Umesh Rudra Vs. Controller of Estate Duty, Karnataka

Umesh Rudra Vs. Controller of Estate Duty, Karnataka

SooperKanoon Citation : sooperkanoon.com/370385

Court : Karnataka

Decided On : Jun-01-1978

Reported in : ILR1978KAR1533; [1978]114ITR127(KAR); [1978]114ITR127(Karn); 1978(2)KarLJ35

Judge : E.S. Venkataramaiah and ;M.K. Srinivas Iyengar, JJ.

Acts : Estate Duty Act, 1953 - Sections 10

Appeal No. : Tax Revision Case No. 1 of 1975

Appellant : Umesh Rudra

Respondent : Controller of Estate Duty, Karnataka

Advocate for Def. : S. Rajendra Babu, Adv.

Advocate for Pet/Ap. : G. Sarangan, Adv.

Judgement :

Srinivasa Iyengar, J.

1. The income-tax Appellate Tribunal, Bangalore Bench, was referred the following question for decision of this court :

'Whether, on the facts and in the circumstances of the case, the value of the residential property known as 'Rajatadri' is includible in the principal value of the estate passing on the death of the deceased under section 10 of the Estate Duty Act, 1953 ?'

2. One B. Rudra alias Rudrashetty was the owner of the house by name 'Rajatadri' and the proceedings relate to the estate duty leviable in regard to his estate, he having died on August 2, 1963. By a registered deed dated 27th November, 1957, he has gifted the residential house to his wife. The gift was more than two years prior to his death. The estate duty authorities sought to include the value of the said house in determining the principal value of the estate passing on his death on the ground that the donee had not retained possession and enjoyment to the entire exclusion of the donor in respect of the said house. The accountable person preferred an appeal to the Appellate Controller of Estate Duty, but his contention was not upheld. The appeal preferred by the accountable person in this behalf to the Tribunal did not meet with success. At the instance of the accountable person, the question above referred to has been referred to this court.

3. The finding of the authorities has been behalf that the gift was a genuine one, but they have held that the value of the house is includible in the principal value of the estate passing on the death under section 10 of the Estate Duty Act, 1953 (hereinafter referred to as 'the Act') merely because the deceased who was the husband of the done continued to reside in the house till his death. The Tribunal mainly sought to rely on certain observations made by the Supreme Court in George Da Costa v. Controller of Estate Duty : [1967]63ITR497(SC) . Similar question had to be considered by the High Court of Calcutta and Andhra Pradesh after the Supreme Court rendered its decision in the above case. The High Court of Madras has also considered the said question after the Supreme Court rendered its decision. They have held that in similar circumstances where the gift is by the husband to the wife of a residential house, the mere fact that he continued to reside in it till his death would not amount to the donee not retaining the property to the entire exclusion of the donor and it cannot be said that the mere residence of the husband in such circumstances would amount to his being in possession and enjoyment of the house, he having nothing to do with its possession and enjoyment. The decisions of the High Court of Calcutta have been reported as Mrs. Shamsun Nehar Mansur v. Controller of Estate Duty :

[1969]71ITR301(Cal) and Sunil Roy v. Controller of Estate Duty : [1970]77ITR668(Cal) and that of the Andhra Pradesh High Court in Mohammed Bhai v. Controller of Estate Duty : [1968]69ITR770(AP) . In Mohammed Bhai's case, at page 777, Jaganmohan Reddy C.J. (as he then was) observed as follows :

'There was no other way in which the donor, even from the department's point of view, could have given possession of the residential house to his wife in order to make an effective gift, unless it is stated that he should leave his wife and go into some other house, or that they should both move out of the house and lease it so that the wife will thenceforth receive the rents...... We do not think there is anything in section 10 which requires a break in the marital relationship or separation from the husband to make an effective gift of the residential house to the wife or the wife to the husband.'

4. We are in respectful agreement with the above observation. The High Court of Madras in the case in Controller of Estate Duty v. Mrs. Kamala Pandalai : [1976]105ITR531(Mad) reviewed all the decisions of the other High Courts and its view is also on the same lines.

5. In the instant case, the house property was the matrimonial house. The presence of the husband in the house after the gift with his wife cannot in any way militate against the Wife dance retaining to the entire exclusion of the donor the possession and enjoyment of the house. For the department the decision of the High Court of Allahabad in Bibi Ahmadi Begum v. Controller of Estate Duty : [1972]83ITR303(All) was relied upon. The view taken by the High Court of Calcutta was sought to be relied upon before the Allahabad High Court, but the learned judges were not inclined to agree with that view. In our opinion, the view taken by the other High Court referred to above appears to us to take the correct view and accordingly we follow them in preference to the decision of the High Court of Allahabad. For the reasons stated above, the inclusion of the value of the house gifted in favour of his wife, Girija, in the computation of the principal value of the estate passing on the death was not warranted. Therefore, we answer the question referred to us in the negative and in favour of the accountable person. No

costs.