v. *The State of Punjab and others* (4). Exactly the same is the position in the present petition. If a private individual cannot ask for a review of an order by the Collector on the basis of the changed interpretation of law, I fail to understand, how a revenue officer can *suo motu* review his own order on that ground. The ground on which the review has been made by the learned Collector,—*vide* his order dated 21st September, 1962, is not a valid and legal ground for reviewing the previous order and thus the order of the Collector dated 21st September, 1962, cannot be sustained. The consequence would be that the orders of the Commissioner, and the Financial Commissioner would also automatically fall.

(6) The other contention of the learned counsel that under section 82 of the Tenancy Act a revenue officer cannot review his previous order at any time and such power has to be exercised within a reasonable period, has considerable force; but I do not propose to deal with this contention on merits in the view I have taken of the first contention of the learned counsel on the basis of which the petition is being allowed.

(7) For the reasons recorded above, I allow this petition and quash the impugned orders of the Collector dated 21st September, 1962, and those of the Commissioner and the Financial Commissioner dated 5th February, 1964, and 29th March, 1965, respectively. In the circumstances of the case there will be no order as to costs.

R.N.M.

FULL BENCH

Before D. K. Mahajan, Gopal Singh and Bal Raj Tuli JJ.

THE CONTROLLER OF ESTATE DUTY,—*Applicant.*

.... *Versus*

JAI GOPAL MEHRA,—*Respondent.*

Income Tax Reference No. 5 of 1969

March 10, 1971.

Estate Duty Act (XXXIV of 1953)—Sections 2(15), 9, 10 and 27—Relinquishment by a coparcener of his share in joint Hindu family less than two

(4) 1968 P.L.J. 19.

years before his death—Whether amounts to "disposition" under sections 9 and 27—Partner of a firm making gifts of cash amounts—Donees depositing the amounts with the firm on interest—Such gifted amounts—Whether deem to pass in terms of section 10 after donor's death.

Held, that Explanation 2 to section 2(15) of the Estate Duty Act, 1953, expressly provides that the extinguishment at the expense of the deceased of any right is to be deemed as a disposition made by the deceased in favour of the person for whose benefit the right is extinguished. The relinquishment by a coparcener of his right in immovable property of the joint Hindu family amounts to the extinguishment of his right in that property in favour of or for the benefit of his other coparceners and therefore clearly falls within the definition of "disposition". It is such a disposition which operates as an immediate gift *inter vivos* and if made within two years of the death of the coparcener, is deemed to pass on his death under section 9 of the Act. Again, it is such a disposition in favour of a relative which is provided in section 27 of the Act and if that disposition is not for valuable consideration, it has to be considered as a gift. (Para 5)

Held, that the case of a partner is different from the case of a person depositing the money in a firm as he does not lose his ownership or seisin on the money deposited and his case cannot be treated at par with the capital contributed by a partner to the firm for the purposes of carrying on its business. The money that it given to a firm by way of a loan or deposit is meant for carrying on the business of the firm and cannot be utilised by any partner for his own purposes. The utilisation of that money for the purposes of the business of the firm does not mean that the partners become possessed of the same. The deposit of money carries with it the liability of the firm to repay the same to the depositor and no partner has the right, unless authorised by the depositor, to receive the amount or its interest or usufruct on his behalf. The discharge for the amount to the firm can be given only by the depositor or his authorised agent. That amount cannot be included in the capital contribution of or a loan advanced by the partner to the firm. In fact, when accounts are taken on dissolution of the firm, such deposits have to be repaid before the partners are entitled to share the assets or property of the firm amongst themselves. When donees of cash amounts from a partner of a firm deposit the amounts received by them as gifts with the firm, they do not lose their hold on those monies. The exclusion of the donor from the gifted amounts remains complete even when the amounts are invested by the donees in the firm in which he is a partner. He neither gets the possession nor enjoyment of those monies for himself. Hence such gifted amounts cannot be deemed to pass in terms of section 10 of the Act after the death of the donor. (Para 10)

Case referred by the Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice Bal Raj Tuli,—vide *their order dated 3rd November, 1970 to a larger Bench owing to the important question of law involved in the case. The case is finally decided by the*

Full Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan, the Hon'ble Mr. Justice Gopal Singh and the Hon'ble Mr. Justice Bal Raj Tuli on 10th March, 1971.

