

**(2001) 05 DEL CK 0143**

**Delhi High Court**

**Case No:** ED Ref. No's. 1 and 2 of 1979 30 May 2001

MAJOR KAPIL MOHAN

APPELLANT

Vs

CONTROLLER OF ESTATE DUTY

RESPONDENT

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**Date of Decision:** May 30, 2001

**Citation:** (2001) 169 CTR 182

**Hon'ble Judges:** Arijit Pasayat, C.J; D.K. Jain, J

**Bench:** Full Bench

**Advocate:** Anoop Sharma and R.K. Raghvan, for the assessed Sanjeev Khanna and Mrs. Prem Lata Bansal, for the Revenue, for the Appellant;

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### **Judgement**

D.K. Jain, J.

In these two cross references u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as the Act), the Income Tax Appellate Tribunal, Delhi Bench D (hereinafter referred to as the Tribunal) has referred the following questions for opinion of this court :

At the instance of the accountable person

"1. Whether, on the facts and in the circumstances of the case the Tribunal was correct in not accepting the plea of the accountable person for deducting alleged liability towards the marriage and maintenance expenses of the granddaughters of the deceased ?

2. Whether, on the facts and in the circumstances of the case the Tribunal was right in law in holding that the aggregation in the principal value of the estate, of the interest in the joint family property, of all the lineal descendants of the deceased, for the purpose of determining the rate of estate duty was legally correct ?

3. Whether the Tribunal was correct in holding that estate duty payable on the value of the estate should not be allowed as a deduction in arriving at the value of the dutiable estate ?

At the instance of the CED

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the refund of Rs. 2,27,681 received by the legal heirs of the deceased consequent on the certificates issued by the Income Tax Officer u/s 80K between February, 1971 and May, 1973, did not represent property passing on the death of the deceased and thus was not liable to be included in the dutiable estate?"

2. Shri N.N. Mohan (hereinafter referred to as the deceased) died on 15-7-1969 and an assessment of estate duty under the provisions of section 58(3) of the Act was made by the Addl. Asstt. CED on 25-4-1975 on Lt. Col. V.R. Mohan (hereinafter referred to as the accountable person). The principal value of the estate was determined at Rs. 37,55,504. Aggrieved by this assessment, the accountable person filed an appeal before the Appellate Controller of Estate Duty (ACED), who by her order dated 22-11-1975, allowed certain reliefs, though not to the extent prayed for by the appellant. Aggrieved, the accountable person as also the revenue preferred appeals before the Tribunal.

3. Shorn of unnecessary details, the facts relating to the questions raised by the accountable person are : it was claimed by the accountable person that the value of the benefit accruing or arising from the cesser of the co-parcenary interest in the joint family property had been wrongly taken, without making provision for a sum of Rs. 4 lakhs towards the marriage and maintenance expenses of the granddaughters of the deceased. Taking the view that the marriage expenses of the sons daughters formed only the liability of his branch and not of the whole joint family, the Tribunal held that the deceased had no unmarried sisters or daughters at the time of his death and, Therefore, deduction for any liability towards the marriage and maintenance expenses of grand/daughters of the deceased was not allowable.

The accountable person claimed that the aggregation of the principal value of the estate by including the interest of all the lineal descendants of the deceased in the joint family property for the purpose of determining the rate of estate duty u/s 34(1)(c) of the Act, was illegal. However, relying on the decision of the Madras High Court in [Pl. S. Rm. Ramanathan Chettiar Vs. Assistant Controller of Estate Duty](#), and the Andhra Pradesh High Court in [N. Krishna Prasad Vs. Assistant Controller of Estate Duty](#), the Tribunal held that such aggregation was neither illegal nor unconstitutional.

While computing the principal value of the estate of the deceased, the accountable person deducted the amount of estate duty chargeable on the estate as a debt. By placing reliance on the decision of the Karnataka High Court in [V. Pramila Vs. Controller of Estate Duty, Bangalore](#), and the Andhra Pradesh High Court in [Controller of Estate Duty Vs. Estate of Late Omprakash Bajaj](#), the Tribunal rejected the claim of the accountable person.

