**SUPREME COURT OF INDIA**

JAYALAKSHMI COELHO

Vs.

OSWALD JOSEPH COELHO

28/02/2001

(Brijesh Kumar, D.P.Mohapatro)

Appeal (civil) 3609 of 1998

**JUDGMENT**

BRIJESH KUMAR, J.

This appeal is preferred against the Judgment and Order dated February 17, 1998 passed by a Division Bench of the Bombay High Court in Letters Patent Appeal No.204 of 1997. The Court of the Principal Judge, Family Court, Bombay, modified its earlier decree which order was challenged by means of a Writ Petition. The Writ Petition was dismissed upholding the order passed by the Principal Judge, Family Court. The impugned order passed by the Division Bench confirmed the order of the learned Single Judge giving cause of grievance to the appellant. Hence, the present appeal. We have heard Ms. Indra Jaising, learned Senior Counsel appearing for the appellant and Shri A.S. Bhasme, learned counsel appearing for the respondent. The appellant Jayalakshmi Coelho and the respondent Oswald Joseph Coelho got married on January 6, 1977 in accordance with the Special Marriage Act, 1954. Out of the said wedlock, a female child Neisha Anne Coelho was born on August 1, 1978. Later, however, differences seem to have arisen between the appellant and her husband, ultimately, culminating into, the parties agreeing for dissolution of their marriage and they entered into an agreement to that effect on 26th July, 1991. It is stated in the agreement that it had become impossible for them to live any longer as husband and wife so they had decided to dissolve the marriage by mutual consent. They had also settled other issues amicably relating to their properties and custody of the child etc. in terms as indicated in the agreement. According to the agreement, the flat in which the parties had been living as husband and wife, on certain terms and conditions, was to be transferred by the wife in the name of the husband. The other matters relating to jewelry, ornaments, utensils, personal belongings etc. had also been mentioned in the agreement as well as about the fixtures and furniture in the house. It also mentioned about the custody of the daughter. The petition for divorce by mutual consent was filed in the Family Court at Bandra, Bombay on 21.8.1991 under Section 28 of the Special Marriage Act, 1954. Apart from other averments, made in the petition for mutual divorce, in paragraph 8, it was mentioned that Flat No.11 in Mon-Bijou Cooperative Housing Society was purchased by both the parties out of their own funds in the year 1976. Though it was in the name of the appellant yet she was to relinquish her right, title and interest in the said flat in the favour of the respondent, namely, the husband, as per their agreement arrived at earlier on 26th of July, 1991. It was, thereafter, mentioned that the Memorandum of Agreement may be treated as part and parcel of the divorce petition and order be passed accordingly. However, in paragraph 14 of the petition, only the following reliefs were prayed :- (a) that the marriage between the Petitioners solemnized on the 6th day of January, 1977, at

Bombay be dissolved by a decree of divorce;

(b) such other reliefs as this Honble Court may deem fit think and proper.

The Family Court granted the decree as follows:- DECREE IN THE FAMILY COURT AT BOMBAY PETITION NO. AA-1221 OF 1991

Jayalakshmi Coelho Residing at No.2 Laxmi Bhawan, Matunga, Bombay .Petitioner No.1

And

Oswald Joseph Coelho Residing at No.11, Mon-Bijou Chimbai Road, Bandra Bombay ..Petititoner No.2

1. Jayalakshmi Coelho and Oswald Joseph Coelho have filed this joint petition under Section 23 of Special Marriage Act, 1954 to get a decree of divorce by mutual consent.

2. Marriage between the petitioners Jayalakshmi and Oswald took place under the provisions of the Special Marriage Act, 1954 at Bombay on 6th January 1977. Thereafter they started dwelling together at Bandra. Their marital life was also fruitful by birth of daughter Neisha Anne Coelho, who was born on 1st August 1978. But it seems that thereafter differences arose between the two and in July 1986, Jayalakshmi left the matrimonial house and went to her parental house. Both the parties decided to take divorce by mutual consent.

3. This petition is coming on 7.3.1992 before Shri S.D. Pandit, Judge, Family Court, Bandra. In presence of Petitioner No.1 and 2, suit is decreed.

O R D E R

Marriage between the petitioners Jayalakshmi and Oswald is hereby dissolved by decree of divorce by mutual consent.

No order as to costs.

The respondent, namely, the husband, after passing of the consent decree, as indicated above, moved an application dated June 30, 1992 stating therein that decree by mutual consent was granted to the parties on 7th March, 1992 but the order remained silent on other reliefs which were mentioned in the agreement and in paragraph 8 of the petition relating to transfer of Flat No.11, Mon-Bijou Co- operative Housing Society, 60-D, Chimbai Road, Bombay. According to the agreement dated 26.7.91, the flat was to be transferred in the name of the husband on payment of Rs.1,70,000/- to the wife. But the said prayer was not made for the reason as indicated below in paragraph 3 of the petition for modification of decree:-

I say that though all these averments and facts were put on record, in the petition, both the Petitioners being lay persons, and appearing in this Honble Court without the assistance of any lawyer, failed to ask for relief, as per the said agreement in their prayer clauses. Consequently the Order passed by this Honble Court remained silent on those reliefs.

It has not been said that the court wanted to or intended to pass order about transfer of flat but it was not so ordered due to any clerical error or accidental slip. Thereafter, in the application for

modification, averments have been made to the effect that the respondent, namely, the husband had been approaching the appellant for making the payment of the balance amount of Rs.1,60,000/-, 10,000/- having been paid earlier, but she had not been accepting the same on one pretext or the other and that she was trying to sell away the flat to some other person. Therefore, it had become necessary to move the application praying for the following relief in para 10 of the application :- (a) That this Honble Court be pleased to modify its order and decree dt. 7th March, 1992 in M.J. Petition No.AA 1221/91 by including and granting the following prayers :-

(1) That the Opponent (Original Petitioner No.1) be directed by an order of mandatory injunction to transfer Flat No.11, Mon-Bijou Co-op.Hsg. Society Chimbai Road, Bandra, Bombay 400 050, to the name of Petitioner No.2 on payment of Rs. 1,60,000/-, (Rupees One Lakh sixty thousand only) as per the Memorandum of Agreement dated 26th July, 1991.

(2) That the Opponent Original Petitioner No.1 be directed by an order of mandatory injunction to remove herself and her belongings from the said flat No.11, Mon- Bijou Co-op. Hsg. Society, Chimbai Road, Bandra 400 050, forthwith;

(3) That it be declared that the custody of minor child Neisha anne Coelho is granted to the Applicant husband.

