
(1981) 01 BOM CK 0039

In the Bombay High Court

Case No : Estate Duty Reference No. 11 of 1965

Controller of Estate Duty

APPELLANT

Vs

Satyanarayan Babulal Chourasia

RESPONDENT

Date of Decision : 13-01-1981

Acts Referred:

Citation : (1981) 23 CTR 110 : (1983) 140 ITR 158 : (1983) 14 TAXMAN 384

Hon'ble Judges : V.A. Mohta, J;M.N. Chandurkar, J

Bench : Division Bench

Judgement

Chandurkar, J.—The original accountable person in this reference Satyanarayan, is dead and by consent, his other brought, Kamalnarayan, is brought on record as an accountable person and Shri Naik appears on behalf of Kamalnarayan.

2. In proceedings for determination of estate duty on the death of one Babulal, who died on February 18, 1958, it has now been found as a fact by the Tribunal that a plot of land measuring 21,708 square feet, which was the separate property of Babulal, was thrown into the hotchpot of the joint family property and that on partition of the joint property, plots of land out of this land were allotted to the sons. It appears that the case of the Department was that the transaction of throwing the plot into the hotchpot by Babulal amounted to a gift. This has been negative by the Tribunal and arising out of this order of the Tribunal, the following question has been referred by the Tribunal:

"Whether, on the facts and in the circumstances of the case and having regard to annexure "A", the plot of land measuring 21,708 sq.ft. was gifted to the sons so as to require a document duly stamped and registered to pass title thereon ?"

3. Annexure-A is a copy of the letter written by the deceased. Babulal, to the Municipal Corporation at Nagpur, intimating that on a partition of the joint family property, the land in question has been allotted to his four sons who were free to use and to put up construction thereon and that "necessary change be made in your records accordingly".

4. It is obvious that the question on which the Department seeks a decision by way of an answer to the question refereed is whether the throwing of the personal amounted to a gift requiring a duly stamped document and registration of the said document. With consent, the question is, therefore, reframe as follows:

"Whether, on the facts and in the circumstances of the case, and having regard to annexure "A", throwing of the plot of land into the common hotchpot of the property of the joint family amounted to a gift in favour of the sons to whom the plots were allotted at a partition, so as to require a stamped document and registration of the said document ?"

5. The Supreme Court in Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, , has held that the unilateral declaration of a Hindu coparcener, whereby he throws his self-acquired property into the common stock of joint family property, does not amount to a transfer. In view of this pronouncement of the Supreme Court, the question as reaffirmed has to be answered in the negative and against the Revenue. The question is accordingly answered in the negative and against the Revenue. Revenue to pay the costs of this reference.