Before Ashok Bhan and N.K. Agrawal, JJ.

ASHA RANI,—*Appellant*

versus

THE CONTROLLER OF ESTATE DUTY, JULLUNDUR,—*Respondent*

Estate Duty Reference No. 4 of 1982

23rd July, 1997

Estate Duty Act, 1953—Ss. 6,7, 39 and 64(1)—Hindu Succession Act, 1956—S.6—Reference of question of law—Joint Hindu family and Hindu coparcenary—Difference—Absence of surviving coparcener—Sole Surviving Coparcener becomes owner of the property in the nature of his separate and self acquired property—Wife's claim that property being ancestral half, the property belongs to her on death of husband the sole survives coparcener governed by Mitakshara law—Claim negatived—Entire property is assessable to estate duty—Hindu woman has right only to maintenance—Question whether the entire value of the properties belonging to H.U.F. is assessable to estate duty on death of sole surviving coparcener answered in favour of the revenue.

(*Controller of Estate Duty* v. *P.G. Chaware* (1993) 204 ITR 513 and *Dulari Devi and others* v. *Controller of Estate Duty* (1995) 211 ITR 524, dissented)

Held, that coparcenary being a narrower body, may cease to exist even before the joint family, such as the one under consideration. In the absence of any other coparcener, Telu Ram, deceased, became the sole surviving coparcener/last male holder. As the deceased did not have son, son's son or son's son's son, he was the absolute owner of the property as if it was his separate and self acquired property and could deal with it as he liked. Another established principle of Hindu Law is that the female member of a H.U.F. cannot claim partition.

(Para 2)

Further held, that S. 7 of the Estate Duty Act, 1953 applies when coparcenary interest in a joint family property ceases on death and section 39(1) lays down the mode for valuation of that interest. Sections 7 and 39 would apply only if there are more than one coparceners in the joint Hindu family. In the case of a single coparcener, the whole estate vests in him, being the last male holder, and the question of ascertaining his right for valuation

under S. 39(1) would not arise. Question of partition immediately before his death would also not arise as partition could only be amongst the coparceners.

(Para 22)

Further held, that S. 39 of the Estate Duty Act, 1953 falls in part of the Act, which deals with Value chargeable of the property for the purposes of Estate Duty. Section 36 provides the mode of estimating the principal value of the property. Section 37 deals with valuation of shares in a private company where alienation is restricted. Section 38 deals with valuation of interests in expectancy. Section 39 deals with valuation of interest in coparcenery property ceasing on death. It has nothing to do with the mode of partition. Thus, sections 37 and 39 of the Act would not apply.

(Para 23)

Further held, that onconsideration of the matter, we differ with the view expressed by the Bombay and Orissa High Courts in Controller of Estate Duty *v.* P.G. Chaware (1993) 204 ITR 513 and Dulari Devi and others *v.* Controller of Estate Duty (1995) 211 ITR 524 respectively and follow the view taken by the Madhya Pradesh, Allahabad, Madras, Patna and Andhra Pradesh High Courts in Controller of Estate Duty *v.* Smt. Rani Bahu, (1983) 142 ITR 843(FB), Ramratan *v.* Controller of Estate Duty, (1983) 142 ITR 863 (F.B.), *Controller of Estate Duty, Luknow v.* Smt. Kalawati Devi (1980) 125 ITR 762, Smt. Rajni Bhargava *v.* Controller of Estate Duty (1991) 190 ITR 521, Controller of Estate Duty*v.* Smt. S. Harish Chandra (1987) 167 ITR 230, P. Amirthavalli*v.* Controller of Estate Duty (1987) 164 ITR 63, Controller of Estate Duty *v.* Smt. Ginni Devi Jain, (1993) 204 ITR 110 and Controller of Estate Duty, A.P. *v.* Smt. P. Leelavathamma (1978) 112 ITR 739.

(Para 18)

A.K. Mittal, Advocate, *for the appellant.*

B.S. Gupta, Senior Advocate with
Sanjay Bansal, Advocate, *for the respondents.*

JUDGMENT

Ashok Bhan, J.

(1) The ticklish question of law reproduced below, which has been referred to us at the instance of the assessee by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as 'the Tribunal' under section 64(1) of the Estate Duty

Act, 1953 (hereinafter referred to as 'the Act'), has evoked divergent and diametrically different views from different High Courts of the country:—

> "Whether, in view of the facts and circumstances of the case, the Tribunal was legally justified in holding that the entire value of the properties belonging to the H.U.F. was assessable to Estate-duty on death of Shri Telu Ram Karta and sole surviving co-parcener of his H.U.F.?"

