ALLAHABAD HIGH COURT

L. Jugal Kishore

Vs.

Wealth Tax Officer

Civil Misc. Writ Petn. No. 1246 of 1959 connected with Civil Misc. Writs No. 1247 2127, 2128, 2492, 2980, 2981, 2982 and 2983 of 1959

(R.N. Gurtu, B. Upadhya and Jagdish Sahai, JJ.)

23.03.1961

JUDGMENT

R.N. Gurtu, J.

1. In this petition we are concerned with the vires of the Wealth Tax Act (Act XXVII of 1957) so far as it relates to the levy of wealth tax on Hindu undivided families. The petitioner claims that Section 3 of the Wealth Tax Act is ultra vires of the Union Parliament in so far as it authorized the levy of wealth tax on the net wealth of a Hindu undivided family.

2. By Section 3 of the Act there is to be charged for every financial year commencing on and from the 1st day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the not wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule. The petitioner's case is that to the extent the Union Parliament has provided for the levy of wealth tax on Hindu undivided families as limits the legislation is beyond its power and this contention is supported with reference to the language of entry No. 86 in List 1 of the 7th Schedule to the Constitution of India. That entry is in the following words :-

> "Taxes on the capital value of the assets, exclusive of the agricultural land, of individuals and companies; tax on the capital of companies." The contention is that this entry only empowers legislation for the imposition of wealth tax on individuals and companies but that the entry does not empower legislation imposing a tax on Hindu undivided family wealth. The contention is that a Hindu undivided family is not an individual nor a collection of individuals but that it stands on its own footing and that this is recognized both by Hindu law and by legislative practice relating to taxation and that, therefore, the legislative field given to entry No. 86 does not cover Hindu undivided family wealth but

covers only that of individuals and companies.

It is contended that a Hindu undivided family is more in the nature of a corporation and is not in the nature of collection of individuals. It is contended that in a Hindu undivided family there is a community of interest and a unity of possession between all the members of the family and until partition takes place there is common enjoyment and common possession of the property and that a Hindu undivided family, therefore, is not in substance a collection of individuals. It is contended that for this reason it is treated in taxation legislation as being distinguishable from either an individual or an association of individuals or persons. A reference has been invited to Section 3 of the Income-tax Act which charges, to income-tax the total income of the previous year of every individual Hindu undivided family, company and local authority and of every firm and other associations of persons or the partners of the firm or the members of the association individually. It is contended that in the Finance Act of successive years this distinction between an individual, a person and a Hindu undivided family is clearly maintained and there is difference both in rates of taxation and in exemption based on the difference. It is further contended that the distinction between "individual" and a "Hindu undivided family" is also maintained in the Business Profits Tax Act, 1947 and, that therefore, there was a well established legislative practice where under a Hindu undivided family was placed upon a footing of its own before the coming into force of the Constitution of India. Therefore, it is contended that if entry No. 86 was meant to cover a field of taxation of the capital value of the assets so far as Hindu undivided families were concerned then the entry would have expressly contained the words "Hindu undivided family".

3. There can be no gainsaying that the Hindu undivided family is a Peculiar institution, The interests of the members of a Hindu undivided family in the joint property are fluctuating and the interests of one member of the family impinges upon the interest of the other. Even an unborn person "en ventre sa mere" acquires a right under Hindu law. The extent of the powers of management which vests in the head of the family is controlled and also varies with the particular relationship, of the person who is the head of the joint family, with other members. That power of alienation by the Karta extends not only to alienating the share of the karta but the power extends also subject to limitation to alienating the entire joint family property. Though the joint Hindu family is not a corporation, it is difficult to say that it is in substance a mere collection of individuals. The individuals who compose a joint Hindu family cannot be considered to be separate juridical entities nor can a joint Hindu family be considered to be a corporate juridical entity, even though it can sue or can be sued in the joint family name and property held by it can be conveyed in its joint character by the manager or father acting within the scope of their authority. The joint Hindu family is a peculiarity of Hindu society and it cannot be put into the framework of any of the well-known juridical concepts, namely, individual person or corporation. It seems to me, therefore, that there is substance in the contention that the field of entry 86 does not cover the Hindu undivided family because it is confined to individuals and companies. It is also, I think, correct to say that in taxation, legislation Prior (and subsequent) to

the Constitution of India a Hindu undivided family has been separately treated and provision has been made both in the Income-tax Act and Business Profits Tax Act and in the different Finance Acts to charge a joint Hindu-family on its own footing and it has been made liable to tax as a Hindu undivided family, expressly so designated.

4. It is true that a corporation constituted by special Act was treated as an individual within the meaning of Section 3 of the Income-tax Act. In the case of *Commissioner of Income-tax v. Trustees of the Sir Currimbhoy Ebrahim*[1] in *Commissioner of Income-tax v. Ahmedabad Millowners' Association*[2], it has been held that the expression "association of individuals" as used in Section 3 of the Indian Income-tax Act, 1922, (before it was amended by the Indian Income-tax (Amendment) Act (VII of 1939)) meant an association of human beings and not an association of companies, also in *Commissioner of Income-tax v. Salem District Urban Bank Ltd*[3]., it was held that a co-operative society registered under the Indian Co-operative Societies Act was an '"individual" within the meaning of the Indian Income-tax Act. Nonetheless there is except *Mavabir Prasad Badri Das v. M.S. Yagnik*[4], and *N.V. Subrahmanyam v. Addl. Wealth Tax Officer, Eluru*[5], no case which clearly lays down when its facts are analysed that a Hindu undivided family is a collection of individuals or that it is an individual. It is well settled that Previous legislative practice may be looked at for purposes of interpretation and though it may not be established that throughout in nil legislation a Hindu undivided family is always treated as distinct from an, individual or an association of individuals yet it; does appear that so far as taxation legislation is concerned even prior to the coming into force of the Constitution a provision was made for taxing Hindu undivided families as distinct and separate assessable units. Whether there is or is not a legislative practice in regard to a particular class of legislation will depend upon the practice as it is found in that class of legislation and if thy legislative enactments in that particular field are few that would not establish that there was no legislative practice. The Constitution makers may be presumed to be aware of that practice and so entry No. 86 may be construed it the light of the practice, though the Constitution strictly speaking is not a legislation. It seems to me, therefore, that entry No. 86 in List I of the 7th Schedule to the Constitution does not deal with the topic of taxation on wealth of Hindu undivided families. It must not be overlooked that the various entries in the 3 lists of the 7th Schedule are not powers of legislation but fields of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution. The entries in the lists are mere legislative fields sad are of an enabling character. They are designed to define and delimit the respective areas of the legislative competence of the Union and State legislature and they neither impose any implied restriction on the legislative powers conferred by the Article nor Prevent any legislature from exercising that legislative power in any particular manner, vide the *State of Bihar v. Kameshwar Singh*[6], It is true that the language of entries should be given the widest scope of which their meaning is fairly capable because they set up a machinery of Government, (vide *Harts Muller v. Supdt. Presidency Tail, Calcutta*[7], and *Western India Theatres Ltd. v. Cantonment Board*[8], but nonetheless their scope should not be so widened as to give over a field to a particular entry which it was not meant to embrace. I find some difficulty in accepting the position that the word "individuals" in entry No.

86 in List I would cover a Hindu undivided family. I am inclined to think that recourse must be had to Article 248 of the Constitution and entry 97 in List I of the 7th Schedule to the Constitution. I am not neglectful of the

[1]33 Bom LR 1549 : AIR 1932 Bom 106 [3](1940) 8 ITR 269 : AIR 1940 Mad 612 (SB) 369 : AIR 1939 [2](1939) 7 ITR Bom 363 [4]1959-37 ITR 191 [5]51960 ITR 567 : AIR 1961 And Pra 75
[6] AIR 1952 SC 252 [8] AIR 1959 SC 582
[7]1955-1 SCR 1284 at p. 1289; AIR 1955 SC 367 at p. 370

fact, that great care has been taken in the framing of the three lists of the Constitution and the distribution of legislative powers made by Article 246 read with the entries in the legislative lists in the 7th Schedule was intended as far as possible to be exhaustive. It is also true that recourse should be had to Article 248 only when all the entries in the three lists are exhausted (Vide *Subrahmanyan Chettiar v. Muttuswami Goundan*[9],) but that does not mean that something should be forced into an entry merely in order to establish that exhaustiveness.

