

(1981) 08 GUJ CK 0032
In the Gujarat High Court
Case No : Estate Duty Reference No. 7 of 1979

Gunvantlal Keshavlal

APPELLANT

Vs

Controller of Estate Duty, Gujarat

RESPONDENT

Date of Decision : 13-08-1981

Acts Referred:

Estate Duty Act, 1953 — Section 33(1), 34(1), 44, 74

Citation : (1982) 27 CTR 95 : (1982) 134 ITR 533

Hon'ble Judges : R.C. Mankad, J;M.P. Thakkar, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; B.R. Shah, for the Respondent

Judgement

Mankad, J.—The Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") has, at the instance of the accountable person,

referred the following two questions to us for our opinion under s. 64(1) of the E.D. Act, 1953 (hereinafter referred to as "the Act"):

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in including Rs. 20,000 being the value of 1/4th share in the

self-occupied house of the HUF of which the deceased was a coparcener in the estate ?

2. Whether, in view of the facts and in the circumstances of the case, the Tribunal was right in holding that the estate duty payable was not liable to

be deducted from the total value of the estate ?

2. Out of these two questions one question, namely, question No. 2, is directly covered by a decision of this court in Shantaben Narottamdas

(A.P. of Late Narottamdas K. Shah) Vs. Controller of Estate Duty, Gujarat, . Following the said decision, this question, namely, question No. 2

shall have to be answered in the affirmative and against the accountable person.

3. So far as question No. 1 is concerned, it does not bring out the real issue in controversy between the parties. What was canvassed by the

accountable person before the Tribunal was that the value of the residential house of the HUF of which the deceased, Keshavlal Jamnadas, was a

coparcener, was to be excluded while computing the value of the interest of the lineal descendants of the deceased for rate purposes under s.

34(1)(c) of the Act. We, therefore, reframe the question as under:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that while computing the value of the interest of the

lineal descendants of the deceased in the property of the Hindu undivided family which is to be included in the dutiable estate for rate purpose u/s

34(1)(c) of the Act, the value of the house of the Hindu undivided family which was used for residence, could not be excluded ?

4. The deceased was a member of a Hindu undivided family (hereafter referred to as ""the HUF""). The HUF owned a house valued at Rs. 80,000

which was used for residence by the members of the HUF. According to the accountable person as the value of the house used for residence was

less than rupees one lakh it was not includible in the dutiable estate under s. 33(1)(n) of the Act. This exemption would be available while

computing the value of the interest of the lineal descendants of the deceased in the HUF property which is to be included in the dutiable estate for

rate purposes under s. 34(1)(c) of the Act. In other words, according to the accountable person, once the house is held to be exempt from

inclusion in the dutiable estate, its value or part thereof cannot be included in the dutiable estate for any purpose, not even while computing the

value of the interest of the lineal descendant in the property of the HUF which is includible in the dutiable estate for rate purposes under s. 34(1)

(c). We do not see how exemption in respect of the house or part thereof used by the deceased for residence, to the extent the principal value

whereof does not exceed rupees one lakh, has any relevance for the purpose of working out the value of the interest of the lineal descendants in

the HUF property for rate purposes under s. 34(1)(c). The deceased had an one-fourth interest in the house of the HUF. The value of such

interest, namely, Rs. 20,000 has been held to be exempt from payment of estate

duty under s. 33(1)(n). However, exemption under s. 33(1)(n)

has no relevance for the purpose of s. 34(1)(c). Section 34(1)(c), in so far as is relevant, reads as under:

34. (1) For the purpose of determining the rate of the estate duty to be paid on any property passing on the death of the deceased, - ...

(c) in the case of property so passing which consists of a coparcenary interest in the joint family property of a Hindu family governed by the

Mitakshara, Marumakkatayam or Aliyasantana law, also the interests in the joint family property of all the lineal descendants of the deceased

member;

shall be aggregated so as to form one estate and estate duty shall be levied thereon at the rate or rates applicable in respect of the principal value

thereof.

5. On a plain reading of the above provision, it is clear that the interest of all the lineal descendants of the deceased in the joint family property or

HUF property has to be aggregated so as to form one estate and estate duty has to be levied thereon at the rate or rates applicable in respect of

the principal value thereof. The above provision does not speak of any exemption in respect of a residential house for the purpose of working out

the value of the interest of the lineal descendants of the deceased. The entire HUF property has to be taken into account for the purpose of

working out the value of the interest of the lineal descendants of the deceased. We are unable to see how the exemption granted under s. 33(1)(n)

can be projected into s. 34(1)(c). Exemption from payment of estate duty under s. 33(1)(n) is in respect of a house or a part thereof used for

residence by the deceased to the extent the principal value thereof does not exceed rupees one lakh. The purpose and object of the two

provisions, namely, s. 33(1)(n) and s. 34(1)(c) are different and distinct. They operate in altogether different spheres. One of the two concerns

itself with the question of identifying the "dutiable estate". The other operates in the sphere of identifying the "rate" at which the dutiable estate is to

be subjected to duty. These two need not be mixed up lest fusion should result in confusion and a resultantly fallacious conclusion. While s. 33(1)

(n) aims at the exclusion of residential house valued at less than rupees one lakh, the object of s. 34(1)(c) is to apply a higher rate of estate duty by

the inclusion of the value of the interest of the lineal descendants of the deceased in the HUF property. What is exempt under s. 33(1)(n) is the property of the deceased. What is included in the dutiable estate for rate purpose under s. 34(1)(c) is not that property which is exempt from payment of estate duty under s. 33(1)(n) but the value of the interest of the lineal descendants of the deceased in the HUF property. Under s. 33(1)(n) what is exempt is not the value of the entire residential house of the HUF but only the value of the interest which the deceased had in the house. Therefore, that which is exempt under s. 33(1)(n) is not included in the dutiable estate under s. 34(1)(c). The line of argument adopted by the accountable person is fallacious and proceeds on a misconception and a misreading of the aforesaid two provisions of the Act. There is absolutely no warrant for the claim made by the accountable person that the entire value of the residential house is exempt ""for all purposes"" under s. 33(1)(n). In our opinion, the view taken by the Tribunal is correct and unexceptionable. We, therefore, answer the first question as reframed by us in the affirmative and against the accountable person.

6. Reference answered, accordingly, with no order as to costs.