Supreme Court of India
Commissioner Of Wealth ... vs Ellis Bridge Gymkhana Etc. Etc on 21 October, 1997
Author: Sen
Bench: Suhas C. Sen, S. Saghir Ahmad

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                 PETITIONER:
COMMISSIONER OF WEALTH TAX,GUJARAT-III, AHMEDABAD

        Vs.

RESPONDENT:
ELLIS BRIDGE GYMKHANA ETC. ETC.

DATE OF JUDGMENT:       21/10/1997

BENCH:
SUHAS C. SEN, S. SAGHIR AHMAD




ACT:




HEADNOTE:




JUDGMENT:
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THE 21ST DAY OF OCTOBER, 1997 Present:

Hon'ble Mr. Justice Suhas C. Sen Hon'ble Mr. Justice S.Saghir Ahmad T.A.Ramachandran K.N. Shukla, Sr.Advs.,Ms.Renu George, B.K.Prasad, P.Parmeswaran, D.S.Mehra, S.N.Terdol, K.J.John, Ms. Manju Mishra, R.A.Perumal, S. Sukumaran, S.K.Pasi, Mrs. Janki Ramachandran, Mukul Mudgal, (Mrs. M. Karanjawala,) Adv. (NP), S.S.Khanduja, Y.P.Dhingra and B.K.satija, Advs. with them for the appearing parties.

J U D G M E N T The following Judgment of the Court was delivered: [WITH C.A. Nos. 3210-14/88, 1544/93, 1649/93, 5340-48/93, 5393/94, 948/95, 8347/95, 1796-1799/96, SLP (C) Nos. 2490/84, C.A.Nos. 4674/95, 2517/96, 9096/96, 3532-38/88, SLP (C) Nos. 7246-7250/97, C.A.Nos.2366-2375/94, SLP (C) Nos. 16259-16275/94 with C.A. No.658/93 with C.A. Nos. 7420-22 of 1997 @ SLP (C) Nos. 4658-60/1990 J U D G M E N T SEN, J.

This is an appeal from an order passed by the High Court of Gujarat in which following question of law was answered in the affirmative and in favour of the assessee:

> "Whether on the facts and in the circumstance of the case, the Appellate Tribunal has

> been right in law in holding that the assessee is not liable to Wealth Tax under Wealth-tax Act, 1957 for the assessment year in question?" The assessment years involved are 1970-71 to 1977-78.

The assessee is a club. It filed its return of wealth being called upon to do so for the aforesaid assessment years but contended that it was not liable to be assessed under the Wealth Tax Act, 1957 at all. The Wealth Tax Officer rejected the claim of the assessee. The Appellate Assistant Commissioner was of the view that the assessee could not be brought to tax under the Act because of the earlier decision of Gujarat High Court in the case of Orient Club v. Wealth Tax Officer, 123 ITR 395. The Tribunal dismissed the appeal upholding the order of the Appellate Assistant Commissioner. The question of law raised by the Revenue was answered by the High Court also in favour of the assessee.

The Club was not incorporated under the Companies Act, 1956. The case of the Revenue is that the club will have to be assessed as an "individual" under the Wealth Tax Act. Section 3 which is the charging section of the Act is as under:

> "3. (1) 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 but before the first day of April, 1993, 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 Schedule 1.

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(2)             x                             x
x"
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> Three units of assessment have been mentioned in the charging section; "individual, Hindu undivided family and company". The contention of the Revenue is that "individual"

has to be understood broadly so as to include as association of persons like clubs.

