

Estate of Kisandas Vs. Controller of Estate Duty

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Court : Chennai

Decided On : Jan-31-1989

Reported in : [1989]178ITR259(Mad)

Judge : Bhakthavatsalam and ;V. Ratnam, JJ.

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

Appeal No. : Tax Case No. 787 of 1979

Appellant : Estate of Kisandas

Respondent : Controller of Estate Duty

Advocate for Def. : C.V. Rajan, Adv.

Advocate for Pet/Ap. : R.P. Janarthana Raja, Adv.

Judgement :

Ratnam, J.

1. At the instance of the accountable person, the following questions of law have been referred for the opinion of this court under section 64(1) of the [Estate Duty Act, 1953](#) (hereinafter referred to as 'the Act') :

'(1) Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that the partnership firm had goodwill

(2) Whether, the Tribunal was justified in holding that the goodwill has to be considered as a whole and should not be bifurcated and made attributable to each business carried on by the partnership firm ?'

Shri Krishanadas Virbhandas, passed away on January 13, 1974. The firm was carrying on business in money-lending and textiles. In computing the value of the goodwill of the firm for purposes of the Act, the Assistant Controller of Estate Duty took into account the average profits of the firm for a period of 1 1/2 years and arrived at the value of the goodwill at Rs. 36,950 in which the deceased's 40% share was worked out to Rs. 14,780 and that was included in the principal value of the estate without any bifurcation thereof into the money-lending in which it did not have much of goodwill and the Appellate Controller of Estate Duty estimated the value of the goodwill on the basis of nine month's profit and the value of the share of the deceased was arrived at Rs. 7,390, being one-half of that adopted in the assessment. The Tribunal upheld the conclusion of the Appellate Controller of Estate Duty and confirmed his valuation of the goodwill of the firm. That is how this reference on the questions referred to earlier has come up before us.

2. Learned counsel for the accountable person contended that the Tribunal has proceeded on the assumption that the firm had goodwill and that the earning of substantial profits is not a relevant consideration for ascertaining whether the firm had goodwill. Our attention in this connection was also drawn to the decisions in A. K. D. Dharmaraja v. CED : [1978]111ITR72(Mad) , Seethalakshmi Ammal v. CED : [1966]61ITR317(Mad) , CIT v. B. C. Srinivasa Setty : [1981]128ITR294(SC) and CIT v. Official Liquidator : [1985]151ITR781(Mad) . On the other hand, learned counsel for the Revenue contended that the Tribunal had taken into account the fact that the firm had been carrying on business for about five years at the time of the death of the partner and that it had also earned substantial profits and that the conclusion arrived at by the Tribunal regarding the value of the goodwill based on those considerations was quite justified and proper. Attention was also invited in this connection to the decision of the Supreme Court in Rustom Cavasjee Cooper. v. Union of India : [1970]3SCR530

3. There is no dispute that since 1969, the firm of Krishnadas Virbhandas had been carrying on business in money-lending and in textiles. Likewise, it is accepted that the firm had earned profits and the average profit for one year for about Rs. 24,000 odd. The expression 'goodwill' is better understood than clearly and precisely defined or described. Generally stated, it refers to the quality of a particular trade or business resulting in the attraction of customers as of course. There are several contributory factors to this quality, viz., honest dealing, good quality and maintenance of top class standards. Goodwill is based and developed on the faith, belief and confidence of the customer in particular business house or trade and the standing of the business is also one of the contributory factors apart from persons engaged in the business, the place of the business and other like factors. On the facts of this case, it is seen that though the firm commenced business only in 1969, it had developed its business to a large extent within a short span of five years. That is really indicative of the trust and confidence, the firm enjoyed in its transactions and relationship with its customers, even though part of its business was money-lending. The short duration of about five years during which the business had been carried on cannot by itself rule out the possibility of the acquisition of goodwill by the firm. There may be instances of a firm or other business acquiring the good reputation based on the trust and confidence of its customers even right from the beginning of the commencement of its business activities. In some cases, it may be even acquired later in the course of a few years. The reputation so gained resulting in the acquisition of goodwill is not necessarily related to the number of years of the existence of the business, but depends entirely upon the business activities and the trust and confidence it had generated in customers, though within a short time. Therefore, from the circumstance that the firm had carried on its business activities only for a period of about five years, it cannot be assumed that the firm had not acquired goodwill even during that period.

