
(1965) 12 MAD CK 0040

In the Madras High Court

Case No : Tax Case No. 62 of 1963 (Reference No. 15 of 1963)

Seethalakshmi Ammal

APPELLANT

Vs

Controller of Estate Duty, Madras

RESPONDENT

Date of Decision : 16-12-1965

Acts Referred:

Insurance Act, 1938 — Section 39

Married Womens Property Act, 1874 — Section 6

Citation : (1966) 61 ITR 317

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—The liability of thirteen life insurance policies to estate duty is in question in this reference. Whether there was a goodwill and if there was, whether the value, as assessed by the department for purposes of duty, is supported by material are further questions for consideration. One T. K. V. S. Vidyapoornachari, whose widow is the accountable person, died on February 17, 1957. He became divided from his brother on August 17, 1935, and the assets that fell to his share out of the joint family properties, he developed with his own efforts so that at his death, the assets belonging to the joint family consisting of himself and his two sons were valued at Rs. 6,25,099. Besides his two sons, both minors he left his wife and three daughters. The deceaseds one-third share in the joint family properties was admittedly liable to duty. The Assistant Controller of Estate Duty added to the principal value Rs. 1,42,552 which represented moneys due under thirteen insurance policies taken out on the life of the deceased of which Rs. 94,662 was after his death received by the accountable person and a sum of Rs. 46,000 on policies with the Oriental Government Security Life Assurance Company Ltd. remained to be realised if and when the company admitted the claims. The balance of Rs. 4,083 related to three polices on the life of the widow, which were effected by the deceased and for which premiums were paid by him. They became paid up long before the death of the deceased but the amount under the terms of the policies was payable only on the

death of the widow. The deceased was one of the quota-holders for the Madurai Mills and the Meenakshi Mills and had built up a lucrative business in yarn. The Assistant Controller found that a third of the value of the goodwill of type business carried on by the family should be included in the chargeable assets and estimated its value at Rs. 50,000 on the basis that the average annual profits earned in the five years immediately preceding the death of the deceased was Rs. 32,579 and the value of the goodwill should be estimated as equal to 1 1/2 years purchase of the average annual profits. The widow appealed against these inclusions and partly succeeded. The Central Board of Revenue considered that the amount of Rs. 4,083 should be deleted from the principal value on the ground that the amount due under the three policies on the life of the widow was only payable on her death. The appeal failed in respect of the balance of the insurance money and the estimated value of the goodwill for duty.

2. The life insurance policies, the thirteen of them, were all effected on the life of the deceased between 1942 and 1955. Out of them, two were assigned in favour of his wife on May 7, 1956, and in respect of the rest, there was only a nomination in her favour between June, 1953, and November, 1955. One of the questions raised before the Assistant Controller and the Central Board of Revenue, which they decided against the accountable person, was whether, on the facts and in the circumstances of the case, the thirteen policies of life insurance and the moneys payable thereunder were in law joint family properties. This is the first of the eight questions referred to us u/s 64(1) of the Estate Duty Act, 1953.

3. It is not in dispute before us that the thirteen policies were effected by the deceased on his own life and were kept up out of the joint family assets. The contention, which did not find favour with the Revenue, is that because the premiums paid by the deceased for the policies came out of the joint family funds, only a third of the total amount due thereunder should be deemed to pass on the deceased's death. The revenue authorities were of the view that the fact of such payment did not have the effect of making the policy moneys the property of the joint family. In support of this view, reliance was placed on *Venkatasubba Rao v. Lakshminarasamma*. In that case certain life insurance policies were taken in the names of the members of a joint Hindu family and the premiums in respect of them were paid from and out of its funds. The accounts of the joint family specified definitely the amount of the premiums as relating to the policy effected by this or that coparcener. There was a separate khata in which the amounts paid towards the premiums for the several policies were separately entered. The question, the court had to determine, was whether the amounts covered by the policies constituted joint property or separate property of the individual coparcener concerned. From a common sense point of view, the court considered that when one of the coparceners insured his life, he intended the benefit of the policy to his heirs and not to the other coparceners. *Rajamannar C.J.* and *Venkatarama Iyer J.* were of the view :

The presumption, therefore, would be that the profit, if any, made by means of the policy would not be joint family asset. The utmost that the other coparceners in equity can claim is that the assured should be debited with the prima which have been paid from joint family funds.

