BOMBAY HIGH COURT

Trustees of Gordhandas Govindram

Vs

Commissioner of Income-Tax

(Kotwal, C.J. V Desai. J.)

15.02.1968

JUDGMENT

V.S. Desai, J.

1. This is a reference under section 27(1) of the Wealth-tax Act relating to the wealth-tax assessments of the assesses for the assessment years 1957-58 and 1958-59, for which the relevant valuation dates were December 31, 1956, and December 31, 1957, respectively.

2. The assessees are the trustee of a trustee of a trust called "Gordhandas Govindram Family Charity Trust". For the two assessment years will which we are concerned, the net wealth of the assessees was computed at Rs. 8,11,702, for the first and Rs. 8,03,039 for the second. The computation of the net wealth is not under dispute. The contentions of the assessee, however, have been that the trust being a public charitable trust, the asset held under trust are exempt from wealth-tax under the provisions of section 5(1)(i) of the Act, that the trustees being more than one cannot be an assessable entity under the Wealth-tax Act, and that they could not be brought to tax under section 21 of the Wealth-tax Act, These contentions have been negatived by the departmental authorities and by the Tribunal and on an application of the assessee under section 27(1), the following two Question have been referred to this court by Tribunal as arising out of its order :

> "1. Whether on a true construction of the indenture of trust dated June 11, 1941, the trustees of the trust constitute an assessable unit under the provisions of the Wealth-tax Act ?

2. Whether the property held by trustees under the indenture of trust dated June 11, 1941, is held for any public purpose of a charitable or religious nature in India within the meaning of section 5(1)(i), the Wealth-tax Act ?"

3. Mr. Kolah, the learned counsel appearing for the assessees, has submitted that the first question as farmed by the Tribunal does not clearly bring out the contentions of the assessees and the points of law involved thereunder. The contentions of the assessees in respect of which the question was asked were that they do not form an assessable unit under section 3 of the wealth tax Act, which is the charging section, and even assuming that they form an assessable unit, they cannot be brought to tax under section 21 on the language used in that section as it stood at the material time. These contentions, Mr. Kolah submits, have nothing to do with the construction of the indenture of trust and are quit independent of it. The question as farmed by the Tribunal, however, gives the impression that the contention of the assessees that they do not form an assessable unit under the provision of the Wealth-tax Act, is dependent upon the construction of the trust deed. In our opinion, this submission of the learned counsel is justified and Mr. Joshi, the learned counsel for the revenue also concedes that that is so.

4. The first question as referred by the Tribunal, therefore, will have to be re-formed in order to bring out the points of law which are required to be determined thereunder. We accordingly reframe the first question as follows :

> "Whether, on a proper construction of sections 3 and 21 of the Wealth-tax Act, the assessment made on the assessees as trustees is valid ?"

5. We will proceed to dispose of the second question first. Section 5(1)(i) of the Wealth-tax Act provides that wealth-tax shall not be payable in respect of any property held by the assessee under trust or other legal obligation for any purpose of a charitable or religious nature in India. What we have to consider in the present case is whether the property held by the trustees under the "Gordhands Govindram Family Charity Trust" is for any public purpose of a charitable nature. Now, a public purpose of a charitable nature would require a charitable purpose which is for general public utility. The purpose contemplated by the trust is the giving of help and relief to the poor. It is, however, well settled that in India the relief of the poor by itself would not be a public charitable purpose unless it involved an object of general public utility. The question, therefore, to be considered is whether on the construction of the deed the purpose of the trust is such as would make the trust a public charitable trust.

6. Now, the indenture of trust, which was executed on the 11th June, 1941, sets out in its preamble that a sum of Rs. 11 lakhs out of the joint family property belonging to the joint family firm of Messrs. Gordhands Govindram carrying on business at Navalgadh had been earmarked and set apart for the benefit of the charitable objects mentioned in the deed in memory of Seth Gordhandas Seksaria and trust was being created of the said sum by transferring it to the trustees. Clause (1) of the trust provides that the trust will be known as "Gordhandas Govindram Family Charity Trust". Clause (2) states that the income of the trust estate, after, after payments of the

necessary outgoings, will be applied by the trustees in giving help or relief to such poor Vaishya Hindus or other Hindus as the trustees may consider deserving of help in the manner and to the extent thereinafter specified and subject to the condition and directions stated in the next following clause and/or for the charitable object or objects thereinafter mentioned. Clause (3) enumerates the conditions and directions referred to in clause (2), which are required to be observed and followed by the trustees in the execution of the trust. Condition (a) provides as follows :

> "Poor Vaishya Hindoos who are members of Seksaria families shall be preferred to poor Vaishya Hindoos not belonging to the said families and poor Vaishya Hindoos of Navalgadh shall be preferred to poor Vaishya Hindoos of any other place in or outside India."

7. Under sub-clauses (b) and (c) provision has been made for a maintenance or Rs. 15 to be paid to any poor male or female descendant of Seth Gordhandas Seksaria, who may appear to be deserving of help. Clauses (d) and (e) similarly provide for a sum of Rs. 2,500 to be expended or given for meeting the expenses of marriage of any poor male or female descendant of Seth Gordhandas Selsaria who may appear to be deserving of help. Conditions (f), (g), (h) and (i) similarly provide for the maintains and marriage expenses of any poor male or female descendant of Seth Baldeodasji Seksaria a sum of Rs. 10 per month to be paid by way of maintenance and a sum of Rs. 1,500 by way of marriage expenses. The further conditions (j), (k), (l) and (m) provide for maintenance and marriage expenses to any poor male or female member of legitimate origin belonging to any Seksaria family of Navalgadh who may appear to be deserving of help. The maintenance provided under these conditions is Rs. 7 per month and the marriage expenses Rs. 1,000. The next four conditions make similar provision for the maintenance and marriage expenses for any poor male or female member of legitimate origin belonging to any Seksaria family of any place other than Navalgadh in or outside India. The maintenance provided is at Rs. 5 per month and the marriage expenses at Rs. 500. The last four conditions from (r) to (u) provide for giving maintenance and marriage expenses to any poor male or female Vaishya Hindu who may be deserving of help. The maintenance provided is at Rs. 5 per month and the marriage expenses at Rs. 500. It is then provided that it the income of the trust estate is not sufficient to carry out the charities specified in the sub-clauses (a) to (u) above the charity specified in an earlier sub-clause shall be given priority over a charity specified in a later sub-clause. In clause (4) it is provided that if any balance or surplus remains of the net income after payments are made for the benefit of the parties specified in clause (3), the trustees will use and apply such unspent balance of net income or so much of it as they in their absolute discretion think proper to use and apply for giving monetary help or relief to the poor members of the Hindu community in general or for such charity or charities for the benefit of the Hindu