(b) Pending the hearing and final disposal of this application the Opponent Original Petitioner No.1 be restrained by an order of injunction from disturbing the Petitioner No.2 is peaceful possession of flat No.11, Mon-Bijou Co-op. Hsg. Society Chimbai Road, Bandra, Bombay 400 050.

© That the pending the hearing and final of disposal of this Application opponent the original Petitioner No.1 be restrained by an order of injunction from selling parting with possession of or creating any third part rights in the said flat No.11, Mon-Bijou Co-op. Hsg. Society, Chimbai Road, Bandra, Bombay 400 050.

(d) Interim and ad interi orders in terms of prayer (b) and (c).

(e) For cost of this Application.

(f) Any other orders that this Honble Court deem fit in the nature and circumstances of the case.

The application was opposed and an affidavit in reply was filed by the appellant-wife. According to her, no payment was made by the respondent-husband as per the terms of the agreement and the allegation that any draft for payment was prepared and sent to the appellant was false and incorrect. It is not necessary to mention all other averments made in reply, about ownership etc. of the flat. It is also denied that in the absence of lawyers, there was any handicap, as the parties are quite educated. It was, however, also submitted in the reply that the payment of Rs.1,60,000/- was to be made by the husband-respondent to the appellant-wife within 4 months from the date of execution of the Memorandum of Agreement. The agreement was entered into on 26.7.1991 and the decree of divorce was granted on 7.3.1992, after about 7 to 8 months of the agreement, but no payment was made. Raising several other pleas, she prayed for the rejection of the application. The Family Court, on the aforesaid application, passed an order on 11.11.1992 amending the decree inserting all the Clauses (1) to (11) of the agreement in the amended decree. The order of amendment of the decree first states about the decree passed on 7.3.1992 and makes the amendment observing :- It is hereby ordered and decreed that the consent terms incorporated in Memorandum of Agreement which is the part and parcel of the Petition be included in decree from condition No.1 to Condition No.11.

It is to be noticed that no such prayer was made in the application for incorporating the conditions of agreement in the decree. The prayers were for grant of mandatory injunction. So far legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 C.P.C., any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice. A reference to the following cases on the point may be made: The basis of the provision under Section 152 C.P.C. is found on the maxim Actus Curiae Neminem Gravabit i.e. an act of Court shall prejudice no man (Jenk Cent-118) as observed in a case reported in AIR 1981 Guwahati 41, The Assam Tea Corporation Ltd. versus Narayan Singh and another. Hence, an unintentional mistake of the Court which may prejudice cause of any party must be rectified. In another case reported in AIR 1962 S.C. 633 I.L. Janakirama Iyer and others etc. etc. versus P.M. Nilakanta Iyer it was found that by mistake word net profit was written in the decree in place of mesne profit. This mistake was found to be clear by looking to the earlier part of the judgment. The mistake was held to be inadvertent. In Bhikhi Lal and others versus Tribeni and others AIR 1965 S.C. 1935 it was held that a decree which was in conformity with the judgment was not liable to be corrected. In another case reported in AIR 1966 S.C. 1047 Master Construction Co. (p) Ltd. versus State of Orissa and another it has been observed that arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court liable to be corrected. To illustrate the point, it has been indicated as an example that in a case where the order may contain something which is not mentioned in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the Court who may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits are required for such rectification of mistake. In a case reported in (1999) 3 S.C.C. 500 Dwarakadas Versus State of M.P. and Another this Court has held that the correction in the order or decree should be of the mistake or omission which is accidental and not intentional without going into the merits of the case. It is further observed that the provisions cannot be invoked to modify, alter or add to the terms of the original decree so as to in effect pass an effective judicial order after the judgment in the case. The trial court had not granted the interest pendente lite though such a prayer was made in the plaint but on an application moved under Section 152 C.P.C. the interest pendente lite was awarded by correcting the judgment and the decree on the ground that non-awarding of the interest pendente lite was an accidental omission. It was held that the High Court was right in setting aside the order. Liberal use of the provisions under Section 152 C.P.C. by the Courts beyond its scope has been deprecated. While taking the above view this Court had approved the judgment of the Madras High Court in Thirugnanavalli Ammal versus P. Venugopala Pillai AIR 1940 Madras 29 and relied on Maharaj Puttu Lal versus Sripal Singh

reported in AIR 1937 Oudh 191: ILR 12 Lucknow 759. Similar view is found to have been taken by this Court in a case reported in (1996) 11 S.C.C. 528 State of Bihar and another versus Nilmani Sahu and another where the Court in the guise of arithmetical mistake on re-consideration of the matter came to a fresh conclusion as to the number of trees and the valuations thereof in the matter which had already been finally decided. Similarly in the case of Bai Shakriben (dead) By Natwar Melsingh and others versus Special Land Acquisition Officer and another reported in (1996) 4 S.C.C. 533 this Court found omission of award of additional amount under Section 23 (1-A), enhanced interest under Section 28 and solatium etc. could not be treated as clerical or arithmetical error in the order. The application for amendment of the decree in awarding of the amount as

indicated above was held to be bad in law.

As a matter of fact such inherent powers would generally be available to all courts and authorities irrespective of the fact whether the provisions contained under Section 152 C.P.C. may or may not strictly apply to any particular proceeding. In a matter where it is clear that something which the Court intended to do but the same was accidentally slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the ends of justice to enable the Court to rectify such mistake. But before exercise of such power the Court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits some thing which was intended to be otherwise that is to say while passing the decree the court must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands added to it. The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order or decree could or should be passed.. There should not be re-consideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought court may find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of Courts inherent powers as contained under Section 152 C.P.C. It is to be confined to something initially intended but left out or added against such intention. So far the legal proposition relied upon by the learned Single Judge and the Honble Division Bench deciding the matter in its LPA jurisdiction, we are totally in agreement with the same i.e. an unintentional mistake which occurred due to accidental slip has to be rectified. The question however which requires consideration is as to whether on the facts of the present case and the principles indicated above, it could be said that there was any clerical or arithmetical error or accidental slip on the part of the Court or not.

