

(1978) 03 CAL CK 0030
In the Calcutta High Court
Case No : Matter No. 785 of 1973

Surajmall Gouti

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 27-03-1978

Acts Referred:

Estate Duty Act, 1953 — Section 36, 7(1)
Estate Duty Rules, 1953 — Rule 7
Partnership Act, 1932 — Section 14, 29

Citation : (1979) 119 ITR 182 : (1979) 2 TAXMAN 260

Hon'ble Judges : Dipak Kumar Sen, J; C.K. Banerji, J

Bench : Division Bench

Advocate : K. Ray and A.C.S. Chari, for the Appellant; B.L. Pal and Suhas Sen, for the Respondent

Judgement

Dipak Kumar Sen, J.—This reference arises out of estate duty proceedings in respect of the estate of one Madan Chand Gouti, who died on the 18th March, 1966. The facts found and/or admitted are, inter alia, that during his lifetime the deceased was a partner in the firm of M/s. Chouthmull Joychandlal Gouti (hereinafter referred to as "the firm") having 12.5% interest (1/8th share) therein. One of the assets of the said firm was a jute press named Gouti Jute Press consisting of five godowns held under a lease for 61 years. The business of the firm consisted mainly of letting out the said godowns from which substantial income was earned. The material clauses in the deed of partnership dated the 10th April, 1965, were, inter alia, as follows:

"11. In case of death or retirement of any partner or of any minor admitted to the benefits of the partnership, the partnership business shall not stand dissolved but outgoing partner or legal representative of the deceased partner shall be entitled to be paid the capital and the value of Ms share and interest in the firm including that in the said jute press after the same is determined on valuation by mutual consent. For this purpose, a balance-sheet and profit and loss account shall be prepared as on the date of retirement or death (as the case may be). In

case of death of any partner, if the surviving partners so unanimously agree, they are at liberty to take in the legal representative of the deceased partner (or any or all of them in case there are more than one legal representatives).

12. In the event of winding up on dissolution, or for the purposes of Clause (11) supra, the share or interest of the four partners and the aforesaid minors (admitted to the benefits of the partnership) in the net assets and properties of the business including leasehold interests and the goodwill and the said jute press (after the same is determined on valuation by mutual consent) shall be the following; the amounts then appearing in the capital account of the respective persons being, however, respectively, their own individually.

13. The division of profits and losses shall notwithstanding anything stated in Clause (11) and/12(12) aforesaid be in the proportions stated in Clauses (7) and (8) aforesaid."

2. Surajmull Gouti, the executor appointed by the will of the deceased and as such the accountable person, filed a return in respect of the estate of the deceased declaring the net principal value thereof at Rs. 2,52,249. In the said return, the value of the deceased's share in the said firm was computed as follows:

Item	Amount
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Rs.	
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Capital standing to the credit of the deceased	1,96,217.89
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1/8th share of the value of the Gouti Jute Press	20,393.54
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1/8th share of the accretion in the share investment	17,133.87
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Dividend warrant for shares held by the firm in the name of the deceased	15.06
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3. By his letter dated the 1st August, 1967, the Asst. CED called upon the accountable person to explain the difference between the amount of the balance shown to the credit of the deceased in the balance-sheet of the firm and that shown in the return. He also called upon the accountable person to show why the value of the said jute press should not be computed on the basis of the rental income enjoyed by the firm and directed him to furnish the market value of the said jute press at the date of the deceased's death.

4. In reply, the accountable person stated that the value of the deceased's interest in the said firm had been shown at Rs. 2,17,148.06 under a misapprehension and that the correct value of the same would be only Rs. 1,96,217.89 as shown in the books. It was further submitted that in law the partners of a firm had no right or interest in any specific asset or property of the firm, such right being confined to what he was entitled after all the accounts were taken and his share in the partnership ascertained. The accountable person also submitted a valuation of the said jute press prepared by a valuer at Rs.

4,21,630, calculated on the basis of the gross yearly income of the said jute press at the rate of Rs. 8 per sq. ft. per month for the available letting space as fixed by the Calcutta Hydraulic Press Association for letting out such godowns.

