

PETITIONER:
COMMISSIONER OF WEALTH TAX, ANDHRAPRADESH, HYDERABAD

Vs.

RESPONDENT:
TRUSTEES OF H.E.H. NIZAM'S FAMILY (REMAINDER WEALTH TRUST), HY

DATE OF JUDGMENT 03/05/1977

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
UNTWALIA, N.L.
FAZALALI, SYED MURTAZA

CITATION:
1977 AIR 2103 1977 SCR (3) 735
1977 SCC (3) 362
CITATOR INFO :
D 1987 SC 522 (14)
D 1988 SC 1824 (8)

ACT:
Wealth Tax Act 1957--Ss. 3, 21(1) and 21(4)--Scope of.

HEADNOTE:

Section 21(1) of the Wealth Tax Act provides that in case of assets chargeable to tax under the Act which are held by any trustee appointed under a Trust, wealth tax shall be levied upon and recoverable from the trustee in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf the assets are held. Sub-section (4) provides that notwithstanding anything contained in this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, wealth tax shall be levied upon and recovered from the trustee as if the persons on whose behalf or for whose benefit the assets are held were an individual for the purposes of this Act.

The corpus of a family trust created by the Nizam of Hyderabad was notionally divided into 175 equal units, out of which 161 1/2 units were allocated amongst relatives mentioned in the Second Schedule to the Deed in the manner specified therein. The essence of the Trust was that none of the beneficiaries was entitled to the corpus of the units allocated to him or her but was only entitled to be paid the income from the units allocated to him or her. The trust deed made detailed and elaborate provisions as to the disposition of the different units allocated to the various beneficiaries and also provided for every other contingency in such a manner that at any particular point of time one could say, if the owner of the life interest were to die at that point of time, who the beneficiaries entitled to the corpus would be.

The Wealth Tax Officer assessed wealth tax on the value of the respective units allocated to each of the several beneficiaries.

In appeal the Appellate Assistant Commissioner upheld the assessee's contention that since each of them was enti-

tled only to a life interest in the corpus of the units allocated, they could not be assessed in respect of the entire value of the corpus. When assessments were made on this basis, the value of the remainder wealth escaped tax. The Wealth Tax Officer, therefore, assessed the remainder wealth under s. 21(4) taking the view that the beneficiaries in respect of the several remainder estates after the lives of the immediate beneficiaries were unknown and their shares were indeterminate.

On appeal the appellate Assistant Commissioner, without, deciding the contention as to the applicability of s. 21(4), annulled the assessments on the ground that though the trust deed was one, it created several distinct and separate trusts, one in favour of each beneficiary with its own independent and complete provision in regard to devolution. After the death of each beneficiary and the Wealth Tax Officer was not justified in clubbing the entire remainder wealth in a single assessment.

Before the Appellate Tribunal the Revenue contended that the assessee was liable to be assessed as an individual under s. 3 in respect of the entire corpus of the trust fund and s. 21(4) being merely a machinery provision did not have the effect of overriding the charge imposed under s. 3. 736

The Tribunal held (i) that s. 3 was subject to s. 21 and the assessee could not be assessed to wealth tax under that section in respect of the entire corpus ignoring the provisions of s. 21; (ii) that s. 21(1) was not applicable in this case and (iii) that s. 21(4) was applicable because the beneficiaries in respect of the remainder estate were unknown.

The following questions, among others, were referred by the Tribunal to the High Court:

1. Whether the trustees were liable to be taxed under s. 3 in the status of an "individual"?
2. Whether the Tribunal was right in holding that the provisions of s. 3 should be considered as subject to the provisions of s. 21 ?
3. Whether the Tribunal was correct in holding that under s. 21(4) the remainder wealth could be assessed in respect of each of the several units or groups of units allocated in favour of the beneficiaries ?
4. Whether the Tribunal was right in holding that the provisions of s. 21(4) are applicable?

The High Court held that (i) since the terms "individual" occurring in s. 3 is wide enough to include a group of persons forming a unit, the trustees were liable to be assessed under s. 3 but, s. 3 being subject to the provisions of s. 21, it was not permissible to tax the trustees under s. 3 ignoring the provisions of s. 21; (ii) it was not possible to say, on the valuation date, that the beneficiaries of the remainder estate in respect of each unit were unknown or their shares were indeterminate so as to attract the applicability of s. 21(4); and (iii) s. 21(1) was applicable because it could be predicated with certainty and definiteness on the relevant valuation date as to who would succeed to the corpus of each set of unit and in what shares, if the conditions for the vesting of the corpus were fulfilled on that date.

Dismissing the appeals in part,

HELD: The trustees constituted an assessable unit and

were liable to be assessed to wealth tax as "individual" under s. 3. [747 E]

(1)(a) Section 3 imposes the charge of wealth tax subject to other provisions of the Act and these other provisions include s. 21. Section 3 is, therefore, made expressly subject to s. 21 and it must yield to that section in so far as the latter makes special provision for assessment of a trustee. [748 D-E]

(b) Section 21 is mandatory. On a combined reading of ss 3 and 21, it is clear that an assessment on a trustee must be made in accordance with the provisions of s. 21. Every case of assessment on a trustee must necessarily fall under s. 21 and he cannot be assessed apart from and without reference to that section. To hold otherwise would be to refuse to give effect to the words "subject to the other provisions of this Act" in s. 3 and to deny mandatory force and effect to the provisions of s. 21. [749 E-G]

C.R. Nagappa v. Commissioner of Income-tax 73 I.T.R. 187, Commissioner of Income Tax v. Nandial Agarwal 59 I.T.R. 756 at 762 and Commissioner of Wealth Tax, Bihar & Orissa v. Kripashankar Dayashanker Worah 81 I.T.R. 763 followed. Commissioner of Income-Tax, Ahmedabad v. Balwantraji Jethalal Vaidya 34 I.T.R. 187 approved.

(c) The assessment which is contemplated to be made on the trustee under s. 21(1) or s. 21(4) is assessment in a representative capacity. It is really the beneficiaries who are sought to be assessed in respect of their interest in the trust properties through the trustee. Section 21(1) can apply only where the trust properties are held by the trustee for the benefit of a single beneficiary
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or where there are more beneficiaries than one, the individual shares of the beneficiaries in the trust properties are determinate and known. Where such is the case wealth tax can be levied on the trustee in respect of the interest of any particular beneficiary in the trust properties in the same manner and to the same extent as it would be leviable upon the beneficiary and in respect of such interest in the trust properties, the trustees would be assessed in a representative capacity as representing the beneficiary. The beneficiary would always be assessable in respect of his interest in the trust properties since such interest belongs to him and the right of the Revenue to make direct assessment on him in respect of such interest stands unimpaired by the provisions enabling assessment to be made on the trustees in a representative capacity.

