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**IN THE HIGH COURT OF DELHI**

**GTA No.3/2002**

Date of Hearing & Decision : 10 April 2003

The Commissioner of Income-tax .....Appellant  
Through: Ms.Prem Lata Bansal,  
Sr.Standing Counsel

Versus

Smt. Asha Gulati .....Respondent  
Through : Mr.Krishan Mahajan, Advocate

CORAM:

THE HON'BLE MR.JUSTICE D.K. JAIN

THE HON'BLE MR.JUSTICE MADAN B. LOKUR

1. Whether reporters of local papers may be allowed to see the judgment.
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

D.K. JAIN, J.(Oral)

This appeal by the Revenue under Section 27A of the Gift Tax Act, 1958 (in short 'the Act') is directed against the order dated 28 November 2001, passed by the Income-tax Appellate Tribunal Delhi Bench-B, New Delhi (for short 'the Tribunal') in GTA No.32/Del/1994, pertaining to assessment year 1989-90.

Briefly stated, the background facts giving rise to the appeal are as follows:

The assessee was a partner in a firm, namely, M/s. Sat Kartar International with one Mohan Gulati. She retired from the firm on 2



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August 1988 and at the time of retirement she took the balance amount outstanding in her capital account, but did not receive any amount towards goodwill and import entitlement of the said firm. The import entitlement of the said firm was subsequently sold by Mohan Gulati for Rs.6,55,514/-.

The Assessing Officer was of the view that the assessee had made a gift in favour of Mohan Gulati in respect of her share in the goodwill and import entitlement of the firm. He, accordingly, valued the goodwill of the firm at Rs.1,45,72,354/- on the basis of the earnings of the firm for the past three years and determined the assessee's share therein at Rs.72,86,177/-, which was treated as the value of the gift made by the assessee to Mohan Gulati. He also treated 50% of the sale price of the import entitlement as assessee's share in it and brought the said amount also to gift tax in her hands.

Aggrieved, the assessee preferred appeal to the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax, while allowing the appeal, observed that the partnership deed/retirement deed did not provide for any amounts payable towards goodwill of the firm; both the assessee and Mohan Gulati continued to carry on their business of export of garments and in fact the name of the firm "Sat Kartar" was being used by the assessee also and, further, after the retirement of the



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assessee, the firm had losses in assessment years 1990-91 and 1991-92. He also observed that the Assessing Officer had calculated the good will in a mechanical manner and had failed to prove that any amount had in fact passed from the firm to the assessee.

Being aggrieved, the Revenue carried the matter in further appeal to the Tribunal. Taking note of the afore-mentioned factual aspects, highlighted by the Commissioner of Income-tax (Appeals), the Tribunal dismissed Revenue's appeal. Hence the present appeal.

We have heard Ms.Prem Lata Bansal, learned senior standing counsel for the Revenue and Mr.Krishan Mahajan , learned counsel for the respondent-assessee.

It is strenuously urged by Ms.Bansal that by voluntarily foregoing her share in the goodwill of the firm and the import entitlement at the time of her retirement, there was a gift by the assessee in favour of Mohan Gulati, which was exigible to gift tax. In support of her proposition that the goodwill of the firm is a property and extinguishment of one's right in the said property constitutes a gift under the Act, learned counsel has placed reliance on the decision of the Supreme Court in Commissioner of Gift-tax, Gujarat Vs. Chhotalal Mohanlal (1987) 166 ITR 124.

On the other hand, Mr.Krishan Mahajan, while supporting the

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order passed by the Tribunal, has urged that the issue raised by the Revenue has since been settled by the Apex Court in Commissioner of Income-tax Vs. T.M. Louiz (2000) 245 ITR 831 and, therefore, order of the Tribunal does not involve any substantial question of law.

We find substance in the submission of learned counsel for the assessee. In T.M. Louiz (supra) the Apex Court has held as under:

“When a partner retires from a partnership, the partnership continues. The assets and the goodwill of the firm continue to remain the assets and the goodwill of the firm. All that the retiring partner gets is the value of his share in the partnership assets less its liabilities. It cannot, in such circumstances, be held, assuming that the retiring partner received less than what was his due, that the difference was something that he had transferred to the continuing partners within the meaning of “transfer of property” for the purposes of the Gift-tax Act or that there was a gift liable to gift-tax.”

In view of the aforementioned admitted factual position and in the light of the said authoritative pronouncement, no substantial question of law survives for our consideration. We, accordingly, decline to entertain the appeal. Dismissed.

  
D.K. JAIN, J.

  
MADAN B. LOKUR, J.

10 APRIL 2003

'v'