community in general or for way as they may consider most advantageous to the objects of the charity and they would have the liberty to hand over the whole of the unspent balance of the net income, if any, or so much of it as has not been used and applied for the aforesaid purposes, to another trust named "Goverdhandas Govindram Charity Trust" to be applied and spent by the trustees of the said trust for the charitable objects or any of them mentioned in the deed of trust relating to that trust. Clause (5) authorises Govindram Gordhandas Seksaria, as the senior member of the said joint family, so long as he would be the trustee under the trust deed, to give such instructions both as regards the selection of persons and or the charitable objects to be benefited under or by virtue of the trusts therein declared and the manner in which such benefit shall be conferred as he may in his discretion think proper and also to require that a particular charity shall be done in the name or names of a particular individual or individuals, etc., and provides that the other trustees shall be bound to observe, carry out and comply with such instructions and/or requisitions of the said Govindram Gordhandas Seksaria. It will be seen on an examination of these terms of the trust deed that the giving of help or relief to the poor Vaishya Hindus or other Hindus, which is contemplated as the purpose of the trust, is made subject to the conditions and directions as are contained in clause (3) and other clauses of the trust deed and, when we consider the conditions and directions contained in clauses (3), (4) and (5) what we find is that in carrying out the said purpose of the trust, the poor members of the Seksaria family come in as the first objects of the charity in a certain order of priority among such members. Thus the members of the family of Seth Gordhandas Govindram Seksaria come first; those of Seth Baldeodasji Seksaria come next; then come the members of the Seksaria family at Navalgadh and thereafter members of the Seksaria family elsewhere. It is after all these members of the Seksaria family have been exhausted that the other poor male or female Vaishya Hindus, who may be deserving of help, come in for consideration. It will also be seen from the terms of the aforesaid clauses that not only in the matter of priority but even in the matter of the quantum of help or relief to be received there is a certain gradation fixed under these conditions. Thus, maintenance at the rate of Rs. 15 per month and marriage expense at Rs. 2,500 are to be given to members of the family of Seth Gordhandas Seksaria. A maintenance at Rs. 10 per month and marriage expense of Rs. 1,500 are directed to be given to the poor members of Baldeodasji Seksaira family. In the case of the members of others Seksaria family of Navalgadh the maintenance provided is at Rs. 7 per month and expenses for marriage expenses at Rs. 1,000 and to the members of the Seksaria family at any other place outside Navalgadh the maintenance is at Rs. 5 per month and the marriage expenses at Rs. 500. Then come person not belonging to the Seksaria family, viz., the poor male or female members belonging to the Vaishya family, who are provided maintenance at Rs. 5 per month and marriage expenses of Rs. 500. The directions contained in clause (3) show that if the trust funds are not sufficient, the benefit is to be given to persons falling in the earlier categories mentioned in conditions (a) to (u) in preference to the

later categories. It will thus be seen that the object of giving help or relief under the trust is to be so carried out so as to give relief to the poor relatives of the Seksaria family first before considering the others, who do not belong to the said family and if the income is not sufficient, the others who are outside the family, do not come in for consideration at all. The Tribunal held that the trust created under the indenture of trust was not one for any public purpose of a charitable nature within the meaning of section 5(1)(i) and, in so holding, it relied on the decision of this court in Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax in which this court had to consider this very same indenture of trust for the purpose of deciding whether the property held thereunder by the trustees was wholly for religious or charitable purposes so as to make the income exempt from income-tax under section 4(3) (i) of the Indian Income-tax Act. "Charitable purpose" within the meaning of section 4(3) (i) is defined as including relief of the poor, education, medical relief and the advancement of any other object of general public utility. The court held, on a consideration of the several terms of the trust deed, that the property under the trust was not held wholly for charitable purposes and the income was. therefore, not exempt from tax under section 4(3) (i). Chief Justice Chagla held that the primary object of the trust was to benefit the poor members of the family of the settlor. Although clause (2) provided that the income was to be applied in giving help or relief to the poor Vaishya Hindhus or other Hindus, that provision was subject to the conditions and directions which followed in the subsequent clauses and these subsequent clauses made it perfectly clear that the members of family of the settlor were to be the first objects of charity, both in respect of maintenance and also for marriage expenses. According to the learned Chief Justice, the conditions, which operated on the giving of relief and help to the poor contemplated in clause (2) did not merely amount to a preference of the members of the settlor's family in the application of the income from the trust and the whole intent and object was that the trust should constitute a first charge in favour of the poor members of the settlor's family and it was only when that first charge was satisfied that the members of the public were to come in for any benefit, under the trust. The learned Chief Justice, therefore, held that the benefit, which was reserved for the public under the trust deed, was much too remote and much illusory and the trust, therefore, was not one which had for its object general public utility. According to the learned Chief Justice, the provision as to marriage expenses to the members of the settlor's family would not be regarded as an item of relief against poverty and consequently the providing of marriage expenses to the members of the settlor's family could not be considered to be a charitable object, apart from the question whether it involved general public utility or not. Mr. Justice Tendolkar, who agreed with the view expressed by the learned Chief Justice, observed in his judgment that although marriage is an object of utility to the individual concerned and it may also be that in certain given conditions of society it may be an object of general public utility to promote marriages generally, such as for instance, when the population of a country has gone down as a result of war, an

individual marriage can never be regarded as an object of public utility and, since the provision made and female descendants of the settlor, it could not be retarded as a provision made for a charitable purpose of general public utility. As to the other conditions, the learned judge was of the opinion that those conditions showed that it was not a case of preference being given to the members of the settlor's family at all but under the said conditions the members of the settlor's family were considered as a class excluding the other members of the community irrespective of whether there were poorer or more deserving persons amongst them. According to the learned judge, the settlor in the present case desired that his descendants should have the benefit in main and if there was anything left over, then alone the other members of the Vaishya community should come in.

8. In view of the conclusion to which this court has come on the construction of this very trust deed, it would normally be difficult for us to be persuaded to take a different view. Mr. Kolah, however, has argued that in the first place the view taken by this court was in the context of the provisions of section 4(3) (i) of the Indian Income-tax Act, which are not the same as the provisions of section 5(1) of the Wealth-tax Act and consequently although the property held under the trust may not be wholly for religious or charitable purposes as required under section 4(3) (i) of the Indian Income-tax Act, the trust may nevertheless be a trust for a public purpose of charitable nature within the meaning of section 5(1)(i) of the Wealth-tax Act. Secondly, he argues that the view that this court has taken on the construction of the deed in Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax cannot be considered as the correct view having regard to the Supreme Court decision in Trustees of the Charity Fund v. Commissioner of Income-tax and the subsequent decisions of this court and other High Courts, which follow the Supreme Court decision in Trustees of the Charity Fund v. Commissioner of Income-tax. His argument is that the Supreme Court case in Trustees of the Charity fund v. Commissioner of Income-tax was in appeal against a decision this court. In that decision this court had followed its earlier decision in Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax and had come to a similar conclusion with regard to the indenture of trust in that case also. The supreme Court, however, disagreed with the view taken by this court on the construction of that trust deed and held that the properties under that trust were held wholly for charitable purposes and income from the properties was exempt under section 4(3) (i) of the Indian Income-tax Act. Mr. Kolah argues that the correct principles for the determination as to whether the trust in question is a public charitable trust or a trust wholly for religious and charitable purposes are laid down in the said case of the Supreme Court and when the said principles are applied to the terms of the present trust deed, it will be seen that the trust is a trust for a public charitable purpose. Mr. Kolah says that both because on the application of the principles laid down by the Supreme Court the trust in the present case would be found to be a public charitable trust as also on the ground that a conclusion of this court with regard to the

nature of trust in the latter case, which was based on the reasoning adopted by this court in the earlier case, has not found favour with the Supreme Court, it would follow that the reasoning adopted by this court in trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax is erroneous.

