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K. Venugopal Vs. Controller of Estate Duty

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Court : Andhra Pradesh

Decided On : Feb-17-1983

Reported in : [1983]143ITR988(AP)

Judge : A. Raghuvir, ;M. Jagannatha Rao and ;Ramchandra Rao, JJ.

Acts : Estate Duty Act, 1953 - Sections 5, 7, 33(1), 34 and 39(3)

Appeal No. : Case Referred No. 176 of 1976

Appellant : K. Venugopal

Respondent : Controller of Estate Duty

Advocate for Def. : M. Suryanarayana Murthy, Adv.

Advocate for Pet/Ap. : Y.V. Anjaneyulu, Adv.

Judgement :

Ramachandra Rao, J.

1. The following question of law have been referred to this court under s. 64(1) of the E.D. Act (hereinafter called 'the Act') by the Income-tax Appellate Tribunal, Hyderabad, at the instance of the applicant representing the estate of late K. C. Krishna Murthy :

'(1) Whether, on the facts and in the circumstances of the case, for the purpose of aggregation of the lineal descendants' share in the joint family property, exemption under section 33(1)(n) of the Act is due in respect of the entire residential house

(2) Whether, on the facts and in the circumstances of the case, the deceased's share of goodwill relating to Associated Trades, Secunderabad, of which the deceased was a partner, passed on his death under section 5 of the Act ?'

2. The relevant facts as set out in the statement of the case by the Income-tax Appellate Tribunal are as follows : One K. G. Krishna Murthy, who was the karta of an HUF consisting of himself and his three sons, died on October 23, 1971.

3. The Asst. Controller of Estate Duty determined the total value of the Hindu joint family properties, of which the deceased was the karta, at Rs. 2,66,705 and determined the deceased's 1/4th share at Rs. 66,676. The balance of Rs. 2,00,028 representing the value of the shares of the lineal descendants was aggregated under s. 34(1)(c) for rate purposes. The properties of the joint family, valued as above, included a residential house valued at Rs. 88,000. The said house is situate in Secunderabad, the population of which exceeds ten thousand. The accountable person contended that while determining the total value of the joint family properties the entire sum of Rs. 88,000 representing the value of the residential house was exempt under s. 33(1)(n) of the Act. It was further contended that for ascertaining the lineal descendants' share for the purpose of aggregation, the entire value of the residential house should be exempted under s. 33(1)(n) of the Act. This contention was due only in respect of the value of 1/4th share of the deceased in the residential house, and accordingly exempted a sum of Rs. 22,000 representing the value of the deceased's share in the residential house of the joint family, and declined to exempt the lineal descendants' share in the residential house for the purpose of aggregation. On appeals preferred by the accountable person to the Appellate Controller and the Income-tax Appellate Tribunal, the view of the Asst. Controller was upheld.

4. The deceased was a partner in the partnership known as Associated Trades, Secunderabad, which carries on business in purchase and sale of Royal Enfield Motor Cycles and BMF Motors and Pumpsets. The Asst. Controller held that 1/4th

share of the deceased in the said partnership firm passed under s. 5 of the E.D. Act, and accordingly determined the value of the goodwill of the partnership at Rs. 28,000 and included in the estate passing on the death of the deceased a sum of Rs. 7,000 representing the value of 1/4th share of the deceased. This view was upheld by the Appellate Controller as well as the Appellate Tribunal. On application made by the accountable person, the questions mentioned above have been referred for the opinion of the High Court.

5. When this case came up for hearing before the Division Bench, Sri. Y. V. Anjaneyulu, the learned counsel for the accountable person, relying upon the ruling of this court in CED v. Estate of Late Durga Prasad Beharilal : [1979]116ITR692(AP) contended that the entire value of the residential house of the joint family should be exempted under s. 33(1)(n) in determining the value of the share of the deceased in the said house and also the shares of the sons in the said house for aggregation under s. 34(1)(c) for rate purpose. The standing counsel for the Revenue contended that the aforesaid decision required re-consideration. The learned judges referred the case to a Full Bench to have an authoritative pronouncement on the said question. That is how the case has come before us.

6. Sr. Y. V. Anjaneyulu, the learned counsel for the accountable person, submitted that he is not pressing for an opinion on the second question; hence, it is unnecessary for us to express our opinion on the said question.

7. On the first question, it is contended by Sri Y. V. Anjaneyulu, the learned counsel for the accountable person, that the entire sum of Rs. 88,000 representing the value of the residential house belonging to the joint family should have been exempted under s. 33(1)(n) of the Act, whereas for the Revenue, it was contended by Sri. M. Suryanarayana Murthy that the exemption under s. 33(1)(n) is only limited to the value of the share of the deceased in the residential house, and no exemption can be allowed for the value of the shares of the lineal descendants in the said residential house, and that the shares of the lineal descendants in all the joint family properties including the residential house have to be aggregated with the interest of the deceased in the joint family property.

8. In order to decide this question, it is necessary to refer to the relevant provisions of the Act. The object of the E.D. Act, 1953, is to impose an estate duty on property passing or deemed to pass on the death of a person.

9. Section 2(15) defines 'property' as including any interest in the property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another.

10. Part II, containing ss. 5 to 20, deals with the imposition of duty. Section 5(1) provides that :

'5. (1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural land situate in the territories which immediately before the November 1, 1956, were comprised in the State specified in the First Schedule to this Act, which passes on the death of such person, a duty called 'estate duty' at the rates fixed in accordance with section 35.'

11. Section 7, which deals with the interest ceasing on death, provides as follows :

'7. (1) Subject to the provisions of this section, property in which the deceased, or any other person had an interest ceasing on the death of the deceased, shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law.

(2) If a member of a Hindu coparcenary governed by the Mitakshara school of law dies, then the provision of sub-section (1) shall apply with respect to the interest of the deceased in the coparcenary property only -

(a) if the deceased had completed his eighteenth year at the time of his death, or

(b) where he had not completed his eighteenth year at the time of his death, if his father or other male ascendant in the male line was not a coparcener of the dame family at the time of his death.'

(Rest omitted as not relevant for this case.)

