

(1992) 09 GUJ CK 0032
In the Gujarat High Court

Case No : Estate Duty Reference No. 10 of 1980

Controller of Estate Duty

APPELLANT

Vs

Dulal Kanhayalal (Late)

RESPONDENT

Date of Decision : 15-09-1992

Acts Referred:

Estate Duty Act, 1953 — Section 64

Citation : (1993) 202 ITR 571

Hon'ble Judges : S.D. Dave, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : M.J. Thakore, for the Appellant;

Judgement

G.T. Nanavati, J.—The Income Tax Appellate Tribunal has referred the following two question to this court u/s 64 of the Estate Duty Act, 1953 :

"(1) Whether the deceased had any share in the goodwill of the partnership firm of Messrs. Ashokkumar Mukeshkumar ?

(2) If the reply to question No. 1 is in the affirmative, whether the amount of Rs. 30,600 can be added on account of the share of the deceased in the goodwill to the estate of the deceased ?"

2. Daulal Kanaiyalal died on August 8, 1975. Apart being a member of a Hindu undivided family and the Hindu undivided family being a partner in two firms, he was a partner in his individual capacity in the firm of Messrs. Ashokkumar. The accountable person had raised various contentions before the Assistant Controller and one of them was that, in view of the clause in the partnership deed of Messrs. Ashokkumar Mukeshkumar to the effect that, in the case of goodwill, if attached to the firm at any time, the same shall be the property of the firm and no party to the deed shall have any right, title or lien over it, it could not be said that any share in the goodwill belonging to the deceased passed on his death. The Assistant Controller was of the view that the interest of a partner in a partnership firm is property and, therefore, it does pass on the death of that

partner. His interest was, therefore, required to be valued in the computation of the principal value of the estate of the deceased and, accordingly, he estimated the share of the in the goodwill at Rs. 30,600.

3. In appeal, the Appellate Controller held that the said clause in the partnership deed was void "as the interest of a partner in partnership firm is property and if the assets of the firm include goodwill, the partner will have also his share in the assets". He, therefore, confirmed the order passed by the Assistant Controller.

4. In further to the Tribunal, the assessee's contention that the deceased, at the time of his death, had no share in the goodwill of Messrs. Ashokkumar Mukeshkumar was accepted. The Tribunal was of the view that, in view of the said clause in partnership deed, it had to be held that no party to the deed had any right, title or lien over the goodwill either on retirement or even at the time of death.

5. The Revenue was aggrieved by the said decision and, therefore, it applied to the Tribunal for making a reference to this court. The Tribunal was of the view that the aforesaid two question of law did arise out of its order and, therefore, they deserve to be referred to this court.

6. As regards question No. 2, it may be stated that the Tribunal had thought it unnecessary to go into question raised on behalf of the accountable person that the share of the deceased was much less than Rs. 30,600. It is therefore, difficult to appreciate how question No. 2 can be said to have arisen from the order of the Tribunal when the Tribunal itself had not considered that aspect.

7. As stated earlier, the Tribunal interpreted the said clause in the partnership deed to mean that no partner had any right, title or lien over the goodwill either on his retirement or even at the time of his death, and, applying the decision of this court in *Mrudula Nareshchandra Vs. Controller Estate of Duty*, it held that the amount of Rs. 30,600 deserved to be excluded while making computation of the value of the estate of the deceased. The decision which was relied upon by the Tribunal, has been reversed by the Supreme Court (see *Controller of Estate Duty, Gujarat-I, Ahmedabad Vs. Smt. Mrudula Nareshchandra*, . The Supreme Court did not accept the view taken by the High Court that the interest of a dying partner automatically comes to an end on his death. The Supreme Court pointed out that the goodwill of the firm, after the death of the dying partner, does not get diminished or extinguished. Whosoever has the benefit of that firm has benefits of the value of that goodwill. Therefore, if by any arrangement, the heirs do not get any share in the goodwill, the surviving partners who will have the benefit of the partnership will certainly have that benefit. The Supreme Court has also observed that it is well-settled that during the subsistence of the partnership, on partner can claim any specific share in any particular items of the partnership assets. The partner's interest in running partnership is no specific and is not confined to any specific item of partnership property but that does not mean that the partner has no interest in any individual asset of the firm. His

interest obviously extends to each and every item of the firm's assets. So the goodwill of the firm was an asset in which a dying partner had a share. If passed on the death of the dying partner and the beneficiary of such passing would be one who, by virtue of the partnership agreement, would be entitled to the value of that asset. In view of what has been held by the Supreme Court in *Controller of Estate Duty, Gujarat-I, Ahmedabad Vs. Smt. Mrudula Nareshchandra*, , the finding of the Tribunal that the deceased had no share in the goodwill of Messrs. Ashokkumar Mukeshkumar will have to be regarded as erroneous.

8. Moreover, the Tribunal, while holding that, in view of the said clause in the partnership deed, no partner had any right, title or lien over the goodwill either on his retirement or even at the time of his death, overlooked the aspect that the said clause did not debar the partner from receiving a share in the goodwill in case of dissolution of the firm. If the firm had been dissolved before the death of the deceased partner, then the deceased partner would have certainly received his share of the goodwill. Similarly, if, after his death, the firm was dissolved, then the remaining partner would have got such a benefit. The clause did recognise the fact that the firm was likely to have goodwill. Therefore, when it provided that "no party to the deed shall have any title or right or lien over it" what was meant was that, so long as the firm remained in existence, no partner while continuing as a partner or on his retirement or his legal representative on his death were entitled to claim any over it. The goodwill of the firm was and had been accepted as property of the firm, and it being a property of the firm, every partner had a right or interest therein. Though, by virtue of the arrangement between the partners, the deceased was not to get his share in the goodwill either on his retirement or at the time of death, it cannot be said that he had no interest in the property capable of passing on his death. In our opinion, this case would be directly covered by the decision of the Supreme Court in *Controller of Estate Duty, Gujarat-I, Ahmedabad Vs. Smt. Mrudula Nareshchandra*, .

9. In the result, we answer question No. 1 in the affirmative. For the reasons stated above, we decline to answer question No. 2. No order as to costs.