

PETITIONER:
CONTROLLER OF ESTATE DUTY GUJARAT-I, AHMEDABAD

Vs.

RESPONDENT:
MRUDULA NARESHCHANDRA

DATE OF JUDGMENT 09/05/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
PATHAK, R.S.

CITATION:
1986 AIR 1821 1986 SCR (3) 45
1986 SCC Supl. 357 1986 SCALE (1)1387

ACT:
ESTATE DUTY ACT 1953/ESTATE RULES 1953: Section 36/Rule 7(c)-Firm-Death of partner-Entire interest of deceased in firm including goodwill passes on death-To be valued-Includible in estate of deceased for levy of estate duty.

HEADNOTE:

One N. Kanti Lal had 28% share in a partnership firm. The Partnership Deed, by cl. (10) provided that the firm shall not stand dissolved on death of any of the partners and the partner dying shall have no right whatever in the goodwill of the firm. On his death, the respondent-accountable person filed necessary return under the Estate Duty Act, 1953 without including the value of the share of the deceased in the goodwill of the firm. The Assistant Controller of Estate Duty, however, held that the share of the deceased in the goodwill of the firm was liable to be included in the principal value of his property and added the same to the value of the interest which the deceased had in the partnership assets. The Appellate Controller of Estate Duty confirmed the aforesaid order in appeal.

The accountable person preferred appeal before the Appellate Tribunal contending: (1) that the deceased had no interest in the assets of the firm and hence his share in the goodwill did not pass at all; (2) that in view of cl. (10) of the Partnership Deed the share of the deceased partner in the goodwill did not pass and as such was not liable to the charge of estate duty; and (3) that when a partnership was a going concern, there could not be any separate valuation of the goodwill which went with the running business. The Tribunal rejected all the contentions and held that in spite of cl. (10) of the partnership agreement, the value of the goodwill to the extent of the share of the deceased passed on his death and it was liable to be charged to estate duty.

46

On reference by the Tribunal, the High Court held: (i) that the interest of the deceased in the firm was property within the meaning of the provisions of the Estate Duty Act; and (ii) that the value of the interest of the deceased in the partnership firm would not include the goodwill of the partnership firm.

This Court, on the question: 'Whether the value of the interest of the deceased in a partnership firm would include the goodwill of the partnership firm and liable to estate duty', allowing the Appeal of the Revenue,

^

HELD: 1. In a partnership there is a community of interest in which all the partners take in the property of the firm. But that does not mean that during the subsistence of the partnership a particular partner has any proprietary interest in the assets of the firm. Every partner of the firm has a right to get his share of profits till the firm subsists, and he has also a right to see that all the assets of the partnership are applied to and used for the purpose of the partnership business. 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 asset even during the subsistence of the partnership. This interest is 'property' within the meaning of s. 2(15) of the Estate Duty Act, 1953. [53 D-F]

2. The goodwill of the firm is an asset in which the dying partner has a share. It passes on the death of the dying partner and the beneficiary of such passing would be one who by virtue of the partnership agreement would be entitled to the value of that asset. The fact that such interest might devolve not on the legal representatives but on a different group or category of persons or that from the goodwill the legal representatives might be excluded, would not make any difference for the purpose of assessment of estate duty. The entirety of the interest of the deceased partner that would pass, which necessarily included goodwill, would be includible in the estate. The valuation of such entire interest has to be determined as provided under s. 36 of the Estate Duty Act, 1953 read with Rule 7(2) of the Estate Duty Rules, 1953. [61 E-G]

3. The share of the deceased in the partnership did not evaporate or disappear. It went together with the other assets and should be valued in the manner contemplated under Rule 7(c) of the Estate Duty Rules. The goodwill of the firm after the death of the dying partner does not get diminished or extinguished. Whoever has the benefit of that firm has the benefit of the value of that goodwill. Therefore, if by any

47

arrangement, for instance, clause (10) of the partnership agreement in the instant case, heirs do not get any share in the good will, the surviving partners who will have the benefit of the partnership will certainly have that benefit. Therefore, as a result of the death of the dying partner, there is cesser of interest as well as accrual or arising of benefit of the said cesser. [62 F; 57 B-D]

4. Difficulties in making apportionment do not make a taxable item non-taxable. [58 C]

Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Taxes, 1954 A.C. 114 = 25 I.T.R. (ED) 47, Attorney- General v. Boden and Another, 1912 (I) K.B. 539, Addanki Narayanappa & Anr. v. Bhashara Krishnappa and 13 ors., A.I.R. 1966 S.C. 1330=[1966] 3 SCR 400, Commission of Income-tax, Madras v. Best and Co. (Private) Ltd., 60 I.T.R.11 and Khushal Khemgar Shah v. Mrs. Khorshed Banu, [1970] 3 SCR 689 relied upon.