[750 G-H, 751 A-B, C]

(d) The Revenue has thus two modes of assessment: (a) it may either assess such interest in the hands of the trustee in a representative capacity under sub s. (1); or (b) assess it directly in the hands of the beneficiary by including it in the net wealth of the beneficiary. In either case what is taxed is the interest of the beneficiary in the trust properties and not the corpus of the trust properties. So also where beneficiaries are more than one and their shares are indeterminate or unknown, the trustee would be assessable in respect of their total beneficial interest in the trust properties.

In the instant case it is the beneficial interest which is assessed to wealth tax in the hands of the trustee and not the corpus of the trust properties. Since under sub-ss. (1) and (4) of s. 21 it is the beneficial interest which is taxable in the hands of the trustee in a representative capacity and the liability of the trustee cannot be greater than the aggregate liability of the beneficiaries, no part

of the corpus of the trust properties can be assessed in the hands of the trustee under s. 3 and any such assessment would be contrary to the plain mandatory provisions of s. 21. [751 D-E, G-H]

(e) The consequences that flow from the proposition laid down in s. 21(1) that the trustee is assessable "in the like manner and to the same extent" as the beneficiary, are: (i) There would have to be as many assessments on the trustee as there are beneficiaries with determinate and known shares, though for the sake of convenience, there may be only one assessment order specifying separately the tax due in respect of the wealth of each beneficiary; (ii) The assessment of the trustee would have to be made in the same status as that of the beneficiary whose interest is sought to be taxed in the hand of the trustee; and (iii) The amount of tax payable by the trustee would be the same as that payable by each beneficiary in respect of his beneficial interest, if he were assessed directly. [752 B-D]

N.V. Shanmugham & Co., v. Commissioner of Income-Tax, Madras, 81 I.T.R. 310, Padmavati Jaykrishna Trust v. Commissioner of Wealth-Tax, Gujarat 61 I.T.R. 66, at 73-4, Trustee of Putlibai R.F. Mulla Trust v. Commissioner of Wealth-Tax 66 I.T.R. 653, at 657-8 and Chintamani Ghosh v. Commissioner of Wealth-Tax 80 I.T.R. 331 at 341 referred to. (f) Once it is established that a trustee can be assessed only in accordance with the provisions of s. 21 and under these provisions, it is only the beneficial interests which are taxed in the hands of the trustee, it must follow that no part of the value of the corpus in excess of the aggregate value of the beneficial interests can be brought to tax in the assessment of the trustee. To do so would be contrary to the scheme and provisions of s. 21. It would be deafly erroneous to assess the trustee to wealth tax on the excess of the value the corpus over the actuarial valuations of the life interest and the reversionary interest of the beneficiaries. [753 C-D]

Commissioner of Wealth-Tax, Gujarat v. Smt. Arundhati Balkrishna Trust 101 I.T.R. 626 approved.

(g) No part of the corpus of the trust funds could be assessed in the hands of the trustees but the assessment could be made on them only in respect of the beneficial interests of the beneficiaries in the trust funds under ss. 21 (1) and (4). [754 A]

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(2)(a) Even if the beneficiaries were indeterminate or unknown, s. 21(4) would apply and the trustees would be liable to be assessed in respect of the totality of the beneficial interest in the remainder as if it belonged to one single beneficiary. The expression 'where the shares of the beneficiaries are indeterminate or unknown' carries with it by necessary implication a situation where the beneficiaries themselves are indeterminate or unknown. [754 F-G]

(b) The correct interpretation of s. 21(4) must be that even where the beneficiaries of the remainder are indeterminate or unknown, the trustees can be assessed to wealth tax in respect of the totality of the beneficial interest in the remainder, treating the beneficiaries fictionally as an individual. [755-B]

(c) The Wealth Tax Officer has to determine as to who the beneficiaries are in respect of the remainder on the relevant date and whether their shares are determinate and known. So long as it is possible to say on the relevant valuation date that the beneficiaries are known and their shares are determinate, the possibility that 'the beneficiaries may change by reason of subsequent events such as

birth or death would not take the case out of the ambit of s. 21(1), [755 D-E]

Khan Bahadur M. Habibur Rehman v. Commissioner of Income-Tax, Bihar & Orissa 13 I.T.R. 189. Subashini Karuri v. Wealth-Tax Officer, Calcutta 46 I.T.R. 527, Commissioner of Wealth Tax, Bombay v. Trustees of Mrs. Hansabai Tribhuvandas Trust 69 I.T.R. 527 and Padmawati Jaykrishna Trust v. Commissioner of Wealth-Tax, Gujarat 61 I.T.R. 66, at 73-4 approved.

(d) In order to determine the applicability of s. 21(1) on the relevant valuation date, it has to be seen whether it is possible to say with certainty and definiteness as to who would be the beneficiaries and whether their shares would be determinate and specific, if the event on the happening of which the distribution is to take place occurred on that date. If it is, s. 21(1) would apply, if not, the case will be governed by s. 21(4).

In the instant case the trust deed provided for every contingency and whenever a relative specified in Second Schedule, who is the owner of the life interest in the set of unit or units allocated to him or her dies, there would always be beneficiaries capable of being easily ascertained and identified who would be entitled to the corpus of such unit or units in determinate and specific shares, either immediately on the death of such life tenant or after another life interest. The remainder in respect each set of unit or units allocated to the respective relative specified in the Second Schedule was, there fore, liable to be assessed in the hands of the trustees under s. 21(1) "in the same manner and to the same extent" as each beneficiary in respect of his determinate and known share in such remainder. That excluded the applicability of s.21 (4) in the assessment of the remainder. [756 'D-E, F, H, 757 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal NOS. 467-470 & 470A of 1971.

(Appeals by Special Leave from the Judgment and Order dated 3-3-1970 of the Andhra Pradesh High Court in case Ref. No. 8 of 1967.)

G.C. Sharma, P.L. Junels and R.N. Sachthey, for the appellant in all the appeals.

N. A. Palkhivala, Y.V. Anjaneyulu, Mrs. A. K. Verma, A. Subba Rao, Ravinder Narain, I. B. Dadachanji, and O.C. Mathur, for the respondents in all the appeals.

The Judgment of the Court was delivered by BHAGWATI, J. These appeals by special leave are directed against a judgment of the High Court of Andhra Pradesh answering certain questions referred to it by the Tribunal in favour of the assessee. The questions are of some importance and complexity and they turn on the true

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interpretation of sections 3 and 21 of the Wealth Tax Act, 1957 but, since they can be answered only by applying the correct interpretation to the facts of the case, it is necessary to briefly recapitulate the facts giving rise to these appeals.

