(1992) 01 GUJ CK 0011

In the Gujarat High Court

Case No : Estate Duty Reference No. 14 of 1978

Manigauri T. Panchal APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 28-01-1992

Acts Referred:

Estate Duty Act, 1953 — Section 2, 2(15), 27, 27(1), 35
Hindu Succession Act, 1956 — Section 6, 9

Citation : (1992) 63 TAXMAN 423

Hon'ble Judges : R.C. Mankad, Acting C.J.;S.B. Majmudar, J;R.K. Abichandani, J

Bench : Full Bench

Advocate : J.P. Shah, for the Appellant; Mihir J. Thakore and M.R. Bhatt, for the Respondent

Judgement

R.K. Abichandani, J.—The estate duty account was filed by the accountable person, Shri Babubhai Trikamlal Panchal on 18-3-1972 in respect of the estate of late Smt. Manigauri Trikamlal Panchal who died intestate on 19-3-1971. The assessment was completed by the second Assistant Controller, Ahmedabad, by his assessment order dated 17-8-1973 passed u/s 58(3) of the Estate Duty Act, 1953 (''the Act'') and the principal value of the estate liable to duty was computed at Rs. 1,89,862. The estate of the deceased consisted of interest in the partnership firm of Trikamlal & Co. ornaments, jewellery, etc. She had also interest in the HUF of Trikamlal Panchal which originally consisted of the deceased, her husband Trikamlal and son Babulal. The husband of the deceased had expired on 3-3-1964 leaving behind him the deceased and the son. The Assistant Controller held in his assessment order that in view of the provisions of section 6 of the Hindu Succession Act, 1956, one-third share of the deceased husband in the HUF had devolved by succession on Manigauri and her son equally. Thus, on the demise of her husband, Manigauri had one-half share in the one-third share of her husband in the joint family property, i.e., she had one-sixth share in the whole Joint family property. Computing the value of the joint family property, for arriving at the principal wealth of the estate of deceased

Manigauri, the Assistant Controller included the value of one-sixth share in the 9 items of movable property which admittedly at one point of time belonged to the said HUF. The accountable person preferred an appeal against the assessment order before the Appellate Controller. It was contended before the appellate authority that deceased Manigauri could not have claimed partition and no right or interest in the property could be said to have arisen in her favour until actual partition took place. The appellate authority, holding that the decision of the Gujarat High Court in Commissioner of Gift Tax, Gujarat I Vs. Taramati Hariprasad Vasa, on which reliance was sought to be placed by the appellant, had no relevance, found that the Assistant Controller had rightly included one-half share of the deceased in the one-third share of her husband (i.e., one-sixth share) in the joint properties of the HUF. The Appellate Controller by his order dated 18-3-1976 dismissed the appeal. The accountable person challenged the appellate order before the Tribunal, Ahmedabad. It was contended before the Tribunal that, Trikamlal had as per release deed dated 29-1-1964 already relinquished his share in the movable property in favour of the other two members of the HUF. namely, his wife Manigauri and their son Babulal and, therefore, one-third share of Trikamlal in the movable properties could not have passed on his death in favour of Manigauri and Babulal since at the time of Trikamlal''s death, the deceased had left no share in the movable property. The Tribunal found that, though the contention was raised by the accountable person before the Appellate Controller to the effect that one-sixth share in the said property of the three-member HUF did not pass on the death of Manigauri, there was no discussion on the said version of the accountable person in the appellate order and though there was release deed dated 29-1 -1964 showing that Trikamlal had relinquished his one-third share in the movable property of the HUF, that aspect was not considered in the assessment order. The Tribunal found no difficulty in holding that the one-third share of Trikamlal in the movable property of HUF stood released with effect from 29-1-1964 in view of the release deed and, therefore, when Trikamlal died on 3-3-1964, he had no share in the said movable property which could pass either to his wife or to his son. The Tribunal, however, found that this position did not help the accountable person in the present case since after the release of one-third share of Trikamlal in the movable property of the HUF, the entire movable property necessarily came to be vested in Manigauri and son Babulal and though there was no subsequent partition between these two persons, they had a defined one-half undivided share In the said movable property and, therefore, on death of Manigauri, it was not only one-sixth share but one-half share in the movable property that had passed. Therefore, the assessment order had not worked to the disadvantage of the accountable person when only one-sixth share in the movable property of the HUF was included for computing the principal wealth of deceased Manigauri. The Tribunal, therefore, dismissed the appeal of the accountable person. In the above background, the Tribunal has referred to the High Court for its opinion, the following two questions at the instance of the accountable person:--