Reference made under Section 64(1) of the Estate Duty Act, 1953 by the Income-tax Appellate Tribunal (Delhi Bench),—vide *his order dated 26th April, 1968 for opinion in R.A. No. 102 of 1967-68 owing to important question of law arising out of EDA No. 246 of 1965-66. The questions of law arising are the following :—*

"Whether on the facts and in the circumstances of the case the sum of Rs. 20,667, that is, the value of 1/6th share of the immovable properties, was includible in the principal value of the estate of the deceased in terms of section 9 of the Estate Duty Act, 1953, as being a disposition within the meaning of section 27 of the said Act ?

2. *Whether on the facts and in the circumstances of the case, the sum of Rs. 1 lac, being the amount gifted by the deceased, would be deemed to pass in terms of section 10 of the Estate Duty Act, 1953 ?"*

D. N. Awasthy and B. S. Gupta, Advocates, for the applicant.

Bhagirath Dass, B. K. Jhingan and S. K. Hirajee, Advocates, for the respondent.

JUDGMENT

Tuli, J.—This reference came up for hearing before my learned brother Mahajan, J., and myself and we referred it for decision to a Full Bench because the correctness of a judgment of a Division Bench of this Court (D. K. Mahajan and S. S. Sandhawalia, JJ.), in *Controller of Estate Duty* v. *Ronaq Ram-Bakshi Ram* (1) was doubted. In pursuance of that order, this reference has been placed before us for decision.

(2) Shri Jaishi Ram died on October 23, 1961, leaving behind his wife, four sons and three daughters. He constituted a joint Hindu family with his wife and sons governed by the Mitakshara School of Hindu Law and this family possessed movable and immovable properties. The members of the joint Hindu family desired to partition the immovable properties possessed by it and appointed Shri Sahib Dayal as an arbitrator to effect the partition. Shri Sahib Dayal gave his award on September 12, 1960, in which he stated that Shri Jaishi Ram Mehra and his wife Shrimati Man Kaur, who were parties to

(1) (1970) 76 I.T.R. 682.

the arbitration and were entitled to 1/6th share each in the said properties, had relinquished their rights in those properties by their free will and consent in favour of their sons. The value of the 1/6th share of the deceased in the immovable properties was determined as Rs. 20,667.00 by the Assistant Controller of Estate Duty, which value has not been disputed.

(3) In April and May, 1958, Shri Jaishi Ram made gifts of Rs. 20,000.00 each in favour of his son Jagdish Chand Mehra and his four daughters-in-law. The total amount of these gifts was Rs. 1,00,000.00. The donees thereafter invested these amounts in the firms in which Shri Jaishi Ram was a partner. On these facts, the following questions of law have been referred to this Court for decision by the Income-Tax Appellate Tribunal:—

"1. Whether on the facts and in the circumstances of the case the sum of Rs. 20,667, that is, the value of 1/6th share of the immovable properties, was includible in the principal value of the estate of the deceased in terms of section 9 of the Estate Duty Act, 1953, as being a disposition within the meaning of section 27 of the said Act ?

2. Whether on the facts and in the circumstances of the case, the sum of Rs. 1 lac, being the amount gifted by the deceased, would be deemed to pass in terms of section 10 of the Estate Duty Act, 1953 ?

(4) The relevant provisions of the Estate Duty Act, 1953 (hereafter called the Act), bearing on question No. 1 are the following:—

"2(15) '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.

Explanation 1.—The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression 'property' shall include the debt or right created.

Explanation 2.—The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression 'property' shall include the benefit conferred by the extinguishment of the debt or right."

9 (1) Property taken under a disposition made by the deceased purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been *bona fide* made two years or more before the death of the deceased shall be deemed to pass on the death:

Provided that in the case of gifts made for public charitable purposes the period shall be six months.

(2) The provisions of sub-section (1) shall not apply to—

(a) gifts made in consideration of marriage, subject to a maximum of rupees ten thousand in value;

(b) gifts which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, subject to a maximum of rupees ten thousand in value."

