

(1974) 03 AHC CK 0040

In the Allahabad High Court

Case No : Estate Duty Reference No. 23 of 1972

VIJAY KUMAR KEDIA

APPELLANT

Vs

CONTROLLER OF ESTATE DUTY.

RESPONDENT

Date of Decision : 11-03-1974

Acts Referred:

Estate Duty Act, 1953 — Section 36, 53, 55, 58, 64
Income Tax Act, 1961 — Section 22, 34

Citation : (1976) 104 ITR 302

Hon'ble Judges : H. N. Seth, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

H. N. SETH J. - One Babu Lal Kedia died intestate on May 4, 1963. Vijai Kumar Kedia, one of the grandsons of the deceased, filed the necessary estate duty return. The relationship between the accountable person and the deceased would be evident from the following pedigree :

Babu Lal

(died on 4-5-1963)

Kamli Devi

(wife, died in Nov.48)

Jiwan Ram

(son, died in May 1949)

Vijai Kumar

Krishna Kumar(From 1st wife, Smt. Kapuri Devi, died in 1944)

Munni Lal(From 2nd wife

Prakashwati Devi)

Case of the accountable person was that the deceased formed a joint Hindu family with his widowed daughter-in-law, Smt. Prakashwati Devi and his three grandsons, Krishna Kumar, Vijai Kumar and Munni Lal. He had thrown all his property in the common hotchpotch of the family. Thus, the only property that passed on the death of Babu Lal Kedia was his interest in the joint Hindu family property. Total value of such joint Hindu family property was Rs. 4,16,240 out of which the interest of the deceased was only one-half.

The Assistant Controller of Estate Duty, Kanpur, held that according to the Hindu law the deceased could not form a joint Hindu family with his daughter-in-law and the three grandsons. As there did not exist any joint Hindu family, any declaration made by the deceased that he was throwing his assets and properties into the family hotchpotch was of no consequence. The assets alleged to have been thrown by the deceased in the family hotchpotch continued to belong to him in his individual capacity and computed the value of the asset left by the deceased as Rs. 7,09,824.

The accountable person then filed an appeal before the Zonal Appellate Controller of Estate Duty. The Zonal Appellate Controller, by his order dated March, 22, 1967, allowed the appeal in part. He accepted the contention of the accountable person that the deceased Hindu undivided family consisted of himself, his widowed daughter-in-law, Smt. Prakashwati Devi and the three grandsons. Accordingly, he had only one-half share in the value of such assets. He also issued directions for the deletion of certain add-backs made by the Assistant Controller and for the modification of the assessment order accordingly.

Both the Assistant Controller and the accountable person, being aggrieved by the order of the Zonal Appellate Controller, filed appeals before the Income Tax Appellate Tribunal. The Appellate Tribunal reversed the judgment of the Appellate Controller on the question whether the deceased formed a joint Hindu family with his widowed daughter-in-law and the three grandsons and held that the deceased had full and not merely half interest in the assets left by him, as claimed by the accountable person. It also modified the order of the Zonal Appellate Controller in respect of certain other items the value of which had been included as the asset of the deceased while computing the value of the property left by him. Before the Tribunal, the accountable person raised a plea that no assessment under the Estate Duty Act could take place unless all the heirs of the deceased, who were the accountable persons, had been brought on the record. However, the Tribunal rejected the plea and held that there was no defeat in the assessment order made on the basis of the returns filed or adopted by Vijai Kumar Kedia and that for that purpose it was not necessary to bring the other heirs of the deceased on the record. Subsequently, at the instance of Sri Vijay Kumar Kedia, the accountable person, the Income Tax Appellate Tribunal stated the case and referred the following questions of law, u/s 64(1) of the Estate Duty Act, 1953, for the opinion of this Court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was

right in holding that the assessment was valid in law without impleading and bringing on record the other legal heirs of the deceased ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of Rs. 10,253 out of the total addition of Rs. 24,453 made by the Assistant Controller was in the nature of a gift and was not permissible deduction u/s 9(2)(b) of the Estate Duty Act ?

3. Whether the Tribunal was right in holding that the value of the gold gifted was liable to assessment at the rate prevailing on the date of the death of the deceased and not on the date when the gift was made ?