12. Section 8 to 16 refer to certain kinds of property or interests which are deemed to be properties passing on the death of a deceased. Part III containing ss. 21 to 33 is captioned 'Exceptions from the charge of duty.' The several sections in Pt. III specify the kinds of properties which are not to be included in the property passing on the death of a deceased, or which are totally exempted from duty, or for which lower rates of estate duty are leviable.

13. Section 33 exempts, to the extent mentioned therein, certain kinds of properties, including a residential house or part thereof as mentioned in clause (n). Section 33(1)(n) which is relevant for the purpose of this case, reads as follows :

'33. Exemptions. - (1) To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of property of any of the following kinds, belonging to the deceased, which passes on his death....

(n) one house or part thereof exclusively used by the deceased for his residence, to the extent the principal value thereof does not exceed rupees one lakh if such house is situate in a place with a population exceeding ten thousand, and the full principal value thereof, in any other case.'

14. Part IV contains two sections which deal with aggregation of property and rates of duty. Section 34 which provides for aggregation of property including the interests of the lineal descendants in the joint family property, reads as follows :

'34. Aggregation. - (1) For the purpose of determining the rate of the estate duty to be paid on any property passing on the death of the deceased, -

(a) all property so passing other than property exempted from estate duty under clauses (c), (d), (e), (i), (j), (l), (m), (mm), (n), (o) and (p) of sub-section (1) of section 33;

(b) agricultural land so passing, if any, situate in any State not specified in the First Schedule; and

(c) in the case of property so passing which consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law, also the interest in the joint family property of all the lineal descendants of the deceased member;

shall be aggregated so as to form one estate and estate duty shall be levied thereon at the rate or rates applicable in respect of the principal value thereof.'

15. Section 35 provides that the rates of estate duty shall be as mentioned in the Second Schedule.

16. Part V which contains ss. 36 to 43 deals with the value chargeable to estate duty. Under s. 36, 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 at the time of the deceased's death.

17. Sub-sections (1) and (3) of s. 39 which are relevant for the purpose of this case read as follows :

'39. (1) The value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which cases on the death of a member thereof shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death....

(3) For the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law in order to arrive at the share which would have been allotted to the deceased had a partition take place immediately before his death, the provisions of this Act, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased.'

18. Part VI containing ss. 44 to 50B provides for allowances for funeral expenses (not exceeding Rs. 1,000) and for debts and incumbrances and other reliefs from estate duty.

19. Part VII deals with the method of collection of duty, while Pt. VIII makes estate duty a first charge on the property and provides for facilities fro raising the amount necessary for payment of duty. Part IX deals with miscellaneous provisions which are not relevant for the purpose of this case.

20. The question referred has to be decided mainly with reference to ss. 5, 7, 33(1)(n), 34(1)(c) and 39 (1) and (3) of the Act.

21. Under s. 5, in the case of every person dying after the commencement of the Act, there shall (save as hereinafter expressly provided) be levied and paid upon the principal value, ascertained as hereinafter provided, of all property which passes on the death of such person, a duty called 'estate duty' at the rates fixed in accordance with s. 35 read with the Second Schedule. This section provides for the extent of charge in the following manner :

(1) Firstly, the person must have died after the commencement of the Act.

(2) The estate duty shall be levied and paid 'as hereinafter expressly provided.'

(3) The estate duty shall be levied and paid on the principal value ascertained as hereinafter provided of all property settled or not settled, including agricultural land.

(4) The estate duty shall be paid at the rate fixed in section 35.

22. Under this section the levy and payment of estate duty as well as the ascertainment of the principal value of all property passing on the death of a person shall be in accordance with the provisions of the Act hereinafter provided.

23. Section 7 deals with cesser of interest, including coparcenary interest ceasing on the death of a coparcener of a Hindu joint family governed by Mitakshara, Marumakkattayam or Aliyasantana Law. By a statutory fiction, the interest of a coparcener ceasing on his death shall be deemed to pass on his death to the

extent to which a benefit accrues or arises by cesser of his coparcenary interest in the joint family property of a Hindu family governed by Mitakshara, Marumakkattayam or Aliyasantana law. Under s. 7(2), the interest of the deceased coparcener in the Hindu joint family governed by Mitakshara school will be deemed to pass only if he had completed 18 years at the time of his death; or if he was under 18, he had no father or other male ascendant in the male line of the coparcenary family at the time of his death.

24. How the value of the benefit accruing or arising from the cesser of a coparcenary interest in Hindu joint family governed by Mitakshara law has to be determined, is provided by s. 39(1). It says that the said value shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death. Section 39(3) provides for estimating the principal value of the joint family property of a Hindu family governed by Mitakshara, Marumakkattayam and Aliyasantana law. In order to arrive at the share which he would have got, had there been a partition immediately before his death, the provisions of the Act, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased. Thus, under s. 39(1), for the purpose of ascertaining the share of the deceased, a notional partition is deemed to have taken place immediately before his death. Under s. 39(3), another fiction is introduced by treating the whole of the joint family as belonging to the deceased, for the purpose of estimating the principal value of the joint family property, in order to arrive at the share which the deceased would have got, had a partition taken place immediately before his death.

25. Thus, there are three statutory fictions introduced for the purpose of levying estate duty on the coparcenary interest of a deceased in the Hindu joint family governed by Mitakshara. Firstly, under s. 7(1), the interest ceasing on the death of a coparcener shall be deemed to pass on his death. Secondly, under s. 39(1), a partition is deemed to have taken place immediately before the death of such coparcener, for the purpose of determining the principal value of his share in the joint family property. Thirdly, under s. 39(3) the whole of the joint family property shall be deemed to have belonged to the deceased for the purpose of estimating

the principal value of the joint family property to arrive at the share of the deceased on the date of his death.

26. Section 33 provides for the exemption of certain kinds of property from payment of estate duty. Section 34 of the Act provides for an aggregation of property for determining the rate of estate duty to be paid on any property passing on the death of the deceased.

27. There is no dispute as to the aggregation of the interests in a joint family property of the lineal descendants of the deceased under s. 34(1)(c) for the purpose of determining the rate of estate duty. The difficulty arises in determining the principal value of the Hindu joint family property and arriving at the shares of the deceased and his lineal descendants in the joint family property.

