(1989) 02 KL CK 0040

In the High Court Of Kerala

Case No : Income-tax Reference No. 320 of 1982

Commissioner of Gift-tax APPELLANT

Vs

K.G. Raghu RESPONDENT

Date of Decision : 15-02-1989

Acts Referred:

Citation : (1994) 210 ITR 979

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; P. Ravindran, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following two questions of law for the decision of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding that ''the firm had no goodwill'' and is not the order of the Tribunal vitiated also for non-consideration of relevant ''tests'' and materials ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the retirement of the assessee from the firm does not involve transfer of property amounting to a gift chargeable to tax, as no question of giving up any right to share the future profits or the goodwill arises when such a right has come to an end the moment the assessee retired ?"

3. The respondent is an assessee to gift-tax. He was a partner in a firm, Messrs. K.K. Kunhandi and T.V. Govindan and others. It was doing abkari business. The respondent retired from the firm with effect from March 31, 1977, and the firm was reconstituted. The Gift-tax Officer held that when the assessee retired from the firm, he relinquished his share in the firm in favour of the continuing partners without adequate consideration and so there is a transfer in the eye of law.

Accordingly, the Gift-tax Officer made a gift-tax assessment and brought the value of the assessee''s share to gift-tax, including the value of the assessee''s share of goodwill, and he computed the taxable gift at Rs. 2,04,580. In appeal, the Appellate Assistant Commissioner cancelled the said assessment The Appellate Tribunal concurred with the Appellate Assistant Commissioner and held that what the retiring partner received at the time of retirement is an asset which he was entitled to receive from the firm and so there is no gift or transfer of property. The Revenue filed an application u/s 26(1) of the Gift-tax Act to refer certain questions of law for the decision of this court. Accordingly, the Appellate Tribunal referred the above two questions of law for the decision of this court.

4. We heard counsel for the Revenue as also counsel for the respond-ent/ assessee. The amount received by a retiring partner in respect of his share in the partnership including goodwill, is what the partner is entitled to in the partnership assets. There is no transfer involved when the amount is so received from the firm. It has been so held by the Gujarat High Court in CIT v. Mohanbhai Pamabhai [1973] 91 ITR 393. The court held that no transfer is involved when a retiring partner takes his share in the partnership including goodwill. In that case, the question was whether there was any capital gains. The question was answered in the negative. The above decision of the Gujarat High Court was affirmed by the Supreme Court in Addl. CIT v. Mohanbhai Pamabhai, (1987) 165 ITR 166 (SC) .

5. In the light of the above decision of the Supreme Court, we are of the view that the Appellate Tribunal was justified in holding that there was no transfer of property in the instant case and so no gift is involved in the matter when the respondent retired from the firm and received amounts due to him. The Appellate Tribunal has held that, on the facts of this case, the firm has no goodwill. This is largely a question of fact. It is not a case where the Tribunal has omitted to consider any relevant fact or considered any irrelevant fact in reaching the conclusion that no goodwill is created pr involved in the case even though the business was carried on for the period for which the licence was obtained. The finding entered by the Appellate Tribunal, in this regard, is purely a finding of fact and it is not open to any objection.

6. The order of the Appellate Tribunal is justified in law. We answer question No. 1 in the affirmative, against the Revenue and in favour of the assessee. We answer question No. 2 in the affirmative, against the Revenue and in favour of the assessee.

7. A copy of this judgment, under the seal of this court and the signature of the Registrar, may be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.