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right In law In holding that one-half share in the movable property of the HUF passed on the death of Smt. Manigauri?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right In law in rejecting the contention of the accountable person that as In view of the release of his Interest from the movable property of the HUF by Trikamlal, Manigauri Inherited no share therein on his death, no part of it could pass on her death as her property?

When the matter came up before a Division Bench of this Court, the Division Bench by its order dated 3-4-1986, felt that the decision of an earlier Division Bench in Controller of Estate Duty, Gujarat Vs. Babubhai T. Panchal, requires reconsideration and referred the matter to a larger Bench.

The deceased Trikamlal by a registered deed dated 29-1 -1964 released in favour of his wife Manigauri and his son Babulal who were members of the joint Hindu family, all his rights, title and interest in all the movable properties including business belonging to the said joint family. The release of his share in the movable properties of the HUF under the said deed has never been challenged by any one. The release deed, however, was made on 29-1 -1964 while the deceased died on 3 -3-1964. This would mean that the release deed was made within the period of two years stipulated by section 9 of the Act. This very release deed came to be considered in Babubhai T. Panchal''s case (supra) and it was held that the provisions of Explanation 2 to section 2(15) of the Act. were not attracted In this case with regard to the release by deceased Trikamlal of his interest in the movable properties of the HUF. In that case, the Assistant Controller had held that the said release deed was not an instrument of partition but a release deed simpliciter and thereby there was relinquishment or renunciation by the deceased of his one-third share of the movable property of the joint family and such relinquishment of release amounted to extinguishment at the expense of the deceased of his right In the HUF and it was deemed to be a disposition in favour of his wife Manigauri and son Babulal within the meaning of Explanation 2 to section 2(15). As the release deed was executed within a period of two years before his death, one-third share of the HUF In the movable property was held liable to estate duty tinder section 9, read with Explanation 2 to section 2(15). The said one-third share of Trikamlal in the movable property was, therefore, included by the Assistant Controller in the principal value of the estate of deceased Trikamlal. That order was confirmed by the Appellate Controller and the matter was carried to the Tribunal, which held that there was no partition and since it could not be predicated about right of a Hindu coparcener as to what his share in the joint family property would be, Explanation 2 to section 2(15) was not attracted. The Tribunal, therefore, had deleted the inclusion of the value of one-third share of Trikamlal in the movable property of HUF. A reference was then made to the High Court for its opinion on the question whether the Tribunal was justified in holding that provisions of