In the year 1950 the late Nawab Sir Mir Osman Ali Khan Bahadur, The Nizam of Hyderabad and Berar created several trusts out of which we are concerned in these appeals with the trust known as the Family Trust. The Nizam, by a Deed of Trust dated 16th May, 1950, created the Family Trust by transferring a corpus of Rs. nine crores in Government

securities to the trustees constituted by him. The corpus was notionally divided into 175 equal units, of out of which five units constituted a Fund called the 'Reserve Fund' 31/2 units constituted a 'Family Trust Expenses Fund' and the remaining 166-1/2 units were allocated amongst the relatives mentioned in the first column of the Second Schedule in the manner specified in that Schedule, the number of units allocated to each individual relative being that mentioned in the second column. The Second Schedule was divided into two parts. Part I specified the names of the Nizam's wife Laila Begum, her five sons and two daughters and his another wife Jani Begum and her minor son as beneficiaries and in Part II were mentioned the names of the other wives, sons, daughters, daughters-in-law, sons-in-law, would-be sons-in-law and certain other ladies of the Palace. None of the beneficiaries mentioned in the Second Schedule, whether in Part I or Part II, was to be entitled to the corpus of the units allocated to him or her. Each was entitled to be paid the income from the units allocated to him or her and detailed provisions were made for the manner in which the units were to devolve after his or her death. Clause (4) of the Trust Deed provided that 30 out of 166 1/2 units shall be allocated amongst the relatives mentioned in Part I of the Second Schedule in such manner that one unit each shall be allocated to Laila Begum and Jani Begum, two units each shall be allocated to the daughters of Laila Begum and four units each shall be allocated to the five sons of Laila Begum and the minor son of Jani Begum. So far as one unit allocated to Laila Begum was concerned, the trustees were directed by sub-clause (a) of clause (4) to pay the income of this one unit to Laila Begum during her life time and after her death, it was to be divided into 12 equal parts and 2 equal parts each were to be added to the four units allocated to each of her five sons and one equal part each was to be added to the two traits allocated to each of her two daughters to be held upon the same trusts as those declared in respect of the original units allocated to each son or daughter as the case may be. Each of the five sons of Laila Begum was allocated four units and under sub-clause (b) of clause (4) it was provided that the income from these four units, supplemented by parts out of Laila Begum's unit on her death, shall be paid to the respective son during his life time and on and after his death, the corpus of the four units allocated to him together with the parts out of Laila Begum's unit added to it, shall be divided amongst his children or remoter issues per stirpes in the proportion of two shares for every male child to one share for every female child standing in the same degree of relationship. If such son died without leaving any child or remoter issue him surviving, sub-clause (b) of clause (4) provided that the trustees shall divide the four units allocated to him together with the

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subsequently added parts out of Laila Begum's unit into such sub-parts and in such manner that they shall allocate two equal sub-parts each to each of the then surviving sons of Laila Begum by the settlor and the issue then surviving of any pre-deceased son and one equal sub-part each to each of the then surviving daughters of Laila Begum by the settlor and the issue then surviving of any pre-deceased daughter. The parts of such surviving sons and daughter of Laila Begum as are specified in the Second Schedule were to be added to and amalgamated with the basic units, four or two as the

case may be, allocated to them and they were to be held on the same trusts as those declared in respect of such basic units. So far as concerns the sub-parts allocated to the surviving sons and daughters of Laila Begum who were born after the date of the Trust Deed, it was directed that such sub-parts would be taken by them absolutely and so also the sub-parts allocated to the issue of any pre-deceased son or daughter of Laila Begum were to be divided between them absolutely per stirpes in the proportion of two shares for every male child to one share for every female child standing in same degree of relationship. Sub-clause (c) of clause (4) made similar provisions with regard to the two units allocated to each of the two daughters of Laila Begum. The income of the two units together with the subsequently added parts out of Laila Begum's unit was to be given to the respective daughter for her life time and on her death, the corpus was to be divided amongst her children and remoter issue per stirpes in the proportion of two shares for every male child to one share for every female child standing in the same degree of relationship and if she died without leaving any issue her surviving, the corpus was to be divided into such sub-parts and in such manner that one equal sub-part was to go to each of the then surviving children of Laila Begum by the settlor and the issue then surviving of any pre-deceased son or daughter.. The other provisions in regard to the interest taken by these beneficiaries in the corpus were the same as in sub-clause (b) of clause (4). Subclause (d) of clause (4) dealt with the unit allocated to Jani Begum and provided that the income of this unit would go to Jani Begum during her life time and on her death, the corpus of this unit would be added to and amalgamated with the four units allocated to her minor son Imdad Ali Khan to be held upon the same trusts as those declared in respect of those four units and if neither Imdad Ali Khan nor any child or remoter issue of his was living at the date of the death of Jani Begum, then this one unit of Jani Begum was to be held upon the same trusts as the one unit allocated to Laila Begum on her death. Similarly, sub-clause (e) of clause (4) provided that the income of the four units allocated to Imdad Ali Khan shall be paid to him during his life time and on his death, the corpus shall be divided amongst his children and remoter issue per stirpes in the proportion of two shares for every male child to one share for every female child standing in the same degree of relationship and if he dies without leaving any child or remoter issue him surviving, the corpus shall be held on the same trusts as those upon which the four units allocated to any of the five sons of Laila Begum are held on the death of such son without leaving any child or remoter issue him surviving. It will thus be seen that detailed and elaborate provisions were made in the Trust Deed regarding the disposition of the different units allocated to the various beneficiaries specified in Part

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I of the Second Schedule and every contingency was taken care of in laying down the mode of devolution, so that at any particular point of time could always say who would be the beneficiaries entitled to the corpus, if the owner of the life interest were to die at that point of time.

The remaining 1361/2 units left after the allocation of 30 units as set out in clause (4) were dealt with in clause (5) of the Trust Deed. These 1361/2 units were allocated to the respective relatives of the settlor specified in Part II of the Second Schedule in the respective proportions set out against their names. Sub-clause (a) of clause (5)

provided that the income of the respective unit or units or fraction thereof allocated to the respective relative shall be paid to them respectively for life. But so far as the 15 daughters of the settlor were concerned, to each of whom three units were allocated, it was provided that out of the income of such three units, each daughter was to be paid only 2/3rd part of the income and the remaining 1/3rd part was to be set apart by way of a reserve fund. Such reserve fund was to be utilised for any special, unusual, unforeseen or emergency expenses relating to the particular daughter from whose income the reserve fund was created and on her death, the reserve fund or the unutilised portion thereof was to be amalgamated with the three units of the corpus allocated to her, to be held on the same trusts as those declared in respect of such three units. There was also a special provision made regarding Nawab Rashid Nawaz Jung, the son-in-law of the settlor, that, though allocated one unit, he was not to receive the income of that unit so long as he received the allowance as Amir of the Vikar-al-Mulk-Paigah and till then, the income of this unit was to be added to the five units allocated to the Reserve Fund created under clause (6) to be held upon the same trusts as those declared in respect of such Reserve Fund. The other son-in-law and the future husbands of the 13 other daughters of the settlor were also allocated 1/2 unit each and it was provided that until the marriage of each of these 13 daughters, the income of 1/2 unit allocated to her future husband should be set apart as a reserve fund and utilised in the same manner as the Reserve Fund of such daughter created out of one-third part of the income of the three units allocated to her and after her marriage, the income of such 1/2 unit should be paid to her husband. So far as Fauzia Begum, the daughter of the second son of the settlor was concerned, a special provision was made that the income of two units allocated to her should be set apart and credited in her account called 'Fauzia Begum Reserve Fund' and on the death of the second son of the settlor during the minority of Fauzia Begum, the income of these two units should be paid to a committee of management for the maintenance, education, welfare, advancement in life and benefit of Fauzia Begum until she attained the age of majority and during the minority of Fauzia Begum, the trustees were also authorised to spend out of the Reserve Fund such sums as may be necessary for any special, unusual, unforeseen or emergency expenses for her benefit and on Fauzia Begum attaining the age of majority, the trustees were to hand over the reserve fund or the unutilised portion thereof to her absolutely and also to pay to her the income of the two units during her life time. Sub-clause (b) of clause (5) provided for the devolution of the respective unit or units or fraction thereof allocated

