

SUREME COURT OF INDIA

Commissioner of Income-Tax, Bombay

Vs.

Kaikobad Byramji and Sons

(J Verma, N Ojha and S Ranganathan JJ.)

10.08.1989

ORDER

1. The Hon'ble Supreme Court of India has directed the Income-tax Appellate Tribunal to refer the following question of law, in Civil Appeal No. 639 of 1978, directly to the Supreme Court, by its order dated March 16, 1978:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that no capital gains arose on the transfer of the goodwill of the transferred business under the provisions of the Income-tax Act, 1961 ?

2. The assessee-firm was newly constituted in terms of a partnership deed dated August 7, 1970. The accounting period relevant to the assessment year 1972-73 was the year ending September 30, 1971. The assessee-firm carried on during this year a business as sole selling agents of Bennett Coleman and Co. for selling their dailies and' periodicals. Though the firm came into existence with effect from September 1, 1970, the business of the firm commenced on January 1, 1971, and the business of the partnership was carried on up to September 30, 1971. Thereafter, the business of the assessee-firm was transferred to a limited company called Kaikobad Byramji and Sons (Agency) P. Ltd. No goodwill amount was paid by the transferee to the transferor of the business in the present case, as noted by the Appellate Assistant Commissioner. The Income-tax Officer, however, invoked the provisions of Section 52 of the Income-tax Act, 1961, and estimated the fair market value of the goodwill transferred by the assessee-firm to the limited company at Rs. 2,96,420 on the basis of one year's purchase of five years' average profits. The Income-tax Officer treated the said amount of Rs. 2,96,420 as the capital gains arising to the assessee-firm on the transfer of the goodwill of the business and deducting therefrom a sum of Rs. 1,50,710 in terms of Section 80T of the Act, computed the taxable capital gains at Rs. 1,45,710.

3. The Appellate Assistant Commissioner held, relying on the decisions in CIT v. K. Rathnam Nadar [1969] 71 ITR 433 (Mad), CIT v. Chunilal Prabhudas and Co. , Jagdev Singh Mumick v. CIT, CIT v. E. C. Jacob [FB] and CIT v. B.C. Srinivasa Setty , that no capital gains tax could be levied on the transfer of the goodwill.

4. The Revenue thereafter carried the matter in second appeal to the Tribunal and the Tribunal

observed that the entire position in this regard has now been reviewed by the Karnataka High Court in the case of B.C. Srinivasa Setty , wherein it has been held that the view taken that capital gains tax is not attracted to the transfer of goodwill is a fair and just interpretation. Their Lordships of the Karnataka High Court also observed that the appeal of the Revenue before the Supreme Court against the judgment in Rathnam Nadar's case [1969] 71 ITR 433, was not pressed by the Revenue and was accordingly dismissed by the Supreme Court and the Revenue had also not preferred any appeal against the judgments of the High Courts of Calcutta and Kerala. Their Lordships further observed that in the circumstances set out above, one could safely draw an inference from the conduct of the Department in not preferring appeals against the judgments of the High Courts of Calcutta and Kerala and further in not pressing the appeals before the Supreme Court against the judgment in Rathnam Nadar's case [1969] 71 ITR 433 (Mad), that the Department had accepted the ratio of the decision in Rathnam Nadar's case [1969] 71 ITR 433 (Mad) as laying down the correct law. Following this view, the Tribunal rejected the Department's appeal.

5. Thereafter, the Revenue filed R.A. No. 177/Bom/1976-77 under-Section 256(1) of the Act, but the Tribunal rejected the same by its order dated September 17, 1976, on the ground that on the same issue, their Lordships of the Bombay High Court have since declined to grant any reference under Section 256(2) of the Act in ITA No. 11 of 1976 in the case of Smt. Krishna Kumari Goswami. It, however, appears that the Bombay High Court also rejected the application filed by the Commissioner of Income-tax, Bombay, under Section 256(2) and, thereafter, the Revenue filed Civil Appeal No. 639 of 1978 in the Supreme Court of India and their Lordships of the Supreme Court of India have been pleased to direct the Tribunal to draw up the statement of the case and refer the same directly to them.

6. Accordingly, we refer the following question of law for the opinion of their Lordships :

Whether, on the facts and the circumstances of the case, the Tribunal was right in holding that no capital gains arose on the transfer of the goodwill of the transferred business under the provisions of the Income- tax Act, 1961 ?.

7. In view of the decision in CIT v. B.C. Srinivasa Setty , the answer given by the Tribunal to the question referred to us is correct and it is upheld. The matter is disposed of accordingly. No costs.

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