Explanation 2 to section 2(15) were not attracted in that case with regard to release by deceased Trikamlal of his one-third share in the movable properties of the HUF. The Division Bench held that it was easily understood that when there is partition where one of the coparceners receives a lesser share than what was strictly due to him or he relinquishes or releases or disclaims his share than what was strictly due to him or he relinquishes or releases or disclaims his share for a lesser amount or completely, there will be a disposition in light of the decision of the Supreme Court in Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal, . However, since deceased Trikamlal had only by the said release deed extinguished his right in the movable property of the HUF, there was in fact no partition, either notional or severance of status or partition by metes and bounds. It was held that, unless there was a specific provision in the said Act like section 39(1) making a departure from the general principles of Hindu Law, the principles of Hindu Law would continue to apply. It was held that when an actual partition takes place, it is clear that the share of disposer in the property becomes known and vested and the value of that share can be very easily ascertained as on the date of disclaimer or release. However, when it came to an inchoate right such as a right of a coparcener to demand a partition and on such demand to obtain his legitimate share in the joint family property, the question that one has to ask oneself is, how can such a right be valued at all? It was held that, in the absence of any provision in Explanation 2 to section 2(15) enacting either expressly or by necessary implication any notional partition as has been provided in section 39(1) it must be held that though there was a release of an inchoate right in as much as it cannot be predicated that the disclaimer or the release was at the expense of the deceased or that there was a corresponding benefit to the other coparceners, there cannot be said to be a disposition of property within the meaning of Explanation 2 to section 2(15). It was held that if for some reason, the value cannot be fixed, then the provisions of the Act will fail because of the impossibility of correct valuation. It was further held that, it is obvious that so far as the release of the type made by deceased Trikamlal is concerned, though it is a disclaimer of an inchoate right, it is not ''disposition of property'' because ''from the very nature of things and the basic principle of Hindu coparcenary property which has not been dislodged in the instant case, it is not possible to predicate as to what would have been the correct value of the share of the deceased coparcener in the movable property of the HUF at the time of the release''. It was, therefore, held, that unless it is possible to arrive at the valuation of the right which was being released or disclaimed by the deceased, it is not possible to say that it was property which was being disposed of looking to the provisions of Explanation 2 to section 2(15). The Division Bench, therefore, held in respect of the same release deed, which is under consideration in the present case also, that release of his right, title and interest in the movable property of the HUF by Trikamlal under the registered deed dated 29-1-1964. though amounting to an extinguishment of his right, was not disposition of property under Explanation 2 to section 2(15) since at the time of executing the release deed, the property was not partitioned and his share had not become defined.

2. We may now turn to some relevant provisions of the Act for appreciating the question whether release of his undefined share by a coparcener in the joint family property can amount to a disposition or not. Section 5 provides for levy of estate duty and, inter alia, lays down that the estate duty at the rates fixed in accordance with section 35 of the Act is to be levied and paid upon the principal value of all property, settled or not settled, which passes on the death of a person. Clause (15) of section 2 defines property, inter alia, so as to include any interest in property, movable or immovable. Explanation 2 to clause (15), inter alia, provides that the expression ''property'' shall include the benefit conferred by the extinguishment at the expense of the deceased of a debt or other right which shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished. Section 7(1), inter alia, provides that property in which the deceased or any other person had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in a joint family property of a Hindu family. Section 9(1), inter alia, provides that property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos, whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession or otherwise which shall not have been bona fide made two years or more before the death of the deceased, shall be deemed to pass on his death. u/s 27 it is, inter alia, laid down that any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of the Act as a gift. The provisions of section 2(15), Explanation 2, sections 5, 7, 9(1), 27(1), and 39 came to be considered by the Supreme Court in Kantilal Trikamlal''s case (supra). The Supreme Court found that Explanation 2 to section 2(15) was deliberately designed to take into its embrace what otherwise may not be disposition. It was also found that the expression ''other right'' occurring in the said Explanation is of the widest import. The Supreme Court approvingly referred to Green''s construction of the identical expression in the English Act in section 45(2) and quoted from Green''s Death Duties, 7th Edn., Butterworths, page 149, the following passage:--

A disclaimer is an extinguishment of a right for this purpose. Although in the event the person disclaiming never has any right in the property, he has the right to obtain it. This inchoate right is a ''right'' for the purposes of section 45(2). The ejusdem generis rule does not apply to the words ''a debt or other right'' and the word ''right'' is a word of the widest import. Moreover, the expression ''at the expense of the deceased'' is used in an ordinary and natural manner; and is apt to cover not only cases where the extinguishment involves a loss to the deceased of a benefit he already enjoyed, but also those where it prevents him from acquiring the benefit... The extinguishment of a right may also cover the release of his interest by one joint tenant in favour of another.

