Union Of India vs Harbhajan Singh Dhillon on 21 October, 1971

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Bench: S.M. Sikri, A.N. Ray, D.G. Palekar, I.D. Dua, J.M. Shelat, S.C. Roy

JUDGMENT

S.M. Sikri, C.J.

1. This appeal is from the Judgment of the High Court of Punjab & Haryana in Civil Writ No. 2291 of 1970, which was heard by a Bench of five Judges. Four Judges held that Section 24 of the Finance Act, 1969, insofar as it amended the relevant provisions of the Wealth Tax Act, 1957, was beyond the legislative competence of Parliament. Pandit, J., however, held that the impugned Act was intra vires the legislative powers of Parliament. The High Court accordingly issued a direction to the effect that the Wealth Tax Act, as amended by Finance Act, 1969, insofar as it includes the capital value of the agricultural land for the purposes of computing net wealth, was ultra vires the Constitution of India.

2. We may mention that the majority also held that the impugned Act was not a law with respect to entry 49 List II of the Seventh Schedule to the Constitution; in other words, it held that this tax was not covered by entry 49 List II of the Seventh Schedule.

3. The Wealth Tax Act, 1957, was amended by Finance Act, 1969, to include the capital value of agricultural land for the purposes of computing net wealth. "Assets" is defined in Section 2(c) to include property of every description, movable or immovable. The exclusions need not be mentioned here as they relate to earlier assessment years. "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, includes assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date," other than certain debts which are set out in the definition. "Valuation date" in relation to any year for which the assessment is to be made under this Act is defined in Section 2(q) to mean the last day of the previous year as defined in Section 3 of the Income-tax Act, if an assessment were to be made under this Act for that year. We need not set out the proviso here. Section 3 is the charging section which reads :

> 3. Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax

(hereinafter referred to as the "wealth-tax") in respect of the net wealth on the corresponding valuation date of every individual, Hindu Undivided Family and company at the rate or rates specified in the Schedule.

4. Section 4 includes certain assets as belonging to the assessee.

5. Section 5 gives certain exemptions in respect of certain assets. We need only reproduce Section 5(iva):

5(iva). Agricultural land belonging to the assessee subject to a maximum of one hundred and fifty thousand rupees in value:

Provided that where the assessee owns any house or part of a house situate in a place with a population exceeding ten thousand and to which the provisions of Clause (iv) apply and the value of such house or part of a house together with the value of the agricultural land exceeds one hundred and fifty thousand rupees, then the amount that shall not be included in the net wealth of the assessee under this clause shall be one hundred and fifty thousand rupees as reduced by so much of the value of such house or part of house as is not to be included in the net wealth of the assessee under Clause (iv).

6. Sections 5(ivb), 5(viiia) and 5(ix) read:

5(ivb) one building or one group of building owned by a cultivator of, or receiver of rent or revenue out of agricultural land:

Provided that such building or group of buildings is on or in the immediate vicinity of the land and is required by the cultivator or the receiver of rent or revenue, by reason of his connection with the land, as dwelling-house, store-house or outhouse;"

"5(viiia) growing crops (including fruits on trees) on agricultural land and grass on such land;"

"5(ix) The tools, implements and equipment used by the assessee for the cultivation, conservation, improvement or maintenance of agricultural land, or for the raising or harvesting of any agricultural or horticultural produce on such land.

Explanation.-For the purposes of this clause, tools, implements and equipment do not include any plant or machinery used in any tea or other plantation in connection with the processing of any agricultural produce or in the manufacture of any article from such produce;

7. Section 7(1) deals with the evaluation of the assets and provides that "subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes

of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date."

8. Rest of the provisions are machinery provisions dealing with the authorities, assessment and special provisions dealing with special cases like appeals, revisions, references, payment and recovery of wealth tax, refunds and miscellaneous provisions.

9. The submissions of Mr. Setalvad, appearing on behalf of the Union in brief were these : That the impugned Act is not a law with respect to any entry (including entry 49) in List II; if this is so, it must necessarily fall within the legislative competence of Parliament under entry 86. read with entry 97, or entry 97 by itself read with Article 248 of the Constitution; the words "exclusive of agricultural land" in Entry 86 could not cut down the scope of either entry 97 List I, or Article 248 of the Constitution.

10. The submissions of Mr. Palkiwala, who appeared on behalf of the respondent in the appeal, and the other counsel for the interveners, in brief, were these: It was the scheme of the Constitution to give States exclusive powers to legislate in respect of agricultural land, income on agricultural land and taxes thereon; in this context the object and effect of specifically excluding agricultural land from the scope of entry 86 was also to take it out of the ambit of entry 97 list I and Article 248; the High Court was wrong in holding that the impugned Act was not a law in respect of entry 49 List II.

11. It was further urged by Mr. Setalvad that the proper way of testing the validity of a parliamentary statute under our Constitution was first to see whether the parliamentary legislation was with respect to a matter or tax mentioned in List II; if it was not, no other question would arise. The learned Counsel for the respondent contended that this manner of enquiry had not been even hinted in any of the decisions of this Court during the last 20 years of its existence and there must accordingly be something wrong with this test. He urged that insofar as this test is derived from the Canadian decisions, the Canadian Constitution is very different and those decisions ought not to be followed here and applied to our Constitution.

12. It seems to us that the best way of dealing with the question of the validity of the impugned Act and with the contentions of the parties is to ask ourselves two questions; first, is the impugned Act legislation with respect to entry 49 List II? and secondly, if it is not, is it beyond the legislative competence of Parliament?

13. We have put these questions in this order and in this form because we are definitely of the opinion, as explained a little later, that the scheme of our Constitution and the actual terms of the relevant articles, namely, Article 246, Article 248 and entry 97 List I, show that any matter, including tax, which has not been allotted exclusively to the State Legislatures under List II or concurrently with

> Parliament under List III, falls within List I, including entry 97 of that list read with Article 248.
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> 14. It seems to us unthinkable that the Constitution-makers, while creating a sovereign democratic republic, withheld certain matters or taxes beyond the legislative competency of the legislatures in this country either legislating singly or jointly. The language of the relevant articles on the contrary is quite clear that this was not the intention of the Constituent Assembly v. Chapter I of Part XI of the Constitution deals with "Distribution of Legislative Powers." Article 246 in this Chapter reads thus :
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> 246.(1) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in Clause (3) Parliament, and, subject to Clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the "State List".

15. Reading Article 246 with the three Lists in the Seventh Schedule, it is quite clear that Parliament has exclusive power to make laws with respect to all the matters enumerated in List I and this notwithstanding anything in Clause (2) and (3) of Article 246, The State Legislatures have exclusive powers to make laws with respect to any of the matters enumerated in List II, but this is subject to Clauses (1) and (2) of Article 246. The object of this subjection is to make Parliamentary legislation on matters in Lists I and HI paramount. Under Clause (4) of Article 246 Parliament is competent also to legislate on a matter enumerated in State List for any part of the territory of India not included in a State. Article 248 gives the residuary powers of legislation to the Union Parliament. It provides

248. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

Under Article 250 Parliament can legislate with respect to any matter in the State List if a proclamation of emergency is in operation. Under Article 253 Parliament has power to make any law for the whole or part of the territory of India for the purpose of implementing any international treaty, agreement or convention.

16. This scheme of distribution of legislative power has been derived from the Government of India Act, 1935, but in one respect there is a great deal of difference, and it seems to us that this makes the scheme different insofar as the present controversy is concerned. Under the Govt. of India Act, the residuary powers were not given either to the Central Legislature or to the Provincial Legislatures. The reason for this was given in the Report of the. Joint Committee on Indian Constitutional Reform, volume I, para 56. The reason was that there was profound cleavage of opinion existing in India with regard to allocation of residuary legislative powers. The result was the enactment of Section 104 of the Govt. of India Act, which provided :

> 104. Residual powers of legislation (1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

17. It appears from para 50 of this report that "the method adopted by the White Paper (following in this respect the broad lines of Dominion Federal Constitutions) is to distribute legislative power between the Central and Provincial Legislatures respectively, and to define the Central and Provincial spheres of government by reference to this distribution," and because of apparently irreconcilable difference of opinion that existed between the great Indian communities with regard to the allocation of residuary powers, the Joint Committee found itself unwilling to recommend an alteration of the White Paper proposal.

18. There does not seem to be any dispute that the Constitution-makers wanted to give residuary powers of legislation to the Union Parliament. Indeed, this is obvious from Article 248 and entry 97 List I. But there is a serious dispute about the extent of the residuary power. It is urged on behalf of the respondent that the words "exclusive of agricultural land" in entry 86 List I were words of prohibition, prohibiting Parliament from including capital value of agricultural land in any law levying tax on capital value of assets. Regarding entry 97 List I it is said that if a matter is specifically excluded from an entry in List I, it is apparent that it was not the intention to include it under entry 97 List I; the words "exclusive of agricultural land" in entry 86 by themselves constituted a matter and therefore they could not fall within the words "any other matter" in entry 97 List I. Our attention was drawn to a number of entries in List I where certain items have been excluded from List I. For example, in entry 82, taxes on agricultural income have been excluded from the ambit of

"taxes on income"; in entry 84 there is exclusion of duties of excise on alcoholic liquors for human consumption and on opium, Indian hemp and other narcotic drugs and narcotics; in entry 86, agricultural land has been excluded from the field of taxes on the capital value of the assets; in entry 87, agricultural land has again been excluded from the Union Estate duty in respect of property; and in entry 88, agricultural land has been further excluded from the incidence of duties in respect of succession to property. It was urged that the object of these exclusions was to completely deny Parliament competence to legislate on these excluded matters.

19. It will be noticed that all the matters and taxes which have been excluded, except taxes on the capital value of agricultural land under entry 86 List I fall specifically within one of the entries in List II. While taxes on agricultural income have been excluded from entry 82 List I, they form entry 46 List II; duties of excise excluded in entry 84 List I have been included in entry 51 List II; agricultural land exempt in entry 87 has been incorporated as entry 48 List II; and, similarly, agricultural land exempted from the incidence of duties in respect of succession to property has been made the subject-matter of duties in respect of succession in entry 47 List II.

20. It seems to us that from this scheme of distribution it cannot be legitimately inferred that taxes on the capital value of agricultural land were designedly excluded from entry 97 List I. In this connection it is well to remember that the first draft of the 3 lists was attached to the report of the Union Powers Committee dated July 5, 1947 (see vol. V, Constituent Assembly Debates, page 60). List I then consisted of 87 entries and there was no residuary entry. It was on August 20, 1947, that! Mr. N. Gopalaswami Ayyangar moved that this report be taken into consideration. At that stage it was evident that in the case of Indian States the residuary subjects were to stay with the Indian States unless they were willing to cede them to the center. He said :

> Now, Sir, when this Committee met after its first report had been presented, we were relieved of the shackles which we had imposed on ourselves on account of the acceptance of the Cabinet Mission Plan and the Committee came to the conclusion that we should make the center in this country as strong as possible consistent with leaving a fairly wide range of subjects to the provinces in which they would have the utmost freedom to order things as they liked. In accordance with this view, a decision was taken that we should make three exclusive Lists, one of the Federal subjects, another of the Provincial subjects and the third of the Concurrent subjects and that if there was any residue left at all, if in the future any subject cropped up which could not be accommodated in one of these three Lists, then that subject should be deemed to remain with the center so far as the Provinces are concerned.
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> This decision, however, is not one which the Committee has applied to the States. You will find a reference to this in the Report. What is said there is that these residuary subjects will remain with the States unless the. States are willing to cede them to the center. Well, I do not know if those who represent the States in this House will take any decision of the kind which perhaps the Committee hoped for when it said so; but we have got to take things as they are.

> There is another matter which it is important that we should recognise. Residuary subjects in the case of provinces are subjects which are not accommodated in any of the three long Lists that we have appended to the Report. Residuary subjects in the ease of the States would really mean all subjects which are not included in the Federal List. I want to draw attention to this, because I know my Hon'ble friend Dr. Ambedkar would rather see that the States accede also on certain items which are included in the Concurrent List, if not the whole of that list. There is a school of opinion in favour of that. But, as things stand now, the report stands today, all the subjects included in the Provincial List, all the subjects included in the Concurrent List and whatever subjects may not be included in the federal list are with the States.
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> If the residuary subjects had ultimately been assigned to the States could it have been seriously argued that vis-a-vis the States the matter of Taxes on "Capital value of agricultural land" would have been outside the powers of States? Obviously not, If so, there can be no reason for excluding it from the residuary powers ultimately conferred on Parliament. The content of the residuary power does not change with its conferment on Parliament.

21. It may be that it was thought that a tax on capita] value of agricultural land was included in entry 49 List II. This contention will be examined a little later. But if on a proper interpretation of entry 49 List II, read in the light of entry 86 List I, it is held that tax on the capital value of agricultural land is not included within entry 49 List II or that the tax imposed by the impugned statute does not fall either in entry 49 List II or entry 86 List I, it would be arbitrary to say that it does not fall within entry 97 List I. We find it impossible to limit the width of Article 248 and entry 97 List I by the words "exclusive of agricultural land" in entry 86 List I. We do not read the words "any other matter" in entry 97 to mean that it has any reference to topics excluded in entries 1-96 List 1. It is quite clear that the words "any other matter" have reference to matters on which the Parliament has been given power to legislate by the enumerated entries 1-96 List I and not to matters on which it has not been given power to legislate. The matter in entry 86 List I is the whole entry and not the entry without the words "exclusive of agricultural land". The matter in entry 86 List I again is not tax on capital value of assets but the whole entry. We may illustrate this point with reference to some other entries. In entry 9 List I "Preventive Detention for reasons connected with defence, foreign affairs or the security of India" the matter is not Preventive Detention but the whole entry. Similarly, in entry 3 List III "Preventive Detention for reasons connected with the Security of the State, the maintenance of public order or the maintenance of supplies and services essential to the community" the matter is not Preventive Detention but the whole entry. It would be erroneous to say that entry 9 List I and entry 3 List III deal with the same matter. Similarly, it would, we think, be erroneous to treat entry 82 List I (Taxes on income other than agricultural income) as containing two matters, one, tax on income, and the other, as "other than agricultural income". It would serve no useful purpose to multiply illustrations.

22. It seems to us that the function of Article 246(1), read with entries 1-96 List I, is to give positive power to Parliament to legislate in respect of these entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so. Accordingly,

we do not interpret the words "any other matter" occurring in entry 97 List I to mean a topic mentioned by way of exclusion. These words really refer to the matters contained in each of the entries 1 to 96. The words "any other matter" had to be used because entry 97 List I follows entries 1-96 List I. It is true that the field of legislation is demarcated by entries 1-96 List I, but demarcation does not mean that if entry 97 List I confers additional powers we should refuse to give effect to it. At any rate, whatever doubt there may be on the interpretation of entry 97 List I is removed by the wide terms of Article 248: It is framed in the widest possible terms. On its terms the only question to be asked is : Is the matter sought to be legislated on included in List II or in List III or is the tax sought to be levied mentioned in List-II or in List III No question has to be asked about List I. If the answer is in the negative, then it follows that Parliament has power to make laws with respect to that matter or tax.

23. It must be remembered that the function of the lists is not to confer powers; they merely demarcate the legislative field. The Federal Court, while interpreting the Government of India Act in The Governor-General in Council v. the Releigh Investment Co. [1944] F.C.R. 229, 261 observed :

> It would not be right to derive the power to legislate on this topic merely from the reference to it in the List, because the purpose of the Lists was not to create or confer powers, but only to distribute between the Federal and the Provincial Legislatures the powers which had been conferred by Sections 99 and 100 of the Act.

24. In Harakchand Ratanchand Banthia v. Union of India [1970] I.S.C.R. 479, 489 Ramaswami, J., speaking on behalf of the Court, while dealing with the Gold (Control) Act (45 of 1968) observed :

> Before construing these entries it is useful to notice some of the well-settled rules of interpretation laid down by the Federal Court and by this Court in the matter of construing the entries. The power to legislate is given to the appropriate legislature by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate legislatures can operate.

25. We are compelled to give full effect to Article 248 because we know of no principle of construction by which we can cut down the wide words of a substantive article like Article 248 by the wording of an entry in Schedule VII. If the argument of the respondent is accepted, Article 248 would have to be re-drafted as follows :

> Parliament has exclusive power to make any law with respect to any matter not mentioned in the Concurrent List or State List, provided it has not been mentioned by way of exclusion in any entry in List I. We simply have not the power to add a proviso like this to Article 248.

26. We must also mention that no material has been placed before us to show that it was ever in the mind of anybody, who had to deal with the making of the Constitution, that it was the intention to prohibit all the legislatures in this country from legislating on a particular topic.

27. Mr. Palkiwala referred to the following extract from para 2 of the report of the Union Powers Committee, dated July 5, 1947 (Constituent Assembly Debates, Vol. 5, page 58):

> We think that residuary powers should remain with the center. In view however of the exhaustive nature of the three lists drawn up by us, the residuary subjects could only relate to matters which, while they may claim recognition in the future, are not at present identifiable and cannot there be included now in the lists.

28. Basing himself on this extract he said that the tax on "net wealth" was well-known and if it had been the desire to include it, it would have been mentioned.

29. We do not think it is a legitimate manner of interpretation. The debates show that notwithstanding that certain taxes were known to the members of the Constituent Assembly they were not mentioned in the final list. Yet it can hardly be argued that they would not fall within the residuary powers.

30. In the report of the Expert Committee on Financial Provisions, dated December 5, 1947, (Constituent Assembly Debates, Volume 7, page 53), it is stated that one of the terms of reference was:

> IX. On the basis that the residuary powers are vested in the center in the new Constitution so far as the Provinces are concerned, and in the States so far as the States are concerned, is it necessary that any additional specific taxes should be entered in the Provincial List, and if so, what?
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> The Committee reported in para 72 as follows:
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> It appears that under the new Constitution, residuary powers will be vested in the center so far as the Provinces are concerned, while the corresponding residuary powers in respect of the States will be vested in the States themselves. The question has therefore been raised whether, as a consequence-, as many specific taxes as possible should not be entered in the Provincial List of subjects. We cannot think of any important new tax that can be levied by the Provinces, which will not fall under one or the other of the existing categories including in the Provincial List. We think that the chance of any practical difficulty arising out of the proposed Constitutional position is remote, and, in any case, it seems to us that if a tax is levied by the center under its residuary powers, there will be nothing to prevent the proceeds of the whole or a part of this tax being distributed for the benefit of the Provinces only. As a matter of abundant caution, however, it may be laid down in the Constitution that if any tax is levied by the center in future under its residuary powers, and to the extent that the States do not agree to accede to the center in respect of the corresponding subject, the whole or a part of the proceeds of the tax shall be distributed between the Provinces and the acceding States only.

This disposes of item IX of our Terms of Reference.

The Committee recommended certain articles :

198. Salt duties and excise duties.-(1) No duties on salt shall be levied by the Federation.

...

"198-A. Taxes not enumerated in any of the lists in the Ninth Schedule. If any tax not mentioned in any of the lists in the Ninth Schedule to this Constitution is imposed by Act of the Federal Parliament by virtue of entry 90 of the Federal Legislative List, such tax shall be levied and collected by the Federation but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenue of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

31. The Committee further recommended that in the Provincial Legislative List in the Ninth Schedule, for entry 50, the following may be substituted, namely :

50. Taxes on the sale, turnover or purchase of goods including taxes in lieu thereof on the use or consumption within the Province of goods liable to taxes within the Province on sale, turnover or purchase; taxes on advertisement.

32. Two points emerge from this. The Constituent Assembly knew how to prohibit Parliament from levying a tax (see proposed Article 193-A set out above). Secondly, they knew of certain taxes as taxes on the use or consumption of goods. The proposal to include them in the Provincial List was not accepted. Indeed, Shri T. T. Krishnamachari said this about this proposal: Constituent Assembly Debates Vol. 7, p. 232.

Sir, one other recommendation of the Expert Committee is, I am afraid, rather mischievous. That is, they have suggested in regard to Sales Tax-which is item 58 in List 2-that the definition should be enlarged so as to include Use Tax as well, going undoubtedly on the experience of the American State Use Tax which, I think, is a pernicious recommendation. I think, it finds a reflection in the mention of Sales Tax in Item 58 which ought not to be there.

33. If Parliament were to levy a Use Tax, it could hardly be thrown out on the ground that it cannot be included in the residuary powers because the tax was known at the time of the framing of the Constitution. Indeed it does not seem to be a sound principle of interpretation to adopt to first ascertain whether a tax was known to the framers of the Constitution and include it in the residuary powers only if it was not known. This would be an impossible test to apply. Is the Court to ask members of the Constituent Assembly to give evidence or is the Court to presume that they knew of

all the possible taxes which were being levied throughout the world? In our view the only safe guide for the interpretation of an article or articles of an organic instrument like our Constitution is the language employed, interpreted not narrowly but fairly in the light of the broad and high purposes of the Constitution, but without doing violence to the language. To interpret Article 248 in the way suggested by the respondent would in our opinion be to do violence to the language.

34. We are, however, glad to find from the following extracts from the debates that our interpretation accords with what was intended.

35. Entry 91 in the draft Constitution corresponds to the present Entry 97, List I. Article 217 of the draft Constitution corresponds to Article 246 of the Constitution. Article 223 of the draft Constitution corresponds to Article 248 of the Constitution.

36. While dealing with entry 91 List I of the draft Constitution, Sardar Hukam Singh moved the following amendment:

> That in entry 91 of List I, the word 'other' be deleted.

37. Extracts from the debates on the proposed amendment are reproduced below :

> Sardar Hukam Singh (Constituent Assembly Debates, Vol. 9 page 854):...
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> "The object of this entry 91 is, whatever is not included in Lists II and III must be deemed to have been included in this List. I feel that it could be said in very simple words, if the word 'other' were omitted, and then there would be no need for this list absolutely. Ultimately, it comes to this that whatever is not covered by Lists II and III is all embraced in the Union List. This could be said in very simple words and we need not have taken all this trouble" which we have taken."

