SUPREME COURT OF INDIA

Commissioner of Wealth Tax, A.P., Hyderabad

Vs.

Trustees of H. E. H. Nizam's Family

C.A.Nos.467-470 and 470A of 1971

(P. N. Bhagwati, N. L. Untwalia and S. Murtaza Fazl Ali, JJ.)

03.05.1977

JUDGEMENT

BHAGWATI, J.:-

1. These appeals by special leave are directed against a judgment of the High Court of Andhra Pradesh answering certain questions referred to it by the Tribunal in favour of the assessee. The questions are of some importance and complexity and they turn on the true interpretation of Sections 3 and 21 of the Wealth Tax Act, 1957 but since they can be answered only by applying the correct interpretation to the facts of the case, it is necessary to briefly recapitulate the facts giving rise to these appeals.

2. In the year 1950 the late Nawab Sir Mir Osman Ali Khan Bahadur, The Nizam of Hyderabad and Berar created several trusts out of which we are concerned in these appeals with the trust known as the Family Trust. The Nizam, by a Deed of Trust dated 16th May, 1950, created the Family Trust by transferring a corpus of Rs. nine crores in Government securities to the trustees constituted by him. The corpus was nationally divided into 175 equal units, out of which five units constituted a Fund

called the 'Reserve Fund', 31/2 units constituted a 'Family Trust Expenses Fund' and the remaining 166 1/2 units were allocated amongst the relatives mentioned in the first column of the Second Schedule in the manner specified in that Schedule, the number of units allocated to each individual relative being that mentioned in the second column. The Second Schedule was divided into two parts. Part I specified the names of the Nizam's wife Laila Begum, her five sons and two daughters and his another wife Jani Begum and her minor son as beneficiaries and in Part II were mentioned the names of the other wives, sons, daughters, daughters-in-law, sons-in-law, would-be sons-in-law and certain other ladies of the Palace. None of the beneficiaries mentioned in the Second Schedule, whether in Part I or Part II, was to be entitled to the corpus of the units allocated to him or her. Each was entitled to be paid the income from the units allocated to him or her and detailed provisions were made for the manner in which the units were to devolve after his or her death, Clause (4) of the Trust Deed provided that 30 out of 168 1/2 units shall be allocated amongst the relatives mentioned in Part I of the Second Schedule in such manner that one unit each shall be allocated to Laila Begum and Jani Begum, two units each shall be allocated to the daughters of Laila Begum and four units each shall be allocated to five sons of Laila Begum and the minor son of Jani Begum, So far as one unit allocated to Laila Begum was concerned, the trustees were directed by sub-clause (a) of Cl. (4) to pay the income of this one unit to Laila Begum during her lifetime and after her death, it was to be divided into 12 equal parts and 2 equal parts each were to be added to the four units allocated to each of her five sons and one equal part each was to be added to the two units allocated to each of her two daughters to be held upon the same trusts as those declared in respect of the original units allocated to each son or daughter as the case may be. Each of the five sons of Laila Begum was allocated four units and under sub-clause (b) of Cl. (4) it was provided that the income from these four units, supplemented by parts out of Laila Begum's unit on her death, shall be paid to the respective son during his lifetime and on and after his death, the corpus of the four units allocated to him together with the parts out of Laila Begum's unit added to it, shall be divided amongst his children or remoter issues per stripes in the proportion of two shares for every male child to one share for every female child standing in the same degree of relationship. If such son died without leaving any child or remoter issue him surviving. sub-cl. (b) of Clause (4) provided that the trustees shall divided the four units allocated to him together with the sub-sequently added parts our of Laila Begum's unit into such sub-parts and in such manner that they shall allocate two equal sub-parts each to each of the then surviving sons of Laila Begum by the settlor and the issue then surviving of any pre-deceased son and one equal sub-part each to each of the then surviving daughters of Laila Begum by the settlor and the issue then surviving of any pre-deceased daughter. The parts of such surviving sons and daughters of Laila Begum as are specified in the Second Schedule were to be added to and amalgamated with the basic units, four or two as the case may be, allocated to them and they were to be held on the same trusts as those declared in respect of such basic units. So far as concerns the sub-parts allocated to the surviving sons and daughters of Laila Begum who were born after the date of the Trust Deed, it was directed that such sub-parts would be taken by them absolutely and so also the sub-parts allocated to the issue of any pre-deceased son or daughter of Laila Begum were to be divided between them absolutely per stirpes in the proportion of tow shares for every male child to one share for every female child standing in same degree of relationship. Sub-clause (c) Cl. (4) made similar provisions with regard to the two units allocated to each of the two daughters of Laila Begum. The income of the two units together with the subsequently added parts out of Laila Begum's unit was to be given to the respective daughter for her lifetime and on her death, the corpus was to be divided amongst her children and remoter issue per stripes in the proportion of two shares for every male child to one share for every female child standing in the same degree of relationship and if she died without leaving any issue her surviving, the corpus was to be divided into such sub-parts and in such manner that one equal sub-part was to

go to each of the then surviving children of Laila Begum by the settler and the issue then surviving of any pre-deceased son or daughter. The other provisions in regard to the interest taken by these beneficiaries in that corpus were the same as in sub-clause (b) of Cl. (4). Sub-clause (d) of cl. (4) dealt with the unit allocated to Jani Begum and provided that the income of this unit would go to Jani Begum and provided that the income of this unit would go to Jani Begum during her lifetime and on her death, the corpus of this unit would be added to and amalgamated with the four units allocated to her minor son Imdad Ali Khan to be held upon the same trusts as those declared in respect of those four units and if nether Imdad Ali Khan nor any child or remoter issue of his was living at the date of the death of Jani Begum, then this one unit of Jani Begum was to be held upon the same trusts as the one unit allocated to Laila Begum on her death. Similarly, sub-clause (e) of Clause (4) provided that the income of the four units allocated to Imdad Ali Khan shall be paid to him during his lifetime and on his death, the corpus shall be divided amongst his children and remoter issue per stripes in the proportion of two shares for every male child to one share for every female child standing in the same degree of relationship and if he dies without leaving any child or remoter issue him surviving, the corpus shall be held on the same trusts as those upon which the four units allocated to any of the five sons of Laila Begum are held on the death of such son without leaving any child or remoter issue him surviving. It will thus be seen that detailed and elaborate provisions were made in the Trust Deed regarding the disposition of the different units allocated to the various beneficiaries specified in Part I of the Second Schedule and every contingency was taken care of in laying down the mode of devolution, so that at any particular point of time, one could always say who would be the beneficiaries entitled to the corpus, if the owner of the life interest were to die at that point of time.

