

(1980) 09 MP CK 0044

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 490 of 1976

Smt. Gunvantibai

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 05-09-1980

Acts Referred:

Estate Duty Act, 1953 — Section 33, 33(1), 34(1), 34(4), 9

Citation : (1981) 21 CTR 9 : (1981) 130 ITR 122 : (1981) 7 TAXMAN 323

Hon'ble Judges : K.N. Shukla, J;G.G. Sohani, J

Bench : Division Bench

Advocate : A.K. Chitale, for the Appellant; S.C. Bagadia, for the Respondent

Judgement

Shukla, J.—Appellate Tribunal, Indore Bench, Indore, has stated the case and referred the following questions for the opinion of this court u/s 64 of the E.D. Act:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in confirming the addition of Rs. 3,60,246 being share of the two lineal descendants for rate purposes u/s 34(1)(c) of the Estate Duty Act ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in not deleting the full value of the residential house belonging to the Hindu undivided family u/s 33(1)(n) of the Estate Duty Act ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in not deleting the addition of interest u/s 34(4) of the Estate Duty Act of Rs. 8,880 on the amounts gifted by the deceased within two years of death ? and

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in upholding the addition of Rs, 4,890 being 1/4th share of the deceased in the enhanced value of the closing stock held by the firm, M/s. Ratilal Manekji, in which he was a partner ? "

2. The material facts giving rise to these questions are as follows. Shri Ratilal

Manekji expired on June 23, 1970. He was the karta of the HUF consisting of himself, his wife and two children. On his death his widow, Smt. Gunvantibai, submitted an account of the estate of the deceased and declared the principal value of the estate at Rs. 2,01,309. The Assistant Controller, after granting relief under Sections 23 and 33 of the E.D. Act, determined the principal value of the property of the deceased at Rs. 2,81,545. For rate purpose he added the shares of the two lineal descendants at Rs. 3,60,246 and the total value including this amount was determined at Rs. 6,41,791. The Assistant Controller made an addition of Rs. 8,880 as interest accrued on two gifts for a sum of Rs. 1,11,000 made by the deceased within two years of his death. According to the Assistant Controller this interest had accrued on the gifts and had formed part of the estate of the deceased. The deceased was a partner in the firm, M/s. Ratilal Manekji. The accountable person had shown investment of the deceased in this firm at Rs. 3,619. The Assistant Controller revalued the closing stock and enhanced the interest of the deceased in the firm by Rs. 4,890. The accountable person objected before the Appellate Controller and the Appellate Tribunal to the inclusion of the share of the two lineal descendants for rate purposes to the principal value of the estate of the deceased. Second ground raised by the accountable person before the appellate authorities was against the rejection of her claim for exemption of the full value of the residential house belonging to the HUF u/s 33(1)(n) of the Act. Third ground related to the inclusion of Rs. 8,880 as accrued interest on a sum of Rs. 1,11,000 gifted by the deceased within two years of his death. Lastly, the accountable person had challenged the enhancement made by the Assistant Controller in the value of the closing stock of the firm, M/s. Ratilal Manekji, while working out the investment of the deceased in the said firm. The objections and the above claims were rejected by the Appellate Tribunal and the questions noted above have been referred for our opinion at the instance of the accountable person.

3. We will deal with these questions in serial order.

4. Question No. 1 : This relates to the inclusion of the share of the two lineal descendants for rate purposes u/s 34(1)(c) of the Act. The contention was that this provision was ultra vires the Constitution and reliance was placed on V. Devaki Ammal Vs. Assistant Controller of Estate Duty, . There are several decisions which take a contrary view. T. R. Jayashankar v. Asst. CED [1972] 83 ITR 445 , N. Krishna Prasad Vs. Assistant Controller of Estate Duty, , Smt. Komanduri Seshamma Vs. Appellate Controller of Estate Duty, , N.V. Somaraju Vs. Government of India and Others, and Pl. S. Rm. Ramanathan Chettiar Vs. Assistant Controller of Estate Duty, . V. Devaki Ammal Vs. Assistant Controller of Estate Duty, was dissented from by the Punjab and Haryana High Court in Hari Ram Vs. Assistant Controller of Estate Duty-cum-Income Tax and Others, .

5. In fact the constitutional validity of Section 34(1)(c) of the E.D. Act, 1953, providing for aggregation of property and rates of duty could not be considered by the authorities constituted under the E.D. Act because these authorities are

the creatures of the statute itself (see K.S. Venkataraman and Co. Vs. State of Madras,). We, therefore, confirm the finding of the Appellate Tribunal and answer the question in favour of the revenue and against the accountable person.

6. Question No. 2 ; The HUF of which the deceased was the karta owned a residential house wherein the deceased had 1/4th interest. It was claimed by the accountable person that u/s 33(1)(n) of the E.D. Act the value of the entire house qualified for exemption. This claim was rejected and it was held that the value of the deceased's share in the said house determined at Rs. 20,000 only qualified for exemption and not the value of the entire house. Section 33(1) provides for exemptions. Clause(n) thereof is as under :

"One house or part thereof exclusively used by the deceased for his residence, to the extent the principal value thereof does not exceed rupees one lakh if such house is situate in a place with a population exceeding ten thousand, and the full principal value thereof, in any other case."

7. As only 1/4th share of the house belonged to the deceased, that share alone could be exempted u/s 33 and the accountable person's claim for exemption of that part of the house also which did not belong to the deceased was absolutely untenable. Reference may be made to Section 39 (1) and (3) of the Act. These provisions provide for valuation of interest in coparcenary property ceasing on death. A notional partition of the joint family property immediately before the death is assumed and the value of that share is determined. Exemption u/s 33 is permissible only to such a share because that share alone passes on death. This view is supported by the decisions in Controller of Estate Duty, Mysore Vs. K. Nataraja, and Income Tax Appellate Tribunal Vs. Madan Mohan, . The finding of the Appellate Tribunal on this question is correct and the question is, therefore, answered in favour of the revenue.

