
(1994) 03 KL CK 0027

In the High Court Of Kerala

Case No : Income-tax Reference No. 38 of 1985

Ravi Abraham

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 09-03-1994

Acts Referred:

Citation : (1994) 03 KL CK 0027

Hon'ble Judges : P.K. Balasubramanyan, J;K. Sreedharan, J

Bench : Division Bench

Advocate : G. Sivarajan, for the Appellant; P.K. Ravindranatha Menon, Senior Advocate and N.R.K. Nair, for the Respondent

Judgement

K. Sreedharan, J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"). The questions referred are :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Rs. 39,021 being the share of the deceased in the profits of the firm of Messrs. Kurien Abraham for the period from April 1, 1978, to December 11, 1978, passed on his death ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Rs. 98,638 included in the total value of the estate by the Assistant Controller as the value of the right of the deceased for future profits of the firm of Messrs. Kurien Abraham was actually the value of the share of the deceased in the goodwill in the firm?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the share of the deceased in the goodwill of the firm of Messrs. Kurien Abraham passed on his death ?"

2. The matter arises out of the estate duty assessment of the estate of Shri Kurien Abraham, who died on December 12, 1978. The estate included one-sixth share of Shri Kurien Abraham in the firm of Messrs, Kurien Abraham. This share

was valued by the accountable person at Rs. 18,893. The Assistant Controller of Estate Duty valued the same at Rs. 1,94,065. The Assistant Controller had valued the share of the profits of the deceased till the date of death at Rs. 53,060. The Appellate Controller held that the share of profit up to the date of death could not be treated as passing on the death of the deceased. Aggrieved by the same, the Department appealed to the Tribunal.

3. The accountable person claimed, on the basis of Clauses 12 and 14 of the partnership deed, that the share of profits up to the end of the preceding financial year, namely, March 31, 1977, alone passed on the death of the deceased and that the share of profits for the period from April 1, 1978, till December 12, 1978, being the date of death, did not pass.

4. The Tribunal took note of the fact that the current account of the deceased in the firm was credited on December 31, 1978, with a sum of Rs. 36,782.06, which was described as the profit for the period up to December 12, 1978. Accordingly, a sum of Rs. 39,021 was taken by the Tribunal as having passed on to the legal heirs of the deceased on his death.

5. The Assistant Controller included a sum of Rs. 98,638 as the value of the share of the right to share the future profits. The correctness of that figure was not disputed. But, it was contended that the authorities were not justified in valuing the share of the right to share future profits as an asset which passed on the death of Shri Kurien Abraham.

6. One of the main arguments advanced by learned counsel representing the accountable person is that Clauses 12 and 14 of the partnership deed provide for the manner of settlement of shares on retirement of a partner or the death of a partner. As per that provision, the crucial date is the last day of the preceding financial year, namely, March 31, 1978. The share of profits due to the deceased as on that date alone is to be treated as the asset left behind by the deceased from the assets of the firm. Clause 12 of the partnership deed reads :

"If, in the meantime, any partner wants to retire from the firm, such partner may do so by selling his shares to the other partners for a price equivalent to the retiring partner's capital investment and interest thereon up to the date of transfer together with the proportionate share of the reserve funds, his entitlement to profits being only up to the end of the last preceding financial year and his liability to loss also being only up to the end of the last preceding financial year. Written notice of the intention to retire shall be given to the other partners."

7. The other clause, on which reliance was placed, was Clause 14 of the partnership deed. That reads :

"If during the continuance of the partnership any partner shall die or become insolvent, then the remaining partners shall have the option (to be exercised by notice in writing to the legal representatives of the deceased partner or to the

receiver of his estate as the case may be within a month after the death or insolvency) to purchase the share of the other partner as on the date of his death or insolvency in the capital and assets of the partnership on the terms mentioned in Clause 12 of the deed. The partnership shall not be dissolved in the event of the death or retirement of any of the partners, but shall continue to be carried on by the remaining partners."

8. According to learned counsel representing the accountable person, the cumulative effect of Clauses 12 and 14 quoted above is that on the death of Shri Kurien Abraham on December 12, 1978, his capital investment and interest in the partnership must be assessed as on the last day of the preceding financial year, namely, March 31, 1978. The Tribunal, in the instant case, did not resort to that course and so, it is contended that the decision rendered by the Tribunal is unsustainable and the first question has to be answered in the negative, in favour of the assessee. We find it difficult to accept this argument.

