

**(1967) 11 CAL CK 0017**

**In the Calcutta High Court**

**Case No : Income-tax Reference No. 120 of 1962**

Commissioner of Income Tax

APPELLANT

Vs

Hind Construction Ltd.

RESPONDENT

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**Date of Decision : 15-11-1967**

**Acts Referred:**

Companies Act, 1913 — Section 11(4)  
Income Tax Act, 1922 — Section 10(2), 66(2)  
Partnership Act, 1932 — Section 4

**Citation : (1970) 78 ITR 664**

**Hon'ble Judges : S.A. Masud, J; B.N. Banerjee, J**

**Bench : Division Bench**

**Advocate : B.S. Pal and D. Gupta, for the Appellant; A.C. Mitra Debi Pal and M.L. Varma, for the Respondent**

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## **Judgement**

Masud, J.—The point to be decided in this reference, u/s 66(2) of the Indian Income Tax Act, 1922, is whether a sum of Rs. 4,00,000 should be included in the total income of the assessee. The Income Tax Officer included the said sum, but the Appellate Assistant Commissioner and the Appellate Tribunal excluded the said amount and decided against the revenue. The facts may be briefly stated as follows :

There was a joint venture run by Messrs. Bhagwanraj Patel & Co. and Messrs. Premier Suppliers Co. Ltd. for purchase and sale of machinery from the disposal department of Assam and each one of them was to receive half share in the joint venture. On the 22nd October, 1949, Messrs. Premier Suppliers Co. Ltd. sold their interest in the venture to the assessee-company and Messrs. Bhagwanraj Patel & Co. sold their interest to Patel Engineering Co., as a result whereof the assessee-company and Messrs. Patel Engineering Co. became interested in the said venture. The stock of the machinery, remaining unsold, was thereafter divided between the assessee-company and Patel Engineering Co. The assessee-company received machinery valued at Rs. 2,06,372 in its share. In the assessee-company's account books for 1949-50, the value of the machinery was written

up by Rs. 4,00,000 an equivalent sum having been credited to a reserve capital account. During this accounting period, the assessee and Patel Engineering Co. formed a partnership firm known as "Hind Patel Co." in which each had an 8 annas share and the assessee transferred this stock of machinery, at the book value of Rs. 6,06,372, to the new firm. Similarly, Messrs. Patel Engineering Co. also transferred their share of machinery, which they had received on the dissolution of joint venture, to the new firm, after similarly appreciating the value of the machinery. The machinery thus valued at Rs. 6,06,372 by each of the partners remained the investment of each one of them in their partnership firm, Messrs. Hind Patel Co. On 1st April, 1950, counter-debit and credit entries were made in the assessee's and the firm's books, respectively. The firm credited the capital account of the assessee with Rs. 6,06,372 and debited the machinery account with an equal amount. The entries in respect of Messrs. Patel Engineering Co. were also similarly made.

2. The assessment year, in the present reference, is 1951-52, for which the relevant accounting year, is the financial year 1905-51. No depreciation was allowed either on the original cost or on the appreciated value of such machinery in the assessment year 1950-51 or in 1951-52. The Income Tax Officer held the transaction as a sale of machinery originally valued at Rs. 2,06,372 for a sum of Rs. 6,06,372, and, accordingly, decided that the amount of Rs. 400,000 was profit of the assessee from the business on the sale of machinery in the year under consideration. The assessee appealed against the said order of the Income Tax Officer to the Appellate Assistant Commissioner, who held that there was no sale of machinery by the assessee, nor was there any profit and allowed the appeal in favour of the assessee on the ground that the transaction did not yield any profit. The revenue preferred an appeal to the Tribunal but the said appeal was dismissed. Thereafter, under the directions of this court, a statement of the case was called for and the following question is required to be answered by us :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the sum of Rs. 4,00,000 from the total income of the assessee ? "

3. Mr. Balai Pal, learned counsel for the revenue, has contended before us that the Tribunal has erroneously deleted the said sum of Rs. 4,00,000 from the total income of the assessee for the reasons mentioned as follows.

(a) Whatever may be the form and the manner in which the transaction was entered into the taxability of the income or profit arising out of such transaction would depend upon the substantial character of the transaction. In the instant case, the transaction was really in the nature of a sale of machinery, inasmuch as the assessee-company although happens to be a partner in Hind Patel & Co. is virtually selling his interest in the machinery to the firm at a profit of Rs. 4,00,000 and, as such, the said amount of Rs. 4,00,000 should be included in the total income of the assessee as his profit. The purchaser and the seller are different persons, the purchaser being the firm and one of the sellers being the

assessee-company.

