
(1980) 08 GAU CK 0004

In the Gauhati High Court

Case No : Estate Duty Reference No's. 1 and 2 of 1975

Controller of Estate Duty

APPELLANT

Vs

Kanta Devi Taneja and Laxmi Devi Taneja

RESPONDENT

Date of Decision : 11-08-1980

Acts Referred:

Estate Duty Act, 1953 — Section 2(15), 2(16), 5(1)

Citation : (1980) 19 CTR 160 : (1981) 132 ITR 437

Hon'ble Judges : D. Pathak, Acting C.J.; N. Ibotombi Singh, J

Bench : Division Bench

Advocate : G.K. Talukdar and D.K. Talukar, for the Appellant; S.K. Sen and M.C. Garodia, for the Respondent

Judgement

D. Pathak, Actg. C.J.

1. These two cases are referred u/s 64(1) of the E.D. Act, 1953 (hereinafter called "the Act") by the Income Tax Appellate Tribunal, Gauhati Bench (for short, "the Tribunal"). As in both the cases the following identical question of law has been referred for the opinion of this court, they are dealt with together. The question of law is ;

"Whether, on the facts and in the circumstances of the case and on a proper construction of Section 5 of the Estate Duty Act, 1953, the Tribunal was justified in holding that the share of the deceased in the value of the goodwill of the firm is not included in the principal value of the estate of the deceased and whether on that basis the Tribunal was justified in deleting Rs. 18,250 as added by the Assistant Controller of Estate Duty in the assessment ?"

2. The broad facts are that Ram Rang Taneja of Gauhati died in a car accident on August 8, 1971. At the time of his death, he held 50% share in the partnership of M/s. Taneja & Co., Machkhowa, Gauhati, which derived income from commission en sale of confectionery goods. This firm was constituted of two partners, namely, Sri Ram Rang Taneja, the deceased, and his brother, Naubat

Ram Taneja. The latter died on June 14, 1971.

3. After his death, his wife, Mst. Lakshmi Devi Taneja, joined the firm. At the time of the death of Ram Rang Taneja, there were two partners, namely, Mst. Laxmi Devi Taneja, widow of Naubat Ram Taneja, and the deceased, Ram Rang Taneja. Since the deceased's share in the said firm passed on his death u/s 5 of the Act, the EDO (Asst. CED) not only included the capital standing to the account of the deceased in his estate but also the valuation of the goodwill attributable to his share in the firm. The value of the entire goodwill of the firm was estimated at Rs. 36,500 and half share thereof at Rs. 18,250 was included in the estate.

4. In the first case, Smt. Kanta Devi Taneja is the accountable person and in the second case, Smt. Laxmi Devi Taneja is the accountable person. In both the cases, the accountable persons separately appealed to the Appellate Controller against the inclusion of the goodwill of the firm in the estate of the deceased. It was contended that no goodwill passed on the death of the deceased and, therefore, its value could not be included in the estate for the purposes of estate duty. This contention raised by the accountable persons was rejected by the Appellate Controller of Estate Duty following the principles laid down by the Madras High Court in the cases of R. Ranganayaki Ammal and Others Vs. The Controller of Estate Duty, Madras, and in S. Devaraj Vs. Commissioner of Wealth-tax, It was further held by the Appellate Controller that the valuation made by the Asst. Controller was in order.

5. The accountable persons preferred appeals to the Tribunal against the above orders of the Appellate Controller. In the grounds of appeal, the accountable persons challenged not only the inclusion of the goodwill in the estate of the deceased's estate in principle but also the valuation thereof. On behalf of the accountable persons the decision of the Punjab and Haryana High Court in Controller of Estate Duty Vs. Shri Ved Parkash Jain, was relied upon where it was held that it could not be said that on the death of a partner, any goodwill passed to his heirs and, therefore, its inclusion in the estate for the purposes of estate duty was not correct. On behalf of the department, the decision of the Privy Council in the case of Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Taxes [1954] 25 ITR 47 was relied upon and it was further submitted that the decision of the Punjab and Haryana High Court in Controller of Estate Duty Vs. Shri Ved Parkash Jain, had no application. On behalf of the department, the decision of the Delhi High Court in the case of The Commissioner of Wealth Tax, Delhi Vs. K.N. Khanna and Others, [1971]81ITR117(Delhi) was also referred to.

