Supreme Court of India
Commissioner Of Wealth Tax vs Dr. Karan Singh And Others Etc on 4 February, 1993
Equivalent citations: 1993 SCR (1) 560, 1993 SCC Supl. (4) 500
Author: L Sharma
Bench: Sharma, L.M. (Cj), Pandian, S.R. (J), Mohan, S. (J), Jeevan Reddy, B.P. (J), Bharucha S.P. (J)

PETITIONER:
COMMISSIONER OF WEALTH TAX

Vs.

RESPONDENT:
DR. KARAN SINGH AND OTHERS ETC.

DATE OF JUDGMENT04/02/1993

BENCH:
SHARMA, L.M. (CJ)
BENCH:
SHARMA, L.M. (CJ)
BHARUCHA S.P. (J)
PANDIAN, S.R. (J)
MOHAN, S. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1993 SCR (1) 560 1993 SCC Supl. (4) 500
JT 1993 (2) 321 1993 SCALE (1)270

ACT:
Wealth Tax Act, 19.57.
S.1(2), 2, 3, 4, 5, 6, 7-Application of the Act (not including within its Purview agricultural lands/assets) to State of Jammu and Kashmir-Held the Act as originally, enacted is covered by Entry 86 of List I of Schedule Vii to the Constitution of India and its extension to the State of Jammu and Kashmir is constitutional.
Wealth Tax- Held, is a net wealth tax-The tax is not upon the assets as such but is upon individuals, companies etc. with reference to Capital value of the assets held by them-The tax is an annual levy on total value of all assets Owned by an assessee after deductions of debts and liabilities.
Constitution of India, 1957.
Article 246, Seventh Schedule, List I, Entry 86-Taxes on capital value of assets exclusive of agricultural land, of individuals and companies-Held the tax contemplated by the Entry is a tax upon the net wealth and is a net wealth tax and is a net Wealth-tax Net wealth of an assessee Means "What all he owns minus what all he ows"-Wealth Tax Act , 1957 as originally enacted is covered by Entry 86.
Interpretation of Statutes-

Taxing Act-Interpretation of.
Court judgrnents-Principles of interpretation-Explained.

HEADNOTE:
The respondents riled writ petitions before the High Court challenging the application of the Wealth Tax Act, 1957 to the State of Jammu and Kashmir on the ground that- the Act was relatable only and exclusively to Entry 97 of list 1 of Seventh Schedule to the Constitution of India and 569
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since the said entry had no application to the State of Jammu & Kashmir, the application of the Act to the said State was incompetent The High Court allowed the writ petitions the revenue flied the appeals by special leave.
The assessee-respondents contended that the question as to the Entry to which the Wealth Tax Act Is relatable was concluded by the decision of a seven Judge Bench of this Court* which laid down that the Act is covered by Entry 97. On merits it was contended that the expression 'capital value of the assets' in Entry 86 did not signify the same thing as net wealth as defined in the Wealth Tax Act, and that for calculating the 'capital value of assets' only the incumbrainces charged on the assets could be deducted from the market value of the assets and not the general liabilities of the Individual owning the assets, which were to be taken into account for the purpose of the Wealth Tax and that, as such, the Act was relatable to Entry 97 and not to Entry 86 of list 1.
The revenue contended that the Act, so far as It applied to nonagricultural assets, was relatable to Entry 86 and not to Entry 97 of list 1 and, since the Act as applied to Jammu and Kashmir did not take in agricultural lands/assets, section 1(2) of the Act extending the application of the Ad to the State of Jammu & Kashmir could not be said to be ultra vires the powers of Parliament; that this Court in Dhillon's case* did not finally determine which Entry covered the Wealth Tax Act as originally enacted as the issue did not arise for decision in that case, and the controversy was confined to the validity of section 24 of the Finance Act, 1969, amending the provisions of the Wealth Tax Act, 1957.
Allowing the appeals, this Court,
HELD- 1.1 The Wealth Tax Act, 1957, was covered by Entry 86 of list 1 of the Constitution, and Its extension to the State of Jammu and Kashmir was perfectly constitutional. The High Court was not right in holding otherwise. [593D]
Banarasi Dos v. Wealth Tax Officer, 56 I.T.R. 224; Sudhir Chandra Nawan v. Wealth Tax Officer, 69 I.T.L. 897 and Assistant Commissioner of Urban Land Tar, Madras v. Buckingham and carmatic Co. ltd, 75 I.T.R. 603, relied on.
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Karan Bahadur Chowakkaram Kaloth Mammad Keyi v. Wealth Tax Officer, 44 I.T.R. 277; Vysyaraju Badri Narayanavnurthy v. Commissioner of Income Tax Bihar and Orissa, 56 ITR 298 and Sri Krishna Rao L. Balekai v. Third Wealth Tax Officer, City Circle 1, Bangalore, 48 I.T.R. 472, referred to as approved.

*Union of India v. H.S. Dhillon [1972] 2 SCR 33, explained and distinguished.

V.Padmanabha v. Dy. Tahsildar, Chittur, AIR 1963 (Kerala) 155; M.B. Thakar v. S.P. Pande, A.I.R. 1964 (Bom.) 170 and Income Tax Officer, Alleppey v. M.C. Poonnoose and others, [1970] 1 SCR 678, cited.,

1.2The Wealth Tax Act, 1957 (which was extended to J&K) Is a 'net wealth tax' Act imposed upon the Individuals, groups of individuals like H.U.F. and companies. The tax Is not upon assets as such but is upon the individuals, groups of individuals and companies with reference to the 'capital value of the assets' held by them. [590GH, 591A]

Assistant Commissioner of Urban Land Tax v. Buckingham Camatic Co. Ltd., 75 ITR 603 and Sudhir Chandra Nawn v. Wealth Tar Officer, 69 I.T.R. 897, relied on.