4. We may now refer to the discussions to which our attention was drawn by learned counsel for the accountable person. In *Seethalakshmi Ammal v. CED* : [1966]61ITR317(Mad) , it was pointed out that goodwill is the magnetic quality of a particular trade or business which attracts customers as a matter of course and this springs from and is developed by various contributing factors that earn a

reputation for honest dealing, quality and standard. It has also been further pointed out that goodwill is founded on the belief and faith of the customers and is commonly built up in relation to a particular type of manufacturer or production of articles identified by a trade mark which becomes widely known to the public and by which the customers take it for granted that it represents what they wish for. The personalities engaged in the business, the location of the carrying on of the business and other like features would also go to make up the goodwill, according to that decision. Apart, therefore, from merely referring to the constituents elements of goodwill, this decision cannot in any manner support the case of the assessee. We may usefully refer to the decision of the Supreme Court in CIT v. B. C. Srinivasa Setty : [1981]128ITR294(SC) , where it has been pointed out that though goodwill is intangible in nature, insubstantial in form and nebulous in character, it is affected by everything related to the business, the personality and business rectitude of the owners, the nature and character of business, its name and reputation, its location, its impact on the contemporary market, the prevailing socio-economic ecology, introductions to old customers and it is impossible to predict the moments of its birth, though its come silently into the world, unheralded and unproclaimed and its impacts may not be visibly felt for an undefined period, yet, it is an asset of the business. Though the business in this case had been carried on only for about five years, yet, it is seen that it had a very large volume of business and that is certainly attributable only to the ability, personality and the business rectitude of the partners, their name and reputation, the location of the business and also the trust and confidence that had come to be reposed in the firm by those who had to resort to it in respect of their business transactions. Again, in CIT v. Official Liquidator : [1985]151ITR781(Mad) , this court pointed out, after referring to the several constituents elements necessary to constitute goodwill, that the Tribunal had proceeded on the basis that every business undertaking should have a goodwill and that that should be ascertained. Even this decision cannot have any application, for, on a consideration of the large volume of business of the firm during the period between 1969 and 1974 and the resulting profits, it can be inferred that the business was progressing and that the goodwill also tended to show a progressive increase. We are, therefore, of the view that on the available facts, the Tribunal cannot be considered to have committed any error

in concluding that though the firm had been carrying on business from 1969 onwards, it had nevertheless acquired goodwill.

5. We now proceed to consider whether the earning of substantial profits would be necessary in order to enable a firm to acquire goodwill. It is in this connection that learned counsel for the accountable person relies strongly upon the observations occurring at page 76 in *A. K. D. Dharmaraja v. CED* : [1978]111ITR72(Mad) to the effect that the extent of the profits alone cannot establish the existence of the goodwill. However, we are inclined to feel that the extent of the profits may also have a bearing upon the acquisition of goodwill by a firm or a business house. An increasing profits from year to year which, in turn, is referable to a larger volume of business may be the result of the several constituent elements which would go to make up the goodwill of the firm and the profits may, in some cases, be a reflection of the goodwill earned by the firm. We may also refer in this connection to the following passage in the decision of the Supreme Court in *Rustom Cavasjee Cooper v. Union of India* : [1970]3SCR530 :

'Goodwill of a business is an intangible asset : it is the whole advantage of the reputations and connections formed with the customer together with the 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 : *Trego v. Hunt* [1896] AC 7. Goodwill of an undertaking, therefore, is the value of the attraction to customers arising from the name and reputation for skill, integrity, efficient business management or efficient service.'

Thus, the ability of a concern to earn profits is also attributable to the goodwill, it had acquired or cannot, therefore, be considered to be wholly irrelevant. On the facts of this case, it is seen that the average profit for one year has been arrived at Rs. 24,634 and that shows that the firm had been make considerable profits only on account of the abundant goodwill it enjoyed amongst its customers. We are, therefore, of the view that the Tribunal was quite right in holding that the partnership firm had goodwill.

6. On the second question, we are of the view that the Tribunal was quite in order in holding that the goodwill has to be considered as a whole and should not be cut up and attributed to the money-lending business in part and also partly to the textile business of the firm. It may be that the business activities of the firm were in different fields and commodities. Even so, the acquisition of the goodwill is in respect of the entire range business activities of the firm taken as a whole and cannot be regarded as having been acquired with respect to only one of the several lines of business activities carried on by the firm. We are, therefore, of the view that the Tribunal was justified in reaching the conclusion it did. We answer the questions referred to us in the affirmative and against the accountable person. The revenue will have the cost of this reference. Counsel's fee Rs. 500.

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