Controller of Estate Duty, Madras v. Ibrahim Gulam Hussain Currimbhoy, 100 I.T.R. 320, State v. Prem Nath, 106 ITR 446, Controller of Estate Duty, Bombay City I v. Fakirchand Fatchchand Sachdev, 134 ITR 268, Controller of Estate Duty v. Kanta Devi Taneja, 132 ITR 437 and Controller

of Estate Duty, West Bengal v. Annaraj Mehta and Deoraj Mehta, 119 ITR 544, approved.

Attorney-General of Ceylon v. AR. Arunachalam Chettiar and Others, 34 ITR 20 E.D., Alladi Kuppuswami v. Controller of Estate Duty, Madras, 76 ITR 500 and Smt. Surumbayi Ammal v. Controller of Estate Duty, Madras, 103 ITR 358, distinguished.

Controller of Estate Duty v. Smt. Ram Sumarni Devi, 147 ITR 233 and P. Abdul Sattar v. Controller of Estate Duty, 150 ITR 206, overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1349(NT) of 1974.

From the Judgment and Order dated 20th June, 1973 of the Gujarat High Court in Estate Duty Ref. No. 3 of 1970.

S.C. Manchanda, K.P. Bhatnagar and Miss A. Subhashini for the Appellant.

48

S.T. Desai and S.C. Patel for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an appeal by certificate granted by the High Court of Gujarat by its order dated 2nd May, 1974 from the judgment and order dated 28th June, 1973 in Estate Duty Reference No. 3 of 1970 under section 65(1) of the Estate Duty Act, 1953 (hereinafter called the 'Act').

One Nareshchandra Kantilal died on 13th September, 1962. He was a partner in the firm of Messrs G. Bhagwatiprasad & Co. having 28% share in the partnership. The partnership was by the document of partnership which is dated 6th June, 1957. On the death of the deceased, 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 the firm in which he was a partner 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 clause (10) of the partnership deed. Clause (10) was as follows:

"The firm shall not stand dissolved on death of any of the partners and the partner dying shall have no right whatever in the goodwill of the firm".

The accountable person contended on the basis of this clause that on the death of the deceased, his heirs had no right in the goodwill of the firm, and as such the value of the said goodwill did not pass under the provisions of the Act and was, therefore, not liable to any estate duty. The Assistant Controller, however, negatived the said contention. He valued the goodwill at Rs.2,16,900. The share of the deceased in the goodwill was worked out from this value at Rs.60,732. The Assistant Controller also worked out the value of the interest which the deceased had in the partnership assets and added to the above referred amount of Rs.60,732 as the value of his share in the goodwill.

The accountable person, being aggrieved, preferred an appeal before the Appellate Controller of Estate Duty, Bombay. He by and

49

large confirmed the order of the Assistant Controller and

made only a slight reduction in the value of the goodwill. The accountable person thereafter went up in appeal before the Appellate Tribunal. She raised before the Tribunal two principal contentions, namely, (1) that 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 as such was not liable to the charge of estate duty. The Tribunal rejected both these contentions.

It was contended on behalf of the accountable person before the Tribunal that when a partnership was a going concern there could not be any separate valuation of the goodwill which went with the running business. The Tribunal noted 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 of the Privy Council in *Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Taxes*, 1954 A.C. 114 = 25 I.T.R. (ED) 47. The Tribunal 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 it was liable to be charged estate duty.

Three questions of law were referred to the High Court. These were:

- "1. 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, 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?"

50

The last question was not pressed before the High Court. The High Court, therefore, did not give any answer. The first question, the High Court, answered in favour of the revenue and in the affirmative and the second question was answered in the negative. As the first question was in favour of the revenue and there was no appeal by the accountable person this appeal is concerned only with the second question namely 'whether the value of the interest of the deceased in the said partnership would include the goodwill of the partnership firm'. The High Court answered the question in the negative and in favour of the accountable person as mentioned hereinbefore.