5. By Article 248 it is declared (1) that Parliament has power to make any law with respect to any matter not enumerated in the concurrent list or State list and that (2) such powers shall include the power of making any law imposing a tax not mentioned in either of these lists. Entry No. 97 of List 1 provides that any other matter not enumerated in List 2 or List 3 including any tax not mentioned in either of those lists is covered by that entry. The tax mentioned in entry No. 86 of List I is a tax on the capital value of the assets .....of individuals and companies. A tax on the capital value of the assets of Hindu undivided families is not ex facie mentioned in entry No. 86. It may be the same nature of tax but the incidence thereof will fall on a different category of assesSecs. In essence also therefore it is a tax not mentioned in entry 86.
It is significant that by entry 97 a residuary field is given over to uncovered taxation and Article 248 sub-clause (2) expressly gives the power to impose a tax to Parliament. It seems to me that Article 248 of the Constitution must be availed of in this case and that the ambit of Entry 86 in List 1 cannot be increased so as to enable legislation relating to a tax on capital values of Hindu undivided families.

6. It was contended that by framing entry No. 80 of List I. in the language in which it was framed the Constitution had placed a reservation so far as tax on capital values of the assets of Hindu, undivided families were concerned and that entry No. 86 incorporated words of limitation expressly placing a restriction upon the competence of the Union Parliament to enact any legislation imposing a tax on capital value on the assets or Hindu undivided families, and that limitation cannot be ignored when considering the residuary powers contained in Article 248 and the residuary entry No. 97 in List 2 of the 7th Schedule. I am wholly unable to accept this contention. There is no reason to think that the Constituent Assembly was desirous of saving Hindu undivided families from the burden of wealth tax. Nor can the language of a topic of legislation affect the plenary power granted by Article 248 of the Constitution. Nor in my view does entry No. 86 impose any restriction of the nature suggested; all that it does is to demarcate a particular field of legislation as falling within the sphere of union legislation. At the same time there is located a residuary taxation field by entry No. 97. The residuary powers under Article

248 remain intact and resort can be had to those residuary powers in order to justify a legislation of this nature. In my view, therefore, the Act cannot be impugned on the ground that there was no power in Parliament to pass an Act imposing wealth tax on the asset of a Hindu undivided family. The conclusion in regard to the vires of the impugned provisions at which I have arrived is in accord with the decision of the Bombay High Court in 1959-37 LTR 191 : AIR 1960 Bombay 191 though I have travelled along a different road. This petition must accordingly be dismissed, as the only point urged fails. I order accordingly. I must express my indebtedness to counsel for assistance. The case for

[9] AIR 1941 FC 47

the Department was presented with great ability by Mr. Gopal Behari.

Upadhya, J.

7. The question raised in these petitions is as to whether the Wealth Tax Act (Act XXVJI of 1957,) is ultra vires the Parliament in so far as if seeks to impose a tax on the net wealth of a Hindu undivided family.

8. I have had the advantage of going through the judgments proposed by my brothers Gurtu and Jagdish Sahai, but I regret I am unable to agree with them.

9. The validity of the Wealth Tax Act is supported in the first instance on Article 246(1) of the Constitution read with entry No. 86 of List 1; of the seventh Schedule. Article 246(1) says :-

> "246 (1) Notwithstanding anything in Clauses (2) and (3) Parliament has exclusive Power to make laws with respect to any of the matters enumerated in List I in the seventh Schedule (in this Constitution referred to as the 'Union List')."

Entry 86 is as follows :-

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

It is contended that the word "Individuals" in entry No. 86 includes a Hindu undivided family and the exclusive power conferred on the Parliament by Article 246(1) empowers that body to make this law. It is then contended that if this construction placed on the word 'individuals' in entry 86 be not accepted it should be held that the imposition of a tax on the capital assets of a Hindu undivided family was not a matter expressly provided for in any entry in List I of the seventh Schedule. In that event it should be taken to fall under entry No. 97 which reads as follows :-

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

Reliance is also placed on Article 248 of the Constitution which says that the Parliament has the exclusive power to make a fly law with respect to any matter not enumerated in file Concurrent List or the State List and Clause (2) of this Article further says - "Such power shall include the power of making any law imposing a tax not mentioned in either of those lists.' It is contended that if it be held that the word 'individuals' does not include a Hindu undivided family the Parliament has the power to make the impugned law under Article 248(1) of the Constitution and more particularly under Article 248(2) which expressly Provides for the making of a law 'imposing a tax not mentioned in either of those lists'. (Concurrent list or State List).

10. I respectfully agree with my brother Gurtu that the word 'individuals' in entry 86 cannot be stretched so as to include a Hindu undivided family. He has referred to the legislative practice evident from several taxing enactments to show that a Hindu undivided family has been always taken to be a unit of assessment different from an individual. In addition to those statutes one may also refer to a more recent enactment. The Expenditure Tax Act of 1957 says in Section 3 of the Act that the tax is imposed in respect of expenditure incurred by 'any individual or Hindu undivided family' in the previous year. The Hindu undivided family has been consistently treated as a unit of assessment different from an individual. The reason for this may be the peculiar legal character of a Hindu undivided family. It does not appear necessary to dilate upon the various characteristics of a Hindu undivided family, but the necessity felt by legislators to impose a tax on a Hindu undivided family as a unit distinct and separate from an individual appears to be due to the fact that the members of a Hindu undivided family cannot say that they are the owners of any part of the property or income which belongs to the family. If therefore a tax is imposed on an individual but not on a Hindu undivided family the income or property of the family will escape liability, for the simple reason that the individuals cannot be assessed in respect of that income or Property. The desire to extend the liability for the tax to the Hindu undivided families appear to be responsible for an express mention being made of sue families in the Wealth Tax Act. But the entry which sets out this particular field of legislation does not expressly mention a Hindu undivided family. I would not speculate as to the reason or reasons for this omission but there is nothing to warrant an assumption that it was merely inadvertent. Taxes of several kinds were in vogue when this entry was provided for in the Constitution and it was common knowledge which must have presumably been in the Possession of the framers of the Constitution that a Hindu Undivided family was a unit of assessment or all such taxes, distinct and separate from an individual.

11. It is true that the provisions in the Constitution should be liberally construed so as to embrace the requirements of an expanding future but if the Constitution specifically lays down the ambit of the legislative power of a particular body, it does not appear reasonable to assume that it was intended to confer on that legislative body the power to make any law whatsoever. In Article

246(1) it is provided that the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the VII Schedule. If 'the matters' in respect of which legislative power was conferred on the Parliament were expressly enumerated, I find no justification for holding that the powers are limitless or that 'the matters' should be so expanded as to cover matters not enumerated. If the word 'individual' includes a Hindu undivided family there can be no doubt that the Act is valid. If the word 'individual' is not wide enough to include a Hindu undivided family, it is evident that the power to impose a tax on the capital assets of a Hindu undivided family cannot be treated as 'a matter' enumerated in entry 86 of the List in the VII Schedule. It was urged that the Members of the Constituent Assembly were fully aware that a capital levy on the assets of a Hindu undivided family could also be a field of legislation and they must be deemed to have provided for it by using the word 'individual' in a wide sense so as to include a Hindu undivided family. I find myself unable to accept this argument. Hindu undivided families are a peculiar feature of this country. When taxes prevalent in other countries are sought to be imposed in this country the peculiar character of a Hindu undivided family calls for special treatment. The provisions of the Income-tax Act show this. The Hindu undivided family is specifically mentioned in Section 3 of that Act. The question as to whether a Hindu undivided family is a resident in the taxable territories or not is determined on a basis different from that of other assessees under Sections 4-A and B of the Act. A sum received by a member of a Hindu undivided family out of the income of the family is exempted from tax under Section 14. Provision is made in Section 25-A for assessment after the partition of a Hindu undivided family etc. In the Wealth Tax Act itself Section 5 (1)(ii) says that the tux shall not be Payable by an assesses in respect of the interest of the assessee in the coparcenary property of any Hindu undivided family of which he is a member and such assets shall not be included in the net wealth of the assesSec. Under Section 20 a provision similar to Section 25-A of the Income-tax Act is made for assessment after partition of a Hindu undivided family. The modes in which notices may be served on a Hindu undivided family are mentioned in Section 38 expressly and Section 41 (2) says that in the case of a Hindu undivided family such notice may be addressed to the Manager or any adult male member of the family. Those provisions indicate mistakably the particular manner in which a Hindu undivided family is to be treated, and the peculiar effect that the imposition of a tax may have on the family was not entirely lost sight of. A tax on 'net capital assets' is a tax to be paid by the owner, and if the framers of the Constitution thought that only individual human beings and a company which is a juristic individual should be subjected to such tax the idea was evidently to exclude from the levy of such tax groups of individuals like firms or association of persons and Hindu undivided families. Levy of tax on such groups of individuals would be an unfair hardship subjecting the interest and property of some individuals, who happen to be members of such groups, to a greater liability than what may fall on individuals having separate properties. It is not difficult to imagine that the framers of the Constitution, in their wisdom, sought to avoid such unfair hardship to a section of the citizens of the country when they did not provide for the imposition of a tax on a Hindu undivided family. I find nothing to justify an assumption that the framers of the Constitution intended to provide for the levy of such tax on Hindu undivided families and that such assumed intention should be