6. The Tribunal held that the principle laid down by the Privy Council in the case relied upon on behalf of the department had no application to the case in hand, inasmuch as Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Taxes [1954] 25 ITR 47 turned on the provisions of law which were different from those of the Indian Act. The Tribunal further held that there

was nothing in the decision in *R. Ranganayaki Ammal and Others Vs. The Controller of Estate Duty, Madras*, to support the contention of the appellant as in that case the deceased was a member of an HUF. So far as the decision, relied upon by the department, in *S. Devaraj Vs. Commissioner of Wealth-tax*, was concerned, the Tribunal expressed the opinion that the said decision did present some difficulty wherein it was held that the Tribunal was not right in holding that the value of the share of the goodwill was not includible in the estate of the deceased that passed on his death.

7. However, the Tribunal disposed of the cases of the accountable persons by paras. 8 and 9 of the order which read:

"8. There are thus two views before us, one laid down by the Madras High Court in the case of *S. Devaraj Vs. Commissioner of Wealth-tax*, and the other of the Punjab and Haryana High Court in the case of *Controller of Estate Duty Vs. Shri Ved Parkash Jain*, It is a well-known principle of law that if there can be two interpretations of a fiscal enactment or if any such interpretation is open to doubt, the construction most beneficial to the subject should be adopted. Following this well-known principle we hold in the present case also that the value of the goodwill attached to the deceased's share in the firm of *M/s. Taneja and Co., Gauhati*, could not be included in his estate for the purposes of estate duty.

9. The learned counsel for the assessee did not dispute before us the valuation of the goodwill. We, therefore, do not see any reason to interfere in the valuation made by the lower authorities. Since, however, we have excluded it from the estate of the deceased, this question becomes academic for the present."

8. The department being aggrieved has got the above question of law referred for the opinion of this court.

9. Mr. G.K. Talukdar, the learned standing counsel for the department, has submitted that the conclusion reached by the Tribunal in interpreting Section 5 of the Act, is not correct. It has been contended on behalf of the department that on the death of one of the partners of a partnership firm constituted of two partners, the goodwill passes to the estate of the deceased partner and thus such goodwill is dutiable in the hands of the accountable persons.

10. On the other hand, Mr. S.K. Sen, the learned counsel for the accountable persons, has submitted that Section 5 of the Act has no application on the facts of the case and the goodwill in the firm does not pass to the estate of the deceased partners. Hence, the accountable persons are not liable to be charged to duty in regard to any portion of the goodwill of the firm.

11. We may set out the relevant portion of Section 5 of the Act, which reads, as under :

"5. (1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the

principal value ascertained as hereinafter provided of all property, settled, or not settled, including agricultural land situate in the territories which immediately before the 1st November, 1956, were comprised in the States specified in the First Schedule to this Act and in the Union Territories of Dadra and Nagar Haveli, Goa Daman and Diu and Pondicherry which passes on the death of such person, a duty called " estate duty " at the rates fixed in accordance with Section 35."

12. Property is defined in Section 2(15) of the Act as under ;

"2. (15) "Property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method.

Explanation 1.--The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition, the expression "property" shall include the debt or right created.

Explanation 2.--The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression "property" shall include the benefit conferred by the extinguishment of the debt or right."

13. In Clause (16) of Section 2, "property passing on the death" is defined as under :-

"2. (16) "Property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and "on the death" includes "at a period ascertainable only by reference to the death".

14. On a perusal of the above sections, we find that u/s 5 of the Act, estate duty is payable on the principal value of all property, settled or not settled, which passes on the death of a person dying after the commencement of the Act. Section 5 is the charging section in the Act.

