

Kamala Devi Jhawar Vs. Assistant Controller of Estate

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Mar-21-1983

Reported in : (1983)5ITD137(Kol.)

Judge : A Halder, E Singh

Appellant : Kamala Devi Jhawar

Respondent : Assistant Controller of Estate

Judgement :

1 to 4. These paras are not reproduced here as they involve minor issues.

5. The next ground pertains to the inclusion of the deceased's share of goodwill in the firm UBM Sales & Services in which the deceased (Smt.) Late Kamala Devi Jhawar was a partner having 15 per cent share. The deceased retired from the partnership of the said firm on 30-5-1976 and died on 12-7 1976. The accountable person of the deceased submitted that on the date of death the deceased had no goodwill or interest in the firm and her share of goodwill was not includible in the principal estate left by her. The Assistant Controller held that the firm had goodwill and since it was not adjusted after the retirement of the deceased from the aforesaid firm to her account, the share of the deceased in the goodwill of the firm at the time of retirement was a gift made within two years. He, accordingly, included the sum of Rs. 1,03,042, being 15 per cent of the deceased's share in the goodwill of the firm determined at Rs. 6,86,952.

6. The accountable person appealed to the Commissioner (Appeals) and contended that the Assistant Controller was wrong in holding that the firm UBM Sales & Services had goodwill. It was urged that the firm had business of selling agency of Usha Martin Black who were the manufacturer of wire ropes. Therefore, such type of business could not have any goodwill. It was further urged that even presuming that there was some goodwill, since the deceased was not a partner on the date of death, the share of the goodwill could not be included in the estate.

Reference was made to the provisions of Section 27 of the Estate Duty Act, 1953 ('the Act') and it was urged that the Assistant Controller was wrong in treating the deceased's share of goodwill as gift. The Commissioner (Appeals) held that there was a goodwill in the aforesaid firm. In doing so he observed as under: The question now, therefore, is whether the deceased's partner action in not taking her share in the goodwill of the firm at the time of her retirement can be called a disposition and treated as gift under Section 9 of the Estate Duty Act. Section 9 of the Estate Duty Act provides that the property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos shall be deemed to pass on the death. Explanation 2 to Section 2(15) of the Estate Duty Act provides that extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished and in relation to such a disposition the expression 'property' shall include the benefit conferred by the extinguishment of debt or right. If, therefore, the firm had goodwill as an asset to which the deceased was entitled and if she did not take her share in that asset, it is an extinguishment at the expense of the deceased of her right in favour of the remaining partners and this is a disposition in view of the provision of Explanation 2 to Section 2(15). In this case the other partners were only the sons and grandsons of the deceased and, therefore, the disposition as explained above is in favour of relatives without any consideration. This would be a gift under Section 9 read with Section 27(1). A similar question had come up for consideration before the Supreme Court in the case of CED v. Kantilal Trikamlal [1976] 105 ITR 92. Though that was a case regarding an unequal partition between the members of the HUF, the provisions of Sections 9(1), 27(1) and Explanation 2 to Section 2(15) and the meaning of the term disposition have been

examined in that case. The disposition means given away or giving up by a person of something which was his own as explained by the Supreme Court in the case of *CGT v. N.S. Getti Chettiar* [1971] 82 ITR 599. In the present case, the share in the goodwill of the firm was something which belonged to the deceased which has been given up and this would be a disposition. Even in the case of *Kantilal Trikamlal* (supra) the Supreme Court has held that where on a partition of a HUF property a coparcener takes less than his share, there is a disposition within the meaning of Explanation 2 to Section 2(15) of the Estate Duty Act by him of that part of his share which he relinquished and on his death within two years of the partition that part of his share would be property deemed to pass under Section 9(1) read with Section 27(1) and Explanation 2 to Section 2(15). By the same ratio, when a partner retires from a firm and takes less than his share in the net assets of the firm, that is a disposition and that part which has been relinquished would be the property deemed to be passed under Section 9(1) read with Section 27(1) and Explanation 2 to Section 2(15), if the death occurs within two years of the retirement. The *Goli Eswariah's* case 76 ITR 675, relied upon by the appellant's representative, is not relevant to this issue as that was a case regarding the meaning of the term 'transfer' in relation to throwing of a separate property into a common hotchpot of a HUF. Since in the estate duty the term 'disposition' is much wider than the term 'transfer' and the Supreme Court has made such relinquishment as disposition in the case cited earlier, the argument of the appellant's representative that this cannot be treated as gift is not acceptable.

The Commissioner (Appeals) was, however, of the opinion that the quantum of the deceased's share of goodwill, as determined by the Assistant Controller, was excessive and he reduced the same to Rs. 71,961.