2. One Telu Ram, the sole surviving co-parcener, who constituted a Hindu Undivided Family (hereinafter referred to as 'H.U.F.') with his wife, died on 27th January, 1977. Wife, being the accountable person, after issuance of statutory notice, filed the estate duty return contending that the properties, both movable and immovable, were ancestral and the deceased who was governed by Mitakshra School of Hindu Law constituted a H.U.F. with his wife. It was claimed that half portion of the properties belonged to her and, therefore, only half of the H.U.F. properties should be included in the estate passing on the death of the deceased. Assistant Commissioner of Estate Duty found that the deceased was the sole surviving co-parcener at the time of his death. He was competent to dispose of whole of the properties. Wife was entitled to claim maintenance only and could not claim partition of the H.U.F. properties. Assistant Commissioner of Estate Duty held that whole of the properties passed on the death of the deceased and, therefore, included the entire estate of the deceased for levy of the estate duty.

3. Accountable person carried an appeal to the Commissioner of Estate Duty (Appeals) who agreed with the conclusions of the Assistant Commissioner of Estate Duty. It was held that the deceased, being the sole surviving co-parcener, had the right to dispose of the properties within the meaning of section 6 of the Act. Wife could not claim partition and the provisions of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act of 1956') could not be helpful in determining the question of power of disposal of the properties by the sole surviving co-parcener. Appeal was dismissed.

4. In further appeal before the Tribunal, it was held that sections 7 and 39 of the Act had no application and whole of the properties passed on the death of the deceased under the provisions of section 6 of the Act. It was also held by the Tribunal that the provisions of the Act of 1956 had no relevance for deciding the issue

under consideration. Plea raised and the appeal filed by the accountable person were rejected.

5. Mr. A.K. Mittal, learned counsel appearing for the accountable person, relying upon the decisions of the Bombay and Orissa High Courts in *Controller of Estate Duty* v. *P.G. Chaware* (1), and *Dulari Devi and others* v. *Controller of Estate Duty* (2), respectively, vehemently contended that there can be a Hindu joint family consisting of the sole co-parcener with his wife. In the event of the death of either one of them, for computing the interest of the deceased in the H.U.F. properties, section 39 of the Act would apply and only that portion of the properties which would fall to the share of the deceased on a notional partition under Section 6 of the Act of 1956 immediately before the death of the deceased, would be the interest which would pass on the death of the deceased. Under Section 39(1) of the Act, there has to be a deemed partition for determining the share of the deceased in the H.U.F. property.

6. As against this, Mr. B.S. Gupta, Senior Advocate, appearing for the department, with equal emphasis, relying upon the text of Hindu Law and the judgements in *Controller of Estate Duty, A.P.* v. *Smt P. Leelavathamma,* (3), *Controller of Estate Duty* v. *Smt. Ginni Devi Jain* (4), *Controller of Estate Duty* v. *Smt. S. Harish Chandra* (5), *Controller of Estate Duty, Lucknow* v. *Smt. Kalawati Devi* (6), *Ramratan* v. *Controller of Estate Duty* (7), and *P. Amirthavalli* v. *Controller of Estate Duty* (8), contended that a wife, though can constitute a H.U.F. which is a taxable unit under the Income Tax Act, 1961 without there being two male members in the family, nontheless, cannot claim partition of the H.U.F. only a co-parcener could claim partition of the ancestral property. Wife has a right of maintenance only from the husband. The sole surviving coparcener has the absolute right over the property which he can dispose of as his self-acquired property. On his death, the whole of the property possessed by the H.U.F. passes for the purposes of estate duty. It was argued that the Tribunal has taken the correct view and the question be answered in the affirmative, i.e. in favour of the revenue. It was also argued by him that the

1. (1993) 204 ITR 513
2. (1995) 211 ITR 524
3. (1978) 112 ITR 739 (A.P.)
4. (1993) 204 ITR 110 (Patna)
5. (1987) 167 ITR 230 (Allahabad)
6. (1980) 125 ITR 762 (Allahabad)
7. (1983) 142 ITR 863 (F.B.) (M.P.)
8. (1987) 164 ITR 63 (Madras)

