
(1973) 06 GUJ CK 0012
In the Gujarat High Court
Case No : Estate Duty Reference No. 3 of 1970

Mrudula Nareshchandra

APPELLANT

Vs

Controller Estate of Duty

RESPONDENT

Date of Decision : 28-06-1973

Acts Referred:

Partnership Act, 1932 — Section 14, 15, 29

Citation : (1975) 100 ITR 297

Hon'ble Judges : T.U. Mehta, J;P.N. Bhagwati, J

Bench : Division Bench

Judgement

T.T. Mehta, J.—The question involved in this reference is whether in cases where it is specifically stipulated between the partners of a firm that on the death of any of the partner, the partnership shall not stand dissolved and that the heirs of the deceased partners shall have no right whatsoever to claim any share in the good will of the firm, the property of the deceased partner in the goodwill of the firm passes on his death under the provisions of the Estate Duty Act, 1953, or not. The said Act is hereinafter referred to as "the Act."

2. Short facts of the case are that one Nareshchandra Kantilal died on 13th September 1962. He was a partners in the firm of Messrs. G. Bhagwatiprasad & Co. having 28% share in the partnership. This partnership came into existence by virtue of the document, exhibit A, which is dated 6th June, 1957. On the death of the deceased, the petitioner of this reference, who is the accountable person, filed necessary return under the Act. The Assistant Controller of Estate Duty, while valuing the estate of the deceased, came to the conclusion that the share of the deceased in the goodwill of th firm in which he was a partners was liable to be included in the principal value of his property. This inclusion was resisted by the accountable person on the ground that the question of adding the value of the share of the deceased in the goodwill of the firm did not arise in view of the stipulations contained in clause (10) of the partnership deed. The clause (10) is in the following terms :

"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."

3. Relying upon this clause, the accountable person contended that since on the death of the deceased, his heirs had no right in the goodwill of the firm, the value of the said goodwill did not pass under the provisions of the Act and was, therefore, not liable to any estate duty.

4. The Assistant Controller, however, negated the above contention of the accountable person and valued the goodwill at Rs. 2,16,900. He worked out the share of the deceased from the value at Rs. 60,732. He also worked out the value of the interest which the deceased had in the partnership assets and added to it the above referred amount of Rs. 60,732 as the value of his share in the goodwill.

5. Being aggrieved by this, the accountable person preferred an appeal before the Appellate Controller of Estate Duty, Bombay, who substantially confirmed the order of the Assistant controller and made a slight reduction in the value of the goodwill.

6. The accountable person, therefore, preferred second appeal before the Appellate Tribunal where she raised two principal contentions, namely, (1) the deceased had no interest in the assets of the firm and hence his share in the goodwill did not pass at all, and (2) as, according to the partnership agreement, the partnership was to continue on the death of any of the partners and as it was further stipulated that the deceased would have no interest in the goodwill of the firm on his death, his share in the goodwill did not pass and was not liable to the charge of estate duty. The Tribunal rejected both these contentions. It is evident from the order of the Tribunal that on behalf of the accountable person, SHri Patel, her learned advocate, contended before the Tribunal that when partnership is a going concern there cannot be a separate valuation of the goodwill which always goes with the running business. So far as this contention is concerned, the Tribunal observed that there was no question of valuing the goodwill separately because what was to be valued was the totality of interest of a partner in partnership assets including the value of the goodwill. The Tribunal eventually decided the matter relying upon the decision given by the Privy Council in *Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Taxes* and held that in spite of clause (10) of the partnership agreement, the value of the goodwill to the extent of the share of the deceased passed on the death of Nareshchandra Kantilal and was liable to the charge of estate duty.

7. Being aggrieved by this decision of the Tribunal, the accountable person has preferred this reference. The Tribunal has referred the following three questions of law to this court :

"I. Whether, on the facts and in the circumstances of the case, the interest of the deceased in the firm of Messrs. G. Bhagwatiprasad & Co. of Ahmedabad was property within the meaning of the provisions of the Estate Duty Act ?

2. If the answer to the above question is in the affirmative, whether, the on the facts and in the circumstances of the case, having regard to the terms of the partnership deed dated June 6, 1957, the value of the interest of the deceased in the said partnership would include the goodwill of the partnership firm ?

3. Whether, on the facts and in the circumstances of the case, the value of the goodwill, if any, would be exempt under the provisions of section 26(1) of the Act ?"

8. Out of these three questions, the last one, which is question No. 3, was not pressed by Shri Patel appearing on behalf of the accountable person. The same, therefore, is not required to be considered in this reference.

9. The question whether an interest which a partner possession in the goodwill of a firm passes on his death is involved even in Estate Duty Reference No. 11/71 and, therefore, Shri Pathak, the learned advocate of the accountable person in that reference, was allowed to intervene and to canvass his views on this question during the course of hearing of this reference.

10. On the first question which is referred to us, it was contended by M/s. Patel and Pathak that in a partnership business which is a going concern, no partners can claim any share of interest in the partnership assets because, so long as the partnership is not dissolved, the only right which a partner has in the partnership is to claim his share in the profits of the firm. In this connection, Shri Pathak further contended that even if a partners has a share of interest in the partnership assets and even if that share of interest is considered a "property" within the meaning of the definition given to that terms in section 2(15) of the Act, his rights in the said property stand extinguished on his death. He further contended that, on account of the dissolution of the firm resulting from the death of a partner, new rights come into existence as provided by section 46 of the Partnership Act in favour of his legal representative. According to Shri Pathak, therefore, extinguishment of the deceased partners and emergence of new rights in favour of his legal representatives show that there is no passing of any property as contemplated by section 5 of the ACT. According to Shri Pathak, there is also no scope for the application of section 7 of the ACT to such cases because the interest which has ceased on the death of a partner cannot be identified with the interest which has accrued or arisen in favour of his legal representatives.