9. In order to appreciate these submissions of Mr. Kolah, we have to consider the Supreme Court case in Trustees of the Charity Fund v. Commissioner of Income-tax and the other cases to which the learned counsel has referred. Now, in the case Trustees of the Charity Fund v. Commissioner of Income-tax clause (13) of the trust deed provided that the trustees should apply the net income for all or any of the purposes mentioned thereafter. These purposes were six in number, enumerated in sub-clauses (a) to (f). The first was relief and benefit of the poor and indigent members of the jewish or any other community of Bombay or other parts of India or of the world either by making payments to them in cash or providing them with food and clothes and /or lodging or residential quarters in giving education including scholarships or setting them up in life or in such other manner as the trustees may deem proper. The second sub-clause related to the setting up of institutions, maintenance and support of hospitals and schools, colleges, or other educational institutions. The third was relief of any distress caused by the elements of nature such as famine, pestilence, fire, tempest, flood, earthquake or any other such calamity. The forth was the care and protection of animals useful to mankind. The fifth related to the advancement of religion and the sixth was other purposes beneficial to the community not falling under any of the foregoing purposes A proviso then followed, which provided that in applying the income as aforesaid, the trustees should give preference to the poor and indigent relations or members of the family of the said Sir Sasoon David, Burt, including therein distant and collateral relations. It was further provided that in the application of the income of the said charitable trust fund, the said trustees for the time being should observe the following proportions, viz. that not less than half the income of the said funds should at all times be applied for the benefit of the members of the Jewish community of Bombay only (including the relation of Sir Sassoon David, Bart, as aforesaid) and Jewish objects and particularly in giving donations to the members of the Jewish community of Bombay on the anniversary of the death of the said Sir Sassoon David Bart, and his wife, Lady Hannah David, which falls on the 22nd day of June, and the remaining income for the benefit of all persons and objects including Jewish persons and objects and in such proportion and objects including Jewish persons and objects and in such proportions as the said trustees may think proper. The Supreme Court held that the property under the trust deed was held wholly for charitable purposes. They pointed out that sub-clauses (a) to (f) of clause (13) of the deed of trust omitting the proviso constituted a valid public charitable trust. As to sub-clauses (b) to (f) it held that the relations or members of the family of Sir Sassoon David did not figure as direct recipients of any benefit thereunder, and that the proviso operated only sub-clause (a) but the effect, of the proviso was that it required a preference to be given to the relations or members of

the family of Sir Sassoon David Bart, in selecting the beneficiaries under sub-clause (a) for the reliefs contemplated by it. In deciding whether the trust, which were all charitable purposes of general public utility. The trustees were at liberty to hold the trust fund and apply the net income for all or any of the six purposes mentioned therein. The relations or members of the family of Sir Seasoon David Bart, including therein the distant and collateral relations, did not figure as direct recipients of any benefit under five of the six purpose and, therefore, in so far as those five purposes were concerned, the trust certainly involving an element of public utility. So far as sub-clause by itself expressed a general charitable intention involving an element of public utility. What had only to be considered was whether by reason of the proviso, which operated on the sub-clause it could be said to be not for such purposes. Their Lordships held that the provision for giving preference involved the idea of selection of persons out of a bigger class envisaged in sub-clause (a) According to their Lordships, the persons to be preferred had to belong to the class envisaged by sub-clause (a) prescribed the primary class of beneficiaries out of which the actual beneficiaries were to be selected by the application of the provisions of the provisos, that is to say, by giving preference to the relations and members of the family of Sir Sassoon David Bart. Having regard to the features of the trust deed, therefore, viz, that sub-clauses (a) to (f) of clause (13) of the trust deed, omitting the provisos, constituted a valid public charitable trust, that the relations and members of the family were clearly not the primary objects contemplated by sub-clauses (b) to (f), and even the first sub-clause (a) ascertained the primary class of persons to be benefited thereunder, the Supreme Court held that the precisions for giving preference to the poor and indigent relations or the members of the family of Sir Sassoon David, Bart, could, not affect the public charitable trust inasmuch as the provisos only applied to the selection of the beneficiaries from the class of eligible persons clearly and properly ascertained by sub-clause (a). Now, it may be pointed out that the case in Gordhandas Govindram Family Charity Trust, case which had been relied upon by the High Court in deciding the later case with which the Supreme Court was dealing, was also considered by the Supreme Court in that case. It was observed by the Supreme Court that, although the same decision was arrived at in the case before them as in the earlier case in Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax by the Bombay Highs Court, the facts of the earlier case were different from the fact of the case before them. After considering the case in 21 I. T. R. 231, their Lordships of the Supreme Court obsreved that in that case the reliefs contemplated by clause (2) were subject to the conditions and directions stated in the next following clauses and those conditions and directions showed that they were intended to benefit the members of the settlor's family. Contrasting the terms of the trust deed before them, with those in the trust deed in the earlier Bombay case, their Lordships observed that the Bombay High Court had observed about the terms in the Gordhandas Govindram Family Charity Trust that the trust "was a fairly blatant illustration of a settlor trying to benefit his own family and his own relations" and that the benefit

of the public was too remote and too illusory. Their Lordships said that that could not be said of the trust in the case before them, and that on the terms of the trust deed, the case was on facts similar to the English case in In re Koettgen's Will Trusts and different from the case of Gordhandas Govindram Family Charity Trust decided by this court and relied on by this court. It would thus be seen that the view taken by the Supreme Court in Trustees of the Charity Fund v. Commissioner of Income-tax cannot be taken as overruling by implication the view taken by this court in Gordhandas Govindram Family charity Trust v. Commissioner of Income-tax. As a matter of fact, the case in Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax was before their Lordships of the Supreme Court. They distinguished that case on facts and held that the reasons on the basis of which the conclusion in that case was arrived at by the Bombay High Court were not obtainable in the case before them. It is important to note that they did not say that the view taken by the Bombay High Court in Gordhandas Govindram's case proceeded on the application of wrong tests or wrong principles. As a matter of fact, so far, so far as we can see, it cannot be said that the Bombay case was decided by applying any wrong tests or wrong principles. In that case the test applied by this court was whether the primary object of the trust was benefit the poor Vaishya Hindus or other Hindus or to benefit the members of the settlor's family. On a consideration of the entire terms of the deed, the court came to the conclusion that the primary object of the trust deed was that the trust should constitute a first charge in favour of the poor members of the settlor's family and it was only when that first charge was satisfied that the members of the public might come in for any benefit under the trust. The dominant intention, according to this court, was not to benefit the public but to benefit the members of the settlor's family. In Trustee of the Charity Fund v. Commissioner of Income-tax the Supreme Court applied the same principle. They applied the test which was laid down in the English case, viz., In re Koettgen's Will Trusts. In that case the testatrix had bequeathed her residuary estate upon trust for the promotion and furtherance of commercial education. The persons eligible as beneficiaries under the fund were stated to be "persons of either sex who are British born subjects and who are desirous of educating themselves or obtaining tuition for a higher commercial career but whose means are insufficient or will not allow of their obtaining such education or tuition at their own expenses...." The testatrix trustees should give preference to any employees of John Batt & Co. (London) Ltd. or any members of the families of such employees; failing a sufficient number of beneficiaries under such description the persons eligible should be any persons of British birth as the trustee might select provided that the total income to be available for benefiting the preferred beneficiaries should not in any one year be more than 75% of the total available income for that year. It was held, on a construction of the will, that the gift to the primary class from which the trustees could select the beneficiaries contained the necessary element of benefit to the public and that it was when that class was ascertained that the validity of the trust had to be determined, so that the subsequent direction to

