DIRECT TAXES CODE BILL, 2009

AT A GLANCE

- The terms 'previous year and 'assessment year' replaced with 'financial year' to eliminate confusion.
- Income for the purposes of this Code will, in general, include all accruals and receipts of revenue and capital nature unless otherwise specified.
- "Income from employment" will be the gross salary on due or receipt basis whichever is earlier including value of perquisites and profits in lieu of salary as reduced by the aggregate amount of the permissible deductions (a) professional tax paid; (b) transport allowance to the extent prescribed; (c) prescribed special allowance or benefit to meet expenses wholly and exclusively incurred in the performance of duties, to the extent actually incurred; (d) compensation under Voluntary Retirement Scheme; (e) amount of gratuity received on retirement or death; (f) amount received on commutation of pension; and (g) pension received by gallantry awardees.
- All perquisites to be included in salary income.
- No deduction in respect of municipal taxes and interest for self-occupied house property whose gross rent is taken as Nil.
- Indefinite carry forward of business losses to be allowed.
- The Securities Transaction Tax will be abolished. Therefore, all capital gains (loss) arising from the transfer of equity shares in a company or units of an equity oriented fund will form part of the computation process.
- Distinction between short-term & long-term capital gains eliminated.
- Any amount exceeding Rs. 20,000 taken or accepted or repaid as loan or deposit otherwise than by account payee cheque or draft shall be deemed to be income from residuary sources and taxed accordingly.
- Any sum received under Life Insurance Policy, including any bonus, shall be exempt from income-tax, provided it is a pure life insurance policy (i.e. the premium payable for any of the years during the term of the policy does not exceed 5 percent of the capital sum assured). Consequently, in all other cases, the sum received under the policy including any bonus, will be taxed as income from residuary sources.
- The Code proposes to introduce the 'Exempt-Exempt-Taxation' (EET) method of taxation of savings. Only new contributions on or after the commencement of this Code will be subject to the EET method of taxation.
- MAT based on value of assets for companies.
- Tax neutral provisions for business re-organizations.
- No preference for either the Code or any DTAA, whichever is later in point of time, shall prevail.

- The Code substitutes profit-linked incentives by a new scheme. Under the new scheme, a person would be allowed to recover all capital and revenue expenditure (except expenditure on land, goodwill and financial instrument) and he would be liable to income-lax on profits made thereafter. The period consumed in recovering all capital and revenue expenditure will be the period of tax holiday. Area-based incentives and profit-linked incentives in the 1961 Act to be grandfathered.
- Liberalised slabs for taxation of individuals.
- Taxation of non-profit organisations rationalised.
- Mutual funds, Venture capital funds, life insurance companies to be treated as pass-thru entities.
- General anti-avoidance rule introduced to combat tax avoidance.
- Provision for advance pricing agreements proposed.
- Amalgamation and demerger provisions rationalized to allow for tax neutral business reorganisalion.

OBJECTS OF THE NEW CODE

- Reduce complexity to reduce compliance costs.
- Broadening of tax base to increase revenue productivity by:
    - Minimizing exemptions
    - Remove ambiguity by rewriting the Code
    - Check tax evasion

SALIENT FEATURES OF THE CODE

- Single Code for all direct taxes and compliance procedures unified.
- Use of simple language. Provisos and Explanations eliminated. Each sub-section in short sentences to convey only one point. Active voice used. Extensive use of formulae and Tables as tax law is a commercial law.
- Delegation of power to Central Govt./CBDT to avoid litigation on procedural issues.
- Essential and general principles in statute. Matters of detail in rules/Schedules.
- Structure of the tax law has been designed so that it is capable of being logically reproduced in a Form.
- Provisions relating to definitions, incentives, procedure and rates of taxes have been consolidated.
- Regulatory function of the taxing statute has been withdrawn.
- All rates of taxes are proposed to be prescribed in the First to Fourth Schedules to the Code itself thereby obviating the need for an annual Finance Bill. The changes in the rates, if any, will be done through appropriate amendments to the Schedule brought before Parliament in the form of an Amendment Bill.

CONCEPT OF INCOME

- Income for the purposes of this Code will, in general, include all accruals and receipts of revenue and capital nature unless otherwise specified.
- Exemptions, if any, have been made on the consideration of positive externalities, encouraging human development and reducing risk, equity and reducing compliance and administrative burden.
- Further, agricultural income has been excluded from the scope of this Code.
- Some exceptions, which are essentially in the nature of deferrals, have also been provided in the Code with a view to mitigating the problem of liquidity.

APPROACH TO TAXING RESIDENTS AND NON-RESIDENTS

- Under the Code, residence-based taxation is applied for residents and source based taxation for non-residents.
- A resident in India will be liable to tax in India on his world-wide income.
- However, a non-resident in India will be liable to tax in India only in respect of accruals and receipts in India (including deemed accruals and receipts).
- The total income of a person will also include the income arising to spouse, minor child and other entities in specified circumstances.
- However, the Second Schedule enumerates incomes that arc exempt from. taxation and these incomes will not form part of the total income.

‘PREVIOUS YEAR’ AND ‘ASSESSMENT YEAR’ DONE AWAY WITH

- In order to simplify the provisions, the separate concepts of ‘previous year’ and ‘assessment year’ will be replaced by a unified concept of ‘financial year’.
- Under the Code, all rights and obligations of the taxpayer and the tax administration will be with reference to the ‘financial year’.

COMPUTATION OF TOTAL INCOME AND RATES OF TAX

- All accruals and receipts in the nature of income, other than those enumerated in the Second Schedule, will be classified into independent sources from which the income is derived. Each of these sources would be a ‘special source’ or an ‘ordinary source’.
- The special sources are sources of income specified in the Fourth Schedule. The income from these sources will be liable to tax at a scheduled rate on gross basis. No deduction is allowed for an expenditure and the gross amount is subject to tax, generally at a lower rate. This is the application of presumptive taxation.
- All other sources of income will be ordinary sources.

Ordinary sources

The accruals or receipts relating to 'ordinary sources' will be further classified under five different heads:

A. Income from employment (presently called 'Salaries')
B. Income from house property
C. Income from business
D. Capital gains
E. Income from residuary sources (presently 'Income from other sources')

A person may have many sources under each head.

The steps for computation of income from ordinary sources is as under:

STEP I - Compute the income in respect of each of these sources. This could either be income or loss (negative income). For example, if a person carries on several businesses, the income from each and every such business will have to be separately computed.

STEP 2 - Aggregate the income from all the sources falling within a head to arrive at the figure of income assessable under that particular head. The result of such computation may be a profit or a loss under that head. The aforesaid two steps will be followed to compute the income under each head.

STEP 3 - Aggregate the income under all the heads to arrive at the 'current income from ordinary sources'.

STEP 4 - Aggregate the current income with the unabsorbed loss at the end of the immediate preceding financial year, if any, to arrive at the 'gross total income from ordinary sources'. If the result of aggregation is a loss, the 'gross total income from ordinary sources' shall be 'nil' and the loss will be treated as the 'unabsorbed current loss from ordinary sources' at the end of the financial year.

STEP 5 - 'Gross total income from ordinary sources', so arrived, will be further reduced by incentives in accordance with sub-chapter 1 of Chapter III. The resultant amount vil1 be 'total income from ordinary sources'.

Special Sources

The steps for computation of income from special sources is as under.

STEP I - Compute the income in respect of each of these special sources in accordance with the provisions of the Fourth Schedule. The income so computed with respect to each of such special sources shall be called 'current income from the special source'.

STEP 2 - Aggregate the 'current income from the special source' with the unabsorbed loss from that special source at the end of the immediate preceding financial year, if any. The result of such aggregation shall be the 'gross total income from the special source'. If the result of aggregation is a loss, the 'gross as total income from the special source' shall be 'nil' and the loss will be treated as the 'unabsorbed current loss from the special source', at the end of the financial year. The 'gross total income from the special source' shall be computed with respect to each of the special sources.

STEP 3 - The gross total income from all such special sources and the result of this addition shall be the 'total income from special sources'.

Total income

- The 'total income from ordinary sources' will be aggregated with the 'total income from special sources' to arrive at the 'total income' of the taxpayer.
- The loss under the head 'Capital gains' shall be ring-fenced and such loss shall not be allowed to be set off against income under other heads. Similarly the loss as from speculative business will also be ring-fenced.
- The losses will be allowed to be indefinitely carried forward for set off again profits in the subsequent financial years.

PROVISIONS FOR AVOIDING DOUBLE TAXATION OR DOUBLE DEDUCTION

The Code will adopt rules to avoid double taxation or double deduction.

CERTAIN EXPENDITURE NOT TO BE ALLOWED

Under the Code, the following expenditure will not be allowed as a deduction in the computation of total income:-

(a) any expenditure attributable to income which does not form part of the total income under this Code and determined in accordance with the method as may be prescribed;

(b) any expenditure incurred for any purpose which is an offence or which is prohibited by law;

(c) any provision made by a person for any unascertained liability.

(d) any expenditure where the source of funds for such expenditure is unexplained;

(e) any expenditure incurred by a non-resident in respect of,-

(i) royalty;
(i) fees for technical services; or
(ii) any income which is liable to tax at the special rate of income-tax specified in Part II of the First Schedule.

DISALLOWANCE OF PAYMENTS IN RESPECT OF WHICH TAX HAS NOT BEEN DEDUCTED AT SOURCE

Under the Code, no deduction shall be allowed (or any payment in respect of which the assessee has failed to deduct tax at source in accordance with the provisions of the Code or having deducted such taxes has failed to pay the same to the Government within the specified time. However, as a general rule, an assessee will be allowed deduction in the year in which the payment is made to the Government. This general rule is subject to the following exceptions:

(i) if the tax has been deducted during the last quarter of the financial year and paid before the due date of filing of tax return for that financial year, the deduction will be allowed in the financial year; and

(ii) if the payment is made more than two years after the end of the financial year in which the tax was deductible at source, no deduction shall be allowed to the assessee.

"INCOME FROM EMPLOYMENT"

• "Income from employment" will be the gross salary on due or receipt basis, whichever is earlier including value of perquisites and profits in lieu of salary as reduced by the aggregate amount of the following permissible deductions:

(a) professional tax paid;

(b) transport allowance to the extent prescribed;

(c) prescribed special allowance or benefit to meet expenses wholly and exclusively incurred in the performance of duties, to the extent actually incurred;

(d) compensation under Voluntary Retirement Scheme;

(e) amount of gratuity received on retirement or death;

(f) amount received on commutation of pension; and

(g) pension received by gallantry awardees.

• The value of rent-free accommodation will be determined for all employees in the same manner as is presently determined in the case of employees in the private sector.

• The new regime of comprehensive taxation of perquisites across employees in all sectors of the economy will improve both the horizontal and vertical equity of the tax system.

INCOME FROM A HOUSE PROPERTY

• Income from a house property, which is not occupied for the purpose of any business or profession by its owner, will be taxed under the head "Income from house property".

• The income from property shall include income from the letting of any buildings along with any machinery, plant, furniture or any other facility if the letting of such building is inseparable from the letting of the machinery, plant, furniture or facility.

• Income from house property shall be the gross rent less specified deductions in the case of a self-occupied property where the gross rent is deemed to be nil, no deduction for taxes or interest will be allowed.

• Gross rent will be the higher of (i) the amount of contractual rent for the financial year; and (ii) the presumptive rent calculated at six per cent per annum of the ratable value fixed by the local authority. However, in a case where ratable value has been fixed, six per cent shall he calculated with reference the cost of construction or acquisition of the property, If the property acquired during the financial year, the presumptive rent shall be calculated for the proportionate period of that financial year. The advance rent will be taxed only in the financial year to which it relates. The gross rent of one self-occupied property will be deemed to be *nil*, as at present. In addition, the gross rent of any one palace in the occupation of a ruler will also be deemed to be *nil*, as at present.

- The following deductions will be admissible against the gross rent:-
  - (i) Amount of taxes levied by a local authority and tax on services, if actually paid.
  - (ii) Twenty percent of the gross rent towards repairs and maintenance.
  - (iii) Amount of any interest payable on capital borrowed for the purposes of acquiring, constructing, repairing, renewing or re-constructing the property.

INCOME FROM BUSINESS

- Every business will constitute a separate source and, therefore, income will be computed separately for each business.
- A business will be treated as distinct and separate from another business if there is no interlacing or interdependence or unity embracing the two businesses.
- The computation of income from business under the Code will be based the income-expenses model where the taxable income under this head will be equal to gross income minus allowable deductions.
- To the extent possible, the items of receipts and deductions for expenses enumerated to reduce the scope for litigation.

The new framework for computation will be as follows:-

(i) All assets will be classified into business assets and investment assets. The business assets will be further classified into business trading assets and business capital assets.

(ii) The income from transactions in all business assets will be computed under the head 'Income from business'. The income from transactions in all investment assets will be computed under the head 'Capital gains'.

(iii) The profits from business will be equal to gross earnings from the business minus the amount of business expenditure incurred.

(iv) Income from business will be equal to the profits from business.

(v) Ordinarily, all accruals and receipts derived from, or connected with, business will form part of the 'gross earnings' irrespective of whether they are derived from business trading assets or business capital assets. These will, inter alia, include the following:

  (a) Profit on sale of business capital assets. (This will no longer be treated as capital gains).

  (b) Profit on sale of an undertaking under a slump sale. (This will no longer be treated as capital gains).

  (c) The reduction or remission of any liability by way of loan, deposit or advance (other than those which are received by an individual from his relative, as defined).

(d) Consideration accrued or received in respect of transfer of any business asset self-generated in the course of the business.

(e) Amount accruing to, or received by, the assessee on account of the cessation, termination or forfeiture of any agreement entered into in the course of business.

(f) Amount accruing to, or received by, the assessee, whether as advance or security deposit or otherwise, from the long term leasing or transfer of the whole or part of, or any interest in, any business asset.

(g) Amount accruing to, or received by, the assessee as reimbursement of any expenditure incurred by him.

(vi) The new items which are to be excluded from 'gross earnings from business' are:-

(a) income by way of interest other than the interest accruing to permitted financial institutions. (This will be treated as income from residuary sources).

(b) income from letting of any property consisting of any building or lands appurtenant thereto, of which the assessee is the owner, other than income from letting of any property in the course of running a hotel, convention centre or cold storage. (This will be treated as income from house property).

(vii) Business expenditure is classified into three mutually exclusive expenditure categories: (i) operating expenditure; (ii) permitted financial charges; and (iii) capital allowances.

(viii) Operating expenditure is defined to include all expenditure laid out or expended wholly and exclusively for the purposes of business. This category covers all expenses which do not fall under 'permitted financial charges' or 'capital allowances'. The provision also contains a positive list of items of business expenditure which shall be treated as operating expenditure and a negative list of items of business expenditure which shall not be treated as operating expenditure.

(ix) Permitted financial charges are defined as expenses on account of interest payable on borrowed capital. These include interest payable to any creditor, discount on bonds/debenture etc. and also other incidental charges payable for obtaining any loan. The deduction in respect of interest payable to banks/financial institutions shall continue to be allowed on 'actually paid basis'.

(x) Capital allowance relates to deduction in respect of capital cost. It includes depreciation and initial depreciation on business assets and allowance for scientific research and development.

(xi) Depreciation on business capital assets will be allowed with reference to the adjusted written down value of the block of assets. The rates of depreciation presently prescribed in the Income-tax Rules will be specified in the Schedule to the Code. Further, the depreciation regime will also be extended to expenses hitherto amortised.

(xii) Scientific research and development allowance will be allowed with reference to expenditure on scientific research and development since such expenditure generates positive externalities. The salient features of the allowance are:

(a) 100 per cent deduction for any revenue expenditure laid out or expended on scientific research related to the business.

(b) 100 per cent deduction for any capital expenditure, other than expenditure on land.

(c) 150 per cent deduction for any expenditure (both revenue and capital) incurred on in-house research and development by a company excluding expenditure on land.

(d) The scope of the weighted deduction of 150 per cent will be extended to all industries.

(e) The term 'scientific research' will be comprehensively defined.

(xiii) Loss on sale of business capital assets, which is treated as capital loss under the 1961 Act, will be treated as intangible asset and depreciation will be allowed at the same rates applicable to the relevant block of assets. Effectively, therefore, a taxpayer will be allowed to set off only a fraction head of the loss every year. This will, accordingly, serve as a disincentive for asset stripping and loss manipulation.

(xiv) The determination of profit of certain businesses on presumptive basis will continue. These include:

(a) Business of civil construction.

(b) Business of supplying labour for civil construction

(c) Business of plying, hiring or leasing of heavy goods vehicle.

(d Business of plying, hiring or leasing of light goods vehicle.

(e) Business of retail trading.

(f) Business of civil construction in connection with a turnkey power project approved by the Central Government in this behalf.

(g) Business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government in this behalf.

(h) Business of providing services or facilities in connection with the prospecting for, or extraction or production of, mineral oil.

(i) Business of supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils.

(j) Business of operation of ships (including an arrangement such as slot charter, space charter or joint charter)

(k) Business of operation of aircraft (including an arrangement such as slot charter, space charter or joint charter)

(xv) Separate income determination regimes are provided for the following:

(a) Business of insurance.

(b) Business of operating a qualifying ship.

(c) Business of mineral oil or natural gas.

(d) Business of generation, transmission or distribution of power.

(e) Business of developing a special economic zone.

(h) Business of operating and maintaining a hospital.

(g) Business of processing, preserving and packaging of fruits or vegetables.

(h) Business of developing, or operating and maintaining, or developing, operating and maintaining, any infrastructure facility.

CAPITAL GAINS

- Income from transactions in all investment assets will be computed under the head Capital gains”.
- Investment asset has been defined to mean any capital asset other than business capital asset.
- Capital gain is the term used for the amount by which the sale price of a capital asset, net of any expense incurred in connection with the sale of the asset, exceeds the acquisition price of the capital asset. Capital gain is a return on investment or a form of compensation for foregoing current consumption opportunities. Since capital gain increases the ability to pay of the person receiving such gain, it should form part of taxable income.
- Special treatment of capital gains to avoid straining of finances and ‘bunching’ of appreciation.
- The gains (losses) arising from the transfer of investment assets will be treated as capital gains (losses). These gains (losses) will be included in the total income of the financial year in which the investment asset is transferred irrespective of the year in which the consideration is actually received. However, in case of compulsory acquisition of an asset, capital gains will be taxed in the year in which the compensation is actually received.
- The present distinction between short-term investment asset and long-term investment asset on the basis of the length of holding of the asset will be eliminated.
- The Securities Transaction Tax will be abolished. Therefore, all capital gains (loss) arising from the transfer of equity shares in a company or units of an equity oriented fund will form part of the computation process.
- The capital gains arising from the transfer of personal effects and agriculture land beyond specified urban limits will be exempt from income-tax.
- In general, the capital gains will be equal to the full consideration from the transfer of the investment asset minus the cost of acquisition, cost of improvement thereof and transfer-related incidental expenses. However, in the case of a capital asset which is transferred any time after one year from the end of the financial year in which it is acquired, the cost of acquisition and cost at improvement will be adjusted on the basis of cost inflation index to reduce the inflationary gains.
- The capital gains from all investment assets will be aggregated to arrive at the total amount of current income from capital gains. This will, then, be aggregated with unabsorbed capital loss at the end of the immediate preceding financial year (unabsorbed preceding year capital loss) to arrive at the total amount of income under the head ‘Capital gains’. If the

result of the aggregation is a loss, the total amount of capital gains will be treated as '*nil*' and the loss wii1 be treated as unabsorbed current capital loss at the end of the financial year.

- The cost of acquisition is generally with reference to the value of the asset or the base date or, if the asset is acquired after such date, the cost at which the asset is acquired. The base date will now be shifted from 1-4-1981 to 1-4-2000. As a result, all capital gains between 1-4-1981 and 31-3-2000 will not be liable to tax.

- A general provision has therefore been made to the effect that the cost of acquisition of an investment asset shall be deemed to be *ni*l if it cannot be determined or ascertained for any reason, and capital gains vil1 be computed accordingly. A similar provision has been provided in respect of cost improvement.

- The benefit of 'rollover' will be available only to the following -

  (a) From agricultural land to one or more pieces of agricultural land.

  (b) From any investment asset transferred any time after one year from the end of the financial year in which the asset is acquired by the assessee, a residential house, if the assessee does not own any residential house, other than the new asset, on the date of transfer of the original asset.

  (c) From any investment asset transferred any time after one year from the end of the financial year in which the asset is acquired by the assessee to deposit in an account maintained under the Capital Gains Savings Scheme.

INCOME FROM RESIDUARY SOURCES

- The income under this head will be equal to the gross residuary income minus the specified deductions. The gross residuary income will comprise of any income which does not form part of any other head of income. Further, the scope of gross residuary income has been broadened to include, *inter alia*, some forms of income without regard to the fact that they may otherwise relate to, or have any incidental nexus with, some other head of income.

- Any amount exceeding Rs. 20,000 taken or accepted or repaid as loan or deposit otherwise than by account payee cheque or draft shall be deemed to be income, and included under this head and taxed accordingly.

- Any sum received under Life Insurance Policy, including any bonus, shall be exempt from income-tax, provided it is a pure life insurance policy. In order to achieve this objective, the Code provides that deduction will be allowed in respect of any sum received under a Life Insurance Policy, including any bonus, only if the premium payable for any of the years during the term of the policy does not exceed 5 per cent of the capital sum assured. Consequently, in all other cases, the sum received under the policy, including any bonus, will be included under this head and taxed accordingly.

TAX EXEMPTIONS UNDER THE CODE

Under the Code, tax exemptions have been rationalized in the following manner-

(a) The source specific exemptions have been separately provided under section 9 read with the Sixth Schedule;

(b) The entity related exemptions have been separately provided under section 10 read with the Seventh Schedule;

(c) Exemptions which relate to specific heads of income have been provided for as deductions under the relevant heads of income;

(d) Non-profit organisations like scientific research associations, news agencies, professional association, welfare fund, education and medical institutions, religious trusts, trade unions, etc. will be allowed concessional tax treatment.

EET METHOD OF TAXING SAVINGS

- The Code proposes to introduce the 'Exempt-Exempt-Taxation' (EET) method of taxation of savings.
- Only new contributions on or after the commencement of this Code will be subject to the EET method of taxation.
- The withdrawal of any amount of accumulated balance as on the 31st day of March, 2011 in the account of the individual in the Government Provident Fund (GPF), Public Provident Fund (PPF), the Recognised Provident Funds (RPFs) and the Employees Provident Fund (EPF) under the Employees Provident Fund and Miscellaneous Act will not be subject to tax.
- Further, the roll-over of any amount received, or withdrawn, from one account with the permitted savings intermediary to any other account with the same or any other permitted savings intermediary will not be treated as withdrawal. Hence, such roll-over will not be subject to tax.
- An individual or HUF will also be allowed deduction for amount paid towards tuition fees for children. The aggregate amount of deduction for payment into the account maintained with any permitted savings intermediary and for tuition fees shall not exceed rupees three hundred thousand.

DEDUCTIONS

- The Code substitutes profit-linked incentives by a new scheme. Under the new scheme, a person would be allowed to recover all capital and revenue expenditure (except expenditure on land, goodwill and financial instrument) and he would be liable to income-tax on profits made thereafter. The period consumed in recovering all capital and revenue expenditure will be the period of tax holiday. The new scheme will apply to the following:-

(a) Business of exploration and production of mineral oil or natural gas.

(b) Business of developing a special economic zone.

(c) Business of generation, transmission or distribution of power.

(d) Business of developing, or operating and maintaining, any infrastructure facility;

(e) Business of operating and maintaining a hospital in any area, other than the excluded area;

(h Business of processing, preservation and packaging of fruits and vegetables.

(g) Business of laying and operating a cross country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of the network;

(h) Business of setting up and operating a cold chain facility; and

(i) Business of setting up and operating a warehousing facility for storage of agricultural produce.

- The Code does not allow area-based exemptions and profit-linked incentives. These exemptions and incentives that are available under the Income-tax Act, 1961 will be grandfathered.

TAXATION OF COMPANIES

- DDT to be retained. Dividends which suffered DDT to be tax-free in shareholder's hands.
- The Code provides for Minimum Alternate Tax calculated with reference to the "value of the gross assets". The shift in the MAT base from book profits to gross assets will encourage optimal utilization of the assets and thereby increase efficiency.
- "Value of gross assets" will be the aggregate of the value of gross block of fixed assets of the company, the value of capital works in progress of the company, the book value of all other assets of the company, as on the last day of the relevant financial year, as reduced by the accumulated depreciation on the value of the gross block of the fixed assets and the debit balance of the profit and loss account if included in the book value of other assets.
- The rate of MAT will be 0.25 per cent of the value of gross assets in the case of banking companies and 2 per cent of the value of gross assets in the case of all other companies. Under the Code, MAT will be a final tax. Hence, it will not be allowed to be carried forward for claiming tax credit in subsequent years.

TAXATION OF UNINCORPORATED BODY

Under the Code, partnership firms, Association of Persons and Body of Individuals will be collectively referred to as "unincorporated body" and their members as "participants". The salient features of the scheme of taxation of unincorporated bodies are as under:-

(a) An unincorporated body will be taxed as a separate entity.

(b) Any salary, bonus, commission or remuneration (by whatever name called), paid/payable to a working participant will be allowed as a deduction.

(c) Any interest paid to any participant will be allowed as a deduction.

(d) The total income of the unincorporated body after allowing deduction for payments referred to in (b) and (c) above will be subject to tax at the maximum marginal

rate applicable to individuals. There will be no threshold exemption limit. However, the share of the participant in the profits of the unincorporated body will be exempt in his hands.

(e) The amount of salary, bonus, commission, remuneration and interest paid to a participant will be taxable in his hands.

(f) The unincorporated body will be entitled to carry forward and set off losses.

(g) In the case of change in the constitution of an unincorporated body on account of death/retirement of a participant, the body will not be entitled to carry forward so much of the loss as is attributable to the deceased/retiring participant.

PASS-THRU STRUCTURE FOR TAXING FINANCIAL INTERMEDIARIES

Under the Code, financial intermediaries like the mutual fund, venture capital fund, pension funds, superannuation funds, provident funds and life insurance companies will be treated as pass-thru entities.

EET METHOD OF TAXING LIFE INSURANCE CONTRIBUTIONS

Based on the principle of pass-thru, the Code provides for rationalization of the tax treatment of life insurance. Under the new scheme, contributions by the insured will be liable to EET method of taxation of savings. As a result, life insurance companies will not be required to pay any tax on the actuarial surplus in the policyholders' account.

NEW TAX RATES FOR INDIVIDUALS

The new tax rate for individual taxpayers can be substantially liberalised to levels indicated below:-

(I) In the case of every individual, other than women and senior citizens,—

		Rates of income-lax
(1)	Where the total income does not exceed Rs. 1,60,000	Nil;
(2)	where the total income exceeds Rs. 1,60,000 but does not exceed Rs. 10,00,000	10 per cent of the amount by which the total income exceeds Rs. 1,60,000;
(3)	where the total income exceeds Rs. 10,00,000 but does not exceed Rs. 25,00,000	Rs. 84,000 plus 20 per cent of the amount by which the income exceeds Rs. 10,00,000
(4)	where the total income exceeds Rs. 25,00,000	Rs. 3,84,000 plus 30 per cent of the exceeds Rs. 25,00,000;

(II) In the case of woman below the age of sixty-five years at any time during **the financial year,-**

		Rates of income-tax
(1)	Where the total income does not exceed Rs. 1,90,000	Nil;
(2)	where the total income exceeds Rs. 1,90,000 but does not exceed Rs. 10,00,000	10 per cent of the amount by which the total income exceeds Rs. 1,90,000;
(3)	where the total income exceeds Rs. 10,00,000 but does not exceed Rs. 25,00,000	Rs. 81,000 plus 20 per cent of the amount by which the income exceeds Rs. 10,00,000
(4)	where the total income exceeds Rs. 25,00,000	Rs. 3,81,000 plus 30 per cent of the exceeds Rs. 25,00,000;

(III) In the case of senior citizens,-

		Rates of income-tax
(1)	Where the total income does not exceed Rs. 2,40,000	Nil;
(2)	where the total income exceeds Rs. 2,40,000 but does not exceed Rs. 10,00,000	10 per cent of the amount by which the total income exceeds Rs. 2,40,000;
(3)	where the total income exceeds Rs. 10,00,000 but does not exceed Rs. 25,00,000	Rs. 76,000 plus 20 per cent of the amount by which the income exceeds Rs. 10,00,000
(4)	where the total income exceeds Rs. 25,00,000	Rs. 3,76,000 plus 30 per cent of the exceeds Rs. 25,00,000;

Similarly, the tax rate for companies (both domestic and foreign) can be substantially reduced to a uniform rate of 25 per cent. However, foreign companies would be required to supplement their corporate tax liability by a branch profits tax of 15 per cent on branch profits (that is, total income, as reduced by the corporate tax). The rates of tax in all other cases can continue at the existing levels.

WEALTH-TAX

The Code proposes to tax net wealth in the following manner:-

(a) Wealth-tax will he payable by an individual, HUF and private discretionary trusts.

(b) Wealth-tax will be levied on net wealth on the valuation date i.e. the last day of the financial year.

(c) Net wealth will be defined as assets chargeable to wealth-tax as reduced by the debt owed in respect of such assets.

(d) Assets chargeable to wealth-tax will mean all assets, including financial assets and deemed assets, as reduced by exempted assets.

(e) The exempted assets will be restricted to the following:-

(i) Assets used as stock-in-trade.

(ii) Any one house or part of a house or a plot of land belonging to an individual or a Hindu undivided family which is acquired or constructed before 1st day of April, 2000;

(iii) The interest of the person in the coparcenary property of any Hindu undivided family of which he is a member;

(iv) The value of any one building used for the residence by a former ruler of a princely state.

(v) Jewellery in possession of a former ruler of a princely state, not being his personal property, which has been recognised as a heirloom by the Central Government before 1st April, 1957 or by the Board after that date.

(vi) Any property held by the person under trust, or other legal obligation, for carrying out any permitted welfare activity in India.

(f) The valuation of financial assets will be at cost or market price, whichever is lower.

(g) The net wealth of an individual or HUF in excess of rupees fifty crore will be chargeable to wealth-tax at the rate of 0.25 per cent.

(h) The threshold limit of rupees fifty crore will not apply to a private discretionary trust.

DUE DATE FOR FILING RETURNS OF TAX BASES

The due date for filing the return of tax bases under the Code will be 30th June of the year following the financial year for all non-business non-corporate taxpayers and 31st August of the year following the financial year for all other taxpayers. The time limit for filing a revised return or a voluntary belated return will be limited to twenty-one months from the end of the relevant financial year.

Taxpayers who do not voluntarily file their returns will be categorized into two categories, namely, stop filer and non-filer. A non-filer is defined as a person who has not filed the return for the relevant financial year and also for two financial years immediately preceding the relevant financial year. A stop filer is a person who has not filed a return for the relevant financial year but has -

(a) filed a return for the financial year immediately preceding the relevant financial year; or

(b) not filed a return in response to a notice calling for the return for the financial year immediately preceding the relevant financial year; or

(c) been assessed for the financial year immediately preceding the relevant financial year.

The Code provides that a notice may be issued to the non-filers and stop filers calling for their return of tax bases. However, such notice shall not be issued after twenty-one months from the end of the relevant financial year.

Under the Code, the selection of cases for scrutiny will be made at a centralized level in accordance with the risk management strategy framed by the Board. This will eliminate all discretionary powers of selection presently vested in the Assessing Officer.

COLLECTION AND RECOVERY OF TAX

No change in the provisions dealing with collection and recovery of tax. The rates of tax deduction at source on payments made to residents are indicated in the Third Schedule and on payments made to non-residents are indicated in the Fourth Schedule.

BUSINESS REORGANISATION

- Reorganisation of a business should, ordinarily, be tax neutral. Hence, the Code contains provisions dealing with reorganisation based on this principle. However, the provisions are subject to such conditions as are necessary to prevent abuse.
- Under the Code, 'business reorganisation' has been defined to mean reorganisation of business of two or more residents, involving an amalgamation or a dernerger. it also includes a merger under a scheme sanctioned and brought into force by the Central Government under the Banking Regulation Act, 1949.
- The term 'amalgamation' has been defined so as to provide for amalgamation of companies, co-operative societies, unincorporated bodies and proprietary concerns. The term 'demerger' has also been defined in the Code. Further, the 'amalgamating' entity and, in the case of a demerger, the 'demerged' entity are referred to as 'predecessor' in a business reorganisation. Similarly, the 'amalgamated' entity and the 'resulting' entity are referred to as 'successor' in a business reorganisation.

(A) Amalgamation

i. Companies

Amalgamation of companies will mean a merger of one or more companies with another company (amalgamated company) or merger of two or more companies to form one company (amalgamated company) subject to the following conditions:-

(a) All the assets and liabilities of the amalgamating company or companies immediately before the amalgamation shall become the property of the amalgamated company.

(b) Shareholders holding seventy-five per cent or more (in value) of the shares in the amalgamating company (other than shares already held by the amalgamated company or

by its nominee) shall become shareholders of the amalgamated company by virtue of the amalgamation.

(c) The scheme of amalgamation shall be in accordance with the provisions of the Companies Act.

The amalgamating and amalgamated companies shall be entitled to the following benefits in the case of business reorganisation through amalgamation:

(a) The transfer of investment assets in amalgamation will not be considered as a transfer for the purposes of capital gains in the hands of the amalgamating company, if the amalgamated company is an Indian company.

(b) The transfer of investment assets (including shares held in an Indian company) by a foreign company to another foreign company in a scheme of amalgamation will not be considered as a transfer for the purposes of capital gains in the hands of the amalgamating company provided the scheme of amalgamation satisfies the conditions applicable to amalgamations contained in the Code.

(c) The exchange of shares in an amalgamating company for shares in the amalgamated company will not be considered as a transfer for the purposes of capital gains in the hands of the shareholders of the amalgamating company, if the amalgamated company is an Indian company.

(d) The accumulated losses of an amalgamating company shall be deemed to be the loss of the amalgamated company in the year which the amalgamation is effected subject to fulfilment of specified conditions.

The aforesaid benefits shall be available to all companies irrespective of the nature of their business.

ii. Sole proprietary concern

Under the Code, a sole proprietary concern may be amalgamated with a company subject to the following conditions:-

(a) All the assets and liabilities of the sole proprietary concern immediately before the amalgamation shall become the assets and liabilities of the company.

(b) The shareholding of the sole proprietor in the company shall be not less than 50 per cent of the total value of the shares in the company.

(c) The sole proprietor shall not receive any consideration or bbenefit, directly or indirectly, in any form or manner other than by way of allotment of shares in the company.

On amalgamation of a sole proprietary concern with a company, the following benefits shall be available:

(a) The transfer of investment assets in an amalgamation will not be considered as a transfer for the purposes of capital gains in the hands of the proprietor, if the company is an Indian company.

(b) The accumulated losses of the sole proprietary business shall be deemed to be the loss of the company in the year in which the amalgamation is effected, subject to fulfilment of specified conditions.

(iii) Unincorporated body

Under the Code, an unincorporated body may be amalgamated with a company subject to the following conditions:

(a) All the assets and liabilities of the unincorporated body immediately before the conversion shall become the assets and liabilities of the company.

(b) The aggregate of the shareholding of the participants of the unincorporated body in the company shall be not less than 50 per cent of the total value of the shares in the company.

(c) The shareholding of the participants of the unincorporated body in the company shall, as regards each other, be in the same proportion in which their capital accounts stood, as regards each other, in the books of the firm on the date of succession/amalgamation.

(d) The participants of the unincorporated body shall not receive any consideration or benefit, directly or indirectly, in any form or manner other than by way of allotment of shares in the company.

On amalgamation of an unincorporated body with a company, the following benefits shall be available:

(a) The transfer of investment assets in the amalgamation will not be considered as a transfer for the purposes of capital gains in the hands of the unincorporated body, if the company is an Indian company.

(b) The accumulated loss of the unincorporated body shall be deemed to be the loss of the company in the year in which the amalgamation is effected, subject to the fulfilment of specified conditions.

(B) Demerger

Demerger in relation to a company shall mean the transfer by a company demerged company) of its undertaking to another company (resulting company) subject to the following conditions:

(a) The entities involved should be companies.

(b) The transfer shall be the transfer of an “undertaking”. Undertaking shall include any part of an undertaking, or a unit or a division of an undertaking, or a business activity taken as a whole, but shall not include the transfer of individual assets or liabilities or any combination thereof not constituting a distinct business activity.

(c) The transfer of the undertaking is on a going concern basis.

(d) All assets and liabilities of the undertaking shall be transferred to the resulting company.

(e) The assets and liabilities of an undertaking transferred to the resulting company shall be valued at the book value as per the provisions of this Code on the date of demerger and such value shall be deemed to be the value of the assets and liabilities entered in the books of account of the resulting company.

(f) The resulting company shall issue shares to the shareholders of the demerged company on a proportionate basis as a consideration for the demerger.

(g) Shareholders holding not less than three-fourths (in value) of the shares in the demerged company (other than shares already held by the resulting company or by its nominee) shall become shareholders of the resulting company by virtue of the dernerger.

(h) The scheme of demerger shall be in accordance with the provisions of the Companies Act.

(i) The transfer is in accordance with such other conditions as may be notified by the Central Government having regard to the necessity to ensure that the transfer is for genuine business purposes.

The companies shall be entitled to the following benefits in the case of business reorganisation through demerger of an undertaking:

(a) The transfer of investment assets in a demerger will not be considered as a transfer for the purposes of capital gains in the hands of the demerged company, if the resulting company is an Indian company.

(b) The transfer of investment assets (including shares held in an Indian company) by a foreign company to another foreign company in a scheme of demerger will not be considered as a transfer for the purposes of capital gains in the hands of the demerged company provided the scheme demerger satisfies the conditions applicable to demergers contained in the Code.

(c) The exchange of shares in a demerged company for shares in the resulting company will not be considered as a transfer for the purposes of capital gains in the hands of the shareholders of the demerged company if demerged company is an Indian company.

(d) The accumulated loss of the undertaking of the demerged company shall be deemed to be the loss of the resulting company in the year in which demerger is effected subject to the fulfilment of specified conditions,

Under the Code, the accumulated losses of the predecessor in a business reorganisation shall be deemed to be the loss of the successor if the successor satisfies the test of continuity of business. This test shall be satisfied upon fulfilment of the following conditions -

(a) The successor holds at least three-fourths of the book value of the fix assets of the predecessor acquired through business reorganisation continuously for a minimum period of five financial years immediately succeeding the financial year in which the business reorganisation taken place;

(b) The successor continues the business of the predecessor for a minimum period of five financial years immediately succeeding the financial year which the business reorganisation takes place; and

(c) Such other conditions as may be prescribed to ensure the revival of the business of the predecessor or to ensure that the business reorganisation is for genuine business purposes.

In a case where the predecessor is a sole proprietary concern or an unincorporated body, the loss of the predecessor will be deemed to be the loss of successor if the following conditions are fulfilled :-

(a) the successor satisfies the test of continuity of business referred to above and

(b) the shareholding of the sole proprietor or the participant, as the case may be, remains fifty per cent or more of the total value of the shares of the successor company at all times during the period of five years immediately succeeding the financial year in which the business reorganisation takes place.

The benefit of set off of the unabsorbed losses of the predecessor, allowed the successor, shall be withdrawn by making appropriate rectification, if any of the conditions referred to above is violated.

NEITHER THE DTAA NOR THE CODE WILL HAVE ANY PREFERENCE OVER THE OTHER

The Code provides that neither a double taxation avoidance treaty nor the Code shall have a preferential status by reason of its being a treaty or law.

Therefore in the case of a conflict between the provisions of a treaty and the provisions of the Code, the one that is later in point of time shall prevail.

GENERAL ANTI-AVOIDANCE RULE (GAAR)

Under the Code, the General Anti-Avoidance Rule (GAAR) will be invoked if the following three conditions are satisfied:-

(a) The taxpayer should have entered into an arrangement.

(b) The main purpose of the arrangement should be to obtain a tax benefit and the arrangement -

(i) has been entered into, or carried out, in a manner not normally employed for bona fide business purposes;

(ii) has created rights and obligations which would not normally be created between persons dealing at arm’s length;

(iii) results, directly or indirectly, in the misuse or abuse of the provisions of this Code; or

(iv) lacks commercial substance, in whole or in part.

Meaning of arrangement, etc.

• An 'arrangement' will mean any transaction, conduit, event, trust, grant, operation, scheme, covenant, disposition, agreement or understanding, including all steps therein or parts thereof, whether enforceable or not. Therefore, if the motive behind individual steps is obtaining a tax benefit, but the overall scheme is not so, the individual steps will nevertheless be treated as an arrangement and the GAAR may be invoked.

• An arrangement will also include any interposition of an entity or transaction where the substance of such entity or transaction differs from the form given to it.

Lack of commercial substance

The lack of commercial substance, in the context of an arrangement, shall be determined, but not limited to, by the following indicators:

(i) The arrangement results in a significant tax benefit for a party but does not have a significant effect upon either the business risks or the net cash flows of that party other than the effect attributable to the tax benefit.

(ii) The substance or effect of the arrangement as a whole differs from the legal form of its individual steps.

(iii) The arrangement includes or involves:

(a) round trip financing;

(b) an 'accommodating party', as defined;

(c) elements that have the effect of offsetting or cancelling each other;

(d) a transaction which is conducted through one or more persons and disguises the nature, location, source, ownership or control of funds; or

(e) an expectation of pre-tax profit which is insignificant in comparison to the amount of the expected tax benefit.

The concepts of 'round trip financing' and 'accommodating party' will be defined in the Code.

Tax consequences of impermissible avoidance arrangements

If the conditions specified above are satisfied, the Commissioner will be empowered to declare the arrangement as an impermissible avoidance arrangement and determine the tax consequences of the assessee as if the arrangement had not been entered into. For this purpose, he may -

(i) Disregard, combine, or recharacterise any steps in, or parts of, the impermissible avoidance arrangement;

(ii) Disregard any accommodating party or treat any accommodating party and any other party as one and the same person;

(ii) Deem persons who are connected persons in relation to each other to be one and the same person for purposes of determining the tax treatment of any amount;

(iv Re-allocate any gross income, receipt or accrual of a capital nature, expenditure or rebate amongst the parties;

(v) Re-characterize any gross income, receipt or accrual of a capital nature or expenditure;

(vi) Re-characterize any multi-party financing transaction, whether in the nature of debt or equity, as a transaction directly among two or more such parties;

(vii) Re-characterize any debt financing transaction as an equity financing transaction or any equity financing transaction as a debt financing transaction;

(viii) Treat the impermissible avoidance arrangement as if it had not been entered into or carried out or in such other manner as in the circumstances the Commissioner may deem appropriate for the prevention or diminution of the relevant tax benefit; or

(ix) Disregard the provisions of any agreement entered into by India with any other country under section 265.

An arrangement declared as an impermissible avoidance arrangement shall be presumed to have been entered into or carried out for the main purpose of obtaining a tax benefit unless the party obtaining the tax benefit proves that obtaining a tax benefit was not the main purpose of the avoidance arrangement.

Under the Vienna Convention, international agreements are to be interpreted in 'good faith'. In case any international agreement/treaty leads to unintended consequences like tax evasion or flow of benefits to unintended person, it is open to the signatory to take corrective steps to prevent abuse of the treaty. Such corrective steps are consistent with the obligations under the Vienna Convention. Further, the OECD Commentary of Article 1 of the Model Tax Convention also clarifies that a general anti-abuse provision in the domestic law in the nature of 'substance over form rule' or 'economic substance rule' is not in conflict with the treaty. The general anti-abuse rule will override the provisions of the tax treaty- The Code provides accordingly.

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Banarsi Dass v. *Wealth-Tax Officer, Special Circle, Meerut*

AIR 1965 SC 1387

P.B. GAJENDRAGADKAR, C.J. – The common question of law which this group of six appeals raises for our decision is whether section 3 of the Wealth-tax Act, 1957 ("the Act"), in so far as it purports to levy a charge of wealth-tax in respect of the net wealth of a Hindu undivided family at the specified rate, is valid. The respective appellants in these appeals who constitute Hindu undivided families were charged under section 3 and they challenged the validity of the said charge on the ground that the said section was ultra vires. Gurtu and Jagdish Sahai JJ. have rejected the appellants' contention and have upheld the validity of the impugned provision. According to Jagdish Sahai J. the impugned section is intra vires, because Parliament had legislative competence to enact the said provision under entry 86, List I of the Seventh Schedule to the Constitution. Gurtu J., who agreed with the said conclusion, however, sustained the impugned provision under entry 97 in List I read with article 248 of the Constitution. Upadhya J. held that neither of the said provisions conferred legislative competence on Parliament to enact the impugned provision and so, he came to the conclusion that the said provision was ultra vires and the charge levied against the appellants was, therefore invalid. In accordance with the majority decision, the writ petitions filed by the respective appellants were dismissed.

The Act was passed in 1957 to provide for the levy of wealth-tax. Section 3 of the Act provides that, subject to the other provisions contained in this Act there shall be charged for every financial year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule. The three constitutional provisions relevant to the decision of the point raised before us in these appeals now be set out.

Entry 86 in List I deals with taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies. Entry 97 in the said List refers to any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists. Article 248 reads thus:

> "(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.
> (2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists."

The appellants contend that the word "individual" used in entry 86 cannot take in Hindu undivided families. The taxes which Parliament is empowered to levy under this entry can be levied only on individuals and not on groups of individuals, and on companies. A Hindu undivided family consists of different coparceners who are, no doubt, individuals, but inasmuch as the impugned provision purports to levy wealth-tax on the capital value of the assets of the Hindu undivided families as such, the tax is not levied on individuals, but on groups of individuals, and therefore, is outside the scope of entry 86. The appellants further urge that if the Hindu undivided families are outside the scope of entry 86, they cannot be

subjected to the levy of wealth tax under entry 97, because entry 97 refers to matters other than those specified in entries 1 to 96 in List I as well as those enumerated in Lists II and III. Since wealth-tax is a matter which is specifically enumerated in entry 86 of List I, entry 97 cannot be held to take in the said tax in respect of Hindu undivided families. In regard to article 248, the appellant's argument is that the said article must be read together with entry 97 in List I, and if wealth-tax in respect of the capital value of the assets of Hindu undivided families is outside both entry 86 and entry 97, the residuary power of legislation conferred on Parliament by article 248 cannot be invoked in respect of the tax imposed on the capital value of the assets of Hindu undivided families by the impugned provisions. That is how the validity of the impugned provision has been challenged before us.

On the other hand, the respondent, the Wealth-tax Officer, seeks to sustain the validity of the impugned provision primarily under entry 86 in List I. It is contended on his behalf that the word "individuals" used in entry 86 is wide enough to take within its sweep groups of individuals and, as such, Hindu undivided families fall within the scope of the area covered by entry 86. In the alternative, it is argued that entry 97, which is a residuary entry, would take in all matters not enumerated in List II or List III including any tax not mentioned in either of those Lists. According to the respondent, the word "matter" mentioned in entry 97 cannot take in taxes specified in entry 86, but it refers to the subject-matter in respect of which Parliament seeks to make a law under entry 97. The subject-matter of the tax imposed by the impugned provision is the capital value of the assets of a Hindu undivided family and if that is held not included in entry 86, it would fall within the scope of entry 97, because it satisfies the requirement specified by the said entry, namely, that the said matter should not have been enumerated in List II or List III. In regard to article 248, the respondent's case is that this article prescribes the residuary power of legislation conferred on Parliament and must be read independently of the Lists. In other words even if the impugned provision cannot be sustained by reference to entry 86 or entry 97 in List I, the power of Parliament to levy the tax imposed by the impugned provision can, nevertheless, be claimed under the provisions of article 248. That, in its broad outlines, is the nature of the controversy between the parties in the present appeals.

Logically, the first question to consider is whether the impugned provision can be referred to entry 86 or not. In construing the word "individuals" used in the said entry, it is necessary to remember that the relevant words used in entries of the Seventh Schedule must receive the widest interpretation. As Gwyer, C.J. has observed in ***United Provinces* v. *Mst. Atiqua Begum*** [(1940) F.C.R. 110, 134], "none of the items in the Lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. I deprecate any attempt to enumerate in advance all the matters which are to be included under any of the more general descriptions; it will be sufficient and much wiser to determine each case as and when it comes before the court."

Another rule of construction which is also well-established is that it may not be reasonable to import any limitation in interpreting a particular entry in the List by comparing the said entry or contrasting it with any other entry in that very List. While the court is determining the scope of the area covered by a particular entry, the court must interpret the

relevant word in the entry in a natural way and give the said words the widest interpretation. What the entries purport to do is to describe the area of legislative competence of the different legislative bodies, and so, it would be unreasonable to approach the task of interpretation in a narrow or restricted manner.

The appellants no doubt contrast entry 86 with entry 82 and contend that the said contrast brings out an element of limitation or restriction which should be imported in construing entry 86. Entry 82 refers to taxes on income other than agricultural income. The argument is that the power to levy taxes on income is not conditioned by reference to individuals or companies; it is an unlimited extensive power. In contrast with this entry, it is urged that limitation is introduced by entry 86, because it seeks to confer power to levy taxes on the capital value of the assets of individuals and companies. The assessees are indicated by this entry, and that itself introduces an element of limitation. The appellants attempt to place their case alternatively by emphasising the fact that the word "individuals" in the context cannot mean companies, because companies are separately and distinctly mentioned; that again, it is said, introduces an element of limitation on the denotation of the word "individuals." "Individuals", therefore, must mean individuals and cannot mean groups of individuals, that is the main contention raised by the appellants. We are not impressed by this argument. It is true that entry 82 does not refer to the assessees, and that is natural because what it purports to do is to recognise the legislative competence of Parliament to levy taxes on income, the only limitation being that the income must be other than agricultural income. Since entry 86 refers to taxes on the capital value of the assets, the Constitution-makers must have thought that it was necessary to specify whose assets should be subject to the taxes contemplated by the entry, and that explains why individuals and companies are mentioned. Since companies are specifically mentioned along with individuals, it may be permissible to contend that companies in the context are not included in the word "individuals," or it may perhaps be that since entry 86 wanted to specify that the taxes leviable under it have to be taxed on the capital of the companies; it was thought desirable that companies should be specified as a matter of precaution along with individuals. However that may be, it is not easy to understand why the word "individuals" cannot take in its sweep groups of individuals like Hindu undivided families. The use of the word "individuals" in the plural is not of any special significance, because under section 13(2) of the General Clauses Act, 1897, words in the singular shall include the plural, and *vice versa*.

The basic assumption on which the appellants' argument rests is that the Constitution-makers wanted to exclude the capital value of the assets of Hindu undivided families from taxes. That is why their contention is that the impugned provision would not be sustained either under entry 86 of under entry 97 of List I or even under article 248. It is difficult to accept this argument. On the face of it, it is impossible to assume that while thinking of levying taxes on the capital value of assets, Hindu undivided families could possibly have been intended to be left out. We can think of no rational justification for making any such assumption. In this connection, it is significant that on the appellants' case, the capital value of the assets of Hindu undivided families would never become the subject-matter of wealth-tax. Hindu undivided families, it is argued, are groups of individuals and, therefore, should be outside entry 86 and individuals who constitute such Hindu undivided families could not

be subjected to the levy of the tax, because the body of coparceners who constitute such Hindu undivided families is a fluctuating body and their shares in the capital assets of their respective families are liable to increase or decrease and cannot be definitely predicated for the accounting year as a whole, unless partition is made. Prima facie, such a position appears to be plainly inconsistent with the scheme of entry 86 and it cannot be upheld unless the words “individuals” is reasonably incapable of including groups of individuals.

It is true that when tax is levied on the capital value of the asses of Hindu undivided families, in a sense the assets of individual coparceners are aggregated, and on the aggregate value a tax is levied; but how the taxes should be levied and at what rate, is a matter for the legislature to decide; that consideration cannot enter into the discussion of the legislative competence of Parliament to enact the law. It is hardly necessary to emphasise that groups of individuals, the capital value of whose assets would be subjected to the payment of wealth-tax, would naturally be groups of individuals who form a unit and who own the said assets together. The fact that the rights of the individuals constituting the group are liable to be decreased or increased does not make any difference when we are dealing with the question as to whether the word “individuals” is wide enough to include groups of individuals. We do not see anything in the context of entry 86 which can be said to introduce an element of restriction or limitation while interpreting the word “individuals.” Ordinarily, individuals would be treated as such and the capital value of their separate assets would be taxed; but if individuals form groups and such groups own capital assets, it is difficult to say why the power to levy taxes on such capital assets should be held to be outside the scope of entry 86.

It is, however, urged that in interpreting the word “individuals”, it would be relevant to take into account the legislative history of tax legislation. Section 3 of the Indian Income-tax Act, 1922 (XI of 1922), is pressed into service for the purpose of this argument. The said section provides, inter alia, that where any Central Act enacts that Income-tax shall be charged for any year at any rate, tax at that rate shall be charged for that year in accordance with the provisions of this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company or local authority, and of every firm and other association of persons or of the partners of the firm or the members of the association individually. The argument is that section 3 recognises that the word “individual” would not include Hindu undivided family, and so, Hindu undivided family has been separately mentioned by it. It is pointed out that the distinction between an individual and a Hindu undivided family has been recognised even in the earlier Income-tax Acts. Section 3(7) of Act II of 1886, for instance, defines a “person” as including a firm and a Hindu undivided family; and section 5(1)(f) of the said Act which provides for exceptions to the charging section 4, refers to any income which a person enjoys as member of a company, or of a firm, or of a Hindu undivided family, when the company, or the firm, or the family is liable to the tax. Basing themselves on the distinction which is made by the Income-tax Acts between an individual and a Hindu undivided family, the appellants contend that the word “individuals” should not be interpreted to include Hindu undivided family.

