
(1985) 10 RAJ CK 0029

In the Rajasthan High Court

Case No : Income Tax Reference Application No. 51 of 1976

Controller of Estate Duty

APPELLANT

Vs

Smt. Shanta Ben Manilal Patel

RESPONDENT

Date of Decision : 16-10-1985

Acts Referred:

Estate Duty Act, 1953 — Section 64(3)

Citation : (1986) 162 ITR 410

Hon'ble Judges : S.N. Bhargava, J;N.M. Kasliwal, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant; N.M. Ranka, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Jaipur Bench, has referred the following question of law for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the share of goodwill of the deceased may be arrived at on the basis of two years" purchase of super profits in the place of three years" as fair and reasonable without assigning any reason ? "

2. In order to appreciate the question of law referred above, we would state the facts in brief. Shri Manilal Shivilal along with his brother was a partner in the firm, Chandulal Jagjivandas & Co., Bhawani Mandi, Kota (hereinafter referred to as the "firm"). This firm was the sole distributor of a well-reputed brand of bidis manufactured by M/s. Mohanlal Har Govind Das of Jabalpur for substantial part of Rajasthan and Madhya Pradesh, though there was no specific agency to that effect in favour of the firm. Originally, the share of Manilal Shivilal in the firm was 75% but from 1963-64, it was reduced to 56%. Shri Manilal Shivilal died on February 9, 1965, and his widow, Smt. Shanta Ben, is now the accountable person for the purpose of the Estate Duty Act, 1953 (hereinafter referred to as the " Act ").

3. The share of the deceased from the profits of the firm during the last five

years was around Rs. 5 lakhs. The Assistant Controller of Estate Duty proceeded to assess the value of the goodwill of the firm and in doing so, calculated the share of the deceased at Rs. 2 lakhs. On appeal, the Zonal Appellate Controller of Estate Duty observed that profits of the year 1962-63 had included an amount of Rs. 1,17,087 as refund of sales tax paid earlier and this special feature should not be included while calculating the goodwill. The Appellate Controller, as such, allowed reduction after observing that the valuation of the goodwill at three years' super profits shall be fair and proper in the circumstances of the case.

4. On appeal, the Tribunal took the view that the share of the deceased in the business being 56% at the time of the death, the same should hold good for the purpose of evaluation of goodwill also. The Tribunal thus held that, in their view, two years' purchase of super profits basis after allowance of interest at 12% and the remuneration of Rs. 12,000 should be considered as fair and reasonable in the present case.

5. On an application moved by the Department, the above question of law has been referred for the opinion of this court on a direction given by this court u/s 64(3) of the Act, to draw up a statement of the case and to refer the above question of law.

6. We have heard Mr. Surolia for the Department and Mr. Ranka for the accountable person. Mr. Ranka has placed reliance on *Seethalakshmi Ammal Vs. Controller of Estate Duty, Madras*, *Commissioner of Gift-tax Vs. M.K. Krishna Chettiar*, *K. Ismail Vs. Controller of Estate Duty*, and *Controller of Estate Duty Vs. Estate of Late G. Venkatasubbaiah* (accountable person : G. Venkataravamma), . It was submitted by Mr. Ranka that in all the above cases, the goodwill has been calculated ranging from one year to two years and no error has been committed by the Tribunal in assessing the goodwill on the basis of two years' purchase of super profits in the facts and circumstances of the present case. It was also submitted by Mr. Ranka that even the basis of two years' purchase of super profits in the present case is on the higher side but as the accountable person has not taken any steps for referring any question of law to this court, he is not in a position to assail the above finding of the Tribunal.

7. Mr. Surolia, learned counsel for the Department, was at a loss to show any circumstances as to why the view taken by the Tribunal in the facts and circumstances of the case was unreasonable or unfair. The question of goodwill of a business depends upon a variety of circumstances. It depends on the location, the standing of the business, the interest of those who run it and various other factors. In the present case, the share of the deceased in the business of the firm was simply 56% at the time of his death. Admittedly, there was no specific agency of the firm for selling the brand of bidis manufactured by Mohanlal Har Govind Das of Jabalpur. The firm was not manufacturing any bidis of its own and the whole business depended upon the sweet will of the manufacturer who had allowed distribution rights to the firm. In the authorities cited by Mr. Ranka, goodwill has been calculated ranging from one year to two years.

8. Thus, taking in view the entire facts and circumstances of the case, we are of the view that in the facts and circumstances of the present case, the Tribunal was right in holding that the share of goodwill of the deceased was to be assessed on the basis of two years' purchase of super profits. The question referred to above is, therefore, answered in the affirmative and in favour of the accountable person. The parties shall bear their own costs.