prefer, as to the 75% of the income, a limited class did not affect the validity of the trust. The principle expounded there was that, if the purpose under the trust was a public purpose involving the necessary element of public utility, a further direction as to selection of beneficiaries for the application of the income of the trust would not invalidate the primary object of the trust from being a public object involving the necessary element of public utility. It was observed in that case as follows :

> ".... it is at the stage when the primary class of eligible persons is ascertained that the question of the public nature of the trust arises and falls to be decided,..."

10. On the terms of the will, the court held that the primary class of eligible persons was ascertained by the clause itself without the proviso and in view of the class so ascertained, the purpose of the trust was a public purpose. In the case before their Lordships, on the construction of the terms of the trust deed, they came to the same conclusion that even under sub-clause (a), on which the proviso operated, the primary class of eligible persons was ascertained and constituted a section of the public. The proviso only provided for preference being given for the selection of beneficiaries from the class and consequently the case came nearer on facts to the English case than to the facts of the case of this court in Gordhandas Govindram Family Charity Trust.

11. Under the present trust deed, the effect of the conditions and directions enumerated in clause (3) is not a preference or a selection to be made from the primary class, which is already well ascertained under some other clauses of the trust deed. Mr. Kolah said that the primary class was the class of poor Vaishya Hindus or other Hindus ascertained under clause (2) and the conditions and directions contained in the other clauses had only the effect of selecting the beneficiaries designated in clause (2) and consequently the case fell within the ratio of the decision in Trustees of the Charity Fund v. Commissioner of Income-tax.

12. We are, however, unable to agree with this submission of Mr. Kolah. Clause (2) itself, which purports to describe the class, attaches the conditions in describing and ascertaining the class itself by providing that the help or relief contemplated to be given to the poor Vaishya Hindus or other Hindus was to be confined both with regard to the manner and to the extent to which the said help or relief was to be given subject to the conditions and directions, and the conditions and directions created a class of persons, viz., the members of the family of the settlor as a special or a first class to be provided as the objects of the help or relief contemplated to be given. This court has taken the view, on the construction of the terms of the trust, that the conditions had not the effect of merely giving preference amongst persons of the same class but creating a special class which came as the first object of charity before any others. It appears to us from the decision in Trustees of the Charity Fund v. Commissioner of Income-tax that this view of the construction of

the trust deed taken in Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax is not disapproved by the Supreme Court.

13. It is argued by Mr. Kolah that the test applied by the Supreme Court following the English decision is that, if the primary class of eligible persons is so ascertained on the terms of the trust as to constitute relief against poverty to such class, a charitable object involving the necessary element of public utility, it would be a trust for a charitable purpose and the directions giving in the selection of the individuals from the primary class to give preference to the members of the settlor's family would not affect the charitable nature of the trust. Applying this test, says the learned counsel, the trust deed in the case before us in clause (2) thereof ascertains the primary class as poor Vaishya Hindus or other Hindus, which is a section of the public and relief of poverty of this class would constitute a charitable purpose involving the necessary element of public utility. Conditions and directions referred to therein are in respect of the distribution of the relief and relate to the selection of the individuals from the primary class of poor Vaishya Hindus. The conditions and directions specified in the trust deed serve the same purpose and have the same effect as the proviso to subclass (a) of the trust deed in the case before the Supreme Court, and cannot, therefore, affect the charitable nature of the trust. Mr. Kolah, therefore, has argued that having regard to the principals laid down by the Supreme court and applying the same to the present case before us, the result must follow that the trust before us is a public charitable trust and the view taken in Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax by this court must be taken to be impliedly dissented from by the Supreme Court.

14. Now, we may point out that the decision of the Supreme Court as to the nature of the trust in that case was based on the facts of the case, which Das C.J. himself pointed out, were different from the facts in the case of the present trust. There clause (13) had specified as many as six objects, each one of which except for proviso contained the necessary element of public utility and the trustees had power to apply the income of the trust to any one or more of the objects. The proviso giving preference to the relations of the settlor in the application of the benefit operated only on one of the six objects and in the other five the relations or members of the settlor's family did not come in directly and this fact, according to the Supreme Court, was material in considering what was the primary object of the trust as a whole. Clause (a) itself provided relief and benefit of the poor indigent members of the Jewish or any other community of Bombay or elsewhere and constituted a charitable, which was neither too wide, vague nor unenforceable. The proviso, which applied to sub-clause (a) only in terms, spoke of a preference in the selection of the individuals from the primary class ascertained by the main clause. It is on these facts that the Supreme Court held that the primary object of the trust as a whole was a charitable object and the provision for giving preference to the poor and indigent relations of the settlor did not affect the public charitable trust constituted under sub-clause (a). The facts in the case before us are

very different. The sole object of the trust is the relief of poverty, which by itself would not constitute a charitable purpose in India unless it involves an element of public utility. Clause (2), no doubt, states that the object is to give help and relief to the poor Vaishya Hindus or other Hindus but the relief contemplated is subjected to the conditions and directions container in the subsequent clauses. In Sassoon's case reported as Trustees of the Charity Fund v. Commissioner of Income-tax, sub-clause (a) itself, which was neither too wide, vague nor unenforceable, as pointed out by the Das C.J. disclosed a charitable object and ascertained the primary case of eligible persons for the benefit contemplated by it. In the present case before us the help and relief to the poor Vaishya Hindus or other Hindus being subject to the conditions and directions contained in the following clauses as to the manner in which and the extent to which the relief was to be given, both for deciding whether the relief of poverty constitutes a charitable object and for ascertaining the primary class of persons eligible for benefit, clause (2) itself will not suffice and the conditions and directions will have to be examined.

