(1997) 03 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Estate Duty Reference No. 3 of 1983

Controller of Estate Duty — APPELLANT

Vs

Som Chand Katia — RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

Citation : (1998) 234 ITR 42

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.P. Sawhney, instructed by Rajesh Bindal, for the Appellant; B.S. Gupta, Senior Advocate, instructed by Sanjay Bansal, for the Respondent

Judgement

G.S. Singhvi, J.—The questions of law which have been referred by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, to this court u/s 64 of the Estate Duty Act, 1953 (hereinafter referred to as the Act), read as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that only one-half capital standing in the books of Om Parkash Som Chand, Bathinda, and value of Rastha in the name of the deceased formed part of the estate of the deceased and that his wife was the owner of the other half share in the said assets ?

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the deceased and his wife held the capita] in the books of Om Parkash Som Chand and Rastha as tenants-in- common although the deceased at the time of his death, being sole surviving coparcener was competent to dispose of the same ?"

2. Dewan Chand Katia was a coparcener in the joint Hindu family, known as Dewan Chand Som Chand. By a partition deed dated April 2, 1964, business capital of Rs. 1,13,605.72 was partitioned amongst Dewan Chand Katia, his wife and two sons. The two sons of Sh. Dewan Chand Katia, namely, Lal Chand and Vijay Kumar, had separated from the joint Hindu family. Therefore, Sh. Dewan

Chand Katia claimed that the joint Hindu family consisted of himself and his wife, Smt. Saraswati Devi. This stand of Dewan Chand was accepted by the Revenue and for a number of years it was assessed like that under the Income Tax as well as Wealth-tax Acts. After the death of Dewan Chand on April 6, 1979, the accountable person claimed that Rs. 2,11,908 which represented half of the joint Hindu family property was in the share of Smt. Saraswati Devi and, therefore, there was no justification for aggregating this amount in the estate of the late Dewan Chand. The Assistant Controller of Estate Duty did not agree with the accountable person. He held that the total property amounting to Rs. 4,38,517 belonged to the joint Hindu family till the death of Sh. Dewan Chand and there has been no partition between them and Sh. Dewan Chand should be considered as the sole and absolute owner of the property. On that premise, he aggregated the entire amount of Rs. 4,38,517 in the estate of Dewan Chand, The appeal filed by the accountable person was dismissed by the Appellate Controller of Estate Duty. However, the Appellate Tribunal did not agree with the Assistant Controller of Estate Duty and the appellate authority. The Tribunal held that the Assistant Controller as well as the appellate authority have erred in treating the entire property as belonging to the Hindu joint family consisting of the late Shri Dewan Chand, his wife and two sons. The Tribunal further held that the property jointly belonged to the late Shri Dewan Chand and his wife, Smt. Saraswati Devi, who were allotted Rs. 56,802.86 in the partition which took place in the year 1964 and, therefore, the entire property could not be taken into consideration for aggregating it in the estate of the late Shri Dewan Chand, On the basis of this conclusion, the Tribunal reversed the findings of the Assistant Controller and the appellate authority.

3. We have heard Shri R.P. Sawhney, senior advocate for the petitioner, and Shri B.S. Gupta, senior advocate for the accountable person, and, in our opinion, the finding recorded by the Tribunal about the nature of the property which fell to the share of Shri Dewan Chand and Smt. Sar-swati Devi is a pure finding of fact and as this finding is based on proper appreciation of evidence, there is no justification for taking a different view.

4. We are also of the opinion that the Tribunal is right in relying on the decision of the Gujarat High Court in Bhimraj Saremal Vs. Controller of Estate Duty, Gujarat, , for taking the view that the property left after allotment of shares to Lal Chand and Vijay Kumar belonged both to Shri Dewan Chand and his wife, Smt. Saraswati Devi.

5. In view of the above, we do not find any ground to hold that the order passed by the Tribunal suffers from an error of law apparent on the face of it.

6. Consequently, the question referred to this court is answered against the Revenue and in favour of the accountable person.