28. The question then for consideration is, at what stage the residential house exempted under s. 33(1)(n) should be excluded for the purpose of levying estate duty on the principal value of the share of the deceased in the Hindu joint family. As already mentioned, there are three statutory fictions created by ss. 7(1), 39(1) and 39(3) with regard to levy of estate duty on the share of a deceased coparcener. While s. 7(1) creates a legal fiction that the interest of a deceased coparcener passes on his death, s. 39(1) creates a statutory fiction of a partition of the deceased immediately before his death for the purpose of fixing the principal value of his share in the joint family property. Yet another fiction is created by s. 39(3) that the whole of the joint family property shall be deemed to have belonged to the deceased for the purpose of estimating the value of Hindu joint family property in order to arrive at the share of the deceased on a notional partition immediately prior to his death. The purpose of the third fiction is wholly unnecessary for determining the share of the deceased, as such determination has already been provided for by s. 39(1). Therefore, the third fiction under s. 39(3) appears to have been introduced altogether for a different purpose. In our view, the said fiction of treating the whole of the joint family property as belonging to the deceased has been introduced with a view to apply the provisions of the Act which apply to the property belonging to an individual and which passes on his death. The expression 'the provisions of this Act, so far as may be, shall apply as

they would have applied if the whole of the joint family property had belonged to the deceased' makes this position clear. Therefore, in estimating the principal value of the joint family property with a view to arrive at the share of the deceased on a notional partition immediately before his death, it becomes necessary to apply all the provisions of the Act as they apply to the property of a deceased individual. While s. 39(1) refers to the 'principal value of the share of the deceased in the joint family property', s. 39(3) refers to the 'principal value of the joint family property'. It is this principal value of the joint family property that has to be determined and in doing so, the provisions of the Act, so far as may be, have to be applied as if the whole of the joint family property had belonged to the deceased.

29. If the whole of the joint family property is deemed to have belonged to the deceased and the provisions of the Act have to be applied for determining the principal value of such property, all the relevant provisions of the Act which make estate duty leviable and payable on property passing on the death, or on property deemed to pass on the death of a person as mentioned in Pt. II as well as the provisions of the Act which provide for exceptions or exemptions under Pt. III including s. 33, and the provisions of Pt. VI, which provide for deductions and allowances, have to be applied.

30. Take a case where the karta of a Hindu joint family and his lineal descendants made a gift of joint family property which falls within the purview of s. 9(1) of the Act. If the fiction introduced by s. 39(3) is not given its full effect, only the share of the karta in the property gifted will be deemed to pass on his death, and not the shares of the other lineal descendants in the gifted property, and the value representing the shares of lineal descendants cannot be taken into consideration in determining the principal value of the joint family property.

31. To illustrate further, let us look at the exemptions provided under s. 33. Certain properties like household goods, books not intended for sale, drawings or paintings, etc., retained in the family of the deceased are wholly exempt from estate duty. Supposing the said properties belonged to a Hindu joint family, if full effect is not given to the fiction under s. 39(3), only the shares of the deceased coparcener in the said properties will be exempted from estate duty, but not the

shares of the other lineal descendants of the deceased coparcener.

32. Take another instance where allowances have to be made under s. 44 for debts and incumbrances incurred by the Hindu joint family. Only the share of the deceased coparcener in the debts and incumbrances will have to be deducted under s. 44 and no such deduction can be allowed in such debts and incumbrances from the shares of the lineal descendants.

33. While the share of the deceased in the joint family properties gets exemption from estate duty in respect of property of the kind mentioned in s. 33, the shares of the living persons, i.e., the shares of lineal descendants of the deceased, though aggregated under s. 34(1) (a), (b) and (c) for rate purposes, would not get the exemptions under s. 33. If the fiction under s. 39(3) is given its full effect by treating the whole of the joint family property as belonging to the deceased, all the provisions of the Act so far as may be will apply and the inclusions or exclusions, exemptions or allowances or deductions provided for under the Act, will become applicable to the whole of the said property.

34. Under Expln. (iii) to s. 34(2), the interests of all the coparceners other than the deceased in the joint family property of a Hindu family governed by Mitakshara are exempt from estate duty but the interests of the lineal descendants of the deceased member are aggregated under s. 34(1)(c) only for rate purposes. Therefore, it would be logical to infer that the fiction under s. 39(3) has been statutorily created with a view to apply all the provisions of the Act which have applied if the whole of the joint family property had belonged to the deceased.

35. It is a well-settled rule of interpretation that in construing the scope of a legal fiction, it would be proper and necessary to assume all those facts on which alone the fiction can operate : vide CIT v. Teja Singh : [1959]35ITR408(SC) . Applying the fiction under s. 39(3) and treating the whole of the joint family property as belonging to the deceased as an individual immediately before his death, all the concomitant provisions of the Act which apply to an individual deceased with regard to inclusions or exemptions, allowances or deductions should be applied to the whole of the joint family property. If such full effect is not given to the legal fiction created by s. 39(3), it amounts to a failure to give effect to the expression

'the provisions of the Act so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased.' An interpretation which will give full effect to the words of the statute must be adopted and normally words or expressions occurring in a statute cannot be ignored or treated as surplusage or redundant.

36. Now, under s. 33(1)(n), one house or part thereof, exclusively used by the deceased for his residence to the extent the principal value there of does not exceed rupees one lakh, if such house is situated in a place with a population exceeding ten thousand, the full principal value thereof, in any other case, is exempt from payment of estate duty. By applying the fiction under s. 39(3) and treating the whole of the residential house as belonging to the deceased, the house valued at Rs. 88,000 has to be exempted from payment of duty under s. 33(1)(n). When once the entire value of the said house is left out of account, for estimating the principal value of the property of the joint family, the question of levying or paying estate duty on the share of the deceased in the said house or aggregating the shares of the lineal descendants in the said house under s. 34(1)(c) does not arise.

37. We shall now consider the cases cited at the Bar. The first of the cases on this question was decided by the Madras High Court in CED v. Estate of late R. Krishnamachari : [1978]113ITR200(Mad) . In that case, a member of the HUF governed by the Mitakshara law died leaving behind a son and a widow. The total estimated value of the properties was determined at Rs. 2 lakhs. The value of the residential house situated in the city of Madras, the population of which was more than ten thousand, exceeded Rs. 1 lakh. The accountable person claimed exemption in respect of the residential house under s. 33(1)(n) to the extent of Rs. 1 lakh. The question referred by the Income-tax Appellate Tribunal to the High Court of Madras was as follows :

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the exemption provided in section 33(1)(n) of the Estate Duty Act, 1953, should be allowed in respect of the dwelling house of the Hindu undivided family from the value of the joint family properties before determining the

share of the deceased and also that of the lineal descendants, the former for assessment and the latter for aggregation ?'

