
(1982) 03 BOM CK 0038
In the Bombay High Court

Controller of Estate Duty

APPELLANT

Vs

G.H. Malhotra

RESPONDENT

Date of Decision : 20-03-1982

Acts Referred:

Partnership Act, 1932 — Section 48

Citation : (1983) 35 CTR 362 : (1983) 144 ITR 925 : (1983) 13 TAXMAN 540

Hon'ble Judges : M.N. Chandurkar, J; M. Jagannatha Rao, J

Bench : Division Bench

Judgement

Kania, J.—This is a reference on a case stated under s. 64(1) of the E. D. Act, 1953. the questions referred to us for our determination in this references are as follows :

" (1) Whether, on the facts and in the circumstance of the case, the Tribunal was justified in holding that the deceased's share in the goodwill of the firms of M/s. Shiv Shakti Silk Mills and M/s. Universal Dyeing and Printing Works were not liable to be included in the principle value of the estate of th deceased ?

(2) Whether, on the fact's and in the circumstance of the case, the Tribunal was justified in holding tat the sum of Rs. 40,000 gifted by the decease to his son was not liable to be include in the principal value of the estate of the deceased ?"

2. It is agreed between the learned counsel for he Revenue and the learned counsel for the assessee that as far as question No. (2) is concerned, the same is concluded in favour of the assessee by the decision of this court in Khatijabai Abdulla Soomar v. CED [1980] 1243 ITR 160. In view of this, we propose to set out the facts only in so far as they pertain to question No. (1).

3. One Harbhagwandas Malhotra died on May 18, 1967. We propose to refer to him as "the said decease" as it is the assessment of his estate duty out of which this reference arises. The accountable persons is the son of the said deceased. In the course of the assessment proceedings, the Assistant Controller of Estate Duty found that the said decease had a share in the partnership firm of M/s. Shiv

shakti Silk Mills and has also a share in the firm of M/s. Shiv Shakti Silk Mills and had also a share in the firm of M/s. Universal Dyeing and Printing Works. The said deceased had retired from the said firm of M/s. Universal Dyeing and Printing Works on October 24, 1965, but continued to be a partner in the other firm of M/s. Shiv Shakti Silk Mills till, the time of his death. In the assessment, the Assistant Controller valued the share of the deceased in the goodwill of the firm of M/s. Universal Dyeing and Printing Works at Rs. 90,000, and added these amounts to the taxable estate of the said deceased. The accountable persons preferred an appeal against this order to the Appellate Assistant Controller of Estate Duty, but the said order of the Asst. Controller was confirmed by the Appellate Controller. The accountable person then preferred a second appeal to the Tribunal. It was contended by the accountable person before the Tribunal that there could be no goodwill in the case of a retired partners and that no amount was liable to be added on account share of the said deceased in the goodwill of the firm o M/s. Universal Dyeing and Printing Works as the said decease had retired from the said firm prior to his death. The accountable persons also contended before the Tribunal that there could not be any goodwill belonging to the said deceased in the other firm of M/s. Siv Shakti Silk Mills. the Tribunal held that each of the two firms in which the deceased wa a partners, had come goodwill, but the question for consideration was whether the deceased was in a position to transfer or dispose of that goodwill at the time of his death. The Tribunal took the view that the said decease had retired from the firm of M/ s. Universal Dyeing and Printing Works prior to his death and was no longer a partner therein at the time of his death and hence, he could not transfer or dispose of his share in the goodwill of that firm. As far as the other firm of M/s. Shiv Shakti Silk Mills was concerned, the Tribunal held that although the said decease continued to be ap; partner in the said firm till his death, he could not transfer or dispose of his share in the goodwill of that firm, as, in the respect of the property of a firm,. all that a partner is entitled to is his share there in on the dissolution of the firm and on making up of the accounting after all the liabilities were provided for. It is form this decision of the Tribunal that the aforesaid two question have been referred to us.

4. We propose to discuss the question of taxability of the share of the said decease in the goodwill of the said two firms separately. As far as the firm of M/ s. Universal Dyeing and Printing Works is concerned, it is not disputed by Mr. Naik, learned counsel for the Revenue, that the share the said deceased had in the goodwill of that firm could not be treated as property which is deemed to pass under s. 6 of the E. d. ACt. this would naturally be so, because, apart from any other consideration, the said deceased did not have any share in the goodwill of that firm at the time of his death. as he had already retired prior to his death from that firm : and hence there was no question of his having any right to dispose of his share in the goodwill of that firm at the time of his death. What Mr. Naik sought to contained before us was that,. as held by the Assistant Controller of Estate Duty, sons no amount was paid to the said deceased on account of his

