

MISCELLANEOUS CIVIL

FULL BENCH

Before O. Chinnappa Reddy, Acting C.J., Gurnam Singh and
M. R. Sharma,

STATE,—Applicant.

versus

SHRI PREM NATH,—Respondent

Estate Duty Reference No. 1 of 1974.

October 25, 1976.

Estate Duty Act (34 of 1953)—Sections 2(16) and 5—Share of a deceased partner in the goodwill of a firm—Whether property which passes on the death of such partner.

Held, that the goodwill of a firm is an asset of the firm the share in which, along with the deceased partner's share in the other assets of the firm devolves on his death, upon his legal representatives notwithstanding any clause in the deed of partnership to the effect that the surviving partners are entitled to carry on the business on the death of the partner. A term extinguishing the right of a deceased partner to a share in the assets is not to be implied merely because the deed provides for continuance of business by the surviving partners. Thus the share of goodwill of a deceased partner in the assets of the firm is property which passes on his death under section 5 of the Estate Duty Act 1953. (Para 3).

Reference under section 64(1) of the Estate Duty Act, 1953 made by the Income-tax Appellate Tribunal (Chandigarh Bench), Chandigarh to this Court for opinion on the following question of law arising out of its order dated 7th November, 1973 passed in E.D.A. No. 2 of 1972-73.

“Whether on the facts and in the circumstances of the case, share of goodwill of a deceased partner in the assets of a firm passes on his death under the Estate Duty Act ?”.

D. N. Awasthy, Advocate, with B. K. Jhingan, Advocate, for the appellant.

G. C. Mittal, Advocate with Arun Jain, Advocate, for the respondent.

State v. Shri Prem Nath (O. Chinnappa Reddy, Acting C.J.)

JUDGMENT.

O. Chinnappa Reddy, A.C.J.

(1) Smt. Parsini Devi, who was a partner having 40 per cent share in the firm of M/s Metal Fabriks (India) Ludhiana, died on 19th August, 1969. In computing the principal value of the estate of late Parsini Devi, the Assistant Controller of Estate Duty included a sum of Rs. 93,480 on account of the share of the deceased in the goodwill of the firm M/s Metal Fabrics (India) Ludhiana. The Zonal Appellate Controller confirmed the order of the Assistant Controller, but the Income Tax Appellate Tribunal, following a judgment of the High Court of Punjab and Haryana in *Controller of Estate Duty v. Ved Parkash Jain*, (1) held that the share of good-will of a deceased person in the assets of a firm did not pass on his death and, therefore, it could not be taken into account in computing the principal value of the estate of the deceased. The addition of Rs. 93,480 was, therefore, deleted. The Tribunal did not go into the question, whether the share of goodwill was correctly valued at Rs. 93,480. At the instance of the Revenue, the following question has been referred to us for our decision :—

“Whether on the facts and in the circumstances of the case, share of good-will of a deceased partner in the assets of a firm passes on his death under the Estate Duty Act.”

The reference came before two of us initially. We referred it to a Full Bench as we thought that the decision in *Controller of Estate Duty v. Ved Parkash Jain*, required reconsideration. That is how the matter has now come before the Full Bench.

(2) Under section 5 of the Estate Duty Act, Estate Duty is leviable upon the principal value of all property which passes on the death of a person. Section 2(16) defines “property passing on the death” as including property passing either immediately on the death or after an interval either certainly or contingently, and either originally, or by way of substitutive limitation. It also defines “on the death” as including at a period “ascertainable only by reference to the death”. The question for consideration is, whether the share of a deceased partner in the goodwill of a firm is property which passes on the death of such a person.

(1) 96 I.T.R. 303.

(3) It is useful to mention at this juncture that under section 14 of the Indian Partnership Act, the goodwill of the business of a firm is expressly stated to be the property of the firm and section 55 also provides for the sale of the good-will as either separately or along with other property of the firm after dissolution of the firm. In *Khushal Khemgar Shah and others v. Mrs. Khorshed Banu Pedipa Boatwalla and another*, (2) the Supreme Court referred to section 14 of the Partnership Act and observed :—

“Good-will of the firm is expressly declared to be the property of the firm.”