4. The facts relating to the question referred at the instance of the revenue are with regard to the inclusion in the principal value of the estate, a refund of Income Tax, amounting to Rs. 2,27,681. The deceased was holding substantial number of shares of M/s Mohan Meakin Breweries Ltd., and was getting dividend on them. A part of the dividend was exempt from Income Tax u/s 80K of the Income Tax Act, 1961 (hereinafter referred to as the Income Tax Act). After the death of the deceased, his legal heirs received total refunds amounting to Rs. 5,74,308, out of which a sum of Rs. 2,27,681 represented the amount of refund which became due on account of relief granted u/s 80K of the Income Tax Act and the balance amount of Rs. 3,46,627 represented refund of taxes paid by the deceased pursuant to the assessment orders, but became refundable consequent upon appeals, filed by him, being decided in his favor after his death. In the estate duty return of the accountable person, only the amount of Rs. 3,46,627 was included and the other amount of Rs. 2,27,681 was not included on the ground that it did not represent property passing on the death of the deceased. The stand of the accountable person was that at the time of death of the deceased he had no right to make a claim for relief u/s 80K because in the first instance the claim of the said company u/s 80J had to be adjudicated and accepted by the department and it was only thereafter that the deceased would have become entitled to any relief u/s 80K. As there was no such adjudication in the case of the company till the date of his death, it was claimed, that the deceased had no right to any relief u/s 80K. It was pointed out that initially relief u/s 80J of the Income Tax Act was not granted to the company by the assessing officer and the companys appeals against its assessment, denying relief u/s 80J of the Income Tax Act were decided by the Tribunal in the years 1971/1972, when the deceased had already expired on 15-7-1969. Taking cognizance of the fact that the accountable person had in fact made a claim for refund on account of relief u/s 80K only after the Income Tax Officer had issued the certificates determining the portion of the dividend issued by the company, which was exempt from tax u/s 80K, between February, 1971 and May, 1973, the Tribunal held that the said refund did not represent the property passing on the death of the deceased.

5. Being aggrieved by the view taken by the Tribunal on the afore-noted issues, at the instance of the revenue and the accountable person, the questions, as set out hereinabove, have been referred.

6. We have heard Mr. Sanjeev Khanna, learned senior standing counsel for the revenue and Mr. Anoop Sharma, learned counsel for the accountable person. At the outset, it was submitted by learned counsel for the accountable person that in view of the fact that there is uniformity in views of various High Courts on the first two questions and the issue raised in the third question stands settled by the Apex Court in the case of [P. Leelavathamma \(Smt\) Vs. Controller of Estate Duty, Andhra Pradesh, Hyderabad](#), , against the accountable person, the decision of the Tribunal on the issues raised by the accountable person is in order and, Therefore, the reference at the instance of the accountable person may be returned unanswered. We order

accordingly.

7. Insofar as the reference at the instance of the revenue is concerned, it was vehemently argued by Mr. Khanna that the right to receive any refund is a property within the meaning of section 2(15) of the Act. As the same was capable of being inherited and transferred, it is deemed to have passed on the death of the deceased in terms of section 6 of the Act and thus, liable to estate duty. It is urged that the right to receive refund comes into existence on the relevant valuation date and only the quantification of refund is deferred, which is not an essential attribute of property under the Act. Support is sought to be derived from a Full Bench decision of this court in [Labh Chand and Another Vs. Controller of Estate Duty, New Delhi](#). In support of the proposition that the scope of the term. property is very wide and it includes any kind of refund due, learned counsel has cited certain decisions of the Supreme Court but we do not propose to burden the judgment by citing them as there is no dispute on the general principle of law laid therein.

8. On the other hand, Mr. Sharma, while supporting the view taken by the Tribunal has contended that in the present case there was no property in existence at the time of death of the deceased because the right to receive refund in question was purely contingent as it was dependent on the action on the part of the company. If the company had failed in its appeals, there was no question of the deceased getting any consequential benefit. In support reliance is placed on the decisions of the Bombay High Court in [Estate of Late Gen. Sir Shankar S.S.J.B. Rana Vs. Controller of Estate Duty](#), and Kerala High Court in [CONTROLLER OF ESTATE DUTY Vs. H. H. SETHU PARVATHI BAI \(ESTATE OF LATE\) BY H. H. LAKSHMI BAI.](#)

9. Thus, the question posed for our consideration is as to whether the amount of refund claimed and received after the death of the deceased, pursuant to the order passed by the Tribunal in the case of the company, accepting its claim u/s 80J of the Income Tax Act constitutes property within the meaning of section 2(15) of the Act.

10. Section 5 of the Act is the charging section and lays down that estate duty shall be levied and paid upon the principal value of all property which passes on the death of a person. Thus, estate duty is livable on property which passes on the death of a person, Section 6 of the Act expands the scope of the charging section and provides that property which the deceased was at the time of his death competent to dispose of, shall be deemed to pass on his death. Sub-section (15) of section 2 of the Act defines the term property and inter alia, states that property includes any interest in property, movable or immovable. Being an inclusive definition, it extends the concept of property beyond what it includes and though clause (15) is not a precise definition of the term property but it makes it clear that an interest in movable or immovable property would be property for the purposes of the Act. The term property is one of very general meaning-wide and comprehensive. It is used in a wide sense in the same way as it has been used in the Transfer of Property Act, 1882. It brings within its ambit all the tangible and

