
(1991) 12 CAL CK 0023
In the Calcutta High Court
Case No : Matter No. 1576 of 1986

Jai Kumar Karnani

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 04-12-1991

Acts Referred:

Estate Duty Act, 1953 — Section 34(1), 44, 5, 74
Land Acquisition Act, 1894 — Section 25(1)
Wealth Tax Act, 1957 — Section 2(m)

Citation : (1993) 204 ITR 118

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference u/s 64(1) of the Estate Duty Act, 1953, at the instance of the assessee, the following four questions have been referred to this court :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that-

(a) the disputed claims as on the date of death, for additional compensation in respect of lands at Ramrajatala, Sodepur, Panihati and Sukchar, belonging to the joint Hindu family of the deceased, which vested in the Government of India under the Land Acquisition Act, 1894, during the lifetime of the deceased, was property passing on the death of the deceased, and its estimated value was includible in the principal value of the estate of the deceased under the provisions of the Estate Duty Act, 1953, even when such additional compensation had neither been determined nor paid ;

(b) the value of such disputed claim for additional compensation, although neither determined nor paid, on the date of death was not nil ;

(c) the assessee was not entitled to any further deduction apart from discounting to cover the risk and hazards of litigation including the possibility of the claim

being altogether rejected in respect of lands at Ramrajatala, Sodepur and Panihati even though, on the date Of death, such additional compensation had neither been determined nor paid and there was no certainty whether it was at all payable ;

(d) the deduction of one-third granted in respect of Sukchar land to cover the risk of hazards and litigation, etc., was quite fair and reasonable.

2. Whether, on the facts and in the circumstances of the case and on an interpretation of the agreement with the Port Trust, the Income Tax Appellate Tribunal was justified in law in holding that the monthly tenancy held by the deceased in the property at Chintamani Dey Ghat Road belonging to the Port Trust should be included as property passing on death and liable to duty under the Estate Duty Act, 1953 ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the estate duty payable was not liable to be deducted from the total value of the estate and/or otherwise considered as a charge, hazard, clog or jeopardy in determining the principal value of the estate chargeable to estate duty ?

4. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that-

(a) the ground relating to the claims of the accountable person as to non-inclusion of the lineal descendants' share in the ancestral property owned by the Mitakshara joint Hindu family in the assessment u/s 34(1)(c) of the Estate Duty Act, 1953, does not arise out of the order of the Controller of Estate Duty (Appeals) ?

(b) the share of the lineal descendants in the ancestral property owned by the Mitakshara joint Hindu family should be included in the assessment u/s 34(1)(c) read with Section 5 of the Estate Duty Act, 1953 ?"

2. The facts from which the first question arises are as under :

In determining the principal value of the dutiable estate passing on death, the additional compensation received for acquisition of lands under the Land Acquisition Act at Ramrajatala, Sodepur, Panihati and Sukchar, belonging to the deceased was included in the estate.

3. The property at Ramrajatala vested in the Government of India on and from May 31, 1943, by virtue of acquisition under the Land Acquisition Act. The Collector awarded as compensation a sum of Rs. 2,35,214 which the deceased's Hindu undivided family had received under protest. On appeal, the District Judge awarded an additional compensation of Rs. 11,89,232 by an order dated September 18, 1971. The Government of India, however, preferred an appeal against the award before this court and it is still pending. Meanwhile, the said award and decree of the District Judge was attached by some creditors and was

sold in public auction for Rs. 7,50,000 in May, 1972. The deceased, however, died on July 8, 1966, i.e., six years before the award of the District Judge was passed.

4. The contention of the accountable person before the Assessing Officer was that the additional compensation is not includible in the principal value of the estate of the deceased as there was no right to receive additional compensation, existent on the date of death of the deceased. Even if the same could be part of the dutiable estate, such right to additional compensation should be valued at 50 per cent. of the additional compensation awarded in view of the discount factor for the risk and hazard of litigation.

5. Before the Appellate Controller of Estate Duty, the same contentions were pressed, but the Appellate Controller pointed out that the right to receive the additional compensation for Ramrajatala land was sold in a public auction and, therefore, the discounted present value of the right as on the date of death of the deceased would have to be determined and he worked out such discounted value at Rs. 5,28,720 on the date of death, adopting the rate of interest at six per cent., the statutory rate under the Land Acquisition Act. He allowed a further discount of one-third of the said discounted present value determined by him as cover for the risk and hazard of litigation. So the value of the right on the date of death of the deceased came down to Rs. 3,52,480.