11. We find that these contentions of the learned advocate of the accountable persons suffer from a serious misapprehension as regards the incidence of partnership agreement.

12. Sections 14 and 15 of the Indian Partnership Act preclude any partners from claiming any property or any specific share in any property of the firm so long as the partnership subsists and the accounts thereof are not taken. This is because of the community of interest which all the partners have in the properties of the firm. But this does not mean that during the subsistence of the partnership no

partner has any proprietary interest in the assets of the firm. It cannot be gainsaid that every partner of the firm has a right to get his share of profits till the firm subsists; he has also a right to see that all the assets of the partnership are applied to and used for the purpose of partnership business. Section 29 of the Partnership Act shows that he can also transfer his interest in the firm either absolutely or partially. Further, he has also the right to get the value of his share in the net assets of the firm after the accounts are settled on dissolution. All these rights of a partner show that he has got a marketable interest in all the capital assets of the firm including the goodwill assets even during the subsistence of the partnership. This interest is property within the meaning of section 2(15) of the Act, which is in the following terms :

"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."

13. There are two Explanations attached to this definition of the word "property" but, for the purpose of the point under consideration, reference to these Explanations is not necessary. The above-quoted definition of the word "property" shows that "any interest" in a property, movable or immovable, is treated by the Act as property itself, and, therefore, it can be concluded without any hesitation that the a peculiar interest which a partner possesses in the assets of the partnership is "property" within the meaning of the Act. Here, it should be remembered that, apart from what is state above, partnership is not recognized as a legal entity and, therefore, the different types of the assets which are owned by the firm really vest in all the partners who constitute that firm. This vesting of assets, therefore, also shows that the interest of a partner in the partnership firms is property which can pass on the death of a partner and which can become liable to the payment of estate duty under the provisions of the Act.

14. In this connection, reliance was placed on behalf of the accountable person on the decision given by the Supreme Court in Addanki Narayanappa v. Bhaskara Krishnappa for the proposition that in a subsisting partnership its assets belong to the firm and the only right which a partner has in the partnership is the right to claim his share in the profits of the partnership business. After perusing this decision of the Supreme Court was have no doubt in our mind that the learned advocate of the accountable persons are misreading the said decision because there is nothing therein to warrant a view that, during the subsistence of a partnership, its individual persons have to interest in the assets of the firm. The relevant observations which the Supreme Court had made in this connection are found at page 1303 of the report and are as under :

"From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business

of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profit, if any, accruing to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to share in the assets of the firm which remain after satisfying the liabilities set out in clause (a) and sub-clause (i), (ii) and (iii) of clause (b) of section 48."

15. These observations recognise the proposition that since a partnership firm has no legal existence, the property of the firm vests in all partners and in that sense every partner has an interest in the partnership properties.

16. So far as Shri Pathak's contention that a partner's interest in the assets of the firm is extinguished on his death and new rights are created in favour of his legal representatives is concerned, we see absolutely no justification for the same. It is difficult to comprehend on the basis of what provisions of law it can be contended that the interest of a partner in the assets of the partnership firm is extinguished on his death. What really happens is that, unless there is any contract to the contrary, the said interest exists and only because it exists, it is inherited by his legal representatives. This contention of Shri Pathak is quite contrary to the observations made by the Supreme Court in *Khushal Khemgar Shah v. Mrs. Khorshed Banu*, wherein it is clearly stated that the Partnership Act does not operate to extinguish the right in the assets of the firm of a partner who dies when the partnership agreement provides that on death the partnership is to continue (vide paragraph 4 of the report).

17. In view of this, our answer to question No. 1 is in the affirmative. We, thereof, now proceed to consider question No. 2, which is the most important question to be considered in this reference. The question is whether, having regard to the clause (10) of the partnership agreement, which is already quoted by us above, the value of the interest of the deceased in the partnership would include the value of his share in the goodwill of the firm.

18. Before considering the merits of the points raised by the parties, with reference to this question, it would be proper to dispose of one contention raised on behalf of the accountable person by her learned advocate, Shri Patel. Shri Patel referred to the assessment order passed by the Assistant Controller and contended that it is evident therefrom as well as from the order of the Appellate Controller that the revenue authorities have treated the goodwill of the firm as a separate asset and has evaluated it accordingly. He pointed out that this cannot be done because no individual asset of the partnership can be separately valued at the time of finding out the value of the interest of the deceased in the firm's

properties so long as the partnership subsists, and this is more so in the case of a goodwill which always goes within the running business. We do not find any force in this contention of Shri Patel because we have observed that the value of the goodwill is assessed only for the purpose of ascertaining the total value of the interest of the deceased in all the assets of the partnership. This particular point becomes very much evident by reference to paragraph 7 of the order of the Tribunal, wherein the following observations are found :

"We are more concerned with valuing the interest of the deceased in the firm which is, as already held by us, to be property. No doubt, the Assistant Controller of Estate Duty took the interest of the deceased in the partnership firm as the capital outstanding to his credit immediately prior to his death and to this he has added his share of goodwill as mentioned above, but all that can be said is that this was only one method of valuing the interest of a deceased partners in the firm."

