

**(1986) 01 MAD CK 0009**

**In the Madras High Court**

**Case No :** Tax cases No"s. 1417 to 1421 of 1977

N. Bhagavathy Ammal and Others

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

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**Date of Decision :** 21-01-1986

**Acts Referred:**

Estate Duty (Controlled Companies) Rules, 1953 — Rule 15, 5, 5(2)  
Estate Duty Act, 1953 — Section 17, 17(1), 44, 73  
Income Tax Act, 1961 — Section 2(22)

**Citation :** (1986) 55 CTR 351 : (1986) 162 ITR 190

**Hon'ble Judges :** M.N. Chandurkar, C.J.;Venkataswami, J

**Bench :** Division Bench

**Advocate :** Nalini Chidambaram, for the Appellant; T.V. Balakrishnan, for the Respondent

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## **Judgement**

Chandurkar, C.J.—All these tax cases arise out of proceedings for determination of estate duty in respect of the estate of the deceased,

Kumaraswami. It would be enough to refer to only such of the relevant facts which are material for the decision of the eight questions which have

been referred to this court by the Income Tax Appellate Tribunal for opinion. One Sastha, the deceased, had three sons, S. Kumaraswami, S.

Nelliappan and S. Nagamani. After the death of Sastha, there was a partition among the three brothers on August 17, 1943. Kumaraswami's wife

died in 1954. At the time of death of Kumaraswami which took place on October 18, 1960, the family consisted of Kumaraswami and his four

daughters. In 1957, the deceased, Kumaraswami, gifted portions of his house to his four daughters. Three of his daughters had been married and

Rajammal, the fourth daughter, was unmarried.

2. The deceased with his two brothers had sold large extent of rubber gardens

and coconut thopes to Messrs. Palkulam Estates Private Limited

by a sale deed dated March 23, 1953, for Rs. 10,50,000. Out of this consideration, Rs. 6 lakhs was directed to be paid to one R. H. Crowther

from whom the rubber gardens had been purchased. For the balance of Rs. 4.50 lakhs, the deceased and his two brothers were each allotted

1,500 shares of Messrs. Palkulam Estates Private Limited, each share being of the face value of Rs. 100.

3. On May 23, 1956, the deceased sold certain lands to Messrs. Nagammal Mills Limited for Rs. 16,66,425. In consideration of this sale, the

deceased was allotted 1,664 shares in the said company of the face value of Rs. 100 each. Out of this, 664 shares were taken by the deceased in

his own name and 250 shares in the name of each of his four daughters.

4. The deceased was a director and shareholder of the two companies, Messrs. Palkulam Estates Private Limited and Messrs. Nagammal Mills

Limited. Admittedly, both these companies were controlled companies within the meaning of section 17(4) of the Estate Duty Act, Finding that the

deceased had already received benefit from these two companies during the period of three years ending with his death, the Assistant Controller of

Estate Duty issued notices to these two companies also intimating them that Rs. 33,61,454 being the value of the slice of the assets of Messrs.

Palkulam Estate Private Limited and Rs. 13,89,719 being the value of the slice of the assets of Messrs. Nagammal Mills Limited were proposed to

be included in the assessment and that the two respective companies would be liable to pay estate duty relatable thereto.

5. The benefit received from Messrs. Palkulam Estates Private Limited was that the deceased was drawing funds from the company directly and

the difference between the debit balances as on August 16, 1957, and August 1960, was an additional amount of Rs. 2,55,184. The deceased

was also a partner to the extent of one-fifth share in a partnership firm, Messrs. Pioneer Motors, and it was found that this firm was receiving large

amounts from the company. As on August 15, 1960, a sum of Rs. 1,39,592 was due by Messrs. Pioneer Motors to the company and the share

of the deceased therein came to Rs. 27,918. Thus, according to the Assistant Controller of Estate Duty, a total amount of Rs. 2,83,102 (Rs.

2,55,184 plus Rs. 27,918) had to be treated as benefit received from Messrs.,

Palkulam Estates Private Limited by the deceased. In respect of

Nagammal Mills Limited, the Assistant Controller of Estate Duty intimated to the mills that inclusive of repayment of loans by the mills to the

deceased which amounted to Rs. 3,49,431, dividends amounting to Rs. 1,96,318, interest on loans advanced by the deceased to the company

amounting to Rs. 18,337 and interest at average rate on distributed assets under rule 12 of the Estate Duty (Controlled Companies) Rules

amounting to Rs. 1,77,515, a total of Rs. 7,90,127 was the benefit received by the deceased.

6. Therefore, a sum of Rs. 13,89,719 was liable to be included in the estate of the deceased u/s 17(2) of the Estate Duty Act and duty in respect

of that amount was to be paid by the mills.

7. The deceased had also 1,700 shares in Messrs. Palkulam Estates Private Limited. The accountable persons had valued the shares at Rs.

199,26 each. The Assistant Controller, however, determined the value at Rs. 1,177 per share.

8. The deceased held 3,250 cumulative preference shares and 6,364 equity shares of the value of Rs. 100 each fully paid up in Messrs. Nagammal

Mills Limited. The Assistant Controller valued the 3,250 preference shares at Rs. 3,25,000. The equity shares were valued at Rs. 159.64 each as

against Rs. 119.63 as contended by the accountable persons. The value of the estate of the deceased was determined by the Assistant Controller

at Rs. 87,46,162 and the estate duty payable thereon was computed at Rs. 28,75,072,41. He also rejected the contention that the estate duty

should be deducted from the principle value of the estate.

9. In appeal, the Appellate Controller held that the shares in Messrs. Palkulam Estate Private Limited should be valued at Rs. 1,167 per share. the

value of the shares held in Messrs. Nagammal Mills was not modified. The Appellate Controller rejected the argument that the Revenue was not

entitled to invoke the provisions of section 17 of the Estate Duty Act but accepted the contention of the assessee that the moneys borrowed by the

deceased from Messrs. Palkulam Estate Private Limited could not be treated as ""benefit"" but held that the sum of Rs. 78,149 received by the

deceased from the said company and deemed to be dividend u/s 2(6A)(e) of the Indian Income Tax Act, 1922, could alone be taken as benefit.

He also held that on this basis, the value of the slice of the assets of the company would be less than the value of the shares held by the deceased

and there was, therefore, no need for the inclusion of the value of the slice in the assessment under rule 11(3) of the Estate Duty (Controlled

Companies) Rules. This resulted in deletion of Rs. 34,07,628 from the computed value of the estate.