3. The remaining 136 1/2 units left after the allocation of 30 units as set out in Cl. (4) were dealt with in Cl. (5) of the Trust Deed. These 136 1/2 units were allocated to the respective relatives of the settlor specified in Part II of the Second Schedule in the respective proportions set out against their names. Sub-clause (a) of Cl. (5) provided that the income of the respective unit or units or fraction thereof allocated to the respective relative shall be paid to them respectively for life. But so far as the 15 daughters of the settlor were concerned, to each of whom three units were allocated, it was provided that out of the income of such three units, each daughter was to be paid only 2/3rd part of the income and the remaining 1/3rd part was to be set apart by way of a reserve fund. Such reserve fund was to be utilised for any special, unusual, unforeseen or emergency expenses relating to the particular daughter from whose income the reserve fund was created and on her death, the reserve fund or the unutilised portion thereof was to be amalgamated within the three units of the corpus allocated to her, to be held on the same trusts as those declared in respect of such three units. There was also a special provison made regarding Nawab Rashid Nawaz Jung, the son-in-law of the settlor, that, though allocated one unit, he was not to receive the income of that unit so long as he received the allowance as Amir of the Vikar-al-Mulk-Paigah and till then, the income of this unit was to be added to the five units allocated to the Reserve Fund created under Cl. (6) to be held upon the same trusts as those declared in respect of such Reserve Fund. The other son-in-law and the future husbands of the 13 other daughters of the settlor were also allocated 1/2 unit each and it was provided that until the marriage of each of these 13 daughters the income of 1/2 unit allocated to her future husband should be set apart as a reserve fund and utilised in the same manner as the Reserve Fund of such daughter created out of one-third part of the income of the three units allocated to her and after her marriage, the income of such 1/2 unit should be paid to her husband. So far as Fauzia Begum, the daughter of the second son of the settlor was concerned, a special provision was made that the income of two units allocated to her should be set apart and credited in

her account called 'Fauzia Begum Reserve Fund' and on the death of the second son of the settlor during the minority of Fauzia Begum, the income to these two units should be paid to a committee of management for the maintenance, education, welfare, advancement in life and benefit of Fauzia Begum until she attained the age of majority and during the minority of Fauzia Begum, the trustees were also authorised to spend out of the Reserve Fund such sums as may be necessary for any special, unusual, unforeseen or emergency expenses for her benefit and on Fauzia Begum attaining the age of majority, the trustees were to hand over the reserve fund or the unutilised portion thereof to her absolutely and also to pay to her the income of the two units during her lifetime. Sub-clause (b) of Clause (5) provided for the devolution of the respective unit or units or fraction thereof allocated to the respective relatives on their death. It was directed that on the death of any of these relatives, the corpus of the unit or units or fraction thereof allocated to him or her should be divided and distributed, subject to some restrictions, amongst the children and remoter issue per strips in the ratio of 2 : 1 as between male and female children standing in the same degree of relationship. The contingency of any of these relatives dying without leaving any child or remoter issue him or her surviving was dealt with in sub-clause (c) of Clause (5) which provided that in that event the unit or units or the fraction thereof allocated to such relative should be divided amongst the other relatives of the settlor but in accordance with certain specified rules. Sub-clause (d) of Clause (5) made a special provision in regard to Dulhan Pasha Begum, namely that on her death, the five units allocated to her should be added to and amalgamated with the four units allocated to her daughter Shahzadi Begum, to be held upon the same trusts as those declared in respect of such four units. It will thus be seen that according to the scheme envisaged in Cl. (5), each of the relatives specified in Part II of the 2nd Schedule was given life interest in the unit or units or fraction thereof allocated to him or her and on his or her death, subject to certain special provisions in regard to some of the relatives, the corpus of such unit or units or fraction thereof was to be divided and distributed amongst the children or remoter issue and if any of the relatives died without leaving any child or remoter issue him or her surviving, the corpus allocated to him or her was to go to the other relatives in accordance with certain specified rules.

4. Clause (6) of the Trust Deed directed the trustees to hold 5 units out of the corpus of the trust fund as and by way of a Reserve Fund. This Reserve Fund was primarily intended to meet special, unusual, unforeseen or emergency expenses of or the benefit of the relatives of the settlor specified in the Second Schedule and it was also provided that if there was any deficit in the Family Trust Expenses Account in meeting the charges of collection the remuneration of the trustees and the members of the committee of management and other costs, charges, expenses and outgoings in connection with the trust, such deficit should be made good out of the income or the corpus of the Reserve Fund. There was also a provision made that on and after the death of any of the relatives of the settlor specified in the Second Schedule, a corresponding proportion of the Reserve Fund should be added to and amalgamated with the unit or units or fraction thereof allocated to such relative and held on trusts similar to the original trust.

5. The remaining 3 1/2 units were allocated under Clause (7) of the Trust Deed to a fund called. 'The Family Trust Expenses Account'. This fund was intended to meet all the charges for the collection of the income of the trust fund and the remuneration of the trustees and the members of the committee of management and all the costs, charges and expenses and outgoings relating to the trust and its administration. It was also directed that after all the aforesaid trusts relating to the 30

units, 136 1/2 units and 5 units out of the corpus of the trust fund had been fully administered and carried out and the corpus of all such units had been handed over and transferred absolutely to the ultimate beneficiaries, the trustees should transfer and hand over 3 1/2 units comprising this fund to the then successor-intitle of the settlor or to the eldest male descendant in the direct male line of succession of the settlor according to the rule of primogeniture.

