

## **ESTATE DUTY ACT, 1953**

**34 of 1953**

**[[6th October, 1953]]**

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STATEMENT OF OBJECTS AND REASONS "The object of the Bill is to impose an estate duty on property passing or deemed to pass on the death of a person. Though the levy and collection of income-tax at high rates since the War and the investigations undertaken by

the Income-tax Investigation Commission in a number of important cases of tax evasion have, no doubt, prevented to some extent the further concentration of wealth in the hands of those who are already wealthy, yet these do not amount to positive steps in the direction of reducing the existing inequalities in the distribution of wealth. It is hoped that by the imposition of an estate duty such unequal distributions may be rectified to a large extent. Such a measure would also assist the States towards financing their development schemes. In their draft outline Report, the Planning Commission have, it will be recalled, stressed the necessity of undertaking legislation to levy death duties in India as early as possible.

2. A Bill seeking to impose such a duty was first introduced in 1946 and then reintroduced in the provisional Parliament in 1948. The latter Bill after being considered by the Select Committee lapsed on the dissolution of that Parliament. The present Bill is practically a reproduction of that Bill as reported by the Select Committee, but certain changes have been made, which are as follow :-

- (1) When the earlier Bill was drafted, the Centre had no jurisdiction to legislate in respect of agricultural land, but now some States have passed the necessary resolutions under Article 252 of the Constitution, and the Bill therefore applies also to agricultural lands in such States. As and when the remaining States pass the necessary resolutions, the Schedule will be amended by a Notification of the Central Government to include such States.
- (2) In respect of the movable property of the deceased, the levy of duty will depend upon his domicile only. The alternative basis of residence in the Bill as amended by the Select Committee has been omitted.
- (3) As in the case of Income-tax law, the fixation of the rates of duty and of the maximum limits of exemption will be regulated by the annual Finance Acts.
- (4) For the sake of administrative convenience, the power to assess duty is assigned to the Controller of Estate Duty, a new authority which will function under the Central Board of Revenue.
- (5) Appeals from the orders of the Controller of Estate Duty will lie to the Central Board of Revenue, and, as in Income-tax Act, 1922, references to the High Court may be made on questions of law.

3. Under Article 269 of the Constitution the net proceeds of the estate duty will be assigned to the States on such principles of distribution as Parliament may hereafter formulate. The appropriate estate duty on agricultural land situate in a State will, of course, be assigned to that State."

Gaz. of Ind., 16-8-1952, Pt. II, Sec. 2, p. 422. Act 31 of 1982:- This Bill seeks to amend the Estate Duty Act, 1953 mainly with a

view to providing certain concessions in relation to estate duty. 2. One of the amendments proposed seeks to raise the exemption-limit of estate duty from Rs. 50,000 to Rs. 1,50,000. The rate of estate duty in the first slab of estate range of Rs. 1,50,001 to Rs. 2,00,000 will be 10 per cent i.e., the same rate as is applicable at present in the estate range of Rs. 1,00,001 to Rs. 2,00,000. The rate schedule of estate duty is proposed to be recast accordingly. 3. Under another amendment, the value of one residential house belonging to the deceased would, for purposes of estate duty, be taken at the same value as determined by the Wealth-tax Officer for the purposes of assessment of the net wealth of the deceased on the valuation date immediately preceding the date of death of the deceased. Where the value of such house is not so included in the net wealth of the deceased, its value would be determined by the Controller in accordance with the provisions contained in the Wealth-tax Act and the rules made thereunder. 4. Another amendment seeks to make a provision similar to that contained in Income-tax Act, 1961 and Wealth-tax Act, 1957, to secure that where the deceased was a member of a co-operative housing Society the value of one house or part thereof allotted or leased to him under a house-building scheme of the society would be treated as a house owned by the deceased, thus qualifying for the concessional treatment accorded to residential house property. 5. The other amendments proposed in the Bill are of a consequential nature. 6. The amendments are being made with retrospective effect from the 1st day of March, 1981 and accordingly the proposed concessions will also be available in relation to estate duty in the case of persons who have died after the 28th February, 1981. 7. The Bill seeks to achieve the above objects. -Gaz. of Ind., 13-7-82, Pt. II, S. 2, Ext" p. 8 (No. 28) Act 53 of 1984:- This Bill seeks to amend the Estate Duty Act, 1953, mainly with a view to excluding agricultural lands from the levy of estate duty. 2. One of the amendments proposed accordingly seeks to provide that the Act shall cease to apply to the levy of estate duty in respect of agricultural land. 3. Another amendment seeks to omit clause (b) of sub-section (1) of section 34 of the Act, which provides for aggregation, for the purpose of determining the rate of estate duty, of agricultural land, situate in any State in respect of which estate duty under the Act is not leviable. . 4. Under another amendment, the rule-laying formula contained in section 85 of the Act is being revised to conform to the model formula recommended by the Committees on Subordinate Legislation of both the Houses of

Parliament. 5. By another amendment, it is proposed to provide that all the proposed amendments will come into force in the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, Orissa and Tamil Nadu and in all the Union territories on the expiration of two months from the date on which the Bill receives the assent of the President; and in respect of the other States, on the expiration of four months from the date of adoption of the proposals for such amendments or the amendments, as the case may be, by those States under clause (1) of article 252 of the Constitution. 6. The Bill seeks to achieve the above objects. -Gaz. of Ind., 24-7-84, Pt. II S. 2, Ext" p. 3 (No. 35). Act 52 of 1985:- In the Budget Speech, an announcement was made of the decision of Government to abolish the levy of estate duty in respect of estates passing on deaths occurring on or after the 16th day of March 1985. This Bill is in pursuance of that assurance. 2. The new section proposed in clause 2 of the Bill seeks to provide that the Estate Duty Act, 1953 shall cease to apply to the levy of estate duty in respect of any property (other than agricultural land) which passes on the death of any person on or after the 16th day of March, 1985. 3. As regards levy of estate duty on agricultural land, it may be mentioned that the Estate Duty Act does not apply to the levy of estate duty in respect of agricultural lands situate in all the Union territories, and all the States except the States of Andhra Pradesh, Karnataka, Manipur, Nagaland, Punjab and Tripura. It is proposed in due course to introduce another Bill to provide for the abolition with effect from the 16th March, 1985, of the levy of estate duty in respect of agricultural lands situate in these States after the passing by the Legislatures of at least two of these States, of resolutions in that behalf under article 252 of the Constitution. -Gaz. of Ind., 22-8-85, Pt. II, S. 2, Ext" p. 10 (No. 48) Act 49 of 1986:- The Estate Duty Act, 1953 has ceased to apply to the levy of estate duty in respect of any property (other than agricultural lands) which passes on the death of any person on or after the 16th day of March, 1985. The Estate Duty Act has also ceased to apply to the levy of estate duty in respect of agricultural lands situate in all the Union territories, and all the States except the States of Nagaland, Punjab and Tripura from various dates specified in the Act. The State Legislatures of Punjab and Tripura have passed resolutions under article 252 of the Constitution that the levy of estate duty in respect of agricultural lands situate in those States passing on the death of the persons occurring on or after the 16th March, 1985

should be discontinued.. 2. The Bill seeks to amend the Estate Duty Act to achieve the above object. -Gaz. of Ind., 12-8-86, Pt. II, S. 2, Ext" p. 2 (No. 35).

PART 1  
PRELIMINARY

**1. Short title, extent and commencement :-**

(1) This Act may be called the Estate Duty Act, 1953.

(2) It extends to the whole of India <sup>1</sup> [\* \* \*].

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

1. Substituted for "the States" by 3 A.L.O., 1956.

**2. Definitions :-**

In this Act, unless the context otherwise requires,,-

(1) "affidavit of valuation" means the affidavit of valuation made under S.191 of the Court-fees Act, 1870, in: connection with an application for the grant of representation;

Sub-section (1).- "Under S.19-I of the Court-fees Act, 1870, any person applying for the grant of a probate or letters of administration is required to file an affidavit in the prescribed form showing the valuation of the property and the credits which the deceased possessed or was entitled to at the time of his death and which had come or are likely to come in the hands of the applicant. This affidavit of valuation contains details of movable and immovable property along with a Schedule of debts. Succession certificates are issued by the Court on payment of requisite stamp duty on the basis of such affidavit of valuation. Under clause (53) (now Section 57) of the Bill, an executor is required to annex to the affidavit of valuation an account of all the property on which estate duty is payable and to send a copy thereof to the controller of estate duty."-S. O.R.

<sup>1</sup>[(1-A) "Appellate Controller" means a person appointed to be an Appellate Controller of Estate Duty under section 4 ;

(1-B) "Appellate Tribunal" means the Appellate Tribunal appointed under S.5A of the Indian Income-tax Act, 1922;]

<sup>1</sup>[(2) "Board" means the Central Board of Direct Taxes constituted under Central Board of Revenue Act, 1963;]

(3) "company" includes any body corporate wheresoever

incorporated;

(4) "controller company" means a company as defined in section 17 ;

(5) "Controller" means a person appointed to be a. Controller of Estate Duty under section 4 and includes a person appointed to be a Deputy Controller of Estate Duty or an Assistant Controller of Estate Duty;

(6) "deceased person" and "the deceased" mean a person dying after the commencement of this Act;

(7) "estate duty" means estate duty under this Act;

(8) "executor" means the executor or administrator of a deceased person;

(9) "general power" includes every power of authority enabling the donee or other holder thereof to appoint or dispose of property as thinks fit, whether exercisable by instrument inter vivos or by will. or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as mortgagee;

Sub-section (9). -"A person who has "general power" as defined in this sub-clause, is a person who is competent to dispose of property whether he is sui juris or not. "General power" means complete authority to dispose of a property in any manner by the holder thereof. ") -S.O,R.

[(9A) "High Court", in relation to the Union Territories-of Dadra and Nagar Haveli and Goa, Daman and Diu, means theBombay High Court]

(10) "incumbrances" includes mortgages and terminable charges;

(11) "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases;

Sub-section (11).- "Interest in expectancy is in contrast with the interest which has fallen into possession, but it does not mean that every interest not in possession is necessarily an interest in expectancy. An "interest in expectancy" is an interest which excludes its owner from the present beneficial enjoyment, being contingent upon the happening of another event. For instance, if A bequeaths a property to B for life, and on his death to C then C's

interest in the property is only an "interest in expectancy" which may or may not materialize."- S. O. R.