Bombay and Orissa High Courts in *P.G. Chaware's case (Supra)* and *Dulari Devi's case (supra),* respectively, have not taken the correct view and commended to us the contrary view taken by the other High Courts in *Smt. P. Leelavathamma's case (supra), Smt. Ginni Devi Jain's case (supra), Smt. S. Harish Chandra's case (supra), Smt. Kalawati Devi's case (supra), Ramratan's case (supra), Smt. Kalawati Devi's case (supra), Ramratan's case (supra)*and *P. Amirthavalli's case (supra).*

7. Sections 6, 7 and 39 of the Estate Duty Act, 1953, which would be relevant to the discussion, are reproduced below :—

> *"Section 6.* Property within disposing capacity.—Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death."
>
> *Section 7.* Interest ceasing on death.—(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 deceased's death to the extent to which a benefit accrues or arises by the cesser 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 member of a Hindu coparcenary governed by the Mitakshara 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 completed 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 coparacenary) possessing separate property of its own, the provision of this sub-section shall have effect separately in respect of the coparcenary and the sub-coparcenary.

(3) If a member of any tarward or tavazhi governed by the Marumakkattayam rule of inheritance or a member of a Kutumba or Kavaru governed by the Aliyasantana rule of inheritance dies, then the provisions of sub-section (1) shall not apply with respect to the interest of the deceased in the property of the tarwad, tavazhi, kutumba or kavaru, as the case may be, unless the deceased had completed his eighteenth year.

(4) The provisions of sub-section (1) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity or as a corporation sole.

Explanation.—For the removal of doubts, it is hereby declared that the holder of a Sthanam is neither the holder of an office nor a corporation sole wihin the meaning of this sub-section."

"*Section 39.* Valuation of interest in coparcenary property ceasing on death.—(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 would have been allotted to the deceased had there been a partition immediately before his death.

(2) The value of the benefit accruing or arising from the cesser of an interest in the property of a tarward or tavazhi governed by the Murumakkattayam rule of inheritance or of a kutumba or kavaru governed by the Aliyasantana rule of inheritance which ceases on the death of a member thereof shall be the principal value of the share in a property of the tarwad or tavazhi or, as the case may be, the kutumba or kavaru which would have been allotted to the deceased had a partition taken place 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 Aliyasanatana 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 far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased."

(8) Section 6 of the Hindu Succession Act, 1956, is also reproduced below, as reference would be made to it in the later discussion :—

"Section 6. Devolution of interest in coparcenary property.—When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section, 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 the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim or intestacy a share in the interest referred to therein."

(9) In *P.G. Chaware's case* (supra), the Bombay High Court in the case of a HUF consisting of the sole surviving coparcener and his wife, on consideration of section 39 of the Act, held :—

"In the instant case, factually, there is no dispute that there was a joint Hindu family consisting of the deceased and his wife. The deceased was the sole coparcener and his

wife a member of the said Hindu undivided family. Each one of them had an equal interest in the properties of the said joint family. In the event of partition, the deceased would have been entitled only to one-half of the property as his share. If that be so, section 39(1) would be clearly attracted and, on the death of the deceased, only a half share of the family property would be deemed to pass. The Assistant Controller of Estate Duty does not appear to be correct in taking the view that though there might be a Hindu undivided family consisting of the deceased and his wife, on the death of the deceased, the whole property will pass. He also does not appear to be right in holding that there cannot be a valid partition between a single male coparcener and his wife. There is no dispute in regard to the legal proposition that, in a joint Hindu family, the wife who is a member is entitled to get a share as and when a partition is effected. The only restriction is that she herself is not entitled to claim a partition. But, in the event of a partition taking place, she cannot be denied her share. If that be so, it is not understandable how section 39(1) will not be attracted. Section 39(1) visualises a deemed partition immediately before the death of the deceased and determination of the share of the deceased consequent to such partition. It is the share of the deceased determined in such manner which will be taken as his interest in the joint family property that ceased on his death. The Appellate Controller of Estate Duty, therefore, seems to be correct in holding that only a half share of the joint family property could be included in the estate of the deceased. The Tribunal was justified in upholding this view."