4. Amplifying this view, they further observed :

In our opinion, having regard to modern social conditions and the growth of individual consciousness in marked contrast to the more corporate outlook of an earlier day, the general presumption must be that when one of the members of a joint family insures his life, the amount of the policy belongs to the assured as his separate property and does not become a joint family asset..... The premia must be treated as amounts drawn by the individual members and they must be debited with those amounts.

5. With respect, we agree that a policy creates a personal contractual relationship and prima facie an insurance is intended for the benefit of the person taking out the policy or his family in accordance with the terms of the assurance. That was also the view of the Nagpur High Court in *Manharanlal v. Jagjiwanlal*. That court felt that in the absence of any proof that the policy was taken out with the intention of benefiting the family and the premia were paid out of joint family funds, the presumption ought to be that the policy was taken out as a personal policy for the benefit of the personal heirs of the assured. These principles were applied by *Karuppa Gounder v. Palaniammal*. This court said :

But where a coparcener has effected insurance upon his own life, though he might have received the premia from out of the funds which he might have received from the joint family, it does not follow that the joint family insured the life of the member or paid the premia in relation thereto. It is undeniable that a member of a coparcenary may with the moneys which he might receive from the coparcenary effect an insurance upon his own life for the benefit of the members of his immediate family. His intention to do so and to keep the property as his separate property would be manifested if he makes a nomination in favour of his wife or children, as the case may be. It would therefore appear that no general proposition can be advanced in the matter of the insurance policy of a member of a coparcenary and that each case must be dealt with in accordance with the circumstances surrounding it.

6. On the facts in that case, it was held that the insurance amount must be regarded as the separate property of the assured and by virtue of the nomination, the nominees was not entitled to any portion of the policy amount. The learned judges there noticed *Parabati Kuer v. Sarangdhar* but distinguished it by observing that it only dealt with there position where it was established that the coparcenary effected the insurance on the life of a member, that is to say, paid premiums due upon the policy from out of the coparcenary funds. The revenue pressed into service the two cases decided by this court; and equally strong reliance was placed for the accountable person on the judgment of the

Supreme Court. In the case before the Supreme Court, two step-brothers of a deceased, who were members of a coparcenary, sought in opposition to the widow of the deceased to have a declaration that they were entitled to the moneys due under the policies. The High Court of Patna had accepted their contention and decided that the insurance policies formed part of the assets of the coparcenary to which the two step-brothers as plaintiffs were entitled as survivors. On a certificate, the widow of deceased went up before the Supreme Court. The three policies stood in the name of the deceased and had matured even during his lifetime. On an examination of the relative accounts of the family, it was found that the joint family incurred expenses for purchasing the policies. In other words, the premiums were paid out of joint family funds. From the treatment in the common accounts and the use to which a part of the policy moneys was put, the Supreme Court considered that those facts also showed that the policy moneys were treated as joint family assets and not as separate property of the deceased. Notwithstanding these factual findings, it was argued for the appellant before the Supreme Court that insurance was a special venture and was meant only for the benefit of the family of the assured and that the other coparceners had no interest in the policies. It was also contended that by family was meant the wife and children of the deceased. On these contentions, it was held by the Supreme Court at page 406 :

This might be true, but the question is not whether Ram Ran Vijaya Sinha (deceased) took out the policies for the benefit of his own family but whether he did so without detriment to the joint family funds. If it was the latter, then anything obtained with the joint family funds would belong to the joint family, and this is the result, in view of our finding that it was the joint family which had paid for these policies and not Ram Ran Vijaya Sinha individually.

7. The attention of the Supreme Court was invited to Venkatasubba Rao v. Lakshminarasamma and particularly the observation which we have extracted therefrom. But with reference to this, the Supreme Court stated :

We need not decide whether such a broad proposition should be accepted as being in consonance with the rules of Hindu law, but unfortunately for the appellant, there are clear indications that none of the three brothers intended to treat as a separate asset the income which would have accrued on the maturity or otherwise of the insurance policies.