Mr. Nazimddin Ahmad (Constituent Assembly Debates, Vol. 9 page 855): "Mr. President, Sir, I do not wish to oppose entry 91. It is too late to do it, but I should submit that the moment we adopted entry 91,-it would involve serious redrafting of certain articles and entries. Under Article 217 we have stated in substance that entries in List I will belong to Union, List II to States and List III common to both. That was the original arrangement 'under which we started. We took the scheme from the Government of India Act. When an entry No. 91, Article 217 and a few other articles would that the residuary power " should be with the center. This was an innovation, as there was nothing like it in the Government of India Act. As soon as we accept entry No. 91, Article 217 and a few other articles would require redrafting and entries 1 to 90 would be redundant. In fact all the previous entries-from 1 to 90 would be rendered absolutely unnecessary. I fail to see the point now retaining entries 1 to 90. If every subject which is not mentioned in Lists II and III is to go to the center what is the point in enumerating entries 1 to 90 of List I? That would amount to absolutely needless, cumbersome detail. All complications would be avoided and matters simplified by redrafting Article 217 to say that all matters enumerated in List II must belong to the States, and all matters enumerated in List HI are assigned to the center and the States concurrently and that every other

conceivable subject must come within the purview of the center. There was nothing more simple or logical then that. Instead, a long elaborate List has been needlessly incorporated. This was because List I was prepared in advance and entry No. 91 was inserted by way of after thought. As soon as entry 91 was accepted, the drafting should have been altered accordingly. Article 217 should have been re-written on the above lines and matters would have been simplified. May I suggest even at this late stage that these needless entries be scrapped and Article 217 be re-written and things made simple? I had an amendment to that effect but I did not move it because I know that any reasons behind an amendment would not be deemed fit for consideration by the House."

Prof. Shibban LalSaksena (Constituent Assembly debates, Vol. 9 page 855-856) : "Sir, today is a great day that we are passing this entry almost without discussion. This matter has been the subject of discussion in this country for several years for about two decades. Today it is being allowed to be passed without any discussion. The point of view of Mr. Naziruddin Ahmad is not correct. In fact Dr. Ambedkar has said that if there is anything left, it will be included in this item 91. 1 therefore think that it is a very important entry. There should not be any deletion of items 1 to 90. I know this entry will include everything that is already contained in the first 90 entries as well as whatever is left. This entry will strengthen the center and weld our nation into one single nation behind a strong center. Throughout the last decade the fight was that provincial autonomy should be so complete that the center should not be able to interfere with the provinces, but now the times are changed. We are now for a strong center. In fact some friends would like to do away with provincial autonomy and would like a unitary Government. This entry gives powers to the center to have legislation on any subject which has escaped the scrutiny of the House. I support this entry."

The Honourable Dr. B.R. Ambedkar (Constituent Assembly Debates. Vol. 9, page 856-857) : "My President, 1 propose to deal with the objection raised by my Friend Sardar Hukam Singh. I do not think he has realised what is the purpose of entry 91 and I should therefore like to state very clearly what the purpose of 91 in List 1 is. It is really to define a limit or scope of List I and I think we could have dealt with this matter, viz., of the definition of and scope of List II and III by adding an entry such as 67 which would read :

> "Anything not included in List II or III shall be deemed to fall in List I. That is really the purpose of it. It could have been served in two different ways, either having an entry such as the one 91 included in List I or to have an entry such as the one which I have suggested.-'that anything not included in List II or III shall fall in List I'. That is the purpose of it. But such an entry is necessary and there can be no question about it. Now I come to the other objection which has been repeated if not openly at least whispered as to why we are having these 91 entries in List I when as a matter of fact we have an article such as 223 which is called residuary article which is 'Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List'. Theoretically I quite accept the proposition that when anything which is not included in List II or List III is by a specific article of the Constitution handed over to the center, it is unnecessary to enumerate these categories which we have specified in List 1. The reason why this is done is this. Many States people, and particularly the Indian States at the beginning of the labours of the

Constituent Assembly, were very particular to know what are the legislative powers of the center. They wanted to know categorically and particularly; they were not going to be satisfied by saying that the center will have only residuary powers. Just to allay the fears of the Provinces and the fears of the Indian States, we had to particularise what is included in the symbolic phrase "residuary powers". That is the reason why we had to undergo this labour, notwithstanding the fact that we had Article 223.

I may also say that there is nothing very ridiculous about this, so far as our Constitution is concerned, for the simple reason that it has been the practice of all federal Constitutions to enumerate the powers of the center, even those federations which have got residuary powers given to the center. Take for instance the Canadian Constitution. Like the Indian Constitution, the Canadian Constitution also gives what are called residuary powers to the Canadian Parliament. Certain specified and enumerated powers are given to the Provinces. Notwithstanding this fact, the Canadian Constitution, I think in Article 99, proceeds to enumerate certain categories and certain entries on which the Parliament of Canada can legislate. That again was done in order to allay the fears of the French Provinces which were going to be part and parcel of the Canadian Federation. Similarly also in the Government of India Act; the same scheme has been laid down there and Section 104 of the Government of Indian Act, 1935 is similar to Article 223 here. It also lays down the proposition that the Central Government will have residuary powers. Notwithstanding that, it had its List I. Therefore, there is no reason, no ground to be over critical about this matter. In doing this we have only followed as I said, the requirements of the various Provinces to know specifically what these residuary powers are, and also we have followed well-known conventions which have been followed in any other federal Constitutions. I hope the House will not accept either the amendment of my Friend Sardar Hukam Singh nor take very seriously the utterings of my Friend Mr. Naziruddin Ahmad."

38. It seems to us that this discussion clearly shows that it was realised that the old entry 91 would cover every matter which is not included in Lists II and III, and that entries were enumerated in List I following the precedent of the Canadian Constitution and also to inform the provinces and particularly the Indian States as to the legislative powers the Union was going to have.

39. The same conclusion is also arrived at if we look at some of the speeches made when the third reading of the Constitution was taken up. Extracts from those speeches are reproduced below :

Shri Alladi Krishnaswami Ayyar (Constituent Assembly Debates, Vol. 11, 838) :

In regard to the distribution and allocation of legislative power, this Assembly has taken into account the political and economic conditions obtaining in the country at present and has not proceeded on any a priori theories as to the principles of distribution in the Constitution of a Federal Government. In regard to distribution, the center is invested with residuary power, specific subjects of national and all-India

importance being expressly mentioned.

Shri T. T. Krishnamachari (Constituent Assembly Debates, Vol. 11, 952-954) :

I would in this connection deal with a point raised regarding the vesting of the residuary powers. I think more than one honourable Member mentioned that the fact that the residuary power is vested in the center in our Constitution makes it a unitary Constitution. It was. I think, further emphasised by my honourable Friend Mr. Gupta in the course of his speech. He said: 'The test is there. The residuary power is vested in the center.' I am taking my Friend Mr. Gupta quite seriously, because he appears to be a careful student who has called out this particular point from some text book on federalism. 1 would like to tell honourable Members that it is not a very important matter in assessing whether a particular Constitution is based on a federal system from the point of view whether the residuary power is vested in the States or in the Central Government. Mr. K.C. Wheare who has written recently a book on Federalism has dealt with this point.

"Now if you ask me why we have really kept the residuary power with the center and whether it means anything at all, I will say that it is because we have gone to such absolute length to enumerate the powers of the center and of the States and also the powers that are to be exercised by both of them in the concurrent field. In fact, to quote Professor Wheare again, who has made a superficial survey of the Government of India Act the best point in the Government of India Act is the complete and exhaustive enumeration of powers in Schedule VII. To my, mind there seems to be the possibility of only one power that has not been enumerated, which might be exercised in the future by means of the use of the residuary power, namely the capital levy on agricultural land. This power has not been assigned either to the center or to the Units. It may be that following the scheme of Estate Duty and succession duty on urban and agricultural property, even if the center has to take over this power under the residuary power after some time, it would assign the proceeds of this levy to the provinces, because all things that are supposed to be associated with agriculture are assigned to the provinces. I think the vesting of the residuary power is only a master of academic significance today. To say that because residuary power is vested in the center and not in the provinces this is not a Federation would not be correct."

40. The above speech of Mr. T. T. Krishnamachari shows that the members were aware that certain known taxes had not been included specifically in the three lists.

41. It is, therefore, difficult to escape from the conclusion that in India there is no field of legislation which has not been allotted either to Parliament or to the State legislatures. In Attorney-General for Ontario v. Attorney-General for Canada [1947] A.C. 127, 150, Lord Jowitt, L.C., recalled the following words of Lord Loreburn, L.C., in Attorney-General for Ontario v. Attorney-General for Canada [1912] A.C. 571, 581 and reiterated them :

> Now, there can be no doubt that under this organic instrument the powers distributed between the Dominion on the one hand and the provinces on the other hand, cover the whole area of self-government within the whole area of Canada. It would be subversive of the entire scheme and policy of the Act to assume that any point of internal self-Government was withheld from Canada.

42. The last sentence applies much more to the Constitution of a sovereign democratic republic. It is true that there are some limitations in Part III of the Constitution on the legislatures in India but they are of a different character. They have nothing to do with legislative competence. If this is the true scope of residuary powers of Parliament, then we are unable to see why we should not, when dealing with a Central Act, enquire whether it is legislation in respect of any matter in List II for this is the only field regarding which there is a prohibition against Parliament. If a Central Act does not enter or invade these prohibited fields there is no point in trying to decide as to under which entry or entries of List I or List III a Central Act would rightly fit in.

43. It was accepted that this test had been applied in Canada, but it was argued that the Canadian Constitution is completely different from the Indian Constitution. It is true that the wording of Sections 91 and 92 of the Canadian Constitution is different and the Judicial Committee has interpreted these sections differently at different periods, but whatever the interpretation, it has always held that the lists are exhaustive. The scheme of distribution of Legislative powers between the Dominion and the Provinces is essentially the same as under our Constitution. In this matter it is best to quote the words of the Judicial Committee or some learned authors rather than interpret Sections 91 and 92 ourselves.

44. In Canada's Federal System by Lefroy it is stated at page 120 as follows :

> In determining the validity of a Dominion Act, the first question to be determined is, whether the Act falls within any of the classes of subjects enumerated in Section 92, and assigned exclusively to the legislatures of the provinces. If it does, then the further question will arise, whether the subject of the Act does not also fall within one of the enumerated classes of subjects in Section 91, and so does not still belong to the Dominion Parliament. But if the Act does not fall within any of the classes of subjects in Section 92, no further question will remain.

45. The learned author cited four Privy Council cases in support of the above statement. In one case Russel v. The Queen [1881-82] 7 AC 836 the Privy Council was concerned with the validity of the Canada Temperance Act, 1878. In this connection Sir Montague C. Smith, observed :

> The general scheme of the British North America Act with regard to the distribution of legislative powers, and the general scope and effect of sees. 91 and 92, and their relation to each other, were fully considered and commented on by this Board in the case of Citizens Insurance Company v. Parsons 7. A.C. 96. According to the principle of construction there pointed out, the first question to be determined is, whether the Act now in question falls within any of the classes of subjects enumerated in Section

92, and assigned exclusively to the Legislatures of the Provinces. If it does, then the further question would arise, viz., whether the subject of the Act does not also fall within one of the enumerated classes of subjects in Section 91, and so does not still belong to the Dominion Parliament. But if the Act does not fall within any of the classes of subjects in Section 91, no further question will remain, for it cannot be contended, and indeed was not contended at their Lordships bar, that, if the Act does not come within one of the classes of subjects assigned to the Provincial Legislatures, the Parliament of Canada had not, by its general power "to make laws for the peace, order, and good government of Canada", full legislative authority to pass it.

46. In Halsbury's Laws of England (Third Edition, Volume 5, page 498) the rule is put thus :

> In determining the validity of legislation the general method of inquiry is to ask first, whether the matter comes within the classes expressed by statute to be exclusively within the powers of the provinces; if it does not, the power belongs exclusively to Parliament, but even it it does appear to come within those classes, the exclusive power still belongs to Parliament if it also falls within the enumerated class within the legislative authority of Parliament.

47. In Attorney-General for Canada v. Attorney-General for British Columbia [1930] A.C. III 118, Lord Tomlin, after referring to Sections 91 and 92 of the Canadian Constitution, observed as follows :

> Questions of conflict between the jurisdiction of the Parliament of the Dominion and provincial jurisdiction have frequently come before their Lordships' Board, and as the result of the decisions of the Board the following propositions may be stated :-
>
> (1) The legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in Section 91, is of paramount authority, even though it trenches upon matters assigned to the provincial legislatures by Section 92; see Tenant v. Union Bank of India [1894] A.C 31.
>
> (2) The general power of legislation conferred upon the Parliament of the Dominion by Section 91 of the Act in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in Section 92 as within the scope of provincial legislation, unless these matters have attained such dimensions as to affect the body politic of the Dominion : see Attorney-General for Ontario v. Attorney-General for the Dominion [1894] A.C. 348.
>
> (3) It is within the competence of the Dominion Parliament to provide for matters which, though otherwise within the legislative competence of the provincial legislature, are necessarily incidental to effective legislation by the Parliament of the

Dominion upon a subject of legislation expressly enumerated in Section 91 : see Attorney-General of Ontario v. Attorney-General for the Dominion [1894] A.C. 189 and Attorney-General for Ontario v. Attorney-General for the Dominion [1816] A.C. 348.

(4) There can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires if the field is clear, but if the field is not clear and the two legislations must meet the Dominion legislation must prevail; see Grand Trunk Ry. of Canada v. Attorney-General of Canada (1907] A.C. 65.

48. This statement was approved of in In re The Regulation and Control of Aeronautics in Canada [1932] A.C. 54; in In re Silver Brothers. Ltd. [1932] A.C. 514; and in Canadian Pacific Railway Company v. Attorney-General for British Columbia [1950] A.C. 122..

49. It would be noticed that the second proposition was based on Attorney-General for Ontario v. Attorney General for the Dominion [1896] A.C. 348 and the words "In supplement" are said to have been used for the first time by the Privy Council.

50. It is quite true, as Mr. Palkiwala points out, that one way of reading Sections 91 and 92 of the Canadian Constitution is that Section 91 gives general powers and then gives certain specific powers by way of illustration, and that apparently was the interpretation placed on the Act by the Privy Council before Attorney-General for Ontario v. Attorney-General for the Dominion. But whatever the interpretation, the same test was applied by the Privy Council before-1896 in Russel v. The Queen [1882] 7A.C. 829 and after this case.

51. The learned Counsel referred to five cases of this Court and the Federal Court to show that the Canadian cases should not be relied on as the Canadian Constitution was different. It is true that the Canadian Constitution is different in many respects and for some purposes it would be misleading to rely on the Canadian cases. In Chhotabhai Jethabhai Patel v. The Union of India [1962] Supp. 2 S.C.R.I the question was the interpretation of entry 84 List I (Duties of excise on tobacco...) and entry 60 List. II (Taxes on professions, trades, callings and employments). This Court held that the Canadian cases which were cited before it did not afford any assistance because in Canada analogous problems are always concerned with questions of direct and indirect taxation. We agree that in the interpretation of entry 84 (duties of excise...) it would be misleading to rely on cases dealing with direct and indirect taxation.

52. Similarly, in 1942 in Province of Madras v. Messrs. Boddu Paidanna [1942] F.C.R. 90 the Federal Court was concerned with the interpretation of entry 45 List I of the Government of India Act (duties of excise on tobacco...) and entry 48 List II (taxes on the sale of goods and on advertisements). On these matters the Canadian cases could not possibly be of any assistance or relevance.

53. In State of Bombay v. Chamarbugwala [1957]S.C.R. 874, 918 this Court rightly held that the decisions of the American Supreme Court and the decisions of the Australian High Court and of the

Privy Council on Section 92 of the Australian Constitution should be used with caution and circumspection, because our Constitution was different and it had provided adequate safeguards in Clause (6) of Article 19 and in Articles 302-325.

54. In Atiabari Tea Co. v. The State of Assam this Court was again dealing with Article 301 and Article 304 of the Constitution. Sinha, C.J., speaking for himself, observed that he had deliberately refrained from making references to or relying upon decisions from other countries like the U.S.A. or Australia.

55. Again in the Automobile Transport (Rajasthan) v. The State of Rajasthan Das, J., referring to the Australian decisions under Section 92, observed :

> Valuable as those decisions might be in showing how the problem of freedom of trade, commerce and intercourse was dealt with in other federal Constitutions, the provisions of our Constitution must be interpreted against the historical background in which our Constitution was made; the background of problems which the Constitution makers tried to solve according to the genius of the Indian people whom the Constitution-makers represented in the Constituent Assembly.

56. On the contrary, in Subrabmanyan Chettiar v. Muttuswami Goundan [1940] F.C.R. 188 while interpreting Section 100 of the Government of India Act, which corresponds to Section 246 of the Constitution, Gwyer C.J., observed at p. 200 :

> The British North America Act, 1867, contains analogous provisions and it can scarcely be doubted that Parliament had those provisions in mind when it enacted the later Act.

57. Then he referred to Sections 91 and 92 of the British North America Act and observed at page 201 :

> As interpreted by the Judicial Committee, the British North America act presents an exact analogy to the India Act, even to the overriding provisions in Section 100(1) of the latter :
>
> The rule of construction is that general language in the heads of Section 92 yields to particular expressions in Section 91, where the latter are unambiguous." per Lord Haldane in Great West Saddlery Co. v. The King [1921] 2 A.C. 91, 116. The principles laid down by the Judicial Committee in a long series of decisions for the interpretation of the two sections of the British North America Act may therefore be accepted as a guide for the interpretation of similar provisions in the Government of India Act.

58. It is true that Gwyer, C.J., was dealing with the question of pith and substance' and the "true nature and character of the legislation" for the purpose of determining whether it is a legislation

with respect to matters in this list or that list but at least his judgment shows that where the provisions are similar, the principles laid down by the Judicial Committee, should be accepted as a guide.

59. Similarly, Varadachariar J., observed at p. 235 :

> It seems to me necessary to point out that the assumption in the Patna case that the scheme of Section 100 of the Constitution Act is radically different from that of Sections 91 and 92 of the British North America Act is not warranted. A long line of decisions beginning at least as early as Citizen Insurance Company of Canada v. Parsons [1881] 7 A. C. 96 have interpreted these provisions of the Canadian Constitution in a manner that almost assimilates their scheme to that adopted in Section 100 of the Government of India Act.... The position of the Provincial Legislatures under the Indian Constitution Act in respect of the subjects enumerated in List II, and in relation to the subjects specified in List I is in essence the same as that above stated in regard to the powers of the Provincial Legislature under Section 92 of the British North America Act. It will be clear from the decisions that the rules of interpretation adopted in the Canadian cases were evolved only as a matter of reasonableness and common sense and out of the necessity of satisfactorily solving conflicts arising from the inevitable overlapping of subjects in any system of distribution of legislative powers. That they need not be limited to any special system of federal Constitution is made clear by the fact that in Gallagher v. Lynn [1937] A.C. 863, 869 Lord Atkin applied the "pith and substance" rule when dealing with a question arising under the Government of Ireland Act-which did not embody a federal system of at all-and in Shannon v. Lower Mainland Dairy Products Board [1938] AC. 708, 719 720, when dealing with a Canadian case, he embodied in the judgment the principles enumerated in the Irish case.

60. It was said that we would be destroying the federal structure of our Constitution if we adopted this line of enquiry. It seems to us that this test was perhaps applied by this Court in Gift Tax Officer v. Nazareth where Hidayatullah, C.J., observed in dealing with the question of the gift tax :

> Therefore, either the pitch and substance of the Gift Tax Act falls within entry 49 of State List or it does not. If it does, then Parliament will have no power to levy the tax even under the residuary powers. It is does not, then Parliament must undoubtedly possess that power under Article 248 and entry 97 of the Union List.

61. Be that as it may, we are unable to see how the adoption of this mode of enquiry will destroy the federal structure of our Constitution. The State Legislatures have full legislative authority to pass laws in respect of entries in List II, and subject to legislation by Parliament on matters in List III.

62. It was also said that if this was. the intention of the Constitution makers they need not have formulated List I at all. This is the point which was taken by Sardar Hukam Singh and others in the debates referred to above and was answered by Dr. Ambedkar. But apart from what has been stated

by Dr. Ambedkar in his speech extracted above there is some merit and legal effect in having included specific items in List I for when there are three lists it is easier to construe List II in the light of Lists I and II. If there had been no List I, many items in List II would perhaps have been given much wider interpretation than can be given under the present scheme. Be that as it may, we have the three lists and a residuary power and therefore it seems to us that in this context if a Central Act is challenged as being beyond the legislative competence of Parliament, it is enough to enquire if it is a law with respect to matters or taxes enumerated in List II. If it is not, no further question arises.

63. In view of this conclusion, we now come to the question, i.e. whether the impugned Act is a law with respect to Entry 49, List II, or whether it imposes a tax mentioned in Entry 49 in List II? On this matter we have three decisions of this Court and although these, decisions were challenged we are of the opinion that they interpreted entry 49 List II correctly.

64. Sudhir Chand Newn v. Wealth Tax Officer this Court was concerned with the validity of the Wealth Tax Act, 1957, as it originally stood. This Court proceeded on the assumption that the Wealth Tax Act was enacted in exercise of the powers under Entry 86, List I. It was argued before the Court that "since the expression net wealth" includes non-agricultural lands and buildings of an assessee, and power to levy tax on lands and buildings is reserved to the State Legislatures by Entry 49 List II of the Seventh Schedule, Parliament is incompetent to legislate for the levy of wealth-tax on the capital value of assets which include non-agricultural lands and buildings.

65. In rejecting this argument the Court observed :

> The tax which is imposed by entry 86 List I of the Seventh Schedule is not directly a tax on lands and buildings. It is a tax imposed on the capital value of the assets of individuals and companies, on the valuation date. The tax is not imposed on the components of the assets of the assessee; it is imposed on the total assets which the assessee owns, and in determining the net Wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account.
>
> ...Again entry 49 List II of the Seventh Schedule contemplates the levy of tax on lands and buildings or both as units. It is normally not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under entry 86 List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under entry 49 List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not, in our judgment, make the fields of legislation under the two entries overlapping.

66. It was urged on behalf of the respondent that in Assistant Commissioner of Urban Land Tax v. The Buckingham & Carnatic Co. Ltd. , this Court held that a tax on the capital value of land and buildings could be imposed under entry 49, List II, but it seems to us that this is not a correct reading of that decision. Reliance is placed on the following sentence at page 277 :

> We see no reason, therefore, for holding that the entries 86 and 87 of List I preclude the State Legislature from taxing capital value of lands and buildings under Entry 49 of List II.

> The above observations have to be understood in the context of what was stated later. Ramaswami, J., later observed in that judgment as follows :

> The basis of taxation under the two entries is quite distinct. As regards entry 86 of List I the basis of the taxation is the capital value of the asset. It is not a tax directly on the capital value of assets of individuals and companies on the valuation date. The tax is not imposed on the components of the assets of the assessee. The tax under entry 86 proceeds on the principle of aggregation and is imposed on the totality of the value of all the assets. It is imposed on the total assets which the assessee owns and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account.. But entry 49 of List II, contemplates a levy of tax on lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings, is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under entry 86, List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under entry 49, List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not make the fields of legislation under the two entries overlapping. The two taxes are entirely different in their basic concept and fall on different subject matters.

> (emphasis supplied).

67. In fifth Tax Officer v. D.H. Nazareth this Court, while considering the validity of the Gift Tax Act, 1958, considered the scope of legislation under entry 49, List II. Hidayatullah, C.J., observed :

> Nor is it possible to read a clear cut division of agricultural land in favour of the States although the intention is to put land in most of its aspects in the State List. But however wide that entry, it cannot still authorise a tax not expressly mentioned.

