(1983) 05 AHC CK 0025

Allahabad High Court

Case No: Estate Duty Reference No. 591 of 1977

Controller of Estate Duty		APPELLANT
	Vs	
Chandra Kala Garg		RESPONDENT

Date of Decision: May 16, 1983

Citation: (1983) 37 CTR 26 : (1984) 148 ITR 737 : (1983) 15 TAXMAN 166

Hon'ble Judges: V.K. Mehrotra, J; R.M. Sahai, J

Bench: Division Bench

Advocate: M. Katju, for the Appellant; R.K. Gulati, for the Respondent

Final Decision: Disposed Of

Judgement

R.M. Sahai, J.
The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, has referred the following questions of law for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the deceased had only 1/4th share in the agricultural holding which alone passed on his death on February 13, 1974?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the right to receive the 1,680 bonus shares in J. K. Synthetics Ltd. did not accrue to the deceased till February 13, 1974, the date of his death ?"

2. Facts found by the Tribunal on share of the deceased in agricultural holding are that after the death of Chunni Lal in 1962, it was entered in the revenue records and records of Nagar Mahapalika in the name of his son, late Sri S.D. Garg, husband of the accountable person, his wife and two sons of Sri Garg. The Tribunal found that although there was no written family settlement yet there was intrinsic evidence from which it could be gathered that as a result of family settlement, Sri Garg at the time of his death had only one-fourth share in the agricultural holding. It did agree that the U.P.Z.A. & L.R. Act

barred transactions in the nature of family settlement. In respect of bonus shares, it was found that although in the meeting held on June 26, 1973, a resolution was passed to allot these shares to the deceased, approval of the Controller was obtained on November 26, 1973, and February 7, 1974, but the letter of allotment having been issued on February 15, 1974, two days after the death of the allottee, the value of bonus shares could not be included in the principal estate of the deceased.

3. From the frame of the first question, it is apparent that the Department did not challenge the finding of fact recorded by the Tribunal that after the death of Chunni Lal there was a family settlement. Even assuming it was covered in the question referred, it is now beyond dispute that there can be an oral family settlement. The Tribunal, while recording this finding, relied on material on record and found that the parties were in possession in accordance with their share as evidenced by revenue entries. Learned standing counsel for the Controller of Estate Duty challenged the finding more as a matter of law. He urged that the concept of Hindu law was no more applicable to agricultural holdings which came within the purview of the U.P.Z.A. & L.R. Act. According to him after the death of Chunni Lal, his son became the sole tenure-holder under s, 171 of the U.P.Z.A. & L.R. Act. In his lifetime, neither his mother nor his sons had any right in it. And no family settlement could be entered into between persons in whom there was no or there could be no likelihood of dispute. Learned counsel maintained that settlement of dispute was a sine qua non of family settlement. The argument is only partially correct. The concept of Hindu law may not be applicable to agricultural holdings governed by the U.P.Z.A. & L.R. Act, but that does not preclude members of a family from resolving their dispute by family settlement. Whether, in a given case, on facts, a family settlement could be entered into or not is a different matter. In Kale and Others Vs. Deputy Director of Consolidation and Others, , it was held that there could be an oral family settlement amongst parties who have some antecedent title, claim or interest, even a possible claim to the property. Even if one of the parties to the settlement has no title but, under an arrangement, the other party relinquished all its claim or title in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld. Therefore, family settlement could be entered into between persons who had some semblance of title. It cannot be disputed that the mother of Sri Garg and his sons did not have any semblance of title. May be it might have been contingent depending on the death of the one or the other. In any case, they were not strangers either in law or in fact. In our opinion, the Tribunal did not commit, any error in holding that the deceased had only one-fourth share in the agricultural holdings at the time of his death.

4. Nor can the argument of learned standing counsel on bonus shares be accepted. True, it was decided in June, 1973, to issue bonus shares to Sri Garg. But by that decision or by its approval by the Controller of Capital Issues in November, 1973, it did not accrue to the deceased. So long as it was not issued, it did not become a debt owed by the company. And as it was not only issued but even allotted after the death of the deceased,

it did not accrue to him and its value could not be included in his principal assets.

5. In the result, both the questions referred to us are answered in the negative, against the Department and in favour of the assessee. The assessee shall be entitled to its costs which are assessed at Rs. 200.