10. The appellate authority also held that the amount of Rs. 2,91,872 which represented the repayment of loans originally advanced by the

deceased to Messrs. Nagammal Mills Limited could also not be treated as ""benefit"" received by the deceased. Finding that the value of the slice of

the assets includible on the basis of enjoyment of the benefit was computed at Rs. 93,850 only, he took the view that the value of the slice would

be lower than the value of the preference and equity shares held by the deceased. He, therefore, directed deletion to the extent of Rs. 17,05,266.

11. There were appeals and counter-appeals against the order of the Appellate Controller. The Tribunal in a very extensive order discussed the

rival contentions and reached the following conclusions : (1) the value of the assets of Messrs. Palkulam Estate Private Limited is to be taken as

Rs. 47,28,885 and 1,700 equity shares held by the deceased in the said company should be valued at Rs. 13,60,000 at the rate of Rs. 800 per

share after reducing the value by 15 per cent.; (2) the sale of the property (rubber estate) by the deceased to Messrs. Palkulam Estate Private

Limited under the sale deed dated May 28, 1961, and the sale of the lands by the deceased to M/s. Nagammal Mills Limited under the sale deed

dated May 23, 1956, fell within the scope of section 17(1) of the Estate Duty Act; (3) the amounts received by way of loan from Messrs.

Palkulam Estate Private Limited cannot be considered as ""benefit"" u/s 17(1) of the Estate Duty Act; (4) only Rs. 78,147 treated as deemed

dividend in the assessment of the deceased for the assessment year 1959-60, u/s 2(6A)(e) of the Indian Income Tax Act, 1922, can be

considered as ""benefit"" received by the deceased; (5) since the slice of the assets of the aforesaid company relatable to the above benefit would be

less than Rs. 13,60,000 being the value of the equity shares held by the deceased in the said company, the same was not dutiable; (6) repayment

of loans by Messrs. Nagammal Mills Limited to the deceased could not be considered as a benefit; (7) since the slice of the assets of the company,

Messrs. Nagammal Mills Limited, that would be attributable to Rs. 53,520 which alone could be taken as the benefit, would be less than the value

of 6,364 equity shares held by the deceased in the company, no duty is payable thereon; (8) the proceedings instituted against the two controlled

companies could not be said to be time-barred; and (9) the estate duty payable cannot be deducted in determining the principle value of the estate.

12. Since the accountable persons as well as the Revenue were aggrieved by the findings recorded against them, both of them asked for reference

to be made to this court. Accordingly, the Tribunal has referred the following eight questions to this court for opinion u/s 64 of the Estate Duty Act

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1. Whether in view of article 3(c) of the articles of association of the company, M/s. Palkulam Estates Private Limited, the value of the shares held

by the deceased therein arrived at by the application of rule 15 of the Estate Duty (Controlled Companies) Rules should be further discounted by

15% ?

2. Whether, on the facts and circumstances of the case, the value of 3,250 cumulative preference shares held by the deceased in M/s. Nagammal

Mills Limited should be increased by Rs. 25,852 in view of the fact that Rs. 34,577 being the accumulated arrears of dividend was to be treated as

a liability in evaluating the net assets of the said company ?

3. Whether, on the facts and circumstance of the case, the transfer of properties by the deceased to the controlled companies, M/s. Palkulam

Estates Private Limited and Messrs. Nagammal Mills Limited, fell within the scope of section 17(1) of the Estate Duty Act ?

4. Whether, on the facts and circumstances of the case, the amounts received by the deceased by way of loan from M/s. Palkulam Estates Private

Limited could be considered as "benefit" u/s 17(1) of the Estate Duty Act ? j5. Whether, on the facts and circumstances of the case, the

repayment of loans by M/s. Nagammal Mills Limited to the deceased could be considered as "benefit" u/s 17(1) of the Estate Duty Act ?

6. Whether, on the facts and circumstances of the case, rule 11(3) of the Estate Duty (Controlled Companies) Rules applies and whether the

Tribunal was right in holding that since the value of the slice of the assets of the two controlled companies referable to the benefits received by the

deceased was less than the value of the share held by the deceased in these companies, such value of the slice of the two companies was not dutiable ?

7. Whether, on the facts and circumstances of the case, the initiation of proceedings against the controlled companies, M/s. Palkulam Estates

Private Limited and M/s. Nagammal Mills Limited, u/s 17(1) of the Estate Duty Act was barred by limitation ?

8. Whether, on the facts and circumstance of the case, estate duty payable is to be deducted in determining the principle value of the estate ?

Questions Nos. 1, 2, 4, 5 and 6 have been referred at the instance of the Revenue and question Nos. 3, 7 and 8 have been referred at the instance

of the accountable persons. Mrs. Nalini Chidambaram appeared on behalf of the Revenue and Mr. T. V. Balakrishnan appeared on behalf of the

accountable persons. We shall deal with these questions in the order in which they have been reproduced.

13. It was found as a fact by the Tribunal that the net assets of the company, Messrs. Palkulam Estate Private Limited, had to be taken as Rs.

47,23,885 and on this footing, the market value of each share of the company worked out to Rs. 946. The Tribunal, However, found that article

3(c) of the articles of association provided that no share of a company shall be transferred to any person without obtaining the consent of the

company in general meeting. This restriction which was a constraint on the free marketability of the shares was taken into account by the Tribunal

and the Tribunal took the view that a discount of 15 per cent. should be given while determining the value of each share and accordingly the

Tribunal determined the value of each share at Rs. 800 and computed the value of 1,700 shares held by the deceased at Rs. 13,60,000 as against

Rs. 20,00,900 fixed by the Assistant Controller.

14. Learned counsel for the Revenue contended before us that there was no justification whatsoever for reducing the value of the share by a further

amount equivalent to 15 per cent. and that the appellate authority had properly determined the value of the share. The proposition that in the case

of a private limited company where there is no free marketability of the shares, the value of the shares computed on the basis of the breakup

method should be reduced further by a reasonable amount is now well-settled by

at least three decisions of this court.

15. In *R. Rathinasabapathy Chettiar Vs. Commissioner of Wealth-tax*, a Division Bench of this court recognized the legal position that the value

of a share ascertained on the basis of the break-up method had to be depreciated further to some extent having regard to the restrictions contained

in the articles of association which have a tendency to bring down the price in an open market sale, as the purchaser will take note of the various

restrictions contained in the articles of association and offer only a lesser price. This decision has been followed later in *COMMISSIONER OF*

*GIFT-TAX, TAMIL NADU-III Vs. S. VENU SRINIVASAN AND ANOTHER.*, .This court in that decision held that the value which the

shares of a private Ltd., tied company would fetch in the open market as ascertained disregarding the restrictions as to sale will have to be reduced

because in reality the shares would not fetch that much of money when transferable because the shares in a private limited company are not easily

transferable and hence cannot be treated to be on par more or less with money that can be handed over quickly from one person to another or

other commodities which are readily saleable.