Assuming that the legislative history in the matter of tax legislation supports the distinction between individuals and Hindu undivided families, we do not see how the said consideration can have a material bearing on the construction of the word “individuals” in

entry 86. The tax legislation may, for convenience or other valid reasons, have made a distinction between individuals and Hindu undivided families; but it would not be legitimate to suggest that the word "individuals" occurring in an organic document like the Constitution must necessarily receive the same construction. Take, for instance, the traditional concept of income as recognised by the tax law. It has been held by this court in ***Navinchandra Mafatlal* v. *Commissioner of Income-tax*** [(1954) 26 ITR 758], that the said traditional concept of income cannot introduce considerations of restriction or limitation in interpreting the word "income" in entry 54 in List I of the Seventh Schedule to the Government of India Act, 1935, which corresponds to entry 82 in List I of the Seventh Schedule to the Constitution. In that case, the validity of the tax levied on capital gains was impeached on the ground that capital gains cannot be regarded as income, and so entry 54 did not justify the levy of the tax on capital gains. In rejecting this contention, this court held that the word "income" occurring in entry 54 must receive the widest interpretation and could, therefore, be interpreted to include a capital gain. In holding that the word "income" includes capital gains, this court observed that the said conclusion was reached not because of any legislative practice either in India or in the United States or in the Commonwealth of Australia, but "because such was the normal concept and connotation of the ordinary English word 'income'. Its natural meaning embraces any profit or gain which is actually received."

Similarly, in ***Navinlal C. Javeri* v. *K.K. Sen, Appellate Assistant Commissioner of Income-tax, Bombay*** [(1965) 56 ITR 198], this court had occasion to consider the validity of section 12(1B) read with section 2(6A)(e) of the Indian Income-tax Act, 1922, as it stood in 1955; the question which was raised for its decision was whether it was competent to Parliament which was raised for its decision was whether it was competent to Parliament to treat a loan advanced to a shareholder of a company as his income. In answering the said question in favour of the impugned provision, this court observed that "though Parliament cannot choose to tax as income an item which in no rational sense can be regarded as a citizen's income, it would, nevertheless be competent to Parliament to levy a tax on a loan received by the shareholder if it was satisfied that the said loan could rationally be construed as his income. In considering this question, however, it would be inappropriate to apply the test traditionally prescribed by the Income-tax Act as such." Therefore, we do not think that the legislative history in the matter of the denotation of the word "individual", on which the appellants rely, can really afford any material assistance in construing the word "individuals" in entry 86.

Reverting then to entry 86, the question which we have to ask ourselves is whether, on a fair and reasonable construction, the word "individuals" in the context of the entry can legitimately be narrowed down to individuals as such and not to include groups of individuals. If the object of making the entry is to enable Parliament to levy taxes on the capital value of the assets, how can it be said to be reasonable to introduce a limitation on the denotation of the word "individuals" and to say that taxes could not be levied on the capital value of the assets which belong to groups of individuals. If the individuals constitute themselves into a group and such group owns capital assets, it is not easy to understand why the value of such assets should not be included within the legislative field covered by entry 86. The Constitution-makers were fully aware that the Hindu citizens of this country normally

form Hindu undivided families and if the object was to levy taxes on the capital value of the assets, it is inconceivable that the word "individuals" was introduced in the entry with the object of excluding from the scope such a large and extensive area which would be covered by Hindu undivided families. We are, therefore, satisfied that the impugned section is valid, because Parliament was competent to legislate in respect of Hindu undivided families under entry 80.

The question has been considered by several High Courts and the reported decisions show consensus in judicial opinion in favour of the construction of entry 86 which we have adopted. We ought to add that these reported decisions show that the validity of the impugned provision was challenged before the High Courts on the ground that the Hindu undivided family is an association and, as such, the capital value of its assets could not be taxed under entry 86. That naturally raised the question about the true legal character and status of Hindu undivided family, and the contention that they were associations has been rejected. Since that argument has not been pressed before us, we have not thought it necessary to consider it.

Before we part with these appeals, we may refer to an earlier decision of this court in which the word "individual" fell to be considered. In ***Commissioner of Income-tax* v. *Sodra Devi*** [(1957) 32 ITR 615], the question which arose for the decision of this court had relation to the construction of section 16(3) of the Indian Income-tax Act, 1922. That sub-section provides that in computing the total income of any individual for the purpose of assessment, there shall be included the items specified in clauses (a) and (b). What is the denotation of the word "individual" was one of the points which had to be considered in that case. According to the majority decision, though the word "individual" is narrower than the word "assessee," it does not mean only a human being, but is wide enough to include a group of persons forming a unit. "It has been held," observed Bhagwati J., who spoke for the majority, "that the word 'individual' includes a corporation created by a statute, e.g., a university or a bar council, or the trustees of baronetcy trust incorporated by a Baronetcy Act. It would also include a minor or a person of unsound mind." We are referring to this case only for the purpose of showing that the word "individual" was interpreted by this court as including a group of persons forming a unit.

Since we have come to the conclusion that entry 86 covers cases of Hindu undivided families, it follows that the impugned provision is valid under the said entry itself. That being so, it is necessary to consider whether the validity of the impugned provision can be sustained under entry 97 or under article 248 of the Constitution.

* * * * *

Sudhir Chandra Nawn v. *Wealth-Tax Officer, Calcutta*

AIR 1969 SC 59

J.C. SHAH, J. – For the years 1959-60, 1960-61 and 1961-62, the petitioner was assessed to tax under the Wealth-tax Act, 1957, by the Wealth-tax Officer, C-Ward, District II(1), Calcutta. The petitioner failed to pay the tax and proceedings for recovery of tax and penalty were taken against him. The petitioner them moved this Court for a writ quashing the order of assessment and penalty and notices of demand for recovery of tax. The petition was sought to be supported on numerous grounds, none of which has, in our judgment, any substance. The plea that wealth-tax is chargeable only on the accretion of wealth during the financial year is contrary to the plain words of the charging section. Section 3 of the Wealth-tax Act, as it stood in the relevant years, declared that there shall be charged for every financial year a tax in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule. The expression "net wealth" is defined in S. 2(m) as meaning "the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in this net wealth as on the date under the Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date, other than ...."

The expression "assets" is defined in Section 2(e) as inclusive of property of every description, movable or immovable but not including agricultural land and growing crops, grass or standing trees on such land. By Section 3 charge is imposed upon the net wealth of an assessee on the corresponding valuation date. The charge thereby imposed is on the "net wealth on the corresponding valuation date" and not on the increase in the wealth of the assessee, or accretion to the wealth of the assessee since the last valuation date.

It was urged that the Parliament could not have intended that the same assets should continue to be charged to tax year after year. But there is no constitutional prohibition against the Parliament levying tax in respect of the same subject-matter or taxing event in successive assessment periods.

The Parliament enacted the Wealth-tax Act in exercise of power under List I of the Seventh Schedule Entry 86 - "Taxes on the capital value of assets, exclusive of agricultural lands, of individuals and companies: taxes on the capital of companies." That was so assumed in the decision of this Court in ***Banarsi Dass*** **v.** ***Wealth-tax Officer, Special Circle, Meerut*** [AIR 1965 SC 1387] and counsel for the petitioner accepts that the subject of Wealth-tax Act falls within the terms of Entry 86, List I of the Seventh Schedule. He says, however, that since the expression "net wealth" includes non-agricultural lands and buildings of an assessee, and power to levy tax on lands and buildings is reserved to the State Legislatures by Entry 49, List II of the Seventh Schedule, the Parliament is incompetent to legislate for the levy of Wealth-tax on the capital value of assets which include non-agricultural lands and buildings. The argument advanced by counsel for the petitioner is wholly misconceived. The tax which is imposed by entry 86, List I of the Seventh Schedule is not directly a tax on lands and buildings. It is a tax imposed on the capital value of the assets of individuals and companies on the valuation date. The tax is not imposed on the components of the assets of the assessee; it is imposed on the total assets which the assessee owns, and in determining the net wealth,

not only the encumbrances specifically charged against any item of asset but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account.

In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets it may be possible to break up the tax which is leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. In such a case, the component out of the total tax attributable to lands and buildings may in the matter of computation bear similarity to a tax on lands and buildings levied on the capital or annual value under entry 49, List II. But the legislative authority of Parliament is not determined by visualizing the possibility of exceptional cases of taxes under two different heads operating similarly on taxpayers.

Again entry 49, List II of the Seventh Schedule contemplates the levy of tax on lands and buildings or both as units. It is normally not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax.

Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under Entry 86 List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49 List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not, in our judgment, make the fields of legislation under the two entries overlapping.

In the case of a tax on lands and buildings, the value, capital or annual would be determined by taking the land or building or both as a unit and subjecting the value to a percentage of tax. In the case of wealth-tax the charge is on the valuation of the total assets (inclusive of lands and buildings) less the value of debts and other obligations which the assessee has to discharge. Merely because in determining the taxable quantum under taxing statutes made in exercise of power under Entries 86, List I and 49, List II, the basis of valuation of assets is adopted, trespass on the field of one legislative power over another may not be assumed.

Assuming that there is some overlapping between the two entries, it cannot on that account be said that the Parliament had no power to legislate in respect of levy of wealth-tax in respect of the lands and buildings which may form part of the assets of the assessee. As observed by Gwyer, C.J. in ***In re Central Provinces and Berar Act No. XIV of 1938*** [AIR 1939 FC 1, 10]:

> "(T)hat a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act and operating in the same field when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning."

Apparently, an entry "taxes on lands and buildings" is a more general entry than the entry in respect of a tax on the annual value of assets of an individual or a company, and by

conferring upon Parliament the power to legislate on capital value of the assets including lands and buildings, the power of the State Legislature was *pro tanto* excluded.

The scheme of Article 246 of the Constitution which distributes legislative powers between the Parliament and State Legislature must be remembered. Article 246 provides:

> "(1) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule.
>
> (2) Notwithstanding anything in Cl. (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule.
>
> (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the 7th Schedule."

Exclusive power to legislate conferred upon Parliament is exercisable, notwithstanding anything contained in Cls. (2) and (3), that is made more emphatic by providing in Clause (3) that the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II of the Seventh Schedule, but subject to Cls. (1) and (2). Exclusive power of the State Legislature has therefore to be exercised subject to Clause (1) i.e. the exclusive power which the Parliament has in respect of the matters enumerated in List I. Assuming that there is a conflict between entry 86, List I and entry 49, List II, which is not capable of reconciliation, the power of Parliament to legislate in respect of a matter which is exclusively entrusted to it must supersede pro tanto the exercise of power of the State Legislature. The problem viewed from any angle is incapable of a decision in favour of the assessee.

The High Courts have consistently taken the view in cases in which the question under discussion expressly fell to be determined, that the power to levy tax on lands and buildings under Entry 49, List II does not trench upon the power conferred upon the Parliament by entry 86, List I, and therefore, the enactment of the Wealth-tax Act by the Parliament is not *ultra vires*. In ***C.K. Mammad Kevi* v. *Wealth-tax Officer, Calicut*** [AIR 1962 Ker 110], the High Court of Kerala held that wealth-tax is specifically and in substance covered by entry 86 of the Union List of the Seventh Schedule to the Constitution of India, and there is really no conflict and no overlapping between the jurisdiction of the Parliament under Entry 86 of the Union List to enact a law levying a tax on the capital value of assets, and of the State Legislature under Entry 49 of the State List, to enact a law levying a tax on lands and buildings.

The plea that Section 7(1) of the Wealth-tax Act is *ultra vires* the Parliament is also wholly without substance. It was urged that no rules were framed in respect of the valuation of lands and buildings. But Section 7 only directs that the valuation of any asset other than cash has to be made subject to the rules. It does not contemplate that there shall be rules before an asset can be valued. Failure to make rules for valuation of a type of asset cannot therefore affect the *vires* of Section 7. No ground is made out for holding that the rate at which wealth-tax is levied is expropriatory.

Union of India v. *Harbhajan Singh Dhillon*

AIR 1972 SC 1061

S.M. SIKRI, C.J. (*Majority*) - This appeal is from the judgment of the High Court of Punjab & Haryana in Civil Writ No. 2291 of 1970 which was heard by a Bench of five Judges. Four Judges held that S. 24 of the Finance Act, 1969 in so far as it amended the relevant provisions of the Wealth Tax Act, 1957, was beyond the legislative competence of Parliament. Pandit J., however held that the impugned Act was intra vires the legislative powers of Parliament. The High Court accordingly issued a direction to the effect that the Wealth Tax Act, as amended by Finance Act, 1969 in so far as it includes the capital value of the agricultural land for the purposes of computing net wealth was ultra vires the Constitution of India.

We may mention that the majority also held that the impugned Act was not a law with respect to entry 49 List II of the Seventh Schedule to the Constitution; in other words, it held that this tax was not covered by entry 49 List II of the Seventh Schedule.

The Wealth Tax Act, 1957, was amended by Finance Act, 1969, to include the capital value of agricultural land for the purposes of computing net wealth. "Assets" is defined in S. 2(e) to include property of every description, movable or immovable. The exclusions need not be mentioned here as they relate to earlier assessment years. "Net wealth" is defined in S. 2(m) to mean "the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, includes assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owned by the assessee on the valuation date" – other than certain debts which are set out in the definition. "Valuation date" in relation to any year for which the assessment is to be made under this Act is defined in S. 2(q) to mean the last day of the previous year as defined in S. 3 of the Income-tax Act, if an assessment were to be made under this Act for that year. We need not set out the proviso here. Section 3 is the charging section.

Section 4 includes certain assets as belonging to the assessee. Section 5 gives certain exemptions in respect of certain assets. We need only reproduce [the relevant part of] S. 5 (iv-a):

> "5 (iv-a) Agricultural land belonging to the assessee subject to a maximum of one hundred and fifty thousand rupees in value.

Section 5(iv-b), 5(viii-a) and 5(ix) read:

> "5 (iv-b) one building or one group of buildings owned by a cultivator of, or receiver of rent or revenue out of agricultural land:
>
> Provided that such building or group of buildings is on or in the immediate vicinity of the land and is required by the cultivator or the receiver of rent or revenue, by reason of his connection with the land, as dwelling-house, store-house or out-house."

"5(viii-a) growing crops (including fruits on trees) on agricultural land and grass on such land."

"(ix) The tools implements and equipment used by the assessee for the cultivation, conservation, improvement or maintenance of agricultural land, or for the raising or harvesting of any agricultural or horticultural produce on such land".

Section 7(1) deals with the evaluation of the assets.

Rest of the provisions are machinery provisions dealing with the authorities, assessment and special provisions dealing with special cases like appeals, revisions, references payment and recovery of wealth tax, refunds and miscellaneous provisions.

The submissions of Mr. Setalvad, appearing on behalf of the Union in brief were these: That the impugned Act is not a law with respect to any entry (including entry 49) in List II, if this is so, it must necessarily fall within the legislative competence of Parliament under entry 86, read with entry 97 or entry 97 by itself read with Art. 248 of the Constitution; the words "exclusive of agricultural land" in entry 86 could not cut down the scope of either entry 97 List I or Art. 248 of the Constitution.

The submissions of Mr. Palkiwala, who appeared on behalf of the respondent in the appeal, and the other counsel for the interveners, in brief were these: It was the scheme of the Constitution to give States exclusive powers to legislate in respect of agricultural land, income on agricultural land and taxes thereon; in this context the object and effect of specifically excluding agricultural land from the scope of entry 86 was also to take it out of the ambit of entry 97 List I and Art. 248; the High Court was wrong in holding that the impugned Act was not a law in respect of entry 49 List II.

It was further urged by Mr. Setalvad that the proper way of testing the validity of a Parliamentary statute under our Constitution was first to see whether the Parliamentary legislation was with respect to a matter or tax mentioned in List II, if it was not, no other question would arise. The learned counsel for the respondent contended that this manner of enquiry had not been even hinted in any of the decisions of this Court during the last 20 years of its existence and there must accordingly be something wrong with this test. He urged that insofar as this test is derived from the Canadian decisions, the Canadian Constitution is very different and those decisions ought not to be followed here and applied to our Constitution.

It seems to us that the best way of dealing with the question of the validity of the impugned Act and with the contentions of the parties is to ask ourselves two questions first is the impugned Act legislation with respect to entry 49 List II and secondly if it is not is it beyond the legislative competence of Parliament.

We have put these questions in this order and in this form because we are definitely of the opinion, as explained a little later, that the scheme of our Constitution and the actual terms of the relevant articles, namely, Art. 246, Art. 248 and entry 97 List I, show that any matter, including tax, which has not been allotted exclusively to the State Legislatures under List II or concurrently with Parliament under List III, falls within List I, including entry 97 of that list read with Art. 248.

It seems to us unthinkable that the Constitution makers, while creating a sovereign democratic republic, withheld certain matters or taxes beyond the legislative competency of the legislatures in this country either legislating singly or jointly. The language of the relevant articles on the contrary is quite clear that this was not the intention of the Constituent Assembly. Chapter I of Part XI of the Constitution deals with "Distribution of Legislative Powers."

Reading Art. 246 with the three lists in the Seventh Schedule, it is quite clear that Parliament has exclusive power to make laws with respect to all the matters enumerated in List I and this notwithstanding anything in clauses (2) and (3) of Art. 246. The State Legislatures have exclusive powers to make laws with respect to any of the matters enumerated in List II, but this is subject to clauses (1) and (2) of Article 246. The object of this subjection is to make Parliamentary legislation on matters in Lists I and III paramount. Under cl. (4) of Art. 246, Parliament is competent also to legislate on a matter enumerated in State List for any part of the territory of India not included in a State. Article 248 gives the residuary powers of legislation to the Union Parliament.

Under Art. 250 Parliament can legislate with respect to any matter in the State List if a proclamation of emergency is in operation. Under Art. 253 Parliament has power to make any law for the whole or part of the territory of India for the purpose of implementing any international treaty, agreement or convention.

This scheme of distribution of legislative power has been derived from the Government of India Act, 1935, but in one respect there is a great deal of difference, and it seems to us that this makes the scheme different insofar as the present controversy is concerned. Under the Government of India Act, the residuary powers were not given either to the Central Legislature or to the Provincial Legislatures. The reason for this was given in the Report of the Joint Committee on Indian Constitutional Reform, Volume I, para 56. The reason was that there was profound cleavage of opinion existing in India with regard to allocation of residuary legislative powers. The result was the enactment of S. 104 of the Government of India Act, which provided:

> "***104. Residual powers of legislation***.- (1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the lists in the Seventh Schedule to this Act including a law imposing a tax not mentioned in any such List and the executive authority of the Federation, or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.
>
> (2) In the discharge of his functions under this section the Governor-General shall act in his discretion."

It appears from para 50 of this report that "the method adopted by the White Paper (following in this respect the broad lines of Dominion Federal Constitutions) is to distribute legislative power between the Central and Provincial Legislatures respectively, and to define the Central and Provincial spheres of government by reference to this distribution" and because of apparently irreconcilable difference of opinion that existed between the great

Indian communities with regard to the allocation of residuary powers, the Joint Committee found itself unwilling to recommend an alteration of the White Paper proposal.

There does not seem to be any dispute that the Constitution makers wanted to give residuary powers of legislation to the Union Parliament. Indeed, this is obvious from Art. 248 and entry 97 List I. But there is a serious dispute about the extent of the residuary power. It is urged on behalf of the respondent that the words “exclusive of agricultural land” in entry 86 List I were words of prohibition prohibiting Parliament from including capital value of agricultural land in any law levying tax on capital value of assets. Regarding entry 97 List I, it is said that if a matter is specifically excluded from an entry in List I, it is apparent that it was not the intention to include it under entry 97 List I; the words “exclusive of agricultural land” in entry 86 by themselves constituted a matter and therefore they could not fall within the words “any other matter” in entry 97 List I. Our attention was drawn to a number of entries in List I, where certain items have been excluded from List I. For example, in entry 82, taxes on agricultural income have been excluded from the ambit of “taxes on income” in entry 84 there is exclusion of duties of excise on alcoholic liquors for human consumption and on opium, Indian hemp and other narcotic drugs and narcotics; in entry 86, agricultural land has been excluded from the field of taxes on the capital value of the assets; in entry 87, agricultural land has again been excluded from the Union Estate duty in respect of property; and in entry 88, agricultural land has been further excluded from the incidence of duties in respect of succession to property. It was urged that the object of these exclusions was to completely deny Parliament competence to legislate on these excluded matters.

It will be noticed that all the matters and taxes which have been excluded, except taxes on the capital value of agricultural land under entry 86 List I fall specifically within one of the entries in List II. While taxes on agricultural income have been excluded from entry 82 List I, they form entry 46 List II, duties of excise excluded in entry 84 List I have been included in entry 51 List II; agricultural land exempt in entry 87 has been incorporated as entry 48 List II; and similarly, agricultural land exempted from the incidence of duties in respect of succession to property has been made the subject mater of duties in respect of succession in entry 47 List II.

It seems to us that from this scheme of distribution it cannot be legitimately inferred that taxes on the capital value of agricultural land were designedly excluded from entry 97 List I. In this connection it is well to remember that the first draft of the 3 lists was attached to the report of the Union Powers Committee dated July 5, 1947 (see Vol. V Constituent Assembly Debates, page 60). List I then consisted of 87 entries and there was no residuary entry. It was on August 1947 that Mr. N. Gopalaswami Ayyangar moved that this report be taken into consideration. At that stage it was evident that in the case of Indian States the residuary subjects were to stay with the Indian States unless they were willing to cede on them to the Centre.

It may be that it was thought that a tax on capital value of agricultural land was included in Entry 49, List II. This contention will be examined a little later. But if on a proper interpretation on Entry 49, List II, read in the light of Entry 86 List I, it is held that tax on the capital value of agricultural land is not included within Entry 49, List II or that the tax imposed by the impugned statute does not fall either in Entry 49, List II or Entry 86, List I. It

would be arbitrary to say that it does not fall within Entry 97, List I. We find it impossible to limit the width of Article 248 and Entry 97, List I by the words “exclusive of agricultural land” in Entry 86, List I. We do not read the words “any other matter” in Entry 97 to mean that it has any reference to topics excluded in Entries 1-96, List I. It is quite clear that the words “any other matter” have reference to matters on which the Parliament has been given power to legislate by the enumerated Entries 1-96, List I and not to mattes on which it has not been given power to legislate. The matter in Entry 86, List I is the whole entry and not the entry without the words “exclusive of agricultural land.” The matter in Entry 86, List I again is not tax on capital value of assets but the whole entry. We may illustrate this point with reference to some other entries. In Entry 9, List I “Preventive Detention for reasons connected with defence, foreign affairs or the security of India” the matter is not Preventive Detention but the whole entry. Similarly, in Entry 3, List III “Preventive Detention for reasons connected with the Security of the State, the maintenance of public order or the maintenance of supplies and services essential to the community” the matter is not preventive detention but the whole entry. It would be erroneous to say that Entry 9, List I and Entry 3, List III deal with the same matter. Similarly, it would we think be erroneous to treat Entry 82, List I (taxes on income other than agricultural income) as containing two matters, one, tax on income, and the other as “other than agricultural income.” It would serve no useful purpose to multiply illustrations.

It seems to us that the function of Article 246(1) read with Entries 1-96, List I, is to give positive power to Parliament to legislate in respect of these entities. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so. Accordingly, we do not interpret the words “any other matter” occurring in Entry 97, List I to mean a topic mentioned by way of exclusion. These words really refer to the matters contained in each of the Entries 1 to 96. The words “any other matter” has to be used because Entry 97, List I follows Entries 1-96, List I. It is true that the field of legislation is demarcated by Entries 1-96, List I, but demarcation does not mean that if Entry 97, List I confers additional powers, we should refuse to give effect to it. At any rate, whatever doubt there may be on the interpretation of Entry 97, List I is removed by the wide terms of Article 248. It is framed in the widest possible terms. On its terms the only question to be asked is: Is the matter sought to be legislated included in List II or in List III or is the tax sought to be levied mentioned in List II or in List III: No question has to be asked about List I. If the answer is in negative then it follows that Parliament has power to make laws with respect to that matter or tax.

We are compelled to give full effect to Article 248 because we know of no principle of construction by which we can cut down the wide words of a substantive article like Article 248 by the wording of an entry in Schedule VII. If the argument of the respondent is accepted, Article 248 would have to be re-drafted as follows:

> “Parliament has exclusive power to make any law with respect to any matter not mentioned in the Concurrent List or State List, provided it has not been mentioned by way of exclusion in any entry in List I.”

We simply have not the power to add a proviso like this to Article 248.

We must also mention that no material has been placed before us to show that it was ever in the mind of anybody, who had to deal with the making of the Constitution, that it was the intention to prohibit all the legislatures in this country from legislating on a particular topic.

In our view the only safe guide for the interpretation of an article or articles of an organic instrument like our Constitution is the language employed, interpreted not narrowly but fairly in the light of the broad and high purposes of the Constitution but without doing violence to the language. To interpret Article 248 in the way suggested by the respondent would in our opinion be to do violence to the language.

It is difficult to escape from the conclusion that in India there is no field of legislation which has not been allotted either to Parliament or to the State Legislatures.

It is true that there are some limitations in Part III of the Constitution on the legislatures in India but they are of a different character. They have nothing to do with legislative competence. If this is the true scope of residuary powers of Parliament, then we are unable to see why we should not, when dealing with a Central Act, enquire whether it is legislation in respect of any matter in List II for this is the only field regarding which there is a prohibition against Parliament. If a Central Act does not enter or invade these prohibited fields there is no point in trying to decide as to under which entry or entries of List I or List III a Central Act would rightly fit in.

We have three lists and a residuary power and therefore it seems to us that in this context; if a Central Act is challenged, as being beyond the legislative competence of Parliament, it is enough to enquire if it is a law with respect to matters or taxes enumerated in List II. If it is not, no further question arises.

In view of this conclusion, we now come to the question i.e. whether the impugned Act is a law with respect to Entry 49, List II, or whether it imposes a tax mentioned in Entry 49 in List II? On this matter we have three decisions of this Court and although these decisions were challenged we are of the opinion that they interpreted Entry 49 List II correctly.

In ***Sudhir Chandra Nawn* v. *Wealth Tax Officer*** (1969) 1 SCR 108, 110, this Court was concerned with the validity of the Wealth Tax Act, 1957, as it originally stood. This Court proceeded on the assumption that the Wealth Tax Act was enacted in exercise of the powers under Entry 86 List I. It was argued before this Court that since the expression "net wealth" includes non-agricultural lands and buildings of an assessee, and power to levy tax on lands and buildings is reserved to the State Legislatures by Entry 49 List II of the Seventh Schedule, Parliament is incompetent to legislate for the levy of wealth-tax on the capital value of assets, which include non-agricultural lands and buildings.

In rejecting this argument the Court observed:

> "The tax which is imposed by entry 86 List I of the Seventh Schedule is not directly a tax on lands and buildings. It is a tax imposed on capital value of the assets of individuals and companies, on the valuation date. The tax is not imposed on the components of the assets of the assessee, it is imposed on the total assets which the assessee owns, and in determining the net wealth not only the encumbrances specifically charged against any item of assets, but the general liability of the

assessee to pay his debts and to discharge his lawful obligations, have to be taken into account ....

Again entry 49 List II of the Seventh Schedule contemplates the levy of tax on lands and buildings or both as units. It is normally not concerned with the division of interest or ownership in the units of lands or building which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee."

It was urged on behalf of the respondent that in ***Asstt. Commr. of Urban Land Tax* v. *The Buckingham & Carnatic Co. Ltd*.** [AIR 1970 SC 169], this Court held that a tax on the capital value of land and buildings could be imposed under entry 49, List II, but it seems to us that this is not a correct reading of that decision. Reliance is placed on the following sentence at page 277:

"We see no reason, therefore, for holding that the entries 86 and 87 of List I preclude the State Legislature from taxing capital value of lands and buildings under Entry 49 of List II."

The above observations have to be understood in the context of what was stated later. Ramaswami, J., later observed in that Judgment as follows:

"The basis of taxation under the two entries is quite distinct. As regards entry 86 of List I, the basis of the taxation is the capital value of the asset. It is not a tax directly on the capital value of asses of individuals, and companies on the valuation date. The tax is not imposed on the components of the assets of the assessee. The tax under entry 86 proceeds on the principle of aggregation and is imposed on the totality of the value of all the assets. It is imposed on the total assets which the assessee owns and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account ... But entry 49 of List II, contemplates a levy of tax on lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings and bears a definite relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of powers under Entry 86 List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under entry 49 List II, the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not make the fields of legislation under the two entries overlapping. The two taxes are entirely different in their basic concept and fell on different subject matters."

In AIR 1970 SC 999 this Court, while considering the validity of the Gift Tax Act, 1958, considered the scope of legislation under entry 49 List II. Hidayatullah, C.J., observed:

"Nor is it possible to read a clear cut division of agricultural land in favour of the States although the intention is to put land in most of its aspects in the State List. But however wide that entry, it cannot still authorise a tax not expressly mentioned."

The Court further observed:

"Since entry 49 of the State List contemplates a tax directly levied by reason of the general ownership of lands and buildings, it cannot include the gift tax as levied by Parliament."

The requisites of a tax under entry 49, List II may be summarised thus:

(1) It must be a tax on units, that is lands and buildings separately as units.

(2) The tax cannot be a tax on totality, i.e. it is not a composite tax on the value of all lands and buildings.

(3) The tax is not concerned with the division of interest in the building or land. In other words, it is not concerned whether one person owns or occupies it or two or more persons own or occupy it.

In short, the tax under entry 49 List II is not a personal tax but a tax on property.

It seems to us that this Court definitely held and we agree with the conclusion that the nature of the wealth tax imposed under the Wealth Tax Act, as originally stood, was different from that of a tax under entry 49, List II, and did not fall under this entry.

In our view the High Court was right in holding that the impugned Act was not a law with respect to entry 49 List II, or did not impose a tax mentioned in entry 49, List II. If that is so, then the legislation is valid either under entry 86, List I, read with entry 97, List I or entry 97 List I standing by itself.

Although we have held that the impugned Act does not impose a tax mentioned in entry 49 List II, we would like to caution that in case the real effect of a Central Act, whether called a Wealth Tax Act or not, is to impose a tax mentioned in entry 49 List II the tax may be held as encroaching upon the domain of State Legislatures.

Although it is not necessary to decide the question whether the impugned Act falls within entry 86 List I read with entry 97 List I, or entry 97 List I alone, as some of our brethren are of the view that the original Wealth Tax Act fell under entry 86 List I, we might express our opinion on that point. It seems to us that there is a distinction between a true net wealth tax and a tax which can be levied under entry 86 List I. While legislating in respect of entry 86 List I, it is not incumbent on Parliament to provide for deduction of debits in ascertaining the capital value of assets. Similarly, it is not incumbent on State Legislatures to provide for deduction of debits while legislating in respect of entry 49 List II. For example, the State Legislature need not, while levying tax under entry 49 List II provide for deduction of debits owed by the owner of the property. It seems to us that the other part of entry, i.e. "tax on the capital of companies" in entry 86 List I also seems to indicate that this entry is not strictly concerned with taxation of net wealth because capital of a company is in one sense a liability of the company and not its asset. Even if it is regarded as an asset, there is nothing in the entry to compel Parliament to provide for deduction of debits. It would also be noticed that entry 86, List I deals only with individuals and companies but net wealth tax can be levied not

only on individuals but on other entities and associations also. It is true that under entry 86 List I aggregation is necessary because it is a tax on the capital value of assets of an individual but it does not follow from this that Parliament is obliged to provide for deduction of debts in order to determine the capital value of assets of an individual or a company. Therefore, it seems to us that the whole of the impugned Act clearly falls within entry 97 List I. We may mention that this Court has never held that the original Wealth Tax Act fell under entry 86 List I. It was only assumed that the original Wealth Tax Act fell within entry 86 List I and on that assumption this entry was analysed and contrasted with entry 49 List II. Be that as it may, we are clearly of the opinion that no part of the impugned legislation falls within entry 86 List I.

However, assuming that the Wealth Tax Act, as originally enacted, is held to be legislation under entry 86 List I, there is nothing in the Constitution to prevent Parliament from combining its powers under entry 86 List I with its powers under entry 97 List I. There is no principle that we know of which debars Parliament from relying on the powers under specified entries 1 to 96, List I and supplement them with the powers under entry 97 List I and Art. 248, and for that matter powers under entries in the Concurrent List.

In conclusion, we hold that the impugned Act is valid. The appeal is accordingly allowed and the judgment and order of the High Court set aside.

J.M. SHELAT J. (*Minority*) - We have had the opportunity of going through the judgment of the learned Chief Justice just delivered, but regret our inability to agree with it.

The Act is designated by its first section – the Wealth Tax Act, 1957. Though it is the substance and not the form or designation which matters, the Act was passed, as conceded by Mr. Setalwad, in exercise of the power contained in Article 246(1) read with Entry 86 of List I. Under Section 3, what was originally charged was the capital value of the net wealth of an assessee, such net wealth having to be arrived at by taking into consideration the total assets excluding the agricultural land held by him as defined by Section 2(e) and Section 2(m). The fact that it is the capital value of the net wealth, computed after deducting from the gross wealth the debts and liabilities of the assessee or the fact that it excluded agricultural land from out of the total assets, prima facie, did not render the tax anything else than the wealth tax as the Parliament legislatively declared it to be. A legislature may, either as a matter of policy or because its power is a restricted one, exclude or not include within the ambit of a tax which it enacts, certain assets and may tax the rest. It may also decide that in fairness and justice to the assessee the tax shall be imposed not on the gross amount but on the net amount arrived at after deducting his debts and liabilities. That fact by itself would not mean that it is a tax any different from what the Legislature itself declares it to be. Fortunately, we do not have to consider in details the nature of the tax contemplated by Entry 86 in List I and that under the impugned Amending Act in the light of works on Public Finance and other allied subjects, as the Act has on more than one occasion been upheld by this Court as one falling under Entry 86 of List I. Even counsel for the Union conceded that the Act as originally passed in 1957 was a tax falling under that entry.

A catena of cases have laid down that the entries of the lists should be construed in a liberal spirit so as to include within each of them all that is subsidiary and incidental to the

power thereunder enumerated. But interpretation of the content and scope of such power, however liberal, cannot be adopted to include within it anything which the entry is in positive terms excludes or restricts. Therefore, when entry 86 was framed, its restrictive terms made it clear that though Parliament would have the power to impose a tax on the capital value of assets, that power was circumscribed so as not to include in the chargeable assets agricultural land.

The reason for such exclusion is to be found in the three lists themselves and the scheme of distribution of fields of legislation and taxation therein. A perusal of the lists indicates that the entire subject of agriculture, including subjects even remotely allied to it, has been left to the States. Thus, entries 82, 86, 87 and 88 in List I dealing with taxes on income, on capital value of assets, estates and succession duties, all uniformly exclude agricultural land. Likewise, entries 6 and 7 in List III dealing with transfer of property and contracts exclude from their fields of operation agricultural land. On the other hand, entry 41 in list dealing with custody, management and disposal of evacuee property expressly includes agricultural land. That is for the obvious reason that, involving as it does Indo-Pakistan relations, such a subject could not be exclusively to the individual States. Entries 14, 18, 28, 30, 45, 46, 47, 48 and 49 in List II, which deals with agriculture and agricultural land, directly or even indirectly, leave power relating to them to the States. Thus tax on agricultural income is left to the States and cannot, therefore, be included in any Income-tax Act enacted by Parliament under entry 82 of List I, by reason of exclusion from that entry of agricultural income although such an Act is on the totality of the assessee's world income, and its inclusion in entry 46 of List II. A similar result is achieved in the matter of a tax on capital value of assets under entry 86 of List I by the exclusion of agricultural land therefrom and its inclusion in entry 49 of List II. It is now fairly well settled that under entry 49 of List II, a State legislature can levy a tax on lands, including agricultural land, on the basis of their capital value. Agricultural lands are likewise excluded in the matter of estate and succession duties from the purview of Parliament's power. Under entries 47 and 48 of List II, the power to impose those duties in respect of agricultural land has been entrusted to the States. The reason for excluding agricultural land from entry 86 of List I is, therefore, clear, viz., that under the scheme of distribution of powers underlying the three lists, agriculture with all its subsidiary and incidental aspects including taxation has been left to be dealt with by the States. That was also done in the 1935 Act, for, entries 54, 55, 56 and 56A of List I there excluded agricultural land from the purview of income-tax, tax on the capital value of assets, duties in respect of succession to property and estate duty leviable thereunder by the Federal Legislature and entries 41, 42, 43 and 43A in List II had allotted that power to the Provincial Legislatures so far as agricultural land was concerned. It is clear that the Constitution has broadly taken and adopted that very principle of distribution while framing the Lists.

If the above analysis is correct and the power to levy a tax on the capital value of agricultural land is not to be found in Art. 246(1) read with entry 86 of List I by reason of exclusion therefrom of agricultural land, the question is, where else is that power located, if at all it is vested in Parliament.

On that question, counsel for the Union urged two contentions. The first was that it is independently located in Art. 248 read with entry 97 of List I. The second was that Article is clearly akin to S. 91 of the British North America Act, 1867, and confers residuary powers on

Parliament with respect to any matter not dealt with in List II or List III. The argument, therefore, was that if a matter is not in either of these two Lists, it must necessarily be held to be with Parliament. Obviously, it cannot be found in List II as that List contains no entry dealing with taxes. Therefore, once it is found that there is no such power in List II, it must necessarily be with Parliament. Since the power to tax on the capital value of all assets including agricultural land is neither in entry 49 of List II nor in entry 86 of List I, the power falls within the residuary power independently granted under Art. 248(2). Mr. Setalvad conceded that ***Nawn*** case [AIR 1969 SC 59] and the two cases following it had been correctly decided in so far as they held that the Wealth Tax Act, as passed in 1957, fell under entry 86 of List I. But he urged that since a tax on the capital value of assets including agricultural land cannot fall under the entry and the States obviously have no power to impose such a tax on the total assets of a person under entry 49 of List II or any other entry in that List, the amending Act must fall under Art. 248(2) and/or entry 97 of List I. Counsel for the respondent refuted the correctness of both the contentions and argued (a) that the power to impose a tax on the capital value of agricultural land is reserved in entry 49 in List II, (b) that the power to impose a tax on the capital value of assets held by a person has been enumerated, mentioned and dealt with in entry 86 of List I, which in doing so expressly excludes agricultural land from its ambit, and that being so, Art. 248(2) providing residuary power cannot be construed to confer a power which, though conferred under a separate entry, has been deliberately, under the scheme of distribution of powers, excluded, and (c) that entry 86 of List I lays down a restriction, which restriction prevents imposition of such a tax including that on agricultural land under any other entry including entry 97 of List I.

Article 248 by its first clause confers on Parliament exclusive power to make a law with respect to any matter not enumerated in List III or List II and by its second clause includes in such power the power of imposing a tax not mentioned in either of those lists. Entry 97 in List I which sets out the field of legislation and taxation under Art. 248 reads as follows:

> "Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

The argument was that the amending Act which deleted the exclusion of agricultural land and thereby included such property within the sweep of the wealth-tax is competent by reason of the fact that the power to impose tax on the capital value of all assets including agricultural land is neither to be found in entry 86 of List I, not in entry 49 of List II, nor in List III, and therefore it falls in entry 97 of List I by reason of the residuary power conferred on Parliament by Art. 248(2).

Such a contention in our opinion is not acceptable. As held in ***Nawn*** case, and the two cases following it, the subject-matter relating to a tax on the aggregate capital value of all the assets of an assessee is located in entry 86 of List I and granted to Parliament. But, while doing so, the framers of the Constitution, presumably on the ground that the entire subject of agriculture had, on their scheme of distribution of power, been allotted to State Legislatures, excluded from the ambit of the power under entry 86 of List I the power to tax on the capital value of agricultural land. Constitution makers may, as a matter of principle or policy, while dealing with or granting power, do so in a qualified or restricted manner. There is no warrant for saying that there must be found vested in one single authority an absolute power to

legislate wholly with respect to a given subject, (Lefray, ***Canadian Federal System*** (1913 ed., p. 97). Indeed, there are several entries in List I such as entries 9, 52, 53, 54, 62, 64 and 80, which confer on Parliament restricted power, either because the topics they deal with are distributed between the Central Legislature and the State Legislatures or because it was thought proper to confer power with restrictions. Thus, entry 9 of List I, which deals with the head of preventive detention, confers power to make a law on that subject only on the grounds of defence, foreign affairs or the security of India, and entry 3 in List III for reasons connected with the security of a State, maintenance of order or maintenance of supplies and services essential to the community. The power to make a law authorising preventive detention is thus restricted to the six reasons set out in the two entries and not for any other reason. The power having been so dealt with, it is impossible to say that matter of preventive detention is not enumerated or that which is excluded therefrom was intended to or must fall under a provision or an entry dealing with residuary power. If counsel for the Union were to be right, the Union can claim the power to make a law for preventive detention on grounds other than those specified in the two entries on the ground that it has residuary power to do so under Article 248 and entry 97, List I. If that were so, there was no point at all in prescribing the reasons in the two entries on which such a law can be enacted by Parliament. The object of providing residuary power was to confer power only in respect of a matter which was not foreseen or contemplated then and which by reason of changed circumstances has arisen and which could not therefore be dealt with when the Lists were framed. To accept the interpretation suggested by counsel for the Union would mean that though the framers of the Constitution deliberately omitted the power with reference to agricultural land while granting it in respect of the rest of the properties, they at the same time nullified that exclusion by providing power for it in the residuary provision. Such a contention cannot be accepted for the reason that no such intention can legitimately be attributed to the Constitution-makers, who clearly had in their minds a scheme of distribution of powers, under which the subject of agriculture including the power of taxation on agricultural land, both on income and on corpus, was handed over to the States.

The Constitution by Art. 246(1) has had already granted exclusive power of legislation and taxation to Parliament in matters set out in entities 1 to 96 in List I. Any State law entrenching in its pith and substance upon a Parliamentary Act would be invalid. Having so provided in respect of List I, the only matters left for legislation would be those in Lists II and III and such of the matters not to be found in those two lists. The last, therefore, could only be the residuary matter in respect of which exclusive power had to be granted to Parliament. This must mean that a field of legislation not dealt with in any of the three lists only could be the subject-matter of residuary power under Article 248. Such a construction of Article 248 is in consonance with the construction given by the Federal Court to S. 104 of the Government of India Act, 1935, following which Art. 248 was framed and also with the words of entry 97 in List I. The words in that entry, viz., "any other matter not enumerated in List II or List III" must mean any matter not being in the entries preceding it, that is, entries 1 to 96 in List I and any matter not enumerated in List II and List III. The residuary power declared by Art. 248, and of which the field is defined in entry 97 of List I, must, therefore, be the power in respect of a field or category of legislation not to be found in any one of the three Lists. Taxes such as the gift tax, the expenditure tax and the Annuity deposit scheme are matters which are not to

be found in any of the three Lists, and therefore, enactments in regard to them would fall, without doubt, under Art. 248 read with entry 97 of List I.

But, can it be said that a tax on the capital value of assets including agricultural land is one such tax, not mentioned in any of the three lists, and therefore, falls under entry 97 of List I? When counsel for the Union opened his case, his contention was that since entry 86 in List I excluded agricultural land therefrom, the field of legislation and tax must be said to be one not enumerated and not mentioned in that list and being a tax on aggregation, conceptually different from one which can be levied by the State under entry 49 in List II, it is also not enumerated in List II, and therefore, that part of it must be said to fall under the residuary entry 97.

The answer to that contention depends on the interpretation which entry 86 in List I bears. In a distributive system of power, whenever a question arises whether a statute is within the power of appropriate legislature, regard must be had to its substance rather than its form. Once it is found that there is power, it can be used by the Federal Legislature in as plenary a manner as if it is a power in a unitary system, subject of course to the express limitations in the Constitution and to the necessary freedom of the States to exercise without interference the powers reserved to them. As stated earlier, constitution-makers while distributing powers, may grant a particular power either absolutely or with qualifications or restrictions. In the latter case, though the power can be acted upon in as plenary a way as possible, it can be exercised subject to restrictions imposed in regard to it. The fact that a power is conferred not in its entirety, but with a restriction upon it, cannot mean that the subject-matter in respect of it has not been dealt with, and therefore, falls under the provision dealing with the residuary matters. If the decision in ***Nawn*** case [AIR 1969 SC 59], and the two decisions following it, were to be adhered to as having been correctly decided, the tax on the capital value of assets of an assessee excluding that of agricultural land falls under entry 86 in List I. In that view, Parliament must be said to have enacted the Wealth Tax Act, 1957 in exercise of its exclusive power under Art. 246(1) read with that entry.

It is possible then to say that by deleting the exclusion of agricultural land by S. 24 of the Finance Act, 1969 and thereby including agricultural land within the purview of S. 3 of the amended Act, the Act ceased to be the Act passed under entry 86 of List I or that it acquired a character different than it had, so that it ceased to fall under Art. 246(1) read with entry 96 of List I. The answer has to be in the negative. The reason is that, as held in ***Nawn*** case, the Act was enacted in pursuance of and under entry 86 of List I, it being an Act levying a tax on the aggregate capital value of all the assets of an assessee barring agricultural land. It was, therefore, passed under Art. 246(1) on a matter enumerated in List I in respect of which Parliament had exclusive power. In deciding the question as to the provision under which it was enacted, the distinction between the subject matter of the Act and the scope of power in respect of it has to be observed. The capital value of the total assets; its scope or field of operation is the capital value of all the assets excluding agricultural land. It is impossible to say that the exclusion of agricultural land in the entry splits the matter into two matters, the permissible and the excluded. The matter is one, viz., the capital value of all assets except that the power in relation to it is restricted by the exclusion therefrom of one kind of asset. Consequently, it is impossible to say that there are two matters, one permissible under entry 86 in List I and the other not enumerated anywhere else and therefore falling under Art. 248

and/or entry 97 in that List. If it were so, as contended, the restriction in entry 86 in regard to agricultural land had no meaning. Such a contention would mean that though the draftsman excluded agricultural land from entry 86 of List I, his intention was to nullify that exclusion by including that exclusion in the same breath in the residuary field in Art. 248 and entry 97.

But, it was said that if the interpretation of entries 86 and 97 in List I, we command, were to be true, it would mean that neither Parliament not the State Legislature can ever levy wealth-tax on the capital value of all the assets including agricultural land held by an assessee. It is true that under entry 86 of List I Parliament cannot include agricultural land within the purview of the tax imposed under that entry. Nor can a State Legislature impose such a tax under entry 49 in List II. This does not mean that a tax on the capital value of agricultural land cannot at all be imposed. Such a power is contained in entry 49, List II. But there is nothing surprising in such a consequence, for, ever in the matter of income-tax, neither of them can impose that tax on the entire income of an assessee. Parliament cannot do so because of the restriction in entry 82 in List I; the States cannot impose such a tax as their power is restricted to agricultural income only under entry 46 in List II. That is also the case in the matter of succession and estate duties. The power of both the Legislatures to make a law or impose a tax on any one of the matters in those entries is restricted, though within the field allocated to each of them, each had a plenary power. The restriction to such a power may, as already stated, be on account of distribution of power in respect of the particular field of legislation between the Union and the State Legislatures or because the topic or field of legislation itself hedged by conditions for reasons of policy. But that does not mean that the excluded or the restricted field in respect of which either both the Legislatures have no power or one or the other has no power, can be said to fall under the provision providing residuary power. Once a topic or a field of legislation is enumerated and dealt with in any one of the entries in one of the Lists, whether the topic is in its entirety or restricted, there is no question of the residuary provision being resorted to on the ground that it operates on the remainder. Such a construction would either nullify the intention to confer power only on the partial field of the topic of legislation in question or set at naught the delicate system of distribution of power effected through the three elaborately worded Lists.

In this view, we are unable to accept the contentions urged on behalf of the Union. The amending Act, in our opinion, fell under Entry 86 of List I, and not under Article 248 and/or Entry 97 of List I. It follows that the impugned Act, by reason of the restricted field in Entry 86, List I, suffered from legislative competence. The majority judgment of the High Court must, consequently, be upheld and the appeal dismissed. We order accordingly but in view of the great importance of the issues involved in the appeal, we think it just that there should be no order as to costs.

[Mitter J. concurred with Sikri C.J., Roy and Palekar JJ. but delivered a separate judgment.]

ORDER

In view of the majority judgments, the appeal is allowed.

* * * * *

Commissioner of Wealth-Tax v. *Dr. Karan Singh*

(1993) 200 ITR 614 (SC)

L.M. SHARMA, CJI – The respondents in these appeals have successfully contended before the High Court that the Wealth-tax Act, 1957, is not applicable to the State of Jammu and Kashmir inasmuch as section 1(2) of the Act, in so far as it extends the Act to Jammu and Kashmir, is ultra vires the power of Parliament. The High Court has upheld their argument that, in view of the special provisions contained in article 370, Parliament had no legislative competence to extend the Act to the State of Jammu and Kashmir.

The provisions in article 370 (only relevant portion) are in the following terms:

> "Temporary provisions with respect to the State of Jammu and Kashmir – (1) Notwithstanding anything in this Constitution, -
>
> (b) the power of Parliament to make laws for the said State shall be limited to:
>
> (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and
>
> (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify ...
>
> (d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify."

By the Presidential Order made under article 370(1) called the Constitution (Application to Jammu and Kashmir) Order, 1954, the provisions of the Constitution of India were applied to the State of Jammu and Kashmir with several exceptions and modifications. The words "Notwithstanding anything in clauses (2) and (3)" occurring in clause (1), and clauses (2), (3) and (4) of article 246 were omitted. Article 248 and entry 97 of List I, List II and List III (Concurrent List) of the Seventh Schedule too were omitted. Thus Parliament was vested with the power to make laws only with respect to the matters enumerated in entries 1 to 96 of List I. The residuary power was retained by the State. According to the respondents, the Act is relatable only and exclusively to entry 97 of List I and since the said entry has no application to the State of Jammu and Kashmir, the application of the Act to their State is incompetent. The High Court has upheld this contention. If the above premise is correct, there is no doubt that these appeals should fail. The appellant, however, submits that the Act, in so far as it applies to the non-agricultural assets, is relatable to entry 86 of List I and not to entry 97. It is common ground that the Act as applied to Jammu and Kashmir does not take in agricultural lands/assets.

Parliament has been vested, by article 246(1) of the Constitution, with the exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule. Entry 86 of the Union List is in the following terms:

"86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies."

The Act as it was initially passed in 1957 did not apply to agricultural land. It was only by an amendment in 1969 that the agricultural land was also brought within the purview of the Act.

The principal question that arises for consideration in these appeals is, to which entry does the Act (minus agricultural land) relate to entry 86 as contended by the appellant or to entry 97 as contended by the respondents?

According to learned counsel for the assessee-respondents, the issue is concluded by the decision of the seven-judge Bench of this court in ***Union of India* v. *Harbhajan Singh Dhillon*** [(1972) 83 ITR 582]. According to them, the decision does lay down in unmistakable terms that the Act is covered by entry 97. Even on the merits, they say, he Act is relatable to entry 97, List I, and not to entry 86 of List I. Learned counsel for the appellants, on the other hand, say that ***Dhillon*** does not lay down any such proposition. According to them, the earlier decisions of the Constitution Benches holding the said Act as relatable to entry 86 are in no manner shaken by ***Dhillon***. They argued further that independent of any decision, the Act is clearly relatable only and exclusively to entry 86, List I. Reliance upon entry 97 of List I is necessary to sustain the extension of the Act to agricultural lands. But, inasmuch as the Act, as applied to the State of Jammu and Kashmir has no application to agricultural lands/assets, entry 97 is irrelevant in the present case, they say.

The Wealth-tax Act, 1957, was passed imposing a tax on the capital value of the net wealth of every individual, Hindu undivided family and company. Section 3 provides for a tax in respect of the net wealth on the corresponding valuation date. The expression "net wealth" has been defined by section 2(m) as the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets on the valuation date is in excess of the aggregate value of all the debts owed by the assessee. Section 2(e) declares "assets" to include property of every description, movable or immovable, excepting agricultural land, *inter alia*. By section 24 of the Finance Act, 1969 (14 of 1969), agricultural land was prospectively included within the ambit of "assets". It would be instructive to examine the decisions of this court dealing with the Act prior to the amendment Act No. 14 of 1969.

In ***Banarsi Dass* v. *WTO*** [(1965) 56 ITR 224 (SC)], the contention raised was that, under entry 86 of List I of the Seventh Schedule, Parliament was competent to levy tax only upon the wealth of individuals but not on the wealth of groups of individuals like Hindu undivided families. It was argued that tax on the wealth of Hindu undivided families cannot also be sustained with reference to entry 97, inasmuch as the said entry refers to matters other than those specified in entries 1 to 96 in List I. Since the wealth tax falls expressly under entry 86, it was argued entry 97 cannot be restored to. Entry 97 reads "any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists." This argument was repelled by a Constitution Bench of this court holding that the word "individuals" in entry 86 takes within its sweep groups of individuals like Hindu undivided families and that there was no basis for placing a restricted meaning upon the word "individuals" in the said

entry. The court reiterated the well-established proposition that none of the items in the legislative Lists of the Constitution is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. Both the parties before the court proceeded on the basis that the Act is relatable to entry 86 alone. This was also the basis of the decision of the court.