The Supreme Court then held that the following passage in S.P. Valliammai Achi Vs. Controller of Estate Duty, in the judgment of the Madras High Court expressed the correct view: "The facts of this case, in our opinion, seem to square with the Explanation 2 to section 2(15). That, no doubt, is an Explanation to the inclusive definition of property. But the language of it seems to go further and coins a deemed disposition in the nature of a transfer. The mechanics of the transfer for the purposes of Explanation 2 consist in the extinguishment at the expense of the deceased of a right and the accrual of a benefit in the form of the right so given up in favour of the person benefited. Transfer in a normal sense and as understood with reference to the Transfer of Property Act connotes a movement of property or interest or right therein or thereto from one person to another in praesenti But in the kind of disposition contemplated by the Explanation 2, one can hardly trace such a transfer because of the mere fact of extinction of a certain right of the deceased which does not involve a movement, a benefit is created in favour of the person benefited thereby. In the present case, the son who was a quondam coparcener had a preexisting right to every part of the coparcenary property, and if by a partition or a relinquishment on the part of one or more of the coparceners, the joint ownership is severed in favour of severalty, the process, having regard to the peculiar conception of a coparcenary, involves no transfer... But Explanation 2 is concerned not with that kind of situation, but an extinguishment of a right and creation of a benefit thereby, and this process is statutorily deemed to be disposition which is in the nature of a transfer". It will be noticed that in S.P. Valliammai Achi''s case (supra), no partition was effected but the deceased in consideration of Rs. 5,000 received from his son, relinquished his share in the properties of the joint family. The Supreme Court held that the decision of the Gujarat High Court which was under consideration before it had gravitated towards the narrower construction of ''disposition'' and or ''right'' and made no specific reference to the classic observations of Jenkins, LJ. in Stratton''s Disclaimer, In re [1958] 34 ITR (ED) 47 (CA), to the effect that in absence of any restriction, the word ''right'' is a word of widest import. The Supreme Court disagreed with the reasoning underlying the Gujarat High Court judgment to the effect that the partition does not involve a transfer and, therefore, cannot be a disposition and held that three hypotheses, namely, (1) the existence of a right, (2) its extinguishment, and (3) its extinguishment at the expense of the deceased, are injected in the definition of disposition and fictional expansion covers the diminution in the share taken by the coparcener and augmentation of the share taken by the other and impresses the stamp of property on this process by the ''deeming'' provision. The Supreme Court held that this conclusion was strengthened by the provisions of sections 9 and 27. The Supreme Court also referred to the decision in Grimwade v. Federal Commissioner of Taxation [1949] 73 CLR 199 (Australia), dealing with the expression ''disposition of property'' in which it was observed that, if there is an act done by one person with the requisite intent, and as a result there is a transfer of value from any property of that person to the property of another person, the conditions of liability are satisfied. Finally illustrating its holding, the

Supreme Court observed: ''If A is entitled to moiety in property worth rupees five lakhs (or let us assume that much of cash in the till belongs jointly to A and B) and by a partition, relinquishment, disclaimer or otherwise, A accepts something substantially less than his due, say rupees one lakh as against rupees two-and-a-half lakhs and the remainder goes to the benefit of B who gets four lakhs as against two-and-a-half lakhs, commonsense, concurrently with Explanation 2, draws the inference that A has made over at his expense and to the benefit of B a sum of rupees one-and- a-half lakhs which may be designated a ''disposition by him in favour of B''. On a careful reading of the decision of the Supreme Court in Kantilal Trikamlal''s case (supra), we do not find that the ratio of the decision was meant to be confined to cases where there was partition. The ratio clearly applies even to cases where there is disposition by relinquishment of interest as in the instant case. Trikamlal had admittedly a share in the property of the HUF and by the release deed he extinguished his share in the movable properties of the HUF. It cannot be gainsaid that this extinguishment was at the expense of deceased Trikamlal and the releases Manigauri and Babulal who were his wife and son had benefited from such extinguishment of his right. The triple hypothesis indicated by the Supreme Court in Kantilal Trikamlal''s case (supra) is clearly satisfied where a coparcener releases his interest to which extent there takes place a diminution in his share in the coparcenary property and corresponding increase in the interest of others in whose favour the interest is relinquished. Therefore, there was a disposition by Trikamlal within the meaning of Explanation 2 to section 2(15) In favour of these two persons who were his relatives. By the release deed, Trikamlal, who had a pre-existing right In the movable properties of the coparcenary, had relinquished the joint ownership in the movable property in favour of others and his joint ownership In respect of this movable property was severed by the release deed and there was an extinguishment of his right in respect of the movable property and a creation of a benefit thereby, which according to us, was deemed to be a disposition of property within the meaning of Explanation 2 to section 2(15). We are, therefore, of the view that the decision of this Court in Babubhai T. Panchal''s case (supra) holding that the relinquishment by a coparcener of his undefined share In the coparcenary property was not a disposition of property within the meaning of Explanation 2 to section 2(15), does not lay down the correct law and is in conflict with the ratio of the decision of the Supreme Court in Kantilal Trikamlal''s case (supra). We are of the view that the provision of section 2(15), read with Explanation 2, and of sections 5,7,9, 27 and 39 would clearly cover cases of relinquishment of rights by coparceners which is, by virtue of section 27, considered gift within the meaning of section 9, If made during the period specified and amounts to a disposition of property which is deemed to pass on death and is accordingly, exigible to estate duty.