16. In a later decision in *T. C. Nos. 169 to 171 of 1977* decided on March 5, 1985, *Commissioner of Income Tax Vs. S. Balasubramaniam*, , this

position has been reiterated. It was pointed out in that decision that the shares of a private limited company have a restricted market and the

constraints on the transfer of such shares inevitably result in reduction in the value of such shares.

17. In our view, therefore, the Tribunal was right when it took the view that the value of the shares of *Messrs. Palkulam Estates Private Limited* as

determined by the application of rule 15 of the *Estate Duty (Controlled Companies) Rules* should be further discounted by 15 per cent. Question

No. 1 will, therefore, have to be answered in the affirmative.

18. Question No. 2. -It appears from the order of the Tribunal that in so far as the contention which is now put in issue in question No. 2 was

concerned, no arguments were advanced on behalf of the Revenue at the hearing of the appeal. but the Tribunal, however, has taken the view that

the value of the cumulative preference shares could not be increased merely because in respect of such shares, the company had a liability to pay

arrears of dividend. In the instant case, the Assistant Controller had valued 3,250 the preference shares held by the deceased in Messrs.

Nagammal Mills at Rs. 3,25,000. It appears that in the books of the company, there was a liability of Rs. 34,577 on account of dividend payable

in respect of the cumulative preference shares. While ascertaining the value of the assets of the company for the purpose of determining the value of

the equity shares, the figure of this liability, namely, Rs. 34,577, was deducted and the assets of the company came to be valued at Rs. 24,94,604.

The value of 6,364 equity shares held by the deceased was also determined at the rate of Rs. 159,64 per share.

19. Learned counsel appearing on behalf of the Revenue has fairly stated before us that the only basis for the contention which is raised and is the

subject-matter of question No. 2 is the observation made in Nanavati's Estate Duty Act, 3rd edition, at page 505. That observation is as follows :

As regards preference shares of a private company, it may be easy to value the same on the yield basis, having regard to the yield "generally

realised in respect of dividends in the share market. If the shares the cumulative preference shares, any accumulations of unpaid dividends should

also be taken into consideration".

20. With respect, we are unable to see any principle on which these observation can be substantiated. The learned author has also not referred to

any principle regarding valuation of cumulative preference shares on the basis of which the arrears of dividends can be said to result in a higher

value on cumulative shares. In view of this, we must uphold the view taken by the Tribunal that the value of the cumulative preference shares could

not be increased because the accumulated arrears of dividend were to be treated as a liability in evaluating the net assets of the said company.

Accordingly, questionjNo. 2 has to be answered in the negative.

21. Question No. 3. -This question is raised at the instance of the accountable person. The argument on behalf of the accountable persons was that

on the facts of the present case, the provisions of section 17(1) of the Estate Duty Act cannot be invoked by the Revenue. The applicability of the

provisions of section 17(1) arose in the present case in the context of the transfer made by the deceased to Messrs. Nagammal Mills Limited. The

transfer in the first case was, as already pointed out, by sale of the rubber and

coconut thopes by the sale deed dated March 23, 1953, for Rs.

10,50,000. In so far as Nagammal Mills Limited was concerned, there were also sales of certain lands on May 23, 1956, for Rs. 16,66,425. On

the day on which these transfers were made, there was already a partition among the three brothers. On the date of the transfer in favour of

Messrs. Palkulam Estate Private Limited, the Hindu undivided family of the deceased consisted of himself, his wife and four daughters and on of

the deceased consisted of himself, his wife and four daughters and on the date of the second transfer in favour of Messrs. Nagammal Mills Limited,

the Hindu undivided family consisted of the deceased and his four daughters. The argument of the accountable person was that these transfers

were either transfers of interest which was limited to case on the death of the deceased or, in any case, the transfers were of property which the

deceased had transferred in a fiduciary capacity and, therefore, the provisions of section 17(1) could not be invoked. The provisions of section

17(1) read as follows :

Where the deceased has made to a controlled company a transfer of any property (other than an interest limited to cease on his death, or

property which he transferred in a fiduciary capacity), and any benefits occurring to the deceased from the company accrued to him in the three

years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his

death to an extent determined in accordance with sub-section(2).

22. Section 17(1) provides that where there is a transfer made to a controlled company of any property by the deceased and there are any

benefits which accrued to the deceased from the company in the three years ending with his death, the assets of the company shall be deemed for

the purpose of estate duty to be included in the property passing on his death to an extent determined in accordance with sub-section (2) of section

17. It is not necessary for the present to refer to section 17(2). The bracketed portion in section 17(1) excludes from the operation of section 17

the transfer of any interest which is limited and ceases on the death of the transferor as well as property which the deceased has transferred in a

fiduciary capacity.

23. Admittedly, the property which was transferred by the deceased to the two

companies was the property belonging to the Hindu undivided family. The family of the deceased at the material time consisted of his wife and four daughters and later on the four daughters as well as himself.

Though the wife and the daughters of the deceased would have been entitled to a share in the property left behind by the deceased, they had no independent right of partition. The deceased as a sole coparcener had an absolute right to deal with the property. Such a coparcener does not hold any interest which is of a limited nature and which ceases on his death nor does he hold the property during his lifetime in any fiduciary capacity. He holds the property as a sole coparcener. The Tribunal was, therefore, right when it took the view that the deceased being the sole coparcener had an absolute right to dispose of all properties and no one could have questioned any alienation made by him. Consequently, as a result of the transfer, the transferee-companies had acquired absolute right and title in the transferred properties and as a result of the death of the deceased, the title of the purchaser-companies would not in any way be affected. The transfer to the two companies could not, therefore, be one which was excluded in the bracketed portion in section 17(1). The transfers were made by the deceased to controlled companies and that was, therefore, sufficient to attract the provisions of section 17(1) of the Act if any benefits accrued to the deceased. In view of this finding, question No.3 has to be answered by holding that the transfer would fall within section 17(1) if the other condition that the benefits accrued to the deceased is satisfied.

