

# CALCUTTA HIGH COURT

Controller of Estate Duty

Vs

Annaraj Mehta and Deoraj Mehta

(Dipak Kumar Sen and C Banerji, JJ.)

23.03.1979

## JUDGMENT

### **Dipak Kumar Sen, J.**

1. The present reference, arises out of levy of estate duty on the estate of Shri Bastimal Mehta, who died on the 15th March, 1968. The accountable persons, Annaraj Mehta and Deoraj Mehta, are the sons of the deceased. The controversy is over the computation of the value of the 20% share of the deceased in a firm named "Ashok Foundry and Metal Works", as a partner. The partnership which commenced its business on and from the 1st January, 1967, was constituted by a deed dated the 30th December, 1966, and, inter alia, provided as follows :

" (17) That on the death or the retirement of any partner, the partnership business shall not be dissolved but it shall continue to be carried on with or without the legal heirs or representatives of the deceased partner who may be taken into partnership in his place on such terms and conditions as may be determined by the parties concerned."

2. The Asst. CED computed the value of the deceased's share in the said firm by taking into account, separately, the balances credited to the deceased in the capital account and in the current account, 20% share in the provisions for liquidated damages and development reserve and, lastly, the deceased's share in the goodwill of the business. The goodwill of the firm was valued at Rs. 6 lakhs and that of the share of the deceased therein was calculated at 20% to be Rs. 1,20,000. The value of the deceased's share in the said firm calculated as aforesaid was included in his estate for purposes of estate duty.

3. Being aggrieved, the accountable persons preferred an appeal to the Appellate CED and contended, firstly, that the business did not have any goodwill, and further that the value of the goodwill, if any, was wrongly computed ignoring the figures of the total income as finally determined and taking into account interest only on the fixed capital at a low rate of 6%.

4. The Appellate Controller held that the business of the firm was of long standing and had a goodwill. He, however, determined the average annual income of the firm at Rs. 1,94,540, allowed interest at the rate of 9% per annum on the entire capital including the balance of the current account and capitalised the super profit at three years' purchase in order to arrive at the

market value of the goodwill. On such basis, the goodwill was computed to be Rs. 2,60,400 and the 1/5th share of the deceased therein was determined to be Rs. 52,080. The appeal was allowed in part.

5. From the order of the Appellate Controller both the revenue and the accountable persons went up on further appeal before the Income-tax Appellate Tribunal. The accountable persons in their appeal challenged the inclusion of any amount on account of goodwill. The revenue, in their appeal, merely challenged the computation of the value of the goodwill as was done by the Appellate Controller.

6. In the appeal of the accountable persons, it was contended before the Tribunal that in a continuing partnership no partner could claim a definite share in any particular property of the firm and as such the assessee not having any specific share in the goodwill there was no question of any part of the goodwill passing on the death of the deceased. The Tribunal took into account Clause 17 of the deed of partnership and, following a decision of the Punjab and Haryana High Court in *CED v. Shri Ved Prakash Jain*<sup>1</sup> held that no goodwill of the said firm passed on the death of the deceased and, therefore, the valuation of the deceased's share in the goodwill could not be included in the estate for purposes of estate duty.

7. The Tribunal noted that the appeal of the revenue had become academic in view of its finding as above. The Tribunal also noted that the revenue did not dispute the principles of computation adopted by the Appellate Controller and that the accountable persons also did not challenge the computation as such. Accordingly, the appeal of the revenue was dismissed and the appeal of the accountable persons' was allowed.

8. On an application of the CED, West Bengal, Calcutta, under Section 64(1) of the E.D. Act, 1953, the Tribunal has drawn up a statement of case and has referred the following question of law for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, and on a correct interpretation of the partnership deed dated 30th December, 1966, the Tribunal was correct in holding that no goodwill passed on the death of the deceased in the firm of M/s. Ashok Foundry & Metal Works and, therefore, its valuation could not be included in the estate of the deceased for the purpose of estate duty ? "

9. At the hearing, Mr. Suhas Sen, learned counsel for the revenue, contended, inter alia, that though under Clause 17 of the deed, death of a partner would not result in the dissolution of the partnership, yet for valuation of the share of the deceased in the firm for estate duty the share of the deceased in the goodwill had to be included as the same would pass either to the legal representative of the deceased or to the surviving partners.