(12) "legal representative" means a person who in law represents the estate of a deceased person, and includes -

(i) an executor,

(ii) as regards any obligation under this Act, any person who takes possession of, or intermeddles with, the estate of a deceased person or any part thereof, and

(iii) where the deceased was a coparcener of a Hindu family, the manager for the time being of the family;

Sub-section (12).- "The definition is on the lines of that contained in Civil Procedure Code, 1908, but it has been made clear that where the deceased is a co-parcener of a Hindu family the expression would include the manager for the time being of the family."- S. O. R.

**1** [(12-A) "person accountable" or "accountable person" means the person accountable for estate duty within the meaning of this Act, and, includes every person in respect of whom any proceeding under this Act has been taken for the assessment of the principal value of the estate of the deceased;]

(13) "power to appoint property" means power to determine the disposition of property of which the person invested with the power is not the owner;

(14) "prescribed" means prescribed by rules made under this Act;

**4** [(14-A) "principal officer", in relation to a company or a corporation established by a Central, State or Provincial Act, means the manager, managing director, managing agent or secretary, and includes any person connected with the management of the company or corporation upon whom the Controller has served a notice of his intention of treating him as the principal officer for the purposes of this Act;]

(15) "property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method;

Sub-section (15).- "Explanations (1 ) and (2) bring within the

definition of 'property' a debt or a right enforceable against a person when created by him or with his consent as also the benefit resulting from the extinguishment of a debt or a right at the expense of the deceased person." -S. O. R, "The definition of 'property' in C I, 2 (15) has been slightly modified to make it clear that property converted from one species into another is also within this definition." -S. C. R.

(16) "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive, limitation, and "on the death" includes "at a period ascertainable only by reference to the death";

(17) "public charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility within the territory of India,

(18) "representation" means probate of a will or letters of administration;

(19) "settled property" means property which stands limited to, or in trust for, any persons, natural or juridical, by way of succession, whether the settlement took effect before or after the commencement of this Act; and "settlement" means any disposition including a dedication or endowment, whereby property is settled;

.

(20) "Valuer" means a Valuer appointed under section 4 .

Sub-section (20).- "The main question of fact that may have to be determined in the imposition of estate duty would be the market-value of property; it has, therefore, been provided that the person accountable for estate duty would have the right to ask for the arbitration by a 'Valuer' to be appointed by the Government. These valuers will be non-officials like the Board of Referees under the Excess Profits Tax Act." -S. O. R.

1. Substituted for "the States" by 3 A.L.O., 1956.

4. Inserted by Taxation Laws (Extension to Union Territories), Regulation, 1963 (Regn. 3 of 1963), S.3(i) and Sch. (1-4-1963).

### **3. Interpretation :-**

(1) For the purposes of this Act,-

(a) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, of he were sui juris, enable him to dispose of the property;

(b) a disposition taking effect out of the interest of the deceased shall be deemed to have been made by him, whether the concurrence of any other person was or was not required;

(c) money which a person has a general power to charge on the property of another person shall be deemed to be an interest in that property of which the former has power to dispose;

(d) the domicile of a person shall be determined as if the provisions of Succession Act, 1925, on the subject applied to him; <sup>1</sup>[and as if the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry had always been parts of India.] .

(2) In Parts II and III of this Act, any reference to any interest disposed of, policy of insurance effected, annuity or other interest purchased or provided or to any gift, settlement, disposition or transfer of property made, shall be construed as including any such interest, policy, annuity, gift, settlement, disposition or transfer, as the case may be, whether it was disposed of, effected, purchased or provided, or made before or after the commencement of this Act.

**2** [(3) For the avoidance of doubt, it is hereby declared that references in this Act to property passing on the death of a person shall be construed as including references to property deemed to pass on the death of such person.]

[(4) Any reference in section 9, Rule 11 and Rule 33 to public charitable purpose or purposes in relation to a gift made or disposition or determination of an interest effected or suffered on or after the 1st day of April, 1964 shall be construed as not including a purpose the whole, or substantially the whole of which is of a religious nature.]

1. Substituted for "the States" by 3 A.L.O., 1956.

2. Inserted by Taxation Laws (Extension to Union Territories), Regulation, 1963 (Regn. 3 of 1963), S.3(i) and Sch. (1-4-1963).

#### **4. Estate duty authorities :-**

(1) There shall be the following authorities for the purposes of this Act, namely:-

(a) the Board

(b) Controllers of Estate Duty.

<sup>1</sup>[(bb) Appellate Controllers of Estate Duty.]

(c) Valuers.

(2) The Central Government may appoint as many Controllers of Estate Duty as it thinks fit and they shall, subject to the control of the Board, perform their functions in respect of such estates or classes of estates and such areas as are assigned to them by the Board.

Provided that, subject to such rules as may be made by the Board in this behalf, every Controller within the local limits of whose jurisdiction any part of the estate of the deceased is situated, may exercise in relation to the whole estate or any part thereof any of the powers conferred on the Controller by this Act: Provided further that the Board may, by general or special order,, direct that any Controller specified by it in this behalf may exercise all or any of the powers conferred on the Controller by this Act to the exclusion of any other Controller.

**1** [(2A) The Central Government may appoint as many Appellate Controllers of Estate Duty as it thinks fit and they shall, subject to the control of the Board, perform their functions in respect of such estates or classes of estates or such areas as the Board may direct, and where such directions have assigned to two or more Appellate Controllers, the same estate or classes of estates or the same area, they shall perform their functions in accordance with any orders which the Board may make for the distribution and allocation of the work to be performed.]

(3) The Central Government shall, within twelve months after the commencement of this Act and may thereafter, from time to time, appoint a sufficient number of qualified persons to act as Valuers for the purposes of this Act and shall fix a scale of charges for the remuneration of such persons.

(4) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, a Controller may appoint such executive or ministerial staff as may be necessary to assist him in the execution of his functions.

(5) All officers and persons employed in the execution of this Act, other than Valuers, shall observe and follow the orders, instructions and directions of the Board.

**3** [Provided that no such orders, instructions or directions shall be given by the Board so as to interfere with the discretion of the Appellate Controller of Estate Duty in the exercise of his appellate functions.]

1. Substituted for "the States" by 3 A.L.O., 1956.
3. Inserted by Taxation Laws (Extension to Union Territories), Regulation, 1963 (Regn. 3 of 1963), S.3(i) and Sch. (1-4-1963).

## PART 2

### IMPOSITION OF ESTATE DUTY

## PART 3

### EXCEPTIONS FROM THE CHARGE OF DUTY

#### **21. Foreign property :-**

(1) There shall not be included in the property passing on the death of the deceased-

(a) immovable property situated <sup>1</sup>[outside India];

(b) movable property situated <sup>1</sup>[outside India] at the time of the death.unless - in the case of any property, whether settled or not, the deceased was domiciled in <sup>3</sup>[India] at the time of his death; or

(ii) in the case of settled property of which the deceased was a life tenant, the settlor was domiciled in <sup>2</sup> [India] at the date the settlement took effect,

(2) The Board may make rules regulating the manner in which the nature and locality of different classes of assets shall be determined for the purposes of this section.

Section 21 provides "that charge on foreign moveable property would be on the basis of domicile. Sub-section (2) provides that the rules regarding the nature and situs of the property will be framed by the Board, and such rules will be framed with due regard to reasonable double estate duty relief arrangements which might be arrived at with the U.K. and U.S. A."-S. O. R. "The Select Committee have omitted from clause (a) the words "or immovable property consisting of agricultural land situated in any State other than the States specified in the Schedule to this Act" as these words are likely to create some confusion. The position under this Bill is that all agricultural land in the territories to which this law will extend should be taken into account for determining the rate of duty, although no duty will be actually levied on agricultural land in States not specified in the Schedule." -S. C. R.

1. Substituted for "outside the territories to which this Act extends" by the Estate Duty (Amendment) Act, 1958 (33 of 1958), S. 10 (w. e. f. 1-7-1960). -.

3. Substituted for "the said territories", the Estate Duty (Amendment) Act, 1958 (33 of 1958).

#### **22. Property held by the deceased as trustee :-**

Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased where (whether by virtue of the original disposition or of a subsequent surrender of any benefit originally reserved to the deceased or otherwise) possession and enjoyment of the property was bona fide assumed by the beneficiary at least <sup>1</sup>[two years] before the death and thenceforward retained by him to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise: <sup>2</sup> [Provided that a house or part thereof held by the deceased as trustee for another person under a disposition made by him in favour of the spouse, son, daughter, brother or sister, shall not be deemed to be included in the property passing on the death of the deceased by reason only of the residence therein of the deceased except where a right of residence therein is reserved or secured directly or indirectly to the deceased under the relevant disposition or under any collateral disposition.] The following illustrations are taken from the notes on clauses given in the Statement of Objects and Reasons: 1. A dies leaving property of which he was a trustee for B under a will left by C. The property, is not chargeable to estate duty upon A's death. . 2. A dies leaving property of which he was a trustee for B under a deed of settlement made by A himself not more than two years before his death. The property is chargeable to duty. for otherwise any person could evade the duty by making such a trust shortly before his death and declaring thereby that he is trustee for some named heir. 3. A dies leaving property of which he was a trustee for B under a deed of settlement made by A himself more than two years before his death, possession and enjoyment having been assumed by immediately upon the creation of the trust and thenceforward retained to the entire exclusion of A. The property is not chargeable to duty upon A's death, 4. A dies leaving property of which he was a trustee; for B under a deed of settlement made by A himself more than two years before his death. B having assumed possession immediately upon the creation of the trust. but being bound by an agreement to give A a share of the profits until A's death. The property is chargeable to duty upon A's death," S.O.R.

1. Substituted for "one year" (which was substituted for "two years" by Act 10 of 1965, S. 69) by the Finance Act. 1966 (13 of 1966), S. 38(1-4-1966). For transitional provisions see S. 39 of Act 13 of 1966.

2. Inserted by the Finance Act, 1965 (10 of 1965), S. 69 (1-4-1965)

**23. Interest failing before becoming an interest in possession :-**

In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and one or more subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death by reason only of the failure or determination of that interest. "Explanation 1 is derived from S. 14, U.K. Finance Act, 1896. Ex hypothesi in the case put in the Explanation, the interest of the deceased in the settled property fails before it becomes an interest in possession and in view of the decision in *A. G. v. Wood*, (1897) 2 QB 102. that an absolute reversion may be a limitation which continues to subsist, the explanation is retained by way of abundant caution. Explanation 2 is derived from S. 47 of the U.K. Finance Act, 1938 and is added in order to make it clear that a residuary interest under reversion within an estate whose administration is not complete will not be regarded as a case of failure of interest before becoming interest in possession, but such interest, would be deemed to have become interest in possession on the date as from which the income of the residue would have been attributable to that interest if the residue had been determined immediately after the death of the testator or intestate." -S. O. R.