19. It is thus clear that the value of the goodwill, if any, is taken into account not as a separate or individual asset but for the purpose of considering the value of the totality of the interest which the deceased possessed in all the partnership assets. We, therefore, see no point in this contention of Shri Patel.

20. The main contention of Shri Patel with regard to the second questions was that, in view of clause (10) of the partnership agreement it cannot be said that the same of the deceased in the firm's goodwill has passed to anyone to his death. The contention was that, on account of the operations of clause (10) of the agreement, the moment the deceased died, his right to claim any share in the goodwill came to an end and, therefore, that right has not passed to his legal representatives. It was pointed out that after his death the whole of the goodwill remained with the surviving partners and continued to remain the asset of the subsisting firm. According to Shri Patel, therefore, there was no passing of property as contemplated by section 5 of the Act and, therefore, no duty can be levied on the value of the share of the deceased in the goodwill of the firm u/s 5. Shri Patel also contended that duty is not attracted even under the provisions of section 7 of the Act for three reasons, namely :

(1) looking to the nature of a partner's interest in partnership assets, it cannot be said that the interest of the deceased in the goodwill of the firm "ceased" on his death. In this connection, he pointed out that the deceased had no separate interest in any individual asset of the firm during the subsistence of the partnership;

(2) even if it is held that there was any cessation of interest within the meaning of section 7 of the Act, no benefit resulted from that cessation, because, by virtue of clause (10) of the partnership agreement, the legal representatives of the deceased were not entitled to any such benefit, and so far as the surviving partners are concerned, they had already an interest in the goodwill even before the death of the deceased;

(3) even if it is held that there was a cesser of interest and consequential accrual of benefit within the meaning of Section 7, the said section has no application, because the interest which the deceased had in the goodwill property was not capable of extending to the whole or part of the income of the goodwill property as the goodwill property, standing by itself, is not capable of yielding any income within the meaning of section 40 of the Act.

21. Here, the contention of Shri Patel was that the interest which section 7 contemplates is the only interest which can be measured in terms of section 40 of the Act, and, therefore, if it cannot be so measured, section 7 would have no application to the facts of the case.

22. As against this, the contention raised by Shri Kaji, on behalf of the revenue, was a two-fold one. According to him, what clause (10) of the partnership agreement says in effect and substance is that the death of the deceased, when notional accounts are taken to evaluate the interest of the deceased in partnership asset, the value of the goodwill should not be taken into account. This, according to Shri Kaji, is a matter between the heirs of the deceased on the one hand and the serving partners on the other, on the question regarding the method of taking accounts; but so far as the provisions of the Act are concerned, they have nothing to do with this method of accounting, because the property, which the deceased owned in the form of this interest in the goodwill, did pass on his death in favour of the legal representatives of the deceased.

23. Shri Kaji's alternative contention was that even if it is found that this property did not pass to the legal representative of the deceased on account of the operation of clause (10) of the agreement, it has surely passed on to the surviving partner, inasmuch as their share of interest in the goodwill is augmented to the extent of the share of the deceased.

24. Thus, according to Shri Kaji, the case is governed by section 5 of the Act.

25. Shri Kaji further contended that the case also falls within the purview of section 7 of the Act, because, if it is believed that the interest of the deceased in the goodwill of the partnership stood extinguished on his death on account of the operations of clause (10) of the agreement, there has been a cesser of interest as contemplated by section 6. He further pointed out that, as a result of this cesser, benefit accrued in favour of the surviving partners because their share of interest in the goodwill augmented on the death of the deceased as, on account of the operation of clause (10), the whole interest in the goodwill including the interest of the deceased therein, was to be owned by the surviving partners.

26. In reply to Shri Patel's contention that section 7 of the Act has no application inasmuch as the interest of the deceased in the goodwill of the firm is capable of being measured in terms of section 40 of the Act, Shri Kaji contended that valuation of the deceased's interest in the goodwill of the firm is possible to be made in accordance with the provisions of section 40 and, therefore, even section 7 of the Act has full application to the facts of the case.

27. Looking to these contentions, the real questions which arises to be considered is whether any property of the deceased in the goodwill of the firm can be said to have passed on his death either u/s 5 or u/s 7 of the Act in view of the stipulations contained in clause (10) of the partnership agreement.

28. Before considering this question it is necessary to have some clear idea about the basis of the levy of estate duty as envisaged by the Act and the relevant provisions. This basis is the passing of property from one hand to the other on the death of a person. Such a basis is provided to us by section 5, which is the charging section and which is very wide in its magnitude is as clear from its terms. Sub-section (1) of this section, which is relevant for our purpose, provides as under :

"(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 State specified in the First Schedule to this Act, which passes on the death of such person, a duty called "estate duty" at the rates fixed in accordance with section 35."

29. It is clear from these provisions that for the purpose of levy of duty under this section, it is not relevant to whom the property passes. According to this section, a mere event of "passing of property" is sufficient to attract the duty contemplated by the Act. The expression "property passing death" is explained in clause (16) of section 2 of the Act as under :

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

30. This definition of the expression is inclusive and not an exhaustive open and makes an attempt to comprehend within its compass every type of passing, be it either immediate, remote, certain or contingent. The definition, however, makes it clear that the passing of property should have reference to the death of the deceased.