Sir Byramjee Jeejeebhoy v. Province of Bombay and Others, 1940 (Bombay) 65; Municipal Corporation, Ahmedabad v. Gordhandas, 1954 (Bombay) 188 and New Manek Chowk Mills v. Municipal Corporation [1967] 2 SCR 679, relied on.

Ralle Ram v. Province of East Punjab AIR 1949 FC 81 and Municipal Corporation v. Gordhandas AIR 1954 (Bombay) 188 at 194, inapplicable.

OECD Committee on 'Fiscal Affairs, reported in Indian Tar Reforms by Kaldor, referred to.

13 In view of ss. 2(e), 2(m) and 3 to 7 of the Wealth Tax Act, Wealth- tax is an annual levy on the total value of all assets owned by an assessee excluding exempted properties. Such value is the price which the property would fetch if sold In the market; in other words its capital value. From the capital value, certain liabilities and debts are to be deducted to arrive at the net wealth. The basis of the tax is capital value

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and net wealth assessable is capital value after deductions of debts and liabilities. [p.589AB]

1.4The expression 'capital value' of as-gets is not capable of any prescribed definition but the taxes on capital are the net worth tax, the real property tax, and the capital levy under the, Equalisation of Burdens law. [P.589BC]

"Harvard Law School World Tax Series: Taxation in the Federal Republic of Germany, referred to.

1.5In construing the language of constitutional enactments conferring legislative power' he most liberal construction should be put upon the words so that the same have effect in their widest amplitude. The heads of legislation should not

be construed in a narrow and pedantic sense but should be given a large and liberal interpretation. [p.588C-F]
Navinchandra Mafatlal v. The Commissioner of Income Tax, Bombay city, [1955] 1 SCR 829, 836, 837;Sri Ram Rant Naarain Medhi v. The State of Bombay, [1959] Suppl. 1 SCR 489 and British Coal Corporation v. The King, (1935) Appeal cases p.500, referred to.
1.6None of the items in the Legislative lists of the Constitution is to be read in a narrow or restricted sense. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. [p.577CD]
1.7The tax contemplated by Entry 86 is a tax upon the net wealth of an individual. It is a net wealth tax. Net wealth of an individual necessarily means "what all he owns minus what all he owes" and this is what the Act purports to tax. The language of Entry 86 clearly indicates that the tax is upon the individuals and not directly upon the assets or upon their value. It cannot be said that since the tax is contemplated to be levied upon the capital value of the assets of an individual, the exclusion of his debts and other liabilities changes the nature and character of the tax. [p.591D-G]
2.1The question whether the Wealth Tax Act, 1957 (without reference to 'the Finance Act, 1969) falls within Entry 86 did not arise for consideration in Dhillon's case* and the majority judgment cannot be understood to have recorded a concluded opinion on the issue, which was left open for future when such occasion arose. [pp.582B, 584G, 586G]
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*Union of India v. H.S. Dhillon [1972] 2 SCR 33, and distinguished.
2.2Every judgment most be mad as applicable to the particular facts proved or assumed and the generality of the expressions used most be read as qualified by the particular facts of the case and the issues raised therein. [p.581E]
The State of Orissa v. Sudhansu Sekhar Misra and Ors., [1968] 2 SCR 154,- Additional District Magistrate, Jabalpur v. Shivakant Shukla [1976] 2 SCC 521 (p. 714 pr. 474); Sreenivasa General Traders and others v. State of Andhra Pradesh and Others, [1983] 4 SCC 353 p. 379 pr. 30 and Rajput Ruda Maha and Others v. State of Gujarat, [1980] 2 SCR 353 (354H, 356D-E), referred to.
Guardian; of Poor v. Guardians of Poors, 1889 (24) QBD 117; Overseers of Manchester v. Guardians of Ormskrik Union, 1890 (24) QBD 678, Rustom Cavasjee Cooper v. Union of India, 1970 (3) and Ramesh Birch and others v. Union of India and others, 119891 Supp. 1 SCC 430, referred to.
Constitution of India by D.D. Basu, (6th Edition) Vol. H, referred to.
2.3 The basic rules of interpreting Court judgments are the same as those of construing other documents.The only difference is that the Judges are presumed to know the

tenancy of parties concerned to interpret the language in the judgments differently to suit their purposes and, consequently, It is Important that the words am chosen very carefully so as not to give room for controversy.The principle Is that if the in a judgment is plain and unambiguous and can be reasonably interpreted In only one way it has to be understood in that sense, and any Involved principle of artificial construction has to be avoided. Further, If there be any doubt about the decision, the entire Judgment has to be considered, and a stray or a casual remark cannot be treated as a decision. [p.584DE]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 129093/85. From the Judgments and Orders dated 14.11.1984 & 19.8.1983 of the Jammu & Kashmir High Court in W.P. Nos. 695/82,694/82, 207/81 and 206/81.

Clvil Appeals Nos. 986-1080 of 1985.

D.P. Gupta, Solicitor General V. Gauri Shankar, B.B. Ahuja, Soli J. Sorabjee, M.H. Beg, D.D. Thakur, P. Parmeshwaran, Ranbir Chandra, S. Rajappa, Ms. A. Subhashini, P. H. Parekh, Fazal, Ms. Madhu Khatri L.K Gupta, Arun Madan, E.C. Aggarwat Ms. Purnima Bhatt, Atul Sharma, M.N. Bhat, Manoj Arora, Avant Pauli, Vijay Pandita, R.F. Nariman, J.P. Pathak and M. Veerappa for the appearing parties.