6. During the course of assessment of the trustees (hereinafter referred to as the assessees) to wealth tax for the assessment year 1957-58, a question arose as to how the assessment to wealth tax should be made. The Wealth Tax Officer assessed the assessees to wealth tax on the value of 13 1/2 units of the trust fund comprising 5 units allocated to the Reserve Fund, 3 1/1 units allocated to the Family Trust Expenses Account and 5 units representing the units allocated to the future husbands of the then unmarried daughters of the settlor. The wealth corresponding to the remaining 161 1/1 units was assessed in the hands of the several beneficiaries specified in the Second Schedule, who were assessed to wealth tax on the value of the respective units allocated to them under the Trust Deed. Similar assessments were also made for the assessment year 1958-59 with this difference that by the time these assessments came to be made, one other daughter was also married and the Wealth Tax Officer, therefore, assessed the assessees to wealth tax only in respect of the value of 13 units of the Trust Fund and the values of the other units were assessed in the hands of the respective beneficiaries to whom they were allocated as specified in the Second Schedule.

7. There were appeals to the Appellate Assistant Commissioner against the assessments for the assessment years 1957-58 and 1958-59 and in these appeals, the Appellate Assistant Commissioner held that the inclusion of 5 units constituting the Reserve Fund, 3 1/2 units constituting the Family Trust Expenses Account and the units allocated to the future husbands of the unmarried daughters in one single assessment was unjustified, since the clauses constituting the Reserve Fund and the Family Trust Expenses Account and creating a trust in favour of the future sons-in-law constituted three distinct trusts and hence separate assessments must be made in respect of the several units forming the subject-matter of these clauses. The Wealth Tax Officer accordingly made separate assessments on the assessees in respect of 5 units constituting the Reserve Fund and 3 1/2 units constituting the Family Trust Expenses Account for the assessment years 1957-58 and 1958-59 and similar assessments were also made on the assessees in respect of the assessment years 1960-61 and 1961-62. We are not concerned in these appeals with the assessments made on the assessees in respect of 5 units constituting the Reserve Fund and 3 1/2 units constituting the Family Trust Expenses Account since these assessments have become final.

8. The several beneficiaries specified in the Second Schedule also appealed against their assessments to wealth tax on the ground that each of them was entitled only to a life interest in the corpus of the units allocated to him or her and he or she could not, therefore, be assessed in respect of the entire value of the corpus. This contention was accepted by the Appellate Assistant Commissioner who held that inasmuch as each beneficiary was entitled only to the income of the units allocated to him or her during his or her lifetime, he or she could be assessed to wealth tax only on the value of his or her life interest in the respective units and not on the value of the corpus and in this view, the Appellate Assistant Commissioner set aside the assessments made on the

beneficiaries and directed the Wealth Tax Officer to make fresh assessments by including only the value of the life interest of each of the beneficiaries in his or her assessment. The Wealth Tax Officer accordingly valued the life interest of each of the beneficiaries in the respective unit or units. allocated to him or her and made assessment to wealth tax by including the value of such life interest. But the result of such life interest. But the result of making assessments on this basis on the several beneficiaries was that the value of the 'remainder wealth' in respect of 166 1/2 units escaped tax. The Wealth Tax Officer was of the view that the beneficiaries in respect of the several remainder estates after the lives of the immediate beneficiaries mentioned in the Second Schedule were unknown and their shares indeterminate and the assessees were, therefore, liable to be assessed in respect of the remainder wealth under S. 21, sub-s. (4) of the Wealth Tax Act. The W.-T. Officer accordingly reopened the assessments made on the assessees for the assessment years 1957-58 to 1960-61 and made fresh assessments on the assessees in respect of the 'remainder wealth" by applying the provisions of Section 21, sub-s. (4). He arrived at the value of the remainder wealth by taking the value of the entire original corpus and deducting therefrom the value of 5 units allocated to the Reserve Fund, the value of 3 1/2 units allocated to the Family Trust Expenses Account and the aggregate of the value of the life interests assessed in the hands of the several beneficiaries. Similar assessment was also made on the assessees in respect of the remainder wealth for the assessment year 1961-62.

9. The assessees appealed to the Appellate Assistant Commissioner against the assessments made on them in respect of the remainder wealth and in the appeals, they contended that the Trust Deed created distinct and separate trusts for the benefit of the several beneficiaries mentioned in the Second Schedule and the Wealth Tax Officer was, therefore, not justified in clubbing the entire remainder wealth relating to these distinct and separate trusts in a single assessment on the assessees and a further contention was also urged by them that,. in any event, the assessments were bad in law inasmuch as the provisions of Section 21, sub-s. (4) were not applicable to the facts and circumstances of the case. The Appellate Assistant Commissioner agreed with the first contention of the assessees and held that though there was only one single Deed of Trust, it created several distinct and separate trusts, one in favour of each beneficiary mentioned in the Second Schedule with its own independent and complete provision in regard to devolution after the death of such beneficiary and on this view, the Appellate Assistant Commissioner annulled the assessments made on the assessees in respect of the remainder wealth, leaving it open to Wealth Tax Officer "to take such steps as he may consider necessary to assess the remainder wealth pertaining to each distinct trust separately." This view taken by the Appellate Assistant Commissioner rendered it unnecessary to decide the second contention as to the applicability of Sec. 21, sub-section (4).

10. The Revenue being aggrieved by the order passed by the Appellate Assistant Commissioner preferred appeals before the Tribunal on the main ground that there was only one single trust created by the Trust Deed and not several distinct and separate trusts. Two further contentions were also sought to be urged on behalf of the Revenue at the hearing of the appeals and one of them was, and that is the only contention material for our purpose, that the Appellate Assistant Commissioner should have "given a definite finding regarding the applicability of Section 21 sub-section (4) or S. 3 to the facts of the case." The argument of the Revenue in regard to this contention was that the assessees were liable to be assessed as an 'individual' under Section 3 in respect of the entire corpus of the trust fund and Section 21. sub-section (4) being merely a machinery section did not have the

