CALCUTTA HIGH COURT

Suhashini Karuri

Vs.

Wealth Tax Officer

Matter No. 113 of 1960

(D.N. Sinha, J.)

23.11.1961

ORDER

D.N. Sinha, J.

1. This is an application concerned with the Wealth Tax Act, 1957 being Central Act No.27 of 1957. It came into operation on the 12th September, 1957 and is an Act, the object of which is to provide for the levy of Wealth Tax. Under section 3 of the said Act, which is the charging section, - subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1957, a tax known as the wealth-tax, in repect of the net wealth on the corresponding valuation date, of every individual. Hindu undivided family and company specified in the Schedule annexed to the said Act. The word "net wealth" has been defined to mean the amount by which the aggregate value computed in accordance with the provisions of the said Act of all the assets, wherever located, belonging to the assessee on the valuation date, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date.

2. Now we come to the facts of this case. One Sri Nandalal Karuri died on May 21. 1944, after having made and published his Will on April 24, 1944 whereby he appointed Sm. Suhasini Karuri his wife and Sri Sudhir Prosad Karuri his eldest son, both of whom are petitioners in this case, as Executors and Trustees. The testator had 8 sons, of whom 7 are alive and one is dead. He has also grandsons. The petitioners obtained Probate of the said Will from this Court on or about July 25, 1945. A copy of the Will is annexed to the petition and marked with the letter "A". Actually there are very few bequests in the Will, which in reality creates a Trust. The petitioners were made the first Trustees and there are elaborate provisions for the appointment and succession of Trustees. The estate is described as the "Trust Estate". The trustees are to perform the pujas of the deities mentioned in clause (5) of the Will. The cost thereof was to be defrayed from out of the income of certain properties mentioned therein. The residue is to be distributed in the following manner:-

> "7. The amount of surplus left of the income of the said Bowbazar property after defraying all the aforesaid expenses and the entire amount of income from the other

> properties the trustees shall divide in equal shares amongst my eight sons. If any son die then his share shall be divided equally amongst his sons and in the event of death of any of those sons his share shall be divided amongst his sons. As to any minor son or grandsons (son's sons) of mine the trustees shall make over the income allotted to his share to his guardian during the period of his minority. If after my death, any of my sons or sons' sons renounce Hindu religion and custom, he shall not get the aforesaid share of the income mentioned in this paragraph. The entire income shall be divided amongst the remaining heirs."

3. This is followed by clause 13 the relevant part whereof is in the following terms :

> "At present seven sons and ten grandsons (son's sons) of mine are alive. I am executing this Deed of Trust for the benefit of the provisions (made) with regard to the worship of the deities and (for the "benefit) of my said sons and grandsons (son's sons). It is only my said sons and grandsons (sons' sons) and those sons that will be born to them in future shall be beneficiaries under this trust deed. As long as they and those other grandsons (sons' sons) that will be born during my life time will remain alive and then during the minority of the sons of them all those properties shall remain under the charge of the Trustees according to the rules of this Trust Deed. This trust shall come to an end when all my sons and (any) son born in my life time and the grandsons (sons' sons) die and when all the sons of theirs will attain majority and my the then heirs at that time shall be competent to make any arrangement regarding these properties as they will think proper. But it is my earnest desire that ever thereafter they shall be executing a Trust Deed similar to this trust deed or by forming a limited company as set forth in the following paragraph......"

4. There is also a provision for building up a reserve fund. According to the petitioners, the estate has been fully administered in their capacity as Executors and they assented to the legacies mentioned in the Will and that upon the completion of the administration the petitioners are holding the residuary estate as Trustee, in terms of the said Will For the assessment years 1957-58, 1958-59 and 1959-60 the Wealthtax Officer, District I (2), "D" Ward, Calcutta, assessed the petitioners as representing the estate of the said Nandalal Karuri deceased and computed the total net wealth at Rs. 14,02,703/-, Rs. 14,04,084/- and Rs. 14,10,007/- respectively and called upon the Petitioners to pay the relevant amounts of wealth-tax. Copies of the assessment orders have been annexed to the petition and included in Exhibit "A" at pages 8 to 22 in all these assessment orders, we find the name of the assessee to be - "Shri Sudhir Prasad Karuri and Sm. Suhashini Karuri for the Estate of Late Nanda Lal Karuri, 54, Raja Raj Ballav Street, Calcutta The "status" has been stated to be, "individual". The assessment orders proceed on the footing that the assessees were Trustees under the last Will and "Testament of the Late Nanda, Lal Karuri and were holding the trust estate for the benefit of the sons and grandsons of the testator. It is mentioned in the assessment orders that there were 7 sons and 3 grandsons. In the body of the assessment orders it is stated that the Executors do not cease to be Executors until the death of all the sons and grandsons of Late Nanda Lal Karuri living at the time of his death, The real point of

