

Assistant Controller of Estate Vs. Radha Krishan Tandon

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Court : Income Tax Appellate Tribunal ITAT Allahabad

Decided On : Aug-29-1985

Reported in : (1986)16ITD351(All.)

Judge : P Narain, R Swarup

Appellant : Assistant Controller of Estate

Respondent : Radha Krishan Tandon

Judgement :

1. The deceased was a partner in the firms of Krishan Khandsari Udyog and Ghanshyam Sugar Factory. From Krishan Khandsari Udyog he retired on 31-12-1980. On his retirement, he was paid the amount standing to his capital account, He was not paid any share either in the development reserve or in the investment allowance of the firm. However, he was relieved of his future liabilities coming to the firm subsequent to his retirement. However, similar facts are not available regarding Ghanshyam Sugar Factory. It appears that from this firm also, the deceased had retired before his death.

2. The deceased, however, died on 18-1-1981. The Assistant Controller was of the opinion that since the deceased had not taken his share in the development reserve and investment allowance in Krishan Khandsari Udyog and investment allowance from Ghanshyam Sugar Factory, it could be deemed that he had made a gift of his share in favour of other partners. Further, since the deceased had died within a period of two years from the date of retirement from the above firms, the

Assistant Controller held that Section 9 of the Estate Duty Act, 1953 ('the Act') was applicable to his case. According to this section, a gift made within a period of two years prior to the death, could be treated as a property passing on the death and was includible in the estate of the deceased for the purposes of estate duty. The Assistant Controller, accordingly, included two sums of Rs. 25,547 and Rs. 3,044 in the estate of the deceased for the above purposes.

3. The accountable person appealed to the Appellate Controller. The Appellate Controller held as under : 2. The first ground is that the ACED erred in including Rs. 25,547 in the estate of the deceased as representing a gift to a firm Krishan Khandsari Udyog in which he was a partner. The ACED has stated that the deceased did not claim his share in the development reserve account of the firm from which as mentioned he retired on 31-12-1980. This, according to the ACED, represented a gift and as the appellant died on 18-1-1981, this gift was includible in his estate. The appellant's counsel contests this and, I think, rightly.

Firstly, foregoing a share in the development reserve account can hardly be treated as a gift. At the most it can be a 'deemed gift' even for this it has to be established that the appellant had crystallised right in the above account which he should have taken when retiring on 31-12-1980 before his death. The ACED has already included Rs. 2,10,000 as gifts made within 2 years of death. This amount of Rs. 25,547, in my opinion, could not be included as a gift in contemplation of death as no such intention has been established.

This amount is deleted from the value of the estate (Relief Rs. 25,547).

5. The last grievance of the appellant is against inclusion of Rs. 3,044 being investment allowance reserve in another firm Ghanshyam Sugar Factory where the deceased was a partner on behalf of the HUF. This again was not a gift, in my opinion, because it has to be seen from the partnership deed of other business where the deceased was entitled to this share on leaving the firm before his death. In the absence of such stipulation in the deed it cannot be said that he had become entitled to a share of the reserve and, therefore, not taken the share on his retirement, was a gift. The investment allowance has to be paid for 8 years and, therefore, it cannot be said that this has already become due and the

deceased could have taken it only if he wished to give a gift of his share to the other partners. I am unable to sustain this addition also (Relief Rs. 3,044).

4. The department is now in appeal before us. The contention of the department is that the view taken by the Appellate Controller was contrary to the view expressed by the Madras High Court in the case of A.K.D. Dharmaraja v. CED [1978] 111 ITR 72. The learned departmental representative contended that admittedly the above two firms had development reserve and investment allowance on the liability side of their balance sheet and, therefore, the deceased was entitled to a share in them. He contended that since the deceased did not receive anything, except his capital, the presumption was that he had made a gift of his share in the above reserve in favour of the continuing partners and since such gift fell within a period of two years, it was liable to estate duty. He also invited our attention to the partnership deed dated 6-10-1973 in the case of Krishan Khandsari Udyog to point out that there was no clause in the deed that the deceased was not entitled to a share in such reserve of the firm. It may be mentioned here that the deed of the other firm was not made available to us.

5. The learned counsel for the accountable person, on the other hand, submitted that the deceased, while retiring from the firms, had received only his capital and nothing more, but at the same time, he was also relieved of all future liabilities of the firm. He contended that on these facts, the decision of the Madras High Court in A .K.D.Dharmaraja's case (supra) was not applicable, but it was the case of Bombay High Court in Smt. Urmila v. CED [1980] 122 ITR 958, which applied.

6. We have carefully considered the submissions placed before us. We agree with the submission of the learned counsel for the accountable person that his case was fully covered by the aforesaid decision of the Bombay High Court. We quote below from the head-note of the case as under: The deceased was also a partner in two other firms. Within two years before his death he retired from those firms. The deeds of retirement in respect of each firm provided that all the assets of the firm including the goodwill, rights, benefits and privileges and outstandings together with all its liabilities were taken over by the continuing partners and that the continuing partners shall pay and discharge all the debts, liabilities and

obligations of the firm and shall indemnify or keep indemnified the deceased against all costs, claims, demands, in respect thereof. The Tribunal held that there was a relinquishment of the deceased's share in goodwill which amounted to a gift under Section 9 read with Explanation 2 to Section 2(15) and the value of his share in the goodwill had to be included in his estate.

Held, that the retirement of the deceased from the two firms was a clear case of a simultaneous taking over of rights and obligations ; the benefits secured by each group was supported by consideration, namely, giving up of its claim. The deceased had given up his share in the assets, but had been relieved of his share in the liabilities. Similarly, the continuing partners had secured the deceased's share in the assets but they had at the same time taken over his share of the liabilities. It was impossible to hold that the share of assets in general or in any asset in particular had been given up without consideration. There was no gift of the share in the goodwill, and the provisions contained in Section 9 regarding gifts made within a certain period before death were not attracted.

The share which the deceased had at the time of retirement in the goodwill of the two firms could not be added in his estate for purposes of estate duty. (p. 959) We also agree with the submission of the counsel that the decision in the case of A.K.D. Dharmaraja (supra) has no application to the present case. In this case, the death had taken place, while the deceased was a partner in a firm. The question related to the valuation of the deceased's share in the firm. One of the related questions in this regard was whether the development reserve should be deducted as a liability from the assets of the firm for the purposes of arriving at the share of the deceased in the surplus of the assets or not. It was held that the reserve could not be deducted. That is not the case here.

In the present case, the deceased had retired before his death.

7. The question which requires consideration is that it has first to be established that there was a gift. It can then be said that such gift which fell within the period of two years and was includible in the estate of the deceased. On the facts of the case, we hold that there was no such gift. Our this finding is supported by the principle laid down by the Bombay High Court in the case referred to above. There

cannot, therefore, be question of any inclusion of such gift in the estate of the deceased. We, therefore, agree with the findings of the Appellate Controller in this regard.

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