4. Whether the Tribunal was right in sustaining the valuation of the gold at Rs. 115 per total in view of its finding that at the material time the value of the gold was at Rs. 62.50 per 10 grammes ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there was proper presentation of the appeal by the department and the same was maintainable as such ?

6. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that full value of the personal estate of the deceased is includible in the estate duty assessment or only half of the said estate is includible in the estate duty assessment being half the share of the deceased in H.U.F. properties impressed with the character of the H.U.F. property through the document dated November 13, 1961 ?

7. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the deceased was not competent in law to bring into existence a Hindu undivided family consisting of himself, his daughter-in-law and his grandsons ?

8. Whether, out of Rs. 62,567 being the refund given by the Income Tax department to the H.U.F. a sum of Rs. 31,288 held by the Appellate Tribunal to be includible in the estate duty assessment of the deceased is correct in law ?"

So far as the first question is concerned, it is not disputed that Sri Vijai Kumar Kedia, one of the grandsons of the deceased, was an accountable person and that he filed the necessary estate duty return. Section 53 of the Estate Duty Act, 1953, runs thus :

"53. Persons accountable, and their duties and liabilities. - (1) Whether any property passes on the death of the deceased -

(a) every legal representative to whom such property so passes for any beneficial interest in possession or in whom any interest in the property so passing is at any time vested,

(b) every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested, and

(c) every person in whom any interest in the property so passing is vested in possession by alienation or other derivative title.

shall be accountable for the whole of the estate duty on the property passing on the death but shall not be liable for any duty in excess of the assets of the deceased which he actually received or which, but for his own neglect or default, he might have received :

Provided that nothing in this section shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(2) Notwithstanding anything contained in sub-section (i), where an heir-at-law proves to the satisfaction of the Controller that some other person is in adverse possession of any assets of the deceased, the heir-at-law shall not be accountable for the portion of the estate duty payable in respect of such assets :

Provided that he shall become so accountable if, and to the extent that, he subsequently recovers possession of such assets.

(3) Every person accountable for estate duty under this section shall, within six months of the death of the deceased, deliver to the Controller an account in the prescribed form and verified in the prescribed manner of all the properties in respect of which estate duty is payable :

Provided that the Controller may extend the period of six months aforesaid on such terms which may include payment of interest as may be prescribed.

(4) Where the person accountable knows of any property which he has not included in his account because he does not know its amount or value, he may state that such property exists, but he does not know the amount or value thereof and that he undertakes, as soon as the amount and value are ascertained, to bring a supplementary account thereof and to pay both the duty for which he may be liable in respect of such property and any further duty payable by reason thereof for which he may be liable in respect of the property mentioned in the original account.

(5) Where two or more persons are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole of the estate duty on the property so passing ?"

According to sub-section (1) every legal representative and every person, in whom an interest in the property so passing on the death of the deceased vests, has been made accountable for the whole of the estate duty on the property passing on the death of the deceased, but a provision has been made that such liability will not exceed the estate of the deceased which is actually received by the person concerned or would have been received by him but for his neglect or default. Sub-section (2) provides that where an heir of the deceased proves to

the satisfaction of the Controller that someone is in adverse possession of any asset of the deceased he shall not be accountable for the portion of the estate duty payable in respect of that asset. Sub-section (3) makes it obligatory on every person accountable for the estate duty to deliver to the Controller an account in the prescribed form and verified in the prescribed manner of all the properties in respect of which the estate duty is payable within six months of the death of the deceased. Thus, the liability to account for the property passing on the death of a person and to pay estate duty in respect thereof is of each and every accountable person and no accountable person can be absolved of the responsibility of complying with the provisions of sub-section (3) merely because some other accountable person had not chosen to account for the property left by the deceased. The position is amply clarified by sub-section (5) which provides that where two or more persons are accountable, whether in the same capacity or different capacities, for the estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole of the estate duty on the property so passing. This section after laying down that the liability of an accountable person is joint and several does not provide that the separate liability of an accountable person can be fixed only in the presence of and along with other accountable persons.

