

Sardar Harbansingh Vs. Assistant Controller of Estate

Sardar Harbansingh Vs. Assistant Controller of Estate

SooperKanoon Citation : sooperkanoon.com/59725

Court : Income Tax Appellate Tribunal ITAT Hyderabad

Decided On : Nov-30-1983

Reported in : (1984)8ITD180(Hyd.)

Judge : S Rajaratnam, T R Rao, J Member

Appellant : Sardar Harbansingh

Respondent : Assistant Controller of Estate

Judgement :

1. These appeals represent appeal and cross-appeal filed by the assessee as well as the department against the order of the Appellate Controller dated 23-9-1982.
2. ED Appeal No. 3 (Hyd.) of 1983 is filed by the accountable person whereas ED Appeal No. 4 (Hyd.) of 1983 is filed by the department. The deceased in this case is one Sardar Manmohan Singh. He died on 5-6-1977 in a car accident while proceeding from Bangalore to Mysore. His father, Shri Harbans Singh, filed an estate duty return on 14-2-1978 declaring the principal value of the estate of the deceased at Rs. 2,08,374. The mother of the deceased, Mrs. Surjit Kaur, wife of Shri Harbans Singh, filed the letter dated 28-6-1978 stating that all the proceedings regarding the estate of the deceased in which her husband participates would be binding on her. Therefore, the accountable person in this case was taken to be Shri Sardar Harbans Singh, representing his wife, Smt. Surjit Kaur. The first question in the accountable person's appeal and the only question in the revenue's appeal is regarding the nature of the amount of Rs. 2,01,750

received under a policy of insurance (Policy No. 37215585) taken from the LIC by the deceased. Admittedly, the father of the deceased, Shri Harbans Singh, was the nominee under the said policy. In order to resolve the real point in controversy, it is necessary to decide the nature of the policy. A specimen copy of the policy taken out by the deceased, and which is now in dispute before us, is filed on behalf of the accountable person. It is titled as '20 years money back policy with profits (with the accident benefit)'. We have thoroughly gone through the conditions and privileges mentioned under that policy. It appeared to us that it is an ordinary life policy plus the accident benefit attached to it during the '20 years contractual period' mentioned in the policy. Under the terms of policy, if the insured person does not involve in any accident, and does not default in paying the premium for the whole of the 20 years period contracted for, and survives during the whole of the 20 years, then at the end of 20 years, he would receive the whole of the assured sum along with bonuses. But instead of the above, if the deceased happens to die or is involved in an accident during the 20 years' period covered by the policy, then the nominee of the insured would get Rs. 1,00,000 and bonuses as an ordinary life policy and another Rs. 1,00,000 as money covered by the stipulation regarding the accident benefit. The insured would be entitled to the accident benefit under this policy even if he is permanently disabled.

However, as we are concerned with the case of a death of the assured in an accident, the portions in the policy which deal with the accident benefit, in case the death of life assured occur, are felt essential for our purposes. Such stipulations under the policy are as follows: Accident Benefit: If at any time when this policy is in force for full sum assured, the Life Assured before the expiry of the period for which the premium is payable or before the policy anniversary on which the age nearer birthday of the Life Assured is 65, whichever is earlier, is involved in an accident resulting in either permanent disability as hereinafter defined or death and the same is proved to the satisfaction of the corporation, the corporation agrees in the case of: Death of the Life Assured: to pay an additional sum equal to the sum assured under this policy, if the Life Assured shall sustain any bodily injury resulting solely and directly from the accident caused by outward, violent and visible means and such injury shall within 90 days of its occurrence solely, directly and independently of all other causes result in the death of the Life

Assured. However, such additional sum payable in respect of this policy, together with any such additional sum payable under other policies on the life of the Life Assured shall not exceed Rs. 1,00,000.

The extra premium for this benefit will not be required to be paid after all premiums under this policy have been paid or on and after the policy anniversary on which the age nearer birthday of the Life Assured is 65 years, whichever is earlier.

3. According to the assessee, the above said policy is purely a personal accident policy. It does not evidence a contract of indemnity.

The deceased was having only a beneficial interest over payment of money as he can direct it to be given to any of his representatives but he did not acquire any interest in money paid under the policy. Hence, the policy money does not pass on the death of the deceased under Section 5 of the Estate Duty Act, 1953 ('the Act'). On 27-6-1978 the accountable person filed a letter intimating that the claim under the policy in question was settled with LIC at Rs. 2,01,750. However, it was contended in the letter that the deceased had no interest for the money as such because that comes into existence the moment after the death and is payable to the nominee or to the legal representative. It is also noted in the said letter that as per the wishes of the deceased expressed before his father, mother and other family members on many occasions, the amount received under the personal accident policy should be shared equally by the younger brother of the deceased, Mr.

Manpreth Singh, his younger brother, Jasjeev Singh and Harjeev Singh, sons of his elder brother Mr. Surender Singh. During the course of hearing, the accountable person filed a letter stating that since the beneficial interest did not result in reduction in the estate of the deceased, the provisions of Section 15 of the Act are not attracted.

The Assistant Controller held that the provisions of Sections 5 and 6 of the Act governed the money received under the policy in question.

According to the Assistant Controller, the property in the nature of interest was in existence even during the lifetime of the deceased and it passed on his death to the beneficiaries designated and to his legal representatives. The deceased had a property in the nature of interest to receive payment in case of loss of life arising as a result of accident or the deceased had purchased an interest for the benefit of his legal representatives in case of loss of his life as a result of an accident. Therefore, he rejected the argument that the deceased never had any interest under the terms of contract of insurance or in the moneys payable thereunder. He relied upon the decision of the Gujarat High Court in *Bharatkumar Manilal Dalal v. CED* [1975] 99 ITR 179. He also held that according to the same Gujarat High Court's decision, the amount received under the policy must be deemed to have passed on the death of the deceased under Section 6 also as the assessee had a right to receive property under the said policy and he had a right to dispose of it by a will.

4. In appeal, the Appellate Controller held that the decision of the Madras High Court in *M.Ct. Muthiah v. CED* [1974] 94 ITR 323 aptly applies to the facts of this case. He held, following the ratio of the above Madras High Court decision, that the deceased had no estate vested in himself but he had only a right to dispose of the benefits arising under the policy. There is no devolution of interest in such a case from the deceased to another person. From the inception of original contract, the money is payable only to nominee or to the legal representative and as such Section 5 is not applicable. However, quoting extensively from the same Madras High Court decision, where it is held that the deceased had interest over the payment of money and not in the money itself, ultimately, it was held that the money received from the LIC on personal accident policy shall be deemed to pass under Section 6 as well as Section 15. As he had preferred to follow the Madras High Court decision over that of the Gujarat High Court decision, the Appellate Controller held that the money received under the policy cannot be aggregated under Section 34(3) of the Act as the said money received under the policy was considered to be an estate by itself falling under Section 34(3). As the assessee did not receive any substantial relief from the impugned order of the Appellate Controller, second appeal is preferred before this Tribunal. In grounds 1 and 2 of the appeal, the following contentions are raised: 1. The learned Appellate

Controller of Estate Duty erred in holding that the sum of Rs. 2,01,750 being the amount due on deceased's personal accident policy is liable to duty under the Estate Duty Act.