In ***Sudhir Chandra Nawn* v. *WTO*** [(1968) 69 ITR 897 (SC)], the constitutional validity of section 7(1) of the Wealth-tax Act was challenged. It was urged by the assessee-petitioners that entry 86 of List I is, really, a tax upon lands and buildings – which tax can be imposed only by the State Legislatures under entry 49 of List II. (Entry 49 of List II reads as follows: "49. Taxes on lands and buildings"). The argument was that the "capital value of the assets" occurring in entry 86 takes in the value of the lands and buildings, and, therefore, Parliament was not competent to levy tax on such assets. This argument was repelled by a Constitution Bench holding that, in the case of wealth-tax, the charge is on the valuation of the total assets (inclusive of lands and buildings) minus the value of debts and other obligations which the assessee has to discharge – whereas, in the case of tax on lands and buildings, the value – capital or annual – would be determined by taking the land or building or both as a unit and subjecting the value of a percentage to tax. It was observed (at page 901): "Merely because in determining the taxable quantum under taxing statutes made in exercise of power under entries 86, List I, and 49, List II, the basis of valuation of assets is adopted, trespass on the field of one legislative power over another may not be assumed." Shah J. held that the power to levy tax on lands and buildings under entry 49, List II, does not trench upon the power conferred upon Parliament by entry 86, List I. Accordingly, the learned judge held that the Wealth-tax Act is not ultra vires the powers of Parliament. The entire decision proceeded on the basis that the Wealth-tax Act is referable to entry 86 of List I.

Now to ***Dhillon*** [(1972) 83 ITR 582 (SC)]. The main contention urged by learned counsel for the respondents calls for a close examination of the judgment to determine the ratio underlying it. As stated hereinbefore, by section 24 of the Finance Act, 1969, agricultural land was included within the meaning of the expression "assets" as defined in the Wealth-tax Act. The validity of the Amending Act was challenged before the High Court of Punjab and Haryana on the ground that Parliament was not competent to levy wealth-tax upon agricultural land inasmuch as entry 86 expressly excludes agricultural land from its purview. The High Court upheld this submission by a majority of 4 to 1. The Union of India filed an appeal before this court, which was heard by a Bench of seven judges. Three judgments were delivered – one by S.M. Sikri C.J., for himself and for S.C. Roy and D.G. Palekar JJ. holding the amendment as valid; the second, a separate but concurring judgment by G.K. Mitter J., and the third (the dissenting opinion) by J.M. Shelat J., on behalf of himself and A.N. Ray and I.D. Dua JJ. The reasoning of Mr. Soli Sorabji, learned counsel for the respondents, runs as follows: Shelat J: (minority opinion) addressed himself pointedly to the question whether entry 86 could be held to cover the enactment in question and the definite conclusion was that it did. Since agricultural land has been excluded from the purview of entry 86 in express terms, he held that entry 97 cannot be relied upon or resorted to to sustain the amendment impugned therein. Accordingly, he concluded that the amending Act was *ultra vires* the

powers of Parliament. Mitter J., on the other hand, declared in unhesitating terms that entry 86 did not cover either the Act as originally enacted or as amended by Act 24 of 1969. Sikri C.J., no doubt, adopted a different approach altogether. According to the learned Chief Justice, it was not really necessary to examine whether the impugned amendment is relatable to entry 86 or entry 97 of List I; the correct approach was to find out whether the impugned Act related to any of the entries in List II; and if it did not, no further enquiry needed to be made and Parliament must be held to be competent to enact the impugned legislation. On this reasoning, the impugned Act was held intra vires Parliament. In view of this finding, it was unnecessary for the learned Chief Justice to go into the question whether the impugned amendment is relatable to entry 86 or entry 97 of List I, but, even then he thought it appropriate to do so as, otherwise, the minority view would have become binding. In this view of the matter, the learned Chief Justice expressly dealt with this issue and held that even the principal Act is relatable only to entry 97 of List I. Particular emphasis is laid on the passage (at page 615 of 83 ITR) at page 73G to page 74E of the judgment published in the Supreme Court Reports. This opinion, supported as it is by the opinion of Mitter J., concludes the issue – says Mr. Sorabjee.

Mr. Sorabjee further contended that whatever has been said in the judgment of Mitter J., must be treated to be the majority view. Describing the views expressed by D.D. Basu on article 141 in his ***Commentary on the Constitution of India*** (6th edition, Volume H, at pages 14 and 15) as the correct approach of interpreting a judgment where the judges holding the majority give independent judgments, Mr. Sorabjee contended that when one of the judges expounds the law on a particular point, but others do not openly dissent from it, it must be taken that all the judges concurring in the majority decision agreed to that exposition. He relied on the following observations from the case of ***Guardians of the Poor of the West Derby Union* v. *Guardians of the Poor of the Atcham Union*** [(1889) 24 QBD 117, 120 (CA)]:

> "We know that each of them considers the matter separately, and then they consider the matter jointly, interchanging their judgment so that every one of them has seen the judgments of the others. If they mean to differ in their view, they say so openly when they come to deliver their judgments, and if they do not do this, it must be taken that each of them agrees with the judgments of the others."

Learned counsel also recommended adoption of the practice followed in England for considering the judgments of the House of Lords indicated in the case of ***Overseers of Manchester* v. *Guardians of Ormskirk Union*** [(1890) 24 QBD 678, 682], in the following terms:

> "Where in the House of Lords one of the learned Lords gives an elaborate explanation of the meaning of a statute, and some of the other learned Lords present concur in the explanation, and none express their dissent from it, it must be taken that all of them agreed in it."

By way of another elaboration, Mr. Sorabjee contended that this principle is applicable even to the views of dissenting judges, unless the majority opinion expressly disagrees with the same. He referred to the decision in ***Rustom Cavasjee Cooper* v. *Union of India*** [(1970) 3

SCR 530], as an illustration of this proposition where the observations in the judgment of Ray J. cannot be treated to be the majority view for the reason that, at page 561G, a reservation was expressed by Shah J. in express terms. The argument, therefore, is that since, in the judgment of Sikri C.J. we do not find any dissent or reservation from the views of Mitter J. on the non-applicability of entry 86 to the Wealth-tax Act, the said view must be treated to be that of all the four judges forming the majority.]

Dr. Gauri Shankar, on the other hand, submitted that the question as to which entry covered the Wealth-tax Act as originally enacted did not arise for decision in the case at all and that the controversy in ***Dhillon*** [(1972) 83 ITR 582 (SC)] was confined to the validity of section 24 of the Finance Act, 1969, in so far as it amended the provisions of the Wealth-tax Act. According to him, the judgment of Sikri C.J. did not finally determine the issue as to which entry covered the main Act. The observations relied upon in the judgment of Sikri C.J. are mere passing observations in the nature of loud thinking. They do not carry the force of precedent. They must be treated as obiter. The Solicitor-General, while adopting the approach of Dr. Gauri Shankar, proceeded further to deal with the principle relating to precedents. He referred to ***Basu's Commentary*** (Volume II at pages 16 and 17) and relied on Stephen (***Commentaries*** Volume I, Page 11) stating:

> "The underlying principle of a judicial decision which forms its authoritative element for the future, is termed ratio decidendi. It is contrasted with an obiter dictum or that part of a judgment which consists of the expression of the judge's opinion on a point of law which is not directly raised by the issue between the litigants."

We have also examined all the three judgments given in ***Dhillon*** case [(1972) 83 ITR 582 (SC)] placed by learned advocates in great detail and analysed at considerable length and since, in our view, the majority judgment cannot be understood to have recorded a concluded opinion on the applicability of entry 86 to the main Wealth-tax Act, we do not think it necessary to deal with the elaborate arguments on the rules for interpreting the judgments. We now proceed to indicate our reasons.

As mentioned earlier, the challenge in ***Dhillon*** case [(1972) 83 ITR 582 (SC)] was limited to section 24 of the Finance Act, 1969, in so far it amended the relevant provisions of the Wealth-tax Act, 1957. Initially, the value of agricultural land was exempt from the charge of wealth-tax. The exemption was withdrawn by this amendment. This was challenged as ultra vires by the assessee, H.S. Dhillon, and the High Court agreed with him. The judgment was appealed against by the Union of India. Mr. Setalvad, appearing in support of the appeal, contended that the impugned Act was not a law with respect to any entry (including entry 49) in List II and, if this was so, it must necessarily fall within the legislative competence of Parliament. He reminded the court that Parliament was competent to legislate with respect to entry 86 read with entry 97 or entry 97 by itself read with article 248 of the Constitution. The argument was being addressed pointedly with reference to the impugned Act, i.e., the Finance Act, 1969. Mr. Setalvad urged (at page 591 of 83 ITR): "that the proper way of testing the validity of a parliamentary statute in our constitution was first to see whether the parliamentary legislation was with respect to a matter or tax mentioned in List II; if it was not, no other question would arise." This approach was taken note of by the judgment of Sikri C.J. in the last paragraph at page 45 and second paragraph at page 46 of the Supreme Court

Reports. The judgment, read as a whole, including the passage which has been relied upon by Mr. Sorabjee, in our view, leads to the irresistible conclusion that Sikri C.J. accepted the line suggested by Mr. Setalvad and, therefore, it did not remain necessary for the learned Chief Justice to express a final opinion as to the particular entry covering the Wealth-tax Act. In the very next paragraph, at page 46 (at page 591 of 83 ITR) Sikri C.J. said:

> "It seems to us that the best way of dealing with the question of the validity of the impugned Act and with the contentions of the parties is to ask ourselves two questions: first, is the impugned Act legislation with respect to entry 49, List II? and, secondly, if it is not, is it beyond the legislative competence of Parliament?"

The learned Chief Justice did not stop at that. He proceeded to say further (at page 591 of 83 ITR):

> "We have put these questions in this order and in this form because we are definitely of the opinion, as explained a little later, that the scheme of our Constitution and the actual terms of the relevant articles, namely article 246, article 248 and entry 97, List I, show that any matter, including tax, which has not been allotted exclusively to the State Legislatures under List II or concurrently with Parliament under List III, falls within List I, including entry 97 of that List, read with article 248."

In his learned judgment, Sikri C.J. considered the constitutional scheme specially with reference to articles 246, 248, 250 and 253 and section 104 of the Government of India Act, 1935. While considering the Constituent Assembly debates and other relevant documents dealing with the process which ultimately led to the making of the Constitution as it was finally adopted, the following interpretation of Dr. B.R. Ambedkar was specifically referred to (at page 601 of 83 ITR):

> "Anything not included in List II or III shall be deemed to fall in List I."

Besides, constitutions of several foreign countries as also many decisions were discussed and the conclusion reached in the following words at page 72G of the Reports (at page 614 of 83 ITR):

> "In our view the High Court was right in holding that the impugned Act was not a law with respect to entry 49, List II, or did not impose a tax mentioned in entry 49, List II. If that is so, then the legislation is valid either under entry 86, List I, read with entry 97, List I, or entry 97, List I, standing by itself."

It was only after arriving at the conclusion finally that the question whether the impugned Act (the Finance Act, 1969) fell within entry 86, List I, read with entry 97, List I, or entry 97, List I, alone, was adverted to; and, while so doing, the fact that it was not necessary to decide this issue was taken note of. Mr. Sorabjee is right in saying that the observations in this part of the judgment from page 73G to page 74E (at page 615 of 83 ITR) were made in view of the judgment of Shelat J. on entry 86, and these observations were critical of the minority view on entry 86, but the respondents before us are failing to appreciate that a critical comment made on a certain statement does not, in the absence of an expression to that effect, necessarily lead to the inference that the converse is true. It may mean that the statement

requires further consideration or that the grounds given in support of the statement are fallacious or inadequate or that the matter requires a fuller examination and until that is done, the assumed correctness of the statement cannot be accepted. The basic rules of interpreting court judgments are the same as those of construing other documents. The only difference is that the judges are presumed to know the tendency of parties concerned to interpret the language in the judgments differently to suit their purpose and the consequent importance that the words have to be chosen very carefully so as not to give room for any controversy. The principle is that, if the language in a judgment is plain and unambiguous and can be reasonably interpreted in only one way, it has to be understood in that sense, and any involved principle of artificial construction has to be avoided. Further, if there be any doubt about the decision, the entire judgment has to be considered, and a stray sentence or a casual remark cannot be treated as a decision. Examined in this light, the judgment of the learned Chief Justice indicates that the main question agitating his mind was: if levy of wealth-tax on agricultural land is not within the purview of List II, if it is not warranted by any entry in List III and if it is also not within the purview of entry 86 of List I, then which is the authority competent to levy it? Evidently, there cannot be a subject-matter or tax which no Legislature under the Constitution can levy. Accordingly, he held, the said tax is warranted by entry 97 of List I read with article 248. The question whether the Wealth-tax Act (without reference to the impugned Finance Act, 1969) falls within entry 86 did not arise for consideration and was not answered but left undetermined, by the learned Chief Justice, though Mitter J., did certainly express himself on it. A reference to other parts of the very passage relied upon by Mr. Sorabjee, as indicated below, will be helpful.

After pointing out two or three features which, in the opinion of Sikri C.J., were inconsistent with the view of Shelat J., the judgment stated (at page 615 of 83 ITR):

> "Therefore, it seems to us that the whole of the impugned Act clearly falls within entry 97, List I."

Even at the cost of repetition, we would like to point out that the impugned Act was the 1969 Amendment Act. The distinction between the Amendment Act and the original Wealth-tax Act was always present in the mind of the learned Chief Justice as is clear from the very next sentence, which reads thus (at page 615 of 83 ITR):

> "We may mention that this court has never held that the original Wealth-tax Act, fell under entry 86, List I. It was only assumed that the original Wealth-tax Act fell within entry 86, List I, and on that assumption this entry was analysed and contrasted with entry 49, List II."

Mr. Sorabjee laid great emphasis on the above sentence and urged that an inference should be drawn therefrom about the majority view holding that entry 86 was not attracted. We do not agree with him. In his judgment Shelat J. had referred to several decisions in favour of holding entry 86 applicable and the last sentence quoted above was only a comment on that part of the judgment. Besides, there is further indication given in the very next sentence, which in our view, reiterates the conclusion already reached and recorded at page 72G (quoted above) and that is in the following words (at page 615 of 83 ITR):

"Be that as it may, we are clearly of the opinion that no part of the *impugned legislation* falls within entry 86, List I."

In the next paragraph, the permissibility of Parliament combining its powers under entry 86 with its powers under entry 97 was considered and answered in the affirmative. This was apparently the conclusion made at page 72G (quoted above) that the legislation should be held to be valid under entry 86, List I, read with entry 97, List I.

We, therefore, interpret the judgment of Sikri C.J. (on behalf of himself and two other learned judges) as holding that:

(i) the proper way of testing the validity of a parliamentary statute under our Constitution was first to see whether the parliamentary legislation was with respect to a matter of tax mentioned in List II; if it was not, no other question will arise;

(ii) the impugned Act was not a law with respect to entry 49, List II, or for that matter any other entry in that List;

(iii) consequently, the legislation (that is the 1969 Amendment Act) was valid either under entry 86, List I, read with entry 97, List I, or entry 97, List I, standing by itself;

(iv) it was not necessary to decide the question whether the impugned Act fell within entry 86, List I, read with entry 97, List I, or entry 97, List I, alone;

(v) there were several fallacies in the reasoning of the minority judgment holding entry 86, applicable, and the assumption made therein that the question was settled earlier by this court was not correct;

(vi) be that as it may, so far as the impugned legislation (the 1969 Amendment Act) was concerned, it did not fall within entry 86;

(vii) there is nothing in the Constitution to prevent Parliament from combining its powers under entry 86, List I, with its powers under entry 97, List I.

We, therefore, hold that the issue, whether the Wealth-tax Act, 1957, falls in entry 86 or not, was not finally decided in the judgment of Sikri C.J., and was left open for the future when such occasion may arise. While so doing, certain observations critical to the views of Shelat J. were expressed but merely on account of this, ***Dhillon*** judgment [(1972) 83 ITR 582 (SC)] cannot be treated to be a binding precedent preventing this Bench from considering the main issue on the merits.

The position, therefore, is that the issue as to whether the Wealth-tax Act, 1957 (without the Amendment Act, 1969, as it has been conceded on behalf of the appellant to be inapplicable to the State of Jammu and Kashmir), extends to the State of Jammu and Kashmir or not, is, as mentioned earlier, dependent on the question whether the Act falls under entry 86, List I, quoted in paragraph 3 above or not. The residuary power in the case of Jammu and Kashmir is with the State and the cases relied upon the parties are of no help.

The argument of Mr. Sorabjee is that the expression "capital value of assets" in entry 86 does not signify the same thing as net wealth as defined in the Wealth-tax Act. For calculating the "capital value of assets" only the encumbrances which are charged on the assets can be deducted from the market value of the assets, and not the general liabilities of the individual owning the assets which are to be taken into account for the purpose of wealth-tax. Adopting

the observation of H.J. Kania, J. in ***Sir Byramji Jeejebhoy* v. *Province of Bombay*** [AIR 1940 Bom 65, 75 (FB)], it was asserted that, under entry 86, "the tax should be on the total capital assets, and not on individual portions of a person's capital." In support of his stand that the Wealth-tax Act is covered by entry 86, Dr. Gauri Shankar took us through the background in which the Wealth-tax Act was enacted.

We, must, therefore, ascertain the correct nature of the tax under the Wealth-tax Act and the scope of entry 86 by reference to the expressions "capital value" and "assets". It is firmly established that, in construing the language of constitutional enactments conferring legislative power, the most liberal construction should be put upon the words so that the same have effect in their widest amplitude. In ***Sri Ram Ram Narain Medhi* v. *State of Bombay*** [AIR 1959 SC 459], this court followed the approach indicated by the Privy Council in ***British Coal Corporation* v. *King*** [AIR 1935 PC 158, 162] in the following words:

> "Indeed, in interpreting a constituent or organic statute such as the Act, the construction most beneficial to the widest possible amplitude of its powers must be adopted."

And further declared that the heads of legislation should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation. It is also settled that, for finding out the true nature and character of a taxing Act, the charging section has to be construed with the help of the other relevant provisions. In the case of the Wealth-tax Act, sections 3 to 7 read with section 2(e) and 2(m) have to be examined. Section 3 levies an annual tax in respect of the net wealth on the valuation date on every individual, etc., at the rate specified in the Schedule. Section 7 mandates that the value for the purpose of charge shall be the value estimated to be the price which, in the opinion of the Assessing Officer, it would fetch if sold in the open market on the valuation date. The expression "net wealth" is defined in section 2(m) as the amount by which the aggregate value computed in accordance with the prescribed provisions, is in excess of the aggregate value of all the debts owed by the assessee. Thus, it appears that the tax is an annual levy on the total value of all assets owned by an assessee excluding exempted properties. Such value is the price which the property would fetch if sold in the market; in other words, its capital value. From the capital value, certain liabilities and debts are to be deducted to arrive at the net wealth. The base of the tax is capital value and net wealth assessable is capital value after deduction of debts and liabilities. The expression "capital value" of assets is not capable of any prescribed definition but, as pointed out in ***Harvard Law School World Tax Series: Taxation in the Federal Republic of Germany***, quoted by Sikri C.J. in his judgement [see (197) 83 ITR 582, 613]:

> "(T)he taxes on capital which are summarised in this chapter are the net worth-tax, the real property tax, and the capital levy under the Equalisation of Burdens Law."

The distinction between a net wealth tax levied upon a person and a tax on the property directly is pointed out in the same work in the following words (at page 613 of 83 ITR):

> "Some of the taxes on capital are deemed to be imposed on the person of the taxpayer while others are deemed to be imposed on an object. Examples of the former are the net worth-tax and the capital levy under the Equalisation of Burden Law, while the real property tax and the trade tax on business capital are classified in

the later category. The main importance of this distinction is that taxes in the first group presuppose a taxpayer with independent legal existence, that is, an individual or a legal entity (juridical person), while in the case of taxes in the second group, the taxable object itself is deemed liable for the tax, in addition to its owner, so that the taxpayer can be a partnership, association of the civil law, or other combination of persons without separate legal existence. Taxes on the first type give consideration to the taxpayer's ability to pay, while those of the second type consider merely the value of the taxable object, such as the capital of a business, in the case of the trade tax on business capital, or the assessed value of real property, in the case of the real property tax."

If we may point out with respect, Sikri C.J., having quoted the above passage with approval at page 72 of (1972) 2 SCR says rather inexplicably at page 74:

> "It seems to us that the other part of entry, i.e., 'tax on the capital of companies' in entry 86, List I, also seems to indicate that this entry is not strictly concerned with taxation of net wealth because capital of a company is in one sense a liability of the company and not its asset. Even if it is regarded as an asset, there is nothing in the entry to *compel* Parliament to provide for deduction of debts. It would also be noticed that entry 86, List I, deals only with individuals and companies but net wealth-tax can be levied not only on individuals but on other entities and associations also. It is true that under entry 86, List I, aggregation is necessary because it is a tax on the capital value of assets of an individual but it does not follow from this that Parliament is *obliged* to provide for deduction of debts in order to determine the capital value of assets of an individual or a company."

According to the learned Chief Justice, it is not incumbent on Parliament to provide for deduction of debts in ascertaining the capital value of the asset. But, having said so, the learned Chief Justice does not proceed further and say that such deduction, if provided for, changes the character of the tax from a tax on capital value to something else. Indeed, on principle, such a statement could not have been made or supported. The learned Chief Justice repeatedly stated that Parliament or the Legislature need not provide for such deductions, but without carrying the thought to its logical conclusion, concluded that "the whole of the impugned Act" (which as pointed out hereinbefore means Act 24 of 1969, amending the Wealth-tax Act) "clearly falls within entry 97 of List I." We have already indicated in paragraph 16 (at page 628) earlier that the expression "the whole of the impugned Act" did not refer to the Wealth-tax Act as originally enacted. We are, therefore, of the opinion that the Wealth-tax Act (as originally enacted and extended to J & K) is a "net-wealth tax" Act imposed upon individuals, groups of individuals like Hindu undivided families and companies. The tax is not levied upon assets as such but is upon individuals and companies with reference to the "capital value of the assets" held by them. As explained in ***Assistant Commissioner of Urban Land Tax* v. *Buckingham and Carnatic Co. Ltd.*** [(1970) 75 ITR 603, 612 (SC)]:

> "It is not a tax directly on the capital value of assets of individuals and companies on the valuation date ... The tax under entry 86 proceeds on the principle of aggregation and is imposed on the totality of the value of all the assets. It is imposed

> on the total assets which the assessee owns and in determining the net wealth not only the encumbrance specifically charged against any item of assets, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account."

This was also the view expressed in ***Sudhir Chandra Nawn* v. *WTO*** [(1968) 69 ITR 897 (SC)].

The language of entry 86 also clearly indicates that the tax is upon individuals and not directly upon the assets or upon their value. The wealth-tax is determined with reference to the capital value of assets minus debts and other deductions mentioned in the Act. We cannot accept the argument that since the tax is contemplated to be levied upon the capital value of assets of an individual, the exclusion of his debts and other liabilities changes the nature and character of the tax. Indeed, learned counsel for the respondents could not suggest any enactment relatable to entry 86 except the Wealth-tax Act.

It is argued for the respondents that "capital value of the assets" on a true interpretation can only mean market value of assets *minus* any encumbrances charged upon the assets themselves. The expression does not take in, it is submitted, general liabilities of the person owning them. This argument, in our opinion, ignores the basic nature of the tax contemplated by entry 86. It is a tax upon the net wealth of an individual. It is a net-worth tax. Net wealth of an individual necessarily means "what all he owns minus what all he owes" – and this is what the Act purports to tax.

For the reasons mentioned above, we hold that the Wealth-tax Act, as originally enacted was covered by entry 86 of List I of the Constitution, and its extension to the State of Jammu and Kashmir was perfectly constitutional and, consequently, the impugned judgment of the High Court is not correct. Accordingly, these appeals are allowed, the impugned judgment is set aside and the writ petition filed before the Jammu and Kashmir High Court are dismissed but in the circumstances, without costs.

* * * * *

Commissioner of Wealth Tax v. *Ellis Bridge Gymkhana*

(1998) 1 SCC 384

SEN, J. - This is an appeal from an order passed by the High Court of Gujarat in which the following question of law was answered in the affirmative and in favour of the assessee:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the assessee is not liable to wealth tax under the Wealth Tax Act, 1957 for the assessment year in question?"

2. The assessment years involved are 1970-71 to 1977-78. The assessee is a club. It filed its return of wealth being called upon to do so for the aforesaid assessment years but contended that it was not liable to be assessed under the Wealth Tax Act, 1957 at all. The Wealth Tax Officer rejected the claim of the assessee. The Appellate Assistant Commissioner was of the view that the assessee could not be brought to tax under the Act because of the earlier decision of the Gujarat High Court in the case of *Orient Club* v. *WTO* (1980) 123 ITR 395 (Guj). The Tribunal dismissed the appeal upholding the order of the Appellate Assistant Commissioner. The question of law raised by the Revenue was answered by the High Court also in favour of the assessee.

3. The club was not incorporated under the Companies Act, 1956. The case of the Revenue is that the club will have to be assessed as an "individual" under the Wealth Tax Act.

4. Three units of assessment have been mentioned in the charging section: "individual, Hindu Undivided Family and company". The contention of the Revenue is that "individual" has to be understood broadly so as to include an association of persons like clubs.

5. The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

6. Unlike Income Tax Act which is also a direct tax, the charging section does not speak of a body of individuals or an association of persons or a firm. If the legislative intent was to tax the wealth of a body of individuals or an association of persons or a firm, the legislature would have said so in so many words as was done in the Indian Income Tax Act, 1922 or the Income Tax Act, 1961. Under Section 3 of the Indian Income Tax Act, 1922, the charge was on "individual, Hindu Undivided Family, company, local authority, firm and other association of persons or the partners of a firm or the members of the association individually". When the Wealth Tax Act, 1957 was passed, the legislature decided to specify only "individual, Hindu Undivided Family and company" as units of assessment. It will not be right to presume that the legislature was unaware of the wording of the charging provisions of the Indian Income Tax Act, 1922 when the Wealth Tax Act was enacted. The legislature must be presumed to have known the large number of cases that were heard and decided on the scope of the charging section under the Indian Income Tax Act and the meaning ascribed to "association of persons" therein. The legislature, however, decided to exclude "firms, association of persons and body of individuals" from the ambit of the charge of wealth tax. What has been

specifically left out by the legislature cannot be brought back within the ambit of the charging section by implication or by ascribing an extended meaning to the word "individual" so as to include whatever has been left out.

10. It is also to be noted that when the Wealth Tax Act was passed in 1957, the Indian Income Tax Act, 1922 was in force. The scheme and structure of the Wealth Tax Act are very similar to the Act of 1922. In fact, some of the provisions of the Wealth Tax Act are almost verbatim reproduction of the corresponding provisions of the Indian Income Tax Act, 1922.

15. But in the case of the charging Section 3 of the Wealth Tax Act, the phraseology of the charging Section 3 of the Indian Income Tax Act, 1922 has not been adopted. Unlike Section 3 of the Income Tax Act, Section 3 of the Wealth Tax Act does not mention a firm or an association of persons or a body of individuals as taxable units of assessment. 16. The position has been placed beyond doubt by insertion of Section 21-AA in the Wealth Tax Act itself. This amendment was effected by the Finance Act, 1981 with effect from 1-4-1981. It provides for assessment of association of persons in certain special cases and not otherwise. Section 21-AA is:

> "**21-AA.** ***Assessment when assets are held by certain associations of persons*** -
>
> (1) Where assets chargeable to tax under this Act are held by an association of persons, other than a company or cooperative society or society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India, and the individual shares of the members of the said association in the income or assets or both of the said association on the date of its formation or at any time thereafter are indeterminate or unknown, the wealth tax shall be levied upon and recovered from such association in the like manner and to the same extent as it would be leviable upon and recoverable from an individual who is a citizen of India and resident in India for the purposes of this Act.
>
> (2) Where any business or profession carried on by an association of persons referred to in sub-section (1) has been discontinued or where such association of persons is dissolved, the Assessing Officer shall make an assessment of the net wealth of the association of persons as if no such discontinuance or dissolution had taken place and all the provisions of this Act, including the provisions relating to the levy of penalty or any other sum chargeable under any provision of this Act, so far as may be, shall apply to such assessment. …"

17. It will be seen that assessment as an association of persons can be made only when the individual shares of members of the association in the income or assets or both of the association on the date of its formation or any time thereafter are indeterminate or unknown. It is only in such an eventuality that an assessment can be made on an association of persons, otherwise not. Sub-section (2) of Section 21-AA deals with cases of such associations as mentioned in sub-section (1). That means only association of persons in which individual shares of the members were unknown or indeterminate can be subjected to wealth tax.

18. It is not the case of the Revenue before us that the members of the club were unknown or that their interest in the assets of the club was indeterminate. In fact, no argument was advanced on this aspect of the matter in any of the cases that have come for hearing along

with this case. In fact, a list of members of the club should be readily available. In any event, there is no finding of fact that particulars of members were unknown or their interest in the assets of the club were indeterminate.

19. In our view, Section 21-AA far from helping the case of the Revenue directly goes against its contention. An association of persons cannot be taxed at all under Section 3 of the Act. That is why an amendment was necessary to be made by the Finance Act, 1981 whereby Section 21-AA was inserted to bring to tax net wealth of an association of persons where individual shares of the members of the association were unknown or indeterminate.

20. We were referred to a large number of cases. It is not necessary to deal with them in detail. It may be noted that the Gujarat High Court in the case of ***Orient Club* v. *WTO*** [(1980) 123 ITR 395 (Guj)] and the Bombay High Court in the case of ***Orient Club* v. *CWT*** [(1982) 136 ITR 697 (Bom)] were of the view that the charging provision of the Wealth Tax Act had not treated a firm or an association of persons as a taxable unit. An unincorporated members' club was a society of persons and did not have any existence apart from the members of which it was composed. An unincorporated club being an association of persons could not be brought to tax as an individual under the Wealth Tax Act. The Kerala High Court in the case of ***CWT* v. *Mulam Club*** [(1991) 191 ITR 370 (Ker)] has taken a similar view.

21. A contrary view was taken by the Madras High Court in the case of ***Coimbatore Club* v. *WTO*** [(1985) 153 ITR 172 (Mad)] where it was held that the expression "individual" occurring in Section 3 of the Act was wide enough to include within its scope a plurality of individuals forming a single collective unit even though formed without any profit motive.

22. In our judgment, the Kerala High Court in the case of ***CWT* v. *Mulam Club***, the Bombay High Court in the case of ***Orient Club* v. *CWT*** and the Gujarat High Court in the case of ***Orient Club* v. *WTO*** have come to a right decision. The judgment of the Madras High Court in the case of ***Coimbatore Club*** to the contrary is erroneous. The Madras High Court has overlooked the significance of omission of firms or association of persons or a body of individuals from the charging section even though these entities were specifically made taxable under various direct tax enactments from 1922 to 1961. Moreover, the Wealth Tax Assessment of an individual will involve computation of "net wealth". All the assets belonging to an individual will have to be included. If an individual is a partner of a firm or member of an association of persons, the value of his share in these entities will have to be included in his individual assessment. We have already examined the scheme of the Wealth Tax Act and also the object behind the insertion of Section 21-AA. All these will go to show, the legislature deliberately excluded a firm or an association of persons from the charge of wealth tax and the word "individual" in the charging section cannot be stretched to include entities which had been deliberately left out of the charge.

23. Strong reliance was placed on the judgment of this Court in ***WTO* v. *C.K. Mammed Kayi*** [(1981) 3 SCC 23]. In that case, the question was whether Mapilla Marumakkathayam Tarwads of North Malabar - Muslim Undivided Families governed by the Marumakkathayam Act (Madras Act 17 of 1939) - fell within the expression "individual" and were assessable to tax under Section 3 of the Wealth Tax Act, 1957.

30. This judgment took note of the fact that long before the Wealth Tax Act was passed Mapilla Tarwad families had been treated as distinct taxable entities and had been taxed as individuals under various tax laws for a very long time. Therefore, “individual” in Section 3 of the Wealth Tax Act must be given the same meaning as was given in various other tax laws so as to include a Mapilla Tarwad family.

31. This judgment really goes against the contention made on behalf of the Revenue. The Court first laid down that a charging section of a taxing statute has to be strictly construed. The Court found that the charging section of various taxing statutes had imposed tax on Hindu Undivided Families as well as on “individuals”. It has been held under various fiscal statutes that Mapilla Tarwads cannot be taxed as a Hindu Undivided Family but will have to be taxed as an “individual”. If “individual” is understood under the Wealth Tax Act, in the same sense in which it has been understood in various fiscal statutes, then “individual” under Section 3 of the Wealth Tax Act will include a Mapilla Tarwad. But in the various tax Acts mentioned in that judgment “individual” has not been interpreted to include a firm or an association of persons.

32. That the charging section of the Wealth Tax Act does not impose a charge on a firm or association of persons has been made clear by explanatory notes on the provisions relating to direct taxes issued by the Central Board of Direct Taxes on 29-6-1981 clarifying the Finance Bill, 1981.

33. It will appear from this notification that the Central Board of Direct Taxes clearly recognised that the charge of wealth tax was on individuals and Hindu Undivided Families and not on any other body of individuals or association of persons. Section 21-AA has been introduced to prevent evasion of tax. In a normal case, in assessment of an individual, his wealth from every source will be added up and computed in accordance with provisions of the Wealth Tax Act to arrive at the net wealth which has to be taxed. So, if an individual has any interest in a firm or any other non-corporate body, then his interest in those bodies or associations will be added up in his wealth. It is only where such addition is not possible because the shares of the individual in a body holding property is unknown or indeterminate, resort will be taken to Section 21-AA and association of individuals will be taxed as association of persons.

34. In the instant case, we are concerned with Assessment Years 1970-71 to 1977-78. Section 21-AA was not in force during the relevant assessment period. There was no way that a club could be assessed as an association of persons in these assessment years. It is not even the case of the Revenue that individual member’s interest in the club was indeterminate or unknown.

35. In view of the aforesaid, the appeal must fail. The question referred by the Tribunal was correctly answered by the High Court in the affirmative and in favour of the assessee. The appeal is dismissed.

* * * * *

Commissioner of Wealth Tax, West Bengal v. *Bishwanath Chatterjee*

AIR 1976 SC 1492

P.N. SHINGHAL, J. – This appeal by certificate has come before us as the question of law arising for decision is said to be of great importance. The facts giving rise to the appeal are quite simple and may be shortly stated.

2. One Bireshwar Chatterjee, who was admittedly governed by the Dyabhaga School of Hindu law, was assessed to income-tax as an individual. He died intestate on January 7, 1957, leaving his widow, sons and daughters. The Wealth-tax Officer rejected their plea that on the death of Bireswar Chatterjee they had definite and determined shares in his properties and were liable to separate assessment, and assessed them as a Hindu Undivided Family for the assessment year 1958-59. On appeal, the Appellate Assistant Commissioner held that since the assessee was governed by the Dayabhaga School of Hindu law, the properties could not belong to the Hindu undivided family and were to be taxed "in the hands of the co-sharers separately". The department took an appeal to the Income-tax Appellate Tribunal, 'B' Bench, Calcutta. There was difference of opinion between the members of the Tribunal, and in accordance with the opinion of the majority of the members it was ordered that "notwithstanding that there was no unity of ownership amongst members governed by the Dayabhaga School of Hindu law in respect of the family property and each member thereof had indefinite shares in it, such property, until partitioned, was assessable to wealth-tax in the hands of the Hindu undivided family." The Tribunal however referred the following question of law to the Calcutta High Court for decision -

> "Whether on the facts and in circumstances of the case, the Tribunal was right in holding that properties possessed jointly by the members governed by the Dayabhaga School of Hindu law were assessable to wealth-tax jointly in the status of a Hindu undivided family?"

The High Court accepted the contention that the question assumed that the property was owned jointly by the members of a Hindu undivided family governed by the Dayabhaga School of Hindu law, and reframed it as follows, -

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the properties possessed by the heirs of a Hindu male governed by the Dayabhaga School of Hindu law were assessable to wealth-tax jointly in the status of a Hindu undivided family?"

It took the view that the matter was covered by its earlier decisions including ***Commr. of Wealth-tax, West Bengal*** **v.** ***Gouri Shankar Bhar*** [(1968) 68 ITR 345 (Cal.)] where it had been held that on the death intestate of a Dayabhaga male, his heirs do not inherit his estate as members of a Hindu undivided family, and remain as co-owners with definite and ascertained shares in the properties left by the deceased unless they voluntarily decide to live as members of a joint family. The High Court also took notice of the fact that a suit for partition had been filed and a preliminary decree had been obtained on July 4, 1959, and answered the reframed question in the negative. As has been stated, the High Court has certified this to be a fit case for appeal to this Court.

3. Mr. S.T. Desai appearing for the Commissioner of Wealth-tax has challenged the view taken by the High Court and has argued that under the Dayabhaga School of Hindu law the property left by the father is taken by the sons jointly by descent, as coparceners, as their joint family comes into existence by operation of law. He has accordingly argued that the father's property is liable to be taxed under Section 3 of the Wealth-tax Act, hereinafter referred to as the Act, as a unit until it is partitioned amongst its members by metes and bounds. Reference has in this connection been made to certain commentaries and judgments and we shall refer to them as and when necessary.

4. Section 3 of the Act is the charging section and the correctness or otherwise of the view taken by the High Court depends on its meaning and content. The section provides for the charge of wealth-tax in these terms, -

> "3. Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule."

The liability to wealth-tax therefore arises in respect of the "net wealth" of the assessee, which expression has been defined as follows in Section 2(m):-

> "(m) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on the date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than ......"

5. The expression "belonging to" has been defined as follows in the Oxford English Dictionary -

"To be the property or rightful possession of."

So it is the property of a person, or that which is in his possession as of right, which is liable to wealth-tax. In other words, the liability to wealth-tax arises out of ownership of the asset, and not otherwise. Mere possession, or joint possession, unaccompanied by the right to, or ownership of property would therefore not bring the property within the definition of "net wealth" for it would not then be an asset "belonging to" the assessee.

6. The question is whether the estate or property of Bireswar Chatterjee could be said to belong jointly to his heirs, after his death?

7. It is not in controversy and is in fact admitted that the property in question belong to Bireswar Chatterjee who was its sole owner in his lifetime and was assessed to income-tax as an individual. His family consisted of his widow, sons and daughters and was governed by the Dayabhaga School of Hindu law. Bireswar Chatterjee's property was therefore the heritage or the wealth which vested in his heirs on his death. According to Jimuta Vahana, his wife or sons or daughters had no ownership in his property during his lifetime for "sons have no ownership while the father is alive and free from defect (***Hindu Law*** by Colebrooke, p. 9). Ownership of wealth is however vested in the heirs "by the death of their father" (page

54, supra) when they become co-heirs and can claim partition. It is on this basis that "dayabhaga" (partition of heritage) has been expounded by Jimuta Vahana. According to him, "since any one parcener is proprietor of his own wealth, partition at the choice even of a single person is thence deducible" (page 16, supra). The heritage does not therefore become the joint property of the heirs or the joint family, on the demise of the last owner, but becomes the fractional property of the heirs in well defined shares. This concept of fractional ownership has been stated as follows by Krishna Kamal Bhattacharya in his **"*Law relating to the Joint Hindu Family*" (Tagore Law Lectures)** with reference to the doctrine of negation of the son's right by birth (page 168) -

> "As a corollary of the doctrine set forth above, negativing the son's right by birth, is another peculiar doctrine of the Bengal School, that is what is called the 'fractional ownership' of the heirs, contrasted with the doctrine of 'aggregate ownership' expounded by all the other schools."

That is why 'partition' in Dayabhaga is defined as an act of "particularising ownership," and is not the act of fixing diverse ownerships on particular parts of an aggregate of properties as in Mitakshara. The learned author has clarified the position in unmistakable terms as follows (pages 172-73) –

> "From what has been said above, it is evident that there is no unity of ownership in Bengal joint family, although there may be something like a unity of possession."

10. In fact we find that a case somewhat similar to the one before us arose when one Prafulla Chandra Bhar, a Hindu governed by the Dayabhaga School died intestate. His mother, widow, three sons and one daughter survived him. Since the death took place before the Hindu Succession Act, 1956 came into operation, he was succeeded by his widow and three sons, each inheriting one-fourth share in the estate. Gouri Shankar Bhar, one of the sons took out letters of administration and filed a wealth-tax return in his capacity as administrator describing the status of the assessee as a Hindu undivided family. The Wealth-tax Officer also treated the status as such, and made the assessment. Gouri Shanker, however, filed an appeal and contended that the family being governed by the Dayabhaga School, the shares of the coparceners in the property of the deceased were definite and ascertained and the assessment should not have been made in their status as a Hindu undivided family and each member should have been assessed separately upon the value of his share in the inherited property. The Appellate Assistant Commissioner overruled the contention and took the view that even though the shares of the coparceners were definite and ascertained, the income from the property of the family did not belong to the several members in specified shares but continued to belong to the Hindu undivided family as a whole. On further appeal, the Tribunal held that as the coparcener under the Dayabhaga law had a definite share in the property left by the deceased and was legally the owner thereof, he had a defined share and that since the wealth-tax was levied on the basis of ownership, it was proper that the assessment should have been made on the individual coparceners on their respective shares and assessment of the total wealth in the hands of the undivided family would be illegal. The matter was referred to the High Court at the instance of the Commissioner of Wealth-tax. The High Court of Calcutta in ***Commissioner of Wealth-tax*** case (supra) made a reference, *inter alia,* to the decision of ***Biswa Ranjan Sarvadhikary* v. *Income Tax Officer*** [(1963) 47 ITR

927 (Cal)] and upheld the view that where property is owned by two or more persons governed by the Dayabhaga School and their shares are definite and ascertainable, then, although they are in joint possession, the tax will be assessed on the basis of the share of the income in the hands of the assessee and not as of a Hindu undivided family. It was held that the position was not different under the Wealth-tax Act. The matter was brought to this Court on appeal and it was conceded by Solicitor General appearing for the Commissioner of Wealth-tax that as the property was the individual property of the deceased, it devolved on his heirs in severalty. It was held that as each of them took a definite and separate share in the property, each of them was liable in law to pay wealth-tax as an individual. While upholding the decision of the High Court it was however observed by this Court that it was not necessary to decide in that case, whether a Dayabhaga family could be considered as a Hindu undivided family within the meaning of Section 3 of the Act. The decision is ***Commr. of Wealth-tax, West Bengal* v. *Gauri Shankar Bhar*** [(1972) 84 ITR 699 (SC)].

11. In the case before us, it is not in dispute that the property in question was the individual property of Bireswar Chatterjee and that it devolved on his heirs according to the provisions of the Hindu Succession Act, 1956. It will be recalled that a suit for partition was filed on June 21, 1957 and a preliminary decree was passed on July 4, 1959. For reasons already stated, the coparcenery had unity of possession but not unity of ownership on the property. Each coparcener therefore took a defined share in the property and was the owner of his share. Each such defined share thus “belonged” to the coparcener. It was his “net wealth” within the meaning of Section 2(m) of the Act and was liable to wealth-tax as such under Section 3. The High Court was therefore right in answering the reframed question in the negative, and as we find no force in the argument of Mr. Desai, the appeal fails and is dismissed with costs.

* * * * *

Nawab Mir Barkat Ali Khan v. *Commissioner of Wealth-Tax*

(1997) 226 ITR 654 (A.P.) (F.B.)

S.S.M. QUADRI, J. – In the reference under section 27(1) of the Wealth-tax Act, 1957, four questions were referred by the Income-tax Appellate Tribunal to this court. While answering two questions, the Division Bench of this Court, referred the following two questions to a Full Bench:

> "(1) Whether, on the facts and in the circumstances of the case, the assessee was the owner in respect of properties agreed to be sold and in respect of which sale consideration was received but no sale deeds had been executed or registered?
>
> (2) Whether, on the facts and in the circumstances of the case, the assessee was the owner of the properties in possession of the Sahebzadas and Sahebzadis regarding which the assessee granted firmans?"

The facts leading to the reference of these questions may be noted here: The late Nizam Nawab Sir Mir Osman Ali Khan, former ruler of the erstwhile State of Hyderabad, executed agreements of sale in respect of some of his personal properties under which he took the entire sale consideration and delivered possession of the immovable properties to the purchasers who have been in actual domain and control of those properties from the date of the agreements. On the ground that the late Nizam continued to be the legal owner of the properties in question, the Wealth-tax Officer, while rejecting the contention of the assessee that those properties did not belong to him, included the value of those properties in the net wealth of the late Nizam for the assessment years 1964-65, 1965-66 and 1966-67. It appears the same question fell for consideration of our High Court in respect of the assessment years 1959-60 to 1963-64 wherein the High Court took the view that the Nizam continued to be the legal owner. In that view of the matter both the appellate authority as well as the Tribunal upheld the assessment.

The facts relevant to the second question are: Certain properties which originally belonged to the parents of the ladies in position in his palace, were held by the late Nizam but they were retroceded in favour of various Sahebzadas and Sahebzadis. No document, however, was executed to record the retrocession of those properties by the late Nizam but some firmans were issued by him in that respect. Negativing the contention that the late Nizam did not have title or interest in the properties, the Wealth-tax Officer took the view that the firmans were invalid and that the late Nizam alone held the properties in question and accordingly included the value of those properties in the net wealth of the late Nizam. The assessee's appeal before the Commissioner of Wealth-tax failed. The matter was then taken to the Tribunal in second appeal and it was contended on behalf of the assessee that the Sahebzadas and Sahebzadis were in exclusive possession and enjoyment of those properties, as such the value of those properties could not be included in the net wealth of the late Nizam. In the cases arising out of the earlier assessment years our High Court had taken the view that the firmans were issued by the late Nizam at a time when he ceased to be the sovereign, therefore, title in the properties did not pass in favour of the Sahebzadas and Sahebzadis. Following that judgment, the Tribunal dismissed the appeal of the assessee.

On the application of the present Nizam, the abovesaid questions are referred to this Court.

The point that arises for consideration in this reference is:

> "Whether, on the execution of the agreement for sale, receipt of consideration thereunder and delivery of possession of the properties to the vendee and whether on retroceding the properties in favour of the Sahebzadas and Sahebzadis by 'firmans', the late Nizam ceased to hold the properties in question; if so, whether the value of those properties should not have been included in his net wealth for assessment to wealth-tax under the Act?"

It may be pointed out here that the definition of "net wealth" takes in not only all the assets belonging to the assessee but also the assets belonging to others which are required to be included, under section 4 of the Act, to which we shall refer presently, in his net wealth on "the valuation date." By "valuation date" is meant in relation to any year for which an assessment is made under the Act, the last day of the previous year as defined in section 3 of the Income-tax Act, if an assessment were to be made under that Act for that year [see section 2(q) of the Act]. This would lead us to the enquiry as to whether the properties sought to be included in his net wealth did belong to the late Nizam on the respective valuation date in respect of the said assessment years, viz., March 31, 1964, March 31, 1965, and March 31, 1966. We may note here that a similar issue came up for consideration of this Court in ***CIT* v. *Nawab Mir Barkat Ali Khan*** [(1974) Tax LR 90] with reference to the assessment year 1959-60. There the question was whether the late Nizam was the owner of the properties which he agreed to sell; received the whole sale consideration and handed over possession of those properties to the purchasers but did not execute sale deed and also of the properties which were in the possession of Sahebzadas and Sahebzadis and which he retroceded by "firmans" within the meaning of section 9 of the Indian Income-tax Act, 1922 (section 22 of the Income-tax Act, 1961). After an elaborate discussion of English law and Indian law, the Division Bench concluded (page 95):

> "We are, therefore, satisfied that the agreement to sell does not create any beneficial ownership according to Indian law in the purchaser. Nor does it create any equitable ownership in him. It is the vendor who continues to be the owner of the properties agreed to be sold until a lawfully registered sale deed is executed by him. The word 'owner' in section 9 or 22, therefore, must be understood in this sense and cannot be understood in any other sense."

and held that the late Nizam, in spite of the agreements, continued to be liable to pay tax on the income from such properties under section 9 of the Indian Income-tax Act.

With regard to the properties in the possession of the Sahebzadas and Sahebzadis in whose favour some "firmans" were issued, the Bench noted that the position of law was admittedly not very different as the "firmans" were not transfer deeds whereby title could be validly transferred as the "firmans" were issued at a time when the late Nizam had lost his sovereignty.

For the assessment years 1975-76 and 1976-77 identical questions arose for consideration of a Division Bench of this Court in ***Nawab Mir Barkath Ali Khan* v. *CIT*** [(1988) 171 ITR

541]. In that case also the meaning of the word "owner" in the context of section 22 of the Income-tax Act, 1961, was considered by the Division Bench. It was held that a purchaser under an agreement for sale did not hold the property adversely to the owner and at the end of possession for twelve years, the purchaser was not liable to be taxed as the owner of the property. However, in respect of the properties said to have been granted by the "firmans" it was observed that the "firmans" could be treated as invalid documents of transfer and, therefore, the possession of the transferees would be adverse to the owners, so they had become owners by adverse possession before the commencement of the accounting year relevant to the assessment year 1975-76 and were liable to be taxed as owners of the property. The Bench, however, declined to re-examine that question in the light of the decision of another Division Bench of this court in ***CIT* v. *Sahney Steel and Press Works P. Ltd.*** [(1987) 168 ITR 811] on the ground that ***Sahney's*** case neither pertained to the same assessee nor to the properties. It was observed that when there was a direct decision of this court with respect to the very same property in ***CIT* v. *Nawab Mir Barkat Ali Khan*** [(1974) Tax LR 90 (AP)], which was pending consideration of the Supreme Court, it would not be advisable and proper to reconsider the view expressed in that case.

Before referring to the judgment of the Division Bench of this court in ***CIT* v. *Sahney Steel and Press Works (P) Ltd.*** [(1987) 168 ITR 811], it would be useful to advert to the judgment of the Supreme Court in ***R.B. Jodha Mal Kuthiala* v. *CIT*** [(1971) 82 ITR 570]. In that case the question before the Supreme Court was, whether the assessee was the owner of the property which has vested in the Custodian of Evacuee Property in Pakistan and whether the income from the said property could be included in the income of the assessee. The Supreme Court was considering the question with reference to taxability of income under section 9 of the 1922 Income-tax Act for the assessment years 1952-53, 1955-56 and 1956-57. The assessee there was a registered firm deriving its income from interest on securities, properties, business and other sources. One of its properties, viz., Nedous Hotel, was situated in Lahore and it was declared as evacuee property and consequently vested in the Custodian in Pakistan. For those assessment years, they claimed losses and showed the annual letting value of that property as "*nil*". The loss was claimed on account of interest payable to the bank on the loan amount which the assessee had taken to purchase that property. The Income-tax Officer held that the income or loss from the property which had vested in the Custodian, could not be taken into account and thus disallowed the losses incurred due to payment of interest to the bank. The Appellate Assistant Commissioner agreed with that view. But the Tribunal came to the conclusion that the assessee continued to be the owner of the property and for the purpose of computation of income, losses by way of payment of interest were allowable deductions. At the instance of the assessee, the abovesaid question was referred to the High Court. A Full Bench of the High Court of Delhi [see ***CIT* v. *R.B. Jodha Mal Kuthiala*** (1968) 69 ITR 598] held that the assessee could not be considered the owner of the property. Against the judgment of the High Court, the matter was taken in appeal to the Supreme Court. On behalf of the assessee, it was contended before the Supreme Court that the expression "owner" meant the person having the ultimate right to the property and as the assessee had a right to that property, in whatever manner that right might have been hedged in or restricted, he was still the owner of the property. For the Revenue, it was urged that the income-tax was concerned with income, gains and profits and, therefore, for the purpose of

that Act, the owner was that person who was entitled to the income and that the "owner" referred to the legal ownership but not merely to any beneficial interest in the property. Having considered the provisions of the Pakistan (Administration of Evacuee Property) Ordinance, 1949, the Supreme Court posed the question as to who was the owner referred to in section 9 of the Act of 1922. It also posed the question, was it the person in whom the property vested or was it the person who is entitled to some beneficial interest in the property. It was observed that a property could not be owned by two persons, each one having independent and exclusive right over it; hence for the purpose of section 9, the owner must be that person who could exercise the rights of the owner, not on behalf of the owner but in his own right. On the point as to what meaning should be given to the word "owner" in section 9, it was laid down that the meaning must not be such as to make that provision capable of being made an instrument of oppression, but it must be in consonance with the principles underlying that Act. Confirming the judgment of the Full Bench, it was held that the assessee therein was not the owner of the said "Nedous Hotel" during the relevant assessment years for the purposes of section 9 of the Act.

In ***Nawab Sir Mir Osman Ali Khan (Late)* v. *CIT*** [(1986) 162 ITR 888 (SC)], one of the two questions considered by the Supreme Court was, (page 890): "Whether, on the facts and in the circumstances of the case, the properties in respect of which registered sale deeds had not been executed, but consideration had been received, belonged to the assessee for the purpose of inclusion in his net wealth within the meaning of section 2(m) of the Wealth-tax Act, 1957?", their Lordships of the Supreme Court referred to the judgment of our High Court in ***CIT* v. *Nawab Mir Barkat Ali Khan*** [(1974) Tax LR 90], and observed that there the position was different and that they were not concerned with the expression "owner" but were concerned, whether the assets on the facts and in the circumstances of that case "belong" to the assessee any more. Referring to the judgment of the Supreme Court in ***Jodha Mal Kuthiala*** case [(1971) 82 ITR 570], it was pointed out that it had to be borne in mind that in interpreting the liability for wealth-tax, normally equitable considerations were irrelevant, but it was well to remember that in the scheme of the administration of justice, tax law like any other laws would have to be interpreted reasonably and whenever possible in consonance with equity and good conscience and, therefore, the fact that the Legislature had deliberately and significantly not used the expression "assets owned by the assessee" but used the phrase "assets belonging to the assessee," in their Lordships' opinion, was an aspect which had to be borne in mind. Their Lordships also referred to the judgment of the Supreme Court in ***Raja Mohammad Amir Ahmad Khan* v. *Municipal Board of Sitapur*** [AIR 1965 SC 1923], and pointed out that the phrase "belonging to" was capable of connoting interest which is less than absolute perfect legal title. They reiterated the observation in ***Raja Mohammad Amir Ahmed Khan*** case [AIR 1965 SC 1923], that though the expression "belonging to" was capable of denoting an absolute title, it was nevertheless not confined to connoting that sense. It was observed that full possession of an interest less than that of full ownership could also be signified by that expression. Speaking for the Supreme Court, his Lordship Sabyasachi Mukharji J. summarised the position in that case as follows (page 899):

> "The following facts emerge here: (1) the assessee has parted with the possession which is one of the essentials of ownership; (2) the assessee was disentitled to

recover possession from the vendee and the assessee alone until the document of title is executed was entitled to sue for possession against others, i.e., other than the vendee in possession in this case. The title in rem vested in the assessee; (3) the vendee was in rightful possession against the vendor; (4) the legal title, however, belonged to the vendor; and (5) the assessee had not the totality of the rights that constitute title but a mere husk of it and a very important element of the husk.