Learned counsel for the accountable person cited a decision of the Supreme Court in the case of *First Additional Income Tax Officer v. Suseela Sadanandan* as also that of the Gujarat High Court in the case of *Choocharmal Wadhuram. v. Commissioner of Income Tax* and urged that on the principle enunciated in these cases, a valid assessment order could be made only in the presence of all the accountable persons. We are unable to accept this submission. The two decisions cited by the learned counsel merely deal with Cases falling u/s 24B of the Indian Income Tax Act, 1922. The position u/s 24B of the Income Tax Act, in so far as the nature and ambit of the liability of the legal representatives of a deceased liable to pay Income Tax, is concerned, is quite different from the nature of the liability of an accountable person to account for the property of the deceased under the Estate Duty Act, 1953. Sub-section (1) of section 24B provides that where a person dies, his executor, administrator or other legal representative shall be liable to pay from out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the tax assessed as payable by such person or any tax which would have been payable by him under the Act, if he had not died. The section casts the responsibility for payment of the tax on the legal representative of the deceased. It is obvious that where there are more than one such representative, the expression "legal representative" would include within its ambit all the legal representatives. The section does not lay down whether the liability of the legal representatives to pay tax payable by the deceased would be joint or several. Sub-section (2) lays down that where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or u/s 34, his legal representatives shall, on the service of the

notice under sub-section (2) of section 22 or u/s 34, as the case may be, comply therewith, and the Income Tax Officer may proceed to assess the total income of the deceased as if the legal representatives were the assessee. Here again when the section uses the word legal representative, in a case where there are more than one legal representative, means all the legal representatives. It follows that the notice to file a return under the Income Tax Act cannot be given to only one of such legal representatives. However, the position u/s 53 of the Estate Duty Act is materially different. This section enjoins each and every person on whom any interest in the property passing on the death of a person is vested, to render an account of the asset left by the deceased. Section 55 clearly specifies that every person accountable for the estate duty (which obviously includes within its ambit each and every legal representative) if so required by the Controller to file and verify to the best of his knowledge and belief, a statement of such particulars. This obviously means that even though there be more than one legal representative, the Controller can give notice to any of them for submitting the accounts. Section 58 of the Estate Duty Act contemplates making of an assessment after notice to such accountable person who has filed the necessary returns. Accordingly, we feel that the two decisions relied upon on behalf of the accountable person, which merely deal with section 2413 of the Indian Income Tax Act, 1922, have no bearing on the question whether an assessment under the Estate Duty Act can be made on a return filed by one of the accountable persons, without making other accountable persons parties to the proceedings. In our opinion the Tribunal was justified in holding that the assessment made without impleading and bringing on record all the heirs and legal representatives of the deceased was valid.

So far as the second question is concerned, we find that the Assistant Controller of Estate Duty had, while computing the value of the property passing in the death of the deceased added a sum of Rs. 22,453 u/s 9(1) of the Act, as the amount books showed that the said amount had been gifted by the deceased to various persons within two years of his death. Particulars of these items have been mentioned at page 27 of the paper book, under paragraph 8(ii), headed as gifts u/s 9(1). Section 9(2)(b) of the Estate Duty Act lays down that nothing under sub-section (1) is to apply to gifts which are proved to the satisfaction of the Controller to have been made by the deceased as a part of his normal expenditure, subject to a maximum of Rs. 10,000 in value. The Appellate Controller of Estate Duty, after scrutinising the books, came to the conclusion that from out of the sum of Rs. 22,453 mentioned above, the amount of more than Rs. 10,000 represented such gifts which could be said to be the normal expenditure of the deceased. He, therefore, directed that to the extent of Rs. 10,000 those gifts were saved by the provisions of section 9(2) of the Estate Duty Act. Besides this, he found that the first item, viz., the amount of Rs. 5,644 alleged to have been gifted one day before the death of the deceased included a sum of Rs. 400 paid as doctors fee. This amount, i.e., the sum of Rs. 400, should not have been added as an item of gift made within two years of the death of the