38. The learned judges felt that in dealing with the question referred, the import of the relevant sections was not properly appreciated and some matters were left vague, and that the Tribunal should re-hear the appeal in the light of the principles laid down by them. After referring to the provisions of ss. 7, 33(1)(n), 34(1) (a) and (c) and 39, the learned judges posed the question (p. 205) :

'Whether, in determining the value of the Joint Hindu family properties, the properties mentioned in section 33(1) which are exempt from the charge should be omitted and then the share of the deceased member determined ?'

and answered the said question as follows (p. 205) :

'A reading of section 33 makes it clear that subject to the limitations introduced by the various clauses regarding the quantum of the exemption, properties of the kinds mentioned in the various clauses of sub-section (1) of section 33 will not come into the picture at all in reckoning the value of the property that passed on the death of an individual. This section has to be applied in the case of individuals in their exclusive right as well as in the case of members of a joint Hindu family who by virtue of the fictions introduced by section 7 and 39(1) are taken to have passed on properties on their death for the purpose of the Estate Duty Act. Naturally, it follows that in determining the total value of the properties of the Hindu family, these properties that are left out of account by the clear provisions under section 33(1) must also be left out for the purpose of determining the total value of the properties of the joint family. To make it clear, we would like to state that there is no charge at all on the exempted properties. It is as though these properties are not taken into account at all for the purpose of the Act.

In the light of the above, for the purpose of determining the value of the share of a member of the joint Hindu family and for the purpose of imposing estate duty on his estate after his death, first of all, the total value of all the properties, valuing each of them separately, must be determined under section 39(3). After having determined that, such of those properties to the extent to which exemption has

been given under the various clauses in section 33(1) will be taken out to that extent. The aggregated of the remaining must be divided as if at the time of the death there was a partition and the share due to the deceased determined. The share so determined will be the share on which duty can be imposed under the Act and on no other. But in the case, where the deceased had left behind lineal descendants, by virtue of the provision in section 34(1)(c), the extent of the shares of the lineal descendants of the deceased has to be aggregated to the share of the deceased in the property and the rate applicable to the aggregated value of the estate will have to be taken into account.'

39. Having laid down the principle that in determining the total value of the properties of the Hindu joint family, the properties exempted under, s. 33(1) should be left out of account in applying the provisions of s. 33(1)(n) to the residential house, the learned judges limited the exemption only to the extent of Rs. 85,000 representing the value of the half share of the deceased in the residential house, though the exemption allowable under s. 33(1)(n) was up to the maximum extent of Rs. 1 lakh, the residential house being situated in Madras city, the population of which exceeded ten thousand. We agree with the principle laid down in the second para. at p. 205 that :

'Naturally, it follows that in determining the total value of the properties of the Hindu family, these properties that are left out of account by the clear provisions under section 33(1) must also be left out for the purpose of determining the total value of the properties of the joint family. To make it clear, we would like to state that there is no charge at all on the exempted properties. It is as though that these properties are not taken into account at all for the purpose of the Act.'

40. But, with respect, we are inclined to think that limiting the exemption to the extent of the share of the deceased in the residential house, does not accord with the principal laid down by the learned judges.

41. In another decision of the Madras High Court in CED v. Lakshmanan Chettiar [1982] 134 ITR 677 the estate of the deceased coparcener of an HUF consisting of himself, his wife and an adopted son, included a residential house valued at Rs. 1,40,000. The Asst. Controller gave exemption under s. 33(1)(n) to the extent of

Rs. 70,000 representing the value of the half share of the deceased in the residential house. On appeal, the Appellate Controller held that the residential house being situated in a place where the population was less than ten thousand, the entire value of Rs. 1,40,000 was exempt under s. 33(1)(n). On appeal by the Revenue, the Tribunal held that the value of the house property liable to be exempted under s. 33(1)(n) read with s. 39(3), had to be deducted from the principal value of the property of the joint family, for ascertaining the share of the deceased as well as the shares of the lineal descendants. At the instance of the Revenue, the following question was referred to the High Court :

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the exemption provided in section 33(1)(n) of the Estate Duty Act, 1953, should be allowed in respect of the dwelling house of the Hindu undivided family from the value of the joint family properties before determining the share of the deceased and also that of the lineal descendants, the former for assessment and the latter for aggregation ?'

42. The learned judges, Sethuraman and Balasubrahmanyan JJ., after referring to the provisions of ss. 5, 7 and 39, observed as follows (p. 681) :

'The scheme being s. 39 is clear. Where a member of an HUF governed by the Mitakshara School of Hindu law dies, then we have to arrive at his share in the value of the properties belonging to the family on the basis that there was a partition immediately before his death. In order to estimate the principal value of the joint family properties, sub-s. (3) of s. 39 provides for the share being taken on the basis of what would have been allotted to the deceased had a partition taken place immediately before his death. The provisions of the Act, so gar as may be, would apply in the same way as they would have applied if the whole of the joint family property had belonged to the deceased. In other words, under the provisions of the Act, in computing the value of the properties of the joint family, we have to proceed first on the assumption that the deceased was the sole owner of the entire properties of the joint family. We would then have to apply all the provisions of the Act for this purpose, and the share of the deceased with reference to those properties would then have to be taken into account, the share

being determined in accordance with the Mitakshara law.'

43. The learned judges then considered the provisions of s. 33(1)(n) and observed that the house being situated in a place with a population of less than ten thousand, it would follow that the entire value of the said property computed at Rs. 1,40,000 would qualify for exemption if there were no order considerations to be taken into account, and referred to the earlier decision of the same High Court in CED v. Estate of Late R. Krishnamachari : [1978]113ITR200(Mad) and observed that the passages occurring at pp. 205 and 206 and the ultimate relief given therein, did not appear to be harmonious. However, the learned judges referred to the observations at p. 205 with approval and observed as follows (p. 685) :

'This passage clearly goes to show that in computing the value of the joint family property, the relief available under s. 33(1)(n) would have to be taken into account, and in the balance that remains as the principal value, the share of the deceased would have to be worked out.'

