(1984) 01 BOM CK 0008

In the Bombay High Court

Case No : E. D. APPEAL NO. 29 (BOM.) OF 1983

CONTROLLER OF ESTATE DUTY APPELLANT

Vs

P. A. KAPADIA. RESPONDENT

Date of Decision : 31-01-1984

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

Citation : (1986) 17 ITD 315

Hon'ble Judges : B. R. Adwalpalkar, Member;B. R. Adwalpalkar, A.M.

Bench : Division Bench

Judgement

Per Shri B. R. Adwalpalkar, Accountant Member - The only contention of the department in this estate duty appeal is that on the facts and in the circumstances of the case and in law, the Appellate Controller, Bombay, erred in holding that the share of the lineal descendants cannot be assessed to estate duty in the case of the deceased u/s 34(1) (c) of the Estate Duty Act, 1953 (the Act).

2. In the course of the assessment proceeding in the estate duty case of late Shri A. C. Kapadia, who died on 10-1-1967, the accountable person, viz., Shri P. A. Kapadia had claimed, inter alia, that 2/9th share of the lineal descendants of the deceased should not be included in the estate passing on his death, in view of the Madras High Court decision in the case of V. Devaki Ammal Vs. Assistant Controller of Estate Duty, which has been followed by a Bench of the Tribunal at Bombay. The Assistant Controller, however, did not find this contention to be acceptable as the decision cited as being contested.

3. The accountable person challenged this decision of the Assistant Controller before the Appellate Controller placing reliance on the decision of the Income Tax Appellate Tribunal, Ahmedabad Bench in the case of Smt. Shantaben Ambalal v. First ACED [ED Appeal No. 47 (Ahd.) of 1974-75], as well as on the decision of the Madras High Court in the case of V. Devaki Ammal (supra). Reference was also made to the decision of the Income Tax Appellate Tribunal at Bombay

(without mentioning the case in which it was given). The Appellate Controller accepted the contention and following the aforesaid decisions of the Ahmedabad Bench of the Tribunal and the Madras High Court, deleted the addition representing 2/9 share of the lineal descendants of the deceased in the principal value of the estate. The department is now contesting this decision of the Appellate Controller before the Tribunal.

4. On behalf of the department, Shri Akhilesh Prasad, the learned departmental representative, cited a catena of cases (ten in number), which he submitted, were all in favour of the departments contention that the share of the lineal descendants of the deceased in the joint family property is includible in the value of the estate for the purpose of aggregation as provided u/s 34(1) (c). In this behalf, he made special reference to the following judicial decisions - Rameshwar Lall Agarwal Vs. Union of India (UOI) and Others, , Ramniklal J. Daftary Vs. Controller of Estate Duty, Gujarat, , and C. Vanajakshi Venkata Rao and Another Vs. Controller of Estate Duty,

5. Shri S. M. Desai, the learned chartered accountant appearing for the accountable person, strongly relied on the order of the Appellate Controller and especially on the Tribunal decisions of the Ahmedabad and the Bombay Benches on the point at issue.

6. We have given careful though to the submissions and arguments advanced from both the sides and we find that the decision of the Ahmedabad Bench of the Income Tax Appellate Tribunal, which was reported in the issue of Taxation of December 1975, obviously could not have considered the subsequent judicial decisions on the point. It was not the case of Shri Desai that the judicial decisions cited by the learned departmental representative were considered by the Bombay Bench of the Income Tax Appellate Tribunal in the case of which apparently the accountable person sought to support his case before the Appellate Controller. On the other hand, we find that the Patna High Court in the case of Rameshwar Lall Agarwal (supra) has followed the earlier judicial decisions on the subject to hold that the object of section 34(1) (c) is to remove the disparity in the incidence of the estate duty and that it is not violative of the principles of equity enshrined under article 14 of the Constitution of India. The Patna High Court has, on this point, discussed at length ratio decidendi of the Madras High Court in the case of V. Devaki Ammal (supra) and dissented from it. To the same effect are the decisions of the Gujarat and the Andhra Pradesh High Courts in the case of Ramnikala J. Daftary (supra) and C. Vanajakshi Venkata Rao (supra). Since apart from the decision of the Madras High Court all the other judicial decisions cited before us are in favour of the departments contention, we prefer to follow the said decisions and hold that the interest of the lineal descendants of the deceased in the joint family property governed by Mitakshara law, as in the instant case, stands to be included in the value of the estate of the deceased for determining the rate of estate duty on the estate passing on the death as envisaged by section 34(1) (c). In this view, we reverse the decision of

the Appellate Controller on the point and allow the departments appeal

7. Departments appeal is allowed.

