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**(1977) 08 MP CK 0014**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Civil Case No. 137 of 1976**

Smt. Ramkunwar Bai

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

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**Date of Decision : 03-08-1977**

**Acts Referred:**

Estate Duty Act, 1953 — Section 10

**Citation : (1983) 142 ITR 852**

**Hon'ble Judges : G.L. Oza, J;C. Kondaiah, J**

**Bench : Division Bench**

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**Judgement**

Oza, J.—This is a reference u/s 64 of the E.D. Act made by the Appellate Tribunal, Indore.

2. The facts giving rise to this reference are that one Mayachandsa died on June 4, 1957. His widow, the accountable person, Smt. Ramkunwar Bai, is the party to these proceedings. The Asst. Controller of Estate Duty determined the principal value of the estate on the date of death of the deceased at Rs, 5,65,116. The Asst. Controller held that the entire coparcenary interest of the deceased in the coparcenary property passed on his death. It also held that an amount of Rs. 3,50,000 which was settled by the deceased under a trust of which the deceased himself was a managing trustee and over which the deceased had an absolute power of disposal also passed on the death of the deceased. The accountable person, i.e., Smt. Ramkunwar Bai went up in appeal to the Appellate Controller of Estate Duty and before the appellate authority two questions were raised; that the deceased and his wife, Ramkunwar Bai, constituted a joint Hindu family and, therefore, the deceased only had half interest in the assets of the HUF. Therefore, only half of the property of the coparcenary would be deemed to have passed on the death of the deceased. Another question raised was that as by creating a trust the deceased had settled the amount of Rs. 3,50,000, that amount could not be said to have passed on his death to Smt. Ramkunwar Bai. The Appellate Controller rejected the first contention. As regards the second the

appellate authority held that out of Rs. 3,50,000 certain items were disbursed during the lifetime of the deceased, Mayachandsa, himself. But an amount of Rs. 82,000 made up of three items, Rs. 25,000, Rs. 20,000 and Rs. 37,000, remained with the deceased in his control and, therefore, this amount of Rs. 82,000 is the amount which passed on his death. Smt. Ramkunwar Bai thereafter went up in appeal before the Appellate Tribunal and the Appellate Tribunal confirmed the findings of the Appellate Controller and the appeal was dismissed. Smt. Ramkunwar Bai thereafter submitted an application u/s 64 of the E D. Act for making a reference and the Tribunal has submitted this statement of case and referred the following two questions to this court :

" (i) Whether, on the facts and in the circumstances of the case, the amount of Rs. 82,000 was correctly included in the estate of the deceased as property passing or deemed to pass on his death u/s 10 of the Estate Duty Act ?

(ii) Whether, on the facts and in the circumstances of the case, the entire coparcenary interest of the deceased in the coparcenary property passed on his death ?"

3. As regards the first question, i.e., the amount of Rs. 82,000 out of the amount of Rs. 3,50,000 which was entrusted to a trust of which the deceased himself was the managing trustee, it is not disputed that this amount of Rs. 82,000 remained in the custody and care of the deceased himself and it was he who was utilising this amount.

4. Learned counsel appearing for Smt. Ramkunwar Bai, however, contended that the learned Tribunal was wrong in applying Section 10 of the E.D. Act (hereinafter referred to as "the Act "). It should have applied the provisions contained in Section 12 of the E.D. Act. Learned counsel appearing for the Department, however, contended that by creating a trust the amount was gifted away to the trust and in view of this, the clear provision contained in Section 10 of the Act could only be applied and not the provisions contained in Section 12 of the Act. He, therefore, contended that the Tribunal was right in holding that this amount of Rs. 82,000 was rightly included in the estate of the deceased as property passed or deemed to pass on his death. Learned counsel for the assessee on the other hand placed reliance on a decision in Controller of Estate Duty Vs. Thanwar Dass, .

