

(2003) 07 RAJ CK 0127

In the Rajasthan High Court

Case No : Estate Duty Reference No. 65 of 1986 9 July 2003

Controller of Estate Duty

APPELLANT

Vs

Inder Jeet Singh

RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Estate Duty Act, 1953 — Section 64

Citation : (2003) 133 TAXMAN 63

Hon'ble Judges : Y.R. Meena, J;Shashi Kant Sharma, J

Bench : Full Bench

Advocate : Mrs. Parinitoo Jain, for the Revneue N.M. Ranka, for the Assessee,
for the Appellant;

Judgement

In this petition, u/s 64(1) of the Estate Duty Act, 1953, the Tribunal has referred the following questions for our opinion :

Question in RA No. 13/JP/84

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the estate left by the deceased belonged to the Hindu undivided family (hereinafter referred to as the HUF) and only value of 1/4th share therein is assessable to estate duty in the hands of the Accountable Person ?"

Question in RA No. 14/JP/84

"Whether on the facts and in the circumstances of the case, the Tribunal is justified in holding that the following assets left by the deceased were not his personal assets

Rs.

1.

Cash in hand

3,676

2.

Money in bank

24,036

3.

Amount due in insurance policies

1,28,296

2. On the death of H.H. Maharaja Rana Harish Chandra, Accountable Person - Inderjeet Singh has submitted the return and claimed HUF status of the property left by H.H. Maharaja Rana Harish Chandra of Jhalawar and claimed that only 1/4th share of the property of HUF is liable to the estate duty. The Assistant Controller of Estate Duty did not accept the claim of the Accountable Person and he treated the property left by H.H. Maharaja Rana Harish Chandra as property left by individual. During the course of assessment, the Assistant Controller of Estate Duty also noticed that the deceased had left cash in hand Rs. 3,676 and money in bank Rs. 24,036 and the amount due in the Insurance Policy Rs. 1,28,296. The Assistant Controller of Estate Duty has taken all those amounts as amounts belonged to H.H. Maharaja Rana Harish Chandra in his individual capacity and taxed accordingly.

3. In appeal before the Appellate Controller of Estate Duty, the Appellate Controller of Estate Duty has accepted the claim of the Accountable Person that estate left by the deceased belonged to HUF and only 1/4th of the share of the estate can be taxed under the Estate Duty Act. The Appellate Controller of Estate Duty has also accepted the claim of the Accountable Person regarding other amounts which were in dispute, except the cash in hand, money in bank, and the amount due under the Insurance Policy. That order has been challenged in appeal by the Controller of Estate Duty as well as by the Accountable Person - Shri Inderjeet Singh.

4. The Tribunal has confirmed the view taken by the Appellate Controller of Estate Duty, holding that the estate left by H.H. Maharaja Rana Harish Chandra belonged to the HUF and that estate has not been held by him in his individual capacity. The Tribunal has also accepted the claim of the Accountable Person that the money in hand and money in bank as well as amount of Insurance Policy belonged to HUF.

5. Heard learned counsel for the parties.

6. Whether the estate left by late H.H. Maharaja Rana Harish Chandra, is HUF or is in his individual capacity, the Tribunal has considered that aspect in para 2 of its order, which reads as under :

"2. First, we take up the appeal of the revenue, for discussion. The first ground is

