
(1962) 11 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Estate Duty Reference No. 1 of 1960

KANWAR SARDARI LAL CHOPRA

APPELLANT

Vs

CONTROLLER OF ESTATE DUTY, DELHI.

RESPONDENT

Date of Decision : 14-11-1962

Acts Referred:

Estate Duty Act, 1953 — Section 2, 39, 64

Citation : (1963) 49 ITR 123

Hon'ble Judges : Falshaw, C.J;S. S. Daulat, J

Bench : Full Bench

Judgement

FALSHAW C.J. - This case has been referred to this court by the Central Board of Revenue under the provisions of section 64 of the Estate Duty Act of 1953.

The case arises out of the assessment to estate duty of the estate of Kanway Haveli Shah Chopra who died on the 6th of October, 1954. The accountable person was the only brother of the deceased Kanwar Sardhari Lal Chopra, the two of them forming a joint Hindu family. He submitted a return on the 22nd April, 1955, in which he showed the valuation of the deceaseds interest in the joint family property at Rs. 22,09,376. However, by his order dated the 31st of October, 1956, the Controller of Estate Duty valued the joint family estate at Rs. 62,24,215 and, consequently, the half share of the deceased at Rs. 31,12,107, to which he added Rs. 2,00,000 as being the individual property of the deceased representing the amount of compensation receivable under the Displaced Persons (Compensation & Rehabilitation) Act of 1954, in respect of property left in Pakistan on the basis of verified claims registered in the name of the deceased.

The accountable person filed an appeal before the Central Board of Revenue. This appeal after being twice adjourned at the instance of the appellant was finally heard ex parte. It was accepted by the order of the Board dated the 20th of November 1957, only to the extent that the estate was reduced by Rs. 3,000.

On the application of the accountable person the following questions have been

formulated and referred to this court :

"1. Whether, on the facts and in the circumstances of the case, the share of the deceased in the joint family property of the Hindu undivided family should be taken as one-half or one-third only, for the purpose of estate duty assessment ?

2. Whether, on the facts and in the circumstances of the case, the finding that the sterling securities and bank balances valued at Rs. 17,60,792 formed part of the joint family assets was correct in law ?

3. Whether, on the facts and in the circumstances of the case, the compensation payable under the Displaced Persons (Compensation & Rehabilitation), Act 1954 (44 of 1954) is liable to estate duty ?

4. Whether having in view the provisions of section 3 of the Central Board of Revenue Act, 1924 (Act No. IV of 1924). and rules 4 and 5 of the Central Board of Revenue (Regulation of Transaction of Business) Rules, 1955, a single member of the Central Board of Revenue can exercise on behalf of the Board all or any of the functions assigned to the Board under the Estate Duty Act, 1953 (Act No. 34 of 1953) ?

5. Whether, on the facts and in the circumstances of the case, the notice of the hearing dated 2nd November, 1957, was validly served ?"

The points embodied in the 4th and 5th of these questions, which relate to the validity of the decision of the appeal by a single member exercising the powers of the Central Board of Revenue and the question whether the appeal was properly decided in the absence of the appellant who was reported to have refused to accept a notice sent by registered post informing him of the date of the hearing of the appeal, have now been abandoned by the learned counsel for the petitioner and so both questions Nos. (4) and (5) are to be answered in the affirmative.

As regards question No. (3), in *Mural Singh v. Controller of Estate Duty Delhi*, it had been by Grover J. and myself that in the case of a person who died before the coming into force of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (44 of 1954) (as in the present case), the compensation which would become payable under the Displaced Persons (Compensations & Rehabilitation) Act for a claim verified under the Displaced Persons (Claims) Act, 1950 (45 of 1950), was not property within the meaning of section 2(15) of the Estate Duty Act, 1953. It is stated by the learned counsel for the Board that this decision, which has not been challenged by any appeal filed by the Board in the Supreme Court, stands good, and, therefore, the third question propounded is to be answered in the negative.

This leaves the subject-matter of the first two questions. The first of these can be easily disposed of. It is conceded that both the original assessment and the appeal were decided on the undisputed premise that each of the brothers was the owner of one-half share in the joint family property and it was only at the

time when the reference to this court was sought that the claim was made by the accountable person that in fact there were shareholders in the estate, namely, the two brothers and their mother, who was still alive. This was apparently on the basis of the provisions of the Hindu Succession Act, but this Act only came into force in the year 1956 and so could not affect the state of affairs which existed on the date of the death of the deceased in October, 1954.