brought in aid to widen the meaning of the word 'individual'. If they had any such intention, the intention would have found expression in the language used.

12. According to the New English Dictionary (Oxford) 'individual' means :-

> "(1) One in substance or essence; forming an indivisible entity
> (2) That which cannot be separated, inseparable.
> (3) Existing as a separate indivisible entity, numerical one, single.
> (4) Inseparable things.
> (5) Single human being as opposed to society family etc."

The Dictionary meaning appears to be inconsistent with the view that a Hindu undivided family, which is a group of individuals, should also be included within the meaning of the word individual. An individual is an indivisible entity. A Hindu undivided family can be subjected to partition resulting in the individual members of the family forming separate units by themselves.

13. Reliance is sought to be placed on the view taken by a Bench of this Court *in re Madan Gopal*[10] that the word individual may in Certain context include a Hindu undivided family. The provision which came up for consideration in that case was Section 55 of the Income-tax Act as it stood then. The section read as follows :-

> "55. In addition to the income-tax charged, for any year, there shall be charged, levied and paid for that year in respect of the total income of the Previous year of any individual, Hindu undivided family, company unregistered firm or other association of individuals not being a registered firm, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the India Legislature.
> Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share."

The word 'individual' occurs in the main section and then again in the proviso. In the main section the word individual is used to denote a person whose income is charged to tax, and this unit of assessment is mentioned along with other units of assessment such as a Hindu undivided family, unregistered firm, or other association of individuals, and thus the word 'individual' there is used as distinct and different from a Hindu undivided family. The proviso deals with the case of an unregistered firm and says that where the Profits and gains of an unregistered firm have been-assessed to super tax such tax shall not be payable by an individual having a share in that firm in respect of the amount which is proportionate to his share. A firm is not a juristic person but an association formed by individuals to carry on business. If the firm is unregistered it Pays tax as a unit itself and where super tax is imposed on an unregistered firm it is essentially imposed on all the partners of the firm collectively.

The proviso only prevents double taxation of the partners of the firm. It was contended in the

case mentioned above that the word individual in the proviso had a meaning different from what it meant in the main section and this contention was accepted by the Bench. In the case which the learned Judges had to deal with, the assessees were said to be two joint Hindu, families, who had entered into a partnership having equal share and had formed a registered firm styled jai Dayal Madan Gopal. The facts as stated in the report are that this registered firm consists of two families as Partners became a partner in nine other unregistered firms. On a reference made by the Income-tax Commissioner on a previous occasion it has been held that the registered firm could not in law be a partner in the aforesaid 9 unregistered firms. The result of this decision according to the Bench was that each of the two joint families was severally a partner in the nine unregistered firms. Niamat Ullah, J. in delivering the judgment of the Bench and stating the facts observed :

> "the assessee in the present case is a joint Hindu family represented by its Karta Lala Ramratan Das. The assessee in the Connected case is a joint Hindu family represented by its Karta Lala Jaidayal. The two joint families entered into a partnership having equal shares and became a registered firm styled Jaidayal Madangopal. This registered firm (consisting of the two joint families

[10](1935) 3 ITR 183 : (AIR 1935 All 444)

> as partners) became a partner in nine other unregistered firms. On a reference made by the Income-tax Commissioner on a previous occasion it has been held by a bench of this Court that the registered firm (consisting of the two joint families) could not in law be a Partner in the aforesaid nine unregistered firms. The result of this decision was that each of the two joint families was taken to be severally a partner in the nine unregistered firms and not as a component part of the registered firm."

The proviso to Section 55, as mentioned above, exempted from payment of super tax an individual having a share in an unregistered firm assessed to super tax. In the case before them the learned Judges proceeded on the fact that instead of two individuals two families were partners in the registered firm Jaidayal Mandangopal which had been assessed to tax. This, they said they did because of an answer given by the Court itself in an earlier case. The earlier case a not mentioned in the judgment but it is mentioned in the statement of the case which, is set out briefly in the report as it appears in the Income-tax Reports. Learned counsel cited the report as it appeared in AIR 1935 Allahabad 444. But that report contains merely the judgment and not the statement of facts which was sent to the court and is Printed in the Income-tax Reports. In the earlier reference case in Re. Jaidayal Madangopal, 1933-1 ITR 186 : AIR 1933 Allahabad 77 Sulaiman Chief Justice and Mukerji, J. gave separate but concurrent judgments. They observed that the firm Jaidayal Madangopal could not lawfully become a partner in a larger firm hut there is nothing in the judgment to show that the partner of Messrs. Jaidayal Madangopal were Hindu undivided families. In fact Mukerji, J. after discussing the facts of the case observed as follows :

> "The question of law that does arise in the case is 'whether as a matter of law the firm Jai

> Dayal Madan Gopal of Banaras could be a partner of the nine unregistered firms of the same name carrying on business at different places, and whether or not, it follows also as a matter of law, that the participation in the nine firms by Lala Jai Dayal and Lala Rai Sahib Ram Ratan Das was in their individual capacity. From what I have already stated it seems to me clear that mere could be only one answer to this question and that is that the two gentlemen Lala Jai Dayal and Lala Rai Sahib Ram Ratan Das are partners in their individual capacity in the nine unregistered firms styled Jai Dayal Madan Gopal."

14. At other places also in the judgment Lala Jai Dayal and Lala Ram Ratan Das are mentioned as partners who joined the firm Jaidayal Madangopal in their individual capacities. The facts therefore on which the later case 1935-3 ITR 183 : AIR 1935 Allahabad 444 is based do not find support in thy earlier decision. The Bench which decided the 1935 case proceeded on the assumption that the two families were partners and they found it necessary to Construe 'individual' including a family. The legal position which is now well established is that neither families nor firms can become partners in a firm.

15. It appears from the judgments in the 1933 case that the Kartas of the two joint families entered into a partnership and the assumption in the case reported in 1935-3 ITR 183 : AIR 1935 Allahabad 444 that the two joint families entered into the partnership styled Jaidayal Madangopal is, with great respect, not correct. This erroneous assumption appears to be responsible for the necessity felt by the learned Judges of widening the meaning of 'individual' in the Proviso to Section 55 and in holding that the word had been used in the same section in two different senses.