dispute however is the basis upon which the assessment of wealth-tax is to be made. The assessment has been made under section 16 (3) of the said Act. This is the clause under which an individual is assessed. In other words, the Trustees or executors were considered as individuals and the net wealth in their hands, on the date of valuation, has been taken as a whole, for purposes of computation. The contention put forward on behalf of the petitioners is that this was not the proper method of assessment. For this purpose, reliance is placed on section 21 of the said Act. The relevant provisions are contained in sub-sections (1) and (4) and run as follows:-

> "21 (J) In the case of assets chargeable to tax under this Act which are held by any trustee, appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise, the wealth-tax shall be levied upon and recoverable from the trustees in the like manner and to the same extent as it would be livable upon and recoverable from the person on whose behalf the assets are held and the provisions of this Act shall apply accordingly.
> * * * * * *
> (4) Notwithstanding anything contained in this section, where the shares of the persons on whose behalf any such assets are held are indeterminate or unknown, the wealth-tax may be levied upon and recovered from the Court of wards, administrator-general, official trustee, receiver manager or other person aforesaid as if the persons on whose behalf the assets are held were an individual for the purposes of this Act."

5. According to the petitioners, the matter falls under sub-section (1) of section 21 The estate is being held on behalf of the beneficiaries by trustees and the correct way of assessing the wealth-tax would be to consider the various beneficiaries to be the assessees and to compute the wealth-tax in respect of each such assessee. Obviously, this would be highly beneficial to them because in each case the amount of net wealth would be only a small proportion of the whole estate and, therefore, likely to come within the exemption limit or a lower rate. Apart from this, a technical objection is taken to the effect that joint executors or trustees are an 'association of persons' and there is no provision in the said Act for the assessment of such an unit. As stated above, the assessment has been made on the basis of "individual" and not on an "association of persons". I shall now consider these objections.

6. With regard to sub-section (1) of section 21, the plain reading of the provision is that where assets chargeable to tax are held by trustees then the wealth-tax shall be levied upon and recoverable from them as it would be livable and recoverable from the person, "on whose behalf the assets are held". Who are the persons in the present case on whose behalf the trustees are holding the assets? According to the petitioners, they are the beneficiaries, namely the sons and grandsons of the deceased testator aforesaid, who were alive at the time of his death. That would seem to be the ordinary meaning. Mr. Pal appearing on behalf of the respondents has argued that under the Indian Law, the legal estate vests in the trustees and the trustees do not hold 'on behalf of the beneficiaries. Under the Indian Trusts Act 1882, a "trust" is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him, for the benefit of another, or of another and the owner. The person who responses or declares the confidence is called the "author of the trust" the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is

accepted is called the "beneficiary'. The "beneficial interest" or 'interest of the beneficiary" is his right against the trustee as owner of the trust property. It is therefore clear that under the Indian Law, the trustee is the owner of the property, subject to the liability that the beneficiary can enforce the trust as against him. The position has been placed beyond dispute by the Judicial Committee in *Chhatra Kumari Devi v. Mohan Bikram Shah*[1], That being the position, a question arises as to whether the trustee holds property on behalf of the beneficiary. Mr. Pal relies on a decision of the Supreme Court, *W. O. Holdsworth v. State of Uttar Pradesh*[2], The facts in that case were shortly as follows: The appellants were the trustees of the estate settled on trust under the last will and testament dated May 17, 1917, of one J.J. Holdsworth which inter alia comprised of a certain zamindari estate known as the 'Lehra Estate', situate in the District of Gorakhpur in Uttar Pradesh. The Will provided that the trustees were to take possession of all the properties of the testator and pay certain annuities to 12 annuitants. If there was no survivor alive, then the estate was to go to W. O Holdsworth, the son of the testator. At the relevant time, 7 of the said annuitants had died. A notice of assessment of agricultural income-tax was issued to the trustees for the year 1949-50. The trustees claimed that the assessment of gricultural income-tax under the U. P. Agricultural Income-tax Act, 1948, should be made as provided f r in section 11 (1) thereof and made on the footing of the aggregate of the tax payable by each beneficiary. Section 11 (1) of the U. P. Agricultural Income-tax Act, 1948, hears a certain resemblance to section 21 (1) of the Wealth-tax Act of 1957 and is set out below:-

