

(1973) 12 KAR CK 0004
In the Karnataka High Court
Case No : T.R.C. No. 4 of 1972

Controller of Estate Duty

APPELLANT

Vs

Sashikant S. Kalghatgi

RESPONDENT

Date of Decision : 17-12-1973

Acts Referred:

Estate Duty Act, 1953 — Section 2 (15), 64 (1), 9

Citation : (1974) ILR (Kar) 293 : (1977) 106 ITR 890 : (1974) 2 KarLJ 4

Hon'ble Judges : G.K. Govinda Bhat, C.J;M.K. Srinivasa Iyengar, J

Bench : Division Bench

Advocate : S.R. Rajasekhara Murthy, for the Appellant; G. Sarangan, for the Respondent

Judgement

Srinivasa Iyengar, J.—The Income Tax Appellate Tribunal, Bangalore Bench, has stated a case and referred the following question of law, u/s 64(1) of the Estate Duty Act, 1953, for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, it has been rightly held that the sum of Rs. 49,545 assessed as property passing on the death in terms of Explanation 2 to Section 2(15) of the Estate Duty Act, 1953, was not includible in the taxable estate of the deceased and that there was neither a gift nor disposition or transfer when the deceased got an unequal share than what he would have received as his rightful share when the family arrangement was effected on October 16, 1964 ?"

2. The proceedings relate to the assessment to estate duty consequent on the death of Shantaram Shankar Kalghatgi, who passed away on 21st October, 1964. He was a karta of a Hindu undivided family and in that capacity was a partner in certain firms and the income therefrom was being assessed to Income Tax in that status. By means of a family arrangement evidenced by a deed dated 16th October, 1964, he effected a partition of the interest of the Hindu undivided family in the said firms among the members of the Hindu undivided family consisting of himself, his wife and two sons, after making provision for his

unmarried daughters. The Assistant Controller of Estate Duty held that the deceased got an unequal share as the value of the assets allotted to him was less than what he would have been entitled to if they had been divided equally. In the deed of family arrangement the entire assets to be divided was valued at Rs. 2,77,523.26. An amount aggregating to Rs. 70,000 was allotted to the wife and daughters. Out of the balance the two sons were allotted Rs. 90,000 each and Rs. 27,572.26 was allotted to the deceased. The Assistant Controller estimated the net value of the assets at Rs. 3,17,025 and on the basis that the 1/4th share of the deceased would be Rs. 79,256 and he had got only Rs. 29,711 (including the share of goodwill in a firm) determined the deficit at Rs. 49,545. He held that this was the value of the interest relinquished at the expense of the deceased within the meaning of Explanation 2 to Section 2(15) of the Act and included the same in the taxable estate u/s 9.

3. On appeal by the accountable person, this inclusion was contested. The Appellate Controller of Estate Duty accepted the contention that by the partition effected under the family arrangement there was neither a gift nor any disposition merely because the division was unequal and the difference could not be included u/s 9 and directed the exclusion of the said amount. He relied upon the decision of the Andhra Pradesh High Court in *SMT. CHERUKURI ESWARAMMA Vs. CONTROLLER OF ESTATE DUTY*, .

4. On appeal by the department to the Income Tax Appellate Tribunal, the view taken by the Appellate Controller of Estate Duty was upheld. The Tribunal held that there was neither a gift nor a disposition or transfer, when the deceased got an unequal share when the family arrangement was effected on 16th October, 1964, and there was no extinguishment of any right by him in favour of the members of the family. It referred to the ruling of the Andhra Pradesh High Court above mentioned and the ruling of the Gujarat High Court in *Kantilal Trikamlal Vs. Controller of Estate Duty*, Gujarat, in this behalf.

5. Before us, for the department, reliance has been placed on the decision of the High Court of Madras in *Ranganayaki Ammal and Others Vs. Controller of Estate Duty*, in which its earlier decision in *S.P. Valliammai Achi Vs. Controller of Estate Duty*, was followed, and the decision of the Punjab High Court in *Controller of Estate Duty Vs. Jai Gopal Mehra*, and it was urged that there was a disposition within the meaning of Explanation 2 to Section 2(15) read with Section 27. For the accountable person reliance was placed on the rulings relied upon by the Tribunal and the rulings of the Supreme Court in *The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar*, and *The Controller of Estate Duty, Andhra Pradesh Hyderabad Vs. Kancharla Kesava Rao*, and that of the High Court of Gujarat in *Controller of Estate Duty, Gujarat-II Vs. Nirmal Chandulal*, and it was contended that by an unequal partition, there is no disposition or gift.