16. In *Ram Kumar Ramniwas v. Commissioner of Income Tax*[11], this Court held that a Hindu family as such cannot be a partner in a firm. In this case it was urged that whatever might have been the view of this Court prior to the year 1948 the decision of their Lordships of the Judicial Committee in *Lachhman Das v. Commissioner of Income Tax, Punjab*[12], made it clear that the view must be reconsidered. Evidently counsel must have been thinking of the view expressed by this Court in 1935 as mentioned above. In 1952-22 ITR 474 : AIR 1953 Allahabad 150 this Court took the view that partnership is 'a contractual relationship' which can be entered into only by some one who is entitled to enter into a contract, About a Hindu undivided family the learned Judges observed :

> "It may be that a member of a Hindu undivided family may continue to have certain personal rights and may be able to own property in his own right and enter into a contract in his own right but a Hindu undivided family is not like a corporation or a limited concern and it cannot therefore be said that it has a legal entity quite distinct and separate from that of those who constitute it. A joint Hindu family is a unit to which no outsider can be admitted by agreement; it is a status which can only be acquired by birth or by adoption and the head or Karta of that family has certain rights and while acting within

those rights, he can bind every member of the family by his actions or deal with the joint family property which though it does not belong to him and belong to all, he has been given the Power to manage or dispose of in the interest of the family. It is difficult to equate and define the position of a joint Hindu family as understood under the Hindu law with the modern conception of a company or a firm or association of individuals for trade or business purposes."

17. In 1948-16 ITR 35 the Privy Council held that a firm not being recognized as a legal entity cannot as such, enter into partnership with another firm, though the Karta may join a firm as a Karta on behalf of a family. The Privy Council case was followed by the Calcutta High Court in *Kaniram Hazarimull v. Commissioner of Income-tax, West Bengal*[13], The same view was taken by the Supreme Court in *Kshetra Mohan Sannayasi Charan v. Commissioner of Excess Profits Tax, West Bengal*[14], Their Lordships of the Supreme Court laid down the law as follows :

"When two Kartas of two Hindu undivided families enter into a partnership agreement the partnership is popularly described as one between two Hindu undivided families but in the eye of the law it is a partnership between the two Kartas and the other members of the families do not ipso facto become Partners. There is, however nothing to prevent the individual members of one Hindu undivided family from entering into a partnership with, the individual

[11]1952-22 ITR 474 : AIR 1953 All 150
[12](1948) 16 ITR 35
[13]1955-27 ITR 294 (Cal)
[14](1953) 24 ITR 488

members of another Hindu undivided family and in such a case it is a Partnership between the individual members and it is wholly inappropriate to describe such a partnership as one between two Hindu undivided families."

18. In *Commissioner of Income Tax M.P and Bhopal v. Smt. Sen Sodra Devi*[15], the question before their Lordships was whether the word 'individual' in Section 16 (3)(a)(ii) of the Income-tax Act includes also a female and whether the Income of the minor sons derived from a partnership to the benefit of which they have been admitted is liable to be included in the income of the mother who is a member of the partnership. Their Lordships by majority took the view that having regard to the context in which the word appears the word 'individual' could mean only a male individual as only a male individual could have a 'wife'. In this case Bhagwati, J. observed that "the word assesses" occurring in the Income-tax Act "was wide enough to cover not only an 'individual' but also a Hindu undivided family company and local authority and every firm and other association of persons or the partners of the firm or the members of the association individually." The learned Judge observed that the word 'individual' is narrower in its connotation being one of the units for the purposes of taxation, than the word 'assessee'. Referring to certain cases the learned Judge went on to say. "It has been held that the word 'individual' includes a Corporation created by a statute e.g. a University or a Bar Council or the trustees of a baronetcy trust incorporated by a Baronetcy Act." It may be noted that in all these cases the Corporation, the University, the Bar Council and baronetcy trusts are units or juristic

persons. The conception in law of a Hindu undivided family is not the same as that of a corporation as observed by Malik, C.J. in Ram Kumar Ram Niwas's case 1952-22 ITR 474 : AIR 1953 Allahabad 150, referred to above.

19. The decision of the Supreme Court therefore docs not to my mind provide any authority for the view that a Hindu undivided family may fall within the meaning of the word 'individual'.

20. Learned counsel for the department relies on the cases of 1959-37 ITR 191 : AIR 1960 Bombay 191 and 1960-40 ITR 567 : AIR 1961 Andhra Pradesh 75. Mahavir Prasad's case 1959-37 ITR 191 : AIR 1960 Bombay 191 was decided by the Bombay High Court . Both the learned Judges took the view that a Hindu undivided family fell within the expression 'individual' in entry 86 of List I of the VII Schedule to the Constitution of India. Shah, J. relied on the fact that in some cases there has been divergence of opinion about the exact meaning of the word individual and it has been held that a company or a co-operative society is also an individual. As mentioned above, where several persons forming a group become a Corporate body the position is different. A company which is a juristic person or a co-operative society which is also an entity brought into existence by law may be treated as an individual. A Hindu undivided family which is essentially different in nature from such corporation cannot be placed on the same footing. The learned Judges relied on the nature of the Hindu undivided family in Mayne's Hindu Law where he has observed that the joint family is a corporate body of which the members are 'individuals' and that 'the family property is owned by the whole coparcenary as a sort of corporation.' The learned Judge therefore held that the property of a Hindu undivided family is within the ambit

[15] AIR 1957 SC 832

of Section 86. In support of this view the learned Judge took certain characteristics of a Hindu family into consideration. He observed :-

> "Now, the contention of the Petitioner that a Hindu undivided family is outside the scope and ambit of the expression 'individuals' and therefore of entry 86 Can possibly succeed only if the Property of such family can be shown to vest not in the individuals who are members or coparceners of the family but in a jural entity which is in the eye of law distinct from its members or coparceners ..... When it is said that the ownership of the coparcenary property is on the whole body of coparceners, it does not mean that it vests in any corporate legal entity apart from the coparceners. The property vests in all the coparceners ..... Joint family or coparcenary Property, therefore, is that in which every coparcener has a vested interest and joint possession. Cadit questio it is not property which is of the ownership of any jural person or entity distinct from the individual coparceners who as a group constitute the joint family."

21. With great respect, tile observations do not support the conclusion reached. If the property of the family belongs to the individuals it is the individuals whose assets may be taxed separately and not the group as a unit. In seeking to impose the tax on the family as a unit, the individuals

themselves are not being taxed as such. The incidence of the tax varies.

22. A true concept of a Hindu undivided family was set out by Lord Westbury in *Appovier v. Rama Subba Aiyari*[16], in words which have become classical :

> "According to the true notion of an undivided family in Hindu Law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share."

Mayne adds –

> "He has an interest in the coparcenary and on his death this interest lapses to the coparcenary; it passes by survivorship to the other coparcenary. He therefore has no Power to devise it by will, nor is there any question of succession to it. In no part of the coparcenary property has he left an estate of his own."

Having regard to the peculiar nature of a Hindu undivided family and the character of the interest which a Member may have in the Property of the family, it is evident that entry 86 which empowers the imposition of a tax on the capital assets of individuals cannot be extended so as to include not only the individuals as such but also a collective body in which the individual members have a certain interest and right and to which they owe certain obligations and which collective existence is a concept different from each of those individuals. In fact if the reasoning adopted by the learned Judge be accepted the liability to tax would fall on associations or individuals as such jointly, which is not even claimed by the department.

[16]11 Moo Ind App 75 (PC)

23. In N.V. Subramanian's case, 1960-40 ITR 567 : AIR 1961 Andhra Pradesh 75 which was decided by the Andhra Pradesh High Court, the Bombay case referred to above has been followed and the view is supported by reference to those cases where co-operative societies or Bar Councils have been considered as an individual within the meaning of the Income-tax Act. Discussing the nature of a Hindu undivided family the learned Judges took the view that a joint family though at times spoken of as a corporation cannot be taken as 'a legal person in the strict sense of the term.'

It is an association of persons and as such would only fall within the expression 'individual'. With great respect, an association is a group of individuals formed by agreement. A Hindu undivided family is not the outcome of any agreement. A person is born in the family and becomes a member of that family by mere birth. I would therefore hesitate to call a Hindu undivided family an association. Besides, individuals may form an association but the association itself is not an individual.

24. I have given full and respectful consideration to these two cases but I am unable to agree.

25. In *Commissioner of Income-tax v. Sarwan Kumar*[17] a Bench of this Court had to consider the question as to whether a Hindu undivided family ceased to exist as such when the sole surviving coparcener died leaving widows, an unmarried daughter, a mother and a step mother. This question had to be decided in order to determine whether the maintenance allowance fixed under an agreement received by the widow of a predeceased coparcener was exempt from Income-tax under Section 14 (1) of the Act. This section provides that "the tax shall not be1 payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family."