15. It is seen that an inclusive definition of property is given in Section 2(15) of the Act. The word includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale. It also includes any property converted from one species into another by any method. There are two Explanations appended to Section 2(15) under which the word "property" is given an artificial definition so as to comprise certain debts, rights or benefits relating to certain dispositions or transactions. It must be noted that though an item may well be of such a nature as falls within the definition of the term "property" as appearing in Section

2(15), that fact by itself would not be sufficient to give rise to a charge for duty. It must further be shown that such property passed or was deemed to pass under one or more of the relevant charging sections.

16. The interest of a partner in a partnership firm is property within Section 2(15) and such interest extends to his share in all partnership assets including goodwill.

17. u/s 5 estate duty is payable on all property which passes on the death of a person. The word "passes", appearing in the section, means "changes hands" 1 (see the Supreme Court case of Controller of Estate Duty, Gujarat Vs. Hussainbhai Mohamedbhai Badri, The simplest case of the passing of property on death is the one in which, on the death of a person, his estate devolves on his heirs. The principle underlying the above proposition that in order to constitute a passing the change of hands must relate to the same property followed from the fundamental principle of estate duty that for there to be a passing (of property) the beneficial interest in the property in question must change hands on the death. We have noticed above Section 2(16) of the Act under which "property passing on the death" is defined to include property passing in the following circumstances :

(1) Either immediately on the death or after any interval.

(2) Either certainly or contingently.

(3) Either originally or by way of substitutive limitation.

(4) Not only actually on the death but also passing at a period ascertainable only by reference to death.

18. The principle which constitutes a passing of property is not a mere change of source or title but a change of beneficial possession or enjoyment as can be found from the judicial pronouncements of various courts. The Supreme Court in Controller of Estate Duty, Gujarat Vs. Hussainbhai Mohamedbhai Badri, observed (p. 154) :

"In our opinion, what is relevant in determining the scope of the expression "property passing on the death of the deceased" is the change in the beneficial interest and not title."

19. In Baidyanath Banerjee v. Asst. CED [1965] 55 ITR 31 , the court made it clear that the Act does not speak of devolution of title from one person to another. What it refers to is the property which goes from one hand to another. The above principle have been very succinctly explained in Mahendra Rambhai Patel Vs. Controller of Estate Duty, Gujarat State, . There, Bhagwati J. (as he then was), of the Gujarat High Court, observed (p. 17):

"In order to arrive at a correct decision on the question as to when property passes, we must focus our attention on a "comparison between the persons beneficially interested in the fund the moment before the death, and the persons

so interested the moment after the death". If after such comparison it appears that the beneficial possession or enjoyment of the property or a definable part thereof is in substance and effect unaffected by the death, the property or that part of it cannot be said to have passed on death even if, as a matter of terminology, one set of limitations has ceased to have effect and another has become operative or the beneficiary was entitled to income only before death and has become entitled to capital thereafter. What attracts the charge of estate duty is not mere change of source or title but change of beneficial possession or enjoyment. If the same person remains in beneficial possession or enjoyment of the property both before and after death without interruption, there is no passing of property even if there is change of source or title."

20. This decision of the Gujarat High Court was affirmed on appeal to the Supreme Court", the judgment whereof is Mahendra Rambhai Patel Vs. Controller of Estate Duty, Gujarat,

21. Before we proceed to discuss the contentions relied on by the learned counsel at the Bar, we may first of all see what is a goodwill ? Goodwill is one of those terms which is better understood than comprehensively and clearly described. Broadly speaking, it is the magnetic quality of a particular trade or business which attracts customers to it as a matter of course. This quality springs from and is developed by various contributing factors that earn a reputation for honest dealing, quality and standard. Goodwill is founded on the belief and faith of the customer. It is commonly built up in relation to a particular type of manufacture or production of articles identified by a trade mark which becomes widely known to the public and by which the customers take it for granted that it represents what they wish for. No trade mark gains reputation overnight. Naturally, the standing of the business is necessarily one of the contributing factors. The personalities who are engaged in the business, the location in which it is carried on and the like are other features which go into the goodwill. Where a business involves no distinguishable features and deals in standard articles manufactured by someone else which one can get from anywhere, not merely from a particular dealer, there is hardly any possibility of there being a goodwill attached to such business : [See Seethalakshmi Ammal Vs. Controller of Estate Duty, Madras,