(b) The transaction should be looked at from a commercial point of view. The assessee had to show in his books of account that the value of the machinery was originally Rs. 2,06,745 and the value of the same machinery was put in the firm's account at an appreciated value of Rs. 6,06,373. Thus, there is a clear transfer of the partner's asset to the firm for a higher value of Rs. 6,06,373. The machinery was assessed at a higher value because the assessee-company was convinced that that value was the correct value of the machinery in the market.

(c) The transfer or sale of the machinery at a higher value or price took place between two distinct personalities, namely, the assessee-company and the partnership firm, and, as such, the Tribunal wrongly held that no element of transfer of sale could be involved in the transactions between the same parties.

4. Mr. A. C. Mitra, learned counsel for the assessee, has submitted before us that there was no question of any sale or transfer between the assessee-company and the partnership firm, inasmuch as the partnership firm was not a juristic person. Further, relying on a large number of decisions, he has wanted us to hold that there is no element of sale or transfer in the transaction between the parties. There was neither any element of profit nor any real income received by the assessee on which tax might be assessed.

5. Before we decide the merits of the case, various cases cited at the bar may now be discussed.

6. In Commissioner of Income Tax Vs. Kikabhai Premchand, ; the assessee, a dealer in silver and shares, withdrew some silver bars and shares from the business and settled them with a certain trust of which he was a managing trustee. In his books, the assessee credited the business with the cost price of the bars and shares so withdrawn. The Income Tax authorities held that the assessee had derived income from the stock-in-trade thus transferred and assessed him on a sum being the difference between the cost price of the silver bars and shares and their market value at the date of their withdrawal from the business. The Tribunal and the High Court upheld the action of the Income Tax authorities but the Supreme Court decided against the revenue. The Supreme Court, after examining the nature of the transaction, came to the conclusion that the act of withdrawal resulted in neither income nor profit nor gain either to himself or to his business nor was it a business transaction. Bose J., in this case at page 509, made the following observations :

"It is well recognised that in revenue cases regard must be had to the substance of the transaction rather than to its mere form. In the present case disregarding technicalities it is impossible to get away from the fact that the business is owned and run by the assessee himself. In such circumstances we are of opinion that it is wholly unreal and artificial to separate the business from its owner and treat them as if they were separate entities trading with each other and then by means of a fictional, sale introduce a fictional profit which in truth and in fact is

non-existent. Cut away the fiction and you reach the position that a man is supposed to be selling to himself and thereby making a profit out of himself which on the face of it is not only absurd but against all canons of mercantile and Income Tax law. And worse. He may keep it and not show a profit. He may sell it to another at a loss and cannot be taxed because he cannot be compelled to sell at a profit. But in this purely fictional sale to himself he is compelled to sell at a fictional profit when the market rises in order that he may be compelled to pay to Government a tax which is anything but fictional."

7. In *Commissioner of Income Tax Excess Profits Tax, Bombay City Vs. Homi Mehta*, . , where the assessee and his sons formed a private limited company and transferred to (that company shares in several joint stock companies which the assessee had held jointly with his son for Rs. 40,97,000, which was the market value of the shares at that time. It was found that these shares originally did cost to the assessee only Rs. 30,45,017. The Income Tax authorities levied Income Tax on the difference between the market value and the cost price of the shares on the ground that the assessee had made a profit. The Bombay High Court held that, though the assessee and his sons on the one hand and the private limited company on other were distinct entities in law, the real result of the formation of the company and the transfer of the shares to that company was only that instead of the shares being jointly held as individuals, they were held by these very persons as a limited company. The High Court came to the conclusion that the so-called sale of the shares to the company was not a business activity nor was it a sale but merely a procedure adopted for readjustment of their position as holder of the shares and, as such, decided against the revenue. Chagla C.J., at page 934, has made the following observations ;

"It is well established both in English courts and in our own courts that there can be no profit subject to tax when there is a sale by a vendor to himself. A vendor cannot make profit out of himself, and, therefore, the transaction relied upon by the department is not a transaction which was capable of resulting in any profits. In the first place, it is not a sale it is merely a transfer of shares by Sir Homi Mehta to the limited company and in the second place, the transfer is solely for the purpose of bringing about a readjustment of their position as the holder of these shares. Instead of holding these shares and doing business in these shares as individuals with all the consequential liabilities, the readjustment is brought about by which Sir Homi Mehta holds these shares as a shareholder of the limited company along with his sons..... Only in name the assessee held a different script of shares from the script that he held before the transfer took place."