26. Iqbal Ahmed, C.J., referred to several authorities to illustrate the nature of a Joint Hindu family and said how it differed and was wider than a Hindu coparcenary. The learned Chief Justice also observed that in the case of a Hindu undivided, family that is not possessed of any property the jointness of the family consists in mess, residence worship etc.' He went on to say :-

> "It is conceded that in such a case an undivided Hindu family can exist so long as there is a male member and some females constituting the family. Why the disappearance of the male member in the case of such a family should cause disruption of the family is not explained. Even after the disappearance of the last surviving male member the females may be joint in mess, residence etc. and continue to remain undivided."

In the following paragraph the learned Chief Justice observed :-

> "A family is an association of people. It is a natural as distinct from an artificial association. The members of an undivided Hindu family consist both of males and females. In other words, females are and can be component parts of an undivided Hindu family. That being so there can be, in our judgment, an undivided Hindu family consisting of females only.""In the case of an undivided Hindu family which is possessed of joint Property the

[17](1945) 13 ITR 361 : AIR 1945 All 286

> "coparcenary" no doubt comes to an end with the disappearance of the last male member of the family, but as already pointed out, the existence of coparcenary is not essential for the existence of a joint Hindu family."

When the learned Chief Justice observed that a family is an association of people he evidently did not mean to say that it was a voluntary association or that it was an association which resulted in the coming into existence of a juristic entity. The association according to the learned Chief Justice was 'natural'. In N.V. Subramanian's case, 1960, 40 ITR 567 : AIR 1961 Andhra Pradesh 75 the learned Judges of the Andhra High Court have mentioned this case and have referred to a part of the passage quoted above, to show the view taken by Judges about the nature of a Hindu undivided family. They have observed that in some cases a Hindu undivided family has been called a corporation or something in the nature of a corporation. They have also referred to the decision of a Bench of the Madras High Court in *Sokkanadha Vannimundar v. Sokkanadha*

Vannimundar[18], where it was held that a joint family though at times spoken of by judges as a corporation cannot be taken as a legal person in the strict sense of the term. The learned Judges have themselves referred to the decision of the Bombay High Court in Mahavir Prasad's case, 1959-37 ITR 191 : AIR 1960 Bombay 191 mentioned above rejecting the contention that a Hindu undivided family is a corporation. The observation therefore in Sarwait Kumar's case, 1945-13 ITR 361 : AIR 1945 Allahabad 286 can not afford any basis for the view that the Hindu undivided family is an association and may therefore be considered to fall within the meaning of the word 'individual' in entry 86.

27. As mentioned above, in agreement with my esteemed brother Gurtu, I am of opinion that the word 'individual' is not wide enough to cover a Hindu undivided family. In my view the entry provided for the imposition of this tax on the capital assets of individuals and companies only. The Income-tax Act falls under entry 82 which does not mention at all those on whom the tax may be imposed. The tax is levied on firms, association of persons, a Hindu undivided family, a company and local authority besides individuals. If the object of entry 86 was similarly to Provide for the imposition of a tax on the capital assets of anybody and everybody there was no meaning in specifying 'individuals and companies' as those whose capital assets may have a tax imposed on them. To my mind the entry indicates that the framers of the Constitution while providing for the levy of a tax on the capital assets of individuals and companies deliberately refrained from providing for the levy of such tax on Hindu undivided families, firms or other association of persons. The mention of those whose capital assets may be taxed is therefore not meaningless and serves to emphasize the restricted nature of this field.

28. When considering the contention that the provision, is valid because of the residuary powers of legislation possessed by the Parliament, some well known judicial pronouncements relating to the Indian Constitution and residuary powers provided thereunder may well be remembered.

29. The Privy Council in *Governor General in Council v. Madras Province*[19],

[18] ILR 28 Mad 344

[19] AIR 1945 PC 98

Observed:-

> "The Indian Constitution is unlike any that have been called to their Lordships notice in that, it contains what purports to be an exhaustive enumeration and division of legislative Powers between the Federal and Provincial legislatures."

Gwyer, C.J. in C.P. and Berar Sales of Motor-Spirit and Lubricants Taxation Act, 1938. In the matter of, AIR 1939 FC I remarked –

> "The attempt to avoid a final assignment of residuary powers by an exhaustive enumeration of legislative subjects has made the Indian Constitution Act unique among federal constitutions in the length and details of its legislative lists." In AIR 1941 FC 47,

> Sulaiman, J., also held that the legislative lists under the Constitution have been made more exhaustive than they were in the Government of India Act 1935 and chances of leaving anything as a residuary were eliminated "as far as human ingenuity could devise."

30. Mr. B.L. Gupta contended that it is futile to suggest that human ingenuity could not have devised a tax on the capital of a Hindu undivided family in 1950 when the Constitution was framed. The Hindu undivided family had been taxed in several statutes by that time and if the Constitution does not mention the Hindu undivided family in entry 86 the only reason for it could be the object of the framers to refrain from providing for the imposition of such tax on the Capital assets of a Hindu undivided family. No omission can be read where a limitation is placed. In entry 86 the area or field is expressly delimited and if legislation beyond the delimited area is attempted it is clear that powers ace sought to be exercised which are not possessed under the Constitution.

31. Entry 97 of List I of Sch. VII reads as follows :-

> "97. Any other matter not enumerated in List II or List III including a tax not mentioned in either of those lists."

This residuary provision comes at the end of the entries made in List I After enumerating the various topics on which the Parliament may legislate this entry provides that the Parliament may legislate on any other matter. The only excess limitation indicated in this entry is that the matter should not be one enumerated in List II or List III. The implied limitation appears to be that the subject must be 'other' than those already mentioned in List I. The subject of the impugned statute is admittedly not one enumerated in List II or List III. Nor is it 'any tax not mentioned in either of those Lists,' which is also excluded in this entry. The question is what does this 'any other matter' really mean ? Can it be construed to include any matter already dealt with in the earlier entries in List I ? I would answer this query in the negative. Tax on capital assets was a subject topic or matter about which art entry does exist in the list (No. 86). The word 'other' appears to exclude the same matter being brought in again under entry No. 97. I am unable to accept the argument that tax on the capital assets of a Hindu undivided family should be considered to fall within the ambit of the expression 'any other matter" in entry No. 97.
This particular kind of tax - tax on capital assets - did receive attention and found express mention in entry No. 86. When the Constitution provided by entry No. 97 a field of legislation relating to 'any other matter' it cannot be construed as permitting an extension or widening of the matter which had already been provided for in any earlier entry. In construing 'any other matter' as including a tax on the capital assets of a Hindu undivided family one would do violence to the intention of the framers of the Constitution were in entry No. 86 expressly lay down on whose capital assets a tax may be imposed. It may be noticed that imposition of tax on income is made under entry No. 82. This entry reads :-

"82. Taxes on income - other than agricultural income."

32. Whose income would be the subject-matter of the imposition is not indicated in this entry. The term income is as wide a one may possibly make it. The only limit set in the entry is that the subject-matter of the tax should be income and that agricultural income should be excluded. There is no mention of the person whose income may be liable to tax. If the framers of the Constitution thought of providing for the imposition of a tax. On the capital assets of all and sundry they would have left entry 86 as wide as entry 82. The fact that they did not do so and provided expressly for the levy of tax on 'individuals' and 'companies' cannot be construed in any other manner except as providing for the levy of tax on these two persons only. After giving anxious consideration to the argument of the learned counsel for the Central Board of Revenue I find myself unable to accept the contention that the word 'individual' would cover a Hindu undivided family and that in the circumstances and having regard to the language of the various entries any other matter in entry No. 97 cannot be considered so as its cover a tax on the capital assets of a Hindu undivided family.

33. Reliance is placed on Article 245 to support the contention that the Parliament has extensive residuary powers to make any law and that a piece of legislation made by the Parliament should be accepted as valid unless it is in violation of any provision of the Constitution. Article 245 reads as follows :-

> "245. (1) Subject to the provisions of Constitution Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
> (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation."