The relevant provision of law is contained in section 39(1) of the Estate Duty Act, which reads :

"39. (1) The value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara School of Hindu law which ceases on the death of a member thereof, shall be the principle value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death. ?"

It is not now in dispute that if there had been a partition immediately before the death of the deceased in this case, each of the brothers would have been entitled to one-half share subject only to some provision for residence and maintenance for their mother, on the financial aspect of which there is no evidence at all in the present case. Indeed there could not be, since, as I have said, the case was decided on the basis that each of the brothers was entitled to one-half of the estate. The provisions of section 64 of the Estate Duty Act are almost identical with those of section 66 of the Income Tax Act, and so presumably the same principles apply, and it is now settled that a reference can only be made to the High Court on a point of law which arises out of the order of the appellate authority, in this case the Central Board of Revenue. Since this point was raised for the first time at a later stage, it obviously could not properly be referred to this court at all, and the answer to question No. (1) must be that the share of the deceased in the joint family property was one-half.

There now only remains the second question. This refers to some 3% War Stock, 1955-59, of the face value of Pounds 122,450-9-6 of which the market value on the 6th of October, 1954, was Pounds 123,828-0-0 or Rs. 16,51,040, a sum of Pounds 8,026-8-0 equivalent to Rs. 1,07,019 lying in a current account as on the 6th of October, 1954, with the Grindlays Bank Ltd., London, and a sum of Pounds 205-0-5 equivalent to Rs. 2,733 similarly lying in an account with the National Bank of India Ltd., London. The total of these sums is Rs. 17,60,792.

Along with his return (called E. D. I.) the accountable person submitted a letter in which he explained that all these items were owned separately and independently by himself and, therefore, he had not included them in his return regarding the estate. He submitted a further letter dated the 5th of October, 1955, explaining his position further. The gist of his explanation is that in April, 1947, shortly before their migration to India from West Pakistan, there was a division of assets between himself and his brother as a result of which a sum of

Rs. 17,00,000 fell to his share. He immediately transferred this amount to England and after at first putting it in a fixed deposit account he invested it in the 3% British War Stock, 1955-59, in his own name, the sum lying in the accounts with Grindlays Bank and National Bank representing the interest which was paid on the War Stock.

It is, however, clear from the orders of the Controller of Estate Duty and the Central Board of Revenue that throughout, and even after the above letters were written, all these assets were being shown from year to year in Income Tax returns as the property of the Hindu undivided family. In his letter of the 4th of October, 1955, it appears that the accountable person sought to explain this inclusion of these assets in the Income Tax returns of the joint family as due to some decision of an Income Tax Tribunal in prepartition days. It does not appear, however, that any copy of the decision referred to was ever filed in these proceedings and it is impossible to say whether this explanation is at all plausible or not.

It appears that when the matter was being dealt with by the Controller of Estate Duty the accountable person was asked to produce some independent and conclusive evidence to show that these sums were his private property and not part of the joint family estate, but all he could furnish in this respect were his own and his mothers affidavits in which the allegation was made that the sum of Rs. 17,00,000 had been withdrawn from the joint account and bona fide gifted to him. As the authorities have pointed out in dealing with this matter this was inconsistent with the position previously adopted, which was that there has been some sort of partition of part of the estate between the two brothers. There is a vast difference between partitioning part of the estate and a gift by one brother to the other of a substantial part of the estate, and this change of position certainly cannot be said to have added to the strength of the case of the accountable person. It may be mentioned that, as has been pointed out in the order of the Board, these sums continued to be shown as estate of the joint Hindu family in Income Tax returns filed by the accountable person on behalf of the family on the 22nd of July, 1954, for the assessment year 1954-55, on the 20th of June, 1955, for the assessment year 1955-56, and on the 20th of July, 1956, for the assessment year 1956-57. In these circumstances, the Controller of Estate Duty and the Central Board of Revenue came to the conclusion that the accountable person had completely failed to prove that this very considerable amount was his own private property and not part of the joint Hindu family estate, as it had continued for so long to be shown in the Income Tax returns even after the death of the deceased.

On these facts I find it difficult to see how any question of law arises. An inference from certain facts has been drawn after a full consideration of all the relevant circumstances and I cannot see how any question of law arises out of the matter at all. A question of law might possibly be said to arise in a matter of this kind if certain facts existed which gave rise to an irresistible inference which

the Controller and the Board had failed or refused to draw, but such is far from being the case.

I thus consider that an affirmative answer must be given to the second of the questions referred to us. In view of the fact that the accountable person has succeeded on one point, I would leave the parties to bear their own costs.

S. S. DAULAT J. - I agree.

Order accordingly.