Thus coming to the facts of the case it is to be noticed that in Paragraph 8 of the main petition for dissolution of the marriage it has been averred that the agreement arrived at between the parties on 26.7.91 may be treated as part and parcel of the petition while passing the order in the case accordingly. The relief however claimed in paragraph 14 of the petition as quoted earlier indicates that specifically decree for divorce alone was prayed for. There was no prayer to the effect that the agreement may be made a part of the decree or the terms and conditions given in the agreement may be incorporated in the decree. It may be observed that whatever forms part of the petition does not automatically become a part of the decree unless specifically it is so provided. It can only be kept in mind while passing the decree. The same seems to be the averment in paragraph 8 of the petition. Next, coming to the prayer made in the application dated June 30, 1992 for modification of the decree, it is for grant of orders of mandatory injunctions of different nature and in different terms as quoted in the earlier part of this judgment. Again, there is no prayer for incorporating the terms and conditions of the agreement dated 26.7.1991 in the decree. So it is not something which can be said to have been left out accidentally earlier. Paragraph 3 of the application for modification quoted earlier, indicates a different reason for not passing decree relating to other matters. It is not shown to be on the ground of clerical error or accidental slip on the part of the Court. We have also perused the order dated 11.11.1992 passed by the family court allowing the application for modification. It is a lengthy order running into 11 pages at places discussing the merits of the matter as well. Paragraph 5 of the order reads as follows: It was stated by the appellant that though original petition contain the agreement which was part and parcel of the original petition, in which the terms of the modalities were agreed upon by the parties regarding the disposal of the matrimonial flat.

Inadvertently those terms were not included in decree and therefore the appellant also prays that a decree be suitably amended.

According to the observations of the Court as quoted above the case of the respondent-husband was that it was due to inadvertence that the terms of the contract were not included in the decree but we find that this was not the case of the respondent- husband in Paragraph 3 of his application for modification of the order. according to which the parties being lay persons without assistance of lawyers had failed to ask for the relief as per the agreement in their prayer clause. Consequently order was silent on those reliefs. No averment of inadvertence by reason of which court may not have included those terms in the decree has been indicated in the application for modification of the decree. It is only an effort to improve upon the case as taken up by the respondent in his application. Again we find that in Para 16 of the order the learned judge of the family court after referring to certain decisions cited by the parties holding some of them to be applicable and others not, held as follows: I have already pointed out in the earlier paragraph of my judgment that both the parties intended to get divorce and agreement to that effect was entered into between the parties which form part of the pleading and both parties initially accepted that it should also form part of the decree (underlined by us to emphasize)

It is to be noticed that no such prayer was ever made by the parties that the agreement should form part of the decree. Paragraph 8 of the petition for dissolution of the marriage only averred that the agreement be treated as part and parcel of the petition while passing the order accordingly. We have already adverted to this aspect of the matter in the earlier part of this judgment. The learned judge therefore arrived at the conclusion that it appeared that the predecessor in office has inadvertently forgotten to incorporate the terms and conditions of the agreement in the decree which was an accidental omission. It is against the case as taken up by the respondent in his application vide its Paragraph 3. The unfounded observation of accidental omission on the part of the Court as made by the Family Court seems to have been taken into account by the learned Single Judge in the writ petition and the learned Division Bench deciding the matter in appeal. There is nothing on the record to indicate that the learned judge of the family court intended to incorporate the terms and conditions of the agreement in the decree. It would have been a different case if it was shown that the Court intended to incorporate those terms but accidentally it slipped or the court forgot to do so. But there is no material on the basis of which intention of the family court can be inferred for incorporating the terms and conditions of the agreement in the decree for divorce on the basis of which it can be said that whatever was intended by the court could not be reflected in the decree. There is not even a whisper about the Memo of Agreement dated 26.7.91 in the narration made in the decree dated 7.3.92. The respondents prayer for grant of mandatory injunction, as quoted in the earlier part of this judgment, by way of modification of the decree dated 7.3.1992, has been rightly not granted. The application was thus liable to be rejected instead of incorporating the terms and conditions of the agreement in the decree in respect of which no prayer was made in the application for modification of decree. We may also make a brief mention of one aspect of the matter without meaning to enter into the merits of that question i.e. in regard to the transfer of the flat, which seems to be the bone of contention, on payment of Rs.1,70,000/- by the husband-respondent to the wife. Much has been said about it in the application for modification and in reply thereof. The payment was to be made within four months of entering into the agreement, that is to say, by 26th November, 1991. On such payment being made the wife was to transfer the property in favour of the husband. The decree has been passed on 7.3.1992. Undisputedly the amount has not been paid to the wife. The payment was ever offered or in time, if at all, is a disputed question between the parties which need not be gone into in these proceedings. But it may possibly have some bearing on the question by reason of which the Family Court did not incorporate the terms of the agreement in the decree or

for that reason namely payment having not been made the parties may have preferred to keep silent about it before the Family Court on 7.3.1992 while the Court was passing the decree. The main part of the agreement related to divorce by mutual consent as it had become impossible for the couple to live together. This fact alone finds mention in the decree passed by the family court dated 7.3.1992. All that we mean to indicate is that there may be other possible reasons for the family court for not incorporating the terms and conditions of the agreement in the decree, or the reason as indicated by the husband-respondent in Paragraph 3 of his application for modification of the decree itself. In the above background and looking to the prayers made by the respondent-husband for granting mandatory injunction in our view the application for rectification of decree was totally misconceived and was only liable to be dismissed rather to incorporate terms and conditions of the agreement dated 26.7.1991 in respect of which no prayer was made in the application for modification nor in the original petition for dissolution of marriage more particularly when no accidental slip on the part of the Court was indicated in the application nor the same being substantiated. In view of the discussion held above we allow this appeal and set aside the orders passed by the High Court and family court dated 11.11.1992 allowing the application for rectification/modification of the decree dated 7.3.1992. In the facts and circumstances of the case there would however be no order as to costs. IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 4152 OF 1991

Municipal Council, Kota, Rajasthan Appellant(s) Versus The Delhi Cloth & General Mills Co. Ltd., Delhi, etc. etc. Respondents

WITH

(Civil Appeal Nos.4153/1991, 2994/1984 & 2842/1989)

J U D G M E N T

RAJU, J.

These appeals involve for consideration an interesting question as to the nature and character of the levy of Dharmada, as it is called in the form of an octroi by the Municipal Council, Kota in Rajasthan State, which, according to respondents, is not really an octroi, but the levy and demand of dharmada tax as such on the goods imported by the respective respondent-companies into the municipal limits of Kota. It is necessary to trace the origin of this levy in this part of the State of Rajasthan.

From the records and materials placed before us, it transpires that in 1860 A.D. the late Ruler of Kota, claimed to be the Sovereign Authority to make even laws, imposed, though on the basis of also a volition expressed by the traders in the locality to pay one such, the levy of dharmada on the traders of `Nandgaon (the ancient name of Kota city), as a compulsory levy by the authority of the said law made by the Ruler. The Schedule of rates of dharmada, so imposed, was said to have continued till 1894 when it came to be sanctioned also by the Resolution dated 6.11.1894 of the Municipality Committee. This seems to have in succession followed by another Schedule of octroi dated 22.11.1922 issued by the Superintendent of Custom and Chief Excise Officer, Kota State, revised subsequently in 1923. It is also disclosed that prior to 1929 cases of evasion of Chungi/Dharmada were entertained and decided in the Court of Magistrate, Kota State, under Section 106 of the Customs Act, then in force and evasion of octroi and dharmada were said to have been made even as a penal act punishable under the said Act. In the year 1929, the Kota State

Chungi Act was said to have been passed empowering the levy and collection of dharmada by the Municipal Board, Kota. In 1959, the Rajasthan Municipalities Act saved the operation of the Chungi Act, 1929.