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to the respective relatives on their death. It was directed that on the death of any of these relatives, the corpus of the unit or units or fraction thereof allocated to him or her should be divided and distributed, subject to some restrictions, amongst the children and remoter issue per stirpes in the ratio of 2:1 as between male and female children standing in the same degree of relationship. The contingency of any of these relatives dying without leaving any child or remoter issue him or her surviving was dealt with in sub-clause (c) of clause (5) which provided that in the event the unit or units or the fraction thereof allocated to such relative should be divided amongst the other relatives of the settlor but in accordance with certain specified rules. Sub-clause (d) of clause (5) made a spe-

cial provision in regard to Dulhan Pasha Begum, namely, that on her death, the five units allocated to her should be added to and amalgamated with the four units allocated to her daughter Shahzadi Begum, to be held upon thus be seen that according to the scheme envisaged in clause (5), each of the settlors specified in Part II of the Second Schedule was given life interest in the unit or units or fraction thereof allocated to him or her and on his or her death, subject to certain special provisions in regard to some of the relatives, the corpus of such unit or units or fraction thereof was to be divided and distributed amongst the children or remoter issue and if any of the relatives died without leaving any child or remoter issue him or her surviving, the corpus allocated to him or her was to go to the other relatives in accordance with certain specified rules.

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

The remaining 31/2 units were allocated under clause (7) of the Trust Deed to a fund called 'The Family Trust Expenses Account'. This fund was intended to meet all the charges for the collection of the income of the trust fund and the remuneration of the trustees and the members of the committee of management and all the costs, charges and expenses and outgoings relating to the trust and its administration. It was also directed that after all the aforesaid trusts relating to the 30 units, 136-1/2 units and 5 units out of the corpus of the trust fund had been fully administered and carried out and the corpus of all such units had been handed over and transferred absolutely to the ultimate beneficiaries, the

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trustees should transfer and hand over 31/2 units comprising this fund to the then successor-in-title of the settlor or to the eldest male descendant in the direct male line of succession of the settlor according to the rule of primogeniture.

During the course of assessment of the trustees (hereinafter referred to as the assessee) to wealth tax for the assessment year 1957-58, a question arose as to how the assessment to wealth tax should be made. The Wealth Tax Officer assessed the assessee to wealth tax on the value of 131/2 units of the trust fund comprising 5 units allocated to the Reserve Fund, 31/2 units allocated to the Family Trust Expenses Account and 5 units representing the units allocated to the future husbands of the then unmarried daughters of the settlor. The wealth corresponding to the remaining 1611/2 units was assessed in the hands of the several beneficiaries specified in the Second Schedule, who were assessed to wealth tax on the value of the respective

units allocated to them under the Trust Deed. Similar assessments were also made for the assessment year 1958-59 with this difference that by the time these assessments came to be made, one other daughter was also married and the Wealth Tax Officer, therefore, assessed the assessee to wealth tax only in respect of the value of 13 units of the Trust Fund and the values of the other units were assessed in the hands of the respective beneficiaries to whom they were allocated as specified in the Second Schedule.

There were appeals to the Appellate Assistant Commissioner against the assessments for the assessment years 1957-58 and 1958-59 and in these appeals, the Appellate Assistant Commissioner held that the inclusion of 5 units constituting the Reserve Fund, 31/2 units constituting the Family Trust Expenses Account and the units allocated to the future husbands of the unmarried daughters in one single assessment was unjustified, since the clauses constituting the Reserve Fund and the Family Trust Expenses Account and creating a trust in favour of the future sons-in-law constituted three distinct trusts and hence separate assessments must be made in respect of the several units forming the subject matter of these clauses. The Wealth Tax Officer accordingly made separate assessments on the assessee in respect of 5 units constituting the Reserve Fund and 31/2 units constituting the Family Trust Expenses Account for the assessment years 1957-58 and 1958-59 and similar assessments were also made on the assessee in respect of the assessment years 1960-61 and 1961-62. We are not concerned in these appeals with the assessments made on the assessee in respect of 5 units constituting the Reserve Fund and 31/2 units constituting the Family Trust Expenses Account since these assessments have become final.

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

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the respective units and not on the value of the corpus and in this view, the Appellate Assistant Commissioner set aside the assessments made on the beneficiaries and directed the Wealth Tax Officer to make fresh assessments by including only the value of the life interest of each of the beneficiaries in his or her assessment. The Wealth Tax Officer accordingly valued the life interest of each of the beneficiaries in the respective unit or units allocated to him or her and made assessment to wealth tax by including the value of such life interest. But the result of making assessments on this basis on the several beneficiaries was that the value of the 'remainder wealth' in respect of 1661/2 units escaped tax. The Wealth Tax Officer was of the view that the beneficiaries in respect of the several remainder estates after the lives of the immediate beneficiaries mentioned in the Second Schedule were unknown and their shares undeterminate and the assessee was, therefore, liable to be assessed in respect of the remainder wealth under section 21, subsection (4) of the Wealth Tax Act. The Wealth Tax Officer accordingly reopened the assessments made on the assessee for the assessment years 1957-58

to 1960-61 and made fresh assessments on the assesseees in respect of the 'remainder wealth' by applying the provisions of section 21, sub-section (4). He arrived at the value of the remainder wealth by taking the value of the entire original corpus and deducting therefrom the value of 5 units allocated to the Reserve Fund, the value of 3-1/2 units allocated to the Family Trust Expenses Account and the aggregate of the values of the life interests assessed in the hands of the several beneficiaries. Similar assessment was also made on the assesseees in respect of the remainder wealth for the assessment year 1961-62.