intangible property which a person can possess or from which he can derive a benefit, which is capable of being reduced to money value. In *The New York Breweries Co. Ltd. v. The Attorney General* (1899) AC 62, it was observed that property is not something necessarily connected with physical possession, capable of being transferred by manual delivery only. Choses-in-action though not capable of physical possession, are "property" as they are capable of being legally transferred by execution of the appropriate documents of transfer. In *Dewan Labh Chands* case (supra), heavily relied upon by learned counsel for the revenue, it was observed that for the purpose of the Act, property must not be restricted to the lifetime of the deceased who must not be divested of it on his death., it must be capable of being inherited by his legal representatives. For the levy of estate duty u/s 5(1) of the Act, the term property shall be deemed to pass even if it is not personally held by the holder before his death provided he was competent to dispose of the same within the ambit of section 6 of the Act.

11. In [M. Ct. Muthiah and Another Vs. Controller of Estate Duty, Madras](#), , while dealing with the concept of property under the Act, the Supreme Court observed that insurance money in the case of an accident policy became payable on the happening of a specified contingency. The property emerged on the death of the deceased during the subsistence of the policy. Therefore, no property can be deemed to pass on the death of deceased as no property existed at the time of death of the deceased.

12. According to the ratio of the said decision, in order to fall within the expression property as defined in section 2(15) of the Act, the property in some form or the other must exist at the time of death of the deceased, which can pass on his death. Sub-section (16) of section 2 speaks of "property passing on the death" as including property passing either immediately on the death or after an interval, either certainly or contingently and either originally or by way of substitutive limitation. So what is important is that the property, whether tangible or intangible must have legal existence at the time of death, and it is not necessary that it should be definite, ascertained or determined. An immediate quantification is not an essential attribute of property under the Act.

13. A conjoint reading of the afore-noted provisions would show that it is the property passing on the death of the deceased, which would be subjected to estate duty and that what passes must be property at the time of death.

14. The answer to the question posed, Therefore, would primarily depend on whether the refund in question satisfies the criteria of property in the Act. The pertinent question would be whether in the instant case the deceased had any right to ask for refund based on his claim u/s 80K. In other words, had any legally enforceable right to claim the said refund accrued to the deceased at the time of his death ?

15. In the instant case, the Tribunal has noted that even at the time of death of the deceased the fate of company's claim u/s 80J was uncertain and deceased's claim was dependent on such an uncertain contingency. It was not a case where only the quantum of refund was uncertain. The Tribunal has recorded a finding of fact that the claim for refund was not even postulated before the death of the deceased, and it was in fact made after his death. As noticed by the Tribunal, originally the company's claim u/s 80J was not allowed by the department and it was only as a result of the orders passed by the Tribunal between February, 1971 and March 1972, that the company's claim u/s 80J was accepted. Thereafter between February, 1971 and May, 1973, the Income Tax Officer issued certificates determining the portion of the dividend issued by the company, which was exempt from tax u/s 80K of the Income Tax Act. It was only after these certificates were issued by the Income Tax Officer that the legal heirs of the deceased preferred claim for refund based on relief u/s 80K in respect of the dividend received by the deceased from that company. In the light of the facts found by the Tribunal, we are in agreement with the Tribunal that as on the date of death, namely, 15-7-1969, it could not be said that the deceased had a right to make a claim for relief u/s 80K, as the claim of the company u/s 80J was itself in jeopardy. We, Therefore, hold that the refund of Rs. 2,27,681 received by the legal heirs of the deceased consequent upon the certificates issued by the Income Tax Officer between February, 1971 and May, 1973 did not represent property passing on the death of the deceased and, Therefore, it was not liable to be included in the principal value of the estate.

16. The Full Bench decision of this court in *Dewan Labh Chands* case (supra), heavily relied upon by learned counsel for the revenue, does not advance the case of revenue. In that case, while answering the question whether the compensation payable to a displaced person under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, was a property within the meaning of the Act, in the affirmative, the court took into consideration three material facts, namely : (i) the displaced persons were holding verified claims. (ii) there was no uncertainty regarding the title of the displaced persons to the compensations and (iii) it was an indefeasible statutory right conferred on them by the Act of 1954, which is not the case here. As noted above. In the instant case the right to claim refund accrued only when the company advised its shareholders to claim relief u/s 80K and not earlier.

17. For the foregoing reasons, it has to be held that the refund in question received by the legal heirs of the deceased cannot be said to be property passing on the death of the deceased and is, Therefore, not liable to be included in his estate for the purpose of levy of estate duty.

18. In the result, the question referred at the instance of the revenue is answered in the affirmative, i.e., in favor of accountable person and against the revenue and the reference made at the instance of the accountable person is returned unanswered.

There will, however, be no order as to costs.