15. Now, when we come to the contained in clause (3), the condition (a) lays down that the poor Vaishya Hindus would be divided into three broad categories in order of priority : the first category being those who belong to the Seksaaria family, the second who belong to Navalgadh and the third those who belong to other places. The further conditions from (b) to (u) proceed to make a further classification in each of the three broad classes, both in respect of priority as well as the quantum of benefit to be received. Thus, the male and female descendants of Seth Gordhandas Seksaria come first; those of Baldeodasji come next. Thereafter follow the members of the Seksaria families of Navalgadh, then the members of the Seksaria families elsewhere and lastly the other Vaishyas Hindus. The quantum of benefit again is fixed in the same order : those in the earlier categories getting more than those in the later. The direction contained in the concluding part of clause (3) clearly specified that, if the income of the trust estate is not sufficient to carry out the charities specified in sub-clause (a) to (u), the charities in the earlier sub-clause shall be given priority over the charities specified in a later sub-clause. As to the kind of relief specified it is for maintenance and for marriage expenses. Now, so far as maintenance is concerned, it can belong to the object of relief of poverty, but it is difficult to see how the marriage expenses can be considered an item of relief of poverty, much less a relief of poverty involving an element of public utility. Both the judges, who decided the case in Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax, held that the provision as to marriage expenses did not constitute a charitable object and the same view has also been taken by the Calcutta High Court in K. Jatiya Sahayak Sabha v. Commissioner of Income-tax. Mr. Kolah, however, has invited our attention to Fatmabibi v. Advocate-General of Bombay and Commissioner of Income-tax v. Board of Mutwallis to the Wake Estate, for the proposition that marriage expenses given to the poor can constitute a valid charitable purpose. We may, however, point out that both these cases were of Wakes by Mohammedans and in the

first case the objects specified including expenses for the marriages of the poor were regarded as constituting a valid charity under the Mohammedan law. In the latter case the argument was not canvassed as to whether the expenses for marriage would constitute charity, but the point debated was whether the reservation of the expenses favour of members of the settlor's family vitiated the charitable nature of the wake. We do not, therefore, think that the said cases can help him to contend for a view contrary to that taken by this court and the Calcutta High Court.

16. It will thus be seen on an examination of the terms of the trust deed before us that although clause (2) started by profession to give help and relief to the poor Vaishya Hindus or other Hindus, the effect of all the terms of the deed was that the relief and help to the poor Vaishya Hindus to other Hindus was primarily and predominatingly confined to the members of the settlor's family and the members of the Seksaria families of Navalgadh and elsewhere. The object of the trust as a whole was predominantly to provide maintenance and marriage expenses to the members of the sttlor's family and remotely, if any, to the Vaishya Hindus or other Hindus. The effect of the conditions and directions in the present deed did not relate to the preference in the selection of the individuals belonging to the primary class in the application of the income of the trust as did the provisos in the Sassoon's case before the Supreme Court. The effect of the conditions and directions in the present trust deed was that the trust created a first charge favour of the members of the settlor's family to the exclusion of others and made them the first objects of the charity. We do not think, therefore, that the principle of Sassoon's case can apply to the trust deed in the case before us. We do not agree, therefore, with the submission of the learned counsel that the view taken by this court on the construction of the trust deed is either erroneous or must be treated as dissented from by the Supreme Court. On the other hand, our view is that the Supreme Court, far from disagreeing with the conclusion of this court, did not even disapprove of the said conclusion. If the principle, which they were applying to the trust in Sassoon's case, equally applied to the construction in Gordhandas Govindram's case we should have expected the Supreme Court to say that Gordhandas Govindram's case was wrongly decided. Far from that, they say that the facts of the case were different and the same result would, therefore, not follow in the case before them. This, in our opinion, is not indicative of any disagreement or disapproval of the view taken in that case. In our opinion, therefore, neither of the submissions of Mr. Kolah, namely, that the view taken by this court on the construction of the deed is erroneous nor that the view is dissented from by the Supreme Court can be sustained.

17. As to the other cases, which Mr. Kolah has cited in connection with this point, the first is the case reported in Commissioner of Income-tax v. Trustees of Seth Meghji Mathuradas Charity Trust. We, however, find that the terms of that trust deed were similar to the trust deed in Sassoon's case. Under clause 1(d) of the deed of trust it was directed that after setting apart certain sums by way of depreciation and other expenses the balance of the income, interest,

dividends, rents and profits of the trust properties was to be utilized for all or any one or more of the following charitable purpose, in such shares and proportions and in such manner in every respect as the trustees shall, in their absolute and unfettered discretion, think fit. The purposes, which were thereafter enumerated, were five in number. The first was giving aid to deserving or poor Hindus of the three upper or twice-born classes. The second was the purpose of advancement of education by the opening, starting, maintaining and conducting schools, colleges, etc., and awarding scholarships or prizes, etc. The third was founding, maintaining and conducting institutions for the benefit of the three upper or twice-born classes of the Hindus community for teaching and practice of arts and crafts. The fourth provided for giving reliefs against distress or bodily ailment by opening, starting, maintaining and conducting hospitals and dispensaries etc., and the fifth for the purpose of founding, maintaining, conducting or helping charitable institutions like orphanages, boarding schools, etc. A proviso then followed, which stated :

> "Provided, however, that in varying out any one of the above charitable intentions the trustees shall always prefer the members of my case viz., the Bhatia caste, to the members of any other caste in the Hindu community and shall further prefer members of my family and my relatives to those who are not such members or relatives....."

18. It was held by this court that the five purposes, which were set out in the deed of trust, were charitable in character and disclosed a dominant intention to benefit the poor. The proviso only required the trustees, in utilising the funds for charitable purposes, to select certain beneficiaries on the ground that they belonged to the members of the family or relatives of the settlor. The proviso, in the opinion of the court, operated only after the purpose or object was selected, and consequently did in that case, there could be no doubt, therefore, that the primary object of the settler was to benefit charity and not benefit in main the members of the settlor's family as is the case in the trust deed before us.

19. The next case is Commissioner of Income-tax v. Moosa Haji Ahmad That was a case of a wakf. Clause (7) of the wakf deed provided that the wakf income shall be utilised by the trustees for the following purposes and object of the wakf : The first object stated was to help the poor and in so doing help must first be given out of the income of the wakf to the relations of Haji Ahmed Haji Abdul Kadar Moosa, who are poor. Thereafter preference should given to the members of the Memon Jamat residing in the Mohalla of Haji Ahmad Haji Abdul Kadar, who are poor and then there were other provisions subsequently set out. The trustees were authorised to apply the income out of the trust fund to any of the object of the trust in such manner and to such extent as the trustees may, in their absolute discretion, deem fit. It would be seen that there were several charitable purposes mentioned in the wakf deed and the provision of giving

preference to the members of the settlor's family and thereafter to the members of the Memon Jamat of the Mohalla of the settlor operated only on one of them. Having regard to the dominant intention disclosed by all the terms of the wakf taken together, the Gurarat High Court took the view that the principle in Sasson's case applied to it. It appears from the report that the case of the present trust decided in Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax as well as the decision in Trustees of the Charity Fund v. Commissioner of Income-tax were referred to and cited before the court. The learned judges, after examining the terms of the trust deeds in both those cases, came to the conclusion that on facts the case before them fell in the category of cases represented by the latter case.