> "Where any person holds land, from which agricultural income is derived, as a common manager appointed under any law for the time being in force or under any agreement or as receiver, administrator the like on behalf of persons Jointly interested in such land or in the a cultural income derived therefrom, the aggregate of the sums payable as agricultural income-tax by each person on the agricultural income derived from such land and received by him, should be assessed on such common manger, receiver, administrator or the like and he shall be deemed to be the assessed in respect of the agricultural income-tax so payable by each such person and shall be liable to pay the same,"

7. It will be observed that there is one difference and it is the enumeration of the class of persons holding land on behalf of the persons interested in such lands or in the income drive therefrom. In section 11 (1) of the Agricultural Income-tax Act, we find the mention of a common manager, a receiver and administrator. Then we have the expression "or the like". Under section 21 (1) of the Wealth-tax Act we have two groups. The first group contains the mention o the Court of wards, administrator-general official trustee, receiver, manager or "any other person by whatever name called." appointed under any order of a Court to manage property on behalf of another. The second group consists of any trustee appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise, including a trustee under a valid deed of wakf With regard to both these groups, the wealth-tax shall be levied upon or recoverable from the Court of wards, administrator-general, official trustee, receiver or trustee as the case may be, in the same manner and to the same extent as it would be 1eviable upon and recoverable from the person "on whose behalf" the assets are held. We are concerned in this case with trustees appointed under a testamentary Instrument. It is not stated that the person on whose behalf the assets are held by a trustee is the beneficiary Mr. Chaudhury however argues that this is what is meant Coming back to the Supreme Court decision mentioned

[1] 58 Ind App 279 at p. 297 : (AIR 1931 PC 196 at p. 202)

[2](1958) 33 ITR 472

above it will be observed that in section 11 (1) of the Agricultural Income-tax Act the word " trustee" has not been mentioned. But a trustee might come in within the expression "or the like" if the trustee can be said to hold land or income "on behalf of the persons interested therein. The question that was decided was as to whether trustees can be said to hold land "on behalf" of beneficiaries, in that case the annuitants. Bhagwati J., first of all held that a trustee would come within the meaning of the word "person" in the charging section. Section 3 of the Agricultural Income-tax Act made the tax payable on the total agricultural income of the previous year of every "person". The word "person" is defined in section 2 (11) of the Agricultural Income-tax Act to mean an individual or an association of individuals owning or holding property for himself or for any other, either as owner, trustee, receiver, manager, administrator or executor or in any capacity recognized by law, etc. Under the Wealth-tax Act, the charging section does not speak of a person but the tax is payable in respect of the net wealth on the corresponding valuation dale, of every individual, Hindu undivided family and company. However, as was pointed out by Bhagwati, J., under the Agricultural Income-tax Act a "person included an individual. A trustee was a "person". The learned Judge explained the section thus:-

> "It is to be noted that the primary liability for the payment of agricultural income-tax is on the person who is interested in the land or in the agricultural income derived there from. The incidence of the tax is on that person and the amount of tax is determined with reference to the aggregate income derived by him. In so much as, however, such land is held by some other person who is a common manager, receiver, administrator or the like on behalf of such person and others jointly interested in such land or in the agricultural income derived there from, the agricultural income-tax is assessed on such common manger, receiver, administrator or the like instead of the assessment being made on each of such persons who is jointly interested in such land or in the agricultural income derived therefrom. Section 11 (1) prescribes a mode of assessing such common manager, receiver, administrator or the like and he is deemed to be the assessee in respect of agricultural income-tax so payable by each such person and is liable to pay the same."

