
(1983) 07 MP CK 0030

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 123 of 1982

Controller of Estate Duty

APPELLANT

Vs

Bansidhar Singhal

RESPONDENT

Date of Decision : 25-07-1983

Acts Referred:

Estate Duty Act, 1953 — Section 2(15)

Citation : (1984) 150 ITR 17 : (1984) 17 TAXMAN 338

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; S.C. Goyal, for the Respondent

Judgement

Sohani, J.—By this reference u/s 64 of the E.D. Act, 1953 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the Appellate Controller that the retirement of the deceased lady from the partnership firm, M/s. Munnalal Pannalal & Sons, did not amount to relinquishment or abandonment of her share in the goodwill of the firm and that, as such, there was no gift of her share in the goodwill liable to duty within the meaning of Section 9 of the Estate Duty Act, 1953 ?"

The material facts giving rise to this reference briefly are as follows. Smt. Bhuribai expired on February 7, 1975. She was a partner in a firm which carried on business in the name and style of "M/s. Munnalal Pannalal & Sons, Ujjain". She retired from the partnership on November 13, 1974. At the time of retirement, the deceased was not paid any amount on account of her interest in the goodwill of the firm. Therefore, in computing the net principal value of the estate of the deceased, the Assistant Controller of Estate Duty held that at the time of her retirement from the partnership firm on November 13, 1974, the deceased was entitled to her share in the goodwill of the firm and as she had

surrendered her right to the share in the goodwill of the firm in favour of other partners of the firm who were her relatives, her share in the goodwill was includible in the net principal value of her estate by virtue of Section 9 of the Act. The Assistant Controller of Estate Duty worked out the goodwill of the firm and determined the share of the deceased at Rs. 34,833 and held that that amount was includible in the principal value of the estate of the deceased. Aggrieved by that order, the accountable person preferred an appeal before the Appellate Controller. The Appellate Controller held that as the deceased had given up her share in the assets including future profits, she was relieved of the responsibilities of discharging future liabilities and that in these circumstances it was not possible to hold that there was any element of gift involved in her retirement from the partnership firm. In this view of the matter, the Appellate Controller deleted the addition on account of goodwill, from the principal value of the estate of the deceased. Aggrieved by that decision, the Department preferred an appeal before the Tribunal. The Tribunal held that the Appellate Controller of Estate Duty was justified in excluding the value of the goodwill from the net principal value of the estate of the deceased. The Tribunal, therefore, dismissed the appeal. Aggrieved by the order passed by the Tribunal, the Department sought a reference and it is at the instance of the Department that the aforesaid question has been referred to this court for its opinion.

2. Shri Mukati, learned counsel for the Department, contended that on her retirement from, the partnership firm, the deceased was entitled to her share in the goodwill of the firm and as she had relinquished that share, there was disposition in favour of other partners and as no consideration had been paid for that disposition, the same amounted to gift. Reliance was placed on a decision of this court in *Premchand Jain Vs. Controller of Estate Duty*, .

3. In reply, Shri Goyal, learned counsel for the accountable person, contended that in view of the fact that after the retirement of the deceased from the firm, the remaining partners had taken over all the assets and liabilities of the firm, there was no goodwill falling to the share of the deceased. Reliance was placed on the decision in *Urmila Vs. Controller of Estate Duty, Bombay*, .

4. Now it is admitted that at the time of her retirement from the firm, the deceased was not paid any amount towards her share in the goodwill of the firm though she received her share in other assets of the firm. It was not the case of the accountable person, nor has it been found by the Tribunal, that it was because of a provision in the deed of partnership that the deceased had become disentitled to a share in the goodwill of the firm at the time of her retirement. It is well-settled that except when there is a provision to the contrary in the deed of partnership, a partner is entitled to get the value of his share in the assets of the firm including goodwill.

5. In the instant case, it has not been found that, by virtue of the deed of retirement, all the assets of the firm including goodwill together with all the liabilities had been taken over by the continuing partners and the retiring partner

had given up her share in the assets in view of the fact that she was discharged from the liabilities of the firm. Therefore, the decision in *Urmila Vs. Controller of Estate Duty, Bombay*, in so far as it refers to the share of the deceased in that case in the goodwill of *M/s. Kantilal Manilal & Co.* and *M/s. Pannalal Bros.*, is distinguishable on facts. In this case as the retiring partner had received her share in the other assets of the firm but had not received her share in the goodwill of the firm to which she was entitled, there was a relinquishment which amounted to a disposition. In this connection we may usefully refer to the following observations of the Division Bench of this court in *Premchand Jain Vs. Controller of Estate Duty*, :

"The next point to be considered is whether when the deceased did not receive her share in the goodwill at the time of retirement, did this result in a disposition in favour of the other partners ? We have already referred to the second Explanation to Section 2(15) which uses the word "disposition" in a wide sense. The meaning of the word "disposition" was considered by the Supreme Court in *Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal*, . In that case it was held that if the deceased took a lesser share than his entitlement in a partition, there was disposition in favour of relatives to the extent of the difference between the value of the deceased's share and what he actually received. The Supreme Court observed that according to the normal meaning, disposition embraces "the parting with, alienation or giving up property--a destruction of property". It was also observed that the second Explanation to Section 2(15) gave an extended meaning to the word "disposition" which can be said to be made up of "simple jural facts that modify and extinguish jural relations and create in their place new rights, whereby one gives or gives up and another gains". It was also explained by the Supreme Court that the word "right" as used in the second Explanation is a word of widest import. When the deceased did not take any share in the value of the goodwill at the time of retirement, to which she was entitled, it has to be held that there was extinguishment at her expense of a right in favour of the other partners and this amounted to a disposition in their favour within the meaning of the second Explanation to Section 2(15). It is not in dispute that the other partners of the firm were relatives as defined in Section 27(1) and as no consideration had been paid for this disposition, the same amounted to a gift. As the gift was made within two years from the date of the death, Section 9 applied to the gift and the property covered by the gift has to be deemed to have passed on the death of the deceased. In other words, the value of the share of the deceased in the goodwill of the partnership must be taken to be property passing on the death of the deceased."

We respectfully agree with the aforesaid observations.

6. In our opinion, therefore, on the facts and in the circumstances of the case, the Tribunal was not justified in holding that the retirement of the deceased from the partnership firm did not amount to relinquishment of her share in the goodwill of the firm and that there was no gift of share in the goodwill liable to

duty within the meaning of Section 9 of the E.D. Act, 1953.

7. Our answer to the reference is, therefore, in the negative and in favour of the Revenue. Parties shall bear their own costs of this reference.