

CONTROLLER OF ESTATE DUTY, KERALA

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v.

NALINI V. SARAF

(Civil Appeal No. 8247 of 2004)

NOVEMBER 25, 2009

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[S.H. KAPADIA AND H.L. DATTU, JJ.]

Estate duty – Value of goodwill – Determination of – Application of super-profit method – Partnership firm engaged in export business – Death of partner of a firm – Determination of accumulated profits and goodwill in firm – Assistant Collector applying super profit method, applied multiplier of three years purchase – Also held that refund of income tax after demise of deceased, constituted property of deceased – Tribunal and High Court holding that multiplier of one year purchase to be applied and refund had not become due when partner died but the claim for refund was pending adjudication – Interference with – Held: Not called for – There is no hard and fast rule regarding multiplier to be applied for evaluating goodwill of the firm – It depends on the nature of business and prevailing market conditions – Refund of income tax stood determined only after the demise of the deceased – Hence, not a property available at the time of death.

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Estate of Late General Sir Shankar S.S.J.B. Rana vs. Controller of Estate Duty (1990) 186 I.T.R. 578, referred to.

Case Law Reference :

(1990) 186 I.T.R. 578 Referred to. Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8247 of 2004.

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From the Judgment & Order dated 18.7.2003 of the High Court of Kerala at Ernakulam in Income Tax Reference No. 62

A of 1998.

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SLP(C) No. 16981, 16985 of 2006

B C.A. Nos. 1700 of 2006, 5812 of 2005 & SLP (C) 9233 of 2006.

Parag P. Tripathi, ASG, Kunal Bahri, Arijit Prasad, Varun Sarin, Amey Nargolkar, B.V. Balaram Das for the Appellant.

P.J. Pardiwalla, Rustom B. Hathikhanawala for the Respondent.

C The Judgment of the Court was delivered by

S.H. KAPADIA, J.

Civil Appeal No.8247 of 2004:

D 1. Heard learned counsel on both sides.

2. This civil appeal is filed by the Controller of Estate Duty, Kerala, against the decision dated 18th July, 2003, delivered by the Kerala High Court in Tax Reference No.62 of 1998.

E 3. One V.G. Saraf passed away on 18th October, 1984. He was a partner in M/s. Saraf Trading Corporation, a partnership Firm carrying on business as commission agents and as exporters of Tea. The Firm was constituted under Deed of Partnership dated 27th November, 1963. The Firm had three

F partners. The deceased had fifty per cent shares in profit and loss. On 16th September, 1981, the Firm was re-constituted with the admission of one more partner and a minor. The Assistant Controller of Estate Duty, inter alia, held that, for determining the value of goodwill, there were two methods of valuation, namely,

G super-profit method and total capitalization method. The Assistant Controller preferred the super-profit method. It may be noted that, in this case, the method is not in dispute. What is in dispute is the application of the super-profit method to the facts of the present case. Applying the super-profit method, the

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Assistant Controller applied the multiplier of three years' purchase whereas the assessee-respondent contended that 3X was excessive. The Assistant Controller further held that refund of income tax, which became due after the demise of V.G. Saraf, constituted property of the Deed, which was also disputed by the legal representatives of the deceased.

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4. We are concerned, therefore, with the valuation of the goodwill and the refund of income tax in this appeal.

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5. The partnership Firm, as stated above, was engaged in the business of exporting Tea. It exported Tea to U.S.S.R. On facts, the Income Tax Appellate Tribunal [for short, "the Tribunal"] found that, at the relevant time, the market conditions in U.S.S.R. were not congenial; that there was huge volatility in the Tea export business; that export of Tea had huge volatility even otherwise; and, in the circumstances, the Tribunal applied the multiplier of one year's purchase instead of three years' purchase. This finding was rightly upheld by the High Court. In any event, there is no hard and fast rule regarding multiplier to be applied for evaluating the goodwill of the Firm. It all depends on the nature of the business and the prevailing market conditions. Hence, we are of the view that this aspect is a pure question of fact and does not call for interference by this Court. In this connection, one more point needs to be highlighted. In order to determine the super profits, the Assistant Controller and the Appellate Authority took the average income at Rs.76,79,673/- and deducted therefrom Rs.4,61,784/- as Interest on average capital employed fixed at twelve per cent on the basis of Bank rates as they existed at the relevant time. However, the Tribunal and the High Court came to the conclusion that the rate of twelve per cent was on the lower side as there is a difference between rate of Interest and rate of

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Return on the capital employed.

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6. On the question as to whether refunds in question which became payable after the death, the Tribunal and the High Court concurrently held that refunds had not become due (crystallized) on 18th October, 1984, when V.G. Saraf passed away. In fact,

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- A on that day, the claim for refund under the Act was pending adjudication. Such refund stood determined only after the demise of the deceased. Hence, such refund cannot be considered to be a property available at the time of the death. [See *Estate of Late General Sir Shankar S.S.J.B. Rana vs. Controller of Estate Duty* [1990] (186 I.T.R.578)].
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7. For the afore-stated reasons, we see no reason to interfere with the impugned order of the High Court, hence, this appeal filed by the Department stands dismissed with no order as to costs.

- C Civil Appeal No.1700 of 2006, Civil Appeal No.5812 of 2005, S.L.P. (C) No.16981/2006, S.L.P. (C) No.16985/2006 and S.L.P. (C) No.9233 of 2006:

8. Delay condoned.

- D 9. In view of the order passed in Civil Appeal No.8247 of 2004, these appeals and special leave petitions are dismissed.

N.J.

Matters dismissed.