8. The learned Judge pointed out that with regard to a common manager, receiver", administrator or the like, there is no doubt that he was holding property for others In such cases, the agricultural income-lax is determined with reference, not to the person holding property on behalf of another, but with reference to each of the persons jointly interested in the" said 1and or the agricultural income derived there from. In making this concession, the rate of tax is lowered in other words the tax would be less than if it was levied upon the income of the person who was holding the land or the income on behalf of another. But what about trustees?. The learned Judge considers the meaning of a trust as defined under the English law, as also the Indian law and concludes that whatever be the Position in English law, the Indian Trusts Act, 1882 is clear and categoric on this point. The learned Judge states as follows:-

> "These definitions emphasize that the trustee is the owner of the trust property and the beneficiary only has a right against the trustee as owner of the trust property. The trustee in thus the legal owner of the trust property and the: property vests in him as such. He no doubt holds the trust property for the benefit of the beneficiaries but he does not hold it on

> their behalf. The expression 'for the benefit of' and 'on behalf of' are not synonymous with each other. They convey different meanings. The former connotes a benefit which is enjoyed by another thus bringing in a relationship as between a trustee and a beneficiary or cestui questrust, the latter connotes an agency which brings about a relationship as between principal and agent between the parties, one of whom is acting on behalf of another. Section 11 (1) therefore can only come into operation where the land from which agricultural income is derived is held by such common manager, receiver administrator other live on behalf of, or in other words, as agent or representative of, persons jointly interested in such land or in the agricultural income derived therefrom. Even though such persons were the beneficiaries cestui quetrust under a deed of trust, they would not be comprised within the category of persons on whose behalf such 1and is held by the trustees and the trustees would not be included in the description of common manager, receiver, administrator or the like so as to attract he operation of section 11 (1). Trustees do not hold the land from which, agricultural income is derived on behalf of the beneficiaries but they hold it in their own right though for the benefit of the beneficiaries."

9. In the above-mentioned case, the claim was that the annuitants being the beneficiaries, their individual income should be taxable It was held however that section 11 (1) did not operate in the case of trustees because the trustees were the legal owners of the trust estate and did not hold land "on behalf of" the annuitants.

10. Coming now to section 21 (1) of the Wealth-tax Act, we find that the wealth-tax is to be levied upon the trustee in the like manner and to the same extent as it would be livable upon and recoverable from the person "on whose behalf" the assets are held. The expression is "on whose behalf" and not "for the benefit of". In working out this provision of law, the question has to be asked, as to whether in the present case the trustees could be said to hold the property "on behalf" of the beneficiaries, namely the sons and the grandsons of the testator. According to the reasoning given above, they do not do so. They hold the property on their own behalf, being legal owners thereof, but for the benefit of the beneficiaries. Mr. Pal argues that it follows that in the present case also, it must be held that the trustees do not hold the property on behalf of the beneficiaries and the competition of wealth-tax cannot be according to the individual income of the beneficiaries but upon the income in the hands of the trustees. If this was the intention of the legislature, then I do not see why the trustees were at all mentioned in section 21 (1) of the Wealth Tax Act. "The object of all interpretation of a stature", says Maxwell in the Interpretation of Statues' 9th Edition, page 2,

> "is to determine what intention is conveyed, either expressly or impliedly, by the language used, so far as is necessary for determining whether the particular case or state of facts Presented to the interpreter falls within it."

Where, of course, the expression used is ambiguous then it must be interpreted to harmonise with the intention. The sense of the words is to be adopted which is best harmonized with the context and in the fullest manner the policy and object of the legislature. Coming to section 21 (1) of the Wealth-tax Act, what is the intention? The intention or the Act is to revise a tax known as the

wealth-tax. The charging section states that the tax should be levied upon every individual, Hindu undivided family in company. From this Point of view, there is difficulty in charging wealth-tax in the hands of a trustee. Section 21 (1) however is intended to grant some relief. With regard to the first group that I have mentioned above, namely the persons who are appointed under any order of court to manage property on behalf of in ther, there is no difficulty. But with regard to the second group, namely trustees, it must have been known to the legislature that he holds property on his own behalf and not on behalf of the beneficiaries. and yet, the trustee is mentioned and the wealth-tax is made livable upon the persons on whose behalf the assets are held If this is meant to signify the trustee himself, then his inclusion in this sub-section is meaningless, because no relief was being granted to any one. It does seem therefore that in this particular case, the intention of the legislature was that in the case of trustees, the expression '"on whose behalf is synonymous with, "for whose benefit." In the above-mentioned Supreme Court decision, it has been held that the two expressions are not synonymous in law. The Supreme Court was, however, interpreting section 11 (1) of the Agricultural Income-tax Act, which did not contain any mention of the word "trustee", but is confined to persons or class of persons who held properly on behalf of another. A trustee was held not to belong to such a group. Under section 21 (1) of the Wealth-tax Act, however, a trustee has been expressly mentioned and has been equated with a group which undoubtedly holds property on behalf of another. In my opinion, the clear intention is that both the groups should be considered in the same light when it came to the computation of wealth-tax and so far as trustees are concerned, the expression "from the person on whose behalf the assets are held" clearly means the beneficiaries. This I think, is made clear from sub-section (3) which runs as follows:-

