(1997) 01 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : Estate Duty Case No. 1 of 1983

Controller of Estate Duty APPELLANT

Vs

Smt. Nirmal Khanna RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:
Estate Duty Act, 1953 — Section 64(1)

Citation : (1998) 229 ITR 624

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant;

Judgement

G.S. Singhvi, J.—This is a petition u/s 64(1) of the Estate Duty Act, 1953, for directing the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, to make reference of the question of law framed by the petitioner to the High Court for its opinion.

2. The late Shri Inder Mohan Khanna was a partner in Khanna Dyeing and Milling Works, Amritsar, with a 20 per cent, share. He died on December 30, 1978. In her capacity as the accountable person, Smt. Nirmal Khanna, widow of the late Shri Inder Mohan Khanna, filed an account of the estate of the deceased on July 2, 1979, showing therein the net principal value of his estate chargeable to estate duty at Rs. 5,21,123. A revised statement was filed by Smt. Nirmal Khanna on June 3, 1981. In these accounts, the share of the deceased in the goodwill of the firm was not included. She addressed a letter dated July 16, 1979, to the Assistant Controller of Estate Duty and asserted that the deceased was not entitled to any goodwill of the firm, Khanna Dyeing and Milling Works, Amritsar, after death. She stated that the profits were earned with the efforts of the individual partners and after the death of Shri Inder Mohan Khanna such efforts stopped and, therefore, his goodwill has no value. The Assistant Controller of Estate Duty did not agree with the contention of the accountable person and ordered the addition of Rs. 1,65,822 to the principal value of the estate of the

deceased for the purpose of levy of estate duty. The Appellate Controller of Estate Duty before whom an appeal was filed by the accountable person concurred with the Assistant Controller of Estate Duty and dismissed the appeal vide his order dated October 15, 1981. On a further appeal filed by the accountable person, the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, held that the addition made by the Assistant Controller was not sustainable in law. The petitioner filed an application u/s 64(1) of the Act of 1953 for reference of the question of law to the High Court. This application has been rejected by the Tribunal.

3. We have heard Shri B. S. Gupta, learned counsel for the petitioner, and have perused the order of the Tribunal. In Controller of Estate Duty, Gujarat-I, Ahmedabad Vs. Smt. Mrudula Nareshchandra, , the Supreme Court has held that the judgment of the Bombay High Court in Controller of Estate Duty, Bombay City-I Vs. Fakirchand Fatehchand Sachdev, does not lay down the correct law. The decision of the Gujarat High Court in Mrudula Nareshchandra Vs. Controller Estate of Duty, , has been partly reversed by the Supreme Court and the decision of this court in State Vs. Prem Nath, which supports the case set up by the Revenue has been approved by the Supreme Court.

4. Therefore, we are of the opinion that the following question of law arises in the instant case :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that inclusion of a sum of Rs. 1,65,822 being the value of the share of the deceased in the goodwill of the firm in computation of the principal value of the estate of the deceased chargeable to the estate duty is unjustified and unsustainable in law ?"

5. The Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, is directed to draw up a statement of the case and refer the aforementioned question to the High Court and send the record of the case.