8. The next case to which our attention was drawn is *Rogers and Co. v. Commissioner of Income Tax*. [1955] 34 ITR 336 . In this case the partners of a firm formed themselves into a private limited company, the shares allotted to each of them in the company being substantially in the same proportion as the

shares they held in the firm. The assets of the firm having written down value of Rs. 3,81,848 were transferred to the company at the original cost of Rs. 4,85,354. The Income Tax Officer held that the amount which is the difference between the original cost and the written down value was liable to Income Tax under the second proviso to Section 10(2)(vii) of the Income-tax Act. The Bombay High Court held that the transfer of the assets of the firm to the company was substantially and really a readjustment made by the members to enable them to carry on their business as a company rather than as a firm and no profit in the commercial sense was made thereby ; accordingly, they came to the conclusion that the transfer of the assets of the firm to the company was not a sale and the assessee could not be taxed.

9. The principles laid down in Kikabhai's case were distinguished and explained by the Supreme Court in Commissioner of Income Tax, Bombay City I, Bombay Vs. Bai Shirinbai K. Kooka, . In this case the assessee, who held by way of investment several shares in companies, commenced a business in shares converting the shares into stock-in-trade of the business and subsequently sold these shares at a profit. A Bench of the Supreme Court of seven judges (A. K. Sarkar J., as he then was, dissenting) came to the conclusion that the assessee's assessable profits on the sale of the shares was the difference between the sale price of the shares and the market price of the shares prevailing on the date when the shares were converted into stock-in-trade of its business in shares, and not the difference between the sale price and the price at which the shares were originally purchased by the assessee. S. K. Das J., in not applying the principles of Kikabhai's case, distinguished the facts of the case before them from Kikabhai's case, in the following way at page 92 :

"From what has been stated above it would at once appear that Kikabhai's case, was the converse of the present case. In Kikabhai's case, a part of the stock-in-trade was withdrawn from the business; there was no sale nor any actual profit. The ratio of the decision was simply this. Under the Income Tax Act the State has no power to tax a potential future advantage and all it can tax is income, profits and gains made in the relevant accounting year. In the case under our consideration the admitted position is that there has been a sale of the shares in pursuance of a trading or business activity and actual profits have resulted from the sale. The question in the present case is not whether the State has a power to tax potential future advantage, but the question is how should actual profits be computed when admittedly there has been a sale in the business sense and actual profits have resulted therefrom. We agree with the High Court that in this respect there is a vital difference between the problem presented by Kikabhai's case, and the problem in the present case. We further agree with the view expressed by the High Court that the ratio in Kikabhai's case, need not necessarily be extended to the very different problem presented in the present case, not only because the facts are different, but because there is an appreciable difference in principle. The difference lies in this : In one case there is no question of any business sale or actual profits and in the other admittedly

there are profits liable to tax, but the question is how the profits should be computed."

10. The next judgment of the Supreme Court to which our attention was drawn was Commissioner of Income Tax (Central), Calcutta Vs. Mugneeram Bangur and Co. (Land Department), This was an appeal by the revenue from the judgment delivered by the Income Tax Bench of the Calcutta High Court in COMMISSIONER OF Income Tax (CENTRAL), CALCUTTA Vs. MUGNEERAM BANGUR AND COMPANY., ., where the Calcutta High Court followed the principles decided in Kikabhai's case. In this case, the partnership firm which carried on the business of buying land, developing it and then selling it pursuant to an agreement, sold the business as a going concern with its goodwill and all stock-in-trade, etc., to a company promoted by the partners of the firm, the company undertaking to discharge all debts and liabilities of the firm in respect of deposits made by the intending purchasers. The consideration of Rs. 34,99,300 was paid by the allotment of shares of the face value of Rs. 34,99,300 to the partners or their nominees. The Income Tax Officer held that in the schedule to the agreement the value of the land was shown as Rs. 2,68,627-7-7 and goodwill fixed at Rs. 2,50,000. The Income Tax Officer held that a sum of Rs. 2,50,000 was actually charged by the vendor as a lump sum amount to profits as a sale of valuable stock-in-trade and not goodwill as alleged. The Appellate Assistant Commissioner on appeal held that the said sum of Rs. 2,50,000 was the value of the goodwill. The Tribunal, however, on appeal, held that the sale was the sale of a business as a going concern of the value of the stock-in-trade and therefore the profits arising out of sale was taxable income. The High Court in deciding the reference in favour of the assessee came to the conclusion that there was no profit in the transaction by which the entire stock-in-trade of the business of the firm was transferred to the limited liability company. The Supreme Court, after discussing Doughty's case [1927] A.C 327 . and COMMISSIONER OF Income Tax, KERALA Vs. WEST COAST CHEMICALS AND INDUSTRIES LTD. (IN LIQUIDATION), ., came to the conclusion that the sale was the sale of the whole concern and no part of the slump price is attributable to the cost of the land. In that case Sikri J. has stated It page 305 :