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

The Revenue being aggrieved by the order passed by the Appellate Assistant Commissioner preferred appeals before the Tribunal on the

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main ground that there was only one single trust created by the Trust Deed and not several distinct and separate trusts. Two further contentions were also sought to be urged on behalf of the Revenue at the hearing of the appeals and one of them was, and that is the only contention material for our purpose, that the Appellate Assistant Commissioner should have "given a definite finding regarding the applicability of section 21, sub-section (4) or section 3 to the facts of the case". The argument of the Revenue in regard to this contention was that the assesseees were liable to be assessed as an 'individual' under section 3 in respect of the entire corpus of the trust fund and section 21, sub-section (4) being merely a machinery section did not have the effect of overriding the charge imposed on the assesseees under section 3. The Tribunal allowed the Revenue to raise this new contention, but made it clear that it would be only "for the purpose of supporting the assessments already made and not for the purpose of enhancing the assessments". The answer given by the assesseees to this contention was that section 3 had no application at all, because the assesseees as trustees would be an 'association of persons' and under the Wealth Tax Act an 'association of persons' is not an assessable entity and they went on further to say that they

could not be assessed even under sub-section (1) or sub-section (4) of section 21, since in respect of the remainder estate after the death of each relative, the beneficiaries were unknown. The assessees also contended that, in any event, even if section 3 were applicable, the assessment on the assessee could be made only in accordance with the provisions of section 21, since section 3 was subject to the other provisions of the Act including section 21. It was also urged on behalf of the assessees that the Trust Deed created distinct and separate trusts 'in respect of the several units allocated to the beneficiaries mentioned in the Second Schedule and in any event, even if the trust was a single indivisible trust, the remainder estate in respect of the several units was required to be assessed separately in the hands of the assessees and to the assessment of such remainder, it was sub-section (1) of section 21 which applied and not sub-section (4) of section 21. The Tribunal, on a proper construction of section 3, and 21, came to the Conclusion that these two sections have to be read together and so read it was clear that section 3 was subject to section 21 and the assessees could not, therefore, be assessed to wealth tax under section 3 in respect of the entire corpus, ignoring the provisions of section 21. Sub-section (1) of section 21 was, in the view of the Tribunal, not applicable and the only question, therefore, was whether assessment could be made on the assessees under sub-section (4) of section 21. The Tribunal held that it was not correct to say that sub-section (4) of section 21 was not applicable in the present case on the ground that the beneficiaries in respect of the remainder estate were unknown and proceeded to apply the provisions of section 21, sub-section (4) in the assessment of the assessees. The Tribunal accepted the contention of the Revenue that there was only one single trust created by the Trust Deed and not as many trust as there were beneficiaries, but all the same it held, on the application of section 21, sub-section (4) that "even if the Trust Deed be viewed as a single trust, separate assessments should be made on the trustees in respect of the several units allocated to the groups of the several beneficiaries mentioned in the Second Schedule". The result was that the appeals filed by the Revenue were dismissed.

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

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

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the provisions of section 3 of the Wealth Tax Act should not be considered as subject to the provisions of section 21 of the above Act ' ?

(iii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in refusing to admit the additional ground filed on behalf of the Department (in W.T.A. No. 690 to 694 of 1963-64) except to the extent of supporting the assessment as made ?

(iv) Whether, on a proper construction of the trust deed in question, the Tribunal

was correct in holding that the settlor had created only one trust in favour of several beneficiaries and not separate and independent trust in favour of several beneficiaries or groups of beneficiaries ?

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

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

So far as the first question is concerned, the High Court answered it in favour of the Revenue by holding that the trustees are liable to be assessed as an 'individual' under section 3, because the word 'individual' in section 3 is wide enough to include a group of persons forming a unit. But section 3 being subject to the provisions of section 21, the High Court held, in answer to the second question, that it was not permissible to the Revenue to tax the trustees under section 3 ignoring the provisions of section 21. The High Court held that the assessment on the trustees could be made only in accordance with the provisions of section 21. The question then was as to which sub-section of section 21 applied in the present case: sub-section (1) or sub-section (4). The High Court took the view that on the relevant valuation date, it was not possible to say that the beneficiaries of the remainder estate in respect of each set of unit or units allocated to the respective relatives

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Specified in the Second Schedule were unknown or their shares were indeterminate so as to attract the applicability of sub-section (4) of section 21. The High Court observed that it could be predicated with certainty and definiteness on the relevant valuation date as to who would succeed to the corpus of each set of unit or units and in what shares, if the conditions for the vesting of the corpus were fulfilled on that date. The High Court accordingly held that sub-section (1) of section 21 was applicable to the facts of the case and the assessment on the assesseees was liable to be made in conformity with that provision. The High Court then addressed itself to the fourth question and held that the Tribunal was not right in holding that the Trust Deed created one single indivisible trust but there were really several distinct and separate trusts created by the Trust Deed in favour of each of the relatives mentioned in the Second Schedule. This view taken by the High Court necessarily resulted in questions Nos. (v) and (vi) being answered in favour of the assesseees. That left the third question, but so far as that is concerned, the High Court took the view that it was not necessary to consider it in view of the answers given to the other questions. It is this decision of the High Court on the various questions referred by the Tribunal which is impugned in the present appeals preferred by special leave.

Before we take up the questions of law that arise for consideration in these appeals, we may clear the ground at

the outset by pointing out that though before the High Court, it was contended on behalf of the assesseees that they were not liable to be assessed to wealth under section 3 since unlike the charging section in the Income-tax Act 3 did not provide for levy of wealth tax on association of persons his contention was not pressed before us and it was conceded, and in our opinion rightly, that the assesseees constituted an assessable unit and opinion liable to be assessed to wealth tax as 'individual' under section 3. This position indeed could not be disputed after the decision of this Court in Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-Tax, Bombay. (1) But the question is whether assessment could be made on the assesseees under section 3 apart from and without reference to section 21. That depends on the true meaning and effect of sections 3 and 21 and the inter-relation between these two sections. Section 3 is the charging section and it levies the charge of wealth tax on the net wealth of the assessee on the relevant valuation date. 'Net wealth' is defined in section 2 (m) to mean "the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date-----is in excess of the aggregate value of all the debts owed by the assessee on the valuation date-----". It is clear from this definition that any property, wherever located, 'belonging to' the assessee on the relevant valuation date would be includible in the net wealth of the assessee assessable to wealth tax. One argument based on semantics advanced on behalf of the assesseees was that assets held by a trustee in trust for others cannot be said to be assets belonging to the trustee so as to be includible in his net wealth. The assets so held "are not trustee's property in any real sense": they are

(1) 88 I.T.R. 47

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the property of the beneficiaries and, to use the words of Lord Mac Naughton in *Heritable Reversionary Co. Ltd. v. Millar*, (1) the beneficiaries are the true owners all along. The trustee of a trust cannot, therefore, be assessed to wealth tax in respect of the trust properties under section 3. It was for this reason, contended the assesseees, that special provision had to be made in section 21 for assessing the trustee and hence assessment on the trustee could be made only in accordance with such special provision. This was precisely the argument which found favour with the Gujarat High Court in *Commissioner of Wealth-Tax, Gujarat v. Kum. Manna G. Sarabhai*(2) which was a case decided by a Division Bench presided over by one of us (Bhagwati, J. as the Chief Justice). On this argument, the trustee of a trust would not be liable to be assessed to wealth tax in respect of the trust properties under section 3. It is only by reason of section 21 that he would be assessable and hence assessment cannot be made on him except in accordance with the provisions of section 21. Prima facie, there seems to be force in this argument, but we do not think it necessary to express any final opinion upon it, since there is an alternative argument advanced on behalf of the assesseees which is quite substantial and leave no room for judicial doubt or hesitation.

