(1998) 02 GAU CK 0037

In the Gauhati High Court

Case No : Estate Duty Reference No. 2 of 1990

Controller of Estate Duty APPELLANT

Vs

Smt. Chand Devi Tushnial RESPONDENT

Date of Decision : 05-02-1998

Acts Referred:
Estate Duty Act, 1953 — Section 2(15), 5, 64(2)

Citation : (1998) 100 TAXMAN 258

Hon'ble Judges : V.D. Gyani, J;P.C. Phukan, J

Bench : Division Bench

Advocate : G.K. Joshi and U. Bhuyan, for the Appellant;

Judgement

1. Pursuant to order dated 6-12-1988 passed by this Court in Civil Rule No. 67(M) of 1978, the following questions u/s 64(2) of the Estate Duty Act, 1953 have been referred to this Court for its opinion :

"1. 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 of which he was a partner was not properly includible in the principal value of the estate passing on the death of the deceased ?

2. Whether on the findings of the Tribunal that "there is no case for addition of goodwill in the chargeable estate is not based on irrelevant consideration and surmise or hypothesis and whether the decision of the Tribunal is, therefore, not untenable in law ?

3. Whether the decision of the Tribunal is not vitiated and untenable in law by reason of its reliance on the case reported in 96 ITR which was no longer good in view of the decision reported in State Vs. Prem Nath, ?

4. Whether the decision of the Tribunal upholding the deletion of Rs. 2,775 made by the Appellate Controller of Estate Duty is not based on material or on

improper view of facts and whether the decision is, therefore, not untenable in law."

A mere glance at the questions, as posed to this Court for opinion, would reveal that the basic question that is common to the first 3 questions is whether the share of the deceased of the goodwill of a firm of which he is partner can be included in the principal value of the Estate passing on the death of a deceased. Since the question has been settled by the Supreme Court in Controller of Estate Duty, Gujarat-I, Ahmedabad Vs. Smt. Mrudula Nareshchandra, , we need not go into the statements of facts. The Supreme Court has categorically held that the goodwill of a firm is an asset in which the deceased had a share and this asset on his death remains and his interest does not extinguish and passes to surviving partners. This Court dealing with a similar question in Controller of Estate Duty Vs. Kanta Devi Taneja and Laxmi Devi Taneja, , also referred to in Mrudula Nareshchandra?s case (supra) has held that...passing of property was not a mere change of source or title but change of beneficial possession or enjoyment. The interest of a partner in a partnership firm was property within the meaning of section 2(15) of the Estate Duty Act, 1953, and such interest extended to the share of the partnership including goodwill. Therefore, on the death of a partner, his interest in the entire unit of the firm including goodwill passes, irrespective of the provisions of the partnership deed as to its final devolution." (p. 356)

2. In view of the above authoritative pronouncement, the first question as submitted is answered in the negative in favour of the revenue and in view of the answer to question No. 1, the remaining questions 2 and 3 are redundant and do not call for any answer. So far as question No. 4 is concerned, considering the facts that the amount involved is small one, just Rs. 2,775, and we do not have ready access to order as made by the Controller of Estate Duty which has not been placed on record, the question is answered in the negative in favour of the revenue. The reference is answered accordingly.