22. Lord Eldon L.C. observed in Crutwell v. Lye [1810] 17 Ves. 335, that goodwill is "nothing more than the probability that the old customers will resort to the old place". In IRC v. Mutter & Co.'s Margarine Ltd. [1901] AC 217, Lord Macnaghten made the following observations :

"What is goodwill ? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old established business from a new business at its first start.....if there is one attribute common to all cases of goodwill it is the attribute of locality. For goodwill has no independent existence. It cannot subsist

by itself. It must be attached to a business. Destroy the business, and the goodwill perishes with it, though elements remain which may perhaps be gathered up and be revived again."

23. Therefore, the goodwill of a business is a composite thing referable in part to its locality, in part to the way in which it is conducted and the personality of those who conduct it, and in part to the likelihood of competition, many customers being no doubt actuated by mixed motives in conferring their custom.

24. In *Khushal Khemgar Shah and Others Vs. Khorshed Banu Dadiba Boatwalla and Another*, , the Supreme Court has observed thus (p. 1149) :

"The goodwill of a business is however an intangible asset being the whole advantage of the reputation and connections formed with the customers together with the circumstances which make the connection durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years because of its reputation, location and other features."

25. It is not disputed that the goodwill is a part of the asset of the firm in view of the legal position contained in the Act as well as the Indian Partnership Act.

26. In *Perpetual Executors and Trustees Association v. Commr. of Taxes* [1954] 25 ITR 47 , the question of law that came up for consideration was whether the value of goodwill could be included in the computation of the deceased partner's share when the partnership deed specifically prohibited any addition on account of goodwill in computing the value of the property on the death of a partner. The partnership deed contained a provision whereby on the death of a partner the partnership continued between the survivors, and options were given to purchase the capital of the deceased partner at a price to be computed according to a formula, but it was expressly provided that in computing the purchase price nothing was to be added or taken into account for goodwill. It was held by the Privy Council that the deceased partner's interest in goodwill must pass with his interest in the other assets to his legal personal representatives which was a part of his estate within Sub-section (3) of Section 8 of the Estate Duty Assessment Act, 1941-42. This decision did not appeal to the Tribunal on the ground that the above decision was rendered with reference to the provision of the Australian Act. The Tribunal has observed that Section 5 of the Act merely says that in the case of every person dying after the commencement of the Act, there shall be levied and paid upon the principal value ascertained of all property which passes on the death of such person, a duty called "estate duty" at the rate fixed in accordance with Section 35; It is true that on a perusal of Section 5 of the Act it is seen that this section charged to estate duty only that property which passes on the death of a person. In the Australian Act considered by the Privy Council reference was to- the estate of a deceased person comprising of his personal property wherever situate, if the deceased was at the time of his death domiciled in Australia. On a consideration of the provisions in the Australian and the Indian

Acts, the Tribunal held that the two provisions were different and, therefore, the principle laid down therein was of no assistance to the department. For its conclusion, the Tribunal mainly relied on the decision in *Controller of Estate Duty Vs. Shri Ved Parkash Jain*, of the Punjab & Haryana High Court wherein it was held that it could not be said that on the death of a partner any goodwill passed to his heirs and, therefore, its inclusion in the estate for the purpose of estate duty was not correct.

