
(1978) 12 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 457 of 1971

Smt. Frenibai G. Anklesaria

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 18-12-1978

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1980) 122 ITR 878

Hon'ble Judges : P.D. Mulye, J;G.L. Oza, J

Bench : Division Bench

Advocate : K.A. Chitale, for the Appellant; A.M. Mathur, for the Respondent

Judgement

G.L. Oza, J.—This reference u/s 64(1) of the E.D. Act came up for hearing before us earlier and by our judgment dated 25th of January, 1978 [reported in FRENIBAI G. ANKLESARIA Vs. CONTROLLER OF ESTATE DUTY, M.P.,], we held that, to answer the reference, the statement of case submitted by the Tribunal was not sufficient, as the statement of case did not show as to from what account the amounts were withdrawn and gifted to Frenibai. Now, an additional statement has been submitted by the Tribunal, which shows that on the respective dates the various amounts withdrawn by Shri G. D. Anklesaria were withdrawn from the capital account of the partnership and each item after withdrawal from the capital account was gifted to Frenibai the next day as they have been credited to her account in the partnership account on the next day. It is not in dispute that the partnership was formed on the 24th of October, 1957, and it is from this partnership account of the capital that these respective items were withdrawn.

2. In Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , their Lordships of the Supreme Court observed (at page 1304) :

" It seems to us that looking to the scheme of the Indian Act no other view can reasonably be taken. The whole concept of partnership is to embark upon a joint

venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges."

3. This clearly indicates that the amounts, which were withdrawn from the capital account of the partnership and gifted to Frenibai were not the amounts exclusively in the hands of Shri G. D. Anklesaria and in view of these facts now appearing in the additional statement and in the light of our judgment dated 25th January, 1978 (reported in *FRENIBAI G. ANKLESARIA Vs. CONTROLLER OF ESTATE DUTY, M.P.*,), and that to the facts of this case the principle of *Munro's case* [1934] AC 61 ; 2 EDC 462 (PC) would be applicable and applying this principle the amounts so credited into the account of Frenibai could not be included in the estate of the deceased as property passing or deemed to pass on his death u/s 10 of the E.D. Act, 1953.

4. Our answer to the question is, therefore, in the negative. Under the circumstances of the case, the parties are directed to bear their own costs.