

(2001) 03 DEL CK 0063
In the Delhi High Court
Case No : E. D. R. No. 3 of 1986

Sh O.P. Ahuja

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 13-03-2001

Acts Referred:

Citation : (2001) 4 AD 461 : (2001) 91 DLT 364 : (2001) 59 DRJ 46 : (2001) 117 TAXMAN 225

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. Sanjeev Khanna and Mr. Ajay Jha, for the Appellant;

Judgement

Arijit Pasayat, C. J.

1. At the instance of Sh.O.P.Ahuja (hereinafter referred to as the accountable person), following questions have been referred for opinion of his Court by the Income Tax Appellate, Tribunal Delhi Bench-E, Delhi (in short the "Tribuna"), u/s 64(1) of the Estate Duty Act, 1953.

(1) Whether the Appellate Tribunal was justified in law in upholding the inclusion of an amount of Rs.1,41,828/- in the dutiable value of the estate of the deceased, on the ground that the deceased and his, one son Shri Om Parkash each had 50% share in the net assets valued at Rs.2,83,656/- belonging to the smaller HUF of the deceased, to the exclusion of Smt. Vishanbai, wife of the deceased?

(2) Whether the Appellate Tribunal was justified in law in upholding the inclusion of an amount of Rs.1,41,828/- for rate purposes in the dutiable value of the state of the deceased, on the ground that the deceased and his one son Shri Om Parkash each had 50% share in the net assets valued at Rs.2,83,656/- belonging to the smaller HUF of the deceased, to the exclusion of Smt. Vishanbai, wife of the deceased?

(3) Whether the Appellate Tribunal was justified in law in upholding the inclusion of an amount of Rs.17,875/- in the dutiable value of the estate of the deceased, in relation to jewellery belonging to the smaller HUF of the deceased?

(4) Whether on a proper interpretation of the provisions of section 9 of the Estate Duty Act, 1953 it could be said that the same were attracted to the facts of the case where the gifts in question had admittedly been made not by the deceased, but by his HUF?"

Though ten questions were proposed by the accountable person, aforesaid four questions have been referred.

2. Proceedings relate to the estate of Sh. Wallaya Ram Ahuja, who expired on 26th January 1976. An account of the estate was filed by the accountable person on 1st February 1978. Assessment was completed by the Additional Controller of Estate Duty, New Delhi (in short Additional Controller). It was his conclusion that HUF of the deceased vis-a-vis property consisted of the deceased and the accountable person. For coming to such conclusion, reference was made to a registered document of partial partition executed on 31st March 1963. stipulations in the said document were to the effect that Smt. Lal Bai and Smt. Vishanbai mother and wife of the deceased, agreed not to have any claim or right/share in the HUF properties. They however continued as members of the HUF and were entitled to maintenance. Elder son of the deceased named Madan Gopal took his full share from joint family properties and had stated that he had no connection with any other member of the HUF property. Therefore Additional Controller held that HUF of the deceased consisted of the deceased and the accountable persons as afore-stated. Matter was carried in appeal before the Appellate Controller of Estate Duty (hereinafter referred to as Appellate Controller). Said authority was of the view that there was necessity for changing the value of estate but on principles the Additional Controller was correct. It has to be noted that there was another point of controversy, which related to the value of the jewellery. Additional Controller noticed that in the wealth-tax return stating that the smaller HUF owned the jewellery worth Rs.71,500/- Accountable person claimed that, being of religious mind, the deceased had gifted/distributed the jewellery and Therefore there was no scope for mentioning the value of any jewellery. This plea was not found acceptable by the Additional Controller and the Appellate Controller. Accountable person preferred appeal before the Tribunal. It stand was that the manner of computation of the value of the properties was not proper inasmuch as not only the deceased and the accountable person had right and/or interest in the properties but also others. The inclusion of the value of jewellery was also questioned. Tribunal held that there was no infirmity in the conclusions of the first Appellate Authority because the partial partition, which took place, left the accountable person and the deceased and no other to the owner of the property. It was noted that two ladies had clearly surrendered their shares and Madan Gopal had severed his relations with the family. That being the position only accountable person and the

deceased were the two persons relevant for the purpose of adjudication. So far as the jewellery is concerned, Tribunal held that it would be not possible to accept that the entire jewellery had been gifted away or distributed. Taking note of the factual backgrounds, it was held that atleast 50% of the jewellery, being the individual assets of the deceased, was to be included and it was not improbable that the widow and the deceased gave away jewellery to temples and to poor persons. On being moved, questions as set out above have been referred for opinion.

3. We have heard learned counsel of the Revenue. There is no appearance on behalf of the accountable person.

4. So far as the questions 1 and 2 are concerned, the conclusions of the Tribunal are essentially factual. It has noted the factual backdrop and come to the conclusion that deceased and the accountable person had 50% share each in the assets. Coming to the other two questions, it is to be noted that there is no challenge to the conclusion arrived at by the Tribunal about 50% of the amount being subjected to tax. Though no reason has been indicated specifically for adopting the valuation, that would not make a difference in the absence of a challenge or a stand that the same was without any foundation or basis. Above being the position, the four questions referred have to be answered in the affirmative, in favor of the Revenue and against the accountable person.

Reference is accordingly disposed of.