deceased. In the same way the amount of Rs. 1,800 represented miscellaneous expenses and that there was nothing on the record to show that this amount was the subject matter of gift made within two years. Accordingly, this amount of Rs. 2,200 (Rs. 1,800 plus Rs. 400) was also liable to be excluded while computing the value of the estate gifted by the deceased. In the result he directed the exclusion of the sum of Rs. 12,200 (Rs. 10,000 plus Rs. 2,200) from out of Rs. 22,453 added by the Assistant Controller in the value of the Estate left by the deceased. So far as this part of the case is concerned both the Assistant Controller and the accountable person were aggrieved by the decision of the Appellate Controller. While according to the Assistant Controller, the Appellate Controller erred in knocking out a sum of Rs. 12,200 from out of Rs. 22,453, the accountable person claimed that the remaining amount of Rs. 10,253 should also have been deleted. The Appellate Tribunal pointed out that it was not disputed before it that the deceased paid various sums as gift within two years of his death. According to the accountable person, the sum of Rs. 10,253 disallowed by the Appellate Controller included a sum of Rs. 10,000 representing mainly gifts/expenses in Hardwar Kshetra during the period of Kumbh in 1961, which also was the normal expenditure of the deceased and, therefore, even though it represented gift made within two years of the death of the deceased, it was not liable to be included in computing the value of the property passing on Babu Lals death as provided in section 9(2) of the Act. The revenue on the other hand contended that not only the sum of Rs. 10,000 mentioned above but also the sum of Rs. 12,250 allowed by the Appellate Controller were not the normal expenditure incurred by the deceased and as such no part of it could be deducted as falling u/s 9(2) of the Act. On this controversy the Tribunal observed thus :

"On going through the details of the alleged gifts. The orders of the Assistant Controller and the Zonal Appellate Controller in this behalf, we find that Rs. 10,000 represents mainly the gift and/or expenditure on Hardwar Kshetra during the period of Ardh Kumbh in 1961, the balance amount except Rs. 2,200 which is not in dispute before us, represented gifts pure and simple to the deceased relations. The counsel for the accountable person was not able to satisfy us that such gifts to various relations were made by the deceased as a matter of routine and even if it was so, the limit of Rs. 10,000 is there in section 9(2)(b) of the Estate Duty Act, 1953. In fact even the figure of the deceased expenditure for the earlier few years were not given to us so as to enable us to examine whether the deceased actually gifted similar amount on certain occasions in those years. There is, thus, no merit with in the accountable persons appeal on this issue. As regards the revenues appeal also we are of the opinion that the normal expenditure of the deceased contemplated in section 9(2)(b) means the expenditure that an assessee would normally incur on particular occasions including the normal expenditure from year to year. It would certainly be not confined to the normal expenditure from year to year only. Having regard to this aspect of the matter we agree with the Zonal Appellate Controller the rich

persons with religious bent of mind do spend their moneys to the capacities on the occasion of Kumbh Mela and, therefore, the expenditure in dispute forms part if the normal expenditure of the deceased. The revenues ground is, therefore, rejected."

These observations clearly imply that the Appellate Tribunal agreed with the Zonal Appellate Controller that the sum of Rs. 10,253 represented the gifts pure and simple which could not be said to be a normal expenditure of the deceased. Remaining amount of Rs. 12,200 represented either the gifts which had been made by the deceased by way of normal expenditure or the amount which did not represent any gift. Even if the contention of the accountable person that the sum of Rs. 10,000 included in Rs. 10,253 (the add-back confirmed by the Zonal Appellate Controller) gifted by the deceased in connection with Hardwar Kshetra on the occasion of Kumbh was his normal expenditure, is accepted, it would not make any difference as u/s 9(2) such gifts to the maximum extent of Rs. 10,000 alone are exempt in computing the value of the estate passing in the death of a person. In this case the benefit to the extent of Rs. 10,000 in respect of gifts made by way of normal expenditure had already been given while deleting the add-back of Rs. 12,250. Accordingly, the sum of Rs. 10,000 gifted by the deceased on Hardwar Kshetra on the occasion of Kumbh could not be further excluded in computing the value of the property passing on the death of the deceased.