effect of overriding the charge imposed on the assessees under Section 3. The Tribunal allowed the Revenue to raise this new contention, but made it clear that it would be only "for the purpose of supporting the assessments already made and not for the purpose of enhancing the assessments". The answer given by the assessees to this contention was that Section 3 had no application at all, because the assessees as trustees would be an 'association of persons' and under the Wealth Tax Act an 'association of persons' is not an assessable entity and they went on further to say that they could not be assessed even under sub-section (1) or sub-section (4) of Section 21. since in respect of the remainder estate after the death of each relative, the beneficiaries were unknown. The assessees also contended that, in any event, even if Section 3 were applicable, the assessment on the assessee could be made only in accordance with the provisions of Section 21, since Section 3 was subject to the other provisions of the Act including Section 21. It was also urged on behalf of the assessees that the Trust Deed created distinct and separate trusts in respect of the several units allocated to the beneficiaries mentioned in the Second Schedule and in any event, even if the trust was a single indivisible trust, the remainder estate in respect of the several units was required to be assessed separately in the hands of the assessees and to the assessment of such remainder, it was sub-s. (1) of Section 21 which applied and not sub-section (4) of Section 21. The Tribunal, on a proper construction of Sections 3 and 21, came to the conclusion that these tow sections have to be read together and so read it was clear that Section 3 was subject to Section 21 and the assessees could not, therefore, be assessed to wealth tax under Section 3 in respect of the entire corpus, ignoring the provisions of Section 21.Sub-section (1) of Section 21 was, in the view of the Tribunal, not applicable and the only question, therefore, was whether assessment could be made on the assessees under sub-section (4) of Section 21. The Tribunal held that it was not correct to say that sub-section (4) of Section 21 was not applicable in the present case on the ground that the beneficiaries in respect of the remainder estate were unknown and proceeded to apply the provisions of Section 21, sub-s. (4) in the assessment of the assessees. The Tribunal accepted the contention of the Revenue that there was only one single trust created by the Trust Deed and not as many trusts as there were beneficiaries, but all the same it held, on the application of Section 21, sub-section (4) that "even if the Trust Deed be viewed as a single trust, separate assessments should be made on the trustees in respect of the several units allocated to the groups of the several beneficiaries mentioned in the Second Schedule". The result was that the appeals filed by the Revenue were dismissed.

11. The Revenue thereupon applied to the Tribunal for referring to the High Court certain questions of law said to arise out of the order of the Tribunal and on the application of the Revenue, the Tribunal referred the following questions for the decicision of the High Court.

"(i) Whether the Trustees are liable to be assessed under Sec. 3 of the Wealth-tax Act in the status of an 'individual'?

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the provisions of Section 3 of the Wealth-tax Act should be considered as subject to the provisions of Section 21 of the above Act?

(iii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in refusing to admit the additional ground filed on behalf of the Department (in W.T.A. Nos. 690 of 694 of 1963-64) except to the extent of supporting the assessment as made?

(iv) Whether, on a proper construction of the trust deed in question, the Tribunal was correct in holding that the settlor had created only one trust in favour of several beneficiaries and not separate and independent trusts in favour of several beneficiaries or groups of beneficiaries?

(v) Whether, having held that a single trust was created by the trust deeds, the Tribunal was correct in law in holding that under S. 21 (4) of the Act the remainder wealth could be assessed in respect of each of the several units or groups of units allocated in favour of the beneficiaries specified under the relevant trust deeds?

(vi) Whether, on the facts and in the circumstances of the case and on a proper construction of the provisions of Section 21 of the Act, the Tribunal was right in holding that the provisions of Section 21 (4) are applicable in the circumstances of this case?"

So far as the first question is concerned, the High Court answered it in favour of the Revenue by holding that the trustees are liable to be assessed as an 'individual' under Section 3, because the word 'individual' in Section 3 is wide enough to include a group of persons forming a unit. But Section 3 being subject to the provisions of Section 21, the High Court held, in answer to the second question, that it was not permissible to the Revenue to tax the trustees under Section 3 ignoring the provisions of Section 21. The High Court held that the assessment on the trustees could be made only in accordance with the provisions of Sec 21. The question then was as to which sub-section of Section 21 applied in the present case; sub-section (1) or sub-section (4). The High Court took the view that on the relevant valuation date, it was not possible to say that the beneficiaries of the remainder estate in respect of each set of unit or units allocated to the respective relatives specified in the Second Schedule were unknown or their shares were indeterminate so as to attract the applicability of sub-section (4) of Section 21. The High Court observed that it could be predicated with certainty and definiteness on the relevant valuation date as to who would succeed to the corpus of each set of unit or units and in what shares, if the conditions for the vesting of the corpus were fulfilled on that date. The High Court accordingly held that sub-section (1) of Section 21 was applicable to the facts of the case and the assessment on the assessees was liable to be made in conformity with that provision. The High Court then addressed itself to the fourth questions and held that the Tribunal was not right in holding that the Trust Deed created one single indivisible trust but there were really several distinct and separate trusts created by the Trust Deed in favour of each of the relatives mentioned in the Second Schedule. This view taken by the High Court necessarily resulted in questions Nos. (v) and (vi) being answered in favour of the assessees. That left the third question but so far as that is concerned, the High Court took the view that it was not necessary to consider it in view of the answers given to the other questions. It is this decision of the High Court on the various questions referred by the Tribunal which is impugned in the present appeals preferred by

special leave.

12. Before we take up the questions of law that arise for consideration in these appeals, we may clear the ground at the outset by pointing out that though before the High Court, it was contended on behalf of the assessees that they were not liable to be assessed to wealth tax under Section 3 since, unlike the charging section in the Income-tax Act, Section 3 did not provide for levy of wealth tax on association of persons', this contention was not pressed before us and it was conceded, and in our opinion rightly, that the assessees constituted an assessable unit and were liable to be assessed to wealth tax as 'individual' under Section 3. This position indeed could not be disputed after the decision of this Court in Trustees of Gordhandas Govindram Family Charity Trust v. Commr. of Income-tax, Bombay, 88 ITR 47; (1973 Tax LR 1936 (SC)). But the question is whether assessment could be made on the assessees under Section 3 apart from and without reference to Section 21. That depends on the true meaning and effect of Sections 3 and 21 and the inter-relation between these two sections. Section 3 is the charging section and it levies the charge of wealth tax on the net wealth of the assessee on the relevant valuation date. 'Net wealth' is defined in Section 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... is in excess of the aggregate value of all the debts owed by the assessee on the valuation date....". It is clear from this definition that any property, wherever located, 'belonging to' the assessee on the relevant valuation date would be includible in the net wealth of the assessee assessable to wealth tax. One argument based on semantics advanced on behalf of the assessees was that assets held by a trustees in trust for others cannot be said to be assets 'belonging to' the trustee so as to be includible in his net wealth. The assets so held "are not trustee's property in any real sense": they are the property of the beneficiaries and, to use the words of Lord Mac Naughton in Heritable Reversionary Co. Ltd. v. Millar, 1892 AC 598 the beneficiaries are the true owners all along. The trustee of a trust cannot, therefore, be assessed to wealth tax in respect of the trust properties under section 3. It was for this reason, contended the assessees, that special provision had to be made in Section 21 for assessing the trustee and hence assessment on the trustee could be made only in accordance with such special provision. This was precisely the argument which found favour with the Gujarat High Court in Commr. of Wealth-tax, Gujarat v. Kum. Manna G. Sarabhai, (1972) 86 ITR 153 : (1972 Tax LR 377) (Guj) which was a case decided by a Division Bench presided over by one of us (Bhagwati, J. as the Chief Justice). On this argument, the trustee of a trust would not be liable to be assessed to wealth tax in respect of the trust properties under Sec. 3. It is only by reason of Section 21 that he would be assessable and hence assessment cannot be made on him except in accordance with the provisions of Section 21. Prima facie, there seems to be force in this argument, but we do not think it necessary to express any final opinion upon it, since there is an alternative argument advanced on behalf of the assesees which is quite substantial and leaves no room for judicial doubt or hesitation.