Referring to section 55 which makes provision for the sale of good-will after dissolution, the Supreme Court further observed :—

“But it is not enacted thereby that good-will may be taken into account only when there is a general dissolution of the firm, and not when the representatives of a partner claim his share in the firm, which by express stipulation is to continue or notwithstanding the death of a partner.....
..... These provisions (sections 39, 42 and 46) deal with the concept and consequences of dissolution of the firm; they do not either abrogate the terms of the contract between the partners relating to the consequences to ensue in the even of the death of a partner when the firm is not to stand dissolved by such death, nor to the right which the partner has in the assets and property of the firm. The Partnership Act does not operate to extinguish the right in the assets of the firm of a partner who dies, when the partnership agreement provides that on death the partnership is to continue. In the absence of a term in the deed of partnership to that effect, it cannot be inferred that a term that the partnership shall continue notwithstanding the death of a partner, will operate to extinguish his proprietary right in the assets of the firm.”

Later again, they observed :—

“The goodwill of a firm is an asset. In interpreting the deed of partnership, the Court will insist upon some indication that the right to a share in the assets is, by virtue of the

(2) A.I.R. 1970 S.C. 1147;

State v. Shri Prem Nath (O. Chinnappa Reddy, Acting C.J.)

agreement, that the surviving partners are entitled to carry on the business on the death of the partner, to be extinguished. In the absence of a provision expressly made or clearly implied, the normal rule that the share of a partner in the assets devolves upon his legal representatives will apply to the good-will as well as to other assets."

It is clear from the observations of the Supreme Court that the good-will of a firm is an asset of the firm the share in which, along with his share in the other assets of the firm devolves, on his death, upon his legal representatives notwithstanding any clause in the deed of partnership to the effect that the surviving partners are entitled to carry on the business on the death of the partner. A term extinguishing the right of a deceased partner to a share in the assets is not to be implied merely because the deed provides for continuance of business by the surviving partners.

(4) The earliest case to which we have been referred is the decision of the Privy Council in *Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Taxes of the Commonwealth of Australia*, (3). Under the terms of the partnership deed, it was provided that on the death of a partner, the surviving partners had the option of purchasing his share without any sum being added or taken into account for good-will. On the death of a partner, the surviving partners exercised the option and purchased the deceased partner's share without any sum being added or taken into account for good-will. In their statement of the deceased partner's estate, the executors of his will gave as the value of his interest in the partnership the price which the surviving partners paid for his share. The revenue added the proportionate value of good-will. It was held by the Privy Council that the deceased partner's interest in the goodwill passed, on his death, with his interest in the other assets to his legal representatives and the fact that its value was not to be taken into account in calculating the price receivable by the estate for his interest in the partnership from the surviving partners was irrelevant. The decision of the Privy Council is conclusive against the assessee on the question referred to us.

(5) In *S. Devaraj v. Commissioner of Wealth Tax*, (4) the Madras High Court considered the identical question which has

(3) (1954) 25 I.T.R. (Supplement) 47.

(4) (1973) 90 I.T.R. 400.

been referred to us. After referring to the observations of the Supreme Court in *Khushal Khemgar Shah v. Khorshed Banu* (supra), they observed as follows :—

“Therefore, the accountable person as legal representatives of the deceased partner, Narayanaswami Naidu, will be entitled to the deceased’s share in all the partnership assets including the good-will on devolution, and sections 39, 42 and 46 of the partnership Act dealing with the concept and consequences of the dissolution of the firm cannot be said to extinguish the proprietary right of the deceased partner in the assets of the firm including the goodwill. The fact that the accountable persons had not in fact got a share in the goodwill of the managing agency firm from the surviving partners as found by the Tribunal will not affect the legal consequences of the devolution of the deceased’s interest in the goodwill to the accountable persons. It may be that in the instant case the accountable persons did not as a matter of fact get anything other than the deceased’s share in the capital and the profits of the business. But, as already stated, the entitlement of the accountable persons to the deceased’s share in the good-will cannot be “disputed in view of the decision of the Supreme Court in *Khushal Khemgar Shah v. Khorshed Banu* (2, (supra).