24. Question Nos. 4 and 5. - We shall deal with these questions together. The Tribunal found as a fact that in the year ending August 16, 1959, an aggregate amount of Rs. 4,82,769 was withdrawn by the deceased who was having a current account with the company. It was also found that Messrs. Pioneer Motors in which the deceased was one of the five partners had withdrawn from Messrs. Palkulam Estate Private Limited. Rs. 90,613 on various dates and, in turn, these amounts were advanced to the deceased by the firm on those very dates. The Appellate Controller had works out the aggregate value of the assets of the company at Rs. 68,84,885 and the total income of the company for the three years preceding the death of the deceased at Rs. 9,81,581. Having found that the benefit received by the deceased from the company was Rs. 5,08,382, the value

of the slice of the assets which was includible in the estate of the deceased was computed at Rs. 34,07,628. The Tribunal, however, took the view

that for the applicability of section 17(2) and rule 5(a) of the Estate Duty (Controlled Companies) Rules, 1953, the income of the company and

any periodical payment by the company received by the deceased as referred to in rule 5(a) should be income or periodical payment actually

received by him by virtue of being entitled to receive the same. The Tribunal observed as follows :

In other words, rule 5(a) covers of actual receipts by a deceased being entitled therefore and sub-rule(b) covers cases where the deceased

though entitled to receive such income or periodical payment had not actually received it....

25. The Tribunal while construing rule 5 applied the rule of ejusdem generis and took the view that before any income or periodical payment made

by the controlled company to a person who has transferred any property to the said company can be taken into account for computing the value of

the estate, it must be shown that such person was entitled to the income of the company or to the periodical payment.

26. The decision of the House of Lords in *St. Aubyn v. Attorney-General* [1951] 3 EDC 293; 2 All ER 473 was cited before the Tribunal. The

Tribunal distinguished the decision by observing that, in that case, the deceased had a right to the advances made to him by the company because

of the mortgage by him to the company of the amount of consideration due to him from the company under the two deeds dated January 30, 1933,

and August 4, 1936". This vital fact, according to the Tribunal, was lacking in the instant case. Having construed section 17(2) and rule 5 in the

manner indicated above, the Tribunal took the view that in the instant case, the deceased did not have any right and he merely had a current

account with the company in which the moneys lent from time to time by the company were debited. Thus, the Tribunal held that Rs. 5,68,392

received by the deceased from Messrs. Palkulam Estates Private Limited within the period of three years prior to his death cannot be considered

as benefit received by him.

27. Learned counsel for the Revenue has challenged the correctness of this view in question No. 4. Learned counsel pointed out that the provisions

of section 17(2) and rule 5 of the Controlled companies Rules are identical with the provisions which fell for consideration before the House of

Lords in *St. Aubyn's case* [1951] 2 All ER 473 cited above. It is argued that the House of Lords has taken a positive view that having regard to

sections 47(1) and (2) of the Finance Act, 1940, loans made by the company to the deceased in that case during the statutory period at four per

cent. per annum interest constituted benefits within section 46(1). Learned counsel argued that a similar construction has been placed and rule 5.

Section 17(2) reads as follows :

The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the

aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net

income of the company for the said years.

28. The proviso is not material for our purpose. We have already reproduced section 17(1) earlier and pointed out that where the deceased had

made a transfer of any property to a controlled company and such property is not an interest limited to cease on the death of the deceased or the

property is not transferred in a fiduciary capacity and any benefits accrued to the deceased from the company in the three years ending with his

death, then to a certain extent, the assets of the company are fictionally deemed to pass for the purpose of estate duty and is to be included in the

property passing on his death. To what extent the assets of the company shall form part of the estate of the deceased is laid down in section 17(2).

The extent of the assets of the company is found out by comparing the aggregate amount of the benefits which have accrued to the deceased from

the company in the last three years with the aggregate amount of the net income of the company for the said years. If benefits are indicated by (b)

and the aggregate is indicated by (c) and the net assets of the company are indicated by (a), then the slice which will be treated fictionally as part of

the estate of the deceased will be (b) upon (c) into (a), i.e.,  $(b/c \times a)$ .

29. Section 20 of the Act enables the Board to make rules under the Act. Learned counsel appearing on behalf of the accountable person has

referred us to clause(b) of section 20(1) which reads as follows :

The Board may make rules -

(b) prescribing the matters to be treated as benefits accruing to the deceased from any such controlled company, the manner in which their amount is to be determined, and the time at which they are to be treated as accruing.

30. In exercise of its powers, a specific rule, namely, rule 5, has been made which reads as follows :

Benefits accruing to deceased from company. -(1) The following shall be treated as benefits accruing to the deceased from the company, that is to

say : -

(a) any income of the company and any periodical payment out of the resources or at the expense of the company, which the deceased received

for his own benefit whether directly or indirectly, and any enjoyment in specie of land or other property of the company or of a right there over

which the deceased had his own benefit whether directly or indirectly;

(b) any such income or payment or enjoyment which the deceased was entitled to receive or have as aforesaid; and

(c) any such income or payment or enjoyment which the deceased could have become entitled to receive or have as aforesaid by an exercise in the

three years ending with his death of any power exercisable by him or with his consent;

and where the deceased could, by an exercise in the said three years of any such power as aforesaid, have become entitled to receive as aforesaid

any payment out of the resources or at the expense of the company not being a periodical payment, but did not in fact receive or become entitled

to receive that payment, there shall be treated as a benefit accruing to the deceased from the company interest on that payment at the average rate

from the earliest date on which he could have become entitled to receive it.

(2) For the purpose of these rules, the expression "periodical payment" means a payment by way of dividend or interest, a payment by way of

remuneration not being a single lump-sum payment, and any other payment being one of a series of payments, whether interconnected or not,

whether of the same or of varying amounts and whether payable at regular intervals or otherwise.

31. The argument of the learned counsel for the accountable person is that section 20 specifically refers to ""benefits accruing to the deceased from

any such controlled company"". It also refers to the ""time at which they are to

be treated as accruing"". Learned counsel then refers to rule 5 and it is argued that the opening words of rule 5 contemplate that for the purpose of section 17, the benefits enumerated in clauses(a), (b) and (c) of rule 5 shall be treated as ""benefits accruing to the deceased from the company"". Our attention is also invited to sub-rule(2) of rule 5 which gives the meaning of ""periodical payment"". The argument is that which payment should be considered as periodical payment is expressly stated in sub-rule(2) of rule 5. Such periodical payment must be a payment by way of remuneration not being a single lump-sum payment, and any other payment being one of a series of payments whether interconnected or not, whether of the same or of varying amounts and whether payable at regular intervals or otherwise. Emphasis is laid by learned counsel for the accountable person on the word ""payable"" in the concluding portion of sub-rule(2). The argument is that when section 20 specifically refers to benefits accruing to the deceased, rule 5 must be read in the light of section 20. Therefore, before section 17(1) or (2) is invoked, a benefit must be shown to have accrued and ""accrued"" in this context, according to the learned counsel, means ""entitled to as of right"".

