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**(1983) 04 AHC CK 0027**

**Allahabad High Court**

**Case No:** Estate Duty Reference No. 512 of 1978

Controller of Estate Duty

APPELLANT

Vs

Smt. Ram Sumarni Devi

RESPONDENT

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**Date of Decision:** April 26, 1983

**Acts Referred:**

- Estate Duty Act, 1953 - Section 40, 5, 7

**Citation:** (1984) 38 CTR 111 : (1984) 147 ITR 233 : (1983) 15 TAXMAN 168

**Hon'ble Judges:** V.K. Mehrotra, J; R.M. Sahai, J

**Bench:** Division Bench

**Advocate:** M. Katju, for the Appellant; R.K. Gulati, for the Respondent

**Final Decision:** Disposed Of

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### **Judgement**

R.M. Sahai, J.

The Income Tax Appellate Tribunal, Allahabad, has referred the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was in law justified in holding that no goodwill passed on the death of Shri Ram Bharosey Lal either u/s 5 or u/s 7 of the E.D. Act, 1953?"

2. It has been found that one Ram Bharosey Lal was a partner in M/s. Dunkar Durrie Company. He died on 6th September, 1971. His wife and legal heir, Smt. Ram Sumarni Devi, filed an estate duty account and showed the net value of the estate at Rs. 1,04,340. It was not accepted by the Asst. Controller of E.D. He determined it at Rs. 1,56,447. In this computation, he added a sum of Rs. 44,511 as the value of 50% share of the accountable person for the goodwill in M/s. Dunkar Durrie Company. The Tribunal did not agree with it. It examined the terms of the partnership deed and found that under it the partnership was determinable at will. Clause 12 of the deed, which is relevant, reads thus :

"It is expressly agreed that no adjustment shall be made for alleged goodwill, if any, in case of death or retirement of any partner."

3. Consequently, the Tribunal found that not only the partnership came to an end due to death of Ram Bharosey Lal but no benefit could accrue under it of goodwill to the accountable person. Further, a fresh partnership deed was entered into between Ram Prakash, the only surviving partner in the firm, and the accountable person, that is, wife of Ram Bharosey Lal, on 28th December, 1971. From this it was inferred that the lady was taken as a partner in her own individual capacity under an independent contract of partnership. The Tribunal found that the lady was not paid anything for the 50% share of her husband in the goodwill. On these facts found which have not been challenge, it is apparent that the good-will of the firm did not devolve or passed to the lady and it could not be added to her wealth. We are supported in our view by a decision of the Gujarat High Court in [Mrudula Nareshchandra Vs. Controller Estate of Duty](#). It was held that where it is specifically stipulated between the partners of a firm that on the death of any of the partners, the partnership shall not stand discharged and the deceased's heirs shall have no right whatsoever to claim any goodwill of the firm, the benefit arising to the other partners on the cesser of interest in the goodwill on the death of one of the partners cannot be measured in terms of Section 40. Therefore, such benefit is not liable to estate duty u/s 7. We are in respectful agreement with it. In these circumstances, the question referred to us is answered in the affirmative, against the Department and in favour of the assessee, accountable person. The assessee shall be entitled to its costs which are assessed at Rs. 200.