5. The Asst. CED did not accept the contentions of the assessee. He held that the accountable person having valued the deceased's share in the said firm on the basis of individual assets was not entitled to go back on the same. He also did not accept the valuation of the said jute press. He held the gross rental income of the jute press to be at Rs. 2,25,823 which was the actual rental in the years 2021 and 2022. After deducting taxes, charges for repairs and collection, he applied the formula of a "number of years' purchase" and valued the said jute press at Rs. 21,71,155 and the 1/8th share of the deceased therein was determined to be Rs. 2,57,466 which was included in the estate.

6. Being aggrieved by the order of the Asst. CED, the accountable person preferred an appeal to the Appellate CED. It was contended on behalf of the accountable person in the appeal, inter alia, that under Clauses 11 and 12 of the partnership deed, referred to hereinbefore, the value of the ascertained share of the deceased in the firm was only Rs. 1,96,217.86 which had to be accepted as correct and that a separate valuation of the individual assets of the firm was against the provisions of the deed as also the general principles of law relating to partnerships. It was further contended that a valuation made by the recognised valuer was binding on the revenue and could not be questioned unless there was a contrary valuation by another qualified valuer.

7. The Appellate CED did not accept the contentions of the accountable person. He found that Clause 12 of the deed, in fact, required the partners to determine the value of the assets as on the date of the death of a partner disregarding their book value. He held that in any event such provisions in the deed regulating the rights or the interests of a partner's successor was of little relevance in the computation of estate duty which is concerned with the cesser of interest of the deceased on his death. The Controller had to ascertain the value of the interest of the deceased in the firm at the time of his death at the prevailing market rate. He concluded that revaluation of such interest in the assessment was proper. He also noted that there was no dispute regarding the quantum of value which was arrived at on the basis of figures supplied by the accountable person. The appeal of the accountable person on this ground was rejected.

8. From the order of the Appellate CED, the accountable person preferred a further appeal to the Income Tax Appellate Tribunal.

9. It was reiterated on behalf of the accountable person in the appeal that under the law of partnership and also under Clause 11 of the deed, the value of the deceased's share in the partnership as shown in the balance-sheet of the firm should have been accepted by the authorities. This figure as appearing in the balance-sheet could not be disputed even by the heirs of the deceased. It was further contended that the Appellate CED had erred in holding that the

computation of the value of the deceased's interest in the partnership had not been challenged. In support of the above contentions reference was made to the relevant estate duty return form, where it was provided that a deceased's share in the movable and immovable property as a partner in a firm had to be valued as per the balance-sheet of the partnership. Reliance was also placed on Section 36 of the E.D. Act and it was contended that the deceased's share in the firm could not be sold in open market at anything more than the value shown in the balance-sheet. Alternatively, it was urged that, in any event, the valuation made by a qualified valuer which was binding on the authorities should have been accepted.

10. The revenue contended that the share or interest of a partner in a firm was movable property and had to be valued in accordance with the provisions of Section 36 of the E.D. Act. But the Controller had the power and jurisdiction to enquire into the details of the assets of the firm and the valuations thereof as the balance-sheet was merely an aggregation of such assets and liabilities.

11. The Tribunal held that the Assistant Controller had acted within law when he revalued the jute press and that the method of valuation adopted could not as such be challenged by the assessee. The valuer's report submitted by the assessee was not based on actual figures of the annual gross rental and, therefore, was justifiably discarded. The Tribunal found that there was no reason to interfere with the decision of the Assistant Controller.

12. On an application by the assessee u/s 64(3) of the E.D. Act, the Tribunal has drawn up a statement of case and has returned the following questions for the opinion of this court:

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the matter of department's valuation of the deceased's interest in the partnership firm, M/s. Chouthmull Joychandlal Gouti, was in accordance with law ?

(2) Whether, on the facts and in the circumstances of the case, there was any material before the Tribunal to justify its upholding the department's valuation of Gouti Jute Press at Rs. 21,71,155 and rejecting the approved valuer's valuation of Rs. 3,37,304 at the hearing ? "

13. Mr. Kalyan Ray, learned counsel for the accountable person, reiterated the contentions of the assessee in the earlier proceedings. He also drew our attention to the following statutory provisions.

14. The Indian Partnership Act:

" 14. The property of the firm.--Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course pf the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

" 29. Rights of transferee of a partner's interest.--(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution."

15. Estate Duty Act, 1953 :

" 36. Principal value how to be estimated.--(1) The principal value of any property shall be estimated to be the price which, in the opinion of the Controller, it would fetch if sold in the open market at the time of the deceased's death.