Learned counsel for the accountable person then argued that the aforesaid amount of Rs. 10,000 was not gifted at all, and as such it did not fall to be included in the value of the property passing on the death of Babu Lal u/s 9(1) of the Estate Duty Act. We are unable to accept this submission. In the first place the case has throughout proceeded on the footing that this amount represented one of the items of gift made by the deceased. Secondly, the assessment order shows that the amount has been described either as charity at Hardwar Kshetra or as gift to Hardwar Chhetra. The accountable person has not been able to point out anything in the statement of the case which may indicate that description that the amount of Rs. 10,000 was either spent as charity at Hrdwar Kshetra or gifted to Hardwar Chhetra was not accurate. Accordingly, it is not open to the accountable person to urge before this court that this amount had not been spent by way of gift. The decision of the Appellate Tribunal that out of Rs. 22,453 only a sum of Rs. 10,253 was liable to be included in the value of the assets left by the deceased, therefore, appears to be justified.

The Assistant Controller of Estate Duty found that the deceased had within two years of his death made a gift of 250 tola of gold. Computing the value of the gold so gifted at the rate of Rs. 140 per tolas, he added a sum of Rs. 35,000 to the value of the estate passing on the death of the deceased. The Appellate Controller of Estate Duty pointed out that in computing the value of gold the Assistant Controller had instead of taking its value on the date of Babu Lals demise had taken into consideration its rate (Rs. 140 per tola) prevailing at the

time of the alleged gift. The rate of gold at the time of Babu Lal Kedias death was Rs. 115 per tola. Accordingly, value of gold which had to be included on the value of the property passing on the death of Babu Lal had to be reduced by a sum of Rs. 6,250. The Appellate Tribunal agreed with the Zonal Appellate Controller that for purposes of estate duty the value of gold had to be calculated on the basis of its rate as prevailing on the date of the death of the deceased and not that on the date of the alleged gift. Section 36(1) provides that the principle value of any property shall be estimated to be the price which, in the opinion of the Controller it would fetch if sold in the open market at the time of the deceased death. It, therefore, follows that the value of the property which passes or is deemed to pass on the death of a person has to be estimated on the date of his death. Accordingly, the Tribunal was justified in coming to the conclusion that the value of the gold was liable to assessment at the rate prevailing on the date of the death of the deceased and not when the gift was made. Question No. 3 is answered accordingly.

So far as question No. 4 is concerned we find that the Assistant Controller of Estate Duty determined the value of 250 tolas of gold by applying to it the rate of Rs. 140 per tola, the rate which was prevailing at the time of its gift. Both the accountable person and the Assistant Controller took in their respective grounds of appeals objections that the value of gold had not been properly determined. Even though the material available on the record indicated that the value of gold on the date of Babu Lals death was less than that on the date of the gift, yet the contention raised by the accountable person in his grounds of appeal was that the value of 250 tolas of gold should have been calculated by applying to it the rate of gold as prevailing at the time of its gift and not that prevailing at the time of Babu Lals death. However, the Tribunal found that on the date of Babu Lal Kedias death, the Gold Control Order, promulgated by the Government of India, which restricted free trade in old and fixing its price at Rs. 62.50 per 10 grammes was in force and that ordinarily gold could not have a market rate other than its control rate at the material time. But considering the admission made by the accountable person that the market rate of gold on the relevant date was Rs. 115 per tola, the valuation made by the Appellate Controller did not require any interference. It is obvious that when section 36 of the Estate Duty Act provides that the principal value of any property shall be estimated to be the price which in the opinion of the controller it would fetch if sold in the open market it obviously refers to sale of property in an open market in legal manner. If at the time of death of a person there is a law providing that the goods cannot be sold in an open market at a price higher than a particular price they cannot be valued at a price higher than that which could be legally charged for it notwithstanding that persons may be available who may be willing to pay a price higher than its controlled price. Accordingly, the price which could be legally charged, if the gold had been sold in the open market on the date of the death of Sri. Babu Lal Kedia, could alone be taken into consideration. The authorities under the Estate Duty Act would not be concerned with the illegal sale of gold or its illegal price. The

admission of the accountable person than on that date gold could fetch a price of Rs. 115 per tola merely meant that notwithstanding the controlled price there were persons who could have purchased gold at that rate. That admission, however, could not entitle authorities under the Estate Duty Act to value gold on the basis of such illegal price. We are, therefore, of opinion that after finding that on the relevant date the value of the gold was Rs. 62.50 per 10 grammes, the Tribunal was not right in sustaining the valuation of 250 tolas of gold by applying to it the rate of Rs. 115 per tola.

