

GIB/KN/B.C. SRINIVASA/19-02-1981/SC-5

Supreme Court Category : INTEREST

State : Karnataka

Order No.: GIB/KN/B.C. SRINIVASA/19-02-1981/SC-5

Name of Entry :
B.C. SRINIVASA SETTY

Date : 19-02-1981

Breif Issue :

Fact & Issues Involved:

The assessee, a registered firm, manufactured and sold agarbattis. Clause (13) of the Instrument of Partnership executed on 28th of July, 1954 and subsequently extended by another instrument dated 31st March, 1964 showed that the goodwill of the firm had not been valued, and the valuation would be made on dissolution of the partnership.

The Commissioner, being of the view that the assessment order was prejudicial to the Revenue, decided to invoke his revisional jurisdiction and setting aside the assessment order directed the Income Tax Officer to make a fresh assessment after taking into account the capital gain arising on the sale of the goodwill. The Income Tax Appellate Tribunal in appeal accepted the contention of the assessee that the sale did not attract tax on capital gains under section 45 of the Income Tax Act, 1961.

The Income-Tax Officer made an assessment on the dissolved firm for the assessment year 1966-67 but did not include any amount on account of the gain arising on transfer of the goodwill. The Commissioner, being of the view that the assessment order was prejudicial to the Revenue, decided to invoke his revisional jurisdiction and setting aside the assessment order directed the Income-Tax Officer to make a fresh assessment after taking into account the capital gain arising on the sale of the goodwill.

The question in these appeals is whether the transfer of the goodwill of a newly commenced business can give rise to a capital gain taxable under s. 45, Income Tax Act, 1961.

Decision of Advance Ruling Authority :

Decision:

In the case of goodwill generated in a new business there is the further circumstance that it is not possible to determine the date when it comes into existence. The date of acquisition of the asset is a material factor in applying the computation provisions pertaining to capital gains. It is possible to say that the "cost of acquisition" mentioned in s. 48 implies a date of acquisition, and that inference is

strengthened by the provisions of ss. 49 and 50 as well as sub-section (2) of s. 55.

Having regard to the nature of the asset, it will be impossible to determine such cost of acquisition Nor call sub-section (3) of s. 55 be invoked, because the date of acquisition by the previous owner will remain unknown.

As the relevant statutory provisions of the [Indian Income Tax Act](#), 1922 are substantially similar to the corresponding provisions of the [Income Tax Act](#), 1961, that appeal is also liable to be dismissed. Accordingly, the appeals are dismissed with costs.