32. Reliance is placed on the decision of the Supreme Court in SETH PUSHALAL MANSINGHKA (P.) LTD. Vs. COMMISSIONER OF Income Tax, DELHI, RAJASTHAN AND MADHYA PRADESH., . The Supreme Court in that decision construed the words ""accrue"", ""arise and ""receive"" in the context of the provisions of paragraph 4 of the Part B States (Taxation Concessions) Order, 1950.

33. Now, it has to be borne in mind that section 17(1) expressly deals with ""any benefits accruing to the deceased from the company"" and benefits which had accrued to him in the three years ending with his death"". The reference to the benefits accruing to the deceased from the company and benefits which had accrued to him in the three years ending with his death is made in the context of the deceased who has made to a controlled company the transfer of any property.

34. The question which falls for decision before us is when moneys are borrowed by a person who has made a transfer of any property to any controlled company, then whether the moneys are taken in the nature of loans can be said to be benefits which accrued to the deceased. It may be

benefit because he has the advantage of borrowing money from the company. That by itself would not, however, be enough because the words

used in the section are ""benefits accruing to the deceased"". It is, in that context, the meaning of the word ""accrued"" would become important. The

dictionary meaning of the word ""accrue"", is given as ""falls, as a natural growth, advantage or result (especially of interest on invested money)"" (see

Oxford Illustrated Dictionary). The Supreme Court has however, in SETH PUSHALAL MANSINGHKA (P.) LTD. Vs. COMMISSIONER

OF Income Tax, DELHI, RAJASTHAN AND MADHYA PRADESH., , in the context of income, clearly held that ""income"" can be said to

accrue to a person if the assessee acquires a right to receive the income. At page 164 of the report, the Supreme Court referred to the decision in

Colquhoun v. Brooks [1888] 21 QBD 52, in which the expression ""profits or gains arising or accruing"" in 16 and 17 Victoria, Chapter 34, section

2, Schedule D, fell for consideration and the observations if Lord Justice Fry quoted by the Supreme Court were as follows :

In the first place, I would observe that the tax is in respect of "profits or gains arising or accruing. I cannot read those words as meaning "received

by". If the enactment were limited to profits and gains "received by" the person to be charged, that limitation would apply as much to all her

Majesty"s subjects as to foreigners residing in this country. The result would be no Income Tax would be payable upon profits which accrued but

which were actually received, although profits might have been earned in the kingdom and might have accrued to the kingdom. I think, therefore,

that the words "arising or accruing" are general words descriptive of a right to receive profits.

35. After quoting the above passage with approval, the Supreme Court observed as follows :

It is clear, therefore, that the income may accrue to an assessee without actual receipt of the same. If the assessee acquires a right to received the

income, the income can be said to accrue to him, though it may be received later, on its being ascertained. The basic conception is that he must

have acquired a right to receive the income (See E.D. Sassoon and Company Ltd. Vs. The Commissioner of Income Tax, Bombay City, .

36. This decision will, therefore, show that when the Legislature specifically used the word ""accrued"", then it is not equivalent to merely a receipt

and when in section 17(1) the words used are ""any benefits accruing to the deceased"", we must construe those words as referring to any benefits

which the deceased who has transferred any property to a controlled company was entitled to receive as a matter of right. It is also important to

note that section 17(1) does not contemplate actual receipt of the benefit. It refers to benefits which accrued to him in the three years ending with

his death. These words also indicate that if the deceased had made a transfer to a company and in consequence thereof was as a matter of right

entitled to certain benefits from the company, then even though he had not received those benefits, the mere fact that those benefits accrued to him

would be sufficient to attract the provisions of section 17(1).jThis position is made clear by rule 5 itself.

37. Before we go to rule 5, it is necessary to refer to section 20(1)(b) which we have reproduced earlier. As already pointed out, the rule making

power enables the Board to prescribe the matters to be treated as benefits accruing to the deceased and one of the matters which could be dealt

with by the Rules is also the ""time at which they are to be treated as accruing"". The Legislature has not used the words ""benefit received"" and the

use of the words ""accrue"" and ""accruing"", in our view, clearly indicates that the benefit which was contemplated by section 17(1) was the benefit

which the deceased was as matter of right entitled to. The position is made more clear by rule 5.

38. Under rule 5, three kinds of income or payments are to be treated as benefit accruing to the deceased. Clause(a) refers to any income of the

company and any periodical payment out of the resources or at the expense of the company, which the deceased received for his own benefit for

his own benefit whether directly or indirectly. Clause(a) also takes in any enjoyment in specie of land or other property of the company of a right

thereover which the deceased had for his own benefit whether directly or indirectly. Clause(a), therefore, refers to some benefits which the

deceased had actually received apart from the fact that such benefits may in a given case be in nature of enjoyment in specie of land or other

property of the company or of a right thereover. By the very nature of the benefit contemplated by clause(a), such benefit must be referable to a

right under an agreement with the company. Clause(b) refers to a case where the deceased was entitled to receive any such income or payment or

enjoyment. In other words, the entitlement to income or payment is the concept which is contained in clause(b) and having regard to the use of the

words ""such income or payment or enjoyment"", those words necessarily must refer to the income or payment or enjoyment referred to in clause(a).

The concept of entitlement, therefore, has to be imported even in clause(a) by virtue of the subject-matter of clauses (a) and(b), being the same

income, periodical payment or enjoyment. Clause(c) once again refers to income, payment or enjoyment, which means, of the nature referred to in

clause(a) which the deceased would have become entitled to receive or had the same by an exercise in the three years ending with his death of any

power exercisable by him or with his consent. Clause(a), (b) and (c), therefore, highlight the concept of entitlement to income, periodical payment

or enjoyment in specie of land or other property of the companies. The concept of entitlement is also prominent in the latter part of rule 5. It would

be useful in this connection to refer to sub-rule(2) of rule 5 which defines ""periodical payment"". Apart from the fact that the definition of ""periodical

payment"" is an exhaustive definition and covers payment by way of dividend or interest, a payment by way of remuneration not being a single lump

sum payment, and any other payment being one of a series of payments, whether interconnected or not, whether of the same or of varying amounts

and whether payable at regular intervals or otherwise, what has to be emphasized is that the periodical payment is a payment which is payable.