The High Court noted that the primary object of every taxing statute was to recover a tax or duty in cash on the happening of a particular taxable event. This event under the Act, is the actual or deemed passing of property on the death of a person. Every taxing statute, according to the High Court, contemplated the levy of a tax or duty on the

valuation date which has to be arrived at on the principles stated in the statute itself. If the valuation principles stipulated in the Act could not be worked out with any precision in respect of any property it would follow as a necessary corollary that that property was not one which was intended to be subject to tax or duty contemplated by the statute. This basic principle, according to the High Court, should be applied while construing sections 7 and 40 of the Act.

Section 7 of the Act, according to the High Court would apply only if two conditions were satisfied, namely (1) that there was a cesser of interest in the property on the death of a person, and (2) an accrual or arising of benefit to another as a result of the said cesser. In order to assess the tax liability the value of the benefit had to be worked out and section 40 of the Act provides the basis for the valuation. Section 40 clearly postulates that the property in which interest had ceased must be capable of yielding income. If the 'benefit' arising under section 7 on the cesser of an 'interest' could not be measured under section 40, the cesser of such interest, according to the High Court did not attract payment of estate duty under section 7 of the Act.

A partner in a firm has a marketable interest in all the capital assets of the firm including the goodwill even during the subsistence of the partnership. Interest in goodwill was property within the meaning of section 2(15) of the Act, according to the High Court. But the goodwill of a firm, in the opinion of the High Court, standing by itself could not earn any income. In a case where it was specially stipulated

51

that on the death of any of the partners, the partnership shall not stand dissolved and that the heirs of the deceased partner shall have no right whatsoever to claim any share in the goodwill of the firm, the benefit arising to the other partners on the cesser of interest in the goodwill, on the death of the partner could not be measured in terms of section 40. The High Court, therefore, was of the view that such a benefit was not liable to estate duty under section 7 of the Act.

The High Court was, therefore, of the view that the facts of this case were not covered by either section 5 or section 7 and answered the question No. 2 in the negative.

In order to appreciate this controversy, it is necessary to refer first to section 2(15) of the Estate Duty Act. Section 2(15) deals with 'property'. It provides as follows:

" '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."

There are two explanations with which we are not presently concerned.

Section 2(16) deals with 'property passing on the death' and is as follows:

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

The imposition of estate duty is by sub-section (1) of section 5. It stipulates that in 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 provided in the Act, all property, settled or not settled including agricultural land....., which passes on the death of such person, a duty called 'estate duty' at the rates fixed in accordance with section 35.

Section 6 of the Act deals with property which is deemed to pass

52

and provides that property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.

Section 7(1) deals with interest ceasing on death and is as follows:

"(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, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakattayam or Allyasantana law.

The other sub-sections of the section deal with special cases of different communities, the details of which need not be considered.

The other relevant provisions which need be considered deal with the value which is chargeable. Sub-section (1) of section 36 of the Act stipulates that 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 open market at the time of the deceased's death. Sub-section (2) of the section stipulates that 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.

Sections 37, 38 and 39 are provisions with which the present controversy is not directly concerned. Section 40 deals with the valuation of benefits from interests ceasing on death. This is relevant and is as follows:

"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

53

(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."

The other provisions of the Act need not be considered for the present controversy.

Section 14 of The Indian Partnership Act 1932 recognises that subject to contract between the partners,

the property of the firm would include all the property and rights and interests in property originally brought into the stock of the firm or acquired by purchase or otherwise, by the firm or for the purpose or in the course of business of the firm and includes the goodwill of the business. It further provides that unless contrary intention appears property and rights in the property acquired with money belonging to the firm are deemed to have been acquired for the firm. Section 15 of the said Act provides that the property of the firm shall be held and used exclusively for the purpose of the firm. In a partnership there is a community of interest in which all the partners take in the property of the firm. But that does not mean that during the subsistence of the partnership a particular partner has any proprietary interest in the assets of the firm. Every partner of the firm has right to get his share of profits till the firm subsists and 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 said Act also shows that he can transfer his interest in the firm either absolutely or partially. He has also the right to get the value of his share in the net asset 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 asset even during the subsistence of the partnership. This interest is property within the meaning of section 2(15) of the Act as mentioned hereinbefore.

Our attention was drawn to the decision of the King's Bench Division in the case of Attorney-General v. Boden and Another, [1912] (1) K.B. 539, in support of the contention on behalf of the revenue.