"As the vendors were transferring the concern to a company, constituted by the vendors themselves, no effort would ordinarily have been made to evaluate the land as on the date of sale. What was put in the schedule was the cost price, as it stood in the books of the vendors. Even if the sum of Rs. 2,50,000 attributed to the goodwill is added to the cost of land, it is nobody's case that this represented the market value of the land."

11. The last Supreme Court case, referred to on this point, was Associated Clothiers Ltd. Vs. Commissioner of Income Tax Calcutta, . This was an appeal from the Income Tax Bench of the Calcutta High Court in Commissioner of Income Tax, Calcutta Vs. Associated Clothiers Ltd., Calcutta, . The facts of the case may briefly be stated as follows : The appellant-company was registered in

the name of Phelps & Co. Ltd., on 30th September, 1939, to carry on the business of clothiers and tailors. On 21st March, 1952, by an order u/s 11(4) of the Companies Act, 1913, the name of Phelps & Co. Ltd., was altered to Associated Clothiers Ltd. On the same day another company was incorporated in the name of Phelps & Co. Ltd., and by a written agreement of the same date the appellant-company, i.e., the Associated Clothiers Ltd., agreed to transfer the assets and liabilities to the new company, viz., Phelps & Co. Ltd., in consideration of the allotment of some shares, the latter taking over the liabilities of the appellant-company. Under the terms of the agreement, the appellant-company purported to transfer seven items of property described in the schedules annexed to the deed. No deed of conveyance was executed. On 1st July, 1952, the new company took possession of the properties agreed to be sold. In the agreement the properties sold were allotted specific values and no attempt was made to prove that the value so allotted were not true. The consideration for a building transferred was in express of its original cost and the question was whether the difference between the original cost of the building and its written down value would be deemed profits under the second proviso to Section 10(2)(vii) of the Indian Income Tax Act, 1922. The Supreme Court discussed a large number of cases and, in deciding the appeal in favour of the revenue, came to the following conclusion :

"In the present case it is true that the entire assets of the appellant-company were sold to M/s. Phelps & Co. Ltd. There was no separate sale of different items, but the consideration of each item of property sold was expressly mentioned in the agreement of sale. The contention that the transaction of sale was a mere attempt to readjust the business position of the transferor was never raised before the Tribunal and does not arise out of the order of the Tribunal."

12. Thus, it is clear that in that case, the Supreme Court proceeded on the basis of the Tribunal's finding. The Tribunal there observed that the Associated Clothiers Ltd. were owners of a business having assets and liabilities, and they by sale of Phelps & Co. Ltd. got the entire ownership by way of shares and the same assets and liabilities remained in the hands of Phelps & Co. Ltd. Thus, not only was there a finding as to the sale but also the Tribunal found that consideration of each item of the property sold was specifically mentioned in the agreement of sale. The Supreme Court, however, did not express its final opinion on the question whether in taxing cases, it is open to the assessing authorities to ignore the corporate personality of a company and to hold that the interests of the shareholders in the shares of a company and on the business of the company is identical and transfers by the owners of a business to a company in which the shares were owned by the former owners of the business does not give rise to a sale in a commercial sense.

13. Mr. Pal strongly relied upon the House of Lords decision in *Sharkey (Inspector of Taxes) v. Wernher* [1956] A.C. 58 ; 29 ITR 962 where the taxpayer's wife carried on a stud farm, the profits of which were agreed to be chargeable to

Income Tax. She also trained horses and ran them at race meetings as a recreation, in respect of which no liability for tax arose. In 1948 she transferred five horses from the stud farm to her racing stables. In her firm's accounts she showed the cost of breeding of the horses as a debit and she claimed that the said figure should be debited in respect of the transfer for Income Tax purposes. The House of Lords came to the conclusion that the horses must be treated as having been disposed of by way of trade and the sum which should be regarded as having been received on the disposal of the horses must be a sum equivalent to their market value. This case has been discussed in Commissioner of Income Tax v. Bai Shirinbai K. Kooka. In our opinion, the facts of the case are distinguishable from the facts of the present case. The Supreme Court, after discussing the said case, made the following observations at page 95:

"It is worthy of note that the facts in Sharkey v. Wernher, were similar to the facts of Kikabhai's case. In both those cases what had happened was that a part of the stock-in-trade was withdrawn and the question was at what figure in the trading accounts the withdrawal should be accounted for. In Kikabhai's case, this court came to the conclusion that the withdrawal should be at the cost price. In Sharkey v. Wernher, the House of Lords held that the proper figure should be the market value which gave a fairer measure of assessable trading profit. It is significant that the House of Lords reached that conclusion not without dissent. If the facts of the case which we are now considering were similar to the facts of Kikabhai's case, it might have been necessary for us to re-examine the ratio of that decision. It is necessary to state here, however, that the decision of the House of Lords in Sharkey v. Wernher is not an authority which is binding on us. It is only an authority of persuasive value entitled to great respect. It may be noted that in that case the question of market value was gone into by the taxing authorities and they came to the conclusion that the market value of the horses was considerably in excess of the cost of breeding and, as such, the market value of the horses should be regarded as the amount having been received in the stud farm."

14. In our view, the taxability of a sum as income or profit would depend upon the real character or the substance of the transaction which yields such income or profit. In the instant case, we cannot agree with the contention that any transfer or sale has taken place between the assessee-company and the partnership firm. The transfer or sale is a bilateral transaction and there must be at least two persons--the transferor or the vendor on the one hand and the transferee or the purchaser on the other. In the facts of this case, the assessee-company's share of the machinery was valued originally at Rs. 2,06,745. Before the assets were transferred to the partnership firm, the assessee's share of the machinery was revalued at Rs. 6,06,372 and the said amount was entered in the assessee's books of account before the transfer. Whether this appreciated value is the market value or not, we do not know. The assessee might have increased the value for future advantage. The assessee-company formed a partnership in which the assessee-company had a half share. Whatever interest the assessee

had in its own share of the machinery was transferred at the said appreciated value of Rs. 6,06,372 of the assessee's share of the capital in the partnership firm. Thus, the assessee is really investing or depositing its own assets in a partnership firm which was constituted by it and in which it has substantial control. In doing the same, it has only appreciated the value of the machinery. Whether the appreciation of the shares has been done before the transfer or after the transfer, there is no question of any purchase or sale of machinery. Nor can it be said that there was any profit motive in it. A notional or fictional income might have been caused in the records of the company or in the records of the firm. But no real income was received by the assessee. The nature and the character of the transaction is such that it is impossible to believe that there is any question of profit having been received in the accounting year. As a result of the appreciation of the value of the machinery the assessee as a partner in the partnership firm might get a future advantage. But, as the Supreme Court has said in *Kikabhai's* case, tax cannot be imposed on the future advantage which might be available to the assessee. Further, there is no question of withdrawal of a part of the stock-in-trade, in the instant case, as it took place in *Sharkey v. Wernher*. In fact, in the latter case, reduction of stock-in-trade took place but the original business with its reduced stock-in-trade was carried on by the assessee. In the instant case the assessee has transferred the entire value of the machinery to the partnership firm with the whole object of increasing the capital of the partnership firm. The assessee has transferred its own property to his partnership account in the firm. The facts and circumstances in which the transaction took place repel the idea of a transfer for consideration or a sale. In the instant case also, the market value of the disposal machinery was not gone into at all.

15. The next point which repels the contention of the revenue is that: there is no question of any transfer or sale in the instant case because the firm is not a juristic person. The partnership has been defined in Section 4 of the Indian Partnership Act, 1932, which reads as follows:

"Partnership is the relation between persons who have agreed to-share the profits of a business carried on by all or any of them acting; for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm" and the name under which their business is carried on is called the firm name."

