

Smt. Bachu Bai Vs. Assistant Controller of Estate

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Court : Income Tax Appellate Tribunal ITAT Allahabad

Decided On : Jul-26-1984

Reported in : (1984)10ITD739(All.)

Judge : P Narain, D Sharma

Appellant : Smt. Bachu Bai

Respondent : Assistant Controller of Estate

Judgement :

1. The matter relates to the estate of late Shri Pravin Chandra, who died on 16-11-1978. The deceased was a partner in the firm of Bharat Auto Stores, which is described in the order of the Assistant Controller as a leading dealer in motor parts of Varanasi. The Assistant Controller held that the above firm had goodwill and that the share proportionate to the interest of the deceased in the firm passed on his death. He calculated the average profit of the firm for the last three years. From this he deducted interest on capital at the rate of 12 per cent and also remuneration of partners at the rate of Rs. 500 per month. The net resultant profit worked out to Rs. 67,721. By taking the multiplier of 3, the value of the goodwill was determined at Rs. 2,03,163. The deceased's share being 25 per cent was determined at Rs. 50,791 and was included in the assessment.

2. The accountable person appealed to the Controller. It was submitted before him that the estimate of the value of the goodwill was excessive among others, on the ground that the multiplying factor taken at 3 times of the average profit was high,

that the remuneration of the partners at the rate of Rs. 500 per month allowed was low and further that interest at the rate of 12 per cent deducted was also low. While allowing relief on some other grounds, the Commissioner (Appeals) did not allow any relief for the salary of the partners or in the rate of interest on the capital or in the multiplying factor.

3. The accountable person is now in appeal before us. The learned counsel for the accountable person raised a legal issue that no goodwill passed on the death of the deceased. In this connection, he invited our attention to Clause 11 of the partnership deed dated 2-4-1970, which reads as follows : That none of the partners will have any claim over the goodwill of the firm.

He submitted that as per the above clause no partner had any claim over the goodwill of the firm and, therefore, it could not be held that any goodwill passed on the death of the deceased, who was also a partner.

To support his submissions, he referred to the decision of the Allahabad High Court in the case of CED v. Smt. Laxmi Bai [1980] 126 ITR 73. Besides, he also referred to the decision of the Supreme Court in Khushal Khemgar Shah v. Mrs. Khorshed Banu Dadiba Boatwalla AIR 1970 SC 1147. On behalf of the department, reliance was placed on another decision of the Allahabad High Court in the case of Smt. Vindoor Bai v. CED [1981] 132 ITR 421.

4. After considering the facts of the case and after going through the decisions cited at the Bar, we are of the opinion that there is no merit in the above contention of the learned counsel for the accountable person. In the case of Smt. Vindoor Bai (supra), the Court considered the nature of the goodwill. We quote below from the headnote of the case, which, in our opinion, is sufficient for the purpose : Goodwill of a business is an intangible asset. It is the whole advantage of the reputation and connection formed with the customer together with 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. It is the value of the attraction to customers arising from the name and reputation for skill, integrity and efficient management or efficient service.

This, however, is not to say that every firm must have a goodwill.

Goodwill is acquired during the course of a number of years of business. It rarely springs from the very institution of the firm.

There are some firms which depend solely on the professional skill of a particular partner, which may have no goodwill at all.

Under the Estate Duty Act, each and every right which passes on death has to be valued. The evaluation has to be done on the basis of the assumption that there is a willing purchaser for the right or property. In this evaluation, it would not be proper to find out whether the right or article left by itself is capable of earning money. It is the settled practice to value goodwill for estate duty and the methods adopted are not unreal or imaginary.

As for the other aspect, our attention was invited by Sri R. K. Gulati, the learned counsel for the respondent-accountable person to a decision of the Gujarat High Court in *Smt. Mrudula Nareshchandra v. CED* [1975] 100 ITR 297 in which it has been held that a partner in a firm has a marketable interest in all the capital assets of the firm including the goodwill even during the subsistence of the partnership. Interest in the goodwill is property within the meaning of Section 2(75) of the Act but the goodwill of the firm standing by itself cannot earn any income. In a case, where it is specifically stipulated between the partners of a firm that on the death of any of the partners, the partnership shall not stand dissolved and that the heirs of the deceased partner shall have no right whatsoever to claim any share in the goodwill of the firm, the benefit arising to the other partners on the cessation of interest in the goodwill, on the death of one of the partners, cannot be measured in terms of Section 40. Therefore, such benefit is not liable to estate duty under Section 7.

The present is not a case, where it is specifically stipulated between the partners of the firm that on the death of any of the partners, the partnership shall not stand dissolved and that the heirs of the deceased partner shall have no right whatsoever to claim any share in the goodwill of the firm. The clause quoted above applies while the partnership is continuing. It has no application after the

firm is dissolved on the death of Shri Pravin Chandra. In this connection, we may also refer to the decision of the Gauhati High Court in the case of CED v. Kant a Devi Taneja [1981] 132 ITR 437. It was held in this case that the interest of a partner in a partnership firm is a property within the meaning of Section 2(75) of the Estate Duty Act, 1953 ('the Act') and such interest extends to his share in the partnership assets including goodwill. Therefore, on the death of a partner his interest in the entire unit of the firm including goodwill passes, irrespective of the provisions of the partnership deed as to its final devolution.

We, therefore, hold that the proportionate share of goodwill of the firm of Bharat Auto Stores passed on the death of the deceased and its value is includible in his estate for the purpose of estate duty.

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