
(1981) 07 BOM CK 0001
In the Bombay High Court
Case No : ED Reference No. 2 of 1967

Controller of Estate Duty

APPELLANT

Vs

Haji Sattar

RESPONDENT

Date of Decision : 01-07-1981

Acts Referred:

ESTATE DUTY ACT, 1953 — Section 64(3)

Citation : (1981) 7 TAXMAN 323

Hon'ble Judges : Madon, J

Bench : Single Bench

Advocate : R.J. Joshi, P.M. Pradhan and L.K. Chatterjee, for the Appellant; S.E. Dastur and C.N. Mistry for the Accountable Person, for the Respondent

Judgement

Madon, J.—In this case which has been stated by the income tax Appellate Tribunal u/s 64(3) of the E.D. Act, 1953, the following two questions have been submitted to the court for its opinion :

1. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in holding that the provisions of section 10 are not applicable in respect of the gift of Rs. 1,20,000 ?
2. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in holding that only 1/4th and not the whole share of the value of goodwill of the firm has passed on to the accountable person ?

The facts in so far as they are material for the determination of the above two questions are very few and may be briefly stated. The deceased Haji Latif Gani Kachhi made a gift of Rs. 40,000 to each of his three sons on May 19, 1955. This amount was handed over to the sons. Three days later, on May 22, 1955, his sons entered into a partnership with their father under a deed of partnership dated May 22, 1955, in respect of the business which till then the deceased was carrying on as a sole proprietor. As their capital contribution to the said partnership each of the sons brought in a sum of Rs. 40,000. The shares of the

deceased and the three sons in the profits and losses of the said firm were equal, that is, four annas or 25 per cent. each. The deceased died on June 15, 1957. Out of the three sons the two respondents before us are the accountable persons.

2. In his order of assessment to estate duty of the estate left by the deceased, the Deputy Controller of Estate Duty held that the deceased was not entirely excluded from the aggregate sum of Rs. 1,20,000 gifted by him to his three sons as aforesaid and he, therefore, included the said amount in the dutiable amount. He further held that the share of the goodwill of the three sons, namely, the three-fourths share of the goodwill, came out of the aforesaid sums gifted as mentioned above and, therefore, the value of the said three-fourths share should also be included in the dutiable amount in addition to the one-fourth share of the deceased in the goodwill. This order of the Deputy Controller was confirmed in appeal by the Appellate Controller. The Tribunal, however, held that section 10 of the Act had no application to the case and deleted from the dutiable amount both the said aggregate sum of Rs. 1,20,000 as also the value of the three-fourths share in the goodwill of the firm.

3. So far as the first question is concerned, there is no dispute between the parties that in view of the judgment of a Division Bench of this High Court (Madon and Kania JJ.) in *Khatijabai Abdulla Soomar Vs. Controller of Estate Duty, Bombay*, it must be held that the deceased was entirely excluded from the possession and enjoyment of the amounts which were gifted to his three sons and that the said section 10 did not apply and the said sum of Rs. 1,20,000 could not be included in the principal value of the estate of the deceased.

4. So far as the second question is concerned, since the deceased had not retained any possession or control or enjoyment in the said sums which were gifted, the findings of the taxing authorities, that the three-fourths share of the sons in the goodwill of the said firm was as a result of the said sum of Rs. 1,20,000 was a gift to which section 10 of the Act was attracted, cannot be sustained. If, therefore, these amounts, as gifts to the said three sons, belonged and continue to belong absolutely to the sons and identical sums were brought in by them as their contribution to the partnership capital, they had become partners in their own right and their shares in the goodwill of the firm could not be said to be property which passed on the death of the deceased. It may further be pointed out that at the time when the said partnership was formed the deceased was about 82 years old and he would most certainly require the time and energy of younger partners if the business were to be carried on. It was on this ground that this High Court held in *Controller of Estate Duty, Bombay City, Bombay Vs. Kantilal Nemchand*, that in such a case there was sufficient consideration for the father taking his son as a partner with a share in the business and even increasing his share later on.

5. In the result, we answer the two questions referred to us as follows:

Question No. 1 in the affirmative, that is, in favour of the accountable persons

and against the department.

Question No. 2 in the affirmative, that is, in favour of the accountable persons and against the department.

The applicant will pay to the respondents the costs of this reference.