8. Question No. 3.--This question pertains to the addition of Rs. 8,880 as interest accrued on the amounts gifted by the deceased as calculated from the date of the gifts to the date of his death. The deceased had made two gifts for a sum of Rs. 1,11,000 within two years of his death. Inclusion of this amount in the estate of the deceased was not objected to by the accountable person before the Appellate Tribunal and before us. It was, however, argued that though this property, by a fiction created u/s 9 of the E.D. Act, passed on the death of the deceased, the investment by the donees of this amount and the interest income received by them could not be included as "income accrued" within the meaning of Section 34(4) of the Act.

9. Distinction has to be drawn between the income or profit accruing on the gifted property as a result of the investment made by the donee and income or profit accruing on such property which was already invested and was earning income when the gift was made. The distinction lies in the meaning of the word "accrued" appearing in Section 34(4) of the Act which is interpreted to contemplate something arising as a natural growth [see T. O. HYDROSE Vs.

CONTROLLER OF ESTATE DUTY, ERNAKULAM.,]. Though in Hydrose's case, on facts, the court treated the business profits on the gifted amount as income accrued, the principle which was emphasised was that only such income will be treated as accrued which will arise on its own and not by any investment made independently by the donee. In P. Gangadharan Pillai Vs. Controller of Estate Duty, Ernakulam, , Controller of Estate Duty, Gujarat Vs. Chandravadan Amratlal Bhatt, , Controller of Estate Duty Vs. Prahlad Rai, and Controller of Estate Duty Vs. Chaman Lal Bery, it has been held that income accrued within the meaning of Section 34(4) of the Act will include only such income which arise naturally from the estate without the intervention of the donee but if income arises as a result of an investment by the donee, the same cannot be included in the estate of the deceased for the purpose of charging estate duty thereon. We, therefore, hold that the sum of Rs. 8,880, which constituted interest on the amount gifted by the deceased, could not be added to the estate passing on the death of the deceased. We, therefore, hold that the sum of Rs. 8,880, which constituted interest on the amount gifted by the deceased, could not to be added to the estate passing on the death of the deceased. The Tribunal was in error in not deleting the addition of interest amounting to Rs. 8,880 and the question is answered in favour of the accountable person and against the revenue.

10. Question No. 4.--Facts giving rise to this question have been stated earlier. The Assistant Controller enhanced the value of the deceased's share of investments in the partnership firm by revaluing the closing stock of the firm. The contention on behalf of the accountable person before the Appellate Tribunal was that the interest of the deceased could be determined in the firm after valuing all the assets and liabilities and it was not open to the Assistant Controller to choose and value only one of the items of the assets. The contention was repelled by the Appellate Tribunal holding that Section 36 of the Act is clear that the properties are to be valued at the market rate. The Appellate Tribunal observed :

"The contention of the accountable person that one of the items of the assets cannot be valued at the market rate unless the interest of the deceased is determined after taking into consideration all the assets and liabilities, is not acceptable."

11. The Tribunal, therefore, held that the Asst. Controller was at liberty to value even one of the items of the assets of the firm in which the deceased was a partner provided he was satisfied that the assets did not represent the market value.

12. Shri Chitale, learned counsel for the accountable person, submitted that the rights of a partner of a firm in the assets of the firm are indeterminate and inchoate till the accounts are settled. Until the settlement of accounts, partners have only a right of sharing the profits in accordance with their respective shares and, therefore, the Appellate Tribunal was in error in holding that one item of the assets, namely, the closing stock alone, could be valued for determining the

share of the deceased in the partnership firm.

13. In *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, , their Lordships of the Supreme Court explained the nature of the interest of a partner in the partnership property during the subsistence of the partnership and after its dissolution. The following observations are significant (p. 1304):

"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."

14. It is a well-known law that a partner has no right or interest in specie in the common asset or property belonging to the partnership. His right merely extends to what he is entitled after all the partnership accounts are taken and his share in the partnership is ascertained. [See *Pl. Rm. Arunachalam Chettiar Vs. Controller of Estate Duty*,]. Nanawati on *The Estate Duty Act*, 3rd Edn., at p. 485, while commenting on Section 36, in relation to the valuation of business, observes as under :

"Hence, in valuing the share of a deceased partner in a firm, reference will have to be made to the balance-sheet made out as up to date of the death, and the amount payable to the deceased by the firm in respect of the deceased's share of capital, his share of profits, etc., will have to be ascertained."

15. Learned standing counsel for the revenue, Shri Bagadia, argued that in the instant case the accountable person had herself valued the closing stock at a particular sum and what the Asst. Controller did was only revaluation of the same at the market rate. According to Shri Bagadia no question of law could arise merely because of revaluation. We are unable to accept this line of argument because this does not arise out of the order of the Tribunal. A particular contention as reproduced earlier was canvassed before the Tribunal and in answering the same the Tribunal held that it was open to the Asst. Controller to value an isolated asset in the partnership firm for the purpose of charging estate duty. Our answer, therefore, must confine to this finding of the Tribunal and the question arising therefrom. We hold that the Tribunal was wrong in its view that the Asst. Controller was at liberty to revalue only one of the assets, namely, the closing stock, and make an addition of Rs. 4,890. In our opinion, the interest of the deceased could be determined only after valuing the assets and liabilities of the firm and the share of the deceased therein at the time of his death. We, therefore, answer the issue in the negative and in favour of the

accountable person.

16. Questions referred by the Tribunal are answered accordingly. There shall be no order as to costs.