6. Similarly, the land at Sodepur vested in the Government of India on February 15, 1957, and the compensation was received by the Hindu undivided family, but the additional compensation of Rs. 1,40,646 was awarded by the District Judge by an order passed on September 25, 1973, and decreed on January 7, 1974.

7. Likewise, Sukchar land vested in the Government of India on September 27, 1956, and the additional compensation of Rs. 10,220 was awarded in 1974 and decreed in 1975. The same is pending in appeal preferred by the Government of India.

8. The contentions of the accountable person before the Appellate Controller in respect of additional compensation for the Sodepur, Panihati and Sukchar lands are similar to those for the Ramrajatala land. The Appellate Controller, for all these lands, allowed two discounts as in the case of the Ramrajatala land. He first determined the discounted present value of the additional award as on the date of death by adopting six per cent. as the rate of interest and a further deduction of one-third from such discounted value to cover the risk and hazard of litigation. Thus, the additional compensation of Rs. 1,40,616 for the Sodepur-Panihati land and Rs. 16,200 for the Sukchar land was valued at final amounts of Rs. 97,742 and Rs. 6,692, respectively.

9. The matter went to the Tribunal. The Tribunal took the view that the Appellate Controller should not have allowed a further discount to the extent of one-third of the discounted present value of the right to receive additional compensation as on the date of death because the decree for the Ramrajatala land was bought by a party in the market at Rs. 7,50,000. Therefore, the buyer of the decree,

according to the Tribunal, in his bid, must have taken the discount factor on account of risk and hazard of litigation. The Tribunal, therefore, decided that there was no scope for a second discount to the extent of one-third of the reduced value as allowed by the Appellate Controller in respect of the property at Ramrajatala. The direction of the first appellate authority in respect of the Sukchar land was, however, found by the Tribunal as reasonable and justifiable.

10. The first question is whether the right to receive additional compensation for the land acquired during the lifetime of the deceased was property passing on the death of the deceased and its estimated value includible in the principal value of the estate of the deceased under the provisions of the Estate Duty Act, 1953, even when such additional compensation had neither been determined nor paid during the lifetime of the deceased. The answer is to be found in the decision of the Supreme Court in *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, . There, the Supreme Court held that, where lands are compulsorily acquired under the Land Acquisition Act, there are no two rights, one a right to receive compensation and the other a right to receive extra or further compensation ; the claimant has only one right which is to receive compensation for the lands at the market value on the date of the relevant notification, and that the right to receive compensation that had accrued to the deceased is property and would pass on the death of the deceased. Therefore, the question whether the right to receive additional compensation for acquisition of property is property or not has become purely academic. There cannot be any dispute that a valuable right that accrued to the deceased during his lifetime would also be property that would pass on death. The only question is how the valuation of such right should be determined. The Supreme Court in *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, laid down a very broad guideline to the effect that the estimated value of the right to receive the compensation can never be below the figure quantified by the Collector because, u/s 25(1) of the Land Acquisition Act, the civil court cannot award any amount below that awarded by the Collector ; the estimated value can be equal to the Collector's award or more but it can never be equal to the tall claim made by the claimant nor equal to the quantum actually awarded by the civil court after the date of death because the risk and hazard of litigation would be a detracting factor while arriving at a reasonable and proper value of the property as on the date of the deceased's death.

11. The Supreme Court has not fixed any cut and dried formula for discounting the actual amount of additional compensation received after death because the factors that should weigh with the authority quantifying the discount are diverse and cannot be alike for all cases.

12. At any rate, the said decision is a clear pointer that the right to receive additional compensation is property that passes on the death of the deceased. Question No. 1(a) is, therefore, answered in the affirmative and against the

assessee.

13. We are left with the remaining branches of question No. 1, viz., 1(b), 1(c) and 1(d). The question in 1(b), viz., whether the additional compensation should be nil is to our mind an idle question. Learned counsel for the accountable person before the authorities below as also before us relied upon the decision of the Andhra Pradesh High Court in Commissioner of Wealth-tax Vs. G.M. Omar Khan, , Going by the facts of the case, the Andhra Pradesh High Court upheld the valuation made by the Tribunal of such right for the purpose of wealth-tax at 50 per cent. of the amount of additional compensation awarded. Here no materials have been brought either before the lower authorities or before us to show that the discount factor in the case is so heavy as to reduce the discounted value of the right to nil. We, therefore, answer question No. 1(b) in the affirmative and against the assessee.