This Article indicates the extent of the legislative jurisdiction of the Parliament. It may make laws for the whole or any part of the territory of India. This article also provides that the legislature of a State may make laws for the whole or any part of the State. The idea is that the respective jurisdictions of the Parliament and the State Legislatures should be demarcated. Clause (2) of this Article indicates the object by saying that no law made by the Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation. There is no dispute in the instant case that if the Wealth Tax Act is otherwise valid it would be operative throughout the entire country. This power of the Parliament to legislate for the whole of the country is 'subject to the provisions of the Constitution', and among the provisions of the Constitution is Article 246 which says that the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of Sch. VII and Article 246 read with entry No. 86 shows what the Constitution Provides for the imposition of tax on capital assets and it there delimits the field by adding that such tax may be levied on the capital assets of individuals and companies.

34. I am therefore of opinion that the Wealth Tax Act should be declared as ultra vires the Parliament so far as it imposes a tax on the capital assets of the Hindu undivided families and these writ petitions should be allowed with costs. Thanks are due to learned counsel for the Parties for their elaborate arguments.

Jagdish Sahai, J.

35. These are nine connected writ Petitions. All of them have been, filed on behalf of Hindu undivided families against whom proceedings for assessment of wealth tax (hereinafter referred to as the tax) have either been completed or are pending. The question raised is that Section 3 of the Wealth Tax Act (hereinafter referred to as the Act) is ultra vires the powers of the Union Parliament in so far as it authorizes the levy of the tax on the net wealth of a Hindu undivided family. No other question is involved in these petitions. Section 3 of the Act reads as follows :-

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

This section authorizes the imposition of the tax on a Hindu undivided family. The question is whether the Union Parliament could enact this section and if so under which entry the imposition of such a tax can be justified? On behalf of the Income-tax Department it has been contended, firstly, that entry 86 of List I of the seventh Schedule of the Constitution enabled the Union Parliament to enact Section 3 of the Act, and secondly, that if the imposition of the tax could not be justified under that entry, in any case, such a tax could be provided for by virtue of the provisions of Article 248 of the Constitution read with entry 97 of List I of the seventh Schedule of the Constitution. Entry 86 reads as follows :-

> "86. Taxes on the capital value of the assets, exclusive of the agricultural land, of individuals and companies; taxes on the capital of companies. It is common ground that a Hindu undivided family cannot be included in the expression "companies" occurring in entry No. 86 and the submission on behalf of the Department has been that u Hindu undivided family would be included in the word "individuals" occurring in that entry. On behalf of the petitioners it has been contended that the word "individuals" cannot its ordinary meaning comprehend a Hindu undivided family, and in any case Considering the legislative history in taxation matters a Hindu undivided family has always been treated to be a separate unit from an individual and consequently the same cannot he taxed under the cover of entry No. 86. While considering this submission we must not forget that in the words of Chief Justice Marshall "it is a Constitution we are expounding". In a written

constitution be it the enacting clauses or the entries in the lists general and comprehensive words are intentionally used in order to keep the scope of action and interpretation extremely wide. It has been said that whereas

"statutes are designed to meet the fugitive exigencies of the hour, a Constitution states or ought to state hot rules for the Passing hour, but principles for an expanding future. In so far as it deviates from that standard and descends into details and particulars, it loses its flexibility, the scope of interpretation contracts the meaning hardens. While it is true to its functions, it maintains its power of adaptation, its suppleness, its play"

(Cardozo 'the Nature of the Judicial Process' - see pages 83 and 84).
Inasmuch as a Constitution is a mechanism under which laws were to be made and not a mere Act which declares what the law is to be, it has got to be interpreted very liberally and should not be construed in any narrow and pedantic sense. In the case of *British Goal Corporation v. The King*[20], while interpreting the Canadian Constitution, their Lordships of the Privy Council observed that :-

"In interpreting a constituent or organic statute, that construction most beneficial to the widest possible amplitude of its Powers must be adopted." In AIR 1939 PC 1 their Lordships of the Federal Court emphasized the importance of very liberally interpreting the Constitution and observed that :
"The provisions of an Act like the Government of India Act, 1935, should not be cut down by a narrow and technical construction but considering the magnitude of the subject with which it purports to deal in a very few words it should be given a large and liberal interpretation....."

Again in the case of *United Provinces v. Mt. Atiqua Begum*[21], Gwyer, C.J., observed as follows :-

"I think however that none of the items in the lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it."

In *James v. Commonwealth of Australia*[22], the Privy Council observed as follows :-

"It is true that a constitution must not be construed in any narrow or pedantic sense. The words used arc necessarily general, and their full import and true meaning can often be appreciated when considered, as years go on, in relation to vicissitudes of fact which from time to time emerge."

Our Supreme Court in the case of *Navinchandra v. Commissioner of Income-tax, Bombay*[23], observed as follows :-

[20] AIR 1935 PC 158 [22](1936) AC 578 (614)
[21] AIR 1941 FC 16 [23] AIR 1955 SC 58 at p. 61

> "It should be remembered that the question before us relates to the correct interpretation of a word appearing in a Constitution Act which, as has been said, must not be construed in any narrow and pedantic sense. Gwyer, C.J., in - In AIR 1939 FC 1 observed at pages 4-5 that the rules which apply to the interpretation of other statutes apply equally to the interpretation of a constitutional enactment subject to this reservation that their application is of necessity conditioned by the subject-matter of the enactment itself .....

A pointed out by Gwyer, C.J., in AIR 1941 FC 16 at p. 25 none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary nr subsidiary matters which can fairly and reasonably be said to be comprehended in it. It is, therefore, clear - and it is acknowledged by Chief Justice Chagla - that in construing an entry in a List conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein..... The cardinal rule of interpretation however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude." It has been contended on behalf of the petitioners that the Hindu undivided family is something in the nature of a corporation or a quasi corporation, and being a distinct entity from its constituent members is a separate unit by itself and cannot be comprehended in the word "individuals". It is true that in a sense and for some limited Purposes a Hindu undivided family is a juristic person and a sort of a corporate body on whose behalf contracts can be entered into and enforced. (See *Shankar Lal v. Toshan Pal Singh*[24] But does that alter its essential nature and make it a corporation and not a group of persons or individuals. A joint Hindu family is a creature of law and consists of males lenially descended from a common male ancestor together with their wives and unmarried daughters. Unlike a corporation it cannot be created by the acts of Parties except by adoption or marriage. A stranger may be affiliated as a member provided permitted by custom. Again, unlike a corporation where its constituents are not the owners of its property the property held by the Hindu undivided family is the property of the coparceners who have a right to separate and get their shares partitioned. Even during the state of jointness a coparcener has an undivided coparcenary interest in the property. It is true that he cannot have separate enjoyment of the Property that would fall in his share until a Partition takes place. Nonetheless he along with other co-sharers is the owner of the same and has an undivided coparcenery interest in the property. When if is said that the ownership of the coparcenery Property vests in the whole body of coparceners it is not intended to say that some one else as distinct from the constituents of the undivided family is the owner of the same. In the case of a company a share-holder has an interest in the profits alone and has no right in the assets of a company. (See *Mrs. Bacha F. Guzedar, Bombay v. Commissioner of Income-tax*[25],) Similarly in a corporation the property vests in the corporation and not in its constituents. The property of a corporation is not the property of its members. In the case of a Hindu undivided family even in the state of jointness the property vests in the co-parceners who have a share in the same and the

only restriction on their right
[24] AIR 1934 All 553
[25] AIR 1955 SC 74

over the property is that they cannot separately
enjoy their share until there has been a partition but their complete ownership over the
corpus of the property and a vested joint interest and joint possession as also the enjoyment, of the usufruct is never in doubt. A joint Hindu family as such, unlike a corporation, neither can sue nor can be sued. It is well known that a, Hindu undivided family is a group of persons placed in that situation by their birth or marriage or adoption where it is permissible. In the case of 1952-22 ITR 474 : AIR 1953 Allahabad 150 a Bench of this Court while considering the essential nature of a Hindu undivided family was of the opinion that it was a "fleeting and changeable body" and held that it "is not like a corporation or a limited concern and it cannot therefore be said that it has a legal entity quite distinct and separate from that of those who constitute it."