2. The learned Appellate Controller of Estate Duty ought to have held that the deceased had no interest in the aforesaid amount, that it came into existence after the death of the deceased and that, therefore, it was not a property which passed on his death.

5. In the departmental appeal, the contention put forward in grounds 2 and 3 is that the policy in question was not personal accident policy but a double accident policy and as per its terms the sum assured along with bonuses passes on the death of the deceased under Section 5 and, therefore, it is to be aggregated. Nextly, it is contended that it is the ratio laid down by the Gujarat High Court in *Bharatkumar Manilal Dalal's case* (supra), which portray the correct position in law and which should have been applied to the facts of this case.

6. We have heard Shri A. Satyanarayana, the learned counsel for the accountable person and Shri Sukhdev Narayan, the learned departmental representative. It is contended on behalf of the accountable person that the money received under the policy in question is not dutiable under Section 5. As far as that point is concerned the decision of the Madras High Court in *M. Ct. Muthiah's case* (supra) is in his favour. At page 346 of the reported decision, the Madras High Court considered the meaning of the word 'passes' according to Section 5, and held following the Delhi High Court decision in the case of *Vashist Bhargava v. ITO* [1975] 99 ITR 148 that in order to determine whether a particular property passed on the death of a deceased what is to be seen is whether that interest passed on his death. So also, they have followed the meaning given to the term by the Full Bench of the Madras High Court in *Alladi Kuppuswami v. CED* [1970] 76 ITR 500 and held that the word 'passes' in Section 5 implies movement of the estate from one to another and means changing hands. Ultimately, considering the situation under the accident policy, the Madras High Court held as follows: We are of the view that in the case of an accident policy, with reference to the death benefit payable thereunder, the deceased had no estate vested in himself but he had only a right

of disposal of the benefits arising under the policy. There is no devolution of the interest in such a case from the deceased to another person. From the inception of the original contract the money is payable only to the nominee or the legal representative and as such Section 5 of the Estate Duty Act is not applicable.

7. Shri A. Satyanarayana argues that though the Gujarat High Court dissented from the above view of the Madras High Court in Bharatkumar Manilal Dalal's case (supra) at page 198, the Madras High Court's view is more in accord with the law than the Gujarat High Court's view and, hence, it should be preferred. Nextly, it is contended that for any property to pass under Section 5 or deemed to pass under Section 6 or 15, the property must be in existence during the lifetime of the deceased. However, inasmuch as the money was paid under this policy on the death of the deceased, it is not a property which passed on the death of the deceased. To buttress this argument, reliance was placed upon the Andhra Pradesh High Court's decision in Smt. Lakshmisagar Reddy v. CED [1980] 123 ITR 601, where it is held in the headnote as follows: In order to attract Section 5(1) of the Estate Duty Act, 1953, (1) the property must be in existence at any time before the death of the deceased; (2) the deceased must have a beneficial interest, be it in praesenti or contingent, in the property; (3) the deceased must be in possession and control, be it actual, constructive or beneficial, of the property; (4) the deceased must have power to dispose of such property.

Property or any interest held by the deceased in any property and which passes on the death immediately or contingently after a certain interval is also includible in the estate. But the condition precedent in order to include such property in the estate is that the deceased must have a right or interest in the property and be competent to dispose of such property or have such general power as would, if he were sui juris, enable him to dispose of the property.

Unless both the conditions are satisfied, the property is not includible in the estate of the deceased in terms of Section 3(1)(a) read with Section 5(1) of the Act.

8. In answer to the argument of the revenue that in any case the deceased was competent to dispose of the property under the policy either by way of gift or will and, therefore, by virtue of such a power contemplated in the deceased, the

amount under the policy should be deemed to have passed under Section 6, it is argued on behalf of the accountable person that when there is no property in existence, no gift or will of such property would be possible and so under such circumstances the deemed provisions of Sections 6 and 15 are also not applicable. It is further argued that when there is no property, there is no question of 'passing' illusory property on the death of the deceased. A mere spes successionis cannot be transferred under Section 57 of the Indian Succession Act, 1925, or under Schedule III of the Indian Succession Act. It is further contended that context of Section 16 does not apply to the case of an insurance policy. Lastly, it is argued that whatever may be the case, the aggregation under Section 34(3) of the amount received under the policy is not possible in view of the specific decision of the Madras High Court in that regard. It is also contended that inasmuch as the father of the deceased was the nominee under the policy, he is entitled to receive the money after the death of the deceased and so under any circumstances, the amount paid under the policy does not pass on the death of the deceased and cannot be considered as part of his estate.

9. On the other hand, the learned departmental representative contended that the moneys received under the policy is the property of the deceased which passed on his death and it is dutiable under Sections 5, 6 and 15. Firstly, it is contended that the policy should not be taken to be purely a personal accident policy. According to him, it should be taken to be a composite policy composed of the life policy attached with the accident benefit. The money paid under the life policy is Rs. 1,00,000 plus the bonuses declared and accrued till the date of payment. That means, according to the learned departmental representative, an amount of Rs. 1,01,750 should be deemed to have been paid towards the life policy and the rest of Rs. 1,00,000 should be deemed to have been paid under the accident benefit contemplated under the policy. He further argued that the decision of the Gujarat High Court in *Bharatkumar Manilal Dalal's case* (supra) is more appropriate to be followed than the Madras High Court decision in *M. Ct. Muthiah's case* (supra). In the Gujarat High Court case, it is specifically held that the deceased had a property in the nature of interest to receive payment in case of loss of limb arising as a result of an accident or the deceased purchased an interest for the benefit of his legal representatives in case of loss of life as a result of an accident.

Therefore, while appreciating the position under an accident policy, the Gujarat High Court held that since the property in the nature of interest was in existence in the lifetime of the deceased which passed on his death to the beneficiaries designated or to his legal representatives, the sum was, therefore, dutiable under Section 5. So also the Gujarat High Court held that inasmuch as the deceased can dispose of the property under the policy by will, therefore, the interest under policies should be deemed to have passed on his death under Section 6. So also the learned departmental representative argues that the interest under the policy is governed by the term 'other interest' used in Section 15. It is also argued by the learned departmental representative that the observations of the Madras High Court in *M. Ct. Muthiah's case* (supra) at page 346 were specifically dissented from by the Gujarat High Court in *Bharatkumar Manilal Dalal's case* (supra) at page 198 and, therefore, the contention that there is no property in existence during the lifetime of the deceased and there is no possibility of application of Section 6, inasmuch as the interest which the deceased had under the insurance policy was more in the nature of *spes successionis*, are arguments worthy to be rejected than accepted. When once it is held that Section 5 applies then the aggregation under Section 34(3) must necessarily follow. It is argued by the learned departmental representative that *Smt. Laxhmisagar Reddy's case* (supra) does not deal with any insurance policy case but dealt with the service conditions of a pilot employed by the Indian Airlines Corporation. Therefore, the ratio laid down in that case cannot be applied to the facts of this case. It is further argued that simply because a nominee is named under the policy, it does not mean that the nominee could be the owner of the moneys paid under the policy. In support of this contention at page 716 the cases of *CED v. Estate of Pichai Thambi* [1978] 111 ITR 711 (Mad.) and *Harendra Popatlal Gandhi v. CED* [1978] 112 ITR 41 (Bom.) were cited. Thus, we have fully heard the arguments on both the sides.