14. We shall now take up questions Nos. 1(c) and 1(d) together. The Tribunal, in the case of additional compensation for the Ramrajatala land, has declined to allow the second discount at the rate of 33 1/3 per cent. as according to the Tribunal, the discount for the risk and hazard of litigation was already taken into account by the purchaser of the decree in public auction while offering the price. So, further discount for risk and hazard was considered superfluous and was negatived. We, however, fail to see the matter in the light the Tribunal viewed it. The auction took place on May 19, 1972, while the deceased died on July 8, 1966. Therefore, the uncertainty and the hazard six years ago would be far greater than they were on the date of auction. Secondly, on the date of death, no additional compensation was at all fixed but, on the date of auction, there was something material and tangible to guide the auction-purchaser, the decree of the court awaiting execution. Doubtless, the degree of the element of risk was heavier on the date of death than on the date of auction. Therefore, we hold that the further deduction of one-third granted by the Appellate Controller stands to reason. The question whether a higher percentage as discount would be fairer is a question of fact-finding. We, therefore, answer questions Nos. 1(c) and 1(d) by saying that the Tribunal should have allowed further deduction of one-third as granted by the Appellate Controller.

15. The second question relates to the includibility of monthly tenancy as property passing on death and its liability to duty. Shortly stated, the facts are that, in the assessment order, the interest of the assessee in the property at Chintamani Dey Ghat Road was included in the principal value of the estate. The contention of the accountable person was that the said property was on a monthly tenancy basis obtained from the Commissioners of Port, Calcutta. In the circumstances, it was urged that there was no question of the assessee having any right in such property for the purpose of estate duty. The Assistant Controller rejected the contention. The matter was taken up before the Controller of Estate Duty (Appeals) who noted that the property was initially taken for lease for two months and thereafter the Hindu undivided family continued to occupy the land

on payment of monthly rent and an annual gross rent of Rs. 6,787 was received and the net value was stated to be at Rs. 2,229 only. The first appellate authority did not accept the contention of the accountable person. He found that Rs. 18,000 on rental method was taken for wealth-tax purpose for the assessment year 1967-68. He directed that this value should be adopted in place of Rs. 34,900 adopted in the assessment order.

16. The accountable person agitated the matter before the Tribunal. The Tribunal, upon hearing both sides, upheld the inclusion of the value of the interest of the deceased in the said property under monthly tenancy and also valued it at Rs. 18,000.

17. Tenancy is an interest in property and the interest is also heritable as held by the Supreme Court in *H.C. Pandey Vs. G.C. Paul*, . But, whether such interest has any value depends on the terms of the agreement of tenancy, specially on the fact, whether or not the tenancy agreement confers on the tenant the right to sublet or assign the tenancy to a third party. Where the tenancy consists in the bare right to occupy and use the tenancy property on payment of rent but without the right to transfer, assign or sublet it, such interest cannot have any value. It is a bare interest restricted in its enjoyment by the tenants and there cannot be any willing buyer because the purchase in the absence of the tenant's right to transfer shall culminate in the termination of the interest by virtue of Section 13(1) of the West Bengal Premises Tenancy Act, 1956.

18. The answer to the question is, therefore, wholly dependent on the terms of the agreement for tenancy. The property had been sublet, whether such subletting was lawful and authorised needs to be determined. Unfortunately, the Tribunal has arrived at its conclusion without looking into the agreement or other vital aspects. We are unable to come to any opinion as to the includibility of the interest of the deceased in the tenanted property in the absence of the said agreement. It is not, therefore, possible to answer the second question. We, therefore, decline to answer the question and the matter is remanded to the Tribunal so that it can examine the matter and decide afresh in accordance with law.