There the Court was concerned with section 1 of the Finance Act, 1894 of United Kingdom. By the said provision, estate duty was, except as in the Act provided, payable upon the principal value of all property which passes on the death of every person dying after the

54
date therein mentioned. By section 2, sub-section (1), property passing on the death of the deceased was deemed to include.....(b) property in which the deceased 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;.....(c) property which would be required on the death of the deceased to be included in an account under section 38 of the Customs and Inland Revenue Act, 1881, as amended by section 11 of the Customs and Inland Revenue Act, 1889. There, a father and his two sons carried on the business of lace or plain net manufacturers under a deed of partnership which included covenants (among others) to the following effect:- Neither of the sons was, without the consent of the father, to be directly or indirectly engaged in any trade or business except on account and for the benefit of the partnership; both the sons were bound to give so much time and attention to the business as the proper conduct of its affairs required; the father was not bound to give more time or attention to the business than he should think fit; if the father should die his share was to accrue to the sons in equal shares subject only to their paying out to his representatives the value of his share and interest at his death as ascertained by an account to be made as on the day of his death with all proper valuations, but without any valuation of or allowance for goodwill, which goodwill was to accrue to the sons in equal shares. The father died, the value of his share and interest at his death was

ascertained by an account taken as directed by the deed of partnership without any valuation of or allowance for goodwill. The share and interest so ascertained amounted to a large sum, and estate duty was paid on that sum. The Crown claimed estate duty on the value of the father's share in the goodwill on the ground that it was (1) property which passed on the death of the father within section 1 of the Finance Act, 1894, or (2) property in which the deceased had an interest ceasing on his death in which a benefit accrued or arose to the sons by the cesser of that interest within section 2, sub-section 1(b) of the Act, or (3) property passing under a settlement by deed whereby an interest for life was reserved to the father, and therefore property which would be required on the death of the father to be included in an account under section 38 of the Customs and Inland Revenue Act, 1881, as amended by section 11 of the Customs and Inland Revenue Act, 1889, as further amended by and within the provision of section 2, sub-section 1(c), of the Finance Act, 1894, or (4) an interest provided by the father in which a beneficial interest accrued or arose by survivorship on his death within section 2, sub-section 1(d) of the Act.

55

The Court deciding on the evidence that the goodwill of the business was of small value held that, having regard to the obligation of the sons under the partnership deed, the share and interest of the father in the goodwill of the business passed on the death of the father to the sons by reason only of a bona fide purchase for full consideration in money's worth paid to the father for his own use and benefit, within the meaning of section 3, sub-section(1) of the Act. It was further held that the share and interest of the father in the goodwill of the business was not (1) property which passed on the death of the father within the meaning of section 1 of the Act, nor (2) an interest for life reserved to the father within the meaning of section 38, subsection 2(c) of the Customs and Inland Revenue Act, 1881, as amended by section 11 of the Customs and Inland Revenue Act, 1889. It was further held that it was a benefit accruing or arising to the sons by the cesser of an interest which the father had in property and which ceased on his death within section 2 sub-section 1(b) of the Act.

The High Court, on the analysis of this case which was placed before it, came to the conclusion that clause 10 of the present partnership deed with which we are concerned is entirely different. In the partnership agreement in Boden's case, the interest of the deceased passed to his legal representatives immediately after his death because his share was to accrue to his partnership who were his sons subject only to their paying to his legal representatives the value of their share as on the date of death ascertained by proper valuation. This decision, in our opinion, must be understood in the light of the facts of that case and though there is a ring of similarity with the facts of the present case. Though clause 10 of the present agreement is different on the aspect of section 7 of the Act, this decision certainly supports the revenue's contentions.

In *Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Taxes of the Commonwealth of Australia* (supra) (E.D) the Privy Council had to deal with a case where the principal asset of a testator was his interest in a partnership pursuant to a deed of partnership which, inter alia, conferred option on the surviving partners to purchase the testator's share in the capital on his death and further provide that "in computing the amount

of purchase money payable on account of the exercise of any option, no sum shall be added or taken into account for the goodwill." It was held by the Privy Council that the whole of the testator's interest including goodwill was assessable to duty. In so far as the Boden's case decided that the

56

goodwill did not pass was dissented from. But the moot question is, what happens to the share of the partner in the goodwill of the firm.

