

**(1975) 04 MAD CK 0013**

**In the Madras High Court**

**Case No :** Tax Case No. 164 of 1969 (Reference No. 56 of 1969)

Smt. Surumbayi Ammal

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

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**Date of Decision :** 09-04-1975

**Acts Referred:**

Estate Duty Act, 1953 — Section 64(1)  
Partnership Act, 1932 — Section 42, 55

**Citation :** (1976) 103 ITR 358

**Hon'ble Judges :** V. Sethuraman, J; V. Ramaswami, J

**Bench :** Division Bench

**Advocate :** K. Srinivasan and K.C. Rajappa, for the Appellant; J. Jayaraman, for the Respondent

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## **Judgement**

Ramaswami, J.—This reference is made u/s 64(1) of the Estate Duty Act relating to the estate of one Ramaswami Chettiar, who died on

April 2, 1963. The widow filed a return which, among others, included a sum of Rs. 4,23,943 as the value of the one-sixth share which the

deceased held in six firms. The Assistant Controller of Estate Duty considered that the firms in which the deceased was a partner had goodwill and

that the value of his share in the goodwill should also be included in the total value of the estate. He, accordingly, proceeded to value the goodwill

in each of the firms on the super-profits basis and added a sum of Rs, 53,700 on this account. The Appellate Controller of Estate Duty and the

Tribunal confirmed this order of the Assistant Controller.

2. At the instance of the accountable person, the following question is referred:

Whether, on the facts and in the circumstances of the case, the valuation of goodwill at Rs. 53,700 in respect of the six firms at Coimbatore,

Tiruppur, Bangalore and Madras was valid in law ?

3. Before dealing with the question, it is necessary to set out certain facts relating to the partnership and the terms and conditions thereof. The

deceased was a partner in six firms of which two were in Bangalore, two in Tiruppur and one each in Coimbatore and Madras. All these

partnerships are evidenced by written deeds of partnership, which show that they were all partnerships at will. There was no reference also to the

sharing of the goodwill as such, except that the sharing of the profit and loss is mentioned in general. The deeds also did not contain any clause as

to the continuance of the partnership in case of the death or retirement of any partner, by the remaining partners. The business was carried on by

the partnership in purchase and sale of yarn and cloth. ,To be more accurate, four of the partnerships exclusively dealt with the purchase and sale

of yarn, one in purchase and sale of cloth alone and another in the purchase and sale of cloth and yarn. Each of the firms had a distinctive name. As

already stated, the deceased was one of the partners in everyone of these firms and had a one-sixth share in them. On his death, all these

partnerships were dissolved and the accountable person was paid the one-sixth share belonging to the deceased. But it is seen from the agreement

dated 30th April, 1963, executed between the accountable person and the other partners that they did not value the goodwill of the firm in the

dissolution and accounting and that only the share of the deceased in the capital account of the partnerships was given to the accountable person.

Though this agreement is dated 30th April, 1963, it is stated that the dissolution and accounting was done as on April 13, 1963. Subsequently, the

surviving partners entered into different partnerships with respect to each of these six firms and carried on the same business as was done by the

dissolved firms. In four instances, the name of the dissolved firm itself was adopted as the name of the new business carried on by the surviving

partners. In the case of the other two firms, which contained the name of the deceased, they changed it in the name of another partner, The

business was also carried on in the same place in which the previous firms were carrying on the business. Thus, except for the omission of the name

of the deceased in the partnership, the surviving partners continued to carry on the same business after the dissolution.