44. The learned judges referred to an unreported decision of the same High Court rendered by Ramanujam and Ratnavel Pandian JJ., in CED v. Estate of Late S. B. Rajarathnam Chettiar, judgment in T.C. No. 399/71, dated 7-3-79 (since reported in : [1983]142ITR260(Mad)), and their own earlier decision in Sundaresa Mehta (T.) v. CED : [1981]127ITR107(Mad) and observed that (p. 686) :

'What was meant was that the value of the joint family properties would have to be worked out in accordance with the provisions of the Act, and the value of the property to the extent exempted under s. 33(1)(n) would, at that stage, have to be deducted and the share of the deceased ascertained accordingly. A combined reading of s. 39 and s. 33 can produce no other result.'

45. Having thus held, the learned judges answered the question referred in the following manner (p. 686) :

'The exemption provided under s. 33(1)(n) of the E.D. Act should be allowed in respect of the dwelling house only to the extent of the share of the deceased in the joint family properties.'

46. With respect, this answer, appears to be at variance with the principle laid down by the learned judges.

47. We shall next refer to the decisions of this court relied on by the learned counsel for the accountable person. In CED v. Estate of Late Durga Prasad Beharilal : [1979]116ITR692(AP) , the deceased, Beharilal, was the karta of the Hindu joint family consisting of himself, his wife and three sons. The joint family properties consisted of a residential house which was valued at Rs. 47,500. The Asst. Controller and the Appellate Controller allowed exemption to the extent of 1/5th share of the deceased in the residential house under s. 33(1)(n). The Appellate Tribunal allowed exemption for the entire value of the residential house holding that (p. 693) :

'... according to s. 39(3), the valuation of the joint family property had to be made as if the deceased was the owner of the entire property and then his share therein taken as if there was a partition just before his death and that since s. 33(1)(n) exempts one residential house from inclusion in the estate of the deceased for duty purposes, the entire residential house of the family would be exempt by extending the legal fiction introduced in s. 39(3).'

48. The following question was referred to the High Court by the Appellate Tribunal (p. 693) :

'Whether, on the facts and in the circumstances of the case, the entire residential house belonging to the HUF in which the deceased had 1/5th share was exempt under s. 33(1)(n) of the E.D. Act ?'

49. The learned judges to an earlier decision of the same court in R.C. No. 30/74, dated October 19, 1976 and held (p. 694) :

'... after giving exemption to the share of the deceased under s. 33(1)(n), the balance of the property cannot be taken into consideration because that belongs to the other coparceners in the property. We are, therefore, of the opinion that for reasons mentioned above the entire value of the property cannot be taken into consideration for purposes of estate duty of the deceased.'

50. With respect, this reasoning of the learned judges does not appear to be correct. The learned judges gave exemption to the share of the deceased in the residential house under s. 33(1)(n) but excluded the remaining on the ground that it belonged to the other coparceners. This reasoning is correct if the shares belonged to coparceners other than the lineal descendants of the deceased, but not with regard to shares of lineal descendants of the deceased, which have to be aggregated under s. 34(1)(c) for rate purposes. The view taken by the Appellate Tribunal that by reason of the legal fiction introduced by s. 39(3), the entire residential house of the joint family should be treated as belonging to the deceased, and the exemption under s. 33(1)(n) applied as if the whole of the house belonged to the deceased, in which case, the entire value of the house was liable to be exempted, appears to us to be correct.

51. The decision in CED v. Estate of Late Durga Prasad Beharilal : [1979]116ITR692(AP) , was followed without any discussion by this court in a later decision in ITAT v. Estate of Late Nuli Lakshminarayanan : [1979]116ITR739(AP) .

52. In an unreported decision of this court in Vanajakshi Venkata Rao v. CED (R.C. No. 109 of 1977, dt. 8-12-82), (since reported at p. 1014 infra (Appx.), decided by Punnayya and Jeevan Reddy JJ., on the death of a deceased member of an HUF consisting of himself and his two sons, exemption was claimed for the entire value of the residential house of the joint family under s. 33(1)(n) read with s. 39. That claim was negatived by the estate duty authorities and exemption was given only to the extent of the value of 1/3rd share of the deceased in the said residential house; and the shares of the lineal descendants and his sons, were aggregated with the property of the deceased under s. 34(1)(c) for rate purposes. The limiting of the exemption under s. 33(1)(n) to the extent of 1/3rd share of the deceased as well as aggregation of the shares of the lineal descendants under s. 34(1)(c) was challenged by way of an appeal before the Appellate Tribunal, but without success.

53. The following two questions were referred to the High Court at the instance of the accountable person :

'(1) Whether the Appellate Tribunal was justified in not exempting Rs. 1 lakh from the residential property under section 33(1)(n) from out of the estate of the deceased instead of limiting the exemption only to the 1/3rd of the value of the residential house

(2) Whether the aggregation of the share of the lineal descendants in the principal value of the estate for the purpose of determining the rate of duty was justified in law ?'

54. On the first question, the learned judges held that there could be little doubt on a reading of s. 33(1)(n) along with s. 39(1), the exemption must be confined only to the deceased's share in the residential house, and that was the uniform view taken by several High Courts, and referred to Seshamma v. Appellate CED : [1973]88ITR82(AP) , and of the Karnataka High Court in CED v. K. Nataraja : [1979]119ITR769(KAR) . It may be pointed out that in the decision of this court in Seshamma v. Appellate CED : [1973]88ITR82(AP) only the constitutional validity of s. 34(1)(c) was challenged as beyond the legislative competence of Parliament and as being violative of the rights conferred by arts. 14 and 19(1)(f) of the Constitution. Those contentions were repelled by this court and the constitutional validity was upheld. Neither the provisions of s. 3(1)(n) nor of s. 39 were considered in the said decision.

55. The second of the cases referred to was of the Karnataka High court, in CED v. K. Nataraja : [1979]119ITR769(KAR) . The said case lends support to the view taken by the learned judges. But the correctness of the view taken by the Karnataka High Court has been challenged before us and we shall presently consider the same.