"27 (1) Any disposition made by the deceased in favour of a relation of his shall be treated for the purposes of this Act as a gift unless:—

(a) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit; or

(b) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only; and references to a gift in this Act shall be construed accordingly:

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his own use or benefit, the value of the consideration shall be allowed as a

deduction from the value of the property for the purpose of estate duty.

(2) Where the deceased has made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of this section as consideration for the disposition made by the deceased.

(3) If a controlled company was concerned in a transaction in relation to which it is claimed that the provisions of clause (a) or of the proviso to sub-section (1) have effect, those provisions shall have effect in relation thereto if, and only if, and to the extent only to which, the Controller is satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

(4) Any gift made in favour of a relative of the deceased by a controlled company of which the deceased at the time of the gift had control within the meaning of section 17 shall be treated for the purposes of this Act as a gift made by the deceased, and the property taken under the gift shall be treated as included by virtue of that section in the property passing on the death of the deceased, if and to the extent to which the Controller is satisfied that they would fall to be so treated in the circumstances mentioned in the last foregoing sub-section.

(5) If the deceased has made in favour of a controlled company a disposition which, if it had been made in favour of a relative of his, would have fallen within sub-section (2),

this section shall have effect in like manner as if the disposition had been made in favour of a relative of his, unless it is shown to the satisfaction of the Controller that no relative of the deceased was, at the time of the disposition or subsequently during the life of the deceased, a member of the company.

Explanation.—For the purposes of this sub-section a person who is, or is deemed by virtue of this provision to be, a member of a controlled company which is a member of another such company shall be deemed to be a member of that other company.

(6) Where there have been associated operations effected with reference to the receiving by the deceased of any payment in respect of such an annuity or other interest as is mentioned in sub-section (2), or effected with a view to enabling him to receive or to facilitating the receipt by him of any such payment, this section shall have effect in relation to each of those associated operations as it has effect in relation to the creation or disposition in favour of the deceased of such an annuity or other interest.

(7) In this section,—

(i) 'relative' means, in relation to the deceased,—

(a) the wife or husband of the deceased,

(b) the father, mother, children, and aunts of the deceased; and

(c) any issue of any person falling within either of the preceding sub-clauses and the other party to a marriage with any such person or issue;

(ii) reference to 'children' and 'issue' include reference to illegitimate children and to adopted children;

(iii) 'annuity' includes any series of payments, whether inter-connected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise, and payments of dividends or interests on shares in or debentures of a company shall be treated for the purposes of this section as a series of payments constituting an annuity limited to cease on a death, if the payments are liable to cease on the death, or the amounts thereof are liable to be reduced

on the death, by reason directly or indirectly of the extinguishment or any alteration of rights attaching to, or of the issue of any shares in or debentures of a company;

(iv) 'associated operations' means any two or more operations of any kind being:—

(a) operations which affect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income; or

(b) any two operations of which one is effected with reference to the other, or with a view to enabling it to be effected or to facilitating its being effected, and any third operation having a like relation to either of those two, and any fourth operation having a like relation to any of those three, and so on;

whether those operations are effected by the same person or by different persons, whether they are connected otherwise than as aforesaid or not, and whether they are contemporaneous or any of them precedes or follows any other."

(5) The first point to be determined is whether the relinquishment of his share by the deceased in the immovable properties of the joint Hindu family amounted to disposition of property by him. The learned counsel for the accountable persons has referred to a Division Bench judgment of the Madras High Court in *Commissioner of Gift-Tax, Madras* v. *N. S. Getti Chettiar* (2), and has submitted that the relinquishment of his 1/6th share in the immovable property by Shri Jaishi Ram did not amount to a transfer of property by him in favour of his sons as all the immovable properties belonged to the joint Hindu family and partition by metes and bounds between the members thereof did not involve any transfer of property from one member to the other or others. In that case, the joint Hindu family consisted of A, his son B and six sons of B and the property owned by the family was worth Rs. 8,51,440.00. A (the father) took only

(2) (1966) 60 I.T.R. 454.

