income-tax Appellate Tribunal, Hyderabad Bench a Vs. Estate of Late Nuli Lakshminarayana

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Court : Andhra Pradesh

Decided On : Feb-03-1978

Reported in : [1979]116ITR739(AP)

Judge : Obul Reddi, C.J. and ;Narasinga Rao, J.

Acts : Estate Duty Act, 1953 - Sections 34(1); Hindu Adoptions and Maintenance Act - Sections 12

Appeal No. : Case Referred No. 116 of 1976

Appellant : income-tax Appellate Tribunal, Hyderabad Bench "a"

Respondent : Estate of Late Nuli Lakshminarayana

Advocate for Def. : D.V. Sastry, Adv.

Advocate for Pet/Ap. : P. Rama Rao, Adv.

Judgement :

Obul Reddi, C.J.

1. The first two questions in this reference are referred at the instance of the accountable person and the third question at the instance of the revenue under Section 64(1) of the Estate Duty Act, 1953.

2. Questions Nos. 2 and 3 may first be quoted :

'2. Whether estate duty payable on the passing of the property of the deceased is not deductible in ascertaining the principal value of the estate

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the entire residential house belonging to the HUF in which the deceased had only 1/2 share was exempt under Section 33(1)(n) of the E.D. Act ?'

3. So far as question No. 2 is concerned, it is covered by the judgment of this court in CED v. Estate of Late Omprakash Bajaj : [1977]110ITR263(AP) . Having regard to the view expressed therein, this question is answered in the affirmative and against the accountable person. Similarly, question No. 3 referred at the instance of the revenue is covered by the judgment of this court in E.D.C. No. 7 of 1975 dated October 13, 1977 [CED v. Durga Prasad Beharilal--since reported in : [1979]116ITR692(AP)]. In view of the opinion expressed by this court, this question is answered in favour of the accountable person.

4. The only question that survives for our decision is question No. 1 and it reads:

'Whether an adopted son can be regarded as a lineal descendant within the meaning of Section 34(1)(c) of the E.D. Act, 1953 ?'

5. The facts necessary for answering that question are these: One Nuli Lakshminarayana (deceased) and his adopted son, N.V. Somaraju (accountable person) constituted a HUF governed by the Mitakshara law. Lakshminarayana died on March 6, 1966. The adopted son, Somaraju, being the accountable person, rendered an account of the deceased's estate before the Asst. CED showing the principal value of the estate at Rs. 11,07,936. It was claimed before the Asst. CED that the share of Somaraju, the lineal descendant, cannot be aggregated under Section 34(1)(c) of the Act in arriving at the dutiable estate. That contention was negatived by the Asst. CED. He fixed the principal value of the estate at Rs. 17,65,450. The appeal preferred by the accountable person was also dismissed. On further appeal to the Tribunal, it was contended on behalf of the accountable person that an adopted son is not a lineal descendant and, therefore, it was not correct to aggregate his share of the joint family property under Section 34(1)(c) for purposes of arriving at the principal value of the estate. As the Tribunal rejected the contention, it affirmed the order of the Appellate Controller. Hence, the reference.

6. Mr. D.V. Sastry, appearing for the accountable person, strenuously contended that the authorities below were in error in construing the expression 'lineal descendant' as equivalent to a coparcener and importing the fiction introduced in Section 12 of the Hindu Adoptions and Maintenance Act for the purpose of construing the expression 'lineal descendant'. Our answerto the question referred will depend upon the interpretation we give to the expression ' lineal descendant' occurring in Section 34(1)(c) of the Act.

7. Section 34(1)(c) of the Estate Duty Act, 1953, reads :

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

(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, Marumakattayam or Aliyasantana law, also the interests 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.'

8. The learned counsel for the accountable person sought to draw support from a decision of the Bombay High Court in Sahebgouda v. Shiddangouda, AIR 1939 Bom 166 to show that an adopted son is not in the same position as an aurasa son and, therefore, cannot be considered to be a lineal descendant of the adoptive father. That was a case where a dispute as to succession to an impartible estate between an aurasa son born after adoption and the adopted son arose. The learned judges held that an adopted son cannot succeed to an impartible estate when there is a natural born son. In so holding they said that the natural born son would be entitled to the honour of primogeniture and precedence, the adopted son being considered as a younger brother. The Full Bench of the same court in Martand Jiwaji v. Narayan Krishna, AIR 1939 Bom 305 again went into the question of the consequences of adoption. The learned judges quoted from Dattaka Mimamsa, Nanda Pandita and Manu Smriti and observed (p. 308):

