, was not pressed by the opposite parties, was thus decided in negative. The revenue led evidence to suggest that late Gobind Ram was not happy with his major son Shri Kishori Lal, who had fallen in bad company. The award shows that Shri Kishori Lal and his mother had strained relations, as he had refused to accept her responsibility. He did not have good relations with his mother, minor brother and sister. He did not challenge the will and did not claim the properties. On the basis of the aforesaid evidence, which included the arbitration agreement dated 12.1.1901, arbitration award of the same year dated 12.3.1901, and thereafter the admissions made by Shri Niranjan Lal Bhargava, half a century later in the proceedings a Civil Suit in 1957, and affidavits filed in Misc. Case No. 48 of 1961 and the conduct of the parties including that Shri Kishori Lal, eldest son, who did not claim properties from his father and did not challenge the will, the Tribunal recorded positive findings that Pt. Budh Sen did not leave any property or assets to be inherited or received by Pt. Gobind Ram. All the properties were acquired by Pt. Gobind Ram at Allahabad from his own income form the salary and from the money lending business. A compromise was arrived at between the parties in 1965 in Suit No. 48 of 1961, after the estate duty dispute had cropped up.

15. The Tribunal found it difficult to ignore overwhelming evidence led by the revenue. It, however, proceeded to treat it as presumption, which could be rebutted by the explanation given by the accountable person and thereafter proceeded to examine from Para 12 onwards as to whether the properties received by Late Pt. Niranjan Lal Bhargava, by his father were ancestral property in his hand. The Tribunal found following explanation to be sufficient to rebut the presumption:

(a) Pt. Kishori Lal, son of Pt. Gobind Ram had lost the confidence of his father on which primary anxiety of Pt. Gobind Ram was that his entire estate should not be managed by his son Pt. Kishori Lal as Karta.

(b) Pt. Niranjan Lal Bhargava, the father of the accountable person was only minor at that time.

(c) The deceased bequeathed his estate to three heirs equally. These facts indicate that Late Gobind Ram''s interest was not to confer a bounty to his son exclusively. It was allocated to his widow so that the widow and minor son and daughter were not left at the mercy of other heir particularly Pt. Kishori Lal. There is no presumption either way regarding the jointness of the properties and that attending circumstances have to be seen. The will was by way of family arrangement and that the property received by the deceased from his father was ancestral property in his hand and this proves that the property received by the deceased from his father was ancestral property.

(d) Thestatement in the trust deed shows that the deceased considered the property to be self-acquired or separate property, because there was no co-owner. He was never in doubt that the property received by him was ancestral property.

16. The Tribunal, thereafter, observed in para 14 that the deceased had received some property from his mother under the will. According to Hindu law, observed the Tribunal, the property inherited by female including mother is always his separate property, but that there is nothing to show that what was really received by the deceased from his mother on or before her death in the year 1927. The accounts of those heirs were not made available. The extent of the property received by the deceased upto the year 1927, from his late father has also not been brought on record.

17. The Tribunal observed that the deceased did receive some property from his mother, which he utilized along with property, which he came to possess in 1927, in certain business activity and the estate left by him is result of all such activities and went on to observe that there was evidence to suggest that the deceased had started his business activity in 1902. His mother though had more properties than her son, also had certain obligations. She died in the year 1927 leaving certain estate to the deceased and that the deceased died in the year 1961, and from these facts it will be reasonable to estimate the estate attributable to the assets received by the deceased from his mother at 1/4th of the entire estate left at the time of his death and this would only be his separate property.

18. The Tribunal, thereafter, considered the question whether separate property received from the mother can be blended with the ancestral property.

19. The Tribunal, thereafter, considered the question of validity of adoption and whether the deceased could have allocated his properties both ancestral and separate property for the purposes of succession or inheritance and held that he could do so. For recording these findings the Tribunal also examined the validity of the adoption deed. It found that Shri Naresh Chandra Bhargava was 22 years old, when he was adopted. Hindu law does not permit the adoption of 22 years old person and further he being the deceased''s sister''s daughter''s son could not have been validly adopted. The Tribunal, thereafter, proceeded to consider the arguments that he deceased belongs to Dhusar community of Gurgaon and that the customs applicable ot Dhusar of Gurgaon permitted Dhusar Brahmin to be adopted even if he was 22 years old and thus the adoption is valid; then the Tribunal observed that even if the adoption is not valid, Shri Naresh Chandra Bhargava would inherit from the deceased under the will executed in the year 1960 after he died in 1961. For the purposes of customs applicable to Dhusar Brahmins in Gurgaon the counsel for the accountable person referred to some order of the Zonal Appellate Controller and the fact adoption was never challenged. It was submitted that the Punjab Customary Laws were applicable to Dhusar Brahmin of Gurgaon, inspite of the fact that the family had thereafter

shifted and hailed from Agra. The Tribunal thereafter recorded the findings as follows:

After all there is no suggestion that the adoption was not in fact made through its legality alone is challenged before us. In the premises we hold that the moment the accountable person was adopted the ancestral property of the deceased because joint Hindu family property and the deceased came to possess a coparcenary interest only in them. For the purposes of estate duty appeal it is not necessary for us to further consider as to what really happened after the death of the deceased and we have only to see what was the deceased as interest in the property left by him. For all that has been stated above we hold that 1/4 of the properties left by the deceased was his separate property being attributable to stand accretion to the property received by him from his mother under the will and the balance property was joint Hindu family property in which the deceased only had a coparcenary interest.

20. With regard to Property No. 59/63 Mutthi Ganj and Bahadur Ganj and also exclusion of rental account from the deceased''s estate, it was accepted that the father of the deceased had left the properties earmarked for charitable purposes and that the deceased was only managing the property. He had no right, title or interest therein whatsoever. The value of these properties, therefore, could not be added to the properties in the hands of the accountable person. The Zonal Appellate Controller had agreed for excluding the valuation of these assets from the estate of the deceased. The Tribunal did not agree that since the accountable person u/s 22 of the Estate Duty Act was in possession and enjoyment of the property, its value be included in the estate of the deceased.

21. So far as value of the good will of the firm M/s Niranjan Lal Bhargava and Company, the Revenue contended that the findings of the Zonal Appellate Controller that the deceased was neither charging interest from the firm nor was his capital account credited with the cost of Bishambhar Cinema, it was shown as the asset in the balance sheet of Firm M/s Niranjan Lal Bhargava and Company. The value of the cinema building represented part of capital contributed by the deceased in the firm. The Tribunal did not find any merit in the arguments, as there was no dispute, that Bishambhar Cinema belongs to the deceased and which was utilized by the partnership firm free of rent.

22. The Tribunal accepted the valuation of various buildings namely Gobind Bhawan, Allahabad; Janki Batika, Suem Sarai; Bishambhar Cinema building; Niranjan Cinema building; 8 Bahadurganj Allahabad prepared by the arbitration for valuation u/s 63(6) of the Estate Duty Act, 1953.

23. Shri Shambhu Chopra has not challenged the findings of the valuation of the properties and thus we are not adverting to that aspect.

24. It is submitted by Shri Sambhu Chopra appearing for the revenue that the Tribunal grossly erred in law in finding that apart from 1/4th of the property, which the deceased had inherited from his mother, remaining properties were

held by him as co-parcenary of the joint Hindu family. He submits that though the findings appear to be findings of fact, the Tribunal grossly erred in law in ignoring the overwhelming evidence led by the department to establish that there was no joint family, nor any joint family could come into existence, nor the properties were acquired from the joint family funds. Pt. Janki Prasad had migrated to Allahabad from Agra. He was serving in Board of Revenue and had acquired all the properties from his own earning. He was a business man. His son Pt. Niranjan Lal Bhargava was also a business man. The father and the son never maintained or claimed the property as joint Hindu family properties in any legal proceedings or for taxation purposes. They never maintained accounts of joint Hindu family, nor filed returns of the properties as HUF properties. The arbitration agreement and award of 1901, and the admissions made by the deceased in the proceedings of civil court in 1957 in Misc. Case No. 52 of 1957 in which a compromise was recorded, clearly established that all the properties were individual properties. The Tribunal wrongly relied upon the customs of Dhusar Brahmins of Punjab, for recording findings that 22 years old person could be adopted. There was no pleading nor there was any evidence to establish the customs. In any case, the accountable person himself left the plea of adoption and relied upon a will for claiming the properties to be joint family property. The will could not have converted the property from individual property to joint family property and further that the Tribunal had absolutely no evidence to come to arrive at a finding that the properties inherited by the deceased from his mother could be 1/4th of the total property held by him to be treated as separate properties.

25. 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 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 un begotten 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 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 often 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-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 (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 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 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.

26. 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.

27. 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 v. Ramesh Chandra, AIR 1979 Allahabad 296.

28. 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, 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 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.

29. 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.

30. 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.

31. 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.

32. 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 decision in the High Court for almost 35 years.

33. 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.

34. 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.

35. The questions called for are answered as above. The file will be remitted back to the Controller of Estate Duty, Allahabad for calculating the estate duty payable and to be realised from the heirs of the accountable person.