68. The Court further observed :

> Since entry 49 of the State List contemplates a tax directly levied by reason of the general ownership of lands and buildings, it cannot include the gift tax as levied by Parliament.

69. The requisites of a tax under entry 49, List II may be summarised thus:

> (1) It must be a tax on units, that is lands and buildings separately as units.
>
> (2) The tax cannot be a tax on totality, i.e., it is not a composite tax on the value of all lands and buildings.
>
> (3) The tax is not concerned with the division of interest in the building or land. In other words, it is not concerned whether one person owns or occupies it or two or more persons own or occupy it.

70. In short, the tax under entry 49, List II is not a personal tax but a tax on property.

71. It seems to us that this Court definitely held-and we agree with the conclusion-that the nature of the Wealth Tax imposed under the Wealth Tax Act, as originally stood, was different from that of a tax under entry 49, List II, and it did not fall under this entry.

72. The distinction between a 'net wealth tax' and 'tax on property' is clearly brought out in the following extracts, and supports the conclusion arrived at by this Court.

73. Readings on Taxation in Developing Countries by Fird and Oldman elucidates the concept of Wealth Tax as follows, at page 281 :

> The term 'net wealth tax' is usually defined as a tax annually imposed on the net value of all assets less liabilities of particular tax-payers-especially individuals. This definition distinguishes the net wealth tax from other types of taxation of net wealth, such as death duties and a capital levy; the former are imposed only at infrequent intervals-once a generation-while the latter is a one-time charge, usually with the primary purpose of redeeming a wartime national debt. The net wealth tax is really intended to tax the annual yield of capital rather than the principal itself as do death duties or a capital levy, even though it is levied on the value of the principal. Since it taxes net wealth, it also differs from property taxes imposed on the gross value of property-primarily real property-in a number of countries. The net wealth tax gives consideration to the taxpayer's taxable capacity through the deduction of all outstanding liabilities and personal exemptions as well as through other devices, while the property tax generally does not take these factors into account. The net wealth tax is therefore deemed to be imposed on the person of the taxpayer, while the property tax is often deemed to be imposed on an object-the property itself.

74. In Harvard Law School World Tax Series-Taxation in Columbia-Net Wealth Tax is defined at page 451 thus :

> As a general rule, all debts owed by a taxpayer, whether to residents or to non-residents, are deductible if their existence is established in conformity with the legal requirements. The usual test of deducibility, as applied by the Division of National Taxes, is whether or not there is an actual, enforceable legal obligation, the amount of which is fixed or computable as on 31 December of the tax year.

75. According to Harvard Law School World Tax Series-Taxation in Sweden-this tax has been levied in Sweden since a long time. Now it is regulated by law enacted in 1947. "Taxable Wealth" has been defined at page 625 as follows :

> Taxable wealth consists of the capital value of the taxpayer's assets, as those are defined in the law, to the extent that this value exceeds the capital value of his debts.

76. In Harvard Law School World Tax Series-Taxation in the Federal Republic of Germany-it is stated at page 152 that "the taxes on capital which are summarised in this chapter are the net worth tax, the real property tax, and the capital levy under the Equalization of Burdens Law." It is further stated thus :

> Some of the taxes on capital are deemed to be imposed on the person of the taxpayer while others are deemed to be imposed on an object. Examples of the former are the net worth tax and the capital levy under the Equalization of Burdens Law, while the real property tax and the trade tax on business capital are classified in the latter category. The main importance of this distinction is that taxes in the first group presuppose a taxpayer with independent legal existence, that is, an individual or a legal entity (juridical person), while in the case of taxes in the second group, the taxable object itself is deemed liable for the tax, in addition to its owner, so that the taxpayer can be a partnership, association of the civil law, or other combination of persons without separate legal existence. Taxes of the first type give consideration to the taxpayer's ability to pay, while those of the second type consider merely the value of the taxable object, such as the capital of a business, in the case of the trade tax on business capital, or the assessed value of real property, in the case of the real property tax.

77. In our view the High Court was right in holding that the impugned Act was not a law with respect to entry 49, List II, or did not impose a tax mentioned in entry 49, List II. If that is so, then the legislation is valid either under entry 86, List I, read with entry 97, List I, or entry 97 List I, standing by itself.

78. Although we have held that the impugned Act does not impose a tax mentioned in entry 49, List II, we would like to caution that in case the real effect of a Central Act, whether called a Wealth Tax Act or not, is to impose a tax mentioned in entry 49 List II the tax may be bad as encroaching upon

the domain of State legislatures.

79. In this connection the following words of the Judicial Committee may be borne in mind. In Attorney-General for Canada v. Attorney-General for Ontario [1937] A. C. 355, 367 the Judicial Committee observed :

> In other words, Dominion legislation, even though it deals with Dominion property, may yet be so framed as to invade civil rights within the Province, or encroach upon the classes of subjects which are reserved to Provincial competence. It is not necessary that it should be a colourable device, or a pretence. If on the true view of the legislation it is found that in reality in pith and substance the legislation invades civil rights within the Province, or in respect of other classes of subjects otherwise encroaches upon the provincial field, the legislation will be invalid. To hold otherwise would afford the Dominion an easy passage into the Provincial Domain.

80. In Attorney-General for Alberta v. Attorney-General for Canada [1939] A.C. 117, 130 the Judicial Committee observed :

> It is not competent either for the Dominion or a Province under the guise, or the pretence, or in the form of an exercise of its own powers, to carry out an object which is beyond its powers and a trespass on the exclusive powers of the other : Attorney-General for Ontario v. Reciprocal Insurance [1924] A.C. 328, 342. In re The Insurance Act of Canada [1932] A.C. 41. Here again, matters of which the Court would take judicial notice must be borne in mind, and other evidence in a case which calls for it. It must be remembered that the object or purpose of the Act, in so far as it does not plainly appear from its terms and its probable effect, is that of an incorporeal entity, namely, the Legislature, and, generally speaking, the speeches of individuals would have little evidential weight.

81. Although it is not necessary to decide the question whether the impugned Act falls within entry 86 List I, read with entry 97 List I, or entry 97 List I alone, as some of our brethren are of the view that the original Wealth Tax Act fell under entry 86 List I, we might express our opinion on that point. It seems to us that there is a distinction between a true net wealth tax and a tax which can be levied under entry 86 List I. While legislating in respect of entry 86 List I it is not incumbent on Parliament to provide for deduction of debts in ascertaining the capital value of assets. Similarly, it is not incumbent on State Legislatures to provide for deduction of debts while legislating in respect of entry 49 List II. For example, the State Legislature need not, while levying tax under entry 49 List II, provide for deduction of debts owed by the owner of the property. It seems to us that the other part of entry, i.e. "tax on the capital of companies" in entry 86 List I also seems to indicate that this entry is not strictly concerned with taxation of net wealth because capital of a company is in one sense a liability of the company and not its asset. Even if it is regarded as an asset, there is nothing in the entry to compel Parliament to provide for deduction of debts. It would also be noticed that entry 86 List I deals only with individuals and companies but net wealth tax can be levied not only on individuals but on other entities and associations also. It is true that under entry 86 List I

aggregation is necessary because it is a tax on the capital value of assets of an individual but it does not follow from this that Parliament is obliged to provide for deduction of debts in order to determine the capital value of assets of an individual or a company. Therefore, it seems to us that the whole of the impugned Act clearly falls within entry 97 List I. We may mention that this Court has never held that the original Wealth Tax Act fell under entry 86 List I. It was only assumed that the original Wealth Tax Act fell within entry 86 List I and on that assumption this entry was analysed and contrasted with entry 49 List II. Be that as it may, we are dearly of the opinion that no part of the impugned legislation falls within entry 86 List I.

82. However, assuming that the Wealth Tax Act, as originally enacted, is held to be legislation under entry 86 List I, there is nothing in the Constitution to prevent Parliament from combining its powers under entry 86 List I with its powers under entry 97 I. There is no principle that we know of which debars Parliament from relying on the powers under specified entries 1 to 96, List I, and supplement them with the powers under entry 97 List I and Article 248, and for that matter powers under entries in the Concurrent List.

83. In Subramanyan Chettiar v. Muttuswami Goundan [1940] F.C.R. 188, 208 Gwyer, C.J., while dealing with the validity of the Madras Agriculturists Relief Act, 1938, observed :

> That the provisions of the Act in their application to the decree obtained by the appellant were within the competence of the Madras Legislature to enact does not seems to me open to doubt. They may be justified by reference to entry No. 4 and No. 15 of List in, perhaps also to entry No. 2 in List II; I do not say that there may not be others, but these will suffice.

84. In State of Bombay v. Narothamdas Jethabhai [1951] SCR. 51 Patanjali Sastri and Das, JJ., as they then were, relied on both items 1 and 2 of List II of the Government of India Act, 1935, to uphold the Bombay City Civil Court Act, 1948.

85. It was contended that the case of residuary powers was different but we are unable to see any difference in principle. Residuary power is as much a power as the power conferred under Article 246 of the Constitution in respect of a specified item.

86. In In re The Regulation and Control of Aeronautics in Canada [1932] AC 54, 77 the Privy Council upheld the validity of a Parliamentary statute after supplementing the powers under the specified items in Section 91 with the residuary powers. It observed :

> To sum up, having regard (a) to the terms of Section 132; (b) to the terms of the Convention which covers almost every conceivable matter relating to aerial navigation; and (c) to the fact that further legislative powers in relation to aerial navigation reside in the Parliament of Canada by virtue of Section 91, items 2, 5 and 7, it would appear that substantially the whole field of legislation in regard to aerial navigation belongs to the Dominion. There may be a small portion of the field which is not by virtue of specific words in the British North America Act vested in the

> Dominion; but neither is it vested by specific words in the Provinces. As to that small portion it appears to the Board that it must necessarily belong to the Dominion under its power to make laws for the peace, order and good government of Canada. Further, their Lordships are influenced by the facts that the subject of aerial navigation and the fulfilment of Canadian obligations under Section 132 are matters of national interest and importance; and that aerial navigation is a class of subject which has attained such dimensions as to affect the body politic of the Dominion.
>
> (emphasis supplied).

87. In conclusion we hold that the impugned Act is valid. The appeal is accordingly allowed and the judgment and order of the High Court set aside and Civil Writ No. 2291 of 1970 in the High Court dismissed. There will be no order as to costs, either here or in the High Court.

Shelat, J.

88. We have had the opportunity to going through the judgment of the learned Chief Justice just delivered, but regret our inability to agree with it. The reasons for our disagreement are as stated hereinafter.

89. The Wealth-Tax Act, 27 of 1957, as originally passed in September 1957, imposed, by its Section 3, tax on the capital value of net wealth on the relevant valuation date of every individual, Hindu undivided family and company. Net wealth, as defined under Section 2(m), means the amount by which the aggregate value computed in accordance with the provisions of the Act on all assets belonging to an assessee on the valuation date is in excess over the aggregate value of debts owed by him on such valuation date. Assets, as defined in Section 2(e), means property of every description, moveable or immoveable, but does not include agricultural land, growing crops, grass or standing trees on such land.

90. By Section 24 of the Finance Act, 1969, Section 2(e) was amended omitting the non-inclusion of agricultural land for the assessment year commencing from April 1, 1970 and for all subsequent assessment years, thus including agricultural land in the definition of assets.

91. The respondent filed a writ petition in the High Court of Punjab, from out of which the present appeal arises, challenging the validity of the amendment by which the non-inclusion of agricultural land from the assets of an assessee was done away with. The challenge was based principally on two grounds :

> (1) that such a tax on agricultural land could be imposed under entry 49 in List II in the Seventh Schedule to the Constitution by the States and not by the Union, and (2) that even if that was not so, Parliament had no competence to enact an act imposing such a tax on agricultural land either under Article 246 read with entry 86 in List I or under its residuary power under Article 248 read with entry 97 in that list.

92. In view of the importance of the issues involved, the Writ Petition was heard by a Full Bench of the High Court, which, by a majority of four to one, allowed it holding that Section 24 of the Finance Act, 1969 to the extent that it included agricultural land within the definition of assets for the purposes of the Wealth-Tax Act, 1957 was beyond the competence of Parliament, and was therefore, ultra vires the Constitution.

93. So far as the first question raised by the respondent was concerned, the High Court held, in view of the decisions of this Court in Sudhir Chandra Nawn v. Wealth-Tax Officer, Calcutta [1969J 1 S.C.R. 108 Assistant Commissioner of Urban Land Tax and Ors. v. The Buckingham & Camatic Co. Ltd. [1970] I.S.C.R. 268 and Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality to which we shall presently come, that a tax levied on the capital value of all assets taken in their totality under entry 86 in List I read with Article 246 or one which included agricultural land and levied under the power conferred by Article 248 read with entry 97 in List I was not a tax under entry 49 in List II, that is to say, it was not a tax on lands and buildings, the two taxes being of a different nature, and therefore,, a tax on capital value of all assets, even if it included agricultural land within the meaning of such assets, did not fall within, nor entrenched upon State power under entry 49 of List II. In the light of these decisions, the High Court felt that entry 86 in List I and entry 49 in List II covered different fields, one net entrenching on the other, and that therefore, a tax levied under and by virtue of the former could not be said to entrench on the sphere of taxation of lands and buildings reserved to the States.

94. On the second issue, the High Court accepted the contentions urged on behalf of the respondent that (a) in the light of the relevant entries in the Lists the Constitution, by and large, left the subject of agriculture and agricultural land both as regards legislation and taxation to the States, (b) that in the light of that Constitutional policy, the Constitution excluded from the field of entry 86 in List I the power to impose the tax on the capital value of agricultural land, and (c) that that being so, it could not be held that the residuary power contained in Article 248 read with entry 97 in List I included the power to levy a tax of the kind contemplated in entry 86 so as to take into its sweep agricultural lands expressly excluded therefrom and thus nullify the restriction or exclusion of that class of property. Therefore, the Union could not resort to Article 248 and or entry 97 in List I to justify the deletion of the non-inclusion of agricultural land by Section 24 of the Finance Act, 1969.

95. Mr. Setalvad challenged the correctness of the High Court's majority judgment. Relying on Article 248 and entry 97 in List I, he argued that under the federal scheme of our Constitution the policy was to vest the residuary powers in the center, that the High Court had misapprehended the true interpretation of entry 97 in List I and was therefore in error in holding that that entry did not contain the power to levy a tax of the kind we have here on agricultural land, though that power was withheld in entry 86 in List I. His contention was that the power to levy a tax on capital value of agricultural land was derived from Article 248 and entry 97 in List I, as it was not a matter enumerated in Lists II and III, and therefore, fell squarely under entry 97. That in brief was the sum total of his contentions. He did not argue on the first question as it was decided by the High Court in his favour. Counsel for the respondent contested the correctness of the contentions urged on behalf of the Union of India and, after an elaborate analysis of the relevant entries and the Articles, supported the majority judgment of the High Court.

96. Before we proceed to examine these rival contentions it is necessary to set out broadly the scheme of distribution of legislative powers between the Union and the States laid down in Ch. I of Part XI of 'the Constitution. Under Article 245, Parliament can make laws for the whole or any part of the territory of India and the State Legislatures for the whole or part of their respective States. The different topics or matters of legislation are set out in the three Lists in the Seventh Schedule. List I, known as the Union List, enumerates topics of legislation in respect of which Parliament has exclusive power to make laws. List II, known as 'the State List, likewise, enumerates topics of legislation in respect of which State Legislatures have exclusive power to make laws. By reason of the non obstante clause in Clause (1) of Article 246, if there is a conflict or overlapping of the subject-matter of legislation, it is the law made by Parliament which prevails over the State law. List III, called the Concurrent List, has topics in respect of which both Parliament and the State Legislatures have power to make laws. Again, as a result of the non-obstante clause in Clause (1) of Article 246, if there is any inconsistency between the laws made by Parliament and the laws made by State Legislatures, both acting under Clause (3) of Article 246 and List III, that is resolved by making the law passed by Parliament to prevail over the State law. So long as the Parliamentary law continues, the State law remains inoperative, but becomes operative once the Parliamentary law is removed. Under Clause (4) of Article 246, Parliament has the power to make laws with respect to any matter including those in List II for any part of India not included in a State, e.g., Union territory. Article 248 declares that Parliament has the exclusive-power to legislate on matters not enumerated in List III or List II and to impose a tax not mentioned in either of those Lists. To avoid any doubts, entry 97 is inserted in List I, which sets out the field of legislation thereunder as follows :

> Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.
>
> Article 246 thus lays down the powers of the respective legislatures in respect of the matters enumerated in the three Lists. Where those Lists come into conflict, the non-obstante clause in Clauses (1) and (2) shows that List I has priority over Lists HI and II, and List III has priority over List II. Despite the dominant part given to Parliament in this Article, the State legislatures, however, have the exclusive jurisdiction over matters set out in List II and the principle underlying the non-obstante clause can be resorted to only in cases of conflict which are not capable of being reconciled, [see In re C.P. & Berar Act, No. XIV of 1938 [1939] F.C.R. 18, at 38].

97. Unlike some of the Constitutions with a federal and distributive system of powers, our Constitution, in consonance with its being a centrally oriented Constitution, has conferred on Parliament under Article 248 "exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List". Such power includes also the power "of making a law imposing a tax not mentioned in either of these Lists".

98. The expression "any matter not enumerated in the Concurrent List or State List" in Article 248 must mean, in the context of Clause (1) of Article 246, which gives Parliament exclusive power in

respect of matters in List I. any matter other than those enumerated in any of the three Lists. Obviously, the residuary power given to Parliament in Article 248 cannot include power which is exclusively given to Parliament on matters in List I already conferred under Clause (1) of Article 246, so that an attempt to distinguish the words "any matter" in Article 248 and "any other matter" in entry 97 in Lift I is a distinction without difference. There had to be difference in language in the two provisions in the context of the content of entry 97 as that entry speaks about matters other than those enumerated before in List I and those enumerated in the other Lists. Notwithstanding the fact that the residuary power has been vested in the Central Legislature under Article 248 and its consequence translated in entry 97 in List I, there can be no gainsaying that the idea was to assign such residuary power over matters which at the time of framing the three Lists could not be thought of or contemplated. This is clear from the fact, as pointed out by counsel, that the Lists contain as many as 209 matters which are couched in careful and elaborate words with inclusive and excluding language in the case of some, which has made the Constitution, to use the words of Gwyer, C.J., in In re the C.P. & Berar Act No. XIV of 1938, [1939] F.C.R. 18, at 38 "unique among federal Constitutions in the length and detail of its legislative Lists". In the lay-put of such elaborately worded matters in the Lists and in the context of Article 246(1), the residuary power contained in Article 248 and entry 97, List I must be construed as meaning power in respect of matters not enumerated in any of the three Lists. Such a residuary power cannot, therefore, be ordinarily claimed in respect of a matter already dealt with under an Article or an entry in any one of the three Lists.

99. Principles of interpretating Constitutional provisions, when conflicts between legislative bodies with separate powers entrusted to them arise are well-settled and need not therefore be here repeated. Two of them, however, bear repetition, for, they have a direct bearing on what we are called upon in this appear to decide. The first one laid down in Att.-Genl. for New South Wales v. Brewery Employees Union [1908] 6 C.L.R. 469, 611 is that although the words of a Constitution are to be interpreted in the same way as courts interpret Other statutes, it has to be borne in mind, while doing so, that what is interpreted is a Constitution, a mechanism under which laws are to be made and not an Act which declares what that law is to be. This is specially so in the case of a federal Constitution, with its nicely drawn balance of jurisdictions. Thus, a broad and liberal spirit should inspire those on whom the duty to. interpret falls. Where the language is explicit, it has to be given effect to; it cannot be unduly stretched so that it is distorted to supply any supposed error or omission. The other is, to quote the language of Att.-Genl. for Ontario v. Att.-Genl. for Canada [1912] A.C. 571 cited with approval in In re the Central Provinces & Berar Act XIV of 1938 [1939] F.C.R, 18, 31 "if the text is explicit, the text is conclusive, alike in what it directs and what it forbids". If the text is ambiguous, i.e., where the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and the scheme of the Act. The presumption, unless there is anything to the contrary, is that the power is not withheld or that it does not exist at all; is it there in some quarter.

100. To ascertain where it is, it becomes necessary at the very threshold to know the nature of the impugned tax. The Act is designated by its first section-the Wealth Tax Act, 1957. Though it is the substance and not the form or designation which matters, the Act was passed, as conceded by Mr. Setalvad, in exercise of the power contained in Article 246(1) read with entry 86 of List I. Under

Section 3, what was originally charged was the capital value of the net wealth of an assessee, such net wealth having to be arrived at by taking into consideration the total assets excluding the agricultural land held by him as defined by Section 2(e) and Section 2(m). The fact that it is the capital value of the net wealth, computed after deducting from the gross wealth the debts and liabilities of the assessee or the fact that it excluded agricultural land from out of the total assets, prima facie, did not render the tax anything else than the wealth tax as the Parliament legislatively declared it to be. A legislature may, either as a matter of policy or because its power is a restricted one, exclude or not include within the ambit of a tax, which it enacts, certain assets and may tax the rest. It may also decide that in fairness and justice to the assessee the tax shall be imposed not on the gross amount but on the net amount arrived at after deducting his debts and liabilities. That fact by itself would not mean that it is a tax any the different from what the Legislature itself declares it to be. Fortunately, we do not have to consider in details the nature of the tax contemplated by entry 86 in List I and that under the impugned Amending Act in the light of works on Public Finance and other allied subjects, as the Act has no more than one occasion been upheld by this Court as one falling under entry 86 of List I. Even counsel for the Union conceded that the Act as originally passed in 1957 was a tax falling under that entry. Since, however, the question as to the nature of a tax on the capital value of assets was debated at one stage of the hearing of the appeal, we may briefly set cut the views of some of the writers on public finance brought to our notice.