Let us assume that the trustee of a trust would be assessable in respect of the trust properties under section 3, even in the absence of section 21. But section 3 imposes the charge of wealth tax 'subject to the other provisions' of the Act and these other provisions include section 21. Section 3 is, therefore, made expressly subject to section

21 and it must yield to that section in so far as the latter makes special provision for assessment of a trustee of a trust. Section 21 is mandatory in its terms and as it stood at the material time it provided as follows:

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

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

(1) (1892) A.C. 598.

(2) 86 I.T.R. 153

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

(4) Notwithstanding anything contained in this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from the court of wards, administrator-general, official trustee, receiver, manager, or other person aforesaid as if the persons on whose behalf or for whose benefit the assets are held were an individual for the purposes of this Act."

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

"21(5) Any person who pays any sum by virtue of the provisions of this section in respect of the net wealth of any beneficiary, shall be entitled to recover the sum so paid

from such beneficiary, and may hold on behalf or for the benefit of such beneficiary, an amount equal to the sum so paid."

It would, therefore, be clear on a combined reading of sections 3 and 21 that whenever assessment is made on a trustee, it must be made in accordance with the provisions of section 21. Every case of assessment on a trustee must necessarily fall under section 21 and he cannot be assessed apart from and without reference to the provisions of that section. To take a contrary view giving option to the Revenue 'to assess the trustee under section 3 without following the provisions of section 21 would be to refuse to give effect to the words "subject to the other provisions of this Act" in section 3, to ignore the maxim *genralia specialibus non derogant* and to deny mandatory force and effect to the provisions enacted in section 21. It may be noted that, while interpreting the corresponding provisions in section 41 of the Indian Income-Tax Act, 1922 and section 161 of the Income-Tax Act, 1961-, this Court in *C.R. Nagappa v. Commissioner of IncomeTax*(1) approved the following observations made by Chagla, C.J. in regard to the scheme of section 41 of the Indian Income Tax Act, 1922 in *Commissioner of Income-tax, Ahmedabad v. Balwantrao Jethalal Vaidya*(2):

"If the assessment is upon a trustee, the tax as to be levied and recovered in the manner provided in section 41.

(1) 73 I.T.R. 187.

(2) 34 I.T.R. 187.

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

dealing with the income of a trustee, they must levy the tax and recover it in the manner laid down in section 41." (Emphasis supplied by us).

This Court also observed that "the some considerations must apply in the interpretation of section 161 (2) of the Income Tax Act, 1961". The same view, it may be pointed out, was taken by this Court in an earlier decision in Commissioner of Income Tax v. Nandial Agarwal.(1) These decisions given under the Income Tax law must apply equally in the interpretation of section 21, since the relevant provisions of both the statutes are almost identical. That was pointed out by this Court in Commissioner of Wealth Tax, Bihar & Orissa v. Kripashankar Dayashanker Worah(2) where it was said: "Section 21(1) of the Act is analogous to section 41 of the Income-Tax Act, 1922. The only difference between the two sections is that whereas the former deals with assets, the latter deals with income. Subject to this difference, the two provisions are identically worded. Hence, the decisions rendered under section 41 (1) of the Indian Income-tax Act, 1922, have a bearing on the question arising for decision in this case". It must therefore, be held to be incontrovertible that whenever a trustee is sought to be assessed, the assessment must be made in accordance with the provisions of section 21.

It must also be noted that the assessment which is contemplated to be made on the trustee under sub-section (1) or sub-section (4) of section 21 is assessment in a representative capacity. It is really the beneficiaries who are sought to be assessed in respect of their interest in the trust properties through the trustee. Sub-section (1) provides that in respect of trust properties held by a trustee, wealth tax

(1) 59 I.T.R. 756 at 762.

(2) 81 I.T.R. 763.

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shall be levied upon him 'in the like manner and to the same extent' as it would be leviable on the beneficiary for whose benefit the trust properties are held. This provision obviously can apply only where the trust properties are held by the trustee for the benefit of a single beneficiary or, where there are more beneficiaries than one, the individual shares of the beneficiaries in the trust properties are determinate and known. Where such is the case, wealth tax can be levied on the trustee in respect of the interest of any particular beneficiary in the trust properties 'in the same manner and to the same extent' as it would be leviable upon the beneficiary and in respect of such interest in the trust properties, the trustee would be assessed in a representative capacity as representing the beneficiary. This, of course, does not mean that the Revenue cannot proceed to make direct assessment on the beneficiary. in respect of the interest in the trust properties which 'belongs to' him. The beneficiary would always be assessable in respect of his interest in the trust properties, since such interest 'belongs to' him and the right of the Revenue to make direct assessment on him in respect of such interest stands unimpaired by the provision enabling assessment to be made on the trustee in a representative capacity. Sub-section (2) makes this clear provided that nothing contained in sub-section (1) shall prevent either the direct assessment of the beneficiary for whose benefit the trust properties are held or the recovery from the beneficiary of the wealth tax in respect of his interest in the trust properties which is assessed in the hands of the trustee. The Revenue has

thus two modes of assessment available for assessing the interest of a beneficiary in the trust properties: it may either assess such interest in the hands of the trustee in a representative capacity under sub-section (1) or assess it directly in the hands of the beneficiary by including it in the net wealth of the beneficiary. What is important to note is that in either case what is taxed is the interest of the beneficiary in the trust properties and not the corpus of the trust properties. So also where beneficiaries are more than one, and their shares are indeterminate or unknown, the trustees would be assessable in respect of their total beneficial interest in the trust properties. Obviously in such a case, it is not possible to make direct assessment on the beneficiaries respect of their interest in the trust properties, because their shares are indeterminate or unknown and that is why it is provided that the assessment may be made on the trustee as if the beneficiaries for whose benefit the trust properties are held were on individual. The beneficial interest is treated as if it belonged to one individual beneficiary and assessment is made on the trustees in the same manner and to the same extent as it would be on such fictional beneficiary. It will therefore, be seen that in this case too, it is the beneficial interest which is assessed to wealth tax in the hands of the trustee and not the corpus of the trust properties. This position becomes abundantly clear if we look at sub-section (5) which clearly postulates that where a trustee is assessed under sub-section (1) or sub-section (4), the assessment is made on him 'in respect of the net wealth' of the beneficiary, that is, the beneficial interest belonging to him. Now wherever there is a trust, it is obvious there must be beneficiaries under the trust because the very concept of a trust connotes that though the legal title vests in the trustee, he does not own or hold the trust pro-

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perties for his personal benefit but he holds the same for the benefit of others, whether individuals or purposes. It must follow inevitably from this premise, that since under sub-section (1) and (4) of section 21 it is the beneficial interests which are taxable in the hands of the trustee in a representative capacity and the liability of the trustee cannot be greater than the aggregate liability of the beneficiaries no part of the corpus of the trust properties can be assessed in the hands of the trustee under section 3 and any such assessment would be contrary to the plain mandatory provisions of section 21.