Clause 10 of the partnership deed in the instant case states as indicated before that the firm shall not stand dissolved on the death of any of the partners. Therefore death of any of the partners will not dissolve the partnership firm and so long as partnership firm exists, goodwill as an intangible asset will belong to all the partners. What the clause says that on the death of the partner, the partner dying shall have no right whatsoever in the goodwill of the firm. It is clear, therefore, that goodwill exists up to the death among the partners. If it does, then the property in the goodwill will also exist in the partners. After his death, the partner shall have no right. It means to convey that as a result of inheritance, the heirs of the partners will not get any share but it cannot evaporate nor can the parties by agreement defeat the rights of the revenue. The very moment life ceases, the right of the deceased in the asset ceases and at that moment the property shall pass and/or shall be deemed to pass on. Jawaharlal Nehru in 'The Discovery of India' quotes Aurobindo Ghose thus:

"Aurobindo Ghosh writes somewhere of the present as 'the pure and virgin moment' that razor's edge of time and existence which divides the past from the future, and is, and yet, instantaneously is not. The phrase is attractive and yet what does it mean? The virgin moment emerging from the veil of the future in all its naked purity, coming into contact with us, and immediately becoming the soiled and stale past. Is it we that soil it and violate it? Or is the moment not so virgin after all, for it is bound up with all the harlotry of the past?" (1983 Impression p. 21)

So therefore in that razor's edge of time and existence which divides the past from the future, and is, and yet, instantaneously is not, the property indubitably passes on, to whom depends upon the facts and circumstances of a particular case. If property exists, as it must as the clause does not and indeed cannot say that goodwill vanishes, then share of the partner exists. If that is so then the title to that property cannot be in the vacuum.

The High Court at page 309 of the report has observed that interest of a dying partner automatically comes to an end on his death. The High Court further stated that if an interest in any property came

57

to an end at a particular point of time, nothing survived which could be inherited by the heirs. We are unable to accept this position. The moment the life comes to an end, 'the razor' edge of time and existence which divides the past from the future, and is, and yet, instantaneously is not,' at that time property passes or is deemed to pass. The goodwill of the firm after the death of the dying partner does not get diminished or extinguished. Whoever has the benefit of that firm has the benefit of the value of that goodwill. Therefore if by any arrangement, for instance, clause (10) of the partnership agreement in the instant

case, the heirs do not get any share in the goodwill, the surviving partners who will have the benefit of the partnership will certainly have that benefit. The High Court was right in observing at page 312 of the report that section 7 of the Act might apply to the facts of a given case if it could be shown that there was a cesser of any interest resulting in some form of benefit. Indeed in this case whoever gets the partnership firm is the gainer. Therefore, as a result of the death of the dying partner, there is cesser of interest as well as accrual or arising of benefit of the said cesser. It is well-settled that during the subsistence of the partnership, no partner can claim any specific share in any particular items of the partnership assets.

A partner's interest in running partnership is not specific and is not confined to any specific item of partnership property but that does not mean that the partner has no interest in any individual asset of the firm. His interest obviously extends to each and every item of firm's asset. See the observations in the case of *Addanki Narayanappa & Anr. v. Bhaskara Krishnappa and 13 Ors.*, A.I.R. 1966 S.C. 1300[1966] 3 S.C.R. 400. So the goodwill of the firm was an asset in which dying partner had a share. It passed from the death of the dying partner and the beneficiary of such passing would be one who by virtue of the partnership agreement would be entitled to the value of that asset.

The question is how should such asset be valued? Under the Act, the levy of the estate duty is on every asset that will pass on the death of the deceased. Part V of the Act deals with the valuation of assets that is chargeable to tax under the Act. Sub-section (1) of section 36 provides that 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. Subsection (2) of section 36 further stipulates that 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

58 death and shall not make any reduction in the estimate on account of the estimate being made on certain assumptions. Section 40 deals with the valuation of benefits from interests ceasing on death.

It has been canvassed before the High Court on behalf of the accountable person and it found favour with the High Court that clause (b) of section 40 of the Act which deals with the valuation of benefit of interest arising on death would be wholly inapplicable with the facts and circumstances of this case. We are unable to accept this position.

Difficulties in making apportionment does not make a taxable item non-taxable. See in this connection the observations of this Court in *Commissioner of Income-tax, Madras. v. Best and Co. (Private) Ltd.*, 60 I.T.R. 11.