36. In an earlier part of this judgment I have already referred to the various cases wherein it has been held that the enacting clauses of the Constitution or entries therein have not got to be narrowly read but must be read in their widest possible amplitude. Therefore if the word "individual" can, without perverting its meaning and reading it not in any narrow or technical sense but in its widest amplitude comprehend a Hindu undivided family, it must be so read. This Court in the case of AIR 1945 Allahabad 286 held that a Hindu undivided family is an association of persons and is distinct from artificial associations. In the case of 1940-8 ITR 269 : AIR 1940 Madras 612 a Full Bench of the Madras High Court held that a Co-operative Central Rank in Madras was an association of individuals within the meaning of Section 3 of the Income-tax Act. In the case of AIR 1957 Supreme Court 832 their Lordships of the Supreme Court held that the word "individual" does not mean only a human being but is wide enough to include a group of persons. The cases mentioned above lend support to the view that the expression "individual" even as used in Section 3 of the Income-tax Act includes not only individuals as such but also an association or body of individuals or persons, A Hindu undivided family is, in my judgment, clearly a group or body of persons or individuals and it appears to me that the word "individual" occurring in entry 81 can comprehend a body of individuals also and consequently a Hindu undivided family.

37. It has been contended that in the Income Tax Act an Individual has been considered to be a separate entity from a Hindu undivided family and is assessable as a separate unit altogether. It is then submitted that there is a clear legislative practice to treat an individual as a separate entity from a Hindu undivided family and in view of that legislative practice it must be held that the constitution-makers intended to use the word "individual" in entry No. 86 in the same restricted sense. In the first place the question of parliamentary practice or legislative history becomes important only when the words used are ambiguous or where the Act is silent with regard to the extent of the scope of the legislative power. In the case of *J.N. Duggan v. Commissioner of*

Income-tax[26]*,* Tendolkar, J., observed as follows :-

> "If there is a plain natural meaning which can be given to the words used in any legislative entry in Sch. VII to the Government of India Act it is not competent to narrow down the meanings of such plain words by giving to the words an artificial meaning which they may have acquired by long course of parliamentary Practice. The Parliamentary practice becomes relevant and of tile utmost importance when the words themselves are ambiguous or, where the Act is silent with regard to the extent of the scope of the legislative power." I have already held above that in my opinion the word "individual" can bear the meaning of a body of individuals or a group of persons like a Hindu undivided family. Consequently inasmuch as there is no ambiguity in the word individual' it is not necessary to fall back on the so called legislative history or parliamentary practice. It is true that sometimes reference to the legislative Practice may be admissible for cutting down the meaning of a word in order to reconcile two conflicting provisions in two legislative lists, as for example in AIR 1939 FC 1, or to enlarge their ordinary meaning as in the *State of Bombay v. F.M. Balsara*[27]*,* In the present case, however, there is no question of reconciling two conflicting provisions in two legislative lists because it is not the petitioners' contention that any of the entries in the State List provides for a capital levy on a Hindu undivided family.

[26]1952-21 ITR 458 at p. 481 : AIR 1952 Bom 261 at p. 271

38. Apart from it, is there any legislative practice to always treat the word "individual" as a separate and distinct unit from a Hindu undivided family in taxing statutes ? It is true that in Section 3 of the Income-tax Act the word "individual" has been treated as a separate unit of assessment from a Hindu undivided family but it has not been brought to our notice that the same was the position in the Income-tax Acts of 1860 or 1886 other taxing statutes have also not been placed before us to show that there was any such legislative practice as alleged by the petitioners. The mere fact that in the Income-tax Act of 1922 there is express mention of the Hindu undivided family along the expression "individual" would not justify the conclusion that there was a consistent legislative practice treating the two as separate units. It is clear that the provision for the Hindu undivided family being taxed as a unit by itself was by way of expediency in order to avoid complications which would have resulted in the constituents of the Hindu undivided family being taxed separately and which would have led to a lot of disputations and considerable difficulty. I am unable to agree that any such legislative Practice exists as alleged by the petitioners and I see no reason to hold that a Hindu undivided family is not comprehended in the expression "individual" occurring in entry No. 86.

39. It was submitted at the Bar that if it was the intention of the Constituent Assembly to include a Hindu undivided family also as a unit for assessment for the Purpose of levy of the Wealth Tax they would have mentioned the Hindu undivided family in entry 86 and would not have left it to be speculated later on whether or not th0 word "individuals" occurring in that entry comprehends

a Hindu undivided family in my opinion it was not necessary to do so, firstly, because the word "individuals" does comprehend a Hindu undivided family and. secondly, because in a written constitution general and comprehensive words are intentionally used so that the same may remain useful even in an indefinite and expanding future and in all vicissitudes in the changing affairs of men. It has been rightly said that a Constitution cannot be

[27] AIR 1951 SC 318 - Vide AIR 1955 SC 58

regarded as a political straight-jacket for generations to came (see *Schneiderman v. U.S*[28]*.,)*. In the case of *United States v. Classic*[29]*,* Chief Justice Stone, while dealing with this aspect of a Constitution observed as follows :-

> "For in setting up an enduring framework of Government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men those fundamental purposes which the instrument itself discloses. Hence we read its words, not as we read legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of Government."

Again, in the case of *Martin v. Struthers*[30]*,* Mr. Justice Frankfurter observed as follows :-

> "From generation to generation fresh, vindication is given to the prophetic, wisdom of the framers of the Constitution in casting it in terms so broad that it has adaptable vitality for the drastic changes in our society which they knew to be inevitable, even though they could not foresee them. Thus it has come to be that the transforming consequences resulting from the pervasive industrialization of life find the Commerce Clause appropriate for instance, for national regulation of an aircraft flight wholly within a single State. Such exertion of power by the national government over what might seem a purely local transaction would, as a matter of abstract law, have been as unimaginable to Marshall, as to Jefferson precisely because neither could have foreseen the present conquest of the air by man. But law, whether derived from acts of Congress or the Constitution, is not an abstraction. The Constitution cannot be applied in disregard of the external circumstances in which men live and move and have their being. Therefore neither the First nor the Fourteenth Amendment is to be treated by judges as though it were a mathematical abstraction; an absolute having no relation to the lives of men."

In this connection it would be relevant to notice what the Privy Council has said in the case of 1936 AC 578 at p. 614 while interpreting the term "trade and commerce" in Sections 51 and 92 of the Australian Constitution. It was observed as follows :-

> "The words used are necessarily general, and their full import and true meaning can often only be appreciated when considered, as the years go on, in relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of the words changes but

> the changing circumstances illustrate and illuminate the full import of that meaning .....It may be that in 1900 the framers of the Constitution were thinking of border tariffs and restrictions in the ordinary sense, and desired to exclude difficulties of that nature, and to establish what was and still is called "free trade", and to abolish the barrier of the State boundaries so as to make Australia one Single country. Thus they presumably did not anticipate those commercial and industrial

[28](1942) 320 US 118: 87 Law Ed 1796 [30](1942) 319 US 141: 87 Law Ed 1313
[29](1940) 313 US 299: 85 Law Ed 1368

> difficulties which have in recent years led to marketing schemes and price control, or traffic regulations, such as those for the co-ordination of rail and road services, to say nothing of new inventions, such as aviation or wireless. The problems, however, of the Constitution can only be solved as they emerge by giving effect to the language used."

Again in the case of *A.G. of Ontario v. A.G. of Canada*[31], while interpreting the expression "trade and commerce" occurring in Section 91 of the British North America Act, the Privy Council observed as follows :-

> "There seems no reason why the legislative competence of the dominion Parliament should not extend to the creation of juristic rights in novel fields if they can be brought fairly within the classes of subjects confided to Parliament by the Constitution."

Another interesting Privy Council case is A.G. for *Alberta v. A.G. for Canada*[32], where the Privy Council observed as follows :-

> "In 1867 postal services (Sec. 91 (5) of the British North America Act) in Canada were rendered by the help of land vehicles, but nobody could contend that the modern use of aeroplanes for carrying mail is, on that account, not within the phrase." These cases would show that general words are intentionally used so that a constitution may remain useful for all time and the progress of a nation be not halted. The Constitution makers, therefore, purposely used general and comprehensive words having a wide import without trying to particularize for if that were done the subject-matter or the field of legislation might have been narrowed down within the restrictions imposed by the particular words.