13. Let us assume that the trustee of a trust would be assessable in respect of the trust properties under Section 3, even in the absence of Section21. But section 3 imposes the charge of wealth tax 'subject to the other provisions' of the Act and these other provisions include Section 21. Section 3 is, therefore, made expressly subject to section 21 and it must yield to that section in so far as the latter makes special provision for assessment of a trustee. Section 21 and it must yield to that section in so far as the latter makes special provision for assessment of a trustee of a trust. Section

21 is mandatory in its terms and as it stood at the material time, it provided as follows:

"21.(1) In the case of assets chargeable to tax under this Act which are held by a court of wards or an administrator-general or an official trustee or any receiver or manager or any other person, by whatever name called appointed under any order of a court to manage property on behalf of another, or any trustee appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise (including a trustee under a valid deed of wakf), the wealth-tax shall be levied upon and recoverable from he court of wards, administrator-general, official trustee, receiver, manager or trustee, as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf the assets are held, and the provisions of the Act shall apply accordingly.

(2) Nothing contained in sub-sec.(1) shall prevent either the direct assessment of the person on whose behalf the assets above referred to are held, or the recovery from such person of the tax payable in respect of such assets.

(3) Where the guardian or trustee of any person being a minor lunatic or idiot (all of which persons are hereinafter in this sub-section included in the term "beneficiary") holds any assets on behalf of such beneficiary, the tax under this act shall be levied upon and recoverable from such guardian or trustee, as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from any such beneficiary if of full age or sound mind and in direct ownership of such assets.

(4) Not withstanding anything contained in this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from the court of wards, administrator-general, official trustee4, receiver, manager, or other person aforesaid as if the persons on whose behalf or for whose benefit the assets are held were an individual for the purposes of this Act."

Sub-section (5) was not a part of Section 21 at the material time since it was introduced only with effect from 1st April, 1965 but it throws some light on the interpretation of the other sub-sections of Section 21 And hence it may be reproduced here:

"21(5) Any person who pays any sum by virtue of the provisions of this section in respect of the net wealth of any beneficiary, shall be entitled to recover the sum so paid from such beneficiary, and may hold on behalf or for the benefit of such beneficiary, an amount equal to the sum so paid."

It would, therefore, be clear on a combined reading of Secs. 3 and 21 that whenever assessment is

made on a trustee, it must be made in accordance with the provisions of Section 21. Every case if assessnebt ib a trustee must necessarily fall under Section 21 and he cannot be assessed apart from and without reference to the provisions of that section. To take a contrary view giving option to the revenue to assess the trustee under Section 3 withoutfollowing the provisions of Section 21 would be to refuse to give effect to the words "subject to the other provisions of this Act" in Section 3, to ignore the maximgeneralia specialisbus non derogant and to deny mandatory force and effect to the provisions enacted in Section 21. It may be noted that, while interpreting the corresponding provisions in sec.41 of the Indian Income-tax Act, 1922 andSection 161 of the income-tax Act,1961, this Court in C.R.Nagappa v. Commr. Of Income-tax, 73 ITR 626: (AIR 1969 SC 888) approved the following observations made by Chagla, C.J. in regard to the scheme of Section 41 of the INDIAN Income tax Act,1922 in Commr. Of Income-tax,Ahmedabad bv. Balwantrai JethalalVaidya, 34 ITR 87: (AIR 1959 Bom 298)

"If the assessment is upon a trustee, the tax has to be levied and recovered in the manner provided in Section 41. The only option hthat the Legislature gives is the option embodied in sub-section (2) of Section 41, and that option is that the department of the trustees, or having assessed the trustees it may proceed to recover the taz from the beneficiaries. But on pricinciple the contention of the department cannot be accepted that, when a trustee is being assessed to tax, his burden which will ultimately fall upon the beneficiaries should be increased and whether that burden should be increased or not should be left to the option of the department. The basic idea underlying Section 41, and which is in conformity with principle, is that the liability of the trustees should be coextensive with that of the beneficiaries and in no sense a wider or alarger liability. Therefore, it is clear that that every case of an assessment against a trustee must fall under Section 41, and it is equally clear that, even though a trustee is being assessed, the assessment must proceed in the manner laid down in Chapter III. Section 41 only comes into play after the income has been computed in accordance with Chapter III. Then the question of payment of tax arises and it is at that stage that Section 41 issues a mandate to the taxing department that, when they are dealing with the income of a trustee they must levy the tax and recover it in the manner laid down in section 41." (Emphasis supplied by us).

This Court also observed that "the same considerations mut apply in the interpretation of section 161 (s) of the Income Tax Act,1961". The same view, it may be pointed out, was taken by this Court in an earlier decision in commr. Of Inxome tax v Nandlal Agarwal, 59 ITR 758 at p.762: (AIR 1966 SC 899 at page 901). These decisions given under the Income tax law must apply equallyin the interpretation of section 21, since the relevant provisions of both the statutes are almost identical. That was pointed out by this Court in Commr. Of Wealth tax, Bihar andOrissa v. Kripashankar Dayashankar Worah, 81 ITR 763: (1971 tax LR1756 (SC)) where it was said: "Section21(1) if tge Act is analogous to Section 41 of the Income-Tax Act, 1922. The only difference betweenthe two sections is that whereas the former deals with assets, the latter deals with income. Subject to this difference, the two provisions are identically worded. Hence, the decisions rendered under Section 41 (1) of Indian Income-tax Act, 1922, have a bearing on the question arising for decision in this case". It must, therefore, be held to be incontrovertible that whenever a trustee is sought to be assessed, the assessment must be made in accordance with the provisions of Section 21.

