S. Devendra Singh Vs. Controller of Estate Duty

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Court : Allahabad

Decided On : Oct-19-1981

Reported in : (1982)27CTR(All)331; [1982]136ITR176(All); [1982]10TAXMAN113(All)

Judge : C.S.P. Singh and ;R.R. Rastogi, JJ.

Acts : Estate Duty Act, 1953 - Sections 5, 34(1), 39 and 40; Constitution of India - Article 14

Appeal No. : Estate Duty Reference No. 429 of 1976

Appellant : S. Devendra Singh

Respondent : Controller of Estate Duty

Advocate for Def. : M. Katju, Adv.

Advocate for Pet/Ap. : R.K. Gulati, Adv.

Judgement :

Rastogi, J.

1. The Income-tax Appellate Tribunal, Allahabad Bench, Allahabad, has referred the following two questions for our opinion !

'1. Whether, on the facts and in the circumstances of the case, the value of the jewellery at Rs. 42,388 was rightly included in the computation of the deceased's estate ?

2. Whether the Income-tax Appellate Tribunal was right in holding that inclusion of the shares of other lineal descendants in the estate of the deceased for rate purposes was justified under Section 34(3)(c) of the Act?'

2. At the time of the hearing of the reference we were not addressed on question No. 1 by the learned counsel for the accountable person. This question, therefore, does not survive for our consideration.

3. Coming to the other question the facts giving rise to it, in brief, are that one Sri Balwant Singh died on October 27, 1965. His wife, Smt. Britain Kaur, as well died a little later and their son, Devendra Singh, filed a statement of the estate left by the deceased Balwant Singh. Balwant Singh constituted a joint family with his son, Devendra Singh, and hence the value of the interest of the lineal descendants in the joint family property was aggregated with the estate of the deceased for rate purposes by the Asst. Controller. The same view was taken on appeal by the Appellate Controller as also by the Appellate Tribunal on further appeal. Before the Appellate Tribunal reliance was placed on behalf of the accountable person on a decision of the Madras High Court in Devaki Ammal v. Asst. CED : [1973]91ITR24(Mad) . In that case, Section 34(1)(c) had been held to be ultra vires. The Appellate Tribunal did not agree with the submission made on behalf of the accountable person for the reason that the Tribunal is not competent to consider the vires of the provisions of the E.D. Act and further some other High Courts have taken the view that this provision is not ultra vires. At the instance of the accountable person, the question has now been referred to this court.

4. On behalf of the accountable person, Sri R.K. Gulati mainly placed reliance on the decision in V. Devaki Ammal's case : [1973]91ITR24(Mad) .

5. According to Sri Gulati, Section 5 of the E.D. Act, hereinafter referred to as 'the Act', is the charging section. It confines the levy of estate duty only to the property passing on death and not to any other property which does not pass on death.

Then Sections 6 to 15 of the Act deal with the properties which are deemed to pass on death. These provisions do not cover the interest of the lineal descendants of a deceased in a joint family property. Sri Gulati drew our attention to Sections 39 and 40 of the Act also. Section 39 provides for the valuation of the interest in a coparcenary property ceasing on death and Section 40 for a valuation of the benefit from interests ceasing on death, Sub-section (1) of Section 39 assumes partition in the joint family property as on the date of the death of the deceased and provides that the principal value of the share which would have been allotted to the deceased is to be considered as 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. According to the learned counsel, Section 34(1)(c) cannot override the provisions of Sections 39 and 40 as also of the charging section. The learned counsel further continued to urge that if for a valuation of the interest in a coparcenary property ceasing on death a partition is to be assumed, then it follows as a necessary corollary that the shares of the other lineal descendants would not pass on the death of the deceased and hende cannot be aggregated with the estate of the deceased so as to form one estate.

6. After hearing counsel we do not find much merit in these submissions. Section 34 provides for aggregation and in so far as it is relevant for the present purpose it reads :

'34. (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--...

(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 interests in the joint family property of all the lineal descendants of the deceased member;

shall be aggreated 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......' .

7. Sections 34 and 35 occur in Part IV of the Act. This part provides for the aggregation of property and rates of duty. Section 34 provides for aggregation and Section 35 for rates of estate duty on property including agricultural land. Both these sections were inserted by the Amendment Act, 1958, and came into force on July 1, 1960. The object which Clause (c) of Sub-section (1) of Section 34 was sought to serve was to remove the disparity in the incidence of estate duty on the estate of persons belonging to families governed by the Mitakshara, Marumakkattayam or Aliyasantana Schools of Hindu law on the one hand and those governed by the Dayabhaga and other personal laws which do not recognise acquisition of interest by birth on the other. This provision does not enlarge the scope of the charging section nor does it override the provisions contained in Sections 39 and 40 of the Act. It was enacted with a particular object in view and so long as this provision is on the statute book it cannot be held to be redundant or otiose. It has to be given effect to.

8. As noted above the submissions made by Sri Gulati are based on the decision of the Madras High Court in Devaki Ammal's case : [1973]91ITR24(Mad) . Our court has not shared the view taken in Devaki Ammal's case. In Badri Vishal Tandon v. Asst. CED : [1976]103ITR468(All) , it has been laid down that Section 34(1)(c) is not violative of Article 14 of the Constitution and that the classification made therein adheres to the fundamental principles underlying the doctrine of equality. The classification has also a nexus or relation to the object sought to be achieved. It also helps to achieve the ultimate purpose of removing unequal distribution of wealth which is the object of the Act itself. It has been further laid down that it is incorrect to say that the interest of the lineal descendants of the deceased is clubbed with the interest of the deceased for the purposes of constituting or forming one estate for levying estate duty. Section 34(1)(c) of the Act does not purport to levy duty on the properties of the lineal descendants. Clubbing of the value of the two interests for the purpose of determining the rate of duty applicable in respect of the property passing on the death of the deceased cannot be interpreted as enlarging the scope of the charging section.

9. Thus, the question of constitutional validity of this provision having been set at rest in Badri Vishal Tandon's case : [1976]103ITR468(All) , this provision has to be

given effect to and the interest of the lineal descendants of the deceased in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law is to be aggregated with the estate passing on the death of the deceased and estate duty shall be levied thereon at the rate applicable in respect of the principal value thereof.

10. We, therefore, answer both the questions in the affirmative, in favour of the respondent and against the accountable person. The respondent is entitled to costs which we assess at Rs. 200.