9. Clause 12 provides for contingencies that may arise on the retirement of a partner. The partner who wants to retire, as per this clause, is entitled to profits up to the end of the last preceding financial year. This provision, according to us, has nothing to do with the devolution of the assets of a partner who dies in the course of the financial year. In such a situation, what Clause 14 provides is that if the partner dies, the remaining partners shall have the option to purchase the share of the deceased partner as on the date of his death. This, according to us, is not similar to Clause 12. As per Clause 14, the surviving partners have got the right to purchase the share of the deceased partner as on the date of his death. This means that the assets of the deceased partner are to be valued as on the date of his death. For valuing the assets of the deceased partner as on the date of his death, reference can never be made to the profits which could have been due to the deceased partner as on the last date of the preceding financial year. So, Clauses 12 and 14 operate in different fields. A partner, who wants to retire, may opt to retire with effect from the end of the preceding financial year. He may opt to retire in the course of the financial year. If he opts to retire in the course of the financial year, his entitlement to profits will be as on the last day of the preceding financial year. Such a contingency cannot happen in the case of death of a partner. On the death of a partner even though the partnership deed provides for the continuance of the partnership, the rights and liabilities of the partners in the new partnership will be entirely different from those which existed prior to the death of the partner. Therefore, it is necessary to value the share of the deceased partner as on the date of death for fixing the rights and liabilities of the partners of the new firm.

10. In the instant case, the Tribunal found that the surviving partners had not exercised the option as per Clause 14 and had not purchased the share of the deceased partner. This finding was arrived at since the current account of the deceased in the firm was credited on December 31, 1978, with a sum of Rs. 36,782.06 which was described as the profit for the period up to December 12,

1978, the date of death of Shri Kurien Abraham. In the Income Tax assessment of the firm for the assessment year 1979-80, for which the accounting period ended on March 31, 1979, the profits for the period from April 1, 1978, to December 11, 1978, were allocated between the four partners, including the deceased. A sum of Rs. 39,021 was allocated as the 1/6th share of profit of the deceased for the period from April 1, 1978, to December 11, 1978. The profit for the subsequent period from December 12, 1978, to March 31, 1979, was allocated between the surviving partners. If the argument advanced by the accountable person is to be accepted, no share of profit should have been allocated to the deceased for the period from April 1, 1978, to December 11, 1978. The profit set apart to the deceased up to December 12, 1978, amounting to Rs. 39,021, therefore, must be deemed to be an asset left behind by the deceased on his death.

11. Learned counsel advanced an argument that the profit of the business run by the partnership do not accrue from day-to-day or from transaction to transaction. It can be deemed to have accrued only on the date fixed for settlement of accounts, namely, the last day of the financial year. This contention, we are afraid, is not to be gone into in this case because no legal heir of the deceased is coming with a claim for profit that accrued to the deceased as on the date of his death. We are concerned with the property left behind by him as on the date of his death which passed on to his legal heirs. For finding out that asset or property of the deceased, a notional accounting as on the day of his death will have to be carried out. The legal heirs have in fact carried out that exercise and found the profits due to the deceased at Rs. 39,021.

12. From what we have stated above, we are clear in our mind that a sum of Rs. 39,021 was the profit due to the deceased as on December 12, 1978. That amount has devolved on his legal heirs. That amount is also to be taken into consideration for assessing the estate duty payable. In this view of the matter, we answer question No. 1 in the affirmative, against the assessee and in favour of the Revenue.

13. The Assistant Controller of Estate Duty, as per annexure-A order of assessment, included a sum of Rs. 98,638 as "share of the right to share the profits" as an asset of the deceased which devolved on his legal heirs. This was challenged before the appellate authority. The appellate authority dealt with that contention, stating :

"The Assistant Controller of Estate Duty estimated the value of the appellant's share in the right to share in the profit of the firm at Rs. 98,638.

Learned counsel challenged this addition on principle. As regards the actual working of the quantum he had no submissions to offer. ..."

14. To sustain the view taken by the Assistant Controller of Estate Duty, the appellate authority relied on various decisions, which were concerned with the right of the deceased in the goodwill of the business carried on by the firm. From

the decisions referred to by the appellate authority, we are clear in our mind that that authority was dealing with the share held by the deceased in the goodwill of the business. The description of that share as "right to share in the future profit of the firm" was a misdescription. The assessee was also approaching the issue as the value of the goodwill and not as the value of the right to share the future profits of the firm. Dealing with this aspect of the matter, the Tribunal rightly took the view that the expression "right to share the profits" meant only the right in the goodwill. The share in the goodwill held by the deceased was an asset which passed on to the legal heirs. In *Controller of Estate Duty, Gujarat-I, Ahmedabad Vs. Smt. Mrudula Nareshchandra*, their Lordships of the Supreme Court took the view that the share of the deceased in the goodwill will pass on to the legal heirs together with other assets and that it should be valued in the manner contemplated under Rule 7(c) of the Estate Duty Rules. In that decision, their Lordships specifically disapproved the view expressed by this court in *P.T. Abdul Sattar Vs. Controller of Estate Duty*. Since the value of the share in the goodwill held by the deceased was the asset of the deceased which passed on to the legal heirs, the same is also to be included in computing the estate duty payable by the accountable person. In view of this finding, we answer question No. 2 in the affirmative, in favour of the Revenue and against the assessee.

15. Since we have already answered question No. 2 in the affirmative against the assessee, the answer to question No. 3 should necessarily be in the affirmative, against the assessee and in favour of the Revenue.

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