
(1990) 07 BOM CK 0010
In the Bombay High Court
Case No : ED Reference No. 8 of 1976

Controller of Estate Duty

APPELLANT

Vs

Prince Udaysingh Gaekwad

RESPONDENT

Date of Decision : 17-07-1990

Acts Referred:

Royal Family (Baroda) Trust Fund (Repealing) Act, 1956 — Section 7, 9(2)

Citation : (1991) 54 TAXMAN 519

Hon'ble Judges : T.D. Sugla, J; Sujata Manohar, J

Bench : Division Bench

Advocate : G.S. Jetly, Mrs. Manjula Singh and K.C. Sidhwa, for the Appellant;
S.E. Dastur, J. Mistri and N.R. Modi, for the Respondent

Judgement

Sugla, J.—The only question referred to this Court in this reference at the instance of the department by the Tribunal is :

"Whether, on the facts and in the circumstances of the case and having regard to the provisions of the Royal Family (Baroda) Trust Fund (Repealing) Act, 1956 (Bombay Act No. IV of 1957) the Tribunal was right in holding that the inclusion of the value of 1/6th share in the trust fund held under the Bombay Act No. IV of 1957 to the extent of Rs. 10,55,582 in the principal value of the estate of the deceased is not proper?"

It is not necessary to go into the entire history of the case. Suffice it to say that the deceased Prince Udaysingh Gaekwad died on 11-8-1960. He had an interest in a trust which eventually came to be regulated by Royal Family (Baroda) Trust Fund (Repealing) Act, 1956 being Bombay Act, 1957. His interest as incorporated in the Act is found in section 7 and section 9(2) of the Act as under:

"7(1) Out of the trust fund and the proceeds of the trust fund as held by the official trustee on 31st March, 1957, the official trustee shall transfer absolutely -

(b)(i) the one-sixth part thereof to Shrimant Udaysinhrao Shivajirao Gaekwar:

Provided that the parts specified in clause (b) shall not be transferred except with the consent of their mother Princess Shrimati Kamaladevi and of His Highness the Maharaja Fatesinhrao Gaekwar."

"9(2) After the 31st March, 1957 and until each part of the trust fund including the proceeds of the trust fund has been transferred in accordance with the provisions of section 7, the official trust shall hold each such part on trust for the respective beneficiaries and shall give effect, as far as possible, to the provisions of the settlement deeds as varied by the provisions of this Act by payment of the income thereof to the respective beneficiaries."

[Emphasis supplied]

It is common ground that during his lifetime his mother and His Highness had not consented to the devolution of one-sixth part of the trust fund on him u/s 7(1)(b)(i). The question that arose for consideration was whether and to what extent his interest in the trust was includible in the computation of the principal value of his estate. The Deputy Controller held that to the extent of one-sixth share in the trust fund the property did pass on his death and, accordingly, the value thereof was includible in his estate. The Appellate Controller agreed with the Deputy Controller while the Tribunal, for reasons given in paragraphs 7 and 8 of the judgment, held that that part of the trust fund had not vested in the deceased and was, therefore, not includible.

2. We would like to make it clear that the only question referred to this Court by the Tribunal is whether the inclusion of the value of one-sixth share in the trust fund in terms of the aforesaid Act is or is not includible. We are, therefore, not concerned whether any other kind of interest that the deceased might have could or could not be included in his estate. We are in agreement with the Tribunal that inasmuch as the consent of the mother of the deceased and His Highness had not been obtained before the death, the provisions of section 7 were very clear and one-sixth part of the trust fund could not have been vested in the deceased. That being so, it is not possible to hold that the property in the one-sixth part of the trust fund passed on the deceased's death. In the circumstances, we answer the question in the affirmative and in favour of the assessee.

No order as to costs.