

(1999) 09 KL CK 0041

In the High Court Of Kerala

Case No : Income-tax Reference No. 85 of 1995

M.M.N.D. Muthiah Rajasabai

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 20-09-1999

Acts Referred:

Citation : (1999) 157 CTR 365 : (1999) 240 ITR 650 : (2000) 108 TAXMAN 275

Hon'ble Judges : Arijit Pasayat, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : P.K.R. Menon and George K. George, for the Respondent

Judgement

Arijit Pasayat, C.J.—This court directed the Income Tax Appellate Tribunal, Cochin Bench, Cochin (in short the "Tribunal"), to refer the following questions for opinion in an application u/s 64(2) of the Estate Duty Act, 1953 (in short "the Act") :

"1. Whether, on the facts and in the circumstances of the case and having regard to the nature of the business, the Income Tax Appellate Tribunal is right in estimating the value of the goodwill at three times the super profits ?

2. Whether, on the facts and in the circumstances of the case, the Income tax Appellate Tribunal is right in holding that the profits of the firm of the previous year in which the deceased died would not form part of the computation under the super profits method ?"

2. The Tribunal has referred the questions along with the statement of facts.

3. The factual background giving rise to the reference is as follows : M.M. N. Durairaja Nadar (hereinafter referred to as the deceased) died on November 4, 1984. During his life time, he was a partner in the firm. "M.M. Nagalinga Nadar and Sons, Quilon". He had a 16 per cent. share in the profits of the firm, which was dealing in coconut and oil cakes. The accounting year of the firm ended on August 16, i.e., the end of the Mala-yalam year. On the death of the deceased,

the accountable person M. M. N. D. Muthiah Rajasabai filed a statement of accounts on June 12, 1986, showing therein the value of the dutiable estate at Rs. 10,60,700. The Assistant Controller of Estate Duty completed the assessment computing the value of the dutiable estate at Rs. 17,62,650. Several additions were made to the returned figure to arrive at the assessable figure. For the purpose of computing the share of the deceased in the firm for the purpose of inclusion in the principal value of the estate passing on his death, the share of the deceased in the goodwill of the firm was taken into account. The same was calculated on the basis of the super profits method. The Assessing Officer worked out the average profits on the basis of profits earned during the earlier period of five years and arrived at the average annual profits at Rs. 13,81,391. The super profits was arrived at Rs. 10,14,610, by deducting interest on average capital and managerial remuneration to the partners, and the deceased's share, 16 per cent. therein, was worked out at Rs. 4,87,013. The said amount was included in the principal value of the estate. Aggrieved by the manner in which the valuation of goodwill was computed, an appeal was filed before the Controller of Estate Duty (hereinafter referred to as the "appellate authority"), who held that the computation of the average profits on the basis of the five years' average is in order. However, he granted reliefs under some other score. An application for rectification was filed and certain changes were made by order dated January 25, 1989. Aggrieved by the orders of the appellate authority, both against the appellate order and the rectification order, the appeal was filed before the Tribunal. The only objection taken by the accountable person before the Tribunal was regarding the method of computation of the good will on the basis of the super profits method. It was contended before the Tribunal that the deceased having died on November 4, 1984, the loss suffered by the firm between the period from August 17, 1984 to August 16, 1985, should have been taken into account while working out the average profit, and the multiplying factor of three times adopted by the appellate authority was characterised to be excessive. The Revenue, on the other hand, relied upon the orders of the authorities below to contend that the remuneration allowed by the Controller of Estate Duty (Appeals) came to Rs. 3,60,000 which was much more than what any business firm of similar nature would have paid to any other person managing the affairs of the firm, and the deceased having died on November 4, 1984, the lower authorities were correct in working out the average profits on the basis of the profit and loss account and the balance sheet for the years up to August 16, 1984. The Tribunal held that there is no dispute, that the firm had a goodwill and that the share of the deceased passed on his death. It was further observed that the proper method of valuing goodwill was the super profits method, which as stated above was worked out by the lower authorities on the basis of the average profits for five years ending on August 16, 1984. The deceased having died on November 4, 1984, an intending purchaser would only look into the accounts of the earlier preceding years in order to find out the profitability of the organisation to assess the goodwill and the loss that might have been suffered by the firm for the subsequent period would not be known on the date of death of the deceased and

hence it cannot be taken into account while computing the average profits. Ultimately, it was concluded that normally when the goodwill is calculated on the basis of the super profits method, it is calculated by taking a multiple between 3 to 5 times. An application u/s 64(1) was filed before the Tribunal, which was not accepted. That is how the application u/s 64(2) of the Act was filed in this court.

4. No one appeared in support of the application. We have heard learned counsel appearing for the Revenue. Essentially the conclusions of the Tribunal are factual in nature. What could be the appropriate multiplier to be adopted would depend on the facts and circumstances of each case and no hard and fast rule can be laid down. The Tribunal upheld the application of the three times multiplier taken by the authorities below. While doing so, the Tribunal noticed that the lower authorities have given reasons for arriving at the figure and that is how the Tribunal concluded on the facts about the reasonableness of the multiplier adopted. There was no dispute that the goodwill was to be included in the dutiable estate. The goodwill is the magnetic quality of a particular trade or business which attracts customers to it as a matter of course. It will be seen that the goodwill of a business depends upon a variety of circumstances or a combination of them. In any business of substantial proportions one of the two methods, i.e., (a) the super profits method, and (b) the total capitalisation method is used to compute the value of the goodwill. Both the methods are aimed at estimating the probable amount of the future profits. The method of computation involves working out of the average profits for the first method. Since the conclusion is essentially on facts, no question of law arises. Therefore, we decline to answer the first question, holding that no question of law arises. In other words, the answer is in the affirmative.

5. So far as the second question is concerned, the Tribunal observed that the deceased having died on November 4, 1984, an intending purchaser would only look into the accounts of the earlier preceding years in order to find out the profitability of the organisation to assess the goodwill. The assessing authority as well as the appellate authority found that the loss suffered from August 17, 1984, to August 16, 1985, would not be of any consequence, because an intending purchaser would not know as to what was the financial position, more particularly, the profit and loss for the period from August 17, 1984 to August 16, 1985. The goodwill is worked out on the date of death. Obviously, the financial position subsequent to that date cannot be taken into consideration. The Tribunal has rightly held that the loss of the said period has to be ignored. Our answer to the second question is also in the affirmative. Both the questions are answered in favour of the Revenue and against the assessee.

6. The reference is accordingly disposed of.