**24. Property reverting to disponent :-**

(1) Where by a disposition of any property an interest is conferred on any person, other than the disponent for the life of such person or determinable on his death, the remainder being conferred upon the disponent absolutely, and such person enters into possession of the interest, and thenceforward retains possession of it, then, on the death of such person, the property shall not be deemed to pass by reason only of its reverter to the disponent in his life time.

(2) Where by a disposition of any property any such interest as is mentioned in sub-section (1) is conferred on two or more persons either severally or jointly or in succession, sub-section (1) shall apply in like manner as where the interest is conferred on one person :

Provided that sub-section (1) shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent

to dispose of the said property. The following illustrations are taken from the notes on clauses given in the Statement of Objects and Reasons:- "1. A settles property on trust for B (usually a poor relation or an old servant) for life and then for himself absolutely. No duty is payable on B's death, if he dies before A. 2. A settles property on trust to pay an annuity thereout to himself and, subject thereto, for B for life, with remainder to A. Duty is payable on B's death, because it cannot be said that only benefit retained by A is subject to the life interest. 3. A settles property on B for life with remainder to B's children absolutely and in default, for A absolutely. B dies without children. Duty is payable for the contingent interests if B's possible children were "other interests" created by disposition. 4. B gives property to A, who then settles it on B for life with remainder to himself. Duty is payable on B's death, for B was competent to dispose of the property prior to the settlement. 5. As in illustration 1, but B dies after A and the property reverts to A's heirs. Duty is payable on B's death, for the property does not revert to the disponent himself." -S. O. R. "In the opinion of the Select Committee it is difficult to differentiate between a case, where A settles property on trust for B for life and then for himself absolutely and a case where A settles property on trust to pay an annuity to himself and subject thereto for B for life with remainder to A. As the clause originally stood, in the first case no estate duty was payable on B's death while in the latter case, it was payable. S.15 of the U. K. Finance Act, 1896, on which this clause is based was criticised adversely in Attorney-General v. Penrhyn, (1900) 83 LT 103. If the property reverts to the disponent on the cesser of the life interest created by him, the exception under this clause should, in the opinion of the Select Committee, apply even where the settlor might have carved out for himself some interest out of the life interest created by him, for, after all estate duty is payable on the death of the settlor on his entire property, including the remainder. This clause has, therefore, been amended accordingly." -S. C. R.

## **25. Income of settled property acquired on death of spouse**

:-

Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which took effect before the commencement of this Act and on his or her death the survivor becomes entitled to the income of the property (as distinguished from the property itself) settled by such survivor, estate duty shall not be payable in respect of that property until the death of that survivor. The following illustration is taken from the notes on clauses given in the Statement of Objects and Reasons:- "A by deed dated 1951 settled property on his wife for life, and on her death on himself for life, with remainder to their children. The wife dies after the

commencement of this Act, leaving A surviving. Estate duty is not payable on her death though it will be payable on the subsequent death of A. The exemption would not have applied if A had become entitled to the corpus on his wife's death." -S. 0. R.

## **26. Property passing by reason of a bona fide purchase for full or partial consideration in money :-**

(1) Subject to the provisions of S. 27 and S. 46 estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a bona fide purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty. ,

"Property bona fide transferred by the deceased for money or money's worth is not chargeable to estate duty. Although such a transfer might be made in anticipation of death, the consideration received in respect of it becomes the property of the deceased and as such is liable to duty. To subject to taxation both the property whose sale produces that money or money's worth itself would be in substance to impose double taxation on the same property. Hence, the exemption in this clause. The exemption is to apply not only when the property is acquired for full consideration in money or money's'Worth, but also to a proportionate extent, where part of the consideration is of that character.

## **27. Dispositions infavour of relatives :-**

(1) Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of <sup>1</sup>[this Act] as gift unless

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

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

.

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

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

(4) Any gift made in favour of a relative of the deceased by a controlled company of which the deceased at the time of the gift had control within the meaning of S.17 shall be treated for the purposes of <sup>1</sup> [this Act] as a gift made by the deceased, and the property taken under the gift, shall be treated as included by virtue of that section in the property passing on the death of deceased, if and to the extent to which the Controller is satisfied that they would fall to be so treated in the circumstances mentioned in the last foregoing sub-section..

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

of a relative of his, unless it is shown to the satisfaction of the Controller .that no relative of the deceased was, at the time of the disposition or subsequently during the life of the deceased, a member of the company.

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

(7) In this section,-

(i) "relative" means in relation to the deceased,-

(a) the .wife or husband of the deceased,

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

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

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

(iii) "annuity" includes any series of payments, whether interconnected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise, and payments of dividends or interests on shares in or debentures of a company shall be treated for the purposes of this section as a series of payments constituting an annuity limited to cease on a death if the payments are liable to cease on the death, or the amounts thereof are liable to be reduced on the death, by reason directly or indirectly of the extinguishment or any alteration of rights attaching to, or of the issue of any shares in or debentures of a company;

(iv) "associated operations" means any two or more operations of any kind being - '

(a) operations which affect the same property, or one of which affects some property and the other or others of which affects

property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income; or

(b) any two operations of which one is effected with reference to the other, or with a view to enabling it to be effected or to facilitating its being effected, and any third operation having a like relation to either of those two, and any fourth operation having a like relation to any of those three, and so on; whether those operations are effected by the same person or by different persons, whether they are connected otherwise than as aforesaid or not, and whether they are contemporaneous or any of them precedes or follows any other.

"Property transferred by the deceased in consideration of money or money's worth is not chargeable to estate duty (see Section 26). This clause, however, provides that annuity or other interest limited to deceased on death, dealt in favour of the deceased cannot be treated as consideration or transfer when such transfers are made to a 'relative' or to a "controlled company". The meaning of the expression 'relative', 'annuity' and "associated operations" as used in this clause has been defined. Nothing in this clause affects an annuity in favour of a person other than the deceased. The relaxations contemplated in S.40 of the United Kingdom Finance Act, 1944, will be considered by the Board when framing rules under cl. 32 (now S. 33). The deduction to be allowed will broadly be the net amount of benefit received by the deceased from the transactions." -S. O, R. "With respect to transfers of property, this clause depends for its efficacy on the proposition that under clauses 8,9 and 10, etc., duty attaches subject to any specific exemptions, to all property transferred within a specified period of the transferor's death or outside that period unless taken and enjoyed by the transferee to the entire exclusion of the transferor from possession, enjoyment or benefit. In Law Reports (1950) chancery 440, the application of this provision to transfers other than gifts was doubted because of the language employed in the relevant clauses and this clause has now, therefore, been amended on the lines of the S.46 of the United Kingdom Finance Act, 1950, to make it clear that dispositions made by the deceased in favour of relative are to be treated on the same footing as gifts inter vivos unless - (a) the disposition was for full consideration in money or money's worth, or (b) the disposition was made by the deceased in a fiduciary capacity." -S. C. R.

1. Substituted for "section 9", by the Estate Duty (Amendment) Act, 1958 (33 of 1958), S. 11 (with effect from 1-7-1960).

**28. Effect of new or increased rates of duty on certain prior sales and mortgages :-**

Where an interest in expectancy in any property has, whether before or after the commencement of this Act, been bona fide sold or mortgaged for full consideration in money or money's worth, and the rates of estate duty in force in the case of a person dying when the interest falls into possession are higher than the rates in force, if any, in the case of a person dying at the time of the sale or mortgage, then -

(a) no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than the duty, if any, which would have been payable if the rates of estate duty applicable had been the rates in force, if any, in the case of a person dying at the time of the sale, or mortgage, and

(b) in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

"In order to protect commercial transactions from higher duties imposed subsequent to the sale or mortgage of an interest in expectancy, this clause provides for relief to the purchasers and mortgagees and no other duty will be payable by them except the duty which would have been payable at the rates of estate duty, if any. in the case of a person dying at the time of the sale or mortgage." ~S. O.R.

**29. Settled property in respect of which since the date of the settlement estate duty has been paid on the death of the deceaseds spouse :-**

If estate duty has already been paid in respect of any settled property since the date of the settlement, on the death of one of the parties to a marriage, the estate duty shall not be payable in respect thereof on the death of the other party to the marriage, unless the latter was at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of such property, and, if on his death subsequent limitations under the settlement take effect in respect of such property, was sui juris at the time of his death, or had been sui juris .at. any time while so competent to dispose of the property.

"The exemption conferred by this clause is in respect of a settled property on which estate duty has been paid since the date of settlement on the death of one of the parties to a marriage. The exemption is, however, conditional and would not apply if the deceased was at any time during the Continuance of settlement competent to dispose of the property.--S.O.R..

**29A. Exemption of pensions, etc., in certain cases :-**

Estate duty shall not be payable in respect of-

(a) any pension accruing or arising on the death of the deceased to his widow or other dependants under the Revised Pension Rules of the Central Government or under any similar scheme of a State Government, a local authority or a corporation established by a Central, State or Provincial Act, or under the New Pension Code applicable to the members of the Defence Services; or

(b) any annuity or pension payable to such widow or dependants from -

(i) a superannuation fund approved under Income-tax Act, 1922, or Income-tax Act, 1961. to the extent to which the amount of such annuity or pension does not exceed the equivalent of fifteen thousand rupees per annum, or

(ii) a superannuation or pension fund established by such international organisations as the Central Government may, by notification in the Official Gazette, specify in this behalf.]

**30. Agreement for avoidance or relief of double taxation with respect to estate duty :-**

The Central Government may enter into an agreement with the Government of any reciprocating country for the avoidance or relief of double taxation with respect of estate duty leviable under this Act and under the corresponding law in force in the reciprocating country and may, by notification <sup>1</sup> in the Official Gazette, make such provision as may be necessary for implementing the agreement.

1. See Double Taxation Relief (Estate Duty)(India) Order, 1956 [S. 1.. 1956 :No. 998). See also Gaz. of India, 1956, Extra., Pt. II.S.3, p. 1561.

**31. Allowance for quick succession to property :-**

Where the Board is satisfied that estate duty has become payable on any property passing upon death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death in respect of the property so passing shall be reduced as follows:-  
Where the second death occurs within one year of the first death,

by fifty percent. Where the second death occurs within two years of the first death, by forty per cent.: Where the second death occurs within three years of the first death, by thirty per cent.: Where the second death occurs within four years of the first death, by twenty per cent.; Where the second death occurs within five years of the first death, by ten per cent.:' Provided that where the value on which the duty is payable of the property on the second death exceeds the value on which the duty was payable of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this sections it to be calculated. "The Select Committee feel that the allowance for quick succession should not be confined to lands and business only, as this will mean that a large number of persons who own, say only buildings, do not obtain the benefit of this provision. This clause has, therefore, been amended to cover all property. Incidentally, an Explanation has been inserted defining "second death" for the purpose of this provision. It has also been provided that in the case of quick deaths occurring within a period of three months, no estate duty shall be leviable on any property more than once by reason of the subsequent deaths occurring within that period." -S. O. R.