> "Where the guardian or trustee of any person being a minor, lunatic or idiot (11 of which persons are hereinafter in this sub-section included in the term beneficiary holds any assets on behalf of such beneficiary, the tax under this Act shall be levied upon and recoverable from suck guardian or trustee as the case may be, in the like manner and to the same extent as it would believable upon and recoverable from any such beneficiary if of full age or sound mind and in direct ownership of such assets."

11. Here, a trustee has been clearly described as holding assets "on behalf of" the beneficiaries. This indicates that the word "on behalf of which has been used in section 21 (1) of the Wealth-tax Act is synonymous with the expression "for the benefit of."

12. That being so, the argument that in subsection (1) of section 21 of the Wealth-tax Act, the trustees cannot be held to be holding property on behalf of the beneficiaries and, therefore, that sub-section is inapplicable in their case, is not a valid argument.

13. I think that a reference to section 41 of the Indian Income-tax Act is of considerable assistance. The relevant provision is contained in sub-section (1) which runs as follows:-

> "In the case of income, profits or gains chargeable under this Act which............ any trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including the trustee or trustees under any wakf of deed which is valid under the Mussalman Wakf Validating Act, 1913), are

> entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such .... trustee or trustees, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits or gains are receivable and all the provisions of this Act shall apply accordingly."

14. The first proviso to sub-section (1) corresponds to sub-section (4) of section 21 of the Wealth-tax Act, Under the provisions of the Income-tax Act, it has never been held that under this provision a trustee was to be considered as holding property on his own behalf and therefore, the assessment should not be made of the income of the beneficiary. Both under the Indian Income-tax Act and Wealth-tax Act, these provisions are enabling and do not prevent assessment being made of the beneficiaries directly. But if the provisions confer an alternative right, it would be meaningless to say that the trustees, for the purpose of this section hold property on their own behalf and so do not come within the scope thereof Perhaps, in view of the Supreme Court decision the wordings of both these Acts require modification.

15. The next point taken on behalf of the respondents is that, in any event, sub-section (4) of section 21 applies to the facts of this case, because the shares of persons on whose behalf the assets are held are indeterminate or unknown. The matter is formulated in this way: Firstly, it is said that the number of beneficiaries is not fixed, because a son may die leaving a number of grandsons. Secondly, that the deities are also beneficiaries. Thirdly, there is provision for the setting apart of a reserve fund, according to the discretion of the trustees. From this it is argued that the share of each beneficiary is indeterminate. In my opinion, this, argument is not of substance. The share of a beneficiary can be said to be indeterminate if at the relevant time the share cannot be determined. Merely because the number of beneficiaries varies from time to time, one cannot say that it is indeterminate. In support of this proposition, Mr. Chaudhury has cited a Division Bench judgment of the Patna High Court *Commissioner of Income Tax, Bihar and Orissa v. Habi bur Rahman*[3], That was case under section 41 of the Income-tax Act, which corresponds to section 21 of the Wealth-tax Act Under sub-section (1) of section 41, where trustees were entitled to receive income on behalf on any person, the tax shall be levied upon and recoverable from such trustees as it would be recoverable from the beneficiaries. The facts were as follows Khan Bahadur Abibur Rahman executed a deed of wakf in regard to his distillery business known as the Sultanganj Distiliery which inter alia provided for the income to be expended on the maintenance and support of the Wakif's family children and descendasts. Fazi A C J., said as follows:-

> "Before the Income-tax Officer it was not disputed that assessment upon the income from the waqf property during the accounting year was be made under the provisions of section 41. In come-tax Act. What was seriously disputed was the question whether the tax should be levied upon the share of each beneficiary under the wakf applying the individual rates applicable separately to the total income of each beneficiary or it should be levied at the maximum rate under proviso 1 of section 41 on the ground that the individual shares of the persons to be benefited by the wakf are indeterminate or unknown .... It appears that the only question which was seriously disputed before the Income-tax authorities was whether the beneficiaries were an in determinate body or they could be ascertained It was