The position is that though all statutes including the statute in question should be equitably interpreted, there is no place for equity as such in taxation laws. The concept of reality in implementing a fiscal provision is relevant and the Legislature in this case has not significantly used the expression 'owner' but used the expression 'belonging to'. The property in question legally, however, cannot be said to belong to this vendee. The vendee is in rightful possession only against the vendor. Speaking for myself, I have deliberated long on the question whether in interpreting the expression 'belonging to' in the Act, we should not import the maxim that 'equity looks upon a thing as done which ought to have been done' and though the conveyance had not been executed in favour of the vendee, and the legal title vested with the vendor, the property should be treated as belonging to the vendee and not to the assessee. I had occasion to discuss thoroughly this aspect of the matter with my learned brother and since in view of the position that legal title still vests with the assessee and the authorities, we have noted, are preponderantly in favour of the view that the property should be treated as belonging to the assessee in such circumstances. I shall not permit my doubts to prevail upon me to take the view that the property belongs to the vendee and not to the assessee. I am conscious that it will work some amount of injustice in such a situation because the assessees would be made liable to bear the tax burden in such situations without having the enjoyment of the property in question. But times perhaps are yet not ripe to transmute equity on this aspect in the interpretation of law – much as I would have personally liked to do that. As Benjamin Cardozo has said, 'the Judge, even when he be free, is not wholly free'. The judge cannot innovate at pleasure".

The learned judge, on the facts noted above, held, albeit hesitatingly that the property in question must be treated as belonging to the assessee in the following words: (page 900):

"It may be said that the Legislature having designedly used the expression 'belonging to' and not the expression 'owned by' had perhaps expected judicial statesmanship in the interpretation of this expression as leading to an interpretation that in a situation like this, it should not be treated as belonging to the assessee but, as said before, times are not yet ripe and in spite of some hesitation, I have persuaded myself to come to the conclusion that for all legal purposes, the property must be treated as belonging to the assessee and perhaps the Legislature would remedy the hardship of the assessee in such cases if it wants. Even though the assessee had a mere husk of title and as against the vendee no reality of title, as against the world he was still the legal owner and the real owner".

In ***Sahney Steel and Press Works (P) Ltd.*** case [(1987) 168 ITR 811], a Division Bench of this court referred to ***Jodha Mal Kuthiala*** case [(1971) 82 ITR 570 (SC)], as well as

Nawab Sir Mir Osman Ali Khan's case [(1986) 162 ITR 888 (SC)] and laid down that the owner of the property was the person who could exercise the rights of the owner not on behalf of the owner but in his own right. There during the accounting year relevant to the assessment year 1973-74, the assessee purchased the building. The conveyance deed in respect of the property was not registered in that year. The assessee claimed depreciation in respect of the building, but that claim was rejected by the Income-tax Officer on the ground that the sale deed was not registered. Hence, the assessee was not the owner of the building. The Tribunal held that the assessee was entitled to depreciation. On a reference, the Division Bench opined that the assessee was the owner of the property in the relevant previous year though the legal title was not complete for want of a registered conveyance deed and that the assessee was entitled to depreciation since the building was owned and used by it for the purpose of its business. It was pointed out by the Division Bench that the earlier ruling of the Supreme Court in ***Jodha Mal Kuthiala*** case [(1971) 82 ITR 570 (SC)], was referred to by the Supreme Court in ***Nawab Sir Mir Osman Ali Khan*** case [(1986) 162 ITR 888], but the statement of law contained in ***Jodha Mal Kuthiala*** case [(1971) 82 ITR 570 (SC)] was neither disapproved nor departed from; the Division Bench, therefore, came to the conclusion that it was not possible to depart from the principles laid down in ***Jodha Mal Kuthiala*** case [(1971) 82 ITR 570 (SC)] and in that view of the matter it agreed with the earlier judgment of the Division Bench in the case of the same assessee for an earlier assessment year in ***Sahney Steel and Press Works (P) Ltd***. [(1987) 165 ITR 399 (AP)].

Now, from the above discussion it becomes evident that for inclusion in the net wealth of an individual, what is relevant is not who owns the property, but "to whom the property belongs." Therefore, it is necessary to understand the true import of the expression "belonging to" in section 2(m) of the Act. We have extracted section 2(m) above. We shall now endeavour to discover the intention of Parliament in using the expression "belonging to" in contradistinction to "owned by" in section 2(m). Here it would be apt to refer to the provisions of section 4 of the Act which brings within the fold of the net wealth of an individual certain assets held by others as belonging to that individual.

Explanation to section 4 of the Act reads as follows:

> "*Explanation*. – For the purposes of this section -
>
> (a) the expression 'transfer' includes any disposition, settlement, trust, covenant, agreement or arrangement, and..."

A close reading of section 4, the *Explanation* thereto and section 2(m) of the Act makes the intention of Parliament evident as to what should be treated as belonging to the individual for the purposes of computing the net wealth. It appears to us that a property which has been transferred by the individual in favour of another under any disposition, settlement, trust, covenant, even an agreement or arrangement will cease to belong to him and cannot be brought within the fold of "belonging to" under section 2(m) of the Act and it is for that purpose that section 4 of the Act specifically provides that the properties held by persons enumerated in clause (a) of sub-section (1) under such inchoate transfer shall be included as belonging to that individual. Therefore, it follows that in the case of a transfer as defined in the *Explanation* to section 4 by the individual, the property cannot be said to belong to the

individual unless it is within the clutches of section 4 of the Act, notwithstanding the fact that the transfer had not been effected as contemplated under section 54 of the Transfer of Property Act or under the Registration Act.

In ***Nawab Sir Mir Osman Ali Khan's*** case [(1986) 162 ITR 888 (SC)], having pointed out that in that appeal, arising out of the Wealth-tax Act, their Lordships were concerned with the expression "belonging to" and not with the expression "owner" and having considered the dictionary meaning of the expression "belong" in the ***Oxford English Dictionary*** "to be the property or rightful possession of," it was opined that the first limb of the definition in the dictionary might not be applicable to the properties in question and that the vendees (under the agreement for sale), were, however, in rightful possession of the properties as against the vendor in view of the provisions of section 53A of the Transfer of Property Act. It was observed that the scheme of the Act had to be borne in mind and also the fact that unlike the provisions of the Income-tax Act, section 2(m) of the Wealth-tax Act had used the expression "belonging to" and as such indicated something over which a person had dominion and lawful dominion and he should be the person assessable to wealth-tax for this purpose. At page 901, it was mentioned:

> "We are conscious that if a person has the user and is in the enjoyment of the property, it is he who should be made liable for the property in question under the Act; yet the legal title is important and the Legislature might consider the suitability of an amendment if it is so inclined."

His Lordship Justice Sabyasachi Mukharji felt a lot of hesitation in coming to the conclusion that the assets transferred under the agreement for sale for which the consideration was received and the possession of the property was handed over would not cease to belong to the late Nizam as the transferee had the control of the properties. It is perhaps for this reason his Lordship observed (page 900):

> "I shall not permit my doubts to prevail upon me to take the view that the property belongs to the vendee and not to the assessee. I am conscious that it will work some amount of injustice in such a situation because the assessees would be made liable to bear the tax burden in such situations without having the enjoyment of the property in question."

It is worth noticing here that the provisions of section 4 of the Act were not brought to the notice of the Supreme Court and were not considered in ***Nawab Sir Mir Osman Ali Khan* v. *CWT*** [(1986) 162 ITR 888 (SC)]. There was, however, no occasion for consideration of those provisions in the other cases referred to above. For the purpose of construing the expression "belonging to" in section 2(m) of the Act and in view of the judgment of the Supreme Court in ***Nawab Sir Mir Osman Ali Khan*** case [(1986) 162 ITR 888], the judgments of our High Court in ***CIT* v. *Nawab Mir Barkat Ali Khan*** [(1974) Tax LR 90], ***Nawab Mir Barkat Ali Khan* v. *CIT*** [(1988) 171 ITR 541] and ***CIT* v. *Sahney Steel and Press Works (P) Ltd.*** [(1987) 168 ITR 811], will not be of much assistance much less will they be binding authorities on the interpretation of the expression "belonging to" in section 2(m) of the Act for the term considered in those income-tax cases was "owner" within the

meaning of section 9 of the 1922 Indian Income-tax Act (section 22 of the 1961 Income-tax Act).

For the aforementioned reasons, in our considered view, the expression "belonging to" in section 2(m) of the Act will have to be understood as interpreted above in answering the first question.

Here, it will be important to notice the observation of the Supreme Court in ***Nawab Sir Mir Osman Ali Khan*** case [(1986) 162 ITR 888]. Their Lordships noted the meaning of the expression "belonging to" in **Aiyar's *Law Lexicon of British India*** [1940] edition, as also to ***Stroud's Judicial Dictionary*** and pointed out that the expression "property belonging to" might connote absolute right of the user as well as the ownership and gave the illustration that a road might be said, with perfect propriety, to belong to a man who has the right to use it as of right, although the soil does not belong to him. Having also noted the meaning of the expression "belonging to" in ***Webster's Dictionary****,* "*inter alia*, to be owned by, be in possession of", it was observed that the precise sense in which the words were used must be gathered only by reading the instrument as a whole because section 53A of the Transfer of Property Act, 1882, is only a shield and not a sword. In the instant case, we do not have the copies of the agreements for sale of the properties in question, said to have been executed by the late Nizam nor do we have the material clauses of the agreements before us. The order of the Tribunal also does not contain the material clauses of the extract of the agreement. In view of the fact that the relevant important documents are not before us, we are handicapped in interpreting the agreement for sale which is essential for answering the question. We, therefore, decline to answer the first question. We leave it open to the Tribunal to gather the necessary material on those aspects and decide the matter in the light of the observations made above.

In so far as the second question is concerned, which relates to retro ceding of the properties in question which are in the possession of the Sahebzadas and Sahebzadis, we may point out at the outset that the "firmans" under which the properties are retroceded are not before us. Nor do we find any excerpts of them in the statement of case or the order of the Tribunal. However, it is mentioned that the late Nizam retroceded the properties in favour of the Sahebzadas and Sahebzadis. It would be appropriate to refer to the meaning of the word "retrocede". In ***Black's Law Dictionary****,* the meaning of the word "retrocession" is noted: "In civil law, when the assignee of heritable rights conveys his rights back to the cedent." In the ***Oxford Dictionary*** "retrocede" is given the meaning "1. move back, recede 2. cede back again." We consider it unnecessary to construe the term "retrocede" in any depth as that is now used in the order of the Tribunal but not in any statutory provision or any document. In the absence of the "firmans" or relevant material, it is not possible to say whether it was copied from the "firmans". Suffice it to say that the term "retrocede" connotes that a thing which originally belonged to a person but was held by another is given back to that person to whom it really belonged.

The private estate of the Nizam comprised the properties of the royal family of his forefathers. He used to have overall supervision and control of the properties of the royal family though the properties in the possession and enjoyment of the members of the royal families called Sahebzadas and Sahebzadis used to devolve on their respective heirs of the

members of the family in accordance with the Sharia. If the properties really belonged to the members of the royal family as Sahebzadas and Sahebzadis and were being dealt with and divided among the heirs as "matruka" on the death of the last holder of the properties, the mere fact that the Nizam was having overall supervision of the properties as head of the family would not make the properties personal properties of the late Nizam and if this fact he acknowledged by issuing the firmans and retroceding the properties, it would not amount to transferring the properties in favour of the Sahebzadas and Sahebzadis. It is also possible that the late Nizam has title to some or all of the properties which he purported to transfer under the "firmans". These facts can only be ascertained by a perusal of the "firmans". But these essential facts are not found by the Tribunal. In the absence of the factual basis, we decline to answer the second question as well.

* * * * *

CWT* v. *Kishan Lal Bubna

(1994) 1 SCC 60

BHARUCHA, J. - This is an appeal by special leave against the judgment of the High Court at Bombay on a reference under the provisions of Section 27(1) of the Wealth Tax Act, 1957. The question arose in respect of the Assessment Year 1962-63, for which the relevant valuation date was March 31, 1962, and it read thus:

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that under Section 4(1)(*a*)(*iii*) of the Wealth Tax Act, 1957 it is the value of the assets which have been actually transferred by the assessee that should be included in the net wealth of the assessee, the transferor, although the form of assets transferred has undergone a change since the date of the transfer, and the value thereof, on the valuation date, is different?"

2. The assessee, an individual, created two trusts, on February 18, 1957 and November 11, 1957, for the benefit of his two minor daughters. Thereby the respective amounts of Rs 25,101 and Rs 21,201 were settled upon trust and transferred to the trustees. After the trusts had been created the trustees purchased shares out of the trust funds. On the valuation date the trust funds were held in shares, the valuation of which was Rs 75,610. In determining the wealth tax payable by the assessee the Wealth Tax Officer took the view that it was the market value of the shares on the valuation date that was to be included in the wealth of the assessee. He rejected the contention that only the sum of Rs 46,302 which was settled by the assessee upon trusts was to be taken into account in computing his wealth. The decision of the Wealth Tax Officer was confirmed in appeal. In a further appeal before the Income Tax Appellate Tribunal the assessee's contention was upheld and, arising out of its judgment, the question quoted above was referred to the High Court. The High Court, upon an interpretation of Section 4(1)(*a*)(*iii*) of the Wealth Tax Act, 1957 answered the question in the affirmative and in favour of the assessee. The Revenue is in appeal before us.

3. Section 4(1)(*a*)(*iii*) of the Wealth Tax Act reads thus:

> "4. (1) In computing the net wealth of an individual, there shall be included, as belonging to him -
>
> (*a*) the value of assets which on the valuation date are held -
>
> (*iii*) by a person or association of persons to whom such assets have been transferred by the individual otherwise than for adequate consideration for the benefit of the individual or his wife or minor child;
>
> whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise"

4. The High Court in its judgment ***CWT* v. *Kishanlal Bubna*** [(1976) 103 ITR 56 (Bom HC)] said that the identification of the words "such assets" used in sub-clause (*iii*) were to be found in clause (*a*) of sub-section (1) of Section 4. The assets which were contemplated in clause (*a*) were the assets held by the transferee to whom such assets had been transferred by the assessee. The words "such assets" indicated and pin pointed the specific assets as being

those which had been transferred. That this was the intention was made very clear by the latter part of the section because it said "whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise". The object of this latter part of the section was that regard is to be had to the valuation of the original assets irrespective of whether they were retained in the form in which they were transferred or were converted into different types of assets. In either case it was the value of the assets that were transferred that had to be determined as on the relevant valuation date. There could be no controversy as regards the value of the assets transferred when the assets transferred were in the form of monies; then, irrespective of whether the transferees retained the monies settled or invested them in other modes, for the purpose of Section 4(1)(*a*)(*iii*) it was the value of the monies that were transferred that had to be taken into account and not the value of the assets into which they were converted. In the absence of clear and express provisions it was not possible to accept the contention raised on behalf of the Revenue, merely because it emphasized the expression "value of assets which on the valuation date are held". The value on the valuation date that had to be determined was the value of the original assets which were transferred.

5. Learned counsel for the Revenue assailed the correctness of the interpretation placed in the impugned judgment upon Section 4(1)(*a*)(*iii*). In support of his case he drew attention to the judgment of the Madras High Court in ***V. Vaidyasubramaniam*** **v.** ***CWT*** [(1977) 108 ITR 538 (Mad)] wherein the impugned judgment had been discussed. The Madras High Court was considering a case where the assessee had gifted the sum of Rs 90,000 to his wife, who had constructed a house therefrom. The assessee claimed that the value of the assets to be included in his wealth tax assessment was Rs 90,000 only and not the actual value of the house on the valuation date. Counsel on his behalf laid stress on the word "such" qualifying the word "assets" occurring in the provision and contended that the words "such assets" must refer only to the sum of Rs 90,000 which had been transferred by the assessee to his wife. The High Court was unable to place that construction on the word "such" qualifying the word "assets". It held that because of the specific provision at the end of sub-clause (*v*), namely, "whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise", it was not necessary that the assets transferred should be the same as the assets held by the spouse on the valuation date. The word "such" merely indicated the correlation between the asset transferred and the asset held by the spouse on the valuation date. The Madras High Court was unable to agree with the reasoning in the judgment impugned before us. It said that the impugned judgment led to this anomaly that the value to be included in the net wealth of the assessee was the value of an asset which was no longer in existence and, though the existence of the different form of the asset on the valuation date had to be taken note of for the purpose of the inclusion of the asset, its value as on the date of the valuation was completely ignored.

6. Learned counsel for the Revenue also drew attention to the judgment of this Court in ***Mohini Thapar (Smt)*** **v.** ***CIT*** [(1972) 4 SCC 493 : (1972) 83 ITR 208] which considered the provisions of Section 16(3)(*a*)(*iii*) of the Indian Income Tax Act, 1922. That provision said that "in computing the total income of any individual for the purpose of assessment, there shall be included - (*a*) so much of the income of a wife or minor child of such individual as

arises directly or indirectly - (*iii*) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart;". This Court held that the income which could be brought to tax under Section 16(3)(*a*)(*iii*) had to have a nexus with the assets transferred, directly or indirectly. Learned counsel urged that the object of Section 16(3)(*a*)(*iii*) of the Indian Income Tax Act, 1922 was the same as that of Section 4(1)(*a*)(*iii*) of the said Act, namely, that where assets had been transferred by an assessee to or for the benefit of his wife or minor child, such assets should continue to be treated as belonging to the assessee and all income derived from them should be treated as income derived by the assessee.

7. The assessee, though served, has remained unrepresented.

8. Reading Section 4(1)(*a*)(*iii*) as a whole, we have no doubt that the provision contemplates that where the asset which has been transferred has been converted to some other asset, it is the value of the converted asset on the valuation date which has to be taken into account in computing the net wealth of the transferor assessee. The words "such assets" in sub-clause (*iii*) do, no doubt, refer to the assets described in clause (*a*) in the sense that they mean "those assets". But we do not think that the use of the words "such assets" implies that it is only the value on the valuation date of the assets that were actually transferred which has to be taken into account and not of any assets to which the transferred assets may have been converted. The words "whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise" appear to us to put the matter beyond doubt. Where what is transferred by the assessee is money and the transferee utilizes that money to acquire an asset, it is the value of the asset on the valuation date which is relevant for the purposes of computing the net wealth of the assessee. Where what is transferred by the assessee is an asset and the transferee disposes of that asset and acquires from the consideration received another asset, it is the value of that acquired asset on the valuation date which is relevant for the purposes of computing the net wealth of the assessee. The object of this provision is much the same as the object of the provisions in the Income Tax Acts by reason of which income arising from an asset transferred to or for the benefit of an assessee's wife or minor child is treated as the income of the assessee.

9. The interpretation placed by the impugned judgment, we may add, would, in given cases, make the provision well nigh impossible to work when the assessee has transferred not money but an asset and that asset has been converted by the transferee into some other asset. An asset held neither by the assessee nor by the transferee on the valuation date could prove difficult to value.

10. In the result, the appeal is allowed. The judgment under appeal is set aside. The question referred to the High Court is answered in the negative and in favour of the Revenue. There shall be no order as to costs.

* * * * *

C.W.T. v. *H.H. Sri Rama Varma, Maharaja of Travancore*

(1975) 100 ITR 91 (Ker.)

GOVINDAN NAIR, ACTG. C.J. – Two questions have been referred to us by the Income-tax Appellate Tribunal, Cochin Bench. They are:

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the value of that portion of the property known as 'Valiakottaram' transferred by the assessee to the trust under the trust deed dated 31st March, 1960, is not to be included in computing the net wealth of the assessee under section 4(1)(a)(iii) of the Wealth-tax Act, 1957, on the ground that the assessee had not acquired any material benefit thereunder?
>
> 2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the benefit contemplated in section 4(1)(a)(iii) of the Wealth-tax Act, 1957, was only a material benefit and would not include a spiritual benefit?"

For the assessment of wealth-tax on his Highness Sri Rama Varma Maharaja of Travancore for the assessment years 1965-66 and 1966-67, the question arose whether the properties of the trust created by the assessee by the trust deed dated 31st March 1960, annexure "A" to the statement of the case, were to be included or not. It may be mentioned here that for the previous years, the properties covered by the trust had not been taken into account for ascertaining the wealth of the assessee. However, for the first time, in the year 1965-66, the Wealth-tax Officer proposed to include the trust properties as well as in the wealth of the assessee. This was objected to by the assessee but the Wealth-tax Officer rejected the objections and included the value of the trust properties as well. In appeal, however, the Appellate Assistant Commissioner set aside the order of the Wealth-tax Officer and held that the properties of the trust could not be taken into account. There was an appeal by the department before the Tribunal and it was urged before the Tribunal by the department that, in view of section 4(1)(a)(iii) of the Wealth-tax Act, 1957, the trust properties should also be included in the assets of the assessee. This contention was negatived by the Tribunal.

It is necessary for the application of the section, (1) that there had been a transfer by the individual to a person or association of persons, (2) that such transfer was otherwise than for adequate consideration, and (3) that the transfer was for the immediate or deferred benefit of the individual, his or her spouse or minor child or both.

The properties regarding which the trust has been created solely and exclusively belonged to the assessee. The properties have been transferred to the trustees under the trust deed, annexure "A", and this is clear from the terms of the trust deed itself. The trustees appointed are the assessee himself and his younger brother, His Highness Sree Uthradam Tirunal Marthanda Varma, Elayaraja of Travancore. The relevant parts of the trust deed also would show that the trust has been created for the sole benefit and well-being "of the members of the family" of the assessee. This is so specifically stated in paragraph 1 of the declaration. The 4th paragraph to the preamble also stated the same thing:

> "WHEREAS daily worship and poojas and homams, special poojas and special homams on certain occasions have been and are being performed and conducted in Thevarapura and Homapura according to the prevailing customs and mamool, with all the usual rituals and rites, for the sole benefit and well-being of the members of the family of his Highness Sree Chitra Tirunal Sri Rama Varma, Maharaja of Travancore."

In paragraph 6 of the preamble, however, it is stated that "poojas and other ceremonies have been and are being performed for the benefit and well-being of the author and members of his family." On a reading of the trust deed in its entirety giving emphasis to the declaratory portion of the trust deed, which is the operative portion, there can be no doubt that the trust has been created for the benefit of the family of the assessee. As a member of the family, the assessee too will be benefited in the sense in which "benefits" have to be understood in cases of this type of trust.

One of the questions that was mooted before us and which was also considered by the Tribunal was whether the type of benefit that can arise to the members of a family from poojas and homams performed in accordance with the terms of a trust deed is the type of benefit that is contemplated by section 4(1)(a)(iii) of the Act. On behalf of the assessee it was contended that there must be a more direct nexus between the assets held and the benefits than a connection that can be said to exist by the utilisation of the income from the assets for the purpose of poojas which poojas in turn may confer the benefits visualised by the trust deed. Spiritual is the object of the trust deed. Mental is the consolation which is sought to be achieved, though one cannot deny that a desire for material prosperity is not unlinked with the objects sought to be achieved by the creation of this trust. The contention raised by counsel on behalf of the department that the benefit in section 4(1)(a)(iii) is qualified by any such limiting words as material benefit or pecuniary benefit and that, therefore, normally the general common meaning of the word "benefit" – "advantage; profit; gains; interest; use; whatever contributes to promote prosperity or add value to property" – must be given to the word, is not without force. We, however, consider that it is unnecessary for the purpose of answering the questions referred to us, to deal with this aspect of the matter further, for we think that the contention on behalf of the assessee that section 4(1)(a)(iii) is not attracted at all because the properties of the trust are not held for the benefit of the individual, his or her spouse or minor child or both as envisaged by the section has to be accepted. This is only another aspect of the first question referred to us and is a pure question of law relating to the interpretation of section 4(1)(a)(iii) which we are justified in considering.

In understanding the scope of section 4(1)(a)(iii), apart from understanding the words of the section, one has also to look into the scheme of the Act and in so ascertaining the scheme of the Act, one has to take into account the provision in section 5(1)(i) and the provision in section 21 of the Act. Section 5(1)(i) gives exemption from the purview of the Act to property held by an individual under trust or other legal obligation for any public purpose of a charitable or religious nature. Section 21 provides for the imposition of tax on trustees "in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf or for whose benefit the assets are held." So, the assessee is liable to be assessed as a trustee of the trust properties under section 21 of the Act, the trust not being

of a public nature. In fact it was so that the assessee had been taxed till and inclusive of the year 1964-65. It is clear that the provisions in sections 21 and 4(1)(a)(iii) are not meant to be simultaneously applied to the same assets. If it is section 21 that is to be applied to this case, the entire trust properties which are held in trust for the benefit of the family of the assessee will have to be assessed in the hands of the assessee and his co-trustees in the like manner and to the same extent as those properties would have been taxed in the hands of the beneficiaries, that is, the members of the family of the assessee. If the properties are held for the benefit of the assessee only partly, then the share of the benefit of the assessee will have to be assessed by applying sub-section (4) of section 21 and in such an event section 4(1)(a)(iii) can have no application. But sub-section (4) of section 21 can have no application, we think, in the case of a composite trust in favour of the family as in this case. If section 21 is the section to be applied, we think that section 4(1)(a)(iii) will have no application, conversely if section 4(1)(a)(iii) is applicable, we think, section 21 will have no application. If this view is not taken, the same assets can be taxed twice, once under section 21, taking the trust properties alone, and again by applying section 4(1)(a)(iii) along with the trustees' other properties. It is clear that such an imposition of double taxation on the same assets is not intended by the statute. The two sections are, therefore, mutually exclusive. If any properties are dealt with under section 4(1)(a)(iii), there will be no assessment in regard to those properties under section 21 and if those properties are to be dealt with under section 21, they will not be included in the assets of the trustee by applying section 4(1)(a)(iii).

The wording of section 4(1)(a)(iii) indicates that it has limited application. However wide an interpretation is placed on the section, we think that it will not apply to a case where the properties are held not for the benefit of the individual and not for the benefit of his or her spouse or of his minor child or of any conceivable combination of these persons, but by other entities which fall outside those mentioned in the section. To be more explicit, if properties are held for the benefit of the family of the transferor – we are assuming here that the sort of benefit arising from the provisions of the trust deed in question is a benefit that would fall within the meaning of section 4(1)(a)(iii) without deciding the matter – the properties cannot be said to be held for the benefit of the individual or his or her spouse or minor child or both. The section is apparently meant for the purpose of covering transfers made by an individual for his own benefit or for the benefit of his wife when the transferor is a male or of his minor child or for a combination of any two or more of the above. We do not think that the section can be extended further. If that be so, a transfer by an individual for the benefit of his family cannot fall under the section.

We answer question No. 1 referred to us in the affirmative, that is, in favour of the assessee and against the department. In view of our answer to question No. 1 based on our finding that section 4(1)(a)(iii) is not attracted, we consider it unnecessary to answer the second question.

* * * * *

Commissioner of Wealth Tax v. *Nawab Fazal Yar Jung*

(1998) 233 ITR 654 (AP)

S.V. MARUTHI, J. - The assessee is an individual. The valuation date for the assessment year 1976-77 was 31-3-1976. The assessee filed return on 23-6-1976 declaring the net wealth Rs. 42,090. In the earlier assessment years the assessee paid a Mehar amount of Rs. 1,20,000 to his wife with which she purchased house properties in Kachiguda and Khairatabad. The value of those properties were estimated at Rs. four lakh by the Wealth Tax Officer and it was added to the assessee's wealth under section 4(1)(a) of the Wealth Tax Act on the ground that Rs. 1,20,000 had not been transferred to the above mentioned wife of the assessee for adequate consideration or in connection with an agreement to live apart. The Wealth Tax Officer computed the wealth at Rs. 4,37,643. On appeal the order of assessment was set aside and the appellate authority directed the Wealth Tax Officer to redo the assessment afresh as there is nothing on record to show that the assessee had not complied with the notices under section 16(2) or (4) of the Wealth Tax Act. The assessee being aggrieved preferred Second Appeal to the Tribunal. The Tribunal relied on the wealth tax assessment for the assessment year 1975-76 in the case of the very assessee where it was held that the profits acquired by the assessee's wife from out of Rs. 1,20,000 paid towards Mehar by the assessee cannot be included under section 4(1)(a)(i) of the Wealth Tax Act. Holding as above, the appeal was allowed. At the instance of the revenue the following questions were referred:

> Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in holding that an amount of Rs. 4 lakh being the fair market value of properties transferred by the assessee to his wife, is not includible in his wealth under section 4 (1)(a) of the Wealth Tax Act?

If the answer to the above question is in the affirmative, whether the Appellate Tribunal is correct in law in omitting to sustain the inclusion of at least Rs. 1,20,000 in the net wealth of the assessee representing the debt due from his wife?

Under Mohammedan Law Mehar or dower is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. Therefore, payment of Rs. 1,20,000 is towards Mehar. Since, it is a consideration for the marriage, it can be paid at any time either at the time of marriage or after marriage.

2. Under section 4(1)(a) of the Wealth Tax Act: In computing the net wealth of an individual, there shall be included, as belonging to that individual, the value of assets which on the valuation date are held by the spouse of such individual to whom such assets have been transferred by the individual directly or indirectly otherwise than for adequate consideration or in connection with an agreement to live apart.

3. A reading of section 4(i)(a) makes it clear that only that asset which was transferred to his spouse in connection with agreement or the consideration for such transfer is inadequate. In this case Rs. 1,20,000 was transferred to the wife not in connection with the agreement but on account of an obligation, viz., payment of Mehar to the wife under the Muslim Law as it is consideration of the marriage itself. Therefore, we are of the view that the amount of Rs. 1,20,000 cannot be included in the net wealth of the assessee under section 4(1)(a) as it has no application. In the light of the above, we answer the question referred to above in the affirmative and against the Revenue.

Trustees of Gordhandas Govindram Trust v. *C.I.T.*

(1973) 3 SCC 346

K.S. HEGDE, J. - These appeals relate to the Wealth Tax assessment of the appellant/assessee for the assessment years 1957-58 and 1958-59, the relevant valuation dates being December 31, 1956 and December 31, 1957.

The two questions of law referred to the High Court are:

> "(1) Whether on a true construction of the indenture of trust, dated June 11, 1941, the trustees of the Trust constitute an assessable unit under the provisions of the Wealth Tax Act?
>
> (2) Whether the property held by the trustees under the indenture of trust, dated June 11, 1941, is held for any public purpose of a charitable or religious nature in India within the meaning of Section 5(1)(*i*) of the Wealth Tax Act?"

The High Court has answered both these questions in favour of the Department and against the assessees. Hence these appeals.

2. The facts of this case lie within a narrow compass. Govindram Gordhandas Seksaria, Ramnath Gordhandas Seksaria, Makhanlal Gordhandas Seksaria and Bholaram Gordbandas Seksaria constituted a Trust on June 11,1941, in respect of a sum of Rs 11 lakhs (Rupees eleven lakhs). That Trust was known as 'Gordhandas Govindram Family Trust'. Clause (2) of the Trust deed says that it was created "for giving help or relief to such poor Vaishaya Hindoos or other Hindoos as the trustees may consider deserving of help in the manner and to the extent hereinafter specified and subject to the conditions and directions stated in the next following clauses and/or for the charitable object or objects hereinafter mentioned". Clause (3) (*a*) of the Trust deed provides that "the conditions and directions to be observed and followed by the Trustees in the execution of the Trusts herein declared as follows:

> "Poor Vaishaya Hindoos who are members of Seksaria families shall be preferred to poor Vaishaya Hindoos of Navalgadh not belonging to that family."

Sub-clauses (*b*) *to* (*q*) provide for the payment of maintenance and marriage expenses of the poor male or female descendants of Seksaria family.

We shall now set out sub-clauses (*r*) to (*a*) of clause (3). They read:

> "(*r*) Rs 5/- (Rupees five) per month may be paid as and by way of maintenance of any poor male Vaishaya Hindoo who may be deserving of help.
>
> (*s*) Rs 5 (Rupees five) per month may be paid as and by way of maintenance to any poor unmarried female Vaishaya Hindoo or a poor Vaishaya Hindoo or a poor Vaishaya Hindoo widow who may be deserving of help.
>
> (*t*) Rs 500/- (Rupees five hundred) may be expended or given for the purpose of meeting the expenses of marriage of any poor male Vaishaya Hindoo who may be deserving of help.
>
> (*u*) Rs 500/- (Rupees five hundred) may be expended or given for the purpose of meeting the expenses of marriage of any poor female Vaishaya Hindoo who may be deserving of help."

The deed further provides:

> "If the income of the Trust Estate is not sufficient to carry out the charities specified in sub-clauses (*a*) to (*a*) above the charity specified in an earlier sub-clause shall be given priority over a charity specified in a later sub-clause."

3. From the above, it is clear that charity provided was primarily for the benefit of the members of the family of Seksaria, no doubt including both male and female descendants. It is also clear from the deed that the amounts provided for the payment of maintenance and marriage expenses for the poor members of the Seksaria family is bound to take away a substantial part of the income of the trust, if not the whole of it.

4. As mentioned earlier, the Trust is known as "Gordhandas Govindram Family Trust." That is a clear pointer. That shows that the Trust was primarily intended for the benefit of the family of Gordhandas Govind-ram. This is made further clear from the various provisions in the Trust deed. A reading of the Trust deed as a whole clearly goes to prove that the charity under that deed begins with the family of Gordhandas Govindram and possibly ends with it. Charity in favour of the Vaishaya Hindoos other than the members of the family of Gordhandas Govindram is not only marginal, but also quite tenuous.

5. We shall now take up the two questions of law referred to the High Court to ascertain its opinion. It was contended before the High Court that the Wealth Tax Act does not provide for levy of any tax on Trusts. As seen earlier, this contention did not find favour with the High Court. But that contention was repeated before this Court. In order to decide that contention, it is necessary to refer to three provisions in the Act, viz., Sections 3, 5(1)(*i*) and 21. Section 3 is the charging section.

6. Section 5 provides for exemption in respect of certain assets. One of the exemptions provided is in respect of any property held by an assessee under Trust or other legal obligation for any public purpose of a charitable or religious nature in India. Section 21 to the extent material for our present purpose may be recast thus:

> "In the case of assets chargeable to tax under this Act which are held by a Trustee appointed under a Trust deed by a duly executed instrument in writing, whether testamentary or otherwise, the wealth-tax shall be levied upon and recoverable from the trustee in the like manner and to the same extent as it would be leviable upon and recoverable from the persons on whose behalf the assets are held, and the provisions of this Act shall apply accordingly."

7. It was urged that unlike the charging section in the Income Tax Act, the charging section in the Act does not provide for the levy of tax on association of persons. It merely provides for assessing an individual or Hindu undivided family or company. Trustees cannot be considered either individual or as Hindu Undivided Families or Companies. They could have been charged as an association of persons. But that body is not assessable under the Act. Hence, the trustees are not chargeable under the Act. It was conceded at the hearing that Section 5 (1)(*e*) as well as Section 21 proceed on the basis that a Trust property is also liable to be taxed under the Act. But what was urged before us was that there is a lacuna in the charging section and, therefore, the trustees of a Trust cannot be taxed under the Act. We see no merit in this contention.

8. In ***Commissioner of Wealth-tax, Bihar and Orissa* v. *Kripashankar Daya-shankar Worah*** [(1971) 2 SCC 570] the contention raised was that trustees could not be assessed under the Act as Section 21(1) of the Act provides for assessing the trustees who held the Trust property "on behalf of" others. In law, a trustee does not hold the trust property "on behalf of" others. Hence, trustees cannot be assessed to tax under the Act. That contention was rejected by this Court. No contention was raised in that case that trustees did not come within the scope of Section 3 of the Act. The judgment in that case proceeded on the basis that trustees can be assessed to wealth-tax in respect of the trust property of which they are trustees.

9. There is also no dispute that Section 5 (1)(e) of the Act proceeds on the basis that a trust property comes within the scope of the Act. Section 3 of the Act does bring within its scope an individual which expression in view of the Central General Clauses Act includes individuals as well, unless the context otherwise indicates. In this case, the context, far from not indicating that the individual does not include individuals, clearly shows at any rate so far as the trustees are concerned that it includes individuals. As the Indian Income Tax Act provides for the assessment of "an association of persons", the context therein may indicate that individual does not include individuals. But such an interpretation is not permissible when we deal with Section 3 of the Act.

10. In ***Commissioner of Income-tax, Madhya Pradesh and Bhopal* v. *Sodra Devi*** [AIR 1957 SC 832] this Court observed:

> "The word 'assessee' is wide enough to cover not only an 'individual' but also a Hindu undivided family, company and local authority and every firm and other association of persons or the partners or the firm or the members of the association individually."

11. In ***V. Venugopala Raoi Varma Rajah* v. *Unions of India*** [(1969) 1 SCC 681] a question arose whether Section 3 of the Expenditure Tax Act, 1957, which reads:

> "(1) Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from April 1, 1958, a tax (hereinafter referred to as expenditure Tax) at the rate or rates specified in the Schedule in respect of the expenditure incurred by any individual or Hindu undivided family in the previous year…"

brought within the net of taxation a Mappilla Marumakkattayam family. As seen earlier, under Section 3 of the Expenditure Tax Act, the only entities which are mentioned, are individuals of Hindu undivided family. This Court came to the conclusion that Mappilla Marumakkattayam family could also be assessed as an individual.

12. In ***Suhashini Karuri* v. *Wealth-tax Officer*, *Calcutta*** [46 ITR 953 (Cal)], the Calcutta High Court opined that the joint trustees could be assessed as individuals under the Act. A similar view was taken by the Bombay High Court in ***Abhay L. Khatau* v. *Commissioner of Wealth-tax, Bombay City II*** [57 ITR 202 (Bom)]. We are in agreement with that view. We, accordingly, agree with the High Court and hold that the trustees of the trust, with which we are concerned in these appeals, constitute an assessable unit under the provisions of the Act.

13. Now, let us turn to the other question, viz., whether the trust in question can be considered as a trust created for public purposes of a charitable or religious nature. As seen earlier, the trust in question was created primarily for the benefit of members of the family of Gordhandas Govind-ram Seksaria. That is clear from the title given to the Trust as well as from the various provisions to which we have made reference earlier. Therefore, it is not possible to hold that the Trust in question is a Trust for any public purpose. It is clearly a private Trust. The character of the Trust in question came to be considered by the Bombay High Court in ***Trustees of Gordhandas Govind-ram Family Charity Trust* v. *Commissioner of Income-tax* (*Central), Bombay*** [21 ITR 231 at 237 (Bom)] under Section 4(3)(*i*) of the Indian Income Tax Act. After examining the various provisions, the High Court opined that it was not a trust for charitable purpose within the meaning of Indian Income Tax Act, 1922. It was held that the primary purpose of the settler was to benefit the members of the family and remotely and indirectly to benefit the general public. We agree with that conclusion. The decision in the above case came up for consideration by this Court in ***Trustees of the Chanty Fund* v. *Commissioner of Income-tax, Bombay*** [AIR 1959 SC 1060]. This Court did not differ from the view taken by the High Court but distinguished the same.

14. In the result, these appeals fail and they are dismissed with cost.

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Trustees of Heh The Nizam's Pilgrimage Money Trust v. *C.I.T.*

(2000) 4 SCC 179

S. S. M. QUADRI, J. - 2. HEH the Nizam of Hyderabad created a trust with a corpus fund of Rs 22,20,000, named "HEH the Nizam's Pilgrimage Money Trust" on 2-11-1950. The objects of the Trust, inter alia, are that during the lifetime of HEH the Nizam to meet expenses of Haj pilgrimage of himself and members of his family accompanying him on such pilgrimage and expenses on visits to holy places of Hedjaz and Iraq and also for making religious offerings at such places as the settlor in his absolute discretion might think fit; that after the death of the Nizam the net income and the unspent accumulations of income, if any, shall be spent or utilised by the trustees for all or any of the religious or charitable purposes specified in clause 3(e) of the said trust deed. HEH the Nizam died on 24-2-1967. During his lifetime, he did not go either for Haj or on any other pilgrimage. After his death, the said Trust became a public charitable and religious trust and the trustees held the corpus and accumulations of the income of the Trust thereunder. But the trustees could not have spent the income of the trust property in Hedjaz or Iraq under clause 3(e) in view of the restriction imposed by the Government of India on sending monies outside India. After obtaining legal opinion, the trustees passed a resolution dated 22-5-1968 to spend the income of the trust property including accumulations thereof only on objects and purposes specified in sub-clauses (v), (vi) and (viii) of clause 3(e) within the territory of India. They read as under:

> "3. The trustees shall hold and stand possessed of the trust fund upon trust.-
>
> (e) On and after the death of the settlor to hold the trust fund or the balance thereof then remaining and the unspent accumulations (if any) of the income of the trust fund and the investment thereof upon trust to expend or utilise the net income of the trust fund as well as the accumulations (if any) of the income thereof made during the settlor's lifetime and the investments thereof for all or any one or more of the following religious or charitable objects and purposes at Hedjaz and/or Iraq in such manner as the trustees may in their absolute discretion think proper -
>
> (v) for constructing, establishing and maintaining dispensaries or hospitals or wards in hospitals and otherwise for medical aid and relief;
>
> (vi) for constructing, establishing, maintaining and running schools, madarsas and other educational institutions and otherwise for advancement of education;
>
> (viii) for such other religious or charitable purposes as the trustees may in their absolute discretion think fit in such manner and to such extent as they may think fit."

4. In assessment proceedings, under the Wealth Tax Act, 1957 for Assessment Years 1974-75 and 1975-76, the trustees claimed exemption under Section 5(1)(i) thereof on the ground that the properties/assets were held in the Trust for public purposes of charitable and religious nature in India in view of the said order of learned Chief Judge, City Civil Court, Hyderabad. The Wealth Tax Officer rejected the claim. The Appellate Assistant Commissioner, however, took the view that by virtue of the order of the Chief Judge, City Civil Court, the properties of the Trust were entitled to exemption under Section 5(1)(i) of the Act from the date of the order. The Revenue carried the matter in appeal before the Income Tax Appellate Tribunal. Holding that the assessee was not entitled to exemptions under

Section 5(1)(i) of the Act, the Tribunal set aside the order of the Appellate Assistant Commissioner and allowed the appeal of the Revenue. At the instance of the assessee, the Tribunal referred the following question of law to the High Court for its opinion:

> "Whether on the facts and in the circumstances of the case and on a proper construction of the scope and effect of the judgment of the Chief Judge of the City Civil Court, Hyderabad in the proceedings under Section 34 of the Indian Trusts Act, the Tribunal is correct in holding that as on the relevant valuation dates corresponding to Assessment Years 1974-75 and 1975-76 the corpus of the trust fund cannot be said to have been held in trust for charitable or religious purposes in India and the assessee Trust is, therefore, not entitled to exemption under Section 5(1)(i) of the Wealth Tax Act, 1957 in respect of the corpus of the trust fund?"

The High Court on construction of the trust deed and Section 5(1)(i) of the Act held that all the objects and purposes of the Trust were intended to be performed outside India and neither the resolution of the trustees nor the order of the Chief Judge, City Civil Court, alter that position. In that view of the matter, the High Court answered the question in the affirmative, i.e., in favour of the Revenue and against the assessee by the impugned order.

5. The contention of Mr P. Murli Krishnan, learned counsel for the appellant assessees, is that as the situs of the trust property is in India, so the property is exempted under Section 5(1)(i) of the Act irrespective of where the income thereof is utilised; therefore, the High Court was in error in answering the question in favour of the Revenue.

6. Mr. M.L. Verma, learned Senior Counsel appearing for the Revenue, argued that the exemption under the said provision was rightly denied to the assessee as the income of the Trust was required to be spent for religious and charitable purposes outside India.

8. A perusal of the provision shows that wealth tax is not payable in respect of any property held by the assessee under the trust or other legal obligation for any public purpose of a charitable or religious nature in India. There is no controversy that to claim exemption under this provision (i) the property must be held under a trust or legal obligation and that (ii) it must be for a public purpose of charitable or religious nature. What is, however, contended by Mr Murli Krishnan is that it is enough if the situs of the trust property is in India and that the public purpose of a charitable or religious nature need not be performed in India. On a plain reading of the provision, it is evident that the situs of the property held in the trust is irrelevant; what is relevant for granting exemption is that the public purpose of charitable or religious nature should be in India. It may be pointed out that the words "in India" are used in clause (i) not after the words "any property" but after the words "for any public purpose of a charitable or religious nature". This leaves no room to contend that exemption is available to a property situated in India even if it is held for any public purpose of a charitable or religious nature outside India. This being the position, the contention of the learned counsel is devoid of any substance and it is rejected.

13. For the foregoing reasons we hold that the High Court has rightly answered the question in favour of the Revenue. The appeals are without any merits and they are accordingly dismissed.

Director of Wealth-Tax (Exemption) v. *Estate R.P. Kayam Trust*

(2002) 253 ITR 30 (Cal.)

Y.R. MEENA, J. – On an application under section 27(3) of the Wealth-tax Act, 1957, this court has directed the Tribunal to refer the following questions:

> "1. Whether, the finding of the Tribunal that the trust as a whole was a public religious trust is based on any relevant materials or is perverse?
>
> 2. Whether the finding of the Tribunal that the assessee did entertain a bonafide belief that it was not liable to wealth-tax is based on any relevant materials or is perverse?
>
> 3. Whether the Tribunal is justified in law in holding that the trust was a public religious trust exempt from wealth-tax under section 5(1)(i) of the Wealth-tax Act, 1957?"

The assessee, Estate R.P. Kayam Trust, filed wealth-tax returns in response to the notice issued under section 17 of the Wealth-tax Act, 1957, for the assessment years 1965-66 to 1973-74 on July 26, 1974, and for the assessment year 1974-75 on August 25, 1975. In each of the years the assessee declared a net wealth of Rs. 5,11,500 and mentioned in Part III of the return that the net wealth was exempt under section 5(1)(i) of the Wealth-tax Act.

The Wealth-tax Officer did not accept the claim. He assessed the wealth for wealth-tax purpose on completion of the assessment under section 16(3) of the said Act. The Wealth-tax Officer has also initiated penalty proceedings under section 18(1)(a) for the delay in filing the returns. In appeal before the Commissioner of Wealth-tax (Appeals), the Commissioner of Wealth-tax (Appeals) has also dismissed the appeal.

In appeal before the Tribunal, the Tribunal has taken the view that the assessee is a public religious trust it is not liable to pay the wealth-tax and when the assessee is not liable to pay the wealth-tax, there is no question of imposing the penalty under section 18(1)(a) of the Wealth-tax Act, nor the penalty can be levied under section 18(1)(c) of the Wealth-tax Act.

Mr. Mullick, learned counsel for the Revenue, brought to our notice the decision of this court in the case of ***CIT* v. *Estate of B.P. Kayan Trust*** [(1985) 155 ITR 60], which covers the issue before us in the case in hand. However, he submits that the objects of the trust have been given by the Wealth-tax Commissioner (Appeals) and one of them is 20 per cent of the balance net income to be spent on the trustee shebait's family. That is not for charitable purpose. Therefore, the assessee is not entitled to exemption under section 5(1)(i) of the Wealth-tax Act.

The objects which are referred to by the Commissioner of Income-tax in his order read as under:

> "(i) 10 per cent of the net income to be spent or reserved for the repairs of the dedicated properties;
>
> (ii) 60 per cent of the balance net income to be spent for sheba and puja of the deities which includes amongst others providing of Jal Chhatras for cattle, land for feeding the poor;

(iii) 20 per cent of the balance net income to be spent on the trustee shebait's family; and

(iv) the remaining 20 per cent to be reserved for constructing Dharamshala at Laharu, Sanskrit Pathshala and other maintenance."

In ***CIT* v. *Estate of B.P. Kayan Trust*** [(1985) 155 ITR 60 (Cal.)], after giving the objects this court has considered the objects and held that both are charitable objects. The relevant portion at page 62 reads as under:

> "The first purpose is establishment and maintenance of a dharamshala for providing food and other amenities to pilgrims and adequate staff for such purposes. The second is for establishment of a Sakskrit chatuspati, for paying salaries of the necessary pandits, for providing scholarships to students and for their lodging and boarding expenses. Both are charitable objects."

It is true that all the objects of the trust are not referred to in the case of ***CIT* v. *Estate of B.P. Kayan Trust***, but a plain reading of the objects 1, 2 and 4 left no doubt in our mind that 80 per cent income has been for charitable purposes, so far 20 per cent of the balance net income to be spent on the trustee shebait's family that strictly cannot be said for charitable purpose but it is not also unreasonable to take the view that when the members of the trustee shebait's family render some services in the temple, the 20 per cent income if goes to that family, that view of the matter it cannot be taken out from the public religious trust.

In the result, we find no infirmity in the order of the Tribunal. In view of the aforesaid facts, we answer question Nos. 1 and 3 in the affirmative, i.e. the finding of the Tribunal is based on the material on record and the finding is not perverse, i.e., in favour of the assessee and against the Revenue. We answer question No. 3 also in the affirmative, i.e., in favour of the assessee and against the Revenue.

* * * * *

Mohd. Ali Khan v. *C.W.T.*

(1997) 3 SCC 511

G.B. PATTANAIK, J. - In this appeal by grant of certificate by the Delhi High Court interpretation of Section 5(1)(iii) of the Wealth Tax Act, 1957 is involved. On an application being filed under Section 27(1) of the Act the Tribunal referred the following question to the High Court for being answered:

> "Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the buildings of the Khas Bagh Palace which were let out to different persons from whom a rental income was received by the assessee were not in the occupation of the assessee within the meaning of Section 5(1)(iii) of the Wealth Tax Act, 1957 and hence the value thereof was includible in the net wealth of the assessee?"

2. The assessee late H.H. Nawab Sir Syed Raza Ali Khan, Nawab of Rampur is the owner of Khas Bagh Palace. The said palace was declared by the Central Government in exercise of power under para 13 of the Merged States (Taxation Concessions) Order, 1949, to be the official residence of the Ruler. During the Assessment Year 1961-62 the assessee claimed exemption of the aforesaid palace in computation of the wealth under the Wealth Tax Act under Section 5(1)(iii) of the Act. The Wealth Tax Officer on consideration of the materials before him came to the conclusion that the palace having consisted of a number of buildings the assessee would be entitled to exemption only in respect of the building or the portions of the building which is in the occupation of the Ruler and on the said conclusion he found that the estimated market value of several buildings which had been let out to be Rs 3,55,000. This valuation obviously he found out on the basis of the rental income derived by the assessee. He accordingly took that into consideration in computation and levying wealth tax on the same. Being aggrieved by the order of the Officer the assessee moved an appeal and the Assistant Commissioner in appeal as well as the Tribunal in second appeal confirmed the assessment made. But on an application being filed under Section 27 of the Act the Tribunal made the reference on the question, as already stated. The High Court in the impugned decision came to the conclusion that a restrictive interpretation of Section 5(1) of the Act would disentitle the assessee of any exemption since the building in question is not under the occupation of the Ruler fully. It also came to the conclusion that liberal interpretation of the said provision would entitle the assessee to exemption to the extent the assessee occupies the building or the portion of the building and, therefore, the liberal interpretation should be preferred. With this finding the High Court answered the question referred to in favour of the Revenue and against the assessee.

3. Mr. Sharma, the learned counsel appearing for the appellant, contended that the expression "any one building" in Section 5(1)(iii) is not susceptible of an interpretation by making a further dissection to import into it the portion of the building or whole of the building as that would tantamount to a fresh legislation which the Court is not empowered to do. According to the learned counsel the Central Government having declared the Khas Bagh Palace to be the official residence of the assessee in exercise of power under para 13 of the Merged States (Taxation Concessions) Order, 1949, the said building would be excluded from

the purview of the Act by virtue of Section 5(1)(iii) of the Act. This being the position, the High Court committed an error in answering the question posed in favour of the Revenue. The learned counsel urged that in interpreting the taxing statute it is not permissible for the Court to look to the policy behind the statute and the Court would be entitled to give a plain meaning to the words used in the statute. It is, therefore, urged that a plain literal meaning being given to each part of Section 5(1)(iii), the said provision is susceptible of only one construction, namely, that building which has been declared by the Central Government to be the official residence of the Ruler cannot be included in the assets of the assessee for the purpose of determining the wealth tax payable by an assessee.

4. Dr. Gauri Shankar, the learned Senior Counsel appearing for the Revenue, on the other hand, contended that in interpreting Section 5(1)(iii) of the Act the expression "in the occupation of a Ruler" has to be borne in mind and if each and every word used in Section 5(1)(iii) of the Act is given its literal grammatical meaning then the only conclusion possible is the building or the part of the building in occupation of the Ruler and which has been declared by the Central Government as the official residence of the Ruler would be exempted under the said provision.

5. In order to appreciate the rival contention it would be appropriate to notice Section 5(1)(iii) of the Act:

> "5. (1) Wealth tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee—
> (iii) any one building in the occupation of a Ruler declared by the Central Government as his official residence under paragraph 13 of the Merged States (Taxation Concessions) Order, 1949, or paragraph 15 of the Part B States (Taxation Concessions) Order, 1950."

