K.B. Rohetgi Vs. Assistant Controller of Estate

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jul-28-1984

Reported in : (1984)10ITD714(Delhi)

Judge : H Ahluwalia, Rajendra

Appellant : K.B. Rohetgi

Respondent : Assistant Controller of Estate

Judgement :

1. Shri Gulzari Mal died on 12-3-1981, leaving behind four sons. One son and wife of Gulzari Mal had predeceased him. Gulzari Mal headed a joint family whose assets were of Rs. 2,48,331.

2. The first controversy before us is regarding the aggregation made by the Assistant Controller of five-sixths share of the deceased's five lineal descendants in the joint family estate. Thus, the Assistant Controller, after working out the deceased's one-sixth share in the estate at Rs. 41,388, aggregated five-sixths of the lineal descendants' shares in the joint family at Rs. 2,05,915.

3. The accountable person contended that the lineal descendants' shares could not be aggregated. The Assistant Controller rejected this contention. The Appellate Controller upheld the Assistant Controller's order on this point after noting that a large number of High Courts had taken the view that the lineal descendants' shares were aggregable under Section 34(1)(c) of the Estate Duty

Act, 1953 ('the Act') and the decision in favour of the accountable person was only of the Madras High Court in V. Devaki Ammal v. ACED [1973] 91 ITR 24.

4. The Appellate Controller, however, accepted the assessee's contention that while aggregating the lineal descendants' shares, notional partition in the smaller HUFs of the lineal descendants should be presumed ; as a result thereof the shares of the wives of the lineal descendants should be excluded and, therefore, could not be aggregated under Section 34(1)(c). The Appellate Controller, while taking the said view, has followed the case of Satyanarayan Saraf v. ACED [1978] 111 ITR 432 (Cal.).

5. The accountable person is in appeal before us and urges that the decision in V. Devaki Animal's case (supra) should be followed as the Supreme Court had refused special leave petition-[1983] 143 ITR (St.) 67. We are, however, unable to accept this contention because the Supreme Court had similarly refused special leave petition against the contrary decisions taken by the Allahabad, Gujarat, Punjab and Haryana, Madhya Pradesh High Courts, etc. (for decisions upholding aggregation under Section 34(1)(c), please see footnote 2 at page 369 of Law and Practice of Estate Duty by V. Balasubramanian, 4th edn.) 6. The next contention is that on the death of Shri Gulzari Mal, there was a notional partition under Section 6 of the Hindu Succession Act, 1956. Reliance is placed on Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum [1981] 129 ITR 440 (SC). It is true that proviso to Section 6 does come into operation because deceased Gulzari Mal left surviving him a female relative specified in Class I of the Schedule, namely, widow of a predeceased son, Shyam Sundar. We have, however, to consider whether on the death of Gulzari Mal, there was a complete partition of the HUF headed by Gulzari Mal or there was a notional partition only so far as the interest of Gulzari Mal in the coparcenary property was concerned.

7. Regarding the accountable person's claim of. complete partition, in view of the Supreme Court's observations in Gurupad Khandappa Magdum's case (supra), we extract below the observations in Mulla's Hindu Law (15th edn.) under the head Explanation 1 to Section 6 of the Hindu Succession Act, 1956 : ...But the operation of the notional partition and its inevitable corollaries and incidents is to be only for

the purposes of this section namely, devolution of interest of the deceased in coparcenary property and would not bring about total disruption of the coparcenary as if there had in fact been a regular partition and severance of status among all the surviving coparceners. It has been appropriately said that legal fictions have legal frontiers. The Supreme Court has pointed out in a number of decisions that a legal fiction should not be extended beyond its aroused purpose. (p. 928) After discussing Gurupad Khandappa Mad-gum's case (supra), the commentator observed that- ... The decision of the Supreme Court does not say that the fiction and notional partition must bring about total disruption of the joint family or that the coparcenary ceases to exist even if the deceased was survived by two coparceners. It is submitted that the notional partition need not result in total disruption of the joint family. Nor would it result in the coparcenary ceasing to exist....(p. 929) The Gujarat High Court in Ramniklal J. Daftary v. CED [1982] 136 ITR 422 were dealing with the case of a deceased who was a coparcener in an HUF governed by Mitakshara law and who died under circumstances attracting proviso to Section 6. The High Court held that interests of the lineal descendants were inciudible under Section 34(1)(c). The Court observed : In order to attract the application of Section 34(1)(c) of the Eastc Duty Act, 1953, what is necessary to be established is that the property passing on death includes a coparcenary interest in the joint family property. If the coparcenary interest of the deceased passed on his death whether under Section 5 or under Section 7 of the Act, the interests of the lineal descendants of the deceased in the joint family property have to be aggregated so as to form one estate for the purpose of determining the rate of estate duty. The aid of Explanation 1 to Section 6 of the Hindu Succession Act is to be taken only in order to ascertain the share or interest of the deceased coparcener in the coparcenary property. Explanation 1 to Section 6 resorts to the simple expedient, undoubtedly fictional, that the interest of a Hindu Mitakshara coparcener 'shall be deemed to be' the share in the property that would have been allotted to him if a partition of that property had taken place immediately before his death. An actual partition of the HUF need not be assumed to have taken place and it need not be further assumed that it was the share which the deceased received at such partition that devolved on his heirs under the proviso to Section 6. Section 6, in terms, says that what passes is the coparcenary interest and the

Explanation to Section 6 merely explains how to ascertain the coparcenary share by recourse to the fiction. Hence, what devolves under the proviso to Section 6 is the coparcenary share of the deceased. (p. 422) The High Court held that interests of the lineal descendants of the deceased in the joint family property should be taken for rate purposes under Section 34(1)(c).

