(1990) 10 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : IT Reference No. 2 of 1975 & Income-tax Reference No. 2 of 1975

Controller of Estate Duty APPELLANT

Vs

Bishamber Dass Butail RESPONDENT

Date of Decision : 03-10-1990

Acts Referred:
Estate Duty Act, 1953 — Section 34, 34(1), 35, 35(3)

Citation : (1991) 187 ITR 618

Hon'ble Judges : P.C. Balakrishna Menon, C.J;Devinder Gupta, J

Bench : Division Bench

Advocate : Indar Singh, for the Appellant; K.D. Sood, for the Respondent

Judgement

P.C. Balakrishna Menon, C.J.—The following question of law is referred for the decision of this court by the Income Tax Appellate Tribunal, Chandigarh Bench, u/s 64(1) of the Estate Duty Act, 1953, at the instance of the Controller of Estate Duty :

"Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the principal value of the estate as mentioned in Section 35(3), Estate Duty Act, 1953, was not to include the value of the deceased''s lineal descendant''s interest in the joint family property which was for rate purposes aggregated u/s 34(1)(c) of the said Act ?"

2. One Mansa Ram died on September 10, 1971. The value of the estate left behind by him was assessed at Rs. 1,83,073. For the purpose of fixing the rate u/s 34(1)(c) of the Act, the value of the interest of the lineal descendants was determined at Rs. 1,41,600. The claim for rebate u/s 35(3) of the Act on the basis that the value of the estate does not exceed rupees two lakhs was rejected by the Assistant Controller of Estate Duty on the ground that, on aggregation, as per Section 34(1)(c), the total value of estate exceeds Rs. 2 lakhs. This view was affirmed by the Appellate Controller. The Tribunal, in further appeal, has found that the chargeable estate is only the estate left behind by the deceased and the

aggregation u/s 34(1)(c) was only for the purpose of determining the rate. In that view of the matter, the appeal was allowed and the claim for rebate was upheld.

3. Section 5, the charging section, clearly shows that the levy is on the estate passing on the death of a person and the rate of duty is to be determined u/s 35 of the Act. Section 34 provides for aggregation for the purpose of fixing the rate and that section has nothing to do with the value of the estate on which the levy is to be imposed. This legal position is clear from the following decisions :

Smt. Komanduri Seshamma Vs. Appellate Controller of Estate Duty, , Maharani Raj Laxmi Kumari Devi Vs. Controller of Estate Duty, , Controller of Estate Duty, Karnataka Vs. N. Ramachandra Bhat, , Controller of Estate Duty, Mysore Vs. K. Nataraja, , Controller of Estate Duty Vs. P.K. Agarwalla, , Controller of Estate-Duty Vs. Murarilal Sovasaria, Controller of Estate Duty Vs. M. Nalini Rao, , R. C. VAISH Vs. CONTROLLER OF ESTATE DUTY., and T. R. Jayasankar v Asst. CED [1972] 83 ITR 445.

4. We, therefore, answer the question referred to us in the affirmative that is against the Revenue and in favour of the assessee. A copy of this judgment under the signature of the Registrar and the seal of the court will be forwarded to the Tribunal.