101. Entry 86 in List I, as aforesaid, deals with a tax on the capital value of the assets, exclusive of agricultural land of an individual, Hindu Undivided Family or a company. Tax on the capital of a company, which is the other tax mentioned there, is left out from consideration as we are not concerned with such a tax for the present. The question is. whether the tax imposed under the Wealth Tax Act, 1957 is a tax on the capital value of the assets? The tax is imposed on the net wealth (Section 3), which means value of assets, an assessee holds on the valuation date (section 4). The net wealth is arrived at by computing the value in the manner provided in the Act and deducting therefrom all debts and liabilities. The tax is one on the capital value of the total assets and though each asset is valued separately, the tax is assessed on the value of all the assets (except agricultural land) as a whole. It was, however, said that the tax levied under the Act is different from the tax on the capital value of the assets as contemplated by entry 86 in List I for two reasons; (a) that it does not take in all the assets inasmuch as it excludes agricultural land, and (b) that it computes net wealth by deducting the debts and liabilities of the assessee. The fallacy in such an argument lies in the confusion between the basis of the tax and its incidence. The basis of the tax is the capital value of the assets except agricultural land. Agricultural land had to be excepted from the tax by reason of the restricted legislative power granted in respect of the subject-matter in entry 86. The power in respect of that subject-matter in its turn was restricted by a definite policy in distributing power under which the field of legislation in agriculture was left to the States as was also the case under the Government of India Act, 1935. The exclusion of agricultural land from entry 86 would not by itself, therefore, mean that the tax is not one on the capital value of assets. In determining the incidence, the legislature may as well take into account various factors such as fairness to the assessee and tax the capital value of his net wealth by allowing deduction of his debts and liabilities from the gross value. That again would not change the character of the tax. Prof. Nicholas Kaldor, who is regarded as the person on whose recommendations in his Report on Indian Tax Reform, 1956 the wealth tax was imposed, himself thought that the tax fell under entry 86 in List I. His recommendation was

that on the grounds of both equity and administrative efficiency, the tax should be comprehensive, i.e., extending to all forms of property, but that such a tax which would include agricultural land would necessitate a Constitutional amendment. He would not have stated so, if he thought the tax, he was suggesting, did not fall under entry 86 in List I. Prof. Kaldor, Report on Indian Tax Reform, (1956), p. 26. According to Tanabe, the term "Net Wealth Tax" is a tax annually imposed on the net value of all assets less, liabilities. Such a deduction distinguishes the tax from property taxes, in that it is not directly on the property and unlike taxes, such as death duties and capital levy, it takes into consideration the taxable capacity of the assessee by deducting his debts and liabilities from the gross value of his assets. The tax, therefore, is on the person of the assessee as against the property tax which is imposed on the property itself directly Richard M. Bird and Oliver Oldman, Readings on Taxation in Developing Countries, p. 281. In Sweden also, where the wealth tax has been a feature of the tax structure, taxable wealth is defined as the capital value of an assessee's assets at the end of his income year to the extent that that value exceeds the capital value of his debts William Barnes, World Tax Series, Taxation in Sweden, p. 617. The basis of the wealth tax thus is the capital value of the assets held by an assessee on the relevant-valuation date. The fact that a particular tax excludes one or more of the assets or allows from its incidence certain deductions, such as debts and liabilities, pertain to the field of computation and not the basis of the tax which is the capital value of assets. Indeed, in all cases which have so far come up before this Court or before the High Courts, it was never the contention of the Union of India that the Wealth Tax Act did not fall under entry 86 in List I.

102. In S.C. Nawn v. Wealth Tax Officer , an order of assessment and penalty, and notices of demand for the recovery of the tax under the Act were challenged on three grounds; (i) that the tax was chargeable only on the accretion of wealth during the financial year, i.e., on the wealth which accrued during the accounting year, (ii) that it could not have been the intention of Parliament to charge the same assets or wealth year after year, and (iii) that since the "net wealth" as denned by the Act included non-agricultural lands and buildings and entry 49 in List II reserved the power to impose tax on lands and buildings to the States, the tax suffered from legislative incompetence. This Court rejected all the three contentions and held that Section 3 of the Act charged the capital value of net wealth on the corresponding valuation date, and was not on accretion of wealth only during the accounting year and since the last valuation date, i.e. that it was not on accrual basis; that the Constitution did not contain any inhibition against the same subject-matter being charged from year to year, that the tax was imposed under entry 86 in List I. that it was not a tax directly on lands and buildings as it was on the capital value of the Assets of an assessee on the valuation date and not on the different components of those assets, that that being so, it was a tax different from the one which could be imposed under entry 49 of List II, and therefore, there was no entrenchment on the States' power to levy a tax on lands and buildings under that entry.

103. It is true that counsel appearing for the petitioner in that case accepted the position that the subject of the Wealth Tax Act fell within entry 86 of List I because such a position was assumed in an earlier decision of this Court in Banarsi Das v. Wealth-Tax Officer 56 I.T.R. 224 and therefore, confined his challenge to the ground of encroachment on States' power under entry 49 of List II. But the following passage from the report at page 111 shows that the Court agreed with the position accepted by counsel and held that the subject-matter of the Act fell under entry 86 of List I :

> Tax on lands and buildings is directly imposed on lands and buildings and bears a definite relation to it. Tax on the capital value of assets bears no definite relation to lands and buildings which may form a component to the total assets of the assessee. By legislation in exercise of power under entry 86 of List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under entry 49 in List II the State legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not, in our judgment, make the fields of legislation under the two entries overlapping.
>
> In support of the view that the subject-matter of the Act fell under entry 86 of List I and that there was no overlapping for conflict between such a tax and the one under entry 49 of List II, the Court cited three decisions in which the High Courts of Kerala, Orissa and Mysore had also taken the same view, (see Khan Bahadur C. K. Mammad Devi v. Wealth-Tax Officer 44 T.T.R. 277, V.B. Narayana Murthy v. Commissioner of Wealth-Tax 56 I.T.R. 298 and Sri Krishna Rao L. Balekai v. Third Wealth-Tax Officer A.I.R. 1963 Mys. 111.

104. In Assistant Commissioner of Urban Land Tax v. Buckingham & Carnatic Co. Ltd. the same question was raised, though in a reverse order. The challenge was to the Madras Urban Land Tax Act, 1966 by which a tax was imposed at the rate of 0.4% on the market value of urban land. The Madras High Court upheld the legislative competence of the State Legislature to enact the Act, but held it to be violative of Articles 14 and 19(1)(f). In the appeal to this Court against that judgment, the contention was that the impugned Act fell under entry 86 of List I and not under entry 49 of List II. Ramaswami, J., who spoke for the Bench, which had on it both Shah, J. (as he then was) and Mitter, J., who were also parties to the earlier judgment, rejected the contention holding that in pith and substance the impugned Act, in imposing the tax on urban land at a percentage of the market value, fell within entry 49 and did not entrench upon the field of legislation of entry 86, List I. What is important for the present appeal is that he held that there was no conflict between entry 86 of List I and entry 49 of List II inasmuch as the basis of the tax under entry 86 would be the principle of aggregation and the tax would be imposed on the totality of the net capital value of all assets, while entry 49 in List II contemplated a levy on lands and buildings or both as units. He also held that in a tax levied under entry 49 of List II, the Madras Legislature, by the amplitude of power in that entry, was competent to levy it on the capital value of lands and buildings, but because that could also be done under entry 86 of List I in respect of non-agricultural lands, overlapping would not for that reason alone arise. "The two taxes", observed the learned Judge, "are entirely different in their basic concept and fall on different subject-matters". The differentiation between the two powers thus lay in the aggregation being the basis of the tax under entry 86 of List I, which made the two taxes conceptually different and distinguishable both in their Incidence and the subject-matter of their burden. Both the legislatures can impose a tax on the capital value of the relevant property but they are, as held by the learned Judge, conceptually different. In Prithvi Cotton Mills v. Broach Borough Municipality , it was held that after S.C. Nawn's case where the respective ambits of entry 86 of List I and entry 49 of List II were explained, it could no longer be questioned that the State Legislature, in that case of Gujarat, had power under entry 49 of List II to levy a tax on the capital value of lands

and buildings and Section 99 of the Gujarat Municipalities Act was therefore valid.

105. Gift Tax Officer v. Nazareth challenged Parliament's competence to pass the Gift Tax Act, XVIII of 1958, on the ground that entry 49 read with entry 18 of List II reserved the power to tax lands and buildings to the State legislatures and Parliament could not, therefore, use its residuary power conferred by Article 248 and entry 97 of List I. Hidayatullah, C.J., speaking for the Bench relied on Nawn's case and drew, as was done in that decision, the differentiation between a tax directly on lands and buildings and a tax, conceptually different from such a tax, viz., on the gift of property which might in some cases include lands and buildings. "There is no tax upon lands and buildings as units of taxation", he observed. "Indeed, the lands and buildings are valued to find out the total amount of the gift and what is taxed is the gift. The value of the lands and buildings is only the measure of the value of the gift. A gift tax is thus not a tax on lands and buildings as such (which is a tax resting upon the general ownership of land and building) but is a levy upon a particular use, which is transmission of title by gift. The two are not the same thing and the incidence of tax is not the same". The validity of the Gift Tax Act was upheld on the ground that since none of the three lists enumerated such a tax, there was no question of Parliament having entrenched upon the State's power under entries 18 and 49 of List II. The Act was held to have been enacted under the residuary power vested in Parliament by Article 248 read with entry 97 in List I.

106. The aforesaid analysis of the three decisions clearly demonstrates that the discussion therein over the ambits of the center's power under, entry 86 of List I and States' power under entry 49 in List II was neither obiter nor was it on any assumption, and that in deciding upon the ambit of the respective powers, the Court made a distinction between a tax directly upon lands and buildings as units by reason of ownership in such lands and buildings (which would fall under entry 49 of List II), and a tax on the capital value of the total assets barring agricultural land which would fall under entry 86 of List I, which, in the words of Ramaswami, J., in the case of the Madras Urban Land Tax Act was conceptually different by reason of its characteristic of aggregation as held in Nawn's case and different in its subject-matter as well as incidence. In all the three cases, the question directly arose on account of the nature of the challenge involved in each of them as to the scope of power under entry 86 of List I in the first case, under entry 49 of List II in the second case and under entry 49 read with entries 18 of List II and 97 of List I in the third case. The Wealth-Tax Act, 1957 has thus been clearly held to fall under Article 246(1) read with entry 86 of List I both in Nawn's case and in the case of the Madras Urban Land Tax Act, 1966(2) where, as already stated, the contention was that that Act did not fall under entry 49 of List II but under entry 86 of List I. The enunciation of the concept of aggregation in Nawn's case (1) and that of conceptual difference in the Madras Urban Land Tax Act's case and both adopted in the case of Gift Tax Act for the purpose of delineating the respective powers of the center and the States have decisively brought the Wealth Tax to fall under entry 86 of List I.

107. Such being the position, a valid tax on the capital value of assets including agricultural land cannot be imposed under the power under Article 246(1) read with entry 86 in List I as entry 86 in List I, which is the only entry authorising such a tax, restricts in express terms the power to impose a tax on the capital value of assets, exclusive of agricultural land, of individuals and companies.

108. It is true that these entries are enumeratio simplex of broad categories. A catena of cases have laid down that they should be construed in a liberal spirit so as to include within each of them all that is subsidiary and incidental to the power thereunder enumerated. But an interpretation of the content and scope of such power, however liberal, cannot be adopted to include within it anything which the entry in positive terms excludes or restricts. Therefore, when entry 86 was framed, its restrictive terms made it clear that though Parliament would have the power to impose a tax on the capital value of assets, that power was circumscribed so as not to include in the chargeable assets agricultural land.

109. The reason for such exclusion is to be found in the three Lists themselves and the scheme of distribution of fields of legislation and taxation therein. A perusal of the Lists indicates that the entire subject of agriculture, including subjects even remotely allied to it, has been left to the States. Thus, entries 82, 86, 87 and 88 in List I dealing with taxes on income, on capital value of assets, estate and succession duties, all uniformly exclude agricultural land. Likewise, entries 6 and 7 in List III dealing with transfer of property and contracts exclude from their fields of operation agricultural land. On the other hand, entry 41 in that List dealing with custody, management and disposal of evacuee property expressly includes agricultural land. That is for the obvious reason that, involving as it does Indo-Pakistan relations, such a subject could not be left exclusively to the individual States. Entries 14, 18, 28, 30, 45, 46, 47, 48 and 49 in List II, which deal with agriculture and agricultural land, directly or even incidentally, have power relating to them to the States. Thus, tax on agricultural income is left to the States and cannot, therefore, be included in any Income-Tax Act enacted by Parliament under entry 82 of List I, by reason of exclusion from that entry of agricultural income although such an Act is on the totality of the assessee's world income, and its inclusion in entry 46 of List II. A similar result is achieved in the matter of a tax on capital value of assets' under entry 86 of List I by the exclusion of agricultural land therefrom and its inclusion in entry 49 of List II. It is now fairly well-settled that under entry 49 of List II a State legislature can levy a tax on lands, including agricultural land, on the basis of their capital value. Agricultural lands are likewise excluded in the matter of estate and succession duties from the purview of Parliament's power. Under entries 47 and 48 of List II, the power to impose those duties in respect of agricultural land has been entrusted to the States. The reason for excluding agricultural land from entry 86 of List I is, therefore, clear, viz., that under the scheme of distribution of powers underlying the three Lists, agriculture with all its subsidiary and incidental aspects including taxation has been left to be dealt with by the States. That was also done in the 1935 Act, for, entries 54, 55, 56 and 56A of List I there excluded agricultural land from the purview of income-tax, tax on the capital value of assets, duties in respect of succession to property and estate duty leviable thereunder by the Federal Legislature and entries 41, 42, 43 and 43A in List II had allotted that power to the Provincial Legislatures so far as agricultural land was concerned. It is clear that the Constitution has bodily taken and adopted that very principle of distribution while framing the Lists.

110. If the above analysis is correct and the power to levy a tax on the capital value of agricultural land is not to be found in Article 246(1) read with entry 86 of List I by reason of exclusion therefrom of agricultural land, the question is, where else is that power located, if at all it is vested in Parliament?

111. On that question, counsel for the Union urged two contentions. The first was that it is independently located in Article 248 read with entry 97 of List I. The second was that that Article is clearly akin to Section 91 of the British North America Act, 1867, and confers residuary powers on Parliament with respect to any matter not dealt with in List II or List III. The argument, therefore, was that if a matter is not in either of those two Lists, it must necessarily be held to be with Parliament. Obviously, it cannot be found in List III as that List contains no entry dealing with taxes. Therefore, once it is found that there is no such power in List II, it must necessarily be with Parliament. Since the power to tax on the capital value of all assets including agricultural land is neither in entry 49 of List II nor in entry 86 of List I, the power falls within the residuary power independently granted under Article 248(2). Mr. Setalvad conceded that Nawn's case [19691 1 S.C.R. 108 and the two cases following it had been, correctly decided in so far as they hold that the Wealth Tax Act, as passed in 1957/ fell under entry 86 of List I. But he urged that since a tax on the capital value of assets including agricultural land cannot fall under that entry and the States obviously have no power to impose such a tax on the total assets of a person under entry 49 of List II or any other entry in that List, the amending Act must fall under Article 248(2) and/or entry 97 of List I. Counsel for the respondent refuted the correctness of both the contentions and argued (a) that the power to impose a tax on the capital value of agricultural land is reserved in entry 49 in List II, (b) that the power to impose a tax on the capital value of assets held by a person has been enumerated, mentioned and dealt with in entry 86 of List I, which in doing so expressly excludes agricultural land from its ambit, and that that being so, Article 248(2) providing residuary power cannot be construed to confer a power which, though conferred under a specific entry, has been deliberately, under the scheme of distribution of powers, excluded, and (c) that entry 86 of List I lays down a restriction, which restriction prevents imposition of such a tax including that on agricultural land under any other entry including entry 97 of List I.

112. Article 248 by its first clause confers on Parliament exclusive power to make a law with respect to any matter not enumerated in List III or List II and by its second clause includes in such power the power of imposing a tax not mentioned in either of those Lists. Entry 97 in List I which sets out the field of legislation and taxation under Article 248 reads as follows :

> Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

113. The argument was that the amending Act which deleted the exclusion of agricultural land and thereby included such property within the sweep of the wealth-tax is competent by reason of the fact that the power to impose a tax on the capital value of all assets including agricultural land is neither to be found in entry 86 of List I, nor in entry 49 of List II, nor in List III, and therefore, it falls in entry 97 of List I by reason of the residuary power conferred on Parliament by Article 248(2).

114. Such a contention in our opinion is not acceptable. As held in Nawn's case and the two cases following it, the subject-matter relating to a tax on the aggregate capital value of all the assets of an assesses is located in entry 86 of List I and granted to Parliament. But, while doing so, the framers of the Constitution, presumably on the ground that the entire subject of agriculture had, on their scheme of distribution of power, been allotted to State Legislatures, excluded from the ambit of the

power under entry 86 of List I the power to tax on the capital value of agricultural land. Constitution makers may, as a matter of principle or policy, while dealing with or granting power, do so in a qualified or restricted manner, There is no warrant for saying-that there must be found vested in one single authority an absolute power to legislate wholly with respect to a given subject Lefroy, Canadian Federal System (1913 ed.) p. 97. Indeed, there are several entries in List I, such as entries 9, 52, 53, 54, 62, 64 and 80, which confer on Parliament restricted power, either because the topics they deal with are distributed between the Central Legislature and the State Legislatures or because it was thought proper to confer power with restrictions. Thus, entry 9 of List I, which deals with the head of preventive detention, confers power to make a law on that subject only on the grounds of defence, foreign affairs or the security of India, and entry 3 in List III for reasons connected with the security of a State, maintenance of order or maintenance of supplies and services essential to the community. The power to make a law authorising preventive detention is thus restricted to the six reasons set out in the two entries and not for any other reason. The power having been so dealt with, it is impossible to say that the matter of preventive detention is not enumerated or that that which is excluded therefrom was intended to or must fall under a provision or an entry dealing with residuary power. If counsel for the Union were to be right, the Union can claim the power to make a law for preventive detention on grounds other than those specified in the two entries on the ground that it has residuary power to do so under Article 248 and entry 97, List I. If that were so, there was no point at all in prescribing the reasons in the two entries on which such a law can be enacted by Parliament. The object of providing residuary power was to confer power only in respect of a matter which was not foreseen or contemplated then and which by reason of changed circumstances has arisen and which could not therefore be dealt with when the Lists were framed. To accept the interpretation suggested by counsel for the Union would mean that though the framers of the Constitution deliberately omitted the power with reference to agricultural land while granting it in respect of the rest of the properties, they at the same time nullified that exclusion by providing power for it in the residuary provision. Such a contention cannot be accepted for the reason that no such intention can legitimately be attributed to the Constitution-makers, who clearly had in their minds a scheme of distribution of powers, under which the subject of agriculture including the power of taxation on agricultural land, both on income and on corpus, was handed over to the States.

115. Such an interpretation on Article 248 and entry 97 in List I finds support in at least two precedents. In Subrahmanyan Chettier v. Muthuswami [1940] F.C.R. 188, the attack on the validity of the Madras Agriculturists Relief Act, 1938 on the ground that it fell under the residuary power provided in Section 104 of the Government of India Act, 1935 and not under List II or List III of the Seventh Schedule to that Act, and that therefore, the Act suffered from lack of competence of the State Legislature, was turned down. Suleiman, J., at page 212 of the report observed :

> But resort to that residuary power should be the very last refuge. It is only when all the categories in the three lists are absolutely exhausted that one can think of falling back upon a non-descript.
>
> (emphasis supplied).

> It is true that the Federal Court there was dealing with Section 104 of the 1935 Constitution Act under which the Governor-General was authorised to empower either the Federal or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the lists, including a tax not mentioned in any such List, and not with a provision such as Article 248 or entry 97 in List I. But 'the only difference between the two is that instead of the residuary power being in the Governor-General, the Constitution has vested it in Parliament. The two provisions are similar and bear the same interpretation especially as the language of Article 248 closely follows that of sec 104 of the 1935 Act.

116. In Gift Tax Officer v. Nazareth Hidayatullah, C.J., dealing specifically with entry 97 in List I, because of his conclusion that the Gift Tax Act, 1958 fell under the residuary field of legislature under that entry, analysed first the scheme of distribution of power under Articles 245, 246 and 248, and then the impact of the three lists on such distribution. Dealing with Article 248 and entry 97 in List I, he construed them at pp. 197 and 198 of the report as follows :

> Then there is the declaration in Article 248 of the residuary powers of legislation. Parliament has exclusive power to make any law in respect to any matter not enumerated in the Concurrent List or State List and this, power includes the power of making any law imposing a tax not mentioned in either of those lists. For this purpose, and to avoid any doubts, an entry has also been included in the Union List to the following effect-
>
> He then set out the entry and observed :
>
> The entries must of-course receive a large and liberal interpretation because the few words of the entry are intended to confer vast and plenary powers. If, however, no entry in any of the three lists covers it, then it must be regarded as a matter not enumerated in any of the three lists. Then it belongs exclusively to Parliament under entry 97 of the Union List as a topic of legislation.
>
> It will be noticed that the learned Chief Justice mentioned all the three lists in this passage while describing the scope of the residuary power of Parliament although both Article 248 and entry 97 in List I refer to only Lists II and III.

117. The Constitution by Article 246(1) has had already granted exclusive power of legislation and taxation to Parliament in matters set out in entries 1 to 96 in List I. Any State law entrenching in its pith and substance upon a Parliamentary Act would be invalid. Having so provided in respect of List I, the only matters left for legislation would be those in Lists II and III and such of the matters not to be found in those two lists. The last, therefore, could only be the residuary matters in respect of which exclusive power had to be granted to Parliament. This must mean that a field of legislation not dealt with in any of the three lists only could be the subject-matter of residuary power under Article 248. Such a construction of Article 248 is in consonance with the construction given by the Federal Court to Section 104 of the Government of India Act, 1935, following which Article 248 was

framed and also with the words of entry 97 in List I. The words in that entry, viz., "any other matter not enumerated in List II or List HI" must mean any matter not being in the entries preceding it, that is, entries 1 to 96 in List I and any matter not enumerated in List II and List III. The residuary power declared by Article 248, and of which the field is defined in entry 97 of List I, must, therefore, be the power in respect of a field or category of legislation not to be found in any one of the three Lists. Taxes such as the Gift tax, the expenditure tax and the Annuity deposit scheme are matters which are not to be found in any of the three lists, and therefore, enactments in regard to them would fall, without doubt, under Article 248 read with entry 97 of List I.

118. But, can it be said that a tax on the capital value of assets including agricultural land is one such tax, not mentioned in any of the three lists, and therefore, falls under entry 97 of List I? When counsel for the Union opened his case, his contention was that since entry 86 in List I exclude agricultural land therefrom, that field of legislation and tax must be said to be one not enumerated and not mentioned in that List and being a tax on aggregation, conceptually different from one which can be levied by the States under entry 49 in List II, it is not also enumerated in List II, and therefore, that part of it must be said to fall under the residuary entry 97.

