

(2001) 02 DEL CK 0134

In the Delhi High Court

Case No : ED Ref. No. 1 of 1987 12 February 2001

CONTROLLER OF ESTATE DUTY

APPELLANT

Vs

SMT. NIRMALA BHANDARI

RESPONDENT

Date of Decision : 12-02-2001

Acts Referred:

Citation : (2001) 167 CTR 341

Hon'ble Judges : Arijit Pasayat, C.J.;D.K. Jain, J

Bench : Full Bench

Advocate : Sanjeev Khanna and Ajay Jha, for the RevenueNone, for the assessee, for the Appellant;

Judgement

Arijit Pasayat, C.J.

At the instance of revenue , following question has been referred for opinion of this court u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as `the Act') by the Appellate Tribunal Delhi (hereinafter referred to as the Tribunal") :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the goodwill should be assessed in the profit sharing ratio, although the goodwill of the business constituted the sole and exclusive property of the deceased in accordance with clause 13 of the partnership deed ?"

2. Factual position essentially is as follows :

Shri Kishan Lal Bhandari (hereinafter referred to as "deceased") was partner in the firm M/s Sita Ram Khairati Lal. He died on 17-9-1978. He had 44 per cent share in the profit of the partnership firm, which carried on business of commission agency in shop No. B-176, New Subzi Mandi, Delhi, Assistant Commissioner of Estate Duty (hereinafter referred to as "assessing authority"), while computing estate duty payable, determined the value of the goodwill of the partnership at Rs. 3,90,579 and held that the goodwill exclusively belonged to

the deceased and, Therefore, passed on his death to his legal representatives. On appeal, however, the Appellate Controller determined the value of the goodwill at Rs. 1,30,193 and upheld the addition to that extent. Matter was carried in appeal by the accountable person before the Tribunal. It was contended that the addition on account of goodwill should be in proportion to the profit-sharing ratio of the deceased. Tribunal accepted the contention. On being moved, question as set out above, he has referred for opinion of this court.

3. We have heard learned counsel for the revenue . There is no appearance on behalf of the accountable person.

Learned counsel with reference to the decision of the Apex Court in Controller of Estate Duty, Gujarat-I, Ahmedabad Vs. Smt. Mrudula Nareshchandra, submitted that the entire goodwill has to be taken into account and not in the ratio in which the deceased shared the profit/loss.

4. It has to be noted that the Tribunal referred to clause (13) of the partnership deed, wherein it was provided that in case of dissolution by mutual agreement or by operation of law, the possession of the shop premises and goodwill of business shall constitute the sole and exclusive property of the deceased. As the entire goodwill was to pass on to the deceased, question of any ratio being applied does not arise.

5. The goodwill of the firm after the death of the dying partner does not get diminished or extinguished. Whoever has the benefit of that firm, has the benefit of the value of that goodwill. In CED v. Mrudula Nareshchandra (supra), it was observed that as a result of the death of the dying partner, there is cessor of interest as well as accrual or arising of benefit of the said cessor. It was noted that during the subsistence of the partnership, no partner can claim any specific share in any particular item of the partnership assets. The partner's interest in a running partnership is not specific and does not confine to any specific item of the partnership property. But that does not mean that the partner has no interest in any individual asset of the firm. His interest obviously extend to each and every item of the firm assets. In Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, the Apex Court held that the goodwill of the firm was an asset in which the dying partner had a share. A question may arise whether the surviving partners will be liable to pay estate duty. A somewhat similar question arose for consideration of the Apex Court in Madan Lal Lohia Vs. Assistant Collector and Others, . Analysing various provisions of the statute, more particularly section 53 of the Act, Apex Court held that, when an order of assessment is made, not only accountable person in respect of whom proceeding for assessment has been taken, but also every other accountable person would be liable to pay the amount of estate duty, limited of course to the assets of the deceased which he actually received or which, but for his own negligence or default, he might have received". Sections 53 and 57 which throw some light on the controversy read as follows :

"Section 53 Persons accountable, and their duties and liabilities.-(1) Where any property passes on the death of the deceased :

(a) every legal representative to whom such property so passes for any beneficial interest in possession or in whom any interest in the property so passing is at any time vested.

(b) every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested, and

(c) every person in whom any interest in the property so passing is vested in possession by alienation or other derivative title,

shall be accountable for the whole of the estate duty on that property passing on the death but shall not be liable for any duty in excess of the assets of the deceased which he actually received or which, but for his own neglect or default, he might have received :

Provided that nothing in this section shall rendered a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(2) Notwithstanding anything contained in sub-section (1), where an heir-at-law proves to the satisfaction of the Controller that some other person is in adverse possession of any assets of the deceased, the heir-at-law shall not be accountable for the portion of the estate duty payable in respect of such assets:

Provided that he shall become so accountable if and to the extent that, he subsequently recovers possession of such assets.

(3) Every person accountable for estate duty under this section shall within six months of the death of the deceased, deliver to the Controller an account in the prescribed form and verified in the prescribed manner of all the properties in respect of which estate duty is payable.

Provided that the Controller may extend the period of six months aforesaid on such terms which may include payment of interest as may be prescribed.

(4) Where the person accountable knows of any property which he has not included in his account because he does not know its amount or value, he may state that such property exists, but he does not know the amount or value thereof and that he undertakes, as soon as the amount and value are ascertained. A to bring a supplementary account thereof and to pay both the duty for which he may be liable in respect of such property and any further duty payable by reason thereof for which he may be liable in respect of the property mentioned in the original account.