56. With regard to the question of aggregation of the shares of the lineal descendants under s. 34(1)(c), the learned judges disagreed with the view taken by this court in CED v. Estate of Late Durga Prasad Beharilal : [1979]116ITR692(AP) , and followed the view taken by the High Courts of Karnataka, Madras and Gujarat and upheld the aggregation of the shares of the lineal descendants of the deceased with the share of the deceased for the purpose of rate. We are not concerned in this case with the lineal descendants with the

share of the deceased under s. 34(1)(c). We are mainly concerned with the question as to the extent of exemption to be granted under s. 33(1)(n) in respect of the residential house of the joint family property in determining the principal value of the share of the deceased in the joint family properties and also determining the value of the shares of the lineal descendants for aggregation under s. 34(1)(c) for rate purposes.

57. The aforesaid decision of this court in Vanajakshi Venkata Rao v. CED (see p. 1014 infra (Appx.) did not fully consider the import of ss. 3(1)(n) and 39 (1) and (3). The learned judges proceeded on the footing that several high courts had taken a uniform view that in the case of a residential house owned by an HUF of which the deceased was a member, exemption should be limited only to his share therein and not to the whole of the house. But, for the reasons already given by us earlier, we are unable to agree with the view taken by the learned judges in the aforesaid decision.

58. The Revenue strongly relied upon the decision of the Karnataka High Court in CED v. K. Nataraja : [1979]119ITR769(KAR) . In that case, the karta of a Hindu joint family governed by Mitakshara law consisting of himself and his three sons died leaving behind joint family properties including a residential house valued at Rs. 80,000. The Asst. Controller granted exemption under s. 33(1)(n) to the extent of Rs. 20,000 representing the 1/4th share of the deceased in the residential house and added under s. 34(1)(c) the share of the sons for rate purposes. On appeal, the Appellate Controller deducted under s. 39 read with s. 33(1)(n), the entire value of the residential house and no part of its value was taken into consideration even for aggregation under s. 34(1)(c). The Appellate Tribunal dismissed the appeal preferred by the Department. At the instance of the Department, the following question was referred to the High Court of Karnataka.

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the exemption under section 33(1)(n) of the Act should be given due effect to while computing the principal value of the estate of the joint Hindu family of which the deceased was a member ?'

59. It was contended on behalf of the accountable person that the exemption allowable under s. 33(1) should be taken into consideration at the stage of valuation of interest under s. 39. But, that contention was negatived by the learned judges for the following reasons (p. 774) :

'1. Section 39 which is in Part V and which has been there since the commencement of the Act deals with valuation of coparcenary interest of the deceased like ss. 36, 37, 38 and 40. Sections 36 to 40 have nothing to do with exemptions from payment of estate duty which are dealt with in Part III of the Act. The fiction under s. 39(3) should be limited for the purpose of valuation only and cannot be extended for determining exemptions. It has also to be observed here that s. 39(3) has been there from the commencement of the Act but s. 33(1)(n) was introduced in 1964, with effect from September 23, 1963.

2. The items of property which are exempt from payment of estate duty under s. 33 are not like items of property which are not to be treated as part of the estate passing on the death of the deceased referred to in ss. 21 to 24 of the Act. Properties referred to in ss. 25, 26, 27, 28, 29, 32 and 33(1) (a) to (p) do pass on the death of the deceased but only estate duty is not payable in respect of them.

3. The words 'property of any of the following kinds belonging to the deceased which passes on his death, in s. 33(1), which are decisive in this case, make it very clear that exemption can be claimed under that sub-section only in respect of that property, (1) which belong to the deceased, and (2) which passes on the death of the deceased.'

60. The learned judges further observed as follows (p. 774) :

'In view of the foregoing, even though 'a house' is referred to in s. 33(1)(n), exemption can be claimed only in respect of the interest of the deceased in that house and not in respect of the whole house in which the surviving coparceners also have interest. Hence exclusion of the entire value of the house at the stage of valuation under s. 39 is not called for. The principal value of all the properties of the deceased should be first ascertained in accordance with the rules contained in Pt. V of the Act, including s. 39 and then the value of items in respect of which

estate duty is not payable under ss. 25, 26, 27, 28, 29, 32 and 33(1) (a) to (p) should be determined. While computing estate duty, deduction should be given in respect of the value of these items on which estate duty is not payable.

Part VI of the Act deals with the rules relating to aggregation of property and rates of duty. Section 34(1)(a) provides that all property passing on the death other than property exempted from estate duty under cls. (c), (d), (e), (i), (j), (l), (m), (mm), (n), (o) and (p) of sub-s. (1) of s. 33 should be taken into consideration while aggregating the properties for purposes of rate of estate duty. It is significant that only value of certain items referred to in s. 33(1), i.e., in cls. (c), (d), (e), (i), (j), (l), (m), (mm), (n), (o) and (p) are to be excluded at this stage and not others referred to in s. 33(1) and in ss. 25 to 29 and 32 even though no estate duty is payable in respect of them also. This again suggests that it would not be correct to deduct all items on which estate duty is not payable even while determining the principal value under Pt. VI. Whatever the property so passing consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law, s. 34(1)(c) required that the deceased member should be added to the properties mentioned in s. 34(1) (a) and (b) for purposes of rate of estate duty.

It must be emphasised here that s. 34(1)(c) merely enables aggregation of the interest of lineal descendants for the purpose of determining rate at which duty is leviable on the principal value of the estate of the deceased but it does not authorise the levy of any estate duty on the interest of the lineal descendants. Its purpose is, therefore, a restricted one. What has to be aggregated under s. 34(1)(c) is the entire interest in the coparcenary property of all the lineal descendants of the deceased members without any exemption or exception. Hence, it is difficult to accept the contention that the interests of the lineal descendants in the house which is referred to in s. 33(1)(n) should be excluded while applying s. 34(1)(c).

It follows from the above discussion that only the value of the interest of the deceased in a house which forms part of his coparcenary is exempted from estate duty under s. 33(1)(n) and for purposes of aggregation under s. 34(1) whereas

under clause (a) thereof the value of the interest of the deceased in such house is excluded, under clause (c) thereof the value of the interest of all the lineal descendants in such house has to be added for the purposes of rate of estate duty. Such a construction will not to any violence to s. 33(1)(n) also as exemption is given in respect of one house or a part thereof exclusively used by the deceased for residence under it. Even though certain items of property are mentioned in cls. (a) to (p) of s. 33(1) we have to construe them as having reference to the interest of the deceased in those items of property and not to interests of others. Property under s. 2(15) includes interest in property also.'