The Judgment of the Court was delivered by SHARMA, CJ. The respondents in these appeals have successfully contended before the High Court that the Wealth Tax Act, 1957 is not applicable to the State of Jammu and Kashmir inasmuch as Section 1(2) of the Act in so far as it extends the Act to Jammu and Kashmir, is ultra vires the power of Parliament. The High Court hag upheld their argument that in view of the special provisions contained in Article 370, the Parliament had no legislative competence to extend the Act to the State of Jammu and Kashmir.

2. The provisions in Article 370 (omitting the parts which are not relevant here) are in the following terms:-

> "Temporary provisions with respect to the State of Jammu and Kashmir- (1) Notwithstanding anything in this Con- stitution,-
>
> (b) the power of Parliament to make laws for the said State shall be limited to
>
> (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion

> Legislature may make laws for that State; and
>
> (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may be order specify.
>
> (d) such of the other provisions of this Constitution apply in relation to that State subject to such exception and modifications as the President may by order specify."

By the Presidential order made under Article 370 (1) called the Constitution (Application to Jammu & Kashmir) Order, 1954, the provisions of the Constitution of India were applied to the State of Jammu & Kashmir with several exceptions and modifications. The words "Notwithstanding anything in Clauses (2) and (3)" occurring in Clause (1), and Clauses (2), (3) and (4) of Article 246 were omitted. Article 248 and Entry 97 of List I, List I1 and List III (concurrent List) of the Seventh Schedule too were omitted. Thus the Parliament was vested with the power to make laws only with respect to the matters enumerated in Entries 1 to 96 of List I. The residuary power was retained by the State. Some modifications have been made from time to time in the 1954 order, but they are not relevant for the present purpose and need not be noticed. According to the respondents, the Act is relatable only and exclusively to Entry 97 of List I and since the said Entry has no application to the State of Jammu and Kashmir, application of the Act to their State is incompetent. The High Court has upheld this contention. If the above premise is correct, there is no doubt that these appeals should fail. The appellant however, submits that the Act, in so far as it applies to non-agricultural assets, is relatable to Entry 86 of List I and not to Entry 97. it is common ground that the Act as applied to Jammu and Kashmir does not take in Agricultural lands/asserts.

3. The Parliament has been vested by Article 246 (1) of the Constitution, with the exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule. Entry 86 of the Union List is in the following terms:-

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

The Act as it was initially passed in 1957 did not apply to agricultural land. It was only by an amendment in 1969 that the agricultural land was also brought within the purview of the Act.

4. The principal question that arises for consideration in these appeals is to, which entry does the Act (minus the agricultural land) relate to Entry 86 as contended by appellant or to Entry 97 as contended by the respondents?

5. According to the learned counsel for the assessee- respondents the issue is concluded by the decision of a seven-Judge Bench of this court in Union of India v. H.S. Dhillon, [1972] 2 SCR 33. According to them, the decision does lay down in unmistakable terms that the Act is covered by Entry 97. Even on merits, they say, the Act is relatable to Entry 97 List I and not to Entry 86 of List I. The learned counsel for the appellants, on the other hand, say that Dhillon does not lay down any such proposition. According to them, the earlier decisions of the Constitution Benches holding the

said Act as relatable to entry 86 are in no manner shaken by Dhillon. They argued further that independent of any decision, the Act is clearly relatable only and exclusively to Entry 86 List I. Reliance upon Entry 97 of List I is necessary to sustain the extension of the Act to agricultural lands. But inasmuch as the Act, as applied to the State of Jammu and Kashmir has no application to agricultural lands/assets Entry 97 is irrelevant in the present case they say-

6. The Wealth Tax Act, 1957 as passed imposing a tax on the capital value of the net wealth of every individual Hindu Undivided Family and company., Section 3 provides for a tax in respect of net wealth on the corresponding valuation date. The expression "net wealth' has been defined by section 2 (m) as the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets on the valuation date is in excess of the aggregate value of all the debts owed by the assessee. Section 2 (e) declares 'assets" to include property of every description movable or immovable excepting, agricultural land inter alia. By section 24 of the Finance Act, 1969 (Act 14 of 1969) agricultural land was prospectively included within the ambit of "assets. It would be instructive to examine the decisions of this Court dealing with the Act prior to the amendment Act 14 of 1969.

7. In Banarsi Das v. Wealth Tax Officer, 56 I.T.R. 224 the contention raised was that under entry 86 of List I of the Seventh Schedule, the Parliament was competent to levy tax only upon the wealth of individuals but not on the wealth of groups of individuals like H.U.F. It was argued that tax on the wealth of Hindu Undivided Families cannot also be sustained with reference to Entry 97, inasmuch as the said Entry refers to matters other than those specified in the Entries I to 96 in List I. Since the wealth-tax falls expressly under Entry 86, it was argued, Entry 97 cannot be resorted to. Entry 97 reads "any other matter not enumerated in List I1 or List III including any tax not mentioned in either of those Lists". This argument was repelled by a Constitution Bench of this Court holding that the word 'individuals' in Entry 86 takes within its sweep groups of individuals like Hindu Undivided Families and that there was no basis for placing a restricted meaning upon the word "individuals' in the said entry. The Court reiterated the well established proposition that none of the items in the Legislative Lists of the Constitution is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. Both the parties before the Court proceeded on the basis that the Act is relatable to Entry 86 alone. This was also the basis of the decision of the Court.