The Rajasthan Municipalities Act, 1959 (hereinafter called the Act) enacted a scheme of taxation for imposition of various categories of taxes by the local authorities classified as obligatory taxes in Section 104 and other taxes that may be imposed in Section 105, besides making provisions for levy of property tax, etc. Section 104, as it stood at the relevant point of time, obligated every Municipal Board by a mandate of law to levy at such rate and from such date as the State Government may in each case direct by Notification in the Official Gazette and in such manner as is laid down in this Act and as may be provided in the rules made by the State Government in this behalf, the following taxes, namely (1); (2) An octroi on goods and animals brought within the limits of the Municipality for consumption, use or sale therein.

Coming to the Notifications issued stipulating the rates, it may be stated at this stage that after the coming into force of the Constitution of India, several Notifications came to be issued from time to time such as, i.e., Notification No.F.2(150)LSG/50 dated 21.8.1950; Notification published in the Official Gazette dated 17.12.1951; Notification No.F.150LSG/60 dated 1.2.1962 successively one after the other, in supersession of the earlier one.

It is seen that subsequently the Government has issued another Notification dated 13.5.1968 under Section 104(2) of the Act authorising the Municipal Council, Kota, to levy octroi under three sub-heads for different and specific purpose and objects, namely, (1) Octroi proper; (2) Dharmada; and (3) Nirkhi, as follows:-

Rajasthan Gazette Extraordinary

Jaipur, May 13, 1968

Notification Tax F.144(2) D.L.B. 161 :-

In supersession of current rates of octroi of Kota Municipal Board, the State Government in exercise of power conferred by Section 104(2) of the Rajasthan Municipalities Act, 1959 (Rajasthan Act No.38/1959) hereby directs that the octroi will be levied on goods and animals brought within the limits of Kota Municipality for use, consumption or sale at the rates specified in the following Schedule from the date of publication of the Schedule:

Schedule Name of Goods Specified rate Per quantity

Serial Nos. 1 to 101

DHARMADA

1. Grains all types 0.02 nP per Qntl.

Upto Serial No.18

ANIMALS AND BIRDS, ETC.

Serial Nos.19 to 31

INFLAMABLE & CLEANING MATERIALS FOR USE AS FUEL, ETC.

Serial Nos.32 to 40

BUILDING & CONSTRUCTION MATERIALS

Serial Nos.41 to 49

MEDICINES, CHEMICALS, PERFUMES, COSMETIC MATERIALS,ETC.

Serial No.50

SHAHARNAMA NIRKHI, MUNICIPAL COUNCIL, KOTA

Grains all types 1.00 per two

quintals.

Tukham Roghan 0.01

XX XX XX

By the order the Governor Sd/- P.N. Seth Deputy Secretary(Admn.)

We shall now advert to the history of the present litigation and the stage at which it has been brought to this Court in the above appeals with particular reference to the facts in C.A. No.4152/91. The respondent-company in C.A. No.4152/91 filed Civil Suit No.51/79 in the Court of the Additional Munsif and Judicial Magistrate, First Class No.2, Kota (South), seeking for a prohibitory relief against the appellant that it should not raise any demand of dharmada tax on any of the goods imported by the company or take up any other proceedings for the recovery of the same and the appellant should neither impose nor realise any Dharmada tax on the raw materials enumerated in the plaint, when brought by the company within the Municipal limits of Kota and for a consequential permanent injunction to that effect. The sum and substance of the claim of the respondent- company was that Section 104(2) enabled the State Government to authorise and as a consequence thereof, empower the appellant to levy the octroi tax, the kind of which envisaged in Entry 52 of List II of the Seventh Schedule to the Constitution of India and that the Notification dated 13.5.1968 insofar as it empowered the appellant to levy and collect Dharmada is illegal, unauthorised, unacceptable, unreasonable and, therefore, null and void. In justification of the said plea, it was urged that there is no provision in any of the Entries contained in List II of the Seventh Schedule to the Constitution for imposing dharmada tax and in the absence of any specific law made by the State Legislature, there can be no legal basis for the levy of dharmada tax by the municipality. Though, as noticed earlier, in the judgment of the Division Bench, the English translation of the Notification issued in 1962 has been extracted, reference is also made in the plaint to the Notification dated 13.5.1968 with a brief mention of the contents thereof by stating that under the said Notification the appellant has been authorised to levy octroi tax on goods brought within the Municipal limits for sale, consumption and use at the rates specified in the Schedule to the notification from the date of its publication in the Official Gazette and that so far as `dharmada is concerned, below the caption of the word `dharmada various articles have been enumerated and found divided into 14 categories and in every such category not only the names of the articles but the rate of dharmada on each category of those goods are also specified therein. It is also one of the

objections of the respondent - plaintiff that on the same goods on which octroi tax is payable, dharmada tax cannot be imposed at all with two different names. The stand taken by the appellant before the Civil Court was that dharmada is not separate from the octroi levy but on the other hand is part and parcel of the same levy for a specific purpose and recovered along with the octroi and, therefore, was well within the power and competency of the appellant to levy by virtue of the statutory Notification issued under Section 104(2) of the Act. Reliance was also placed on Article 277 of the Constitution of India in addition to relying upon the Kota State Chungi Act, 1929 and Section 2 of the Rajasthan Municipalities Act for the continued authority to levy the same.

The learned Trial Judge by his judgment and decree dated 26.11.1979 held that dharmada levy is also octroi and justified under Section 104(2) of the Act. Aggrieved, the respondent-companies pursued the matter in appeal in Civil Regular Appeal No.District Judge/12/80 and the learned Additional Civil Judge, Kota, by his judgment dated 8.9.81 concurred with the conclusion of the learned Trial Judge and dismissed the appeal. Thereupon, the matter has been pursued before the High Court. The learned Single Judge, placing reliance upon the earlier decision of a Division Bench in D.B. Special Appeal No.154/73, which is the subject-matter of Civil Appeal No.2994 of 1984 before us, allowed the claim of the respondent- company. It may be pointed out at this stage that the Division Bench sustained the challenge to the levy at the instance of the respondent-companies by holding that Section 104(2) of the Act only dealt with the obligatory taxes like octroi and cannot be held to include `dharmada tax and, therefore, the State Government could not have authorised the appellant-Municipality to collect dharmada on the entry of goods within the municipal limits of Kota. Though the Division Bench while sustaining the claim of the company therein not only issued a perpetual injunction restraining the appellant from levying and collecting any dharmada tax on the goods brought by the company within the limits of the Municipal Council, but also granted a decree, though not specifically prayed and sought for as required in law, directing refund of collections made, the learned Single Judge in the case dealt with by him though upheld the claim for prohibitory relief, yet applied the doctrine of undue enrichment and on the view that the respondent-companies have already realised the dharmada tax paid by passing over the same to the customer, the company also ought not to be allowed to retain the same and consequently instead of ordering refund to the company directed refund of the amounts collected (within six months) to the State of Rajasthan with a further direction as to the manner in which such amount has to be utilised by the State. It is in such circumstances these appeals have been filed before this Court by the Municipal Council, Kota.