19. The third question relates to the assessee's claim for deduction in respect of the estate duty liability in determining the principal value of the estate of the deceased. It was argued by learned counsel for the assessee that the estate duty is a liability embedded in the estate by reason of the said duty being the first charge on the property u/s 74 of the Estate Duty Act. It was alternatively argued that the estate duty liability, as an ingrained element of the estate, should be considered as a hazard or jeopardy having a depressing or detracting effect on the value of the estate adversely influencing a willing buyer. Therefore, in framing a proper valuation of the estate, one should take into account the estate duty liability as an encumbrance calling for a deduction. In this connection, reliance was placed on two decisions of the Supreme Court in *Commissioner of Wealth Tax, Bihar, Patna Vs. Maharaja Kumar Kamal Singh*, and *Commissioner of*

Wealth Tax, Patna Vs. Raghubar Narain Singh, . The thrust of the argument of learned counsel for the assessee was on that part of the ratio decided in those two cases of the Supreme Court which stated that the possibility of deduction of the tax dues of the assessee from the compensation receivable for compulsory acquisition by the State must be taken as a hindrance or a factor going to the diminution of the value of the asset. Those decisions were rendered in the context of the method of valuing the right to compensation as an asset for the purpose of inclusion in the net wealth of an assessee for the purpose of taxation under the Wealth-tax Act ; 1957. Apparently, the argument appears to be good enough to strike home but a closer look into the scheme of the Estate Duty Act rules out such decisions as supporting the assessee's claim of estate duty itself as a deduction from the principal value of the estate exigible to duty. In Commissioner of Wealth Tax, Patna Vs. Raghubar Narain Singh, , the question was of valuation of a civil decree obtained by the assessee. There the Supreme Court held that the full decretal amount as appearing in the assessee's books cannot be taken as the actual fair market value because the hazards of execution operate as a disincentive to a willing purchaser depressing the price in the open market on the valuation date. Learned counsel was barking up the wrong tree. Those decisions do not advance the assessee's case because there the question relates to discounting a particular type of property while evaluating its fair market value. It is now well-settled that, while valuing any asset under the Estate Duty Act, discounts have to be provided for hazards or hindrances. This principle is not in conflict with the principle of valuation embodied in Section 36 of the Estate Duty Act. As a matter of fact, in the assessee's case, with regard to the valuation of the additional compensation for properties compulsorily acquired, the plea for discount had been urged not without success and the principle as enunciated in Commissioner of Wealth Tax, Patna Vs. Raghubar Narain Singh, has been adopted. The Supreme Court in Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, , propounded a similar principle under the Estate Duty Act. Therefore, Commissioner of Wealth Tax, Patna Vs. Raghubar Narain Singh, offers no new light. Commissioner of Wealth Tax, Bihar, Patna Vs. Maharaja Kumar Kamal Singh, lays down that, where the assessee has incurred tax liability or is likely to incur tax liability attributable to the asset, the estimate of such liability should go into the estimation of the value of the asset. The crucial aspect on the facts in that case is that the decision refers to the need for a discount for the possibility of tax dues incurred by the assessee and holds that it is necessary to take into account a fair estimate of such possibility before a proper estimate of the value of the assessed money receivable by the assessee is prepared. The decision was delivered in the light of Section 7 read with Section 2(m) of the Wealth-tax Act, 1957. For the charge of wealth-tax, what is necessary is first to ascertain the items of property falling within the definition of Section 2(e) as assets. Then comes Section 7, a machinery for valuing such assets ; after such assets are valued, the aggregate value of all assets as on the valuation date is to be reduced by the debts referred to in Section 2(m)(ii) and 2(m)(iii). The ultimate

product is the net wealth. Under the Wealth-tax Act, the amount of tax debt including the wealth-tax itself under the direct taxes law as on the valuation date are allowable as deduction as debt u/s 2(m)(iii) of the Wealth-tax Act. But such is not the position under the Estate Duty Act. It is only the debts of the type specified in Section 44 of the Estate Duty Act that are deductible. The estate duty is not a debt deductible from the principal value of the estate.

