(2006) 04 GUJ CK 0013

In the Gujarat High Court

Case No : Estate Duty Reference No. 2 of 1995

Surajram Hiralal Bachkaniwala-Late Taragauri P. Bachkaniwala APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Estate Duty Act, 1953 — Section 39, 5, 64(1)
Hindu Succession Act, 1956 — Section 6

Citation : (2006) 04 GUJ CK 0013

Hon'ble Judges : J.M. Panchal, J;Bankim N. Mehta, J

Bench : Division Bench

Advocate : Bhargav D. Karia, for the Appellant; Manish R. Bhatt, for the Respondent

Judgement

J.M. Panchal, J.—The Income Tax Appellate Tribunal, Ahmedabad Bench ''B'' has referred the following question of law for the opinion of this Court u/s 64(1) of the Estate Duty Act, 1953 (The Act for short).

Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that the HUF estate valued at Rs. 19,18,938/- passed on death of the deceased who was sole surviving co-parcener?

2. The H.U.F., comprising Shri Pranlal Hiralal and his wife Smt. Taragauri Pranlal, had an estate of the value of Rs. 19,18,938/-. Shri Pranlal Hiralal expired on May 12, 1981. The estate duty account was filed on January 7, 1982 by the accountable person, i.e. Smt. Taragauri Pranlal declaring the total value of the property at Rs. 23,29,918/-. The accountable person claimed before the Asst. Controller of Estate Duty, Surat, that half of the H.U.F. Estate was liable for estate duty. The Asst. Controller of Estate Duty rejected the claim advanced by the accountable person on the ground that the deceased was the sole owner of the property and as no part of it was shared by his wife, who was the only other member in the family, the entire property passed on to her on the death of deceased Pranlal Hiralal within the meaning of Section 5 of the Act. The

Commissioner of the Estate Duty (Appeals), Surat, held that deceased Pranlal was the sole surviving coparcener and, therefore, in terms of Section 6 of the Hindu Succession Act, 1956, a deemed partition had taken place on the death of deceased Shri Pranlal as a result of which, only half share belonging in the property of the deceased had passed on to his widow. In view of this conclusion, the Commissioner (Appeals) directed the Controller of Estate Duty to take the share of the deceased at 1/2 value, i.e. Rs. 9,59,469/- instead of Rs. 19,18,938/-. In appeal, the Tribunal held that the undisputed facts were that the H.U.F. was consisting of deceased Shri Pranlal and his wife Smt. Taragauri Pranlal and he died interstate leaving behind his widow. It was also held by the Tribunal that in the present case there was no coparcenary in existence.

3. After recording above referred to findings of facts, the Tribunal considered the decision rendered in Controller of Controller of Estate Duty Vs. Smt. S. Harish Chandra, and held that as the entire property of the deceased had passed on to her widow on his death, his whole estate was liable to estate duty under the Act, which has given rise to the instant Reference.

4. This Court has heard Mr. Bhargav D. Karia, learned Counsel for the accountable person, and Mr. Manish R. Bhatt, learned Counsel for the Revenue, at length and in great detail and also considered the facts of the case.

5. In view of the findings of facts recorded by the Tribunal to the effect that there was H.U.F. comprising the deceased and his widow and that there was no coparcenary in existence, this Court is of the opinion that the Tribunal was not justified in referring the question of law to this Court, for opinion, on the basis that the deceased was sole surviving coparcener. As there was no coparcenary in existence, the words who was sole surviving coparcener appearing in the question referred to this Court for opinion are ordered to be deleted and the question referred is re-framed as under:

Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that the HUF estate valued at Rs. 19,18,938/- passed on death of the deceased?

6. The conception of a joint Hindu family constituting a coparcenary is that of a common male ancestor with his lineal descendants in the male line within four degrees counting from and inclusive of such ancestor. There can be no coparcenary if there are not more than two members to form it. 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 are the sons, grandsons, and great grandsons of the whole of the joint family and no female can be a coparcener although a female can be a member of a joint Hindu family. A Joint family may consist of female members. The property of a joint family does not cease to belong to the family because there is only a single male member in the family inasmuch as it is not necessary that there should be two male members to constitute a joint family. This is, however, not

true of a coparcenary. In order to constitute a coparcenary as said above, there is need of more than one male member and both of them should be entitled to be called coparceners. The facts of the instant case do not indicate that deceased Shri Pranlal had inherited the property from his father or grandfather nor do the facts show that there was a coparcener as known to law. The findings recorded by the Tribunal, which is ultimate fact-finding authority, are that there was Hindu Undivided Family comprising deceased Shri Pranlal and his widow and no coparcenary was in existence, could not be challenged by the learned Counsel for the accountable person. Once it is held that there was no coparcenary nor the deceased was the sole surviving coparcener and that there was a Joint Hindu Family comprising deceased Shri Pranlal and his widow, it becomes very clear that neither the provisions of Section 6 of the Hindu Succession Act, 1956 would apply nor the provisions of Section 39 of the Act would get attracted. Section 5 of the Act deals with levy of estate duty which is payable on the property which passes on the death of its owner. The expression passes means changes hands. In the instant case, what this Court finds is that late Mr. Pranlal was the only male member in his family. He did not have any male issue. Consequently, there was no coparcenary nor was he sole surviving coparcener and since there was no coparcenary, Section 6 of the Hindu Successions Act, 1956 has no application. In such a case, the widow or the accountable person could not by taking advantage of Explanation 1 to the proviso to Section 6 of the Hindu Succession Act, 1956, claim that she had one half-share. The question of notional partition could arise, as stated earlier, in respect of a coparcenary property and not otherwise, but this Court has refrained from expressing any opinion with regard to applicability of Section 39 of the Act to such a situation. Therefore, there is no manner of doubt that the estate of the deceased on his death passed on to her widow and the whole estate was liable to the estate duty.

Under the circumstances, the question referred is answered in the affirmative, i.e. in favour of the Revenue and against the accountable person. The Reference stands disposed of. There shall be no orders as to costs.