[3] AIR 1945 Pat 494

> conceded before us, as it seems to have been conceded throughout, that if their number could be ascertained there was no difficulty finding out their individual shares because under the wakf deed the beneficiaries were entitled take the profits 'simultaneously in equal shares The view of the learned Appellate Assistant Com missioner was that it was not possible to ascertain the number of beneficiaries as the respondent has numerous grand children and the expression "family included a daughter-in-law and various other relations like the son of a half-brother, the so and grandson of a maternal uncle and the son a half-sister. The Tribunal, however, came the conclusion that the persons who were entitle to share the profits were 24 in number and included the settlor, his wife, his five sons and sever daughters and his ten grand children. It seem that no question was raised before the tribunal a to whether any relations of the various categories, to which reference was made by the Appellate Assistant Commissioner such as the son of a half brother, the son and grandson of a maternal uncle etc., were in existence and therefore entitled share the income. The tribunal took the view that in the accounting year the 24 persons to whom reference has already been made, were the only persons who were entitled to share the profits...............

It seems to me therefore that the finding of the tribunal that there were only 24 persons who were entitled to share the profits in the accounting year and that they were entitled to equal shares therein must be accepted. As it does not seem to have been contended that the assessee had any other relations than those enumerated by the Tribunal who would be entitled to share the profits, it is academic to discuss whether various categories of persons referred to by the Appellate A sis- taut Commissioner of Income-tax were included in the term 'family' or not."

16. It was held that the assessee Matwalli should be taxed on the basis of profits falling to the share of each beneficiary. In the present case there seems to be no difficulty determining the share of the beneficiaries during the relevant accounting period. The Will clearly lays down as to who would be entitled to the income and it is a mere matter of calculation as to how many sons and grandsons were in existence, at the relevant date and to calculate according to their respective shares, as provided under the testamentary trust. Coming to the deities, we have a known number of deities and the income to be spent on their behalf has been fixed. There does not seem therefore to be any difficulty in computing the share of the income allotted to the deities. As regards the deities, Mr. Chaudhury has cited A Division Bench Judgment of the Patna High Court - *Vissaswar Singh v. Commissioner of Income Tax, Bihar and Orissa*[4], There, certain properties were held in trust on behalf of a number of deities. It was held that the deities were juridical persons and where it was provided that She income of certain properties were to be spent in their behalf, in the eye of law the deities had equal share in the income of the properties and the assessment should be made under section 41 (1) of the Income-tax Act on the individual income of each such deities. In the present case, the income of the deities has been fixed and therefore, there is no difficulty in determining their respective shares in the total income in the hands of the trustees. As regards the reserve fund, the amount of reserve fund set apart in the accounting period can easily be determined.

17. I now come to the point taken by Mr. Chaudhury that it is not permissible under the

[4] AIR 1951 Pat 187

Wealth-tax Act to assess two or more trustees, because they can only be assessed as an "association of persons" and that under the said Act, an "association of persons' cannot be assessed. For this proposition Mr. Chaudhury compares section 3, the charging section under the Wealth-tax Act with section 3, the charging section under the Income-tax Act. Under the latter Act income-tax is assessable on every individual, Hindu undivided family, company and local authority and on every firm and other association of persons or the partners of the firm or the members of the association individually. Mr. Chaudhury points out that under section 3 of the Wealth-tax Act, the only person who can be assessed is an individual, a Hindu undivided family and a company. He says that the expression "association of persons" has been deliberately omitted. Mr. Chaudhury argues that under the Income-tax Act, joint trustees can only be assessed as an association of persons. He has cited a Division Bench judgment of the *Lahore High Court Hotz Trust of Simla v. Commr of Income-tax*[5], It was held there that a body of trustees comes within the meaning of "other association of individuals" as used in section 3 and elsewhere of the Income-tax Act and could be grouped as a unit for the purpose of income-tax. Mr. Pal appearing on behalf of the respondents points out that under section 3 of the Wealth-tax Act, an "individual' can be taxed. Although used in the singular, it includes the plural. He points out that in item 86 of List I in the 7th Schedule of the Constitution, Parliament has been given power to legislate on the taxation of "individuals". The question is as to whether joint trustees could form an unit for the purpose of taxation. Mr. Pal has cited a Supreme Court decision, The *Commissioner of Income-tax, Madhya Pradesh and Bhopal v. Sodra Devi*[6]. In that case, Bhagwati, J., points out that the word "individual" has not been defined in the Income-tax Act and there is authority for the proposition that the word "individual' is wide enough to include a group of persons forming an unit. I have already mentioned the case of AIR 1930 Lahore 929 (supra), where it has been held that a body of trustees could be grouped as an unit for the purposes of taxation. The nature of the joint trusteeship has been explained by Abdur Rahman, J., in *Vedakanna Nadar v. N.T.S. Annadana Chatram*[7], The learned Judge points out, after considering all the authorities on the subject, that the general principle of law is that the office of trustees, irrespective of their number, is a joint one and four trustees form, as it were, one trustee. This is also pointed out by Mukharji, J., in *Shri Mahadeb Jew v. Bal Krishna Vyas*[8]. quoting Lewin on Trustees 14th Edn. at page 196 where he says "Where the administration of the trust is vested in co-trustees they all form as it were but one collective trustee." Mr. Pal has cited a decision of the Supreme Court The *Commissioner of Income-tax, Bom. v. Indira Balkrishna*[9], It has been pointed out there that the term "association of persons" has not been defined and we must construe the words in their plain ordinary meaning in the context in which they have been used A decision of this Court, *In Re B. N. Elias*[10], was quoted with approval, in which Derbyshire, C.J., pointed out that an association of persons is one in which two or more persons joined in a common purpose or a common action the object of which was to produce income, profits and gains. In the same case Costello, J., said that the expression would be applied to a combination of individuals who were engaged together in some joint enterprise but did not in law constitute a partnership. Mr. Pal argues that the office of a trustee holding property but not carrying on any business cannot be said to be an "association of persons" the object of which is to produce income,

