(1996) 06 GAU CK 0029

In the Gauhati High Court

Case No : Estate Duty Reference No. 1 of 1990

Controller of Estate Duty APPELLANT

Vs

Shri Shew Kishan Bahety RESPONDENT

Date of Decision : 10-06-1996

Acts Referred:
Estate Duty Act, 1953 — Section 40, 5

Citation : (1996) 221 ITR 535

Hon'ble Judges : S. Barman Roy, J;D.N. Baruah, J

Bench : Division Bench

Advocate : G.K. Joshi and U. Bhuyan, for the Appellant; None, for the Respondent

Judgement

D.N. Baruah, J.—By judgment and order dated August 26, 1988, in Civil Rule No. 21(M) of 1977, this court directed the Tribunal to refer the following question for the opinion of this court. Pursuant to the said direction, the said question has been referred under the Estate Duty Act, 1953 (for short, "the Act"), as noted below :

"Whether, on the facts and in the circumstances of the case and, on a proper construction of Section 5 of the Estate Duty Act, 1953, the share of the deceased in the value of the goodwill of the firm is not includi-ble in the principal value of the estate of the deceased and whether the Tribunal was justified in upholding the order of the Appellate Controller of the Estate Duty deleting Rs. 36,440 as added by the Assistant Controller of Estate Duty in the assessment ?"

2. The matter relates to the estate of one Champalal Baheti, partner of a firm, Kasturchand Champalal Marwaripatty, Jorhat. The said Baheti was having 30 per cent. share in the said firm. He died on November 21, 1970. The accountable person was to file a return on or before January 21, 1971. However, on the failure to file the return in time, time for filing return was extended up to December 31, 1971. The return was filed by the accountable person on February 26, 1972, for the purpose of the estate duty. The Assistant Controller of Estate

Duty found that the deceased had certain immovable property besides movable property. While determining the principal value of the estate, the Assistant Controller of Estate Duty valued the immovable property at Rs. 1,47,338. The share of the deceased in the goodwill of the firm which was estimated at Rs. 36,440 was also included in the principal value of the estate. The accountable person being aggrieved by the decision of the Assistant Controller of Estate Duty, preferred an appeal before the appellate authority, namely, Appellate Controller of Estate Duty. The appellate authority, after hearing the accountable person, disposed of the appeal by deleting the addition of Rs. 36,440 being share of the value of the goodwill holding, inter alia, that the goodwill not being capable of quantification could not be deemed to pass on to the successor of the deceased. The Revenue, therefore, took up the matter by way of appeal before the Income Tax Appellate Tribunal. After careful consideration, the Tribunal followed the decision of the Gujarat High Court in the case of Mrudula Nareshchandra Vs. Controller Estate of Duty, holding that the cesser of interest in the goodwill on the death of one of the partners could not be measured in terms of Section 40 of the Estate Duty Act and could not, therefore, be brought to tax. The order of the Appellate Controller of Estate Duty was thereby confirmed by the Tribunal in this regard and the Revenue''s appeal was accordingly dismissed. The Revenue requested the Tribunal to refer the question mentioned above, for the opinion of this court, which was however refused. Situated thus, the Revenue approached this court and this court as stated above directed the Tribunal to refer the case u/s 64(3) of the Act. Hence, the present reference.

3. Heard Mr. Joshi, learned standing counsel appearing on behalf of the Revenue. None appears on behalf of the accountable person. Mr. Joshi, submits that goodwill is also a part of the estate of the deceased. According to him, on the death of a person his share in the estate including the goodwill passes on to his heirs. Goodwill means the benefit, an advantage of the good name, reputation and connection of a business. It is an attractive force which brings customers. Goodwill itself has no independent existence, as it is attached to the business and it is a part of the assets of the firm. So, on the death of the partner, his share in the goodwill can be included in his estate. In this connection, Mr. Joshi has drawn our attention to a decision of this court in Controller of Estate Duty Vs. Kanta Devi Taneja and Laxmi Devi Taneja, In the said case this court relying on the decision in the case of S. Devaraj Vs. Commissioner of Wealth-tax, and the Full Bench decision of the Punjab and Haryana High Court in State Vs. Prem Nath, held that on the death of a partner, his interest in the entire unit of the firm including the goodwill passes on to his next kin.

4. The present case is similar to the case of Controller of Estate Duty Vs. Kanta Devi Taneja and Laxmi Devi Taneja, Accordingly, we are of the opinion that the share of the deceased in the goodwill of the firm is includible in the principal value of the estate of the deceased, and, therefore, the Tribunal was not justified in upholding the order of the Controller of Estate Duty deleting the sum of Rs. 36,440 which was added by the Assistant Controller of Estate Duty in the

assessment.

5. In view of the above, we answer the question in the negative and in favour of the Revenue and against the assessee.

6. A copy of this order shall be transmitted to the Tribunal for disposing of the case in accordance with law.