27. Now, let us consider the decision of the Madras High Court in the case of *S. Devaraj Vs. Commissioner of Wealth-tax*, . That case turned on the following facts ! Narayanaswami Naidu died on December 31, 1958. At the time of his death, he was a partner in the firm of M/s. T.R. Narayanaswami Naidu and Co., having a 3/16ths share in the profits and losses of the said firm. That firm was the managing agent of one Coimbatore Pioneer Mills Ltd. In the estate duty return filed by the accountable person although the share capital and the share of profit and interest of the deceased in the managing agency firm was included, the return did not include the value of the share of the deceased in the goodwill of the said managing agency firm. The Assistant Controller held that the managing agency firm did possess goodwill and on the death of the deceased the accountable persons were entitled to 3/16ths share in the goodwill of the business of the firm and as such a sum of Rs. 66,000, being the value of the 3/16ths share, had to be included in the estate of the deceased, and thus the claim of the accountable person that on the death of the deceased there was no passing of interest in the goodwill on the death of the deceased was negated by the Assistant Controller of Estate Duty.

28. This order was confirmed by the Appellate Controller. On further appeal to the Tribunal, it was held that goodwill could not be associated with the business of the managing agency firm because the managing agency is governed by the terms of the agreement between the managing agency firm and the company and the right of the managing agency was more personal and could not pass on to a successor. The Tribunal also held that no share in the goodwill of the business passed to the accountable person on the death of the deceased and that in any event no amount was actually paid to the accountable persons by way of the deceased's share in the goodwill of the business. The High Court of Madras did not agree with the observation of the Tribunal that a managing agency business could not have any goodwill. It also held that the deceased's share in the goodwill could be included in the estate of the deceased as the property passing on the death. The court also did not agree with the view of the Tribunal that as no share in the goodwill of the business was actually paid to the accountable persons towards the deceased's share, in the goodwill, it was not possible to say that any share in the goodwill passed on the death of the deceased and that Section 53 of the Act could not be invoked in the case. The court stated that the question was not whether the accountable persons had the benefit of the deceased's 3/16ths share in the goodwill but the question was whether that share legally passed on to or vested in the accountable persons on

the death of the deceased. The court relied on the decision of the Supreme Court in Khushal Khemgar Shah and Others Vs. Khorshed Banu Dadiba Boatwalla and Another, Finally, the court held that the Tribunal was not right in holding that the value of the share of the goodwill was not includible in the estate of the deceased that passed on his death.

29. The fact that the legal representatives of the deceased may not have received or may not have been entitled to receive any amount representing the share of the deceased in the goodwill will not prevent the estate duty from being levied on the share, which the deceased was entitled to, in the goodwill of the firm and which passed on his death.

30. In Khushal Khemgar Shah and Others Vs. Khorshed Banu Dadiba Boatwalla and Another, , the Supreme Court has observed that Section 55 of the Partnership Act does not provide that goodwill may be taken into account only when there is a general dissolution of the firm and not when the representative of a deceased partner claims his share in the firm which by express stipulation is to continue notwithstanding the death of a partner.

31. There the court was ascertaining the rights of the parties in relation to goodwill with reference to the partnership deed which contained the following clause :

"This partnership shall not be dissolved or determined by the death of any of the parties hereto but the same shall be continued as between the surviving partners on the same terms and conditions but with such shares as shall then be determined."

32. Based on the said clause the surviving partners had contended that the goodwill being merely a right to the name, place of business and the reputation of the firm, the share of the deceased partner in the goodwill of the firm devolve only on the surviving partners and not upon the legal representatives of the deceased partner. This contention was rejected by the Supreme Court with the following observation (p. 1149):

"The goodwill of a business is however an intangible asset being the whole advantage of the reputation and connections formed with the customers together with the circumstances which make the connection durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years because of its reputation, location and other features. An agreement between the partners that the name, the place of business and the reputation of the firm are to be utilised by the surviving partners will not necessarily warrant an inference that it was intended that the heirs of the deceased partner will not be entitled to a share in the goodwill."

33. The contention on behalf of the accountable persons that in interpreting the deed of partnership, business whereof it was stipulated, "shall be continued by the surviving partners after the death of a partner, the court will not award to the

legal representatives of the deceased partner a share in the goodwill in the absence of an express stipulation to the contrary" was negated by their Lordships.