Rs. 1,78,343.00 though under the Hindu law he was entitled to one-half of the entire property, that is, property worth Rs. 4,25,720.00. The Gift-tax Officer assessed the difference between Rs. 4,25,720.00 and Rs. 1,78,343.00 (i.e., Rs. 2,36,377.00), to gift tax on the ground that A must be deemed to have made a gift of property worth this amount to the other members of the family. It was held that the transaction did not amount to a gift as it did not involve a transfer of property by A to his sons and grandsons and levy of gift-tax on the sum of Rs. 2,36,377.00 was illegal. That decision being under the Gift-Tax Act, 1958, is not relevant for the purposes of the present case which is under the Estate Duty Act. The decision of the Madras High Court was given on the meaning of the word "gift" as defined in the Gift-Tax Act, 1958, which definition reads as under:—

> " 'Gift' means the transfer by any person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer of any property deemed to be a gift under section 4."

In order to constitute a gift, it is necessary that the transaction must involve the transfer of property and it was held that the partition by metes and bounds of joint family does not involve any transfer of property from one member to another. The same consideration does not apply to a disposition of property under the Act. Explanation 2 to section 2(15) of the Act expressly provides that the extinguishment at the expense of the deceased of any right is to be deemed as a disposition made by the deceased in favour of the person for whose benefit the right is extinguished. The relinquishment of his right by Shri Jaishi Ram in the immovable property of the joint Hindu family amounting to the extinguishment of his rights in that property in favour of or for the benefit of his sons and, therefore, clearly fell within the definition of "disposition". It is such a disposition which operates as an immediate gift *inter vivos* and is made within two years of the death of the deceased that is to be deemed to have passed on his death under section 9 of the Act. Again, it is such a disposition in favour of a relative which is provided in section 27 of the Act and if that disposition is not for valuable consideration, it has to be considered as a gift. In view of these statutory provisions, the decision of the Madras High Court is of no assistance to the learned counsel for the accountable persons.

(6) The next judgment relied upon by the learned counsel for the accountable persons is a Division Bench judgment of the Kerala High Court in *Controller of Estate Duty* v. *Arunachalam Chettiar* (3). Again, this judgment is of no assistance as it only determines whether the separate property of a coparcener, when impressed with the character of joint family or coparcenary property by the exercise of his volition by a coparcener, amounts to a gift within the meaning of section 10 of the Act. It was held that such a transaction did not amount to a gift as the coparcener, who owned it up-to then as his separate property, impressed it with the characted of joint family or coparcenary property by the exercise of his volition, to be held by him thereafter along with the other members of the joint family. The coparcener never divested himself of that property and continued to enjoy it with the other members of the family and, therefore, there was no transfer.

(7) The last case brought to our notice by the learned counsel is a Division Bench judgment of the Andhra Pradesh High Court in *Smt. Cherukuri Eswaramma* v. *Controller of Estate Duty* (4). In that case, the deceased was allotted, on partition of the Hindu undivided family of which he was a Karta, a sum of Rs. 98.103.00 while the share due to him under the law was Rs. 2,06,694.00. The Department levied estate duty on the difference of Rs. 1,08,591.00 under sections 9 and 27 of the Act treating the transaction as gift to that extent. On a reference, it was held by the learned Judges that partition does not amount to transfer; nor can it be said to be a transaction inasmuch as there is no donor and donee relationship between the two persons. It was further held that uneven partition does not become gift for the purposes of section 9 of the Act nor can it be considered as a disposition within the meaning of section 27 thereof because Hindu law permits of unequal partitions and where once partitions are effected, they cannot be reopened on the ground of mere inequality of shares, though it may be done on the ground of fraud or mistake or subsequent recovery of family property. In that case, there was no relinquishment of any right of the deceased. He separated from the family in pursuance of a partition deed by receiving an amount of Rs. 98,103.00 on account of his share in the joint family. There was no declaration by him that he was relinquishing any of his right in favour of other members of the family and the

(3) (1968) 67 I.T.R. 607.
(4) (1968) 69 I.T.R. 109.

