Controller of Estate Duty Vs. Harbans Singh Overruled in Pritam Singh V. Assistant Controller of Estate Duty.

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Court : Punjab and Haryana

Decided On : Jan-17-1974

Reported in : [1975]98ITR331(P& H)

Appeal No. : Estate Duty Reference No. 1 of 1973

Appellant : Controller of Estate Duty

Respondent : Harbans Singh Overruled in Pritam Singh V. Assistant Controller of Estate Duty.

Judgement :

P. C. PANDIT J. - The Income-tax Appellate Tribunal has referred the following question of law to this court for opinion under section 64(1) of the Estate Duty Act, 1953, hereinafter called the Act.

'Whether, on the facts and in the circumstances of the case, the assessment was to be made under section 7 read with section 39 of the Estate Duty Act, in view of the passage of the Hindu Succession Act 1956 ?'

The facts as found by the Tribunal have been summarised in para. 3 of the statement of the case as under :

'One Shri Udham Singh of village Reru, Distt. Jullundur, was a Jat. He died on June 18, 1960. The deceased was a descendant of one of the three Jats who about 200 years ago founded the village Reru. It is situated at a distance of about three miles from the city of Jullundur. Ever since the three sections of Jats have been living in the village and holding a position of supremacy. Their gotras are Virk, Basras and Dhindses. The deceased belonged to the first one. There are three lambardars in the village, two of the Jat family and one of Dharmias (Harijan). The head of the family in the family of the deceased has been one of the two Jat lambardars ever since the village was founded. The deceased himself was a lambardar and, currently, Shri Harbans Singh, his eldest son, is one. About 1/3 rd land of the village is the property of Virk Jats. These facts have been taken from the deposition of Shri Harbans Singh before me (Assistant Controller) on March 7, 1963. It is true that the deceased was a whole-time cleark in Kanya Mahavidiala from 1923 to 1942, i.e., from the age of about 33 years to the age of about 52 years. It is also a fact that his eldest son, Shri Harbans Singh, was in military service from 1941 to 1949, i.e. from the age 27 to 35, that the youngest son of the deceased, Shri Balbir Singh, is employed in the office of the Superintending Engineer, Electricity Branch, Jullundur, and that the second son of the deceased, Shri Niranjan Singh, did some business for five to six years in the district of Karnal, Punjab (now Haryana), and later was employed under some co-operative society of Reru from 1933 to 1944.'

After the death of Udham Singh, the Assistant Controller of Estate Duty made and assessment of his three sons as accountable persons and charged his entire property to estate duty.

A question was raised before the Assistant Controller and the Zonal Appellate Controller, as is apparent from the statement of the case, that the assessee has given up custom and was no longer governed by the customary law of the Sikh Jats.

Both these officers, however, found that the deceased was a member of a compact agricultural tribe and his family was governed by the customary law of the Punjab and, consequently, the principal value of all his properties had to be taken

into account in computing his estate for the levy of estate duty under the Act.

These findings were challenged by the assessee before the Tribunal and the contention that, owing to the passing of the Hindu Succession Act, 1956, it must be held that the ownership of the entire property vested in a Hindu undivided family of Mitakshara school and the assessment of the estate duty should be made on that basis, which had been raised before the two officers below, was again pressed there. This argument had been repelled by the said officers, who held that according to the customary law governing the Hindu Jats, the deceased had full control and disposing power over the entire property and, therefore, the whole of it had to be taken into consideration for levying the estate duty. The Tribunal did not give any finding as to whether or not the deceased and his sons had given up custom, because they came to the conclusion that custom had been abrogated by the passage of the Hindu Succession Act. They then held that 'it must be deemed to be a case of a death of a member of the Hindu undivided family'. As a result, the Tribunal accepted the contention of the assessee that the assessment should be made under section 7 read with section 39 of the Act, and, consequently, allowed the appeal.

The relevant portions of sections 7 and 39 of the Act are as under :

'7. (1) Subject to the provisions of this section, property in which the deceased, or any other person had an interest ceasing on the death of the deceased, shall be deemed to pass on the deceaseds death to the extent to which a benefit accrues or arises by the censer of such interest, including in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law.

(2) If a members of a Hindu coparcenary governed by the Mitakashara school of law dies, then the provisions of sub-section (1) shall apply with respect to the interest of the deceased in the coparcenary property only -

(a) if the deceased had completed his eighteenth year at the time of his death, or

(b) where he had not competed his eighteenth year at the time of his death, if his father or other male ascendant in the male line was not a coparcener of the same family at the time of his death.

Explanation. - Where the deceased was also a member of a sub-coparcenary (within the coparcenary) possessing separate property of his own, the provisions of this sub-section shall have effect separately in respect of the coparcenary and the sub-coparcenary....'

'39. (1) The value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which ceases on the death of a member thereof shall be the principal value of the share in the joint family property which should have been allotted to the deceased had there been a partition immediately before his death.....

(3) For the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his death, the provisions of this Act, so fast as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased.'

A reading of the above two provision shows that they will apply when a coparcener dies and his interest in the joint family property governed by the Mitakshara school of Hindu law, has to be valued after his death for the purpose of levying the estate duty thereon.

The point of determining in this case is whether Udham Singh and his sons formed a joint Hindu family governed by the Mitakshara school of Hindu law and whether, on the formers death, his interest in the property was that of a coparcener and the same had to be valued for the purpose of levying the estate duty.

After hearing the counsel for the parties, we are of the view that merely on the enforcement of the Hindu Succession Act, it could not be held that custom had

been abrogated and all the Jats started being governed by the Mitakshara school of Hindu law and they formed joint Hindu families with their sons and commenced having coparcenary interest in the joint family property, with the result that the assessment in their cases had to be made under section 7 read with section 39 of the Act. All these questions, e.g., whether (a) Custom has been abrogated by the person concerned, (b) he is governed by the Mitakshara school of Hindu law, (c) he forms a joint Hindu family with his sons, and (d) his interest in the property is that of a coparcener, have to be settled in each individual case. The facts found by the Tribunal in the instant case, which have been given above, do not, in my view, lead to that conclusion. The answer to the question of law referred to us, therefore, has to be in the negative, i.e. in favour of the department.

It must, however, be made clear that the case has now to go back to the Tribunal for deciding the appeal on the merits. All the points urged by the assessee, especially those which were mentioned in their grounds of appeal Nos. 1 and 5 (printed at page 49 of the paper-book), on which particular emphasis was laid by their counsel, have to be considered by the Tribunal and findings given thereon. The appeal, in my opinion, could not have been decided on this law point alone. There will, however, be no order as to costs.

PRITAM SINGH PATTAR J. - I agree.