

(1979) 01 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 473 of 1972

Controller of Estate Duty

APPELLANT

Vs

B.K. Tiwari

RESPONDENT

Date of Decision : 19-01-1979

Acts Referred:

Estate Duty Act, 1953 — Section 5, 6, 64(5), 7

Citation : (1981) 130 ITR 515

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Advocate : Bagadia, for the Appellant; K.A. Chitale, for the Respondent

Judgement

Oza, J.—This is a reference made by the Income Tax Appellate Tribunal, Indore, at the instance of the Controller of Estate Duty, Madhya Pradesh, on the following questions :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that, even if the two properties belonged to the HUF, the value of the properties could not be charged to estate duty?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the deceased, who was the karta of the HUF, had no power of disposition over the properties in question of the HUF standing in the names of Smt. Savitridevi and Basant Kumar ?"

2. The facts stated in the reference are that the deceased, R. B. Tiwari, died on June 4, 1964. His son, Basant Kumar Tiwari, is the accountable person in respect of the estate of his late father. The present dispute pertains to two house properties, (1) 11, Mahatma Gandhi Road, Indore, and (2) 27, Deshwalipura, Indore. The Controller of Estate Duty, Indore, included these properties in the estate of the deceased and taxed on the one-third share of the estate in accordance with the provisions of the E.D. Act. House No. 11, M. G. Road, Indore, stands in the name of Basant kumar Tiwari, son of the deceased, and the

other house No. 27, Deswalipura, Indore, stands in the name of Savitridevi, wife of the deceased. The value of these properties was not included in the account of the estate but the accountable person had referred to these properties in the foot-note to a statement accompanying the account of the estate. It was claimed before the Asst. Controller that these two properties were owned and possessed by these two individuals with full right of disposition thereon and the deceased had no power to alienate them and, therefore, the properties did not come within the framework of Section 6 of the E.D. Act. According to the accountable person the source of investment for the purchase of these properties, as explained by the counsel, came from the funds set aside by late Dr. Sarjuprasad, father of the deceased. In support of this explanation a note book, alleged to be in the handwriting of Dr. Sarjuprasad, was produced before the Asst. Controller who examined the entries therein but held that the evidence was not helpful as it could not be correlated with the purchase of the properties. The Asst. Controller on the other hand found from the Income Tax records that income from the two properties was shown in the return of the HUF and he, therefore, felt that the properties were acquired out of the funds of the HUF and, accordingly, found that these properties were impressed with the character of HUF properties and on this basis taxed the one-third share.

3. When the matter went before the Appellate Controller two decisions were cited-- BIBI GURDARSHAN KAUR (DECEASED) (THROUGH LEGAL HEIRS) Vs. COMMISSIONER OF Income Tax, NEW DELHI., and SMT. DENABAI BOMAN SHAH Vs. CONTROLLER OF ESTATE DUTY, A.P., before him and the Appellate Controller felt that the provisions of Section 6 of the E.D. Act (hereinafter referred to as "the Act") could not be applied merely because the property was found by the Asst. Controller as impressed with the character of HUF property and applying these decisions he held that the value of these properties could not be included in the value of the estate of the deceased. On appeal, the Tribunal also maintained that decision. At the instance of the Controller the Tribunal has now made this reference.

4. The questions referred to in this reference indicate that the Tribunal made this reference on an assumption that even if the property is accepted to be of the HUF, applying Section 6 of the Act, it could not be said to be the estate held by the deceased as he had no power of disposition of these properties.

5. Learned counsel appearing for the Controller contended that in a case where the property is held to be of the HUF the provisions contained in Section 6 will not be applicable ; but to such a case the provisions contained in Section 5 coupled with Section 7 of the Act would be applicable. He, therefore, contended that the Tribunal was not right in taking the view by application of Section 6 and following the two decisions relied upon by the Tribunal, According to learned counsel the finding arrived at by the Asst. Controller that the properties are impressed with the character of HUF properties has not been set aside by the Appellate Controller nor the Tribunal. And on this finding, applying the provisions

contained in Sections 5 and 7 of the Act, the answer to these questions will be in the negative.