(5) Where two or more persons, are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole

of the estate duty on the property so passing.

Section 57. Power to make provisional assessment in advance of regular assessment.-(1) Estate duty shall be due from the date of the death of the deceased, and the Controller may, at any time after the receipt of account delivered u/s 53 or section 56, proceed to make in a summary manner a provisional assessment of the estate duty payable by the person delivering the account on the basis of the account so delivered.

(2) Upon a provisional assessment being made under sub-section (1), the person so assessed shall pay to the Controller, or furnish security to the satisfaction of the Controller for the payment of, the estate duty, if any, payable on the provisional assessment, and the Controller shall thereupon grant him a certificate that such duty has been or will be paid or that none is due, as the case may be, in respect of the property mentioned in the certificate.

(3) After regular assessment has been made u/s 58, any amount paid towards the provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular assessment.

(4) No appeal shall lie against a provisional assessment made under sub-section (1), but nothing done or suffered by reason or in consequence of any such provisional assessment shall prejudice the determination on the merits of any issue which may arise in the course of the regular assessment u/s 58.

6. It is clear from the resume of the provisions of the Act, that under sub-section (3) of section 53 every person accountable for estate duty under sub-section (1) of that section is liable to deliver to the Controller within six months of the death of the deceased an account of all properties in respect of which estate duty is payable on the death of the deceased. There may be and in many cases there would be more than one person accountable for estate duty under sub-section (1) of section 53 and the obligation to deliver an account of all the properties in respect of which estate duty is payable would be on each of the persons so accountable. But one out of several accountable persons may deliver an account to the Controller under sub-section (3) of section 53 and that would be sufficient to empower the Controller to proceed u/s 57, sub-section (1), to make a provisional assessment of the estate duty payable by such accountable person on the basis of the account so delivered and when such provisional assessment is made, the accountable person "so assessed" would be liable under sub-section (2) of section 57 to pay to the Controller the estate duty, if any, payable on such provisional assessment. The amount of estate duty provisionally assessed would be payable only by the accountable person on whom the provisional assessment is made. The Controller would, thereafter, be entitled u/s 56 to make an order of regular assessment assessing the principal value of the estate of the deceased and determining the amount payable as estate duty. When an order of assessment is made, not only the accountable person in respect of whom proceeding for assessment has been taken, but also every other accountable

person would be liable to pay the amount of estate duty, limited of course to "the assets of the deceased which he actually received or which, but for his own negligence or default, he might have been received". That is the plain effect of section 53, sub-section (1), read with section 73, sub-section (1). It may be noticed that so far as the estate duty payable on provisional assessment is concerned, sub-section (2) of section 57 provides that "the person so assessed" shall pay the amount of such estate duty to the Controller, but when we turn to sub-section (1) of section 53 and section 73, sub-section (1), we find that the words "the person so assessed" are absent in both these provisions and the liability to pay the amount of estate duty due in consequence of an order of assessment made under the Act is on every "person accountable", irrespective of whether assessment is made on him or not. But here a question of some difficulty arises, namely, whether each of the accountable persons in sub-clauses (a), (b) and (c) in section 53, sub-section (1), is accountable for estate duty on the entire property passing on the death of the deceased or only for the estate duty on the particular property falling within the respective sub-clauses which passes on the death. The difficulty is created on account of the words "the property passing on the death" appearing in the expression "the whole of the estate duty on the property passing on the death" in sub-section (1) of section 53. These words, according to their plain grammatical construction, would seem to indicate that every accountable person would be accountable for the estate duty on the entire property passing or deemed to pass on the death of the deceased. But it was argued on behalf of the appellant that having regard to the words "where any property passes" appearing in the opening part of the sub-section coupled with the words "such property so passes" and "the property so passing" appearing in the respective sub-clauses, the word "the" appearing before the words "property passing on the death" must again refer to the same property which is referred to in the respective sub-clauses (a), (b) and (c) as the case may be. This argument, plausible though it may seem, is not well founded for it ignores one very important circumstance, namely, that each of the persons mentioned in sub-clauses (a), (b) and (c) is rendered accountable for the whole of the estate duty not merely "on the property so passing" but on "the property passing on the death". Where the legislature wanted to refer to the specific property passing on the death of the deceased, described in the opening part of the sub-section, the legislature used the words "such property so passes" and "the property so passing" in sub-clauses (a), (b) and (c), but while imposing accountability for the estate duty, the legislature made a deliberate departure and instead of the words "the property so passing", which were familiar coinage, it used the words "the property passing on the death". This departure in phraseology is highly significant and clearly indicates that the legislative intent was that each of the persons mentioned in sub-clauses (a), (b) and (c) should be accountable for the estate duty on the entire property passing on the death. It was for this reason that the liability of each of these persons had to be limited to "the assets of the deceased which he actually received or which, but for his own neglect or default, he might have received". If the liability of each of these

persons was only to the extent of the estate duty on the particular property falling within the respective sub-clauses there was no need for limiting it to the assets of the deceased which such person received or ought to have received.

7. In view of the observations made by the Apex Court in *CED v. Mrudula Nareshchandra* (supra) from which decision we have culled out the principles and noted above, the inevitable conclusion is that entire goodwill was to be included while working out the assets of the deceased which passed on to the legal representatives on his death.

8. Answer to the question, Therefore, is in the negative, in favor of the revenue and against the assessed.

Reference accordingly is disposed of.