### **32. Exemption of interest of a Hindu widow devolving upon reversioners in certain cases :-**

Where on the death of any person governed by any school of Hindu law, his interest in any property has devolved on his widow, then, if the widow dies within seven years of her husband's death and the interest aforesaid devolves upon the reversioners or any of them, no estate duty shall be leviable in respect of the passing of the interest aforesaid on the death of the widow, if and in so far as estate duty had been paid in respect of the passing of such interest on the death of her husband.

### **33. Exemptions :-**

(1) To the extent specified against each of the clauses in this subsection, no estate duty shall be payable in respect of property of any of the following kinds belonging to the deceased which passes on his death -

(a) property taken <sup>1</sup>[under one or more gifts] made by the deceased for public charitable purpose within a period of six months before his death, to the extent of rupees two thousand and five hundred in value;

(b) property taken <sup>2</sup>[under one or more gifts] made by the deceased for any other purpose within a period <sup>3</sup>[two years] before his death, to the extent of rupees one thousand and five hundred in value;

(c) household goods, including tools of artisans, agricultural implements or any other tools or implements as were necessary to the deceased to enable to earn his livelihood, to the extent of rupees two thousand and five hundred in value;

(d) books not intended for sale;

(e) -wearing apparel, but not including any precious or semi-precious stones or ornaments worked or sewn into the wearing apparel;

(f) moneys payable under one or more policies of insurance effected by the deceased on his life for the purpose of paying estate duty or assigned to the Government for the said purpose, to the extent of the amount of duty payable <sup>4</sup>[\* \* \*];

(g) moneys deposited with the Government in such manner as may be prescribed for the purpose of paying estate duty, together with the interest which has accrued due thereon at such rate as may be prescribed to the extent of the amount of duty payable <sup>5</sup>[\* \* \*]:  
<sup>6</sup>[Provided that the moneys in respect whereof no estate duty shall be payable either under cl. (f) or cl. (g) or under both shall not exceed rupees fifty thousand in the aggregate;]

(h) moneys payable under one or more policies of insurance effected by the deceased on his life, to the extent of rupees five thousand;

(i) drawings, paintings, prints, manuscripts, works of art or archaeological or scientific collections which are of national, scientific or historical interest and which are retained in the family of the deceased and dealt with or disposed of in accordance with such conditions <sup>7</sup>as the Board may prescribe, or which are given absolutely or bequeathed to Government or to any University or other public institution;

(j) drawings, paintings, photograph, prints, manuscripts and any other heirloom, not falling within clause (i) which are retained in the family of the deceased and are dealt with or disposed of in

accordance with such conditions <sup>8</sup>as the Board may prescribe and are not intended for sale;

(k) moneys earmarked under policies of insurance or declarations of trust or settlements effected or made by a deceased parent or natural guardian for the marriage of any of his female relatives dependent upon him for the necessaries of the life, to the extent of <sup>9</sup>[rupees ten thousand] in respect of the marriage of each of such relatives.

**10**(l) any one building in the occupation of a Ruler declared by the Central Government as his official residence under Paragraph 13 of Merged States (Taxation Concessions) Order 1949, <sup>11</sup>or Paragraph 15 of Part B States (Taxation Concessions) Order, 1950; <sup>12</sup>

(m) property belonging to the deceased who was a member of the armed forces of the Union and who was killed in action during operations against an enemy.]

**13**[(mm) properly belonging to the deceased who was a member of any police force (including border security force) and was killed in any action in protecting the border.]

**14**(n) one house or part thereof exclusively used by the deceased for his residence, to the extent the principal value thereof does not exceed rupees one lakh if such house is situate in a place with a population exceeding ten thousand, and the full principal value thereof in any other case.]

**8**(nn) any deposits with a co-operative society, being a co-operative housing society made by the deceased who was a member of the society to whom a building or part thereof was allotted or leased under a house building scheme of the society, where such deposits had been made under such scheme;]

**10**(o) property taken under any gift made by the deceased to the spouse, son, daughter, brother or sister, beyond a period of five years before his death:

Gift-tax Act, 1958, or is not chargeable under S.5 of that Act for any assessment year commencing after the 31st day of March, 1964.]

**11** [(p) National Defence Gold Bonds, 1980, to the extent of the principal value of such Bonds .for an aggregate weight of fifty

kilogrammes of gold :

Provided that if such Bonds had passed on the death of any person, the exemption conferred by this clause shall not be available in respect of the same Bonds passing on any subsequent death.]

(2) If the Central Government is of opinion that in respect of any class of property or class of persons the circumstances are such that some relief in addition to the reliefs provided in sub-section (1) should be given, it may, by notification in the Official Gazette, make any exemption, reduction in rate or other modification in respect of estate duty in favour of any such class of property or the whole or any part of the property of any class of persons, and any notification so issued shall be laid before both Houses of Parliament as soon as may be after it is issued. Wealth-tax Act, 1957 and Expenditure Tax Act, 1957 in respect of the 'official residence' of a Ruler this newly inserted clause exempts the official residence of a Ruler from estate duty.- S. C. R., Gaz. of Ind., 1958, Extra, Pt. II-S. 2, p. 760.

1. Substituted for "under a gift" by the Estate Duty (Amendment) Act, 1958 (33 of 1958), S. 12 (w. e. f. 1-7-1960). See Pr. 30 to 34 of Estate Duty Rules, 1953.

2. Substituted for 'one year' by Finance Act, 1966 (13 of 1966), S. 38 (1-4-1966) for transitional provisions, see S. 39, the Estate Duty (Amendment) Act, 1958 (33 of 1958).

3. Words "but not exceeding rupees fifty thousand" were omitted by the Finance Act, 1954 (17 of 1954), S. 4 (w.r. e. f. 15-10-1953).

4. Inserted, See Rr. 11 to 13 of the Estate Duty Rules, 1953 for such conditions.

5. Substituted for the words "five thousands" by Act-33 of 1958, S. 12.

6. Inserted, Act-33 of 1958.

7. See Gaz. of Ind., 3-12-1949, Ext., p. 2623 (as amended from time to time),

8. See S. R. O., 998, D/-2-12-1950 published in Gaz. Ind., 1950 Ext., Pt. II, S. 3, p. 959.

9. Inserted by the Finance Act, 1966 (13 of 1966), S. 38 (1-4-1966).

10. Inserted by Finance Act, 1964 (5 of 1964), S. 49 (w. e. f. 23-9-1963).

11. Inserted by the Finance Act, 1965 (10 of 1965), S. 69 (1-4-1965).

12. Inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1965 (41 of 1965), S. 5 (4-12-1965).

13. See G. S. R. 657, D/- 4-6-1960 published in Gaz. Ind., 1960, Pt. II, S. 3(i) p. 885.

14. Inserted by Estate Duty (Amendment) Act(31 of 1982), S. 4 (w.r.e f. 1-3-1981).

PART 4

AGGREGATION OF PROPERTY AND RATES OF DUTY

**34. Aggregation :-**

(1 )For the purpose of determining the rate of the estate duty to be paid on any property passing on the death of the deceased,-

(a) all property so passing other than property exempted from estate duty under clauses (f), (d), (e), (i), (j), [(l), (m), [(mm),] (n), (o) and (p)] of sub-section (1) of section 33 ; [and]

(b)[\* \* \* \*\*\*\*\*]

(c) in the case of property so passing which consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law, also the interests in the joint family property of all the lineal descendants of the deceased member; shall be aggregated so as to form one estate and estate duty shall be levied thereon at the rate or rates applicable in respect of the principal value thereof.

(2) Where any such estate as is referred to in sub-section (1 ) includes any property exempt from estate duty, the estate duty leviable on the property not so exempt shall be an amount bearing to the total amount of duty which would have been payable on the whole estate had no part of it been so exempt, the same proportion as the value of the property not so exempt bears to the value of the whole estate. Explanation.- For the purposes of this sub-section, "property exempt from estate duty" means --

(i) any property which is exempt from estate duty under S. 33;

(ii) [ \* \* \*- \* \*]

(iii) the interests of all coparceners other than the deceased in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law.

(3) Notwithstanding anything contained in sub-section (1) or sub-sec. (2), any property passing in which the deceased never had an interest, not being a right or debt or benefit that is treated as property by virtue of the Explanations to clause (15) of Section 2 , shall not be aggregated with any property, but shall be an estate

by itself, and the estate duty shall be levied at the rate or rates applicable in respect of the principal value thereof.

(4) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of death of the deceased.

(5) For the purposes of this section, no property shall be aggregated more than once nor shall estate duty in respect thereof be levied more than once on the same death.]

### **35. Rates of estate duty on property including agricultural land :-**

**1** [(1)] The rates of estate duty shall be as mentioned in the Second Schedule.]

[(2) \*\*\*\*\*]

(3) Notwithstanding anything contained in sub-section (1) and the Second Schedule, where any property passing on the death of any person consists wholly or in part of agricultural land and the principal value of the estate does not exceed rupees two lakhs, there shall be allowed by way of rebate -

(a) in the case of any estate which consists wholly of agricultural land, a sum representing one-fourth of the estate duty payable; and

(b) in the case of an estate which consists in part only of agricultural land, a sum representing one-fourth of the estate duty payable on that part of the estate which consists of agricultural land, the duty on such part being a sum which bears to the total amount of estate duty the same proportion as the value of the agricultural land bears to the value of the estate.

1. Inserted by Estate Duty (Amendment) Act (31 of 1982), S. 5 (w.r.e.f. 1-3-1981).

#### PART 5

#### VALUE CHARGEABLE

### **36. Principal value how to be estimated :-**

(1) The principal value of any property shall be estimated to be the price which, in the opinion of the Controller it would fetch if sold in the open market at the time of the deceased's death.

(2) In estimating the principal value under this section the Controller shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the satisfaction of the Controller that the value of the property has depreciated by reason of the death of the deceased, the depreciation shall be taken into account in fixing the price.