learned Judges did not consider the definition of "disposition" given in Explanation 2 to section 2(15) of the Act which meaning is to be given to the word "disposition" as used in section 9 and 27 of the Act. In any case, the facts of the two cases, one before the Andhra Pradesh High Court and the other before us, are not similar. In the instant case, the members of the family could not agree to the mode of partition of the joint family property and appointed an arbitrator to effect the partition. Before the arbitrator, Shri Jaishi Ram and his wife stated that they did not desire to take any share and that their shares should be given to their sons. The effect of that statement before the arbitrator is that Shri Jaishi Ram obtained his 1/6th share on partition and gave it over to his four sons by way of gift. In that view of the matter, the relinquishment of his share by Shri Jaishi Ram amounted to disposition of property which had been effected in favour of his sons without consideration and has to be treated as a gift for the purposes of the Act. Under section 9, the gift, having been made less than two years before the date of death of Shri Jaishi Ram, has to be included in his estate for the purposes of estate duty. I am supported in this view by a Division Bench judgment of the Madras High Court in *S. P. Valliammai Achi* v. *Controller of Estate Duty, Madras* (5). In that case, the deceased, in consideration of Rs. 5,000.00 received from his son, relinquished his share in the joint family assets. The Revenue applied Explanation 2 to section 2(15) of the Act and added Rs. 1,71,986.00 being the net value of the deceased's half share in the properties as having passed on his death and declined to accept that section 9 had no application on the ground that the document of relinquishment did not operate as a transfer. On a reference it was held by the learned Judges of the High Court, as per the head note:

> "The scope of section 9 has to be appreciated and delimited with reference to the other provisions of the Act one of which is the second Explanation to section 2(15) and when that Explanation speaks of a disposition of the kind it contemplates, it is impossible to conceive that that kind of disposition would have been intended by the legislature to be excluded from the scope of section 9. Section 9 read with Explanation 2 to section 2(15) was rightly invoked by the revenue for the inclusion of the value of the half share of the father less the sum of Rs. 5,000.00 in view of

(5) (1969) 73 I.T.R. 806.

the proviso to section 27, in his estate for purposes of estate duty."

(8) In view of what has been stated above, we are of the opinion that the sum of Rs. 20,667.00, the value of the 1/6th share of Shri Jaishi Ram in the immovable properties of the joint Hindu family, which he relinquished in favour of his sons less than two years before his death, was includible in his estate for the purposes of the estate duty.

(9) The second question referred to us for opinion concerns the interpretation of section 10 of the Act which reads as under:—

"10. Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that *bona fide* possession and enjoyment of it was not immediately assumed by the donee and thence forward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise:

Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gift, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death.

Provided further, that a house or part thereof taken under any gift made to the spouse, son, daughter, brother or sister, shall not be deemed to pass on the donor's death by reason only of the residence therein of the donor except where a right of residence therein is reserved or secured directly or indirectly to the donor under the relevant disposition or under any collateral disposition."

(10) The facts of the case before the Division Bench in *Controller of Estate Duty* v. *Ronaq Ram Bakshi Ram* (1), (supra), were similar to the facts of the present case and since the correctness of that decision has been doubted, it seems appropriate that that decision should be noticed first. The facts of that case were that Mam Chand died on February 9, 1962 and more than two years before his death he had made a gift of Rs. 10,000.00 to Sushila Devi. The gift was made in

two parts of Rs. 5,000.00 each on April 14, 1959, and April 16, 1959. The same amounts were deposited by Sushila Devi on April 15, 1959, and April 17, 1959, respectively, in the firm M/s. Ram Chand Ronaq Ram in which Mam Chand was a partner. The amount carried interest which was paid to Sushila Devi. On October 22, 1959, she withdrew the entire amount of Rs. 10,000.00 from that firm and deposited it with M/s. Ronaq Ram Vinod Kumar in which also Mam Chand was a partner. Again, on September 9, 1960, the amount along with interest earned by Sushila Devi was deposited with M/s. Ashoka Industries, Tohana, a firm in which Mam Chand was also a partner. It is thus clear that the amount which was gifted by Mam Chand to Sushila Devi in April, 1959, continued to remain deposited in one firm or the other in which Mam Chand was a partner till his death. The Assistant Controller of Estate Duty came to the conclusion that in view of the provisions of section 10 of the Act, the sum of Rs. 10,000.00 was to be treated as part of Mam Chand's estate. The decision of the Assistant Controller of Estate Duty was upheld by the Zonal Appellate Controller of Estate Duty but was reversed by the Income-Tax Appellate Tribunal. At the instance of the Controller of Estate Duty, the following question of law was referred to this Court for opinion:—

> "Whether, on the facts and in the circumstances of the case, the amount of Rs. 10,000.00 gifted to Sushila Devi in April, 1959, was not includible in the estate of the deceased for the purpose of the Estate Duty Act?".

