

**The Controller of Estate Duty Vs. Smt. Comilla Mohan**

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**Court :** Allahabad

**Decided On :** Jan-20-2005

**Reported in :** (2006)205CTR(All)184

**Judge :** R.K. Agrawal and ;Prakash Krishna, JJ.

**Acts :** Estate Duty Act - Sections 44 and 59; Hindu Adoption and Maintenance Act - Sections 18, 20(3) and 27; Mulla's Hindu Law - Sections 304; Hindu law

**Appeal No. :** E.D.R. No. 91 of 1986

**Appellant :** The Controller of Estate Duty

**Respondent :** Smt. Comilla Mohan

**Advocate for Def. :** Vikram Gulati, Adv.

**Advocate for Pet/Ap. :** Shambhu Cho(sic), Adv. and ;S.C.

**Judgement :**

**Prakash Krishna, J.**

1. The Income Tax Appellate Tribunal, Allahabad has referred the following question of law under the Estate Duty Act for opinion to this Court.

'Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal were correct in law in holding that the deduction of Rs.

3.75.000/- being provision for the marriage, maintenance and education of the female members of the family was correctly allowed in computing the value of the assets of the HUF of M/s N.N. Mohan & Sons for the purpose of determining the deceased's share and the share of the lineal descendants?'

2. The respondent is an accountable person and filed return of estate duty under the Estate Duty Act. The deceased had a share in the property, belonging to the HUF of M/s H.N. Mohan & Sons (bigger HUF). The original assessment under the Estate Duty was completed on 20th April, 1974 on the estate valuing Rs. 31,87,565/-. However, on the objections being raised by the internal audit party of the department, the Estate Duty Officer found that the deduction to the extent of Rs. 3,75,000/- was wrongly allowed in computing deceased's share in the property belonging to the HUF of M/s N.M. Mohan, & Sons (bigger HUF). Proceedings under Section 59(b) of the Act were initiated. The deduction of Rs. 3,75,000/- which was initially allowed, but was withdrawn subsequently in the proceedings under Section 59(b) of the Act, was in regard to the marriage, maintenance and education of girls. In the reassessment proceedings, the Estate Duty Officer enhanced the deceased's share in the Estate of M/s N.N. Mohan & Sons (bigger HUF) by Rs. 23,4377-. Similarly the value of assets of the lineal descendant for rate purposes was also increased by an amount of Rs. 46,874/-. In appeal the Appellate Controller of Estate Duty rejected the contention of the accountable person and held that no deduction could be allowed for any provision either for the marriage of the female members or for their maintenance from the value of the estate belonging to HUF of M/s N.N. Mohan & Sons. The said order has been set aside in further appeal by the Tribunal and it has been held that the deduction of Rs. 3,75,000/- being provision for marriage, maintenance and deduction of the female members of the family was allowable deduction in computing the value of the assets of the HUF of M/s N.N. Mohan & Sons for the purpose of determining the deceased's share and share of the lineal descendants.

3. Heard Sri Shambhu Chopra, learned Standing Counsel for the department and Sri Vikram Gulati, learned counsel for the accountable person.

4. At the outset a preliminary objection was raised by Sri Vikram Gulati that this Court should return the above reference unanswered as the department has failed to file necessary paper books, as required under the Rules of the Court. We have given careful consideration to the aforesaid submission. This objection was raised on earlier occasions also by Sri Vikram Gulati and the Court had observed that since the necessary facts are mentioned in the statement of the case and the question of law referred to the Court can be decided on the basis of the facts as stated in the statement of the case, the Court is not inclined to return the reference unanswered at its threshold. A copy of the statement of the case was given to Sri Vikram Gulati to enable him to prepare and argue the case on merits. On his request the case was adjourned on 29th November, 2004 and 8th December, 2004 and was ultimately heard on 3rd January, 2005. On the last date of hearing again the aforesaid objection was pressed by the learned counsel for the accountable person. Except for the objection that the paper books have not been filed by the department, it was not submitted by him that the necessary facts are not available for the decision of the question referred to this Court. We find that necessary facts are mentioned in the statement of case and we do not feel any difficulty in answering the question referred to us. Thus, the objection of non filing of paper books is of no substance and it is more technical in nature, rather substantial one. The Supreme Court in the case of Kalipada Das and Ors. v. Bimal Krishna Sen Gupta : AIR 1983 SC876 has held that supplying paper books is a procedural requirement devised to facilitate rendering justice. In other words, it is a procedural step in aid of justice and not substantive justice itself. It did not approve the dismissal of a case as penalty of failure to comply with court's order to file paper books. It has been held that such a penalty imposed is disproportionate to the gravity of the lapse or omission, the procedural stage instead of becoming a step in aid of justice would be a road block to justice. In that view of the matter and also that the necessary facts being available for adjudication of the above question, we are inclined to decide the reference on merits rather than to return it unanswered. Thus, the preliminary objection raised by the accountable person is overruled.