10. We have read the conditions governing the policy now in dispute before us. We hold that it is a composite policy--a life policy and an accident benefit policy--rolled in one. Under the terms of the policy, the above two main components are distinct, different, separate and severable. The payment under life policy together with accrued bonuses declared was Rs. 1,01,750. The payment under the accident policy was Rs. 1,00,000. As far as the payment which can be ascribed to

the life policy is concerned it is governed by the clear provisions of Section 14 of the Act and so we have no hesitation to hold that the amount passes on the death of the deceased as it is a policy wholly kept up by him. As far as the amount of Rs. 1,00,000 which can be ascribed to the accident benefit under the policy is concerned, we are of the opinion that the amount is payable only after the death of the deceased. We prefer to follow the ratio of the Madras High Court decision in M. Ct.

Muthiah's case (supra) over that of the Gujarat High Court decision in Bharatkumar Manilal Dalal's case (supra). We hold that a personal accident policy is not a contract of indemnity. The amount payable on the death of the insured is fixed in the policy itself. It is in the contemplation of the parties even at the time of the contract that in case of death, the amount would be payable either to the nominee or the legal representatives and not to the insured. It is, thus, in the nature of a provision made by the deceased for such nominee or his legal representatives. The deceased has no interest for the money as such because the amount comes into existence the moment after his death and is payable to the nominee or to the legal representatives. But the deceased had a right for the payment on his death to his legal representatives. Thus, the deceased had interest over payment of money but not in the money itself. In the case of a personal accident policy, the property is the ultimate money that is paid and that shall be deemed to pass on the death of the deceased because of his competency to dispose of the same by a will. Under the terms of the policy, in the case of the death of the insured, the death benefit is payable to the legal representatives. The deceased, thus, had a right to have the amount paid to his legal representatives after his death. This right is not like a chance of an heir-apparent succeeding to an estate or the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of a like nature coming within the provision of Section 6 of the Transfer of Property Act, 1882. The right of the deceased is a right flowing under the terms of the policy itself and not an uncertain contingent right dependent on an uncertain event.

Therefore, the provisions under Section 6 of the Transfer of Property Act and the restriction under Schedule III of the Indian Succession Act are not applicable.

Therefore, we hold that the money paid under the accident benefit clause in the policy is governed primarily under Section 6 of the Act, inasmuch as the assessee had the right over the disposal of the money paid under the policy after his death and he had a right to gift or will away the benefit under the policy either to the nominee or his legal representative. We hold that under the accident benefit clause, the money was payable always either to the nominee or the legal representative of the deceased and there was no question of any devolution of interest in such a case from the deceased to another person. Therefore, we hold that Section 5 does not apply as there was no devolution of any benefit to the deceased from his legal representative. Now let us consider how far Section 15 comes into operation. For the application of Section 15, what is to be considered is the beneficial interest that is purchased or provided by the deceased and whether the beneficial interest accrues or arises on death. In the case of a personal accident policy, the only beneficial interest purchased or provided by the deceased was the policy money itself. So, 'the other interest' which the deceased had purchased or provided within the meaning of Section 15 is the policy money.

Therefore, that policy money is liable to estate duty under Section 15 also. According to us, the sum of Rs. 1,00,000 which can be ascribed to the payment made under the accident benefit clause under the policy is not governed by Section 5 but it becomes dutiable for application of Sections 6 and 15. We have already held that the deceased never had any interest in the moneys paid under the accident benefit clause of the policy though he was competent to dispose of the same by a will.

Therefore, we hold that the amount of Rs. 1,00,000 paid under the accident benefit clause of the policy is not aggregatable under Section 34(3) as it constitutes an estate by itself. Our view was supported by the Madras High Court in M. Ct. Muthiah's case (supra). According to us, the ratio of the Andhra Pradesh High Court in Smt. Lakshmisagar Reddy's case (supra) does not apply to the facts of the present case, inasmuch as in that case their Lordships of the Andhra Pradesh High Court were dealing with a case of a deceased pilot under the service rules of Indian Airlines Corporation and with the compensation amount which was paid on the death of one captain in an air accident. So obviously, the Andhra Pradesh High

Court was not dealing with any insurance policy or the rights flowing therefrom. Their Lordships specifically distinguished the Gujarat High Court decision in Bharatkumar Manilal Dalal's case (*supra*) and the Madras High Court decision in M. Ct. Muthiah's case (*supra*). They held that the above two cases are similar to the case with which we were concerned. The ratio laid down by the Andhra Pradesh High Court was that in order to attract Section 5(1), there are four essentials to be fulfilled: (i) the property must be in existence at any time before the time of the death of the deceased; (ii) the deceased must have a beneficial interest, be it in praesenti or contingent, in the property; (iii) the deceased must be in possession and control, be it actual, constructive or beneficial, of the property; and Distinguishing the Gujarat High Court decision, their Lordships stated that the deceased in the Gujarat High Court case had purchased the accident insurance policy and paid one premium and, therefore, the deceased had interest in the policy. Their Lordships also held that the deceased was entitled to nominate whomsoever he liked to receive the amount as beneficiaries under the policy. Their Lordships also held that indisputably the deceased had a right or interest in the property under the insurance policies which he could have disposed of earlier.

Their Lordships further stated that in those circumstances, the amount received under the personal accident policy is dutiable under Section 7 of the Act. In the case on hand, the facts, namely, the amount received under the accident benefit clause of the policy is more akin to the facts of the Madras High Court's case. Therefore, the Andhra Pradesh High Court decision, stated above, cannot be of any help to the accountable person. Similarly, we reject the argument that the right of the deceased under the policy is like a chance of an heir-apparent succeeding to an estate or a mere right of spes successions or other mere possibility of alike nature within the provisions of Section 6 of the Transfer of Property Act. We also reject the argument that the money paid under the accident benefit clause of the policy is the money belonging to the nominee but not to the deceased. This point, is directly covered against the assessee in Estate of Pichai Thambi's case (*supra*) where it is held in the headnote as follows: The effect of nomination of a person by an insurance policyholder under Section 39 of the Insurance Act, 1938, is not to clothe the nominee with beneficial interest in the policy or money payable thereunder but to clothe him or her only with the power to receive the money under

the policy from the insurer without prejudice to the question of title to the money. Consequently, it confers on the nominee a bare right to collect the policy money when the money becomes payable and by such nomination and the collection of the money the nominee does not become the owner of the money payable under the policy and he or she is liable to make it over to whomsoever is entitled to the same under the law....