8. It may be seen that as we understand the judgment of the Supreme Court, the decision that the policy moneys formed part of the assets of the coparcenary was rested on the principle that anything obtained with the joint family funds would belong to the joint family and on the test not whether the deceased had taken out the policies for the benefit of his own family but whether he did so without detriment to the joint family funds. It may further be noticed that there were two other policies in that case taken at the same time on the lives of the other brothers of the deceased, the premiums for which were also paid from the funds of the press which was owned by the joint family just as in the case of the

three policies in the name of the deceased. In *Karuppa Gounder v. Palaniammal*, as the learned judges themselves pointed out, the premiums for the policy were paid out of moneys the assured had received from the joint family and, in that sense, the court viewed the funds for payment of the premiums as not coming from the joint family. It was in that manner the conclusion was reached that the policy there did not belong to the family but only to the assured. The presumption based on the personal contractual relationship and the modern concept of society and economy and individual rights may not help where life insurance policies are taken out on the lives of the members of a coparcenary and are kept up, that is to say, the premiums therefore were paid out of joint family funds or to the detriment of the joint family assets. In such a case, the principles of Hindu law will have application with the result that whatever is acquired out of coparcenary property or to the detriment of the joint family assets will belong to the coparcenary or joint family. It is true that up to the year 1948, the deceased was the only surviving coparcener of his branch of the family after the partition from his brother in August, 1935, and his minor sons were born subsequent to 1948. But this can make no difference to the fact that the policies were kept up by payment out of joint family funds. The principle of Hindu law as stated by Mayne in his treatise on Hindu Law and Usages (eleventh edition) is :

All savings made out of ancestral property, and all purchases or profits made from the income or sale of ancestral property, would form part of the ancestral or coparcenary property, whether such savings or acquisitions were made before or after the birth of a son.

9. In our opinion, therefore, the life insurance policies are the property of the joint Hindu family consisting of the deceased and his two sons.

10. We have next to consider the second question under reference which is :

Whether, on the facts and in the circumstances of the case, the said thirteen policies were kept up by the deceased for the benefit of a donee within the meaning of section 14 of the Estate Duty Act ?

11. The Answer to this question will depend upon the meaning of "kept up" and the effect and scope of "for the benefit of a donee, whether nominee or assignee" in section 14 of the Estate Duty Act, 1953. The insurance policies are a species of property, the value of which will depend upon the surrender value thereof at a given time and they are dealt with separately by the section. They may attract duty in accordance with the circumstances either under this section or section 6 or section 15 of the Act. For the application of section 14, the policy of life insurance must have been kept up by the deceased either wholly or partially and it was so kept up for the benefit of a donee, who may be a nominee or assignee. Where it was only partially kept up by the deceased, only a proportionate policy money shall be deemed to pass on the death of the assured. The phrase "kept up" is not a legal term or a term of art but conveys the ordinary meaning. In the

context of a life insurance policy, "kept up" means the policy is continued in force by payment of premiums due in respect of it. In our opinion, not merely the physical act of getting a policy of insurance but all acts necessary for keeping the policy alive will be comprehended in the phrase. The substantial element that goes to maintain a policy alive, once it is taken out, is, however, payment of premiums. The words "kept up by him" indicate, to our minds, that the premiums paid should be from his own funds, not merely his own hand that physically makes the remittance of the premiums. In other words, the source of the premiums paid will be determinative of who kept up the policy.

12. *Barclays Bank Limited v. Attorney-General*, a decision of the House of Lords, is a leading case which throws light on the expression "kept up". That decision was rendered with reference to section 11(1) of the Customs and Inland Revenue Act, 1889, and section 2(1)(c) of the English Finance Act more or less analogous to section 14 of the Indian Estate Duty Act, 1953, and the noble Lords were agreed in holding that to keep up a policy was to pay the premiums thereon, as they fell due and the person who paid them was the person who kept up the policy. In that case there were two policies on the life of the deceased and the question was whether they were kept up by him within the meaning of section 11(1) of the Customs and Inland Revenue Act, 1889, in which case, estate duty was payable on the whole value of the proceeds. What happened was, the deceased had executed a settlement for the benefit of his son and certain others including in it the policies and at the same time he transferred to the trustees of the settlement certain income-yielding investments on the primary trust to pay the premiums for time to time to become payable in respect of the policies out of the income thereof. The deceased retained no control over the trustees and no interest under the settlement, under which he was divested of all rights and beneficial interest whatsoever in the two policies of assurance. The trustees were, at all material times, the legal owners of the policies and they paid the premiums from the special investments. The House of Lords held, differing from the Court of Appeal, that the policies were not kept up by the deceased. Lord Thankerton viewed the matter this way :