20. The last Indian case, which has been referred to by Mr. Kolah in this connection is a decision of this court in Commissioner of Wealth-tax v. Trustees of the J. P. Pardiwala Charity Trust. Clause 6 of the trust deed authorised the trustees to pay money towards the maintenance and support of the settlor's relatives and /or other indigent persons. Clause 5, which preceded clause 6, empowers the trustees to expend money on certain religious ceremonies for the repose of the soul of the members of the settlor's family It was argued that the purpose specified in the aforesaid two clause did not disclose charitable purposes. The court held that the ceremonies performed for the repose of the soul of the deceased individual enured for the benefit of mankind at large and as such the purpose mentioned in clause 5 of the deed was a public purpose of a religious nature. It also held that the use of the word "other" in clause 6 showed that the reference to the relatives of the settlor was a reference to indigent persons and not to all the relatives irrespective of their financial condition. Clause 6, therefore, only contained a direction that in considering the case of all indigent persons, preference should be given to the indigent relatives of the settlor and such a direction had not the effect of invalidating the charitable object of the trust on the principle laid down in Sasson's case. It will be seen that even in this case the view taken by this court on the construction of the deed was that it disclosed a dominant intention to charity and only gave a preference to certain individuals in the matter of the application of the benefit under the charity. We do not think, therefore, that the view taken in any of these cases is contrary to the view taken by this court in Gordhandas Govindram's case.

21. Mr. Kolah also invited our attention to an English case reported in In re Koettgen's Will Trust : Westminster Bank Ltd. v. Family Welfare Association Trustees Ltd. It may be pointed out that this case was referred to by the Supreme Court in Trustees of the Charity Fund v. Commissioner of Income-tax, and the test which they applied in that case was the test that was applied in this case. We have already considered that test and its application to the case before the Supreme Court and the case before us. It is not, therefore, necessary to deal with this case any further.

22. In our opinion, therefore, the trust deed in the present case cannot constitute a trust for any

public purpose of a charitable nature in India within the meaning of section 5(1)(i) of the Wealth-tax Act.

23. Mr. Kolah has then argued that the decision of this court in Gordhandas Govindram's case was in the context of the provisions of section 4(3) (i) of the Income-tax Act and the definition of "charitable purposes" gives under that section. Under the provisions of section 4(3) (i), income of the property was exempted from the payment of tax if the property was held under trust or other legal obligation wholly for religious or charitable purposes and "charitable purposes" was defined as including relief of the poor, education, medical relief and advancement of any other object of general public utility. Under section 5(1)(i), however, what is required is that the trust must be for a public purpose of a charitable nature. He has argued that the provision of marriage expenses under the present trust deed could be considered as a valid object of a public charitable trust and in that connection has invited our attention to the report of "the Tendolkar's Committee to investigate into the religious and charitable endowments in the Province of Bombay", wherein instances of general public utility work were mentioned including, amongst them, marriages of poor maidens. He has, therefore, argued that providing for marriage expenses would constitute a valid charitable object involving an element of public utility. We may, however, point out that the instance of public utility mentioned is the marriage of maidens and not all marriages. Moreover, the definition of a "public trust" under the Bombay Public Trusts Act was contemplated to be a wider definition than what public Trusts Act was contemplated to be a wider definition than what public trust would ordinarily mean. There is, however, no warrant for introducing this larger definition of a public trust in the expression "public trust" used in section 5(1)(i) of a special Act. In our opinion, the expression "trust for any public purposes of a charitable or religious nature "connotes a trust for charitable objects involving an element of public utility. Marriage expenses, as we have already pointed out and as held by this court in the earlier case, do not normally involve any element of public utility. In our view, therefore, a trust property which could not be regarded as held wholly for charitable purposes within the meaning of section 4(3) (i) of the Indian Income-tax Act will also fail to qualify as a trust for a public purpose of a charitable nature in India. Moreover, on the view we have taken of the construction of the trust deed, viz. that its primary object is to provide maintenance and marriage expenses to the poor members of the settlor's family or the Seksaria family, it could not be considered as a public trust for a charitable purpose under any concept of a public trust either wide or narrow. In our opinion, therefore, the trust in the present case does not qualify to be a trust for a public purpose of a charitable nature in India and consequently would not be exempt under the provisions of section 5(1)(i) of the Wealth-tax Act.

24. Coming to the other question, which is question No. 1, we will consider the same in the form in which we have reframed it, because as we have already pointed out earlier, the question as

framed by the Tribunal does not bring out the real controversy between the parties. Now, the reframed question is as follows.

> "Whether, on the proper construction of sections 3 and 21 of the Wealth-tax Act, the assessment made on the assessees as trustees is valid ?"

25. The contention of the learned counsel relating to this question is two-fold : He argues in the first place that the trustees in the present case being more than one could not be treated as an individual : they could only be regarded as an association of persons. Under section 3 of the Wealth-tax Act, which is the charging section, the entities, which are charged to wealth-tax, are only an individual, Hindu undivided family and company. On the terms of the section itself, a group of individuals is not made an assessable entity under the section. In other taxing statutes, for instance in the Income-tax Act, the entities mentioned are individual, Hindu undivided family, company and local authority, and every firm or other association of persons or the partners of the firm or the members of the association of persons or the partners of the firm or the members of the association individually. In the Gift-tax Act, the entity to be taxed under the charging section, which is section 3, is a person, which is defined in section 2(xviii) as including a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorported or not. Mr. Kolah's argument, therefore, is that the taxing statutes have always made a distinction between an individual and a group of individuals, which may be acting as an individual and whenever they want to bring within the ambit of taxing statutes such groups of individuals, they have taken care to specify them expressly as assessable entities. The legislature in the Wealth-tax Act, however, has selected only three entities, viz. an individual, Hindu undivided family and a company for being liable to be charged to wealth-tax. The scheme of the Wealth-tax Act and the provisions of the several sections in the Act as also the forms of the returns, etc. will show that it is only the individual, a Hindu undivided family and a company that are dealt with under the Wealth-tax Act and groups of individuals acting as an association of persons or firms, etc. are not brought within the ambit of the said Act. It is, no doubt, true, says the learned counsel, that there was provisions in the Act which speak of "trustee" but those portions speak of a single trustee, who can very well come within the expression of "individual". Group of trustees would not be covered by the expression in the Act, which deal with cases where the entity to be charged is other than an individual a Hindu undivided family or a company. He has in that connection invited our attention to the provisions of section 6 and 8 of the Act and the forms of returns required to be filled in and verified under the Act.

26. We do not propose to enter into a detailed discussion of this contention raised by Mr. Kolah, because we find that the point is concluded by the decision of this court in Abhay L. Khatau v. Commissioner of Wealth-tax which followed the Calcutta decision in Suhashini Karuri v.