Payability necessarily contemplates an obligation on the person who has to pay and in a case like this ""the controlled company""-and there must,

therefore, be a corresponding right to receive payment. The concept of legal entitlement is, therefore, again clear from the words of sub-rule(2) of

rule 5. Merely because moneys have been borrowed from time to time, they do not become periodical payments because having regard to the

words of rule 5(2), the test of payability is not satisfied. It is nobody's case that there was any agreement between the company and the deceased

that as and when he wanted to borrow money, the company was under an obligation to advance such money. We are, therefore,unable to hold

that the loans which were given to the deceased by the company were benefits contemplated by section 17 read with rule 5 of the Estate Duty

(Controlled Companies) Rules.

39. Undoubtedly, the decision of the House of Lords referred to above supports the argument of the Revenue. The relevant consideration which

fell for consideration before the House of Lords was in section 46(1) which corresponds to section 17(1) of the Estate Duty Act, 1953. That

section reads as follows :

46.(1) Where a person dying after the commencement of this Act has made to a company to which this section applies a transfer of any property

(other than an interest limited to cease on his death or property which he transferred in a fiduciary capacity), and any benefits accruing to the

deceased from the company accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of

estate duty to be included in the property passing on his death to an extent determined, in accordance with sub-section, by reference to the

proportion that the aggregate amount of the benefits accruing to the deceased from the company bore to the net income of the company.

40. Section 47(1) corresponded to rule 5. Indeed, it appears that rule 5 is a verbatim reproduction of section 47(1) which read as follows :

The following shall be treated as benefits accruing to the deceased from the company, that is to say : (a) any income of the company and any

periodical payment out of the resources or at the expense of the company, which the deceased received for his own benefit whether directly or

indirectly, and any enjoyment in specie of land or other property of the company or of a right thereover which the deceased had for his own benefit

whether directly or indirectly;....

(2) In this part of this Act, the expression "periodical payment" means a payment by way of dividend or interest, a payment by a way of

remuneration not being a single lump payment, and any other payment being one of a series of payments, whether interconnected or not, whether

of the same or of varying amounts and whether payable at regular intervals or otherwise.

41. The argument of the Crown in that case was that loans or advances were payments made to the deceased out of the resources of the company

and they were made periodically and they were received by the deceased for his own benefit directly or indirectly. Therefore, they were benefits.

The company's argument was that a man who receives for his own benefit a

sum by way of loan which he has to repay cannot be said to have

received a benefit and "loan" was not mentioned in section 47. Dealing with this question, Lord Simonds observed as follows [1951] 2 All ER 490

:

The latter argument may derive some force from the contention of the Crown that a transaction of loan was just what the section was aimed at.

But, perhaps that contention had only become common form by the time this stage of the case had been reached. My Lords, here again is a

question on which I find it impossible to express a confident opinion. It is indeed strange that no reference is made to transaction of loan and the

result of holding such a transaction to be a benefit must, as learned counsel for the Crown was constrained to admit, have strange results. But I

have come to the conclusion nevertheless, that the contention of the Crown must be upheld. I cannot escape from the fact that as each periodical

loan was made to Lord St. Levan, there was a payment to and receipt by him. And I cannot think that he received it any the less for his own

benefit because he had, or his estate had, at a later date to repay it. He had the beneficial use of what he received and can fairly be said to have

received it for his own benefit. I may add that I do not find it possible to find in the definition of periodical payment any genus of payments created

from which by the application of the ejusdem generis rule a loan could be excluded, nor can I get any assistance from the provisions of

Schedule VII to the Act to which reference was made. I am, therefore, of opinion that the loans were "benefits" within section 46. But this only

relevant if Lord St. Levan transferred property to the company within the same section except in a fiduciary capacity, and this, in my opinion, he did

not.

42. Lord Radcliffe concurred with this view and made the following observations [1951] 2 All ER 501 :

During the three years preceding his death he received from the company sums amounting in the aggregate to 3,000 pounds in each year by way

of loan. These loans carried interest at the rate of four per cent. per annum, but the company could not call for repayment of either principal or

interest until the expiration of two years after Lord St. Levan's death. Were the sums so received "benefits" accruing to him from the company

within the meaning of section 46 ? I would answer this question by saying that there were benefits because section 47 of the Act has declared them

so to be. The section does in terms declare that among the things to be treated as benefits accruing to a deceased transferor from a company are

any periodical for his own benefit. A man receives for his own benefit moneys paid to him on an advance by way of loan, not the less because the

transaction involves an obligation to repay an equivalent amount at a future date with interest in the meantime. A "" payment" is defined by section

47(2) in terms which give it the widest possible scope and show at any rate that a payment may be a benefit by way of periodical payment even

though it is made in consideration of services rendered or by way of interest on money lent. I can appreciate the force of several criticisms if loans

are treated as benefits for this purpose. To have money advanced to one is, no doubt, a benefit, but to treat the whole sum advanced as itself the

benefit seems a curious procedure. Yet the statute makes no provision for any valuation of the benefit, since it treats the payment itself as being the

benefit. The procedure becomes more curious when it is discovered that a payment made in respect of a loan without interest is treated as

equivalent to other payments made in respect of loans at normal interests, high interests or even exorbitant interest. A loan made within the

statutory period and repaid before death is treated as equivalent to a loan still outstanding. I appreciate the force of these criticisms, as I do of

other criticisms that might be leveled at the width of the definition of "periodical payments". But I am unable to find in the wording of the Act any

warrant for allowing them to cut down what seems to me the arbitrary interpretation that is deliberately imposed on us. It is not as if these criticisms

depended on obscure or complicated considerations. They are fairly obvious and I think that the only possible conclusion is that the Legislature,

intending to prescribe for a branch of enterprise that may often involve what are at least highly artificial operations, decided to impose its charge in

the widest and most comprehensive terms-a decision which excludes the more normal distinctions between what is reasonable and what is

unreasonable and the usual connotations of the English language.

43. Dealing with the same question, Lord Tucker made the following observations [1951] 2 All ER 502; j""With regard to the benefits accruing to

the deceased from the company, I agree that the sums amounting to 3,000 pounds advanced to Lord St. Levan during the three years preceding his death were benefits which accrued to him from the company. I feel considerable doubt whether they come within the definition of periodical payments in section 47(2), a definition which on the Crown's construction would included loans which had been repaid at the date of death, but I do regard section 47, not as containing an exhaustive definition of the word "benefits", but merely as enumerating certain matters which are "to be treated as benefits". It does not, I think, exclude other transactions, such as the present, which in the circumstances of particular cases may clearly confer benefits on the deceased in the natural and ordinary meaning of that word.