14. It must also be noted that the assessment which is contemplataed to be made on the trustee under sub-section (1) or sub-section (4) of Section 21 is assessment in a representative capacity. It is really the beneficiaries who are sought to be assessed in respect of their interest in the trust properties through dthe trustee. Sub-section (1) provides that in respect of trust properties held by a truste4e, wealth tax shall be levied upon hi9m 'in the like manner and to the same extent " as it would be leviable on the beneficiary for whose benefit the trust properties are held by the trustee for the benefit of a single beneficiary or where there are more beneficiaries than one, the individual shares of the beneficairies in the trus tproperties are determinate and known. Where such is the case, wealth tax cam ne ;evoed on the trustee in respect of the interest of any particular benficairy in the trust properties 'in the same manner and to the same extent' as it would be leviable upon the beneficiaryand in respect of such interes in the trust properties, the trustee would be assessed in a representativecapacity as representing the beneficiary. This, of cours, e doies not mean that the Revenue cannot proceed to make direct asessment on the beneficiary in respect of the interest in the trust properties which 'belongs to' him. The beneficiary would always be assessable in respect of his interestin the trust properties, since such interest 'belongs to' him and the right of the Revenue to makedirect asssessment on him in respect of such interest stands unimpaired by the provision enabling assessment to be made on the trustee in a representative capacity. Sub-section (2) makes this clear by providing that nothing contained insub-section (1) shall prevent either the direct assessment of the beneficiary for whose benefit thetrust properties are held or the recovery from the beneficiary of the wealth tax in respect of his interest in the trust properties which is assessed in the hands of the trustee. The Revenue has thus two modes of assessment available for assessing the interest of a beneficiaryin the trust properties: it may either assess such interst in the hands of the trusteee in a representative capacity under sub-section (1) or assessit directly in the hands of the beneficiary by including it in the netwealth of the beneficiary. What isimportant to note is that in eithercase what is taxed is the interest of the beneficiary in the trust properties and not the corpus of the trust properties. So also where beneficiaries are more than one, and their shares a5re indeterminate or unknown, the trustees would be assessable in respect of their beneficial interest in the trust properties. Obviously in such a case, it is not possible to make direct assessment on the beneficiaries in respect of their interest in the trust properties, because their shares are indeterminate or unknown and that is why it is provided that the assessment may be made on athe trustee as if the beneficiaries for whose benefit the trust properties are held were an individual.the beneficial interest is treated as of ot belonged to oneindiidual beneficiary and assessment ismade on the trustees in the same manner and to the same extent as it would be on such fictional beneficiary. It will, therefore, be seenthat in this case too, it is the beneficial interest which is assessed to wealth tax in the hands of the t5rusteeand not the corpus of the trustproperties. This position becomesabundantly clear if we look at sub-section (5) which clearly postulates that where a trustee is assessed undersub-section (1) or sub-section (4), the assessment is made on him 'in respect of the net wealth' of the beneficiary, that is the beneficialinterestbelonging to him. Now, wherever there is a trust, it is obviousthere must be beneficiaries under the trust, because the very concept of a trust connotes that though the legal title vestsin the trustee, he does not own orhold the trust properties for his personal benefit but he holds the samefor the benefit of other, whether individuals or purposes. It must follow inevitably from this premise that since under sub-section (1) and (4)of Section 21 it is the beneficial interests which are taxable in the handsof the trustee in a representative capacity and the liability of the trustee cannot be greater than the aggregate liability of the beneficiaries, no part of the corpus of the trust properties can be assessed in the hands of the trustee under Section 3 and any such assessment would be contrary to the plain mandatory provisions of Section 21.

15. It is also necessary to notice the consequnces that seem to flow from the proposition laid down in section 21, sub-section (1) that the trustee is assessable 'in the like manner and to the same extent' as the beneficiary. The consequences are three-fold. In the first place, it follows inevitably from the proposition that there would have to be as many assessments on the trustee as there are beneficiaries with determinate and known shares, though for the sake of convenience, there may be only one assessment order specifying separately the tax due in respect of the wealth of each beneficiary whose interest is sought to be taxed in the hands of the trustee. This was recognised and laid down by this Court in N.V. Shanmugham and Co. V. Commr. Of Income-tax, Madras, 81 ITR 310: (AIR 1970 SC 1707). And lastly, the amount of tax payable the trustee would be the same as that payable by each beneficiary in respect of his beneficial insterest, if he were assessed directly. Vide Padmavati Jaykrishna Trust v. Commr. Of Wealth-tax, Gujarat, (1966) 61 ITR 66 (Guj) as pp. 73-4: Trustees of Putlibai R.F. Mulla Trust v. Commr. Of Wealth-tax, (1967) 66 ITR 653 at pp. 657-8 (Bom) and Chintamani Ghosh v. Commr. Of Wealth-tax, (1971) 80 ITR 331 (at p . 341) (All). Let us, by way of illustration, take a case where property of the value of rupees ten lacs is held in trust under which the income of the property is given to A for life and on his death, the property is to be divided equally between B and C. The beneficiaries in this case are clearly A, B and C. A having life interest in the trust property and B and C having equal shares in the remainder. The Revenue has option to asess the beneficial interests of A, B and C in the trust property in the hands of the trustee or to make direct assessment on each of the three beneficiaries. If the trustee is assessed under sub-section (1) of Section 21, three separate assessments would have to be made on hi, one in respect of the actuarial valuation of the life interest of A, which may be , take an ad hoc figure, say, Rs. 5 lacs and the other two in respect of the actuarial valuations of the remaindermen's interests of B and C, which may be, to take again an ad hoc figure, say, Rs. 2 lacs each. But, as pointed out above, the Revenue may, instead of assessing the trustee, proceed to make direct assessment on each of the three beneficiaries A, B and C and in that case, Rs. 5 lacs, Rs. 2 lacs and Rs. 2 lacs would be included in the net wealth of A, B and C respectively. The result would be that though the value of the corpus of the trust property is Rs. 10 lacs, the assessments, whether made on the trustee or on each of the three beneficiaries, would be only in respect of Rupees 5 lacs, Rupees 2 lacs and Rupees 2 lacs and the balance of Rupees 1 lac would not be subject to taxation. In fact, in most cases, if not all, the aggregate of the values of the life interest and the remainderman's interes would be less than the value of the total corpus of the trust property, since the value of the remainderman's interest would be the present value of his right ot received the corpus of the trust property at an uncertain furture date and this would almost invariably be less than the value of the corpus of the trust property after deducting the value of the preceding life interest. The balance of the value of the corpus of the trust property would not, in the result, be subjected to assessment to wealth tax. But that is the logical and inevitable effect of the scheme of Section 21. Once it is established that a trustee of a trust can be assessed only in accordance with the provisions of Section 21 and under these provisions, it is only the beneficial interests which are taxed in the hands of the trustee, it mus follow as a necessary corollary that no part of the value of the corpus in excess of the aggregate value of the beneficial interests can be brought to tax in the assessment of the trustee. To do so would be contrary to the scheme and provisions of Sec. 21. It would be clearly erroneous to assess the trustee to wealth tax on the excess of the value of the corpus over the actuarial valuations of the life interest and the reversionary interest of the beneficiaries. We find that the same view has been taken by the Gujarat High Court in Commr. Of Wealth-tax, Gujarat v. Smt. Arundhati Balkrishna Trust, (1975) 101 ITR 626 (Guj) and this view, in our opinion, represents the correct law on the subject.