119. The answer to that contention depends on the interpretation which entry 86 in List I bears. In a distributive system of power, whenever a question arises whether a statute is within the power of the appropriate legislature, regard must be had to its substance rather than its form. Once it is found that there is power, it can be used by the Federal Legislature in as plenary a manner as if it is a power in a unitary system, subject of course to the express limitations in the Constitution and Jo the necessary freedom of the States to exercise without interference the powers reserved to them, [of. King v. Barter 6 C.D.R. 41 at 42]. As stated earlier, Constitution-makers, while distributing powers, may grant a particular power either absolutely or with qualifications or restrictions. In the latter case, though the power can be acted upon in as plenary a way as possible, it can be exercised subject to restrictions imposed in regard to it. (of. Att.-Gen. for the Dominion of Canada v. Att. Gen. for the Province of Alberta [1916] A.C. 588 at 595. The fact that a power is conferred, not in its entirety, but with a restriction upon it, cannot mean that the subject-matter in respect of it has not been dealt with, and therefore, falls under the provision dealing with the residuary matters. If the decision in Nawn's case and the two decisions following it, were to be adhered to as having been correctly decided, the tax on the capital value of assets of an assessee excluding that of agricultural land falls under entry 86 in List I. In that view. Parliament must be said to have enacted the Wealth-Tax Act, 1957 in exercise of its exclusive power under Article 246(1) read with that entry.

120. Is it possible then to say that by deleting the exclusion of agricultural land by Section 24 of the Finance Act, 1969 and thereby including agricultural land within the purview of Section 3 of the amended Act, the Act ceased to be the Act passed under entry 86 of List I or that it acquired a character different than it had so that it ceased to fall under Article 246(1) read with entry 86 of List I? The answer has to be in the negative. The reason is that, as held in Nawn's case [1969] I S.C.R. 108, the Act was enacted in pursuance of and under entry 86 of List I, it being an Act levying a tax on the aggregate capital value of all the assets of an assessee barring agricultural land. It was, therefore, passed under Article 246(1) on a matter enumerated in List I in respect of which Parliament had exclusive power. In deciding the question as to the provision under which it was

enacted, the distinction between the subject matter of the Act and the scope of power in respect of it has to be observed. The subject-matter of the Act is, as aforesaid, the capital value of the total assets; its scope or field of operation is the capital value of all the assets excluding agricultural land. It is impossible to say that the exclusion of agricultural land in the entry splits the matter into two matters, the permissible and the excluded. The matter is one, viz., the capital value of all assets except that the power in relation to it is restricted by the exclusion therefrom of one kind of asset. Consequently, it is impossible to say that there are two matters, one permissible under entry 86 in List I and the other not enumerated anywhere else and therefore falling under Article 248 and/or entry 97 in that List. If it were so, as contended, the restriction in entry 86 in regard to agricultural land had no meaning. Such a contention would mean that though the draftsman excluded agricultural land from entry 86 of List I, his intention was to nullify that exclusion by including that exclusion in the same breath in the residuary field in Article 248 and entry 97.

121. But, it was said that if the interpretation of entries 86 and 97 in List I, we commend, were to be true, it would mean that neither Parliament nor the State Legislatures can ever levy wealth-tax on the capital value of all the assets including agricultural land held by an assessee. It is true that under entry 86 of List I Parliament cannot include agricultural land within the purview of the tax imposed under that entry. Nor can a State Legislature impose such a tax under entry 49 in List II. This does not mean that a tax on the capital value of agricultural land cannot at all be imposed. Such a power is contained in entry 49, List II. But there is nothing surprising in such a consequence, for, even in the matter of income-tax, neither of them can impose that tax on the entire income of an assessee. Parliament cannot do so because of the restriction in entry 82 in List I; the States cannot impose such a tax as their power is restricted to agricultural income only under entry 46 in List II. That is also the case in the matter of succession and estate duties. The power of both the Legislatures to make a law or impose a tax on any one of the matters in these entries is restricted, though within the field allocated to each of them, each has a plenary power. The restriction to such a power may, as already started, be on account of distribution of power in respect of a particular field of legislation between the Union and the State Legislatures or because the topic or field of legislation is itself hedged by conditions for reasons of policy. But that does not mean that the excluded or the restricted field, in respect of which either both the Legislatures have no power or one or the other has no power, can be said to fall under the provision providing residuary power. Once a topic or a field of legislation is enumerated and dealt with in any one of the entries in one of the Lists, whether the topic is in its entirety or restricted, there is no question of the residuary provision being resorted to on the ground that it operates on the remainder. Such a construction would either nullify the intention to confer power only on the partial field of the topic of legislation in question or set at naught the delicate system of distribution of power effected through the three elaborately worded Lists.

122. Counsel for 'the Union in his opening address had argued the appeal on the footing that the impugned amending Act was no encroachment on the field reserved to the States under entry 49 of List II, as the nature of the tax is such that it could not be levied by any law passed under that entry. His argument then was that the tax fell squarely within the power of Parliament by the combined effect on entry 86 in List I and the residuary power in Article 248(2) and entry 97 in List I. In his reply, however, he enlarged his argument and urged that once it was found that the impugned Act

did not entrench on entry 49 in List II, Parliament could impose it independently of entry 86 in List I under Article 248. The argument was that Article 248 conferred an independent and distinct power on Parliament in all matters not enumerated in Lists II and III. Since List III did not deal with taxes, the only question was whether the impugned tax fell under any entry in the State List. The contention was that Article 248 was in pari materia with Section 91 of the British North America Act, 1867, and therefore, the proper inquiry, as under that Act, would be whether the impugned tax fell under List II and that if it did not, the power must necessarily be held to reside in Parliament. In support of this contention be emphasised the words, "Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List", in Article 248, and argued that List III not containing any entry with respect to any tax, only List II was relevant. Therefore, in dealing with a question such as the one before us, the proper inquiry would be whether the impugned tax entrenched upon entry 49 in List II, that being the only relevant entry, and if it were found 'that it did not, the power must be said to reside in Parliament, in other words, that which is not in List II must be said to be with Parliament. On the assumption that Article 248 was in pari materia with the first part of Section 91 of the Canadian Constitution Act, he relied on certain passages from Lefroy's Canada's Federal System (1913 ed.) at p. 120, on Russel v. The Queen [1881] 7 App. Cas. 829 at 836 and the observations made by the Federal Court in connection with that Constitution in Subrahmanyan v. Muttuswami [1940] F.C.R. 188. He next argued" that entry 49 of List II gave power to the States to impose a tax on lands and buildings; that power was to impose a tax directly on lands and buildings as units of taxation by reason of the ownership of an assessee in such lands and biuldings. Such a tax would be different in concept, subject-matter and incidence from the impugned tax which was one on the capital value of the totality of assets of an assessee as held in Nawn's case . Consequently, such a tax, which the States could not levy under entry 49 in List II, cannot be said to entrench on that power. That being so, the power to levy the impugned tax, including on agricultural land, must be held to be under Article 248.

123. The question is; does the Canadian Constitution Act furnish an apposite analogy and can the decisions on the interpretation of Sections 91 and 92 of that Act be relied on for the purpose of interpreting the scheme of distribution of legislative power in our Constitution?

124. The structure of Section 91 of the Canada Act falls into four parts. The first in the initial part which says that Parliament shall have power to make laws "for the Peace, Order, and good Government of Canada" in relation to all matters not coming within the classes of subjects assigned exclusively to the Provincial Legislatures. Lord Watson speaking for the Privy Council in Att.-Gen. for Ontario v. Att.-Gen. for the Dominion [1896] A.C. 348 thought that the power contained in this part was supplementary to the powers contained in the next part which sets out twenty-nine classes or heads of subjects. The theory of the first part supplementing the power on the enumerated subjects did not, however, commend itself to Lord Birkenhead in Canadian Pacific Wine Co. Ltd. v. Tulev [1921] 2 A. C. 417 and to Lord Atkin in Proprietary Articles Trade Association v. Att.-Gen. for Canada [1931] A.C. 310, where both of them held in categorical words that it was the first part of the section which conferred power on Parliament and that the enumerated subjects in the second part merely illustrated that certain subjects fell under the general description, viz., "Peace, Order and good Government of Canada". The second part contains the declaration of the exclusive power of Parliament in respect of the classes of subjects there enumerated. This declaration, however, in no

way affects the generality of power initially assigned to Parliament, or its exclusive power to make laws for peace, order and good government. The third part enumerates twenty-nine classes or heads of subjects. The fourth part is contained in the last paragraph which again contains a declaration that any matter coming within any class of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumerated classes of subjects assigned exclusively to the Provincial Legislature in Section 92. The result is that if a matter falls within any of the twenty-nine heads enumerated in the third part of 'the section, it is deemed not to fall within any class of matter assigned to the Provincial Legislatures. The power assigned to the Dominion in the initial part of Section 91, viz., with respect to matters concerning peace, order and good government and head 16 in Section 92, viz., "generally all matters of a merely local or private nature in the Province" clearly show that the distributive system in the Canada Act is what has been termed "interlacing" and not disjunctive, where the two would have independent powers assigned respectively to them as in our Constitution. Such an interlacing is further seen from head 29 in the enumerated subjects in Section 91, by which power is given to 'the Dominion in respect of such subjects as are expressly excepted in the enumeration of the classes of subjects assigned exclusively to the Provincial Legislatures.

125. It was on the basis of such a peculiar scheme of distribution of powers that in Russel v. Queen [1881] 7 A.C. 829 at 836, the Privy Council, fo lowing its earlier decision in the Citizens Insurance Company v. Parsons [1881-1882] 7 App. Cas. 96, stated that whenever a question arose with regard to the respective powers of the legislatures of the Dominion and the Provinces, the first question to be determined would be whether the statute in question fell within any of the classes of subjects enumerated in Section 92. If it did, then only the further question would arise whether the subject of the Act did not fall within one of the enumerated subjects in Section 91, and so did not still belong to the Dominion Parliament. But if the Act did not fall within any of the classes of subjects assigned exclusively to the Provinces by Section 92, no further question would remain, and the Act would fall within the general words of the first part of Section 91. Since then the Privy Council have, on several occasions, while construing Sections 91 and 92, made shifts in emphasis. But amidst all the variations there emerges a code of interpretation crystallized into four propositions as summarised by Lord Tomlin in Att.-Gen. for Canada v. Att.-Gen. for British Columbia [19301 A.C. 111. These were approved in In re the Regulation and Control of Aeronautics in Canada [1932] A.C. 54, In re Silver Bros. Ltd. [1932] A.C. 514, and finally, in Canadian Pacific Railway Co. v. Att.-Gen. for British Columbiai [1950] A.C. 122, and therefore, can fairly be said to be well-settled principles of interpretation of these two sections. These are :

> (1) The legislation of the Parliament, so long as it strictly relates to subjects expressly enumerated in Section 91, is of paramount authority, even though it trenches upon matters assigned to the Provincial Legislatures by Section 92.
>
> (2) The general power of legislation conferred on the Parliament by Section 91 in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance.

> (3) It is within Parliament's competence to provide for matters which, though otherwise within the competence of Provincial legislatures, are necessarily incidental to effective legislation by it upon one of the enumerated subjects in Section 91; and (4) There can be a domain in which Provincial and Dominion legislation may overlap, that is to say, where there is overlapping between classes of subjects or heads of legislative power in which case neither legislation would be ultra vires if the field is clear, but if the field is not clear and the two legislations meet, the Dominion legislation must prevail Varcoe, F.P.. The Distribution of Legislative Power in Canada (1954 ed.). pp. 73-78.

126. Providing such a distribution of powers in general terms had a two-fold object, (a) to avoid inflexibility, which it was apprehended elaborate lists might result in, and (b) not to have any power reserved or withheld. The clear objective, while framing the Constitution Act, was to model it on the lines of the British Constitution with Parliamentary supremacy as one of its principal features, and therefore, to leave no power uncovered by Sections 91 and 92. The preamble of the Act itself declares that its object was to give a Canada "a Constitution similar in principle to that of the United Kingdom". That and the peculiar language in Sections 91 and 92 led the Privy Council in the Att.-Gen. for Ontario v. Att.-Gen. for Canada [1912] A. C. 571 to observe that the powers distributed between the Dominion on the one hand, and the Provinces, on the other, covered the whole area of self-government within the whole area of Canada and that it "would be subversive of the whole scheme and policy of the Act to assume that any part of internal self-government is withheld from Canada". As Lefroy observes at p. 95:

> The scheme of our Federation Act was to have no reserved power; but that there should be, in Canada, the same kind of legislative power as there is in the British parliament, so far as that was consistent with the confederation of the provinces and our position as a Dominion within the Empire.

127. Since the British Parliament was the model, pre-eminence was firstly given to the laws made by Parliament, and secondly, provision was made that all powers not expressly assigned to provincial legislatures were to be treated as vested in Parliament. (Valin v. Langlots [1879] 5 App. Cas. 155.

128. It is thus clear that there is no similarity either in the content or the scheme between the distributive system in the Canadian Act and that in our Constitution. There is no declaration in general and unspecified terms in our Constitution as there i9 in the first part of Section 91, nor is there the interlacing of powers brought about by expressions such as "for the Peace, Order and good Government of Canada" and "in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces" as in Section 91. The powers of the Union Legislature and the State Legislatures under Article 246 and the field of legislation delineated in the three Lists are well-defined in elaborate and precise terms, and are disjunctive and independent. The State Legislatures are not the delegates of, nor do they derive their powers from the Union Legislature, and enjoy within their fields of legislation plenary powers including the power to legislate on all matters incidental and subsidiary to the matters assigned to them. The question of pre-eminence of Parliamentary legislation by reason of the non-obstante clause in

Article 246 arises only where there is over-lapping of jurisdictions or the law in question is in respect of any of the matters in List III. For the rest, the power of the States is as exclusive in their field as it is of Parliament within its allotted field. The contention that the first part of Section 91 of the Canadian Act is analogous to Article 248 and its second part to Article 246(1), and therefore, decisions on Section 91 and Section 92 of that Act apply for the purpose of construing the distribution of powers in our Constitution is unacceptable.

129. It is true that in Subrahmanyan v. Muthuswami [1940] F.C.R. 188 Gwyer. C.J., at p. 200 of the report did speak of the Canadian Act as containing analogous provisions and of the British Parliament having those provisions in mind when it enacted Section 100 of the Government of India Act, 1935. But it is clear from the context that those observations were made in connection with overlapping of legislative powers and the preeminence of the Central law in that contingency, and not in relation to the distributive schemes in the two Acts. That decision, therefore, is no authority for the proposition that there is any analogy between Section 100 of the 1935 Act and Section 91 and Section 92 of the Canadian Act, 1867. Indeed, at page 200 of the report, the learned Chief Justice talked of "the two lists of mutually exclusive powers" as contrasted with the Canadian "interlacing" of powers. That was because none of the parties concerned with the enactment of the 1935 Act had expressed any desire, as was the case with the Canadian Act, to have a "Constitution similar in principle to that of the United Kingdom". The speech of Sir Samual Hoare, who piloted the Constitution Bill of 1935 in the Parliament on the draft section corresponding to Section 104 clearly shows that there was acute controversy amongst the parties in India regarding the distribution of legislative powers. It was because of that controversy that three Lists had to be made "each as exhaustive as we could make it, so exhaustive, as to leave little or nothing for the residuary field", and therefore, "all that is likely to go into the residuary field are perhaps some quite unknown spheres of activity that neither my Hon. Friend nor I can contemplate at the moment". Cited in N. Rajagopala Aivanager, Government of India Act, 1935, at p. 133.

130. As a matter of fact, Gwyer, C.J., had, only a year ago, uttered a warning against applying decisions on other Constitutions to the provisions of the 1935 India Act, in the following words :

> ...there are few subjects on which the decisions of other Courts require to be treated with greater caution than that of federal and provincial powers, for, in the last analysis the decision must depend upon the words of the Constitution which the Court is interpreting; and since no two Constitutions arc in identical terms, it is extremely unsafe to assume that a decision on one of them can be applied without qualification to another. This may be so even where the words or expressions used are the same in both cases; for a word or a phrase may take a colour from its context or bear different senses accordingly.

131. In The Province of Madras v. Boddu Paidanna & Sons 1942 R.C.R. 90 at 105 the Federal Court, while discussing the powers of taxation of the center and the Provinces in 'the matter of excise and sales Tax, brought out the difference between the distribution of powers in the Canadian and the Indian Acts:

> It is natural enough, when considering the ambit of an express power in relation to an unspecified residuary power to give a broad interpretation to the former at the expense of the latter; and this indeed is the principle upon which the Judicial Committee have for the most part interpreted Sections 91 and 92 of the British North America Act. The case, however, is different where, as in the Indian Act, there are two complementary powers, each expressed in precise and definite terms.

132. In Manikkasundara Bhattar v. Nayudu [1946] F.C.R. 67, 87-88, the Federal Court once again uttered similar words of caution, observing that in view of Section 104 of the 1935 Act expressly providing for residuary power, it would be impossible to apply to the Indian Act the Canadian principle evolved by the Privy Council that one has only to look into the Provincial List for power, which if it is absent there must necessarily be attributed to the general pool of power in the Dominion:

> In the Canadian Constitution Act there is no provision in respect of omitted subjects of legislation. Every subject must be held to be either within the legislative powers of the Dominion Parliament or of the Provincial Legislatures. In the Indian Constitution, Section 104 has been inserted for the very purpose of enabling legislation to be enacted in respect of subjects omitted from the three Lists in the Seventh Schedule.

133. These pronouncements clearly point out (a) the difference between the two systems/of distribution of power, and (b) the danger of applying Canadian precedents to our Constitution. Since the present Constitution is, as repeatedly stated by this Court, in many ways based on the provisions of the 1935 Act, particularly in the matter of distribution of legislative powers, what has been said about that Act must equally apply to the Constitution.

134. We may now turn to Article 248. There can be no two opinions that that Article deals with residuary power and that that power is an independent power conferred by that Article and not by entry 97 in List I. It is well settled that entries in the three Lists do not by themselves confer power. They, however, delineate the fields in which the respective powers are conferred on the Legislatures by the relevant Article of the Constitution.

135. The controversy is about the extent of the power under Article 248. Counsel for the Union availed himself of the fact that the Article speaks of the Parliament's exclusive power with respect to any matter not enumerated in List III or List II and to impose by law a tax not mentioned in either of the two Lists. True it is that the Article does not speak of List I; in other words, it does not say in express terms that that power is only in respect of matters and taxes not enumerated or mentioned in any one of the three Lists. But when one talks about residuary power, the question at once arises : what it is residuary of? The marginal note to the Article states that the power conferred is residuary. A marginal note can serve as guidance when there is ambiguity or doubt about the true meaning of the provision. As earlier stated, Article 246(1) having given exclusive power to the Union Legislature, surely the power in respect of the very matters therein provided for could not have been once again granted by Article 248. Obviously therefore, the residuary power conferred by Article

248 means power in respect of matters not dealt with in Article 246, and not to be found in any of the three Lists.

136. In this connection, Mr. Setalvad himself pointed out to us the debate in the Constituent Assembly on entry 91 in List I (equivalent to the present entry 97 in List I) as instructive and showing the background in which and the purpose for which that entry was inserted in List I. When the entry came before the House, Sardar Hukum Singh and Mr. Naziruddin Ahmed thought that if Article 231 (equivalent to the present Article 248) meant that all powers not contained in Lists II and III vested in the center, enumeration of powers in List I as also the last entry 91 therein were altogether redundant. Sardar Hukum Singh pointed out also that the word "other" preceding the word "matter" in that entry was unnecessary. "If every subject which is not mentioned in Lists II and III is to go to the center," observed Mr. Naziruddin Ahmad, "what is the point of enumerating entries 1 to 90 in List I". This construction was akin to the one urged before us by Mr. Setalvad, viz., that one need only turn to List II, and if the power in question is not there, the power must be assumed to be with the center by reason of Article 248. The point urged by Mr. Naziruddin was at once demurred by Prof. Shibban Lal Saksena who pointed out that Mr. Naziruddin's point of view was incorrect as "Dr. Ambedkar has said that if there is anything left, it will be included in entry 91." That must mean that if in the enumeration of powers in the three lists any topic of legislation was left out, such a topic would fall in the residuary power conferred on the center. Dr. Ambedkar then explained the purpose for which entry 91 was inserted in List I, which, he said, was to define the limit and scope of List I. That, he pointed out, could have been achieved in two ways; (i) by having entry 91 defining the scope of List I, or (2) by defining the scope of Lists II and III by adding in entry 91 the words :

> anything not included in List II or List III.

137. He added that when Article 223 (equivalent to the present Article 248) provided that Parliament had exclusive power with respect to any matter not enumerated in List III or List II, it would theoretically be unnecessary to enumerate 'the categories in List I. "The reason why this is done is this. Many States' people, and particularly the Indian States at the beginning of the labours of the Constituent Assembly, were very particular to know what are the legislative powers of the center. They wanted to know categorically and particularly; they were not going to be satisfied by saying that the center will have only residuary powers. Just to allay the fears of the Provinces and the fears of the Indian States, we had to particularise what is included in the symbolic phrase "residuary powers". That is the reason why we had to undergo this labour, notwithstanding the fact that we had Article 223." A little later, he further explained that the Government of India Act, 1935, by s. 104 in it had the same scheme and that section was similar to Article 223. This speech indicates that the purpose of inserting entry 91 was to define the scope of residuary powers conferred on the center and that was that the center was to have exclusive power not only on matters enumerated in the preceding entries but also on matters not enumerated in Lists II and III Constituent Assembly Debates, Vol. IX, pp. 855-857. More instructive is the second report, dated July 5, 1947 of the Union Powers Committee, of which Pandit Nehru was the Chairman, wherein it was stated that while the residuary powers should be with the center, in view "of the exhaustive nature of the three lists drawn up by us, the residuary subjects could only be related to matters which, while they may claim

recognition in the future, are not at present identifiable and cannot therefore be included now in the lists". Sir Gopalaswami Ayyangar in his speech moving this report on August 20, 1947. also said that after making "three exhaustive lists", if there was any residue left at all, if in the future any subject cropped up which could not be accommodated in one of these three lists, then that subject should be deemed to remain with the center...." B. Shivrao, The Framing of India's Constitution, Vol. IT, p. 867 and onwards. Therefore, what emerges from this discussion is that the residuary power lodged in Article 248 was in respect of matters which could not be foreseen or contemplated when the three Lists were framed, and therefore, could not then be included in any one of them.

138. Mr. Setalvad, however, relied on a speech by Shri Krishnamachari during the debate on the center's residuary power. On a careful reading of it in the context of what others said on that occasion, it is clear that it was made to allay the apprehensions expressed by some of the members against Article 248 and entry 97 of List I. The propositions, he sought to make, were (a) that one of the best points of the 1935 Constitution Act, according to Prof. Wheare, was the enumeration of powers in the Seventh Schedule; (b) that that having been done, a provision for residuary power became necessary, and (c) that the Lists being almost "complete and exhaustive" there was not much left in the content of the residuary power. He, however, added that one possible use to which the provision for residuary power can be put in future would be to impose a capital levy on agricultural land, but that if that were done, he thought that the center would assign its proceeds to the States as all matters supposed to be associated with agriculture were allotted to the States. "I mink", he observed, "the vesting of the residuary power is only a matter of academic significance to-day". It is undoubtedly true that he expressed his individual opinion as to the possible exercise in future of the residuary power under Article 248 and entry 97 in List I for imposing a capital levy on agricultural land. But he did not refer to the other entries in the Lists such as entry 86 in List I or entry 49 in List II, and their impact or significance on the extent of the residuary power. Nor does the debate show that any other member took up or agreed with his suggestion. It is, therefore, not possible to spell out, as Mr. Setalvad tried to do, any consensus of opinion in the Assembly or an awareness on the part of its members of the residuary power being enable of being used in future for a tax such as the one impugned here Constituent Assembly Debates, Vol. 2, 838-839; 952-954.