The facts with regard to question No. 5 are that, being aggrieved by the order of the Appellate controller of Estate Duty, the revenue went up in second appeal before the Tribunal. The accountable person raised a preliminary objection and contended that the appeal filed by the department was not maintainable inasmuch as instead of being addressed to the Income Tax Appellate Tribunal, Allahabad, it was addressed to the Appellate Tribunal of Estate duty, Allahabad, and the appellant instead of being the Assistant controller of Estate Duty, Kanpur, was the Assistant Controller of Estate Duty, Allahabad. The Income Tax Appellate Tribunal found that the mistake in addressing the Tribunal as also in designating the officer presenting the appeal were bona fide mistakes. The appeal had in fact been presented by the person competent to present the same and before the competent Tribunal. Since the appeal had been presented by a competent person and before the competent authority the same was entertainable and the Tribunal did not commit any mistake in entertaining it. In our opinion merely because there was some, mis-description in the designation of the person presenting the appeal or the Tribunal to which it was addressed, would not render the appeal incompetent person presenting the appeal or the so long as it was presented by a person competent to file it before an authority factually competent to entertain the same. The appeal presented by the department in this case was therefore maintainable.

Questions Nos. 6 and 7 may now be taken up and dealt with together.

It is not disputed that originally Sri Babu Lal Kedia formed a joint Jindu family with his son, Jiwan Ram, the father of Krishna Kumar, Vijay Kumar and Munni Lal and the husband of Prakashwati Devi. This Hindu undivided family was being assessed to tax under the name and style of Messrs. Ganga Dhar Babu Lal, General Ganj, Kanpur. The family carried on money-lending business in the name of Ganga Dhar Babu Lal and cloth business in the name of Babu Jiwan Ram. Besides this, Babu Lal was also partner in various other firms such as Ganga Dhar Deo Narain and Babu Lal Sheo Narain. He also owned considerable amount of other movable and immovable properties. In the year 1943, there was a partial partition in the family as a result of which the family business was divided between Babu Lal Kedia and his son, Jiwan Ram. The business, Gangadhar Babu Lal, was given exclusively to Sri Babu Kadia, whereas that carried on in the name of Babu Lal Jiwan Ram was given to Jiwan Ram exclusively. At that time the parties agreed that they would further divide all other movable and immovable

properties belonging to the family. Consequently, on April, 28, 1945, Babu Lal Kedia, Jiwan Ram on his own behalf and on behalf of his sons and Smt. Kamli Devi, wife of Babu Lal and step-mother of Jiwan Ram, executed a partition deed dividing all the movable and immovable properties amongst themselves and in the manner specified therein. The executants recognised and accepted the partition of the business already effected between Babu Lal and Jiwan Ram. It thus appears that on April, 28, 1945, there was a complete disruption in the family of Babu Lal. Thereafter, Babu Lal continued to be assessed to Income Tax as an individual. Subsequently, Kamli Devi and Jiwan Ram died in the years 1948 and 1949. Thereafter, the only members of the disrupted members of the joint Hindu family that remained were Babu Lal, his daughter-in-law, Smt. Prakashwati Devi, and the three grandsons, Krishna Kumar, Vijai Kumar and Munni Lal. Sri Babu Lal Kedia claims that on November 5, 1961, he declared and threw all the sums standing to his credit in the business, Gangadhar Babu Lal, as also the business, along with 500 tolas of gold and 200 shares of the Bank of Jaipur, in the common hotchpotch of the Hindu undivided family consisting of himself, his widowed daughter-in-law, Smt. Prakashwati Devi, and the grandsons Krishna Kumar, Vijay Kumar and Munni Lal (the three sons of Jiwan Ram) with the intention of abandoning all his separate claim over that property. He followed up the afore said declaration by executing a deed on November 13, 1961, in which he recognised and accepted the aforementioned facts. Thereafter, Babu Lal Kedia claimed that in respect of income derived by him from the business, Gangadhar Babu Lal, he be assessed in his capacity as karta of the Hindu undivided family. While these assessment proceedings were pending Babu Lal died on May 4, 1963. After the death of Sri Babu Lal Kedia, Vijai Kumar, as one of the accountable persons, filed the estate duty return indicating that the business, Gangadhar Babu Lal, was a joint Hindu family business in which the deceased had merely one-half share. The Assistant controller of Estate Duty held that the Hindu undivided family headed by Babu Lal Kedia disrupted in the year 1945, when all the properties belonging to the family were divided between Babu Lal, his wife, Kamli Devi, and his son Jiwan Ram. Under the law an agreement between Babu Lal, his daughter-in-law, Smt. Prakashwati Devi, and his three grandsons could not lead to a reunion of the family. Accordingly, in the year 1961, there was no such joint Hindu family in existence, into whose hotchpotch, Sri Babu Lal could throw his separate property. The business of the firm, Gangadhar Babu Lal, and other properties, therefore, continued to be the individual business of Babu Lal and the whole value of the same and not merely one-half, as claimed by the accountable person, was to be included in the value of the property passing on Babu Lal's death. In appeal, the Appellate Controller of Estate Duty held that there did exist a joint family in to whose hotchpotch Babu Lal could have and had thrown the business carried on in the name of Gangadhar Babu Lal and that his share in such joint family property was only one-half as claimed by the accountable person. In second appeal the Income Tax Appellate Tribunal disagreed with the Appellate Controller and after setting aside his order on this point, it restored the order made by the Assistant Controller.