34. The court has held that 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 other assets.

35. In support of his contention, that there is no passing of the goodwill u/s 5 of the Act, Mr. Sen heavily relies on the decision of the Division Bench of the Gujarat High Court, *Mrudula Nareshchandra Vs. Controller Estate of Duty*, That decision of the Gujarat High Court turned on the consideration of Clause 10 of the deed of partnership, which was in the following words I

"10. 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."

36. The Gujarat High Court considered the case before it and, thereafter, having set out the relevant statutory provisions, proceeded to consider whether the share of interest which the deceased had in the goodwill of the firm either passed u/s 5 or could be deemed to have passed u/s 7 of the Act in the following words (p. 307) :

"We shall first take up for our consideration the question whether Section 5 applies to the facts of the case. As already noted above, a mere event of passing of property from one hand to the other is sufficient to attract the provisions of Section 5. The use of the word "passes" signifies the movement of the property from one hand to the other by some legally recognised method of devolution. This passage or the movement of the property from one hand to the other should be the result of death of the person concerned. Therefore, in the case of a person, whose right or interest in the property ceases or comes to an end on his death, and somebody acquires fresh interest in that property in his own right, can it be said that the property has "passed" from the hands of the deceased to the hands of the other person, who acquires it on his death ? In our opinion, the answer to his question must necessarily be in the negative, because the interest or the right, which has ceased to exist would obviously be incapable of "passing" or of having any "movement"." (underscoring is ours)

37. It was contended before that court that there was passing of the share of the deceased in the goodwill u/s 5 of the Act, which was negated by the Division Bench with the following observations (p. 311) :

"We have already shown above that the word "passes" involves the concept of mobility and change of hands resulting from the continuity of the identity of

rights in the property. But, if the rights of the deceased cease to exist on the happening of a particular event giving rise to fresh rights in favour of those who do not derive their interest as the representatives of the deceased, it cannot be said that the property "passed" within the meaning of Section 5, In the instant case, what has happened is that, by virtue of Clause (10), the interest of the deceased in the firm's goodwill ceased without being inherited by his heirs. The right, therefore, lost its continuity, identity and mobility. We, therefore, reject even this contention of Shri Kaji."

38. The court then considered whether this was the case of deemed passing contemplated by Section 7. It observed (p. 312) :

"In order that Section 7 may apply to the facts of the given case, it should be shown that there is a cesser of interest resulting in some form of benefit. In our opinion, both these conditions, namely, (1) the cesser of interest, and (2) accrual or arising of benefit as a result of the said cesser, are satisfied in this case."

39. When these two requirements were considered with reference to the facts of the case, the court came to the conclusion that the interest of the deceased in the assets became extinguished on his death by virtue of Clause 10 of the partnership agreement. In other words, there was a cesser of his interest within the meaning of Section 7. It also found that there was an augmentation or enhancement in the interest in the goodwill of the remaining partners and this augmentation was the result of the cesser of the interest of the deceased on his death and hence both the conditions of Section 7 were satisfied.

40. The aforesaid decision of the Gujarat High Court was distinguished by the Bombay High Court in *Urmila Vs. Controller of Estate Duty, Bombay*, That was a case where the deceased was a partner in a firm till his death, and the question was whether the share of the deceased in the goodwill of the firm passed on the death of the deceased u/s 5 of the Act, or whether there was only a cesser of interest u/s 7.

41. Clause 13 of the partnership deed of the firm provided, inter alia, that "the share of the partner dying.....shall accrue to the surviving partners.....in proportion to their respective shares subject only to payment to the legal representatives of the deceased partner.....his share and interest at death.....as ascertained by a general account to be made as on the date of death with all proper valuation but without valuation or allowance or payment for goodwill. In the case of death.....the surviving partners.....shall be entitled to the goodwill of the partnership business without making any payment or compensation to the legal representatives of the deceased partner in respect of goodwill and the intention is that the goodwill shall accrue to and belong to the surviving.....partners without any valuation of or allowance for goodwill". On these facts, the Tribunal held that the share of the deceased in the goodwill passed on his death u/s 5. On a reference, it was contended for the accountable person that this was a case of deemed passing of property as contemplated by