4. It was contended on behalf of the accountable person before the Assistant Controller of Estate Duty that after the death of the said Ramaswami Chettiar, there was a dissolution of the firms and they were reconstituted by the surviving partners and that, therefore, the goodwill as such in the old firms could not be valued and included in the estate of the deceased. The Assistant Controller pointed out that the surviving partners continued the same line of business even after the death of the deceased and that the clientele and the contracts that were developed in the course of the business of the old partnership in which the deceased was a partner enured for the benefit of the surviving partners also. He also held that the old firms had goodwill and that, therefore, its value had to be computed and included in the property passing on the death of the deceased. Even before the Appellate Controller of Estate Duty, the accountable person raised a similar contention. The Appellate Controller held that, having regard to the fact that the firm had been in existence for quite some time and was carrying on a large business, it cannot be said that the said business did not carry any goodwill. Having arrived at the conclusion that the business had goodwill, he expressed the view that it had to be evaluated as any subsequent event or conduct of the dissolution or reconstitution would not affect the passing itself. Before the Tribunal it was contended that the firms had no goodwill at all and that even if they had goodwill, on the death of Ramaswami Chettiar, there was dissolution of the firms by operation of law and that with the dissolution, the goodwill also disappeared. On the first contention, the Tribunal held that the firms were in existence for quite some years and had established a name in the particular line of business which they were conducting. Each firm had also its own clientele and business contracts and that, therefore, the firms had goodwill. On the second contention, the Tribunal held that the dissolution of the firms subsequent to the death of Ramaswami Chettiar, did not affect the passing of goodwill on the death. Further, if the goodwill had been sold, it would have obtained a reasonable amount. The Tribunal also expressed the view that if there was goodwill at the time of the death of the deceased, the events which took place after the death need not be taken into account in valuing the estate of the deceased as on the date of death. There was also the question relating to the method of valuation to be adopted for ascertaining the value of the goodwill. The Tribunal held that the

super-profits method adopted by the Assistant Controller of Estate Duty is one of the recognised methods and that no objection could be taken to the actual valuation.

5. At the outset, we would like to make it clear that the learned counsel for the revenue objected to our going into the question as to whether there was any goodwill at all at the time when Ramaswami Chettiar died as the question that is referred to us did not cover that issue. He also contended that the question did not cover the other point argued by the learned counsel for the accountable person that on the dissolution of the firms, the goodwill ceased to exist and no question of valuation arises. According to the learned counsel, the only question that could be gone into in the reference was relating to the valuation of the goodwill. There is great force in this contention of the learned counsel. But, having regard to the order of the Tribunal and the points raised before the Tribunal, we do not consider that this question as to the method of valuation could at all be said to arise out of the order of the Tribunal, The only point that was pressed before the Tribunal was that the old firms had no goodwill at all and even if they had, on dissolution, it ceased to have any value. Therefore, as rightly pointed out by the learned counsel for the accountable person, what was intended to be covered by the question was whether there was any goodwill at all for the firms and whether there was any passing of that goodwill on the death of Ramaswami Chettiar. We, accordingly, proceed to consider the question as covering the points raised by the learned counsel for the accountable person.

6. It was first contended by the learned counsel in this reference that the old firms had no goodwill at all and there could not have been any goodwill in respect of the line of business which the firms were carrying on. As already stated, the business that was carried on by the firms was purchase and sale of yarn and cloth. According to the learned counsel, the firms were not manufacturers of these yarn and cloth which they were dealing and that they purchased from reputed manufacturers and sold them. The firm as such did not have any brand name or any other particular trade mark under which the yarn and cloth sold by them were given to the public. In these circumstances, according to the learned counsel, the firms could not have derived any goodwill and there could be no goodwill at all.

In support of this contention, the learned counsel relied on the decision of this court in *Seethalakshmi Ammal Vs. Controller of Estate Duty, Madras*, In that case, the manager of a Hindu joint family was carrying on business in yarn under certain quota rights. He had a very lucrative business. On his death, the goodwill of this business was sought to be valued and added to the estate. This court, after considering the decisions which dealt with the meaning of goodwill, held that the deceased had no goodwill in the business carried on by him. The learned judges pointed out that the deceased was not a manufacturer of yarn, that he was selling only manu- factured yarn supplied by the mills against the quota given to him, that a customer could get similar goods from any quota-holder, that the particular goods sold by the deceased were not identified by any trade mark of his own and that the fact that the business was carried on by the deceased for a long time had no significance. It is seen from these considerations set out in the judgment that the question was decided as a fact on the particular facts and circumstances of that case. The decision could not, therefore, be taken as a proposition of law holding that in a case of sale of yarn, in no case, there could be goodwill. But it is worth while to quote the following passage from this judgment which considered what goodwill"" is:

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.

7. The Supreme Court also had occasion to consider the meaning of goodwill in S.C. Cambatta and Co. Private Ltd. Vs. Commissioner of Excess

Profits Tax, Bombay, . On a consideration of the various decisions, the Supreme Court observed thus:

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 custom depends on one or more of the other factors as well. In the case of a theatre or restaurant what is catered, how the service is run and what the competition is, contribute also to the goodwill.

