

Controller of Estate Duty Vs. Devi Prasad

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Court : Allahabad

Decided On : Feb-25-1983

Reported in : [1983]141ITR925(All)

Judge : R.M. Sahai and ;V.K. Mehrotra, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 2(15), 9(1) and 27(1)

Appeal No. : Estate Duty Reference No. 374 of 1977

Appellant : Controller of Estate Duty

Respondent : Devi Prasad

Judgement :

V.K. Mehrotra, J.

1. By a statement dated 19th August, 1976, the Income-tax Appellate Tribunal, Allahabad Bench, Allahabad, has referred the following questions for the opinion of this court. Four separate applications were filed under Section 64(1) of the E.D. Act, 1953, two on behalf of the Controller of Estate Duty, and two on behalf of the accountable person. The questions are these :

'(1) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in deleting the addition of Rs. 1,78,485 made under Section 9(1) read with Section 27(1) of the Estate Duty Act?

(2) Whether, on the facts and in the circumstances of the case, the action of the deceased in not taking any share of the goodwill on his retirement from the firm, M/s. Shadi Ram Ganga Prasad, on June 27, 1968, resulting in 'deemed gift' under Section 9(1) read with Section 27, Explanation 2, to Section 2(15) of the Act ?

(3) Whether, on the facts and in the circumstances of the case, the estate duty levied under Section 5(2) of the Act, is deductible in ascertaining the ' principal' amount for the purpose of this section '

2. One Ganga Prasad Kanudia expired on July 1, 1968. The dispute in the present case relates to the estate left by him. There was a Hindu undivided family (hereinafter ' the HUF ') consisting of the deceased and his sons, as well as two grandsons. The HUF was carrying on business as a firm. On June 27, 1968, Ganga Prasad Kanudia relinquished his interest in the firm for a consideration of Rs. 1,75,000. The transaction was recorded in a declaration dated June 28, 1968, which was executed before the notary public, and the relevant portion whereof read thus:

' 1. That I was the head karta of the HUF consisting of myself and my two sons, namely, Brij Mohan Kanudia and Devi Prasad Kanudia, and my two grandsons, namely, Govind Prasad Kanudia and Sri Prakash Kanudia, as its coparceners.

2. That on account of my old age and failing health and my desire to retire from all worldly and material involvements of life, I decided by my own free will to sever and have accordingly severed myself from the HUF aforesaid on the 27th of June, 1968.

3. That in full satisfaction of my interest in the properties of the aforesaid HUF, I have received a sum of Rs. 1,75,000 which has been credited to my individual account in the books of the said HUF by debit to the capital account of the HUF on the said date, i. e., 27th June, 1968.'

3. The view taken by the Controller was that this declaration amounted to a partial partition of the partnership business between the deceased and the other members of the HUF and that inasmuch as the sum of Rs. 1,75,000 did not

represent the entire value of the estate of the deceased thereunder, the value of the estate left by the deceased, for the purpose of the Act, was to be treated to be Rs. 3,53,485 on the basis that the value of the property of the HUF in its entirety was Rs. 10,60,456. The remaining amount of Rs 1,78,485 was, therefore, added to the estate of the deceased which, according to the Controller, was deemed to pass at the time of his death. This view was affirmed in appeal, but in second appeal before the Income-tax Tribunal, the view taken by the Tribunal was that a sum of Rs. 1,78,485 had to be excluded while computing the value of the estate of the deceased. This was on the ground that partial partition of property was involved in such a transaction, and it could not be said that the remaining members of the HUF acquired any right on the ground of the property passing to them at the time of the death of the deceased. The Tribunal discussed a number of decisions which were cited before it and negated the submission made on behalf of Controller that the transaction was one of relinquishment so as to be included in the category of deemed gift within the meaning of Expls. 1 and 2 to Section 2(15) of the E.D. Act read with Section 9(1) and Section 27(1).

4. The question whether in a situation like the present where members of the HUF relinquishes his right in the assets of the HUF business for payment of some consideration, has engaged the attention of the Supreme Court. The Supreme Court has accepted the view that where the deceased member of the HUF parted with his right in the assets of the HUF without obtaining the entire value of his share therein, the difference between the value of his share and the amount actually accepted by him for relinquishing his rights therein represented a disposition to the remaining members of the HUF. That decision, which is apposite to the present case, has interpreted the provisions of Section 2(15) with its Expls.1 and 2 as well as Section 9(1) of the E.D. Act in the manner suggested by the counsel for the Controller in this court. The decision was rendered in the case of CED v. Kantilal Trikamlal : [1976]105ITR92(SC) .

5. In view of the decision of the Supreme Court, we answer the first question in the negative, against the accountable person and in favour of the Controller.

6. The second and third questions were referred by the Tribunal at the instance of the accountable person. The notice of this reference was duly served upon the accountable persons and at one stage they were represented in this court by Sri Raja Ram Agarwal, advocate. On October 31, 1980, Sri Raja Ram Agarwal stated before a Bench of this court that he had no instructions to appear on behalf of the accountable persons. No one else has put in appearance on behalf of the accountable persons. Even before this Bench, which has heard the reference, no one has appeared on behalf of the accountable persons with the request to answer the questions referred at the instance of the accountable persons. In these circumstances, we have no option but to return these questions, namely, questions Nos. 2 and 3 unanswered.

7. With our answer aforesaid on question No. 1, the case shall go back to the Tribunal for appropriate orders in terms of Section 64(6) of the E.D. Act. Since no one has appeared on behalf of accountable persons, we direct the parties to bear their own costs.

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