61. Referring to the decision of this court on CED v. Estate of Late Durga Prasad Beharilal : [1979]116ITR692(AP) the learned judges observed that it was not clear from the above decision why the interest of the lineal descendants in the house should not be added for the purpose of aggregation as required by s. 34(1)(c).

62. With regard to the decision of the Madras High Court in CED v. Estate of Late R. Krishnamachari : [1978]113ITR200(Mad) the learned judges observed that while the passage at p. 205 of the said decision might lend some support to the contention urged on behalf of the accountable person, the reasoning was not quite consistent with the other portions of that decision, and that the conclusion ultimately reached by the High Court of Madras did not support the case of the accountable person.

63. The learned judges observed that the two decisions of the Allahabad High Court in Income-tax Appellate Tribunal v. Madan Mohan : [1979]119ITR781(All) and CED v. Satish Chandra : [1979]119ITR783(All) laid down the law correctly. Accordingly, the learned judges answered the question referred as follows (p. 781 of 119 ITR) :

'Section 33(1)(n) of the Act has no relevance to the computation of the value of the interest of the deceased in the coparcenary property under s. 39. Where the residential house belongs to a HUF governed by Mitakshara, only the share of the deceased in such house is exempt from estate duty under s. 33(1)(n). For purposes of rate of estate duty, the value of the share of the deceased in such house has to be excluded from the value of the property passing on his death

under s. 34(1)(a), but the value of the shares of all the lineal descendants of the deceased in the coparcenary property including the residential house has to be aggregated under s. 34(1)(c) without any reference to any exemption under s. 33(1)(n) of the Act.'

64. This case was followed by the same High Court in a later decision in CED v. N. Ramachandra Bhat : [1980]123ITR841(KAR) . With great respect, we are unable to agree with the view taken by the learned judges that the fiction under s. 39(3) should be limited for the purpose of valuation only and should not be extended for applying the provisions of the Act providing for exemption; or that any distinction should be made between properties which are not to be treated as part of the estate passing on the death of the deceased under ss. 21 to 24, and properties which are exempted from payment of estate duty under ss. 25 to 29 and 32 and s. 33(1) (a) to (p).

65. It is not doubt true as observed by the learned judges that the exemption could be claimed under s. 33(1)(n) only in respect of property which belonged to the deceased and which passed on the death of the deceased. But the fiction under s. 39(3) of the Act should be given full effect, and the whole of the joint family properties should be treated as belonging to the deceased, and the provisions of the Act so far as may be applicable, should be applied in giving exemptions allowable under s. 33(1) (a) to (p). Construing the provisions of s. 39, we have held that the statutory fiction introduced by s. 39(3) should be given full effect both for the purposes of inclusions and exclusions or exemptions allowable under the Act.

66. The Allahabad High Court took the view in Income-tax Appellate Tribunal v. Madan Mohan : [1979]119ITR781(All) , that in view of the provisions of s. 39, only the share of the deceased in the residential house belonging to the joint family which passed on his death could be exempted from payment of estate duty under s. 33(1)(n), and that the share of the sons should be aggregated under s. 34(1)(c) for rate purposes. This decision was followed in the later decision of the same High Court in CED v. Satish Chandra : [1979]119ITR783(All) . But in these two decisions, the effect of the legal fiction created by s. 39(3) has not been

considered. Therefore, with respect, we are unable to agree with the view taken by the Allahabad High Court in the said two decisions.

67. In Gunvantlal Keshavlal v. CED : [1982]134ITR533(Guj) , a Hindu joint family, of which the deceased was a member, owned a residential house valued at Rs. 80,000. The accountable person claimed exemption of the entire value of the house under s. 33(1)(n) of the Act. The learned judges held that (p. 535) :

'We do not see how exemption in respect of the house or part thereof used by the deceased for residence, to the extent the principal value whereof does not exceed rupees one lakh, has any relevance for the purpose of working out the value of the interest of the lineal descendants in the HUF property for rate purposes under s. 34(1)(c). The deceased had an one-fourth interest in the house of the HUF. The value of such interest, namely, Rs. 20,000, has been held to be exempt from payment of estate duty under s. 33(1)(n). However, exemption under s. 33(1)(n) has no relevance for the purpose of s. 34(1)(c).'

68. After referring to s. 34(1)(c), the learned judges further observed as follows :

'On a plain reading of the above provision, it is clear that the interest of all the lineal descendants of the deceased in the joint family property or HUF property has to be aggregated so as to form one estate and estate duty has to be levied thereon at the rate or rates applicable in respect of the principal value thereof. The above provision does not speak of any exemption in respect of a residential house for the purpose of working out the value of the interest of the lineal descendants of the deceased. The entire HUF property has to be taken into account for the purpose of working out the value of the interest of the lineal descendants of the deceased. We are unable to see how the exemption granted under s. 33(1)(n) can be projected into s. 34(1)(c). Exemption from payment of estate duty under s. 33(1)(n) is in respect of a house or a part thereof used for residence by the deceased to the extent the principal value thereof does not exceed rupees one lakh. The purpose and object of the two provisions, namely, s. 33(1)(n) and s. 34(1)(c) are different and distinct. They operate in altogether different spheres. One of the two concerns itself with the question of identifying the 'dutiable estate'. The other operates in the sphere of identifying the 'rate' at which the dutiable

estate is to be subjected to duty. These two need not be mixed up lest fusion should result in confusion and a resultantly fallacious conclusion. While s. 33(1)(n) aims at the exclusion of residential house valued at less than rupees one lakh, the object of s. 34(1)(c) is not apply a higher rate of estate duty by the inclusion of the value of the interest of the lineal descendants of the deceased in the HUG property. What is exempt under s. 33(1)(n) is the property of the deceased. What is included in the dutiable estate for rate purpose under s. 34(1)(c) is not that property which is exempt from payment of estate duty under s. 33(1)(n) but the value of the interest of the lineal descendants of the deceased in the HUF property. Under s. 33(1)(n) what is exempt is no the value of the entire residential house of the house. Therefore, that which is exempt under s. 33(1)(n) is not included in the dutiable estate under s. 34(1)(c). The line of argument adopted by the accountable person is fallacious and proceeds on a misconception and a misreading of the aforesaid two provisions of the Act. There is absolutely no warrant for the claim made by the accountable person that the entire value of the residential house is exempt 'for all purposes' under s. 33(1)(n). In our opinion, the view taken by the Tribunal is correct and unexceptionable. We, therefore, answer the first question as reframed by us in the affirmative and against the accountable person.'