**1** [(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the principal value of one residential house or part thereof belonging to the deceased (which the accountable person may at his option specify in writing in this behalf) shall be-

(a) where the value of such house or part is included in computing the net wealth of the deceased for the purposes of making an assessment under Wealth-tax Act, 1957 (hereafter in this sub-section referred to as the Wealth-tax Act) in respect of his net wealth on the valuation date immediately preceding the date of his death, the value as taken by the Wealth-tax Officer for the purposes of such assessment; and

(b) in any other case, the value of such house or part,-

(i) on the said valuation date; or

(ii) where such house or part was constructed, acquired or otherwise became the property of the deceased after the said valuation date, on the date of his death, as determined by the Controller in accordance with the provisions of the Wealth-tax Act and the rules made thereunder; and, for this purpose, in a case where the provisions of sub-section (4) of section 7 of that Act apply, the provisions of that sub-section shall have effect as if the words "throughout the period of twelve months immediately preceding the valuation date", occurring therein, had been omitted and as if the references therein to the option of the assessee had been references to the option of the accountable person.

1. Substituted for 'one year', (which was earlier substituted for two years by Act 10 of 1965, S. 69) by the Finance Act, 1966(13 of 1966), S. 38(1-4-66).

**37. Valuation of shares in a private company where**

### **alienation is restricted :-**

Where the articles of association of a private company contain restrictive provisions as to the alienation of shares, the value of the shares, if not ascertainable by reference to the value of the total assets of the company, shall be estimated to be what they would fetch if they could be sold in the open market on the terms of the purchaser being entitled to be registered as holder subject to the articles, but the fact that a special buyer would for his own special reasons give a higher price than the price in the open market shall be disregarded.

### **38. Valuation of interests in expectancy :-**

Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then -

- (a) for the purpose of determining the rate of estate duty in respect of the rest of the estate, the value of the interest shall be its value at the date of the death of the deceased; and
- (b) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

### **39. Valuation of interest in coparcenary property ceasing on death :-**

(1) The value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which ceases on the death of a member thereof shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death.

(2) The value of the benefit accruing or arising from the cesser of an interest in the property of a tarwad or tavazhi governed by the Murumakkattayam rule of inheritance or of a kutumba or kavaru governed by the Aliyasantana rule of inheritance which ceases on the death of a member thereof shall be the principal value of the share in a property of the tarwad or tavazhi or, as the case may be, the kutumba or kavaru which would have been allotted to the

deceased had a partition taken place immediately before his death.

(3) For the purpose' of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasanatana law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his death, the provisions of this Act, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased.

**40. Valuation of benefits from interests ceasing on death :-**

The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall -

(a) if the interest extended to the whole income of the property, be the principal value of that property; and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

"This clause provides a formula for calculating the amount upon which duty is leviable on account of cesser of an interest. The effect of this clause is to charge duty on a slice of the capital concerned, the income of which is equivalent to the income enjoyed by the deceased immediately before his death." -S. O. R.

**41. Valuation to be made by the Controller :-**

Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Controller in such manner and by such means as may be prescribed and if he authorises a person to inspect any property and to report the value thereof for the purposes of this Act, that person may enter upon the property and inspect it at such reasonable times as may be prescribed.

**42. Costs of valuation :-**

Where the Controller requires any person to report on the value of any property for the purposes of this Act, the reasonable costs of such valuation shall be defrayed by the Controller.

**43. Controller may accept and certify valuation when convenient :-**

The Controller on application from a person accountable for the duty on any property forming part of an estate shall where he

considers that it can conveniently be done, certify the amount of the valuation accepted by him for any class or description of property forming part of such estate. "The object of this clause is to enable the person primarily accountable for the payment of the estate duty to apportion the duty where necessary in administering the estate and to provide a method ascertaining the proportion of duty which may be charged on a particular property and may be recoverable against a person having a charge on the property."- S.O.R.

PART 6  
DEDUCTIONS

**44. Reasonable funeral expenses and, with some exceptions, debts and incumbrances to be allowed for in determining chargeable value of estate :-**

In determining the value of an estate for the purpose of estate duty, allowance shall be made for funeral expenses (not exceeding rupees one thousand) and for debts and incumbrances; but an allowance shall not be made-

(a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless, subject to the provisions of section 27 such debts or incumbrances were incurred or created bona fide for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, or

(b) for any debt in respect whereof there is right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, or

(c) more than once for the same debt or incumbrance charged upon different portions of the estate, or

(d) for debts incurred by or on behalf of the deceased by way of dower, to the extent to which such debts are in excess of rupees five thousand, and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

"This clause has been amended to provide that funeral expenses should include expenses in connection with the shraddha ceremonies of the deceased but, in the opinion of the Select Committee the maximum amount permissible should be fixed at Rs. 1000. Consistently with the provisions contained in clause 32 (j),it

has also been provided that dower debts in excess of Rs. 5,000 should be removed from the category of deductible expenses. Moreover, if any such provision were not made a large scale evasion of estate duty may result therefrom."--S.C.R. , ,

#### **45. Limitations on debts deductible :-**

Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise of any interest in expectancy in any property passing or deemed to pass on the death of the deceased and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of estate duty no allowance shall be made in respect of such debtor incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance : Provided that-

(a) if part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only; and

(b) if a person whose interest in expectancy in the property so purchased, acquired or . extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

The following illustration is taken from the notes on clauses given in the Statement of Objects and Reasons:

#### **46. Further limitations :-**

(1) Any allowance which, but for this provision, would be made under section 44 for a debt incurred by the deceased as mentioned in clause (a) of that section, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefor which consisted of

(a) property derived from the deceased; or

(b) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there-was at any time included, any property derived from the deceased:

Provided that if. where the whole or a part of the consideration given consisted of such consideration as is mentioned in clause (b) of this sub-section, it is proved to the satisfaction of the Controller that the value of the consideration given, or of that part thereof, as the case may be, exceeded that which could have been rendered available by application of all the property derived from the deceased, other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to sub-section (1) of Section 16 in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess.

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which sub-section (1) would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that sub-section has effect on his death, shall, unless so paid or applied <sup>1</sup>[two years] before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, notwithstanding anything in <sup>2</sup> section 26 , be payable in respect thereof accordingly.

(3) The provisions of sub-section (2) of Section 16 shall have effect for the purpose of this section as they have effect for the purpose of that section.

"Broadly the effect of this clause is to reduce the amount allowable as a deduction for a debt in proportion to the value of the consideration given for it which was derived directly or indirectly from the deceased or which was given by a creditor who acquired property from the deceased for the purpose of facilitating the loan."-S.O.R.

1. Substituted for 'one year', (which was earlier substituted for two years by Act 10 of 1965, S. 69) by the Finance Act, 1966(13 of 1966), S. 38(1-4-66).

2. Substituted for "25" by the Estate Duty (Amendment) Act, 1958 (33 of 1958), S. 15 (w.e.f. 1-7-1960).

**47. Debts to persons resident in foreign country not to be deducted in first instance except from duty-paid property in that country :-**

An allowance shall not be made in the first instance for debts due from the deceased to persons resident <sup>1</sup>[out of India] (unless contracted to be paid in <sup>2</sup>[India] ), or charged on properties situate within <sup>2</sup>[India]), except out of the value of any property of the deceased situate out of <sup>2</sup> [India], in respect of which estate duty is paid, and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Controller that the property of the deceased situate in the foreign country in which the person to whom such debts are due resides is insufficient for their payment. The provision in section 47 "is in accordance with the established rule of law that debts claimable in the country where the assets are situate should be paid out of the assets in that country before any surplus is available for transmission to the country of the domicile." S.O.R.

1. Substituted for "out of the territories to which this Act extends" by the Estate Duty (Amendment) Act, 1958 (33 of 1958), S. 16 (w.e.f. 1-7-1960).

2. Substituted for "the said territories", by the Estate Duty (Amendment) Act, 1958 (33 of 1958).

**48. Cost of realising or administering foreign property may be allowed for within certain limits :-**

Where the Controller is satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate <sup>1</sup> [out of India], he may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

1. Substituted for "out of the territories to which this Act extends" by the Estate Duty (Amendment) Act, 1958 (33 of 1958), S. 17 (w.e.f. 1-7-1960).

**49. Allowance for duty paid in a non-reciprocating country :-**

Where any property passing on the death of the deceased is situate in a non-reciprocating country and the Controller is satisfied that by reason of such death any duty is payable in that country in respect of that property, he may, subject to such rules as may be made by the Board in this behalf, make an allowance of the whole or any part of the amount of that duty from the value of the property.

**50. Relief from estate duty where court-fees have been**

### **paid for obtaining representation to estate of deceased :-**

Where any fees have been paid under any law relating to court-fees in force in any State<sup>1</sup>[ \* \* \*] for obtaining probate, letters of administration or a succession certificate in respect of any property on which estate duty is leviable under this Act, the amount of the estate duty payable shall be reduced by <sup>2</sup>[an amount which is equal to <sup>3</sup> [\* \* \*]] the court-fees so paid. "In practically all countries with a federal structure of Government where inheritance or succession duties are paid in the component States side by side with estate duty, the principle of granting relief in respect of such duties when estate duty comes to be paid is well recognised. The Select Committee feel that a similar relief should be provided in this Bill also within a specified limit."-S.C.R.

1. Words "other than the State of Jammu and Kashmir" were omitted by the Taxation Laws (Extension to Jammu and Kashmir) Act, 1954 (41 of 1954), S. 2 and Schedule (8-10-1954).
2. Substituted for "an amount which is equal to" by the Estate Duty (Amendment) Act, 1958 (33 of 1958), S.I 8 (w.e.f. 1-7-1960).
3. Words "one-half" omitted by Finance Act, 1964 (5 of 1964), S. 49 (w.e.f. 23-9-1963).

### **50A. Relief from estate duty where gift-tax has been paid :-**

Where tax has been paid under Gift-tax Act, 1958, in respect of a gift of any property and the property is also included in the estate of the donor as property passing under this Act, then, notwithstanding anything contained in this Act, the estate duty payable under this Act shall be reduced by an amount equal to the amount of gift-tax paid in respect of any such property under that Act.] Section 50A inserted by Act 33 of 1958.- "In cases where any property in respect of which gift tax has been paid is also included in the estate of a donor as property passing under the Estate Duty Act, the Committee are of the opinion that, instead of exempting such property from estate duty altogether as proposed in the Bill, the amount of estate duty payable may be reduced by a sum equal to the amount of the gift tax paid."-S.C.R., Gazette of India, 1958, Extra, Pt. II, S. 2, p. 760. .

### **50B. Relief from estate duty where tax has been paid as capital gains :-**

Where any property on which estate duty is leviable under this Act is transferred within a period of two years following the death of the deceased and tax under Income-tax Act, 1961, has been paid in respect of the capital gains arising from such transfer, the estate

duty payable shall be reduced by a sum which bears to the total amount of tax so paid the same proportion as the amount paid towards estate duty out of the proceeds of the transfer bears to the gross proceeds of such transfer: Provided that the Board may, on an application of the accountable person, extend the period of two years aforesaid if it is satisfied that the accountable person had sufficient cause for not effecting the transfer of the property within that period.]