(10) Relying upon *N.V. Narendranath* v. *Commissioner of Wealth Tax* (9) and *C. Krishna Prasad* v. *Commissioner of Income Tax* (10), it was held that a single coparcener could form a HUF with a female member of the family. Further relying upon *Gurupad Khandappa Magdum* v. *Hirabai Khandappa Magdum & Ors.* (11), and *'Alladi Kuppuswamy's case (supra),* two judgments of the Supreme Court, it was concluded :—

9. (1969) 74 ITR 190
10. (1974) 97 ITR 193 (SC)
11. (1981) 129 ITR 440

"On a careful consideration of the various decisions of the Supreme Court and the High Court referred to above, we are of the clear opinion that there can be a Hindu joint family consisting of a sole coparcener and his wife. That being so, in the event of the death of any one of them, for computing the interest of the deceased in the family property, section 39 of the Estate Duty Act would apply and only that portion of the property which would have fallen to the share of the deceased in the event of a partition of the family taking place immediately before the death would be deemed to be the interest of the deceased in the joint family property. That being so, in the instant case, the Tribunal was right in holding that only a half share in the property of the deceased passed on his death."

(11) It specifically dissented from the view taken by the Madhya Pradesh High Court in *Controller of Estate Duty* v. *Smt. Rani Bahu* (12) and *Ramratan's case (supra)* and the Allahabad High Court in *Smt. Kalawati Devi's case (Supra).*

(12) Orissa High Court in *Dulari Devi's case (supra)* took the same view as the Bombay High Court in *P.G. Chaware's case (supra).* Judgement in *P.G. Chaware's case (supra)* was noted but the judgements of the other High Courts taking the contrary view were not considered.

(13) Madhya Pradesh High Court in Ramratan's case (supra), in somewhat similar facts, took the following view :—

"The ownership in the property obtained by the deceased on partition was not shared by his wife although the deceased and his wife constituted an HUF. The deceased had no son. There was thus no coparcener in his family excepting himself. The deceased was the sole coparcener in his family. Speaking generally, female members in an HUF have no ownership in the property belonging to the family. The ownership of such a property is held by a smaller body which is called the coparcenary and in case there is only once coparcener, it is he alone who owns the entire property. It is true that for purposes of assessment of income tax, the status of the deceased was that of an HUF as he and his wife constituted a

12. (1983) 142 ITR 843 (FB)

family but different consideration prevail for finding out as to whether the entire property of the family or a share in it passed on the death of the deceased. As the entire ownership in the property vested in the deceased and as no part of it was shared by the wife who was the only other member in the family, the entire property passed on the death of the deceased within the meaning of s. 5 of the Act. The deceased being the sole coparcener had a disposing power under the Hindu law in respect of the entire property and even under s. 6 of the Act the entire property would be deemed to have passed on his death for purposes of estate duty. Section 7 which applies when a coparcenary interest in a joint family property ceases on death and s. 39 (1) which lays down the mode of valuation of such interest, can apply only when the joint family property is vested in more than one person. It is only then that an interest in the joint family property ceases on the death of a coparcener and the valuation of such an interest has to be ascertained on the basis of the principal value of the share which would have been allotted to the deceased had there been a partition immediately before his death. When the entire property vested in the deceased because the deceased was the sole coparcener, there is no question of any other person getting any interest or share on a notional division immediately before his death and ss. 7 and 39 have no application to such a case. As earlier stated, the whole of the property in such cases passes under s. 5 read with s. 6. The view that we have taken is fully supported by the decision of the *Allahabad High Court in CED* v. *Smt. Kalawati Devi* (1980) 125 ITR 762 (All), with which we entirely agree."

(14) Allahabad High Court has consistently taken the same view in *Smt. Kalawati Devi's case (supra), Smt. S. Harish Chandra's case (supra) and Smt. Rajni Bhargava* v. *Controller of Estate Duty* (13), It has been held in these judgements that a single male member in the family could constitute a HUF with the female members and it is not necessary that there should be two male members to constitute a joint family. The last male holder would have absolute power to dispose of the property and on his death the entire estate would pass to the accountable person. In *Smt. S.*

13. (1991) 190 ITR 521

Harish Chandra's case (supra), it was also held that as there was no coparcenary in existence at the time of the death of the last male holder, a notional partition under section 6 of the Act of 1956 could not, therefore, be assumed and the whole of his share of the original Hindu undivided family passed on his death to the accountable person.

15. Similarly, Patna High Court in *Smt. Ginni Devi Jain's case (supra),* on same facts, has taken the following view :—

> "It is also well established that, in respect of ancestral properties, there can be a partition only between two surviving coparceners subject to the provisions contained in the Hindu Succession Act, 1956, conferring special rights which are not relevant for the present purpose. Therefore, even immediately before the death of the deceased, no partition was permissible between the deceased and his wife, Ginni Devi. It is well settled that, in a case like the present one, neither the wife can have any share nor could she sue for any share and, therefore, on the death of the sole surviving coparcener of a Hindu undivided family, the entire interest in the Hindu undivided family property passes to his heir. [See *Smt. Rajni Bhargava* v. *CED (1991)* 190 ITR 521 (All) and CED v. *Smt. Kalawati Devi* (1980) 125 ITR 762 (All)]."