31. It, therefore, follows that the point of time when death occurs is materiel for considering whether a particular property has passed. One test for considering whether the property in question has passed is to find out an answer to the question whether the property, which belonged to a person, happened to belong to a different person as a result of some death. If the answers is in the affirmative we can safely concluded that the property has "passed" within the meaning of section 5. Once this question gets an affirmative answers, it is immaterial to them by virtue of which disposition the property has passed.

32. While section 5 of the Act provides for the property which actually "passed"

on death, section 6 to 16 provided for the cases in which a property is deemed by law to pass on death. Out of these deeming provisions of the Act, we are concerned in this case with section 7, because the Appellate Tribunal has held that the case is covered by that section. If reference is made section 7, it will be found that it provides a deeming fiction to the cases wherein interest in property ceases on death and a consequential benefit arises or accrues. This will be clear from sub-section (1) of section 7, which is relevant for our purpose. The same is in the following terms :

"Subject to the provisions of this section, property in which the deceased, or any other person had an interest ceasing on the death of the deceased, shall be deemed to pass on the deceased's death to the extent to which a benefit accrued or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joined family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law."

33. From the provisions of this section, it is clear that before they can be invoked, the revenue should prove not only the cesser of the interest but also the accrual of a benefit resulting from such cesser. If, therefore, these two factors, namely, the cesser, and the resultant benefit, are proved, the property in question should be deemed to pass and the value of the benefit accruing or arising from the cesser should be assessed as per the provisions of section 40 of the Act.

34. As one of the contentions of Shri Patel, the learned advocate of the accountable person, was that the provisions of section 7 of the Act are attracted only in the benefit accruing or arising from the cesser is capable of valuation u/s 40 of the Act, it is also necessary to quote the provisions of section 40.

35. It says :

"The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall -

(a) if the interest extended to the whole income of the property, be the principal value of that property; and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended."

36. It is obvious that this section postulates that the interest which has ceased on death should be capable of extending either to the whole of the income of the property or to less than the whole thereof.

37. Having thus referred to the relevant provisions of the Act, we shall now proceed to consider whether the share of interest, which the deceased had in the goodwill of the firm, either passes u/s 5 or is deemed to have passed u/s 7 of the Act.

38. 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 words "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 this 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".

39. It is evident that the simplest case of passing of a property on death of a person is its acquisition by inheritance. In case of inheritance we find a continuity of rights, which devolve, according to the law of succession, only on those who can inherit the estate of the deceased. The heirs, who get the property, represent the deceased himself. There is, therefore, a continuity of interest resulting in passing of property from one hand to the other and such a passage of property obviously attracts a liability for the payment of duty as contemplated by section 5 of the Act. Therefore, if in the present case it is found that the heirs of the deceased inherited the interest in the goodwill of the firm along with his interest in the rest of the partnership assets, there would be no difficulty in holding that the provisions of section 5 of the Act are attracted.

40. In order to show that there is no passage of the property as discussed above, the petitioner has relied upon clause (10) of the partnership agreement and has contended that it was not possible for the heirs of the deceased to inherit his interest in the firm's goodwill. According to the petitioner, the legal effect of clause (10) of the agreement is to extinguish all the rights of the deceased in the firm's goodwill and, therefore, there was no scope for any inheritance of these extinguished rights. As against this the contention raised on behalf of the revenue is that the only reasonable construction which can be put to clause (10) of the agreement is that it was agreed between the parties that at the time of taking accounts with a view to ascertain the value of the share of the deceased in the partnership asset, the value of goodwill should not be taken into consideration. According to the revenue, therefore, this agreement about the method of taking accounts of the firm's assets has nothing to do with the passing of the whole interest of the deceased in all the properties of the firm, including its goodwill, to the heirs. In other words, the contention of the revenue is that on the death of the deceased his interest in the goodwill of the firm along with his interest in the rest of the asset of the firm did pass to his heirs, and the only effect which clause (10) of the partnership agreement had was to prevent the heirs of the deceased from taking into account the value of the firm's goodwill at the time of assessing the value of the firm's total assets for the

purpose of liquidating the share of the deceased. In support of this contention, Shri Kaji, who appeared on behalf of the revenue, heavily relied upon the Privy Council decisions in *Attorney-General v. Boden and Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Taxes*.

41. We find that the interpretation of clause (10) of the agreement canvassed by Shri Kaji is not acceptable. If a reference is made to this clause, it will be found that, according to it, the interest of a dying partner automatically comes to an end on his death. Thus, if an interest in a property comes to an end at a particular point of time, nothing survives which can be inherited by the heirs of that partner, after the interest has ceased to exist. Therefore, on a bare reading of clause (10), it is not possible to contend successfully that it leaves any scope for the passing of that interest from the hands of the deceased to the hands of his legal representatives.

42. Apart from the interpretation of this clause, we find that the two case on which SHri Kaji has put reliance have no application to the fact of the case under our consideration as there is a clear distinction between the facts of the present case and the facts of the cases relied upon. This will be evident from the discussion which follows.