11. Thus, it can be seen that the nominee is a mere custodian or a trustee of the money received under the policy and she or he is liable to make over the amount to whomsoever is entitled for the money under law. In *Harendra Popatlal Gandhi's* case (supra) wherein it was held that the wife of the deceased was the nominee under a life policy, the question was what interest she had for the moneys paid under those policies as a nominee. The Bombay High Court held as follows in the headnote: ... Upon the death of the deceased, all that the wife got under the nomination was a right to receive the moneys from the insurance company and the moneys under the nominated policies continued to be the property of the estate of the deceased, clearly liable to be attached by creditors for satisfaction of their debts and liable to satisfy the unsatisfied debts of the free estate and, in a sense, the said insurance moneys really formed part of the free estate of the deceased and not property deemed to pass under other titles ...

12. Therefore, applying the two above decisions, we hold that though *Shri Harbans Singh*, the representative of the accountable person, herein is nominated under the policy and though the money was received by the nominee after the death of the deceased, the money does not cease to be part of the estate of the deceased and the nominee cannot be treated to be the owner of that money.

13. Now let us come to the second major ground which relates to the share of the goodwill in three firms in which he was a partner. The deceased was a partner in the following firms: In the estate duty return, no amount was shown towards the share of the goodwill of the deceased. During the proceedings before the Assistant Controller, a letter was filed stating that the above three firms had no goodwill, that the balance sheets of the above firms did not disclose any goodwill, that the aspect of goodwill was not considered in the wealth-tax assessments of the

deceased and so it should be held that there was no goodwill. Further, it was submitted that those firms were not manufacturers and they do not deal in any brand named tyres and tubes. They deal in goods in which the others deal. When the firms are sold, they cannot be sold along with any dealership rights in tyres and when once there was a change in the constitution of the firm, the dealership rights would automatically cease and the newly constituted firm must again apply for dealership. It was further submitted that none of the three firms are monopoly sellers of any brand named tyres but they are only one in the competitive market. Under the circumstances, the firms do not have any goodwill. To a specific notice issued as to why the goodwill should not be evaluated after deducting the interest on capital charge in the accounts and remuneration charge, the accountable person filed a letter dated 11-9-1978 wherein it was submitted that since the firms were only trading concerns, there cannot be any goodwill and that the share of the deceased in the goodwill of any of the firms mentioned above will not pass within the meaning of Section 5. Reliance was placed upon the decision of the Punjab and Haryana High Court in *CED v. Ved Parkash Jain* [1974] 96 ITR 303 and the Madras High Court in *A.K.D. Dharmaraja v. CED* [1978] 111 ITR 72. The Assistant Controller in his assessment orders held that except in the case of Khandari and Company, Hyderabad, which was running in losses, the two other firms mentioned above had goodwill. Then it was contended that the partnerships were at will, that there were no clauses in those partnership deeds contemplating sharing of goodwill on dissolution and, in fact, the deceased did not get any share in the goodwill from any of the firms and so the alleged share of the goodwill from any of the above firms should not be deemed to have passed under Section 5. This argument was also rejected by the Assistant Controller. He held that though the accountable person practically did not get any share in the goodwill, the fact that the deceased was entitled to a share was sufficient to hold that the share in the goodwill passed on his death for the purpose of estate duty and it is chargeable under Section 5. In support of his finding, he relied upon the decisions of the Madras High Court in *Seethalakshmi Ammal v. CED* [1966] 61 ITR 317, *Smt. Surumbayi Ammal v. CED* [1976] 103 ITR 358 and the Allahabad High Court decision in the case of *Smt. Kamlawati Raizada v. CED* [1976] 105 ITR 703. Then, the Assistant Controller while computing the goodwill agreed with the accountable

person and deducted 15 per cent towards interest though 6 per cent only was shown as interest charged in the accounts of the firm. He also allowed a reasonable remuneration. The working of the goodwill was shown in annexure to the assessment order very vividly.

Five years' income was taken in the first instance. Interest at 15 per cent thereon was deducted. Then one year's average was arrived at and estimated remuneration was deleted therefrom and he had taken twice the resultant figure as the total of the goodwill and from that figure one-third was taken towards the share of the deceased in the goodwill of the firm. That means, virtually, he had taken two years' average profit after giving deduction to interest and remuneration as the goodwill of the business. Thus, he had determined the total of the goodwill of Standard Tyres and Motors, Vijayawada, and Khandari Tyres, Hyderabad, at Rs. 67,136.

14. Aggrieved by the assessed figure, the accountable person went in appeal before the Appellate Controller. The Appellate Controller rejected the argument of accountable person that the two firms with regard to which the goodwill was determined had in fact no goodwill.

However, the Appellate Controller reduced the estimation of the quantum of the goodwill of those two years, taking into consideration that there are 42 to 50 dealers in the same line and so he held that taking one-time purchase price would be more reasonable than two-time purchase price taken by the Assistant Controller to estimate the goodwill.

15. In this appeal, it was submitted on behalf of the accountable person that the two firms in question are dealers in tyres. They are not agents. They do not hold any dealership rights. They are just carrying on ordinary business in tyres as one in the competitive market. Shri A. Satyanarayana, the learned counsel for the accountable person, submitted the following: (2) Even if there is a goodwill, the authorities are wrong in valuing it separately.

Elaborating his arguments on the first point, he submitted that inasmuch as the two firms in question are only dealers and not traders according to the decision of

the Madras High Court in Seethalakshmi Ammal's case (supra), the firms have no goodwill. In that case, the Madras High Court held that where a business involves no indistinguishable features and deals in standard articles manufactured by someone else which one can get from anywhere, not merely from a particular dealer, there is hardly any possibility of there being goodwill attached to such business. It is also contended that the above said two firms are going concerns even after the death of the deceased, the remaining partners have been continuing the business of those firms. Therefore, it is contended that goodwill has no value for going concern of partnership. Reliance was placed upon the decision of the Punjab and Haryana High Court in Ved Parkash Jain's case (supra). In that case, it was held that after the death of Shri Hari Ram, no specific share in the goodwill passed on to the heirs as he did not own any specific share in the goodwill of the firm. After the death of Shri Hari Ram, the firm Ved Parkash Vijay Kumar did not dissolve and the same continued thereafter, 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 Shri Hari Ram on the goodwill of the firm could not legally be included in the principal value of the estate of the deceased. Nextly, it is contended that there are 12 companies manufacturing tyres. The firms in question are some among the competitors in the market in selling tyres manufactured by all the 12 companies. In such a case, there is no goodwill at all.