The learned Judges followed the decisions of the Gujarat High Court in *Smt. Shantaben S. Kapadia* v. *Controller of Estate Duty* (6) and *Controller of Estate Duty* v. *Chandravadan Amratlal Bhatt* (7), which were rendered by the same Bench. The learned Judges of the Gujarat High Court had relied on the decision of the Privy Council in *Clifford John Chick* v. *Commissioner of Stamp Duties* (8), and the decision of the Supreme Court in *George Da Costa* v. *Controller of Estate Duty* (9), and held:

> "In the instant case, as happened in *Chicks's case* (8), and also in *Smt. Shantaben S. Kapadia* v. *Controller of Estate Duty* (6), the subject-matter of the gift was made available to the partnership and placed at the disposal of the

(6) (1969) 73 I.T.R. 171.
(7) (1969) 73 I.T.R. 416.
(8) (1959) 37 I.T.R. (E.D.) 89.
(9) (1967) 63 I.T.R. 497 (S.C.).

partnership in which the deceased had an interest as a partner, and that being the case, in the light of the decision of the Privy Council in *Chick's case* (8), and also in the light of our decision in Estate Duty Reference No. 1 of the 1965 (*Smt. Shantaben S. Kapadia's case*) (6), the deceased was not entirely excluded from the subject-matter of the gifts of Rs. 30,000.00 and Rs. 24,000.00. The fact that there was an interval of time between the gift of Rs. 24,000.00 in January, 1958, and the dates on which the amount of Rs. 12,000.00 was brought in by each of the two sons, Jayantilal and Chandravadan, is again immaterial. In *Chick's case* (8), the subject-matter of the gift was brought into the partnership from nearly 17 months after the date of the gift and even then it was held that the entire property included in the gift was liable to be included in the principal value of the estate of the deceased. In our opinion, the provisions of section 10 clearly apply in this case and the case clearly falls within the first limb of the second part of section 10 of the Act. As regards the accumulated interest referable to the sum of Rs. 30,000.00, in our opinion, the view taken by the Tribunal is correct because section 10 applies to that property which is the subject-matter of the gift and not the income from or subsequent accretion to that originally gifted property."

With great respect to the learned Judges of the Gujarat High Court, we are of the opinion that reliance was wrongly placed by them on the decision of the Privy Council in *Chick's case* (8) (supra), for the proposition laid down by them. In *Chick's case* (8), the pastoral property which had been gifted by the father to one of his sons was brought by him in the partnership with his father and another brother for the purpose of carrying on the business of graziers and stock dealers. The agreement of partnership provided, *inter alia*, that the father should be the manager of the business and that his decision should be final and conclusive in connection with all matters relating to its conduct, that the capital of the business should consist of the livestock and plant then owned by the respective partners; that the business should be conducted on the respective holdings of the

partners and such holdings should be used for the purposes of the partnership only; that all lands held by any of the partners at the date of the agreement should remain the sole property of such partner and should not on any consideration be taken into account as or deemed to be an asset of the partnership, and any such partner should have the sole and free right to deal with it as he might think fit. Once the property is brought into the partnership as a contribution by one of the partners, it becomes the property of the firm as is provided in section 14 of the Indian Partnership Act and can be utilised only for the purposes of the business of the firm. Similarly, any property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm and become the property of the firm. This aspect of the partnership property has been explained by their Lordships of the Supreme Court in *Addanki Narayanappa and another* v. *Bhaskara Krishnappa and others* (10). Their Lordships referred to sections 14, 15, 29, 30, 32, 36, 37 and 48 of the Indian Partnership Act and observed as under:—

> "From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership, it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realization of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets

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

of the firm which remain after satisfying the liabilities set out in clause (a) and sub-clauses (i), (ii) and (iii) of clause (b) of section 48."