43. In *Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Income Tax*, the partnership contained a provision whereby on the death of the partners 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 not account for goodwill. During the subsistence of this partnership, one partners named Ferederick Charles Henry Thomas died, and the surviving partners excised the option stipulated by the partnership agreement. The revenue claimed that the value of the share of the deceased partners in the goodwill was liable to estate duty under the Commonwealth Estate Duty Assessment Act, 1941- 42. The contention between the revenue and the assessee was on the question whether the case fell u/s 8(4)(c) or u/s 8(3)(c) of the Act. While considering this question the Privy Council also considered the effect of the partnership agreement which gave option to the surviving partners to purchase the capital of the deceased partners without taking into account the value of the goodwill. Their Lordships opined that the deceased partners interest in goodwill in such a case must pass with his interest in the other assets to his legal personal representatives and the fact that its value was not to be taken into account in calculating the price receivable by the estate for his interest in the partnership was irrelevant. Shri Kaji contended that the agreement about the goodwill in the Privy Council case being the same, as is found in clause (10) of the agreement in our case, we should interpret this clause (10) in the same manner in which their Lordships of the Privy Council have done in the case of *Perpetual Executors Association*. The Tribunal has taken the view which Shri Kaji wants us to take in this case, but on

clear scrutiny of the terms of the agreement with regard to the goodwill as found in the Privy Council's case, we find that the said agreement bears no resemblance with the agreement evidenced by clause (10) of the partnership deed in the case before us. It should be noticed that while in the instant case the interest of the deceased in the goodwill of the firm instantly ceases to exist on the death of the deceased, in the Perpetual Executors case, the said interest subsisted till the surviving co-partners preferred to exercise their option to purchase the capital of the deceased partners. There was, therefore, in the Privy Council case, a gap of time between the death of the deceased and exercise of option which resulted in the devolution of interest of the deceased, on his legal representatives. It is a well-known principle that title to an estate near remains in abeyance and, therefore, till the surviving partners in the Privy Council case actually exercised their option to purchase the capital of the deceased partner in accordance with the formula prescribed by the partnership agreement, the estate of the deceased partner, which included his interest in the goodwill, devolved on his heirs. If such a devolution is once found to have come into existence the fact that the legal representatives of the deceased partner were not entitled to take the value of the goodwill into account at the time when the surviving partners exercised their option under the agreement, would obviously be irrelevant, and, therefore, the observations of the Privy Council were completely justified with reference to the facts of that case.

44. The facts of even the other case, namely, Attorney General v. Boden were also different from the facts of the instant case. In that case the deceased carried on business in partnership with his sons under a deed which contained a provision that, on his death, his share was to accrue to his sons in equal shares subject only to their paying out to his legal representatives the value of his share at the date of his death ascertained by proper valuation without any consideration of or allowance for goodwill. The duty was claimed by the revenue on the death of the deceased u/s 2(1)(b) of the English Finance Act, 1894, on the footing that the deceased's interest in the goodwill, in which the deceased had an interest ceasing on his death, the assessee claimed that the share in the goodwill passed on the death of the deceased u/s 1 of the Finance Act 1894, and, therefore, should not fall within the ambit of section 2 of the said Act. On these facts Hamilton J. came to the conclusion that the case fell within section 2(1)(b) and not u/s 1 of the English Finance Act of 1894. The Privy Council referred to this case in the decisions given in Perpetual Executors and did not approve of the view that the case fell within section 2(1)(b) of the Finance Act of 1894. Now, in the instant case, we are not concerned with the question whether such a case would fall within section 2(1)(b) of section 1 of the Finance Act, 1894, in view of the fact that in the case before us, there is a special provision covering the rights of the partners as found in clause (10) of the agreement. But the fact remains that, on the facts of Boden's case, the interest which passed on the death of the deceased partner was found assessable to duty. Therefore, the question is whether the facts of that case are the same as the facts found in the case under

our consideration. On scrutiny of the terms of the partnership agreement in Boden's case, we find that even there the interest of the deceased directly passed to his legal representatives immediately after his death, because his share was to accrue to his partners, who were his sons, subject only to their paying out to his legal representative the value of his share, as on the date of his death ascertained by a proper valuation without taking into account any valuation of, or allowance for, goodwill. It, therefore, follows that his partners' sons were given a sort of option, because the sale of the deceased was to accrue to them only if they were willing to pay to the legal representative the valuation of the share of the deceased as ascertained according to the stipulations. If the partners of the deceased in Boden's case had preferred not to exercise this option by paying the legal representative of the deceased the value of the share of the deceased, the interest of the deceased would have surely passed to his legal representatives. These are obviously not the facts of the case under our consideration, because, as already noted above, in this case, the interest of the deceased is stipulated to come to an end the moment the deceased died. In our opinion, therefore, even Boden's case does not help the revenue in any manner.

45. Shri Kaji then wanted us to hold that, on account of the operation of clause (10) of the agreement, the share of the deceased in the goodwill of the firm passed on to the surviving partners u/s 5 of the Act. 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.

46. We thus find that this is not the case of the passing of the property directly from one hand to the other as contemplated by section 5. It is, therefore, now necessary to consider whether this is a case of deemed passing contemplated by section 7.

47. 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. Shri Patel, however, contended on behalf of the accountable person that looking to the nature of a partner's interest in the firm's property when the partnership is still subsisting, it cannot be said that the deceased had any interest in any one specific asset of the firm, much less in the goodwill which is an intangible asset. He pointed out to the community of interest which all the partners jointly possess

in all the assets of the partnership taken as a whole, and contended that no partners can say that he has any specific interest in any individual item of the assets of the firm. If that be, so, contended She Patel, the deceased cannot be said to be possessing any interest in the goodwill which could "cease" on his death. According to Shri Patel, the even the second requirement of accrual of arising of benefit is not fulfilled in this case, because the surviving partners already possessed interest in the goodwill even before the death of the deceased.