[5] AIR 1930 Lah 929
[6](1958) SCR 1
[7](1938) 2 Mad LJ 663 at p. 679: AIR 1938 Mad 982 at p. 990
[8]89 Cal LJ 224 at pp. 234-235: AIR 1952 Cal 763 at p. 767
[9](1960) 30 ITR 546 at p. 551: (AIR 1960 SC 1172 at p. 1174)
[10](1935) 3 ITR 408 (Cal)

profits and gains. Now, this appears to me to be a controversial way of looking at things. Even if

such a construction is proper under the 'Income-tax Act which intends to assess income, it cannot be appropriate under the Wealth-tax Act, which professes to tax wealth. In my opinion, it is sufficient to hold that joint trustees must be taken to be a single unit in law and there is nothing wrong in treating such an unit as an individual holding property and becoming assessable under Section 3 of the Wealth-tax Act.

18. The result is that under the Wealth-tax Act joint trustees form a unit of taxation and are not excluded by the charging section, namely, section 3.

19. Lastly, I come to the question raised in the assessment order, namely, hat the petitioners are holding property as executors and not as trustees. What is stated is that under the Will they must held the property until the death of all the sons and the grandsons living at the time of the death of the testator and/or the period of minority of any of them and consequently until the time for distribution arrives, the petitioners are holding as executors and not as trusties. Now, if this contention is correct and the Petitioners are holding as executors then they do not come within the mischief of section 21 because section 21 does not apply to executors. In my opinion, the respondent No.1 is in error in considering that the petitioners hold the property as executors until the period of distribution has arrived. It is a mistake to think that an executor necessarily remains an executor until he hands over the property to the person ultimately entitled to it. The administration of an estate in the hands of an executor is at an end as soon as the debts have been paid and the legacies have been assented to have been paid. Lewis in his book on "Trust" says :

> "When the funeral and testamentary expenses, debts and legacies have been satisfied and the surplus has been invested upon the trust of the will, the executor then assumes the character and becomes a trustee in the proper sense".

Therefore, when the proper executorial function has been completed the executor continues to hold only as a trustee for the execution of the trust of the will. Reference may be made to the case of *Gour Chandra Das v. Monmohiai Dasi*[11], The facts in that case were as follows: S by his Will appointed A and B as his executors as well as shebaits of the idol in whose favor the Will created a trust in respect of the whole of big property .Greaves, J., said as follows:-

> "The whole of the estate of Sambhu was created a trust property for the idol Seligram and as soon as debts and legacies were paid and the funeral expenses Were paid the Executors would hold the property upon the trusts of the Will and there would be no property administered by the Executors which would pass to any addministratrix de-bonis-non appointed by the probate Court."