8. In Sudhir Chandra Nawn v. Wealth Tax Officer, 69 I.T.R. 897, the constitutional validity of Section 7 (1) of the Wealth Tax Act was challenged. It was urged by the assessee-petitioners that Entry 86 of List I is, really, a tax upon lands and buildings-which tax can be imposed only by the State Legislature under Entry 49 of List II. (Entry 49 of List I1 reads as follows: "49. Taxes on lands and buildings"). The argument was that the "capital value of the assets" occurring in Entry 86 takes in the value of the lands and buildings and, therefore, the Parliament was not competent to levy tax on such assets. This argument was repelled by a Constitution Bench holding that in the case of wealth-tax, the charge is on the valuation of the total.' assets (inclusive of lands and buildings) minus the value of debts and other obligations which the assessee has to discharge whereas, in the case of tax on lands and buildings, the value capital or annual would be determined by taking the land or building or both as a unit and subjecting the value of a percentage to tax It was observed :

"Merely because in determining the taxable quantum under taxing statutes made in exercise of power under Entries 86, List I and 49, List II, the basis of valuation of assets is adopted, trespass on the field of one legislative power over another may not be assumed". Shah, J. referred with approval to the decisions of High Court of Kerala (44 I.T.R. 277), Orissa (.56 I.T.R. 298) and (48 I.T.R. 472) holding that the power to levy tax on lands and buildings under Entry 49 List II does not trench upon the power conferred upon the Parliament by Entry 86, List I. Accordingly, the learned Judge held that the Wealth Tax Act is not ultra vires the powers of the Parliament. The entire decision proceeded on the basis that the Wealth Tax Act is referable to Entry 86 of List I.

9. In Assistant Commissioner of Urban Land Tay, Madras v. Buckingham and Camatic Co., Ltd, 75 I.T.R. 603 it was contended that the Madras Urban Land Tax Act, 1966 imposing a tax on urban land at a percentage of market value is outside Entry 49 of List II and falls within Entry 86 of List I and, therefore, the State Legislature was incompetent to enact the said law. The argument was rejected. It was pointed out that by a legislation in exercise of the power under Entry 86 of List I, tax is contemplated to be levied on the value of the assets (subject to certain deductions) whereas, for the purpose of levying tax under Entry 49 of List II, the State Legislature may adopt the annual or capital value of the lands and buildings as the basis for taxation. It was also held that the adoption of the annual or capital value of lands and buildings for determining the tax liability under Entry 49 of List II will not amount to trenching upon the field reserved to the Parliament under Entry 86 of List I. Accordingly, the validity of the Madras Act was upheld.

10. Now to Dhillon. The main contention urged by the learned counsel for the respondents calls for a close examination of the judgment to determine the ratio underlying it. As stated hereinbefore, by section 24 of the Finance Act, 1969, agricultural land was included within the meaning of the expression 'assets' as defined in the Wealth Tax Act. The validity of the Amending Act was challenged before the High Court of Punjab and Haryana on the ground that the Parliament was not competent to levy wealth-tax upon agricultural land inasmuch as entry 86 expressly excludes agricultural land from its purview. The High Court upheld this submission by a majority of 4 to 1. The Union of India filed an appeal before this Court, which was heard by a Bench of seven Judges. Three judgments were delivered- one by S.M. Sikri, CJ., for himself and for S.C. Roy and D.G. Palekar, JJ., holding the Amendment as valid; second a separate but concurring judgment by G.K Mitter, J., and the third (the dissenting opinion) by J.M.,Shelat, J., on behalf of himself and A.N. Ray and I.D. Dua, JJ. The reasoning of Mr. Soli Sorabjee, learned counsel for the respondents runs as follows: Shelat, J. (minority opinion) addressed himself pointedly to the question whether Entry 86 could be held to cover the enactment in question and the definite conclusion was that it did. Since agricultural land has been excluded from the purview of Entry 86 in express terms, he held that entry 97 cannot be relied upon or resorted to sustain the amendment impugned therein. Accordingly, he concluded that the amending Act was ultra vires the powers of the Parliament. Mitter, J. on the other hand, declared in unhesitating terms that Entry 86 did not cover either the Act as originally enacted or as amended by Act 24 of 1969. Sikri, CJ., no doubt, adopted a different approach altogether. According to the learned Chief Justice, it was not really necessary to examine whether the impugned amendment is relatable to Entry 86 or 97 of List I; the correct approach was to find out whether the impugned Act related to any of the entries in List II; and if it did not, no further enquiry was needed to be made and Parliament must be held to be competent to enact the

impugned legislation. On this reasoning, the impugned Act was held intra vires the Parliament. In view of this finding it was unnecessary for the learned Chief Justice to go into the question whether the impugned amendment is relatable to Entry 86 or 97 of List I, but even then he thought it appropriate to do so as otherwise the minority view would have become binding on the principle affirmed in V Padmanabha v. Dy. Tahsildar, Chittur, AIR 1963 (Kerala) 155; M.B. Thakar v. S.P. Panda, A.I.R. 1964 (Bombay) 170 and Income Tax Officer, Allegheny, v. M.C. Poonnoose and Others, 119701 1 SCR 678 at 681G to 682A. In this view of the matter, the learned Chief Justice expressly dealt with this issue and held that even the principal Act is relatable only to Entry 97 of List I. Particular emphasis is laid on the passage at p.73 G to p. 74 E of the judgment published in the Supreme Court Reports. This opinion, supported as it is by the opinion of Mitter, J., concludes the issue- says Mr. Sorabjee.