48. If these contentions of Shri Patel are accepted, section 7 would obviously have no application to the facts of the case. But we find that none of these contentions is acceptable.

49. It is undoubtedly true that a partner's interest in the assets of a subsisting partnership is of a very peculiar type. There cannot be any dispute about the proposition that, during the subsistence of a partnership, no partner can claim any specific share in any particular property of the firm as his own, and, as is held by the Supreme Court in *Commissioner of Gift-tax v. P. Gheevarghese, Travancore Timbers and Products*, it is wholly incomprehensible to pick out one of the assessee of a subsisting partnership and to treat it is a subject-matter of gift. A Full Bench of this court has held in *Velo Industries v. Collector, Bhavanagar*, that the determination of a partner's share in the net assets of the firm on his retirement does not amount to a transfer resulting in sale.

50. All that these decisions show is that a partner's interest in a running partnership is not specific and is not also confined to a specific item of partnership property. But that does not mean that a partners has no "interest" in an individual asset of the firm. His interest obviously extends to each and every item of the firm's assets. A partnership firm is not a legal person, and so, when we say that the properties of the firm belong to the partnership, what we actually means is that they vest in all the partners in proportion to their shares. As observed by the Supreme Court in *Narayanappa's case*.

"..... since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership."

51. Obviously, this interest extends to each item of the property of the firm. Since the goodwill of a firm is one of the firm's assets, the interest of the deceased extended even to it. As held by the Supreme Court in *K. K. Shah v. Khorshed Banu*, section 55 of the Partnership Act does not provide that goodwill of a partnership firm can be taken into account only when there is a general dissolution of the firm, and not when the representatives of a deceased partners claim his share in the firm, which by express stipulation is to continue notwithstanding the death of a partner. In this case, the Supreme Court has further held that in the case of a provisions expressly made or clearly implied, the normal rule that the share of a partners in the assets devolves upon his legal representatives will apply to the goodwill as well as to other assets of the firm. In

view of this legal position, the contention of Shri Patel that the deceased had not interest in the goodwill asset of the firm is found to be devoid of any force.

52. As already stated, the interest of the deceased in this assets became extinguished on his death by virtue of clause (10) of the partnerships agreement. In other words, there was cesser of his interest within the meaning of section 7 of the Act. This satisfies the first condition of section 7. Therefore, the next question is whether, as a result of his cesser, any benefit accrued or arose to the surviving partners.

53. On this question, one contention of Shri Patel was that, if any one item of partnership property cannot be separately treated for ascertaining the quantum of interest of one or some of the partners of the firm, it is not possible to conclude that any benefit accrued or arose to the surviving partners as a result of the cesser of interest of the deceased. He also pointed out that the surviving partners had already an interest in the goodwill of the firm and that interest survived even after the death of the deceased. This contention is not acceptable because on a closer scrutiny of the facts of the case we find that, for all practical purposes, clause (10) of the partnership agreement results in excluding the goodwill assets of the firm from being taken into account for the purpose of liquidating the share of the deceased in the net assets of the firm. On account of this exclusion only the remaining assets of the firm are burdened with the firm's liability with the results that its goodwill assets remained untouched and vested wholly in the surviving partners. Thus, the whole value of the goodwill voted in the surviving partners without the burden of the share of the deceased or of the firm's liability. Obviously, this augmented the value of the goodwill in the hands of the surviving partners, and this augmentation of value being the result of the cesser of the interest of the deceased on his death, it can be safely concluded that benefit has accrued or arisen within the meaning of section 7. Thus, Shri Patel's contention on this point also is not acceptable.

54. But this does not conclude the matter, because we find that Shri Patel is on stronger grounds in his contention that the "benefit" which is contemplated by section 7 should be the one which is capable of being valued in terms of section 40 of the Act. He relied upon certain decisions to show that, if the benefit accruing or arising on the cesser of an interest cannot be valued u/s 40, the said benefit is not the one which is contemplated by section 7. He pointed out to the fact that the property to which the interest of the deceased extended, namely, the goodwill, was, standing by itself, not capable of fetching any income, and, therefore, it is not possible to put the value of benefit accruing or arising from the cesser of the deceased's interest in it, in terms of section 40.

55. Shri Kaji fairly and rightly conceded on behalf of the revenue that though there is nothing in section 7 or section 40 or any other provisions of the Act to show that section 7 is controlled by section 40, there is a line of decisions taking such a view and hence it would be futile to count that section 40 operates in a different field having no effect on the provisions of section 7. Shri Kaji, however,

tried to show that the benefit arising to the surviving partners can be evaluated u/s 40 as co-extensive with the proportionate share of the deceased in the value of goodwill property on the footing that the goodwill property is also an income-yielding asset of the firm.

56. While considering these rival contentions, it would first be necessary to consider the type of legal impact which section 40 has on the provisions of section 7.

57. We have already quoted sections 7 and 40 in the foregoing portion of this judgment. While construing these sections, the basic principle which should be borne in mind is that the primary, and, rather, the main, object of every taxing statute is to recover a tax or a duty in cash on the happening of a particular taxable event. That event, so far as the Estate Duty Act is concerned, is the actual or deemed passing of property on the death of a person. Again, every taxing statute contemplates the levy of the tax duty on the valuation which is arrived at on the principle enunciated in the statute itself. It is, therefore, apparent that if valuation principles stated in the statute cannot be worked out with precision, it would follow, as a necessary corollary, that the property, which is required to be valued, is not the one which is intended to be subject to tax or duty contemplated by the statute. This principle is tersely stated by Lord Wilberforce in his address in *Gastrid v. Inland Revenue Commissioner* in the following terms :

"We are concerned here with a taxing Act, and if one thing is necessary about taxes it is that the amount of them should be ascertained with precision."