Their Lordships then referred to page 375 of Lindley on Partnership, 12th Edition, and some English cases and observed:—

"The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done, whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion of their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution of retirement after a deduction of liabilities and prior charges."

If this aspect of the partnership law is kept in mind, it is abundantly clear that in *Chick's* case (7), the property which had been gifted by the father to the son and was brought into the partnership by the son became the property of the firm and vested in all the partners jointly and did not remain the exclusive property of that son. On these facts, we are of the opinion that it had been rightly held by their Lordships of the Privy Council that the son did not retain the gifted property to the entire exclusion of the donor, his father, and that the provisions of section 102(2)(d) of the Stamp Duties Act, 1920—56 (N.S.W.), applied to the facts of that case. That clause is the same as section 10 of the Act. We may emphasise that the case of a partner is different from the case of a person depositing the money in a firm as he does not lose his ownership or seisin on the

money deposited and his case cannot be treated at par with the capital contributed by a partner to the firm for the purposes of carrying on its business. The money that is given to a firm by way of loan or deposit is meant for carrying on the business of the firm and cannot be utilised by any partner for his own purposes. The utilisation of that money for the purposes of the business of the firm does not mean that the partners become possessed of the same. The deposit of money carries with it the liability of the firm to repay the same to the depositor and no partner has the right, unless authorised by the depositor, to receive the amount or its interest or usufruct on his behalf. The discharge for the amount to the firm can be given only by the depositor or his authorised agent. That amount cannot be included in the capital contribution of or a loan advanced by the partner to the firm. In fact, when accounts are taken on dissolution of the firm, such deposits have to be repaid before the partners are entitled to share the assets or property of the firm amongst themselves. It cannot, therefore, be said that when Jagdish Chand Mehra and the four daughters-in-law of Shri Jaishi Ram deposited the amounts received by them as gifts from Shri Jaishi Ram in the firms in which he was a partner, they lost their hold on those monies and gave them back to the donor Shri Jaishi Ram. The exclusion of Shri Jaishi Ram from the gifted amounts remained complete even when the amounts were invested by the donees in the firms in which he was a partner. He neither got the possession nor enjoyment of those monies for himself.

(11) In *Dulichand Laxminarayan* v. *Commissioner of Income-Tax, Nagpur* (11), their Lordships held that a firm is not an entity or person in law but is merely an association of individuals and a firm name is a collective name of those individuals who constitute the firm. A firm is, therefore, as such not entitled to enter into partnership with another firm or individuals. This is the position in accordance with the provisions of the Indian Partnership Act but for certain purposes the firm has been given a separate entity from its partners. According to the provisions of the Indian Partnership Act, while taking partnership accounts and administering partnership assets, the liabilities of the firm are to be satisfied out of its assets in the first instance and it is only when the assets are not sufficient to meet the liabilities of the firm that the partners in their individual

(11) (1956) 29 I.T.R. 535.

capacity become liable. The firm as a firm is a separate unit of business under the Income-Tax Act apart from its partners who are also units of assessment as individuals. Similarly, a firm is liable as a unit to pay profession tax which is also payable by the partners. For certain purposes, therefore, the firm as such is an entity apart from its partners and when a depositor lends to or invests money in a firm, he does not pass it on to the partners of the firm nor do the partners of the firm become his debtors. He cannot, at his sweet will, recover the amount from any one of the partners. If he has to recover the amount deposited by him, he has to make a demand on the firm and in case he is not paid, the suit has to be brought against the firm. Under the Indian law, as embodied in Order 30 of the Code of Civil Procedure, a firm can be sued in the firm name and it is not necessary that the partners should be made parties to such a suit. In view of this state of the law, we are of the opinion that the donees in this case retained the gifted amounts with themselves to the entire exclusion of Shri Jaishi Ram even when they invested the amounts in the firms in which he was a partner. This view of ours is in direct conflict with the view taken by the Division Bench of this Court in *Controller of Estate Duty* v. *Ronaq Ram Bakshi Ram* (1) (supra), the correctness of which was doubted. We, accordingly, hold that that case was not correctly decided and overrule the same.