I am clearly of opinion that these policies were not kept up by the deceased after the date of the settlements..... Payment of the premium necessary for renewal was made by the appellants (trustees) over whom the settlor retained no control out of settled funds in which the settlor had no interest, and over which he retained no control. It cannot be maintained that the appellants made those payments as agent of the settlor, and the fact that the funds out of which the payments were met were originally settled by the settlor is not relevant....

13. Lord Macmillan, while pointing out that policies of life assurance do not by their nature fit very logically into the scheme of estate duty, which is a duty leviable on property passing on death, and they have, therefore, been specially dealt with in the legislation, went on to consider the import of "kept up". The noble Lord concurred with Lord Thankerton and the other noble Lords who were

of a similar view. Lord Wrights consideration of the question was in extenso and we shall extract his observations as they are quite useful :

I think that `keeping up a policy according to the ordinary use of language connotes payment of the premiums, which is the normal method of keeping up a policy..... the insertion of the words `in proportion to the premiums paid by him is necessary to deal with the case where the deceased did not himself wholly keep up the policy but only did so partially. In that case the death duty is to fall on the deceaseds estate in proportion to the premiums paid by him. The change in expression from `kept up to `premiums paid is necessary to give the basis of apportionment, but at the same time it identifies `paying the premiums with keeping up the policy..... The language of the sub-section..... supports the view that when the Act refers to keeping up the policy it means the method of paying the premiums as they fall due..... In the present case not only did the trustees pay the premiums as principles and not as agents for the settlor, but the money out of which they paid them was their own money in law, though in equity it was the money of the beneficiaries. It was not the settlors money..... The phrase keep up the policies is, no doubt, an ordinary expression, but the question is whether, within the meaning of the Act, it is the settlor who has kept them up.

14. Lord Simonds dealing with the question stated :

I agree that it is not a term of legal art, but it is, I think, the most appropriate expression in our language to describe the doing of those acts which will prevent a policy lapsing..... The question is : who keeps up the policy ? Who does these acts which prevent the policy lapsing ? Who, in fact, pays the premiums ? I see no justification for ascribing those acts to a settlor who neither does them himself nor is competent to direct their performance. I do not base my opinion on the juxtaposition of the words `premiums paid by him to the words `kept up, for it is by the payment of premiums that a policy is ordinarily kept up. My opinion would be the same if the subsection ended with the word `assignee.

15. It is manifest from this decision, and particularly the observations which we have extracted, that a person can be said "to keep up" a policy if he pays the premiums himself out of his own money and thus prevents the policy from lapsing.

16. We have already found that the premiums to keep up the policies effected by the deceased in this case were all paid out of joint family funds though of course the physical act of paying the premiums was perhaps that of the deceased himself. We are, therefore, of opinion that section 14 will be inapplicable to the facts of this case.

17. It is also inapplicable, as we consider, for another reason. Keeping up a policy should be for the benefit of a donee, whether nominee or assignee. That means there should have been a gift of the money due under the policies to a person so as to constitute him a donee. Unless a person is a transferee of the benefit of the policies, he cannot be properly described as a donee. Such a transfer can

