

(2001) 03 DEL CK 0165

In the Delhi High Court

Case No : Estate Duty Reference No. 2 of 1983

Controller of Estate Duty

APPELLANT

Vs

Satyajit

RESPONDENT

Date of Decision : 07-03-2001

Acts Referred:

Estate Duty Act, 1953 — Section 10, 2(15), 27, 27(1), 64(1)

Citation : (2001) 169 CTR 461 : (2001) 250 ITR 80 : (2001) 118 TAXMAN 437

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : R.C. Pandey and Premlata Bansal and Ajay Jha, for the Appellant;
None, for the Respondent

Judgement

Arijit Pasayat, C.J.—At the instance of the Revenue, the following question has been referred for the opinion of this court u/s 64(1) of the Estate Duty Act, 1953 (in short "the Act"), by the Income Tax Appellate Tribunal, Delhi Bench-A (in short "the Tribunal") :

"Whether, on the facts and in the circumstances of the case, the unilateral declaration made by the deceased, Durga Dass, on March 31, 1973, amounted to a disposition falling within the mischief of section 27 read with section 9 of the Estate Duty Act, so as to justify the inclusion of the said property in the net principal value of the deceased for purposes of the estate duty assessment ?"

2. The background facts sans unnecessary details are as follows :

A proceeding under the Act was initiated on the basis of a statement of estate delivered by Satyajit (hereinafter referred to as "accountable person") on April 10, 1975, in respect of the late Shri Durga Dass (hereinafter referred to as the "deceased"), who breathed his last on May 17, 1974. During the assessment proceedings the Assistant Controller of Estate Duty (hereinafter referred to as "the Assistant Controller") was of the view that a property, which was thrown into the hotchpot of the Hindu undivided family (in short "the HUF") on March 31,

1973, and subsequently allocated to six members thereof on June 1, 1973, was to be taken as a disposition within the meaning of the section 27 of the Act and the value thereof was to be included. The accountable person questioned the inclusion before the Appellate Controller of Estate Duty (in short "the Appellate Controller"). The said authority held that when the deceased impressed his self-occupied property with a character of joint family property there was no transfer, gift or disposition within the meaning of any of the provisions of the Act. He held that neither section 9 nor section 10 nor section 27 justifies the inclusion as done by the Assistant Controller. The matter was carried in appeal before the Tribunal by the Revenue on two grounds, i.e., about the non-applicability of section 9 and the valuation of the property. The Tribunal considered various decisions regarding throwing of self-acquired property into the common hotchpot and held that there was no element of gift involved to warrant application of either section 9 or 27 of the Act. On being moved for a reference, the question as set out above, has been referred for the opinion of this court.

3. We have heard learned counsel for the Revenue. There is no appearance on behalf of the accountable person in spite of notice,

4. Learned counsel for the Revenue referred to two decisions of the apex court in Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal, and Controller of Estate Duty, Madras Vs. N. Shankaran, It was his stand that the expression "disposition" has a wide ambit and the factual position as indicated brooks within its scope, throwing of the self-acquired property into the common hotchpot by blending as well as partition subsequently.

5. So far as the question of disposition is concerned, it is to be noted that in Controller of Estate Duty, Madras Vs. N. Shankaran, the apex court held that the act of a member of a Hindu undivided family by which he impresses his individual property with the character of joint family property or throws it into the hotchpot of the joint family or blends it with the joint family property is not a disposition within the meaning of the Act and will not attract estate duty u/s 9 read with section 27 of the Act.

6. It has to be noted that though an extended definition in section 2(15) was given to the expression "disposition" in Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal, the act of blending unlike the voluntary acceptance of an unequal partition falls outside the purview of the deeming part of the definition contained in the Explanations to section 2(15). It is to be noted that the Supreme Court in Controller of Estate Duty, Madras Vs. N. Shankaran, highlighted these aspects. The expression "disposition" in section 27(1), however wide the ambit may be, will not include the unilateral act of a person by which he throws his self-acquired property into the common stock of the joint family. The act of blending does not create any right enforceable against the blender or his property. It only brings to the surface rights already latent and inherent in others. The act of blending does not result in the extinguishment of any rights of the blender with a correlative conferral of benefit on others as contemplated by

Explanation 2 to section 2(15).

7. Therefore, the question as referred has to be answered in the negative, in favor of the accountable person and against the Revenue.

8. Before parting with the case, we may take note of certain observations made by the apex court in *Controller of Estate Duty, Madras Vs. N. Shankaran*, as quoted below, on which strong reliance was placed by learned counsel for the Revenue (page 40):

"This disposes of the question sought to be referred in these cases. We would, however, like to advert to another aspect which may arise for consideration at some future date. It may, perhaps, be possible to contend that, though a declaration of blending does not amount to a "gift", where the act of blending is followed by a subsequent partition, the two transactions taken together do result in the extinguishment, at the expense of the deceased, of his rights in the properties which go to the share of other coparceners at the subsequent partition and that, if the two can be treated as parts of the same transaction, Explanation 2 to section 2(15) may be attracted. But this, apart from being a totally new question of law not raised at any stage and not debated before us, would also require not only a closer look from the legal angle but also investigation into facts, particularly as to whether the act of blending and the subsequent partition can be treated, in law and on facts, as parts of a single transaction. We, Therefore, express no opinion on this issue."

9. As was the case before the apex court, the question of partition/allocation and its effect is not the question referred for the opinion of this court. As was done by the apex court, we express no opinion on the said issue.

10. Reference is accordingly disposed of.