

**Bajranglal Saboo Vs. Assistant Controller of Estate**

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**Court :** Income Tax Appellate Tribunal ITAT Delhi

**Decided On :** May-22-1985

**Reported in :** (1985)14ITD368(Delhi)

**Judge :** Rajendra, V Elhence

**Appellant :** Bajranglal Saboo

**Respondent :** Assistant Controller of Estate

**Judgement :**

1. The accountable person is aggrieved of the order dated 22-11-1983 of the Appellate Controller, New Delhi.
2. Shri Bajranglal Saboo expired on 18-9-1980. He constituted an HUF consisting of himself and his wife. After the death of Shri Saboo, as aforesaid, the accountable person declared before the Assistant Controller, inter alia, half share of the deceased in the HUF. However, the learned Assistant Controller took the view that since the wife had no right to ask for partition, the whole of the amount had to be considered in the hands of the deceased.
3. In appeal, the order was confirmed by the learned Appellate Controller. He held that the deceased's wife had no share in the joint family property which belonged exclusively to the deceased.
4. In further appeal, before us, Shri Balram Sangal reiterated the submissions made on behalf of the accountable person before the Appellate Controller. He also

relied upon the following decisions : Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum [1981] 129 ITR 440 (SC), CED v. Smt. Rani Bahu [1983] 142 ITR 843 (MP) (FB) and Smt.

Ramkunwar Bai v. CED [1983] 142 ITR 852 (MP). On the other hand, Shri G.L. Khurana, the learned departmental representative, strongly supported the orders of the estate duty authorities and relied upon the following decisions : Smt. Sarla Devi v. CED [1976] 103 ITR 652 (All.), CED v. Smt. Kalawati Devi [1980] 125 ITR 762 (All.), Seethammal v. CIT [1981] 130 ITR 597 (Mad.), Jeetmal Nagri v. CWT [1984] 148 ITR 139 (MP) and CIT v. Dhannamal [1984] 148 ITR 141 (MP).

5. We have considered the rival submissions as also the decisions referred to above. In the case of Gurupad Khandappa Magdum (supra), the deceased had left his wife, two sons and three daughters and, therefore, it was found that if a partition were to take place during the deceased's lifetime between himself and his two sons, the wife would have got one-fourth share in the joint family properties, the other three getting one-fourth share each. The facts in the present case are different. Here, the deceased was the only coparcener and he did not leave any sons or daughters. In the case of Smt. Rani Baku (supra), the deceased had left his widow and four sons. In that case, referring to the decision in the case of C. Krishna Prasad v. CIT [1974] 97 ITR 493 (SC), it was observed that it did not support the conclusion that in a family consisting of the deceased and his wife, where the deceased was the only owner-coparcener, the property passing on his death was only half the property and not the entire property. So far as the decision in the case of Smt. Ramkunwar Bai (supra) is concerned it was admitted or conceded that the wife had half interest in the joint family property which is not the case here. Therefore, the learned Tribunal was right in observing that these decisions could not assist the accountable person. Out of the decisions relied upon on behalf of the department, the decision of the Hon'ble Allahabad High Court in the case of Smt. Kalawati Devi (supra) is specific. It was held in that case that the assets which are received on partition by a member of an HUF, who has no male issue at the time belongs to him absolutely although they are capable of being owned by an HUF, consisting of him and his son or sons that may be born or adopted subsequently. It was held that on the death of the sole coparcener, the

entire property passed. We are, therefore, of the view that the order of the learned Appellate Controller does not call for any interference.

In the said decision of the Hon'ble Allahabad High Court, reference was also made to the decision of the Patna High Court in Hanumanmal Periwal v. CWT [1968] 67 ITR 320. The Patna High Court had held that the assets that are received on partition by a member of a HUF, who has no male issue at the time belongs to him absolutely although they are capable of being owned by a HUF, consisting of him and his son or sons that may be born or adopted subsequently.

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