69. In this decision also, there was no reference to the provisions of s. 39(1) and (3) and the impact of the fictions created by the aforesaid provisions with regard to the applicability of the other provisions of the Act.

70. A similar question was considered by the Madhya Pradesh High Court in CED v. R. S. Gwalre : [1981]130ITR261(MP) . In that case, on the death of a member of the HUF, exemption was claimed in respect of the entire value of the residential house of the joint family under s. 33(1) read with s. 39(3) of the Act. The Asst. Controller granted exemption only in respect of the share of the deceased in the residential house and included the shares of the lineal descendant of the deceased in the residential house in the principal value of the estate of the deceased for rate purposes. On appeal, the Appellate Controller granted exemption for the entire value of the house and that was confirmed on appeal by the Appellate Tribunal. The question referred to the High Court was : 'whether the

amount representing the value of the shares of the lineal descendants in the residential house of the Hindu undivided family of the deceased was exempt under section 33(1)(n) read with section 39(3) and section 34(1)(c) both for ascertaining the share of the deceased and also the shares of the lineal descendants which are to be included for rate purposes only under section 34(1)(c) of the Act ?'

71. The learned judges held that the exemption under s. 33(1)(n) was not in respect of the whole house put only to the extent it belonged to the deceased and passed on his death, and that the interest of the lineal descendants of the deceased in the house did not belong to the deceased and could not be said to pass on his death and, therefore, it could not qualify for exemption under s. 33(1)(n). The learned judges further observed as follows (p. 265) :

'Section 34 permits aggregation of the interest in the joint family property of all the lineal descendants of the deceased for rate purposes. This is clear by a reading of s. 34(1)(c) and s. 34(2). But s. 34 nowhere provides that in making the aggregation of the interest in the joint family property of the lineal descendants the aggregation would not cover such property of the lineal descendants which would have qualified for exemption had any one of them died. There is no room for applying the provisions dealing with exemption at the stage of aggeregation of the interest in the joint family property of the lineal descendants. Section 39(1) provides for the mode of valuation of interest in coparcenary property which ceases on the death of a member. This interest is to be valued by determining the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death. Section 39(3) on which great reliance has been placed by the accountable person provides that for the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara law in order to arrive at the share which would have been allotted to be deceased had a partition taken place immediately before his death, the provisions of the Act, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased. Now, s. 39(3) created a fiction for the purpose of estimating the principal value of the joint family property of the Hindu family. The fiction is that the joint family property is deemed to be the property of the deceased and the

provisions of the Act are to apply on that basis but this fiction is 'for the purpose of estimating the principal value' and not for any other purpose. The application of the provisions of the Act by the fiction is only for the purpose for which the fiction is created, i.e., for the purpose of estimating the principal value of any joint family property. For example, s. 36 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 open market at the time of the deceased's death. This provision of the Act would be applied because of the fiction 'for the purpose of estimating the principal value of the joint family property.' Similarly, if the joint family held shares in a private company, s. 37 would be applied. The fiction, however, cannot be used to widen the exemptions contained in s. 33 of the Act in determining the principal value of the joint family property under s. 39(3). The principal value of the joint family property has first to be determined by ignoring s. 33. The next stage is the determination of the principal value of the share which would have been allotted to the deceased, had a partition taken place immediately before his death. After determining the principal value of the share of the deceased in the joint family property, exemption of the value of his interest in the residential house of the family has to be allowed under s. 33(1)(n). Thereafter, the value of the interest in the joint family property of all the lineal descendants of the deceased is to be added to the principal value of the interest of the deceased minus the exemption allowed to him under s. 33(1)(n). It is on this aggregate amount that the rate of estate duty is to be applied subject to this that the inclusion of the value of the interest of the lineal descendants in the joint family property is merely for rate purposes as is clear from s. 34(2). In our opinion, the Tribunal was wrong in applying the fiction contained in s. 39(3) to extend the exemption under s. 33(1)(n) so as to cover the value of the interest of the lineal descendants in the residential house.'

72. With great respect, we are unable to agree with the aforesaid reasoning, firstly because s. 34 provides only for aggregation of the interest of the lineal descendants in the joint family property and does not deal with exemption. The question of exemption has to be considered with reference to the provisions of s. 33(1)(n) read with s. 39 of the Act. Secondly, the legal fiction created by s. 39(3) even for the purpose of estimating the principal value of the joint family property of

the Hindu family should be given full effect and all the provisions of the Act including the exemption provided under s. 33(1)(n) should be applied by deeming the whole of the joint family house as belonging to the deceased and giving exemption in respect of the value of the entire house but limited to the extent of the amount allowed under s. 33(1)(n).

73. In another case, Smt. Gunvantibai v. CED : [1981]130ITR122(MP) , the same High Court, following the decision of the Karnataka High Court in CED v. K. Nataraja : [1979]119ITR769(KAR) and of the Allahabad High Court in Income-tax Appellate Tribunal v. Madan Mohan : [1979]119ITR781(All) , held that the exemption under s. 33 was permissible only to the share of the deceased in the residential house, as that share alone was deemed to pass in the death of the deceased, and that the provisions of s. 39(1) and (3) provide for valuation of interest in the coparcenary property ceasing on death and not for granting exemption.

74. With respect, for the reasons given by us earlier, we are unable to agree with this reasoning of the learned judges.

75. For all the foregoing reasons, we hold on the first question that the entire value of the residential house has to be exempted under s. 33(1)(n) read with ss. 39(1) and 39(3) of the Act, and once the entire value of the house which is within the limit of exemption allowed under s. 33(1)(n) is exempted, the question of aggregation of the shares of the lineal descendants of the deceased for rate purposes under s. 34(1)(c) does not arise.

76. The reference is accordingly answered in favour of the accountable person and against the Revenue on the first question. We express no opinion on the second question. No order as to costs.

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