

Controller of Estate Duty Vs. Narandas Jamnadas Gokani

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Court : Mumbai

Decided On : Jun-07-1990

Reported in : [1990]186ITR380(Bom)

Judge : Sujata V. Manohar and;T.D. Sugla, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 9

Appeal No. : Estate Duty Reference No. 35 of 1976

Appellant : Controller of Estate Duty

Respondent : Narandas Jamnadas Gokani

Advocate for Pet/Ap. : G.S. Jetley, Sr. Adv.;Dilip Dwarkadas, Adv.

Judgement :

T.D. Sugla, J.

1. The Income-tax Appellate Tribunal has referred the following four questions of law to this court for opinion under section 64(1) of the Estate Duty Act, 1957 :

'(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that since no part of the goodwill of the firm vested in the accountable person by reason of the partnership agreement 1969, can section 9 of the Estate Duty Act be applied ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in determining the deceased's share in the goodwill of the firm which passed on his death at 25 per cent. instead of 60 per cent as determined by the Assistant Controller ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that only 25 per cent. of the amount of development rebate reserve standing in the firm's account as at the time of the deceased's death, should be taken as having passed on his death under section 5 of the Act and consequently reducing the amount under this head to be taken into account to Rs. 1,225 ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there is no scope to consider anything out of the amount of development rebate reserve as having passed on the death of the deceased under section 9 of the Act ?'

2. The real question is, however, only one. That question is :

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that only 25 per cent of the value of the goodwill of the partnership firm and 25 per cent. of the amount standing to the credit of development rebate reserve in the books of the partnership firm were includible in the computation of the principal value of the estate of the deceased ?'

3. The deceased, it is common ground, started a business in manufacture and sale of camphor and agarbatti at Bombay as a proprietary concern. The business was converted into a partnership of the deceased and his son, the accountable person, in this case, on and from September 21, 1961. The deceased and his son thereupon had 60 per cent and 40 per cent. share respectively, both in the profits and the assets including goodwill. On March 3, 1969, the then partners took the deceased's wife also as a partner and admitted the deceased's minor son to the benefits of the partnership. This arrangement resulted in the reduction of the deceased's share in the goodwill of the firm from 60 per cent. to 25 per cent.

4. (June 7, 1990) Being of the view that the deceased had transferred 35 per cent. of his share in the goodwill to his son within two years of his death without consideration and, therefore, the provisions of section 9 of the [Estate Duty Act, 1953](#), were attracted, the Assistant Controller of Estate Duty included in the principal value of the estate 60 per cent. value of the goodwill and 60 per cent. of the development rebate reserve standing to the credit of that account in the balance-sheet of the firm. The Appellate Controller confirmed the order. The Tribunal, on second appeal, however, held that the transfer of the deceased's share in the goodwill to the extent of 35 per cent. was bona fide. According to the Tribunal, for application of section 9, two conditions were necessary, viz., (i) the transfer must have been made within two years of the death, and (ii) the transfer must not be bona fide. The transfer being bona fide, the Tribunal concluded that section 9 of the Estate Duty Act was not applicable. Accordingly, the Tribunal directed that 25 per cent. of the value of the goodwill and the development rebate reserve alone were to be included in the computation of the principal value of the estate of the deceased.

5. Placing reliance on the Supreme Court decision in the case of CED v. Mrudula Nareshchandra : [1986]160ITR342(SC) , Shri Jetlely, learned counsel for the Department, submitted that the value of the goodwill was includible in the principal value of the estate. Taking us then through the facts of the case, he pointed out that the transfer of the goodwill to the extent of 35 per cent. by the deceased was without any consideration and, therefore, the provisions of section 9 of the Estate Duty Act were applicable. Shri Dwarkadas, learned counsel for the assessee, on the other hand, pointed out that the Tribunal having given a finding that the transfer was bona fide, section 9 was not applicable. In support, learned counsel placed reliance on this court's decision in the cases of CED v. Ramesh Rajaram Sakhalkar : [1979]118ITR846(Bom) and also Raman Lal Nagji and Dhirajlal Nagji v. CED : [1979]118ITR785(Bom) .

6. Section 9 reads thus :

'9. (1) Property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery,

declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been bona fide made two years or more before the death of the deceased shall be deemed to pass on the death :

Provided that in the case of gifts made for public charitable purposes the period shall be six months.

(2) The provisions of sub-section (1) shall not apply to -

(a) gifts made in consideration of marriage, subject to a maximum of rupees ten thousand in value.

(b) gifts which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, subject to a maximum of rupees ten thousand in value.'

7. It cannot be disputed that two conditions must be satisfied before section 9 can be applied. The two conditions are : (i) the transfer must have been made within two years of the death, and (ii) the transfer must not be bona fide. The Tribunal has, in paragraph 8 of its judgment, admittedly, given a finding that the transfer was bona fide. No question was raised to dispute the said finding of fact nor has such a question been referred to us by the Tribunal. Under the circumstances, the case has to proceed on the basis that the transfer was bona fide. That being so, we have no difficulty in holding that section 9 of the Estate Duty Act is not applicable in this case. If section 9 is not applicable, it must necessarily follow that the share of the deceased as on the death, i.e., 25 per cent., both in the goodwill and in the development rebate reserve, could alone be included in the computation of the principal value of the estate.

8. In the above view of the matter, the question reframed by us in the first paragraph is answered in the affirmative and in favour of the accountable person. No order as to costs.