The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

Unlike Income Tax Act which is also a direct tax, the charging section does not speak of a body of individuals or an association of persons or a firm. If the legislative intent was to tax the wealth of a body of individuals or an association of persons or a firm, the Legislature would have said so in so many words as was done in the Indian Income Tax Act, 1922 or Income Tax Act, 1961. Under Section 3 of the Indian Income Tax Act, 1922, the charge was on "individual, Hindu undivided family, company, local authority, firm and other association of persons or the partners of a firm or the members of the association individually". When the Wealth Tax Act, 1957 was passed, the Legislature decided to specify only "individual, Hindu undivided family and company" as units of assessment. It will not be right to presume that the Legislature was unaware of the wording of the charging provisions of Indian Income Tax Act, 1922 when the Wealth Tax Act was enacted. The Legislature must be presumed to have known the large number of cases that were heard and decided on the scope of the charging section under the Indian Income Tax Act and the meaning ascribed to "association of persons" therein. The Legislature, however, decided to exclude "firms, association of persons and body of individuals" from the ambit of charge of Wealth Tax. What has been specifically left out by the Legislature cannot be brought back within the ambit of the charging section by implication or by ascribing an extended meaning to the word "individual" so as to include whatever has been left out.

It has also to be noted that the charge under the Gift- Tax Act, 1958, a contemporaneous statute is on a gift made by a "person". "Person" has ben defined by Section 2 (xviii) as under:

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"`person'    includes    a    Hindu
undivided family or a company or an
association   or    a    body    of
individuals  or   persons,  whether
incorporated or not"
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Moreover, in the Income Tax Act, 1961, Section 4 which is the charging section imposes a tax on the total income of every person. `Person' has been defined by Section 2(3) of the Act as under:

"(31) `person' includes-

(i) individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses."

It will be seen from the above that just like the Indian Income Tax Act, 1922, in the Gift Tax Act, 1958 and the Income Tax Act, 1961, an association of persons or body of individuals have been specifically brought in as units of assessment. It is only under the Wealth Tax Act, the charge is on "every individual, Hindu undivided family and a company" and not on association of persons or a body of individuals or a firm. If the language of Section 3 of the Wealth Tax Act is contrasted with the provisions of other cognate statutes it will clearly appear that the intention of the legislature was not to treat an association of persons or a body of individuals or a firm as an unit of assessment for the purpose of imposition of Wealth Tax. There is no other explanation why these units of assessment which have been specifically made taxable under the Indian Income Tax Act, 1922, the Gift Tax Act, 1958 and Income Tax Act, 1961 have been left out of the charging section of the Wealth Tax Act.

It is also to be noted that when the Wealth Tax Act was passed in 1957, Indian Income Tax Act, 1922 was in force. The scheme and structure of the Wealth Tax Act are very similar to the Act of 1922. In fact, some of the provisions of Wealth Tax Act are almost verbatim reproduction of the corresponding provisions of the Indian Income Tax Act, 1922.

The charge of wealth tax imposed by Section 3 is in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and the Company. Valuation date has been defined by 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 was to be made under that Act for that year. Proviso(i) to Section 2(q) lays down that where in the case of an assessee there are different previous years under the Income-tax Act for different sources of income, the valuation date for the purposes of this Act shall be the last day of the last of the previous year. This proviso was deleted by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1.4.1989.

Section 2(b) defines Appellate Tribunal to mean the Tribunal constituted under Section 252 of the Indian Income- tax Act. Various authorities under the Act like Chief Commissioner, Commissioner, Additional Commissioner of Income Tax, Assistant Commissioner of Income Tax have been given the meanings respectively assigned to them under Section 2 of the Income-tax Act. Section 16(3) of the Indian Income-tax Act, 1922 lays down that in computing the total income of any individual for the purpose of assessment, the income of a wife or minor child of such individual will have to be included if he wife is member of a firm of which the husband is a partner or if a minor is admitted to the benefit of the partnership of which the father of the minor is a partner. There were also provisions for including in the income of an assessee income from assets transferred directly or indirectly to his wife otherwise than for adequate consideration or in connection with an agreement to live apart. Lastly, Section 16(3) provides that an income from assets transferred by a person for the benefit of his wife or a minor child or both otherwise than for adequate consideration will be included in the income of the person concerned. Similar provisions have been made in Section 4 (1) (a) of the Wealth Tax Act.