16. We have given in the preceding paragraph illustration of a case falling within Sec. 21, sub-s, (1), but the illustration can be slightly modified by taking a case here property is held in trust for giving income for life to A and on his death, to such of the children of A as the trustee might think fit, Section 21, sub-section (4) would be clearly attracted in such as case so far as the reversionary interest is converned, because on the relevant valuation date, the remaindermen and their shares would be indeterminate and unknown. But here also two assessments would have to be made on the trustee: one in respect of the actuarial valuation of the life interest of A under sub-sec. (1) of Section 21 and the other in respect of the actuarial valuation of the totality of the beneficial interest in the remainder as if it belonged to one individual under sub-sec. (4) of Section 21. The difference between the value of the corpus of the trust property and the aggregate of the acturial valuations of the life interest of A and the remaindermen's interest would not be assessable in the hands of the trustee because, as pointed out above, the trustee can be taxed only in respect of the beneficial interests and there being no other beneficiary apart from A and such of the children of A as the trustee might think fit, the balance of the value of the corpus cannot be brought to tax in the hands of the trustee under sub-section (1) or (4) of Section 21.

17. It is therefore, obvious that no part of the corpus of the trust funds could be assessed in the hands of the asessees, but the assessment could be made on the assessees only in respect of the beneficial interest of the beneficiaries in the trust funds under sub-sections (1) and (4) of Section 21. Now so far as the beneficiaries specified in the Second Schedule are concerned, each of them had a life interest in the unit or units allocated to him or her and the assessees were liable under sub-section (1) of Section 21 to be assessed in respect of such life interest 'in the same manner and to the same extent' as the respective beneficiaries. But the question is as to how the beneficial of each set of unit or units was of interest in the remainder in respect to be taxed in the hands of the assessees. The argument of the Revenue was that it could not be said on the releant valuation date as to who would be the beneficiaries entitled to the remainder on the death of the concerned relative and hence the beneficiaries were indeterminate and unknown on the relevant valuation datge and in the circumstances, sub-section (1) of Section 21 had no application. Sub-section (4) of Section 21 was also not attracted, said the Revenue, because that sub-section could apply only where the shares of the beneficiaries themselves were indeterminate or unknown and not where the beneficiaries themselves were intermediate and unknown. The Revenue contended, on the basis of this argument , that since the beneficial interest in the remainder in respect of each set of unit or units was not taxable either under sub-s. (1) or sub-section (4) of Sec. 21, the assessees were liable to be assessed in respect of the value of the corpus of such unit or units minus the valuation of the life interest under Sec. 3. But this contention is plainly erroneous, because, on the view we have taken as regards the interpretation of Sections 3 and 21, a trustee can be assessed to wealth tax only in respect of the beneficail interests of the beneficiaries and no assessment can be made on him in respect of any part of the corpus of the trust funds apart from and without reference to Section 21. We shall presently show that under the Trust Deed on each relevant valuation date the shares of the beneficiaries in the remainder in respect of each set of unit or units were determinate and known and the case was, therefore, governed by sub-section (1) of Section 21, but we may point out that even if the beneficiaries were indeterminate or unknown, sub-sec. (4) of Section 21 would apply and the assessees would be liable to be assessed in respect of the totality of the beneficial interest in the remainder as if it belonged to one single beneficiary. When the beneficiaries are indetrminate or unknown, then obviously their shares would also be indeterminate and unknown. We cannot

conceive of a case where the shares would be determinate or known while the beneficiaries are indeterminate and unknown. The expression 'where the shares of the beneficiaries are indeterminate or unknown' carried with it by necessary implication, a situation where the beneficiaries themselves are indeterminate or unknown. Such, for example, would be the case in the modified illustration given above. There, the beneficiaries are such of the children of A as the trustee might think fit and the beneficiaries themselves would, therefore, be indeterminate and unknown and yet sub-section (4) of Section 21 would apply in their case. To take any other view would be to deny full maing and effect to the words "where the shares of the beneficiaries are indeterminate or unknown: and to create a lacuna where, even though the beneficial interest in the remainder is disposed of under the Trust Deed, such beneficial interest would escape assessment. The correct interpretation of sub-sec. (4) of Section 21 must, therefore, be that even where the beneficiaries of the remainder are indeterminate or unknown, the trustee can be assessed to wealth tax in respect of the totality of the beneficial interest in the remainder, treating the beneficiaries fictionally as an individual.