'The modern trend of decisions is to take a more liberal view and to interpret the texts from a practical point of view as far as possible. This is particularly noticeable in the decisions of this court on several questions of adoption, such as the adoption of an only son, the adoption of a married boy, the adoption of a boy whose mother the adopting father could not have legally married, and the adoption by a widow without the express consent of her husband. We do not see why a similar liberal view should not be taken in this case, having regard to the interests of the boy to be given in adoption. With his father actually living, it would be a hardship on the boy to treat him as an orphan, merely because the father has gone in adoption. Usually when the father is adopted, his pre-born sons are still minors, and in practice they go with their father to live with him, though legally they are held to have remained in the natural family of their father. Though the father has gone in adoption, the ties of affinity andlove for his pre-born sons cannot be severed, and he is the proper man to look after their education and welfare. If a guardian is to be appointed for them, he will naturally be

consulted. Having their interest at heart, he is the best person to decide whether one of them should be given in adoption and what is conducive to their benefit.'

9. The question that arose in that case was whether the father who had gone in adoption to another family can still give his pre-born son in adoption, and the learned judges opined that the mere fact that the father had gone into another family by adoption and ceased to be of his son's gotra or family cannot unmake what he naturally is--the son's father. It is on that basis of the view expressed there that Mr. Sastry contends that it is only an aurasa son that can claim to be a lineal descendant and not an adopted son. It should be remembered that, in the case supra, nowhere the learned judges said that an adopted son is not a lineal descendant nor did that question arise in that case.

10. The learned counsel next invited our attention to Section 12 of the Hindu Adoptions and Maintenance Act to contend that in view of the limitations imposed upon an adopted son to marry any person whom he or she could not have married if he or she had continued in the family of his or her birth, it is not possible to construe the expression 'lineal descendant' as applicable to an adopted son. The Tribunal relying upon Section 12 , which says that 'an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family' held that the adopted son comes within the ambit of the expression 'lineal descendant'. What Mr. Sastry contends is that it is not open to the revenue to extend the fiction introduced in Section 12 to the provisions of the E.D. Act. Each Act, according to him, provides for certain fictions and relied upon the fiction introduced in Section 2(15A) of the I.T. Act, Section 4, Explanation (aa) of the W.T. Act, and Section 27(7)(ii) of the E.D. Act. He cited in support of his contention, that legal fiction introduced in one Act for one purpose cannot be extended to another statute for another purpose, the following decisions: State of Bombay v. Pandurang Vinayak Chaphatkar : 1953CriLJ1049 Bengal Immunity Co. Ltd. v. State of Bihar : [1955]2SCR603 , Radhakissen v. Durga Prosad , M.K. Balakrishna Menon v. Asst. CED : [1972]83ITR162(SC) and CIT v. Shakuntala : [1961]43ITR352(SC) . In all these cases, it has been held that the legal fiction must be limited to the purpose indicated by the context in that statute and the fiction must not be made to travel beyond the terms of that statute. We would like to make it clear that it is not the case of the revenue that any legal fiction is introduced in the Act regarding'adopted child'. Naturally, therefore, we will have to fall back upon the personal law.

11. In Bouvier's Law Dictionary, volume II, third revision, at page 2023, the expression ' lineal' is defined thus :

'Lineal. In a direct line. Lineal descent would be as from father or grandfather to son or grandson.'

12. The Privy Council had occasion to consider in Nagindas Bhugwandas v. Bachoo Hurkissondas [1916] 32 1C 403; AIR 1915 PC 41 on a review of the several decisions and the texts Dattaka Chandrika and Dattaka Mimamsa the position of an adopted son under the Hindu law. Their Lordships agreed (at 406 ibid) with the statement of the Full Bench of the Calcutta High. Court in Uma Sunker Moitro v. Kali Komul Mozumdar ILR [1880] 6 Cal 256 where Romesh Chunder Mitter J. said (at pages 259-260):

'According to Hindu law, an adopted son occupies the same position, and has the same rights and privileges in the family of the adopter as the legitimate son, except in a few specified instances, which have been clearly and carefully noted and defined by writers on the subject of adoption. The theory of adoption depends upon the principle of a complete severance of the child adopted from the family in which he is born, both in respect to the paternal and the maternal line, and his complete substitution into the adopter's family, as if he were born in it.'

13. The Board further made it clear thus [1916] 32 1C 403

'As early as 1833, this Board in Sumboochunder Chowdhry v. Naraini Debeh [1835] 3 Knapp. 55; 1 Suther P.C.J. 25 (PC), considered that according to Hindu law an adopted son becomes for all purposes the son of the

father by adoption. This Board in 1881 in Pudmakumari Debi Chowdhrani v. Court of Wards ILR [1881] Cal 302 approved of the decision of this Board in Sumboochunder Chowdhry v. Naraini Debeh [1835] 3 Knapp 55 and held that an adopted son succeeds not only lineally, but collaterally, to the inheritance of his relations by adoption, and also that an adopted son occupies the same position in the family of the adopter as a natural born son, except in a few instances which are accurately defined both in the Dattaka Chandrika and the Dattaka Mimamsa.'