8. The Allahabad High Court in Maharani Raj Laxmi Kumari Devi v. CED [1980] 121 ITR 1002 was considering a problem similar to one before us.

They specifically considered Gurupad Khandappa Magdun,s case (supra) and held that the provisions of the Hindu Succession Act did not destroy the existence of the coparcenary at the time of death of a coparcener and the interests of the lineal descendants of the deceased coparcener were rightly aggregated in the principal estate of the deceased. The High Court observed as under : Section 4 of the Hindu Succession Act, 1956, lays down that the Act has overriding effect over any text, rule or interpretation of Hindu law or any custom or usage in force before that enactment. There is, however, a rider to the effect that the provisions of the Act prevail only as respects such matters for which provision is made in the Act. The proviso to Section 6 of the Hindu Succession Act does not effect a disruption in a coparcenary family. In the first place, the proviso creates a fiction only for purposes of Section 6.

Section 7 sets out the mode of devolution of interest in a coparcenary property. Thus, the fiction created by the proviso is only for purposes of fixing the persons who are entitled to succeed to the property of the deceased coparcener. It comes into operation only after the death of a coparcener and only for the limited purpose of laying down the succession. This interpretation is in consonance with the principle that a legal fiction must be limited to the purpose for which it has been created and cannot be extended beyond its legitimate field. Section 6 does not effect a partition by operation of law. In fact, in the event of a Hindu coparcener not having a female or male relative specified in the Schedule, the proviso does not come into play at all, for, in that event, the property of the deceased coparcener devolves on the surviving members of the coparcenary and not in accordance with the Schedule.

Further, the very fact that Section 6 talks of a male Hindu having interest in a Mitakshara coparcenary postulates that at the time of death of the Hindu male a coparcenary existed of which he was a member. This militates against the contention that the proviso effects a partition in the coparcenary during the lifetime of the coparcener. After the death of the coparcener there cannot be any question at all of a partition between the deceased coparcener and a surviving member of the coparcenary, because a partition can be effected only between living coparceners or persons who claim under a deceased coparcener.

Section 30 of the Hindu Succession Act makes a striking departure from the existing law governing coparceners but it does not destroy the existence of a coparcenary. All that Section 30 does is to lift the bar on testamentary disposition of the undivided portion of a coparcener in his coparcenary property. The other rights which a coparcener has are left untouched. Thus, as Section 30 does not impinge upon the other rights which a coparcener has under the Hindu law, nor does it expressly or by implication affect the existence of the coparcenary, the abrogation of the restriction of testamentary disposition does not destroy the existence of a coparcener or coparcenary property. (p. 1002) 9. The Tribunal, Delhi Bench 'B' in WTO v. H.H. Sir Sawai Man Singhji of Jaipur (HUF) [1984] 7 ITD 401 was interpreting Gurupad Khandappa Magdum's case (supra) and they noticed the interpretation of the said Supreme Court decision by the Allahabad High Court in Maharani Raj Laxmi Kumari Devi's case (supra) but they did not follow the said Allahabad High Court decision, observing that the said decision was under the Act (see para 9). The said Bench, thus, gave their own interpretation to the Supreme Court decision contrary to the interpretation given by the Allahabad High Court in the aforesaid case of Maharani Raj Laxmi Kumari Devi (supra).

10. As the case before us is under the Act, we respectfully follow the aforesaid decision of the Allahabad High Court in Maharani Raj Laxmi Kumari Devi's case (supra) and hold that there was a notional partition of the HUF headed by Gulzari Mal only so far as the interest of Gulzari Mal in the coparcenary property was concerned and the HUF remained intact so far as surviving coparceners are concerned. The ACED was, therefore, right in aggregating the shares of lineal

decendants for rate purpose under Section 34(1)(c).

11. The very fact that at least 5 High Courts have upheld the provisions of aggregation of lineal descendants' shares for rate purpose under Section 34(1)(c), shows by implication that there was no complete partition of the HUF on the death of a coparcener. Latest decision on this point is C. Vanajakshi Venkata Rao v. CED [1983] 143 ITR 1014 (AP), where on page 1019 the decisions of other High Courts are enumerated.

12. If appellant's interpretation (of the Supreme Court's decision) is accepted, it will lead to the preposterous result of disruption of all HUFs in the country as on date, because over the last 30 years (since the enactment of the Hindu Succession Act) there is no HUF in which a member has not died leaving female heirs.

13. It may also be noted that the concept of partition under the income-tax law is not the same as under Hindu law. While in Hindu law partition can be in two stages, namely, severance of status and partition by metes and bounds, the Income-tax Act, 1961 recognises only partition by metes and bounds. Under the income-tax law there are statutory provisions regarding non-recognition of partial partition and converted property which have made a departure from traditional Hindu law. Statutory provisions prevail over the traditional Hindu law. Thus, the provisions of Section 34(1)(c) would prevail and the lineal descendants' shares have to be aggregated for determining the estate duty payable on the death of a coparcener. We would, accordingly, reject the assessee's contention challenging the aggregation of lineal descendants' shares.

14. We may also mention that the Madhya Pradesh High Court in CED v.Prakashchand [1984] 147 ITR 1 has dissented from Satyanarayan Saraf's case (supra) and have held that notional partition contemplated by Section 39 of the Act was between the deceased and other members of the HUF who were entitled to a share in the joint family property if the partition was to take place in the lifetime of the deceased and, therefore, the wife of the son of the deceased cannot be brought into picture at that stage. It is, therefore, arguable whether the Appellate Controller was right in following Satyanarayan Saraf's case (supra).

However, as the revenue is not in appeal before us, we do not express any opinion on this aspect.

15 and 16. [These paras are not reproduced here as they involve minor issues.]