3. The valuation of interest in the property, passing on death of a coparcener by virtue of gifts or dispositions treated as gifts u/s 9(1), can also be worked out in the manner provided in section 39. Section 39(1) deals with valuation of interest

In coparcenary property ceasing on death and when a gift is made which is a disposition deemed to pass on the death of the deceased u/s 9(1), the same criteria for valuation can be applied. There is no warrant for any distinction as is attempted in Babubhai T. Panchal''s case (supra), between Explanation 2 to section 2(15) and section 39(1) on the ground that no notional partition is provided for in Explanation 2 to section 2(15) as has been provided in section 39(1). As seen earlier, the emphasis of Explanation 2 to section 2(15) is on the point that the expression ''property'' shall include the benefit conferred by extinguishment of a right at the expense of the deceased which is deemed to be a disposition made by the deceased in favour of the person for whose benefit, the right was extinguished. We, therefore, hold that the Tribunal was not right when it held that, in view of the release deed dated 29-1-1964. Trikamlal who died on 3-3-1964 had no share in the said movable property which could, on his death, have passed to his heirs. We hold that, in view of section 9, read with section 27 read with Explanation 2 to section 2(15), the undefined share in movable property sought to be released by Trikamlal under the release deed dated 29-1-1964 was requireed to be treated as a gift for the purposes of this Act and the said disposition made by deceased Trikamlal within two years before his death shall be deemed to have passed on his death in favour of the releases Manigauri and Babulal. We, therefore, answer Question No. 2 for the reasons Indicated above in the affirmative and against the accountable person.

4. In the present case, the release deed of the interest of Trikamlal in the movable property was made in favour of his wife Manigauri and son Babulal and the validity of the release deed was never questioned by anyone. Therefore, we are not called upon to go into the question whether Trikamlal could have validly relinquished his share in favour of Manigauri also as was done by him. It is not the case of the accountable person that the release deed did not operate in favour of Manigauri though it was executed in favour of both these relatives. The case of the accountable person was that since Trikamlal had already disposed of his 1/3rd interest in the movable property of the HUF, by making the release deed, Manigauri inherited no share in it on his death and no part of it could, therefore, pass on her death as her property. Whether the share of Trikamlal in movable property went to Manigauri and Babulal under that release deed on 29-1-1964 or had passed on his death on 3-3-1964, the result will, however, be the same because the interest of deceased Trikamlal in the said coparcenary property was either deemed to have passed on death of Trikamlal u/s 9, read with section 27, since the release deed was made within two years prior to his death or had devolved on these two persons by succession in equal share in view of proviso to section 6 read with section 8, of the Hindu Succession Act. Therefore, one-third share in the movable property of Trikamlal was taken in equal shares by Manigauri and Babulal on the death of Trikamlal. Hence, Manigauri had only one-sixth share in the movable property which came to her on the death of Trikamlal. The properly was admittedly coparcenary property and no partition had taken place. Therefore, only one-sixth share which came to

Manigauri either under the disposition or by succession on the death of her husband was the portion that could pass on her death. The Assistant Controller and the Appellate Controller were, therefore, right in holding that, Manigauri had one-sixth share in the said property that had passed on her death. We, therefore, answer Question No. 1 in the negative. As held by the Tribunal, only one-sixth share in the movable property was included by the Assistant Controller as confirmed by the Appellate Controller for computing the principal wealth and the finding of the Tribunal has not worked to the disadvantage of the accountable person. We, therefore, answer the reference accordingly. The reference stands disposed of with no order as to costs.