6. It is now well-settled that a partition in a Hindu undivided family involves no transfer or conveyance of property from one member to another and it is a process by which joint enjoyment is transformed into an enjoyment in severally.

So long as the joint family continues, no member of the family can predicate that he has a particular share or claim that a particular property belongs to him. A division in status can be brought about by an unequivocal declaration to become divided in status and concurrence of the other members of the family is not necessary. The share of the member gets crystallised on such declaration and communication to the other members. The actual division of the assets is only an adjustment of the antecedent right of the members. It is only a satisfaction of the rights rather than an extinguishment of any right of any member or conferring or transferring any right to any other member. The expression disposition involves an element of transfer of an interest in property from one person to another and such an element of transfer is absent in the conception of a partition in an undivided Hindu family. This was the view taken by Bhagwati C.J. in *Kantilal Trikamlal Vs. Controller of Estate Duty, Gujarat*, and we are in respectful agreement with the same.

7. The Supreme Court in *The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar*, while construing the expression in Section 2(xxiv) of the Gift-tax Act held that it had been used as one of the modes of transfer of property and a partition in a Hindu undivided family cannot be considered "either as a disposition or conveyance or assignment or settlement or delivery or payment or alienation within the meaning of those expressions in Section 2(xxiv). In *The Controller of Estate Duty, Andhra Pradesh Hyderabad Vs. Kancharla Kesava Rao*, , which arose under the Estate Duty Act, the Supreme Court which was considering the expression "disposition" in Section 24 of that Act, upheld the contention of the department that a partition in a Hindu undivided family did not amount to a disposition. The observations in *The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar*, were quoted and it was held that there was no reason why the same interpretation should not be placed in regard to the expression "disposition" in Section 24 of the Estate Duty Act. The High Court of Madras in *Ranganayaki Ammal and Others Vs. Controller of Estate Duty*, , when reliance was placed on the observations of the Supreme Court in *The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar*, was of the opinion that they did not apply while construing the provision in Explanation 2 to Section 2(15) of the Estate Duty Act or Section 27. When the Supreme Court adopted the observations in *The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar*, in construing the expression "disposition" in Section 24 of the Estate Duty Act, the distinction sought to be made in the decision of the High Court of Madras does not appear to be justified. The High Court of Gujarat in the decision in *Controller of Estate Duty, Gujarat-II Vs. Nirmal Chandulal*, after noticing the ruling of the Supreme Court in *The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar*, adhered to its earlier enunciation in *Kantilal Trikamlal Vs. Controller of Estate Duty, Gujarat*, . In the light of the clear pronouncement of the Supreme Court in the above-said case, the contention for the department that in a partition there is a "disposition" cannot be accepted. Unless the transaction amounts to a "disposition", the fact that one member got property

less than what he would have got if the partition was made equally will have no significance.

8. Section 2(15) of the Estate Duty Act defines what is property and Explanation 2 provides :

"The extinguishment at the expense of the deceased of a debtor other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression "property" shall include the benefit conferred by the extinguishment of the debt or right."

9. There is no settlement of any debt involved in the process of partition and consequently no question of extinguishment of any debt arises. There is also no extinguishment of any right possessed by a coparcener resulting in any benefit to another coparcener or extinguishment of any right at the expense of the deceased. In these circumstances, Explanation 2 to Section 2(15) is not attracted. The decision of the Punjab High Court in Controller of Estate Duty Vs. Jai Gopal Mehra, related to a case of a relinquishment of his interest by a coparcener and is clearly distinguishable as in such a case there is no partition of a Hindu undivided family and the undivided family continues, only the member relinquishing his interest going out of the family and his interest would be extinguished and the benefit would go to the other members of the continuing family.

10. For the reasons stated above, we hold that the Tribunal rightly held that the sum of Rs. 49,545 was not includible as the value of any property passing on death and answer the question referred in the affirmative and in favour of the accountable person. The respondent shall be entitled to the costs of this reference. Advocate's fee Rs. 250.