16. Madras High Court in P. Amirthavalli's case (supra), held:—

> "that when the partition took place between the deceased and his son, the deceased's wife had no right to be allotted any share in the joint family property. Thereafter, in the said joint family, the only members were the deceased, his wife and one unmarried daughter and during the lifetime of the deceased, neither his wife nor the unmarried daughter had any right to demand any partition and it would be only on the death of the deceased that the entire estate would devolve on his heirs including the widow. Further, there being only a sole coparcener in the coparcenary, no partition was ever possible during the lifetime of the deceased and, therefore, the entire interest of the deceased passed on his death. The Tribunal was, therefore, right in its view that the cesser of interest under section 7(1) was to the extent of the whole of the property received by the

deceased in the partition between him and his son."

17. Andhra Pradesh High Court in Smt. P. Leelavathamma's case (supra) has also taken the same view.

18. On consideration of the matter, we with respect differ with the view expressed by the Bombay and Orissa High Courts in *P.G. Chaware's case* (supra) and *Dulari Devi's case* (supra), respectively, and respectfully follow the view taken by the Madhya Pradesh, Allahabad, Madras, Patna and Andhra Pradesh High Courts in *Smt. Rani Bahu's case* (supra), *Ramratan's case* (supra), *Smt. Kalawati Devi's case* (supra) *Smt. Rajni Bhargava's case* (supra), *Smt. S. Harish Chandra's case* (supra), *P. Amirthavalli's case* (supra), *Smt. Ginni Devi Jain's case* (supra) and *Smt. P. Leelavathamma's case* (supra).

19. Hindu law is applied to Hindus, subject to any legislative enactment for the time being in force. A joint Hindu family consists of all persons lineally descended from a common ancestor. It is much larger than a coparcenary and includes the females i.e. the wife and unmarried daughters. A daughter ceases to be a member of her father's family on marriage and becomes a member of her husband's family. The existence of joint estate is not essential requisite to constitute joint family and the family which does not own any property may nevertheless be a joint family. A Hindu co-parcenary is a much narrower body than a joint family. It consists of made members of a joint and undivided family who are related to the head of the family for the time being within four degrees. These are sons, grand sons and great grand sons i.e. three generations next to the holder of the joint property in an unbroken male descent. Co-parcenary excludes female members of the joint family. A coparcener acquires by birth an interest in the ancestral property. Property inherited from father, grand father and great grand father is ancestral property whereas any other property inherited from other relations is the separate property of the inheritor. A coparcener, subject to local customary laws, can claim partition of his ancestral property from his father. A Hindu male has absolute right over his self-acquired property and can dispose it of at his will. The last male holder/sole surviving co-parcener enjoys the same powers of disposition of the inherited property as self-acquired property.

20. Co-parcenary, being a narrower body, may cease to exist even before the joint family, such as the one under consideration. In the absence of any other coparcener, Telu Ram, deceased, became the sole surviving coparcener/ last male holder. As the deceased

did not have son, son's son or son's son's son, he was the absolute owner of the property as if it was his separate and self acquired property and could deal with it as he liked. Another established principle of Hinud Law is that the female member of a H.U.F. cannot claim partition. In *Controller of Estate Duty, Madras* v. *Alladi Kuppuswamy* (14), their Lordships of the Apex Court observed that prior to the passing of Hindu Women's Rights to Property Act, 1937, "a Hindu woman had no right or interest at all in a Hindu coparcenary. She was neither a coparcener nor a member of the coparcenary nor did she have any interest in it, except the right to get maintenance. She also had no right to demand partition of the coparcenary, property after the death of her husband."

21. In *Sat Pal Bansal* v. *Commissioner of Income Tax* (15), a Full Bench of this court, while summarising the law on partition where the H.U.F. consisted of only one male member, held :—

> "According to Hindu law, female members of a Hindu undivided family have no share in the joint family property and their interest is confined to maintenance only. A wife cannot herself demand a partition of the Hindu undivided family property, but if a partition takes place between her husband and his sons, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband. The share which is allotted to the wife or the mother is in lieu of her right of maintenance and the allotment of such a share does not show that she has any right or interest in the Hindu undivided family property. Before a partition can be visualised or thought of, the property has to be owned by more than one person. The sole owner cannot divide the property. The grant of any share in the property by the sole surviving male member of the Hindu undivided family to the wife or to the mother would be only in the nature of settlement of the property upon them in lieu of their right of maintenance and cannot by any stretch of reasoning be said to be a partition of the property amongst them. Therefore, no partition, partitial or otherwise, would be possible in the case of a Hindu undivided family consisting only of one male member or the sole coparcener. Therefore, a karta who is the sole surviving coparcener of a Hindu

14. (1977) 108 ITR 414
15. (1986) 162 ITR 582

undivided family cannot effect partition of the family property between himself and his wife."

