

Controller of Estate Duty Vs. Santram

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Court : Madhya Pradesh

Decided On : Jul-25-1980

Reported in : (1981)20CTR(MP)48; [1981]130ITR38(MP); 1981MPLJ5

Judge : G.P. Singh, C.J. and ;U.N. Bhachawat, J.

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

Appeal No. : Miscellaneous Civil Case No. 72 of 1975

Appellant : Controller of Estate Duty

Respondent : Santram

Advocate for Def. : B.L. Nema, Adv.

Advocate for Pet/Ap. : P.S. Khirwadkar, Adv.

Judgement :

G.P. Singh, C.J.

1. This is a reference made by the Appellate Tribunal under Section 64(1) of the E.D. Act, 1953, referring for our answer the following question of law :

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the value of the shares of the lineal descendants of

the deceased in the joint family property should not be included in the total value of the estate for the purpose of determining the rate of estate duty '

2. The dispute relates to the assessment of estate duty on the estate of Brijlal who died on 12th July, 1967. The accountable person is Santram, one of the sons of the deceased. In determining the total value of the estate, an amount of Rs. 1,27,053, representing the value of the interest in the joint family property of all the lineal descendants of the deceased, was added under Section 34(1)(c) of the Act by the Assistant Controller of Estate Duty. The Appellate Controller maintained the addition subject to some relief in regard to the valuation of certain assets. In second appeal filed before the Tribunal, it was held that Section 34(1)(c) could not enable the addition made by the Asst. Controller as that section was held to be ultra vires by the Madras High Court in *V. Devaki Ammal v. Asst. CED* : [1973]91ITR24(Mad) . The Tribunal was of the view that as the Madras decision was the only decision on the point, it was bound to follow the same and to hold that the addition made by the Asst. Controller was bad.

3. Now, when the reference comes up before us for hearing, we find that the validity of Section 34(1)(c) has been upheld by the Andhra Pradesh, Punjab and Allahabad High Courts. These decisions are : *N. Krishna Prasad v. Asst. CED* : [1972]86ITR332(AP) , *Hari Ram v. Asst. CED* and *Badri Vishal Tandon v. Asst. CED* : [1976]103ITR468(All) . As the question referred is whether the Tribunal was justified in law in holding that the value of the shares of the lineal descendants of the deceased in the joint family property should not be included in the total value of the estate and as different opinions have been expressed on the question of validity of Section 34(1)(c), it is inevitable for us to examine as to what the correct law is and whether Section 34(1)(c) is valid or not. In this connection, we may refer to our decision in *CIT v. Vrajilal Manilal & Co*, : [1981]127ITR512(MP) . In that case, we pointed out that although the question relating to the constitutional validity of a provision of the Act cannot ordinarily be examined in a reference, the position is different when the constitutional validity has already been examined by different High Courts under Article 226 and the Tribunal has followed the view expressed by one of the High Courts that the provision is invalid. Now, coming to the constitutional validity of Section 34(1)(c), we do not think it necessary to give

our reasons in detail, for, we substantially agree with the reasons expressed by the Andhra Pradesh, Punjab and Allahabad High Courts holding the provision to be valid. The reasoning of the Madras High Court in V. Devaki Ammal v. Asst. CED : [1973]91ITR24(Mad) in holding that Section 34(1)(c) is invalid, is that this section goes beyond the charging section and that it creates a discrimination between coparceners who are lineal descendants and coparceners who are not lineal descendants of the deceased. As regards the first ground that Section 34(1)(c) goes beyond the scope of the charging section, we are of opinion that the charging section of a taxing Act has not to be read in isolation ; it has to be read along with the other provisions contained in the same Act. Section 34(1)(c) is a part of the Act and has to be read along with Section 5. The charge of estate duty is on the principal value of the estate which passes on the death of a person. By the aggregation allowed by Section 34(1)(c), the property of the lineal descendants of the person dying is not brought to tax. The effect of the aggregation is only to increase the rate of tax on the estate left by the deceased. It cannot, therefore, be said that Section 34(1)(c) brings to tax the property of the lineal descendants. As regards the second ground that there is a discrimination between coparceners who are lineal descendants and coparceners who are not lineal descendants of the deceased, it is apparent that the coparceners who are lineal descendants stand as a class different and distinct from other coparceners for the simple reason that lineal descendants up to three degrees get an interest by birth in the coparcenary interest of their father, grandfather and great grandfather, whereas other relations do not acquire such, an interest. The idea behind the aggregation of interest of lineal descendants with the coparcenary interest of the deceased for rate purposes is to bring about some parity in the taxation of the Mitakshara joint family and the Dayabhaga joint family. It is well settled that in matters of taxation the Legislature has a wide discretion of selecting properties, persons and rates and a provision in a taxing Act cannot be lightly held to be invalid on the ground of violation of Article 14 of the Constitution. With great respect, we are unable to agree with the view taken by the Madras High Court in V. Devaki Ammal v. Asst. CED : [1973]91ITR24(Mad) . We would also like to point out that in an earlier case of the Madras High Court, Ramanathan Chettiar v. Asst. CED : [1970]76ITR402(Mad) , Section 34(1)(c) was held to be valid.

4. For the reasons given above, our answer to the question referred is in the negative, in favour of the department and against the accountable person. There will be no order as to costs of this reference.

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