10. Mr. Sen submitted that the decision in *CED v. Shri Ved Prakash Jain*, relied on by the Tribunal, was no longer good law inasmuch as the same had been specifically overruled in a subsequent Full Bench decision of the same High Court in the case of *State v. Prem Nath*<sup>2</sup> where it was held that the goodwill was an asset of the firm and the share of a deceased partner in the same along with his share in the other assets devolved on death for the purpose of estate duty notwithstanding any clause in the deed of partnership providing that the death of a partner would

not dissolve the firm and that the surviving partners would be entitled to carry on the business of the partnership.

11. Mr. Sen also drew our attention to a subsequent decision of the Gujarat High Court in *Smt. Mrudula Nareskchandra v. CED*<sup>3</sup>. In that case, the partnership deed, inter alia, provided as follows :

" The firm shall not stand dissolved on death of any of the partners and the partner dying shall have no right whatsoever in the goodwill of the firm."

12. The question before the Gujarat High Court was whether any property of the deceased partner in the goodwill of the firm could be said to have passed on his death either under Section 5 or under Section 7 of the E.D. Act in view of the aforesaid provision in the deed. It was held that though the interest of the deceased in the goodwill was a property belonging to the deceased, such a property standing by itself could produce no income. Therefore, the value of the benefit which resulted on a cesser of such interest could not be measured in terms of Section 40 of the E.D. Act and as such was not an interest contemplated by Section 7 of the Act.

13. Mr. Sen submitted further that the above decision of the Gujarat High Court was contrary to the law as laid down by the Supreme Court and the other High Courts and he cited the following decisions.

(a) Addanki Narayanappa v. Bhaskara Krishnappa, . Here the Supreme Court quoted with approval the following passage from Lindley on Partnership, 12th edn., at page 375:

" What is meant by the share of a partner is his proportion of the partnership assets after\* they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged. This it is, and this only, which on the death of a partner passes to his representatives, or to a legatee of his share; ...and which on his bankruptcy passes to his trustee."

(b) Khushal Khemgar Shah v. Mrs. Khorshed Banu Dadiba Boatwalla, . This decision was cited for the following observations of the Supreme Court (pp. 1149 & 1150) :

" The goodwill of a firm is an asset. In interpreting the deed of partnership, the court will insist upon some indication that the right to a share in the assets is, by virtue of the agreement, that the surviving partners are entitled to carry on the business on the death of the partner, to be extinguished. In the absence of a provision expressly made or clearly implied, the normal rule that the share of a partner in the assets devolves upon his legal representatives will apply to the goodwill as well as to the assets".

(c) *S. Devaraj v. CWT* . The facts in this case were that the deceased at his death was a partner in a managing agency firm. At the assessment to estate duty, the accountable persons contended that the managing agency firm had no goodwill and, in any event, they not having realized any amount on account of the deceased's share in the goodwill, nothing should be included in the estate on that account. On a reference, the Madras High Court held that the interest of the deceased in the goodwill of the firm in law and under the deed vested in the accountable persons and was as such includible in the estate. The factum of non-receipt of the deceased's share was immaterial.

(d) *CED v. Ibrahim Ghulam Hussain Currimbhoy* . In this case, the deed provided that the retiring partner or the legal representatives of a deceased partner would not be entitled to the goodwill of the business and that only the surviving or continuing partners would be entitled to the same and to continue to carry on the business under the same name and style. In assessing estate duty, the value of the share of the goodwill was included in the estate. On a reference, the Madras High Court expressed their disagreement with the decision of the Gujarat High Court in *Smt. Mrudula Nareshchandra*<sup>4</sup> and following the Supreme Court decision in *Khushal Khemgar Shah*, held, that the interest of the deceased in the goodwill would devolve on the surviving partners whose shares in such goodwill would be augmented to that extent. It was held further that Section 5 of the E.D. Act would apply as the property, namely, the share of the deceased in the goodwill, would pass.