Mr. Altaf Ahmad, learned Additional Solicitor General appearing for the appellant, strenuously contended that whatever be the nomenclature in substance, the levy and collection under the heading of dharmada being a levy on the entry of goods brought within the limits of the Muncipality for consumption, use and sale therein, it is essentially an octroi covered by Entry 52 of List-II of the Seventh Schedule to the Constitution of India and the mere fact that for historical reasons and administrative purposes, different names and/or labels were given to the levy would not change the nature and character of the tax to render it any the less an octroi or different in content and character than the one which it really is octroi. Placing reliance on the historical origin of the levy, it is also contended that the collections from the dharmada are being specifically earmarked for carrying out the charitable objects and obligations such as for feeding and clothing of the poor and the needy; for giving financial aid to educational institutions for maintaining Gaushalas and providing fodder to animals and rearing destitute cows; for taking care of stray dogs; for performing the last rites of unclaimed dead-bodies; for running Aushdhalyas, Dharamshalas, water huts; for distribution of books to poor boys and clothes and blankets to poor people; for giving subsidies to School, arranging sports, providing aid; for extension of hospitals and supplying medical instruments for the

same and even so many such charitable schemes and objects. It is claimed that the levy thus came to be made as dharmada, though it was well not only open but within the competency and jurisdiction of the State Legislature as well as the Government to authorise the Municipality to levy and collect for all those purposes under the specific category of octroi itself. The levy otherwise made under various headings such as octroi proper, dharmada and Nirkhi are stated to be only to continue the long established practice of maintaining the distinction based upon the different purposes for which the octroi was being levied under different categories or names. Argued the learned counsel further that in the absence of any specific prohibition or restriction in any law governing the particular levy, the State is entitled to a larger area of discretion and latitude in fashioning its own scheme, pattern, method or class of fiscal measures designed in the best possible manner that suits its financial and budgetary exigencies and necessities. As long as, in pith and substance, the levy satisfies the character of octroi, it is asserted, that how and in what form and manner and for what purposes the octroi or portions of the octroi are collected or utilised should be left to the discretion of the State. It is also contended that as a matter of principle, there is nothing illegal or unlawful and unconstitutional even to levy more than one tax or rates of tax on the same taxable event as long as all such levies or rates put together is not shown or substantiated to be either expropriatory or irrational.

Dr. A.M. Singhvi, learned senior counsel for the appellant in C.A.No. 4152/91, apart from adopting the submissions of the other senior counsel, noticed supra, further contended that as long as the levy satisfied the ingredients of the tax authorised to be imposed, it is irrelevant as to by what name the same is called or identified and that the dharmada levy in question having had its origin in pre-constitution laws at any rate is also saved and protected by virtue of Article 277 of the Constitution of India as well as Section 2 of both the the 1951 and 1959 Act. Reliance has also been placed on Section 105 (i), (ii), (iii) and (iv) to justify the levy in question. Both the learned counsel appearing for the appellants also relied upon the doctrine of prospective over-ruling by contending that the High Court ought not to have interfered with the levy and collections made for the period prior to the declaration of law by the Court and, at any rate should not have ordered for the refund of the tax already collected and spent on various charitable objects by the Municipal Council, either to the respondent-companies or to the Government, particularly when in the normal course of events the respondent-companies would have necessarily passed on the same to the consumers with the cost price of the products manufactured and sold by them.

Shri Shanti Bhushan, learned senior counsel appearing for the respondent-company, whose submissions have been adopted by the other learned counsel, with equal vehemence and force, contended that the levy of tax by the name of dharmada is unknown to law and there is no authority to provide for imposition of such a tax under the Constitution either by the State Legislature or the Government and consequently even by Local Authority and, therefore, the same has rightly been set aside by the High Court. It was also contended that Section 104(2) of the Act empowers the Government only to prescribe the rate and date for the levy of octroi in the manner provided in the Act and the Rules and, therefore, the very language of the Section precludes any argument that dharmada could be included in the octroi in any manner. Dharmada, it is contended, is a well-known concept and when the same Notification issued by the Government advisedly stipulates levy of octroi and dharmada separately, both cannot be claimed to be the same but instead considered as separate levies altogether. It is also further contended that municipal fund created has to be applied in respect of various purposes enumerated in Sections 98, 99, 101 and 102 and the sum collected could not be sent on Gaushalas, an item totally not permitted under law. Anything in excess of the rates fixed as octroi cannot be said to be octroi at all, according to the respondents, and therefore, dharmada sought to be levied over and above, by a separate name cannot also be called octroi. So

far as the relief of refund granted is concerned, it has been contended for the respondents that there is no material on record to show that they have passed on the tax to the consumers and that a levy, which has been held to be unauthorised and illegal, if found to have been also collected by a public authority, has to be refunded to the person who paid it under the coercion of law. Reference has also been made to the interim orders passed by this Court during the pendency of the appeals, granting leave to the appellant to recover from the companies, half of the dharmada tax due with effect from the date of the High Court Judgment with a further condition that in the event of the appeal being dismissed the amount recovered should be refunded to the company with interest at 12% per annum. Consequently, it is contended that the appellants must be made to refund the tax collected in terms of the orders of this Court once their claims in the appeal fail and no plea based either on the `doctrine of undue enrichment or the principle of prospective over-ruling could be permitted to be even raised. In traversing the claim of the appellant based on Articles 277 and 376 of the Constitution of India, it has been urged that those Articles will have no relevance or application to the cases on hand. Reliance has been placed upon the decision reported in The Commissioner of Income Tax, (Central) Delhi, New Delhi Vs. Bijli Cotton Mills (P) Ltd., Hathras, District Aligarh [(1979) 1 SCC 496], to substantiate the stand based upon the nature and character of Dharmada sought to be levied and collected.

