

(1981) 03 KAR CK 0026

In the Karnataka High Court

Case No : Tax Referred Case No. 198 of 1977

Bhaktavarmalshivalal Ostwal

APPELLANT

Vs

Controller of Estate Duty Karnataka

RESPONDENT

Date of Decision : 10-03-1981

Acts Referred:

Estate Duty Act, 1953 — Section 55, 7
Partnership Act, 1932 — Section 40

Citation : (1981) 24 CTR 13 : (1981) ILR (Kar) 1214 : (1983) 140 ITR 871 :
(1981) 7 TAXMAN 321

Hon'ble Judges : M. Rama Jois, J;G.N. Sabhahit, J

Bench : Division Bench

Advocate : B.V. Katageri, for the Appellant; S.R. Rajasekhara Murthy, for the Respondent

Judgement

Rama Jois, J.—Pursuant to the order by this court in Civil Petition No. 264 of 1976, the Income Tax appellate Tribunal, Bangalore Bench, has referred the following question for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the inclusion of a sum of Rs. 9,690 in the principal value of the estate by way of the share of the deceased in the goodwill of the firm, was justified ?"

2. One S.Hansaji Ostwal was a partner of the firm, M/s. Shah Shivalal Hansaji Ostwal. It was doing business in commission agency and trading in cotton seeds at Kundgol in the district of Dharwad. Hansaji Ostwal died on September 12, 1971. He has 17% share in the firm. Bhaktavarmal Shivalal Ostwal, son of the deceased partner, became an accountable person for the purpose of levy of estate duty under the provisions of the E.D. Act, 1953. The Assistant Controller of Estate Duty, Hubli, while computing the estate duty on the assets which passed on to the accountable person on the death of his father by virtue of s. 7 of the Act, computed the share of the deceased in the goodwill. Taking into

account the super profit at Rs. 21,874 and computing the goodwill at 3 years" purchase, the total value of the goodwill arrived by the Asst. Controller was Rs. 65,000. The share of the was calculated at Rs. 11,050. Including the value of the goodwill, the estate of the deceased was brought to tax under the provisions of the Act. Aggrieved by the said order, the accountable person pr an appeal before the Appellate Controller, Mysore Range. appellate authority confirmed that the firm had a goodwill and the share of the deceased therein passed on to the accountable person on the death of the deceased. However, he reduced the share of the goodwill of the deceased to Rs. 9,690. The accountable person preferred a second appeal before the Income Tax Appellate Tribunal, Bangalore Range. Two contentions were raised by the accountable person before the Tribunal. Firstly, it was contended that no share in the goodwill could be included in the principal value of the estate and, secondly, it was contended that the valuation was excessive. The Tribunal rejected both the contentions. Thereafter, as the Tribunal refused to make a reference, the accountable person filed Civil petition No. 264 of 1976 and pursuant to an order made by his court the question set out earlier has been referred to this court for its opinion.

3. Sri B. V.Katageri, learned counsel appearing for the accountable person, contended that unless the firm was dissolved there was no question of the value of the goodwill passing on the accountable person on the death of the partner. In support of this submission, he relied on the judgment of the Gujarat High Court in *Mrudula Nareshchandra Vs. Controller Estate of Duty*, Before the Tribunal also reliance was placed on the said decision. The Tribunal however, preferred to follow the decision of the Madras High Court in *Controller of Estate Duty Vs. Ibrahim Gulam Hussain Currimbhoy*, , in which the said High court had taken a view contrary to the view taken by the Gujarat High Court. The learned counsel submitted that the view taken by the Gujarat High Court is correct and the same should be accepted in preference to the view taken by the Madras High Court.

4. In our view, the facts of this case are entirely different from the facts in both the above cases which were similar and in which the two High courts have taken divergent views. In both the cases:

(i) there was a clause in the partnership deed concerned to the effect that on the death of any of the partners the partnership shall not stand dissolved and the heirs of the deceased partner shall have no right whatsoever to claim any share in the goodwill of the firm.

(ii) the question for consideration was that in respect of a partnership in which there was such a clause whether on the death of one of the partners his interest in the goodwill passed on to the surviving partners and consequently the surviving partners were liable to pay estate duty under the provisions of the Act.