Reliance was placed on behalf of the accountable person on a decision of the Judicial Committee in *Attorney-General of Ceylon v. AR. Arunachalam Chettiar and Others*, 34 I.T.R. 20 E.D. The facts of that case and the clauses with which the Judicial Committee was concerned there were entirely different. There the son had merely a right to be maintained by the Karta out of the common fund to an extent in the Karta's absolute discretion and there was no basis of valuation which in relation to such an 'interest' would conform to the scheme prescribed under section 17(6) of the

Ordinance with which the Judicial Committee was concerned.

A full bench of the Madras High Court in the case of Alladi Kuppaswami v. Controller of Estate Duty, Madras, 76 I.T.R. 500, had to construe the effect of a Hindu Women's Rights to Property Act, 1937 and to consider the nature of the right of the widow in the property. It was found that at the death of the widow, there was no cesser of any interest she had in the joint family property and, in any case, her interest being entirely undefined, it lapsed on her death resulting in no change in the coparcenership as such and her interest could not properly be regarded as an interest in property within the meaning of section 7(1) of the Act. Our attention was drawn to certain observations of Veeraswami, C.J. at page 507 of the report wherein it was observed that it was only property that passed in the sense of passing hands by way of inheritance, or other form of devolution which seemed 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

59
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 Chief Justice had observed that the implication was that if that measure in terms of income of the property was not apposite to the cesser of an interest, it would not be an interest such as was contemplated by section 7(1) of the Act. It is not necessary to examine this proposition in any greater detail because in our opinion under section 5 of the Act read with section 36, valuation can be made in the instant case.

The Madras High Court in Controller of Estate Duty, Madras v. Ibrahim Gulam Hussain Currimbhoy, 100 I.T.R. 320, observed that the goodwill being an asset of the firm belonged to the firm, i.e., to all the partners, and the death of the deceased partner did not extinguish his share in the goodwill but resulted in the augmentation of the interest of the surviving partners in the goodwill in view of clause 14 of the partnership deed in that case. Clause 14 was as follows:

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

And hence there was a passing of the deceased's share in the goodwill even if there was no devolution of the deceased's interest in the goodwill on the legal representatives. The interest in the goodwill which the deceased possessed and could dispose of along with his entire interest in the firm at the time of his death came to devolve on the surviving partners and their share in the goodwill was augmented to the extent of the share of the deceased as per clause 14 of the partnership deed in that case and the Madras High Court held that section 5, of the Act applied. Section 5, we have noted, is applicable in the instant case in the sense that property passed on the death of the deceased partner and if that is so, section 40 would not have any application in the valuation. On this aspect, the Madras High Court was unable to agree with the Gujarat High Court's decision under appeal. The Madras High Court relied on the decision of this Court in Khushal Khemgar Saha v. Mrs. Khorsed Banu, [1970]3 S.C.R. 689.

Our attention was also drawn to a decision of the Madras High

60

Court in the case of Smt. Surumbayi Ammal v. Controller of Estate Duty, Madras, 103 I.T.R. 358. But the question under controversy was different in that case and no useful purpose would be served by examining that case in detail.

The full bench of Punjab and Haryana High Court in the case of State v. Prem Nath, 106 I.T.R. 446, held that the goodwill of a firm was an asset of the firm, the share of the deceased partner in which, along with his share in the other assets of the firm, devolved for the purposes of estate duty, on his death, upon his legal representatives notwithstanding any clause in the deed of partnership to the effect that the death of a partner should not dissolve the firm and that the surviving partners were entitled to carry on the business on the death of the partner. The Punjab & Haryana High Court noted that the decision under appeal of the Gujarat High Court did not consider the question whether the devolution of the goodwill on the surviving partners on the death of the deceased partner was itself not sufficient to constitute passing of the property within the meaning of section 5 of the Act. It noted that this view of the Gujarat High Court was contrary to the Privy Council's decision referred to hereinbefore and that of the Madras High Court's view noted earlier.