We have carefully considered the submissions of the learned counsel appearing on either side in the light of the case law placed before us for our consideration. The main issue that looms large for consideration in these appeals is as to the real character and nature of the levy sought to be imposed and collected under the name of Dharmada and if the answer is to be that it is in no way different from octroi and it is one and the same it would become unnecessary for us to advert to the other aspects of the submission made on either side.

The genetic history of levy of octroi has been judicially noticed by this Court on many an occasion. In Burmah-Shell Oil Storage and Distributing Co. of India Ltd., Belgaum Vs. Belgaum Borough Municipality, Belgaum [AIR 1963 SC 906] a Constitution Bench of this Court not only traced the emergence of this concept as a limb of public finance but also succinctly noticed the successive stages of its development before it got crystallised into a topic of legislative power as enumerated in Entry 52 of List-II of the Seventh schedule to the Constitution of India in the following manner:

14. The particular tax was octroi and there was no description of the tax. The word octroi comes from the word octroyer which means to grant and in its original use meant an import or a toll or a town duty on goods brought into a town. At first octrois were collected at ports but being highly productive, towns began to collect them by creating octroi limits. They came to be known as Town duties. These were collected not only on imports but also on exports see Beuhler: Public Finance (3rd Edn.) p. 426. Grice in his National and Local Finance p.303 says that they were known as ingate tolls because they were collected at toll gates or barriers. Normally, they were levied on goods meant for consumption but in Seligmans Encyclopaedia of Social Sciences Volume IX page 570, octrois are described without any reference to consumption or use. This is how the editors describe octrois:-

As compared with the facilities of the National Government the possibilities of raising revenue by local bodies are quite limited. All forms of indirect taxation are practically closed to local authorities. They are unable to levy customs duties, although they may collect the so-called octrois; that is, duties levied on goods entering town.

15. It will be noticed that in the Government of India Act octroi was named but not described and

now the Constitution avoids the word octroi, as did the Government of India Act 1935 before, and gives a description. In the Boroughs Act the definition of octroi includes Terminal Tax. Terminal tax, as the Indian Statutory Commission points out, formerly meant in Indian fiscal terminology a tax which was levied at Railway Stations and collected by the Railway Administration on all goods imported or exported from the Station. It was also collected from passengers in some municipalities. We also learn from the Report that on the recommendation of a Committee appointed in 1908 terminal tax took the place of octroi in a large number of Municipalities at first in the United Provinces and then in others. At first the Government of India were not in favour of such a change. Octrois were levied on goods brought into a local area for consumption, use or sale and were indirect taxes but terminal taxes were regarded as direct. On July 6, 1917, the Government of India by a Resolution reversed their former policy and agreed that the conversion was not a change from indirect to direct taxation. Terminal taxes were of the nature of octrois, but were not quite the same. The main differences were, that there was no system of refunds under the Terminal Tax Rules (Terminal taxes as Findlay Shirras tells us were sometimes known as octrois without refunds) and for octroi to be levied the goods must be brought in for sale, use or consumption.

16. After the Scheduled-tax Rules the collection of terminal tax was restricted to those areas in which octroi was levied on or before July 6, 1917. Most of the municipal laws allowed collection of terminal taxes only if octrois were not levied. As the Taxation Enquiry Commission observes: (Vol. III Ch. IV page 401).

the most important difference lies in the requirement peculiar to octroi that, for this tax to become leviable, the goods must not only enter the area, but must be for the purpose of consumption, use or sale therein. Usually, this requirement is sought to be satisfied by (a) the ab initio exemption of the goods which merely pass through the area, whether the exit is immediate or after an interval, or (b) by the subsequent refund of the tax collected on such goods. Exemptions and refunds, therefore, are the distinguishing features of the octroi system.

17. Octrois and terminal taxes were different taxes though they resembled in one respect, namely, that they were leviable in respect of goods brought into a local area. While terminal taxes were leviable on goods imported or exported from the Municipal limits denoting thereby that they were connected with the traffic of goods, octrois, according to the legislative practice then obtaining were, leviable in respect of goods brought into a Municipal area for consumption or use or sale. It is not necessary to cite the Municipal Acts prior to 1935 but a reference to them will amply prove that such was the tax which was contemplated as octroi.

18. When the Government of India Act 1935 was enacted terminal taxes became a central subject, vide entry No. 58 of List 1, which reads as follows:-

58. Terminal taxes on goods or passengers carried by railway or air.

At that time, it was suggested by Sir Walter Leyton that both octrois and terminal taxes should be provincial subjects and that it would perhaps be possible to fuse the two. The Joint Committee, however, recommended otherwise and terminal taxes were separated from octrois and included in the central list. The proceeds of the terminal taxes, however, were to be distributed among the provinces. In allocating octrois to the Provinces, the word itself was avoided because terminal taxes are also octroi in a sense and instead a description of the tax was mentioned in entry No.49, which has been quoted already, and which read Cesses on the entry of goods into a local area for consumption, use or sale. This scheme has been repeated in the Constitution with the difference that

the entry relative to terminal tax now reads terminal taxes on goods and passengers carried by railway, sea or air, and the word taxes replaced the word cesses in the entry relative to octrois.

19. The history of these two taxes clearly shows that while terminal taxes were a kind of octroi which were concerned only with the entry of goods in a local area irrespective of whether they would be used there or not; octrois were taxes on goods brought into the area for consumption, use or sale. They were leviable in respect of goods put to some use or other in the area but only if they were meant for such user. When the Government of India Act, in its Scheduled Tax Rules, mentioned octrois, it intended to give the power to levy taxes in this well-understood sense, namely, on the entry of goods in a local area for consumption, use or sale.

There is no challenge in these cases to the levy of octroi as such but what is questioned is that which is purported to be levied and collected as Dharmada only which though the appellant Municipal Council would contend is only a levy of octroi for Dharmada purposes or to meet the obligations cast upon the council to carry out the various public charitable objects enumerated under Sections 98, 99, 101 and 102 of the Act, is challenged by the respondent-companies to be a different and separate tax, unwarranted, unauthorised and uncalled for under the provisions of the Constitution, the Act and notification issued under Section 104 (2) of the Act and therefore, illegal. Though, strong reliance has been placed upon the decision reported in (1979) 1 SCC 496 (supra) to contend that a payment of Dharmada is always understood as a gift or voluntary payment by commercial or trading custom for charitable purposes, in our view the said judgment though may be of help to understand the nature of Dharmada collected by traders from customers as a customarily established trade practice in certain areas or fields can be of no assistance whatsoever for determining the legality, propriety and validity of the notification issued under Section 104 (2) of the Act or the levy and recovery of octroi sought to be made under the heading of Dharmada. Yet another important fact to be noticed and firmly recorded is that there is no challenge by the respondent-companies to the levy on the ground that the levy and collection of Dharmada and Nirkhi under the Notification taken together with octroi or separately as octroi renders the levy either expropriatory or irrational, since such issues pertaining to the constitutional validity of a levy cannot be raised before ordinary civil courts and that too in a collateral manner, in a bare suit for injunction.