(12) There is no dispute that the donees had taken *bona fide* possession and enjoyment of the gifted amounts immediately after the gifts were made and thus the first limb of section 10 is satisfied. In view of what has been said above, the first part of the second limb of the Section has also been satisfied and no argument has been addressed on the basis of the second part of the second limb of the Section, that is, whether Shri Jaishi Ram was excluded from any benefit by contract or otherwise from the gifted amounts. In the first place, there was no contract between Shri Jaishi Ram and the donees that he would be entitled to enjoy in any manner the gifted properties and, consequently, in view of what has been held above, that the donees retained the gifts to the entire exclusion of the donor, it follows that he was excluded from any benefit from those amounts. The amounts of the gifts cannot, therefore, be included in the estate of Shri Jaishi Ram under section 10 of the Act.

(13) On behalf of the accountable persons, reliance has been placed on a judgment of their Lordships of the Privy Council in

H. R. Munro and others v. *Commissioner of Stamp Duties* (12). In that case, M owned 35,000 acres of land in New South Wales on which he carried on the business of a grazier and in 1909 he made an oral agreement with his six children that thereafter the business should be carried on by him and them as partners under a partnership at will, the business to be managed solely by M and each partner to receive a specific share of the profits. In 1913, by six registered transfers in the form prescribed by the Real Property Act, 1900, M transferred by way of gift all his right, title and interest in portions of his land to each of his four sons and to trustees for each of his two daughters and their children. The evidence showed that the transfers were taken subject to the partnership agreement, and on the understanding that any partner could withdraw and work his land separately. In 1919, M and his children entered into a formal partnership agreement, which provided that during the lifetime of M no partner should withdraw from the partnership. On the death of M in 1919, the land transferred in 1913, was included in assessing his estate to death duties under the Stamp Duties Act, 1920—1931 (N.S.W.), on the ground that they were gifts dutiable under section 102, sub-section (2) (a) of that Act. It was held by their Lordships that "the property comprised in the transfers was the land separated from the rights therein belonging to the partnership, and was excluded by the terms of section 102, sub-section (2) (a), from being dutiable, because the donees had assumed and retained possession thereof, and any benefit remaining in the donor was referable to the partnership agreement of 1909, not to the gifts." Evidently, this case has no relevance to the facts of the present case.

(14) Similarly, the other cases relied upon by the accountable persons are not relevant. These cases are:—

(1) *Controller of Estate Duty, Assam* v. *Birendrakumar* (13), a Division Bench judgment of the Assam and Nagaland High Court.

(2) *Collector of Estate Duty, Madras* v. *Estate of Janab S. Ibrahim, Rowther* (14).

(12) 1934 A.C. 61.

(13) (1964) 53 I.T.R. (E.D.) 1.

(14) A.I.R 1966 Mad. 408 (D.B.)

(3) *Controller of Estate Duty* v. *C. R. Ramchandra Gounder* (15).

(4) *Controller of Estate Duty, Madras* v. *N. R. Ramarathanam and others* (16), and

(5) *Mohammed Bhai and another* v. *Controller of Estate Duty, A.P.* (17).

These were not the cases of donees depositing the amounts in the firms in which the donor was a partner after having received the gift from him. They were concerned with the gifts of a part of the running business or the amounts lying to the credit of the donor in the firm and it was held that what was gifted was subject to the rights of the firm and the donees took such possession of the gifted property as it was capable of and merely because those properties continued to be used for the purposes of the business of the firm, did not detract from the retention of those properties by the donees to the complete exclusion of the donor.

(15) For the reasons given above, our answer to the first question is in the affirmative, that is, in favour of the Revenue and against the accountable persons while the answer to the second question is in the negative, that is, in favour of the accountable persons and against the Revenue. In the circumstances, we make no order as to costs.

MAHAJAN, J.—I agree.

GOPAL SINGH, J.—I agree.

K.S.K.

(15) A.I.R. 1970 Mad. 335.

(16) (1969) 74 I.T.R. 432.

(17) (1968) 69 I.T.R. 770.