11. Mr. Sorabjee further contended that whatever has been said in the judgment of Mitter, J., must be treated to be the majority view. In support of this proposition, Mr. Sorabjee relied upon the observations in Guardians of Poor v. Guardians of Poors, 1889 (24) Q.B.D. 117 at 120, and Overseers of Manchester v. Guardians of Omukrik Union, 1890 Q.B.D. 678 at 682. Describing the views expressed by D.D. Basu on Article 141 in his Commentary on the Constitution of India (6th edition, volume H at pages 14 and 15) as the Correct approach of interpreting a judgment where the judges holding the majority give independent judgments, Mr. Sorabjee contended that when one of the Judges expounds the law on a particular point, but others do not openly dissent from it must be taken that all the concurring in the majority decision agreed to that exposition. He on the following observations from the case of Guardian of Poor v. of Poors, 1889 (24) QBD 117:

> "We know that each of them considers the matter separately, and then they consider the matter jointly, interchanging their judgment, so that every one of them has seen the judgments of others. If they mean to differ in their view, they say so openly when they come to deliver their judgments and if they do not do this, it must be taken that each of them agrees with the judgments of the others."

The learned counsel also recommended adoption of the practice followed England for considering the judgments of the House of Lords indicated case of Overseers of Manchester v. Guardians of Ormskrik Union, 1890 24) QBD 678 in the following terms:

> "Where in the House of Lords one of the learned Lords gives an elaborate explanation of the meaning of a statute, and some of the other learned Lords present concur in the explanation, and none express their dissent from it, it must be taken that all of them agreed in it."

By way of further elaboration Mr. Sorabjee contended that this principle is applicable even to the views of dissenting Judges, unless the majority opinion expressly disagrees with the same. He referred to the decision in Rustom Cavasjee Cooper v. Union of India, [1970] 3 SCR 530, as an illustration of this proposition where the observations in the judgment of Ray, J. cannot be treated to be the majority view for the reason that at stage 561G reservation was expressed by Shah, J. in express terms. The argument, therefore, is that since in judgment of Sikri CJ. we do not find any

dissent or reservation from the views of Mitter, J. on the non-apapplicability of Entry 86 of the Wealth Tax Act, the said view mum be treated to be that of all the four Judges forming the majority. Reliance was also placed on paragraph 20 of the Judgment in Rwnesh Birch and Others v.

Union of India and others, [1989] Supp. 1 SCC 430.

12. Dr. Gouri Shankar, on the other hand, submitted that the question as to which entry covered the Wealth Tax Act as originally enacted did not arise for decision in the case at all and that the controversy in Dhillon was confined to the validity of section 24 of the Finance Act, 1969 in so far as it amended the provisions of the Wealth Tax Act. According to hint, the judgment of Sikri CJ., did not finally determine the issue which Entry covered the main Act. The observations relied upon in the judgment of Sikri CJ., are mere passing observations in the nature of loud thinking. They do not carry the force of precedent. They must be treated as obiter. Mr. Solicitor General, while adopting the approach of Dr. Gauri Shankar, proceeded further to deal with the principle relating to precedents. He referred to Basu's commentary (Vol. H at pages 16 and 17) and relied on Stephen (Commentaries Vol. I p. 11) stating:-

> "The underlying principle of ajudicial decision which forms its authoritative element for the future, is termed ratio decidendi. It is contrasted with an obiter dictum or that part of a judgment which consists of the expression of the Judge's opinion on a point of law which is not directly raised by the issue between the litigants.' The learned counsel also referred to the oft quoted proposition that every judgment must be read as applicable to the particular facts proved or assumed and the generality of the expressions used must be read as qualified by the particular facts of the case and the issues raised therein.

The learned Solicitor General also placed reliance on the decisions in The State of Orissa v. Sudhonsu Sekhar Misra 'and Ors, [1968] 2 SCR 154 162E-163B; Additional District Magistrate, Jabalpur v. Shivakant Shukla, 119761 2 SCC 521; Sreenivasa General Traders and Others v. State of Andhra Pradesh and Others, [1983] 4 SCC 353 and Rajput Ruda Maha and others v. State of Gujarat, [1980] 2 SCR 353.

13. During the course of the hearing, the counsel placed learned and interesting arguments dealing with the rules relating to precedents as mentioned above, and attempt was made to distinguish the foreign judgments on the ground that Article 141 of the Constitution of India in tory terms lays down that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. It was also suggested that the expression 'courts' within the meaning of Article 141 does not include Supreme Court and the Supreme Court is not bound by its own decisions Punjab Land Development Corpn. Ltd v. Resident Officer Labour Court and Other, [1990] 3 SCC 682. We have also examined all the three judgments given in Dhillon's case placed by the learned advocates in great detail and analysed at considerable length and since in our view the majority judgment cannot be understood to have recorded a concluded opinion on the applicability of Entry 86 to the main Wealth Tax Act, we do not think it necessary to deal with the elaborate arguments on the rules for interpreting the judgments. We now proceed to indicate our reasons.

14. As mentioned earlier, the challenge in Dhillon's case was limited to section 24 of the Finance Act, 1969 insofar it amended the relevant provisions of the Wealth Tax Act, 1957. Initially the value of agricultural land was exempt from the charge of wealth tax. The exemption was withdrawn by this amendment. This was challenged as ultra vires by the assessee H.S. Dhillon and the High Court agreed with him. The judgment was appealed against by the Union of India. Mr. Setalvad, appearing in support of the appeal, contended that the impugned Act was not a law with respect to any Entry (including Entry 49) in List II and if this was so it must necessarily fall within the legislative competence of parliament. He reminded the court that the Parliament was competent to legislate with respect to Entry 86 read with Entry 97 or Entry 97 by itself read with Article 248 of the Constitution. The argument was being addressed pointedly with reference to the impugned Act i.e., the Finance Act, 1969. Mr. Setalvad urged "that the proper way of testing the validity of a parliamentary statute in our Constitution was first to see whether the parliamentary legislation was with respect to a matter or tax mentioned in List I1; if it was not, no other question would arise". This approach was taken note of by the judgment of Sikri CJ. in the last paragraph of page 45 and second paragraph at page 46 of the Supreme Court Reports. the judgment read as a whole including the passage, which has been relied upon by Mr. Sorabjee, in our view leads to the irresistible conclusion that Sikri, CJ. accepted the fine suggested by Mr. Setalvad and, therefore, it did not remain necessary for the learned Chief Justice to express a final opinion as to the particular Entry covering the Wealth Tax Act. In the very next paragraph at page 46 Sikri, CJ. said, "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 com- petence of Parliament?

