
(1973) 08 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Estate Duty Reference No. 1 of 1971

Controller of Estate Duty

APPELLANT

Vs

Shri Ved Parkash Jain

RESPONDENT

Date of Decision : 01-08-1973

Acts Referred:

Estate Duty Act, 1953 — Section 5

Citation : (1974) 96 ITR 303

Hon'ble Judges : Prem Chand Jain, J; Harbans Singh, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.S. Gupta, for the Appellant; S.K. Aggarwal, for the Respondent

Judgement

1. This reference u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), has been made by the Income Tax Appellate Tribunal, Chandigarh Bench, on the application filed by the Controller of Estate Duty, requesting the Appellate Tribunal to refer to this court a question of law which is said to have arisen out of the Tribunal's order in EDA No. 2 of 1969-70. The Tribunal has referred the following question of law for our opinion :

" Whether, on the facts and in the circumstances of the case, the share of goodwill of a deceased partner in the assets of a firm passes on his death under the Estate Duty Act ?"

2. The facts of the case are as follows:

3. One Hari Ram was partner in the firms of Messrs. Hari Ram Kishori Lal and Messrs. Ved Parkash Vijay Kumar. He died on 26th April, 1966. The Assistant Controller of Estate Duty made an addition of Rs. 17,251 in the principal value of his estate representing his share of goodwill in the said two firms, in the following manner :

Rs.

M/s. Hari Ram Kishori Lal

8,134

M/s. Ved Parkash Vijay Kumar

8,917

4. On appeal, the Zonal Appellate Controller of Estate Duty excluded the share of Rs. 8/134 in the goodwill of the firm of M/s. Hari Ram Kishori Lal as this firm had been dissolved and was not continued after the death of Hari Ram while the addition of Rs. 8,917 representing the share of goodwill of Hari Ram in the firm of M/s. Ved Parkash Vijay Kumar was confirmed. On Second appeal by the assessee, the Income Tax Appellate Tribunal, Chandigarh Bench, held that, on the death of Hari Ram, there was no passing of the property so far as the share in the goodwill was concerned and, accordingly, allowed the appeal. The Controller of Estate Duty filed an application for making a reference on which the aforesaid question was framed by the Tribunal for the opinion of this court.

5. The answer to the question posed by the Tribunal would not present much difficulty if we first find out the nature of interest of a partner in the partnership property and for that purpose reference may be made to the decision of the Supreme Court in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, wherein their Lordships have described the nature of interest of a partner during the subsistence of a partnership and after its dissolution and the relevant observations read as under :

" From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, of fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in Clause (a) and Sub-clauses (i), (ii) and (iii) of Clause (b) of Section 48. It has been stated in Lindley on Partnership, 12th edition, at page 375 :

" What is meant by the share of a partner is his proportion of the partnership assets after they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged. This it is, and this only which on the death of a partner passes to his representatives, or to a

legatee of his share.....and which on his bankruptcy passes to his trustee.".....

It seems to us that looking to the scheme of the Indian Act no other view can reasonably be taken. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges. It is true that even during the subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is permitted by Section 29(1), that is to say, the right to receive the share of profits of the assignor and accept the account of profits agreed to by the partners."

6. From the observations of their Lordships of the Supreme Court, it is manifestly clear that during the subsistence of the partnership, no partner can deal with any part of the property as his own nor can he assign his interest in a specific item of the partnership property to any one, that his only right is to obtain such profits, if any, as fall to his share from time to time and that in case a partner assigns his share to another, then the assignee would get only the right to receive the share of profits of the assignor. If the present case is adjudged in the light of the observations referred to above, then, on the admitted facts, after the death of Hari Ram, no specific share in the goodwill passed on to the heirs as he did not own any specific share in the goodwill of the firm. After the death of Hari Ram, the firm, M/s. Ved Parkash Vijay Kumar, did not stand dissolved and the same continued thereafter. u/s 5 of the Estate Duty Act, duty is leviable upon the principal value ascertained of all property which passes on the death of a person. Goodwill may be an intangible property as argued by the learned counsel for the revenue, but as earlier observed, in the instant case, after the death of Hari Ram, the same did not pass on to the heirs who in the partnership firm during its continuance are only entitled to receive the share of profits. Goodwill has no value in a going concern of partnership and its quantification is not possible and as such the value of the so-called share held by Hari Ram in the goodwill of the firm could not legally be included in the principal value of the estate of the deceased. In this view of the matter, the Appellate Tribunal was justified in excluding the sum of Rs. 8,917, alleged to be the share of goodwill of Hari Ram in M/s. Ved Parkash Vijay Kumar.

7. For the reasons recorded above, we answer the question referred to us in the negative. The assessee shall be entitled to his costs from the department which are assessed at Rs. 150.