20. The sole purpose of the grant of administration of an estate is the collection of assets, payment of necessary expenses and debts and the disposition of the assets, - in case of testamentary success ion. by the payment of legacies and carrying out the directions of the Will with regard to the assets and in the case of intensive, by distribution of the assets among the legal hairs. As long as any one or more of these things remains to be done in

[11] 25 Cal WN 332 : AIR 1921 Cal 142

respect of the whole or any part of the assets of the estate, it is said to be not fully administered. When the estate is fully ad ministered, the executors can get a discharge by an application to the

High Court under Sea 301 of the Indian Succession Act. Whether there is an order of discharge or not is immaterial. If the estate has been fully administered the administration must be deemed to have come to an end. In *Taran Singh Hazari v. Ram Ratan Tewari*[12], one Gourj Devi was appointed executuix of a will of Siblai Tewari who left a minor son. She continued to manage the property of the minor for some time and then applied to the Court of Wards to take over the estate. The Court of Wards took over the estate and subsequently brought a suit against the defendant Taran Singh Hazari, to recover an amount due on a mortgage bond executed by him in favour of Gauri Devi as executrix. The defence taken was that it was the executrix who could alone enforce the mortgage. It was held that Gouri Devi had fully administered the estate and was holding the property as a trustee for the minor. The duties of an executor are to pay the debts, collect the Outstanding and to administer the estate of the deceased and after this has been done and the estate has been settled, his duties as an executor are finished and if he is required to continue to be in charge of the Property for the benefit of certain beneficiaries, the ceases to be an executor and becomes a trustee of the property. The duties of an executor and those of a trustee are quite different. In the case of - *Madhu Sudan Bagchi v. Hrishikesh Sanyal*[13], Mootham, J., said as follows :

> "The duties of an executor in general terms are to collect the assets of the deceased, to pay his debts and the funeral and testamentary expenses and thereafter to make over the residue of the estate to the person or persons entitled thereto under the will. Where the testator intends is to create a trust of the whole or part of his property his will, if properly drawn, will direct the executor, after performing the ordinary duties of administration, to make over the estate or such part thereof as the testator indicates to a trust or trustees to be held by them upon such trusts as are set out in the will."

21. In India the words "executor" and "trustee" are indiscriminately used. One has, therefore, to find out where the executorships ends and the trusteeship begins. In this particular case, the will itself creates a trust in express terms. In fact, the will is nothing but a trust created by a testamentary instrument. Thus, as soon as the debts and liabilities have been paid and the legacies have been assented to the executors have dropped their position as executors and have assumed the duties of trustees. In this particular case, it has been stated in the petition that the estate has been duly administered and he executors have assented to the legacies in favour of the legatees. This is not effectively denied in the affidavit-in-opposition. In the assessment order, the finding is that inasmuch as the estate has to be made over at a future date to the beneficiaries, the administration of the estate continues until the period of distribution. This is an erroneous view and cannot be accepted. The will itself states that the petitioners would hold the properties in trust for the sons and grandsons. Therefore, as soon as the administration was ended the petitioners have been holding the properties as trustees. The position in law has been elucidated in *V.M. Raghuvalu Naidu and sons v. Commissioner of Income Tax, Madras*[14] It has been pointed but there that in the case of a specific bequest, the executors to not become trustees tor the beneficiaries until

[12] ILR 31 Cal 89
[13] AIR 1949 All 93
[14](1950) 18 ITR 787 : AIR 1950 Mad 790

assent. In the case of a residuary bequest, executors become trustees when the residue is ascertained and the assent of executors is either expressly given or inferred from conduct. In this case there may not have been a specific assent, but as the trustees have paid off the debts and

liabilities of the test tor and are holding the property, paying or expending the income on behalf of the beneficiaries, their conduct would amount to an assent and the administration of the estate has come to an end.

22. The result is that the assessment orders are bad inasmuch as the Wealth Tax Officer proceeded on the looting that the pr visions of Section 21 (1) of the Wealth-tax Act do not apply to this case and that the administration of the property his not yet come to an end, as also because it has been held that the shares of the beneficiaries are indeterminate. For all these reasons, the application should succeed and the rue is made absolute and the impugned assessment orders for the years 1957-58, 1958-59 and 1959-60 mentioned in the petition are quashed and/or set aside by a writ in the nature of certiorari and here wil1 be issued a writ in the nature of mandamus directing the respondents not to give effect to thers me. The respondents will now be at liberty to make assessments in accordance with law. There will be no Order as to costs.

Rule made absolute.