6. Learned counsel appearing for the accountable person on the other hand contended that although the Asst. Controller went into the question about the acquisition of these properties and examined the material placed by the accountable person, yet felt that although the funds were available from the late Dr. Sarjuprasad, the properties standing in the names of the two persons--the son and the wife of the deceased--the accountable person has not been able to correlate these funds with the acquisition of the property. And on this, and the fact that the deceased in the returns of the HUF for the purpose of Income Tax had added the income of these properties as well, the Asst. Controller came to the conclusion that these properties are impressed with the character of the HUF properties. But according to learned counsel the Appellate Controller and the Tribunal did not go into this question of fact but went on an assumption that even if these properties are assumed to be of the HUF, applying the provisions of Section 6, they could not be said to be the properties on which the deceased had a right of alienation and, therefore, could not be added in the estate of the deceased. Learned counsel, therefore, contended that in fact the two Appellate Tribunals ought to have gone into the question of fact to come to a positive finding and reference could only be made to this court on the positive finding of fact arrived at by the Tribunal as, according to learned counsel, while answering a reference u/s 64 of the Act, this court cannot examine the questions of fact nor can remand the case directing the Tribunal to hear the appeal and decide the questions of fact. According to learned counsel, the only course open, in such a situation, to this court is to decline to answer the reference as laid down by their Lordships of the Supreme Court in *COMMISSIONER OF Income Tax, WEST BENGAL I Vs. INDIAN MOLASSES CO. P. LTD.*, and *Raghunath Prasad Poddar, etc. Vs. Commissioner of Income Tax, Calcutta*, . It was also contended that without findings of fact arrived at by the Tribunal it is not possible for this court to apply Section 7 of the Act to answer the questions referred to when in fact the questions as framed clearly indicate that they are based on an assumption that the properties are HUF properties, and are based on a further assumption that Section 6 of the Act is applicable to the facts of this case : and by application of Section 6 it could not be contended that the view taken by the Tribunal is erroneous.

7. Section 5 of the E.D. Act is the charging section which provides for the charging of estate duty upon the principal value ascertained on the property of the deceased. Section 5 talks of the property "which passes on the death of such person". The further provisions of the Act are deeming provisions which bring in the property as deemed to pass on the death of the deceased. Sections 6 and 7 are the deeming provisions with the help of which the property could be held to pass on the death of the deceased. Section 6 brings in those properties which the deceased was competent to dispose of whereas Section 7 deals with those properties in which the deceased had an interest ceasing on his death.

Apparently, therefore, by these deeming provisions the properties which ordinarily do not stand in the name of the deceased and could not be held to pass on his death are included, provided on the facts of a particular case the provisions of Section 6 or Section 7 are attracted. The provisions of Section 6 are attracted to properties which may not be in the name of the deceased but which the deceased was competent to dispose of, whereas Section 7 will apply in cases where the deceased had some interest in the property which ceases on his death. It, therefore, cannot be doubted that before the provisions contained either in Section 6 or Section 7 are made applicable, the competent authority under this Act has to determine the facts necessary for the application of these provisions. Admittedly, they are deeming provisions and are meant to enlarge the scope of the properties which, could be taxed under this statute.

8. The Asst. Controller went into the material placed before him and also examined the two note books alleged to have been written in the handwriting of Dr. Sarjuprasad showing funds available in the name of the son and wife and after examining all the material placed by the accountable person as well as the department, he felt that the accountable person "has failed to correlate the investments in the purchase of the above two properties" ; and, further examining the Income Tax returns, felt that as the deceased has shown the income of these properties in the Income Tax returns of the HUF, these properties are impressed with the character of HUF properties. When the matter went before the Appellate Controller, unfortunately, the Appellate Controller did not examine the facts nor come to any positive finding about the acquisition of the properties and the source of assets from which they were acquired, but only applied the two decisions in BIBI GURDARSHAN KAUR (DECEASED) (THROUGH LEGAL HEIRS) Vs. COMMISSIONER OF Income Tax, NEW DELHI., and SMT. DENABAI BOMAN SHAH Vs. CONTROLLER OF ESTATE DUTY, A.P., , and by applying the test laid down in these decisions for application of Section 6, he held that as the deceased was not competent to dispose of these properties they could not be included in the properties passing on his death. The Appellate Controller only made a passing reference to the observations of the Asst. Controller when he observed :

"The only reason why the Assistant Controller has included the value of the said properties in the value of the deceased's estate is that the income from these properties had been assessed in his Income Tax assessments. This fact alone is not sufficient to make the provisions of Section 6 applicable to the facts of this case."