5. It is found by the Tribunal as a fact that out of Rs. 3,50,000 given away to the trust, a sum of Rs. 82,000 was utilised by the deceased-assessee in his money-lending business and on this he earned interest but no part of the interest so earned was credited to the account of the trust and, therefore, it is found as a fact that so far as the amount of Rs. 82,000 is concerned, beneficial enjoyment of this amount remained with the deceased and the deceased was not excluded from the possession and enjoyment of this amount of the trust funds. The decision to which the reference was made by learned counsel, i.e., Controller of Estate Duty Vs. Thanwar Dass, , is of no assistance in the present case. The

Allahabad High Court in this decision following the decisions of their Lordships of the Supreme Court in *Commissioner of Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and Others*, and *Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder*, , observed that the Supreme Court decisions laid down two tests after the analysis of Section 10 of the Act (p. 104 of 94 ITR): "Firstly, that the donor must give such possession of the gifted property as the property is capable of, and, secondly, that he must not retain any benefit for himself by contract or some such other obligation." And, applying these two tests their Lordships held that under the facts of that particular case, Section 10 of the Act did not apply. But applying these two tests in the present case it could not be doubted that the second test, if applied, goes against Smt. Ramkunwar Bai, as the donor retained the benefit for himself of the sum, i.e., Rs. 82,000, as found by the Tribunal. In the light of this it could not be doubted that the Tribunal rightly applied Section 10 of the Act. Hence our answer to the first question is in the affirmative, holding that a sum oi Rs. 82,000 was correctly included in the estate of the deceased as property passing or deemed to pass on his death.

6. As regards the second question, learned counsel for the assessee contended that in view of the decisions of their Lordships of the Supreme Court in *C. Krishna Prasad Vs. Commissioner of Income Tax , Bangalore*, and *Controller of Estate Duty Vs. Thanwar Dass*, , it could not be doubted that the deceased along with his wife formed a Hindu joint family and, therefore, on his death what could be said to pass on his death is not the whole joint property but only his share, which in the present case would be half. Learned counsel contended that in spite of these series of decisions of their Lordships of the Supreme Court and Privy Council, it appears that the Tribunal was led away because of the decision in *Kalyanji Vithaldas v. CIT [1937] 5 ITR 90*. Learned counsel for the Department on the other hand contended that the Tribunal was right in holding that it is the whole coparcenary property which passed on the death of the deceased as he was the sole surviving coparcener.

7. In *C. Krishna Prasad Vs. Commissioner of Income Tax , Bangalore*, , their Lordships of the Supreme Court considered the term " family" and observed as under (p. 496):

" It is well settled that a Hindu joint family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. A Hindu coparcenary is a much narrower body than the joint family: it includes only those persons who acquire by birth an interest in the joint or coparcenary property, these being the sons, grandsons, and great-grandsons of the holder of the joint property for the time being. The plea that there must be at least two male members to form a Hindu undivided family as a taxable entity has no force. Under Hindu law a joint family may consist of a single male member and widows of deceased male members. The expression " Hindu undivided family " in the Income Tax Act is used in the sense in which a Hindu joint family is understood under the various schools of Hindu law (see Attorney-

General of Ceylon v. Ar. Arunachalam Chettiar [1958] 34 ITR 42 and Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, . In the case of Commissioner of Income Tax, Madras Vs. Rm. Ar. Ar. Veerappa Cheitiar, , this court observed that under the Hindu law it is not predicated of a Hindu joint family that there must be a male member. It was accordingly held that so long as the property which was originally of the joint Hindu family remains in the hands of the widows of the members of the family and is not divided among them, the joint family continues. One thing significant which follows from the above is that the assessment in the status of a Hindu undivided family can be made only when there are two or more members of the Hindu undivided family. "

8. It, therefore, cannot be doubted that a male member along with his wife could also constitute a Hindu joint family, and in view of this pronouncement of their Lordships of the Supreme Court, the question cannot any longer be agitated before us.

9. Consequently, in our opinion, as regards the second question, our answer is that the Tribunal was wrong in holding that the entire coparcenary interest of the deceased in the coparcenary property passed on his death. In fact the property vested in the joint Hindu family consisting of the deceased and his wife and on the death of the deceased it is only his share which passed and, therefore, our answer to the second question is in the negative. It is only the deceased's share in the joint Hindu family which, admittedly half, will be the property which passed on his death.

10. In the circumstances of the case, parties are directed to bear their own costs.