
(1979) 04 AP CK 0008

In the Andhra Pradesh High Court

Case No : Case Referred No. 91 of 1976

Controller of Estate Duty

APPELLANT

Vs

V. Rama Mohan Gupta

RESPONDENT

Date of Decision : 03-04-1979

Acts Referred:

Estate Duty Act, 1953 — Section 11, 11(1), 7

Citation : (1981) 127 ITR 273

Hon'ble Judges : C. Kondaiah, C.J.; Ramanujulu Naidu, J

Bench : Division Bench

Advocate : P. Rama Rao, for the Appellant; Y.V. Anjaneyulu and K. Lakshminarayana, for the Respondent

Judgement

Ramanujulu Naidu, J.—At the instance of the Controller of Estate Duty, Andhra Pradesh, Hyderabad, the above reference is made by the Income Tax Appellate Tribunal, Hyderabad, u/s 64(1) of the E.D. Act, 1953, referring the following question of law, arising out of its order, for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, only 1/5th share in the Kakinada house is includible or the entire value of the property is to be included in the principal value of the estate of the deceased ? "

2. The material facts, giving rise to the above reference as incorporated in the statement of case drawn up by the Tribunal, may be briefly stated : The deceased and his three brothers constituted a HUF. By an award dated March 9, 1952, registered in the office of the Registrar at Kakinada, the deceased and his brothers became divided. Certain properties were allotted thereunder to the HUF consisting of the deceased and his five sons, Venkata Narayana, Ramamohan Gupta, Laxmana Rao, Bharata Raju and Shatrugnu. On March 16, 1952, there was a division in status between the deceased and his five sons and in the first instance, certain movable properties were divided between them. Later, under a registered deed of partition dated March 30, 1952, the immovable properties belonging to the family were also divided. Besides certain lands allotted to the

deceased with absolute rights, the house bearing Municipal No. 17/33-1-4 situate on the main road of Kakinada town was allotted to him to be enjoyed by him for his life without any power of alienation. The remainder in the house was to be enjoyed by his five sons with absolute rights. The business that was being carried on under the name and style " City Emporium " in the aforesaid house was converted into a partnership business. On May 4, 1962, the deceased and his five sons purchased another house for Rs. 14,005. Sri Venkata Narayana started a new business in the said house. On June 16, 1964, the deceased and his five sons executed another deed of partition, whereunder the house situate on the main road of Kakinada town and the subsequently acquired house were divided. Under the said deed of partition, the subsequently acquired house was allotted absolutely to Venkata Narayana while the deceased and his other four sons were allotted the house situate on the main road of Kakinada town with absolute and equal rights therein. The Asst. Controller, by his order dated March 31, 1967, determined the principal value of the estate of the deceased at Rs. 2,46,459 comprising of Rs. 26,459 being the amount standing to the credit of the deceased in the partnership business and Rs. 2,20,000 being the value of the Kakinada house. He rejected the contention of the accountable person that the deceased was entitled to a 1/5th share in the said house and that that alone passed on his death u/s 5 of the E.D. Act. He held that the deceased was entitled to a life interest in the said house under the earlier deed of partition dated March 30, 1952, that the said right was not in any way affected by the deed of partition dated June 16, 1964, and that u/s 7 of the Act, the entire house should be deemed to pass on his death. The decision of the Assistant Controller was affirmed on appeal by the Appellate Controller by his order dated March 18, 1970. On further appeal to the Tribunal, it was held by the Tribunal that the partition evidenced by the deed dated June 16, 1964, was entered into by the deceased and his five sons not as coparceners of a HUF, but as tenants in common, owning two houses and that, under the deed, Venkata Narayana was allotted the subsequently acquired house absolutely, while the deceased and his other four sons were allotted the Kakinada house with absolute and equal rights therein. Negating the contention of the revenue that the arrangement, whereby the deceased was given life interest in the Kakinada house, was not disturbed by the deed of partition dated June 16, 1964, the Tribunal held that the deceased was entitled to only a 1/5th share in the Kakinada house, that that alone would pass on his death u/s 5 of the Act and that the provisions of Section 7 of the Act were not attracted. The contention of the revenue that Section 11 of the Act was also attracted, was repelled by the Tribunal.

3. Admittedly, under the deed of partition dated March 30, 1952, only the life interest in the Kakinada house was given to the deceased, the remainder therein having been given to his five sons with absolute rights. On May 4, 1962, the deceased and his five sons acquired another house. As the deceased and his five sons intended to bring about a division of both the houses, they entered into a partition evidenced by the deed dated June 16, 1964. Under the said deed, the

subsequently acquired house was allotted to the eldest son of the deceased absolutely, while the Kakinada house was allotted to the deceased and his other four sons with absolute and equal rights therein. The arrangement evidenced by the deed of partition dated June 16, 1964, is genuine and perfectly valid and not a device to evade the estate duty, as rightly held by the Tribunal. It is, therefore, clear that on the death of the deceased on May 1, 1965, he had only a 1/5th share, with absolute right, in the Kakinada house and had no life interest in the entire house. Section 7 of the Act cannot, therefore, be invoked by the revenue for the purpose of inclusion of the entire value of the Kakinada house in the estate of the deceased, as rightly held by the Tribunal.

4. It is, however, urged by Sri P. Rama Rao, standing counsel for the revenue, that the arrangement evidenced by the deed of partition dated June 16, 1964, amounted to disposition or determination of the interest of the deceased within the meaning of Section 11(1) of the Act and that by reason of the provisions contained therein, the entire value of the Kakinada house is liable to be included in the estate of the deceased. To appreciate the submission, Section 11(1) of the Act may be usefully extracted hereunder :

" 11(1). Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession, and the disposition or determination (or any of them if there are more than one) is not excepted by Sub-section (2), then-

(a) if, had there been no disposition or determination, as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have passed on the death u/s 5, that property shall be deemed by virtue of this section to be included as to the whole thereof in the property passing on the death ; or

(b) if, had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have been deemed by virtue of Section 7 to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death. "

5. It may be noted that if a limited estate is either disposed of or determined within two years before the death of the deceased, by reason of a fiction enacted in Section 11, the total value of the limited estate so disposed of or determined, is liable to estate duty. The question which, therefore, falls for consideration is whether, under the deed of partition dated June 16, 1964, there was disposition or determination of the life interest of the deceased in the Kakinada house. It may be recalled that in lieu of the life interest of the deceased in the Kakinada

house and his 1/5th absolute share in the subsequently acquired house, the deceased acquired a 1/5th share in the Kakinada house with absolute rights. The arrangement evidenced by the deed of partition, far from operating as disposition or determination of the interest of the deceased, enlarged the interest of the deceased in the Kakinada house. Section 11 of the Act cannot, therefore, be invoked by the revenue for the purpose of including the value of the entire house in the estate of the deceased.

6. Sri Rama Rao, however, relies upon the following passage at page 192 of Dymond's Death Ditties, 14th Edn. :

" However, if the life-tenant purchases the interest of the remainderman and satisfies the consideration by the transfer to him either of part of the settled funds or of the proceeds thereof, the transaction in substance amounts to, and seems to be officially regarded as, a determination, not an enlargement, of the life interest..... "

7. The passage apparently supports the contention of the revenue but in the later edition, i.e., 15th edition of Dymond's Death Duties, at page 228, the interpretation is, however, limited to Section 36(5)(c) of the U.K. Finance Act, 1969.

8. From the foregoing discussion, it follows that only 1/5th share in the Kakinada house is liable to be included in the principal value of the estate of the deceased. We, accordingly, answer the question against the revenue and in favour of the accountable person. We, however, make no order as to costs.