40. The Bombay High Court in the case of 1959-37 ITR 191 : (AIR I960 Rom 191) and the Andhra Pradesh High Court in the case of 1960-40) ITR 567 : AIR 1961 Andhra Pradesh 75 have held that the Union Legislature was competent to provide for the imposition of a capital levy on a Hindu undivided family. For the reasons given in this judgment I am in respectful agreement with the views expressed by the learned Judges in the cases mentioned above.

41. In view of my conclusions that the Union Legislature could have enacted the impugned provisions by virtue of entry 86 it is not necessary for me to go into the question whether entry 97 read with Article 248 of the Constitution could sustain the impugned Provision. But in view

of the fact that my brother Gurtu has taken the view that it was entry 97 read with Article 248 that enabled the Union Parliament to make the impugned provision and I am unable to agree with him on this point, it has become necessary for me to record in short my reasons for the disagreement. It is well known that resort to residuary powers should be the very last refuge. It is only when all the categories in the three lists are absolutely exhausted that one can think of falling back upon a non descript (Vide AIR 1941 FC 47 at p. 55). It is a matter of

[31] AIR 1947 PC 206

[32](1939) AC 117

common knowledge that at the time when the Government of India Act, 1935, was enacted as also when the present Constitution was passed an attempt was made to include in one list or the other all conceivable subjects and an attempt was made to make the list exhaustive and to avoid a final assignment of residuary powers. In the case of AIR 1945 PC 98 their Lordships of the Privy Council while commenting on the Government of India Act, 1935, observed as follows :-

> "The Indian Constitution is unlike any that have been called to their Lordships notice in that it contains what purports to be an exhaustive enumeration and. division of legislative powers between the Federal and Provincial legislatures."

In AIR 1939 FC 1, Chief Justice Gwyer, observed as follows with regard to the Government of India Act 1935 :-

> "The attempt to avoid a final assignment of residuary powers by an exhaustive enumeration of legislative subjects has made the Indian Constitution Act unique among Federal Constitutions, in the length and details of its Legislative Lists."

Sulaiman, J., also held that resort to the residuary powers should be had only as a last refuge, in the case of AIR 1941 FC 47. What was true of the 1935 Act is truer still of the Constitution because a mere Perusal of the latter would show that the lists under it had been made more elaborate and the chances of leaving anything for residuary legislation eliminated as far as human ingenuity could devise. In List I of the Constitution there are 97 entries as against 59 in List I of the 1935 Act, while in List II of the Constitution there are 66 entries as against 54 in the 1935. Act. Similarly in List III there are 47 entries in the Constitution as against 36 entries in List III of 1935 Act. It is well known that the provision with regard to the exercise of residuary powers has been made only by way of abundant caution so as not to leave any subject or field of legislation which in spite of the exhaustive enumeration of legislative powers and the best efforts escaped notice or could not be conceived of by the founding fathers without, either the Union Legislature or the State Legislature having the Power to legislate in respect of. Again, there is good authority for the proposition that in a case where two constructions are possible, one of which will avoid the resort to the residuary power and the other which will necessitate such resort, the former must

be preferred. (See *Manikka Simdara v. R.S. Naidu*[33],). On the assumption that sometimes new fields of legislation may come into existence which could not be foreseen and which could not be covered by the existing entries a residuary entry is provided for. In other words nothing was left to the residuary list by design and all sorts of conceivable subjects were included in one list or the other. It is impossible to believe that the Constituent Assembly could not conceive of the idea of imposing a capital levy on a Hindu undivided family because entry 86 itself would show that they had in mind a capital levy on the assets and the Provisions of the Income-tax Act show that they also knew that the Hindu undivided family was a unit of assessment.
Inasmuch as in my opinion the Constitution makers were fully aware that a capital

[33] AIR 1947 FC 1

levy on a Hindu undivided family could also be a field of legislation they must have provided for it and could not have left it for the exercise of residuary powers. In my judgment therefore there is no question of residuary powers being exercised in the Present case. If the Constitution-makers wanted to exclude from entry No. 86 the Hindu undivided family they could have excepted it expressly as agricultural land has been excepted from that entry. In my judgment it is not the umbrella of entry 97 but that of entry 86 which would cover and protect the impugned provision. Entries 86 and 97 are mutually exclusive. Inasmuch, as I have already held above that it is entry No. 86 which provides the field for enacting the impugned provision it must be held that entry 97 read with Article 248 of the Constitution would not be applicable.

42. I may, however, state that in case it were not possible to hold that entry 86 of List I of the 7th Schedule of the Constitution did provide foundation for the impugned provision the residuary Article 248 read with entry 97 would justify the imposition of the tax. Article 248 of the Constitution clearly provides that Parliament has exclusive power to make any law including one imposing a tax with respect to any matter not enumerated in the concurrent List or State List. To the same effect is entry 97. Therefore, if for any reason it could be held that the impugned tax could not be levied under the cover of entry 86, the same could clearly be levied under Article 248 of the Constitution read with entry 97. I am not impressed with the submission that the power to impose a capital levy on a Hindu undivided family cannot be exercised by any of the Legislatures functioning in this country. In my judgment considering the scheme of our Constitution and its provision; it is not possible to say that there is some power which the framers of the Constitution have withheld for the people and have not conferred on either the Union or the State Legislatures. It is true that in America there is a residium of powers neither granted to the Union nor to the States but reserved to the People who can put them in force only by the difficult process of amending the Constitution. That is not the position in our Constitution. While dealing with the Canadian Constitution the Privy Council in the case of A.G. for *Ontario v. A.G. for Canada*[34], observed as follows :-

> "Now, there can be no doubt that under this organic instrument the powers distributed between the dominion on the one hand and the provinces on the other hand cover the

whole area of self-government within, the whole area of Canada. It would be subversive of the entire scheme and policy of the Act to assume that any Point of internal self-government was withheld from Canada." Again, at Pp. 583-84, it was observed as follows :-

"In the interpretation of a completely self-governing Constitution founded upon a written organic instrument, such as the British North America Act, if the text is explicit the text is conclusive, alike in what it directs and what it forbids. When the text is ambiguous, as, for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular Power within either, recourse must be had to the context and scheme of the Act.

Again, if the text says nothing expressly, then it is not to be presumed that the

[34](1912) AC 571 at p. 581

Constitution, withholds the power altogether. On the Contrary, it is to be taken for granted that the power is bestowed in some quarter unless it be extraneous to the statute itself (as, for example, a power to make laws for some part of His Majesty's dominions outside of Canada) or otherwise is clearly repugnant to its sense. For whatever belongs to self-government in Canada belongs either to the Dominion or to the provinces within the limits of the British North America Act."

43. What is true of the Canadian Constitution is also true of our Constitution. In our Constitution all the residuary powers have been given to the Union Legislature. Consequently it is not possible to assume that the power to impose a capital levy on a Hindu undivided family is completely withheld or resides only in the people. It appears to me clear that except what is specifically prohibited by the enacting clauses of the Constitution e.g., the provisions relating to the fundamental rights, all the Powers vest either in the Union Legislature or the State Legislatures. For these reasons I am of the opinion that if the impugned tax could not be imposed by the Union Legislature under the cover of entry 86 it would be intra vires the same by virtue of the Provisions of Article 248 read with entry 97 of the first List of the 7th Schedule. I have, however, already said above that it is entry 86 and not 97 read with Article 248 which empowered the Union Legislature to enact the impugned provision.

44. For the reasons already mentioned and on the basis of the conclusions given above it must be held that Section 3 of the Act is intra vires the Union Legislature by virtue of entry 86 of List I of the Seventh Schedule of the Constitution. It would, therefore, dismiss all these petitions with costs. The case was ably argued both, by Mr. B.L. Gupta and Mr. Gopal Behari from whom we received considerable assistance.

45. BY THE COURT We accordingly dismiss all these nine writ petitions with costs. We assess the fee of the Standing Counsel for the Department at Rs. 200/- per case.

Petitions dismissed.