(1990) 06 BOM CK 0039

In the Bombay High Court

Case No : Estate Duty Reference No. 3 of 1976

Controller of Estate Duty — APPELLANT

Vs

Shri Ashok Kumar M. Parikh — RESPONDENT

Date of Decision : 06-06-1990

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

Citation : (1990) 87 CTR 124 : (1990) 186 ITR 212

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

Bench : Division Bench

Advocate : G.S. Jetley, for the Appellant;

Judgement

T.D. Sugla, J.—In this reference at the instance of the Department, the question of law referred to this court reads thus :

"Whether the shares of the sons of the deceased in the joint family property could be taken into account for the purpose of determining the rate of tax applicable in respect of the share of the deceased in the joint family properties as per section 34(1)(c) of the Estate Duty Act, 1953 ?"

2. The deceased had a coparcenary interest in the joint family property. The Assistant Controller and the Appellate Controller of Estate Duty held that the value of the sons of the deceased in the joint family property was to be included for the purpose of determining the rate of duty applicable in respect of the principal value thereof as required u/s 34(1)(c) of the Estate Duty Act. In second appeal, the Tribunal considered itself bound by the Madras High Court decision in the case of V. Devaki Ammal Vs. Assistant Controller of Estate Duty, by which the Madras High Court had struck down the provisions of section 34(1)(c) of the Estate Duty Act as ultra vires. The Tribunal, accordingly, directed the Assistant Controller not to include the value of the interest of the two sons of the deceased in the joint family assets for determining the rate of duty.

3. Shri Jetley, learned counsel for the Department, submitted that the Tribunal

was not justified in ignoring the provisions of section 34(1)(c). He pointed out that, when the Tribunal passed the impugned order on January 15, 1974, the Andhra Pradesh High Court had, in Smt. Komanduri Seshamma Vs. Appellate Controller of Estate Duty, , already held that the provisions of section 34(1)(c) were valid and not ultra vires articles 14 and 19(1)(f) of the Constitution. This judgment was delivered on August 27, 1971. Fairly admitting that the Madras High Court had in V. Devaki Ammal Vs. Assistant Controller of Estate Duty, had struck down section 34(1)(c), Shri Jetley argued that, in view of a contrary Andhra Pradesh High Court decision In Smt. Komanduri Seshamma Vs. Appellate Controller of Estate Duty, , the Tribunal could not have in law proceeded on the basis that such a provision was not there in the Act. Further, a number of other High Courts, namely, the Karnataka High Court in the case of Sirigeri Thippamma Vs. Appellate Controller of Estate Duty and Others, , the Allahabad High Court in the case of Controller of Estate Duty Vs. Shiv Puran Lal Gulati, , the Patna High Court in the case of Controller of Estate Duty Vs. P.K. Agarwalla, , the Gauhati High Court in the case of Controller of Estate-Duty Vs. Murarilal Sovasaria, and the Madhya Pradesh High Court in the case of Controller of Estate Duty Vs. Suresh Kumar Mirani, , have in the recent past, it was stated, follwed the Andhra Pradesh High Court decision. He argued that the question must, therefore, be answered in the affirmative and in favour of the Revenue.

4. None appeared on behalf of the respondent accountable person although notice was served and intimation of the hearing was also given to him by the High Court office.

5. It is pertinent to mention that the Madras High Court decision followed by the Tribunal reported in V. Devaki Ammal Vs. Assistant Controller of Estate Duty, is dated October 10, 1972, whereas the Andhra Pradesh High Court decision in Smt. Komanduri Seshamma Vs. Appellate Controller of Estate Duty, was delivered on August 27, 1971. Thus, when the Tribunal decided the appeal, there existed two High Court decisions, one upholding the validity of section 34(1)(c) and the other striking it down. That being so, neither of the two decision was binding on the Tribunal as such. The settled law in view of the Supreme Court decision in K.S. Venkataraman and Co. Vs. State of Madras, being that the Tribunal cannot consider the vires of the provisions of the Act under which it is constituted, the Tribunal could not have considered the question, far less ignored the provisions, strictly speaking, this court cannot also go into this question in its reference jurisdiction, though, as rightly pointed out by Shri. Jetley, several other High Courts have upheld the validity of the provisions of section 34(1)(c). Accordingly, we hold that Tribunal was not justified in ignoring the provisions of section 34(1)(c).

6. In the above view of the matter, the question of law is answered in the affirmative and in favour of the Revenue. No order as to costs.

