

Commissioner of Gift Tax Gujarat

Vs

Chhotalal Mohanlal

Civil Appeal No. 2027 of 1974

(CJI R. S. Pathak, B. C. Ray, Ranganath Misra JJ)

16.04.1987

JUDGMENT

RANGANATH MISRA J. -

1. This appeal is by certificate. Under a deed of partnership dated November 12, 1958, a firm by name M/s. Chhotalal Vedilal came into existence with three partners, Chhotalal Mohanlal (the assessee), Gunvantilal Chhotalal and Pravinchandra Vedilal. These three partners had 7 annas, 4 annas and 5 annas share respectively in the firm. This position continued until November 9, 1961, relevant to the assessment year 1963-64 with which this appeal is concerned, when a change took place in the constitution of the firm. Under the new deed, Pravinchandra Vedilal retired; no change took place in respect of Gunvantilal Chhotalal; one Ramniklal Chhotalal became a partner with 4 annas share. The share of the assessee, Chhotalal Mohanlal, was reduced to 4 annas; for the remaining 4 annas, two minor sons of Chhotalal, being Kiritkumar and Deepak Kumar were admitted to the benefits only of the firm - Kiritkumar having 12 per cent and Deepak Kumar having 13 per cent. No alteration was, however, made regarding the share capital standing in the name of the assessee.

2. The Gift Tax Officer came to the conclusion that the assessee had deprived himself of 19 per cent share in the profit and had gifted away 19 per cent share in the goodwill of the firm in favour of his two minor sons. He valued the goodwill and treated 19 per cent thereof as taxable gift. The Appellate Assistant Commissioner before whom the assessee appealed adopted a different stand. According to him, the gift was not of a share of the goodwill but in respect of the right to receive future profits. He valued that right and since the amount was higher than what the Income Tax Officer had estimated, following the requirements of law he enhanced the quantum. In further appeal by the assessee the Tribunal held that in the circumstances of the case there could be no gift of goodwill. As appears from the statement of the case, the revenue did not seek to support the order of the Income Tax Officer but pleaded for sustaining the order of the Appellate Assistant Commissioner. The Tribunal further found that the right to receive future profits could not be the subject-matter of a gift as the transfer did not relate to existing property. According to it, the situation did not give rise to any gift which could be made liable to tax under the Act. The following question relevant for the purpose of the appeal was referred to the High Court for its opinion at the instance of the revenue :

Whether on the facts and in the circumstances of the case, the benefits of partnership given to minors, Kiritkumar Chhotalal and Deepak Kumar Chhotalal, was a gift under the Gift Tax Act, 1958 ?

The High Court answered the question against the revenue and upheld the view of the Tribunal. This appeal has, therefore, been carried by the revenue.

3. In spite of service of notice of appeal the respondent has not appeared. Counsel appearing in support of the appeal has contended that the order of the Gift Tax Officer was right and the Appellate Assistant Commissioner, the Tribunal and the High Court had gone wrong in holding that the arrangement under the deed of November 9, 1961, did not give rise to a taxable event under the Act, so far as the assessee was concerned.

4. "Gift" is defined in Section 2(xii) of the Act :

'Gift' means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer of any property deemed to be gift under Section 4.

In support of the appeal, learned counsel further relies upon decisions of different High Courts to which we shall presently refer. Before doing so it would be appropriate to indicate that in *Khushal Khemgar Shah v. Khorshed Banu Dadiba Boatwalla* ((1970) 3 SCR 689 : (1970) 1 SCC 415 : AIR 1970 SC 1147), this Court has held that goodwill of a firm is an asset. In *CGT v. Nani Gopal Mondal* ((1984) 150 ITR 469, 479 (Cal HC), after referring to a number of authorities of this Court and different High Courts a Division Bench of the Calcutta High Court concluded thus :

From the cases cited above, it appears that goodwill of a partnership business is a property of the firm in which a partner is entitled to a share. Although the above cases are under the Estate Duty Act, yet the principle laid down in the said cases regarding the nature of goodwill of a firm and the right of a partner in respect thereof is applicable to the instant case. In this connection, it may be mentioned that according to Section 14 of the Indian Partnership Act, property of a firm includes goodwill of the business. Further, according to Section 29(2), if a partner transfers his interest and the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled to. It further appears that under proviso to Section 53 of the Indian Partnership Act, in case of dissolution, a partner or his representative may buy the goodwill of the firm and under Section 55(1) of the Act, in settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the parties, be included in the assets and it may be sold either separately or along with other properties of the firm ..... Upon transfer, the share or interest in the property of the firm of the transferring partner including the goodwill becomes the share or interest of the transferee. In the instant case, Nani Gopal Mondal by the deed of gift transferred his share or interest in the firm which included his share of goodwill also. Hence, for the purpose of payment of gift-tax, the value of one-third share of the assessee in the goodwill shall also be taken in account.

In *M. K. Kuppuraj v. CGT* ((1985) 153 ITR 481 (Mad HC), the Madras High Court was called upon to deal with a case of this type where minors were admitted to the benefits of partnership firm and the assessee's interest in the firm suffered detriment by relinquishment of a portion of his interest. The High Court found that relinquishment of 8 per cent profit was in favour of the minors who were admitted without any consideration. It held that the transaction constituted a gift by the assessee in

favour of the minors. The ratio in *Sirehmal Nawalkha v. CIT* ((1985) 156 ITR 714 (Raj HC)) as also in *CGT v. Premji Trikamji Jobanputra* ((1982) 133 ITR 317 (Bom HC)) support the stand of the revenue that the transaction constitutes a 'gift'.

5. Once goodwill is taken to be property and with the admission of the two minors to the benefits of partnership in respect of a fixed share, the right to the money value of the goodwill stand transferred; the transaction does constitute a gift under the Act. Since there has been no dispute about valuation of the goodwill as made by the Gift Tax Officer, with the conclusion that there has been a gift in respect of a part of the goodwill, the answer to the question referred has to be in the affirmative, that is, it constitutes a gift under the Act. The appeal is allowed and the conclusion of the High Court is reversed. Since the respondent hasn't appeared, there will be no order for costs.

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