16. Elaborating the second of his contentions, Shri A. Satynarayana argued vehemently assuming without admitting that the two firms in question had earned goodwill, admittedly, goodwill is an intangible asset belonging to the partnership firm. It is a well-known proposition that a partner does not have any particular interest in each of the assets held by the partnership firm. The only ascertainable interest which the partner gets is on dissolution of the firm and that too after making good the losses, etc., contemplated under Section 48 of the Indian Partnership Act, 1932. So, it is argued that the revenue is not entitled to evaluate the share of the deceased in the goodwill of the two firms which constitutes only one of the assets of the firm. In support of the contention that it is not open to the Assistant Controller to value only one single item of partnership asset and determine the share of the deceased in it, the learned counsel relied upon the following decisions: *Surajmall Gouti v. CED* [1979] 119 ITR 182 (Cal.); *CED v.*

Annaraj Mehta & Deoraj Mehta [1979] 119 ITR 544 (Cal.); Smt. Gunvantibai v. CED [1981] 130 ITR 122 (MP) and CED v. Fakirchand Fatehchand Sachdev [1982] 134 ITR 268 (Bom.).

It is, therefore, stated that the addition towards the share of the goodwill of the deceased was unsustainable. Lastly, it was submitted that the valuation of the goodwill at one year's purchase price is not sacrosanct.

17. As against this, the learned departmental representative objected the accountable person to raise the contention that the revenue cannot pick and choose out of many assets possessed by the partnership firm and goodwill being one of such assets, the deceased cannot predicate any particular share in it individually and what he is entitled to is a share in the net assets of the firm after meeting the liabilities from out of gross receipts and as such valuing the share of the deceased in the goodwill of the firm is not valid, is an argument which is not available to the accountable person, at this stage, as it was never raised in this present form, before either of the two lower authorities and, hence, this argument does not arise from out of the impugned order of the Appellate Controller and it was never processed by him and, hence, the assessee should be precluded to raise this contention at this stage as there was neither material nor claim for such an argument. The learned departmental representative cites in support of his argument, the decision of the Hon'ble Supreme Court in the case of Addl. CIT v. Gurjargravures (P.) Ltd. [1978] 111 ITR 1 where it is held that it is not possible to hold that the ITO examining a portion of the profits from the point of view of its taxability only, should be deemed to have also considered the question of its non-taxability. We consider that this is a preliminary objection for entertaining the argument raised by the accountable person. Now let us consider how far this preliminary objection stands scrutiny. The decision of the Hon'ble Supreme Court in Gurjargravures (P.) Ltd's. case (supra) applies when there was neither evidence on record nor there was any claim made before the ITO. The ratio of the Supreme Court's case does not apply when the question raised was purely a question of law. If it is purely a question of law according to us, it can be raised at any time. If it is a mixed question of fact and law then only a need to process it at the earliest of the stages arises. Further, the requirement of the ratio laid down by the

Supreme Court in Gurjargravures (P.) Ltd's. case (supra) would be adequately fulfilled even if the claim is made before the Assistant Controller. Here in this case, the contention that there is no goodwill for the firms was already taken even before the Assistant Controller. The reasons to substantiate that contention may be different than the present reasons put forward. But, in our opinion, the contention raised before the Assistant Controller is comprehensive enough to take in the present contention sought to be put forward also.

Thus, in our opinion, even the ratio in Gurjargravures (P.) Ltd.'s case (supra) is fulfilled in this case. Hence, the preliminary objection regarding the availability of this ground at this stage is not well founded. We, therefore, set aside the preliminary objection and consider the merits of the contention put forward.

18. First let us consider the contention of the accountable person that as the two firms were only dealing in tyres and tubes and as they are commodities of general variety which would be available not only with the firms in question but also with some others in the market and as they are not selling any patented items or brand named items exclusively, the firms did not earn any goodwill. In support of that contention, the decision of the Madras High Court in case of Seethalakshmi Ammal (supra) was sought to be relied upon. In that case, it is held as follows as per the headnote of the decision: ... Where a business involves no indistinguishable features and deals in standard articles manufactured by someone else which one can get from anywhere, not merely from a particular dealer, there is hardly any possibility of there being a goodwill attached to such business.

It is also argued that there cannot be goodwill for a running business.

Reliance was sought to be placed on the decision in Ved Parkash Jain's case (supra) where it is held that goodwill has no value in a going concern of partnership. However, it may be stated that the ratio laid down in Ved Parkash Jain's case (supra) is overruled by the Full Bench of Punj. & Har. High Court in State v. Prem Nath [1977] 106 ITR 446 where it is held as per the headnote of the decision as follows: goodwill of a firm is an asset of the firm, the share of the deceased partner in which, along with his share in the other assets of the firm,

devolves, for 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 shall not dissolve the firm and that the surviving partners are entitled to carry on the business on the death of the partner.

Referring to the ratio of the decision in Ved Parkash Jain's case (supra) at page 306 where it is held that goodwill has no value in a going concern of partnership, it is held by the learned judges of the Full Bench in Prem Nath's case (supra) that the ratio is clearly opposed to Section 14 of the Indian Partnership Act and also to the observations of the Hon'ble Supreme Court in the case of Khushal Khemgar Shah v. Mrs. Khorshed Banu Dadiba Boatwalla AIR 1970 SC 1147.

They have also expressly stated that Ved Parkash Jain's case (supra) was wrongly decided. Nextly, the proposition of the Madras High Court that a firm dealing not in brand named articles or standard articles but only carrying on business in articles which can be got from anywhere and not merely from a particular dealer, there is hardly any possibility of there being goodwill attached to such business and it does not appear to be sound in law inasmuch as the proposition was found to be opposed to the ratio of the Hon'ble Supreme Court laid down in S.C. Cambatta & Co. (P.)Ltd. v. CEPT [1961] 41 ITR 500, according to which the goodwill of a business depends upon varied circumstances or a combination of them. It had defined 'goodwill', as per the headnote of the decision, as follows: ... The location, the service, the standing of the business, the honesty of those who run it, and the lack of competition and many other factors go individually or together to make up the goodwill, though locality always plays a considerable part. Shift the locality, and the goodwill may be lost. At the same time, locality is not everything. The power to attract custom depends on one or more of the other factors as well. In the case of a theatre or restaurant, what is catered, how the service is run and what the competition is, contribute also to the goodwill.