#### PART 7

#### COLLECTION OF THE DUTY

#### **51. Method of collection of duty :-**

Estate duty may be collected by such means and in such manner as the Board may prescribe.

#### **52. Payment of duty by transfer of property :-**

(1) The Central Government may, on an application of the person accountable for estate duty, accept in satisfaction of the whole or any part of such duty any property passing on the death of the deceased at such price as may be agreed upon between the Central Government and that person, and thereupon such person shall deliver possession of the property to such authority as may be specified by that Government in this behalf.

(2) Notwithstanding anything contained in any other law for the time being in force, on the date the possession of the property is delivered to the authority under sub-section (1)-

(i) the property shall vest in the Central Government; and

(ii) the Central Government shall, where necessary, intimate the registering authority concerned accordingly; and the authority shall administer the property in such manner as the Central Government may direct.

(3) Where the price referred to in sub-section (1) exceeds the aggregate of the amounts due under this Act in respect of the estate of the deceased, the excess shall be applied in the following order to the payment of any tax, penalty, interest or other amount-

(i) which the legal representative of the deceased is liable to pay in respect of the income, expenditure or wealth of, or gift made by, the deceased under any of the Acts referred to in clause (c) of S.2 of the Central Boards of Revenue Act, 1963;

(ii) which the executor is liable to pay under any of the Acts aforesaid in respect of the . estate of the deceased for the period of the administration of the estate;

(iii) which the person beneficially entitled to the property in question is liable to pay under any of those Acts; and the balance, if any, shall be paid to the accountable person.]

### **53. Persons accountable, and their duties and liabilities :-**

(1) Where any property passes on the death of the deceased- , :

(a) every legal representative to whom such property so passes for any beneficial interest in possession or in whom any interest in the property so passing is at any time vested,

(b) every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested, and

(c) every person in whom any interest in the property so passing is vested in possession by alienation or other derivative title, shall be accountable for the whole of the estate duty on that property passing on the death but shall not be liable for any duty in excess of the assets of the deceased which he actually received or which, but for his own neglect or default, he might have received :

(2) Notwithstanding anything contained in sub-section (1 ), where an heir-at-law proves to the satisfaction of the Controller that some other person is in adverse possession of any assets of the deceased, the heir-at-law shall not be accountable for the portion of the estate duty payable in respect of such assets: Provided that he shall become so accountable if and to the extent that, he subsequently recovers possession of such assets.

**1** [(3) Every person accountable for estate duty under this section shall, within six months of the death of the deceased, deliver to the Controller an account in the prescribed form and verified in the prescribed manner of all the properties in respect of which estate duty is payable:

Provided that the Controller may extend the period of six months aforesaid on such terms which may include payment of interest as may be prescribed.]

(4) Where the person accountable knows of any property which he has not included in his account because he does not know its

amount or value, he may state that such property exists, but he does not know the amount or value thereof and that he undertakes, as soon as the amount and value are ascertained to bring a supplementary account thereof and to pay both the duty for which he may be liable in respect of such property and any further duty payable by reason thereof for which he may be liable in respect of the property mentioned in the original account.

(5) Where two or more persons are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole of the estate duty on the property so passing.

1. Substituted for "eight" by the Estate Duty (Amendment) Act, 1958 (33 of 1958), S. 23 (w.e.f. 1-7-1960).

#### **54. Persons accountable may include trustees in certain cases :-**

(1) Where an interest limited to cease on a death within the meaning of section 11 after becoming an interest in possession is disposed of or determines wholly or partly, then, whatever the nature of the property in which the interest subsisted the following persons shall be accountable for any estate duty payable on the death by virtue of that section (in addition to any persons accountable therefor apart from this section, that is to say- (a) if the settlement under which the interest subsisted is in existence at the death, the trustees for the time being of that settlement and (b) if it is not, the persons who were the last trustees of that settlement,

(2) Where-

(a) the trustees of a settlement may become accountable for estate duty payable by virtue of Section 11 in respect of any property; and

(b) it is intended that the property or any part thereof shall cease to be comprised in the settlement, then, if the trustees obtain from the Controller a certificate of the amount which, in the opinion of the Controller, may properly be treated as the prospective amount of duty, and give the Controller all the information and evidence required by the Controller in connection with the application for the certificate, no person shall be accountable as trustee of the

settlement for the duty to which the certificate relates to an amount in excess of the amount certified.

(3) It is hereby declared that a person who may become accountable as trustee of a settlement for estate duty payable by virtue of Section 11 on property which is or has been comprised in the settlement has a lien for the prospective amount of the duty and the costs in respect thereof on any property in his hands which is so comprised.

"Whether trustees, beneficiaries and others who have parted with property before death which gives rise to the charge of estate duty remain accountable for that duty was not free from doubt. This new provision which is based on S.44 of the U. K. Finance Act, 1950, settles the question so far as concerns the duty payable under clause 11 by expressly making the trustees of the settlement accountable for the duty whether or not they have parted with the property. As a corollary, sub-clause (2) will enable the trustees to make advance arrangements with the Revenue Authorities for restricting their liability and to recoup themselves in respect of any duty they may have paid by establishing a lien for the prospective duty upon any property remaining in the settlement."-S.C.R.

**55. Every person believed to be in possession to deliver statement of particulars of property as required by Controller :-**

Every person accountable for estate duty, every company to which, in the opinion of the Controller, a transfer of property has been made by the deceased as mentioned in section 17 , every person who is or was at anytime an officer or auditor of such company, and every person whom the Controller believes to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased or of the income of any part of such estate shall, if required by the Controller, deliver to him and verify, to the best of his knowledge and belief, a statement of such particulars together with such accounts, documents, evidence or information as the Controller may require relating to any property which he has reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

**56. Grant of representation, etc., not to be made unless particulars are furnished to the Controller :-**

(1) In all cases in which a grant of representation is applied for-

(a) the executor of the deceased shall, to the best of his knowledge

and belief, specify in an appropriate account annexed to the affidavit of valuation filed in Court under S.191 of the Court-fees Act, 1870, all the property in respect of which estate duty is payable upon the death of the deceased and shall deliver a copy of the affidavit with the account to the Controller; and

(b) no order entitling the applicant to the grant of representation shall be made upon his application until he has delivered the account prescribed in clause (a) and has produced a certificate from the Controller under sub-section (2) of section 57 or section 67 that the estate duty payable in respect of the property included in the account has been or will be paid, or that none is due, as the case may be.

(2) In all cases in which a grant of a succession certificate is applied for, a copy of the application shall be furnished by the applicant to the Controller and no order enabling the applicant to the grant of such a certificate shall be made upon his application until he has produced a certificate from the Controller under sub-section (2) of section 57 or section 67 that the estate duty payable in respect of the property mentioned in the application has been or will be paid, or that none is due, as the case may be.]

**57. Power to make provisional assessment in advance of regular assessment :-**

(1) Estate duty shall be due from the date of the death of the deceased, and the Controller may, at any time after the receipt of account delivered under section 53 or section 56 , proceed to make in a summary manner a provisional assessment of the estate duty payable by the person delivering the account on the basis of the account so delivered.

(2) Upon a provisional assessment being made under sub-section (1), the person so assessed shall pay to the Controller, or furnish security to the satisfaction of the Controller for the payment of, the estate duty, if any, payable on the provisional assessment, and the Controller shall thereupon grant him a certificate that such duty has been or will be paid or that none is due, as the case may be, in respect of the property mentioned in the certificate.

(3) After regular assessment has been made under section 58 , any amount paid towards the provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular

assessment.

(4) No appeal shall lie against a provisional assessment made under sub-section (1), but nothing done or suffered by reason or in consequence of any such provisional assessment shall prejudice the determination on the merits of any issue which may arise in the course of the regular assessment under section 58 .]

**58. Assessment :-**

(1) If the Controller is satisfied without requiring the presence of the person accountable that an account delivered under section 53 or section 56 is correct and complete, he shall assess the principal value of the estate of the deceased, and shall determine the amount payable as estate' duty.

(2) If the Controller is not so satisfied, he shall serve a notice on the person accountable, either to attend in person at his office on a date to be specified in the notice, or to produce, or cause to be produced on that date, any evidence on which the person accountable may rely in support of his account.

(3) The Controller, after hearing such evidence as the person accountable may produce and such other evidence as he may require on any specified points, shall, by order in writing, assess the principal value of the estate of the deceased and determine the amount payable as estate duty.

(4) In any case where no account has been delivered as required by section 53 or section 56 , or the person accountable fails to comply with the terms of the notice served under sub-section (2), the Controller shall make the assessment to the best of his judgment and determine the amount payable as estate duty.]

**59. Property escaping assessment :-**

If the Controller.-

(a) has reason to believe that by reason of the omission or failure on the part of the person accountable to submit an account of the estate of the deceased under section 53 or section 56 or to disclose fully and truly all material facts necessary for assessment, any property chargeable to estate duty has escaped assessment by reason of under- valuation of the property included in the account or of omission to include therein any property which ought to have been included or of assessment at too low a rate or otherwise, or

(b) has, in consequence of any information in his possession, reason to believe notwithstanding that there has not been such omission or failure as is referred to in clause (a) that any property chargeable to estate duty has escaped assessment, whether by reason of under-valuation of the property included in the account or of omission to include therein any property which ought to have been included, or of assessment at too low a rate or otherwise, he may at any time, subject to the provisions of section 73A , require the person accountable to submit an account as required under section 53 and may proceed to assess or re-assess such property as if the provisions of section 58 applied thereto.]

**60. Penalty for default or concealment :-**

(1) If the Controller, the Appellate Controller or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person-

(a) has without reasonable cause failed to deliver the account of the property of the deceased under section 53 or section 56 or to comply with any requisition of the Controller under section 53 or section 59 or has without reasonable cause failed to deliver or submit any of the accounts or statements required under, any of the sections aforesaid within the time allowed and in the manner required; or

(b) has without reasonable cause failed to comply with a notice under sub-section (2) of section 58 ; or

(c) has concealed the particulars of the property of the deceased or deliberately furnished inaccurate particulars thereof; or

(d) being a company referred to in section 20 A , fails without reasonable cause, to pay the amount of estate duty due from the company under that section within the time specified in this behalf; he or it may, by order in writing, direct that- such person shall pay by way of penalty-

(i) in the case referred to in clause (a) or clause (d), in addition to the amount of the estate duty payable by him, a sum of not exceeding twice the amount of such duty: and

(ii) in the case referred to in clause (b) or clause (c), in addition to the amount of estate duty payable by him, a sum not exceeding twice the amount of the estate duty, if any, which would have been

avoided if the principal value shown in the account of such person had been accepted as correct.