(2) In estimating the principal value under this section the Controller shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the satisfaction of the Controller that the value of the property has depreciated by reason of the death of the deceased, the depreciation shall be taken into account in fixing the price."

16. The Estate Duty Rules, 1953 :

" 7. (c) The share of a partner in a partnership shall be treated as an indivisible asset for the purpose of determination of its nature and locality. The share of a partner in a partnership is movable property....."

Item in the statutory Form No. E.D-I:

" the deceased's share in movable and immovable property as a partner in the firm of as per balance-sheet annexed, signed by the surviving partners....."

17. Mr. Roy also cited a decision of the Supreme Court in *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, , where the Supreme Court quoted with approval the following passage from *Lindley on Partnership*, 12th Edn., at page 375 ;

" What is meant by the share of a partner is his proportion of the partnership

assets after they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged. This it is, and this only, which on the death of a partner passes to his representatives, or to a legatee of his share and which on his bankruptcy passes to his trustee."

18. On the basis of the aforesaid, Mr. Roy contended that in the instant case the estate duty authorities fell into the error of picking up only one asset of the partnership, namely, the jute press, valuing the same separately and adding the enhanced value thereof to the value of the share.

19. Mr, Suhas Sen, learned counsel for the revenue, contended, on the other hand, that it is not only what passes at death but also what interest ceases on death which would be relevant for computation of the value of the estate. He relied on Section 7 of the E.D. Act, 1953, the material part of which reads as follows :

"7. (1) 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 accrues or arises by the cesser of such interest..... "

20. Mr. Sen submitted further that the share of a partner at any time had to be valued ultimately by converting the partnership assets into money as in the liquidation of the firm. For this reason, the valuation of the individual assets is important. He also relied on the said passage of Lindley on Partnership, also quoted by the Supreme Court in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , noted hereinbefore.

21. In further support of his contentions Mr. Sen cited the following decisions.

(a) Controller of Estate Duty Vs. Ibrahim Gulam Hussain Currimbhoy, . The facts in this case were that in a partnership it was provided that the retiring partner or the legal representatives of a deceased partner would not be entitled to the goodwill of the business. In assessing estate duty, the Assistant Controller held that the deceased partner's share in the goodwill of the firm should be subject to charge and he estimated the value of the goodwill and included the same in the valuation of the estate. His decision was upheld by the Appellate Controller. On a further appeal, the Tribunal held that, in view of the specific terms of the deed, the legal representatives were not entitled to the goodwill and the value of the same should not be included in the valuation of the estate. On a reference, the Madras High Court held that the goodwill was an asset of the firm and the share of the deceased in the same was not extinguished, but it augmented the interest of the surviving partners. Therefore, the deceased's share in such goodwill passed on his death even if there was no devolution of such interest on the legal representatives. The following observations of Lord Parker in Attorney-General v. Milne [1914] AC 765 ; 2 EDC 8 was quoted (p. 325) :

"The expression " passing on the death" is..... evidently used to denote some

actual change in the title or possession of the property as a whole which takes place at the death For the purpose of this section (Section 1) it is absolutely immaterial to whom, or by virtue of what disposition the property passes."

(b) *Lynall v. IRC* [1972] 83 ITR 563. This is a decision of the House of Lords, where the House considered Section 7(5) of the British Finance Act, 1894, which is in pari materia with Section 36 of the E.D. Act.

(c) *Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Taxes* [1954] 25 ITR (Suppl.) 47. Here the principal asset of a testator was his interest in a partnership, the deed whereof, inter alia, conferred options on the surviving partners to purchase the testator's share in the capital on his death, and further provided that in computing the amount payable on the exercise of such option no sum would be added or taken into account in respect of goodwill. The executors of the testator furnished the value of the testator's interest in the partnership as the price at which it was to sell the interest of the testator to the surviving partners who had exercised their option. The value of the goodwill was excluded. It was held that u/s 8(4)(e) of the Estate Duty Assessment Act of Australia, the beneficial interest of the testator in the goodwill at the time of his death passed or accrued or devolved on his death under the terms of the partnership and, therefore, was deemed to be a part of his estate. It was observed in the judgment (at page 60) as follows :

"In their opinion the deceased partner's interest in goodwill in such a case must pass with his interest in the other assets to his legal personal representative, and the fact that its value is not to be taken into account in calculating the price receivable by the estate for his interest in the partnership is irrelevant. "