The learned Chief Justice did not stop at that. He proceeded to say further, '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, Art. 246, Art. 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 Art. 248."

15. In his learned judgment, Sikri, CJ., considered the constitutional scheme specially with reference to Articles 246, 248, 250 and 253 and section 104 of the Government of India Act, 1935.While considering the Constituent Assembly Debates and other relevant documents dealing with the process which ultimately led to the making of the Constitution as it was finally adopted, the following interpretation of Dr. B.R. Ambedkar was specifically referred to :-

"Anything not included in List II or III shall be deemed to fall in List I".

Besides, Constitutions of several foreign countries as also many decisions were and the conclusion reached in the following words at page 72G of the Reports ;-

> "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

> H. If that is so, then the legislation is valid either under entry 86, List I, read with entry 97, List I. or entry 917 List I, standing by itself.' It was only after arriving at the conclusion finally that the question whether the impugned Act (we will prefer *to call it as the Finance Act, 1969) fell within Entry 86, List I, read with Entry 97, List I, or Entry 97, List I alone, was adverted to; and while so doing the fact, that it was not necessary to decide this issue was taken note of Mr. Sorabjee is right that the observations in this part of the judgment from p. 73G to p. 74E were made in view of the judgment of Shelat, J. on Entry 86, and these observations were critical of the minority view on Entry 86, but the respondents before us are failing to appreciate that a critical comment made on a certain statement does not, in absence of an expression to that effect, necessarily lead to the inference that the converse is true. It may mean that the statement requires further consideration or that the grounds given in support of the statement are fallacious or inadequate or that the matter requires a fuller examination and until that is done, the assumed correctness of statement cannot be accepted. The basic rules of interpreting Court judgments are the same as those of construing other documents. The only difference is that the Judges are presumed to know the tendency of parties concerned to interpret the language in the judgments differently to suit their purposes and the consequent importance that the words have to be chosen very carefully so as not to give room for controversy. The principle is that if the language in a judgment is plain and unambiguous and can be reasonably interpreted in only one way it has to be understood in that sense, and any involved principle of artificial construction has to be avoided. Further, if there be any doubt about the decision, the entire judgment has to be considered, and a stray sentence or a casual remark cannot be treated as a decision. Examined in this light, the judgment of learned Chief Justice indicates that the main question agitating his mind was if levy of wealth-tax on agricultural land is not within the purview of List II, if it is not warranted by any Entry in List III and if it is also not within the purview of Entry 86 of List I, then which is the authority competent to levy it? Evidently, there cannot be a subject matter or tax, which no legislature under the Constitution can levy.

Accordingly, he held, the said tax is warranted by Entry 97 of List I read with Article 248. The question, whether the Wealth Tax Act (without reference to the impugned Finance Act, 1969) falls within Entry 86 did not for consideration and was not answered but left undetermined by the learned Chief Justice, though Mitter, J., did certainly express himself on it. A reference to other parts of the very Passage relied upon by Mr. Sorabjee as indicated below, will be helpful.

16. After pointing out two or three features which, in the opinion of Sikri CJ., were inconsistent with the views of Shelat J., the judgment stated--

> "Therefore, it seems to us that the whole of the impugned Act clearly falls within entry 97 List I.' At the cost of repetition we would like to point out that the impugned Act was the 1969 Amendment Act. The distinction between the Amendment Act and the original Wealth Tax Act was always present in the mind of the learned Chief

justice as is clear from the very next sentence, which reads thus :-

"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."

Mr. Sorabjee laid great emphasis on the above sentences and urged that ,an inference should be drawn therefrom about the majority view holding that Entry 86 was not attracted. We do not agree with him. In his judgment Shelat, J. had referred to several decisions in favour of holding Entry 86 applicable and the last sentence quoted above, was only a comment on that part of the judgment. Besides, there is further indication given in the very next sentence, which, in our view, reiterates the conclusion already reached and recorded at page 72G (quoted above) and that is in the following words :-

"Be that as it may, we are clearly of the opinion that no part of the impugned legislation falls within entry 86 List I."

(emphasis added) In the next paragraph the permissibility of the parliament combining its powers under Entry 86 with its powers under Entry 97 was considered and answered in the affirmative.

This was apparently the conclusion made at page 72G (quoted above) that the legislation should be held to be valid under Entry 86 List I, read with Entry 97 List I.

17. We, therefore, interpret the judgment of Sikri CJ. (on behalf of himself and two other learned Judges) as holding that

(i) 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 win arise;

(ii) the impugned Act was not a law with respect to Entry 49 List II or for that matter any other entry in that List;

(iii) consequently the legislation (that is the 1969 Amendment Act) was valid either under Entry 86 List I read with Entry 97 List I, or Entry 97 List I standing by itself;

(iV) it. was not necessary to decide the question whether the impugned Act fell within Entry 86 List I read with Entry 97 List I, or Entry 9 7 List I alone;

(v) there were several fallacies in the reasoning of the minority judgment holding Entry 86 applicable, and the assumption made therein that this question was settled

earlier by this Court was not correct.

(vi) be that as it may, so far as the impugned legislation (The 1969 Amendment Act) was concerned, it did not fall within Entry 86;

(vii) there is nothing in the Constitution to prevent the Parliament from combining its powers under Entry 86 List I with its powers under Entry 97, List I.