(2) No order shall be made under sub-section (1) unless the person concerned has been given a reasonable opportunity of being heard.]

**61. Rectification of mistakes :-**

At any time within five years from the date of any order passed by him or it, the Controller, the Appellate Controller or the Appellate Tribunal may, on his or its own motion rectify any mistake apparent from the record and shall, within a like period rectify any such mistake which has been brought to the notice of the Controller, the Appellate Controller or the Appellate Tribunal, as the case may be, by the person accountable : Provided that no such rectification shall be made which has the effect of enhancing the estate duty payable unless the person accountable has been given a reasonable opportunity of being heard in the matter.]

**62. Appeal against orders of Controller :-**

(1) Any person-

(a) objecting-

(i) to any valuation made by the Controller; or

(ii) to any order made by the Controller determining the estate duty payable under section 58 or section 59 , or

(iii) to any penalty levied by the Controller under section 60 , section 72 or section 84 , or

(iv) to any penalty imposed by the Controller under sub-section (1) of S.46 of the Indian Income-tax Act, 1922, as applied under sub-section (5) of section 73 for the purposes of estate duty, or

(b) denying his liability to the amount of estate duty payable in respect of any property, may, within thirty days of the date of the receipt of the notice of demand under section 73 , appeal to the Appellate Controller in the prescribed form which shall be verified in the prescribed manner: Provided that no appeal shall lie under sub-clause (iv) of clause (a) unless the duty has been paid before the appeal is filed.

(2) The Appellate Controller may admit an appeal after the expiry of the thirty days referred to in sub-section (1) if he is satisfied

that there was sufficient cause for not presenting it within that period.

(3) The Appellate Controller shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing.

(4) The Appellate Controller may-

(a) at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal;

(b) before disposing of an appeal, make such further inquiry as he thinks fit or cause further inquiry to be made by the Controller.

(5) In disposing of an appeal, the Appellate Controller may pass such order as he thinks fit which may include an order enhancing the estate duty or penalty: Provided that no order enhancing the estate duty payable or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(6) The Appellate Controller shall, on the conclusion of the appeal, communicate the order passed by him to the appellant and to the Controller.]

### **63. Appeal to the Appellate Tribunal from the order of the Appellate Controller :-**

(1 ) Any person accountable objecting to any order passed by an Appellate Controller under section 62 , may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order.

(2) The Controller may, if he is not satisfied as the correctness of any order passed by the Appellate Controller under section 62 , appeal to the Appellate Tribunal against such order and such appeal may be made at any time before the expiry of sixty days of the date on which the order is communicated to the Controller.

(3) The Tribunal may admit an appeal after the expiry of the sixty days referred to in sub-sections (1) and (2) if it is satisfied that there was sufficient cause for not presenting it within that period.

(4), be accompanied by a fee of rupees one hundred.

(5) The Appellate Tribunal may, after giving the parties to the

appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such order may include an order enhancing the estate duty payable or penalty:

Provided that no order enhancing the estate duty payable or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(6) Where the appellant objects to the valuation of any property, the Appellate Tribunal may, and if the appellant so requires, shall, refer the question of disputed value to the arbitration of two valuers, one of whom shall be nominated by the appellant and the other by respondent, and the Tribunal shall, so far as that question is concerned, pass its orders under sub-section (5) conformably to the decision of the valuers :

Provided that if there is a difference of opinion between the two valuers, the matter shall be referred to a third valuer nominated by agreement, or failing agreement by the Appellate Tribunal, and the decision of that valuer on the question of valuation shall be final.

(7) The costs of any arbitration proceeding under sub-section (6) shall be borne by the Central Government or the person accountable, as the case may be, at whose instance the question was referred to the valuers :

Provided that where the person accountable has been wholly or partially successful in any reference made at his instance, the extent to which the costs shall be borne by him shall be at the discretion of the Appellate Tribunal.

(8) The valuers may, in disposing of any matter referred to them for arbitration under sub-section (6), hold or cause to be held such inquiry as they think fit, and after giving the appellant and the respondent an opportunity of being heard, pass such orders thereon as they think fit and shall send a copy of such orders to the Appellate Tribunal.

(9) A copy of every order passed by the Appellate Tribunal under this section shall be forwarded to the person accountable and to the Controller.

(10) Save as provided in section 64 any order passed by the Appellate Tribunal on appeal shall be final.

(11) The provisions of sub-sections (5), (7) and (8) of S.5A of the Income tax Act, 1922 shall apply to the Appellate Tribunal in the

discharge of its functions under this Act as they apply to it in the discharge of its functions under that Act.]

**64. Reference to the High Court :-**

(1) Within ninety days of the date upon which he is served with an order under section 63 , the person accountable or the Controller may present an application in the prescribed form and, where the application is by the person accountable, accompanied by a fee of one hundred rupees to the Appellate Tribunal requiring the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall, if in its opinion a question of law arises out of such order, state the case for the opinion of the High Court.

(2) An application under sub-section (1 ) may be admitted after the expiry of the period of ninety days aforesaid if the Appellate Tribunal is satisfied that there was sufficient cause for not presenting it within the said period.

(3) If, on an application made under sub-section (1), the Appellate Tribunal,-

(a) refuses to state a case on the ground that no question of law arises; or

(b) rejects it on the ground that it is time-barred; the applicant may, within three months from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case to the High Court, and on receipt of such requisition the Appellate Tribunal shall state the case:

Provided that, if, in any case where the Appellate Tribunal has been required by a person accountable to state a case the Appellate Tribunal refuses to do so on the ground that no question of law arises, the person accountable may, within thirty days from the date on which he receives notice of refusal to state the case, withdraw the application, and if he does so, the fee paid by him under sub-section (1) shall be refunded to him.

(4) The statement to the High Court shall set forth the facts, the determination of the Appellate Tribunal and the question of law which arises out of the case.

(5) If the High Court is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modifications therein as it may direct.

(6) The High Court, upon hearing any such case, shall decide the question of law raised thereby, and in doing so, may, if it thinks fit, alter the form of the question of law and shall deliver judgment thereon containing the ground on which such decision is founded and shall send a copy of the judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal and the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(7) Where the amount of any assessment is reduced as a result of any reference to the High Court, the amount, if any, over-paid as estate duty shall be refunded with such interest as the Controller may allow unless the High Court on intimation being given by the Controller within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to the Supreme Court, makes an order authorising the Controller to postpone payment of such refund until the disposal of the appeal in the Supreme Court.

(8) The costs of any reference to the High Court shall be in the discretion of the High Court.

(9) S.5 of the Limitation Act, 1908 shall apply to an application to the High Court under this section.

(10) When a case has been stated to the High Court under this section, it shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges:

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.]

## **65. Appeal to the Supreme Court :-**

(1) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a case stated under Section 64 in any

case which the High Court certifies as a fit case for appeal to the Supreme Court

.

(2) Where the judgment of the High Court is varied or reversed on appeal under this section, effect shall be given to the order of the Supreme Court in the manner provided in sub-section (6) of Section 64 .

(3) The High Court may, on application made to it for the execution of any order of the Supreme Court in respect of any costs awarded by it, transmit the order for execution to any Court subordinate to the High Court.]

**66. Grant of representation not to be delayed on reference to High Court :-**

Where any grant of representation has been applied for, it shall not be delayed by reason of any reference to a High Court under Section 64 .

**67. Certificate of payment of estate duty :-**

Where the amount of estate duty determined by the Controller as payable on an assessment made under Section 58 has been paid by the person accountable, the Controller shall, on application by that person, grant to him a certificate to that effect.]

**68. Commutation of duty in respect of interest in expectancy :-**

The Controller in his discretion may, upon application by a person entitled to an interest in expectancy, commute the estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and, for determining that sum, shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three percent and on the receipt of such sum the Controller shall give a certificate accordingly.

**69. Assessment in complicated cases :-**

Where by reason of the number of deaths upon which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of estate duty payable in respect of any property or any interest therein or so to

ascertain the same without undue expense in proportion to the value of the property or interest, the Board, on the application of any person accountable for the duty and upon his giving to the Board all the information in his power respecting the amount of the property and the several interests therein and other circumstances of the case, may by way of composition for all or any of the duties payable in respect of the property or interest and the various interests therein or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed in full payment of all claims for estate duty in respect of such property or interest, and shall give a certificate accordingly.

**70. Controller may allow postponement of payment on terms :-**

(1) Where the Controller is satisfied that the estate duty leviable in respect of any property cannot, without excessive sacrifice, be raised at once, he may allow payment to be postponed for such period,, to such extent, and on payment of such interest not exceeding four per cent or any higher interest yielded by the property, and on such other terms as he may think fit.

(2) Notwithstanding anything contained in sub-section (1), estate duty in respect of immovable property ,may at the option of the person accountable be paid in <sup>1</sup>[four] equal yearly instalments or <sup>2</sup> [eight] equal half-yearly instalments with interest at the rate of four per cent per annum or any higher interest yielded by the property from the date on which the first instalment is payable and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid with such interest to the date of payment may be paid at any time and in case where the property is sold shall be paid on the completion of the sale and if not so paid shall be recovered in the manner specified in Section 73 .

"Where estate duty cannot be raised at once except by sale of property at excessive sacrifice due to adverse market conditions, the Controller is authorised to allow postponement of the recovery of the estate duty on payment of prescribed interest and on such other terms as the Controller may think fit. Power to extend time of payment or to allow payment of the demand in instalment is also exercised by Income-tax Authorities as an administrative measure."-S.O.R. "In the opinion of the Select Committee a provision should be made for allowing executors and accountable

persons reasonable time by the law itself to raise the necessary funds for discharging the liability to duty so that the interest of the heirs or beneficiaries may not be adversely affected and sales of immovable do not become too frequent. Hence the amendment making provision for payment of estate duty by reasonable instalments." S.C.R.

1. Substituted for "eight" by the Estate Duty (Amendment) Act, 1958 (33 of 1958), S. 23 (w.e.f. 1-7-1960).

2. Substituted for "sixteen", the Estate Duty (Amendment) Act, 1958 (33 of 1958).

### **71. Board may remit duty and interest outstanding after twenty years from death :-**

If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the Board may, if it thinks fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon. "This section vests the Board with power to remit the payment of estate duty or any part thereof or any interest thereon in fit cases if the duty remains unpaid after the expiration of 20 years from the date of death. The purpose of this provision is not to burden the administration with a heavy carry forward of uncollectable demands after all steps for realisation have been exhausted. Similar powers to write off irrecoverable demands of income-tax are exercised by the Income-tax Authorities under executive instructions."--S.O.R.

