(1978) 02 DEL CK 0016

In the Delhi High Court

Case No : Estate Duty Reference No. 2 of 1973

The Controller of Estate Duty, New Delhi — APPELLANT

Vs

Madan Lal — RESPONDENT

Date of Decision : 28-02-1978

Acts Referred:

Citation : (1978) 14 DLT 10 : (1978) 113 ITR 332

Hon'ble Judges : V.S. Deshpande, J;H.L. Anand, J

Bench : Division Bench

Advocate : B. Kirpal, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The Income Tax Appellate Tribunal has referred the following questions of law to this court u/s 64 of the Estate Duty Act, 1953 (hereinafter referred to as the Act) : "1. Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that no estate duty was chargeable u/s 5 of the Estate Duty Act, 1953 ?

(2) Whether on the facts and in the circumstances of the case, and in view of the clear provisions of sub-section (1) of section 34 of the Estate Duty Act, 1953 estate duty was rightly charged ?" 2. The undisputed facts are that Shri Jai Ram Dass was a member of an undivided Hindu family, of which Shri Madan Lal and others were members. The interest which passed on the death of Shri Jai Ram Dass was valued Rs. 31,429. The value of the interest of his lineal discendants was Rs. 1,90,750. While the Assistant Controller of Estate Duty assessed the interest of Shri Jai Ram Dass passing on his death to duty at the rate applicable to the aggregate value-of the property i.e. the interest of the deceased, which so passed combined with the value of the interest of the lineal discendants and while this assessment was upheld by the Zonal Appellate Controller, the Income Tax Appellate Tribunal came to a different conclusion. It held that the property of Shri Jai Ram Dass, which passed on his death was worth less than Rs. 50,000

and was, thus, not assessable to estate duty in view of section 5 read with section 35(1) and Second Schedule to the Act. It also pointed out that the aggregation of property u/s 34 had to be done only for determining the rate at which the property passing on the death of Shri Jaij Ram Dass was to be assessed to estate duty. If, however, the said property was not assessable under sections 5 and 35(1) read with Second Schedule to the Act, that it did not become assessable merely because it was aggregated with other property u/s 34.

(3) In our view, the decision of the Income Tax Appellate Tribunal was correct. A distinction must be made between the liability of property passing on the death of Shri Jai Ram Dass to duty on the one hand, and the determination of the rate at which such property will be assessed to estate duty if it is chargeable to estate duty on the other. The former question is governed by sections 5, 35(1) and the Second Schedule to the Act. A reading of these two provisions together makes it clear that the property of Shri Jai Ram Dass passing on his death being below Rs. 50,000 was not chargeable to estate duty at all. This fact is not altered by the aggregation of the property passing on the death of Shri Jai Ram Dass with the property of his lineal discendants u/s 34. The aggregation has to be done only for the purpose of determining the rate at which the property passing on the death of Shri Jai Ram Dass should be assessed to estate duty. But, this is subject to the condition that independently of the aggregation, the property should have been liable to pay estate duty. Since this condition was not fulfillled in the present case, the property passing on the death of Shri Jai Ram Dass continued to be not liable to be charged to estate duty. The state of non-liability was not transferred into a state of liability by the aggregation u/s 34. This conclusion is supported by the decisions in T.R. Jayasankar Vs. Assistant Controller of Estate Duty, , Sardarni Virpaul Kaur Vs. Controller of Estate Duty, , and V. Devaki Ammal v. Asst. Controller of Estate Duty, Madras, (1973) 91 I.T.C. 24.

(4) The questions referred to us are, Therefore, answered as follows for the reasons given above :

1.On the facts and circumstances of the case the Tribunal was correct in law in holding that no estate duty was chargeable u/s 5 of the Act.

2.The provisions of section 34(1) of the Act do not make the estate passing on the death of Shri Jai Ram Dass liable to the charge of estate duty because they come into play only for the purpose of aggregation and thereupon for determining the rate at which the estate duty is charged provided that independently of them the property passing on death is liable to payment of estate duty.

(5) There will be no order as to costs.