6. It is a cardinal principle of construction that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary. It has been often held that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. Obviously the aforesaid rules of construction is subject to exceptions. Just as it is not permissible to add words or to fill in a gap or lacuna, similarly it is of universal application that effort should be made to give meaning to each and every word used by the legislature. In ***J.K. Cotton Spg. and Wvg. Mills Co. Ltd.* v. *State of U.P*.** [AIR 1961 SC 1170], it was observed by this Court:

> "(T)he courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect."

7. In case of taxing statute it has been held by this Court in several cases that one must have regard to the strict letter of the law and if the Revenue satisfies the Court that the case falls strictly in the provisions of law, the subject can be taxed. This being the position, a fair

reading of Section 5(1)(iii) of the Act would reveal that only the building or the part of the building in occupation of the Ruler which has been declared by the Central Government to be the official residence under the Merged States (Taxation Concessions) Order, 1949, will not be included in the net wealth of the assessee. The contention advanced by the learned counsel for the appellant that once a building has been declared as the official residence and a portion of the said building is under occupation of the assessee then the said building should come under the purview of Section 5(1)(iii) of the Act even if the substantial portion of the same has been rented out by the assessee to the tenant or for any other purpose would make the expression "in the occupation of a Ruler" redundant and those words in the provision would not have their play.

8. We have carefully considered the principles of construction of the statute enunciated by this Court in the decision cited by the learned counsel for the appellant and we do not find any principle stated therein, which is contrary to the principle we have adopted in this case in interpreting Section 5(1)(iii) of the Act. In the aforesaid premises, we are of the considered opinion that the High Court rightly answered the question posed in favour of the Revenue and against the assessee and the said judgment of the High Court does not require any interference by this Court.

9. This appeal is accordingly dismissed.

* * * * *

C.W.T. v. *D.S. Virawala Suragwala*

(2003) 259 I.T.R. 405 (Guj.)

R.K. ABICHANDANI J. – The reference raise the questions on the aspect as to whether the assessee was entitled to exemption under section 5(1)(iii) of the Wealth-tax Act, 1957, in respect of the new building, constructed in place of the old recognised palace.

For the assessment year 1977-78, the assessee had declared the net wealth of Rs. 11,12,243 on July 1,1977. The return was filed in the capacity of individual. During the proceedings, the assessment was made in the status of a "Hindu undivided family", as requested by the assessee. According to the assessee, he had succeeded to the Gaddi of the former State of Vadia on the death of his father. According to him, he was in possession of a palace at Vadia which was exempted for taxation purposes under the notification issued under the Part "B" States (Taxation Concessions) Order, 1950. The said palace was declared as the official residence of the ex-Ruler of Vadia. It was demolished in the previous year relevant to the income-tax assessment year 1973-74 and the scrap was partly sold and partly utilized for construction of a new building. The assessee claimed the capital loss of Rs. 56,518 in respect of the old palace. The value of the newly constructed building at the place where the palace earlier stood was shown as Rs.1,57,280. The assessee claimed exemption under section 5(1)(iii) of the said Act in addition to the exemption claimed, in respect of his flat at Bombay under section 5(1)(iv) of the said Act. The Wealth-tax Officer, Rajkot, by the order dated March 13, 1982, held that since, in the instant case, the old palace was dismantled and a new building had been constructed in its place, the new building cannot be regarded as the palace mentioned in the notification, and therefore, the exemption under section 5(1)(iii) of the Act was not available to the assessee.

The return for the assessment year 1978-79 was filed on June 30, 1978, by the assessee in the status of a "Hindu undivided family". For the reasons stated in the assessment order for the year 1977-78, the Wealth-tax Officer, by the order dated March 4, 1983, rejected the assessee's claim for exemption under section 5(1)(iii) of the said Act. Similar order was made on January 12, 1984, by the Wealth-tax Officer in respect of the assessee's claim filed in the status of a "Hindu undivided family" for the assessment year 1979-80.

Against the order of the Wealth-tax officer dated March 13, 1982, made for the assessment year 1977-78, the assessee had preferred an appeal raising the ground that the Wealth-tax Officer had erred in not granting exemption in respect of the building constructed on the same land on which the palace was demolished. The Appellate Assistant Commissioner of Wealth-tax, by the order dated May 5, 1984, construing the provisions of section 5(1)(iii) of the said Act, held that the exemption was given to a building which was the official residence of the assessee, and that such exemption was enjoyed by the assessee up to the assessment year 1972-73 and, therefore, the exemption was available to the assessee even when he demolished the dilapidated palace and constructed a new building at the same place. The addition of Rs.1,57,280 made by the Wealth-tax Officer was, therefore, deleted. Similar orders were made by the appellate authority on the appeals filed for the assessment years 1978-79 and 1979-80 on July 3, 1984, and December 20, 1985, respectively.

The matter was carried to the Appellate Tribunal by the Wealth-tax Officer in respect of these years and the Tribunal, taking note of the fact that, in para.13 of the Merged States (Taxation Concessions) Order, 1949, exemption was granted from income-tax and super tax in respect of bona fide annual value of the residential palaces of a Ruler of an Indian State which was declared by the Central Government as the official residence of the Ruler and likewise para. 15 of the Part "B" States (Taxation Concessions) Order, 1950, also granted that exemption, held that, having regard to the expression "any one building in the occupation of the Ruler" occurring in section 5(1)(iii) of the said Act and to the fact that there was no dispute as to the building having been in the occupation of the ex-Ruler, there was no reason why exemption granted earlier cannot be availed of by the assessee. All the appeals were, therefore, dismissed.

The Tribunal has, in the aforesaid background, referred the following questions for the opinion of this court under section 27 of the Wealth-tax Act, 1957, in Wealth-tax Reference No. 16 of 1987 :

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to exemption under section 5(1)(iii) of the Wealth-tax Act, 1957, in respect of new building constructed by him in place of the old recognised palace ?
>
> 2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the exemption was available to a building used as an official residence irrespective of the fact whether it was old or newly constructed ?"

Learned standing counsel, appearing for the Revenue, contended that the basic requirement of section 5(1)(iii) of the Act was that a building should be in the occupation of the Ruler, and that it should have been declared as the official residence of the Ruler under para. 15 of the Part "B" States (Taxation Concessions) Order, 1950. It was submitted that, in this case, admittedly, the declared building was demolished in the year 1973-74 and a new one was constructed in the year 1974-75. Therefore, the building in respect of which benefit of section 5(1)(iii) of the Act was intended, did not exist and no exemption could be granted for a new building which was not declared as the official residence. It was also submitted that the Tribunal had not considered as to whether the assessee was a person eligible to make a claim under section 5(1)(iii) of the Act for exemption.

In support of his contentions, learned senior standing counsel for the Revenue relied upon the following decisions:

(a) A decision of the Allahabad High Court in **H. H. *Maharaja Vibhuti Narain Singh*** v. ***CWT*** [(1970) 78 ITR 714], in which it was held in the context of the provisions of section 5(1)(iii) of the said Act that, under the said provisions, the Ruler of an Indian State was entitled to exemption from tax in respect of only one building which the Central Government has declared as his official residence under para. 13 of the Merged States (Taxation Concessions) Order, 1949. In that case, the Wealth-tax Officer had already granted exemption in regard to the Ramnagar palace as the official residence of the assessee and included the value of Nandeswar palace in his net wealth. It was held that the assessee was not entitled to

exemption from tax in regard to the value of Nandeswar palace under any provision of the Wealth-tax Act.

(b) A decision of the Supreme Court in ***Revathinnal BalagopalaVarma* v. *His Highness Shri Padmanabha Dasa Bala Rama Varma*** [(1993) Suppl. 1 SCC 233], was cited for the proposition that, one incidence of property held by a sovereign was that there was really no distinction between the public or State properties on the one hand and private properties of the sovereign on the other, and the other incidence was that no one could be a co-owner with the sovereign in the properties held by him, and that the whole of it belongs to him as sovereign.

(c) A decision of the Supreme Court in ***Gaj Singh* v. *Settlement Commission*** [(2001) 247 ITR 586] was cited to point out that, where the assessee, an ex-Ruler of an Indian State, had opted to adopt the Umed Bhavan Palace as his house for the purposes of exemption under section 5(1)(iii) of the Wealth-tax Act, 1957, it was held that he could not seek exemption for another house, namely, the Sardar Samand Palace under clause (iv) of section 5.

(d) A decision of the Supreme Court in **H. H. *Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur* v. *Union of India*** [AIR 1971 SC 530] was cited for the proposition that, in recognizing or de-recognising a person as a Ruler, the President does not exercise any political power, but he exercises only an executive function.

Learned counsel appearing for the assessee supported the decision of the Tribunal and contended that the assessee was entitled to the benefit of section 5(1)(iii) of the said Act, in respect of any building which was used as official residence. It was submitted that the emphasis was on providing residence to the ex-Ruler and his successors and, therefore merely because the earlier building which was dilapidated, had been pulled down and a new building was constructed at the same site, it cannot be said that the benefit of section 5(1)(iii) ceases to operate. It was also submitted that the Hindu undivided family of the Ruler or his successor can file returns under the said Act and all that was required to be ascertained was, whether the property in question fell within the description of section 5(1)(iii) of the said Act, and it makes no difference whether the assessment was made in the hands of the Ruler or his successor as an assessee or in the hands of the Hindu undivided family of such Ruler or the successor, as the case may be.

Learned counsel for the assessee, in support of his submissions, referred to the decision of the Madhya Pradesh High Court in ***H. H. Raja Agit Singh of Jhabua v. CIT*** [(1983) 140 ITR 138], in which, in the context of the provisions of clause (19A) of section 10 of the Income-tax Act, 1961, the court held that, by the said clause, the earlier exemption granted to erstwhile Rulers in respect of the annual value of the palaces was withdrawn and the annual value of only one of the palaces in the occupation of the Ruler was exempted from income-tax with effect from December 28, 1971, and therefore, the Tribunal was not justified in holding that the annual value of the palace was also taxable under clause (19A) of section 10 from April 1, 1971, to December 28, 1971, though the said clause was deemed to have been inserted with effect from December 28 1971.

The undisputed facts are that, the palace of the erstwhile Ruler of Vadia was notified at item 60 of the notification dated May 14, 1954, issued by the Government of India, Ministry of Finance (Revenual Division) and published in the Gazette of India, Part II section 3, dated

May 14, 1954, pursuant to the provision of item (iii) of para. 15 of the Part "B" States (Taxation Concessions) Order, 1950, and declared as the official residence of the Ruler of the said former Indian State. The said Taxation Concessions Order, 1950, was issued under section 60A of the Indian Income-tax Act 1922, and the exemptions from income tax and super-tax enumerated in clause 15 included in sub-clause (iii), "the bona fide annual value of the residential palace of the Ruler of a State which is situate within the State and is declared by the Central Government as his inalienable ancestral property".

The assessee claims exemption under section 5(1)(iii) of the said Act, which reads as under :

> "***5. Exemption in respect of certain assets.-***(1) Subject to the provisions of sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee- . . .
>
> (iii) any one building in the occupation of a Ruler, being a building which immediately before the commencement of the Constitution (Two-sixth Amendment) Act, 1971, was his official residence by virtue of a declaration by the Central Government under paragraph 13 of the Merged (Taxation Concessions) Order, 1949, or paragraph 15 of the Part 'B' States (Taxation Concessions) Order, 1950; . . ."

Section 2(p) of the said Act defines "Ruler" so as to mean a Ruler as defined in clause (22) of article 366 of the Constitution. Under article 366(22) as per the definition of "Ruler" as substituted by the Constitution (Twenty-sixth Amendment) Act, 1971, "Ruler" means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such "Ruler". Under article 363A which was inserted by the Constitution (Twenty-sixth Amendment) Act, 1971, it was provided that any person recognised by the President as Ruler or successor of such Ruler before the commencement of the said Amendment Act, shall, on and from such commencement, cease to be recognized as such Ruler or the successor of such Ruler. It would, therefore, follow that, for enabling the assessee to claim exemption under section 5(1)(iii) read with the definition of "Ruler" in section 2(p) of the Act, by not including in the net wealth of the assessee one building in the occupation of a Ruler which before the said Constitution Amendment Act, 1971, was his official residence, such Ruler should have been recognised by the President as the Ruler of an Indian State or the successor of such Ruler should have been so recognised at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971.

The Constitution (Twenty-sixth Amendment) Act, 1971, received the assent of the President on December 28, 1971, and by that Act, articles 291 and 362 of the Constitution were omitted and a new article 363A was inserted. Under article 363A(a), notwithstanding anything in the Constitution or in any law for the time being in force, the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement was recognised by the President as the successor of such Ruler shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler.

Under article 362, which came to be omitted by the said Amendment, it was earlier provided that, in the exercise of powers of Parliament or of the Legislature of a State to make laws or in the exercise of the executive powers of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as was referred to in article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

Consequent to derecognition of the Rulers of Indian States and abolition of privy purse, in order to enable the Rulers to adjust progressively to the changed circumstances, Parliament enacted the Rulers of Indian States (Abolition of Privileges) Act, 1972, with a view to amend certain enactments, including the Wealth-tax Act. In the Wealth-tax Act, 1957, in clause (iii) of section 5 in sub-section (1) for the words "any one building in the occupation of a Ruler declared by the Central Government as his official residence", the words, brackets and figures "any one building in the occupation of a Ruler, being a building which immediately before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was his official residence by virtue of a declaration by the Central Government", were substituted with effect from December 28, 1971. The said Act of 1972 also made an amendment in section 10(19A) of the Income-tax Act, 1961, which contains a similar exemption from income-tax.

Thus, the overall effect of the Twenty-sixth Amendment on the definition of "Ruler" which has been adopted under section 2(p) of the Wealth-tax Act, 1957, and of the aforesaid amendment made by the Rulers of Indian States (Abolition of Privileges) Act in section 5(1)(iii) of the said Act, was that the exemption in respect of any one building could be given only to a Ruler who was recognised by the President as the Ruler or to any person who was recognised by the President as the successor of such Ruler before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, if it was his official residence by virtue of the declaration made under para. 15 of the Part "B" States (Taxation Concessions) Order, 1950.

As noted above, the official palace of the Ruler of Vadia was notified under para. 15 of the Part "B" States (Taxation Concessions) Order, 1950, and, therefore, the benefit under section 5(1)(iii) of the said Act was available in respect of that palace. However, since the palace was demolished in 1973-74 and a building has been reconstructed on the same site, the question has arisen as to whether the benefit of exemption under section 5(1)(iii) of the said Act would enure in respect of the said newly constructed building. The official building of the Ruler or the successor recognised prior to the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was exempted from the net wealth of the assessee with a view to provide some relief to such recognised Ruler or successor, as a transitional provision to enable such person to adjust progressively to the changed circumstances as indicated in the preamble to the Rulers of Indian States (Abolition of Privileges) Act, 1972, by which section 5(1)(iii) of the said Act was amended.

The grant of exemption to the palace from inclusion in the net wealth of the assessee, was not on the ground that it was some antique object but was intended to ensure that one building in the occupation of the recognised ex-Ruler or the recognised successor of such ex-Ruler should be exempted from wealth-tax. It cannot be countenanced that the recognised Ruler or the recognised successor should be compelled to live in a dilapidated building declared as his

official residence and would lose the benefit of exemption under section 5(1)(iii) of the said Act, if by reconstructing the building he makes it habitable. Moreover, such building recognised as an official residence may be raised on the ground due to natural calamity and it would lead to absurdity, if one has to construe the provision of section 5(1)(iii) so as to deny the benefit of the reconstructed building even in such cases.

It will, thus, be seen that the emphasis even at the time when this exemption clause was enacted in the Act of 1957 was to provide exemption for one building which was in the occupation of the Ruler. The definition of the word "Ruler" has undergone change as noted above, and the benefit under section 5(1)(iii) of the said Act, would now be available, only as a transitional measure, to the ex-Ruler or his successor, who may have been recognised by the President prior to the date of commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, which came into force with effect from December 28, 1971.

The validity of the Constitution (Twenty-sixth Amendment) Act, 1971, was upheld by the Supreme Court in ***Raghunatharao Ganpatrao*** v. ***Union of India*** [(1994) Suppl. 1SCC 191]. It was observed in the majority judgment that, permanent retention of the privy purse and the privileges of rights would be incompatible with the sovereign and republican form of Government. Such a retention will also be incompatible with the egalitarian form of our Constitution. The repudiation of the right to privy purse, privileges, dignities, etc., by the deletion of articles 291 and 362, insertion of article 363A and amendment of clause (22) of article 366 by which the recognition of the Rulers and payment of privy purse were withdrawn cannot be said to have offended article 14 or 19(1)(f) of the Constitution. It was held that there was no legitimacy in the argument in favour of continuance of princely privileges.

In the present case, however, it has never been disputed so far that the assessee-Shri D. S. Virawala Suragwala Vadia- was a recognised successor of the ex-Ruler. Therefore, if the said assessee is a successor of the ex-Ruler recognised by the President prior to the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, he was entitled to the benefit of section 5(1)(iii) of the said Act, by not including in the net wealth of the assessee the said building notwithstanding the fact that it was reconstructed after demolishing the dilapidated palace.

Since the question as to whether the exemption claimed under section 5(1)(iii) of the Act could have been made by the assessee in the return filed by him in the status of a Hindu undivided family has not been referred and does not arise from the order of the Tribunal, we refrain from giving any opinion on that aspect of the matter.

In view of the above discussion, we hold that the Tribunal was right in coming to the conclusion that the exemption under section 5(1)(iii) of the Wealth-tax Act, 1957, was admissible even in respect of the new building constructed by the assessee in the place of the old recognised palace which was used as his official residence.

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Commissioner of Wealth-Tax v. *Jugal Kishore Bhagat*

(1992) 197 ITR 250 (Cal.)

AJIT K. SENGUPTA J. – In this reference under section 27(1) of the Wealth-tax Act, 1957, for the assessment years 1969-70, 1970-71 and 1971-72, the following common question of law has been referred to this court:

> "Whether, on the facts and in the circumstances of the case and on a correct interpretation of section 5(1)(iv) of the Wealth-tax Act, 1957, the Income-tax Appellate Tribunal was justified in law in holding that the assessee was entitled to deduction under section 5(1)(iv) of the Wealth-tax Act, 1957, in respect of his leasehold property?"

The disputes relate to the assessee's claim for exemption under section 5(1)(iv) of the Wealth-tax Act, 1957, in respect of the property at 15, Shib Thakur Lane, Calcutta. The Wealth-tax Officer noticed that the assessee had taken a lease of this building for 35 years with an option for a further renewal for 35 years. The value of the leasehold property was not disclosed in the return in the first instance. Later, the assessee showed it at 12 times the net rental income which came to Rs. 1,61,825. The Wealth-tax Officer estimated it at Rs. 1,75,680 and included the same in the net wealth of the assessee.

On appeal, the assessee claimed deduction under section 5(1)(iv) as two-thirds portion of the premises was being used by him for residential purposes and the same was allowed by the Appellate Assistant Commissioner.

The Revenue came up in second appeal before the Tribunal which upheld the order of the Appellate Assistant Commissioner with the following observations:

> "We have heard the representatives of the parties at length in these appeals. The main reliance of the representative of the Revenue was that, under the relevant clause (iv) of section 5(1), the exemption can be claimed only in respect of a house belonging to the assessee. In the present case, the house in question did not belong to the assessee and, therefore, he was not entitled to any exemption. For this purpose, reliance was placed upon a decision of the Hon'ble Supreme Court of India in ***CWT* v. *Bishwanath Chatterjee*** [(1976) 103 ITR 536]. In this case, the question in dispute was the liability to wealth-tax in respect of property held jointly by the members of the family by the Dayabhaga school of Hindu Law."

The Tribunal did not accept the contention and, on a consideration of the facts and circumstances, held that the assessee was entitled to deduction under section 5(1)(iv) of the Act in respect of his leasehold residential house property. In this view, the application of the Revenue was dismissed.

At the hearing before us, the contentions raised before the Tribunal have been reiterated. Much has been sought to be made out from this decision of the Supreme Court in ***Bishwanath Chatterjee's*** case [(1976) 103 ITR 536] by the Revenue to lead us to the conclusion that, in order to obtain the benefit of clause (iv), the assessee must be the owner of the property and mere possession or any leasehold right therein was not sufficient to enable him to do so. But

that ratio is quite unrelated to the issue. It propounds that unlike a Mitakshara joint family, the Dayabhaga family is based on mere joint possession without joint ownership. In a Mitakshara family, both ownership and possession are joint. It does not lay down that the right to beneficial enjoyment does not come within the pale of the words "belonging to" or that there can be no ingredients of belonging without absolute ownership.

There is also a fundamental self-contradiction in the Revenue's stance. It cannot, in the same breath, include an asset under section 2(m) as belonging to the assessee and deny it exemption as an asset not belonging to him. Such ambivalence is a fallacy.

After carefully considering all the facts and circumstances of the case, we are not inclined to accept this contention. The dispute before the Supreme Court did not relate to leasehold rights at all. In fact, if the assessee cannot get the exemption, it can be very well argued that no addition can be made to the net wealth of the assessee because the asset in question, i.e., the house, does not belong to him, because the same expression "belonging to" is used in clause (m) of section (2) of the Wealth-tax Act, 1957, which defines "net wealth".

Secondly, it is not necessary that a person should be the exclusive owner of the property so as to claim the benefit of clause (iv) of section 5(1) of the Wealth-tax Act, 1957. A part ownership or co-ownership may be sufficient for this purpose. What is probably required is that he should be having some right of ownership and not merely a right of possession. What we find in the present case is that the right of the assessee was fairly comprehensive. He had the power to demolish the existing old building situated at the said premises and to construct a new structure thereon, the right to raise loans from the Life Insurance Corporation and/or any other financial institution and/or bank for constructing a new building on the security of the demised premises and the lessor had thereby given his consent to the same.

The lease itself was for a period of 35 years with an option of renewal for a further period of 35 years. In ***CED* v. *Jyotirmoy Raha*** [(1978) 112 ITR 969 (Cal.)], it was held that :

> "Though the word 'belonging' in section 33(1)(n) of the Estate Duty Act, 1953, is capable of denoting an absolute title, yet it is not confined to that sense. Even possession of an interest less that that of full ownership could be signified by that word."

The Supreme Court in ***Raja Mohammad Amir Ahmad Khan* v. *Municipal Board of Sitapur*** [AIR 1965 SC 1923], had construed the meaning of the word "belonging" as capable of signifying possession of an interest less than that of full ownership. The ratio in ***CWT* v. *Bishwanath Chatterjee*** [(1976) 103 ITR 536 (SC)] is in no way incongruous or inconsistent with or in conflict with the said construction. Because, in the latter case, the issue was whether a joint Hindu family unless having jointness of ownership and possession could be held to be assessable in respect of the asset. Their Lordships answered the question in the negative. Possession bereft of a shade of ownership cannot bring in exigibility of the asset to wealth-tax. The Revenue as earlier said was playing a wrong note.

The decision of the Supreme Court in ***R.B. Jodha Mal Kuthiala*** [(1971) 82 ITR 570] has classified "ownership" broadly into two genres – two legal ownership and the right to exercise the benefits of ownership. This also supports the view that there can be an asset belonging to

a person who could exercise the rights of the owner without being the owner in the fulness of its meaning.

There could be some justification for citing ***Nawab Sir Mir Osman Ali Khan (Late)* v. *CWT*** [(1986) 162 ITR 888 (SC)] on behalf of the Revenue. But that case is also distinguishable. It settles the principle that an unregistered seller continues to be taxable for the asset sold and delivered by reason of not being divested of the legal estate, one part of ownership. The word "belonging" ropes in the holder of empty legal estate. Far from discarding, it relaxes the meaning of "belonging" to include any slice of ownership.

Even according to the Transfer of Property Act, 1882, there are several modes of transferring property. Lease is one of them and involves transfer of a right. It is correct that mortgage is also termed as a transfer of an interest but the purpose thereof is obviously to secure the repayment of money advanced or to be advanced by way of loan, or the performance of an engagement and normally there is no right to the usufruct of the property.

It was urged that it is quite possible that, in the present case, both the lessor and the lessee may ultimately claim the benefit of this exemption. This does not necessarily result in denial of the assessee's claim. It is also always possible to have a set of ownerships subsisting in a property. The rights of the holders may not be exactly similar. One person may have one kind of right and another person another kind, but both are the owners of the rights. So, this argument by itself should not be fatal to the assessee's claim. The rights may flow from the same property in separate streams converging on different persons.

For the reasons aforesaid, the question in this reference is answered in the affirmative and in favour of the assessee.

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Commissioner of Wealth-Tax V. *P. Babul Reddy*

(1996) 218 ITR 625 (A.P.)

S.S.M. QUADRI, J. – Under section 27(1) of the Wealth-tax Act, 1957, the following question is referred for our opinion at the instance of the Revenue:

> "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee is entitled to exemption under section 5(1)(iv) in respect of the amount included in the assessee's net wealth representing the amounts paid to Nandam Construction Company in respect of a flat given possession of to them?"

To answer the question it would be necessary to note the relevant facts here. The assessee is a Hindu undivided family. For the assessment years 1977-78 and 1978-79, under the Wealth-tax Act, the assessee included the value of the flat at Rs. 70,000 and Rs. 80,125 respectively. The assessee claimed exemption under section 5(1)(iv) of the Wealth-tax Act, on the ground that that was the only flat belonging to the joint family. Inasmuch as there was no registered document conveying the flat in favour of the assessee, the Wealth-tax Officer did not allow the exemption under the said provision. The assessee unsuccessfully carried the matter in appeal. In second appeal before the Tribunal, it was held that the assessee was entitled to exemption under the said provision. On these facts, the above said question arose.

The learned standing counsel for the Revenue vehemently argues that as the assessee did not have title to the flat in question and as the same was not conveyed under a registered document which is a must under section 54 of the Transfer of Property Act, the Tribunal erred in allowing the exemption prayed for. Section 5(1)(iv) of the Wealth-tax Act, as it stood in the relevant assessment year, was in the following terms:

> "5.(1) Wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee….
>
> (iv) one house or part of a house belonging to the assessee;"

From a perusal of the provision extracted above it is clear that for purposes of having the benefit of the house excluded from the computation of the net wealth under the Wealth-tax Act, it is not necessary that the title to the property should have been conveyed in favour of the assessee. It is enough if the assessee is the beneficial owner of the house in respect of which exemption is claimed. The expression "belonging to" fell for consideration of this court in ***Syed Khaza* v. *Raghavendra Rao*** [(1974) 2 ITJ 287]. The Division Bench held that it does not necessarily connote ownership of the property and that the right of possession falls within the ambit of that expression. Following that judgment, we hold that for purposes of section 5(1)(iv) of the Wealth-tax Act, a person who has come into possession of the property on payment of the full consideration is entitled to exemption even though in the relevant year the property was not conveyed to him under a registered document. In this view of the matter, the Tribunal was right in holding that the assessee was entitled to exemption under section 5(1)(iv) of the Wealth-tax Act.

For the above reasons, we answer the question in the affirmative, i.e., in favour of the assessee and against the Revenue.

Commissioner of Wealth-Tax v. *Laxmi Dutt*

(2003) 263 ITR 225 (All.)

M. KATJU, J. – This is a reference under section 27 of the Wealth-tax Act, 1957, in which the following question has been referred to us for our opinion:

> "Whether on the facts and in the circumstances of the case, the Tribunal was legally correct in allowing deduction under section 5(1)(iv) of the Wealth-tax Act, 1957?"

The assessee is an individual who is a partner in the firm, Laxmi Dutt Roop Chand, along with another partner, Roop Chand.

The relevant assessment years are 1974-75 and 1975-76. In his return of net wealth as well as during the assessment proceedings, the assessee claimed deduction under section 5(1)(iv) of the Wealth-tax Act in respect of the house property owned by the firm. The Wealth-tax Officer rejected the assessee's claim but the appeal was allowed by the Appellate Assistant Commissioner and his order was upheld in further appeal by the Tribunal.

In our opinion, there is no merit in the submission of learned counsel for the Department. Section 5(1)(iv) of the Wealth-tax Act, as it existed before the Finance Act, 1992, stated:

> "5.(1) Wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee –
>
> (iv) one house or part of a house belonging to the assessee."

Thus, the value of one house belonging to an assessee is not to be included in the net wealth of the assessee for the purposes of the Wealth-tax Act.

As regards the house in question, no doubt it has been mentioned that it belongs to a firm but it must be remembered that a firm is not a distinct legal entity unlike a company registered under the Companies Act. When we say that the house is owned by a firm we really mean that the house belongs to the partners. Similarly, when we say that the firm has acquired or sold some property then we really mean in law that its partners have done so. This is because a firm is not a distinct legal entity at all, both under the general law as well as under the Wealth-tax Act, although it is a legal entity under the Income-tax Act.

It has been mentioned in section 3 of the Wealth-tax Act, which is the charging section, that wealth-tax is levied on individual, Hindu undivided family and a company. Thus, wealth-tax cannot be levied on a firm under the Wealth-tax Act.

Since the house in question, which is said to belong to the firm, in reality belongs to the partners and since the assessee is one of the co-owners of the house property, in our opinion, the value of his share in the house property has to be deducted from the net wealth for the purposes of wealth-tax.

We, therefore, answer the question in the affirmative, that is, in favour of the assessee and against the Department.

* * * * *

Commissioner of Wealth-Tax v. *M.K. Abdul Khader Haji*

(2000) 242 ITR 728 (Ker.)

ARIJIT PASAYAT C.J. – Doubting the correctness of the judgment rendered by this court in ***Dr. V.P. Gopinathan* v. *CWT*** [(1996) 221 ITR 401], reference was made to a Full Bench. The order for reference was made by the Division Bench while considering a reference under section 27(1) of the Wealth-tax Act, 1957. The following question was referred by the Income-tax Appellate Tribunal:

> "Whether, on the facts and in the circumstances of the case, and in view of the Tribunal's own decision in the case of ***Dr. V.P. Gopinathan*** (WTA Nos. 58, 59 and 60 (Coch) of 1985 dated June 11, 1988), the assessee is entitled to exemption under section 5(1)(xxxiii) of the Wealth-tax Act, 1957?"

The assessee, an individual, though a citizen of India, was a resident of Kuwait for a long time. He is a partner in Haji M.K. Abdul Khader and Co., a partnership firm, which runs a hotel called "Paramount Tower" in Calicut. The Valuation Officer determined the fair market value of the hotel building at Rs. 86,28,000 as on March 31, 1984, and that of plant and machinery including electrical installations at Rs. 13,66,200. The assessee, being a partner in the said partnership firm, the Assessing Officer computed the value of the assessee's share in the interest of the firm and consequently enhanced the returned figure of wealth by Rs. 20,87,448. The assessee claimed that the entire wealth was exempt under section 5(1)(xxxiii) of the Act as investments made in India were out of remittances made by him from abroad. The Assessing Officer refused the claim on the ground that the exemption would not be available in respect of the amounts brought prior to his return to India. The matter was challenged before the Commissioner of Wealth-tax (Appeals), who held that the assessee would be entitled to exemption under the aforesaid provision. The Revenue carried the matter in appeal before the Tribunal which affirmed the view of the CWT (A). It was noticed by the Tribunal that in some of the cases a different view had been taken by it and, therefore, made a reference. When the matter was heard by a Division Bench, reliance was made by learned counsel on ***Dr. Gopinathan's*** case [(1996) 221 ITR 401 (Ker.)], which supports the view taken by the Tribunal. Learned counsel for the Revenue, with reference to the provision itself, submitted that the position is clear that it is only money and the value of assets brought by the assessee into India at the time of his return with the intention of permanently residing in India which qualifies for exemption and not any other amount. Learned counsel for the respondent-assessee, however, submitted that such a narrow interpretation is not in line with the legislative intent and in any event the decision of this court has correctly taken note of the position.

The provision at the relevant time relating to the assessment year reads as follows:

> "**5.** ***Exemptions in respect of certain assets***. –(1) Subject to the provisions of sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the asessee-...

> (xxxiii) in the case of an assessee, being a person of Indian origin who was ordinarily residing in a foreign country and who, on leaving such country, has returned to India with the intention of permanently residing therein, moneys and the value of assets brought by him into India and the value of the assets acquired by him out of such moneys:
>
> Provided that this exemption shall apply only for a period of seven successive assessment years commencing with the assessment year next following the date on which such person returned to India..."

Learned counsel for the assessee submitted that the amendment brought in by the Finance Bill of 1986, which operates with effect from April 1, 1987, throws considerable light on the controversy. By the amendment, in the opening paragraph, after the words "out of such moneys", the words "within one year immediately preceding the date of his return and at any time thereafter" has been inserted along with two *Explanations.* Clarificatory notes on clauses show that under the pre-existing provisions, in the case of an assessee being a permanent person of Indian origin or a citizen of India who has returned to India with the intention of permanently residing in India, the moneys and the value of assets acquired by him out of such moneys within one year immediately preceding the date of his return and at any time thereafter will qualify for exemption and will not be included in the net wealth of such person. The exemption will, however, be limited to a period of seven successive assessment years commencing with the assessment year next following the date on which such person returned to India. Item (B) in respect of clause 40, sub-clause (a)(ii) of the notes sought to clarify that the moneys outstanding in the credit of the person to whom the clause in the Act is applicable in a non-resident (external) account in any bank in India in accordance with the Foreign Exchange Regulation Act, 1973, and any rules made thereunder on the date of his return shall be deemed to be moneys brought by him into India on that date. This amendment was operative retrospectively from April 1, 1977 and relatable to the assessment year 1977-78 and subsequent years.

The assets, etc., brought into India, by persons of Indian origin or by citizens of India-section 5(1)(xxxiii). Section 5(1)(xxxiii), newly inserted by the Finance Act, 1976, with effect from April 1, 1977, grants exemption, for and from the assessment year 1977-78, to an assessee, being a person of Indian origin (as defined in *Explanation 1*) or a citizen of India, who was ordinarily residing in a foreign country and who, leaving such country, has returned to India with the intention of permanently residing in India. The exemption to an eligible assessee is, for the assessment years 1977-78 to 1986-87, in respect of moneys and the value of the assets brought by him in India and the value of the assets acquired by him out of such moneys. However, for and from the assessment year 1987-88, the scope of such exemption has been broadened also in respect of moneys and the value of assets brought by the eligible assessee in India and the value of assets acquired by him out of such moneys within one year immediately preceding the date of his return. *Explanation 2* to section 5(1)(xxxiii) (which has been inserted by the Finance Act, 1986, with retrospective effect from April 1, 1977) clarifies that moneys standing to the credit of an eligible assessee in a non-resident (external) account in any bank in India in accordance with the Foreign Exchange Regulation Act, 1973, and any rules made thereunder, on the date of his return to India, shall be deemed to be moneys

brought by him into India on that date. Earlier, Department Circular No. 411 dated February 25, 1985 (see [1985] 152 ITR (St.) 227), has clarified the same position in the absence of a statutory provision in that regard. Such exemption is available only for a period of seven successive assessment years commencing with the assessment year next following the date on which such eligible assessee returned to India. Thus, where an eligible assessee has returned to India on January 1, 1978, and brought eligible assets into India, he will be entitled for exemption for the assessment years 1978-79 to 1984-85 in respect of the eligible assets.

According to Mr. P. Balachandran, learned counsel for assessee, three categories of assets are covered by the provisions. They are : (1) remittances made earlier to return of the assessee, (2) money and value of assets brought by him into India, and (3) investments after arrival by way of acquisition and all the three categories are eligible for exemption. According to learned counsel for the Revenue, on the other hand, only the second and third categories are exempted. Before the addition of the expression "within one year immediately preceding the date of his return and at any time thereafter" and *Explanation 2* which were simultaneously inserted by the Finance Act, 1986, with effect from April 1, 1987, and April 1, 1977, respectively, the position appears to be in line with the stand taken by the Revenue. A bare reading of the provision would make it apparent that what was exempted in respect of an assessee was moneys and the value of assets *brought by him* into India and the value of assets acquired by him *out of such* moneys. "Such moneys" obviously relates to moneys and the value of assets brought by him into India. The expression "moneys and the value of assets brought by him" precedes the expression "out of such moneys". It is relatable to moneys brought by him into India when he returns from a foreign country with the intention of staying permanently. The requirement seems to be that (a) a person of Indian origin as defined in *Explanation 1* or a citizen of India, who was ordinarily residing in a foreign country; (b) who, on leaving such country, has returned to India with the intention of permanently residing here; (c) moneys had been brought by him into India; and (d) assets have been acquired out of such moneys. There is another significant expression used i.e., "on leaving such country has returned to India." Therefore, the expression "moneys and the value of assets brought by him into India" is also relatable to the factum of the assessee leaving the foreign country and returning to India. The inevitable conclusion is that only moneys brought by the assessee at the time of leaving the foreign country and the value of the assets acquired by him out of such money qualifies for exemption.

It is stated that from the subsequent addition with effect from April 1, 1987, a different intention is inferable. As observed by the apex court in ***Hariprasad Shivshanker Shukla* v. *A.D. Divelkar*** [AIR 1957 SC 121] and ***Nalinikant Ambalal Mody* v. *S.A.L. Narayan Row, CIT*** [(1966) 61 ITR 428], legislation founded on a mistaken or erroneous assumption has not the effect of making that law which the Legislature had erroneously assumed to be so. The court will disregard such a belief or assumption and also the provision inserted on that belief or assumption. A later statute, therefore, is normally not used as an aid to construction of an earlier one. However, when an earlier Act is truly ambiguous, a later Act may in certain circumstances serve as a parliamentary exposition of the former. The position was succinctly stated in ***Cape Brandy Syndicate* v. *IRC*** [(1921) 2 KB 403, 414 (CA)] quoted in ***Jogendra Nath Naskar* v. *CIT*** [(1969) 74 ITR 33, 41 (SC)], by Lord Sterndale as follows:

> "I think, it is clearly established... that subsequent legislation, on the same subject may be looked to in order to see what is the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation, if it proceed upon an erroneous construction of previous legislation, cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to put upon the earlier."

There is no necessity to deal with that question in view of the clear and unambiguous language used in the statute for the assessment year with which we are concerned.

The decision in ***Dr. V.P. Gopinathan*** case [(1996) 221 ITR 401 (Ker)] does not state the position in law correctly and is accordingly overruled. The question referred to is to be answered in the negative, in favour of the Revenue and against the assessee.

* * * * *

Commissioner of Wealth-Tax v. *K.O. Mathews*

(2003) 261 ITR 702 (Ker.)

G. SIVARAJAN, J. – The following question of law is referred under section 27(1) of the Wealth-tax Act, 1957, at the instance of the Revenue.

> "Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim exemption of the price received by him on the sale of the car under section 5(1)(xxxiii) of the Wealth-tax Act?"

The respondent/assessee was a non-resident Indian, who returned to India for permanent settlement on May 2, 1985. While returning to India, he had brought a Mercedes Benz car and claimed the value of the same as exempt under section 5(1)(xxxiii) of the Wealth-tax Act. This claim was allowed up to the assessment year 1988-89. During the previous year relevant to the assessment year 1989-90, the assessee sold the car for Rs. 4,50,000 and the sale proceeds were invested in movable properties and claimed exemption under section 5(1)(xxxiii) on the amount of Rs. 4,50,000. The Assessing Officer disallowed the exemption holding that under section 5(1)(xxxiii) exemption is available only for moneys and the value of assets brought into India and the value of assets acquired out of such money. According to the Assessing Officer, assets which are sold and converted into money lose the exemption. The order of the Assessing Officer was confirmed in appeal by the Commissioner of Income-tax (Appeals), Kochi. However, in further appeal by the assessee, the Income-tax Appellate Tribunal upheld the claim of the assessee and allowed the appeal. It is against the said appellate order of the Tribunal, the question of law specified in paragraph 1 of this judgment is referred to.

Shri P.K.R. Menon, learned senior Central Government standing counsel appearing for the applicant, submits that under the provisions of section 5(1)(xxxiii), exemption is available only in respect of moneys, the value of assets brought by the assessee into India and the value of assets acquired by him out of such money. It is further submitted that since the assessee converted the asset, viz., the Benz car, into money by selling it, the said money is not eligible for exemption under the said sub-section. The senior counsel also submits that though the said sub-section refers to the value of assets, it has no significance in deciding the eligibility in view of the provisions of section 7 of the Act, which specifically provides for valuation of assets under the Act. The senior counsel, accordingly, submitted that the Tribunal was not justified in holding that the sale consideration of the Benz car brought by him from abroad is entitled to the exemption provided under section 5(1)(xxxiii) of the Act.

Though clause (xxxiii) contains various ingredients, we are only concerned with the question as to whether the sale consideration of the asset, viz., Benz car, brought by the assessee into India, is entitled to the exemption provided in the clause, for there is no dispute with regard to the other ingredients of that clause. The relevant portion of clause (xxxiii) states that "moneys and the value of assets brought by him into India and the value of the assets acquired by him out of such moneys." Admittedly, what is brought by the assessee, for the sale proceeds of which exemption is claimed, is a Benz car. According to the assessee, the sale consideration of the Benz car is the value of the asset brought by him, and therefore, the sale consideration is eligible for exemption under this clause.

However, the contention of the Revenue is that exemption under this clause will not be available once the asset brought from abroad is converted into money. The contention of senior counsel is that if the legislative intention was to grant exemption even in respect of the sale consideration of the assets brought from abroad, it should have been specifically stated so in the section itself. He drew inspiration for this submission in view of the provision that the "value of the asset acquired by him out of such moneys" used in the said section. According to him, this refers to the acquisition of assets with the moneys brought by the assessee from abroad. In other words, clause (xxxiii) does not permit grant of exemption when the assets brought from abroad are converted into money or in any other form.

On a reading of the provisions of clause (xxxiii) of section 5(1) of the Act, we are unable to agree with the contention of learned senior Central Government standing counsel. Clause (xxxiii), as already stated, grants exemption in respect of "moneys" and the value of assets brought by the assessee into India. According to us, the expression "value of assets" has got significance in deciding the issue. The word "value" as per ***Bouvier's Law Dictionary***, unabridged, 3rd revision, volume 3, 1984, at page 3387, reads thus:

> "Value. The utility of an object. The worth of an object in purchasing other goods. The first may be called value in use; the latter, value in exchange.
>
> When applied without qualification to property of any description, necessarily means the price which it will command in the market; …"

In ***Black's Law Dictionary***, 5th edition, page 1391, the meaning of the word "value" is given as follows:

> "Value. The utility of an object in satisfying, directly or indirectly, the needs or desires of human beings, called by economists 'value of use', or its worth consisting in the power of purchasing other objects, called 'value in exchange'."

So, when clause (xxxiii) of section 5(1) refers to the value of assets, it is the money's worth or the price of the assets, which is relevant. It is also relevant to note that clause (xxxiii) itself provides that the value of assets acquired by him out of such moneys is also held to be exempt. Here, the expression "such moneys," according to us, refers to moneys brought, as well as the value of the assets brought by the assessee from abroad. The value of assets, as already noted, is the money's worth or the sale consideration. Therefore, even if the assessee has converted the assets, which were brought by him from outside India, into money, and if the money has been used for acquisition of other assets, either the original asset, or the money's worth of the assets, or the asset which is acquired with the sale consideration of the original asset, is eligible for exemption, so long as the said asset is available with the assessee.

In the instant case, the Tribunal also, on a consideration of the provisions of section 5(1)(xxxiii), has taken the view that the assessee is entitled to claim exemption of the value of the Benz car brought by him from outside India or the price received by him on the sale of the car. We are of the view that the Tribunal is perfectly justified in taking such a view.

In the circumstances, we answer the question referred to us in the affirmative, i.e., in favour of the assessee.

* * * * *

C.W.T. v. *Consolidated Pneumatic Tools Co.*

(1972) 4 SCC 428

K.S. HEGDE, J. -These are appeals by special leave. The question for decision in these appeals is whether the goods in transit from England to India belonging to a non-resident assessee can be considered as wealth of the assessee during the relevant valuation dates. The relevant assessment years are 1957-58, 1958-59 and 1959-60.

2. The assessee is admittedly a non-resident company. It is said that during the relevant valuation dates some goods belonging to the assessee were in the High Seas. The question for decision is whether value of those goods can be taken into consideration in computing the net wealth of the assessee.

4. If these provisions [sections 3 and 2(m)] had stood by themselves there would have been some force in the arguments advanced on behalf of the assessee that the value of the goods with which we are concerned in this case should be taken into consideration in computing the net wealth of the assessee. But the above provisions are controlled so far as the non-resident assessees are concerned by Section 6 of the Act: That section provides "In computing the net wealth of an individual who is not a citizen of India or of an individual or a Hindu undivided family not resident in India or resident but not ordinarily resident in India, or of a company not resident in India during the year ending on the valuation date -

(i) the value of the assets and debts located outside India . . ."

shall not be taken into account. As mentioned earlier, the assessee is a non resident company. Therefore, in computing its net wealth the restrictions placed by Section 6 will have to be taken into consideration.

5. Quite clearly High Seas cannot be considered as a part of India in the absence of anything in the Act making it a part of India. Therefore, prima facie we must proceed on the basis that the goods with which we are concerned in this case were located outside India on the relevant valuation dates. But the learned Solicitor-General invited our attention to a passage in ***Dicey: Conflicts of Lows*** (6th edition) which says - "Goods on the High Seas which are capable of being dealt with in England by means of bills of lading in this country are, wherever actually situate, to be held situate in England". These observations are made in a different context and they will have no bearing in interpreting the scope of Section 6 of the Act. The scope of Section 6 is plain and unambiguous. It was urged on behalf of the Revenue that the question raised is a question of law arising from the Order of the Tribunal and therefore the High Court was bound to consider it. But herein we are dealing with appeals brought by special leave. It is within the discretion of this Court to grant or refuse to grant relief in appeals brought by special leave. For the reasons mentioned above we find no merit in these appeals.

6. In the result, these appeals fail and they are dismissed with costs.

* * * * *

Pandit Lakshmi Kant Jha v. *Commissioner of Wealth-Tax, Bihar*

(1973) 90 ITR 97(SC)

H.R. KHANNA J. – This appeal on certificate is directed against the judgment of the Patna High Court whereby that court answered the following question referred to it under section 27 of the Wealth-Tax Act, 1957 against the assessee:

> "Whether in computing the market value of the shares the assessee is entitled to the deduction of a sum of Rs. 2,30,546 by way of brokerage commission?"

The assessee was the former Maharajadhiraja of Darbhanga. The matter relates to the assessment year 1957-58, the relevant valuation date for which was March 31, 1957. The assessee filed a return on April 22, 1958, declaring a net wealth of Rs. 2,77,46,489. A revised return was filed subsequently showing the total wealth to be Rs. 2,69,58,130. The Wealth-tax Officer determined the net wealth of the assessee to be Rs. 4,57,85,996.

The assessee held shares and stocks in various limited companies. In the return filed by him the assessee gave correct valuation of those shares and stocks as given in the stock exchange quotations and the quotations furnished by well-known brokers, but he claimed a deduction of a sum of Rs. 2,30,546 by way of brokerage. It was contended on behalf of the assessee that in effecting the sales of the shares and stocks, brokerage would have to be paid. The Wealth-tax Officer disallowed the claim in this respect on the ground that there was no provision for deducting the brokerage commission.

On appeal, the Appellate Assistant Commissioner affirmed the decision of the Wealth-tax Officer on the question mentioned above. On further appeal to the Income-tax Appellate Tribunal, the Tribunal rejected the claim of the assessee for deduction on account of brokerage commission.

The High Court observed that in estimating the value of an asset, regard must be had to the value it would fetch. The word "fetch," in the opinion of the High Court, must mean the quoted price only and brokerage and other inevitable expenses would have to be ignored.

The question, as would appear from the above, relates to the claim of the assessee for deduction on account of brokerage commission from the value of shares and stocks held by him. The stand which has been taken on behalf of the assessee is that as and when he sells the shares and stocks in question, he would have to pay brokerage commission. As such, it is urged that in computing the value of this asset, the price which it would fetch in the market should be reduced by the brokerage which would have to be paid on account of the transaction of sale. We find it difficult to accede to this contention. Section 7(1) of the Act reads as under:

> "Subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date."

Bare reading of the section makes it plain that subject to any rules which may be made in this behalf, the value of the assets, other than cash, has to be the price which the assets, in the opinion of the Wealth-tax Officer, would fetch in the open market on the valuation date. It

would, therefore, follow that in the absence of any rule prescribing a different criterion, the value of an asset, other than cash, should be taken to be the price which it would fetch if sold in the open market on the valuation date. No rules prescribing a different criterion in respect of the value of quoted stocks and shares have been brought to our notice. Rule 1-C of the Wealth-tax Rules relates to the market value of unquoted preference shares, while rule 1-D of the said rules relates to market value of unquoted equity shares of companies other than investment companies and managing agency companies. The value of the stocks and shares in question, in the circumstances, would have to be estimated to the price which they would fetch if sold in the open market on the valuation date. The authorities concerned under the Act for this purpose accepted the valuation as given in stock exchange quotations and the quotations furnished by well-known brokers. No objection can be taken to this mode of valuation. Indeed, this was the mode which had been adopted by the assessee himself in the return filed by him.

There is nothing in the language of section 7(1) of the Act which permits any deduction on account of the expenses of sale which may be borne by the assessee if he were to sell the asset in question in the open market. The value according to section 7(1) has to be the price which the asset would fetch if sold in the open market. In a good many cases, the amount which the vendor would receive would be less than the price fetched by the asset. The vendor may, for example, have to pay for the brokerage commission or may have to incur other expenses for effectuating the sale. It is not, however, the amount which the vendor would receive after deduction of those expenses but the price which the asset would fetch when sold in the open market as would constitute the value of the asset for the purpose of section 7(1) of the Act. To accede to the contention advanced on behalf of the appellant would be reading in section 7(1) the words "to the assessee" after the words "it would fetch," although the legislature has not inserted those words in the statute. Such a course would not be permissible unless there is anything in the relevant provisions which may show that the intention of the legislature was that the value of an asset would be the price fetched after deducing the sale expenses.

It, no doubt, appears to be somewhat harsh that in computing the value of an asset only the price it would fetch if sold in the open market has to be taken into account and the expenses which would have to be borne in making the sale have to be excluded from consideration. This, however, is a matter essentially for the legislature. No resort can be made to an equitable principle for there is no equity about a tax. So far as the construction of section 7(1) of the Act is concerned, in view of its plain language, there is no escape from the conclusion that the expenses in effecting the sale of the asset in the open market cannot be deducted.

The material part of the language of section 7(1) of the Wealth-tax Act, 1957, is similar to that of sub-section (1) of section 36 of the Estate Duty Act, which was brought on the statute book earlier in 1953. Sub-section (1) of section 36 of the Estate Duty Act reads as under:

> "(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."

Section 48 of the Estate Duty Act was as under:

> "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 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."

On account of the similarity in language of the material parts of section 7(1) of the Wealth-tax Act and section 36(1) of the Estate Duty Act, the value of an asset, other than cash, for the purpose of section 7(1) of the Wealth-tax Act, should be the same as its value for the purpose of section 36(1) of the Estate Duty Act. Section 48 of the Estate Duty Act reproduced above allows a deduction up to 5 per cent on account of expenses for administering or realising property situated out of India in computing the value of that property. It would follow from the above that where the legislature intended that allowance or deduction should be made from the value of property, it made an express provision to that effect. The fact that no provision was made in respect of expenses which may have to be borne by the assessee in effecting the sale of an asset shows that in computing the value of an asset, such expenses cannot be deducted from the price which the asset would fetch if sold in the open market.

Section 36(1) of the Estate Duty Act was based upon section 7(5) of U.K. Finance Act, 1894, and section 60(2) of the U.K. Finance Act, 1910, while section 48 of the Estate Duty Act was based upon section 7(3) of the U.K. Finance Act, 1894. According to section 7(5) of the U.K. Finance Act, 1894:

> "The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioner, such property would fetch if sold in the open market at the time of the death of the deceased."

Section 60(2) of the U.K. Finance Act, 1910, provides that:

> "In estimating the principal value of any property under section 7(5) of the principal Act, ... the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, 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."

In the context of the above provisions, it has been observed on page 393 of ***Green's Death Duties***, sixth edition:

> "The price which property 'fetches' is the gross price paid by the purchaser, without deduction for the vendor's costs and expenses. This is so, even where the property is subject to a trust for sale. But if the property to be valued is merely a share in an unadministered estate, or in the proceeds of sale of trust property which must be realised for the purpose of distribution, the expenses of the executors or trustees under the old title should be taken into account."

The matter has been dealt with in ***Dymond's Death Duties***, fourteenth edition, page 569, in the following words:

> "The price which the property *fetches* is the gross sale price, without deduction for the costs of sale, except that, if the property is part of an unadministered estate or a

> share of property subject to a trust already in operation which involves conversion, or if the property consists of certified chattels of national, etc. interest (*see* p. 868), allowance for costs may be made."

The House of Lords had to deal with this aspect of the matter in the case of ***Duke of Buccleuch* v. *Inland Revenue Commissioner*** [(1967) A.C. 506, 525, 536 (H.L.)]. After referring to section 7(5) of the U.K. Finance Act, 1894, Lord Reid observed:

> "I am confirmed in my opinion by the fact that the Act permits no deduction from the price fetched of the expenses involved in the sale (except in the case of property abroad under sub-section (3))."

Lord Morris, in this context, observed:

> "The value of a property is to be estimated to be the price which it would 'fetch' if sold in the open market at the time of the death of the deceased. This points to the price which a purchaser would pay. The net amount that a vendor would receive would be less. There would be costs of and incidental to a sale. It would seem to be harsh or even unjust that allowances cannot be made in respect of them. But the words of the statute must be followed."

Similar observations were made by Lord Hodson and Lord Guest. We are, therefore, of the view that the High Court has recently answered the question relating to the claim for deduction on account of brokerage commission, against the assessee.