Section 7, as, on the death of the deceased his interest in the goodwill came to an end and to the extent of the cesser of his interest there was an enhancement in the shares of the goodwill of the continuing partners. Rejecting the above contention, the High Court held that Clause 13 of the deed of partnership contemplated devolution of the share of the deceased in all the assets including the goodwill on the continuing partners. The share of the deceased in the goodwill of the firm was includible in the principal value of his estate u/s 5 of the Act. The court considered a decision of the Madras High Court in *Controller of Estate Duty Vs. Ibrahim Gulam Hussain Currimbhoy*, in which a Division Bench of the Madras High Court had disagreed with the reasoning of the Division Bench of the Gujarat High Court in *Mrudula Nareshchandra Vs. Controller Estate of Duty*, The clause in the deed of partnership which was being considered by the Madras High Court was Clause (14) which reads as follows (p. 322) :

"The retiring partner or the legal representatives of the deceased partner shall not be entitled to the goodwill of the business as the surviving or continuing partners alone shall be entitled to the goodwill and to continue to carry on the business under the same name and style."

42. On a construction of the above clause, the Madras High Court held that the interest in the goodwill which the deceased possessed, which could be disposed of along with the entire interest in the firm at the time of his death, came to devolve on the surviving partners and their share or interest in the goodwill stood augmented to the extent of the share of the deceased as per Clause 14 of the partnership deed, and this would straightaway attract Section 5 of the Act.

43. In *Urmila Vs. Controller of Estate Duty, Bombay*, the Bombay High Court considering Clause 13 of the deed of partnership held that there was no cesser of the right of the share of the deceased in the goodwill of the firm on his death. A contention raised on behalf of the accountable person, that the cesser must be presumed because the continuing persons were absolved of the obligation to pay for the share of the deceased in the goodwill, was rejected by the court. It was further observed (p. 966) :

"In any case, it is impossible to hold on the provisions of Clause 13 of the deed of partnership that there was any cesser, and hold further the only provision which could be attracted was Section 7. In our view Clause 13 clearly contemplates devolution of the share of the deceased in all the assets including the goodwill on the continuing partners but providing that there is to be payment to the legal representatives for the share in the assets but excluding goodwill. This would clearly bring the case within the meaning of Section 5 and the points which appealed to the Gujarat High Court in *Mrudula Nareshchandra Vs. Controller Estate of Duty*, do not arise for our consideration in the matter before us."

44. It may further be pointed out that the correctness of the decision in *Smt. Mrudula* was also doubted by the Full Bench of the State Vs. *Prem Nath*, It may

be mentioned that the said Full Bench became necessary in view of the earlier Division Bench decision of the same High Court, which held in *Controller of Estate Duty Vs. Shri Ved Parkash Jain*, (which was relied upon by the Tribunal in the cases before us), that goodwill had no value in a going concern of a partnership and its quantification is not possible and as such the value of the so-called share held by the deceased person in the goodwill of a firm could not be legally included in the principal value of the estate of the deceased, It was this view which was required to be reconsidered by the aforesaid Full Bench, which observed that *Controller of Estate Duty Vs. Shri Ved Parkash Jain*, was wrongly decided.

45. Another argument advanced at the Bar on behalf of the accountable persons is that the goodwill cannot be singled out for the purpose of levying the estate duty unless all other interests in the firm of the deceased are taken into account. In support of the above submission, the learned counsel relies on *Commissioner of Gift-Tax, Kerala Vs. P. Gheevarghese, Travancore Timbers and Products*, We do not think that the aforesaid decision has got any application in the present case. That decision turned on the facts where the taxing authority sought to levy gift-tax on the goodwill of the assessee's business. The Supreme Court held that no gift-tax was payable on the goodwill of the assessee's business. There what the department did and persisted in was to pick out only one of the assets of the assessee's proprietary business, viz., its goodwill, and regard that as the subject of the gift. Their Lordships of the Supreme Court held that this approach was wholly incomprehensible. But here in the present cases before us the department has to take into account not only the goodwill but also the interest in the capital of the firm of the deceased persons for the purpose of levying the duty in the hands of the accountable persons. Therefore, the aforesaid case sought to be relied on by the learned counsel for the accountable persons has no bearing at all in the present cases.

