

(2003) 04 DEL CK 0096

Delhi High Court

Case No: G.T.A. No. 3 of 2002 10 April 2003

Commissioner of Income Tax

APPELLANT

Vs

Smt. Asha Gulati

RESPONDENT

Date of Decision: April 10, 2003**Citation:** (2005) 142 TAXMAN 234**Hon'ble Judges:** Madan B. Loikur, J; D.K. Jain, J**Bench:** Full Bench**Advocate:** Ms. Prem Lata Bansal, for the assessed Krishan Mahajan, for the Revenue, for the Appellant;

Judgement

D.K. Jain, J.

This appeal by the revenue u/s 27A of the Gift Tax Act, 1958 (in short "the Act") is directed against the order dated 28-11-2001, passed by the Income Tax Appellate Tribunal Delhi Bench-B, New Delhi (hereinafter referred to as "the Tribunal") in GTA No. 32/Del/1994, pertaining to assessment year 1989-90.

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

The assessed was a partner in a firm, namely, M/s. Sat Kartar International with one Mohan Gulati. She retired from the firm on 2-8-1988 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.

3. The assessing officer was of the view that the assessed had made a gift in favor 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 assessed'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 assessed's share in it and brought the said amount also to gift tax in her hands.

4. Aggrieved, the assessed preferred appeal to the CIT(A). 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 assessed 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 assessed also and, further, after the retirement of the assessed, the firm had losses in assessment years 1990-91 and 1991-92. He also observed that the assessing officer had calculated the goodwill in a mechanical manner and had failed to prove that any amount had in fact passed from the firm to the assessed.

5. Being aggrieved, the revenue carried the matter in further appeal to the Tribunal. Taking note of the afore-mentioned factual aspects, highlighted by the CIT(A), the Tribunal dismissed revenue's appeal. Hence the present appeal.

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

7. 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 their retirement, there was a gift by the assessed in favor 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 (he 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](#),

8. On the other hand, Mr. Krishan Mahajan, while supporting the order passed by the Tribunal, has urged that the issue raised by the revenue has since been settled by the Apex Court in [The Commissioner of Gift Tax, Trivandrum Vs. T.M. Louiz](#), and, Therefore, order of the Tribunal does not involve any substantial question of law.

9. We find substance in the submission of learned counsel for the assessed. In TM. 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 (p. 832)

10. In view of the forenoted 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.