Wealth-tax Officer, Calcutta. In Abhay L. Khatau v. Commissioner of Wealth-tax this court held that the joint trustees are regarded as a unit for purposes of taxation and they can be assessed to wealth-tax in the status of an "individual" in respect of the value of the properties held by them as trustees. They cannot be treated as an association of persons and exempted from wealth-tax on the ground that an association of persons is not an entity mentioned in the charging section of the Wealth-tax Act, 1957. It was argued by Mr. Kolah that this decision does not take into account the difficulties and complications which will arise in giving effect to some of the provisions of the Wealth-tax Act, such as sections 6 and 8, it a group of trustees is regarded as an individual unit of assessment. It may, however, be pointed out that, as stated in the statement of the case in the present case, there has been no difficulty experienced in arriving at the computation of the net wealth in the present case on the basis that the group of trustees formed a single unit of assessment. The statement of the case points out that the net wealth has been assessed at certain figures in the two relevant years and there has been no dispute with regard to the computation. We do not, therefore, think that there is any need to reconsider the view taken by this court in Abhay L. Khatau v. Commissioner of Wealth-tax with regard to this point. In Suhashini Karuri v. Wealth-tax Officer, Calcutta the Calcutta High Court has taken the same view. As a matter of fact, as we have pointed out earlier, this court has followed the view taken in that case. Our attention has not been invited by Mr. Kolah to any decision of any other High Court or of the Supreme Court, which has taken a contrary view and we must regard, therefore, that the point is concluded on authority and not capable of being re-agitated before us.

27. The next argument advanced by Mr. Kolah in connection with this question is that even though the trustees could be regarded as an assessable unit, the assessment could only be made, if possible under section 21 of the Wealth-tax Act, which is a special mandatory provision enacted by the legislature to apply to the assessment of a trustee. The argument of the learned counsel in this connection is that even though a group of trustees can be treated as an individual trustee and, therefore, assessable under section 3, the liability to pay tax is to be determined only under section 21 and not under any other provision. He has in that connection invited our attention to the case in Commissioner of Income-tax v. Balwantrai Jethalal. This case related to the consideration of section 41 of the Indian Income-tax Act, which is analogous to section 21 of the Wealth-tax Act. The question was whether it was obligatory to follow the provisions of section 41 in making the assessment on the trustees or was it optional either to follow the said provisions or to have resort to the general provisions of the taxation Act. The court held that section 41, which provided for the determination of the liability to pay tax of the trustee, was a mandatory section and the assessment of income returned by a trustee, whether it was derived from property held by him or from a business carried on by him from the ownership of shares, could only be made in accordance with the special provisions laid down in that section, and that it was not open to the department to ignore the provisions of section 21 as it stood at the material

time failed to achieve its purpose of making a valid assessment on a trustee and since that was the only provision under which the trustee and since that was the only provision under which the trustee could be made liable to pay the wealth-tax, there can be no assessment on a trustee for wealth-tax. Now, section 21(1) as it stood at the material time reads as follows.

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

28. Sub-section (4) then provided as under :

> "Notwithstanding anything contained in this section, where the shares of the person 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 of other person aforesaid as if the persons on whose behalf the assets are held were individual which is a citizen of India and resident in India for the purposes of this Act."

29. Mr. Kolah's argument is that on the languages of section 21, the trustee who falls within its ambit, is the trustee who holds the assets on behalf of the beneficiary. Now in view of the legal concept of trust, a trustee is the legal owner of the property, the property vests in him and he is the owner thereof his own behalf and not on behalf of the beneficiaries. It is true that the holds the property for the benefit of the beneficiaries, but that is not the same as holding it on behalf of the beneficiaries. The expressions "on behalf of" and "fir the benefit of" are not synonymous as held by the supreme Court in *W. O. Holdworth v. State of Uttar Pradesh.* A trustee, therefore, although mentioned in section 21 cannot come within the ambit of section 21 inasmuch as he is not a trustee who is holding on behalf of the beneficiaries as required under the said section. Mr. Kolah says that section 21 as it stood at the mistrial time, though it intended to cover the case of a trustee, failed to achieve the object by reason of the language used in the said section. The learned counsel further points out that the legislature has amended the section and instead of the words "on whose behalf", which only related to the either person specified in section 21, apart from the trustee, they have also now included the words "or for whose benefit" which cover the

case of a trustee also. In support of his submissions, he has relied on a case of the Patna High Court in Kripashankar D, Worah v. Commissioner of wealth-tax, in which relying on *W. O. Holdworth v. State of Uttar Pradesh, the Patna High Court* has taken the view that a trustee cannot be assessed under section 21 as it stood before its amendment. Now, in *W. O. Holdworth v. State of Uttar Pradesh,* the question before the court was whether the trustee was required to be assessed under section 11(1) of the U. P. Agricultural Income-tax Act, 1948. That section reads as follows :

> "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 or the like on behalf of persons jointly interested in such land or in the agricultural 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, shall be assessed on such common manager, receiver, administrator or the like and he shall be deemed to be the assessee in respect of the agricultural income-tax so payable by each such person and shall be liable to pay the same."

30. The trustees, who, under a will held with powers of absolute owners the estate of the testator upon trust to pay thereout certain several annuities specified in the will, derived income from agricultural land (forming part of the estate) taxable under the U. P. Agricultural Income-tax Act, 1948. Their contention was that instead of being assessed on the aggregate income derived from the agricultural lands, they should only be assessed in accordance with section 11(1) of the Act, and made liable only for the aggregate of the tax payable by each beneficiary under the will on the income derived by him. The contention of the department was that they did not within the ambit of section 11(1) of the Act, and could not claim to be assessed in the manner specified in the said section. The argument or behalf of the revenue was that the owed "trustee" was not mentioned in section 11(1) and on the terms of the section it dealt with only such persons as would hold land on behalf of the persons jointly interested in the land or in the agricultural income derived therefrom. Since the trustees do not hold on behalf of persons, but hold on their own behalf, being the legal owners of the trust property, they could not come within the category of "person" specified in section 11(1). It was contended on behalf of the assessee that although the word "trustee" was not used in the section 11(1) itself, the word "person" used therein as defined in section 2(11) of the Act, included a "trustee". It could not, therefore, be said that a trustee was not capable of coming within the ambit of section 11(1). On the other hand, by the use of the word "person" at the outset of the section, a trustee could also be said to have been included in the said section. The court, however, held that it was not enough that the word "person" was capable of including a trustee within its connotation, and whether the trustee was included within the section or not, had to be determined on the language of the section and

inasmuch as the words used in the section were "on behalf of" and not "for the benefit of", no intention to include a trustee by the use of the word "person" in the section could be said to be intended by the legislature. In coming to this conclusion the Supreme Court observed :

> "The expressions '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 beneficial or cestui que trust, the latter connotes an agency which brings about a relationship as between principle 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 or the like 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.... 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."

31. Relying on these observations of the Supreme Court that the expressions "on behalf of" and "for the benefit of" are not synonymous, the Patna High Court held in Kripashankar D. Worah v. Commissioner of Wealth-tax, that the trustee was not assessable to Wealth-tax under section 21 of the Wealth-tax Act is it stood before its amendment by Act 40 of 1964. The court held that the trustee did not hold the estate on behalf of the beneficiaries, but he held it for the benefit of the beneficiaries. Since the expression "on behalf of" used in section 21 could not be taken as synonymous with the expression "for the benefit of", a trustee who holds the estate for the benefit of the beneficiaries could not be assessed under section 21 of the Act.