9. There is no discussion in the appellate order at all to indicate that the Appellate Controller applied his mind to the disputed question of fact, as to whether these properties were acquired from the funds kept apart for the son and the wife of the deceased by late Dr. Sarjuprasad or that they were acquired from the funds of the HUF. Nor is there anything to indicate that the Appellate Controller arrived at any finding of fact about the nature of these properties. But

it appears that the Appellate Controller felt that merely because the income of these properties was taxed as the income of the HUF--on this fact alone, Section 6 could not be attracted. It also appears that the pointed attention of the Appellate Controller was not drawn to the fact that if the property is held on facts to be the property belonging to the HUF, where the deceased had an interest in these properties ceasing on his death, a further determination of facts may ultimately attract Section 7 and not Section 6. But it appears that before the Appellate Controller these questions were not agitated nor did the Appellate Controller bother to go into the questions of fact in dispute but went on an assumption that even if the income is assessed for the purpose of Income Tax in the HUF, still as the deceased was not competent to dispose of the property, with the aid of Section 6, the properties could not be brought within the taxable properties passing on the death of the deceased.

10. After this judgment of the Appellate Controller, the Asst. Controller went up in appeal before the Tribunal. The judgment of the Appellate Tribunal shows that the Tribunal did notice the observations of the Asst. Controller that HUF funds were utilized for acquisition of the two properties and further that the properties retained the imprint of the HUF. But the Tribunal also, instead of going into the facts and determining the disputed question of fact about acquisition of the property, started with an assumption as it observed in para. 11 of its order :

"After careful consideration we are of opinion that the Appellate Controller is correct in the conclusion. We are prepared to assume that the deceased had correctly been assessed in the status of HUF and that he had provided HUF funds for the acquisition of the two, properties. From this fact alone we are unable to hold that one property was held benami by the son of the deceased and the other by the wife of the deceased both for the benefit of the deceased. It is quite possible that the deceased was under the bona fide belief that the income from these two properties had to be returned for purpose of his assessment. Even if the rentals from the two properties were utilized for the purpose of the family, it would only amount to an application of the income by the members of the family and not necessarily that the properties were held benami. We are not concerned here with the application of Section 10 of the Estate Duty Act on the ground that the donor was not excluded from possession and enjoyment of any properties gifted to the donees. We are only concerned with the simple issue whether the deceased had power of disposition over the two properties. In the absence of any admission either by Savitridevi or by Basantkumar that the property concerned was held benami for the deceased, we should presume that the ostensible was real so that the title to the properties vested in them and not in the deceased. We are, therefore, in agreement with the Appellate Controller's conclusion that the chargeability to estate duty is governed by the two decisions relied upon by him. Accordingly, the appeal is dismissed."

11. It appears that before the Tribunal, the main question raised was about the benami nature of the transaction when the properties were acquired in the name

of the wife and the son and it appears that this became necessary because the whole controversy centered around Section 6 as none of the parties felt that if it was the property of the HUF, then Section 6 may not be applied but it would be the provisions contained in Section 7 that may be attracted. And in order to examine the scope of Section 6, the Tribunal, instead of deciding the question about acquisition of property, which is a question of fact, started with the assumption.

12. It was seriously contended by the learned counsel appearing for the department that these observations quoted above amount to a finding of fact that the properties were impressed with the HUF character as found by the Asst. Controller. The language used by the Tribunal, as quoted above, viz., we are prepared to assume, itself goes to show that the Tribunal did not go into the question to decide the fact but felt that even on this assumption by applying Section 6, the view taken by the Asst. Controller could not be justified. It is, therefore, apparent that except the Asst. Controller, the Appellate Controller and the Tribunal did not go into the question of fact about the acquisition of property. Both the appellate authorities, on the assumption that even if the property is assumed to be of the HUF, applied the provisions contained in Section 6 and took a view which ultimately has brought this reference before us. So far as Section 6 is concerned, it could not be disputed that if the deceased was not competent to dispose of the property it could not be held to be the property passing on his death. But it is also clear that in the case of a property where the deceased had an interest as in the case of a HUF, the deeming provisions of Section 7 will have to be applied and not Section 6. And in this situation, therefore, learned counsel appearing for the department seriously contended that we should answer the reference by applying the provisions contained in Section 7 of the Act.

