
(1991) 06 KL CK 0004

In the High Court Of Kerala

Case No : Income-tax Reference No. 14 of 1990

Commissioner of Gift-tax

APPELLANT

Vs

Smt. T.M. Sajilatha

RESPONDENT

Date of Decision : 03-06-1991

Acts Referred:

Citation : (1994) 210 ITR 976

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

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

Judgement

K.S. Paripoornan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal (in short "the 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 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 ?"

2. The respondent was a partner of a firm, K.K. Kunhandi, T.V. Govindan and Co., Trichur. We are concerned with the assessment year 1977-78, for which the accounting period ended on March 31, 1977. The respondent retired from the firm with effect from March 31, 1977, and relinquished her share in favour of the continuing partners. The short question that arises for consideration is whether there was any goodwill of the firm which was relinquished by the respondent

when she retired from the firm. The Gift-tax Officer held that when the respondent (partner) retired from the firm and somebody else was admitted into the partnership, the respondent had relinquished her share of the goodwill and determined the value of the respondent's share in the goodwill at Rs. 69,030 and treated it as a gift made by the respondent in favour of the continuing partners. In appeal, the Appellate Assistant Commissioner, following the decision of the Tribunal in G.TA No. 18(Coch) of 1980 dated December 31, 1981, held that since the firm, in which the assessee was a partner, did not have any goodwill at all, there was no question of relinquishment of any share in the goodwill and cancelled the assessment made by the Gift-tax Officer. The Tribunal concurred with the said view and held that the Appellate Assistant Commissioner was justified in holding that no question of relinquishment of any share in the goodwill arose for consideration. It is thereafter at the instance of the Revenue that the questions of law formulated hereinabove have been referred for the decision of this court.

3. We heard counsel. The decision relied on by the Appellate Assistant Commissioner and by the Tribunal, GTO v. K.G. Raghu (G.T.A. No. 18(Coch) of 1980), dated December 31, 1981, came up before this court for consideration in Income Tax Reference No. 320 of 1982. That related to the same firm. This court, following the relevant decisions on the subject, held that there was no transfer of property, and so no gift was involved when a partner retired from the firm and received the amounts due to him. The decision of the Tribunal, holding that there was no goodwill gifted, was concurred with.

4. In the light of the Bench decision of this court in Income Tax Reference No. 320 of 1982 (Commissioner of Gift-tax Vs. K.G. Raghu,), dated February 15, 1989, wherein this court concurred with the view of the Tribunal in GTO v. K.G. Raghu (G.T.A. No. 18(Coch) of 1980), dated December 31, 1981, which has been followed in the instant case, we have to hold that the firm had no goodwill and the Tribunal was justified in law in holding that on the retirement of the respondent-assessee from the firm, no transfer of property amounting to a gift, chargeable to tax, arose. There was no goodwill capable of being gifted.

5. We answer the questions referred to this court in the affirmative, against the Revenue and in favour of the assessee.

6. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.