* * * * *

C.W.T., Bombay City-II v. *Keshub Mahindra*

(1983) 139 ITR 22 (Bom)

CHANDURKAR, J. – The father of the assessee died on 31st October 1963. The assessee, while submitting the return for the assessment year 1964-65 stated that he had filed a separate return of the net wealth of his father, late K.C. Mahindra, because, according to the assessee, the estate was still to be administered and the final position could be ascertained only after completion of administration of his estate. The WTO declined to separately assess the estate of the deceased father, holding that the assessee, being the sole heir and the father having died intestate, took the entire estate with all the liabilities and since the assessee had become the sole owner of the estate, he should have declared all the assets left by the father as his wealth. Consequently, he included "the wealth of the estate as the wealth of the assessee" in his personal assessment. In respect of the assessment year 1965-66, for which the valuation date was 31st March 1965, also the assessee did not include in his wealth what according to him was the unadministered estate of the deceased father on 31st March 1965. The WTO, however, had declined to make any separate assessment in respect of what was described by the assessee as "unadministered assets of late Shri K.C. Mahindra."

The AAC of Wealth-tax, in the appeal filed by the assessee, in which it was contended on his behalf that the father's estate was under administration on the relevant valuation date and, therefore, it could not be included in the net wealth of the assessee, took the view that the provisions of s. 19A of the W.T. Act, 1957 (hereinafter referred to as "the Act"), were not applicable, and he maintained the order of the WTO by which the wealth left by the father was included in the net wealth of the assessee for both the years.

In the two appeals filed before the I.T. Appellate Tribunal, the contention that the estate of the deceased father of the assessee was under administration and, therefore, it should have been separately assessed was repeated. The Appellate Tribunal, no doubt, took the view that the assets left behind by the deceased (father) were the self-acquired property of the assessee's father and that it was wrong to suggest that the estate had to be administered before the ownership vested in the assessee, but it took the view that in the first year, that is, the assessment year 1964-65, the assessee was not liable to be assessed on the value of the assets because, according to the Tribunal, s. 19A was inserted in the Act from 1st April 1965, and was not, therefore, applicable to the assessment year 1964-65 which is the first year involved in the appeal. The Tribunals further took the view that although the assessee himself was the owner of the estate and could have been so assessed, there was an alternative mode of assessment under s. 19 of the Act, and, therefore, the Tribunal found that that method of assessment being more favourable to the assessee for the assessment year 1964-65, the assets left by the father should be assessed in the hands of the assessee as a legal representative and should not be included in the net wealth of the assessee. Thus, the net wealth represented by the assets inherited from the father were deleted from the assessment for the assessment year 1964-65. With regard to the assessment year 1965-66, the Tribunal took the view that as the assessee was the full owner of the assets on the valuation date, the assets of the father were liable to be assessed as net wealth in the hands of the assessee.

On these facts, the following question has been referred under section 27(1) of the Act, at the instance of the Revenue:

> "Whether, in computing the net wealth of the assessee, the value of the assets left by the assessee's father is to be included?"

Shri Joshi, the learned counsel appearing for the Revenue, contended that the assessee is the sole heir of his deceased father and, therefore, he inherited the entire property of his deceased father and as a result of such inheritance he becomes the owner of all the property which is left behind by his father. The learned counsel contends that inheritance is never in abeyance and once inheritance has occurred and the property has vested in the assessee, the only basis on which the property left behind by the father can be assessed is that the property or assets now belong to the assessee and they must necessarily be assessed as the net wealth of the assessee. Shri Joshi has vehemently contended that neither the provisions of s. 19 nor s. 19A of the Act are relevant for the purposes of assessment, in the instant case, because the father of the assessee died on 31st October 1963. The next valuation date admittedly for the assessment year 1964-65 was 31st March 1964, and for the assessment year 1965-66 the valuation date was 31st March 1965. Shri Joshi has contended that on the relevant valuation date, 31st March 1964, the wealth which originally belonged to the father of the assessee absolutely belonged to him and there was no change in respect of the ownership of this wealth on 31st March 1965. Therefore, according to the learned counsel, on the admitted fact that the assessee was the sole owner on 31st March 1964, and 31st March 1965, the property left behind by the father could be assessed only in his hands under the substantive provisions of s. 3 of the Act. There was, therefore, no occasion, according to the learned counsel to invoke either the provisions of s. 19 or s. 19A of the Act.

Shri Dastur, appearing on behalf of the assessee, has contended that the estate left behind by the father was liable to be separately assessed as "estate of the deceased." According to the learned counsel, though it is true that the deceased father had died intestate and he had not left any will and, therefore, the assessee cannot claim to be an executor or an administrator because he has not obtained any letters of administration, he was still a person who was administering the estate of a deceased person, as contemplated by the *Explanation* to s. 19A of the Act. The learned counsel, therefore, contended, relying on the decision of this court in ***Jamnadas* v. *CWT*** [(1965) 56 ITR 648], that the assessment for the year 1964-65, in respect of the net wealth left behind by the father, should be made against him as a legal representative of the father and the assessment for the next assessment year 1965-66 should be made in respect of the estate of the deceased having regard to the *Explanation* to s. 19A. Therefore, according to the learned counsel, for none of these two years, the assets left behind by the father could be included as a part of the assessee's own net wealth. Indeed, according to the learned counsel, the same mode of assessment will have to continue until the administration of the estate of the deceased father is completed. We have been told that as a person administering the estate of his deceased father, the assessee has to perform certain functions such as recovering certain debts, payment of certain debts, filing of an estate duty return, payment of estate duty determined in respect of the estate of the deceased; there are all acts which, according to the learned counsel, are akin to the acts performed by either an executor or an administrator. Shri Dastur was not in a position to dispute that under the

Hindu law, the assessee had inherited the entire property left by the deceased father. That also is the finding recorded by the Tribunal which has to be accepted for the purposes of this reference. The two crucial questions which, therefore, will have to be determined before an answer to the controversy raised in this reference is given are: Whether the provisions of ss. 19 and 19A are at all attracted in the instant case or whether the assessee was liable to be assessed to wealth-tax as the sole heir, in whom the assets of his deceased father have vested with full ownership rights immediately after his death.

The words "belonging to the assessee" used in the definition of "net wealth" have been construed by the Supreme Court in ***CWT* v. *Bishwanath Chatterjee*** [(1976) 103 ITR 536]. Referring to the meaning of the word "belong" in the ***Oxford English Dictionary*,** which was given as "to be the property or rightful possession of," the Supreme Court has pointed out that the liability to wealth-tax arises out of ownership of an asset and mere possession unaccompanied by the right to, or ownership of, property would not bring the property within the definition of "net wealth." The relevant observations of the Supreme Court are as follows (p. 539):

> "So it is the property of a person, or that which is in his possession as of right, which is liable to wealth-tax. In other words, the liability to wealth-tax out of ownership of the asset, and not otherwise. Mere possession or joint possession, unaccompanied by the right to, or ownership of, property would, therefore, not bring the property within the definition of 'net wealth' for it would not then be an asset 'belonging' to the assessee.

Apart from the definition of "net wealth", it is now clear from the decision of the Supreme Court that the ownership of an asset is necessary for its inclusion as a part of the net wealth of an assessee.

As already pointed out, the assessee has inherited certain assets from his father, being the only son of the father. It is well-known that inheritance is never in abeyance, and inheritance has taken effect in the instant case the moment the father died, with the result that the property immediately devolved on the assessee as the sole heir of his father. If the property has devolved on the assessee as the sole heir by the law of inheritance, it is difficult to see how one can resist the conclusion that the property which is now sought to be treated separately for the purposes of assessment to wealth-tax does not belong to the assessee.

A consideration of the scheme of the two provisions (sec. 19 and 19A) is necessary in order to decide the contention raised before us with regard to the liability of the assessee. Sections 19 to 22 are contained in Chap. V which is headed as "Liability to assessment in special cases." Section 19A was enacted for the first time with effect from 1st April, 1965. Thus, the provisions in Chap. V deal with assessment in special cases, and before any one of these provisions in Chap. V are invoked, it must be found that the general provisions relating to assessments are inapplicable to a case which is sought to be brought within the provisions in Chap. V. The marginal note to s. 19 reads: "Tax of deceased person payable by legal representative." If we contrast the provisions of s. 19 with those of s. 19A, it is clear that while s. 19 deals with the tax (liability) of a deceased person payable by the legal representative, s. 19A deals with assessment in the case of executors. Now, when s. 19 refers

to the tax (liability) of a deceased person, it presupposes that the tax is payable by a deceased person. As already pointed out under s. 3 of the Act, the charge is attracted on the valuation date and whoever owns wealth which is assessable under s. 3 will, on the valuation date, become liable to pay the tax, though the quantum of the tax may be determined after the valuation date by the process of assessment. Section 19, therefore, obviously contemplates a case where a liability has accrued to the deceased person by virtue of the fact that he was alive on the valuation date but has died thereafter. The deceased may have filed a return, or he may not have filed a return, or the assessment may have been completed and he may not have paid the tax. It is to cover cases like these that the provisions of s. 19 appear to us to have been enacted. Section 19(1) provides that where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the wealth-tax assessed as payable by such person, or any sum which could have been payable by him under this Act if he had not died. Section 19(1) has, therefore, the effect of fastening a liability on an executor, administrator or other legal representative to pay wealth-tax assessed as payable by the deceased person. As already pointed out, the wealth-tax payable by a person can be determined only if he was alive on the valuation date. The liability which is fastened by s. 19(1) is limited to the extent to which the estate is capable of meeting the charge, and it has to be paid out of the estate of the deceased. Section 19 is, therefore, not a substantive provision but a mere machinery provision for assessment. More specifically, s. 19(2) provides for a case where a person dies without having furnished a return or he dies after having furnished a return, and in such a case the power is given to the WTO to make an assessment of the net wealth of such person. The power under sub-s. (2), therefore, is to assess the wealth of the person as on the valuation date before his death. By sub-s. (3) the provisions of ss. 15, 16 and 17 have been made applicable to the executor, administrator or other legal representative as they apply to any person referred to in those sections. We have, therefore, no doubt that so far as s. 19 is concerned, it positively deals with a case where an assessee dies after a relevant valuation date on which his liability to pay wealth-tax has accrued. It is that liability which has to be worked out *via* the provisions of s. 19 and the tax which the deceased was liable to pay or any other sum, which would have been payable by him if he had not died has to be paid by the executor, administrator or other legal representative, subject to the limitation that it shall be paid out of the estate of the deceased and to the extent to which the estate is capable of meeting the charge.

When we now come to s. 19A, on which heavy reliance is placed on behalf of the assessee, it will be noticed that what has been made chargeable under s. 19A is the net wealth of the estate of a deceased person. As pointed out by this court in ***Jamnada's*** case [(1965) 56 ITR 648 (Bom)], prior to the enactment of s. 19A, there was no provision in the Act which fastened a liability on the estate of a deceased person to be assessed to wealth-tax. The heading of the section itself indicates that it is intended to provide for assessment in the case of executors. Under s. 19(1), the estate of the deceased person is made chargeable to tax in the hands of the executor or executors. The word "executor" has been given by the *Explanation* an extended meaning so as to include an administrator or other person administering the estate of a deceased person. It is on this extended meaning that a contention has been advanced before us that the assessee was administering the estate of his deceased

father and having regard to the provisions of sub-s. (4) of s. 19A, the assessment in respect of such assessee has to be made separately from the assessment that may be made on the assessee in respect of his net wealth. It is, therefore, necessary to consider the intent and the purpose of enacting s. 19A.

The provisions of s. 3, to which we have earlier referred, provide for a charge in respect of the net wealth of an individual and, as already pointed out, that individual must be a living person who must own property, and it is in respect of the assets belonging to him on the valuation date that the charge to wealth-tax is attracted. An executor appointed by a will or an administrator appointed by a court is not a person who owns any property in his capacity as an executor or as an administrator. They have no interest in the property like the interest of one who owns property, and the executor or the administrator who in the first case is the representative of the testator having been appointed by the will and in the second case derives his authority from an order of a competent court has only to function as long as the administration of the property is not complete. It is well established that an executor is a representative of the testator for all purposes, as will be clear from the provisions of s. 211 of the Indian Succession Act, 1925. That section provides that the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Now, when s. 19A provides for the estate of a deceased person being chargeable to wealth-tax in the hands of the executor, it became necessary for the Legislature to give an artificial status of an individual by specifically enacting in sub-s. (2) of s. 19A that the executor or executors shall, for the purposes of the Act, be treated as an individual. Sub-ss. (4) and (5) of s. 19A give a clear indication that s. 19A will be attracted only in a case where the deceased has left a will. Sub-s. (5) of s. 19A refers to the period of time during which the provisions of s. 19A can be effectively applied. While sub-s. (4) provides that an executor shall be assessed separately in respect of the net wealth of the deceased and his own net wealth, for which period this separate assessment in respect of net wealth of the deceased is to be made is expressly indicated in sub-s. (5). Sub-section (5) provides that separate assessment shall be made under s. 19A in respect of the net wealth as on each valuation date as is included from the date of death of the deceased to the date of complete distribution to the beneficiaries of the estate according to their several interests. This is the period of time for which s. 19A operates. The provisions of sub-s. (5) also indicate that it will operate in a case where the estate is to be distributed to the beneficiaries of the estate according to their several interests, and when this provision is made in the context of the assessment of executors, it is obvious that the distribution is contemplated according tot he will left behind by the deceased. Sub-section (6) makes it further clear that where any asset is distributed to or applied to the benefit of any specific legatee of the estate prior to a valuation date, such asset shall be excluded in computing the net wealth on any valuation date. It further provides that such assets which are excluded will be included in the net wealth of the specific legatee on the relevant valuation date. The scheme of s. 19A is thus clear that executors, who hold the property as representatives of the testator for the purposes of distribution of the property to the beneficiaries in accordance with the directions made in the will of the testator, are artificially given the status of an individual, so that the estate of the deceased which is not

vested in any particular individual in ownership does not escape the liability to wealth-tax. Therefore, the *Explanation* which gives an extended meaning to the word "executor" has to be so construed as including within that term only such persons who are administering the estate in accordance with the directions of the will of the deceased. In other words, a person who becomes the owner of an estate by virtue of inheritance cannot fall within the residuary part of the *Explanation*, because the property which at once vested in such heir by virtue of inheritance belongs to him exclusively as owner thereof.

We have already pointed out that the assessee having inherited the entire property of his father, his liability under the Act has to be determined solely with reference to whether the estate which has devolved on him can be described as his net wealth within the meaning of that term in s. 2(m). We have also pointed out that what is material for the provisions of s. 2(m) is that the wealth must belong to an individual on the valuation date. If by virtue of having succeeded to the property, the absolute ownership rights have vested in the assessee and this property belongs to the assessee, then this ownership is not in any way affected by the fact that he may be required to pay off certain debts or to recover certain debts which may be due from, or due to, his deceased father. If he recovers any debts he does so because the right to recover the debt has vested in him by inheritance and not as an administrator. There is thus no question of the assessee claiming the benefit of the extended meaning of "executor" in the proviso in s. 19A of the Act.

The question referred to us is answered in affirmative.

* * * * *

Ved Prakash Narang v. *Commissioner of Wealth-Tax*

(1988) 172 ITR 184 (All.)

OM PRAKASH J. – At the instance of the assessee, the Income-tax Appellate Tribunal, Allahabad Bench, has referred the following two questions for our opinion under section 27(1) of the Wealth-tax Act, 1957:

> "1. Whether on the facts and circumstances of the case, penalty under section 18(1)(a) could be imposed on a legal heir, in view of the specific omission of sections 18 and 16 from section 19(3) in Chapter V of the Wealth-tax Act, determining the liability and tax of a deceased person payable by the legal representative?
>
> 2. Whether, on the facts and circumstances of the case, and the absence of mens rea and of the returns having been filed in good faith by the legal representative, penalty was impossible even if it could be imposed?"

The facts as stated by the Tribunal, briefly, are that one Keshav Ram Narang died on January 19, 1969. On January 22, 1969, a partition of his property was made between his heirs. The assessee, being one of the heirs, applied for obtaining a succession certificate in respect of some of the assets to the civil court on November 24, 1969, and the certificate was granted on January 17, 1970. The dispute relates to the assessment years 1969-70 and 1970-71, the relevant valuation dates for the said assessment years being March 31, 1969, and March 31, 1970, respectively. For both the years, the due dates for filing the returns were June 30, 1969, and June 30, 1970, but they were filed on May 1, 1972.

The Wealth-tax Officer, therefore, initiated penalty proceedings for default under section 18(1)(a) of the Act of 1957, by issuing a show cause notice to the assessee. In reply, the assessee stated that section 18 is not included in section 19(3) of the Act of 1957, and, therefore, no penalty proceedings could be commenced against the legal representative for late filing of the returns. The contention was repelled by the Wealth-tax Officer and he imposed penalties in the sums of Rs. 56,950 and 40,040 for these two years respectively.

The assessee appealed to the Appellate Assistant Commissioner. The latter rejected the legal contention of the assessee that no penalty proceedings can be initiated as section 19(3) does not refer to section 18 of the Act of 1957. He, however, accepted the contention of the assessee that he was prevented in not having filed returns within time by sufficient cause in part for the assessment year 1969-70. The assessee contended before the Appellate Assistant Commissioner that he was under the bona fide belief that the value of the assets left behind by the deceased was to be included by the heirs in their own returns and as it was necessary to obtain the succession certificate in respect of some of the assets, the returns were filed only after having obtained the succession certificate. The Appellate Assistant Commissioner, therefore, held that the assessee was prevented by the reasonable cause for not having furnished the returns for the assessment year 1969-70 up to January 17, 1970. So the penalty for the assessment year 1969-70 was upheld in part and the penalty imposed for the assessment year 1970-71 was fully upheld.

The assessee carried the dispute in appeal to the Appellate Tribunal. The latter also rejected the legal contention of the assessee that since section 18 does not find a berth in

section 19(3), no penalty proceedings could be initiated against the legal representatives. The Tribunal took the view that to the case of the assessee, section 19A is applicable and not section 19, that section 19A is not a sub-section of section 19, but the two sections, section 19 and section 19A, are distinct and they have been enacted for different purposes. The Tribunal also held that when an assessment was made on the assessee, then to take it to a logical end, it would be within the powers of the Wealth-tax Officer to levy penalty for not having filed the returns for both the years within time. In short, the finding of the Tribunal is that when an assessment can be made on the assessee, penalty proceedings can also be initiated against the legal representatives. Coming to the question of sufficient cause, the Tribunal observed that the assessee was prevented by sufficient cause for not having filed the returns for the assessment year 1969-70 till January 17, 1970, when the succession certificate was obtained. The Tribunal condoned the delay of two months observing:

> "We would further allow a period of two months during which the assessee could have collected the relevant details and then filed the return for 1969-70. The default for this year is, therefore, restricted to 25 months and the penalty would be recalculated accordingly."

So far as the assessment year 1970-71 is concerned, the order of the Appellate Assistant Commissioner confirming the penalty imposed by the Wealth-tax Officer was affirmed by the Tribunal.

First, the question for consideration is whether a penalty for default under section 18(1)(a) of the Act can be imposed on a legal heir or a legal representative under the special provisions of section 19 or section 19A as stated in Chapter V of the Act of 1957. The Tribunal has given a clear finding that as Keshav Ram Narang died before the valuation date, viz., March 31, 1969, relevant to the assessment year 1969-70, section 19A is applicable to assessee's case. What the Tribunal says is that since the case is covered by section 19A, it is immaterial whether sub-section (3) of section 19 refers to section 18 or not. Then the Tribunal refers to its earlier decisions given in the cases of ***Late Babu Ram Gupta***, W.T.A. No. 35 (Alld) of 1974-75 and of ***Ram Shanker Agrawal***, W.T.A. Nos. 158 to 163 (Alld) of 1974-75. In those cases, the Tribunal says that a view was taken:

> "(t)hat even though section 18 does not find a place in sub-section (3) of section 19, the words 'or any sum, which would have been payable by him under this Act if he had not died' could not be lost sight of and the expression 'any sum' was quite exhaustive and would include penalty amount also. If this section is read with section 14, it could not be doubted that section 18 is also covered by sub-section (3) of section 19 ...."

Thus, the Tribunal recorded two findings: (1) that the case of the assessee is governed by section 19A and not by section 19; and (2) that section 19(3) takes within its ambit section 18 as well. It is the propriety of these findings that has to be seen by us.

To answer the questions: Whether to the case of the assessee, section 19A can be attracted and whether sub-section (3) of section 19 takes within its sweep section 18 as well, it will be apposite to see the scope and object of sections 19 and 19A. The Tribunal has recorded a finding that these two sections are applicable to two different situations. We quite agree with

this view of the Tribunal but the question is as to which are the two situations attracting these provisions. Chapter V is headed as "Liability to assessment in special cases." It is, therefore, clear that the provisions contained in Chapter V deal with special cases. Section 19 occurring in Chapter V is preceded by the words "Tax of deceased person payable by legal representative." Section 19(1) states that where a person dies, his executor, administrator or other legal representatives shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, *the wealth-tax assessed as payable* by such person or any sum which would have been payable by him under this Act if he had not died. The delineated portion clearly shows that section 19(1) applies to a situation where wealth-tax has been assessed and the tax becomes payable as a result of the assessment order. Section 19(1) will have no application to a case where there is no tax assessed and where the tax has not become payable as a result of assessment. In ***Rameshwar Prasad* v. *CWT*** [(1980)124 ITR 77], a Division Bench of this court, referring to the relevant provisions of the Act, held on page 82:

> "Sub-section (1) of section 19 is confined to liability to pay, and it casts upon the legal representatives liability to pay wealth-tax or any sum which would have been payable by the deceased if he had not died. Section 19(1) by itself does not create on the legal representative liability to pay which was non-existent till the date of death of the deceased. In other words, if an order creating liability to pay under the Act had not been passed till the date of death of the original assessee, sub-section (1) does not authorise creation of the liability to pay on the legal representative."

The authority clearly supports our view that section 19(1) deals with a case where liability was already assessed in the hands of the deceased who died before discharging the liability. It is such liability which will be payable by the legal representative under section 19(1).

A similar view was taken in ***A. & F. Harvey Ltd.(as agents to executors of the Estate of Late Andrew Harvey)* v. *CWT*** [(1977) 107 ITR 326], in which the Madras High Court succinctly stated the legal position on pages 335 and 336 as follows:

> "Section 19(1) deals with the situation where an assessee has been already assessed to tax, but is dead before the payment of tax. In that context, it says that the tax shall be payable by the executor, administrator or other legal representative out of the estate of the deceased to the extent to which the estate is capable of meeting the charge .... Sub-section (2) of section 19 deals with a situation where the assessee is dead after having the return, but before the tax is quantified .... Therefore, a reading of sub-section (1) and sub-section (2) of section 19 makes it absolutely clear that the said section has nothing whatever to do with the assessment to wealth-tax of the estate of a deceased who died even before the valuation date. The provisions contained therein clearly show that that section is concerned with a case where an assessee dies after the valuation date and has been assessed to tax before his death or dies after the valuation date but before filing a return or dies after the valuation date and after having filed a return which the Wealth-tax Officer considers to be incomplete or incorrect."

Let us be clear as to which wealth attracts the charge under section 3 of the Act of 1957, which is the charging section. Section 3 provides for a charge of tax in respect of the net wealth on the corresponding valuation date of an assessable entity. Therefore, the net wealth of the individual has to be ascertained as belonging to him on the corresponding valuation date defined in section 2(q) as meaning the last date of the previous year as defined in section 3 of the Income-tax Act, 1961. Section 3 of the Act of 1957 does not create a charge in respect of the net wealth "held" by an assessee on the valuation date but the charge is created only in respect of the net wealth of an assessee on the valuation date. Unlike income-tax which is in relation to income which is spread over a period in the form of accrual or receipt of income, wealth-tax is in relation to the wealth quantified or crystallised with reference to a particular date, namely, the valuation date. Therefore, for a person to be liable to pay wealth-tax, he must be alive on the valuation date and must have the wealth which is liable to tax as provided in that section on that date.

Section 19(1) is applicable to a situation where a person was alive on the valuation date and assessed to tax but dies later. On these facts, the tax payable by that person can be recovered from his legal representative, the executor or the administrator and for that purpose, the proceedings will be continued against them.

Section 19(2) provides for a case where a person dies without having furnished the return or he dies after having furnished the return and in such a case, the power is given to the Wealth-tax Officer to make an assessment of the net wealth of such person. The power under sub-section (2), therefore, is to assess the wealth of a person as on the valuation date before his death. Both sub-sections (1) and (2) will apply when a person having wealth was alive on the valuation date, but died later. The distinction between the two is that section 19(1) envisages a case of a person who was assessed to tax before his death and sub-section (2) of section 19 takes care of the cases where no assessment was made prior to the death or even no return was filed, but the person having wealth died after the valuation date. If no return was filed by the person who died after the valuation date, then section 14(1) read with sub-section (3) of section 19 obligates a legal representative to file the return and get the assessment done.

In the case on hand, Keshav Ram Narang died on January 19, 1969, i.e., prior to the valuation date, being March 31, 1969, for the assessment year 1969-70, and this being so, neither sub-section (1) nor sub-section (2) of section 19 is attracted to the facts of the instant case.

Then comes section 19A. Sub-section (1) of this section states that subject as hereinafter provided, the net wealth of the estate of a deceased person shall be chargeable to tax in the hands of the executor or executors. Sub-section (2) says that the executor will be treated for the purposes of this Act as an individual. Sub-section (6) of section 19A states that in computing the net wealth on any valuation date under this section, any assets of the estate distributed to or applied to the benefit of any specific legatee of the estate prior to that valuation date shall be excluded, but the assets so excluded shall, to the extent such assets are held by the legatee on any valuation date be included in the net wealth of such specific legatee on that valuation date.

It is clear from the express language of this section that it provides for the assessment of the assets of a deceased person in the hands of the executor of executors. From the very nature of the case, this section will apply only to a case where an assessee dies having executed a will and appointed an executor or executors. If he had died intestate, the estate would have gone to his heirs and, therefore, it is in the hands of the heirs that the assessment will have to be made and not in the hands of anybody else. Consequently, section 19A is confined only to a case where an assessee dies after executing a will and appointing the executor. In such a case, section 19A provides for the assessment of the estate of the deceased in the hands of the executor till the administration is completed. The executors will not be liable to be assessed in respect of the assets which have already been passed on or applied to the benefits of the legatees under the will in view of sub-section (6) of section 19A. The scheme of section 19A is thus clear that executors, who hold the property as representatives of the testator for the purposes of distribution of property to the beneficiaries in accordance with the directions made in the will of the testator, are artificially given the status of an individual so that the estate of the deceased which is not vested in any particular individual, does not escape liability to wealth-tax.

Then the question is whether any will was executed in this case. The Tribunal has given a clear finding:

> "It was not a case of an executor or an administrator or issue of letters of administration. It was a case where one of the heirs gave an application for succession certificate only and hence the use of the word administrator for him is not correct."

This finding was recorded as the Appellate Assistant Commissioner referred to the assessee as "administrator" in his order. This shows that no will was executed by Keshav Ram Narang in favour of the assessee and that the assessee is not an executor or administrator but that he is a pure and simple legal heir of the deceased. On these facts, the application of section 19A cannot be conceived of and the Tribunal was in error in holding otherwise.

It is settled law that inheritance never remains in abeyance. It being so, the inheritance was an open right on January 19, 1969, when Keshav Ram Narang died and the assets belonging to him had dissolved on his legal heirs then and there.

Lastly, we come to the chief question whether the penalty proceedings can at all be initiated against a legal representative under section 19 and 19A. The Tribunal has held that section 19(3) takes within its ambit section 18 as well and that the words "any sum" occurring in sub-section (1) of section 19 take within their sweep "penalty" as well. This question directly came up for consideration before this court in ***Rameshwar Prasad's*** case [(1980) 124 ITR 77 (All.)]. This reference related to the assessment years 1961-62 to 1969-70. For the first eight years, Rameshwar Prasad filed returns under the Wealth-tax Act on April 12, 1970, while for the assessment year 1969-70, the return was filed on March 12, 1970. For belated returns, the Wealth-tax Officer initiated penalty proceedings under section 18(1)(a) by issuing show-cause notice which was replied to in June, 1970. While the proceedings were pending, Rameshwar Prasad died on February 22, 1973. His son, Indra Bhushan, being a legal representative, was brought on record and the proceedings were continued. He submitted that

penalty proceedings which were initiated against his deceased father could not legally be continued against him. His contention was repelled and penalty was imposed. His appeals right up to the Tribunal failed. Reproducing the relevant sections, this court held on page 83:

> "(T)he absence of section 18 from being mentioned in sub-section (3) is significant. Penalty proceedings under section 18 cannot be initiated against a legal representative, because a legal representative has not been made liable to assessment to penalty. A notice to show cause cannot be issued to a legal representative, firstly, because he has not been made liable to show any such cause, and, in the next place, he, namely, the legal representative, cannot be said to have committed any default in cases where the deceased assessee delayed the filing of the return. Default was committed by the original assessee. Legal representative has not been made liable to be assessed for such a default of the original assessee."
>
> In the next following paragraph on the same page 83, this court further held:
>
> "If, for example, penalty proceedings had been initiated by the issuance of a show-cause notice to the original assessee and during the pendency of such proceedings the original assessee dies, such proceedings will come to an end. They cannot be continued against the legal representative, because the legal representative is not liable to be assessed; and since no order determining liability can be passed after the death of the person who was liable to be assessed, it is obvious that no valid order can be passed after his death against the legal representatives."

This court also considered the submission of the Revenue that the words "or any sum" occurring in sub-section (1) of section 19 are of the widest amplitude embracing penalty also. But this submission also did not find favour with this court.

We see no good reason to deflect from the view taken by this court in ***Rameshwar Prasad's*** case [(1980) 124 ITR 77 (All.)]. We, therefore, follow the semantic view taken by this court in ***Rameshwar Prasad*** case [(1980) 124 ITR 77 (All)] and hold that no penalty proceedings could be legally initiated under section 18(1)(a), as section 18 is not mentioned in section 19(3) and hence the entire penalty imposed on the assessee has to be quashed.

For the above reasons, we hold that the Appellate Tribunal was in error in holding that the cases are governed by section 19A and that sub-section (3) of section 19 takes within its ambit section 18 of the Act of 1957 as well.

Then, we revert to question No. 2: whether or not the assessee was prevented by sufficient cause in not having filed the return – this is a purely a question of fact, but since the question has already been referred by the Tribunal, we do not press this legal view and proceed to decide the second question giving a different reasoning. In view of our opinion given on question No. 1 that the Wealth-tax Officer had no jurisdiction to initiate penalty proceedings against the assessee, a legal representative of Keshav Ram Narang (deceased), and that being so, it is not necessary to decide the question, whether or not the assessee was prevented by sufficient cause. This question would have been relevant only when the Wealth-tax Officer was competent to initiate penalty proceedings. So in view of our findings on question No. 1, question No. 2 has become infructuous. On the facts and circumstances of the case, question No. 1 is decided in favour of the applicant and against the Revenue and question No. 2, having become infructuous in view of the findings in question No. 1 is returned unanswered.

Commissioner of Wealth Tax v. *G.E. Narayana*

(1992) 193 ITR 41 (Kar)

K. SHIVASHAANKAR BHAT, J. – In T.R.C. Nos. 23 and 24 of 1987, the following question is required to be answered under the provisions of the Wealth-tax Act, 1957.

> "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in coming to the conclusion that there is no provision in the Wealth-tax Act to make an assessment on the erstwhile Hindu undivided family in a case where the karta of the said erstwhile Hindu undivided family has filed the return of wealth of the Hindu undivided family and thereafter died before the completion of the assessment and ignoring the fact that the Hindu undivided family was not in existence as on the date of assessment?"

In respect of the assessment years 1977-78 and 1978-79, wealth-tax returns were filed by G.E. Narayana on August 25, 1977, and September 12, 1978, respectively as karta of the Hindu undivided family. The Hindu undivided family consisted of himself and his minor son. On June 26, 1982, G.E. Narayana died. Thereafter, assessment orders were made on February 14, 1983, and March 28, 1983, respectively, in respect of the two assessment years, assessing the Hindu undivided family. In other references also the situation was the same. The same karta of the Hindu undivided family, G.E. Narayana had filed the wealth-tax returns for the various years before his death. But, in all those cases also, the assessment orders were made after his death. Consequent on the death of G.E. Narayana, the Hindu undivided family ceased to exist because his only minor son was left by him who was earlier a member of the Hindu undivided family. Therefore, it was contended that, on the extinction of the Hindu undivided family, there was no Hindu undivided family on which an assessment order could have been made and there is no provision in the Act providing for such a contingency to make an order of assessment in respect of a return filed earlier by the then existing Hindu undivided family which ceased to exist by the time the assessment order is made. The Appellate Tribunal has accepted this contention and held that there is no machinery to assess a Hindu undivided family which ceased to exist after filing the return. Hence, these references.

Mr. G. Chanderkumar, learned counsel for the Revenue, contended that the Hindu undivided family is a "person" and when it is said that the Hindu undivided family ceased to exist, it is the same as the death of a person, the subject which is covered by section 19 of the Act and, therefore, the surviving member of the Hindu undivided family could be assessed as the legal representative representing the erstwhile Hindu undivided family. It is further contended that the scheme of the Act is to complete the assessment in respect of a return filed by the then existing assessee and the provisions of the Act will have to be interpreted to make the said scheme workable and effective. Learned counsel pointed out that, while filing the return itself, an assessee (Hindu undivided family) may have to make a self-assessment under section 15B and if tax had been paid accordingly, such a completed self-assessment cannot stand nullified by any alleged lacuna in the machinery provisions of the Act.

Learned counsel further pointed out that sections 20 and 20A provided for the assessment of a Hindu undivided family after its partition or after a partial partition which again indicate

the scheme of the Act to tax a Hindu undivided family and collect the tax payable by it under all circumstances.

Sri Sarangan, learned counsel for the assessee, however, pointed out that when there is no specific provision to make an assessment in respect of a return filed by an erstwhile Hindu undivided family, it is not possible to imply a machinery under the Act to make such an assessment. Learned counsel referred to a few decisions wherein the Privy Council as well as the Supreme Court have held that a specific machinery is necessary to make an assessment order in respect of a taxable entity like a Hindu undivided family. Mr. Chanderkumar also tried to establish that the charge under the Act for the levy of tax on the assets of the assessee and such a charge gets crystallised on the valuation date and, therefore, so long as such assets are available, the crystallised tax can be assessed and collected.

Before proceeding further, the nature of the charge under the Act has to be clarified. The charging provision is section 3. It states that there shall be charged for every assessment year a tax in respect of the net wealth on the valuation date, of every individual, Hindu undivided family and company at the rate specified in the Schedule. Thus, this language is substantially similar in its structure to section 4 of the Income-tax Act whereunder income-tax shall be charged in respect of the total income of the previous year of every person. Under the Income-tax Act, the tax is connected with and related to the total income of every person. Similarly, under the Wealth-tax Act, the tax is in respect of the net wealth which means the tax is related to and connected with the net wealth of the three kinds of assessees, referred therein. Construing a similar provision of the Indian Income-tax Act, 1922, the Bombay High Court held in ***Patiala State Bank, In re.,*** [(1941) 9 ITR 95], that the tax is not made a charge on the income upon which it is levied and that broadly speaking it was accurate to say that income-tax is a tax imposed upon a person in relation to his income. Chief Justice Beaumount observed at page 112 thus:

> "I think that, properly considered, income-tax is a tax on a person in relation to his income. The tax is not imposed on income generally; it is imposed on the income of a person, natural or artificial, as defined in section 3. The assessment has to be made against a person, and the tax has to be collected from the assessee. The tax is not made a charge on the income upon which it is levied, and I think, broadly speaking, it is accurate to say that income-tax is a tax imposed upon a person in relation to his income."

From the above, it is clear that the charge is not on the assets but on the person, though the charge is related to the net wealth of the person concerned.

Under the Income-tax Act also, the Hindu undivided family is a person assessable to tax. There were almost similar situations which arose under the provisions of the Indian Income-tax Act, 1922, as well as under the present Income-tax Act, 1961, in connection with the assessment of the Hindu undivided family. One such situation resulted in the enactment of section 25A in the earlier Income-tax Act, 1922. The said provision was enacted to get over the difficulty caused when a Hindu undivided family had received income in the year of account but was no longer existing as such, at the time of assessment. The Privy Council, in

the case of ***Sir Sundar Singh Majitha* v. *CIT*** [(1942) 10 ITR 457], observed at page 465, thus:

> "Section 25A deals with the difficulty in two ways, which are explained by the rule, applicable to families governed by the Mitakshara, that by a mere claim of a partition a division of interest may be effected among coparceners so as to disrupt the family and put an end to all right of succession by survivorship. It is trite law that the filing of a suit for partition may have this effect though it may take years before the shares of the various parties are determined or partition made by metes and bounds. Meanwhile the family property will belong to the members as it does in a Dayabhaga family – in effect as tenants in common. Section 25A provides that if it be found that the family property has been partitioned in definite portions, assessment may be made, notwithstanding section 14(1), on each individual or group in respect of his or its share of the profits made by the undivided family, while holding all the members jointly and severally liable for the total tax. If, however, though the joint Hindu family has come to an end it be found that its property has not been partitioned in definite portions, then the family is to be deemed to continue – that is to be an existent Hindu family upon which assessment can be made on its gains of the previous year."

But for section 25A, the erstwhile Hindu undivided family could not be assessed at all. In ***Lakhmichand Baijnath* v. *CIT*** [(1959) 35 ITR 416], the Supreme Court pointed out that, but for section 25A of the Indian Income-tax Act, 1922, a Hindu undivided family which ceased to exist could not have been taxed at all. At page 422, the court observed:

> "Under the provisions of the Act as they stood prior to the amendment, when the assessee was an undivided family, no assessment could be made thereon if at the time of assessment it had become divided, because at that point of time, there was no undivided family in existence which could be taxed, though when the income was received in the year of account the family was joint. Nor could the individual members of the family be taxed in respect of such income as the same is exempt from tax under section 14(1) of the Act. The result of these provisions was that a joint family which had become divided at the time of assessment escaped tax altogether. To remove this defect, section 25A enacted that until an order is made under that section, the family should be deemed to continue as an undivided family."

Again, in ***Govinddas* v. *ITO*** [(1976) 103 ITR 123 (SC)], it was pointed out at page 128 thus:

> "We may first look at section 25A of the old Act. The position which obtained before this section was introduced in the old Act was that though a Hindu undivided family was a unit of assessment, there was no machinery provided in the Act for levying tax and enforcing liability to tax in cases where a Hindu undivided family had received income in the year of account but was no longer in existence as such at the time of assessment. This difficulty was the more acute by reason of the provision contained in section 14(1) which said that tax shall not be payable by an assessee in respect of any sum which he received as a member of a Hindu undivided family. The

result was that the income of a Hindu undivided family could not be assessed and the tax could not be collected from the members of the family, if at the time of making the assessment the family was divided. This was obviously a lacuna and the Legislature, therefore, introduced section 25A in the old Act for assessment of the income of a Hindu undivided family and enforcement of the liability to tax, where the Hindu undivided family was no longer in existence at the date of assessment."

The above observation once again points out that a lacuna in the taxing law cannot be filled up by any judicial exercise and the difficulty caused by the lacuna will have to be removed by the Legislature.

An identical situation arose before the Madras High Court in ***Seethammal* v. *CIT*** [(1981) 130 ITR 597], though under the provisions of the Income-tax Act. There were only two members constituting a Hindu undivided family; one of them died; consequently, the Hindu undivided family ceased to exist. The question was whether section 171(1) of the Income-tax Act could be applied to make an order of assessment assessing the erstwhile Hindu undivided family. The Madras High Court pointed out that there was no provision at all to make the assessment on the Hindu undivided family, even though the income was earned during the accounting year when there was a Hindu undivided family. Section 171 of the Income-tax Act did not make any provision to meet such a contingency. It is thus clear that a specific provision is necessary to make an order of assessment against a taxable entity which does not exist on the date of the assessment, even though the said entity was in existence when the liability to tax arose.

The Hindu undivided family is an assessable entity; without the presence of the assessee, it is not possible to make an order of assessment, unless the law provides a machinery to assess the erstwhile Hindu undivided family by enabling the assessment proceedings to be initiated or continued against a proper successor. Section 19 is one such provision which enables the initiation of proceedings against the legal representatives of the deceased person who was liable to pay the tax under the Act. Sections 19A, 20 and 21 are also enacted to provide for certain similar contingencies. But, nowhere is a provision found in the Act, enabling the Assessing Officer to make an order or assessment against the person who succeeded to the wealth of an erstwhile Hindu undivided family which was in existence on the date of the valuation date, but ceased to exist by the time the order of assessment is made, the said cessation being due to natural causes as happened in the instant case. Section 20 covers an entirely different field wherein the Hindu undivided family ceases to exist by act of parties.

Mr. Chanderkumar attempted to bring in section 19 to this situation, by contending that this is a case where the Hindu undivided family was a "person," "died" as a result of the death of one of the two coparceners. The word "person" may include all the assessable entities referred to in section 3; but the question, here, is, can it be said that the Hindu undivided family "dies" as a result of the death of one coparcener out of two, leaving behind only one member of the family and can it be said that such a surviving member is the legal representative of the "deceased Hindu undivided family?" To the extent of his individual interest, the sole surviving coparcener cannot be the legal representative; he is the legal representative of the share of the deceased coparcener; but here, the Hindu undivided family

simply vanished from existence as a legal entity. The term "dies" is normally referable to the expiration of the life of a living person, animal or a plant. In the absence of any statutory fiction, the meaning of the said word cannot be extended to convey a meaning which is not normally attributed to it.

Consequently, the question referred to us has to be answered in the affirmative and against the Revenue.

* * * * *

Tatavarthi Rajah v. *Commissioner of Wealth-Tax, Hyderabad*

AIR 1997 SC 2072

S.C. AGRAWAL, J. – The appeal by the assessee raise the question whether the provisions of Section 20 of the Wealth-tax Act, 1957 (hereinafter referred to as 'the Act') can be applied to a case where the partition in the Hindu Undivided Family in accordance with the principles of Hindu Law has taken place before the commencement of the Act.

The assessee was a Hindu Joint Family constituted by T. Nagapotha Rao and his three sons, Sitarama Rao, Raja and Satyanarayana Murthy. Sitaram Rao died in 1947 and Nagapotha Rao died in 1950. Thereafter the family constituted of two minor coparceners Raja and Satyanarayana Murthy and Smt. Mahalakshmamma, widow of Nagapotha Rao and Smt. Raja Syamala, widow of Sitaram Rao. Differences arose between Smt. Raja Syamala and the other members of the family and on October 7, 1950 Smt. Raja Syamala gave a registered notice expressing her desire to separate. On April 7, 1954 she filed a suit for partition in the Court of Subordinate Judge, Tanali. In the said suit, Smt. Mahalakshmamma on behalf of herself and her two minor sons filed a written statement on October 27, 1954 agreeing to the division of all the family properties into four equal shares. On attaining majority Raja as well as Satyanarayana Murthy filed written statements making similar request. On the basis of compromise between the parties a preliminary decree for partition was passed in the said suit on April 1, 1956. The final decree was passed in the suit on March 16, 1961. The present appeal relates to assessment years 1958-59, 1959-60 and 1960-61. In respect of these years returns were filed by the assessee as a Hindu Undivided Family consisting of three members, namely, Smt. Mahalakshmamma and her sons Raja and Satyanarayana Murthy.

The Wealth-tax Officer made the assessment on the basis that there was no partition by metes and bounds and that Hindu undivided family consisted of four members including Smt. Raja Syamala and the properties allotted to Smt. Raja Syamala were included in the joint properties of Hindu undivided family. On appeal it was submitted on behalf of the assessee before the Appellate Assistant Commissioner that the assessee should be treated as a Hindu Undivided Family with three members and not four members. This contention of the assessee was, however, rejected by the Appellate Assistant Commissioner. On further appeal before the Income-tax Appellate Tribunal the assessee raised an additional ground that there was severance in status of Hindu Undivided Family as early as on October 7, 1950 when the first registered notice was issued by Smt. Raja Syamala to the other three members and on April 7, 1954 when Smt. Raja Syamala filed the suit for partition as well as on October 27, 1954 when Smt. Mahalakshmamma, on behalf of herself and her two minor sons, filed the written statement claiming that all the properties be divided in four equal shares. The said additional ground was permitted to be raised by the Tribunal since, according to the Tribunal, it went to the root of the matter, namely, whether assessee was in existence at all. After considering the submissions of both the sides, the Tribunal has stated that the present claim of the assessee is that in fact on the valuation dates for all these assessment years there was no Hindu Undivided Family of the type taken by the Wealth-tax Officer and the family was, if at all, disrupted a long time before the Wealth-tax Act came into force and accordingly the provisions of Section 20(2) of the Act do not apply and the Wealth-tax Officer ought to have

assessed the assessee on what exactly were his assets rather than on the assets held by the members of the erstwhile family together. The Tribunal felt that the assessee had reasonable ground for the present claim to be considered in the light of the facts and the law applicable to them and if the family had acquired different status long before the Act came into force, the family as assessed for these assessments would not be in existence on the valuation dates. The Tribunal, therefore, cancelled the assessment orders for the three assessment years before it and sent the matter back to the Wealth-tax Officer to decide afresh the question as to who the assessee is and what assets formed part of his net wealth. At the instance of the Revenue, the Tribunal referred the following question for the opinion of the High Court of Andhra Pradesh:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in canceling the Wealth-tax assessments for the years 1958-59, 1959-60 and 1960-61?"

The said question has been answered by the High Court by the impugned judgment dated August 26, 1982 in favour of the Revenue and against the assessee. The High Court has held that having regard to the language of sub-section (1) of Section 20, no distinction can be made between a case where the partition is alleged to have taken place before the commencement of the Act and where the partition is said to have taken place after the commencement of the Act. The idea behind Section 20 of the Act is that unless the joint family properties are divided into definite portions and allotted to each individual member, it cannot be said that a particular member can be assessed with respect to particular properties. If it is contended that a mere division in status is sufficient for the purpose of putting an end to the Hindu Undivided Family, even for the purpose of the Act, the resultant situation would be that, while the Hindu Undivided Family cannot be assessed on the ground that no Hindu Undivided Family is in existence, the members also cannot be assessed because until the properties are divided into definite portions, it cannot be said which member is entitled to which property. The High Court has agreed with the decision of the Gujarat High Court in ***Goswami Brijranjan-lalji Meharaj* v. *Commr. of Wealth-tax*** [(1971) 79 ITR 373], and has differed from the decision of the Calcutta High Court in ***Shri Srilal Bagri* v. *Commr. of Wealth-tax*** [(1970) 77 ITR 901]. In view of the difference of opinion between the High Courts on the question, the High Court has granted certificate of fitness for appeal to this Court. Hence this appeal.

Section 20 of the Act provides as under:

> "20(1). Where, at the time of making an assessment, it is brought to the notice of the Wealth-tax Officer that a partition has taken place among the members of a Hindu Undivided Family, and the Wealth-tax Officer, after inquiry, is satisfied that the joint family property has been partitioned as a whole among the various members or groups of members in definite portions, he shall record an order to that effect and shall make assessments on the net wealth of the undivided family as such for the assessment year or years, including the year relevant to the previous year in which the partition has taken place, if the partition has taken place on the last day of the previous year and each member or groups of members shall be liable jointly and severally for the tax assessed on the net wealth of the joint family as such.

(2) Where the Wealth-tax Officer is not so satisfied, he may, by order, declare that such family shall be deemed for the purpose of this Act to continue to be a Hindu Undivided Family liable to be assessed as such."

The said provision is similar to that contained in Section 25-A of the Income-tax Act, 1922 and Section 171 of the Income-tax Act, 1961. These provisions in the tax laws make a departure from the personal law governing partition in a Joint Hindu Family. Under the Hindu law a mere declaration of an intention to sever the joint status of the members of the Hindu Undivided Family is sufficient to constitute partition and the moment such a declaration is made, the joint family comes to an end and, thereafter the members of undivided family become separated in status and they hold the joint family property as tenants under common ownership with definite shares in that property. But for the purpose of assessment of Income-tax and Wealth-tax the Legislature has imposed the requirement that for a partition in a Hindu Undivided Family, it is necessary that the joint family property should be partitioned among the various members or group of members in definite portions.

The rationale for the introduction of Section 25-A in the Indian Income-tax Act, 1922 has been thus explained by Venkatarama Aiyer J., in ***Lakshmichand Baijnath* v. *Commissioner of Income-tax, West Bengal*** [AIR 1959 SC 341]:

"That Section was, it should be noted introduced by the Indian Income-tax (Amendment) Act, 1928 (3 of 1928), for removing a defect which the working of the Act as enacted in 1922 had disclosed. Under the provisions of the Act as they stood prior to the amendment, when the assessee was an undivided family, no assessment could be made thereon if at the time of the assessment it had become divided, because at that point of time, there was no undivided family in existence which could be taxed, though when the income was received in the year of account the family was joint. Nor could the individual members of the family be taxed in respect of such income as the same is exempt from tax under Section 14(1) of the Act. The result of these provisions was that a joint family which had become divided at the time of the assessment escaped tax altogether. To remove this defect, S. 25-A enacted that until an order is made under that section, the family should be deemed to continue as an undivided family."

The object underlying Section 20 of the Act is also to avoid a situation where neither the Hindu Undivided Family nor the individual members can be taxed in respect of the property of the joint family. With that end in view Section 20 prescribes that if at the time of making an assessment it is claimed that a partition has taken place among the members of a Hindu Undivided Family, the Wealth-tax Officer, after making an inquiry, must satisfy himself that joint family property has been partitioned as a whole among the various members of groups of members in definite portions and if he is so satisfied he has to record an order to that effect and make assessment on that basis. The question that needs to be considered is whether the provisions of Section 20 are confined in their application to cases where the severance in the Hindu Undivided Family is claimed to have taken place after the coming into force of the Act and the provision has no application to cases where the severance in the joint family is claimed to have taken place prior to coming into force of the Act.

The Calcutta High Court in ***Shri Srilal Bagri* v. *Commissioner of Wealth-tax*** [(1970) 77 ITR 901] has taken the view that Section 20 does not empower assessment of a Hindu Undivided Family which has ceased to be a Hindu Undivided Family which has ceased to be a Hindu Undivided Family according to the relevant Hindu law prior to the relevant valuation date and that where the family had never been assessed under the Act as Hindu Undivided Family and a preliminary decree for partition had been passed prior to valuation date Section 20 does not authorise assessment of the members of the family as a Hindu Undivided Family after the preliminary decree. In taking the view the Calcutta High Court has proceeded on the basis that Section 20 is in *pari materia* with Section 25-A of the Income-tax Act, 1922 and is only a machinery section. The High Court has also held that in view of the position of Hindu Law that after the unequivocal expression of intention to separate the individual member of the erstwhile Hindu undivided family will have no interest in the coparcenary property of the Hindu Undivided Family of which he was a member and sub-section (ii) of Section 5(1) of the Act would be no bar for assessment in respect of the properties in the hands of the erstwhile members of the Hindu Undivided Family even though the properties have not yet been divided amongst the members in definite portions. The High Court has further held that sub-section (2) of Section 20 would not be attracted where no prior assessment had been made of the assessee as a Hindu Undivided Family under the Act because in that event there is no question of this family being continued to be liable to be assessed as such under sub-section (2) of Section 20.

In ***Goswami Brijratanlalji Mehaj* v. *Commissioner of Wealth-tax*** [(1971) 79 ITR 373 (Guj)] after taking note of the reasons given by the Calcutta High Court in the ***Shri Srilal Bagri* v. *Commissioner of Wealth-tax***) the learned judges of the Gujarat High Court have pointed out that the words "not previously assessed" occurring in Section 25-A of the Indian Income-tax Act, 1922 have been omitted from Section 20 of the Act, and the Legislature has merely used the words "where at the time of making the assessment." The learned Judges have observed pp. 387, 388].

> "Therefore, at any time when a Wealth-tax Officer is making the assessment, a contention is raised or is sought to be raised before him that a partition has taken place amongst the members of the Hindu Undivided Family, he has to enter upon an inquiry and satisfy himself whether there has been a partition by metes and bounds. If he is not so satisfied about the joint family properties having been partitioned by metes and bounds amongst the various members, he has to declare under sub-section (2) of Section 20 that such family shall be deemed for the purposes of the Act to continue to be a Hindu Undivided Family liable to be assessed as such. Once that declaration under Section 20(2) is made, it becomes clear that even for the purpose of Section 5(1)(ii) of the Act, the interest of any individual member of the joint family in coparcenary property of any Hindu Undivided Family of which he is a member can be safely excluded. The words for the purposes of this Act occurring in Section 20(2) would include within their ambit Section 5(1)(ii) as well and so long as the satisfaction about the properties of the joint family having been partitioned by metes and bounds is not reached by the Wealth-tax Officer, he has to declare that such family for the purposes of the Act shall continue to be a Hindu Undivided Family liable to be assessed as such. Once such a declaration is made, even though there

> may be notional partition, and even though for the purposes of Hindu Law there is disruption of the joint family, for the purposes of the Wealth-tax Act the family is deemed to continue to be a Hindu Undivided Family liable to be assessed as such. Therefore, the undivided share or interest of an individual member of such Hindu Undivided Family will continue to be assessed as part of the property of the Hindu Undivided Family and will not be includible in the net wealth of that individual member." ["In our opinion, the question that has to be considered by the Wealth-tax Officer is not whether there has been a disruption in status according to notions of Hindu Law but whether there has been a partition by metes and bounds and whether there has been a physical partition of properties of the Hindu Undivided Family amongst different members; and it is only after that test of physical partition by metes and bounds is satisfied that the necessary consequences for the purposes of assessment under the Wealth-tax Act will follow."