The Bombay High Court in the case of Controller of Estate Duty, Bombay City-I v. Fakirchand Fatehchand Sachdev, 134 I.T.R. 268, came to the conclusion that the charging provisions and the computation provisions in the Estate Duty Act, 1953 constituted an integrated scheme, and if in a given case it was not possible to compute the value of a particular property passing on death, then that property did not become exigible to the charge of estate duty. Where certain property was deemed to pass under section 7(1) of the Act, estate duty thereon would be chargeable under section 5, but the value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased would have to be computed under section 40 and if it could not be computed, then such a benefit was not liable to the charge of estate duty. The goodwill of a firm was one of the properties or assets of a firm. Merely because it was an intangible asset, it did not stand on a different footing from the tangible assets of the firm, but in making up the final accounts it had to be taken together with the other assets of the firm in arriving at the value of the total assets and for deducting therefrom the liabilities as provided by law and in paying to the partners their share in the balance so arrived at. Where a partnership was dissolved by the death of a partner, his share in the firm

61

passed on his death to his legal representatives. Where a partnership A was not dissolved on the death of a partner but the surviving partners became entitled to continue the partnership business, the deceased partner's share passed to his surviving partners subject to their making payment to the legal representatives of the deceased partner of the amount of the value of his share in accordance with the provisions of the deed of partnership. A partner did not have a defined share in the goodwill of the firm and the estate duty authorities could not regard it as a separate property by itself apart from the other assets and liabilities of the firm and include its value in the estate of a deceased partner under section 5. The Bombay High Court could not agree with the view of the Gujarat High Court

under appeal.

In the case of Controller of Estate Duty v. Kanta Devi Taneja, 132 I.T.R. 437, the Gauhati High Court held that passing of property was not a mere change of source or title but change of beneficial possession or enjoyment. The interest of a partner in a partnership firm was property within the meaning of section 2(15) of the Estate Duty Act, 1953, and such interest extended to the share of the partnership including goodwill. Therefore, on the death of a partner, his interest in the entire unit of the firm including goodwill passes, irrespective of the provisions of the partnership deed as to its final devolution.

The Calcutta High Court in the case of Controller of Estate Duty, West Bengal v. Annaraj Mehta and Deoraj Mehta, 119 I.T.R. 544 had occasion to consider this question and held that what passed on the death of a partner was his share in the firm, that is, his interest in the entire unit of the firm. This had to include goodwill. The fact that such interest might devolve not on the legal representatives but on a different group or category of persons or that from the goodwill of the legal representatives might be excluded would not make any difference for the purpose of assessment to estate duty. The entirety of the interest of the deceased partner that would pass, which necessarily included goodwill, would be includible in the estate. The valuation of such entire interest had to be determined as provided under section 36 of the Estate Duty Act, 1953 read with rule 7(c) of the Estate Duty Rules, 1953. Goodwill as such could not be valued, according to the Calcutta High Court, for inclusion in the estate of the deceased for purposes of estate duty. The High Court observed at page 552 of the report as follows:

"We hold that the Tribunal's finding that the goodwill in

62

the firm, Messrs. Ashok Foundary and Metal Works, did not pass on the death of the deceased is incorrect but the finding that the valuation of the goodwill as such could not be included in the estate of the deceased for the purpose of the estate duty is correct. Goodwill being part of the entire assets of the firm, the entire share of the deceased therein has to be valued in accordance with law and this value has to be included in the estate for levy of estate duty."

The Allahabad High Court in the case of Controller of Estate Duty v. Smt. Ram Sumarni Devi, 147 I.T.R. 233, followed the decision under appeal and was of the view that the goodwill could not be included in the value of the property passing on the death of a partner.

In P.T. Abdul Sattar v. Controller of Estate Duty, 150 I.T.R. 207, the Kerala High Court came to the conclusion that under clause 15 of the deed it had to construe, provided that in the event of death or retirement of a partner, such deceased or retiring partner would not be entitled to any goodwill of the firm. A had died in 1969 and the Asst. Controller held that the interest of A in the goodwill of the firm passed on his death and this was upheld by the Tribunal. It was held by the High Court that under clause 15, the interest of A in the goodwill of the firm automatically came to an end on his death. Property in the goodwill did not, therefore, pass on his death. We are, however, for the reasons we have indicated before, unable to accept this conclusion.

In the aforesaid view of the matter, we are of the

opinion that the share of the deceased in the partnership did not evaporate or disappear. It went together with the other assets and should be valued in the manner contemplated under rule 7(c) of the Estate Duty Rules as indicated in the judgment of the High Court of Calcutta in Controller of Estate Duty, West Bengal v. Annaraj Mehta and Deoraj Mehta (supra) .

The second question must, therefore, be answered in the affirmative and in favour of the revenue. The appeal is, therefore, allowed. In the facts and circumstances of the case, parties will pay and bear their own costs. Consequential orders in accordance with law and in consonance of this decision should be passed by the Tribunal upon notice, to all necessary parties.

A.P.J .

Appeal allowed.

63