46. In those two reference cases before us, the partnership was constituted with two brothers. Therefore, on the death of one of the partners, the partnership itself comes to an end despite any term in the articles of agreement of partnership that even on the death of a partner, the partnership shall continue. In this connection, we may refer to a decision of the Supreme Court in *Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Seth Govindram Sugar Mills*, where their Lordships have held that where a firm consists of two partners, death of one of the partners will dissolve the firm despite an agreement to the contrary. In that case, their Lordships have noticed a chain of decisions which show a cleavage of judicial opinions on the question. On a consideration of these decisions, it has been noted as under (p. 515):

"The decision of the Allahabad High Court in *Lala Ram Kumar Vs. Kishori Lal and Others*, is not of any practical help to decide the present case. There, from the conduct of the surviving partner and the heirs of the deceased partner after the death of the said partner, the contract between the original partners that the

partnership should not be dissolved on the death of any of them was inferred. Though the partnership there was only between two partners, the question of the inapplicability of Section 42(c) of the Partnership Act to such a partnership was neither raised nor decided therein. The same criticism applies to the decision of the Nagpur High Court in *Chainkaran Sidhakaran Oswal v. Radhakisan Vishwanath Dixit* AIR 1956 Nag 46 . This question was directly raised and clearly answered by a Division Bench of the Allahabad High Court in *Mt. Sughra and Others Vs. Babu, ,* against the legality of such a term of a contract of partnership consisting of only two partners. Agarwala J. neatly stated the principle thus :

"In the case of a partnership consisting of only two partners, no partnership remains on the death of one of them and, therefore, it is a contradiction in terms to say that there can be a contract between two partners to the effect that on the death of one of them the partnership will not be dissolved but will continue...Partnership is not a matter of status, it is a matter of contract. No heir can be said to become a partner with another person without his own consent express or implied.""

47. Thus, the above principle enunciated by Agarwala J. was approved by their Lordships of the Supreme Court.

48. In view of the above legal position the submission made by the learned counsel for the accountable persons that there was no dissolution of the firm is not at all tenable.

49. In *Controller of Estate Duty Vs. Annaraj Mehta and Deoraj Mehta, ,* a Division Bench of the Calcutta High Court has held that what passed on the death of a partner was his share in the firm, i.e. his interest in the entire unit of the firm, including goodwill. The fact that such interest might devolve not on the legal representatives but on a different group of category of persons or that from the goodwill the legal representative might be excluded, would not make any difference for the purpose or assessment to estate duty. It was settled law that the goodwill must be deemed to pass on the death of a partner, irrespective of the provisions of the deed as to its final devolution. The court relied on the decision in *Surajmall Gouti Vs. Controller of Estate Duty,*

50. On a survey of the legal position enunciated by various courts as discussed above, we are of the indubitable view that on the death of a partner, his interest in the entire unit of the firm, including goodwill, passes, irrespective of the provisions of the partnership deed as to its final devolution. We are in respectful agreement with the opinion expressed by the Madras High Court in the case of *S. Devaraj Vs. Commissioner of Wealth-tax,* and the Full Bench decision of the Punjab and Haryana High Court in *State Vs. Prem Nath,*

51. In these cases before us, the assessing authority has rightly held that the share of the partners in the firm passed on their death u/s 5 of the Act not only in respect of the capital Standing in the firm to the account of the deceased in their estates but also the valuation of the goodwill attributable to their share in

the firm.

52. On a consideration of the legal position and for the reasons stated above, on the final analysis, we are of the firm opinion that the question referred to us is to be answered in the negative and in favour of the revenue. The department will be entitled to costs. Counsel's fee Rs. 250.

N.I. Singh, J.

53. I agree.