Entry 52 of List-II of the Seventh schedule to the Constitution of India enables the State Legislatures to enact a law providing for the levy and collection of taxes on the entry of goods into a local area for consumption, use or sale therein otherwise known as octroi and/or authorise the local authorities concerned to levy and collect the same. Section 104 (2) of the Act enables every Municipal Board to levy at such rate and from such date as the State Government direct by notification in the official gazette and in such manner as provided in the Act and the rules to be made by the Government an octroi on goods and animals brought within the limits of the Municipality for consumption, use or sale therein. The levy of tax envisaged under Section 104 as a whole, has been classified as `obligatory tax with a duty to levy, once notified by the Government, unless specifically got exempted from doing so from the Government by means of a notification, therefor under the proviso, thereto.

The Notification under challenge issued in the undoubted and indisputed exercise of powers under Section 104 (2) of the Act provide a schedule enumerating the class or category of goods and the rate of tax obligated to be levied by the Municipal Board. In the said schedule apart from specifying the levy to be made as octroi provision has been made to levy also Shaharnama Dharmada and Nirkhi Shaharnama with a specific enumeration and description of the class or category of goods, as and when such goods are brought into the Municipal limits for consumption, use or sale therein and

the rates as well. The scheme underlying the notification issued in exercise of the powers under Section 104 (2) of the Act seem to be to provide for an additional levy and collection of octroi on certain class or category of goods, under the nomenclature of Dharmada or Nirkhi, indicative more of the specific purpose or object of the demand so made but again only on goods brought within the limits of the Kota Municipality for consumption, use or sale demonstrating thereby that the collection under the name of Dharmada as well as Nirkhi is also by way of an octroi, the levy being on the very and only incidence of the entry of the goods and animals within the municipal limits for consumption, use or sale therein. If that be the correct position could it be legitimately questioned or challenged on the mere ground or for the only reason of there being a multiple rates of levy or double taxation.

Whenever a challenge is made to the levy of tax, its validity may have to be mainly determined with reference to the legislative competence or power to levy the same and in adjudging this issue the nature and character of the tax has to be inevitably determined at the threshold. It is equally axiomatic that once the legislature concerned has been held to possess the power to levy the tax, the motive with which the tax is imposed become immaterial and irrelevant and the fact that a wrong reason for exercising the power has been given also would not in any manner derogate from the validity of the tax. In M/s Jullundur Rubber Goods Manufacturers Association vs The Union of India and another (AIR 1970 SC 1589) this Court while dealing with a challenge to the levy of rubber cess under Section 12 (2) of the Rubber Act, 1947 as amended in 1960 observed that the tax in the nature of excise duty does not cease to be one such merely because the stage of levy and collection has been as a matter of legislative policy shifted by actually providing for its levy and collection from the users of rubber, so long as the character of the duty as excise duty is not lost and the incidence of tax remained to be on the production or manufacture of goods. Likewise, once the legislature is found to possess the required legislative competence to enact the law imposing the tax, the limits of that competence cannot be judged further by the form or manner in which that power is exercised. In (Morris) Leventhal and others vs David Jones, Ltd. (AIR 1930 PC 129), the question arose as to the power of the legislature to impose Bridge Tax, when the power to legislate was really in respect of tax on land. It was held therein as follows:

The appellants contention that though directly imposed by the legislature, the bridge tax is not a land tax, was supported by argument founded in particular on two manifest facts. The bridge tax does not extend to land generally throughout New South Wales, but to a limited area comprising the City of Sydney and certain specified shires, and the purpose of the tax is not that of providing the public revenue for the common purposes of the State but of providing funds for a particular scheme of betterment. No authority was vouched for the proposition that an impost laid by statute upon property within a defined area, or upon specified classes of property, or upon specified classes of persons, is not within the true significance of the term a tax. Nor so far as appears has it ever been successfully contended that revenue raised by statutory imposts for specific purposes is not taxation. [Emphasis supplied]

A Division Bench of the Allahabad High Court, in a decision reported in Raza Buland Sugar Co. Ltd., Rampur vs Municipal Board, Rampur (AIR 1962 Allahabad 83) had an occasion to consider the nature and character of an impost levied by the name, water tax, when the power was to levy tax on buildings. The Division Bench, while applying the ratio in AIR 1930 PC 129 (supra) held as hereunder:

5. Tax means burden of charges imposed by the legislative power of a State on person or property to raise money for public purposes. The expression fee connotes recompense for services rendered.

There is an element of quid pro quo in the case of fee. It is not so in the case of a tax. The learned counsel for the petitioner pointed out that cl.(b) of Sec.129 provides that water tax is to be imposed solely with the object of defraying the expenses connected with construction, maintenance, extension or improvement of municipal water works and that all moneys derived therefrom shall be expended on the aforesaid object. He argued that the fact that the money raised from water tax is to be spent only on the supply of water, introduces an element of quid pro quo. The argument does not appear to be tenable. Sec.129 (B) mentions the object of the tax. As the maintenance of regular supply of water and extending the supplies is one of the most beneficial public purposes, the section lays down that the money realised from this impost is to be spent on the construction, maintenance and extension of water works so that the purpose may not suffer on account of paucity of funds. In (Morris) Leventhal vs David Jones Ltd., AIR 1930 PC 129, their Lordships of the Judicial Committee held that there was no authority for the proposition that revenue raised by statutory imposts for specific purposes is not taxation.