8. The Supreme Court again in Khushal Khemgar Shah and Others Vs. Khorshed Banu Dadiba Boatwalla and Another, referred to goodwill of a business as:

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

9. These decisions show that the existence of a goodwill depends on a number of considerations and that merely because a person is dealing in a particular type of goods it could not be stated that there could be no goodwill at all in respect of that business.

10. What are the facts in our case ? It is seen from the records that the business was carried on by these firms for a number of years. It had a firm name of its own. The Tribunal had pointed out that it had established a name in the particular line of business which it was conducting. The firms had their own clientele and business contracts. In addition, the parties themselves were conscious that they had gained a goodwill for the business,

as seen from the agreement dated 30th April, 1963, referred to above. If there was really no goodwill, there was no necessity for stating in that

document, that nobody would be entitled to the goodwill of the firms. Further, ultimately, the decision whether there was goodwill for a firm or not,

is a finding to be based on facts. The Tribunal and the authorities below took the view, on the facts, that the firms had goodwill. We do not find any

reason to take a different view from that of the Tribunal.

11. The learned counsel for the accountable person contended that even so, since there was a dissolution of the firms on the death of Ramaswami

Chettiar, the goodwill ceased to have any value and that the goodwill did not pass on death. There could be no doubt that goodwill is an asset of a

partnership firm, and this position is well-settled now. If the other assets of the firms passed on death, the goodwill also certainly passed on death.

But what was contended by the learned counsel for the accountable person was that since the partnership was one at will, and there was no term

in the partnership relating to the effect on death, u/s 42 of the Partnership Act, the partnership stood dissolved on the death of the partner.

Therefore, there was no need for dissolution subsequently and what was done subsequently was only to settle the accounts. In those

circumstances, according to the learned counsel, there was no passing of property on death. On the other hand, the learned counsel for the

revenue contended that if goodwill existed on the date of death, that automatically passed on death and any subsequent event of dissolution or

reconstitution had no effect at all on that business. The learned counsel, in this connection, also relied on Section 55 of the Partnership Act. That

Section provides that :

"In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may

be sold either separately or along with other property of the firm.

12. In the instant case, there was no contract relating to the goodwill as such. Therefore, each will be entitled to a share in the goodwill in the

proportion in which they would be entitled to profit and loss. Section 55 also provides that if the goodwill is sold after dissolution, a partner may

carry on a business competing with that of the buyer, but he cannot use the firm name nor represent himself as carrying on the business of the firm

or solicit the custom of persons who were dealing with the firm before its dissolution. We have already noticed that, after the dissolution, the surviving partners reconstituted the firms and carried on the same business in the same place and under the same name and style, except in two cases, where the name of the firm was changed. These clearly show that, though the reconstituted firms did not purchase the goodwill as such, they were permitted to use the goodwill without the goodwill being valued and shared among the partners in the dissolution. The right to use the partnership name is considered to be one of the most important elements in goodwill. Therefore, factually, there is no basis for the argument of the learned counsel for the accountable person that on the dissolution of the firm the goodwill had ceased and was not taken over by the surviving partners in the reconstituted firm. It is true that in the agreement executed on 30th April, 1963, the surviving partners agreed that none of them would be entitled to goodwill as such. But factually that was not the position as noticed above. It is true that the accountable person did not as a matter of fact get anything other than the deceased's share of capital. But whether the accountable person was able to get any share or in fact got it is irrelevant. If the deceased was entitled to it, that passed on his death. Nor the fact that the parties adopted a mechanism by which it was made to appear that there was no goodwill or that the deceased was not entitled to anything could change the situation or alter the legal effect of passing. Either the accountable person had defaulted in enforcing the right of the deceased or a share in the goodwill, or she had made a gift of the goodwill itself to the surviving partners. In either case, the liability to estate duty is not affected. Further, these subsequent events of not enforcing the right or gifting away the same or the reconstitution of the firms had no effect on the passing of goodwill as an asset of the deceased. Once it is found that the deceased had an interest at the time of his death, it should be taken to be property passing on his death, as held by this court in *Controller of Estate Duty Vs. Ibrahim Gulam Hussain Currimbhoy*, (Tax Case No. 269 of 1968) to which one of us was a party.

13. For the foregoing reasons, we answer the reference in the affirmative and against the accountable person. The revenue will be entitled to its costs. Counsel's fee Rs. 250.