It appears that before the Assistant Controller it was urged on behalf of the accountable person that after disruption of the family in the year 1945, there was reunion as a result of which Babu Lal, his daughter-in-law, Smt. Prakashwati, and the three grandsons, viz, Vijai Kumar and his two brothers, again became members of a joint Hindu family. However, in view of the fact that under the Hindu law in a case where the family stood disrupted at the instance of the grandfather and his son, it could not get reunited as a result of an agreement between the grandfather and his grandsons, the plea of reunion was specifically given up by the accountable person before the Regional Appellate Controller and the Income Tax Appellate late Tribunal. As a matter of fact before the Appellate Controller, the accountable person urged that the Assistant Controller had misunderstood this case which he made a reference to reunion of the family as a result of an agreement between Babu Lal and his grandsons. It was urged on behalf of the accountable person that throughout a joint family consisting Prakashwati and the three grandsons of Balu Lal Kedia continued to exist. That family was never disrupted and Babu Lal Kedia threw his individual property in the hotchpotch of that family. Now, if the case of reunion is abandoned it is obvious that after partition in the family in the year 1945, Babu Lal did not become a member of the joint Hindu family constituted by Jiwan Ram and his three sons, viz., Krishna Kumar, Vijai Kumar and Munni Lal. In the case of *Goli Eswariah v. Commissioner of Gift-tax* the Supreme Court observed thus :

"To pronounce on the question of law presented for our decision, we must first examine what is the true scope of the doctrine of throwing into the common stock or common hotchpotch. It must be remembered that a Hindu family is not a creature of a contract. As observed by this Court in *Mallesappa Bandappa Desai v. Desai Mallappa*, the doctrine of throwing into the common stock inevitable postulates that the owner of separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. The existence of a coparcenary is absolutely necessary before a coparcener can throw into the common stock his self-acquired properties. The separate property of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by him into the common stock with the intention of abandoning his separate claim therein. The separate property of a Hindu ceases to be separate property and acquires the characteristic of joint family or ancestral property not by any physical mixing with his joint family or his ancestral property but by his own volition and intention by his waiving and surrendering his separate rights in it as separate property. The act by which the coparcener throws his separate property in the common stock is a unilateral act." These observations, in our opinion, clearly make out that a person can throw his individual property in a common stock or in a Common hotchpotch only in a coparcenary of which he is a member. A person cannot throw his individual property in the common hotchpotch of another joint Hindu family of which he is not a coparcener. In this case once it is established that there was a disruption in the joint Hindu family,