20. In our opinion, the aforesaid decisions of the Supreme Court relied upon in the context of valuation are under the Wealth-tax Act, and do not throw any light on the question of admissibility of estate duty as a debt to be deducted from the principal value of the estate. In fact, the discounting factor for hazards or demerits in valuation of assets is always taken into account under the Estate Duty Act. The aforesaid decisions of the Supreme Court relate only to the question of discounting the valuation of a property for any affectation of the property for any cause whatsoever detracting from its market value. It is not the case of the assessee that any liability that was non-existent in that it had not been incurred by the deceased during his lifetime is to be deducted before determining the exigible duty according to the provisions of the Estate Duty Act. In the light of the provisions of Section 44, it cannot be said that the estate duty exigible by itself is a deduction contemplated by Section 44 which is the Section that authorises deduction for debts and encumbrances. In our view, the provisions of Section 44 make it clear that the allowance of anything as debt or encumbrance is limited to that for which the deceased or his property was liable on his death as opposed to liability incurred by the accountable person. Similarly, the word "encumbrances" is defined to include mortgages and terminable charges. The definition is not thus exhaustive. In its wider connotation, it may mean encumbrances or hindrances other than mortgages or charges. But the question here is whether the estate duty is a debt or encumbrance for which the deceased or his property was liable until his death. If the liability is incurred by the accountable person only by reason of the death of the deceased, the estate duty cannot be a debt or encumbrance deductible u/s 44. Section 5, the charging section shows that the estate duty as a liability appears only on the holder dying and not before. Therefore, it does not come within the ambit of Section 44. True, the estate duty is a first charge on the property liable thereto by virtue of the provisions of Section 74, but that does not transform it into a debt or encumbrance during the lifetime of the deceased because of its not being existent until the death of the person. As a matter of fact, no encumbrance or debt is liable to be deducted from the principal value of the estate except such encumbrance or debt as is created by the deceased before his death. All the High Courts have uniformly held that estate duty was payable u/s 5(1) on the principal value of the estate as determined in accordance with the provisions of the Act. Neither the said section nor any other provision says that estate duty was payable on the principal value of the estate as reduced by the estate duty payable thereon and the duty would, therefore, not be a deductible debt as has been urged by the assessee. The view that we have taken is supported by the

decisions of the Karnataka, Madras, Kerala, Andhra Pradesh, Gujarat, Allahabad and Gauhati High Courts in K. Bhoomiamma and Another Vs. Controller of Estate Duty, Mysore, Bangalore, ; V. Pramila Vs. Controller of Estate Duty, Bangalore, ; in In Re: Mrs. Constance Lubeck, ; Keerampalli Sivasankaran Vs. Assistant Controller of Estate Duty and Another, ; Controller of Estate Duty Vs. Estate of Late Omprakash Bajaj, ; Controller of Estate Duty Vs. Smt. P. Leelavathamma, ; Shantaben Narottamdas (A.P. of Late Narottamdas K. Shah) Vs. Controller of Estate Duty, Gujarat, ; Gunvantlal Keshavlal Vs. Controller of Estate Duty, Gujarat, ; Jeanie D. Karaka Vs. Controller of Estate Duty, Gujarat, ; Maharani Raj Laxmi Kumari Devi Vs. Controller of Estate Duty, ; in Bhawani Shankar Bagaria Vs. Asst. Controller of Estate Duty,

21. The issue, however, now stands concluded by the decision of the Supreme Court in P. Leelavathamma (Smt) Vs. Controller of Estate Duty, Andhra Pradesh, Hyderabad, . The said decision has approved all the decisions of the High Courts cited by us in support of the principle that estate duty falling upon property passing on the death of the deceased is not deductible in computing the principal value of the estate.

22. The third question is, therefore, answered in the affirmative and against the assessee.

23. The fourth question is two-pronged. It, however, arises from the plea for non-inclusion of the lineal descendants' share in ancestral property governed by the Mitakshara school of Hindu law. The first aspect of the question is whether the Tribunal was justified in law in holding that this particular issue contesting the inclusion of lineal descendants' share did not arise out of the order of the Controller of Estate Duty (Appeals). This part of the question presents no difficulty because we have perused the order of the Appellate Controller. We find in paragraph 12 of his order that this particular ground against inclusion of lineal descendants' share was urged before the first appellate authority by way of an additional ground. Since the ground raises only a question of law not involving any fresh evidence or investigation, the same had been admitted by the first appellate authority, but the plea was rejected on the ground that it is beyond the competence of the appellate authority functioning as a quasi-judicial authority under the statute itself to pronounce any provisions of the statute ultra vires the Constitution. The accountable person wanted the Controller of Estate Duty (Appeals) to hold against the inclusion of the shares of the lineal descendants following the decision of the Madras High Court in the case, viz., V. Devaki Ammal Vs. Assistant Controller of Estate Duty, , pronouncing the provision of Section 34(1)(c) as discriminatory and violative of the equality clause, viz., Article 14 of the Constitution. The plea was not, however, accepted by the said Controller (Appeals). It is not, therefore, correct to say that the question of inclusion or non-inclusion of the shares of the lineal descendants does not arise from the order of the first appellate authority. It does arise.