### **72. Forms :-**

All affidavits, accounts, certificates, statements and forms used for the purposes of this part of this Act shall be in such form and contain such particulars as may be prescribed by the Board and, if so required by the Board, shall be in duplicate and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed by the Board and any person who wilfully fails to comply with the provisions of this section <sup>1</sup> [shall be liable to pay by way of penalty a sum not exceeding rupees one thousands provided that no penalty shall be imposed under this section unless the person concerned has been given a reasonable opportunity of being heard.] Amendment made by Act 33 of 1958, Section 24.- "As the original Section 56 of the principal Act is now being replaced, a consequential amendment is necessary in Section 72. The Committee feel that the penalty leviable under S. 72 may be

expressed as not to exceed rupees one thousand and that before any such penalty is levied the person concerned should be given an opportunity of being heard. This new clause (namely, S. 24 of the amending Act) provides for the necessary amendment in Section 72 of the principal Act."-S.C.R., Gaz. of ind., 1958, Extra., Pt. II, S. 2, page 761.

1. Substituted for the words "shall be liable to the penalty mentioned in Section 56" by the Estate Duty (Amendment) Act, 1958 (33 of 1958), Section 24 (w.e.f. 1-7-1960).

### **73. Notice of demand and recovery of duty, penalty, etc :-**

(1) When any estate duty, penalty or interest is due in consequence of any order passed under this Act, the Controller shall serve upon the person accountable or other person liable to pay such duty, penalty or interest a notice of demand in the prescribed form specifying the sum so payable and the time within which it shall be payable.

(2) Any amount specified as payable in a notice of demand issued under sub-section (1) shall be paid within the time, at the place and to the person mentioned in the notice, or if no time is so mentioned, then on or before the first day of the second month following the date of service of the notice and any person accountable failing so to pay shall be deemed to be in default.

(3) Where a person accountable has been assessed in respect of assets located in a country outside India, the laws of which prohibit or restrict the remittance of money to India, the Controller shall not treat the person accountable as in default in respect of that part of the estate duty which is attributable to the assets in that country, and shall continue to treat the person accountable as not in default in respect of that part of the duty until the prohibition or restriction of remittance is removed.

(4) Notwithstanding anything contained in this section, where the person accountable has presented an appeal under section 62 the Controller may in his discretion treat the person accountable as not being in default as long as such appeal has not been disposed of.

(5) The provisions of sub-sections (1), (1 A), (2) (3), (4), (5), (5 A), (6) and (7) of section 46 and S.47 of the Indian Income-tax Act, 1922 , shall apply as if the said provisions were provisions of this Act and referred to estate duty (including estate duty provisionally assessed) and sums imposed by way of penalty or

interest under this Act instead of to income-tax and sums imposed by way of penalty or interest under that Act and to Controller of Estate Duty instead of to Income-tax Officer.]

**73A. Limitation for commencing proceedings for assessment or reassessment :-**

No proceedings for the levy of any estate duty under this Act shall be commenced-

(a) 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; and

(b) in the case of a reassessment, after the expiration of three years from the date of assessment of such property to estate duty under this Act.]

**PART 8**

**CHARGE OF ESTATE DUTY ON PROPERTY AND FACILITIES FOR RAISING IT**

**74. Estate duty a first charge on property liable thereto :-**

(1) Subject to the provisions of section 19 , the estate duty payable in respect of property, movable or immovable, passing on the death of the deceased, shall be a first charge on the immovable property so passing (including agricultural land) in whomsoever it may vest on his death after the debts and encumbrances allowable under Part VI of this Act; and any private transfer or delivery of such property shall be void against any claim in respect of such estate duty.

(2) A rateable part of the estate duty on an estate, in proportion to the value of any beneficial interest in possession inmovable property which passes to any person (other than the legal representative of the deceased) on the death of the deceased shall be a first charge on such interest:

Provided that the property shall not be so chargeable as against a bona fide purchaser thereof for valuable consideration without notice.

(3) The Controller may release the whole or any part of any property, whether movable or immovable, from charge under this section in such circumstances and on such conditions as he thinks fit.

**75. Discharge from estate duty in certain cases :-**

A certificate granted by the Controller under section 67 or by the Board under section 69 , shall discharge the property included therein and the grantee so far as regards that property from any further claim for estate duty but shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts and shall not affect the duty payable in respect of any property afterwards shown to have passed on the death nor any further duty payable by reason thereof in respect of the property included in the certificate: Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a bona fide purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

**76. Person accountable to be repaid by trustees and owners in certain cases :-**

If a person accountable under section 53 pays any part of the estate duty in respect of any property not passing to him, it shall, where occasion requires, be repaid to him by the trustees or owners of the property.

**77. Facilities for paying duty or raising amount already paid :-**

(1) A person authorised or required to pay estate duty in respect of any property shall, for the purposes of paying the duty, or raising the amount of the duty, when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof:

provided that any sum payable under any such sale, mortgage or terminable charge may be paid (to the extent to which such sum or part thereof represents the estate duty payable), not to the person raising the sum but to the Controller at the option of the person from whom the sum is being raised.

(2) A person having an interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge, as if the estate duty in respect of that property had been raised by means of a mortgage to him.

(3) Any money arising from the sale of property comprised in a settlement or held upon trust to lay out upon the trusts of a

settlement may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts.

#### PART 9

#### MISCELLANEOUS

#### **78. Jurisdiction of Courts barred in certain cases :-**

No suit shall be brought in any Civil Court to set aside or modify any estate duty determined under this Act and no prosecution, suit or other proceedings shall lie against <sup>1</sup> [the Government or] any officer of Government for anything in good faith done or intended to be done under this Act.

1. Inserted by the Estate Duty (Amendment) Act, 1958 (33 of 1958), S. 26 (w.e.f. 1-7-1960).

#### **79. Power to take evidence on oath, etc :-**

Every authority specified in sub-section (1) of section 4, other than valuers, shall for the purposes of this Act have the same powers as are vested in a Court under Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:- (a) enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavit; (d) issuing commissions for the examination of witnesses; and any proceeding before any such authority under this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and Section 228 of the Indian Penal Code, 1860

#### **80. Disclosure of Information respecting assessments :-**

Where a person makes an application to the Controller in the prescribed form for any information in respect of any assessment made under this Act, the Controller may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for in respect of that assessment only and his decision in this behalf shall be final and shall not be called in question in any Court of law.

#### **80A. Publication of information respecting accountable persons :-**

(1) If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any accountable persons and any other particulars relating to any proceedings under this Act in respect of such persons, it may cause

to be published such names and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Controller has expired without an appeal having been presented or the appeal, if presented, has been disposed of.]

**81. Arrangements with States to supply information :-**

The Central Government may make arrangements with the Government of any State for exchange of such information as may be necessary for the purposes of levying or realising any estate duty under this Act or under any other law for the time being in force in that State.

**82. Service of notices :-**

Any notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a Court under Code of Civil Procedure, 1908 .

**83. Appearance by authorised representatives :-**

Any person accountable for estate duty who is entitled or required to attend before any authority specified in sub-section (1) of section 4 in connection with any proceeding under this Act, otherwise than when required under section 79 to attend in person, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by that person, or a legal practitioner or a chartered accountant <sup>1</sup> [or any other person having such qualifications as may be prescribed].  
Amendment made by Act XXXIII of 1958, S. 26.- "The Committee consider that as in the Wealth Tax, Gift Tax and Expenditure Tax Acts, a provision should be made authorising the appearance before estate duty authorities of persons who are neither legal practitioners nor accountants but possess such qualifications as may be prescribed....." -S. C. R., Gazette of India. 1958, Extra, Pt. II, Sec. 2, page 761.

1. Substituted for former clause (b) of the Explanation, by the Estate Duty (Amendment) Act, 1958 (33 of 1958).

**84. Companies to furnish particulars of deceased to the Controller :-**

(1) Where a company within the meaning of Companies Act, 1956 ,

has knowledge through any of its principal officers of the death of any member of or debenture-holder in the company, it shall within three months of receipt of intimation of the death, furnish to the Controller such particulars as may be prescribed in respect of the interest of the deceased in the company; and it shall not be lawful for the company to register the transfer of any shares or debentures standing in the name of the deceased unless the transferee has acquired such shares or debentures for valuable consideration or a certificate from the Controller is produced before the company to the effect that the estate duty in respect of such shares or debentures has been paid or will be paid or that none is due, as the case may be.

(2) Where a corporation established by a Central, State or Provincial Act has knowledge through any of its principal officers of the death of any person who is a registered holder of stocks, shares or other securities in the corporation, it shall, within three months of the receipt of intimation of the death, furnish to the Controller such particulars as may be prescribed in respect of the interest of the deceased in the corporation.

(3) Any company or corporation which, without reasonable cause, fails to comply with the provisions of this section shall be liable to pay a penalty of rupees one thousand.]

### **85. Rule-making powers of the Board :-**

(1) Subject to the condition of previous publication and subject to the control of the Central Government, the Board may make rules <sup>1</sup>not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out the purposes of or giving effect to this Act.

(2) The power to make rules conferred by this section shall, on the first occasion of the exercise thereof, include the power to give retrospective effect to the rules or any of them from a date not earlier than the date of the commencement of this Act.

<sup>2</sup> [(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the

successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

1. For the Estate Duty Rules, 1953, see S.R.O.556, dt./-13-2-1954, published in Gazette of India, 1954, Extra, Pt. II, Sec. 3, p. 137. The Rules shall be deemed to have come into force on 15-10-1953; these rules are amended from time to time, e.g., see S. R. O. 1706, dated 22-5-1954, S. O. 747, dated 1-4-1959; S. O. 1619, dated 1-7-1960; G. S. R. 742, dated 14-5-1965; G. S. R. 954, dated 29-6-1964; S. O. 419, dated 24-6-1964; S. O. 1706, dated 22-5-1954; G.S.R. 1810, dated 16-12-1964, etc. For Estate Duty (Controlled Companies) Rules, 1953, the Estate Duty Rules, 1953.
2. Substituted by Estate Duty (Amendment) Act (53 of 1984), S. 5 (23-8-84).

#### SCHEDULE 1

States in which estate duty is leviable on agricultural land

. Bombay Madhya pradesh Orissa Punjab Uttar Pradesh Hyderabad Madhya Bharat Rajasthan Saurashtra All Part C States [Assam] [Bihar] [Travancore-Cochin] [Madras] [Andhra] [Mysore] [Patiala and East Punjab States Union.]
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#### SCHEDULE 2

RATES OF ESTATE DUTY

##### PART

PART 1

##### PART

PART 2