

(1982) 09 MAD CK 0020

In the Madras High Court

Case No : Tax Case No. 994 of 1977

Controller of Estate Duty, Madras

APPELLANT

Vs

D. Rajesekaran Kamak

RESPONDENT

Date of Decision : 21-09-1982

Acts Referred:

Estate Duty Act, 1953 — Section 25, 29, 32, 33, 33(1)

Citation : (1983) 36 CTR 12 : (1984) 147 ITR 769

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Judgement

Ramanujam, J.—The following question of law has been referred to this court by the Income tax Appellate Tribunal, Madras, for its opinion

at the instance of the Controller of Estate Duty, Madras :

Whether, on the facts and in the circumstances of the case, Rs. 19,500, being the value of the accountable person's half share in the family

residential house, should be excluded in computing the value of his share in the family properties, for the purposes of section 34(1)(c) of the Estate

Duty Act ?

2. One Thiru Kamak Dharmaraj Nadar died on September 19, 1970. He was the karta of the HUF consisting of himself and his only son, D.

Rajasekaran Kamak. The deceased was carrying on business of purchase and sale of iron, steel, hardware, building materials, etc., as sole

proprietor thereof. Besides, he was also selling the goods manufactured by certain other companies. He had executed a will be queathing all his

properties to his only son, the accountable person.

3. The Asst. Controller, by his order dated November 27, 1971, determined the

principal value of the estate as Rs. 4,03,449 and levied a duty of Rs. 36,992,65. In so doing, he included Rs. 83,629 as the value of the share of the lineal descendant in the property of the HUF under s. 34(1)(c) of the E.D. Act (hereinafter referred to as "the Act"). In computing the value of such share at Rs. 83,629, the Asst. Controller had included Rs. 19,500 being the value of his half share in the family residential house, after rejecting the contention of the accountable persons that the value of his half share in the family residential house should not be included in the value of his half share of the joint family properties.

4. Aggrieved by such assessment, the accountable person preferred an appeal to the Appellate Controller retreating the contention that the value of his half share in the family residential house should not be included in computing the value of his half share in the properties of the HUF. The Appellate Controller held that though the deceased had a right to execute a will in respect of his interest in the joint family properties and had executed a will, still his right was only a coparcenary interest in the joint family properties and hence passed on his death only under in the joint family properties and hence passed on his death only under s. 7 with the result that s. 39(3) became applicable and that consequently in determining the value of his share in the joint family properties, the value of the entire dwelling house must be excluded. He, accordingly determined the value of the lineal descendants share in the joint family properties at Rs. 64,129.

5. Aggrieved by the order of the Appellate Controller, the Revenue preferred an appeal to the Income Tax Appellate Tribunal contending that the relief under s. 33(1)(n) could be allowed only in respect of the value of the deceased's share in the residential property and that in computing the value of the share of the lineal descendant in the joint family properties liable to be included under s. 34(1)(c) of the Act, exemption available under s. 33(1)(n) could not be granted and hence the value of the share of the lineal descendant in the joint family house should not have been deducted. The Tribunal, however, held that the value of the share of the lineal descendants should be computed only after excluding the value of their share in the family residential house and that the Appellate Controller was justified in directing that the value of the lineal descendants share in the joint

family property should be taken as Rs. 64,129, as against the value given by the Asst. Controller as Rs. 83,629. Aggrieved by the said order of

the Tribunal, the Revenue obtained a reference to this court on the question referred to above.

6. The question referred involves interpretation of s. 33(1)(n) and s. 39(3) of the Act. Section 33 is a provision for exemption from the charge of

estate duty, and s. 33(1)(n) exempts from payment of estate duty in respect of a house or part thereof exclusively used by the deceased for his

residence to the extent the principal value thereof does not exceed Rs. 1 lakh if such house is situate in a place with a population exceeding 10,000

and the full principal value thereof in any other case. Section 39(3) which provides the manner of estimating the principal value of the joint family

property of a Hindu family is as follows :

For the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or

Aliyasantana law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his

death, the provisions of this Act, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to

the deceased.