between Babu Lal on the one hand and Jiwan Lal and his sons on the other, Babu Lal ceased to be a member of the joint Hindu family consisting of Jiwan Lal and his sons and as such he could not throw his individual property in the common hotchpotch of the coparcenary of his grandsons of which he was not a member. Learned counsel for the accountable persons then took up a stand, which was not taken either before the Appellate Controller or before Income Tax Appellate Tribunal, viz., that notwithstanding the partition deed executed in the year 1945, the joint family consisting of Babu Lal, his son, Jiwan Ram, and the grandsons actually never got disrupted. He urged that during the proceedings for the assessment of Gangadhar Babu Lal (HUr) certain refund amounting to Rs. 62,567 (the subject-matter of the next question) became due to the family. This amount also represented one of the assets belonging to the joint Hindu family which was never partitioned. Relying upon the case of Jogendra Nath Rai v. Baladeo Das Marwari, he contended that qua this property the family of Babu Lal, his son Jiwan Ram, and the grandsons, Krishna kumar, Vijai Kumar and Munni Lal, continued to exist as a joint Hindu family. Babu Lal thus was a member of that family which after the death of Jiwan Ram consisted of Babu Lal, his grandsons, Krishna Kumar, Vijai Kumar and Munni Lal, and widowed daughter-in-law, Prakashwati Devi, and he could throw his individual property in its common stock or hotchpotch. We are unable to accept this submission. According to the law on the subject as enunciated in Mulla's Hindu Law, 10th edition, page 417, it is open to the members of a joint Hindu family to make a division and severance of interest in respect of a part of the joint estate while retaining their status as a joint family and holding the rest as the members of the joint and undivided family. But, where there is evidence to show that the parties intended to sever, then the joint family status is put an end to and with regard to any portion of the property which remained undivided the presumption would be that the members of the family would hold it as tenants-in-common unless and until a special agreement to hold as joint tenants is proved. When a partition is admitted or proved the presumption is that all the property was divided and a person alleging that the family property in the exclusive possession of one of the members after the partition is joint and is liable to be partitioned has to prove his case. To in the case before us the partition deed dated April 28, 1945, Makes it clear that the intention of the parties was to put an end to the joint family status of the family constituted by Babu Lal, Jiwan Ram and the sons of Jiwan Ram. The documents clearly receives that for certain reasons Babu Lal Kedia and Jiwan Ram Kedia realised that they could not remain joint any longer and, therefore, they separated on Jeth Sudi 5, S. 2000 and a partition deed was being executed by them. The refund amounting to Rs. 62,000 and odd became payable on a date much later than April 28, 1945. That is property therefore was not available for being partitioned on April 28, 1945, and thus could not be included in the partition deed. In our opinion, after the parties had clearly indicated their intention of putting a end to the joint family status, merely because some property came into existence which would have belonged to this joint Hindu family had it not dissolved, it does not mean that severance in the family status

had not taken place or that the parties intended to continue as a member of a joint Hindu family. The amount of Rs. 62,567 which became refundable in respect of the assessment of the erstwhile dissolved joint Hindu family, would belong to the members of that family in accordance with the shares received by them on partition. Such members would be entitled to that money as the tenants-in-common, rather than in their status of joint tenants. Accordingly, Babu Lal had half share in the refund amount of Rs. 62,567 and the remaining half belonged to the other members of the erstwhile joint Hindu family. In the result, the Tribunal was right in holding that after partition no Hindu undivided family consisting of Babu Lal, his daughter-in-law and his grandsons came into existence and that from out of Rs. 62,567, the refund admissible in connection with the assessment of the Hindu undivided family, only a sum of Rs. 31,288 was includible in the estate duty assessment of the deceased. In the result we answer the various questions referred to us as follows :

Question No. 1 in the affirmative and in favour of the department.

Question No. 2 in the affirmative and in favour of the department.

Question No. 3 in the affirmative and in favour of the accountable person.

Question No. 4 in the negative and in favour of the accountable person.

Question No. 5 in the affirmative and in favour of the department.

Question No. 6 in the affirmative and in favour of the department.

Question No. 7 in the affirmative and in favour of the department.

Question No. 8 in the affirmative and in favour of the department.

In view of the divided success, parties are directed to bear their own costs of this reference.