18. We, therefore, hold that the issue, whether the Wealth Tax Act, 1957 falls in Entry 86 or not, was not finally decided in the judgment of Sikri, CJ., and was left open for future when such an occasion arose. While so doing certain observations critical to the views of Shelat, J. were ex- pressed but merely on account of this, Dhillon's judgment cannot be treated to be a binding precedent preventing this Bench from considering the main issue on merits.

19. The position, therefore, is that the issue as to whether the Wealth' Tax Act, 1957 (without its amendment Act, 1969, as it has been conceded on behalf of the appellant to be inapplicable to the State of Jammu and Kashmir), extends to the State of Jammu and Kashmir or not, is, as mentioned earlier, dependent on the question whether the Act falls under Entry 86, List I quoted in paragraph 3 above or not. The residuary power in the case of Jammu and Kashmir is with the State and cases relied upon by the parties are of no help.

20. The. argument of Mr. Sorabjee is that the expression "capital value of assets" in Entry 86 does not signify the same thing as not wealth as defined in Wealth Tax Act. For calculating the 'capital value of assets' only the encumbrances which are charged on the assets, can be deducted from the market value of the assets, and not the general liabilities of the individual owning the assets, which are to be taken into account for the purpose of wealth-tax. Adopting the observations of HJ. Kania, J. (as he then was) in Sir Byramjee v. Province of Bombay, AIR 1940 (Bombay) 65 at 75, it was asserted that under Entry 86, 'the tax should be on the total capital assets and not on individual portions of a person's capital". In Sir Byramjee's case the relevant entry was Entry 55 in List I of the Government of India Act, 1935, similar to the present Entry 86. The learned counsel pointed out that Bombay decision was approved by the Federal Court in.' Ralla Ram v. Province of East Punjab, AIR 1949 FC 81. Reference was also made to the judgment in Municipal Corporation v. Gordhandas, AIR 1954, Bombay 188 at 194. In support of his stand that Wealth Tax Act is covered by Entry 86 Dr. Gauri Shanker took us through the background in which the Wealth Tax Act was enacted. He placed before us the legislative practice in other countries also as reported by OECD Committee on Fiscal Affairs and the discussion by Kaldor in his book "Indian Tax Reforms". Dealing with the deductions which are allowed under the Wealth Tax Act for liabilities and debts, the learned counsel proceeded to say that is the methodology of levy of this form of capital taxation adopted interna- tionally. Paragraph 1.39 of the OECD Committee's Report stated that "Just as all assets to which a value can be attached should in principle be included in the tax base, so in principle all debts should be deducted from the taxpayer's assets, in order to arrive at his net wealth."

In the next paragraph of the Report, the equity of allowing debts not related to the acquisition of assets is also discussed The counsel summed up by saying that the substance of the practice adopted

in other countries and the economic concept underlying the theory of equi-marginal sacrifice, which is called the ability to pay, is that there will be no true measure of a person's net worth unless from the gross aggregate capital value, deductions are given for liabilities and debts, and that is the rationale of Entry 86 as also that of the Wealth Tax Act.

21. We must, therefore, ascertain the correct nature of the tax under the Wealth-tax Act and the scope of Entry 86 by reference to the expressions "capital value' and "assets". It is firmly established that in co the language of constitutional enactments conferring legislative power the most liberal construction should put upon the words so that the same have effect in their widest amplitude. See Navinchandra Mafatlal v. The Commissioner of Income-Tax Bombay City, [1955] 1 SCR 829, 836, 837. In Sri Ram Ram Narain Medhi v. The State of Bombay, [1959] Suppl. I SCR 489, this Court followed the I approach indicated by the Privy Council in British Coal Corporation v. The King, 1935 Appeal Cases p. 500, 518 in the following words :-

> "Indeed, in interpreting a constituent or organic statute such as the Act, that construction most beneficial to the widest possible amplitude of its powers must be adopted."

and further declared that the heads of legislation should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation. It is also settled that for finding out the true nature and character of a taxing Act, the charging section has to be construed with the help of the other relevant provisions. In the case of the Wealth-tax Act Sections 3 to 7 read with Sections 2

(e) and 2 (m) have to be examined. Section 3 levies an annual tax in respect of the net wealth on the valuation date on every individual etc. at the rate specified in the schedule. Section 7 mandates that the value for the purpose of charge shall be the value estimated to be the price which in the opinion of the assessing officer it would fetch if sold in the open market on the valuation date. The expression "net wealth' is defined in section 2 (m) as the amount by which the aggregate value computed in accordance with the prescribed provisions, is in excess of the aggregate value of all the debts owned by, the assessee.

Thus it appears that the tax is an annual levy on the total value of all assets owned by an assessee excluding exempted properties. Such value is the price which the property would fetch if sold in the market; in other words its capital value. From the capital value, certain liabilities and debts are to be deducted to arrive at the net wealth. The base of the tax is capital value and net wealth assessable is capital value after deductions of debts and liabilities. The expression 'capital value" of assets is not capable of any prescribed definition but as pointed out in Harvard Law School World Tax Series, Taxation in the Federal Republic of Germany, quoted by Sikri, CJ. in his judgment, "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 Equalisation of Burdens Law."

The distinction between a net-wealth tax levied upon a person and a tax on the property directly is pointed out in the same work in the following words "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 Equalisation 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 pre-suppose a taxpayer with independent legal existence, that is, an individual or a legal entity Guridical 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 tax-payer'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."

If we may point out with respect, Sikri CJ. having quoted the above passage with approval at page 72 of [1972] 2 S.C.R., says rather inexplicably at page 74.