5. Learned Standing Counsel has placed reliance on the judgment of the Apex Court in the case of P. Leelavathamma v. Controller of Estate Duty :

[1991]188ITR803(SC) and : [1999]239ITR108(Mad) Smt. K.N. Sita v. Controller of Estate Duty and submitted that the Tribunal was in error in allowing the aforesaid deduction, while calculating the deceased's share. It was submitted that the right of a daughter to claim maintenance which is a statutory right would include the right of reasonable marriage expenses as such a claim under the Act can be enforced and only after a charge is created by the award of maintenance that the estate can be said to be encumbered. In contra the learned counsel for the accountable person placed reliance upon Section 44 of the Estate Duty Act.

6. Section 44 of the Estate Duty Act reads as follows:-

44. Reasonable funeral expenses and, with some exceptions, debts and incumbrances to be allowed for in determining chargeable value of estate - In determining the value of an estate for the purpose of estate duty, allowance shall be made for funeral expenses (not exceeding rupees one thousand) and for debts and incumbrances, but an allowance shall not be made.

(a) for debts incurred by the deceased, or incumbrances created a disposition made by the deceased, unless, subject to the provisions of Section 27 such debts or incumbrances were incurred or created bona fide for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, or

(b) for any debt in respect whereof there is right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, or

(c) more than once for the same debt or incumbrance charged upon different portions of the estate, or

(d) for debts incurred by or on behalf of the deceased by way of dower, to the extent to which such debts are in excess of rupees five thousand, and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

6. The aforesaid section provides deductions towards reasonable funeral expenses and with some exceptions, debts and incumbrances to be allowed for

determining the chargeable value of the estate. Elaborating the argument the learned counsel for the accountable person submitted that the deceased was under a statutory duty to maintain his wife and daughters and to marry the unmarried daughters. Section 304 of the Mulla's Hindu Law deals with the property available for partition. According to the learned author in order to determine what property is available for partition, the provision must first be made for joint family debt, which are payable out of the joint family property, personal debts of the father not tainted with immorality, maintenance of dependents to family members and all heirs and for marriage expenses for unmarried daughters. Section 18 of the Hindu Adoption and Maintenance Act gives a right to a Hindu wife to claim maintenance from her husband during her life time. Under Hindu Adoption and Maintenance Act, a Hindu is bound to maintain his or her legitimate and illegitimate children under Sub-section 3 of Section 20 of the aforesaid Act. The right of an unmarried daughter for maintenance includes the right of marriage so far as she is unable to bear the expenses out of her own earnings or property. Therefore, the obligation of Hindu male to maintain his wife and his unmarried daughters is not questionable either under old Hindu law or under Hindu Adoption and Maintenance Act.

7. Section 44 on which much reliance was placed by the accountable person would apply in respect for 'debts and encumbrances' excluding those as mentioned in Clauses (a) to (d) of the Act. The Supreme Court in the case of P. Leelavathamma (supra) has held that to claim any deduction of the amount attributable to the maintenance of wife of the deceased during his life time is not allowable, unless there is evidence to show that the estate had been burdened with any such debt or encumbrance by reason of the husband's failure to act upon his statutory obligation to maintain his wife. The debts and encumbrance mentioned in Section 44 are as a general rule debts and encumbrance incurred before the death of the deceased. Certain exceptions are, however, specifically provided in Section 44 and other provisions of part VI. Reasonable funeral expenses, cost of realizing or administering foreign property, allowances for duty paid In a non reciprocating country relief from estate duty, where the court fees has been paid for any estate for obtaining probate, letters of administration or succession certificate and relief from estate duty, where tax has been paid on

capital gains are in the ; specified circumstances allowable deductions for determination of the value of the estate for the purpose of estate duty, notwithstanding that such liabilities arose subsequent to the death. In no other case, as held by the Supreme Court in the above case P. Leelavathamma (supra) the Act postulate deduction or allowance. The deduction or allowances for any debt or encumbrance incurred subsequent to the passing of the property upon the death is not allowable under the Act. In our view the controversy involved in the present case is squarely covered by the aforesaid judgment of the Apex Court.

8. In this view of the matter, we are of the opinion that the Tribunal committed illegality in allowing deduction of Rs. 3,75,000/- being provision for the marriage, maintenance and deduction of the female members of the family in computing the value of the assets of the HUF of M/s N.N. Mohan & Sons for the purposes of determining the deceased's share and the share of lineal descendants.

9. In the result, we answer the above question referred to us in the negative i.e. in favour of the Revenue and against the accountable person. There shall be no order as to costs.

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