24. It is well-settled that the High Court, in its advisory capacity in a reference,

cannot determine the question of vires of the legislation by Parliament as the same is not justiciable by the Tribunal. But the question whether the shares of the lineal descendants in the ancestral property owned by a Mitakshara joint Hindu family should be included in the principal value of the estate for aggregation u/s 34(1)(c) remains to be determined.

25. We have not been able to persuade ourselves to follow the Madras decision in *V. Devaki Ammal Vs. Assistant Controller of Estate Duty*, because we are not concerned with the constitutional validity of the said provision. The provision as it stands is unambiguous in its mandate that the shares of the lineal descendants in the ancestral property should be included for the purpose of aggregation. The Tribunal was correct in declining to follow the said decision of the Madras High Court. The Bombay High Court has, however, held in *Commissioner of Income Tax Vidarbha Vs. Godavaridevi Saraf*, that, if any section is declared ultra vires by a competent High Court in the country, an authority like an Income Tax Appellate Tribunal, acting anywhere in the country, has to respect the law laid down by the High Court, though of a different State, so long as there is no contrary decision of any other High Court on that question. The crucial aspect of that decision is that any High Court within the country striking down any statute or part of a statute shall be binding on a Tribunal even acting beyond the jurisdiction of that High Court provided that decision is the sole decision as regards the vires of the provisions. But Section 34(1)(c) has been assailed on the ground of constitutional validity before various High Courts at various points of time, but the decisions are not at one with the Madras decision in *V. Devaki Ammal Vs. Assistant Controller of Estate Duty*, . The Madras High Court itself, in *Pl. S. Rm. Ramanathan Chettiar Vs. Assistant Controller of Estate Duty*, , had earlier held that this provision, far from discriminating between the members of a Mitakshara family and a Dayabhaga family in the matter of application of rates of taxation, avoids discrimination. In the case of a Dayabhaga family, the share of the deceased is crystallised while it is not so in the case of a Mitakshara family. In the case of death of a member of a Dayabhaga family, no question of aggregation arises at all, for the member of such family dies possessed, by reason of his personal law, of a defined share in the assets of the family unlike a deceased member belonging to a joint family governed by the Mitakshara law. Therefore, the measure like the one embedded in Section 34(1)(c) laying down the principle of aggregation is a measure not of discrimination but of avoiding discrimination. The earlier Madras view upholding the vires of Section 34(1)(c) has been followed in *N. Krishna Prasad Vs. Assistant Controller of Estate Duty*, , *Smt. Komanduri Seshamma Vs. Appellate Controller of Estate Duty*, , *Hari Ram Vs. Assistant Controller of Estate Duty-cum-Income Tax and Others*, *Sirigeri Thippamma Vs. Appellate Controller of Estate Duty and Others*, and *R. C. VAISH Vs. CONTROLLER OF ESTATE DUTY*, . There is a host of decisions delivered by the other High Courts upholding the vires of Section 34(1)(c). Therefore, the question of vires of Section 34(1)(c) is a question on which there is a cleavage of judicial opinion. The Madras High Court itself is of two opinions on the issue.

Therefore, the principle laid down by the Bombay High Court in Commissioner of Income Tax Vidarbha Vs. Godavaridevi Saraf, cannot operate and bind the Tribunal compelling it to ignore the provision of Section 34(1)(c). The minority Madras view in V. Devaki Ammal Vs. Assistant Controller of Estate Duty, is of no consequence.

26. On the other hand, on the merits, the includibility of the value of the share of the lineal descendants in dutiable estate for rate purposes has been upheld by umpteen number of cases, namely, Controller of Estate Duty, Mysore Vs. K. Nataraja, , Income Tax Appellate Tribunal Vs. Madan Mohan, Controller of Estate Duty Vs. Smt. Andal Thayaramma, , Maharani Raj Laxmi Kumari Devi Vs. Controller of Estate Duty, , Ramniklal J. Daftary Vs. Controller of Estate Duty, Gujarat, , R. C. VAISH Vs. CONTROLLER OF ESTATE DUTY., , C. Vanajakshi Venkata Rao and Another Vs. Controller of Estate Duty, , Gunvantlal Keshavlal Vs. Controller of Estate Duty, Gujarat, , Smt. Gunvantibai Vs. Controller of Estate Duty, , etc.

27. Therefore, on the merits, the question has to be answered in the affirmative and against the assessee (accountable person). We, therefore, answer question No. 4(a) in the negative and question No. 4(b) in the affirmative.

28. There will be no order as to costs.

Shyamal Kumar Sen, J.

29. I agree.