It is also necessary to notice the consequences that seem to flow from the preposition laid down in section 21, sub-section (1) that the trustee is assessable 'in the like manner and to the same extent' as the beneficiary. The consequences are three fold. In the first place it follows inevitably from this proposition that there would have to be as many assessments on the trustee as there are beneficiaries with determinate and known shares, though for the sake of convenience, there may be only one assessment order specifying separately the tax due in respect of the wealth of each beneficiary. Secondly, the assessment of the trustee would have to be made in the same status as that of the beneficiary whose interest is sought to be taxed in the hands of the trustee. This was recognised and laid down by this Court in *N.V. Shanmugham & Co. v. Commissioner of Income-Tax Madras* (1) And lastly, the amount of tax payable by the trustee would be the same as that payable by each beneficiary in respect of his beneficial interest, if he were assessed directly. Vide *Padmavati Jayakrishna Trust v.*

Commissioner of Wealth-Tax, Gujarat(2) Trustees of Putlibai R.F. Mulla Trust v. Commissioner of Wealth-Tax.(3) and Chintamani Ghosh v. Commissioner of Wealth-Tax.(4) Let us, by way of illustration, take a case where property of the value of Rs. ten lacs is held in trust under which the income of the property is given to A for life and on his death, the property is to be divided equally between B and C. The beneficiaries in this case are clearly A, B and C, A having life interest in the trust property and B and C having equal shares in the remainder. The Revenue has option to assess the beneficial interests of A, B and C in the trust property in the hands of the trustee or to make direct assessment on each of the three beneficiaries. If the trustee is assessed under sub-section (1) of section 21, three separate assessments would have to be made on him, one in respect of the actuarial valuation of the life interest of A, which may be, to take an ad hoc figure, say, Rs. 5 lacs and the other two in respect of the actuarial valuations of the remaindermen's interests of B and C, which may be, to take again an ad hoc figure, say, Rs. 2 lacs each. But, as pointed out above, the Revenue may, instead of assessing the trustee, proceed to make direct assessment on each of the three beneficiaries A, B and C and in that case, Rs. 5 lacs, Rs. 2 lacs and Rs. 2 lacs would be included in the net wealth of A,

(1) 81 I.T.R. 310

(2) 61 I.T.R. 66; at 73-4.

(3) 66 I.T.R. 653, at 657-8

(4) 80 I.T.R. 331 at 341.

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B and C respectively. The result would be that though the value of the corpus of the trust property is Rs. 10 lacs, the assessments, whether made on the trustee or on each of the three beneficiaries, would be only in respect of Rs. 5 lacs, Rs. 2 lacs and Rs. 2 lacs and the balance of Rs. 1 lac would not be subject to taxation. In fact in most cases, if not all, the aggregate of the values of the life interest and the remaindermen's interest would be less than the value of the total corpus of the trust property, since the value of the remaindermen's interest would be the present value of his right to receive the corpus of the trust property at an uncertain future date and this would almost invariably be less than the value of the corpus of the trust property after deducting the value of the preceding life interest. The balance of the value of the corpus of the trust property would not, in the result, be subjected to assessment to wealth tax. But that is the logical and inevitable effect of the schemes of section 21. Once it is established that a trustee of a trust can be assessed only in accordance with the provisions of section 21 and under these provisions, it is only the beneficial interests which are taxed in the hands of the trustee, it must follow as a necessary corollary that no part of the value of the corpus in excess of the aggregate value of the beneficial interests can be brought to tax in the assessment of the trustee. To do so would be contrary to the scheme and provisions of section 21. It would be clearly erroneous to assess the trustee to wealth tax on the excess of the value of the corpus over the actuarial valuations of the life interest and the reversionary interest of the beneficiaries. We find that the same view has been taken by the Gujarat High Court in Commissioner of Wealth Tax, Gujarat v. Smt. Arundhati Balkrishna Trust(1) and this view, in our opinion, represents the correct law on the subject.

We have given in the preceding paragraph illustration

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

(1) 101 I.T.R. 626

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be brought to tax in the hands of the trustee under sub-section (1) or (4) of section 21.

It is, therefore, obvious that no part of the corpus of the trust funds could be assessed in the hands of the assessee, but the assessment could be made on the assessee only in respect of the beneficial interests of the beneficiaries in the trust funds under sub-section (1) and (4) of section 21. Now so far as the beneficiaries specified in the Second Schedule are concerned, each of them had a life interest in the unit or units allocated to him or her and the assessee. were liable under sub-section (1) of section 21 to be assessed in respect of such life interest 'in the same manner and to the same extent' as the respective beneficiaries. But the question is as to how the beneficial interest in the remainder in respect of each set of unit or units was liable to be taxed in the hands of the assessee. The argument of the Revenue was that it could not be said on the relevant valuation date as to who would be the beneficiaries entitled to the remainder on the death of the concerned relative and hence the beneficiaries were indeterminate and unknown on the relevant valuation date and in the circumstances, sub-section (1) of section 21 had no application. Sub-section (4) of section 21 was also not attracted, said the Revenue, because that sub-section could apply only where the shares of the beneficiaries were indeterminate or unknown and not where the beneficiaries themselves were indeterminate and unknown. The Revenue contended, on the basis of this argument, that since the beneficial interest in the remainder in respect of each set of unit or units was not taxable either under sub-section (1) or sub-section (4) or section 21, the assessee was liable to be assessed in respect of the value of the corpus of such unit or units minus the valuation of the life interest under section 3. But this contention is plainly erroneous, because, on the view we have taken as regards the interpretation of section 3 and 21, a trustee can be assessed to wealth tax only in respect of the beneficial interests of the beneficiaries and no assessment can be made on him in respect of any part of the corpus of the trust funds apart from and without reference to section 21. We shall presently show that under

the Trust Deed on each relevant valuation date the shares of the beneficiaries in the remainder in respect of each set of unit or units were determinate and known and the case was, therefore, governed by sub-section (1) of section 21, but we may point out that even if the beneficiaries were indeterminate or unknown, sub-section (4) of section 21 would apply and the assessee would be liable to the assessed in respect of the totality of the beneficial interest in the remainder as if it belonged to one single beneficiary. When the beneficiaries are indeterminate or unknown, then obviously their shares would also be indeterminate and unknown. We cannot conceive of a case where the shares would be determinate or known while the beneficiaries are indeterminate and unknown. The expression 'where the shares of the beneficiaries are indeterminate or unknown' carried with it by necessary implication, a situation where the beneficiaries themselves are indeterminate or unknown. Such, for example, would be the case in the modified illustration given above. There, the beneficiaries are such of the children of A as the trustee might think fit

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and the beneficiaries themselves would, therefore, be indeterminate and unknown and yet sub-section (4) of section 21 would apply to their case. To take any other view would be to deny full meaning and effect to the words "where the shares of the beneficiaries are indeterminate or unknown" and to create a lacuna where, even though the beneficial interest in the remainder is disposed of under the Trust Deed, such beneficial interest would escape assessment. The correct interpretation of sub-section (4) of section 21 must, therefore, be that even where the beneficiaries of the remainder are indeterminate or unknown, the trustee can be assessed to wealth tax in respect of the totality of the beneficial interest in the remainder, treating the beneficiaries fictionally as an individual.