> "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 in 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.' (emphasis supplied) According to the learned Chief Justice it is not incumbent on Parliament to provide for deduction of debts in ascertaining the capital value of the assets. But, having said so, the learned Chief Justice does not proceed further and say that such deduction, if provided, changes the character of tax from a tax on capital value to something else. Indeed on principle, such a statement could 'not have been made or supported. The learned Chief Justice repeatedly stated that the Parliament or the legislature need not provide for such deductions, but without carrying the thought to its logical conclusion, concluded that "the whole of the impugned Act' (which as pointed out hereinbefore means the Act 24 of 1969 amending the Wealth Tax Act) "clearly falls within entry 97 of List I.' We have already indicated in paragraph 16 earlier that the expression 'the whole of the impugned Act', did not refer to the wealth tax as origniahy enacted. We are, therefore, of the opinion that the Wealth Tax Act (as originally enacted and extended to J & K) is a 'net-wealth tax' Act imposed upon the individuals group of individuals like H.U.F. and companies. The Tax is not upon the assets as such but is upon the individual and companies with reference to the 'capital value of the assets' held by them.

As explained in Assistant Commissioner of Urban Land Tar v. Buckingham Camatic Co. Ltd, 75 ITR 603.

> "It is not a tax directly on the capital value of the assets of individuals and companies on the valuation date..... Me 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 assets but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account."

This was also the view expressed in Nawn.

22. The language of Entry 86 also clearly indicates that the tax is upon the individuals and not directly upon the assets or upon their value. The wealth-tax is determined with reference to the capital value of the assets minus the debts and other deductions mentioned in the Act. We cannot accept the argument that since the tax is contemplated to be levied upon the capital value of the assets of an individual the exclusion of his debts and other liabilities changes the nature and character of the tax. Indeed, the learned counsel for the respondents could not suggest any enactment relatable to Entry 86 except the Wealth Tax Act.

23. It is argued for the respondents that 'capital value of the assets' on a true interpretation can only mean market value of the assets minus any encumbrances charged upon the assets themselves. The expression does not take in, it is submitted, general liabilities of the person owning them. This argument, in our opinion, ignores the basic nature of the tax contemplated by Entry 86. It is a tax upon the net wealth of an individual. It is a net-wealth tax Net wealth of an individual necessarily means 'what all he owns minus what all he owes' and this is what the Act purports to tax.

24. Mr. Sorabjee relied upon the decisions of the Bombay High Court in Sir Byramjee Jeejeebhoy v. Province of Bombay and others, 1940 Bombay 65, and Municipal Corporation Ahmedabad v. Gordhandas, 1954 Bombay 188. In the first case, the question was whether the Bombay Finance Act, 1932 which levied tax upon urban immovable property was outside the competence of the Bombay legislature on the ground that the tax levied was one in the nature of Income Tax Act relatable to Entry 54 of the Federal List in the VII schedule to the Government of India Act, 1935. All the three Judges constituting the full Bench repelled the said argument. In the course of their discussion they also referred to Entry 55 of the Federal List; but that aspect did not arise in that case and, therefore, any passing observation made with respect to the content of the said Entry cannot be of any assistance to us in this case. Similarly, in Gordhandas the question was with respect to the power of the Bombay Municipal Corporation to levy tax on land. The petitioners contentions was that the said tax falls outside Entry 42 of List I1 of the VII Schedule to the 1935 Act (corresponding to Entry 49 of List I1 of our Constitution) and that the tax on land imposed by the said Act is really in the nature of tax contemplated by Entry 55 of the Federal List. Reliance was placed upon the decision in AIR 1940 Bombay 65. The said argument was dealt with by Gajendragadkar, J. (as he then was) in the following words:

> "I have dealt with this question on the assumption that Entry 55 in List I confers jurisdiction on the Central Legislature to levy a tax on the capital value, not only of all

> the assets, but of even a part of the assets. In AIR 1940 Bom. 65 a Full Bench of this Court had to consider the construction of Entry 54 in List I as against Entry 42 in List I1. Incident ally an argument was urged before the Full Bench even as to Entry 55 in List I. Chief Justice Beaumont said that it was unnecessary to consider the argument based on Entry 55; but, nevertheless, he observed that an analysis of the language employed in Entries 54 and 55 respectively affords scope for the argument that the assets mentioned in Entry 55 must mean the totality of the assets. According to Mr. Justice Broomfield, the meaning of the expression capital value of the assets" in Entry 55 was by no means clear. He, however, added that it may be that what was intended was a tax on the total value of the assets in the nature of a capital levy. Mr. Justice Kania, on the other hand, expressed his clear opinion that under Entry 55 the tax should be on the total capital assets and not on individual portions of a persons capital."

It was held that the said earlier decision in no manner supported the assessee's contention.

25. Lastly, reference was made to the decision of this Court in New Manek Chowk Mills v. Municipal Corporation, [1967] 2 SCR 679. In that case, it was held by this Court that Entry 49 in List II of the VII Schedule permits levy of tax on lands and buildings but not on machinery installed on land or in the building. It was held that rule 7 (2) of the Rules framed under Bombay Provincial Municipal Corporation Act, 1949 which provided that all plant and machinery contained or situated in any building or land shall be deemed to form part of such building or land was held to be beyond the legislative competence of the State. We are unable to see how the principle of this decision is of any assistance to the respondents herein.

26. For the reasons mentioned above, we hold that the wealth-tax, as originally enacted was covered by Entry 86 of List I of the Constitution, and its extention to the State of Jammu & Kashmir was perfectly constitutional and consequently the impugned judgment of the High Court is not correct. Accordingly these appeals are allowed, the impugned judgment is set aside and the Writ Petitions filed before the Jammu & Kashmir High Court are dismissed but in the circumstances without costs.

R.P.

Appeals allowed.