58. This view is further fortified if we analyse the working of sections 7 and 40. Section 7 deems an interest to pass if the same ceases on death. The section thus makes the property exigible to duty if there is a cesser of interest of death. But the extent of this exigibility to duty is "the extent to which a benefit accrues or arises by the cesser." Therefore, the tax liability is made co-extensive with the extent of the benefit. Thus, in order to assess the tax liability, the value of benefit so accruing or arising has to be worked out. It is at this stage that section 40 steps in, and provides a basis on which this valuation can be worked out. It says that the value of the benefit accruing or arising on the cesser of an interest shall be the principal value of the property, if the interest, which has ceased to exist, extended to the whole income of the property, and the value of an addition to the property equal to the income to which the interest extended, if the interest extended to less than the whole income of the property. Section 40 thus clearly postulates that the property in which the interest has ceased must be capable of yielding income, because, unless it is so capable, the interest, which has ceased, cannot be said to be extending either to the whole or to less than the whole of the income within the meaning of section 40. In other words, if the property in which the interest has ceased to exist has no inherent potentiality to yield any income, standing by itself, it would not be possible to evaluate the benefit accruing or arising from the said cesser under any of the provisions of the Act

including section 40. To put it differently, the cesser of such interest is not made exigible to duty.

59. The view which we are taking of sections 7 and 40 gets sufficient support from three weighty decisions - one of the House of Lords in *Gartside v. Inland Revenue Commissioners*, the other of the Privy Council in *Attorney-General of Ceylon v. Ar. Arunachalam Chettiar* and the third of a Full Bench of the Madras High Court in *Alladi Kuppuswami v. Controller of Estate Duty*.

60. *Gartside's* case provides a direct authority on the point under debate, because it is based on those provisions of the English law which are in pari material with sections 7 and 40 of the Act. We, therefore, propose a rather detailed reference to this decision. Facts of that case were that a testator, Thomas Edmund Gartside by name, made a will, dated 8th February, 1934, by which he gave to trustees a residuary trust fund to divide into four equal parts. One of these parts was left on a discretionary trust for the benefit, support and maintenance of all or any of the testator's son, John Travis Gartside, his son's wife, or children, if any. The trustees were given an absolute discretion to apply any or all of the income of the fund as they thought fit and the income not distributed was to be added to the capital of the fund. They had also power to make advancements to any child of the son out of the trust fund. After the testator's death, his above referred son married and twin sons were born to him. For 20 years the trustees accumulated the income and distributed none of it. On January 2, 1962, when the twin sons were aged 17, the trustees exercised their power of advancement. The testator's son died on May 8, 1963. At that time the value of the trust fund in each of the two deeds of advancements was about Pounds 23,500. The revenue claimed estate duty on these two funds of Pounds 23,500. The trustees resisted this claim and took out a summons to determine whether on the death of the testator's son, the estate duty did or did not become payable on the property then representing the investments made by virtue of the two deeds of advancements. The court held that, although the discretionary objects and "accumulation beneficiaries" had an interest in the property from which the income was derived, this was not an "interest in possession" within the meaning of section 43(1) of the Finance Act, 1940, and, therefore, the estate duty was not payable on the property advanced to them. The revenue appealed against this decision and the appeal was allowed. The trustees thereafter took the matter in appeal to the House of Lords. The main question which was agitated in this appeal was whether "there was under the discretionary provisions and accumulation provision of the trust any beneficial interest in possession" in the trust fund within the meaning of section 43 of the Finance Act, 1940. But another question, which was raised by the parties was whether the said interest was the one, which could be measured u/s 7(7) of the Finance Act of 1894 which is in pari materia with section 40 of Indian Estate Duty Act, 1953. On behalf of the trustees, it was contended in *Gartside's* case that the interest must be the one which can be measured u/s 7(7) of the Act of 1894, while the contention raised on behalf of the revenue was that section 7(7) of the

Finance Act of 1894 merely provided a formula for valuing the interest of benefit and went no further and that it was not right to use it to limit the construction of the word "interest" in section 2(1)(b) of the Finance Act of 1894. It should be noted here that section 2(1)(b) of the Finance Act of 1894 is in pari material with section 7 of our Estate Duty Act of 1953. It is thus apparent that the point involved in our case was directly involved in Gartside's case.

61. At this stage it would be proper to quote the two relevant sections, namely, section 2(1)(b) and section 7(7) of the English Act, i.e., the Finance Act of 1894. They are as under :

"2. (1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say (b) property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;....."

"7. (7) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall -

(a) if the interest extended to the whole income of the property, be the principal value of that property; and (b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended."

62. On a bare perusal of these provisions of the English law, it is clear that they are in almost the same language in which sections 7 and 40 of our Act are couched.