7. As per the above provision, for the purpose of estimating the principal value of the joint family property of a Hindu family governed by the

Mitakshara, Marumakkattayam or Aliyasantana law, in order to arrive at the share which would have been allotted to the deceased had a partition

taken place immediately before his death, the provisions of the Act, so far as may be, shall apply as they would have applied if the whole of the

joint family property had belonged to the deceased. In this case, it is not in dispute that the Hindu joint family of which the deceased was the karta

was governed by the Mitakshara law. Therefore, for the purpose of determining the value of the property that passed on the death of the

deceased, we have to determine the value of the share which would have been allotted to the deceased had there been a partition in the family at

the time of his death. In order to determine the value of his share, it is necessary to determine the principal value of the joint family property and

therefrom deduce the value of the share of the deceased which actually passed

on death. For that purpose, s. 39(3) provides that the entire joint family properties should be treated as that of the deceased. For the purpose of the determination of the principal value of the entire joint family property, we have to proceed on the basis, in view of s. 39(3), that the entire properties belonged to the deceased. Therefore, in determining the principal value of the entire properties of the joint family, the exemption provision contained in s. 33(1)(n) has to be applied. Though the residential house belonged to the joint family and was used for the residence of all the members of the joint family, for the purpose of determining the principal value of all the properties of the joint family, the house should be deemed to belong to the deceased and the exemption provision has to be applied. Section 33(1)(n) gives an exemption of Rs. 1,00,000 if the house is situate in a place where the population is more than 10,000, or of the value of the entire house in any other case. In this case, the value of the house has been found by the Asst. Controller to be Rs. 39,000. In view of s. 33(1)(n), the entire sum of Rs. 39,000, being the value of the residential house, will stand exempted and if cannot be included in the principal value of the joint family properties. Here the deceased's half share in the house has been exempted but the half share belongings to the lineal descendant has not been exempted and the accountable person is aggrieved by the inclusion of his half share in the house for rate purposes.

8. The question of valuation of the deceased's share while he died as a member of the joint family came up for consideration before this court as well as before other High Courts and some what differing opinions have been expressed. In *CONTROLLER OF ESTATE DUTY, MADRAS*

Vs. ESTATE OF LATE R. KRISHNAMACHARI., , this court laid down that for the purposes of determining the value of the share of the deceased member of a joint Hindu family and for the purpose of imposing estate duty on his estate after his death, the total value of the properties valuing each of them separately must first be determined under s. 39(3) and thereafter the properties to the extent to which exemption has been given under s. 33(1)(n) will have to be taken out and then the aggregate of the remaining must be divided as if at the time of death there was a partition and the share that would have fallen to the deceased determined and the share so determined will be the share on which duty can be

imposed under the Act and that if the deceased left behind lineal descendants, the extent of the shares of such lineal descendants has to be

aggregated to the share of the deceased in the property in accordance with s. 34(1)(c) and the rate applicable to such aggregate value of the estate

will have to be taken into account. However, after laying down the said proposition consistently with s. 39(3), the Bench has taken the view that

since the share of the deceased alone in the residential house passes on death, the exemption under s. 33(1)(n) should be limited to his interest if it

is more than one lakh of rupees. This view has been followed in *T. Sundaresa Mehta Vs. Controller of Estate Duty, and Controller of Estate Duty*

Vs. N.L.S.V. Lakshmanan Chettiar, wherein after referring to the mode of valuation of the deceased's share suggested in *CONTROLLER OF*

ESTATE DUTY, MADRAS Vs. ESTATE OF LATE R. KRISHNAMACHARI., the court has proceeded to say that the exemption provided

under s. 33(1)(n) should be allowed in respect of the dwelling house only to the extent of the share of the deceased in the joint family properties. In

Controller of Estate Duty Vs. Estate of Late Durga Prasad Beharilal (by accountable person and Others), the Andhra Pradesh High Court has

taken the view that in a case where the deceased was a karta of a joint Hindu family consisting of himself, his wife and three sons, the entire value

of Rs. 47,500 of the residential house should be exempted for purposes of estate duty in view of the legal fiction introduced in s. 39(3). In

Controller of Estate Duty, Mysore Vs. K. Nataraja, the Karnataka High Court has taken the view that the exclusion of the entire value of the

house at the stage of valuation under s. 39 is not called for, that the principal value of all the properties of the deceased should first be ascertained

in accordance with the rules contained in the Act including s. 39 and then the value of the items in respect of which estate duty is not payable under

ss. 25 to 29, 32 and 33 should be determined and, therefore, only the share of the deceased in the residential house belonging to the HUF is

exempt from estate duty under s. 33(1)(n) and for determining the rate of estate duty, the value of the share of the deceased in such house is to be

excluded from the value of the share of the deceased in such house is to be excluded from the value of the property passing on his death under s.