14. The Board while recognising the limitations imposed upon an adopted son regarding restrictions imposed on marriage and his rights vis-a-vis an aurasa son had ruled that he succeeds not only lineally but collaterally to the inheritance of his relations by adoption. In Hindu Law--Principles and Precedents by N.R. Raghavachariar, fourth edition, page 147, the author, on the basis of the Privy Council decision, said :

'The adopted son is in the same position as an aurasa son except in a few matters where the aurasa son is placed in a more favourable position and he can inherit both lineally and collaterally in his adoptive family.'

15. The same view has been expressed by Mayne on Hindu Law and Usage, 11th Edn., page 243, para. 188, with the marginal note 'Lineal succession ' :

'An adopted son is entitled to inherit not only to his adoptive father, but to his father and grandfather and other more distant lineal ancestors just as if he were natural-born son. So also he is entitled to inherit to the adoptive father's collaterals, whether the latter are related to the former through males only, or through females.'

16. Mulla on Hindu Law, 14th Edn., page 556, in para. 494, has detailed the consequences that flow on adoption :

'Adoption has the effect of transferring the adopted boy from his natural family into the adoptive family. It confers upon the adoptee the same rights and privileges in the family of the adopter as the legitimate son, except in a few cases. Those cases relate to marriage and adoption and to the share on a partition between an adopted and an after-born son.'

17. The mere fact that adoption does not sever the tie of blood between him and members of the natural family will not take him out of the line of lineal descendants of the adoptive father. The Supreme Court in Smt. Sitabai v. Ramchandra, : [1970]2SCR1 , referred to the scheme of Sections 11 and 12 of the Hindu Adoptions and Maintenance Act and said (page 347) :

'.....the child adopted is tied with the relationship of sonship withthe deceased husband of the widow. The other collateral relations of the husband would be connected with the child through that deceased husband of the widow. For instance, the husband's brother would necessarily be the uncle of the adopted child. The daughter of the adoptive mother (and father) would necessarily be the sister of the adopted son, and in this way, the adopted son would become a member of the widow's family, with the ties of relationship with the deceased husband of the widow as his adoptive father.'

18. It may also be noticed that Section 15 of the Hindu Adoptions and Maintenance Act lays down :

'No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the a dopted child renounce his or her status as such and return to the family of his or her birth.'

19. We do not agree with Mr. Sastry that the fiction created in Section 12 or Section 15 is being imported into the provisions of the ED Act. It may be seen that the ED Act Under Section 27(7)(ii) refers to children. It says :

'In this section, reference to 'children' and 'issue' include reference to illegitimate children and to adopted children.'

20. What the learned counsel for the accountable person says is that the reference to adopted children is only limited for purposes of Section 27(7)(ii) andcannot be extended, while determining the question of 'lineal descendant' under Section 34(1)(c) of the ED Act, 1953. The expression 'child' as such has not been defined in the ED Act nor the term 'lineal descendant' defined in the Act. We have, therefore, necessarily to go to the personal law to understand the meaning of the expression 'adoption' as also the expression 'lineal descendant'. Mr. Sastry next placed reliance on CIT v. Dhannalal Devilal to show that the expression 'lineal descendant' has to be interpreted in its natural meaning without importing any notion of Hindu law. This decision, far from supporting the view canvassed for, lends support to the interpretation given by us. The Rajasthan High Court in the above case has interpreted the expression 'lineal descendant' as applying to a son or grandson through the female line also. It held that 'where a Hindu undivided family consisted of two minor sons, their widowed mother and widowed grandmother, the minors were 'lineal descendants' of the mother, and that, therefore, the family was not entitled to a higher limit of exemption from tax provided in the limit clause to the proviso of Part I(A) of Schedule I to the Finance Act, 1951'. All that the learned judges said in that case was that the expression 'lineal descendant' has to be interpreted in its natural meaning. There, the learned judges extended the meaning even to the female line. When sons and grandsons in the female line could be held to be lineal descendants, we see no reason for excluding an 'adopted son' from the meaning of 'lineal descendant'. Our attention is not invited to any decision of the Supreme Court departing from the view expressed by the Privy Council in Nagindas Bhugwandas v. Bachoo Hurkissondas [1916] 32 IC 403;AIR 1915 PC 41. We, therefore, hold that the expression 'lineal descendant' takes in 'adopted son'. Question No. 1 referred to us is, therefore, answered in the affirmative and against the accountable person. No costs. Advocate's fee Rs. 250.