As can be seen from the above definition, no distinction is drawn between a business carried on in branded or patented articles and a business carried on in non-patented and ordinary articles or articles which are available everywhere in

the market. The Supreme Court never stated that a firm which deals in ordinary articles would not have the scope to earn goodwill. Further, in CIT v. K. Rathnam Nadar [1969] 71 ITR 433, the Madras High Court itself was not preferred to follow the ratio in Seethalakshmi Ammal's case (supra). In that case also, the firm was in existence since 1943. The assessee who was the partner of the firm right from its inception wanted to come out of the firm and for that purpose a deed of dissolution dated 31-12-1958 was entered into. Under one of the terms of the said deed of dissolution a sum of Rs. 65,898 was payable to the assessee in three equal instalments towards the assessee's share, of goodwill of the firm. The question is whether capital gains tax can be levied against the said goodwill. In that case, both the Madras High Court's decision in Seethalakshmi Ammal's case (supra) and the Hon'ble Supreme Court's decision in S.C.Cambatta & Co. (P.) Ltd.'s case (supra) were considered. After considering S.C. Cambatta & Co. (P.) Ltd.'s case (supra), the Madras High Court held as follows of the decision: the sense used by this Court in that case it cannot be said that there was any goodwill which this firm had. It was dealing in ordinary automobiles, spare parts and petroleum products. As mentioned in Attorney-General v. Boden [1912] 1 KB 539, referred to above, one machine is practically as good as another; and the product is so uniform that anyone can buy the goods in any shop. But by the definition which the Supreme Court gave in S.C. Cambatta & Co. (P.) Ltd. v. CEPT [1961] 41 ITR 500, 504 it may be said that this firm had a goodwill ...

Therefore, it can be seen that a later Madras High Court's decision in Seethalakshmi Ammal's case (supra) was not followed and the Supreme Court decision in S.C. Cambatta & Co. (P.) Ltd.'s case (supra) was not only followed but applied to the facts of the case before the Madras High Court and held that though the firm was dealing with ordinary goods still there is scope for the said firm to acquire the goodwill.

19. In Smt. Surumbayi Ammal's case (supra), the facts are that the deceased in that case was a partner in six firms. The deeds evidencing the partnership showed that they were all at will and did not contain any reference to the sharing of goodwill on dissolution of the firms.

The deeds also did not contain any clause regarding the continuance of partnership in case of death or retirement of any partner by the remaining partners. On the death of the deceased partner, all the firms were dissolved and the accountable person was paid one-sixth share belonging to the deceased and no value was attached to the goodwill of the firm. The surviving partners entered into different partnerships with reference to each of the six firms and carried on the same business as was done by the dissolved firms. In four firms, the name of the dissolved firm itself was adopted as the names of the new firms.

The new firms carried on the same business as the old firms in the same places. The Assistant Controller held that the old firms had goodwill which had to be computed and included the goodwill in the property passing on death of the deceased. This view was confirmed by the Appellate Controller as well as the Tribunal. On a reference, the Madras High Court held as follows: Held, (1) that the firms had been doing business for a long period and had established a name in the line of business they were carrying on with their own clientele and business contracts. The decision whether there was goodwill or not being a finding to be passed on facts and the lower authorities and the Tribunal having taken the view on the facts that the firms had goodwill, there was no reason to differ from that view; and (2) that though the accountable person factually did not get any share in the goodwill, the fact that the deceased was entitled to a share was sufficient to hold that the share in the goodwill passed on his death for purposes of estate duty.

20. In *CED v. Estate of Late V. Rm. Valliappa Chettiar* [1980] 125 ITR181 (Mad.), the deceased was carrying on commission business in jaggery and tamarind and trading business in cloth and yarn. The Appellate Controller included the goodwill of the business as one of the properties passing on the death of the deceased. The Tribunal following *Seethalakshmi Ammal's* case (supra) held that the business which was carried on by the deceased did not have any goodwill. The Tribunal held that the fact that the business was carried on for a long time and that it derived good profits were not conclusive to hold that there was goodwill attached to the business. The Madras High Court specifically held the Tribunal's view as wrong and also held that the extent of the profits made and its consistency will be an indication as to whether the profit is due to existence of any magnetic quality in

the business attracting customers. The High Court held that the Tribunal had not considered the existence of the goodwill in the light of the two relevant circumstances, namely, length of business and its profitability. Hence, the matter was remanded again to the Tribunal to consider the case de novo. Therefore, there are a catena of decisions to establish that goodwill is one of the assets of the firm even though such firm deals in ordinary goods.

21. Now let us come to the point as to what goodwill means. It is already defined in S.C. Cambatta & Co. (P.) Ltd.'s case (supra). In *Rustom Cavasjee Cooper v. Union of India* [1970] 40 Comp. Case 325 (SC) goodwill is defined as follows: Goodwill of a business is an intangible asset; it is the whole advantage of the reputation and connections formed with the customers together with the circumstances making the connection durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years or in excess of normal amounts because of its reputation, location and other features--*Trego v. Hunt* (1896) AC 7 (HL). Goodwill of an undertaking, therefore, is the value of the attraction to customers arising from the name and reputation for skill, integrity, efficient business management, or efficient service.

In *Khushal Khemgar Shah's* case (supra), the Supreme Court again defined the goodwill as follows: ... The goodwill of a business is however an intangible asset being the whole advantage of the reputation and connections formed with customers together with the circumstances which make the connection durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years because of its reputation, location and other features. An agreement between the partners that the name, the place of business and the reputation of the firm are to be utilised by the surviving partners will not necessarily warrant an inference that it was intended that the heirs of the deceased partner will not be entitled to a share in the goodwill.

In view of all the above, we have to hold that goodwill is an intangible asset of the firms. From the facts and circumstances, we hold that the firms are long standing and they got good reputation and they have been consistently earning profits for a

number of years. The computation of the goodwill made by the Assistant Controller would make it clear that Standard Tyres and Motors, Vijayawada and Khandari Tyres, Hyderabad, have been earning profits and with reference to 5 years super profits earned by these firms prior to the death of the deceased, the quantum of the goodwill was determined. Therefore, it makes the position clear that the above said two firms have earned goodwill. As regards Khandari and Co. is concerned, it was sustaining losses and so it was rightly taken to be not a firm which had earned goodwill.

22. The next question is to consider the arguments of the accountable person that assuming that goodwill is one of the assets of the two firms mentioned above inasmuch as it is only one of the assets under law, the deceased cannot be taken to have any defined share in the said goodwill and as such taking the share of the deceased in the goodwill and adding it to the estate of the deceased is not correct. It is contended that as per the deeds of partnership governing these two firms, the death of the deceased brought about the dissolution of both the firms as the partnerships were at will. The learned counsel for the accountable person brought to our notice, the Supreme Court ruling in the case of Addanki Narayanappa v. Bhaskara Krishnappa AIR 1966 SC 1300 where the Supreme Court lucidly brought about what rights a partner is entitled to in the assets of the firm during his continuance and after dissolution. In the headnote of the said decision the following is found: The provisions of Sections 14, 15, 29, 32, 37, 38 and 48 make it 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 realisation 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 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....