We are in agreement with these observations and we are unable to agree with the interpretation placed by the Calcutta High Court in ***Srilal Bagri*** [(1970) 77 ITR 901] on the provisions of Section 20 of the Act. In the impugned judgment the learned Judges, in our opinion, have rightly observed that no distinction can be made between the case where partition is alleged to have taken place before the commencement of the Act and where the partition is said to have taken place after the commencement of the Act because the idea behind Section 20 of the Act as well as Section 171 of the Income-tax Act, 1961 is that for a given assessment year either the Hindu Undivided Family must be assessed or its members must be assessed individually and unless the joint family properties are divided in definite portions and allotted to each individual member, it cannot be said that a particular member can be assessed with respect to particular properties or income as the case may be, and a mere division in status does not indicate which member is entitled to which of the properties. The learned Judges have also mentioned that in the present case returns were filed by the Hindu Undivided Family in the status of a Hindu Undivided Family and the only difference between the assessee and the department was whether it comprised of three members or four members, i.e. whether Smt. Raja Syamala must also be treated as a member of the Hindu Undivided Family or not and that it was only before the Tribunal it was contended for the first time that there was a division in status between the parties long prior to the coming into force of the Act. We are of the view that the approach of the Gujarat High Court in ***Goswami Brijratanlalji Meharaj*** **v.** ***Commissioner of Wealth-tax*** [(1971) 79 ITR 373] and that of the learned Judges in the impugned judgment in the matter of interpretation of Section 20 of the Act is correct and we are in agreement with the same. In that view of the matter, we do not find any merit in the appeal and same is accordingly dismissed.

Pooran Mal v. *The Director of Inspection*

(1974) 1 SCC 345

D.G. PALEKAR, J. – In these proceedings – two of them writ petitions under Article 32 of the Constitution asnd two others which are appeals from orders passed by the Delhi High Court under Article 226 – relief is claimed in respect of action taken under Section 132 of the Income-tax Act, 1961 (hereinafter called the Act) by way of search and seizure of certain premises on the ground that the authorisation for the search as also the search and seizure were illegal. The challenge was based on constitutional and non-constitutional grounds. For the appreciation of the constitutional grounds it is not necessary to give here the detailed facts of the four cases. It is sufficient to state that in all these cases articles consisting of account books and documents and in the writ petitions, also cash, jewellery and other valuables, were seized by the Income-tax authorities purporting to act under the authorisation for search and seizure issued under Section 132 of the Act. Broadly speaking the constitutional challenge is directed against sub-sections (1) and (5) of Section 132 of the Act and incidentally also against Rule 112-A on the ground that these provisions are violative of the fundamental rights guaranteed by Articles 14, 19(1)(f), (g) and 31 of the Constitution. The non-constitutional grounds of challenge are based upon allegations to the effect that the search and seizure were not in accordance with Section 132 read with Rule 112. This challenge will have to be considered in the background of the facts of the individual cases.

Under the amendment of 1965, two Sections namely Sections 132 and 132A were substituted for the original Section 132. We are concerned with these Sections.

Rule 112-A which is also challenged as it prescribes the procedure for the enquiry under Section 132(5) is as follows:

> "112-A. Inquiry under Section 132 – (1) Where any money, bullion, jewellery or other valuable article or thing (hereinafter referred to as assets) are seized, the Income-tax Officer shall within fifteen days of the seizure issue to the person in respect of whom enquiry under sub-section (5) of Section 132 is to be made requiring him on the date to be specified therein (not being earlier than fifteen days from the date of service of such notice) either to attend at the office of the Income-tax Officer or to explain or to produce or cause to be there produced evidence on which such person may rely for explaining the nature of the possession and the source of the acquisition of the assets.

(2) The Income-tax Officer may issue a notice to the person referred to in sub-rule (1) requiring him on a date specified therein to produce or cause to be produced at such time and at such place as the Income-tax Officer may specify such accounts or documents or evidence as the Income-tax Officer may require and may from time to time issue further notices requiring production of such further accounts or documents or other evidence as he may require.

(3) The Income-tax Officer may examine on oath any other person or make such other inquiry as he may deem fit.

(4) Before any material gathered in the course of the examination or inquiry under sub-rule (3) issued by the Income-tax Officer against the person referred to in sub-rule (1) the Income-tax Officer shall give a reasonable notice to that person to show cause why such material should not be used against him."

Dealing first with the challenge under Article 19(1)(f) and(g) of the Constitution it is to be noted that the impugned provisions are evidently directed against persons who are believed on good grounds to have illegally evaded the payment of tax on their income and property. Therefore, drastic measures to get at such income and property with a view to recover the government dues would stand justified in themselves. When one has to consider the reasonableness of the restrictions of curbs placed on the freedoms mentioned in Article 19(f) and (g), one cannot possibly ignore how such evasions eat into the vitals of the economic life of the community. It is a well-known fact of our economic life that huge sums of unaccounted money are in circulation endangering its very fabric. In a country which has adopted high rates of taxation a major portion of the unaccounted money should normally fill the Government coffers. Instead of doing so it distorts the economy. Therefore, in the interest of the community it is only right that the fiscal authorities should have sufficient powers to prevent tax evasion.

Search and seizure are not a new weapon in the armoury of those whose duty it is to maintain social security in its broadest sense. The process is widely recognized in all civilized countries. Our own Criminal Law accepted its necessity and usefulness in Sections 96 to 103 and Section 165 of the Criminal Procedure Code. In *M.P. Sharma* v. *Satish Chandra* [1954 SCR 1077], the challenge to the power of issuing a search warrant under Section 96(1) as violative of Article 19(1)(f) was repelled on the ground that a power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. As pointed out in that case a search by itself is not a restriction on the right to hold and enjoy property though a seizure is a restriction on the right of possession and enjoyment of the property seized. That, however, is only temporary and for the limited purpose of investigation. Then the Court proceeds to say: (p. 1081)

> "A search and seizure is, therefore, only a temporary interference with the right to hold the premises searched and the articles seized. Statutory regulation in this behalf is necessary and reasonable restriction cannot *per se* be considered to be unconstitutional. The damage, if any, caused by such temporary interference is found to be in excess of legal authority is a matter for redress in other proceedings. We are unable to see how any question of violation of Article 19(1)(f) is involved in this case in respect of the warrants in question which purport to be under the first alternative of Section 96(1) of the Criminal Procedure Code."

We are to see what are the inbuilt safeguards in Section 132 of the Income-tax Act. In the first place, it must be noted that the power to order search and seizure is vested in the highest officers of the department. Secondly, the exercise of this power can only follow a reasonable belief entertained by such officer that any of the three conditions mentioned in Section 132(1)(a), (b) and (c) exists. In this connection it may be further pointed out that under sub-rule (2) of Rule 112, the Director of Inspection or the Commissioner, as the case may be, has

to record his reasons before the authorisation is issued to the officers mentioned in sub-section (1). Thirdly, the authorisation for the search cannot be in favour of any officer below the rank of an Income-tax Officer. Fourthly, the authorisation is for the specific purposes enumerated in (i) to (v) in sub-section (1) all of which are strictly limited to the object of the search. Fifthly, when money, bullion, etc. is seized the Income-tax Officer is to make a summary enquiry with a view to determine how much of what is seized will be retained by him to cover the estimated tax liability and how much will have to be returned forthwith. The object of the enquiry under sub-section (5) is to reduce the inconvenience to the assessee as much as possible so that within a reasonable time what is estimated due to the Government may be retained and what should be returned to the assessee may be immediately returned to him. Even with regard to the books of account and documents seized, their return is guaranteed after a reasonable time. In the meantime the person from whose custody they are seized is permitted to make copies and take extracts. Sixthly, where money, bullion etc. is seized, it can also be immediately returned to the person concerned after he makes appropriate provision for the payment of the estimated tax dues under sub-section (5) and lastly, and this is most important, the provisions of the Criminal Procedure Code relating to search and seizure apply, as far as they may be, to all searches and seizures under Section 132. Rule 112 provides for the actual search and seizure being made after observing normal decencies of behaviour. The person in charge of the premises searched is immediately given a copy of the list of articles seized. One copy is forwarded to the authorising officer. Provision for the safe custody of the articles after seizure is also made in Rule 112. In our opinion, the safeguards are adequate to render the provisions of search and seizure as less onerous and restrictive as is possible under the circumstances. The provisions, therefore, relating to search and seizure in Section 132 and Rule 112 cannot be regarded as violative of Article 19(f) and (g).

A minor point was urged in support of the above contention that Section 132 contains provisions which are likely to affect even innocent persons. For example, it was submitted, an innocent person who is merely in custody of cash, bullion or other valuables, etc. not knowing that it was concealed income is likely to be harassed by a raid for the purposes of search and seizure. That cannot be helped. Since the object of the search is to get at concealed incomes, any person, who is in custody without enquiring about its true nature, exposes himself to search. Sub-section (4) of Section 132 shows the way how such an innocent person can make the impact of the search on him bearable. All that he has to do is to tell the true facts to the searching officer explaining on whose behalf he held the custody of the valuables. It will be then for the Income-tax Officer to ascertain the person concerned under sub-section (5).

It was next argued that the power for directing a search is given to an authority like the Director of Inspection who, it is submitted, is, in the very nature of things, incapable of forming any reasonable belief with regard to the requirements of Section 132(1)(a), (b) and (c). The contention was that the assessee has no contact in the matter of assessment with the Director and, therefore, he can hardly entertain any belief, reasonable or otherwise. It is conceded that the Income-tax Officer or his superiors in the direct line, like the Inspecting Assistant Commissioner or the Commissioner, may be in a position to entertain the requisite belief on account of their having direct and first hand knowledge of the financial

circumstances of the assessee, the defaults he has committed or is likely to commit etc. But the Director of Inspection has no opportunity and is, therefore, thoroughly unable to form any opinion. This would only mean that any belief entertained by him would be an arbitrary belief and legislation investing such an officer with the power to direct a search is *per se* unreasonable. In our opinion, there is no substance in this argument. The Director of Inspection, as already seen in Section 116 of the Income-tax Act, is an officer in the Income-tax Department next only in authority to the Board of Direct Taxes. Section 118 shows that all Inspecting Assistant Commissioners and Income-tax Officers, besides being subordinate to the Commissioners, are also subordinate to the Director of Inspection. Under Section 119(2) every Income-tax Officer employed in the execution of the Act is required to observe and follow such instructions as may be issued to him for his guidance by the concerned Director of Inspection. Moreover under Section 120 the Director of Inspection is required to perform such functions of any other Income-tax authority, apparently, including the Income-tax Officers and his direct superiors, as may be assigned to him by the Board. Under Section 135 the Director of Inspection is competent to make any enquiry under the Act and for that purpose he is invested with all the powers that an Income-tax Officer has under the Act in relation to the making of enquiries. It would, therefore, follow that in the course of his duties the Director of Inspection has ample opportunities to follow the course of investigation and assessment carried on by the Income-tax Officers and to check the information received from his sources with the actual material produced or not produced before the assessing authorities. It is not, therefore, correct to argue that the Director of Inspection could hardly be expected to entertain, honestly, any reasonable belief for the purposes of Section 132(1)(a), (b) and (c).

A subsidiary point relating to the entertainment of reasonable belief under Section 132 was also raised by Mr. Karkhanis. He submitted that it was possible to say that the Director of Inspection or the Commissioner, as the case may be, could, in conceivable cases, entertain reason to believe the existence of conditions referred to in sub-clauses (a) and (c) of sub-section (1). For example, where the necessary requisition is mane under sub-clause (a) the authority concerned may from the record ascertain whether the person to whom the requisition is issued has omitted or failed to produce or cause to be produced the required documents. Similarly under sub-clause (c) if the authority, has received any secret information which, in its opinion, was reliable, it may be possible for it to have reason to believe that any person is in possession of any money, bullion, jewellery, etc., which is undisclosed income or property and such property is secreted in some place. But Mr. Karkhanis submitted that so far as sub-clause (b) is concerned, it will be impossible for one to say that the authority can reasonably entertain the belief that if a requisition is made the person concerned will not or would not produce or cause to be produced the required documents. In his submission, the authority can entertain that belief only when a requisition is made and within reasonable time given the document is not produced. That is provided for in sub-clause (a). But to say that the authority can also have reason to believe that if a requisition is made the person concerned will not in future produce the document is, according to Mr. Karkhanis, a conclusion which is impossible to draw on any conceivable facts. We must say that if Mr. Karkhanis really thinks that there is substance in this argument, then he must be blissfully unaware of the manner in which income-tax is evaded. It is impossible to enumerate all the circumstances in which the necessary reasonable belief

may be entertained under sub-clause (b). As an illustration, however, we may point out a case which falls completely under sub-clause (b). An assessee may be filing his returns from year to year regularly and his assessment may be also completed in due course over years. His books of account and documents have been duly checked from year to year and the assessing officer is also completely satisfied that the returns are correct. But it might happen that this apparently honest assessee has invested large funds in properties and other financial deals, reliable information about which finds its way to the Director of Inspection. In such a case no oracle is needed to tell the Director of Inspection that if a requisition is made on the assessee to produce his documents in connection with these financial deals and investments, the assessee will most certainly omit to produce or cause to be produced such documents. On the other hand, there is danger that all these documents may be destroyed because the very fact that a requisition is made with a view to investigate concealed deals would put the assessee on his guard and the relevant documents may either disappear or be destroyed. Indeed, it is possible that an assessee may, after knowing that the game is up, produce the requisite documents. But in the nature of things such an assessee would be rare. The question for us to consider is whether the authority under Section 132(1) may entertain the reasonable belief that in such circumstances the assessee will not or would not produce the documents. In our opinion, though in a very rare case a tax evader may comply with a requisition, the Director of Inspection who has reliable information that the assessee has consistently concealed his income derived from certain financial deals may be justified in entertaining the reasonable belief that the assessee, if called upon to produce the necessary documents, will not produce the same. There is no substance, therefore, in the contention that sub-clause (b) has over-reached itself.

The argument that Section 132(5) is confiscatory in its effect has also no force. It must be remembered that the object of this provision is to expedite the return of the seized assets after retaining what is due by way of tax to Government and has been illegally withheld by the person concerned. The seizure of the assets has been made in the belief, honestly held, that the assets represent undisclosed income or property. But the Income-tax Officer cannot merely rest on this belief. He must take a summary enquiry after notice to the person concerned and the latter has an opportunity to show that he had duly disclosed this income. If he cannot do this the officer is entitled to proceed on the basis that it is undisclosed income and on the relevant material make a broad estimate of the tax withheld. The amount of such tax which truly belongs to Government is retained by the Income-tax Officer and the balance forthwith released. We do not see how this can be described as confiscation. In fact, the second proviso to sub-section (5) shows that the assessee can get a release of all the assets seized if he can make satisfactory arrangements for the payment of the estimated dues. Moreover, it must be noted that the enquiry under sub-section (5) is no substitute for regular assessment or re-assessment. The Income-tax Officer, having jurisdiction, will proceed with the assessment in due course and determine the correct amount of tax payable. In the meantime the assets retained are only by way of sequestration to meet the tax dues found to be eventually payable. If by reason of the enquiry under Section 132(5), which is admittedly a summary enquiry, an amount in excess of the dues is retained, the same is liable to be returned with interest at 9 per cent under Section 132A.

We are not, therefore, inclined to hold that the restrictions placed by any of the provisions of Section 132, 132A or Rule 112A are unreasonable restrictions on the freedoms under Article 19(1)(f) and (g).

It was next argued that Sections 132(a) and (5) are violative of the fundamental right under Article 14 on the ground (1) that they make unjust discrimination between evaders of tax, distinguishing those who are believed to be in possession of undisclosed income or property from those evaders of tax who are not believed to be in possession, and (2) that although all evaders are liable to be proceeded against under Section 147 of the Act, yet only some of them who are found in possession of undisclosed income or property are liable to be subjected to the procedure under Section 132(5). We find no substance in this argument. All evaders of tax can be proceeded against under Section 132. Only in some cases the search may be useful; in others it may not be. If the Director of Inspection gets timely information about the undisclosed income and its location, he can direct a search and seizure. Otherwise, it is futile to direct a search and seizure because the whole manoeuvre will be fruitless. The provision for seizure is designed with the object of getting at the income which has been concealed illegally by the assessee. Only when he is honestly satisfied that some undisclosed income of a person is likely to come to his hands if a search is directed, he will be in a position to issue the necessary authorisation. He cannot, however, direct a search in respect of an evader of tax who is astute enough to spend all his income or otherwise make it impossible to be traced. For the purposes of Section 147 of the Act all evaders of tax are subject to the same procedure for assessment of tax including those against whom action is taken under Section 12. Assessees whose assets could be seized for the recovery of their tax liabilities do not stand in a different class, as such, but stand in a different situation from those others against whom the search and seizure process, though available, is futile. The finding of undisclosed income in the form of cash, jewellery and the like makes the provision of sub-section (5) imperative. The taxing authorities cannot keep the valuables with them indefinitely without trying to see how much of what is now seized will go to the Government by way of tax. Therefore, in fairness to the assessee, sub-section (5) has been deliberately introduced. In the nature of things such an enquiry is impossible in the case of tax evaders from whom nothing is or could be seized on a search.

Sub-section (5) of Section 132 does not contemplate a different procedure in the matter of regular assessment. See Section132-A which shows that those who are found in possession of undisclosed income on a seizure are likely to be regularly assessed or reassessed. Sub-section (5) only contemplates a provisional summary enquiry with a view to determine how much of the seized wealth can be legitimately and reasonably retained to cover the tax liability already incurred. Regular assessment follows under the law in the same manner as in the case of tax evaders who are not found in possession of concealed income. The utmost that can be said is that by reason of the seizure the Government is in a position to secure its tax dues before the regular assessment is concluded. But that does not introduce any different procedure for the regular assessment of such an assessee's income which remains the same for all tax evaders. In one set of cases the fiscal authorities make sure of recoveries, in the other, they are unable to do so – not because the provisions of Section 132 do not operate on them, but because action under that Section by search and seizure is futile. Therefore, there is no substance in

the contention that two different procedures for assessment are adopted and hence there is a discrimination under Article 14. The plea on behalf of the assessees, in effect, only amounts to this "It is true that we are tax evaders. But if other evaders successfully dodge the collection of the tax by causing their concealed income to disappear, why should we not get the same facility?"

Some points of lesser substance were mentioned in the petition memos in support of the challenge under Articles 14 and 19(1)(f) and (g). They were, however, not urged at the time of the hearing, as on the other grounds urged, it was impossible to hold that the impugned provisions were violative of either Articles 14, 19 or 31. We may, however, mention in this context that these points had been raised in ***C. Venkata Reddy* v. *Income-tax Officer (Central) I, Bangalore*** [(1967) 66 ITR 212 (Mys.)] and in ***Ramjibhai Kalidas* v. *I.G. Desai, Income-tax Officer*** [(1971) 80 ITR 721 (Guj)], where they have been quite adequately dealt with and rejected.

In that view, even assuming, as was done by the High Court that the search and seizure were in contravention of the provisions of Section 132 of the Income-tax Act, still the material seized was liable to be used subject to law before the Income-tax authorities against the person from whose custody it was seized and, therefore, no Writ of Prohibition in restraint of such use could be granted. It must be, therefore, held that the High Court was right in dismissing the two writ petitions. The appeals must also fail and are dismissed with costs.

The two writ petitions filed in this Court now remain for consideration and what is to be considered is whether there has been any illegality in the search and seizure because of the alleged contravention of the provisions of Section 132 of the Act or Rule 112.

WRIT PETITION NO. 446 OF 1971

The petitioner Pooran Mal is a partner in a number of firms – some of them doing business in Bombay and some in Delhi. His permanent residence is 12-A, Kamla Nagar, Delhi. His business premises in Delhi are A-14/16 Jamuna Bhavan, Asaf Ali Road, New Delhi. It would appear that on an authorisation issued by the Director of Inspection, his residence and business premises in Delhi were searched on October 15/16, 1971. On the 15t^{h} his premises in Bombay were also searched and at that time it appears the petitioner was present in Bombay. When his residence was searched on 15th and 16th, there were in his house the petitioner's wife, two or three adult sons and his father who is said to have been ailing. It was alleged on behalf of the petitioner that the search in the residential premises was *mala fide*, oppressive, excessive, indiscriminate and vexatious. The grounds for making these allegations seem to be (1) that the search and seizure in the house took place in spite of the wife's request to postpone the search; (2) it was Dhanteras day which is a festival day; (3) petitioner's wife was not informed that there was any authorisation; (4) her father-in-law was suffering from paralysis; (5) even children's small boxes containing their pocket money were seized; (6) jewellery including that of the mother-in-law of the petitioner Kailashbai, who had died six years earlier was seized; (7) the panchas who helped in the search were unknown to the petitioner or the members of his family; (8) the search went on from 8.00 a.m. on October 15th till the early hours of October 16th and the search was again resumed on the evening of October 16. The grounds on which the wild allegations of *mala fides*, oppression etc. had

been made do not appear to be of any substance. It is undoubtedly true that search and seizure is a drastic process and is bound to be associated with some amount of unsavoury and inconvenient results. A sudden search and seizure may unnerve the inmates of the place where the search is made. But this is to be expected. When oppression and *mala fides* are alleged, we should have more substantial grounds than these. On the other hand, the allegations of highhandedness, *mala fides* etc. are wholly denied in the affidavit filed on behalf of the Department. That it was a Dhanteras day is denied. But assuming it was, there is no law which says that a search and seizure cannot take place on that day. It may be that the wife had requested that the search may be postponed till her husband's return but obviously the officers concerned could not agree to this request because the whole purpose of search would have been defeated. It is denied that the inmates were not informed of the authorisation. In fact it is alleged that the petitioner's wife Smt. Sharda Devi was shown the authorisation and in token of the same she had put her signature thereon. That the petitioner's father was suffering from paralysis might be unfortunate but it does not appear that the officers concerned caused him the least inconvenience. All through the search, it is alleged, Sharda Devi and her two educated sons Dinesh and Vinod were present at the time of the search. It is not denied that considerable jewellery was seized. The jewellery seized in the house was worth Rs. 37,043 and though it is the case of the petitioner that part of it belonged to his mother-in-law, Smt. Kailashbai, who is now dead, it is stated on oath on behalf of the Department that in the statements recorded on October 15/16,1971 Smt. Sharda Devi had claimed the whole of the jewellery as her own, though in the last Wealth Tax Return she had valued her jewellery at Rs. 5,000 only. So far as the Panchas are concerned, it is denied that they were not known to the inmates of the house. In fact, it is alleged by the Department that Pancha Mathuradas was a resident in the same house and had been called at the suggestion of Sharda Devi. It is not denied that the search went on for a long time because a number of documents and account books were seized in the course of the search and so also a lot of jewellery and cash. The allegation that the small boxes of the children containing their pocket money were seized is denied. We may say, therefore, on the whole that there is nothing in the petition inducing us to take the view that the search in the house was either *mala fide*, oppressive or excessive etc. etc.

The search in the business premises was made when a number of persons who usually worked there were present. Books of account, documents, some jewellery and a large amount of cash amounting to about Rs. 61,000 were seized.

On October 16 there was a search in the Branch Offices of Laxmi Commercial Bank and the Punjab National Bank. 84 silver bars were seized from Laxmi Commercial Bank and 30silver bars were seized from the Punjab National Bank. The value of these silver bars comes to nearly 18 lakhs. It is the case of the petitioner that these bars belong to M/s. Pooranmal and Sons of Bombay who sent the same to the Motor and General Finance Company of which the petitioner is a partner and this Finance Company, it is alleged, kept these bars with the two banks. 84 bars were kept in the account of M/s. Udey Chand Pooranmal for an alleged overdraft limit while the 30 silver bars were pledged with the Punjab National Bank in the account of the Finance Company. In all these aforesaid firms the petitioner is a partner and it is the Department's case that all these bars are the undisclosed

assets of the petitioner. It appears that the Income-tax Officer made a summary enquiry as required by Section 132(5) after issuing notice to the petitioner and his order dated January 12, 1972 shows, of course *prima facie*, that all the assets which had been seized in the house, the business premises and the banks, except for the value of the ornaments declared byMrs. Sharda Devi in her Wealth Tax Return, had to be retained for being appropriated against tax dues from 1969 onwards which amounted to nearly 42 lakhs. Indeed this *prima facie* liability was subject to regular assessment and re-assessment.

Mr. Karkhanis submitted that the petitioner had been very cooperative with the department before and, therefore, the Director of Inspection could have no possible reason to believe that if any requisition for documents and account books were made the same would not be produced. This allegation about cooperation is denied by the Department and in this connection the Department has produced a chart at Annexure RI showing how the petitioner has been throughout non-cooperative. Assessment for the year 1967-68 is still pending and no return has been filed for the year 1968-69 or for later years. We are not at all satisfied that the petitioner was cooperative, and, therefore, the Director of Inspection would have no possible ground for entertaining a reasonable belief as required by sub-clauses (a), (b) and (c) of sub-section (1) of Section 132. To satisfy ourselves we called for the grounds recorded by the Director before the authorisation was issued and we are quite satisfied that there were grounds for him to entertain reasonable belief as required under the sub-clauses. As already pointed out the summary enquiry made under sub-clause (5) of Section 132 discloses that the assets seized were for the most part undisclosed income and property. Indeed the accident that undisclosed property is found on a search may not be a justification for the authorisation of a search if, in fact there had been no grounds for entertaining reasonable belief. But finding of assets as expected by the Director of Inspection on the information received by him would at least support the view that the authority concerned had reliable information on which he could entertain the necessary relief.

On the whole, therefore, we are not inclined to hold that the search and seizure in this writ petition was vitiated by any illegality.

WRIT PETITION NO. 86 OF 1972

The position in this writ petition is not different. The petitioner Ganeriwala is a businessman. His residence is 1, Raj Narain Road, Civil Lines, Delhi and he runs a family business in automobile parts in the name of Ganeriwala Trading Company. The business is at No. 1, Krishna Motor Market, Kashmiri Gate, Delhi. The family seems to be a partner in the firm M/s. Bisheshwar Lal Brij Nath, Bareilly, and is supposed to have income from ancestral agricultural land in Haryana State. It is alleged by the petitioner that his assessment of income had been completed up to the year 1970-71 and of Wealth Tax up to 1969-70. The return for 1970-71 was also filed. Even so, it is alleged, on October 8, 1971 his residential house and also the business premises were searched and documents and books of account were seized. The search was started at 8.00 a.m. and continued till the evening and, thereafter, the business premises were searched. The petitioner stated that though the raiding party made a very detailed search, they did not come across any concealed income – cash or bullion, ornaments of jewellery. General allegations regarding the search being oppressive and excessive are made. But there is no substance in them. Objection was taken to search on

the ground that the authorities had deliberately selected Panchas who were inimical to the petitioner. This is denied. It is stated in the affidavit on behalf of the Department that one of the Pancha witnes namely Lt. Col. Raj Behari Lal was actually sitting in the house of the petitioner even before the search party entered the premises. It is also stated that both the Panchas are responsible persons of the locality and the immediate neighbours of the petitioner – one of them being a responsible officer in the Army. The petitioner says that he had told the authorities that he had been on inimical terms with these Panchas. But that is denied. There is, therefore, no reason to think that respectable Panchas were not taken for the search. Another objection was made that two cash books relating to the years 1970-71 and 1971-72 were removed by the Income-tax authorities but they were not duly entered in the inventory. This allegation also is denied. In para 21 of the counter-affidavit the Assistant Director of Inspection has stated that during the course of the petitioner's examination and the recording of his statement on October 8, 1971 the petitioner had stated that his Roker-Bahis for the accounting years 1970-71 and 1971-72 did not contain any entries regarding the expenditure on the construction of the godown, and as such those Roker-Bahis were not seized from the custody of the petitioner. The other reason was that the petitioner had requested that they may not be seized as otherwise the petitioner would face difficulties in carrying on his business. It must be remembered that the search and seizure had been ordered because the petitioner had recently constructed a huge godown near his residential premises with the floor area of approximately 6700 sq. ft. on which a large investment was estimated to have been made from income which had not been disclosed in the books of account produced or returns filed by the petitioner. Since the petitioner himself told the authorities that the Roker-Bahis for the two years did not contain any entries regarding the expenditure on the construction, the authorities inspected the Roker-Bahis for the year 1971-72, and finding that it did not contain any entries for the past 30 days it was considered by the authorities not proper to take possession of the same. We are inclined to think that this objection by the petitioner is an after-thought with a view to malign the departmental authorities. It is not denied that the petitioner had been given a copy of the inventory of the documents seized from his custody on that very day. He did not raise the objection regarding the account books till November 5, 1971 i.e. nearly after one month. The petitioner is a businessman. He could not have been unaware that his Roker-Bahis for the current year and the previous year were missing for such a long time.

It was next alleged that a very large number of documents were seized which were really irrelevant. The authorised officer has to seize books of account and other documents which will be useful for and relevant to any proceeding under the Income-tax Act. When in the course of a search voluminous documents and books of account are to be examined with a view to judge whether they would be relevant, a certain amount of latitude must be permitted to the authorities. It is true that when particular documents are asked to be seized unnecessary examination of other documents may conceivably make the search excessive. But when the documents, pieces of paper, exercise books, account books, small memos etc. have all to be examined with a view to see how far they are relevant for the proceeding under the Act, an error of judgment is not unlikely. At the most this would be an irregularity – not an illegality. Nor can it be a valid objection to the search that it continued for about 16 hours. By their very nature the search and seizure as shown above would consume a lot of time.

In this petition also it was alleged that the Director of Inspection could possibly have no reason to believe the existence of circumstances required by sub-clauses (b) and (c) of sub-section (1) of Section 132 because the petitioner's assessment for the year 1970-71 had been already completed and so also the Wealth Tax assessment for the year 1969-70. But this does not mean that on the information in the possession of the Director of Inspection he cannot entertain the necessary belief. The grounds for the belief recorded by the Director of Inspection before the authorisation were shown to us and we do not think that on the material the authority could not have entertained the belief. A big godown has been newly constructed by the petitioner but his books of account did not reflect the expenditure on account of this construction. It is alleged on behalf of the Department that, on search, certain documents in the nature of maps etc. were seized which showed that the petitioner had constructed the building in the month preceding the date of search and the money with which the said building was constructed was unaccounted money. There is, therefore, no substance in the contention that the Income-tax authorities could not have possibly entertained the required belief. The search and seizure, therefore, impugned in this writ petition cannot be regarded as illegal. In the result the two writ petitions and the two appeals are dismissed with costs.

* * * * *

Income-Tax Officer v. *Seth Brothers*

(1969) 74 ITR 836 (SC)

J.C. SHAH, J. – M/s. Seth Brothers run a flour mill in the name and style of "Imperial Flour Mills." From April 1, 1953 to March, 1956, the business was carried on by M/s. Seth Brothers, of which the partners were Baikunth Nath and Vishwa Nath. Between March, 1956 and March 31, 1957, the business was carried on by Baikunth Nath, Vishwa Nath, Dr. Manmohan Nath, Mrs. Rama Rahi and Mrs. Sushila Devi. On April 7, 1957, Mrs. Prem Lata was admitted as a partner. The partners were engaged in carrying on other businesses in the names of Seth Brothers (Private) Ltd., Nath Brothers (Private) Ltd. and Meerut Cold Storage and General Mills.

The owners of the business were, year after year, assessed to income-tax in respect of the income arising in the course of the business. On March 14, 1963, the Income-tax Officer, Meerut, issued a notice under section 148 of the Income-tax Act, 1961, intimating M/s. Seth Brothers that there was reason to believe that their income chargeable to tax had escaped assessment and it was proposed to reassess this income for the assessment year 1954-55. In response to the notice, Baikunth Nath and Vishwa Nath filed a return under protest. In the meantime information was received by the Income-tax Commissioner, U.P., that M/s. Seth Brothers were maintaining "duplicate records" and were evading assessment of their true income and that it was necessary to seize the records which may be found at "Shanti Niketan," Meerut, in which M/s. Seth Brothers carried on the business of Imperial Flour Mill and other businesses. The Commissioner of Income-tax, U.P., on May 29, 1963, drew up a memorandum that on a report of the Income-tax Officer, D-Ward, Meerut, requesting for authorisation under section 132 of the Income-tax Act, 1961, to enter and search the premises of M/s. Seth Brothers, he was satisfied about the need for the issue of the authorisation. The Commissioner also issued an order in Form 45 prescribed under rule 112 of the Income-tax Rules, 1962, authorising two Income-tax Officers, R.R. Agarwal and R. Kapoor, to enter the premises known as "Shanti Niketan," at Meerut and to search for and seize such books and documents as may be considered relevant or useful for the purpose of the proceeding of reassessment, and to place identification marks thereon and to convey them to the Income-tax office.

On the 7th and 8th of June, 1963, the premises described in the order were searched and account books and certain documents found therein were seized and were carried to the Income-tax Office. M/s. Seth Brothers then moved a petition in the High Court of Allahabad for an order quashing the proceedings of the income-tax authorities. Petitions were also filed by Nath Brothers (Private) Ltd., Seth Brothers (Private) Ltd. and Seth Brothers, Meerut, for the same relief. By these petitions, they claimed writs of certiorari quashing the letters authorising search of the premises at Shanti Niketan, and writs of mandamus directing the Income-tax Officer to return all the books, papers and articles seized during the search and for writs of prohibition restraining the income-tax department from using any information gathered as a result of the search. It was submitted by the petitioners that K.L. Ananda, Income-tax Officer, and Satya Prakash, an "ex-employee" of M/s. Seth Brothers, had given false information to the Deputy Director of Inspection with a view to blackmail the partners

of M/s. Seth Brothers, and that the order of search was made by the Commissioner of Income-tax at the direction of the Deputy Director of Inspection, that the action of the Income-tax Officer in searching the premises and in seizing the books of account was malicious and that in any event section 132 of the Income-tax Act, 1961, and the rules framed thereunder, were violative of the fundamental freedoms guaranteed by Articles 14, 19(1)(f) and 31 of the Constitution.

Affidavits were filed on behalf of M/s. Seth Brothers. It was affirmed that "the so-called duplicate records" seized by the Income-tax Officer were copies of the books of account and that action had been taken by the Commissioner of Income-tax, not on his own initiative but at the behest of the Directorate of Inspection. In reply to the contentions raised by the assessees several affidavits sworn by officers of the income-tax department were filed. The Commissioner of Income-tax stated in his affidavit that before issuing letters of authorisation and the warrant of search he was satisfied that it was necessary to take action under section 132 of the (Indian) Income-tax Act, 1961, and that the letters of authorisation were not issued at the direction of the Directorate of Inspection. The Income-tax Officers stated that in consequence of the search a large number of "duplicate account books and records" maintained by M/s. Seth Brothers were recovered, that the search was carried out according to law and in the presence of two of the partners of the firm and their advocates, that all the documents seized were relevant for the purpose of reassessment, that there was close connection between the different business activities of the partners of M/s. Seth Brothers and that all the documents which were seized were in relation to those activities. The Deputy Director of Inspection in his affidavit stated that he did not give any direction to the Commissioner to issue authorisation for search and seizure.

The High Court of Allahabad held on a consideration of the averments made in the affidavits filed on behalf of M/s. Seth Brothers and the revenue that "there was reason to believe" that instructions were issued by the Directorate of Inspection for a general raid and seizure of all account books and papers which may be found at the premises of the firm; that some out of the documents seized by the Income-tax Officers were irrelevant for the purpose of any proceeding under the Act; that besides the documents belonging to M/s. Seth Brothers the Income-tax Officers seized documents relating to the transactions of the allied concerns; that marks of identification were not placed on certain documents at the time they were seized; that the documents seized were detained by the Income-tax Officer for more than two months; and that the police force employed during the raid was excessive. The High Court concluded:

> "It is true that there was no ill-will between the ... (partners of Seth Brothers) on one side and respondents Nos. 1, 3 and 4 (Commissioners of Income-tax, U.P. and Punjab and Income-tax Officer, Special Investigation Circle A, Meerut) on the other side. But the extent of the seizure was far beyond the limits of section 132 of the Act. The action was *mala fide* in the sense that there was abuse of power conferred on Income-tax Officers by section 132 of the Act. The act being *mala fide*, the proceedings should be quashed by this court by issuing a writ of mandamus."

The Income-tax Officer, S.I. Circle, has appealed to this court with special leave.

Section 132 as originally enacted by Act No. 43 of 1961 was substituted by a modified provision by the Finance Act of 1964 which in its turn was replaced by section 1 of the Income-tax (Amendment) Act, 1965. By section 8 of that Act it was provided, inter alia, that any search of a building or place by an Income-tax Officer purported to have been made in pursuance of sub-section (1) of section 132 of the principal Act shall be deemed to have been made in accordance with the provisions of that sub-section as amended by the Act of 1965 as if those provisions were in force on the day the search was made.

The Commissioner or the Director of Inspection may, after recording reasons, order a search of premises, if he has reason to believe that one or more of the conditions in section 132(1) exist. The order is in the form of an authorization in favour of a subordinate department officer authorising him to enter and search any building or place specified in the order, and to exercise the powers and perform the functions mentioned in section 132(1). The officer so authorised may enter any building or place and make a search where he has reason to believe that any books of account or other documents which in his opinion will be useful for, or relevant to, any proceeding under the Act, may be found. The officer making a search may seize any books of account or other documents and place marks of identification on any such books of account or other documents, make or cause to be made extracts or copies therefrom and may make an inventory of any articles or things found in the course of any search which in his opinion ill be useful for, or relevant to, any proceeding under the Act, and remove them to the income-tax office or prohibit the person in possession from removing them. He may also examine on oath any person in possession of or control of any books of account or documents or assets.

The section does not confer any arbitrary authority upon the revenue officers. The Commissioner or the Director of Inspection must have, in consequence of information, reason to believe that the statutory conditions for the exercise of the power to order search exist. He must record reasons for the belief and he must issue an authorization in favour of a designated officer to search the premises and exercise the powers set out therein. The condition for entry into and making search of any building or place is the reason to believe that any books of account or other documents which will be useful for, or relevant to, any proceeding under the Act may be found. If the officer has reason to believe that any book of account or other documents would be useful for, or relevant to, any proceedings under the Act, he is authorised by law to seize those books of account or other documents, and to place marks of identification therein, to make extracts or copies therefrom and also to make a note or an inventory of any articles or other things found in the course of search. Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorizes it to be exercised. If the action of the officer issuing the authorization or of the designated officer is challenged, the officer concerned must satisfy the court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed. But where power is exercised *bona fide*, and in furtherance of the statutory duties of the tax officers any error of judgment on the part of the officers will not vitiate the exercise of power.

Where the Commissioner entertains the requisite belief and for reasons recorded by him authorises a designated officer to enter and search premises for books of account and documents relevant to or useful for any proceeding under the Act, the court in a petition by an aggrieved person cannot be asked to substitute its own opinion whether an order authorizing search should have been issued. Again, any irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the officer has in executing the authorisation acted *bona fide*.

The Act and the Rules do not require that the warrant of authorisation should specify the particulars of documents and books of account: a general authorisation to search for and seize documents and books of account relevant to or useful for any proceeding complies with the requirements of the Act and the Rules. It is for the officer making the search to exercise his judgment and seize or not to seize any documents or books of account. An error committed by the officer in seizing documents which may ultimately be found not to be useful or relevant to the proceeding under the Act will not by itself vitiate the search, nor will it entitle the aggrieved person to an omnibus order releasing all documents seized.

The aggrieved party may undoubtedly move a competent court for an order releasing the documents seized. In such a proceeding the officer who has made the search will be called upon to prove how the documents seized are likely to be useful for or relevant to a proceeding under the Act. If he is unable to do so, the court may order that those documents be released. But the circumstance that a large number of documents have been seized is not a ground for holding that all documents seized are irrelevant or the action of the officer is *mala fide*. By the express terms of the Act and the Rule the Income-tax Officer may obtain the assistance of a police officer. By sub-section (13) of section 132 the provisions of the Code of Criminal Procedure, 1898, relating to searches apply, so far as may be, to searches under section 132. Thereby it is only intended that the officer concerned shall issue the necessary warrant, keep present respectable persons of the locality to witness the search and generally carry out the search in the manner provided by the Code of Criminal Procedure. By sub-section (13) of section 132 does not imply that the limitations prescribed by section 165 of the Code of Criminal Procedure are also incorporated therein.

In ***Income-tax Officer, A-Ward, Agra* v. *Firm Madan Mohan Damma Mal*** [(1966) 70 ITR 293], it was observed that the issue of a search warrant by the Commissioner is not a judicial or a quasi-judicial act and even the Commissioner is enjoined to issue a warrant only when in fact there is information in his possession in consequence of which he may form the necessary belief, the matter is not thereby subject to scrutiny by the court. Section 132 of the Income-tax Act does not require specific mention by description of each particular document which has to be discovered on search, it is for the officer who is conducting the search to decide whether a particular document found on search is relevant for the purpose or not. That statement of the law, in our judgment, accurately states the true effect of section 132. The mere fact that it may ultimately be found that some document seized was not directly relevant to any proceeding under the Act or that another officer with more information at his disposal may have come to a different conclusion will not be a ground for setting aside the order and the proceeding for search and seizure.

The authrisation issued by the Commissioner was, in the view of the High Court, open to challenge on the ground that the Commissioner did not apply his mind to the existence of circumstances which justified the exercise of the power to issue authorisation. The action of the Income-tax Officers who searched the premises was quashed on the ground that they seized some documents which were irrelevant to the process of reassessment. In our judgment, in reaching their conclusion that the Commissioner acted at the behest of the Director of Inspection, the High Court ignored important evidence on the record. It was averred in the petition of M/s. Seth Brothers that:

> "(56) It appears that the Deputy Director of Inspection at the instigation of Shri K.L. Nanda and Sri Satya Prakash, without making any enquiries or having any material, ordered a raid for search and seizure of all the account books and papers, which could be found.
>
> (57) That, according to such directions of the Directorate, the Commissioner of Income-tax, U.P., Lucknow, was made to issue authorisations under section 132 of the Act of 1961 in favour of opposite Parties Nos. 3 and 4 to seize the account books, documents and papers, which could be recovered therefrom."

The High Court observed that even though a number of affidavits were filed by the income-tax authorities, no reference to paragraph 56 of the writ petition was made and the "only affidavit filed by Shri A.L. Jha, Commissioner of Income-tax was vague in the extreme." The allegation in paragraphs 56 and 57 of the writ petition made no definite allegation that the Commissioner of Income-tax acted at the behest of the Deputy Director of Inspection and not on his own satisfaction reached in consequence of information in his possession. In the verification clause Baikunth Nath stated that the contents of paragraph 57 were true on information received from the Deputy Director of Inspection (Investigation), Income-tax, Central Revenue Buildings, New Delhi, but said nothing about the contents of paragraph 56. The affidavits filed on behalf of the income-tax department specifically denied the allegations made in paragraphs 56 and 57. R.R. Agarwal (one of the Income-tax Officers authorised to conduct the search) in his affidavit affirmed that the letter of authorisation was issued to him by the Commissioner of Income-tax, U.P., Lucknow, after the Commissioner had been satisfied on the report submitted by the deponent.

The Commissioner of Income-tax, Mr. A.L. Jha, by his affidavit denied that letters of authorisation were issued under the directions of the Deputy Director of Inspection or any body connected with the Directorate. He also stated that in respect of the case of M/s. Seth Brothers some information was brought to him by the Directorate and that information corroborated the report made to him by Mr. R.R. Agarwal and that after taking into consideration all those materials he was satisfied that a search of the premises of M/s. Seth Brothers "was called for" and that he issued the impugned letters of authorisation.

Mr. R.V. Ramaswamy, Deputy Director of Inspection (Investigation) in paragraph 6 of his affidavit denied that the raid or search of the premises of M/s. Seth Brothers was ordered by him.

The affidavit of R. Kapur, Income-tax Officer, Special Investigation Circle, who was authorised by the Commissioner of Income-tax to make the search is also relevant. Mr.

Kapur averred that some information was received by Mr. R.R. Agarwal from which it appeared that the firm of M/s. Seth Brothers and its partners were "evading tax by maintaining duplicate sets of accounts" and by suppressing relevant documents and papers from the department; that Mr. R.R. Agarwal made a written request to the Commissioner of Income-tax for letters of authorisation in order to carry out the search of the assessee's premises and in pursuance thereof on May 29, 1963, the Commissioner of Income-tax issued three authorisation letters, two in favour of Mr. R.R. Agarwal and one in favour of the deponent authorising them to carry out the search in accordance with the terms of the authorisation letters.

In this state of the record we are unable to agree with the High Court that the letters of authorisation were issued by the Commissioner of Income-tax at the direction of the Director of Inspection (Investigation). The attention of the court was presumably not invited to the relevant paragraphs of the affidavits of the officers concerned.

It is true that a large number of documents were seized from the premises of M/s. Seth Brothers but that has by itself no direct bearing on the question whether the Income-tax Officer acted *mala fide*. If the Income-tax Officer in making a search had reason to believe that any books of account or other documents useful for, or relevant to, any proceeding under the Act may be found, he may make a search for and seize those books of account and other documents. Some books, maps of the cold storage, assessment returns, and doctor's prescriptions were seized by the Income-tax Officer. It appears, however, from the inventory that a large number of documents which related to the business of the assessees and their allied concerns were also seized. It would be impossible merely from the circumstance that some of the documents may be shown to have no clear or direct relevance to any proceeding under the Act that the entire search and seizure was made not in *bona fide* discharge of official duty but for a collateral purpose. The suggestion that the books of account and other documents which could be taken possession of should only be those which directly related to the business carried on in the name of M/s. Seth Brothers has, in our judgment, no substance. The books of account and other documents in respect of other businesses carried on by the partners of the firm of the assessees would certainly be relevant because they would tend to show inter-relation between the dealings and supply materials having a bearing on the case of evasion of income-tax by the firm. We are unable to hold that because the Income-tax Officers made a search for and seized the books of account and documents in relation to business carried on in the names of other firms and companies, the search and seizure were illegal.

It is also said that marks of identification were not placed on several documents. Assuming that this allegation is true, in the absence of anything to show that the documents were either replaced or tampered with that irregularity will not by itself supply a ground for holding that the search was *mala fide*. A delay of two months in issuing a notice calling for explanation is also not a ground for holding that the action was taken for a collateral purpose.

It is not disputed that assistance of the police may be obtained in the course of a search. The High Court has, however, found that the police force employed was excessive. But we are unable to hold that on the evidence, in keeping police officers present at the time of the

search in the house of influential businessmen to ensure the protection of the officers and the record, "excessive force was used."

We accordingly see no good grounds to accept the finding recorded by the High Court that the manner in which the search and seizure were conducted "left no room for doubt that the Income-tax Officer did not apply his mind and formed no opinion regarding the relevancy or usefulness of the account books and documents for any proceedings under the Income-tax Act." The High Court accepted that the correctness of the opinion actually formed by the Income-tax Officer was not open to scrutiny, in a writ petition, but in their view no opinion was in fact formed by the officer and the search and seizure of documents the books of account must on that account be held as made in excess of the powers conferred upon the Income-tax Officer and *mala fide*. For these observations we find no warrant. The Income-tax Officers concerned have sworn by their affidavits that they did not in fact form the requisite opinion under section 132 of the Act and the other evidence and the circumstances do not justify us in discarding that assertion.

These proceedings were brought before the High Court by way of a writ petition under article 226 of the Constitution before any investigation was made by the Income-tax Officers pursuant to the action taken by them. In appropriate cases a writ petition may lie challenging the validity of the action on the ground of absence of power or on a plea that proceedings were taken maliciously or for a collateral purpose. But, normally, the High Court in such a case does not proceed to determine merely on affidavits important issues of fact especially where serious allegations of improper conduct are made against public servants. The Income-tax Officers who conducted the search asserted that they acted in good faith in discharge of official duties and not for any collateral purpose. The Commissioner of Income-tax also denied that he acted at the direction of the Deputy Director of Inspection and that case was supported by the Deputy Director of Inspection. If the learned judges of the High Court were of the view that the question was one in respect of which an investigation should be made in a petition for the issue of a writ, they should have directed evidence to be taken *viva voce*. The High Court could not, on the assertions by the partners which were denied by the Income-tax Officer, infer that the premises of M/s. Seth Brothers were searched and documents were seized for a collateral purpose, merely from the fact that many documents were seized or that in some of the documents seized marks of identification were not put or that the documents belonging to the "sister concerns" of the "Imperial Flour Mills" were seized.

In our view, the decision of the High Court that the action of the Commissioner of Income-tax, U.P. and the Income-tax Officers who purported to act in pursuance of the letters of authorisation was *mala fide*, cannot be accepted as correct.

Counsel for M/s. Seth Brothers contended that opportunity may be given to the assessees to lead evidence *viva voce* to prove that the revenue officers acted for a collateral purpose. We do not entertain this request since we propose to remand the case to the High Court to decide questions which have not been decided. The applicants, if so advised, may move the High Court for leave to lead evidence. It is for the High Court to decide whether at this stage after nearly six years leave to examine witnesses should be granted. The order passed by the High Court is set aside and the proceeding is remanded to the High Court. The High Court will deal with and dispose of the proceeding according to law.

Bapurao v. *Assistant Director of Income-Tax*

(2001) 247 ITR 98 (M.P.)

N.K. JAIN, J. – By this petition under article 226/227 of the Constitution of India, the petitioner, Bapurao, an assessee under the Income-tax Act, 1961, calls in question the two orders made by respondents Nos. 1 and 2, respectively, purporting to act under the provisions of section 132 of the Act.

Pursuant to a warrant of authorisation issued by the D.I.T. (Investigation), Pune, respondent No. 1 – Assistant Director of Income-tax (Investigation) – purporting to act under section 132(1) of the Act, conducted a search at the residential premises of the petitioner situated at 47, Gulmohar Colony, Indore, on March 19, 1990, and March 20, 1990. Respondent No. 1 was of the view that undisclosed investment has been made in certain immovable properties as enumerated in the order annexure B and since it was not practical or feasible to take possession of those properties, he passed prohibitory order annexure B under section 132(1) of the Act directing the petitioner not to part with or dispose of the said properties without his permission. Respondent No. 2 to whom a jurisdiction under section 132 was later on transferred, after necessary enquiry as envisaged under section 132(5), on July 16, 1990, passed impugned order annexure C endorsing the order annexure B and directing retention of the said immovable properties.

The petitioner has assailed the aforesaid orders as without jurisdiction. It was contended that respondents Nos. 1 and 2 had no jurisdiction under section 132 to seize or retain any immovable property as according to the petitioner section 132 in terms applies to only movables like books of account, other documents, money, bullion, jewellery or other valuable articles or things found as a result of such search.

As against it, the respondents/Revenue have supported the impugned action and contended that immovable properties also fell within the ambit of section 132. A preliminary objection was also taken that the petitioner before moving this court under article 226/227 of the Constitution, ought to have exhausted alternative remedy as provided under sub-section (11) of section 132 of the Act.

Having heard learned counsel for the parties and considered the provisions of section 132, I am clearly of the view that the entire action taken by respondents Nos. 1 and 2 was without jurisdiction.

Clause (B) of section 132(1) provides for the action which the authorised officer may take in exercise of his power of search and seizure under section 132(1). It authorises him to:

> "132. (1)(B)(i) enter and search any building, place, vessels, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;
>
> (ii) break open the lock….
>
> (iia) search any person ….
>
> (iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;
>
> (iv) place marks of identification…..

(v) make a note….."

A plain reading of the aforesaid provision would show that while the autorised officer has power to enter and search any building, place, vessel or aircraft, he can seize only the books of account, other documents, money, bullion, jewellery or other valuable article or thing kept therein. He has no power to seize the building and the place itself which he has searched or other immovable properties of the assessee. Needless to add the order of retention under sub-section (5) of section 132 can be made only in respect of things and articles seized under sub-section (1) not with respect to the building or the place searched. There is absolutely nothing in section 132 which may authorise the officer to seize or retain any immovable property.

In ***Sardar Parduman Singh* v. *Union of India*** [(1987) 166 ITR 115], a Division Bench of the Delhi High Court has held that (page 121) the "scope of section 132 was limited to articles and things mentioned in sub-section (1), the section does not include within its ambit immovable properties…." I respectfully agree with the view taken by the Delhi High Court as no other interpretation of section 132 is possible.

In the result, this petition succeeds and is allowed and the impugned orders are quashed.

* * * * *

Union of India v. *Vipan Kumar Jain*

(2003) 260 ITR 1 (SC)

RUMA PAL AND B.N. SRIKRISHNA JJ. -

ORDER

Between September 30, 1998 and October 15, 1998, the premises of the respondents was searched under section 132 of the Income-tax Act, 1961. The search party was headed by one Harinder Kumar who had been appointed as the authorised officer for the purposes of section 132 of the Act by the Commissioner of Income-tax.

Almost two years after the search was carried out when the assessments of the respondents were sought to be completed, the respondents filed a writ petition in the High Court of Punjab and Haryana impugning not only the search which had been carried out but also assailing the authority of the Assessing Officer to carry out the assessments. The High Court did not accept the submissions of the respondents in so far as they had challenged the validity of the search. The only issue on which the writ petition was allowed and the assessments made in favour of two of the respondents herein were quashed was that the Assessing Officer was the same Harinder Kumar who conducted the search.

The High Court invoked the principle that a person could not be a judge in his own cause to hold that the assessments could not have been carried out in respect of respondents Nos. 2 and 4. It said (p. 748):

> "Herein the witness who had headed the raiding party for search in the house of petitioners Nos. 2 and 4 acted not only as the Investigating Officer but a quasi-judicial officer determining the liability to pay the income-tax. To that extent we are convinced that the assessment order qua petitioners Nos. 2 and 4 and proceedings of assessment are liable to be quashed."