22. Mr. Sen also cited an unreported decision of this court in Matter No. 66 of 1971 intituled *CED v. John Gregory Apar* (since reported in [1977] 119 ITR 192). In this case, the partnership deed provided that for the purposes of ascertaining the amount payable to the representatives of a deceased partner for the latter's share in the firm, the value of the goodwill of the business would be deemed to be Rs. 1 lakh. The Asst. CED estimated the value of the goodwill at Rs. 5 lakhs. The Appellate CED upheld the order of the Assistant Controller. On farther appeal, the Tribunal held that for the purpose of estate duty the value of the goodwill should be taken at Rs. 1 lakh. On a reference this court held that the share of the deceased in the partnership, including that in the goodwill, passed to his legal representatives and the value of the same should be determined in the manner as provided by the partnership deed. But in respect of the surviving partners under the terms of the partnership, there was a cesser of interest of the deceased and corresponding benefit accrued to them. For determining the value of such benefit, for the purpose of estate duty, the market value of the goodwill and not the value as stated in the partnership should be taken into account.

23. In reply, Mr. Roy for the assessee has drawn our attention to a passage in the

3rd edition of Halsbury, vol. 15, page 13, para. 22, which reads as follows:

" 22. Interests ceasing.--Property in which the deceased or any other person had an interest ceasing on the deceased's death is deemed to pass to the extent to which a benefit accrues or arises by the cesser of the interest. The benefit is the benefit to the property and the extent is measured by comparing the interest ceasing with the total income of the property. "

24. He contended that there was no cesser of interest in the instant case as there was no increase of the value of the property in the hands of any person as it was a continuing business.

25. It has been found by the Tribunal and is undisputed that it is the share of the deceased in the firm which has to be valued for the purposes of estate duty. This is what has passed by devolution or cesser, as the case may be. In our view such valuation has to be made u/s 36 of the E.D. Act, 1953, read with Rule 7(c) of the E.D. Rules. In making such valuation the value of such share as appearing in the balance-sheet of the firm is an important and relevant piece of evidence and has to be taken into account. The provision in the partnership deed that an outgoing partner or the legal representative of a deceased partner will be entitled to be paid the capital and value of the share as arrived at in the balance-sheet and profit and loss account is also a relevant factor to be taken into account. The prospective buyer in the market while purchasing such a share is bound to consider the balance-sheet value thereof, and cannot claim to have a higher right than the heirs of the deceased partner.

26. A stranger buying the share of a partner in a firm has severely restricted rights. u/s 29 of the Indian Partnership Act, noted hereinbefore, a transferee is only entitled to a share of the profits, of the firm as long as the partnership continues. Even if the firm is dissolved the transferee is only entitled to accounts as on the date of dissolution.

27. In that view of the matter, it does not appear to us that the market value of the share of a partner in a firm can be correctly determined by adding up the break-up value of each and every asset of the firm. Mr. Sen was not able to cite an authority where this break-up method was adopted in valuing the share of a partnership. In *Controller of Estate Duty Vs. Ibrahim Gulam Hussain Currimbhoy*, , *Perpetual Executors and Trustees Association of Australia Ltd.* [1954] 25 ITR (Supp) 47 and *John Gregory Apcar* (see p. 192 infra), all cited by Mr. Sen, the share of a partner had been valued excluding one particular asset of the firm, namely, the goodwill. In the instant case, it is not the contention of the revenue that any particular asset of the partnership has been excluded in valuing the share of the partner. In *John Gregory Apcar* (see below) the dispute was confined to the valuation of a particular asset and the more fundamental question, i.e., the method or manner of valuation of the individual share of a partner, was not gone into.

28. In the instant case the estate duty authorities accepted the value of the

share of the partner as shown in the balance-sheet of the firm to start with but added thereto the estimated value of one individual asset, namely, the jute press. This computation in our view is erroneous. The authorities could have rejected the balance-sheet value and computed the value of the entire share of the deceased on the basis of what it would fetch in the open market. But they were not entitled to add thereto the estimated enhanced value of any particular asset.

29. For the reasons as aforesaid, we answer question No. 1 in the negative and in favour of the assessee. By reason of our answer to question No. 1, question No. 2 does not call for any answer and we decline to answer the same. In the facts and circumstances of the case, there will be no order as to costs.

C.K. Banerji, J.

30. I agree.