obviously be by means of an assignment. But the word "nominee" taken by itself or even in the context of the principles that govern the law of insurance admits of no doubt as to its significance. A nomination does not involve a transfer of the rights under a policy unlike an assignment. This distinction was recognised by a Division Bench of this court in *Mohanavelu Mudaliar v. Indian Insurance & Banking Corporation Ltd.* in relation to section 38 and 39 of the Insurance Act. Section 38(5) clearly states the effect of an assignment as that the assignee is the only person entitled to benefit under the policy and such a person shall also be subject to all liabilities and equities to which the assignor was subject at the date of assignment. But "nomination", as seen from sub-section (1) of section 39, merely means that the person nominated is the one to whom moneys secured by the policy shall be paid in the event of the death of the assured. Unlike an assignment which is irrevocable, a nomination may, at any time, before the policy matures for payment, be cancelled or changed. In the event of the policy maturing during the lifetime of the assured, the nomination will have no effect and the policy money will, in that event, be payable to the assured. It follows that while an assignee is not merely entitled to receive but has a right to the policy money itself, a nominee is no more than a person who is competent to receive the money if the assured did not survive maturity of a policy and has no right to the money. But nominee in section 14 of the Estate Duty Act does not appear, as it seems to us, to convey the ordinary or the statutory sense we referred to. In the context of the words "for the benefit of a donee, whether nominee or assignee", it is clear that the "nominee" must be such as he may also be a donee. That means the nomination for the purpose of section 14 must be such as will constitute the nominee, a donee entitled to the benefit of the policy money.

18. The accountable person was but a nominee in respect of the policies except two which were of course assigned in her favour. The nomination in each of these cases was no doubt *ex facie* the policy but it was specifically mentioned that the nomination was under the Insurance Act. It follows that the nomination did not vest in her any right to the insurance money. All that it enabled her was to receive the money and the nomination must be taken to be only for that purpose. By such nomination she by no means became a donee or nominee within the meaning of section 14 of the Estate Duty Act. Our conclusion, therefore, is that the thirteen policies were not kept up by the deceased for the benefit of a donee, whether as a nominee or assignee. Because they were not so kept up by the deceased, the assignment of the two policies to the accountable person will not, in our opinion, bring even these two policies within the purview of section 14.

19. It will be convenient to consider together questions Nos. 3 to 5 which are :

(3) Whether, on the facts and in the circumstances of the case, the moneys payable under the four policies, viz., Policy Nos. 1945037 to 1945040 which were nominated in favour of the wife of the deceased (viz., the applicant) on the 19th

June, 1955, fall within section 6 of the Married Womens Property Act, 1874 ?

(4) If the answer to question No. 3 is in the affirmative, whether the amount payable under the said four policies cannot be deemed to pass on the death of the deceased u/s 14 of the Estate Duty Act ?

(5) If the answer to question No. 4 is in the affirmative, whether the amount so deemed to pass can be aggregated with the other property passing on the death of the deceased having regard to the provisions of section 34 of the Estate Duty Act ?

20. The policies mentioned in the first question were effected on June 10, 1955, and the risk commenced from that date. The nomination in favour of the accountable person in respect of these policies was also on the same date. There were seven other policies too in which the accountable person was the nominee and four of them are those covered by question No. 6 which we shall deal with separately. It is not clear why question No. 3 was limited to the four policies alone mentioned therein as what applies to them will apply to the other policies as well in which there was nomination of the accountable person.

21. The revenue authorities were of opinion that section 6 of the Married Womens Property Act, 1874, will have no application to the policies covered by question No. 3. We think they were right. The effect of section 6 is that a policy of insurance effected by a husband in his own name for the benefit of his wife or of his wife and children or any of them and so expressed on the face of the policy shall ensure and be deemed to be a trust for the purpose. Consequently, as the latter part of the section states, the policy, so long as the trust lasts, will cease to be the property of the husband. Section 6 will not apply unless the beneficial interest, which shall be deemed to be a trust, is expressly stated on the face of the policy. There is no particular formula for such expression and it will be a matter of construction in each case whether there is any such expression. In *Krishnan Chettiar v. Velayee Ammal* a full Bench of this court resolved a conflict opinion and held that "expressed on the face of it" in section 6 of the Married Womens Property Act did not necessarily mean that the requirement was satisfied if the proposal, which, by the terms of the policy, would form part of it, was expressive of such intention. Against clause 12 in the proposal in that case, relating to the name of the person nominated to receive the sum assured, was mentioned "self or wife Velayee Ammal". The learned judges were of the view that the words created a trust in favour of the wife. Subsequently a Division Bench of this court in *Mohanavelu Mudaliar v. Indian Insurance & Banking Corporation Ltd.* while noticing that dispositions of life insurance policies can be classed as (1) assignment, (2) nomination, and (3) creation of a trust by reason of the provisions of the Married Womens Property Act, 1882, observed :

If by nomination a trust is created then the nominee becomes the beneficiary but the difficulty is to find out from the exact words used what the intention was, because the terms `nomination and `nominee are not strictly speaking terms of

art. `Nominate means only to name and it is in every instance a question of mixed law and act as to what the intention is. Thus by the expressions used it has to be found out whether the nomination merely creates a payee or a beneficiary for whose protection a trust is thereby created....

