

Controller of Estate Duty Vs. Arun Kumar

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Court : Allahabad

Decided On : Aug-20-2004

Reported in : [2005]144TAXMAN645(All)

Appeal No. : IT Reference No. 88 OF 1984 20 August 2004

Appellant : Controller of Estate Duty

Respondent : Arun Kumar

Advocate for Pet/Ap. : Dhananjai Awasthi *for the Appellant* S.B.L. Srivastava *for the Respondent*.

Judgement :

ORDER

The Income Tax Appellate Tribunal, Allahabad has referred the following questions of law under section 64(1) of the Estate Duty Act, 1953 hereinafter referred to as the Act for opinion to this court :

'1. Whether on the facts and in the circumstances of' the case the Appellate Tribunal was justified in law in holding that section 34(1)(c) of the Estate Duty Act, 1953 was not applicable in the present case ?'

2. Briefly stated the facts giving rise to the present Reference are as follows:

Smt. Anaro Devi died on 1-1-1981 and her son Arun Kumar is the accountable person. The Assistant Controller of Estate Duty invoked the provisions of section 34(1)(c) by adding the lineal descendant's shares for the purposes of determining the rate of estate duty. He also applied the provisions of section 32 of the Act.

3. In appeal, the Appellate Controller of Estate Duty held that in the case of female, section 34(1)(c) was not applicable because female could not be a co-parcener. He, therefore, directed the Estate Duty Officer not to invoke that provision. The Appellate Controller of Estate Duty did not uphold the contention of the accountable persons that section 32 was applicable in this case. He held that section 32 was not applicable because the estate of the widow does not go to reversioners but to the heirs under the Hindu Succession Act, 1956.

4. The department being aggrieved came up in appeal before the Appellate Tribunal. The accountable person also preferred an appeal before the Tribunal. The Tribunal vide order dated 19-2-1983 dismissed the appeal filed by the department whereas it remanded the matter to the Estate Duty Officer for determining the question of the applicability of section 32 of the Act. The Tribunal has held that the provision of section 34(1)(c) of the Act is not applicable in the present case as the deceased was a female and she was not a co-parcener, but only a member of the joint family and therefore the basic pre-condition under section 34(1)(c) of the Act that a person should be a co-parcener was not fulfilled.

5. We have heard Shri Dhananjai Awasthi, learned counsel for the revenue and Shri S.B.L. Srivastava, learned counsel appearing for the accountable person.

6. In the present case Smt. Anaro Devi whose estate is being subjected to duty, died on 1-1-1981 i.e., after the Hindu Succession Act, 1956 had come into force. She by no stretch of imagination can be treated as a co-parcener. As held by the Hon'ble Supreme Court in the case of *Gowli Buddanna v. CIT* : [1966]60ITR293(SC) , a Hindu co-parcenary is a much narrower body than the joint family it includes only those persons who acquire by birth an interest in the joint or co-parcenary property, these being the sons, grandsons and great-grandsons of the holder of the joint property for the time being.

7. In *Kalyanji Vithaldas v. CIT* (1937) 5 ITR 90 , Sir George Rankin delivering the judgment of the Judicial Committee had observed: 'The phrase 'Hindu Undivided Family' is used in the statute with reference, not to one school only of Hindu Law, but to all schools and their Lordships think it a mistake in method to begin by pasting over the wider phrase of the Act the words 'Hindu co-parcenary', all the more that it is not possible to say on the face of the Act that no female can be a member.'

8. In the case of *Controller of Estate Duty v. Alladi Kuppuswamy* : [1977]108ITR439(SC) , the Apex court has held that a Hindu co-parcenary has six essential characteristics, namely:

'(1) that the lineal male descendants up to the third generation acquire an independent right of ownership by birth and not as representing their ancestors;

(2) that the members of the co-parcenary have the right to work out their rights by demanding partition;

(3) that until partition, each member has got ownership extending over the entire property conjointly with the rest and so long as no partition takes place, it is difficult for any co-parcener to predicate the share which he might receive;

(4) that as a result of such co-ownership the possession and enjoyment of the property is common;

(5) that there can be no alienation of the property without the concurrence of the other co-parceners unless it to be for legal necessity; and

(6) that the interest of a deceased member lapses on his death and merges in the co-parcenary property.' (p. 449)

9. Under the Hindu Women's Right to Property Act, 1937, a Hindu widow had a right to demand the partition. However, with the introduction of the Hindu Succession Act, 1956 the provisions of the 1937 Act has been deleted. As of now the right to demand partition by a Hindu widow does not exist.

Thus, a female is only a member of the Hindu Undivided Family and is not a co-parcener.

10. In this view of the matter, a Hindu widow has no right to demand partition and is only treated as member of Hindu Undivided Family. The provisions of section 34(1)(c) of the Act is not applicable as it applies to a case of a co-parcener. The Tribunal has rightly held in favour of the accountable person.

11. In view of the foregoing discussion we answer the question of law referred to us in affirmative i.e., in favour of accountable person and against the revenue. There shall be no order as to costs.

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