7. Against the aforesaid order of the Commissioner (Appeals), the accountable person has preferred second appeal before us and the learned counsel for the accountable person argued that on a consideration of the nature of the business done by UBM Sales & Services, the lower authorities should not have held that the said firm had goodwill. He urged that the firm did not carry on any business independently nor it produced any article and that it was a selling agent of other concerns controlled by those concerns. He, therefore, submitted that such type of

business could not have any goodwill. The learned counsel for the accountable person urged that the provisions of Section 27(1) had no application in the present case, inasmuch as no disposition was made by the deceased in favour of her relatives. He urged that on the date of death of the deceased all her rights in the firm were given to her and nothing was left. He further urged that there was no question of extinguishment of a debt or other rights on the part of the deceased and, therefore, the Commissioner (Appeals) was wrong in referring to Explanation 2 to Section 2(15) of the Act. He submitted that the Commissioner (Appeals) was wrong in relying on the decision of the Supreme Court in the case of CED v. Kantilal Trikamlal [1976] 105 ITR 92 which was distinguishable on facts. He pointed out that in that case the Supreme Court was concerned with the applicability of the provisions of Sections 9(1), 27(1) and Explanation 2 to Section 2(15), regarding an unequal partition between the members of a HUF. Reliance was also made to the provisions of Section 6 of the Act and it was pointed out that since the deceased had no right to transfer her share of goodwill on her date of death, it was not includible in her principal estate. Reliance was placed on the decision of the Allahabad High Court in the case of CED v. Smt. Laxmi Bai [1980] 126 ITR 73 wherein a decision of the Supreme Court in the case of CIT/CED v. N.R. Ramarathnam [1973] 91 ITR 1 had been considered. In that case the deceased, his three sons and a daughter were partners in a firm which carried on money-lending business. On 31-3-1953 and 1-4-1956, 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 17-10-1960. It was held that the subject-matter of the gifts did not come within the purview of Section 10 of the Act and was not subject to estate duty. In view of the aforesaid position, the learned counsel for the accountable person submitted that the deceased's share of goodwill in the firm UBM Sales & Services should not have been included in her principal estate.

So far as the quantum of the deceased's share of goodwill as determined by the Commissioner (Appeals) was concerned, the learned counsel for the accountable person urged that this was on the high side.

8. The learned departmental representative, on the other hand, highlighted the reasons given by the Commissioner (Appeals) for including the value of the deceased's share in the goodwill of the firm in the principal estate. He relied on the decision of the Calcutta High Court in the case of *CED v. Annaraj Mehta & Deoraj Mehta* [1979] 119 ITR 544 for the proposition that on the death of a partner his share in the firm would pass, for the purpose of estate duty, which necessarily includes goodwill. Reliance was placed on the decisions relied on by the Commissioner (Appeals) and it was claimed that the firm UBM Sales & Services, being a sole selling agent for the products of Usha Martin Black, had the benefit of control of the market regarding sale of that products. Therefore, the said firm had goodwill. Reliance was also placed on the decision of the Supreme Court in the case of *Kantilal Trikamlal* (supra) and urged that the provisions of Sections 9(1), 27(1) and Explanation 2 to Section 2(15) were applicable to the facts of the instant case.

9. The goodwill of the firm UBM Sales & Services was not confined to manufacturing business. The Allahabad High Court in the case of *Smt. Kamlawati Raizada v. CED* [1976] 105 ITR 703 has held that business ordinarily available and standard articles can also have goodwill. We are, therefore, of the opinion that the firm had goodwill. However, Section 5 of the Act is the charging section. The only question relevant under Section 5 is whether the property changed hands in beneficial possession or enjoyment for attracting the charge of the estate duty. Therefore, it has to be held that if there is no change in beneficial possession or enjoyment as a result of the death, property cannot be said to have passed under this section.

10. It is not in dispute that the deceased retired from the firm of UBM Sales & Services on 30-5-1976, that is, more than a month before her death. On the date of her retirement accounts of the firm should have been settled. The retiring partner had nothing left in the firm that she could give to her heirs except her dues as per settlement of account in accordance with the provisions of Section 48 of the Indian Partnership Act, 1932. In that view of the matter, it cannot be said that the deceased made any disposition of her share of goodwill of the firm in question as

envisaged in Section 9(1), 27(1) or Section 2(15).

11. The decision of the Supreme Court in Kantilal Trikamlal's case (supra) is distinguishable on facts. In that case their Lordships of the Supreme Court was concerned with the question whether on a partition of a HUF property, if a coparcener takes less than his share, there is a disposition within the meaning of Explanation 2 to Section 2(15) by him of that part of his share which he relinquished and on his death within two years of the partition, that part of his share would be a property deemed to pass under Section 9(1) read with Section 27(1) and Explanation 2 to Section 2(15). But in the instant case, the deceased retired from the firm before her death. As soon as a partner retires from a firm he ceases to be a member of the said firm and, therefore, after the date of retirement he cannot have any interest except his dues as per settlement of accounts of the firm. It was not the case of the revenue that the deceased had relinquished his share of goodwill of the firm in favour of other partners. In view of what we have stated above, we would hold that the lower authorities were not justified in including the share of goodwill of the firm UBM Sales & Services in the principal estate of the deceased. Accordingly, we direct that the amount of Rs. 71,961 be deleted.

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