that the Appellate Controller erred in holding that the status of the deceased in respect of the properties inherited by the Accountable Person from his deceased father was that of HUF and, consequently directing the Assistant Controller of Estate Duty, (hereinafter referred to as the ACED), to take only the value of 1/4th share of the deceased in the HUF property for the purpose of the Estate Duty. We have heard Shri Saxena, learned Departmental Representative and Shri Rathore, learned counsel for the assessee. Our attention was drawn to a decision of this Bench dated 25-11-1980 passed in the case of the Accountable Person himself in ITA Nos. 1380 to 1388/JP/79 assessment years 1967-68 to 1976-77 decided with other appeals. In these appeals of the Accountable Person, the question was whether the properties inherited by him from his deceased father were ancestral properties in his hands or not. The Tribunal, by the combined order dated 25-11-1980, clearly found that the properties having been inherited by the assessee (Accountable Person) constituted his ancestral properties for the assessment years 1967-68 to 1976-77. The father of the Accountable Person died on 17-3-1967, and he filed the last return for the assessment year 1966-67 on 29-9-1966 in the status of individual, which was revised in the status about 1 day before his death by him. Returns for the earlier years also, i.e. prior to the assessment year 1966-67 had been filed by the deceased in the status of individual. For the assessment year 1966-67, the Tribunal decided that the properties in the hands of the deceased were ancestral and as such a view was taken that the properties in question were ancestral in his hands. But during the hearing of the appeals relating to the assessment years 1967-68 to 1976-77, the assessee (Accountable Person) filed ample evidence to prove that the properties were ancestral in the hands of the deceased father. Considering such evidence, the Tribunal, in the order dated 25-11-1980, observed: "These clearly show that the properties were ancestral in the hands of the predecessor of the assessee. The properties being ancestral, there is no doubt that they constituted to be the HUF property in the hands of the assessee"(Accountable Person). Thus, from the order dated 25-11 -1980 of the Tribunal, it is clear that the properties were ancestral in the hands of the deceased and, therefore, the status of the deceased, as that of 14 HUF, was rightly taken by the Appellate Controller. The submission of the revenue that the status of the HUF was taken only for the period posterior to the date of the death of the deceased is incorrect. The Tribunal clearly held that for the assessment year 1966-67, the Tribunal took the status of the individual, as no evidence was filed at that stage by the deceased to show that the properties were ancestral, but enough evidence having been filed during the hearing of the cases relating to the assessment years 1967-68 to 1976-77, the Tribunal clearly took the view that the properties were ancestral in the hands of the deceased also. Therefore, the Appellate Controller, in our view, has rightly directed the ACED only to take the value of 1 /4th share of the deceased in the HUF property for the purpose of Estate Duty.

7. The facts are also not in dispute before us that in the years, 1967-68 to 1976-77, the property in the form of estate was assessed finally at the Tribunal's

level as property belonged to HUF and that order has not been challenged further. Therefore, that order has become final. Once the Tribunal has accepted the property in the form of estate left by late H.H. Maharaja Rana Harish Chandra belong to HUF, then the character of that property cannot be accepted in individual capacity in the estate duty proceedings. Apart from that, no justification has been shown to us. Considering these admitted facts, we find no infirmity in the view taken by the Tribunal.

8. Question in RA No. 14/JP/84, dispute has been raised whether the cash in hand, money in bank and amount due, in the Insurance Policy belongs to late H.H. Maharaja Rana Harish Chandra in his individual capacity or that belongs to HUF. The Tribunal has taken the view that the cash in hand and money in bank, could not be saved by the deceased as he was getting a meagre salary as MLA and MP. For the Insurance, the Tribunal has taken the view that the premium was paid out of the estate income which belonged to HUF, therefore, the amount due in the Insurance Policy also belongs to HUF.

9. Admittedly, the deceased H.H. Maharaja Rana Harish Chandra remained MLA and MP, therefore, the meagre amount of cash in hand and money in bank is nothing looking to his status, in our view, that belongs to him in his personal and individual capacity.

10. So far as the amount due in Insurance Policy is concerned, whether the premium was paid out of income from the estate or by individual, that is immaterial. The amount due and payable on death of late H.H. Maharaja Rana Harish Chandra that cannot be treated as his personal amount, cash or money in hand. The amount payable on his death goes to beneficiaries and there is no question of succession in respect of such amount, therefore, there is no question of estate duty on that amount. The estate duty is payable only when the amount belongs to the deceased. When the amount is due on the death of the deceased, that always belongs to the beneficiaries and cannot be said that the money or cash has been left by the deceased.

11. In the result, we answer the question in RA No. 13/JP/84 in affirmative, i.e., in favour of the Accountable Person and against the revenue. With regard to question referred to in RA No. 14/JP/84, we answer that the cash in hand and money in bank that belongs to the deceased in his individual capacity and is subject to estate duty. The amount due in the Insurance Policy does not belong to the deceased in his individual capacity, therefore, not subject to estate duty and we answer 2nd question accordingly.

12. The reference so made, stands disposed of accordingly.