22. If the construction placed upon the declaration is that a trust has been created under the provisions of the Married Womens Property Act, the beneficiary would take the assured amount free of all the liabilities of the insured and if it is construed as a mere nomination, the nominee would have no more right than to receive the amount subject to all the liabilities as if the disposition was by means of a testamentary instrument."

23. In our opinion, if we may say so with respect, these observations represent the correct position in law. We may add that it is not every nomination that will have the effect of creating a trust and it is necessary to make a distinction, as has been made in Macgillivrays Insurance Law, between the creation of a trust and a simple contract between two persons for the benefit of a third. Such a simple contract cannot by itself be interpreted as creating a trust. Though the dividing line between the two classes of cases is thin, it is nevertheless real.

24. But it is not necessary for us to consider the question very elaborately because there is a short answer to it. As we already pointed out, the nomination, through ex facie the policies, was specifically mentioned to have been made under the Insurance Act. Sub-section (7) of section 39 of the Insurance Act says :

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Womens Property Act, 1874, applies or has at any time applied :

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

25. We are of the view that the proviso applies to the nomination here and that will eliminate applicability of section 6 of the Married Womens Property Act. The four policies covered by question No. 3 will not, therefore, fall within the ambit of section 6 of the last mentioned Act. On this view, questions Nos. 4 and 5 do not arise for consideration.

26. Question No. 6 reads as follows :

Whether, on the facts and in the circumstances of the case, the policy moneys received under Policy Nos. 813825, 813826, 1145972 and 1145973 which were nominated by the deceased in favour of his wife on the 25th June, 1953, i.e., more than two year prior to his death, are not liable to estate duty on his death ?

27. The Board of Revenue dealt with it from the standpoint of section 14 of the Estate Duty Act and said that the period that elapsed between the date of nomination or assignment and the date of death was irrelevant for purposes of liability u/s 14. But we have already held that section 14 has no application to the policies. In the order of the Assistant Controller the point was dealt with with reference to section 9 on the assumption that the policies covered by the question were all assigned to the accountable person which is not factually correct. As mentioned by us, she was only a nominee in respect of these policies. Though two of the policies were assigned, they are not covered by question No. 6. On the footing that the policies in the question were assigned, the view was expressed by the Assistant Controller that in counting the two years period u/s 9, the date of assignment was not the criterion but who paid the renewal premiums after the assignment was relevant, and as the premiums were paid out of joint family funds after the assignment, the moneys received under the policies should be considered as property deemed to pass u/s 14 of the Estate Duty Act. There was here a mixing up of ideas under sections 9 and 14. The Board does not appear to have approached the four policies u/s 9 but it said with reference to them that the period that elapsed between the date of nomination or assignment and the date of death was irrelevant for purposes of liability u/s 14. This is on the view that section 14 applied to them which as we said is incorrect. Section 9 also will not apply because there was not gift of these four policies in favour of the accountable person.

28. We pass on to the last two questions Nos. 7 and 8 which relate to goodwill and its value. The questions read :

(7) Whether, on the facts and in the circumstances of the case, there is no material to support the finding that the yarn business belonging to the joint family of which the deceased was the karta had any goodwill ?

(8) Whether, on the facts and in the circumstances of the case, there is no material to support the finding that the value of the goodwill of the business is Rs. 50,000 ?