This immediately takes us to the question as to which of the two sub-sections, (1) or (4) of section 21 applies for the purpose of assessing the assessee to wealth tax in respect of the beneficial interest in the remainder qua each set of unit or units allocated to the relatives specified in the Second Schedule. Now it is clear from the language of section 3 that the charge of wealth tax is in respect of the net wealth on the relevant valuation date, and, therefore, the question in regard to the applicability of sub-section (1) or (4) of section 21 has to be determined with reference to the relevant valuation date. The Wealth Tax Officer has to determine who are the beneficiaries in respect of the remainder on the relevant date and whether their shares are indeterminate or unknown. It is not at all relevant whether the beneficiaries may change in subsequent years before the date of distribution, depending upon contingencies which may come to pass in future. So long as it is possible to say on the relevant valuation date that the beneficiaries are known and their shares are determinate, the possibility that the beneficiaries may change by reason of subsequent events such as birth or death would not take the case out of the ambit of sub-section (1) of section 21. It is no answer to the applicability of sub-section (1) of section 21 to say that the beneficiaries are indeterminate; and unknown because it cannot be predicated who would be the beneficiaries in respect of the remainder on the death of the owner of the life interest. The position has to be seen on the relevant valuation date as if the preceding life interest had come to an end on that date and if, on that hypothesis, it is possible to determine who

precisely would be the beneficiaries and on what determinate shares, sub-section (1) of section 21 must apply and it would be a matter of no consequence that the number of beneficiaries may vary in the future either by reason of some beneficiaries ceasing to exist or some new beneficiaries coming into being. Not only does this appear to us to be the correct approach in the application of subsection (1) of section 21, but we find that this has also been the general consensus of judicial opinion in this country in various High Courts during the last about thirty years. The first decision in which this view was taken was rendered as far back as 1945 by the Patna High Court in Khan Bahadur M. Habibur Rahman v. Commissioner of Income-Tax, Bihar & Orissa(1) and since then, this view has been followed by the Calcutta High Court in Subhashini Karuri v. Wealth (1) 13 I.T.R. 189, 9--707SCI/77

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Tax Officer Calcutta(1) the Bombay High Court in Trustees of Putlibai R.F. Mulla Trust v. Commissioner of Wealth-Tax (supra) and Commissioner of Wealth Tax, Bombay v. Trustees of Mrs. Hansabai. Tribhuwandas Trust(2) and the Gujarat High Court in Padmavati Jaykrishna Trust v. Commissioner of Income Tax, Gujarat (supra). The Calcutta High Court pointed out in Subhashini Karuri's case: "The share of a beneficiary can be said to be indeterminate if at the relevant time the share cannot be determined but merely because the number of beneficiaries vary from time to time, one cannot say that it is indeterminate". The same proposition was formulated in slightly different language by the Bombay High Court in Trustees of Putlibai R.F. Mulla Trust's case: "The question whether the shares of the beneficiaries are determinate or known has to be judged as on the relevant date in each respective year of taxation. Therefore, whatever may be the position as to any future date, so far as the relevant date in each year is concerned, it is upon 'the terms of the trust deed always possible to determine who are the shares and what their shares respectively are." The Gujarat High Court also observed in Padmavati Jaykrishna Trust's case: "..... in order to ascertain whether the shares of beneficiaries and their numbers were determinate or not, the Wealth-Tax Officer has to ascertain the facts as they prevailed on the relevant date and therefore any variation in the number of beneficiaries in future would not matter and would not make sub-section (4) of section 21 applicable." These observations represent correct statement of the law and we have no doubt that in order to determine the applicability of sub-section (1) of section 21, what has to be seen is whether on the relevant valuation date, it is possible to say with certainty and definiteness as to who would be the beneficiaries and whether their shares would be determinate and specific, if the event on the happening of which the distribution is to take place occurred on that date. If it is, sub-section (1) of section 21 would apply: if not, the case will be governed by sub-section (4) of section 21.

Now in the present case it is clear from the provisions of the Trust Deed that, in the case of each set of unit or units, it is possible to say with certainty and definiteness on each relevant valuation date as to who would be the beneficiaries and in 'what specific shares, if the respective relative mentioned in the Second Schedule to whom such set of unit or units is allocated under the Trust Deed were to die on that date. That is the view taken by the High Court in the judgment impugned in these appeals and we think it is a correct view on the interpretation of the

provisions of the Trust Deed. We may point out in fairness to the learned counsel appearing on behalf of the Revenue that he did not seriously contest this position. There is not a single contingency unprovided for in the Trust Deed and whenever a relative specified in the Second Schedule, who is the owner of life interest in the set of unit or units allocated to him or her dies, there would always be beneficiaries capable of being easily ascertained and identified who would be entitled to the corpus of such unit or units in determinate and specific shares, either immediately on the

(1) 46 I.T.R. 527

(2) 69 I.T.R. 527.

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death of such life tenant or after another life interest. The remainder in respect of each set of unit or units allocated to the respective relative specified in the Second Schedule was, therefore, liable to be assessed in the hands of the assessee under section 21, sub-section (1) in the same manner and to the same extent as each beneficiary in respect of his determinate and known share in such remainder. That plainly excluded the applicability of sub-section (4) of section 21 in the assessment of the remainder. The High Court also examined the question whether the Trust Deed created one single indivisible trust or several distinct and separate trusts and, disagreeing with the view taken by the Tribunal, came to the conclusion that "the Deed of Trust created several trusts in favour of the relatives specified in the Second Schedule and their issues." But on the view taken by us that it is sub-section (1) of section 21 and not sub-section (4) of that section which applies in the assessment of the remainder in respect of each set of unit or units in the hands of the assessee, it is unnecessary to pursue this question and decide whether the Trust Deed created one single indivisible trust or as many trusts as the number of beneficiaries specified in the Second Schedule.

We accordingly agree with the High Court that question No. (i) should be answered in favour of the Revenue and Question Nos. (ii), (v) and (vi) should be answered in favour of the assessee. We do not propose to answer Questions Nos. (iii) and (iv), since in view of the answers given by us to the other questions, it is unnecessary to decide them. The appeals are accordingly dismissed. The Commissioner will pay the costs of these appeals to the assessee in one set.

P.B.R.

dismissed.

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Appeals