32. We have, on the other hand, a decision of the Calcutta High Court in Suhashini Karuri v. Wealth-tax Officer, Calcutta, to which we have already referred in connection with the first aspect of this question. In that case the Calcutta High Court held as follows :

> "The words 'on behalf of' used in section 21(1) of the Wealth-tax Act are synonymous with the expression 'for the benefit of'. Notwithstanding that trustee hold property for the benefit of beneficiaries and not on their behalf, section 21(1) applies to them and they are liable to pay wealth-tax only 'in like manner and to the same extent as it would be livable upon and recoverable from any such beneficialy'."

33. The Supreme Court case in W. O. Holdworth v. State of Utlar Pradesh was considered by the Calcutta High Court also. They, however, pointed out that there was difference in the language of section 11(1), which the Supreme Court was considering, and the language of section 21(1) of the Wealth-tax Act, which they had to consider. In section 11(1) of the U. P. Agricultural Income-

tax Act, which the Supreme Court was considering, the word "trustee" has not been mentioned, but a trustee was capable of coming 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 the trustees could be said to hold land "on behalf of" the beneficiaries and the court held that section 11(1) did not operate in the case of trustees because the trustees because the trustees were the legal owners of the trust estate and did not hold land "on behalf of" the annuitants. The Calcutta High Court, however, pointed out that under section 21(1) of the Wealth-tax Act, wealth-tax was 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 were held, and the question to be considered was whether in giving effect to the said provision a trustee could be said to hold the property on behalf of the beneficiaries. The learned judges took the view that, although the language "on behalf of" was inappropriate in the case of a trustee, there could be no doubt that the intention of the legislature was to cover the case of a trustee also. Having regard to the intention of the Act, which was to realise a tax known as "wealth-tax" and having regard to the further facts that under the charging section, the tax was to be levied upon every individual, Hindu undivided family and company, there was no difficulty in charging wealth-tax in the hands of trustee. Section 21(1), however, was intended to grant some relief. With regard to the first group of persons mentioned therein, namely, the persons who were appointed under any order of court to manage property on behalf of another, there was no difficulty. But with regard to the second group, namely, the trustees, it must have been known to the legislature that he holds the property on his own behalf and not on behalf of the beneficiaries. And yet the trustee is mentioned and wealth-tax is made leviable upon the persons on whose behalf the assets are held and if this was 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" was synonymous with "for whose benefit". The Patna High Court has not agreed with this view taken by the Calcutta High Court and has held that, in view of the decision of the Supreme Court in *W. O. Holdworth v. State of Uttar Pradesh,* it is not possible to treat the expression "on behalf of" under section 21(1) of the Wealth-tax Act as synonymous with "for the benefit of".

34. In our opinion, the view taken by the Calcutta High Court received support from the later decision of the Supreme Court in *Commissioner of Income-tax v. Managing Trustees, Nagore Durga. That* case dealt with section 41 of the Indian Income-tax Act, which was analogous to section 21 of the Wealth-tax Act, and ran as follows :

> "41. (1) In the case of income, profits or gains chargeable under this Act, which the courts of wards, the administrators-general, the official trustees or any receiver or manager

(including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a court, or 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 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 court of wards, administrator-general, official trustee, receiver or manager or 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."

35. The argument advanced before the Supreme Court on behalf of the revenue was that the properties of the Durga vested in the trustees and, therefore, they or the managing trustee administered the trust properties in their own right and not on behalf of the beneficiaries and section 41 therefore did not apply, with the result the Income-tax Officer had rightly assessed the surplus income in the hands of such trustees as an association of persons. In the context of this contention that the properties vested in the managing trustee and he received the income in his own right and not on behalf of the beneficiaries, though for their benefit, the assessment fell outside the scope of section 41 of the Act, the Supreme Court observed as follows :

"The doctrine of vesting is not germane to this contention. In some of the enumerated persons in the section the property vests and in others it does not vest, but they only manage the property. In general law the property does vest in a receiver or manager but it vests in a trustee, but both trustees and receivers are included in section 41 of the Act. the common thread that passes through all of them is that they function legally or factually for others : they manage the property for the benefit of others. That the technical doctrine of vesting is not imported in the section is apparent from the fact that a trustee appointed under a trust deed is brought under the section though legally the property vests in him. In the case of Muslim wakf the property vests in the Almighty; even so the mutawallis are brought under the section. A reasonable interpretation of the section is that all the categories of persons mentioned therein are deemed to receive the income on behalf of another person or person or manage the same for his or their benefit. None of them has any beneficial interest in the income; he collects the income for the benefit of others. In this view, even if the nattamaigars were trustees in who, the properties of the Durga vested, they should be deemed to have received the income only on behalf of the kasupangudars in definite shares."

36. In our opinion the reasoning of the Supreme Court in connection with section 41 of the Indian Income-tax Act will equally apply to the construction of section 21 of the Wealth-tax Act,

and although the words used in section 21(1) are "on behalf of" and not "for the benefit of", as pointed out by the Supreme Court, the trustee mentioned in section 21(1) must be deemed to hold the estate on behalf of the beneficiaries or manage the same for his or their benefit. In our opinion, this later case of the Supreme Court is more in point of the consideration of the contention, which has been raised before us, because it dealt with a similar contention, raised in connection with an analogous section of the Income-tax Act. In both these sections, there was no doubt whatsoever that the "trustee" was intended to be included within the ambit of the section and the difficulty was only created by an inappropriate language used in so far as the trustee was concerned. In section 11(1) of the U. P. Agricultural income-tax Act, however, there was no express mention of the trustee in the section itself and the question as to whether the said provision could apply to the case of a trustee had to be considered because of the use of the word "person" or the expression "or the like" occurring in the section. The court held in *W. O. Holdsworth v. State of Uttar Pradesh,* that a trustee could not be said to be included inferentially because the word "person" and the expression "or the like", which are used in the section, clearly indicate the nature of the right in which the property was being held by the persons specifically enumerated in the section, who hold and manage the property on behalf of others. A trustee, however, does not hold the property on behalf of the beneficiaries but holds it on his own behalf, though for the benefit of the beneficiaries. It was, therefore, not possible to include him within the ambit of the section in the absence of clear words. On the other hand, in the present section 41 of the Income-tax Act as well as section 21 of the Wealth-tax Act, a "trustee" has been specifically mentioned. As their Lordships of the Supreme Court pointed out, the concept of vesting is not germane to the construction of the section. The intention of the section had to be gathered from the purpose of the section and on a reasonable interpretation of the section all categories of persons mentioned therein could be deemed to be receiving the income on behalf of another person to persons. Having regard to the decision of the Supreme Court in *Commissioner of Income-tax v. Managing Trustees, Nagore Durgha, t*o which we have already referred, we do not find it possible to agree with the view taken by the Patna High Court in Kripashankar D. Worah v. Commissioner of Wealth-tax 3. In the view that we are taking, therefore, section 21 was applicable to the assessment of the trustees in the present case and they would also be capable of being treated as an individual and, therefore, an assessable entity under section 3 of the Wealth-tax Act.

37. In the result, therefore, our answer to question No. 1 as reframed by us is in the affirmative and to question No. 2 in the negative. The assessee will pay the costs of the Commissioner.