139. The question then is whether the impugned Act is in pursuance of the power under Art 248. If it falls under entry 86 of List I, it cannot fall under Article 248 or entry 97 in List I. The argument was that since entry 86 of List I is in respect of a tax on capital value of assets excluding agricultural land, the impugned tax which includes agricultural land, is not a legislation falling under entry 86 but falls under Article 248(2) and/or entry 97 in List I. In answer to a specific question put to him, Mr. Setalvad stated that the power to impose a tax on capital value of assets, banking agricultural land, was one field of legislation and which fell under entry 86 in List I, while the power to impose a similar tax which included agricultural land was another distinct field of legislation and fell under entry 97 in List I, and Article 248(2). That being: so. he said, the Wealth Tax Act, as amended by the Finance Act, 1969, fell under the residuary power in Article 248 and entry 97 of List I.

140. We frankly concede our inability to appreciate this contention. Can it be said that the Wealth Tax Act when passed in 1957 fell under entry 86 of List I, but that it ceased to be so when it was amended in 1969 by including within its sweep agricultural land? The subject matter, the nature and

the incidence of the tax remained the same, the only difference which the amendment made was the inclusion of agricultural land while computing the capital value of the assets of an assessee. In our opinion, the Act, even after its amendment, retained its original character and continued to be one falling under Article 246(1) read with entry 86 in List I. The field of legislation under entry 86 in List I is no doubt a restricted one in the sense that the law imposing the tax envisaged there cannot include within its sweep agricultural land. But that does not mean that the power in respect of such a tax is not covered by that entry or that that which was withheld as a matter of policy and by the scheme of distribution of power is a distinct power, and therefore, falls under Article 248 and/or entry 97 of List I.

141. It is not uncommon for Constitution-makers to confer a restricted legislative power on a particular subject or subjects. Counsel for the respondents pointed out to us as a sample of such restricted power entries 9 in List I and 3 in List III. The first is with respect to the power to make law providing for preventive detention on three grounds, viz., defence, foreign affairs and security of India The second provides for the same power, but on three other grounds, viz., security of the State, maintenance of public order and of supplies and services essential to the community. The two entries read together clearly show that in the matter of preventive detention, the Constitution, as a matter of policy, provided a restricted field within which the power could be exercised, that is to say, for the six reasons set out in the two entries. As stated before, if counsel for the Union were right, the Union can claim power to make a law in respect of preventive detention on grounds other than those specified in the two entries on the footing that it has residuary power under Article 248 and/or entry 97 in List I. Surely, such a field of legislation is not one which was not foreseen, or thought of, or was not "identifiable" in the words of Pandit Nehru and for which only Article 248 and entry 97 in List I were enacted. Entry 86 in List I is yet another example where a restricted legislative power has been provided for, presumably because under the distribution of powers in the Constitution, the field of agriculture and agricultural land was almost wholly entrusted to the States. Such a restriction must be held to be the result of a calculated policy, for, in a country such as ours, agricultural land would be by far the largest asset and capable of bringing a very substantial amount of tax. Those who excluded such an asset from entry 86 and gave power over it to the States could not possibly have thought of including such an excluded item of taxation in the residuary power of the Union under Article 248(2). These reasons must compel us to reject the argument that a tax on the capital value of agricultural land falls under the residuary power or that it is a field of legislation distinct from that in entry 86 not dealt with therein, or that therefore, the amending Act does not fall under entry 86, List I.

142. In this view, we are unable to accept the contentions urged on behalf of the Union. The amending Act, in our opinion, fell under entry 86 of List I, and not under Article 248 and/or entry 97 of List I. It follows that the impugned Act, by reason of the restricted field in entry 86, List I, suffered from legislative competence. The majority judgment of the High Court must, consequently, be upheld and the appeal dismissed. We order accordingly but in view of the great importance of the issues involved in the appeal, we think it just that there should be no order as to costs.

G.K. Mitter, J.

143. This is an appeal from a judgment of a Bench of five Judges of the High Court of Punjab and Haryana holding by a majority of four to one that Section 24 of the Finance Act of 1969 amending the definition of "net wealth" in the Wealth-tax Act (No. 27 of 1957) by the inclusion of agricultural land in the assets for the purpose of computation of net wealth was beyond the competence of Parliament and as such ultra vires the Constitution.

144. The reasoning of the majority Judges was that Entry 86 of List I of the Seventh Schedule to the Constitution withdrew the power to impose wealth-tax on agricultural land from the competency of Parliament. It was therefore not open to Parliament to enact such a measure in exercise of its power under Entry 97 of the said List. Although arguments were advanced before the High Court on behalf of the respondent that Entry 49 of List II empowered the State to impose a wealth tax on agricultural land, this contention was ultimately given up before the High Court. In the view of the majority Judges:

> The effect of the impugned legislation in its pith and substance is to impose a tax on the capital value of the assets, including agricultural land. Thus in effect the words of prohibition in Entry 86, namely, "excluding agricultural land", have been treated as non-existent. In doing so, Parliament has altogether gone beyond the limitations within which it has competence to legislate.

145. According to the fifth learned Judge:

> The State Legislature had no power to impose a tax on the capital value of the assets in the form of agricultural land of an individual under Entry 49 and as there was no prohibition in the way of Parliament making a law imposing such a tax the legislation was beyond challenge.

146. In view of the great importance of the question and the far-reaching consequences of the amendment of 1969, the appeal has been placed before a Bench of seven Judges and arguments on both sides, and specially on behalf of the respondents, ranged far and wide including the topic as to whether the legislative competence of Parliament and the States and the heads of legislation in the first two Lists of the Seventh Schedule to the Constitution should be interpreted in the same way as the corresponding provisions in Sections 91 and 92 of the British North America Act of 1867.

147. The propositions put forward by Mr. Setalvad for the appellant were as follows :-

> (1) The real question to be determined in the appeal was whether the impugned tax fell within the ambit of Entry 49 in List II of the Seventh Schedule in which case no further question would arise and the respondent would be entitled to succeed. But in case the tax was not to be found within the ambit of Entry 49 Parliament would be competent to impose such a tax.
>
> (2) In order to determine the true nature of the imposition, we must consider the pith and substance or the essential character of the tax with special reference to the unit of

taxation.

(3) Entry 49 of List II envisaged taxation of lands and buildings as separate units. The entry did not contemplate the aggregation of all lands, agricultural or otherwise, and buildings held by a person as one unit and consequently the State Legislature was not competent to impose a tax on such aggregation. Further the entry did not contemplate a tax which would permit the legislature to deduct the liabilities to which the owner of the property might be subject. The unit for the purpose of taxation as described in the Weal h-tax Act as net wealth is not contemplated by Entry 49 of List II.

(4) The legislative power was distributed among the Union Parliament and the State Legislatures by the different provisions in Part XI of the Constitution. The objects of the exercise of power, that is to say, the subject matter of all legislation was comprised within the three Lists in the Seventh Schedule. The entries enumerated in List I set forth the matters within the exclusive powers of Parliament to legislate upon and this was notwithstanding anything in Clauses (2) and (3) of Article 246. The exclusive power of the legislature of a State with respect to matters enumerated in List II was however subject to Clauses (1) and (2) of Article 246.

(5) The legislative power conferred upon Parliament as above was supplemented by Article 248. Under Clause (1) of this article Parliament had exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List, and by virtue of Clause (2) such power included the power of making any law imposing a tax not mentioned in either of those Lists. The net result was that if there was a matter or a tax which though not expressly mentioned in any of the items in List I, was also not included in List II or List III, the same was to be a matter upon which Parliament alone was competent to legislate.

(6) Proceeding on the basis of the decisions of this Court that tax on net wealth was covered by Entry 86 in List I it did not matter that the head of legislation under that entry read as "tax on the! capital value of assets exclusive of agricultural lands" inasmuch as net wealth on agricultural land could not be the subject matter of any entry in List II; legislation on the topic of taxation of net wealth inclusive of agricultural land would fall within Entry 97 of List I read with Article 248.

(7) The basic principle of the Constitution was that there should not be any matter which would be beyond the scope of legislation either at the hands of the Union Parliament or at those of the State Legislatures. The Constitution did not envisage any power vacuum.

(8) The words of Entry 86 of List I "exclusive of agricultural land" were not to be read as a prohibition on Parliament from taxing the capital value of such assets which were ascribable to agricultural land. The words were to be read as words of exclusion.

In other words, without using the words "exclusive of agricultural lands" Parliament might have specified in the entry all kinds of known assets, omitting any reference to agricultural lands. So interpreted, there would be no question of any prohibition on Parliament imposing a tax on the capital value of assets including agricultural land therein by the combined operation of Article 248 and Entry 97 in List I.

148. Entry 97 in List I was meant to comprise all matters which were not to be found in List II or List III including any tax not mentioned in those two Lists. Entry 97 was really a supplement to Article 248(1).

149. The scheme of the distribution of legislative power with regard to various matters adopted in the Indian Constitution had a close parallel to Sections 91 and 92 of the British North America Act and the decisions of the Judicial Committee of the Privy Council on those two sections throw considerable light on the question before us in this Court.

150. The propositions put forward by Mr. Palkhivala were as follows :-

(1) Power to levy wealth tax on agricultural land was not covered by Article 248 read with Entry 97 in the Union List. The Constitution has denied to the Union the power to levy any tax direct or indirect on the capital value of agricultural lands.

(2) The judgments of this Court in S.C. Nawn v. Wealth-tax Officer , Asst. Commissioner v. B. and C. Ltd. [1970]-1 SCR 261 and Prithvi Mills v. Broach Municipality show that

(a) a direct tax on lands and buildings was covered by Entry 49 in List II while a tax on the total assets which may include buildings and non-agricultural land was covered by Entry 86 in the Union List;

(b) a tax under Entry 49 could be levied on the capital value of lands and buildings just as under Entry 86 a tax could be levied on the capital value of other assets;

(c) despite the State's power under Entry 49 to levy a tax which was directly on the capital value of lands and buildings, the Union Parliament has power under Entry 86 to impose a tax on the capital value of assets including buildings and non-agricultural lands;

(d) The result is that so far as non-agricultural lands are concerned they can be subject to two separate taxes, a land tax by the State and a Wealth-tax or capital levy by the Union.

(3) The Constitution expressly excluded agricultural lands from this two-fold burden. The express words in Entry 86 restrict the scope of the Union's power to legislate in respect of capital levy or wealth-tax.

(4) The said scheme is apparent from other Entries in the said two Lists.

(5) Neither the Union nor the State has power to levy wealth-tax in respect of the total value of the entire wealth of an assessee which would include agricultural lands just as neither the Union nor the State has power to levy income-tax in respect of total income inclusive of agricultural income or to levy estate duty or succession duty in respect of properties passing on death including agricultural land.

(6) The scheme of the Constitution being exclusion of agricultural land from the purview of legislative power of the Union, it did not matter that there was no entry in List II which was in terms corresponding to those in Entry 86 to List I. (7) Wealth-tax in respect of agricultural land would not be covered by Entry 97 in the Union List. The opening words of the entry i.e. "any other matter" go to show that the matters which are specified in Entries 1 to 96 are alike excluded from Entry 97 as matters enumerated in List II or List III.

(8) The scope of Article 248 was not wider than that of Entry 97 in the Union List. If a matter was specifically enumerated in the Union List Article 248 could have no application to such a matter and as Entry 86 envisaged the levy of wealth-tax on assets exclusive of agricultural land wealth tax on assets which included agricultural land could not come under Entry 97.

(9) The extension of wealth-tax to agricultural lands would be an encroachment on the State's power under Entry 49 of List II. Taxes direct or indirect so far as agricultural lands are concerned are comprised in Entry 49 of List II. If Entry 49 is so read it would be beyond the competence of Parliament to enact legislation which would have the effect of levying a tax on the value of the assets which included agricultural lands.

151. The Wealth-tax Act, 1957 as it stood before the amendment of 1969 contained the following provisions relevant for the purpose of this appeal. Under Section 2(a) "assets" includes property of every description, movable or immovable, but does not includo-

(i) agricultural land and growing crops, grass or standing trees on such land;

(ii) any building owned or occupied by a cultivator or receiver of rent or revenue out of agricultural land;

Provided that the building is on or in the immediate vicinity of the land and is a building which the cultivator or the receiver of rent or revenue by reason of his connection with the land requires as a dwelling-house or a store house or an out-house;

(iii)

(iv) not relevant

(v) Section 2(m) ran as follows:

> net wealth" means 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, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owned by the assessee on the valuation date other than...
>
> (i) debts which under Section 6 are not to be taken into account;
>
> (iii) not relevant Section 3 was the charging section and provided that :
>
> Subject to the other conditions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule.
>
> Under Section 4 net wealth was to include certain assets specified therein. Section 5 provided for exemption of certain assets held by an assessee. The notable exemptions were the interest of the assessee in the coparcenary property of any Hindu undivided family of which he was a member and any one house or part of a house belonging to the assessee exclusively used by him for residential purposes provided that the value thereof did not exceed the amount specified. Under Section 6 debts and assets outside India were to be excluded. Under Section 7 the value of any asset was to be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date.

152. By the Finance Act 14 of 1969 Section 2(e) was amended and the relevant portion thereof reads :

> "assets" include property of every description, movable or immovable, but does not include,-
>
> (1) in relation to the assessment year commencing on the 1st day of April, 1969 or any earlier assessment year-
>
> (i) agricultural land and growing crops, grass or standing trees on such land;
>
> (ii) any building owned or occupied by a cultivator of, or receiver of rent or revenue out of, agricultural land :

Provided that the building is on or in the immediate vicinity of the land and is a building which the cultivator or the receiver of rent or revenue by reason of his connection with the land requires as a. dwelling-house or a store-house or an outhouse;

(iii) animals

(iv) certain right to annuities

(v) certain interests in property (2) in relation to the assessment year commencing on the 1st day of April 1970 or any subsequent assessment year-

(i) animals;

(ii) certain rights to annuities

(iii) certain interests in property.

The exemptions provided in Section 5 were considerably augmented by inclusion of the following relevant clauses in Sub-section (1) of Section 5-These are as follows :-

(iv-a) agricultural land belonging to the assessee subject to a maximum of one hundred and fifty thousand rupees in value:

Provided that where the assessee owns any house or part of a house or part of a house situate in a place with a population exceeding ten thousand and to which the provisions of Clause (iv) apply and the value of such house or part of a house together with the value of the agricultural land exceeds one hundred and fifty thousand rupees, then the amount that shall not be included is the net wealth of the assessee under this clause shall be one hundred and fifty thousand rupees as reduced by so much of the value of such house or part of house as is not to be included in the net wealth of the assessee under Clause (iv);

* * * * (viii-a) growing crops (including fruits on trees) on agricultural land and grass on such lands;

(ix) the tools, implements and equipment used by the assessee for the cultivation, conservation, improvement or maintenance of agricultural land, or for the raising or harvesting of any agricultural or horticultural produce on such land.

Explanation.-For the purpose of this clause, tools, implements and equipment do not include any plant or machinery used in any tea or other plantation in connection with the processing of any agricultural produce or in the manufacture of any article from such produce;

(x) to (xxi)

153. In effect the rigour of the inclusion of agricultural land, growing crops, grass etc. was mitigated by exempting land of the above character to a maximum of Rs. 1,50,000 in value, besides growing crops including fruit trees on such land, tools, implements and equipment used by the assessee for the cultivation etc. of agricultural land. The scheme of the Wealth-tax Act both before and after the amendment of 1969 thus appears to be to impose an annual tax on the value of all the assets of an assessee which are in excess of the aggregate value of all his debts on the valuation date other than debts which are expressly excluded. This is to be subject to inclusion of certain assets mentioned in Section 4, exemption of other assets in Section 5 and exclusion of assets and debts outside India in terms of Section 6. Thus before 1969, if an assessee had owed a debt secured on a non-agricultural property or a debt which he had incurred in relation to such property, the same would be deductible from the value of the assets owned by him. If such a debt was in respect of agricultural property the same would not have been excludible. As a result of the Amendment of 1969 any debt secured on any property, be it agricultural land or otherwise and any debt incurred in relation to any property, unless the property was one in respect of which wealth-tax was not chargeable, would have to be deducted from the total value of the assets for computation of the net wealth of the assessee. The taxation was to be based on the net worth of an individual, that is to say, his total assets less his debts. It is therefore possible for an assessee who though seemingly in possession of assets of great value not to be subject to proportionately high taxation if he owes large debts to others within the meaning of the definition clause of Section 2(m) on the valuation date.

154. The overall change by the Amendment Act of 1969 lay in that in respect of assets in relation to the assessment year commencing from 1st April 1970 and any subsequent year agricultural lands, growing crops or a building occupied by a cultivator or receiver of rent or revenue out of agricultural land ceased to be exemptible. The main question in this appeal is, whether the amendment of the definition of 'assets' by withdrawing the exemption in respect of agricultural land etc. was within the competence of Parliament.

155. The vires of the Wealth Tax of 1957 was challenged before different High Courts prior to the decision appealed from and the matter also came up to this Court as is to be found in at least three decisions which have come to ray notice. But as no question ever arose with regard to the competency of Parliament to include agricultural assets in the definition of "net wealth" for the purpose of levying wealth-tax, the point now before us never arose in any of those prior decisions. In none of the decisions which will be presently noted was there any pin-pointed direction at the particular head of legislation which would cover the imposition of wealth-tax on the aggregation of assets. It will therefore not be out of place to consider the competence of Parliament to legislate on this field not on any pre-conceived notions nor on the basis of any decisions already rendered.

156. The Constitution of India forged by the Constituent Assembly after deliberation for a very long time was meant to be as complete a Code as possible by which all prior laws and all law-making powers were to be tested and guided. As India was to be a sovereign democratic Republic composed of a Union of States, it was necessary for the Constitution-makers to define with as much precision as possible the respective functions of the Union and the States' Legislatures as also the relations

between the Union and the States. As both the Union and the States were to have legislative powers, it became necessary to distribute legislative powers among them and to provide for as clear a demarcation of these powers as was feasible. This was sought to be done in Chapter I of Part XI of the Constitution containing Articles 245 to 255. The territorial extent of the laws to be made by Parliament and the State Legislatures is dealt with in Article 245 which provides that subject to the provisions of the Constitution Parliament has the power to make laws for the whole or any part of the territory of India while the legislature of a State can make laws for the whole or any part of the State concerned and a law made by Parliament is not to be treated as invalid on the ground that it would have extra-territorial operation. Article 246 of the Constitution seeks to divide the subject matters of legislation in three Lists enumerated in the Seventh Schedule to the Constitution and indicating the legislative body competent to deal with any such subject matter. Clause (1) of Article 246 gives Parliament the exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule and this is notwithstanding anything in Clauses (2) and (3). By Clause (2) Parliament as also the Legislature of any State are both given power to make laws with respect to the matters enumerated in List III in the Seventh Schedule, notwithstanding anything in Clause (3). By Clause (3) the Legislature of a State is given exclusive power to make laws for such part or any part thereof with respect to matters enumerated in List II but this is to be subject to Clauses (1) and (2). Broadly speaking, the scheme under this article is that Parliament is to have exclusive power to make laws with respect to matters in List I, the State is to have such exclusive power with regard to matters in List II subject to the powers of Parliament in respect of matters in List I and List III while matters in List III could be the subject matter of legislation both by Parliament and the State Legislatures. By Clause (4) however Parliament is given power to make laws with respect to any matter for any part of a territory of India not included in a State, notwithstanding that such matter is a matter enumerated in the State List. Obviously the Constitution gave Parliament the power to make laws with respect to Union territories mentioned in Sub-clause (b) of Clause (3) of Article 1 of the Constitution and other territories mentioned in Sub-clause (c) of the said clause as might be acquired after the commencement of the Constitution. The Constitution-makers envisaged a possibility of the existence or occurrence of subject matters of legislation not enumerated either in List II (the State List) or List III, the Concurrent List. This was sought to be provided for in Article 248 of the Constitution which reads :-

> (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.
>
> (2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

157. The above three articles thereafter make it clear that the Constitution-makers were careful to see that the law making power with respect to any matter which until the date of the Constitution had not been thought of as fit for legislation or had by some chance been omitted from the fold of Lists II and III were to be within the exclusive jurisdiction of Parliament to legislate. Such law-making power was to extend to the imposition of tax not mentioned in either of those Lists.

158. The Constitution-makers were also alive to the possibility of laws made by a State Legislature impinging upon laws made by Parliament in its competence and sought to remove the difficulty by providing in Article 254 that laws made by Parliament, whether passed before or after the laws made by a State legislature, were to prevail in such a contingency. This is however to be subject to Clause (2). Article 250 was aimed at giving Parliament the power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List while a proclamation of emergency was in operation. In normal circumstances the extent of legislative power of Parliament and the State Legislatures have to be worked out in terms of Articles 246 and 248 of the Constitution.

159. The Seventh Schedule which is divided in three Lists, sets forth 209 heads or subject matters of legislation : 86 entries in List I, 66 entries in List II and 47 in List III besides Entry 97 in List I reading "Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists". Few Constitutions have attempted such precise enumeration of subject matters of legislation. Schedule VII of the Government of India Act, 1935 containing the Legislative Lists had no more than 59 entries in List I known as the Federal Legislative List, 54 in List II known as the Provincial Legislative List and 36 in List III known as the Concurrent Legislative List. Even a cursory comparison between List I of the Constitution and List I of the Government of India Act will show some additions of subject matters which either did not exist or could not be thought of at the time when the Government of India Act was enacted. For instance Entry 6 in present List I reads : "Atomic energy and mineral resources necessary for its production" and Entry 12 "United Nations Organisation": atomic energy in 1935 was only in the minds of the scientists. United Nations Organisation had not come into existence. Although the League of Nations was there, probably it was not thought necessary to include any such entry in List I under the Government of India Act because it would be the Imperial Parliament which would be primarily concerned with this subject. Entry 14 in the present list reading "Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries" and Entry 15 "War and peace" could not form the subject matters of legislation when Federal Legislature was not a sovereign body for such purposes. It is significant to note that entries like Entry 20. Economic and social planning Entry 21. Commercial and industrial monopolies, combines and trusts, and Entry 23. Social security and social insurance; employment and unemployment in present List III had no counter-part in any of the Lists in the Seventh Schedule to the Government of India Act. But what is necessary for our present purpose is to note that there was nothing like present Entry 97 in List I in the Government of India Act. Section 104 of the said Act which is analogous to Article 248 of our Constitution read:

> (1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such List, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

> (2) In the discharge of his functions under the section the Governor-General shall act in his discretion.

