

(1973) 09 KAR CK 0012
In the Karnataka High Court
Case No : T.R.C. No. 4 of 1971

K. Ismail

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 20-09-1973

Acts Referred:

Estate Duty Act, 1953 — Section 10, 64 (1)

Citation : (1974) 97 ITR 201

Hon'ble Judges : G.K. Govinda Bhat, C.J;M.K. Srinivasa Iyengar, J

Bench : Division Bench

Advocate : H.L. Narasimba Sastry, for the Appellant; S.R. Rajasekhara Murthy, for the Respondent

Judgement

Govinda Bhat, C.J.—The Income Tax Appellate Tribunal, Bangalore Bench, has stated a case and referred the following questions of law u/s 64(1) of the Estate Duty Act, "1953, hereinafter called "the Act", for the opinion of this court :

"(1) Whether, on the facts and in the circumstances of the case, the inclusion of the share of goodwill at 2 years" purchase of average profits in M/s. Ismail Haji Suleman Sait, Hospet, as belonging to the deceased is valid in law ?

(2) Whether, on the facts and circumstances of the case, the inclusion of Rs. 71,900 being the gifts (inclusive of interest) made by the deceased to his wife and five sons, by applying the provisions of Section 10 of the Estate Duty Act, 1953, is valid in law ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in not entertaining the additional ground raised by the assessee ?"

2. The deceased, Suleman Sait, was a partner of a firm by name, M/s. Ismail Haji Suleman Sait, Hospet," carrying on business in food-grains, oil, etc., in Hospet town. He died on first December, 1966. The Assistant Controller of Estate Duty determined the net principal value of the estate at Rs. 2,19,813. That

amount included a sum of Rs. 13,860 which, according to the Assistant Controller, represented the deceased's 1/5th share of the goodwill value of the firm. It also included a sum of Rs. 71,900, which was the amount gifted by the deceased to his wife and children with interest thereon, which amounts were kept in the firm and utilised for the purposes of the business. On appeal preferred by the accountable person, the Appellate Controller valued the goodwill at two years' purchase of the average profits. The contention of the accountable person that the aforesaid sum of Rs. 71,900 was not property passing on death u/s 10 of the Act was rejected. That decision of the Appellate Controller was affirmed by the Appellate Tribunal. Aggrieved by the decision of the Appellate Tribunal, the accountable person has sought reference to this court on the above questions of law.

3. The second question of law is concluded by the decisions of the Supreme Court in *Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder*, and *Commissioner of Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and Others*, . In, the latter case the facts were these : The deceased, his three sons and a daughter were partners in a firm which carried on money-lending business. On March 31, 1953, and April 1, 1956, the deceased transferred to his sons and daughter amounts totalling Rs. 1,29,924 by adjustment entries in the books of the firm against the balance to his credit in the firm. The amounts continued to remain with the firm and were utilised in the business and the deceased continued to be a partner of the firm till his death on October 17, 1960. The question was whether the sum of Rs. 1,29,924 could be included in the property passing on his death u/s 10 of the Estate Duty Act, 1953. The Appellate Tribunal, applying *Munro's case* [1934] A.C. 61 : 2 E.D.C. 462 (P.C.), held that the subject-matter of the gifts did not come within the purview of Section 10 and was not subject to estate duty. On a reference, the High Court held that the sum of Rs. 1,29,924 was not liable to estate duty as property deemed to pass on the death of the deceased u/s 10. In the said case, the amounts transferred by the deceased to his daughter and sons continued to remain in the partnership business subsequent to the transfers till the death of the deceased and were utilised in the firm's money-lending business. Following the decision in *Ramachandra Gounder's case*, the Supreme Court held that the amount of Rs. 1,29,924 which was the subject-matter of the gifts did not come within the purview of Section 10 and, therefore, not property subject to estate duty. The said decision concludes this matter and accordingly, we answer question No. 2 in the negative and in favour of the accountable person.

4. It was submitted by the learned counsel that in view of our answer to question No. 2, question No. 3 need not be answered. Therefore, we decline to answer question No. 3.

5. The only question that remains to be answered is question No. 1 regarding the inclusion of the value of the deceased's share of the goodwill of the firm. It was urged by the learned counsel for the accountable person that the firm was

dealing in foodgrains, oil, etc., and there was no material before the Tribunal to hold that the firm had established a goodwill of its business. In support of that contention, learned counsel relied on the decision of the Madras High Court in Seethalakshmi Ammal Vs. Controller of Estate Duty, Madras, It was observed in the said case :

"Where a business involves no distinguishable features and deals in standard articles manufactured by someone else which one can get from anywhere, not merely from a particular dealer, there is hardly any possibility of there being a goodwill attached to such business."

6. But the authoritative view on the nature and quality of goodwill is contained in the judgment of the Supreme Court in Rustom Cawasjee Cooper v. Union of India [1970] 40 CompCas. 325, 385 (S.C.). This is what is stated by Shah J. as he then was :

"Goodwill of a business is an intangible asset. It is the whole advantage of the reputation and connections formed with the customers together with the circumstances making the connection durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years or in excess of normal amounts because of its reputation, location and other features. Goodwill of the business is, therefore, the value of the attraction to customers arising from the name, and the reputation for skill, integrity, efficient business management or efficient service."

7. In the instant case it has been found that the firm in question was established about six years prior to the death of the deceased and that it was making good profits ranging from Rs. 26,000 to about Rs. 40,000 and the business was located in Hospet town. This is what the Tribunal has stated :

"The firm was in business for nearly about 6 years. It has built up a reputation for itself. It depends upon so many factors, viz., the persons carrying on the business, their conduct as to how the business is carried on and its situation. During the last three years sizeable profits have been made by the firm. The firm has established itself and we are of the view that there was a goodwill attached to the kind of business carried on by the assessee. The Appellate Controller of Estate Duty has directed that the goodwill should be valued at two years' purchase of the average profits. This we think is quite reasonable."

8. On the material on record, it cannot be said that the Tribunal had no material to hold that there was a goodwill of the business. The usual rate of capitalisation in the case of ordinary retail customary business not very well established is two years' average profits. Therefore, there is no error in the valuation made by the Tribunal. Accordingly, question No. 1 is answered in the affirmative and against the accountable person.

9. Since the accountable person has succeeded substantially, he will be entitled to the costs of this reference. Advocate's fee, Rs. 250.