34(1)(a) but the value of the property passing on his death the deceased in the coparcenary property including the residential house has to be

aggregated under s. 34(1)(c) without any reference to any exemption under s. 33(1)(n) of the Act. Thus, the Karnataka High Court has proceeded

on the basis that the exemption under s. 33(1)(n) is to be given only after the valuation of the share of the deceased in the joint family properties is

determined but such exemption cannot be claimed by the lineal descendants when their interest is added to the principal value of the estate of the

deceased for purpose of aggregation for rate purposes while the Andhra Pradesh High Court in *Controller of Estate Duty Vs. Estate of Late Durga*

Prasad Beharilal (by accountable person and Others), , however, appears to have taken the view that the exemption provided in s. 33(1)(n) should

be in relation to the entire house property either for determination of the principal value of the estate of the deceased or for rate purposes.

9. We are of the view that if s. 39(3) is properly applied, there will be no question of exemption being given for the deceased's share alone in the

residential house and denying that benefit of exemption to the share of the lineal descendants as has been held in some of the decisions. Section

39(3) provides that if the deceased was member of a joint family, firstly, the principal value of the family properties as a whole should be

determined on the assumption that all the properties of the joint family belonged to the deceased, and the principal value of the deceased's share

has then to be determined again assuming as if a apartition had taken place in the family on the date of death of the deceased. The determination of

the principal value of the share of the deceased in the joint family automatically determines the share of the other members as also of the lineal

descendants. At the stage of determination of the principal value of the properties of the family as a whole, treating them as belonging to the

deceased, we have to give effect to the exemption provision contained in s. 33(1)(n). Since the Legislature has given a mandate to treat all the

properties of the family as belonging to the deceased, the exemption under s. 33(1)(n) should also be given on that basis. After giving exemption

under s. 33(1)(n) treating the deceased as the owner of the entire house, the principal value of the estate of the deceased will have to be separated

for the purpose of estate above in the principal value of the properties of the family will have to be determined and aggregated on to the principal

value of the estate of the deceased for rate purposes. Thus, if the exemption is given at the first stage of the determination of the properties of the

joint family as whole, the principal value of the share of the deceased as also those of the lineal descendants get automatically determined.

10. Take for example the case of a deceased who is one of the two coparceners in the joint family and the joint family owning residential house

worth about Rs. 1,50,000 and other properties worth about Rs. 2,50,000, By applying s. 39(3), we have to take all the properties of the joint family

as belonging to the deceased and apply the exemption provision contained in s. 33(1)(n). In that view, the principal value of the properties held by

the joint family will come to Rs. 4,00,000 minus Rs. 1,00,000 if the residential house is situated in a place where the population is above 10,000,

which is equal to Rs. 3,00,000. Thus, the principal value of the deceased's share assuming a partition of the joint family on the date of death of the

deceased, comes to half of Rs. 3,00,000, that is, Rs. 1,50,000. Since the exemption under s. 33(1)(n) had been granted at the stage of

determination of the principal value of all the properties of the joint family, the benefit of the exemption provision also goes to the lineal descendant

whose share is taken for rate purposes. This results in the shares of all the coparceners including that of the deceased being equal. If, on the other

hand, the deceased's share in the joint family properties ascertained first and the exemption under s. 33(1)(n) is then applied to the deceased's

share in the residential house, it will result in the shares getting shares of unequal value. In the example above given, since the deceased's share in

the joint family properties if a partition has taken place on the date of death of the deceased will be half of four lakhs of rupees, that is, two lakhs of

rupees and if exemption is to be given under s. 33(1)(n) to the deceased's half share alone in the residential house, the principal value of his share

in the joint family will come to two lakhs of rupees minus seventy five thousand rupees, that is, Rs. 1,25,000, while the lineal descendant's share

will be Rs. 2,00,000, because he will not be entitled to an exemption under s. 33(1)(n) as his share did not pass on the death of the deceased.

Thus, for rate purposes, the principal value of the deceased's share comes to Rs. 1,25,000 and that of the lineal descendant becomes to Rs.

2,00,000. This inequality will not arise, if, as already stated, s. 39(3) is properly given effect to, that is the exemption under s. 33(1)(n) is given at

the stage of determination of the principal value of the properties of the joint family in entirety and then apportioning the shares of all the

coparceners including that of the lineal descendants.

11. We are, therefore, of the view that Rs. 19,500 being the value of the accountable person's half share in the family residential house should

have been excluded even while computing the value of the deceased's share in the family properties. Therefore, the question is answered in the

affirmative and against the Revenue. There will, however, be no order as to costs.