It will be noted that the Imperial Parliament was alive to the fact that there might be subject matters of legislation not covered by any of the three Lists of the Seventh Schedule but the same were not committed to the care of the Federal Legislature or even attempted to be divided between the Federal Legislature and the State Legislatures. It was the function of the Governor-General to empower either the Federal Legislature or a Provincial Legislature by public notification to enact a law with respect to any law not enumerated in the Seventh Schedule including a tax not mentioned in any such list and in the discharge of this function, the Governor-General was to act in his discretion. The Explanation for this is to be found in the speech of Sir Samuel Hoare recorded in the Parliamentary debates to the effect that Indian opinion was very definitely divided between the Hindus who wanted to keep the predominant powers in the center and the Moslems who wished to keep the predominant power in the provinces. The extent of that feeling made each of these communities look with greatest suspicion at the residuary field the Hindus demanding it with the center and the Moslems demanding with the Provinces.

It would appear from the same speech that all attempts to bridge the difference only resulted in making the Federal List, the Provincial List and the Concurrent List each as exhaustive as possible to leave little or nothing for the residuary field. The said speaker hoped that "all that was likely to go into the residuary field were perhaps some quite unknown spheres of activity" which could not be contemplated at the moment.

160. The matter had engaged the attention of the Constituent Assembly. The Second Report of the Union Powers Committee dated 5th July, 1947 to the President of the Constituent Assembly contains the following statement :

> We think that residuary powers should remain with the center. In view however, of the exhaustive nature of the three Lists drawn up by us the residuary subjects could only relate to matters which, while they may claim recognition in the future, are not at present identifiable and cannot therefore be included now in the Lists.
>
> Moving the aforesaid report Shri Gopalaswami Aiyangar in his speech on the 20th August, 1947 said inter alia as follows:-
>
> We should make the center in this country as strong as possible consistent with leaving a fairly wide range of subjects to the Provinces in which they would have the utmost freedom to order things as they liked. In accordance with this view, a decision was taken that we should make three exhaustive Lists, one of the Federal subjects, another of the Provincial subjects and the third of the concurrent subjects and that, if there was any residue left at all, if in the future any subject cropped up which could not be accommodated in one of these three Lists then that subject should be deemed to remain with the center so far as the Provinces are concerned.(see the Constituent Assembly Debates Vol. V. p. 38).

161. It will be noted that Gopalaswami Aiyangar's speech is almost on the same lines as that made by Sir Samuel Hoare in explaining the principle adopted in framing the legislative lists and in particular the decision to leave the residuary field to the care of the Governor-General under the said section without making the matter the subject of an entry in List I of the Seventh Schedule. A glance at these Lists shows that in some cases broad classes of subject matters of legislation were divided under more than one head and placed in different lists. Thus while generally "industries" are to be within the legislative power of List II under Entry 24 of that List, a portion of industries is carved out of that Entry and placed within the exclusive competence of Parliament under List I. These portions are mentioned in Entry 7 of the Union List i.e. "Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war" and in Entry 62 "industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest". To take another instance "preventive detention occurs both in List I and List III. Entry 9 of List I reads "Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention" while "Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention" finds a place in the Concurrent List" as item 3. So far as preventive detention in its aspects mentioned in Entry 9 of List I is concerned Parliament has the exclusive power. The competence of the State Legislature to legislate with regard to preventive detention can only be under Entry 3 of List III but even then it cannot encroach on the field set apart for exclusive legislation by Parliament though the two field of legislation may, in certain circumstances, have a common border difficult of definition.

162. So far as "Lands", whether agricultural or otherwise, agriculture, agricultural income and taxes with regard to any of these matters the specification appears to be as follows:-

> List I Entry 82. Taxes on income other than agricultural income.
>
> Entry 86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
>
> Entry 87. Estate duty in respect of property other than agricultural land.
>
> Entry 88. Duties in respect of succession to property other than agricultural land.
>
> List II Entry 18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
>
> Entry 46. Taxes on agricultural income.
>
> Entry 47. Duties in respect of succession to agricultural land.
>
> Entry 48. Estate duty in respect of agricultural land.

Entry 49. Taxes on lands and buildings.

List III Entry 6. Transfer of property other than agricultural land; registration of deeds and documents.

Entry 7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

Entry 41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.

Entry 42. Acquisition and requisitioning of property.

163. Scanning the lists and specially the entries mentioned above, there can be little doubt that the Constitution-makers took care to insert subject matters of legislation regarding land and particularly agricultural land and matters incidental to the holding of agricultural land in the exclusive jurisdiction of State Legislatures. Although Parliament is competent to legislate on transfers of property and contracts generally, the legislative power in this regard is not to be exercised over agricultural land but when evacuee property includes agricultural land, Parliament is competent to legislate with respect to custody, management and disposal of the same under Entry 41 of List III. Similarly, when a question of acquisition or requisitioning of property including agricultural land is concerned, both Parliament and the State Legislatures are competent to exercise legislative powers.

164. It may also be noted that so far as some specific matters of legislation with regard to agricultural land are concerned, they have been set forth in List II while there are corresponding entries in List I which expressly exclude agricultural land. Thus Entry 46 in List II reads "taxes on agricultural income". Entry 82 in List I mentions "taxes on income other than agricultural income". Again Entry 47 in List II "Duties in respect of succession to agricultural land" has its counter-part in Entry 88 of List I "Duties in respect of succession to property other than agricultural land". Entry 48 in List II 'Estate duty in respect of agricultural land' has its counter-part in Entry 87 of List I 'Estate duty in respect of property other than agricultural land'. But while Entry 86 in List I reads "Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies" there is no corresponding entry with regard to tax on capital value of agricultural lands, the nearest approach to it being Entry 49 in List II "Taxes on lands and buildings."

165. In order to find out the true nature of the Wealth-Tax Act one must look at the charging section to ascertain the exact scope of the legislation. In the words of the Judicial Committee of the Privy Council in Provincial Treasurer of Alberta and Anr. v. C. E. Kerr and Anr. [1933] A. C. 710 "the identification of the subject matter of the tax is naturally to be found in the charging section of the statute, and it will only be in the case of some ambiguity in the terms of the charging section that recourse to other sections is necessary." The scheme of the Act in substance is to treat the individual as if he was a business, ascertain the price which the said business would fetch by deducting its

liabilities from its tangible assets and impose a tax on the balance which is the net wealth of an individual. Whereas under the Wealth-Tax Act as originally enacted a portion of the assets, namely, agricultural land was not to be taken into consideration, the amendment of 1969 brought that in for the computation of the value of the business. The nature of the Act has not changed; only it has been made more comprehensive than before.

166. We have next to find out the legislative entry to which the said Act conforms. If one were to ignore Entry 97 in List I, the only entry which might suggest itself would be Entry 86 and there would be no entry either in List II or List III carrying such a suggestion unless one was to take the view that Entry 49 in List II would comprehend that portion of the wealth of an individual which had its base in lands and buildings.

167. We may therefore examine the true scope of the two entries, viz., Entry 49 in List II and Entry 86 in List I. If the Act does not fall in any of these two entries, it must be covered by Entry 97 in List I and be within the legislative competence of Parliament under Article 248 of the Constitution. Under the express words of Clause (1) of Article 248 one has only to consider whether the subject matter of legislation is comprised in List II or List III: if it is not, Parliament is competent to legislate on it irrespective of the inclusion of a kindred subject in List I or the specified limits of such subject in this List.

168. Before the passing of the Wealth-tax Act of 1957 little attention was paid to Entry 55 in List I of the Seventh Schedule to the Government of India Act, 1935 or its successor, the present Entry 86. No Act of the Federal Legislature was ever traced directly to Entry 55. Attempts had however been made to impugn taxes imposed by the Provincial Legislature or the State Legislature as covering the subject matter of Entry 55 or Entry 86. These cases will be noted in due course.

169. The expression "capital value" has not been defined in any Act either English or Indian, but is a term well known to the English Law of Rating. According to Ryde on Rating, Eleventh Edition, page 433 :

> Where property is of a kind that is rarely let from year to year, recourse is sometimes had to interest on capital value, or on the actual cost, of land and buildings, as a guide to the ascertainment of annual value.
>
> Further, according to the learned author :
>
> Where better evidence is in the circumstances of a particular hereditament impossible, resort may be had to either capital value or cost of construction, either of which can, with appropriate corrections, be converted into approximately equivalent terms of annual value. (See p. 436 quoting the rule expressed by Scott, L.J. in Robinson Brothers (Brewers) Ltd. v. Houghton and Chester-le-Street Assessment Committee-[1937] 2 K.B. 445, at 481).
>
> According to Farady on Rating (5th Edition) p. 42 :

"Effective capital value" is a term commonly used by valuers, but, so far, no definition of such term appears in any text-book, and in order to determine 'effective capital value' of any building the valuer must appreciate the proper significance of the term.

The learned author then goes on to discuss the positive meaning of the expression by first explaining its negative meaning and at page 43, after noting some instances, states :

The above instances are sufficient to illustrate the difficulty of defining 'effective capital value'. It is submitted that the substantive definition of this expression is 'the selling price between a willing seller and a willing purchaser of the property in question, subject to the restriction that it can only be occupied substantially in its present condition'; this takes into consideration all the above qualifications, but it will be observed that it is then no easier to assess the figure than to arrive at the rental value direct.

According to Halsbury's Laws of England, third edition, volume 32 at page 79 :

Where neither the actual rents nor the profits of trade afford evidence of annual rental value, a percentage on the cost of construction or structural value of the hereditament, or of a substitute hereditament, is sometimes taken as evidence. The value taken is sometimes called the 'effective' capital value, that is to say, the capital value leaving out of account expenditure on unnecessary ornamentation, or accommodation surplus to requirements and after allowing, if necessary, for age and obsolescence.

It is stated further :

This method of valuation has been applied, for instance, to the directly productive parts of public utility undertakings (such as water works), to municipal property (such as schools, sewerage systems, a town hall, a fire station, a swimming pool, to colleges and university buildings, public schools, a light house, an old people's home etc. Except in the Law of Rating, the expression "capital value" does not seem to have been used in any branch of English Law. There is no reference to it in Stroud's Judicial Dictionary or Jowitt's Law Dictionary. Yet the expression was used in the Government of India Act, 1935-a statute passed by the Parliament of England and drawn up by people expected to be familiar with words and expressions known to lawyers in England. It will therefore not be improper to interpret the expression "capital value of assets" as meaning the aggregate value of the assets which a willing purchaser would offer a willing seller for the property in its condition at the time of the transaction. Naturally, a purchaser would enquire into encumbrances on the property and charges thereon created by the seller but he would not be concerned with any other debts or liabilities incurred by the seller for the purpose of acquiring the property or maintaining it. So interpreted the expression "capital value of assets

> of an individual" will take in only the assets less the charges secured but not any other liability.

170. Entry 49 in List II of the Constitution had a fore-runner in Entry 42 in List II to the Seventh Schedule to the Government of India Act, 1935 which read "taxes on lands and buildings, hearths and windows". The inclusion of hearths and windows made little difference to the entry and it was therefore dropped from the list in the Constitution. In Sir Byramjee Jeejeebhoy v. Province of Bombay A.I.R 1940 Bombay 65 the scope of entry 42 in List II came to be examined in juxtaposition to that of entry 55 in List I which is identical with Entry 86 of List I of the Constitution. In that case, the jurisdiction of the State Legislature to levy a tax called the Urban Immovable Property Tax Act was challenged. There by Part 6, Bombay Finance Act of 1932 incorporated therein by the Bombay Finance (Amendment) Act, 1939 was impugned. Section 20 of the said Part 6 of the Bombay Finance Act directed that inclusion of the said Part was to extend to the City of Bombay and the other places therein mentioned. Section 21 defined "annual letting value" in the City of Bombay as meaning the rateable value of buildings or lands as determined in accordance with the provisions of the City of Bombay Municipal Act, 1888. Section 22 which was the charging section provided that there shall be levied and paid to the Provincial Government a tax on buildings and lands called the Urban Immovable Property Tax at 10 per cent of the annual letting value of such buildings or lands. Examining the legislative authority of the Provincial Government, Beaumont C.J. observed :

> The impugned tax may fall either : (1) within item 42 of the Provincial List and not within the Federal List, or (2) within item 54 or item 55 of the Federal List and not within the Provincial List, or (3) it may fall within both the Lists.
>
> It will be noted that item 54 read "taxes on income other than agricultural income" and item 55 "taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of the companies". According to the learned Chief Justice the impugned tax was not a tax on income. He observed :
>
> The charging Section 22 imposes the tax on lands and buildings, and not on income, and the basis of the tax is annual value. This is an arbitrary basis which might be applied as well for ascertaining capital value, as for ascertaining income. The fact that some concession is allowed to the small owner, a concession which may be based as much on political, as on economic considerations and that an allowance may be made where the property is shown to produce no income, a fact which may be taken to show that the estimated value was found to be erroneous, cannot alter the nature of the tax.
>
> Addressing himself to the question as to whether the tax was one on the capital value of the assets, the learned Chief Justice said :
>
> An analysis of the language employed in items 54 and 55 respectively affords scope for this argument but whether the contention be sound or not, in my opinion, it is impossible to say that this tax, although it is a tax on lands and buildings, is a tax on

the capital value of the lands and buldings. It is imposed without any relation to the capital value except so far as such value can be ascertained by reference to rateable value.

Broomfield. J. made an attempt to ascertain what the expression "capital value" meant and said :

What is meant by the capital value of assets in that item (item 55) is by no means clear, and the argument threw little light on the matter. It may be that what is intended is a tax on the total value of assets in the nature of capital levy. In any case the measure of the capital value of assets would appear to be the market price. That would obviously be affected by several factors, e.g. mortgages and charges, of which the impugned tax takes no account.... Looking at the essential character of the tax from the legal point of view, I think it may be described as a tax on lands and buildings, imposed on the owners qua owners, and assessed by a somewhat arbitrary but not inequitable standard, which is not dependent either on the income of the assessee or on the capital value of the properties.

Kania, J. did not think that the impugned tax was of a nature to encroach upon item 55 in List I; under that item the tax should be on the total capital assets and not on a portion of person's capital.

171. In Municipal Corporation v. Gordhandas Rule 350-A framed by the Corporation of the City of Ahmedabad in respect of a rate on open lands was impugned as ultra vires. This rule laid down the manner in which the rateable area of the open lands was to be determined and provided that the rate of the area of open Jand thus determined was to be levied at one per cent of the valuation based on capital and all such lands subject to 'exemptions thereinafter provided shall be liable to be charged the same'. Rule 243 dealt with the valuation based on capital and it laid down that valuation based upon capital shall be the capital value of buildings and lands as may be determined from time to time by the valuers of the municipality who were to take into consideration such reliable data as the owners or the occupiers might furnish either of their own accord or on being called upon to do so. It was common ground that the corporation derived its authority to impose taxes or rates under Section 73 of Bombay Act XVIII of 1925. Sub-section (1) of that section empowered a Municipality to impose for the purposes of the Act a rate on buildings or lands or both situate within the municipal borough. Sub-section (2) provided for a limitation : that nothing in this section was to authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Government of India Act, 1935 under Entry 55, List I. The corporation contended that the rate in question did not amount to a capital levy at all, but that it was a rate on open land and the value of the capital was utilised merely as a means or machinery to enable the municipal corporation to levy a reasonable rate on the said open plot. In support of this, the corporation relied upon the Explanation to Section 75 of the Municipal Boroughs Act laying down the procedure preliminary to imposing a tax. It provided that before imposing a tax a municipality shall, by a resolution passed at a general meeting, specify among other things (iii) in the case of a rate on buildings or lands or both, the basis for each class of the valuation on which such rate is to be imposed; and the explanation

added that in the case of lands the basis of valuation may be either capital or annual letting value. According to the municipal corporation all that R. 350-A had purported to do was to adopt the capital value as the basis of valuation for levying the rate on open lands. In upholding the validity of the tax, Gajendragadkar, J. (as he then was) said (see p. 191) :

> ...the Provincial Legislature is given the power to levy a tax on lands. Entry 42 of List II, which confers this power on the Provincial Legislature, introduces no terms of limitation and does not provide for any particular manner in which the tax should be levied. In other words, the power of the Provincial Legislature to levy the tax on lands is unqualified and absolute. In the present case, the power of the Municipal Corporation to levy a tax on the open land is similar in extent to the power of the local legislature.... If, by adopting this basis, the inevitable result would be that the rate which is ultimately levied amounts to a capital levy and is, therefore ultra vires, it would be necessary to hold that, not only R. 350-A ultra vires, but the 'Explanation' to Section 75 itself is ultra vires.

He did not however feel driven to this conclusion as in his view :

> a distinction must be made between a rate or tax which is levied on land on the basis of its capital value and a tax which is levied on the capital value of the land treating it as an asset itself.

He added :

> It seems to me that it is perfectly legitimate to the taxing authority to attempt to correlate its tax to the real value of the property. It would be open to a municipality to levy a uniform tax on all the buildings; it would similarly be open" to the municipality to levy a uniform tax on all the lands. The Municipality may, however attempt to "make such taxation reasonable by taking into account the areas of the lands and the size and nature of the buildings. But when the municipality makes provisions for taking into account these relevant facts, the municipality is attempting only to make its taxation reasonable, just and equitable. It is with that view alone that, in the case of lands, the Municipal Corporation of Ahmedabad has chosen to adopt the basis of the capital value of the open lands to determine the rate of tax that should be levied on them.

The learned Judge went on to consider in what manner Central Legislature could levy a tax on the capital value of the assets. He observed :

> If the asset in question happens to be a land, its real capital value in the context would be determined after taking into account the encumbrances to which the land may be subject and the other liabilities which may be enforceable against it.... The position of the Municipal Corporation when it levies a rate on the same property, treating it as land, is not the same or similar. It would be open to the Municipal

> Corporation to take into account the value of the land as such, without reference to the encumbrances to which it is subject, and to levy the rate on the value of the land so determined. In other words, the municipal rate or tax would not be concerned to determine the real economic capital value of the asset in question, but to find out the market value of the land apart from its real capital value in the economic sense and levy its tax on it. In this way, the capital value of the open land determined by the Municipal Corporation under R. 350A would not always or necessarily be the same as the capital value of the same land if it was determined by the Central Legislature for the purpose of levying a tax under Item 55 in List I. The learned Judge however visualised that in some cases the capital value may work out to be the same in cases falling under Entry 55 of List I and those falling under Entry 42 of List II. The learned Judge Vyas, J. said :
>
> In the context of item 55 the capital value of the assets means the real capital value, regard being had to the encumbrances to which the lands may be subject. If a land whose market value is Rs. 10,000/-is subject to a mortgage of Rs. 15,000/-the owner has only an equity of redemption the value whereof may be a minus quantity. Such an asset could not possibly be liable to the levy of a tax under entry 55 of List I. All the same the owner would not be immune from the levy of a tax upon the said land by the municipality under entry 42 for the municipality is not concerned whether the land is encumbered or unencumbered.
>
> It must be noted that the above decision was set aside in appeal to this Court but there is nothing in the judgment of this Court which goes against the interpretation of the expression "capital value" by the High Court. The decision of the majority Judges of this Court was based on the fact that the word "rate" had not been used anywhere in the Act and when it was provided that in the case of open lands the basis of valuation may either be capital or annual letting value "the words must be held to refer to that well-known method of valuation prevailing in England with respect to levy of rates and cannot be read to mean a percentage of the capital value itself : Patel Gordhandas Hargobindas v. Municipal Commissioner, Ahmedabad .

172. Entry 49 appears always to have been regarded as contemplating the levy of tax on lands and buildings both as units. As was pointed out in Asst. Commissioner v. B. & C. Mills Ltd. (supra) :

> Entry 49 of List II, contemplates a levy of tax on lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buldings, is directly imposed on lands and buildings, and bears a definite relation to it.... For the purpose of levying tax under Entry 49, List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings.
>
> In this case it was held that the Madras Urban Land Tax Act 12 of 1966 was in pith and substance one which imposed a tax on urban land at a percentage of the market

> value and was within the ambit of Entry 49 of List II. The history of this entry was also traced in the judgment and it was held that "Entry 49 'taxes on lands and buildings' should be construed as taxes on lands and taxes on buildings."

173. It may not be out of place to note that the vires of the Punjab Urban Immovable Property Act of 1940 which contained somewhat similar provisions was challenged before the Federal Court of India in Ralla Ram v. Province of East Punjabi [1948] F.C.R. 207. There the charging section (Section 3) provided for the levy and payment of annual tax on buildings and lands situate in the rating area shown in the Schedule to the Act at a rate prescribed not exceeding twenty per centum of the annual value of such buildings and lands and Section 5 laid down that the annual value of any land or building was to be ascertained by estimating the gross annual rent at which such land or building might reasonably be expected to let from year to year less certain allowances. One of the grounds urged was that the impugned tax was in substance a tax on income and as such covered by Entry 54 in List I and not by Entry 42 in List II. Turning down the above contention it was observed :

> The Act is to be read as a whole and having regard to the elaborate provisions made in it for determining the annual value of buildings and to the fact that the rate actually fixed in the Official Gazette has a direct reference to the annual value, there can be no doubt that the basis of the tax is annual value.

The Court further said that (see p. 220) :

> ...once it is realised that the annual value is not necessarily actual income, but is only a standard by which income may be measured, much of the difficulty which appears on the surface is removed. In our opinion, the crucial question to be answered is whether merely because the Income-tax Act has adopted the annual value as the standard for determining the income, it must necessarily follow that, if the same standard is employed as a measure for any other tax, that tax becomes a tax on income?

Considering the pith and substance of the legislation the Court said that (see p. 224) :

> There is however nothing in the impugned Act to show that there was any intention on the part of the Legislature to get at or tax the income of the owner from the building.... The annual value, as has been pointed out, is at best only notional or hypothetical income and not the actual income. It is only a standard used in the Income-tax Act for getting at income, but that is not enough to bar the use of the same standard for assessing a Provincial tax. If a tax is to be levied on property, it will not be irrational to correlate it to the value of the property and to make some kind of annual value on the basis of the tax without intending to tax income.

The ultimate conclusion of the Court was that in substance the impugned tax was not a tax on income.