(6) This view was reiterated by the Madras High Court in *Controller of Estate Duty v. Ibrahim Gulam Hussain Currimbody*, (5) and *Surumkhavi Ammal v. Controller of Estate Duty*, (6).

(7) In *Smt. Mrudula Nareshchandra v. Controller of Estate Duty*, (7), the Gujarat High Court, while holding that the good-will of a firm was one of the firm’s assets and that the interest of a deceased partner extended even to it, held that, in the case before them, the interest of the deceased partner in the good-will of the firm became extinguished with his death and was not inherited by his heirs. Therefore, it was held that the property did not pass within the meaning of section 5 of the Estate Duty Act. The conclusion of the learned Judges was based on clause 10 of the Deed

(5) 100 I.T.R. 320.

(6) 103 I.T.R. 358.

(7) 100 I.T.R. 297.

State v. Shri Prem Nath (O. Chinnappa Reddy, Acting C.J.)

of Partnership which said. "The firm shall not stand dissolved on death of any of the partners and the partner dying shall have no right whatsoever in the good-will of the firm." Apart from the question whether the learned Judges were right in their construction of clause 10 of the Deed of Partnership, we must also point out that the learned Judges, in arriving at the conclusion that the property did not pass within the meaning of section 5 of the Act, confine their consideration to the question whether the goodwill passed to the heirs of the deceased or not. They 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 property within the meaning of section 5 of the Act. Since the actual decision of the learned Judges proceeded on a construction of the relevant clause of the Deed of Partnership, we do not think that it is necessary for us to say anything more about the view expressed by the learned Judges we may, however, add that the view of the learned Judges, appears to be opposed to the decision of the Privy Council in *Perpetual Executors and Trustees Association of Australia Ltd. v. Commissioner of Taxes of the Commonwealth of Australia*. In *Controller of Estate Duty v. Ibrahim Gulam Hussain Currimbhoy*, (5) (supra). The Madras High Court expressly disagreed with the view expressed by the Gujarat High Court in *Smt. Mrudula Nareshchandra v. Controller of Estate Duty*.

(8) We now come to the decision of the High Court of Punjab and Haryana in *Controller of Estate Duty, Patiala v. Ved Parkash Jain*, (1) (supra). Harbans Singh and Jain, JJ. held that the share of a deceased partner in the good-will of a firm did not pass within the meaning of section 5 of the Estate Duty Act where the firm continued even after the death of the deceased partner. The learned Judges observed "goodwill has no value in a going concern of partnership and its quantification is not possible and as such the value of the so-called share held by Hari Ram in the goodwill of the firm could not legally be included in the principal value of the estate of the deceased." The observation of the learned Judges that "goodwill has no value in a going concern of partnership" is clearly opposed to section 14 of the Indian partnership Act and the observations of the Supreme Court in *Khushal Khemgar Shah and others v. Mrs. Khorshed Banu Dadiba Boatwalla and another*, already extracted by us. Nor can the difficulty in quantification be a ground for concluding that the goodwill has no value and does not pass on the death of a deceased partner. The learned Judges also referred to

the observations of the Supreme Court in *Addanki Naravanappa v. Bhaskara Krishnappa* (8), where the Supreme Court generally discussed the rights and duties of a partner and observed that during the subsistence of the partnership no partner can deal with any part of the property as his own. The observations of the Supreme Court throw no light on the question whether the share of a partner in the goodwill of a firm passes or does not pass on the death of the partner. If the share of a partner in goodwill does not pass because no partner can deal with any portion of the property as his own during the subsistence of partnership, the same argument may be made to apply to the share of the partner in the other assets of the firm also. We do not think that we can accept such an argument. We are of the view that *Ved Parkash Jain's case* was wrongly decided. We express our respectful agreement with the view expressed by the Madras High Court in *S. Devaraj v. Commissioner of Wealth Tax*. In the result, the question referred to us is answered against the assessee and in favour of the revenue. There will be no order regarding costs.

Gurnam Singh, Judge.
M. R. Shrama, Judge.

N.K.S.

(8) A.I.R. 1966 S.C. 1300.