29. The Assistant Controller negated the contention that the business of the deceased in yarn was built up by his tact and personal influence and it did not survive his death. He found that the deceased was one of the quota-holders for Madurai Mills and the Meenakshi Mills for supply of yarn, that the business of yarn was lucrative as found from the average profits for the five years immediately preceding the death, and expressed the view that having regard to the longstanding nature of the business and in view of the fact that the deceased was one of the quota-holders for Madurai Mills and Meenakshi Mills, it could not be accepted that the business had no goodwill at the time of the death. On the basis of the average annual profits for the preceding five years, namely, Rs. 32,579, he estimated the value of goodwill as equal to 1 1/2 years purchase of the average annual profits. The value of goodwill was thus estimated and fixed at Rs. 50,000, one-third of which was added to the principal value as liable to

estate duty. The Board agreed with the Assistant Controller as regards this and dealt with the further contention for the accountable person that goodwill, even if it existed, was not a partible item and held that the liability to estate duty was not based on the partibility or otherwise of the property. This is upon the view that the goodwill of the business, as such, was not treated as a separate asset in which the deceased had a share but it was only an element which made up the total value of the business and that the business carried on by the family was saleable. As to the value of the goodwill, the Board thought that what price it would fetch over and above the tangible assets that the family possessed would be the test and the estimate made by the Assistant Controller was not extravagant.

30. In our opinion, the findings of the revenue authorities on the two questions have no basis and cannot be accepted as sound in law. There was here no material on which they could reasonably conclude that a goodwill existed. What is a goodwill ? It 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 custom 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 custom takes 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.

31. Hamilton J. in *Attorney-General v. Boden* thought that the question whether there was a goodwill or not was a pure matter of fact. We are of the view that it is really a mixed question of law and fact, for the propriety or reasonableness of an inference from proved facts is also a matter for the law; so too the question whether the factual finding is based on no material. The learned judge was there concerned with the question whether the business of lace manufacturers carried with it a goodwill. The approach of the learned judge to the question is instructive (page 559) :

Plain net is a fabric principally used by lace manufacturers as the foundation for other work. It is graded by the width of the machines and by the size of the spaces in the net work. The finished product of one manufacturer is so like that of another that it is impossible to distinguish between them..... that Boden & Co. never advertise. They canvas a small market, now principally at Nottingham

since German manufacturers have learnt to supply their own markets. They have no trade mark, sign, badge or patent; any patents for machinery that there may be have been treated as of no account. One machine is practically as good as another, and the product is so uniform that any one who can buy the machinery can produce the fabric. Its sale depends almost entirely on the price.

32. The learned judge concluded, therefore, that the business had no goodwill worth the name. *S. C. Cambatta & Co. Private Ltd. v. Commissioner of Excess Profits Tax* was concerned with a business of running a theatre and a restaurant and the question there was whether a question of law did arise and whether the goodwill of the theatre and the restaurant was calculated in accordance with the law. In that connection, the Supreme Court considered what a goodwill was and referred to the following observations of Lord Macnaghten in *Inland Revenue Commissioners v. Muller & Co.s Margarine Ltd.*

What is goodwill ? 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.

33. Reference was also made to certain other English cases and it was observed by the Supreme Court at page 505 :

It will thus be seen that the goodwill of a business depends upon a variety of circumstances or a combination of them. The location, the service, the standing of the business, the honesty of those who run it, and the lack of competition and many other factors go individually or together to make up the goodwill, though locality always plays a considerable part. Shift the locality, and the goodwill may be lost. At the same time, locality is not everything. The power to attract customs depends on one or more of the other factors as well. In the base of a theatre or restaurant, what is catered, how the service is run and what the competition is contribute also to the goodwill.

34. In his background of what generally is meant and understood by goodwill, we are of opinion that it cannot reasonably be found that the business of the joint family based on the manufactured yarn supplied by the mills against quota had any goodwill as such. Go to any quota-holder of such yarn, you will get the same or similar yarn without any difference or distinction in quality or other characteristics. A particular yarn with reference to which the family held a quota is identified not by the trademark assigned to it by the family but by its original manufacturer. The yarn supplied by Madurai Mills and Meenakshi Mills to quota-holders is just the same and one quota-holder does not in any way differ from any other quota-holder of the mills in the matter of the quality and standard manufacture of yarn supplied against the quotas. In that sense, the longstanding of the family business will have no significance in the context of whether there was a goodwill or not attached to the business. We think that the facts in this case provide no basis and quota-holding, without anything more, cannot, in the nature of things, admit of the existence or development of any goodwill. On this

view, it is unnecessary to consider whether the value of the goodwill has been properly determined or not is supported by material.

35. We answer the questions referred to us in favour of the accountable person with costs. Counsels fees, Rs. 250.