18. This immediately takes us to the question as to which of the two sub-sections (1) or (4) of Section 21 applies for the purpose of assessing the assessees to wealth tax in respect of the beneficial interest in the remainder qua each set of unit or units allocated to the relatives specified in the Second Schedule. Now it is clear from the language of Sec. 3 that the charge of wealth tax is in respect on the net wealth on the relevant valuation date, and, therefore, the question in regard to the applicability of sub-section (1) or (4) of Section 21 has to be determind with reference to the relevant valuation date. The Wealth Tax Officer has to determine who are the beneficiaries in respect of the remainder on the relevant date and whether their shares are indeterminate or unknown. It is not at all relevant whether the beneficiaries may change in subsequent years before the date of distribution, depending upon contingencies which may come to pass in future. So long as it is possible to say on the relevant valuation date that the beneficiaries are known and their shares are determinate, the possibility that the beneficiaries may change by reason of subsequent events such as birth or death would not take the case out of the ambit of sub-section (1) of Section 21. It is no answer to the applicability of sub-section (1) of Section 21 to say that the beneficiaries are indeterminate and unknown because it cannot be predicated who would be the beneficiaries in respect of the remainder on the death of the onwner of the life interest. The position has to be seen on the relevant valuation date as if the preceding life interest had come to an end on that date and if, on that hypothesis, it is possible to determine who precisely would be the beneficiaries and on what determinate shares, sub-section (1) of S.21 must apply and it would be a matter of no consequence that the number of beneficiaries may vary in the future either by reason of some beneficiaries ceasing to exist or some new beneficiaries coming into being. Not only does this appear to us to be the correct approach in the application of sub-section (1) of Section 21, but we find that this has also been the genereal concensus of judicial opinion in this country in various High Courts during the last about thirty years. The first decision in which this view was taken was rendered as far back as 1945 by the Patna High Court in Khan Bahadur M. Habibur Rahman v. Commr. Of Income-tax, Bihar and Orissa, 13 ITR 189: (AIR 1945 Pat 494) and since the, this view has been followed by the Calcutta High Court in Suhashine Karuri v. Wealth-Tax Officer, Calcutta, 46 ITR 953 : (AIR 1962 Cal 295) the Bombay High Court in Trustees of Putlibai R.F. Mulla Trust v. Commr. Of Wealth Tax, (1967) 66 ITR 653 (Bom) (supra) and Commissioner of Wealth Tax, Bombay v. Trustees of Mrs. Hansabai Tribhuwandas Trust, (1968) 69 ITR 527 (Bom) and the Gujarat High Court in Padmavati Jaykrishna Trust v. Commr. Of Income Tax, Gujarat, (1966) 61 ITR 66 (Guj) (supra). The Calcutta High Court pointed out in Suhashini Karuri's case: "The share of a beneficiary can be said to be indeterminate if at the relevant time the share cannot be determined but merely because the number

of beneficiaries vary from time to time, one cannot say that it is indeterminate." The same proposition was formulated in slightly different language by the Bombay High Court in Trustees of Putlibai R. F. Mulla Trust's case: "The question whether the shares of the beneficiaries are determin ate or known has to be judged as on the relevant date in each respective year of taxation. Therefore, whatever may be the position.....as to any future date, so far as the relevant date in each year is concerned, it is upon the terms of the trust deed always possible to determine who are the sharers and what their shares respectively are." The Gujarat High Court also observed in Padmavati Jaykrishna Trust's case: "..... in order to ascertain whether the shares of beneficiaries and their numbers were determinate or not, the Wealth-tax Officer has to ascertain the facts as they prevailed on the relevant date and therefore any variation in thenumber of beneficiaries in future would not matter and would not make sub-section (4) of Section 21 applicable." These observations represent correct statement of thelaw and we have no doubt that in order to determine the applicability of sub-section (1) of Section 21, what has to be seen is whether on the relevant valuation date, it is possible to say with certainty and definiteness as to who would be the beneficiaries and whether their shares would be determinate and specific, if the event on the happening of which the distribution is to take place occurred on that date. If it is, sub-section (1) of Sec.21 would apply: if not, the case will be governed by sub-section (4) of Section 21.

19. Now, in the present case it is clear from the provisions of the Trust Deed that, in the case of each set of unit or units, it is possible to say with certainty and definiteness on each relevant valuation date as to who would be the beneficiaries and in what specific shares if the respective relative mentioned in the Second Schedule to whom such set of unit or units is allocated under the Trust Deed wre to die on that date. That is the view taken by the High Court in the judgment impugned in these appeals and we think it is a correct view on the interpretation of the provisions of the Trust Deed. We may point out in fairness to thelearned counsel appearing on behalf of the Revenue that he did not seriously contest this position. There is no a single contingency unporided for in the Trust Deed and whenever a relative specified in the Second Schedule, who is the owner of life interest in the set of unit or units allocated to him or her dies, there would always be beneficiaries capable of being easily ascertained and identified who would be entitled to the corpus of such unit or units in determinate the specific shares, either immediately on the death of such life tenant or after another life interest. The remainder in respect of each set of unit or units allocated to the respective relative specified in the Second Schedule was, therefore, liable to be assessed in the hands of the assessees under Section 21, sub-section (1) 'in the same manner and to the same extent' as each beneficiary in respect of his determinate and known share in such remainder. That plainly excluded the applicability of sub-section (4) of Section 21 in the assessment of the remainder. The High Court also examined the question whether the Trust Deed created one single individible trust or several distinct and separate trusts and, disagreeing with the view taken by the Tribunal, came to the conclusion that "the Deed of Trust createed several trusts in favour of the relatives specified in the Second Schedule and their issues". But on the view taken by us that it is sub-section (1) of Section 21 and not sub-sec. (4) of that section which applies in the assessment of the remainder in respect of each set of unit or units in the hands of the assessees, it is unnecessary to pursue this question and decide whether the Trust Deed created one single indivisible trust or as many trusts as the number of beneficiaries specified in the Second Schedule.

20. We accordingly agree with the High Court that question No. (I) should be answered in favourof

the Revenue and Question Nos. (ii), (v) and (vi) should be answered in favour of the assessees. We do not propose to answere Questions Nos. (iii) and (iv), since in view of the answeres given by us to the other questions, it is unnecessary to dicide them. The appeals are accordingly dismisssed. The Commissioner will pay the costs of these appeals to the assessees in one set.

Appeals dismissed.