(e) *Smt. Surumbayi Ammal v. CED* . The facts in this case were that the deceased was a partner in several firms which were partnerships at will. There was no provision as to the devolution of the goodwill on the dissolution of the said firms nor the continuance thereof in case of death or retirement of any partner. On the death of the deceased all the firms were dissolved and the accountable persons were paid on account one-sixth share of the deceased therein without taking into account the value of the respective goodwill. The names of the dissolved firms were adopted in the new partnerships constituted by the surviving partners. The question arose whether the value of the share of the deceased in the goodwill of the dissolved firms should be included in the estate of the deceased. The Madras High Court held that though the accountable persons in fact did not get any share in the goodwill yet the deceased's share in the said goodwill passed on his death for the purpose of estate duty inasmuch as the deceased was entitled to his share therein.

(f) *Smt. Kamlawati Raizada, v. CED* . In this case, the Allahabad High Court followed the Supreme Court decision in *Kushal Khemgar Shah*, .

14. *Mr. Sen also referred to a decision of the Supreme Court in CED v. Alladi Kuppuswamy*<sup>5</sup>, where the question of passing of goodwill was not involved but which, according to Mr. Sen, supported his contentions as to passing of property.

15. Mr. Sen cited a decision of the Privy Council in *Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Taxes* [1954] 25 ITR (Supp) 47 (PC). The facts in this case were, inter alia, that in respect of the principal asset of a testator, viz., his interest in a partnership, the deed conferred options on the surviving partners to purchase his share in the capital on his death and further provided that in computing the amount payable on the exercise of such option no sum would be added or taken into account in respect of goodwill. It was held that under Section 8(4)(e) of the Estate Duty Assessment Act of Australia, and the terms of the deed, the beneficial interest of the testator in the goodwill passed or accrued or devolved on his death and was, therefore, deemed to be a part of his estate. It was held further that the fact that the value of the goodwill was not to be taken into account in calculating the price receivable by the estate for such interest was irrelevant.

16. Mr. Sen last cited an unreported decision of this court in Matter No. 66 of 1971 instituted *CED v. John Gregory Apcar* . In this case, the partnership deed provided that for the purpose of ascertaining the amount payable to the representatives of a deceased partner for the latter's share in the firm the value of the goodwill of the business would be deemed to be a fixed figure. The Assistant Controller estimated the value of such goodwill at a higher figure. This estimation was

upheld by the Appellate Controller but reversed by the Tribunal. On a reference, it was held by this court that the value of the goodwill must be determined as provided by the partnership deed only to determine the share receivable by the representatives but for the surviving partners there was a cesser of the entire interest of the deceased partner in such goodwill and the actual value of the goodwill less the amount fixed in the partnership deed was the benefit which accrued to them and would be deemed to pass on his death. For estate duty, the market value and not the agreed value of the goodwill should be taken into account.

17. In reply, Mr. Kalyan Roy, learned counsel for the accountable persons, contended before us that in the instant case the factum of the existence of any goodwill in the said firm has been left undetermined. He submitted that it has been found by the Tribunal that the partnership commenced its business only on and from the 1st January, 1967, and the deceased died on the 15th March, 1968. There was no specific finding by the Tribunal that the firm had any goodwill. Mr. Roy next contended that computation of the value of goodwill was required to be made under well-settled principles which were not followed and necessary data for such computation were not obtained. He referred to pages 134 to 136 "Book-keeping and Accountancy" by Spicer & Pegler, 17th edn., and pages 2277 to 2279 of "Accountancy" by W. Pickles, 4th edn.

18. Mr. Roy commented that the question sent up in this reference was an abstract one and contended that the matter should be remanded to the Tribunal for proper determination.

19. On merits Mr. Roy contended that on a correct construction of Section 7 of the E.D. Act, the benefit on the death of the deceased partner accrued, if at all, only to the property and not to any individual person. There was no cesser of interest in the goodwill. The goodwill remained in the firm where it was before the death of the deceased. In support of this contention, he relied on a passage from Halsbury's Laws of England, 3rd edn., Vol. 15, para. 22, at p. 13.

20. Mr. Roy also brought to our notice an unreported decision of this Bench in Matter No. 785 of 1973 intitled Surajmall Gouti v. CED--since reported in [1979] 119 ITR 182. In that case, the deed provided that in case of death or retirement of any partner the partnership will not stand dissolved but the legal representatives of the deceased would be entitled to be paid his share of capital and interest in the firm after the same could be determined by mutual consent on the basis of the balance-sheet and profit and loss account of the firm as on the date of death. The estate duty authorities, in calculating the value of the share of the deceased partner in the firm, valued individual items of assets and included in the estate the prescribed share in the value of a particular jute press separately. It was held that the authorities were required to compute the value of the entire share of the deceased in the firm on the basis of what it would fetch in the open market and they were not entitled to value the share of the deceased in the firm first on estimate item-wise and thereafter to add thereto the enhanced value of any particular asset.