Based on the above dictum, it is argued that goodwill being an intangible asset of the firm, the deceased being a partner cannot claim any specific share in it even during his lifetime nor could he have assigned his share in the goodwill to anybody. In support of the accountable person's contention, reliance was also placed upon another Supreme Court's decision in *CGT v. P. Gheevarghese, Travancore Timbers & Products* [1972] 83 ITR 403. In that case, the assessee was the sole proprietor of a concern in the first instance. Subsequently, he enlisted his two daughters and formed partnership. The capital of the partnership was Rs. 4,00,000 out of which the assessee's contribution was Rs. 3,50,000 and the contribution of each of his daughters was Rs. 25,000. All the assets of the proprietary business were transferred to the newly formed partnership. Under the partnership deed, the profits and losses are to be shared equally between all the three partners. The assessee returned a gift of Rs. 50,000 made in favour of his two daughters representing their share capital in the firm. The GTO held that the assessee had also gifted one-third share of the goodwill of his proprietary business to each of his daughters. Ultimately, when the matter came up before the Supreme Court, it was held that the department cannot pick out only one of the assets of the assessee's proprietary business, namely, its goodwill and regard that as the subject of gift. The Hon'ble Supreme Court held that this approach was wholly incomprehensible. No gift-tax was payable on the goodwill of the assessee's business. Reliance was also placed on the decision of the Bombay High Court in *Fakirchand Fatehchand Sachdev's case* (supra). In that case, three types of partnerships were considered for purpose of estate duty, more especially for purpose of ascertaining the value of the goodwill which the deceased had in the partnerships. It is held that goodwill is part of the assets of the firm. A partner does not have a defined share in the assets of the firm, he would have a share in the totality of the properties of the firm less the liabilities thereof, the share of the deceased in the goodwill of the firm cannot be valued as a separate item apart from other assets of the firm and included its value in the estate of a deceased partner under Section 5.

After elaborately discussing both on first principles as well as with reference to a long series of decisions, the Bombay High Court summarised the conclusions in 18 propositions. Out of the 18 propositions, proposition numbers 8,10 and 16 are felt relevant for our purposes and they are, therefore, extracted below: (8) Upon the dissolution of a firm, the right of a partner in the dissolved firm is to a share in the assets 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 of the Indian Partnership Act, 1932. Where under the provisions of a deed of partnership, a partnership is not dissolved by the death or retirement of a partner but the surviving partners become entitled to carry on the partnership, the right of the retiring partner or the legal representatives of the deceased partner are governed by the deed of partnership.

(10) The goodwill of a firm is one of the properties or assets of a firm. Merely because it is an intangible asset, it does not stand on a different footing from the tangible assets of the firm, but in making up the final accounts it is 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.

(16) In the valuation of a deceased partner's share for the purposes of the Estate Duty Act, 1953, it is not open to the department to pick up only one item out of the partnership properties or the assets of the firm and proceed upon the basis that the deceased had a specified share in it, because no partner has a defined share in the individual assets or properties of the firm. His share is in the totality of the properties of the firm less the liabilities thereof.

If for the purpose of valuing a partner's share in the firm the department picks up just one or two items out of the total assets or properties upon the basis that the deceased had a defined share in it or them, ignoring the other assets and the liabilities of the firm, the valuation made is unjustified and unsustainable in law.

In view of the above said Supreme Court and the Bombay High Court's decisions, we have to hold that it is not open to the department to pick up only one item out of the partnership assets or assets of the firm (goodwill of the firm) and proceed

upon the basis that the deceased had a specified share in it because no partner has a defined share in the individual assets and properties of the firm. His share is in the net assets of the firm, i.e., the value of the totality of the properties of the firm minus the liabilities of the firm. However, it is contended on behalf of the revenue that there is an authority for the proposition that goodwill is an asset of the firm and that on the death of a partner, his share in the goodwill of the firm passes to his legal representative in the decision of the Allahabad High Court in *CED v. Smt. Laxmi Bai* [1980] 126 ITR 73. In the headnote of the said decision the following is found: Goodwill of a firm is an asset and on the death of a partner his share in the goodwill passes to his legal representatives. Goodwill may sometimes exist as an asset in the balance sheet of a business but often it does not so exist and has to be brought into account by proper valuation. For the purpose of estate duty, goodwill of a business has to be valued at the date of the death and included in the valuation of the estate passing. This is, however, subject to an important rider. Goodwill goes with the business and has no existence apart from the business itself. If goodwill is to be included as an asset of the business passing on the death by valuing it, it can be done only by valuing the assets and liabilities of the business and working out the net assets valued. Alternatively, even though goodwill may have a positive value worked out for it, based on the annual income of the business, if the overall assets of the business have for some reason been completely depleted in value, no prudent person will purchase the business merely because its goodwill has been worked out at a positive figure. As a general rule, therefore, goodwill as an asset can be included in the estate passing either when all the assets and liabilities of the business have been evaluated or when *prima facie* they are proved to have a good positive value even without the goodwill.

In substance, what is contended for was that if admittedly the assets of the firm exceeded the liabilities of the firm, even without taking into consideration the value of the goodwill of the firm, then in such cases, it is permissible for the department to value the goodwill as one of the assets of the firm, ascertain the share of the deceased out of such asset and treat it as one of the assets which passes on the death of the deceased partner of the firm. It is also submitted that the Allahabad High Court's decision in *Smt. Laxmi Bai's* case (*supra*) was also taken note of and considered by the Bombay High Court in *Fakirchand Fatehchand Sachdevs* case

(supra). However, the Bombay High Court did not choose to dissent from the view expressed by the Allahabad High Court. In fact, it had approved it by saying that it is in favour of the accountable person. The following is stated regarding this Allahabad High Court's decision by the Bombay High Court: It is pertinent to note that the Allahabad High Court proceeded upon the basis that the overall assets of the firm exceeded the liabilities. It also held that goodwill is to be taken into account in arriving at the valuation of the assets of the firm and that the liabilities are to be deducted therefrom and that thereafter the deceased's share in the balance determined as his share in the firm.

It is in the context of this that when it was sought to be urged that in valuing the assets goodwill should not be taken into account that the Allahabad High Court, bearing in mind the fact that the other assets exceeded the liabilities, came to the conclusion that, in the facts of that case, in the goodwill of the firm, the partners had a defined share. This decision, if at all, is in favour of the accountable persons before us.

It is contended on behalf of the revenue that it was never the contention of the accountable person that overall assets of the two firms under consideration did not exceed the liabilities of those two firms. Admittedly, the balance sheets for those firms do not include the value of the goodwill of the firms on the assets side. Even then the assets of those firms far exceed the liabilities. Therefore, it is contended on behalf of the revenue that there is nothing wrong if the goodwill is separately valued and the share of the deceased added to his estate. However, we are constrained to observe that neither of the lower authorities viewed the matter in the light of the decisions which we have discussed above. Therefore, we feel that it is a fit case where the matter should be sent back to the Assistant Controller with a direction to ascertain the share of the deceased in the assets of the two firms (Standard Tyres and Motors, Vijayawada, and Khandari Tyres, Hyderabad) taking the goodwill as one of the assets in each of the two firms.