63. On the question whether "interest" contemplated by section 2(1)(b) of the English Act must be one which could be measured in section 7(7) of that Act, Lord Reid has observed as under :

"The first thing that strikes one is that these provisions must have been intended to be co-terminous. Section 2(1)(b) (read in conjunction with section 1) only makes the cesser of an interest the cause of liability for estate duty "to the extent to which a benefit accrues or arises" by the cesser. And section 7(7) directs how the "benefit accruing or arising from the cesser" shall be valued. On any ordinary principle or method of construction I would infer that section 2(1)(b) is only intended to apply to those "interests" the cesser of which causes "a benefit to accrue or arise" and, therefore, creates the liability to pay estate duty. Why should section 2(1)(b) have set out to deal with any other kind of right ? There is nowhere any definition of the word "interest" : one must infer its meaning from the context. The sub-section plainly applies to every kind of right the cesser of which does cause a benefit to accrue or arise, but I find nothing to indicate that it can have been intended to apply or must be held to apply to any

right or any kind of right the cesser of which does not have that result. To find what is meant by a benefit accruing or arising one must turn to section 7(1), for again there is no definition of this phrase. It appears to me to be obvious that section 7(7) was intended to provide a method for valuing every benefit accruing or arising from any cesser of an interest within the meaning of section 2(1)(b), and it is implicit in section 7(7) that every right which is an "interest" within the scope of these provisions must "extend" either to the whole or to a part of the income of the property in which the right gave to its owner the "interest". The scheme appears to me to be perfectly clear. If the deceased or any other person had a right which "extended" (whatever that may mean) to the whole or to any part of the income of any property and that right ceased on the death of the deceased, then estate duty is to be due on an amount to be determined by section 7(7). If the right of the deceased or other person did not "extend" to any part of the income, then it was not an interest within the meaning of these provisions. It appears to have been assumed in some cases that a right can be an "interest" within the meaning of section 2(1)(b) although its cesser does not cause any benefit to accrue or arise, or that it is sufficient that the cesser causes some benefit to accrue or arise although the interest does not "extend" to any part of the income of any property. I can find nothing either in the words or in the apparent purpose of these provisions to justify such an extension of the meaning of the word "interest" in section 2(1)(b)."

64. Lord Wilberforce also made similar observations after quoting section 7(7) of the English Act. Says he :

"This shows that for the cesser of an interest to give rise to a charge for duty, it must be possible to say of the interest that it extended to the whole income, or to a definite part of the income. This notion of definite extension is, in my opinion, vital to the understanding and working of section 2(1)(b) and consequently of section 43 of the Act of 1940."

65. Must the same view is taken by the Privy Council in *Attorney-General of Ceylon v. Arunachalam Chettiar*, where similar provisions of the Estate Duty Ordinance No. 8 of 1919 of Ceylon were considered. It is held in that case that for section 8(1)(b) of the Ceylon Ordinance to be applicable there must be not only a cesser of interest in property but also a benefit arising by such cesser, and, therefore, the benefit, as provided by section 17(6) of the Ordinance, must be capable of valuation by reference to the income of the property which the deceased had enjoyed.

66. Both of these cases have been cited with approval by a Full Bench of the Madras High court in *Alladi Kuppuswami*. After considering the relevant provisions of the Act, Veeraswami C.J. has made the following observations which are pertinent to this point :

"It would be proper, and necessary, in our opinion, to understand the words "property", "interest" and "benefit" in the context and in the light of these

provisions. It follows that though property, or an interest in property, may well be included in the definition of the term "property", still it may or may not be so for purposes of a particular section in the Act. For instance, it is only property that passes in the sense of passing hands by way of inheritance, or other form of devolution, which seems to attract section 5. Likewise, for purposes of section 6, it must be property which the deceased at the time of his death was competent to dispose of. So also, for the application of the first part of section 7(1), it should be such interest in property, as on its cesser the benefit that accrues or arises should be referable to the whole or less than the whole income of the property. The implication is that if this measure in terms of income of the property is not apposite to the cesser of an interest, it will not be an interest such as is contemplated by section 7(1)."

67. We must, therefore, conclude that if the "benefit" arising u/s 7 on the cesser of an "interest" cannot be measured u/s 40 of the Act, the cesser of such an interest is not the one which attracts the payment of estate duty u/s 7.

68. Shri Kaji made an attempt to show that the interest which the deceased possessed in the goodwill of the firm is capable of being measured in terms of section 40 of the Act. According to him, the goodwill asset of the firm should be taken as income yielding property inasmuch as, without the goodwill, the firm cannot have any custom. According to Shri Kaji, therefore, the interest of the deceased should be treated as extending to the whole income of the property limited only to the extent of his 28% share. We are unable to accept this contention, because the property of which the income is to be taken into account is the property in which the interest can be said to have ceased within the meaning of section 7 of the Act. In this case, the interest of the deceased has ceased only in one property, namely, the goodwill of the firm. Therefore, the pertinent question is whether this goodwill, standing by itself, can earn any income. It need not be emphasised that with plenty of goodwill, a business concern would not be able to earn anything if it lacks in other resources which are necessary for running a business. It would, therefore, follow that the goodwill property in which the interest of the deceased has ceased had no income of its own, and if it had no income of its own, the value of the benefit which has resulted on account of the cesser of the interest in that property cannot be measured in terms of section 40. If that be so, the interest which has ceased is not the interest contemplated by section 7 of the Act.

69. The result, therefore, is that the case is not covered either by section 5 or section 7 of the Act and, therefore, question No. 2, which is referred to us, should be answered in the negative. Thus, we answer question No. 1 in the affirmative, question No. 2 in the negative and do not give any answer to question No. 3, which is not pressed on behalf of the applicant. This reference is accordingly disposed of without any order as to costs.