16. It appears from this definition that a firm cannot be called a separate entity. The same persons who are individually called partners are collectively known as the firm for the purpose of their business. The firm always, consists of partners and the partners always are parts of the firm. Procedurally and for limited purpose a firm has been separately described, but in no sense, can a firm be called a juristic entity like a limited company. The name of a firm is the business name of the partners and, thus, when a person in individual capacity transfers his assets to his own firm, it cannot be said that the partner is transferring his

assets to a distinct person. We agree with Mr. Pal that a firm may have a character distinct from a partner but such distinction is not because the firm and the partners are different entities. The distinction is for a limited purpose because a firm is only a descriptive name of the business of the partners. To illustrate, ordinarily, a firm comes to an end with the death of a partner, but there may be cases where a firm can continue although the old partners have died and the new partners have joined the firm. That contingency occurs where the terms of the partnership agreement provide that on the death of a partner the firm will not be dissolved. Juristically speaking, a person is one which is capable of rights and duties. In analysing the concept of "right", it appears that a "person" is a subject and object of "right". Such a "person" may be natural or legal or artificial. A natural person, like a human being, is a being to whom law attributes personality in accordance with the reality and truth. A legal and artificial person, however, is a persona real or imaginary to whom law attributes personality by way of fiction, when there is none in fact. Thus, natural person is a person in fact as well as in law, whereas a legal; or artificial person is a person in law but not in fact. A firm accordingly is neither a natural nor an artificial person. It is not natural, because a firm represents only a relationship or arrangement between persons who carry on business with a view to profit. It is not a living being. If a firm represents individual partners and as such, is called a natural person, there is a relationship of identity between partners and their firm. Nor can it be called a legal or artificial person because there is no general law by which its personality is recognized. It is suggested that because a firm carries on business in its firm name and because a firm can sue and be sued, under the Code of Civil Procedure, it has a distinct personality. Such personality can at best be a matter of procedural law. In substance, the firm name is only the business name of partners. It is allowed to sue and be sued as a matter of procedural law by way of convenience or expediency. It is not a corporate body with the right of perpetual succession nor its existence depends upon substantive law. The creation, continuation and extension of a firm is purely contractual and depends on the agreement between the partners. It is in that sense that Mr. D. N. Pritt in the latest edition of Pollock & Mulla's The sale . of Goods Act and The Partnership Act, 3rd edition, has made the following observations:

"A firm is currently regarded as something distinct from its members; they may have claims on the firm's property but it is not theirs ; it has separate accounts, and is their debtor and creditor. Quite possibly some person who is not a member of the firm may have authority to do certain things in its name which some or one of the partners have not. In short, the firm is treated very much as if it were a corporation ; it is an artificial or "moral" person for business purposes. ..."

17. Thus, a partnership firm in India, although for limited purposes, is an individual or person or an entity, a legal personality cannot be attributed to it. In this connection reference may be made to a judgment of the Supreme Court in Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , where S. R. Das C. J., after discussing the juristic character of a partnership firm,

held that a firm is not an entity or a person in law but merely a person fir individual and a firm name is the collective name of these individuals who constitute the firm. The Judicial Committee also has held in AIR 1948 100 (Privy Council) , that Indian law has not given legal personality to a firm apart from its partners. This view is also supported by another decision of the Supreme Court in Commissioner of Income Tax, West Bengal Vs. A.W. Figgies and Co. and Others, . James Mackintosh in his book on Roman Law in Modern Practice (Tagore Law Lectures, 1933) at page 126, has made the following observations :

"In Scotland and on the Continent generally the firm is recognised as a person distinct from the partner ; in England it is not and here English and Roman laws are in accord. The latter held the persons engaged in ordinary partnership (societies) or joint adventure are just so many individuals acting together under contract; the property they contribute or acquire is their joint property; every debt due to the firm belongs in rateable shares to the various partners, and they are individually liable for the debts owing by the firm."

18. Thus, it is obvious that unlike a company where there is perpetual succession a firm, although an entity for a limited purpose, cannot be considered as a juristic person. In the instant case, the assessee has got 50 per cent. share in the fund and the other partner, Patel Engineering Co., who also owned the remaining 50 per cent. share in the disposal machinery also transferred his share in the partnership capital. Thus, the assessee and Patel Engineering Co. have only transferred their respective interests in the disposal machinery to their own firm. The transfer, if at all, is a transfer to itself or to its own account. We are convinced that the nature of the transaction could at best be described as a readjustment of their assets in such a way that they can do their business in a different way. There is no, question of ownership being transferred from one distinct person to another nor was there any consideration received by one individual from the other. Thus, there is no question of the assessee making any profit or gain and therefore, the mere fact that the assessee transferred its interest to the assessee"s firm at an appreciated value does not make the assessee liable to pay tax on the difference between the original price and the appreciated price.

19. For the reasons stated, the question is answered in the affirmative and in favour of the assessee. The assessee is entitled to get the costs.

Banerjee, J.

20. I agree.