
(1983) 03 KL CK 0014

In the High Court Of Kerala

Case No : Income-tax Reference No. 229 of 1980

G. Ameer

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 22-03-1983

Acts Referred:

Estate Duty Act, 1953 — Section 59

Citation : (1984) 150 ITR 443

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; K.S. Paripoornan, J

Bench : Division Bench

Advocate : S. Vijayan Nair, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

Subramonian Poti, Actg. C.J.

1. The reference has been made to this court of the following three questions u/s 64 of the Estate Duty Act, 1953 :

"1. Whether, on the facts and in the circumstances of the case, the reopening of the assessment u/s 59(b) of the Estate Duty Act was valid ?

2. Whether, on the facts and in the circumstances of the case, the entirety of the goodwill of the firm, M/s. Pulavar Shoe Mart, of which the deceased was a partner, belonged only to the deceased and passed on his death ?

(3) Whether, on the facts and in the circumstances of the case, in arriving at the super profits of the firm in computing the value of its goodwill, Income Tax payable or paid should be excluded ?"

2. The facts which have given rise to these questions are the following.

One Gulam Moideen died on September 2, 1972. He was a partner of the firm, M/s. Pulavar Shoe Mart. This firm was constituted under a deed of partnership which is annex. A in the case. It was carrying on the business of manufacture and sale of aluminium vessels. Besides Gulam Moideen, there were two other

partners, they being his brother and son. They were only working partners who brought in no capital of their own. The deceased was entitled to 40% share and the other two partners 30% each. Clause 15 of the deed of partnership provided that in the event of any change in the constitution of the firm or its dissolution, parties Nos. 2 and 3 who were working partners would be entitled only to the amounts standing to their respective credit in the books of the firm and they shall not be entitled to any share in the goodwill or trade-mark.

3. In making the original assessment to estate duty of the estate of Gulam Moideen u/s 58(3) of the E.D. Act, the principal value of the estate was taken as Rs. 2,19,897. In determining this amount, 40% of the goodwill valued at Rs. 8,000 was shown as the share of the goodwill to be taken for the purpose of assessment to estate duty. Subsequently, there was an audit and the audit party pointed out that in view of clause 35 of the partnership deed, the entire goodwill of the business belonged to the deceased. Thereupon the Assistant Controller reopened the assessment u/s 59(b) of the E.D. Act. He directed the inclusion of the full value of the goodwill in the assets liable to estate duty. The value of the estate was determined as Rs. 2,40,997.

4. The Appellate Controller, before whom an appeal was filed, did not accept the contentions of the appellant. It was also contended before the Appellate Controller, that in arriving at the super profits for the purpose of evaluating the goodwill, Income Tax payable or paid should be excluded. This contention was also not accepted. The matter was taken to the Tribunal and the Tribunal found that the reopening had been made on the basis of the audit note which was proper and upheld the reopening. It is from these facts that the questions referred had arisen.

5. The main question that we are called upon to answer in this case concerns the reopening of the assessment on the basis of information furnished by the audit objection. If what was supplied by the audit party was merely information and the assessing authority treated it as such information and proceeded to assess, there will be no objection to such a course. If, on the other hand, the audit party expressed a view on the materials and the assessing authority adopting that view decided to reopen the assessment, that may be objectionable. The assessing authority would then be not acting upon any information but upon the view expressed by the audit party. In other words, just as the assessing authority can obtain information from any source whatsoever, such information can also be that supplied by the audit party. Such information does not preclude the assessing authority from forming an opinion of its own. If he receives any information, he has to form an opinion on such information whether reopening would be called for in the light of the information. That obligation arises even in respect of an audit objection. A clear instance where the assessing authority may not be competent to reopen on the basis of audit objection, is where, on materials available to him, the assessing authority after due consideration of such materials forms an opinion and merely because the audit party holds a

different opinion and that opinion is communicated to the assessing authority and the assessing authority subsequently takes a different view, he would not then be acting upon any information. It would then be the reconsideration of the assessment order by reason of a different view on a matter already decided upon and that based on the opinion of the audit party. The decision in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, , was not available to the Tribunal when it decided the case and, therefore, there was no occasion for the Tribunal to consider the subject-matter of question No. 1 in the light of the decision. We, therefore, think that, in the circumstances of the case, it calls for an answer by the Tribunal itself.

6. Questions Nos. 2 and 3 depend to a large extent upon question No. 1, in the sense that if question No. 1 is answered against the Revenue, other questions would not call for answers. Independently, questions Nos. 2 and 3 also are required to be considered by the Tribunal itself, for reference has been made to Clause 15 of the agreement in the order but in effect Clause 14 in the context of the plea also calls for consideration. Whether Clause 15 would be attracted to a circumstance such as that in this case also is a matter which the Tribunal has necessarily to consider. Hence, we direct the Income Tax Appellate Tribunal to go into the matter afresh and dispose of the appeal in the light of what we have said.

7. A copy of this judgment under the signature of the Registrar and the seal of this court shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

CMP No. 27502 of 1983 in ITR No. 229 of 1980 dt. 3-2-84.

8. This court directed the Appellate Tribunal to consider the matter, in the light of the decision of the Supreme Court in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, .) We do not think that this is a fit case for appeal to the Supreme Court and so we decline to grant a certificate to appeal to the Supreme Court.