174. Before the vires of the Wealth-tax Act, as originally enacted came to be canvassed before this Court, the matter had engaged the attention of several High Courts. It would appear that throughout this web of decisions (he principal and sometimes the only question raised was, whether it was competent to the Union Parliament to enact a measure which would impose a liability on Hindu undivided families when Entry 86 provided for imposition of a tax on "individuals" and "companies". Chronologically the main decisions are as follows. In Mahavirprasad Badridas v. Yagnik, Second Wealth Tax Officer the petitioner before the Bombay High Court contended that "to the extent the Union Parliament authorised the levy of wealth tax on Hindu undivided families as units, the legislation is ultra vires" and in support of that contention placed reliance on Entry 86. The submission assumed that the levy of wealth-tax fell under Entry 86. The contention of the petitioner was repelled by Shah, J. (as he then was) holding that the expression "individuals" used in defining the topic of legislation would include an association of individuals It is to be noted however that the learned Attorney-General appearing on behalf of the Union of India had contended that even assuming that by the 86th entry in List I of the Seventh Schedule the Union Parliament was not invested with power to legislate for levying wealth-tax on the assets of Hindu undivided families, the Union Parliament was still so invested with authority by Article 248 of the Constitution and Entry 97 in List I of the Seventh Schedule. For the assessee it was submitted that "where the Constitution, in defining powers to legislate on a topic, has by incorporating words of limitation expressly placed a restriction upon the competence of Parliament to enact legislation, relying upon the residuary powers contained in Article 248 and Entry 97 in List I, the restriction cannot be ignored. Shah, J. dealt with this argument by observing :

> On the view I have taken on the interpretation of the expression "individuals" in entry 86, I do not think it necessary to express any opinion on the question whether in the residuary powers of the Union Parliament, power to legislate on a topic which is partially dealt with by a specific entry in the first List may be regarded as included.

> The other learned Judge, Desai, J. expressed himself similarly. In N. V. Subramanian v. Wealth Tax Officer 40 I.T.R. 567 the vires of the Act was challenged by a Hindu undivided family before the Andhra Pradesh High Court the exact contention being "that the respondent cannot take action under the provisions of the Wealth-tax Act, 1957 with respect to a Hindu undivided family on the ground that the Act, in so far as it enables the levy and collection of wealth-tax on the capital value of assets of a Hindu undivided family is beyond the legislative competence of the Union Parliament". No point appears to have been raised as to whether wealth-tax could at all be the subject of a levy under entry 86, as the High Court noted (p. 571) :

> The principal question that falls to be determined is whether the expression 'individuals' in entry 86 can comprehend a Hindu undivided family.

> Reference was made to Mahavirprasad's case (supra) as also decisions turning on the interpretation of the expression "individuals" in Section 3 of the Income-tax Act of 1922 and it was held that the principle of the said decisions applied to the construction of 'individual' in entry 86. Although the Court mentioned that reliance

> had been placed on behalf of the Wealth-tax Officer upon Entry 97 in List I to sustain the imposition it did not feel it necessary to examine the applicability of the said entry.

175. The question cropped up again before the same High Court in P. Ramabhadra Raju v. Union of India 45 I.T.R. 118 and was similarly answered. The argument on behalf of the assessee proceeded on the assumption that entry 86 was the relevant entry for levying wealth-tax but it was inapplicable to the case of a Hindu undivided family.

176. In C. K. Mamihad Keyi v. Wealth-tax Officer 44 I.T.R. 277 the assessee raised in the forefront of his contention that "Parliament was not competent under entry 86 in the Union List to impose a tax called the wealth-tax on the capital value of the assets of Hindu undivided families and of Mappila Marumakkattayam tarwads and also on the capital value of the assets of any person to the extent that they are and may be deemed to be made up of agricultural income." Examining the different provisions of the Act, Velu Pillai, J. observed (see p. 282) :

> These leave no room for doubt in our minds that the pith and substance or the true nature and character of the tax is that it is a levy on the capital value of assets, subject to specified inclusions and exclusions in the content of the term 'assets', agricultural lands being one of the exclusions. To this extent, the wealth-tax is specifically and in substance covered by entry 86 in the Union List.
>
> The learned Judge felt no difficulty in accepting the argument that "lands and buildings" can form part of assets and that "taxes on lands and buildings" within the meaning of Entry 49 of the State List may include a tax thereon on the basis of their capital value. He remarked that the land tax can be related to the annual or capital or sale value of the land.
>
> According to him :
>
> the distinction, real and vital (i.e. between entry 86 and entry 49) between a tax on lands and buildings on the basis of their capital value, and a tax on such capital value itself treating lands and buildings as an item of asset, cannot be ignored.
>
> He further observed :
>
> In the case of a tax whose base or object is lands and buildings, their annual or capital value is but a measure or standard adopted to ensure the justness or reasonableness of the levy, but in the case of a tax on capital value, such value is itself the base or object of the levy.
>
> According to the learned Judge there was an overlapping of imposts under Entry 86 and Entry 49 as in his view :

> To allocate the legislative power to impose a tax on the capital value of lands and buildings, treating them as assets, entirely to the field covered by entry 86 in the Union List is not, as contended, to rob entry 49 in the State List of its content, for even excluding taxes under entries 45 to 48 in the State List, which have some relation to lands or buildings or both, the field is still open under entry 49 for legislation for other taxes on lands and buildings... There is, therefore, really no conflict and no overlapping of jurisdiction in the case of the two entries in question.
>
> The learned Judge was further of the view that:
>
> ...entry 49 must be held to be a general provision for taxes on lands and buildings and to yield to entry 86 which must be held to be a special provision for a particular tax, a tax on the capital value of assets.
>
> On the other aspect of the case e.g. that a tax on the net wealth of an assessee to the extent that it is or may be said to be made up of his agricultural income and as such pertaining to the field marked by entry 46 in the State List the learned Judge pointed out that the charging section in the Act did not purport to tax any income whatever but only the net wealth of an assessee as defined in terms of his assets. He agreed with the view of the Bombay and the Andhra Pradesh High Courts that a Hindu undivided family was not an entity distinct and separate from the members composing it and came within the connotation of the term 'individual' in entry 86. In this view, he felt it unnecessary to consider the alternative argument advanced for the department that even if entry 86 was not applicable the Act was saved by Article 248 read with entry 97 in the Union List.

177. So far as the Allahabad High Court is concerned the notable judgment is that of a Bench of three Judges, Jugal Kishore v. Wealth-tax Officer 44 I.T.R. 94. The judgment of Gurtu, J. shows that the argument on behalf of the assessee was that Entry 86 did not justify an imposition on Hindu undivided families. He appears to have started with the assumption that imposition of tax on net wealth would be observed by Entry 86 but inasmuch as the said entry would not justify an imposition on a. Hindu undivided family resort could be had to the residuary power in Article 248 to justify a legislation of this measure (see p. 100). Upadhya, J. was of the view that "the Act should be declared ultra vires the Parliament so far as it imposed a tax on the capital assets of the Hindu undivided families" (p. 115). Jagdish Sahai, J. concluded that the Union legislature could have enacted the impugned provision by virtue of entry 86" and it was "not necessary to go into the question whether entry 97 read with Article 248 could sustain the impugned provision" (pp. 123-124).

178. In Sarjero Appasaheb Shitole v. Wealth-tax Officer 52 I.T.R. 372 the three main points urged there : (i) wealth-tax on lands and buildings is ultra vires the powers of Parliament; (ii) under any circumstances Parliament could not have imposed wealth-tax on Hindu undivided families; and (iii) the Wealth-tax Act was violative of Article 14 of the Constitution. It was argued on behalf of the assessee that Entry 86 of List I had to be read as subject to Entry 49 in List II; if so read it would be

found that the field of "lands and buildings" was reserved for the State under Entry 49. The first point was rejected on the basis of the earlier decision in Balaka's case 48 I.T.R. 472 holding that "land" other than agricultural land, being a part of the assets, came within the scope of Entry 86. It was argued that Entry 86 of List I did not empower Parliament to levy wealth-tax on undivided families. This point was decided against the assessee by the learned Judges observing (see p. 376) :

> Whenever a question arises as to the source of power, the task of the court is to locate that power in one or the other of the Lists. As mentioned earlier, it is not the case of the assessee that the power in question can be located either in List II or List III. Therefore, it follows that Parliament has power to legislate on the subject either under entry 86, failing that under the residuary power given to it under entry 97. It makes no difference whether the source of the power is in entry 86 or in entry 97. Therefore, we hold that Parliament had competence to enact a law providing for imposing wealth-tax on undivided families.

179. The Madras High Court had to deal with the question in Raja Sir M. A. Muthiah Chettiar v. Wealth-lax Officer 53 I.T.R. 504. The petitioner there asked for the issue of a writ of prohibition to direct (he Wealth-tax Officer to forbear from taking proceedings pursuant to the notices issued and also for a similar writ restraining the Expenditure Tax Officer. The only question in the first petition was, whether Section 3 of the Wealth-tax Act offended Art 14 of the Constitution in that it left out of its ambit Marummakkattayam tarwards. It was held that the charging section of the Wealth-tax Act did not fall within the mischief of the equality clause of the Constitution as Government was free to exercise a wide discretion in selecting the subjects of legislation. The Kerela case above referred to came up in appeal to this Court: the judgment there is reported in 52 I.T.R. 605 and allowing the appeals and remanding the case to the High Court this Court observed that it was not necessary to consider whether the view of the High Court on the first question relating to legislative competence was or was not correct.

180. The judgment of the Special Bench of the Allahabad High Court already referred to came up for consideration in this Court in Banarasi Das v. Taxing Officer . The appellants contended before this Court that the taxes which Parliament was empowered to levy under entry 86 could only be imposed on individuals and if these bodies were outside the scope of entry 86 they could not be subjected to such a levy under Entry 97 "as that entry referred to matters other than those specified in entries 1 to 96 of List I as well as those enumerated in Lists II and III and since Wealth-tax was a matter specifically enumerated in Entry 86, Entry 97 could not be held to take in the said tax." In regard to Article 248 the argument was that it must be read with Entry 97 and if wealth-tax in respect of the capital value of assets of Hindu undivided families was outside both Entry 86 and Entry 97, the residuary power of legislation conferred on Parliament by Article 248 could not be invoked in respect of tax imposed on the capital value of assets of Hindu undivided families by the impugned provision" (p. 358).

181. On behalf of the Wealth Tax Officer it was argued that the impugned provision was primarily valid under Entry 86 in List I. In the alternative, it was argued that Entry 97 which was a residuary entry would take in all matters not enumerated in List II or List 111 including any tax not mentioned

in either of those Lists. It was urged that the words "matter" mentioned in Entry 97 cannot take in taxes specified in Entry 86, but it refers to the subject matter in respect of which Parliament seeks to make a law under Entry 97. The bulk of the arguments there turned on the interpretation of the word "individuals" in Entry 86 and as to whether the use of that word justified the levy of a tax on Hindu undivided families. According to this Court :

> the basic assumption on which the appellants' argument rests is that the Constitution-makers wanted to exclude the capital value of the assets of Hindu undivided families from taxes. That is why their contention is that the impugned provision would not be sustained either under entry 86 or under entry 97 of List or even under Article 248. (p. 360).

To this the Court's reaction was :

> On the face of it, it is impossible to assume that while thinking of levying taxes on the capital value of assets, Hindu undivided families could possibly have been intended to be left out", (p. 361).

It was further said (p. 364) :

> The Constitution-makers were fully aware that Hindu citizens of this country normally form Hindu undivided families and if the object was to levy taxes on the capital value of assets it is inconceivable that the word 'individuals' was introduced in the entry with the object of excluding from its scope such a large and extensive area which would be covered by Hindu undivided families.

Accordingly the Court came to the conclusion that the "impugned section is valid because Parliament was competent to legislate in respect of Hindu undivided families under Entry 86". Having come to the said conclusion it was said (see at p. 364) :

> This question has been considered by several High Courts and the reported decisions show consensus in judicial opinion in favour of the construction of Entry 86 which we have adopted.

This is followed by reference to the decisions of the Bombay High Court, Andhra Pradesh High Court, Mysore High Court and the Madras High Court which have been already noted. According to this Court:

> ...these reported decisions show that the validity of the impugned provision was challenged before the High Courts on the ground that the Hindu undivided family is an association and as such, the capital value of its assets could not be taxed under Entry 86.

The Court observed at p. 365 :

> Since we have come to the conclusion that Entry 86 covers cases of Hindu undivided families, it follows that the impugned provision is valid under the said Entry itself. That being so, it is unnecessary to consider whether the validity of the impugned provision can be sustained under Entry 97 or under Article 245 of the Constitution.

182. It will be noted that the argument there was not whether a tax or net wealth was covered by the entry "capital value of the assets" but whether "individuals" on whom the burden was to fall under that entry, could include Hindu undivided families and this Court was really not called upon to examine this aspect of the matter.

183. In S.C. Nawn v. Wealth-tax Officer (supra) the substance of the argument was that wealth-tax was chargeable only on the accretion of wealth during the financial year and that Parliament could not have intended that the same assets should continue to be charged to tax year after year. It is to be noted that in the writ petition filed in this Court, the assessee did not contend that the tax on net wealth was not chargeable under the Act of 1957 under Entry 86 or in any other Entry of the Union List and naturally there was no occasion for this Court to go into that question as is clear from a passage as p. 110 of the judgment:

> The Parliament enacted the Wealth-tax Act in exercise of the power under List I of the Seventh Schedule entry 86-"Taxes on the capital value of assets, exclusive of agricultural lands, or individuals and companies; taxes on the capital of companies". That was so assumed in the decision of this Court in Banarsi Dass v. Wealth Tax Officer, Special Circle, Meerut (supra), and counsel for the petitioner accepts that the subject of Wealth-tax Act falls within the terms of entry 86 List I of the Seventh Schedule. What he argued however was that...since the expression 'net wealth' includes non-agricultural lands and buildings of an assessee, and power to levy tax on lands and buildings is reserved to the State Legislatures by Entry 49 List II of the Seventh Schedule, the Parliament is incompetent to legislate for the levy of wealth-tax on the capita' value of assets which include non-agricultural lands and buildings.
>
> This was however turned down by the Court observing :
>
> The tax which is imposed by entry 86 List 1 of the Seventh Schedule is not directly a tax on lands and buildings. It is a tax imposed on the capita] value of the assets of individuals and companies, on the valuation date. The tax is not imposed on the components of the assets of the assessee : it is imposed on the total assets which the assessee owns, and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account. In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets, it may be possible to break up the tax which is leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. In such a case, the

component out of the total tax attributable to lands and buildings may in the manner of computation bear similarity to tax on lands and buildings levied on the capital or annual value under entry 49 List II. But the legislative authority of Parliament is not determined by visualizing the possibility of exceptional cases of taxes under two different heads operating similarly on tax-payers.

The Court went on to add :

Again entry 49 List II of the Seventh Schedule contemplates the levy of tax on lands and buildings or both as units. It is normally not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under entry 86 List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under entry 49 List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not, in our judgment, make the fields of legislation under the two entries overlapping.

184. It is therefore quite clear that the whole discussion proceeded on the assumption that imposition of tax on the net wealth was justified under Entry 86 List I. The assessee's contention was that capital value of lands and buildings would fall under entry 49 and would therefore fall within the exclusive field of legislation of the State. This was turned down by the Court holding that the concept of a tax on net wealth which included not only the value of the assets but excluded the general liability of the assessee to pay his debts was one entirely different from a concept of tax attributable to lands and buildings as such. With respect, this was the proper approach to the identification of the subject matter of legislation i.e. that the levy had no direct relationship to the aggregate value of the assets of an "individual" but his net worth which was to be determined by deducting his liabilities from the total value of the assets held by him.

185. In Assistant Commissioner v. Buckingham & Carnatic Co. Ltd. (supra) Madras Act 12 of 1966 was inter alia challenged before the Madras High Court as violative of Articles 14 and 19(1)(f) of the Constitution. Before this Court it was contended inter alia on behalf of the assessee that the impugned Act fell under Entry 86 List 1 and not under Entry 49 of List II, and as Entry 49 envisaged taxes on lands and buildings the impugned Act which imposed tax on land could not be held to fall under that entry. The argument on behalf of the respondent was that the "impugned Act was, both in form and substance taxation on capital and was hence beyond the competence of the State Legislature." It was urged that "to tax on the basis of capital or principal value of assets was permissible to Parliament under List I, entries 86 and 87 and to the State under entry 48 of List II "Taxation under Entries 86 and 88 formed a group of entries the scheme of which was to carry out the directive principle of Article 39(c) of the Constitution and the method of taxation of capital or principal value was prohibited even to Parliament in respect of other taxes and to the States except

in respect of estate duty on agricultural land". This was turned down by the Court observing (see p. 277) :

> ...there is no warrant for the assumption that entries 86, 88 of List I and Entry 48 of List II form a special group embodying any particular scheme.... The legislative entries must be given a large and liberal interpretation, the reason being that the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere simplex enumeratio of broad categories. We see no reason, therefore, for holding that the entries 86 and 87 of List I preclude the State Legislature from taxing capital value of lands and buildings under Entry 49 of List II.

The Court went on to add :

> In our opinion there is no conflict between Entry 86 of List I and Entry 49 of List II. The basis of taxation under the two entries is quite distinct. As regards Entry 86 of List I the basis of the taxation is the capital value of the asset. It is not a tax directly on the capital value of assets of individuals and companies on the valuation date. The tax is not imposed on the components of the assets of the assessee. The tax under Entry 86 proceeds on the principle of aggregation and is imposed on the totality of the value of the assets. It is imposed on the total assets which the assessee owns and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account.... But entry 49 of List II contemplates a levy of tax on lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings and bears a definite relation to it. Tax on the capital value of assets bears no relation to lands and buildings which may form a component of the total assets of the assessee.... For the purpose of levying tax under Entry 49, List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not make the fields of legislation under the two entries overlapping. The two taxes are entirely different in their basic concept and fall on different subject matters.

186. Sri Prithvi Cotton Mills Ltd. v. Broach Municipality (supra) was the aftermath of the judgment of this Court in Patel Gordhandas's case (supra). To undo the effect of that decision the Gujarat Legislature passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act 1963 seeking to validate the imposition of the tax as well as to avoid any future interpretation of the Act on the lines on which Rule 350-A was construed. Section 3 of the Act was passed to validate past assessments and collection of rates on lands and buildings on the basis of capital value or a percentage of capital value as also all assessments made before the passing of the Validation Act. At the same time Section 99 was enacted in the Gujarat Municipalities Act to provide for the levy of a tax on lands and buildings "to be based on the annual letting value or the capital value or the

percentage of the capital value of the buildings or lands or both." The main question before the Court was whether the legislature possessed competence to pass a law imposing a tax on lands and buildings on the basis of a percentage of their capital value. The Court noted that it was conceded by counsel for the appellants that Section 99 of the Municipalities Act was permissible legislation under Entry 49 of List TT.

The Court observed that :

> the doubt which was created by entry 86 of List I no longer exists after the decision in Sudhir Chandra Nawn's case (supra). As it had been held in that case that tax under entry 86 was not a direct tax on lands and buildings but on net assets it was open to a State Legislature to levy a tax on lands and buildings as units indicating the mode of levy which could include one based on a percentage of the capital value.
>
> It will thus be clear from the elaborate discussion of the arguments in all the cases regarding the imposition of wealth-tax in different High Courts that the principal ground of attack on the Wealth-tax Act was that "Hindu undivided families" were not "individuals" and could not be brought to tax under Entry 86 of List I directly or by the aid of Article 248 read with Entry 97 of the said List. In most of the cases the learned Judges did not feel called upon to express any opinion with regard to the applicability of Entry 97. Barring the decision in Mohammad Keyi's case in the Kerala High Court, little was said about the scope of this Entry read with Article 248. When the matter came to this Court effectively for the first time in Banarsi Das's case (supra) the Judges did not think that the legislative history in the matter of denotation of the word "individuals'" on which the appellants relied could really afford any material assistance in construing the word "individuals" in entry 86. The Court held that "individuals" in Entry 86 would include Hindu undivided families as had been the view of many High Courts.

187. With respect no serious attempt was made in any of the cases to properly identify the subject matter of the legislation imposing the tax and ascertain whether capital value of assets meant the same thing as net wealth as defined in the Wealth Tax Act. The various decisions and authorities cited above which bear on the true meaning of the expression "capital value of assets" make it amply clear that the same can only mean the market value of the assets less any encumbrances charged thereon. The expression does not take in either the general liabilities of the individual owning them or in particular the debts owed in respect of them. In my view, the subject matter of legislation by Wealth Tax Act is not covered by Entry 86 but by Entry 97 of List I. The capital value of the assets of an individual is as different from his net wealth as the market value of the saleable assets of a business is from its value as a going concern ignoring the goodwill. When a business is valued as a going concern its assets and liabilities whether charged on the fixed assets or not have to be taken into account but in computing the value of the tangible assets of the business the general liability of the business apart from the encumbrances on its assets do not figure1. To what use entry 86 can be put is not for us to speculate upon. It appears that the view of Professor Kaldor as expressed in his report on Indian Tax Reform (Chapter 2) was that an annual tax on wealth should be a tax on

accrual and not a tax on the principal itself. His suggestion was that the tax should be on a graduated scale with a very low rate at the lowest slab so that an assessee could meet both the income-tax liability and the wealth-tax liability without feeling the pinch. It must also be noted that in his view agricultural land could only be taxed by way of wealth as a result of a Constitutional amendment. The Government of India do not appear to have proceeded on the lines of Professor Kaldor's suggestion. Probably Entry 86 of List I can be utilised for levying a capital levy in an emergency or by way of a marginal imposition of an individual's assets without considering his holding of agricultural land. Even assuming Entry 49 of List II envisages imposition of taxes on lands and buildings adopting a mode of a certain percentage on their capital value. lands and buildings must still be subject to taxation as units and no aggregation is possible. Further, no State Legislature is competent to levy a tax which would embrace an individual's assets in the shape of lands and buildings situate outside the State.

188. The subject matter of wealth tax including or excluding agricultural lands etc. is not covered by Entry 86 of List I read with Article 246 of the Constitution, but by Entry 97 of List I read with Article 248. Although read by itself Entry 97 may seem to suggest that the expression "any other matter" has reference to the other entries in List I, Article 248(1) makes it clear beyond doubt that such matters are those which are not covered by entries in List II or List III. The Constitution has not denied to the Union power to levy wealth tax inclusive of agricultural land as was contended for on behalf of the respondents.

189. The residuary field of legislation no longer lies barren or unproductive. It has already yielded fruitful sources of taxation like the Gift Tax Act, the Expenditure Tax Act and borrowings as under the scheme of annuity deposits.

190. In the above view of the matter, it is not necessary to discuss the points of similarity between the scheme of distribution of legislative power under our Constitution and sections 91 and 92 of the British North America Act of 1867. Nor is it relevant to consider whether the words "exclusive of agricultural land" in Entry 86 of List I are words of exclusion and not of prohibition.

191. I would therefore allow the appeal and set aside the Judgment of the High Court but make no order as to costs.

192. In view of the majority judgments the appeal is allowed There shall be no order as to costs.