44. It is undoubtedly true that the House of Lords in *St. Aubyn's case* [1951] 2 All ER 473, has taken the view that the loans made by the company to the deceased during the statutory period at 4% per annum interest constituted benefits within section 46(1). We must, however, point out that this decision cannot be read as laying down a general principle of law that in all cases where loans are made by the company to the deceased, they should be construed as benefits for the purpose of section 17(1) of the Estate Duty Act. That decision must be read in the light of the facts of that case. The facts of that case will show that the deceased in that case had mortgaged by mortgage deed dated January 30, 1933, certain property and by virtue of this mortgage, the company covenanted to advance to Lord St. Levan on March 25, June 24, September 29, and December 25, during the joint lives of Lord St. Levan and his nephew Francis Cecil St. Aubyn, at four per cent. interest a sum of 500 pounds unless and until Lord St. Levan should give notice to the company that he did not require such advances to be made. It was also agreed between the parties that payment of the said sums and of the interest thereon should not be required by the company until the expiration of a period of two years the death of Lord St. Levan unless he or his personal representatives should desire to repay the same previously and in the meantime interest becoming due thereon should be added to the principal and carry interest accordingly. The said deed also contained a provision for deduction of the said debt by installments from any installment of the said sum of 7,50,000 pounds which was a part of the price which the company was to

pay when the single property was sold to the company remaining outstanding at the expiration of the period of two years and for charging the same

on such installments. There was another deed August 4, 1936, by which the company covenanted to advance to Lord St. Levan on every January

1, and July, 1, a further sum of 500 pounds on the same terms as the advances to be made under the said deed of January 30, 1933. Pursuant to

the said deeds, the company advanced to lord St. Levan in each of the three years preceding his death sums amounting in all to 3,000 pounds all of

which with the interest thereon remained due and owing at his death. The question which fell for consideration before the House of Lords was

whether the advances of made were ""benefits"" the meaning of section 46. We must, therefore, appreciate the fact the payments made were by

virtue of a stipulation in the deed of mortgage itself and were clearly referable to the transaction of the mortgage and the deceased was entitled as

of right under the terms of the deed of mortgage to the said payment. The facts of St. Aubyn's case [1951] 2 All ER 473 Will, therefore, show

that a right had accrued to St. Aubyn to receive benefits by virtue of the transfer of certain property mortgage.

45. The Tribunal, in our view, has rightly referred to the fact that in the Income Tax Act wherever receipt of a loan by a person was artificially to

be treated as something different from loan, the Legislature had specifically so provided and a reference was made to the definition of ""dividend"" in

section 2(22) of the Income Tax Act, 1961. The Legislature while giving an artificial of ""dividend"" has, inter alia, included within the definition of

dividend"" in clause(e) ""any payment by a company..... by way of advance or loan to a shareholder, being a person who has a substantial interest in

the company, or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the

company in either case possesses accumulated profits."" In the Indian Income Tax Act, 1922, also, a similar artificial definition of ""dividend"" was

made in section 2(6A)(e) which is a clause similar to clause(e) of the definition of ""dividend"" in section 2(22) of the Income Tax Act, 1961. The

absence of reference to any loan in section 17 as well as in rule 5 of the Controlled Companies Rules is, in our view, significant. Having regard to

the history of taxing legislation, the absence of a provision including loan by making it artificially a benefit in rule 5 must be treated as a circumstance

against the Revenue.

46. We have already pointed out that the concept of entitlement to the benefit which is expressly referred to in clauses(b) and (c) of rule 5 must

necessarily be imported into rule 5(1)(a) of the Controlled Companies Rules. The construction which we have placed on section 17 is, in our view,

supported by the object with which section 17 was incorporated in the Estate Duty Act. The underlying principle in the levy of estate duty is that it

is intended to bring to charge not only all property which the deceased died possessed of at the time of his death, but also all property which he

had disposed of without consideration within a stated period prior to his death and all property of which he retained enjoyment indirectly even after

disposing of the same. One of the modes of transferring property and yet retaining its enjoyment is to transfer the property in favour of a private

limited company and stipulate as a part of the transfer that the deceased will be entitled to some benefit from the company. This benefit could be in

the form of a periodical payment. Once the property is transferred to the company, the transferor ceases to be the owner of the property and this

property can never become the subject-matter of estate duty because the company never dies. While the transferor thus can avoid payment of

estate duty on the property so transferred, the transferor can by a device continue to enjoy the same property by stipulating that the deceased

would receive for himself a part of the profits of the company either in the shape of dividends or in the shape of loans or remuneration or otherwise.

The necessity of a provision like section 17 is clearly highlighted by an illustration which is given in the Statement of Objects and Reasons of the

Estate Duty Bill in section 17. We reproduce below the relevant illustration from the Statement of Objects and Reasons (See [1952] 22 ITR 77 :

The necessity for these provisions will be illustrated by the following example : -

A is the owner of an estate worth Rs. 12 lakhs including a residential house, and of stocks and shares worth Rs. 8 lakhs. He forms a company with

a nominal capital of Rs. 20 lakhs divided into 50,000 five per cent. Preference shares and 1,50,000 ordinary shares, all of Rs. 10 each. He sells

the estate and the securities to the company in consideration for the shares of which 50,000 ordinary shares are allotted to him and the rest to his

wife and children. As part of the arrangement, he is appointed governing director

for life at a salary of Rs. 50,000 per year and the residential house, whose annual value is Rs. 5,000, is let to him as governing director at a rent of Rs. 1,000 per year. On A's death more than two years later, estate duty would, but for the provisions of this section, be payable only in respect of the 50,000 shares which he retained. There was no gift to the company, for the company gave full consideration. the only gift was a gift of the shares to his wife and children and that gift not subject to any reservation (and had been made two years prior to his death). But according to this provision, the estate duty payable would be not on the market value of 50,000 ordinary shares but on such proportion of the assets of the company as the aggregate amount of benefits accruing to the deceased for the three years ending with his death bear to the income of the company for the same three years....

47. The illustration will make it clear that the benefit which is contemplated by section 17 must accrue to him as a part of the arrangement for the transfer of his assets to the company.

48. In the instant case, it is not possible to say that the loans taken by way of advances which were debited to the current account of the deceased were benefits for the purpose of section 17(1) of the Estate Duty Act or rule 5 of the Controlled Companies Rules. Accordingly, question No. 4 has to be answered in the negative and against the Revenue.