22. As has been observed by us earlier, the sole surviving coparcener can constitute a HUF with a female member of the family which is a taxable unit under the Income Tax Act. The female can be a member of the HUF but not of a coparcenary. She does not have interest in the HUF property by birth and has no right to claim partition. She has only a right of maintenance. HUF property continues to be joint as a taxable unit in the Income Tax Act but the last male holder enjoys the same power on the property as if the same was his personal/self-acquired property. As he was possessed with right of disposal of the property; under section 6 of the Act, the whole of his interest would be deemed to have passed on his death to the accountable person. Section 7 of the Act applies when coparcenary interest in a joint family property ceases on death and section 39(1) lays down the mode for valuation of that interest. Sections 7 and 39 would apply only if there are more than one coparceners in the joint Hindu family. In the case of a single coparcener, the whole estate vests in him, being the last male holder, and the question of ascertaining his right for valuation under section 39(1) would not arise. Question of partition immediately before his death would also not arise as partition could only be amongst the coparceners.

23. Section 39 falls in Part V of the Act, which deals with value chargeable of the property for the purposes of Estate Duty. Section 36 provides the mode of estimating the principal value of the property. Section 37 deals with valuation of shares in a private company where alienation is restricted. Section 38 deals with valuation of interests in expectancy. Section 39 deals with valuation of interest in coparcenary property ceasing on death. It has nothing to do with the mode of partition. Thus, sections 37 and 39 of the Act would not apply.

24. With respect, we say that the Bombay High Court in *P.G. Chaware's case* (supra) proceeded on a wrong premise. It was wrong in observing that the coparcener and the wife, with whom he constituted the HUF, had equal interest in the property and in the event of partition, the deceased would have been entitled to half share only. Wife could not claim partition. Question of deemed partition under section 39 of the Act would not arise as there was only one surviving coparcener and there was no heritable coparcenary interest. Reliance upon *Gurupad Khandappa Magdum's case* (supra) is also misplaced. Judgement in *Gurupad*

Khandappa Magdum's case (supra) is only for the proposition that a female member of HUF inherits an interest in the HUF property by virtue of section 6(1) of the Hindu Succession Act and on a notional partition under that section, she is not only entitled to inherit the interest as a heir to the deceased but also the share she would have been notionally allotted as per Explanation (1) to section 6 of the Hindu Succession Act. Similarly, reliance placed upon *Alladi Kuppuswamy's case* (supra) to hold that a wife could claim partition/had a coparcenary interest, is also wrong. In *Alladi Kuppuswamy's case* (supra), their lordships were dealing with a special provision contained in the Hindu Women's Rights to Property Act, 1937. Section 3(2) and (3) of this Act, by fiction, created a coparcenary interest and right to claim partition in a female. Otherwise, it has been held that but for the Act of 1937, a Hindu women had no right or interest in a Hindu coparcenary. She was neither a coparcener nor a member of a coparcenary and had no interest in it, except the right to get maintenance; that she could not, as of right, demand partition of the coparcenary property.

25. Present case is not being considered under the Act of 1937. Their lordships of the Bombay High Court in P.G. Chaware's case (supra) were also not considering a case under the Act of 1937 and, therefore, *Alladi Kuppuswamy's case* (supra) has no applicability.

26. For the reasons stated above, we answer the question referred to us in the affirmative i.e. against the assessee and in favour of the revenue.

R.N.R.

Before Ashok Bhan, N.K. Sodhi & N.K. Agrawal, JJ.

THE COMMISSIONER OF INCOME TAX, JALANDHAR—*Appellant*

versus

M/S KISSAN FRIENDS ICE FACTORY AND COLD STORAGE,—*Respondent*

I.T.R. No. 94 of 1984

29th September, 1997

Income Tax Act, 1961—S. 32—A(2), b(11)—Investment Allowance—Cold storage business—Machinery installed therein—Whether entitled to claim investment allowance as provided under