13. It is no doubt true that if on the findings arrived at by the Tribunal, if we were called upon to answer the questions referred to us, it was not necessary for this court to examine only the provisions of Section 6 as thought by the Tribunal, but we could refer even to Section 7, if on the facts found we felt that the questions could be answered only by applying the provisions contained in Section 7. But unfortunately, in the present case, although the Appellate Controller and the Appellate Tribunal have assumed the property to be of the HUF, yet they have not given any finding of fact. The questions referred to us are on the basis of an assumption; and on the basis of that assumption, in our opinion, it is not justifiable to answer the questions by applying Section 7 as all the facts that may be necessary for a consideration of the application of Section 7 are not found by the Tribunal. Ultimately, the reference as it stands, if answered on the basis of the assumptions that it is a HUF property and the deceased was not competent to dispose of it as stated in the second question, then our answer to these two questions would only be of mere academic interest and in fact it is not also the correct legal position as, in a case where the deceased had an interest ceasing on his death, the test will not be as to whether he was competent to dispose of that property as the provisions of Section 6 will not be attracted. But in the

absence of findings of fact, it is not possible for us to apply any other provision merely on an assumption.

14. u/s 64 of the Act, the Tribunal makes a reference. It is expected, as provided in Sub-section (4) of Section 64 that the Tribunal shall set forth the facts, the determination of the Appellate Tribunal and the question of law which arises out of the case.

"64. (4) The statement to the High Court shall set forth the facts, the determination of the Appellate Tribunal and the question of law which arises out of the case."

15. So far as the jurisdiction of this court hearing a reference is concerned, it is provided in Sub-sections (5) and (6) of Section 64 :

"(5) If the High Court is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modifications therein as it may direct.

(6) The High Court, upon hearing any such case, shall decide the question of law raised thereby, and in doing so, may, if it thinks fit, alter the form of the question of law and shall deliver judgment thereon containing the ground on which such decision is founded and shall send a copy of the judgment under the seal of the court and the signature of the Registrar to the Appellate Tribunal and the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment."

16. Under Sub-section (5) of Section 64, if this court feels that the statement of case submitted by the Tribunal is not sufficient to enable this court to determine the questions of law raised therein, it may require the Tribunal to make such modifications as it may direct. This, therefore, clearly indicates that if the statement of case sent by the Tribunal does not state the questions on facts properly determined which in our opinion is necessary to decide the reference, we can direct the Tribunal to modify the statement of case or submit a supplementary statement of case as it was observed by their Lordships of the Supreme Court in COMMISSIONER OF Income Tax, WEST BENGAL I Vs. INDIAN MOLASSES CO. P. LTD., , when it appears, their Lordships felt that on the statement of case as it stood the questions of law could not be answered (p. 482):

"Two courses are now open to us : to call for a supplementary statement of the case from the Tribunal; or to decline to answer the question raised by the Tribunal and to leave the Tribunal to take appropriate steps to adjust its decision u/s 66(5) in the light of the answer of this court."

17. It appears that, in the facts of that case, their Lordships felt that if the Tribunal is directed to submit a supplementary statement of case it may result in injustice and it was in that context that, it appears, their Lordships observed that the only appropriate course was to decline to answer the questions referred by

the Tribunal.

18. In *Raghunath Prasad Poddar, etc. Vs. Commissioner of Income Tax, Calcutta*, their Lordships were faced with the situation more or less similar to the one in the present case as their Lordships observed (p. 146): "Neither the Income Tax Officer nor the Appellate Assistant Commissioner and nor even the Tribunal has gone into the questions..." and in view of this, while exercising the appellate jurisdiction, their Lordships remanded the case with a direction that the Tribunal will go into the questions of fact which were necessary as it was observed (p. 147):

"All that we can do is either to call for a supplementary statement from the Tribunal or to remand these cases to the Tribunal for a fresh hearing. As seen earlier, the authorities under the Act have completely misdirected themselves as to the questions of fact to be decided. Hence, there is need for a fresh enquiry. Therefore, it will be in the interest of the parties to remand the cases to the Tribunal for a fresh enquiry on the lines suggested earlier."

19. Their Lordships further observed that the parties may be given reasonable opportunity to adduce additional evidence both documentary as well as oral.

20. These observations made by their Lordships in the two cases referred to above make it clear that if the statement of case is not complete on the basis of which an answer to the legal questions raised could be given, this court also, exercising powers u/s 64(5) of the Act, could direct the Tribunal to send an additional statement of case. As discussed earlier, the statement of case submitted by the Appellate Tribunal does not indicate the determination of the question of fact about the acquisition of property which according to us is necessary to determine the question of law raised in this reference. We, therefore, feel that a further statement of case from the Tribunal is necessary.

21. It is, therefore, directed that the Appellate Tribunal will submit an additional statement of case indicating their determination of the question about the acquisition of property in the light of the discussion given above. In the circumstances of the case, parties are directed to bear their own costs so far as the present proceedings are concerned.