23. Shri A. Satyanarayana, the learned counsel for the accountable person, strongly opposed that this course if adopted would amount to giving second innings to the department to correct its mistakes which should not be allowed and

it amounts to taking away the valuable right of the accountable person. We are unable to accept this contention. The Assistant Controller is correct even according to all decided case law to hold that these two firms had goodwill and the goodwill is one of the assets of the firms. Theoretically, he had done a mistake in ascertaining the share of the deceased in the assets of the firms. In order to ascertain the share of the deceased instead of taking the net assets of the firms, he had taken one of the assets of the firm and valued it. In *Kapurchand Shrimall v. CIT* [1981] 131 ITR 451 the Supreme Court held that the appellate authority has not only the jurisdiction but also his duty to correct all errors in the proceedings under appeal and to issue, if necessary, any appropriate directions to the authority against whose decision the appeal was preferred to dispose of the whole or any part of the matter afresh, unless forbidden from doing so by statute. No provision of any statute was brought to our notice which comes in the way of correcting the error. Therefore, this objection fails. As regards the valuation of the goodwill is concerned, we uphold the order of the lower appellate authority. Our above finding regarding goodwill relating to Standard Tyres and Motors, Vijayawada, and Khandari Tyres, Hyderabad, equally hold good even with regard to Khandari and Company, Hyderabad, in which the HUF headed by Shri Harbans Singh was having one-third share. This disposes of ground Nos.

3 to 9 in the assessee's appeal and ground No. 4 in the departmental appeal.

24. Now remains ground Nos. 10 to 15 in the assessee's appeal for disposal. It is found that the accountable person declared only the credit balances lying in the capital accounts of the deceased in various firms. However, Khandari Tyres, Hyderabad, and Khandari and Company, Hyderabad, in which the deceased was a partner had fixed assets like sites and buildings, etc. The accountable person filed a letter dated 11-9-1978 submitting that regarding valuation of buildings and sites, their book values in the firms as going concerns are being accepted for wealth-tax purposes. These values were adopted in the wealth-tax assessments of the deceased for the assessment year 1977-78 for which the valuation date was on 31-3-1977. It is argued that since the date of death of the deceased is very near to the above said valuation date, the valuation as per the books does not require any alteration. As regards valuation of fixed assets in various firms, the

Assistant Controller in his order held as follows: (1) The fixed assets in the various firms consists of sites and buildings. These were got valued either by departmental valuer or approved valuer for arriving at the cost of construction in the relevant years. The constructions were made during 1973-74 in respect of Khandari and Company, 1972/June 1973 in respect of Khandari Tyres and February to August 1974 in respect of Khandari Bros. Thus, almost all the values arrived at by the valuers showing the cost of construction of relevant assets was as on 31-3-1974. In the books (i.e., in the respective balance sheets) the values of these fixed assets were depreciated from year to year and the final figure was shown in the latest balance sheets. While making such depreciation, the accountable person also deducted depreciation on land relating to the buildings. Further, these values are in 1974 and the death took place in June 1977, i.e., after a period of more than 3 years. It is a known fact that the values of these properties have increased by leaps and bounds during the period from 1975 onwards. Further, the valuers in reporting the cost of construction have excluded the values of cost of furniture and fittings connected with these assets (vide concluding remark in the valuer's report in the case of Khandari and Co.) These properties are situated at Madras, Hyderabad, etc., keeping in view the time-lag and all the other factors narrated above, I shall estimate the market value of these assets as on the date of death at an increased amount of one-third value of the cost of construction. From the market values so arrived at, the book figures have been deducted.

(i) Site-addition (estimated)	Rs. 70,000
(Ai) one-fifth share of the deceased	14,000
one-third	Rs. 1,07,848
3,65,338	(Aii) Less: as on 4-6-1977 B.S.
2,94,516	One-fifth thereon works to
48,564	One-third
91,348	3,65,392
Value as on 31-3-1977 B.S.	2,21,693
one-third share	Under Section 7: Khandari Bros. (HUF has got one-third share)
Rs. 3,00,000	
Rs. 4,00,000	(C) Value as on 31-3-1977
Rs. 1,32,935	(sic).

One-third share 44,312.

25. In appeal, the Appellate Controller confirmed the share of the deceased in the site belonging to Khandari and Company at Rs. 14,000.

As can be seen from the Assistant Controller's order, he had increased the value of the assets by adding one-third to the cost of construction estimated by the

departmental valuer/approved valuer as on 31-3-1974.

In the appeal, the Appellate Controller held that since there is time-lag and the date of valuation and the date of death is more than three years, it could be reasonable to make an addition of one-fifth instead of one-third to the 'other assets' (other than the land which is already considered above). Therefore, he directed to add one-fifth to the figure shown by the accountable person in respect of site with building in Khandari and Company and then deduct the balance sheet value as on 4-6-1977 and then work out the one-fifth of the deceased.

He also directed the Assistant Controller to work out the addition towards appreciation in the valuation of the fixed assets by adding only one-fifth to the figures shown by the accountable person in respect of the firm of Khandari Tyres and then deduct the balance sheet figure on 31-3-1977 for arriving at the value of the one-third share.

So also even regarding the valuation of the fixed assets belonging to Khandari Brothers (which is a HUF's concern) wherein the deceased has got one-third share. The Appellate Controller directed the Assistant Controller to add only one-fifth for appreciation in value. To the value shown by the accountable person and after deducting the value as on 31-3-1977, the Assistant Controller may take one-third towards the share of the deceased for purposes of the assessment under the Act. It is contended on behalf of the accountable person that the one-fifth addition is also not sustainable. He requested that the balance sheet amounts returned by the accountable person towards the value of these assets may be ordered to be accepted. The departmental representative objected to this request and argued that the balance sheet values have only historical importance. He argues that it is a known fact that the values of assets like sites and buildings especially in cities like Hyderabad and Madras are appreciating year after year by leaps and bounds and the market value of the rates of these assets would be very much higher than the balance sheet values which represent only the purchase value and construction values minus yearly depreciation allowed against them. Therefore, there was no justification at all to adopt such low values. Under the Act, it is the market value of the asset held by the deceased on the date of his death, which

should be ascertained and so adding only one-fifth to the purchase price and construction cost of the assets was more than fair and it should not be further reduced. After considering the arguments on both sides, we are inclined to agree with the submission of the revenue. We hold that there is no justification to further reduce the values of the fixed assets of these firms at the values noted in the balance sheet. We hold that the market value of these assets as on the date of death, namely, on 5-6-1977 would be higher than either the cost price or the cost of the construction price of these assets. Further, the cost of construction estimated as on 31-3-1974 by the departmental valuer/ approved valuer has not taken into consideration the furnitures and fittings connected with these assets. We also hold that depreciation was allowed even regarding the land. We took judicial notice of the fact that since 1975, the sites and buildings and values of other assets in cities like Hyderabad and Madras are very much appreciated.

Taking all these into consideration the increase of value by one-fifth, as ordered by the Appellate Controller, is quite justified and cannot be interfered with.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com