share of the goodwill of that firm on his retirement, it must be regarded as a gift of the said share of goodwill to the continuing partners. The Assistant Controller had valued the share of the said deceased in the goodwill of that firm at Rs. 90,000 and held that as the said deceased had not been paid any amount on account of that share, the case must be regarded as one where the said deceased had given a gift of his share in the goodwill of that firm to the continuing partners of that firm, and as the said deceased died within two years of that gift, the said deceased under the provision of s. 9 of the E. D. Act. In the first place, in our view, Mr. Naik is not entitled to urge this contention before us at all. There is no reference in the judgment of the Tribunal or in the statement of the case to any contention by the Revenue that the amount of Rs. 90,000 was liable to be included in the estate of the said deceased by reason of the provision of s. 9 of the E. D. Act. The judgment of the Tribunal nowhere considers whether it could be said that at the time of his retirement, the said deceased had made a gift of his share of the goodwill to the continuing partners of the firm. It is, on the other hand, quite clear that the only question argued before the Tribunal and discussed by the Tribunal was where the share of the said deceased in the goodwill of that firm valued at Rs. 90,000 must be deemed to pass on his death under the provision of s. 6. The question, therefore, whether this amount was liable to be included in the estate of the said deceased under the provision of s. 9 of the E. D. Act, does not arise out of the judgment of the Tribunal. Apart from this, there is nothing in the statement of the case to show that the said deceased was entitled, in law, to any amount on account of his share in the goodwill of the said firm, on the terms of the deed of partnership constituting the firm. For example, it is possible that there might have been a specific term in the said deed of partnership, providing that a retiring partner would not get any amount on account of his share in the goodwill. That question has not been investigated at all by the Tribunal and it would not be right for us to permit the learned counsel for the Revenue to agitate that question here.

5. We now come to the question of the share of the said deceased in the goodwill of the said firm of M/s. Shiv Shakti Silk Mills. As far as this person with the Asst. Controller, the balance in the capital account of the said deceased with the said firm was shown at Rs. 78,147 and to that the Asst. Controller added the value of the share of the deceased in the goodwill which value he calculated at Rs. 10,000. This addition was deleted by the Tribunal on the ground that the said deceased could not have disposed of that share during his lifetime and hence the sum of Rs. 10,000 was not liable to be included in the estate of the said deceased. In this connection, we find that the question is really concluded against the assessee by the decision of this court in *Controller of Estate Duty, Bombay City-I Vs. Fakirchand Fatehchand Sachdev*. In that case, it has been held that the charging provision and the computation provision in E. D. Act, 1953, constitute an integrated scheme and if in a given case it is not possible to compute the value of a particular property passing on death, then that property does not become eligible to the charge of estate duty. It has been further held that the

goodwill of a firm is one of the properties or assets of a firm. Merely because it is an intangible asset, it does not stand on a different footing from the tangible asset of the firm but in making up the final account it is to be taken together with the other assets of the firm in arriving at the value of the total assets and for deducting therefrom the liability as provided by law and in paying to the partners their share in the balance so arrived at. Where a partnership is dissolved by the death of a partner, his share in the firm passes on his death to his legal representatives. In the valuation of a deceased partner's share for the purpose of the E. D. Act, it is not open to the Department to pick up only one item out of the partnership properties or the assets of the firm and proceed upon the basis that the deceased had a specified share in it, because, no partner has a defined share in the individual assets or properties of the firm. His share is in the totality of the properties of the firm less the liabilities thereof. If for the purpose of valuing a partner's share in the firm the Department picks up just one or two items out of the total assets or properties upon the basis that the deceased has a defined share in it or them ignoring the other assets and the liabilities of the firm, the valuation made is unjustified and unsustainable in law. A partner does not have a defined share in the goodwill of the firm and the estate duty authorities cannot regard it as a separate property by itself apart from the other assets and liabilities of the firm and include its value in the estate of a deceased partner under s. 5 of the E. D. Act. Mr. Mehta, relying upon this decision, contended before us that the addition of Rs. 10,000 on account of the value of the share of the said deceased in the goodwill of the said firm was erroneous, as if it was on the footing that the goodwill of the said firm constituted a separate property by itself apart from the assets and liabilities and that it was not open to the E. D. authorities to value the share of the said deceased in a particular asset of the firm, as such. In our view, this submission cannot be sustained. A perusal of the other side of the Asset Controller clearly shows that he has not attempted to pick out separately any of the assets of the firm and to tax the share of the said deceased in that asset. Before him the amount standing in the capital account of the said deceased in the said firm was shown as Rs. 78,617. It is not in dispute that this was the correct value of the share of the said deceased in the assets of the firm other than the goodwill, and all that the Asst. Controller has done is to add the amount of the share of the deceased in the goodwill of the firm to this amount. There is no attempt, in our view, by the E. D. authorities to pick out any particular asset of the firm and to tax separately the share of the deceased therein. As pointed out in the aforesaid judgment (at page 282 of the report) (134 ITR) all that is required is that the price realised on the sale of the goodwill or the value of the goodwill must be brought into the hotchpotch for the purpose of applying it in the manner provided in cl. (b) of s. 48 of the Indian Partnership Act, for calculating the share of the partners on the dissolution of the firm.

6. In the result, we answer the question referred to us as follows :

Question No. 1 : The Tribunal was justified in holding that the deceased's share in the goodwill of M/s. Universal Dyeing and Printing works was not liable to be

include in the principle value of the estate of the deceased. The Tribunal was, however, not justified in holding that the deceased share in the goodwill of the firm of M/s. Shiv Shakti Mills was not liable to be include in the principal value of the estate of the deceased.

Questions No. 2 : In the affirmative and in favour of the assessee.

7. In view of th divided successes which the parries have achieved in this references, there will be no order as to the costs.