21. It appears to us that the law on the question stands well settled. What passes on the death of a partner is his share in the firm, that is, his interest in the entire unit of the firm. This has to include goodwill. The fact that such interest may devolve not on the legal representatives but on a different group or category of persons or that from the goodwill the legal representative may be excluded would not make any difference for the purpose of assessment of estate duty. It is the entirety of the interest of the deceased partner that would pass and such interest of the deceased partner in the firm, which necessarily includes goodwill, would be includible in the estate. The

valuation of such entire interest is, however, another question. As held in *Surajmall Gouti*, such entire interest has to be determined as provided under Section 36 of the E.D. Act, 1953, read with r. 7(c) of the E.D. Rules.

22. In the appeal preferred on behalf of the accountable persons before the Tribunal in the instant case, it appears that the only submission made was that on principle no amount on account of goodwill could be included in the estate. It does not appear that it was urged that the firm, in fact, did not have any goodwill. In the appeal preferred by the revenue the contention of the accountable persons was only that they had no objection to the basis of calculation of the value of the goodwill. In view of the aforesaid, the controversy as to the existence of any goodwill, in our view, has come to an end.

23. Mr. Roy also submitted that the partnership deed not having been annexed to the paper book it may not be possible to correctly interpret the same as stated in the question before us.

24. The material clause of the deed has been set out in the order of the Tribunal. At no stage the accountable persons referred to or relied on any other clause. The law as settled also appears to be that irrespective of the provisions of the deed as to its final devolution, goodwill must be deemed to pass on the death of the partner. In that view of the matter, it does not appear to us to be necessary to consider any other provision of the deed.

25. For the above reasons, the question referred has to be answered partly in the negative and partly in the affirmative. We hold that the Tribunal's finding that the goodwill in the firm, Messrs. Ashok Foundry and Metal Works, did not pass on the death of the deceased is incorrect but the finding that the valuation of the goodwill as such could not be included in the estate of the deceased for the purpose of the estate duty is correct. Goodwill being part of the entire assets of the firm, the entire share of the deceased therein has to be valued in accordance with law and this value has to be included in the estate for levy of estate duty.

26. During the course of his argument Mr. Roy stated on instructions that a Miscellaneous Application in the appeal before the Tribunal from which the present reference has arisen was pending and had not been disposed of. At that stage, however, he could not furnish further particulars of the said application. While this judgment was being delivered Mr. Roy furnished a copy of the said miscellaneous application. It is stated in this application, inter alia, as follows :

- (a) The accountable persons had contended before the Appellate Controller of the Estate Duty that the business of the firm did not have any goodwill.
- (b) The Appellate Controller rejected such contention on the sole ground that the business was of long standing.
- (c) That the business did not have any goodwill at all was urged in appeal before the Tribunal and there was an alternative contention that the deceased's share in the goodwill, if any, did not pass on his death.
- (d) In its order the Tribunal by mistake had omitted to deal with the basic contention that the business in question did not have any goodwill at all.
- (e) This mistake should be rectified.

27. So far as this court is concerned the matter has been disposed of on the basis of the statement

of the case as drawn up in this reference which includes the order of the Tribunal and as such we cannot go into the question of other mistakes at this stage. We, however, make it clear that this judgment is not intended to shut out the accountable persons and will not stand in their way from proceeding with their miscellaneous application, if any, pending before the Tribunal in accordance with law. This judgment has proceeded on the basis that the firm had a goodwill. If it is ultimately found that the said firm had any goodwill, in that event, only the Tribunal will dispose of the matter in accordance with this judgment. The reference is disposed of accordingly. There will be no order as to costs.

**C.K. Banerji, J.**

28. I agree.

Cases Referred.

1[1974] 96 ITR 303

2[1977] 106 ITR 446 (Punj) [FB]

3 [1975] 100 ITR 297

4[1975] 100 ITR 297 (Guj)

5[1977] 108 ITR 439