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10. It is obvious that the subject-matter of water tax is not water. Though it is called water tax, it is not levied on its production. As explained by their Lordships of the Judicial Committee in Governor-General in Council vs Province of Madras, AIR 1945 P. C. 98, it is not the name of the tax but its real nature, its pith and substance as it has sometimes been said, which must determine into what category it falls. [Emphasis supplied]

We affirm the statement of law thus made above to be correct and in our view it is not the nomenclature used or chosen to christen the levy that is really relevant or determinative of the real character or the nature of the levy, for the purposing of adjudging a challenge to the competency or the power and authority to legislate or impose a levy. What really has to be seen is the pith and substance or the real nature and character of the levy which has to be adjudged, with reference to the charge viz., the taxable event and the incidence of the levy. We are convinced on the indisputable facts on record that the levy sought to be imposed and recovered as Dharmada being only on the goods brought within the municipal limits of Kota for consumption, use or sale therein the same in truth, reality and substance is only an octroi for the purpose of carrying out the several public charitable objects statutorily enjoined upon the Municipal Board and enumerated in Sections 98 and 99 and those undertaken pursuant to the stipulations contained in Sections 101 and 102 of the Act. The mere fact that it is called by a different name (all the more so when the word octroi itself is not found used in Entry 52 of List-II of the Seventh Schedule) for historical reason and administrative needs or exigencies by the draftsmen of the notification does not in any manner either undermine the nature and character of the levy or render it any the less a levy envisaged under Entry 52 of List-II of the Seventh Schedule. The various charitable objects and ameliorative schemes and projects for which the taxes realised under the classified head of Dharmada are claimed to be spent cannot as the provisions of the Act stand enacted be said to be either unauthorised or without the sanction of law. That, apart, the irregularity or illegality, if any involved in spending the sum after collection cannot have any impact on or adversely affect, the otherwise competency of the Authority concerned to impose a levy, well within its legislative competence and further not shown to be violative of any provisions of the Constitution of India. Neither the High Court has gone into any such question of illegality in the matter of spending the tax realised nor are there any materials on record placed before us to substantiate any such claim by the respondent-companies in this regard.

There is no warrant or justification in law for the High Court proceeding on an assumption that permitting the levy even as octroi twice over would suffer the vice of double taxation and therefore

bad in law, unmindful of the well settled position of law in this regard, also. A Constitution Bench of this Court in the decision reported in M/s Jain Bros. and others vs The Union of India and others (AIR 1970 SC 778) in unmistakable terms declared the position to be as hereunder:

It is not disputed that there can be double taxation if the legislature has distinctly enacted it. It is only when there are general words of taxation and they have to be interpreted they cannot be so interpreted as to tax the subject twice over to the same tax (vide Channell, J., in Stevens v. The Durban-Roddepoort Gold Mining Co. Ltd., (1909) 5 Tax Cas 402. The Constitution does not contain any prohibition against double taxation even if it be assumed that such a taxation is involved in the case of a firm and its partners after the amendment of Section 23 (5) by the Act of 1956. Nor is there any other enactment which interdicts such taxation. It is true that Sec.3 is the general charging section. Even if Section 23(5) provides for the machinery for collection and recovery of the tax, once the legislature has, in clear terms, indicated that the income of the firm can be taxed in accordance with the Finance Act of 1956 as also the income in the hands of the partners, the distinction between a charging and a machinery section is of no consequence. Both the sections have to be read together and construed harmoniously. It is significant that similar provisions have also been enacted in the Act of 1961. Sections 182 and 183 correspond substantially to Section 23 (5) except that the old section did not have a provision similar to sub-section (4) of Section 182. After 1956, therefore, so far as registered firms are concerned the tax payable by the firm itself has to be assessed and the share of each partner in the income of the firm has to be included in his total income and assessed to tax accordingly. If any double taxation is involved the legislature itself has, in express words, sanctioned it. It is not open to any one thereafter to involve the general principles that the subject cannot be taxed twice over.

In Avinder Singh etc., vs State of Punjab and another (AIR 1979 SC 321) this Court has once again held as follows:

A feeble plea that the tax is bad because of the vice of double taxation and is unreasonable because there are heavy prior levies was also voiced. Some of these contentions hardly merit consideration, but have been mentioned out of courtesy to counsel. The last one, for instance, deserves the least attention. There is nothing in Art.265 of the Constitution from which one can spin out the constitutional vice called double taxation. (Bad economics may be good law and vice versa). Dealing with a somewhat similar argument, the Bombay High Court gave short shrift to it in Western India Theatres, AIR 1954 Bom. 261. Some undeserving contentions die hard, rather survive after death. The only epitaph we may inscribe is: Rest in peace and dont be re-born! If on the same subject- matter the legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure save where other prohibitions exist.

In Sri Krishna Das vs Town Area Committee, Chirgaon [1990 (3) SCC 645] and Radhakishan Rathi vs Additional Collector, Durg & Ors. [1995 (4) SCC 309] the same position is found reiterated.

Though taxation of the same thing under different names is nonetheless double taxation in popular sense, the expertise exposition of the topic seem to also lean in favour of the revenue, in that the legislature has been considered to possess the power to levy one or more tax or rates of tax on the same taxable event and since in these areas large latitude and wide discretion has always been allowed to the State to choose its own method or kind of tax or mode and purpose of levy and recovery, unless there is any prohibition in the Constitution or the very law enacted by the legislature itself prevents such a thing happening no infirmity can be said to vitiate such a levy. Wherever the taxes are imposed by different legislatures or authorities or where one of the two

alone is a tax or where it is for altogether different purposes or when it is indirect rather than direct, there is no scope even for making any grievance of double taxation, at all. In the absence of any impediment specifically created in the Constitution of a country or the legislative enactment itself, the desirability or need otherwise to avoid such levies has been held to pertain to areas of political wisdom of policy making and adjusting of public finances of the State, and not for the Law Courts, though Courts would unless there is clear and specific mandate of law in favour of such multiple levies more than once, in construing general statutory provisions lean in favour of an interpretation to avoid double taxation. So much are the principles or statement of law governing a challenge to any levy on the ground of Double Taxation.

Now coming to the facts and circumstances of the cases before us, we find that the levy is specific, definite and positive in terms, with a definitely disclosed object leaving no room for any doubt or any exercise to clear such assumed doubts. We have carefully gone through the original Notification in vernacular published in the Gazette dated 13.5.1968, noticed supra, and we find that the rates of the levy under challenge have been notified as part and parcel of one and the same Schedule to the said Notification and not by any different or more than one Schedule and that too by means of a simultaneous exercise of powers under Section 104(2) of the Act and not on different occasion or time. Though it is seen that some of the classified items or commodities enumerated in various Entries overlap those found in the other Entries under different captions including Dharmada, they are not mere mechanical repetitions in toto, viewed either from their classification, enumeration or determination of the rates as well as the measure or quantity with reference to which the actual levy is to be made and collected. Therefore, the mere stipulation of plurality of rates in respect of some or the other of the commodities/goods under different classified groups for different purpose by itself will not render it to be dubbed or castigated as `Double Taxation for spearheading a challenge on them. The Notification under consideration cannot, in our view, be said to involve the imposition of any double tax and the High Court has gone wrong in proceeding upon such an erroneous assumption and declaring thereby the levy for Dharmada purposes to be bad and illegal.

For all the reasons stated above, the appeals are accepted and allowed. The judgments of the High Court allowing the claims of the respondent companies by granting injunction and refund are hereby set aside. The suits filed by the respondent-companies shall stand dismissed. But in the circumstances of the case, there will be no order as to costs.