5. The Gujarat High Court held that in a case like that there was no cesser of interest in the goodwill on the death of the partner and it cannot be measured under s. 40 of the Indian Partnership Act, 1932, and the cesser of such interest

did not attract payment of estate duty under s. 7 of the Act. The Madras High court took a contrary view and held that, even in a case of that type, the interest of the deceased partner in the goodwill passes on the other partners on his death and it is liable to tax under the provisions of the Act at the hands of the surviving partners.

6. Both the aspects which were present in those two cases are absent in the present case, namely:

(i) it is not the case of the accountable person that there was a clause in the partnership deed to the effect that the outgoing partner (either by death or by retirement), or his legal heirs, as the case may be, would not be entitled to any share in the goodwill.

(ii) The proceedings in this case for the levy of estate duty, unlike in those cases, are not against the surviving partner who are not legal heirs of a deceased partner but against the son of the deceased partner who is his legal heir.

7. Therefore, the question which arises for consideration in this case is:

"Whether the accountable person, who is the legal representative of the deceased partner was or was not entitled to receive a share of the deceased partner in the clause in the partnership deed which provided for the continuance of the firm notwithstanding the death or retirement of a partner, though there was no condition that an outgoing partner would not be entitled to a share in the goodwill?"

8. Thus, the present case is entirely different from the one considered by the two High Courts. Therefore, in our view, the ratio of these two decisions are not apposite to this case. Consequently, the submission that we should accept the view taken by the Gujarat High Court in preference to the view taken by the Madras High Court, does not survive for consideration. We, therefore, confine our attention to the precise question which is required to be answered in this case.

9. According to s. 14 of the Partnership Act, goodwill is specifically mentioned as a property of the partnership firm. Section 55 of that Act specifically states that in settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm. From these provisions it is clear, and it was not disputed also before us, that goodwill constitutes the assets of the partnership firm. However, the contention urged by the learned counsel for the accountable person was that unless there was a general dissolution of the firm, the interest in the goodwill cannot be claimed by any consequently, the goodwill did not pass to the accountable person as there was a clause in the partnership deed to the effect that on the death of a partner the firm shall not stand dissolved and shall be continued and was accordingly continued. It is this submission that has given rise to the question set out in the preceding paragraph. A similar question was considered by the Supreme Court in

Khushal Khemgar Shah and Others Vs. Khorshed Banu Dadiba Boatwalla and Another, Interpreting s. 55 of the Partnership Act, the Supreme Court observed (p. 1148):

"... it is not enacted thereby that goodwill may be taken into account only when there is a general dissolution of the firm, and not when the representatives of a partner claim his share in the firm, which by express stipulation is to continue notwithstanding the death of a partner... The Partnership Act does not operate to extinguish their right in the assets of the firm of a partner who dies, when the partnership agreement provides that on death the partnership is to continue. In the absence of a term in the deed of partnership to that effect, it cannot be inferred that a term that the partnership shall continue notwithstanding the death of a partner, will operate to extinguish his proprietary right in the assets of the firm."

10. Thereafter, with reference to the right of the legal representative of the deceased partner to get a share in the goodwill in the absence of an express stipulation to the contrary, the Supreme Court observed as follows (p. 1149):

"7. We are unable to agree with Mr. Nariman that in interpreting a deed of partnership, business whereof it is stipulated shall be continued by the surviving partners after the death of a partner, the court will not award to the legal representatives of the deceased partner, a share in the goodwill in the absence of an express stipulation to the contrary. The goodwill of a firm is an asset. In interpreting the deed of partnership, the court will insist upon some indication that the right to a share in the assets is, by virtue of the agreement, that the surviving partners are entitled to carry on the business on the death of the partner, to be extinguished. In the absence of a provision expressly made or clearly implied, the normal rule that the share of a partner in the assets devolves upon his legal representatives will apply to the goodwill as well as to other assets."

11. In the present case, as stated earlier, there was no clause in the partnership deed to the effect that on the death of a partner his legal representative would not be entitled to any share in the goodwill and that the goodwill shall enure to the benefit of the surviving partners who would continue as the partners of the firm. In the absence of such a clause, the accountable person being the legal representative of the deceased partner was entitled to the assets of the deceased partner in the firm which includes his share in the goodwill. Therefore, we see no force in the contention of the learned counsel for the accountable person that the value of the goodwill did not pass on to the accountable person on the death of the deceased partner and consequently it was not liable to tax under the provisions of the Act.

12. In the result, we answer the question in the affirmative, i.e., against the accountable person.