

(1975) 03 AHC CK 0011

Allahabad High Court

Case No: Estate Duty Reference No. 106 of 1973

Controller of Estate Duty

APPELLANT

Vs

Satish Chandra

RESPONDENT

Date of Decision: March 18, 1975**Acts Referred:**

- Estate Duty Act, 1953 - Section 33(1), 34(1), 64(1)

Citation: (1979) 119 ITR 783**Hon'ble Judges:** R.L. Gulati, J; M.P. Mehrotra, J**Bench:** Division Bench**Final Decision:** Disposed Of

Judgement

Mehrotra, J.

This is a reference u/s 64(1) of the E.D. Act, 1953. The following question has been referred to us for our answer :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the value of the entire residential house occupied by Shri Sunder Lal, the deceased, karta of his HUF, was exempt from estate duty and the share of the lineal descendants of the deceased was not includible for the rate purposes in view of the provisions of Section 33(1)(n) read with Section 34(1)(a) of the E.D. Act, 1953 ?"

2. The brief facts are these I One Shri Sunder Lal died on 16th February, 1966. The deceased was the karta of his HUF. There was a residential house at Hardoi which belonged to the HUF. The accountable person did not show any value of the house on the ground that it was exempt. The Assistant Controller estimated the value of the house at Rs. 82,000 and held that since the house belonged to the HUF the share of the deceased and his wife to the extent of Rs. 41,000 was exempt and the balance of Rs. 41,000 being the share of the lineal descendants was includible in the estate of the deceased for rate purposes.

3. On appeal, the Zonal Appellate Controller did not decide the point. The matter then went to the ITA Tribunal. The Tribunal, on an interpretation of Section 33(1)(n) read with Section 34(1)(a) of the E.D. Act, held that the entire house which was exclusively occupied by the deceased was exempt under the said provisions. In other words, it was held that the value of the property was not only excluded from the estate duty but it was also not includible for rate purposes. On an application made u/s 64(1) of the E.D. Act on behalf of the Controller of Estate Duty the aforesaid question of law has been referred to us for our answer.

4. Shri Deokinandan, learned counsel for the applicant, placed reliance on a Division Bench decision of this court reported in [Income Tax Appellate Tribunal Vs. Madan Mohan](#), . In the headnote of the said case in [1974] UPTC 372, it has been laid down as under :

"The properties mentioned in the various clauses of Section 33(1) are exempt from estate duty only in so far as they belong to the deceased and pass on his death. In the case of a residential house belonging to the HUF it is the share of the deceased which passes on his death. The value of such share alone in the residential house will be exempt from payment of estate duty under Clause (n).

In the instant case, since only a half share in the residential house was exempt under Clause (a), Clause (c) which relates to the remaining half which belonged to the son, who was a lineal descendant of the deceased, would be liable to be aggregated under Clauses (c). The value of this share was validly taken into consideration by the Assistant Controller of Estate Duty for rate purposes."

5. In our opinion, the decisive words in Section 33(1) are "which passes on his death". Section 39(1) lays down that 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 would have been allotted to the deceased had there been a partition immediately before his death. In this view of the matter, the property which could have passed on his death would be the principal value of his share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death. The Tribunal did not consider this aspect of the matter but merely relied upon Clause (n) of Section 33(1) in isolation without focussing its attention on the principal Sub-section (1) itself. Therefore, our answer to the aforesaid question is as follows :

"The Tribunal was not justified in holding that the value of the entire residential house occupied by Shri Sunder Lal, deceased, karta of his HUF, was exempt from estate duty and the share of the lineal descendants of the deceased was not includible for rate purposes in view of the provisions of Section 33(1)(n) read with Section 34(1)(a) of the E.D. Act, 1953. The half share of the meal descendants of the

deceased was liable to be included for rate purposes in view of the provisions of Section 34(1)(a) and (c) of the E.D. Act, 1953."

6. There will be no order as to costs since no one has appeared on behalf of the assessee.