49. Question No. 5. - This question arises out of a finding recorded by the Tribunal that a sum of Rs. 2,91,872 which was the amount repaid by the controlled company to the deceased could not be considered as a benefit received by the latter. The deceased had advanced a sum of Rs.

2,91,327 to the company for the purpose of business. It was found as a fact and indeed not disputed that the said amount was borrowed by the

deceased from Messrs. Palkulam Estate Limited. These amounts which were advanced as loans were ultimately repaid and the contention of the

Revenue was that these amounts must also be treated as benefit for the purpose of section 17(1). We have already construed section 17(1) and

taken the view that the benefit which is sought to be brought in, viz., the provisions of section 17(1) read with rule 5, must accrue out of an

arrangement relating to transfer of some property to the company. Where a loan is being merely repaid, it is difficult to see how this repayment of

the loan can be treated, by stretch of imagination, to be a benefit for the purpose of section 17(1).

50. The question as to whether withdrawal of moneys deposited with a company by a deceased shareholder amounts to ""benefit"" has been

considered by this court in Controller of Estate Duty, Madras Vs. A.C. Desikachari, . That was a case in which the deceased who was a

shareholder in a controlled company was maintaining a current account with the company in which the deceased had made deposits of various

sums and had also withdrawn moneys therefrom. After the death of the deceased shareholder, the Assistant Controller treated the deposit of

moneys to the credit of the deceased in the current account as a transfer of property by the deceased to the company and withdrawals from the

said account were treated as benefits accruing to the deceased from the company. The Tribunal, however, held that notwithstanding the multiplicity

of withdrawals, they all amounted only to a single lump sum payment and not periodical payments and consequently the inclusion of the slice of the

assets of the company attributable to the benefits was not justified. On a reference, this court held that the payments received by the deceased

from the current account could not be regarded as a ""series"" of payments within the meaning of rule 5(2) of the Controller Companies Rules and if

rule 5(2) did not apply, rule 5(1)(a) could not applied either, so as to regard any of the payments as ""benefits"" within the meaning of section 17 of

the Estate Duty Act. This decision, in our view, squarely covers the point raised inquestion No. 5 against the Revenue. Accordingly, question No.

5 has to be answered in the negative and against the Revenue.

51. So far as question No. 6 is concerned, it is conceded that if question Nos. 4 and 5 are answered against the Revenue, question No. 6 need not

be answered. Accordingly, we are not answering question No. 6.

52. Question No. 7 is concluded against the accountable persons by the decision of the Allahabad High Court in Padampat Singhania and Others

Vs. Controller of Estate Duty, . The contention is mainly raised on behalf of the controlled companies and the contention is that notices were issued

to the controlled companies for the first time on September 24, 1970, i.e., beyond a period of five years from the date of death of the deceased,

the deceased having died on October 18, 1960.

53. Section 73A of the Estate Duty Act contains a prohibition against commencement of proceedings for the levy of estate duty ""in the case of a first assessment, after the expiration of five years from the date of death of the deceased in respect of whose property estate duty became payable"". There is also a bar of limitation of three years under clause(b) of section 73A in the case of a reassessment and the three-year period commences from the date of assessment of such property to estate duty under the Act. The Tribunal has taken the view that the estate duty payable is a single duty on a single estate and thus there is only a single proceeding. The Tribunal found that the proceedings having already been instituted before the expiry of the period of five years, there was no bar for issuing notices to the controlled companies in the proceedings already instituted. In Padampat Singhanian and Others Vs. Controller of Estate Duty, , all Allahabad High Court has taken the view that once the authorities have commenced an assessment proceeding within five years of the date of death even in respect of one of the accountable persons, the bar of section 73A will not operate in cases where during the course of these proceedings, the Assistant Controller of Estate Duty directs other accountable persons to file accounts. We see no reason to depart from the view which was taken by the Allahabad High Court. The proceedings against the controlled companies were, therefore, not barred by limitation.

54. Question No. 8 relates to the deductibility of the estate duty payable in determining the principle value of the estate. The Tribunal has taken the view that the deductions permissible under the Estate Duty Act are set out in section 44 of the Act and reading sections 44 and 74(1), it makes estate duty payable as a first charge on the immovable property passing on the death of the deceased but only after the debts and encumbrances allowable under Part VI of the Act, and the debts and encumbrances taken priority over the estate duty payable; and the estate duty could not be construed as a debt or encumbrance and it would not, therefore, be permissible to deduct the amount of estate duty from the principle value of the estate of the deceased which becomes liable for estate duty.

55. Section 44 of the Act specifies the deductions which can be made while determining the value of estate for the purpose of estate duty. Section 44 is, therefore, exhaustive of the deductions made permissible by a statute for

determining the value of an estate for the purpose of estate duty.

Since the estate which becomes liable for payment of estate duty is the estate which passes on the death of the deceased, the value of the estate

has to be determined at the point of time of the death of the deceased. Section 5(1) which is the charging section and deals with the extent of the

charge provides, inter alia, that ""in the case of every person dying after the commencement of the Act, there shall, save as hereinafter expressly

provided, be levied and paid upon the principle value ascertained as hereinafter provided of all property, settled or not settled..... which passes on

the death of such person, a duty called "estate duty" at the rates fixed in accordance with section 35"". Section 5(1), therefore, contemplates that

the principle value of the estate has to be ascertained as provided in the Act. If there is no express provision which permits deduction of estate duty

from the principal value of the estate, then it is difficult to see how the estate duty payable can validly be deducted for the purpose of determining

the principal value of the estate liable to estate duty. This question fell for consideration before this court in RM. ARUNACHALAM Vs.

CONTROLLER OF ESTATE DUTY, MADRAS., . This court has taken the view that the estate duty payable on the estate of a deceased in the

hands of the accountable person is not an admissible deduction in computing the principal value of the estate passing on the death of the deceased.

Accordingly, question No.8 has to be answered in the negative and against the accountable persons. Accordingly, the question referred to this

court are answered as follows :

Question No.1 : - In the affirmative and against the Revenue.

Question No.2 : - In the negative and against the Revenue.

Question No.3 : - Yes; but only if benefits had accrued to the deceased from the controlled company.

Question No. 4 : - In the negative and against the Revenue.

Question No. 5 : - In the negative and against the Revenue.

Question No. 6 : - Not answered as being unnecessary.

Question No. 7 : - In the negative and against the accountable persons.

Question No. 8 : - In the negative and against the accountable persons.

56. In view of the equal success and failure in the reference, we make no order

at costs.