

Khoday Distilleries Ltd. v. Commissioner of Income Tax and another

Civil Appeal No. 6654 of 2008

[2008] 15 SCR 1133 | 2008-11-14

Gift-tax: rights allotment created shares rather than transferring existing property; bonus capitalisation was not a gift by the company.

Gift-tax Act, 1958: sections 2(xii), 2(xxiv) and 4(1)(a) | Companies Act, 1956: section 81, in the renunciation discussion

2-judge bench | S. H. Kapadia, J. | B. Sudershan Reddy, J.

Assessment years: 1987-88

Allotment is distinct from renunciation

The company succeeded on its own gift-tax liability. The Court expressly preserved possible liability of a shareholder renouncing rights for inadequate consideration in an appropriate case; it did not decide those shareholders' assessments.

Historical gift-tax scope

Do not use this AY 1987-88 Gift-tax Act decision as a current exemption for share issues or related-party transactions.

01 FACTS OF THE CASE

For AY 1987-88, the company faced gift-tax assessments on a rights issue and later bonus shares. Twenty of its twenty-seven shareholders did not subscribe to the rights issue, and the company allotted the shares to seven existing investment-company shareholders under a 29 January 1986 resolution. Bonus shares followed in April/May 1986 at the stated 1:23 ratio. The assessing officer treated the difference between the rights shares' asserted value and their face value as a deemed gift and also taxed the bonus issue. The Tribunal found for the company, but the Karnataka High Court reversed it.

Source: [Assessment year, transactions and proceedings: paragraphs 2-4](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court distinguished creating a share by allotment from transferring an existing share. Allotment appropriated previously unappropriated capital, so the company's issue did not transfer existing property to attract the asserted gift-tax charge. Renunciation by a shareholder was different: a valuable existing right might be relinquished for inadequate consideration, potentially engaging section 4(1)(a) against that shareholder. The Department had confused these acts and had not proceeded against the renouncers despite the appellate authority's observations. On bonus shares, the Court explained that capitalising retained profits did not make shareholders donees from the company. It also found Revenue's wealth-tax, income-tax and gift-tax evasion theories inconsistent; that criticism did not adjudicate hypothetical alternative assessments.

Source: [Allotment, renunciation and bonus reasoning: paragraphs 8-16](#)

03 JUDICIAL DECISION

The rights allotment was not a gift by the company under section 2(xii), and the asserted deemed-gift provision did not apply to that allotment. The bonus issue likewise did not make its recipients donees of shares from the company. The Court set aside the High Court's judgment and allowed the company's appeal without an order as to costs.

Source: [Holdings: paragraphs 11-14; final order: paragraph 18](#)

04 OUTCOME / IN WHOSE FAVOUR

The company succeeded against both gift-tax components. The result did not absolve every renouncing shareholder or decide an Income-tax Act charge; the Court distinguished those potential routes from the assessment actually before it.

Source: [Scope and final disposition: paragraphs 16-18](#)

05 AKHB REVIEW POINT

AKHB analysis: identify both the legal act and the proposed taxpayer. Keep the company's creation of new shares separate from a shareholder's transfer or renunciation of an existing right. Preserve the offer, renunciation, subscription and allotment records and the bonus-capitalisation resolution. Apply the statute and valuation rules governing the relevant period; this historical gift-tax result alone cannot clear a present transaction or establish its anti-avoidance position.

Source: [AKHB analysis based on paragraphs 9-16](#)

SOURCE & VERIFICATION

[Supreme Court Reports scan - public eSCR mirror](#)

Full 18-page SCR report read, including the editorial headnotes, the Court's judgment beginning at SCR p.1138 / PDF p.6, and quoted authorities on bonus capitalisation.

Open cited source rendition

Exact source hash and 18-page count match catalogue asset 2008_15_1133_1150; all pages were read.

The SCR report verifies the date, bench, appeal number and AY 1987-88. The catalogue's neutral-citation metadata 2008INSC1299 is not independently certified because it is not printed in this report.

Counsel's general tax-planning submission in paragraph 5 is not elevated into an unrestricted holding; the Court's actual reasons are in paragraphs 7-18.

STATUTORY SCOPE

The judgment applies the historical Gift-tax Act, 1958 to assessment year 1987-88. It does not determine present deemed-income, valuation or anti-avoidance consequences of an allotment, bonus issue or renunciation.

LATER TREATMENT

Source checked 2026-10-10. Comprehensive subsequent treatment and present-law applicability have not been verified; no current citator clearance is represented.

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