As far as the other respondents are concerned the High Court noted that their apprehension was unfounded since the Assessing Officer was not the authorised person who carried out the search in respect of their premises. The Revenue authorities have impugned the decision of the High Court before us. Nobody appeared on behalf of the respondents when the matter has been argued by the Revenue authorities yesterday and today.

According to the appellants the decision of the High Court should not be sustained on the ground that the High Court had failed to take into account, the entire scheme of the Act and several provisions which permitted the Assessing Officer to discharge the functions of a fact-finding authority. Particular reference has been made to sections 120, 124, 131(1), 132(8), (9A), 133A, 133B and 142. It is pointed out that the High Court having expressly found that there were no malafides attributed, should not have interfered with what was a question of jurisdiction and discharge of statutory duties. The decision of the High Court, according to the appellants, apart from running contrary to the scheme of the Act, would amount to a limitation on the powers conferred statutorily on the Assessing Officer. The appellants contend that there is no "structural bias" in the sections of the Act and that in any event the

appellants have not impugned any provision of the Act as being constitutionally invalid on the ground that it opposed the basic principles of natural justice.

In our view, this appeal must be allowed. The several sections which have been cited by the appellants would show that the Assessing Officer has, either directly or by virtue of his appointment or authorisation by a superior authority under the Act, been given the power of gathering information for the purposes of assessment. The mode of gathering such information may vary from the mere issuance of a notice under section 142 to the more intrusive method of entry and search envisaged under sections 133A and 133B and seizure under Section 132. The appellants are also correct in their submission that in the absence of any challenge to any of these provisions, it was not open to the High Court to have disabled the Assessing Officer from discharging his statutory functions. What the High Court has done is to read limitations into the Act and to qualify the jurisdiction of the Assessing Officer and the powers of the authorities empowered to appoint the Assessing Officer as an authorised officer under section 132 without any foundation for such conclusion being laid in any manner whatsoever by the writ petitioners.

Apart from the absence of any challenge to the provisions of the Act relating to the jurisdiction of the Assessing Officer to carry out the search under section 132, subject to his being appointed as an authorised officer thereunder, we are of the view that there is no question of imputing or presuming a bias where action is followed under the section. The Assessing Officer is required to assess the income on the basis of facts as found. Such finding may be through any of the provisions referred to above. The only limitation on his drawing a conclusion from the facts as found is the requirement of allowing the assessee an opportunity of explaining the material. Even though it could be said that in a sense since the Assessing Officer was acting on behalf of the Revenue, in discharging the functions as an Assessing Officer, he was a party to the dispute, nevertheless there is no presumption of bias in such a situation. As said in ***H.C. Narayanappa* v. *State of Mysore*** [AIR 1960 SC 1073, 1079]:

> "It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but if the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of bias. The Minister or the officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show that he is biased, his decision will not be liable to be called in question, merely because he is a limb of the Government."

There is nothing inherently unconstitutional in permitting the Assessing Officer to gather the information and to assess the value of the information himself. The issue as to the constitutional validity of a provision which permitted an examining board not only to hold an inquiry but also to take action against doctors was raised before the Supreme Court of United States in ***Harold Withrow* v. *Duane Larkin*** [(43 L. Ed. 2d 712)]. In negating the challenge the court said:

> "The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has

> a much more difficult burden of persuasion to carry. It must over come a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individual poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented."

It is true that there may be cases where the outcome of the assessment may be influenced by the fact that the raiding Assessing Officer had himself in the course of the raid been witness to any incriminating material against the assessee. The Assessing Officer's decision on the basis of such material is not the final word in the matter. The assessment order is appealable under the provisions of the statute itself and ultimately by way of judicial review.

Finally, the courts cannot read in limitations to the jurisdiction conferred by the statutes, in the absence of a challenge to the provision itself when the language of the Act clearly allows for an ostensible violation of the principles of natural justice including the principle that a person cannot be a judge in his own cause. In ***Union of India* v. *Tulsiram Patel*** [AIR 1985 SC 1416], in recognition of this principle this court held (page 1462):

> "Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the *nemo judex in causa sua* rule as also to the *audi alteram partem* rule. The *nemo judex in causa sua* rule is subject to the doctrine of necessity and yields to it as pointed out by this court in ***J. Mohapatra and Co.* v. *State of Orissa*** [AIR 1984 SC 1572.]"

Learned counsel also drew our attention to the fact that the assessments on the basis of material recovered under section 132 had to be completed within a period of limitation prescribed under section 158BE(1)(b). The last date for completion of the assessments in the present case was October 31, 2000. The prayer of the respondents for transfer of the case from the Assessing Officer on October 11, 2000, to a new Assessing Officer in the circumstances was unacceptable and the assessment by the said Harinder Kumar was unavoidable given the limited period left for completing the assessment proceedings. The High Court has observed that this plea had not been raised by the appellant. Perhaps the appellants are correct in submitting that the fact speaks for itself. However, it is not necessary for us to give any final view in the matter having held that the sections in the Act impose no limitation on the Assessing Officer on the authorised officer being the same person and that it could not be said that action taken pursuant to such statutory empowerment was coloured, only by reason thereof, by any bias.

Ultimately, the question of bias will have to be decided on the facts of each case. If the assessee is able to establish that the Assessing Officer was in fact biased in the sense that he was involved or interested in his personal capacity in the outcome of the assessment or the procedure for assessment, no doubt, it would be a good ground for setting aside the assessment order. But to hold, as the High Court has that bias is established only because the authorised officer under section 132 and the Assessing Officer are the same person is, in our view, an incorrect approach. In the circumstances of the case, we set aside the judgment under appeal. The appeal is allowed.

State of Kerala v. *C. Velukutty*

(1966) LX ITR 239 (SC)

K. SUBBA RAO J. – These two appeals by special leave are preferred against the order of the High Court of Kerala in Tax Revision Cases Nos. 52 and 53 of 1960 relating to sales tax assessments made on the respondent for the year 1955-56 and 1956-57 respectively.

The following facts relate to Civil Appeal No. 986 of 1964 in respect of the assessment year 1955-56: The respondent has two offices, the head office is at Court Road and the branch office, at Big Bazar. Both the offices are in Kozhikode. The branch office does wholesale business and the head office does retail business and they maintain separate accounts. The goods sent from the branch office to the head office are entered in the accounts as transfers. The head office maintains accounts disclosing the goods so transferred by the branch office and also the goods purchased by it locally. The branch office has also transactions with other customers. On April 6, 1957, the Deputy Commercial Tax Officer, Kozhikode, assessed the respondent on the net turnover of his business of Rs. 9,30,565-10-5 for the assessment year 1955-56. But later on, on a surprise inspection of the head office by the Intelligence Officer, North Zone, Kozhikode, some books of accounts and records were recovered. On October 27, 1958, on the basis of the said books and records, the Sales Tax Officer issued a notice to the respondent proposing to determine to the best of his judgment the turnover which had escaped assessment. The respondent agreed to the Sales Tax Officer assessing the turnover of the head office on the basis of the aforesaid secret books recovered from the shop, but objected to a fresh assessment being made in respect of the branch office at Big Bazaar. That objection was rejected and the Sales Tax Officer reassessed the turnover of the business of the respondent in the following manner: (1) He found that in regard to the head office the transactions disclosed in the secret books were 135% of the turnover recorded in the regular accounts and on that basis added 135% to the turnover disclosed in the regular book of the said office. He then applied the same percentage in regard to the assessment of the turnover of the branch office. He added 135% to the turnover found in the regular accounts of the branch office. He assessed the total turnover of the two offices at Rs. 19,71,805-13-5. On the basis of the said total turnover the respondent was assessed to sales tax amounting to Rs. 16,269.37. The respondent preferred an appeal against the said order of the Sales Tax Officer to the Appellate Assistant Commissioner without any success. The further appeal preferred by him to the Sales Tax Appellate Tribunal was also dismissed. The said order was taken in revision to the High Court of Kerala in T.R.C. No. 52 of 1960.

The facts of the Civil Appeal No. 987 of 1964 relating to the assessment for the year 1956-57 are as follows: (1) On the basis of the secret accounts discovered in the surprise inspection of the head office, the Sales Tax Office issued a notice to the respondent proposing to determine to the best of his judgment the turnover which had escaped assessment. The respondent had no objection for a reassessment being made in respect of the turnover of the head office on the basis of the secret accounts discovered, but objected to the reassessment of the turnover of his branch office. (2) The Sales Tax Officer applied the same principle in regard to the assessments of both the shops as he had adopted in the case of the turnover for the assessment year 1955-56. Taking the head office he found in regard to the general goods

that the escaped assessment was 200% of the turnover assessed; and in regard to sugar, 500% of the assessed turnover. He, therefore, added 200% and 500% to the turnover of the general goods and turnover of sugar respectively. In the same manner, in regard to the turnover of the branch office, though no secret books were discovered in respect of that office, he added to the turnover already assessed 200% of the turnover of the general goods and 500% of the turnover of sugar. With the result he fixed the total turnover of the two offices at Rs. 39,66,377-2-6 made up of the turnover of the head office at Rs. 2,21,251-14-5 and of the branch office at Rs. 37,45,125-4-1. The respondent pursued the matter up to the High Court. T.R.C. No. 53 of 1960 was the revision filed by him in the High Court.

The High Court set aside the orders of the Sales Tax Tribunal in respect of both the assessment years on the ground that the finding of the escaped assessment so far as the branch office was concerned amounted to an error of law, because it was based on conjecture. Rejecting the plea of the State that the matter should be remanded for a fresh assessment, the High Court dismissed the revisions. Hence the present appeals.

Mr. Govinda Menon, learned counsel for the State, argued that the High Court was wrong in holding that the best judgment assessment was capricious. He pressed on us to hold that the branch office must have maintained secret accounts corresponding to the secret accounts discovered in respect of the head office, that the respondent had suppressed the said accounts and that, therefore, the Sales Tax Officer acted reasonably in ascertaining the escaped assessment on the basis of the percentage of escaped assessment found in respect of the head office. He further contended that the High Court had no jurisdiction to interfere with the finding of the fact arrived at by the Tribunal.

Mr. Sreedharan Nambiar, appearing for the respondent, contended that there was no basis for the Sales Tax Officer to hold that the respondent maintained separate accounts in respect of the branch office business, that there was absolutely no material before the Sales Tax Officer to sustain his best judgment assessment, and that, therefore, the said assessment made by the Sales Tax Officer was capricious and arbitrary and was rightly set aside by the High Court.

At the outset the relevant provisions of the Travancore-Cochi General Sales Tax Act; 1125 M.E. (XI of 1125), may be noticed:

> ***"Section 12*** – (1) Every dealer whose turnover is ten thousand Indian rupees or more in a year shall submit such return or returns relating to his turnover, in such manner and within such periods as may be prescribed.
>
> (2) (a) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof.
>
> (b) If no return is submitted by the dealer under sub-section 1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall assess the dealer to the best of his judgment.
>
> Provided that before taking action under this clause the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

> ***<u>Section 15B</u>*** – Within sixty days from the date on which an order under section 15A, sub-section (4) or sub-section (6) was communicated to him, the assessee or the Deputy Commissioner may prefer a petition to the High Court against the order on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law."

It is manifest that the jurisdiction of the High Court under section 15B is confined only to the question whether the Tribunal has either decided erroneously or failed to decide any question of law. As we will point out immediately, the Sales Tax Officer acted capriciously and arbitrarily in assessing the respondent, which he could not do under section 12(2)(b) of the Act and the Tribunal confirmed that order. It is a clear case where the Tribunal decided erroneously on a question of law.

What is the scope of section 12(2)(b) of the Act? The expression "to the best of his judgment" in the said clause is presumably borrowed from section 23(4) of the Income-tax Act. The said expression in the Income-tax Act was the subject of judicial scrutiny. The Privy Council in ***Commissioner of Income Tax* v. *Laxminarayan Badridas*** [(1937) 5 I.T.R. 170 at 180], has considered those words. Therein it observed:

> "He (the assessing authority) must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other maters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess-work in the mater, it must be honest guess-work. In that sense, too, the assessment must be to some extent arbitrary."

The Privy Council, while recognizing that an assessment made by am officer to the best of his judgment involved some guess-work, emphasized that he must exercise his judgment after taking into consideration the relevant material. The view expressed by the Privy Council in the context of the Income-tax Act was followed when a similar question arose under the Sales Tax Act. A Division Bench of the Calcutta High Court in ***Jagadish Prosad Pannalal* v. *Member, Board of Revenue, West Bengal*** [(1951) 2 S.T.C. 21], confirmed the assessment made by the sales tax authorities, as in making the best judgment assessment the said authorities considered all the available materials and applied their mind and tried their best to come to a correct conclusion. So too, a Division Bench of the Patna High Court in ***Doma Sahu Kishun Lal Sao* v. *State of Bihar*** [(1951) 2 S.T.C. 37], refused to interfere with the best judgment assessment of a Sales Tax Officer as he took every relevant material into consideration, namely, the situation of the shop, the rush of the customers and the stock in the shop and also the estimate made by the Assistant Commissioner in the previous quarters.

Under section 12(2)(b) of the Act, power is conferred on the assessing authority in the circumstances mentioned thereunder to assess the dealer to the best of his judgment. The limits of the power are implicit in the expression "best of his judgment." Judgment is a

faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a "best judgment assessment," it shall not be a wild one, but shall have a reasonable nexus to the available material and circumstances of each case. Though sub-section (2) of section 12 of the Act provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard for the available material.

Can it be said that in the instant case the impugned assessment satisfied the said tests? From the discovery of secret accounts in the head office, it does not necessarily follow that a corresponding set of secret accounts were maintained in the branch office, though it is possible that such accounts were maintained. But, as the accounts were secret, it is also not improbable that the branch office might not have kept parallel accounts, as duplication of false accounts would facilitate discovery of fraud and it would have been thought advisable to maintain only one set of false accounts in the head office. Be that as it may, the maintenance of secret accounts in the branch office cannot be assumed in the circumstances of the case. That apart, the maintenance of secret accounts in the branch office might lead to an inference that the accounts disclosed did not comprehend all the transactions of the branch office. But that does not establish or even probabilize the finding that 135% or 200% or 500% of the discovered turnover was suppressed. That could have been ascertained from other materials. The branch office had dealings with other customers. Their names disclosed in the accounts. The accounts of those customers or their statements could have afforded a basis for the best judgment assessment. There must also have been other surrounding circumstances, such as those mentioned in the Privy Council's decision cited supra. But in this case there was no material before the assessing authority relevant to the assessment and the impugned assessments were arbitrarily made by applying a ratio between disclosed and concealed turnover in one shop to another shop of the assessee. It was only a capricious surmise unsupported by any relevant material. The High Court, therefore, rightly set aside the orders of the Tribunal.

Nor can we accede to the request of the learned counsel for the State to remand the matter to the Tribunal for fresh disposal. The sales tax authority had every opportunity to base its judgment on relevant material; but it did not do so. The department persisted all through the hierarchy of tribunals to sustain the impugned assessment. The High Court, having regard to the circumstances of the case, refused to give the department another opportunity. We do not think we are justified to take a different view.

In the result, the appeals fail and are dismissed.

* * * * *

Commissioner of Income-Tax v. *Burlop Dealers Ltd.*

(1971) 79 ITR 609 (SC)

J.C. SHAH, CJI – Burlop Dealers Ltd., hereinafter referred to as "the assessee", is a limited company. For the assessment year 1949-50, the assessee submitted a profit and loss account disclosing in the relevant year of account Rs. 1,75,875 as profit in a joint venture from H. Manory Ltd. and claimed that Rs. 87,937 being half the profit earned from H. Manory Ltd. was paid to Ratiram Tansukhrai under a partnership agreement. The assessee stated that on June 5, 1948, it had entered into an agreement with H. Manory Ltd. to do business in plywood chests and in consideration of financing the business the assessee was to receive 50% of the profits of the business. The assessee also claimed that it had entered into an agrement on October 7, 1948, with Ratiram Tansukhrai for financing the transactions of H. Manory Ltd. in the joint venture, and had agreed to pay to Ratiram Tansukhrai 50% of the profit earned by it from the business with H. Manory Ltd.

The Income-Tax Officer accepted the return filed by the assessee and included in computing the total income for the assessment year 1949-50, Rs. 87,937 only as the profit earned on the joint venture with H. Manory Ltd. In the assessment year 1950-51 the assessee filed a return also accompanied by a profit and loss account disclosing a total profit of Rs. 1,62,155 in the relevant account year received from H. Manory Ltd., and claimed that it had transferred Rs. 81,077 to the account of Ratiram Tansukhrai as his share. The Income-tax Officer, on examination of the transactions, brought the entire amount of Rs. 1,62,155 to tax holding that the alleged agreement of October 1948, between the assessee and Ratiram Tansukhrai had merely been "got up as a device to reduce the profits, received from H. Manory Ltd." This order was confirmed by the Appellate Assistant Commissioner and by the Income-Tax Appellate Tribunal. The Tribunal then stated a case under section 66(1) of the Income-tax Act, to the High Court of Calcutta. The High Court agreed with the view of the Tribunal and answered the question against the assessee.

In the meanwhile on May 13, 1955, the Income-tax Officer issued a notice under section 34 to the assessee for the assessment year 1949-50 to reopen the assessment and to assess the amount of Rs. 87,937 allowed in the assessment of income-tax as paid to Ratiram Tansukhrai. The assessee filed a return which did not include the amount paid to Ratiram Tansukhrai. The Income-tax Officer reassessed the income under section 34(1)(a) and added Rs. 87,937 to the income returned by the assessee in the assessment year 1949-50. The Appellate Assistant Commissioner held that the Income-tax Officer was entitled to take action under section 34(1)(a) of the Income-tax Act, 1922, after the amendment in 1948, and to reopen the assessment if income had been under-assessed owing to the failure of the assessee to disclose fully and truly all material facts necessary for the assessment. He confirmed the order observing that the assessee had misled the Income-tax Officer into believing that there was a genuine arrangement with Ratiram Tansukhrai and had stated in the profit and loss account that the amount paid to Ratiram Tansukhrai was the share of the latter in the partnership, whereas no such share was payable to Ratiram Tansukhrai.

In appeal against the order of the Appellate Assistant Commissioner the Income-tax Appellate Tribunal held that the assessee had produced all the relevant accounts and

documents necessary for completing the assessment, and the assessee was under no obligation to inform the Income-tax Officer about the true nature of the transactions. The Tribunal on that view reversed the order of the Appellate Assistant Commissioner and directed that the amount of Rs. 87,939 be excluded from the total income of the assessee for the year 1949-50.

An application under section 66(1) of the Indian Income-tax Act for stating a case to the High Court was rejected by the Tribunal. A petition to the High Court of Calcutta under section 66(2) for directing the Tribunal to submit a statement of the case was also rejected. The Commissioner has appealed to this court.

Section 34(1) of the Indian Income-tax Act, 1922; as it stood in the assessment year 1949-50 provided:

> "If –
>
> (a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed... or
>
> (b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed, ...
>
> he may in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, ... a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or reassess such income, profits or gains ..."

The Income-tax Officer had, in consequence of information in his possession that the agreement with Ratiram Tansukhrai was a share transaction, reason to believe that income chargeable to tax had escaped assessment. Such a case would appropriately fall under section 34(1)(b). But the period prescribed for serving a notice under section 34(1)(b) had elapsed. Under section 34(1)(a) the Income-tax Officer had authority to serve a notice when he had reason to believe that by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the year, income chargeable to tax had escaped assessment. As observed by this court in ***Calcutta Discount Co. Ltd.* v. *Income-tax Officer, Companies District I, Calcutta*** [(1061) 41 I.T.R. 191, 200(SC)]:

> "The words used are 'omission or failure to disclose fully and truly all material facts necessary for his assessment for that year.' It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his

> possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable."

We are of the view that under section 34(1)(a) if the assessee has disclosed primary facts relevant to the assessment, he is under no obligation to instruct the Income-tax Officer about the interference which the Income-tax Officer may raise from those facts. The terms of the *Explanation* to section 34(1) also do not impose a more onerous obligation. Mere production of the books of account or other evidence from which material facts could with due diligence have been discovered does not necessarily amount to disclosure within the meaning of section 34(1), but where on the evidence and the materials produced the Income-tax Officer could have reached a conclusion other than the one which he has reached, a proceeding under section 34(1)(a) will not lie merely on the ground that the Income-tax Officer has raised an inference which he may later regard as erroneous.

The assessee had disclosed his books of account and evidence from which material facts could be discovered; it was under no obligation to inform the Income-tax Officer about the possible inferences which may be raised against him. It was for the Income-tax Officer to raise such an inference and if he did not do so the income which has escaped assessment cannot be brought to tax under section 34(1)(a). The appeal fails and is dismissed with costs.

* * * * *

Gemini Leather Stores v. *The Income-Tax Officer, 'B' Ward Agra*

AIR 1975 SC 1268

A.C. GUPTA, J. – The appellant a partnership firm, was assessed to income-tax for the assessment year 1956-57 on a turnover of Rupees fifteen lacs by the Income-tax Officer by his order dated January 22, 1958. The Income-tax Officer did not accept the return filed by the assessee and the books of account produced by it and made a best judgment assessment. The turnover so assessed was reduced by the Appellate Assistant Commissioner and further reduced by the Appellate Tribunal. On March 31, 1965 the Income-tax Officer issued a notice under Sec. 148 of the Income-tax Act, 1961 stating that he had reasons to believe that income chargeable in respect of the assessment year 1956-57 had escaped assessment within the meaning of Section 147 of the Act and directing the assessee to file a return as he proposed to reassess the income for the said assessment year. The assessee filed a writ petition before the High Court at Allahabad challenging the validity of the notice dated March 31, 1965 on the ground that the Income-tax Officer had no jurisdiction to issue the notice. A learned single Judge of the High Court dismissed the writ petition and his order was affirmed in appeal by a Division Bench. The appeal to this Court is by the assessee on certificate granted by the High Court.

2. The justification for taking action under Sections 147 and 148 of the Income-tax Act, 1961 as stated by the Division Bench of the High Court is:

> "The firm utilised certain drafts for making purchases at Madras and Calcutta. These drafts represented undisclosed income of the firm. This aspect of the matter was not considered at the time of the original assessment. It is proposed to take this income into consideration for purposes of reassessment. The amounts, for which drafts were purchased by the firm, were not recorded in the disclosed account of the firm. It is, therefore, proposed to tackle that income for purposes of reassessment."

The learned single Judge took the view that the Income-tax Officer did not apply his mind to the question as to whether the amounts invested in the purchase of the drafts could be treated as part of the total income of the assessee, and as the assessee did not disclose the source of these amounts which were not recorded in the account books produced by the assessee, all the conditions for invoking the jurisdiction under Section 147(a) were present. This was also the view taken by the Division Bench.

3. It appears that the Income-tax Officer had written a detailed order in making his best judgment assessment. Having found out all about the drafts which were not mentioned in the assessee's books of account, the Income-tax Officer gave the partners of the firm opportunity to explain the drafts. Referring to the statement of one of the partners, Shri Om Prakash, the Income-tax Officer observed in his order:

> "He has said that the drafts which were sent by him relating to Messrs Gemini Leather Stores were entered in the books of the firm while other drafts which he has made would be of others whose name he does not remember. As he is unable to tell to whom other drafts sent by him relate in spite of specific opportunities given to

> him, the obvious inference is that moneys of the drafts are that of the firm with which he is connected."

Referring to the circumstances in which these drafts had been sent or received, the Income-tax Officer further observed:

> "Since these drafts have been sent or received in such circumstances and by such persons connected with the firm the conclusion is obvious that these drafts relate to the firm."

4. It is not disputed that the case falls under clause (a) of Section 147. The question is whether the Income-tax Officer had reason to believe that income chargeable to tax had escaped assessment for the assessment year in question by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts. The decision in ***Calcutta Discount Company*** case [AIR 1961 SC 372]. is based on Section 34 of the Income-tax Act, 1922, the provisions of which correspond to those of Sections 147 and 148 of the Income-tax Act, 1961; the points of departure from the old law are not material for the purpose of this case. The position is stated in ***Calcutta Discount Company*** case as follows:

> "In every assessment proceeding the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inferences as regards certain other facts; and ultimately from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences... Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else - far less the assessee - to tell the assessing authority what inferences, whether of facts of law, should be drawn."

In the case before us the assessee did not disclose the transactions evidenced by the drafts which the Income-tax Officer discovered. After this discovery the Income-tax Officer had in his possession all the primary facts, and it was for him to make necessary enquiries and draw proper inferences as to whether the amounts invested in the purchase of the drafts could be treated as part of the total income of the assessee during the relevant year. This the Income-tax Officer did not do. It was plainly a case of oversight, and it cannot be said that the income chargeable to tax for the relevant assessment year had escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts. The Income-tax Officer had all the material facts before him when he made the original assessment. He cannot now take recourse to Section 147(a) to remedy the error resulting from his own oversight. For these reasons we allow the appeal and quash the impugned notice dated March 31, 1965 and the proceedings in consequence thereof.

* * * * *

Income-Tax Officer v. *Lakhmani Mewal Das*

(1976) 3 SCC 757

H.R. KHANNA, J. – The respondent was assessed for the assessment year 1958-59 under Section 23(3) of the Indian Income-tax Act, 1922 on June 14, 1960. His total income was assessed to be Rs. 37,872. While making the assessment the Income-tax Officer allowed deduction of a sum of Rs. 15,991 by way of expenses claimed by the respondent. The expenses included Rs. 10,494 by way of interest. According to the respondent, he produced through his authorised representative all books of accounts, bank statements and other necessary documents in connection with the return. On March 14, 1967 the respondent received notice dated March 8, 1967 issued by the appellant under Section 148 of the Act stating that the appellant had reason to believe that the respondent's income which was chargeable to tax for the assessment year 1958-59 had escaped assessment within the meaning of Section 147 of the Act and that the notice was being issued after obtaining the necessary satisfaction of the Commissioner of Income-tax. The respondent was called upon to submit within 30 days from the date of the service of the notice a return in the prescribed form of his income for the assessment year 1958-59. On May 2, 1967 the respondent through his lawyer stated that there was no material on which the appellant had reason to believe that the respondent's income had escaped assessment and, therefore, the condition precedent for the assumption of jurisdiction by the appellant had not been satisfied. The appellant was said to have no competence or jurisdiction to reopen the assessment under Section 147 of the Act on a mere change of opinion. The appellant was also called upon to furnish all the materials on which he had reason to believe that income had escaped assessment. As, according to the respondent, there was no satisfactory response from the appellant, he filed petition under Article 226 of the Constitution for quashing the impugned notice.

It was denied in the affidavit on behalf of the appellant that all materials relevant and necessary for the assessment of the respondent's income for the assessment year 1958-59 had been produced before the Income-tax Officer at the time of the original assessment. It was further stated:

> "Subsequent to the assessment for the assessment year 1958-59, it was discovered, *inter alia*, that some of the loans shown to have been taken and interests alleged to have been paid thereon by the petitioner during the relevant assessment year were not genuine. The Income-tax Officer had reason to believe that *bona fide* thereon are not genuine. If necessary, I crave leave to produce the hon'ble Judge hearing the application the relevant records on the basis of which the said Income-tax Officer had reason to believe that the income of the petitioner escaped assessment as aforesaid at the hearing of the application."

During the pendency of the proceedings, the High Court directed that a copy of the report made by the appellant to the Commissioner of Income-tax for obtaining latter's sanction under Section 147 be produced. The report was accordingly produced, and the same reads as under:

> "There are hundi loan credits in the name of Narayansingh Nandalal, D.K. Naraindas, Bhagwandas Srichand, etc., who are known name lenders, and also hundi loan credit in the name, Mohansingh Kanayalal, who has since confessed he was doing only name-lending. In the original assessment these credits were not investigated in detail. As the information regarding the bogus nature of thee credits is since known, action under Section 147(a) is called for to reopen the assessment and assess these credits as the undisclosed income of the assessee. The assessee is still claiming that the credits are genuine in the assessment proceedings for 1962-63. Commissioner's sanction is solicited to reopen the assessment for 1958-59, under Section 147(a)."

All the three Judges who constituted the Full Bench found that the assessee was not being charged with omission to disclose all facts: he was charged for having made an untrue disclosure because the assessee had stated that he had received certain sums of money from certain persons as loans when, in fact, he had not received any sum at all from those persons. It was also stated by the assessee at the time of the original assessment that he had paid interest to certain persons when, in fact, he had not, if the information received later was true. The duty of the assessee, it was held, was not only to make a full disclosure of all material facts, his duty was also to make a true disclosure of facts and not to mislead the assessing officer by disclosing certain things which did represent facts. The High Court accordingly held that once an assessee infringes this rule, any subsequent discovery of fact by the assessing officer which would raise a reasonable belief in his mind that the assessee had not made a true and correct disclosure of the facts and had thereby been responsible for escapement of his income from assessment would attract Section 147 of the Act. Two of the learned Judges, A.K. Mukherjea and S.K. Mukherjea, JJ., however, took the view that the conditions precedent for the exercise of jurisdiction by the Income-tax Officer under Section 147 of the Income-tax Act were not fulfilled in the case as the report submitted by the Income-tax Officer to the Commissioner for sanction under Section 147(a) was defective. The defects in the report, in the opinion of the High Court, were the same as had been pointed out by this Court in the case of ***Chhugamal Rajpal* v. *S.P. Chaliha*** [(1971) 1 SCC 453]. The Commissioner while according permission for taking action under Section 147, it was observed, acted mechanically because the Commissioner had not expressly stated that he was satisfied that this was a fit case for the issue of notice under Section 148. As against the majority, Sabyasachi Mukherji, J. held that notice under Section 148 of the Act was valid and did not suffer from any infirmity. It was also observed that the Commissioner of Income-tax had not acted improperly in giving sanction.

In the result, by majority the High Court quashed the notice issued by the appellant to the respondent.

In appeal before us Mr. Sharma on behalf of the appellants has assailed the judgment of the majority of the learned Judges in so far as they have held that the report submitted by the Income-tax Officer to the Commissioner of Income-tax for sanction was defective. As against that, Dr. Pal on behalf of the assessee-respondent has canvassed for the correctness of the view taken by the majority regarding the defective nature of the report. Dr. Pal has in his own turn assailed the finding of all the three learned Judges of the High Court in so far as they have held that the assessee was being charged with omission to disclose true facts.

Contention has also been advanced by Dr. Pal that the material on the basis of which the Income-tax Officer initiated these proceedings for reopening the assessment did not have a rational connection with the formation of the belief that the assessee had not made a true disclosure of the facts at the time of the original assessment.

Before dealing with the points of controversy, it would be useful to reproduce the relevant provisions of the Act. Sections 147 and 148 deal with income escaping assessment and issue of notice where income has escaped assessment.

The provisions of Sections 147 to 153 of the Act correspond to those of Section 34 of the Indian Income-tax Act, 1922. There have been some points of departure from the old law, but it is not necessary for the purpose of the present case to refer to them.

It would appear from the perusal of the provisions reproduced above that two conditions have to be satisfied before an Income-tax Officer acquires jurisdiction to issue notice under Section 148 in respect of an assessment beyond the period of four years but within a period of eight years from the end of the relevant year, viz. (1) the Income-tax Officer must have reason to believe that income chargeable to tax has escaped assessment, and (2) he must have reason to believe that such income has escaped assessment by reason of the omission or failure on the part of the assess (a) to make a return under Section 139 for the assessment year to the Income-tax Officer, or (b) to disclose fully and truly material facts necessary for his assessment for that year. Both these conditions must coexist in order to confer jurisdiction on the Income-tax Officer. It is also imperative for the Income-tax Officer to record his reasons before initiating proceedings as required by Section 148(2). Another requirement is that before notice is issued after the expiry of four years from the end of the relevant assessment years, the Commissioner should be satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice. We may add that the duty which is cast upon the assessee is to make a true and full disclosure of the primary facts at the time of the original assessment. Production before the Income-tax Officer of the accounts books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure contemplated by law. The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that his duty ends. It is for the Income-tax Officer to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the Income-tax Officer with regard to the inference which he should draw from the primary facts. If an Income-tax Officer draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment.

The grounds or reasons which lead to the formation of the belief contemplated by Section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist reasonable grounds for the Income-tax Officer to form the above belief, that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a mater for the court to investigate. The sufficiency of grounds which induce the Income-tax Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the Income-tax Officer did not hold the belief

that there had been such non-disclosure. The existence of the belief can be challenged by the assessee but not the sufficiency of reasons for the belief. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law.

Keeping the above principles in view, we may now turn our attention to the facts of the present case. Two grounds were mentioned in the report made by the Income-tax Officer for reopening of the assessee respondent with a view to show that his income had been underassessed because of his failure to disclose fully and truly material facts necessary for the assessment. One was that Mohansingh Kanayalal, who was shown to be one of the creditors of the assessee, had since confessed that he was doing only name-lending. The other ground was that Narayansingh Nandalal, D.K. Naraindas, Bhagwandas Srichand, etc., whose names too were mentioned in the list of the creditors of the assessee, were known name-lenders. So far as the second ground is concerned, neither the majority of the Judges of the High Court nor the learned Judge who was in the minority relied upon that ground. Regarding that ground, the learned Judge who was in the minority observed that no basis had been indicated as to how it became known that those creditors were known name-lenders and when it was known. The majority while not relying upon that ground placed reliance upon the case of ***Chhugamal Rajpal***. In that case the Income-tax Officer while submitting a report to the Commissioner of Income-tax for obtaining his sanction with a view to issue notice under Section 148 of the Act stated:

"During the year the assessee has shown to have taken loans from various parties of Calcutta. From D.I.'s Inv. No. A/P/Misc.(5) D.I/63-64/5623 dated August 13, 1965 forwarded to this office under C.I.T. Bihar and Orissa, Patna's letter No. Inv.(Inv.) 15/65-66/1953-2017 dated Patna September 24, 1965, it appears that these persons are name-lenders and the transactions are bogus. Hence, proper investigation regarding these loans is necessary. The names of some of the persons from whom money is alleged to have been taken on loan on hundis are: Seth Bhagwan Singh Sricharan; 2. Lakha Singh Lal Singh; 3. Radhakissen Shyam Sunder. The amount of escapement involved amounts to Rs. 1,00,000.

In dealing with that report this Court observed:

> From the report submitted by the Income-tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reasons of the assessee's omission to disclose fully and truly all material facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he, as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the Income-tax Officer had any material before him which could satisfy the requirements of either clause (a) or clause (b) of Section 147. Therefore, he could not have issued a notice under Section 148.

Reference to the names of Narayansingh Nandalal, D.K. Naraindas, Bhagwandas Srichand, etc. in the report of the Income-tax Officer to the Commissioner of Income-tax in the instant case does not stand on a better footing than the reference to the three names in the report made by the Income-tax Office in the case of Chhugamal Rajpal. We would, therefore, hold the second ground mentioned by the Income-tax Officer, i.e., reference to the names of Narayansingh Nandalal, D.K. Naraindas, Bhagwandas Srichand, etc., could not have led to the formation of the belief that the income of the respondent assessee chargeable to tax had escaped assessment for that year because of the failure or omission of the assessee to disclose fully and truly all material facts. All the three learned Judges of the High Court, in our opinion, were justified in excluding the second ground from consideration.

We may now deal with the first ground mentioned in the report of the Income-tax Officer to the Commissioner of Income-tax. This ground relates to Mohansingh Kanayalal, against whose name there was an entry about the payment of Rs. 74 annas 3 as interest in the books of the assessee, having made a confession that he was doing only name-lending. There is nothing to show that the above confession related to a loan to the assessee and not to someone else, much less to the loan of Rs. 2,500 which was shown to have been advanced by that person to the assessee-respondent. There is also no indication as to when that confession was made and whether it relates to the period from April 1, 1957 to March 31, 1958 which is the subject-matter of the assessment sought to be reopened. The report was made on February 13, 1967. In the absence of the date of the alleged confession, it would not be unreasonable to assume that the confession was made a few weeks or months before the report. To infer from that confession that it relates to the period from April 1, 1957 to March 31, 1958 and that it pertains to the loan shown to have been advanced to the assessee, in our opinion, would be rather farfetched.

As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of 1961 would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, farfetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

The powers of the Income-tax Officer to reopen assessment though wide are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt,

contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped income or other income escaping assessment in a large number of cases come to the notice of the income-tax authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders in judicial and quasi-judicial proceeding. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income-tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. In any event, the link was too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned Judges in the High Court, in our opinion, were not in error in holding that the said material could not have led to the formation of the belief that the income of the assessee respondent had escaped assessment because of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs.

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Srikrishna (P) Ltd. v. *I.T.O.*

(1996) 9 SCC 534

B.P. JEEVAN REDDY, J. - 1. This is an appeal preferred by the assessee against the judgment and order of a Division Bench of the Calcutta High Court allowing the writ appeal preferred by the Revenue against the judgment of a learned Single Judge. The learned Single Judge had allowed the writ petition filed by the assessee questioning the validity of a notice issued under Section 148 read with Section 147 of the Income Tax Act.

2. In the return filed for the Assessment Year 1959-60, the assessee had shown certain hundi loans totalling Rs 8,53,298 said to have been taken from a number of persons. The Income Tax Officer accepted the averment and made the assessment. During the assessment proceedings for the succeeding year, 1960-61, the assessee again showed hundi loans in a sum of more than rupees seventeen lakhs. The Income Tax Officer enquired into the truth of the averment and found that many of them were bogus claims while some of the alleged lenders were found to be near relations of directors or principal shareholders of the assessee. The Income Tax Officer held that out of the hundi loans of more than rupees seventeen lakhs claimed by the assessee, loans totalling Rs 11,15,275 were not established to be genuine loans and accordingly added that amount as income from undisclosed sources. Having regard to the similarity of the claims and the persons who are said to have advanced the said unsecured hundi loans during the accounting year relevant to the Assessment Year 1959-60, the Income Tax Officer issued a notice under Section 148 calling upon the assessee to file a revised return for the Assessment Year 1959-60. Immediately, upon receiving the said notice, the assessee approached the Calcutta High Court by way of a writ petition questioning the validity of the notice on the grounds that the Income Tax Officer had no reasonable ground to believe that income chargeable to tax has escaped assessment for the said year on account of any omission or failure on his part to make a full and true disclosure of all material facts. The writ petition was allowed by a learned Single Judge, as stated above, whose decision has been reversed in appeal by the Division Bench. This Court entertained the special leave petition filed by the assessee and granted leave on 26-7-1977. This Court, however, did not stay the proceedings pursuant to the impugned notice. It directed that the Income Tax Officer may proceed to complete the assessment proceedings but will not issue a demand notice. The Income Tax Officer has accordingly completed the reassessment.

4. Section 139 places an obligation upon every person to furnish voluntarily a return of his total income if such income during the previous year exceeded the maximum amount which is not chargeable to income tax. The obligation so placed involves the further obligation to disclose all material facts necessary for his assessment for that year *fully and truly*. If at any subsequent point of time, it is found that either on account of an omission or failure of the assessee to file the return or on account of his omission or failure to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, the Income Tax Officer is entitled to reopen the assessment in accordance with the procedure prescribed by the Act. To be more precise, he can issue the notice under Section 148 proposing to reopen the assessment only where he has reason to believe that on account of either the omission or failure on the part of the assessee to

file the return or on account of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year, income has escaped assessment. The existence of the reason(s) to believe is supposed to be the check, a limitation, upon his power to reopen the assessment.

Section 148(2) imposes a further check upon the said power, viz., the requirement of recording of reasons for such reopening by the Income Tax Officer. Section 151 imposed yet another check upon the said power, viz., the Commissioner or the Board, as the case may be, has to be satisfied, on the basis of the reasons recorded by the Income Tax Officer, that it is a fit case for issuance of such a notice. The power conferred upon the Income Tax Officer by Sections 147 and 148 is thus not an unbridled one. It is hedged in with several safeguards conceived in the interest of eliminating room for abuse of this power by the assessing officers. The idea was to save the assessees from harassment resulting from mechanical reopening of assessment but this protection avails only those assessees who disclose all material facts truly and fully.

5. Coming to the facts of this case, the reasons recorded by the Income Tax Officer for reopening the assessment for the year 1959-60 are to the following effect:

> "In the course of the assessment proceeding for the Assessment Year 1960-61 investigations were made into the unsecured loans of Rs 17,32,298 which was the position of the last day of the accounting year relevant to the Assessment Year 1960-61. These investigations disclosed that a large number of them were bogus hundi loans or loans from near relations of the Directors or principal shareholders. Hence, the amounts credited to some of these accounts have been assessed as income from undisclosed sources to the extent of Rs 11,51,275.00.
>
> Similar loans are noticed for the Assessment Year 1959-60 and they stand at Rs 8,53,298 as per Balance-Sheet as on 16-4-1959.
>
> I have, therefore reasons to believe that by reason of omission or failure on the part of the assessee company to disclose fully and truly all material facts necessary for its assessment of 1959-60 in regard to these accounts, income chargeable to tax has escaped assessment.
>
> I, therefore, propose action under Section 147(*a*) of I.T. Act, 1961."

6. We may also mention that after hearing this appeal for some time, we found it appropriate to look into the relevant record and accordingly made the following order on 10-10-1995:

> "After hearing the appeals for some time, we find it necessary to look into the record to satisfy ourselves with respect to the following fact:
>
> Whether, at the time of issuing of notice under Section 148, the ITO had material before him showing the persons who have lent the sum of Rs 8,53,298 during the accounting year relevant to Assessment Year 1959-60, were the very same persons who are said to have lent Rs 11,51,275 (bogus loans) during the accounting year relevant to Assessment Year 1960-61, and disallowed by the ITO in that assessment year?
>
> Adjourned for eight weeks."

7. Accordingly, the Income Tax Officer has submitted a chart showing that out of the unsecured hundi loans of Rs 8,53,298 claimed by the assessee, ten persons who are said to have lent a total amount of Rs 3,80,000 were common to both the Assessment Years 1959-60 and 1960-61. In other words, these very ten persons are said to have advanced loans again during the next year and all the ten were found to be bogus lenders as recorded in the assessment proceedings relating to Assessment Year 1960-61. Now, the question is can it be said in the above facts that the issuance of the notice under Section 148 was not warranted? Can it be said in the face of the above facts that the Income Tax Officer had no reason to believe that on account of the assessee's omission/failure to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year. In the reasons recorded by the Income Tax Officer [as required by Section 148(2)], he had stated clearly that in the course of assessment proceedings for the succeeding assessment year, it was found that out of the unsecured hundi loans put forward by the assessee, a large number were found to be bogus and that many of the so-called lenders were found to be near relations of the Directors or the principal shareholders. He stated that similar loans are also noticed for the Assessment Year 1959-60 and, therefore, he has reason to believe that there has been no true and full disclosure of all material facts by the assessee for the Assessment Year 1959-60 leading to escapement of income. It is not alleged by the assessee that the Income Tax Officer had not checked up or tallied the names of the alleged lenders for both the assessment years and that he merely went by the fact that there were unsecured hundi loans for both the assessment years. In the absence of any such allegation — which allegation, if made, could have afforded an opportunity to the Income Tax Officer to answer the said averment — we must presume that the Income Tax Officer did find that a large number of alleged lenders who were found to be bogus during the Assessment Year 1960-61 were also put forward as lenders during the Assessment Year 1959-60 as well. Evidently, this is what he meant in the context, when he spoke of "similar loans" being noticed for the year in question as well. In such a situation, it is impossible to say that the Income Tax Officer had no reasonable ground to believe that there has been no full and true disclosure of all material facts by the assessee during the relevant assessment year and that on that account, income chargeable to tax had escaped assessment. As we shall emphasise hereinafter, every disclosure is not and cannot be treated to be a true and full disclosure. A disclosure may be a false one or true one. It may be a full disclosure or it may not be. A partial disclosure may very often be a misleading one. What is required is a *full and true disclosure of all material facts necessary for making assessment for that year*. This calls for an examination of the decisions of this Court analysing and elucidating Sections 147 and 148 of the Act.

8. The first and foremost is the decision of the Constitution Bench in ***Calcutta Discount Co. Ltd.* v. *ITO, Companies Distt.-I*** [AIR 1961 SC 372]. The case arose under Section 34 of the Income Tax Act (as amended in 1951). In material particulars, the provisions in Section 34 were similar to those in Section 147. Having regard to the fact that it is the only Constitution Bench decision on the point, it is necessary to examine it in some detail. The Constitution Bench explained the purport of Section 34 in the following words:

> "To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year two conditions have therefore to be satisfied. The first is that the Income Tax Officer must have reason to believe that income, profits or gains chargeable to income tax have been under-assessed. The second is that he must have also reason to believe that such 'under-assessment' has occurred by reason of either (*i*) omission or failure on the part of an assessee to make a return of his income under Section 22, or (*ii*) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. *Both these conditions are conditions precedent to be satisfied before the Income Tax Officer could have jurisdiction to issue a notice for the assessment or reassessment* beyond the period of four years, but within the period of eight years, from the end of the year in question.
>
> The words used are 'omission or failure to disclose fully and truly all material facts necessary for his assessment for that year'. *It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment*. What facts are material and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise - the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable. Thus, when a question arises whether certain income received by an assessee is capital receipt, or revenue receipt, the assessing authority has to find out what primary facts have been proved, what other facts can be inferred from them, and, taking all these together, to decide what the legal inference should be.
>
> We have, therefore, come to the conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this."

9. In that case, the alleged non-disclosure of material facts fully and truly — to put it in the words of the court — was the failure of the assessee to disclose "the true intention behind the sale of the shares". The assessee had stated during the assessment proceedings that the sale of shares during the relevant assessment years was a casual transaction in the nature of mere change of investment. The Income Tax Officer found later that those sales were really in the nature of trading transactions. The case of the Revenue was that the assessee ought to have stated that they were trading transactions and that his assertion that they were casual transactions, in the nature of change of investment, amounted to "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year" within the meaning of Section 34. This contention of the Revenue was rejected holding that the *true nature of transaction*, being a matter capable of different opinions, is not a material or primary fact but a matter of inference and hence, it cannot be said that there was an omission or failure of the nature contemplated by Section 34 on the part of the assessee. Now, what

needs to be emphasised is that the obligation on the assessee to disclose the material facts — or what are called, primary facts - is not a mere disclosure but a disclosure which is *full and true*. A false disclosure is not a true disclosure. The disclosure must not only be true but must be full - "fully and truly". A false assertion, or statement, of material fact, therefore, attracts the jurisdiction of the Income Tax Officer under Sections 34/147. Take this very case: the Income Tax Officer says that on the basis of investigations and enquiries made during the assessment proceedings relating to the subsequent assessment year, he has come into possession of material, on the basis of which, he has reasons to believe that the assessee had put forward certain bogus and false unsecured hundi loans said to have been taken by him from non-existent persons or his dummies, as the case may be, and that on that account income chargeable to tax has escaped assessment. According to him, this was a false assertion to the knowledge of the assessee. The Income Tax Officer says that during the assessment relating to subsequent assessment year, similar loans (from some of these very persons) were found to be bogus. On that basis, he seeks to reopen the assessment. It is necessary to remember that we are at the stage of reopening only. The question is whether, in the above circumstances, the assessee can say, with any justification, that he had *fully and truly* disclosed the material facts necessary for his assessment for that year. Having created and recorded bogus entries of loans, with what face can the assessee say that he had truly and fully disclosed all material facts necessary for his assessment for that year? True it is that Income Tax Officer could have investigated the truth of the said assertion - which he actually did in the subsequent assessment year - but that does not relieve the assessee of his obligation, placed upon him by the statute, to disclose fully and truly all material facts. Indubitably, whether a loan, alleged to have been taken by the assessee, is true or false, is a material fact - and not an inference, factual or legal, to be drawn from given facts. In this case, it is shown to us that ten persons (who are alleged to have advanced loans to the assessee in a total sum of Rs 3,80,000 out of the total hundi loans of Rs 8,53,298) were established to be bogus persons or mere name-lenders in the assessment proceedings relating to the subsequent assessment year. Does it not furnish a reasonable ground for the Income Tax Officer to believe that on account of the failure - indeed not a mere failure but a positive design to mislead - of the assessee to disclose all material facts, fully and truly, necessary for his assessment for that year, income has escaped assessment? We are of the firm opinion that it does. It is necessary to reiterate that we are now at the stage of the validity of the notice under sections 148/147. The enquiry at this stage is only to see whether there are reasonable grounds for the Income Tax Officer to believe and not whether the omission/failure and the escapement of income is established. It is necessary to keep this distinction in mind.

10. A recent decision of this Court in ***Phool Chand Bajrang Lal* v. *ITO*** [(1993) 4 SCC 77], we are gratified to note, adopts an identical view of law and we are in respectful agreement with it. The decision rightly emphasises the obligation of the assessee to disclose all material facts necessary for making his assessment *fully and truly*. A false disclosure, it is held, does not satisfy the said requirement. We are also in respectful agreement with the following holding in the said decision:

> "Since the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to

> establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief."

11. Learned counsel for the assessee, Shri Gupta placed strong reliance upon the decisions of this Court in ***Chhugamal Rajpal* v. *S.P. Chaliha*** [(1971) 1 SCC 453]; ***ITO* v. *Lakhmani Mewal Das*** [(1976) 3 SCC 757] and ***CIT* v. *Burlop Dealers Ltd*.** [(1971) 1 SCC 462] as laying down propositions contrary to those laid down in ***Phool Chand Bajrang Lal***. We cannot agree. The principle is well settled by *Calcutta Discount* and it is not reasonable to suggest that any different proposition was sought to be enunciated in the said decisions. ***Calcutta Discount*** emphasises repeatedly the assessee's obligation to disclose all material facts necessary for his assessment *fully and truly* in the context of the two requirements — called conditions precedent which must be satisfied before the Income Tax Officer gets the jurisdiction to reopen the assessment under Sections 147/148. This obligation can neither be ignored nor watered down. Nor can anyone suggest that a false disclosure satisfies the requirement of full and true disclosure. All the requirements stipulated by Section 147 must be given due and equal weight. Finality of proceedings is certainly a consideration but that avails one who has fully and truly disclosed all material facts necessary for his assessment for that year - and not to others. All the decisions relied upon by Shri Gupta have been elaborately discussed and distinguished in ***Phool Chand Bajrang Lal*** and we fully agree with the same. We think it unnecessary to repeat those reasons. In particular, we agree with the reasons given in ***Phool Chand Bajrang Lal*** for holding that the decision of this Court in ***Burlop Dealers*** must be confined to the particular fact-situation of that case and that it cannot be construed to be of universal application irrespective of the facts and circumstances of the case before the Court.

12. It is brought to our notice that certain other decisions of this Court have rightly emphasised the requirement of full and true disclosure and have held that failure or omission to do so, legitimately attracts the power under Section 147. In ***Inspecting Asstt. CIT* v. *V.I.P. Industries Ltd.*** [(1991) 191 ITR 661 (SC)] a three-Judge Bench had this to say:

> "After hearing learned counsel for both the parties, we are unable to uphold the order of the High Court. It appears that, subsequently, facts have come to the notice of the Income Tax Department that the facts disclosed in the return are not a true and correct declaration of facts. In that view of the matter, we set aside the order of the High Court passed in Writ Petition No. 1634 of 1988 with Writ Petition No. 2919 of 1988 [***V.I.P. Industries* v. *Inspecting Asstt. Commr.*** (1991) 187 ITR 639 (Bom)], and send the case back on remand to the Income Tax Officer for a decision in accordance with law after giving an opportunity of hearing to the parties concerned.
>
> The special leave petitions are disposed of."

13. In ***Central Provinces Manganese Ore Co. Ltd.* v. *ITO*** [(1991) 4 SCC 166] again this Court observed:

> "The only question which arises for our consideration is as to whether the two conditions required to confer jurisdiction on the Income Tax Officer under Section 147(*a*) of the Act have been satisfied in this case. The first is that the Income Tax Officer must have reason to believe that the income chargeable to income tax had been under-assessed and the second that such under-assessment has occurred by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the year 1953-54.
>
> So far as the first condition is concerned, the Income Tax Officer, in his recorded reasons, has relied upon the fact as found by the Customs Authorities that the appellant had under-invoiced the goods he exported. It is no doubt correct that the said finding may not be binding upon the income tax authorities but it can be a valid reason to believe that the chargeable income has been under-assessed. The final outcome of the proceedings is not relevant. What is relevant is the existence of reasons to make the Income Tax Officer believe that there has been under-assessment of the assessee's income for a particular year. We are satisfied that the first condition to invoke the jurisdiction of the Income Tax Officer under Section 147(*a*) of the Act was satisfied.
>
> As regards the second condition, the appellant did not produce the books of accounts kept by them at their head office in London nor the original contracts of sale which were entered into at London with the buyers. The appellant did not produce before the Income Tax Officer any of the accounts which related to the foreign buyers. No reasons were given for the supply of manganese ore at a rate lower than the market rate. It is for the assessee to disclose all the primary facts before the Income Tax Officer to enable him to account for the true income of the assessee. The proven charge of under-invoicing per se satisfied the second condition. The appellant's assessable income has to be determined on the basis of the price received by it for the goods exported. If the true price has not been disclosed and there was under-invoicing, the logical conclusion prima facie is that there has been failure on the part of the appellant to disclose fully and truly all material facts before the Income Tax Officer. We are, therefore, satisfied that both the conditions required to attract the provisions of Section 147(*a*) have been complied with in this case."

14. In ***ITO* v. *Mewalal Dwarka Prasad*** [(1989) 176 ITR 529] this Court held that if the notice issued under Section 148 is good in respect of one item, it cannot be quashed under Article 226 on the ground that it may not be valid in respect of some other items. We need not, however, dilate on this aspect for the reason that no argument has been urged before us to the effect that since the notice under Section 148 is found to be justifiable in respect of some loans disclosed and not with respect to other loans, it is invalid.

15. For the above reasons, the appeal fails.

THE END