Section 8 of the Wealth Tax Act provides that the Income Tax authorities specified under Section 116 of the Income Tax Act shall be the Wealth Tax authorities for the purposes of the Wealth Tax Act and every such authority shall exercise the powers and perform the functions of the Wealth Tax authority in respect of any individual, Hindu Undivided Family or a Company, and for this purpose his jurisdiction shall be the same as he had under the Income Tax Act by virtue of orders or directions issued under Section 120 of that Act or under any other provisions of that Act. Section 8B confers power of transfer of cases on the Commissioner from one officer to another. This provision is almost identical with the provisions of sub-section (7A) of Section 5 of the Income Tax Act. Chapter IV of the Wealth Tax Act deals with assessment and the provisions are similar to the corresponding provisions of the Income Tax Act. A return of wealth has to be filed by an assessee if his net wealth exceeded the maximum amount which is not chargeable to wealth tax in the prescribed form and verified in the prescribed manner on or before the "due date". Explanation to Section 14 clarified that "due date" in relation to assessee under this Act shall be the same date as that applicable to an assessee under the Income Tax Act under the Explanation to sub-section (1) of Section 139 of the Income Tax Act.

Just as in the Income Tax Act, 1922 Section 15 of the Wealth Tax Act provides that if any person does not file a return within the time prescribed by the statute or having furnished a return, discovers any omission or wrong statement in the return, he may furnish a revised return at any time before the expiry of one year from end of the relevant assessment year or before the completion of the assessment whichever is earlier. There are provisions for provisional assessment under Section 15C similarly to Section 23B of the Indian Income Tax Act, 1992. Section 16 which deals with assessment is similar to Section 23 of the Income Tax Act. After completion of assessment if the assessing office has reason to believe that the net wealth chargeable to tax has escaped assessment, he is empowered to issue a notice under sub-section (1) of Section 17. These provisions are similar to corresponding provisions of Section 34 of the Income Tax Act of 1992. The penalty provisions in Section 18 are similar to provisions of Section 28 of the Income Tax Act. Provisions for appeal against an order of assessment of penalty are provided by Section 23. There are also provisions for further appeal to the Appellate Tribunal. The Commissioner has been given power to revise orders on his own motion pr on an application made by the assessee under Section 25. All these provisions are almost identically worded with the corresponding provisions of the Income Tax Act, 1922. A reference lies from an order of the Appellate Tribunal to the High Court under Section 27 in respect of any question of law arising out of the appellate order. From the order passed by the High Court on reference, an appeal lies to the Supreme Court under Section 29.

All these provisions go to show that the Wealth Tax Act has been drafted on the same lines as the Indian Income Tax, 1922. There is great similarity of wording between the various provisions of Wealth Tax Act and corresponding provisions of Indian Income Tax Act, 1922. But in the case of the charging Section 3 of the Wealth Tax Act, the phraseology of the charging section 3 of Indian Income Tax Act, 1922 has not been adopted.

Unlike Section 3 of the Income Tax Act, Section 3 of the Wealth Tax Act does not mention a firm or an association of persons or a body individuals as taxable units of assessment.

The position has been placed beyond doubt by insertion of Section 21AA in the Wealth Tax Act itself. This amendment was effected by the Finance Act, 1981 with effect from 1.4.1981. It provides for assessment of association of persons in certain special cases and not otherwise. Section 21AA is:

> "Assessment when assets are held by certain association of persons 21AA. (1) Where assets chargeable to tax under this Act are held by an association of persons, other than a company or co-operative society or society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India, and the individual shares of the members of the said

> association in the income or assets or both of the said association on the date of its formation or at any time thereafter are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from such association in the like manner and to the same extent as it would be leviable upon and recoverable from an individual who is a citizen of India and resident in India for the purposes of this Act.
>
> (2) Where any business or profession carried on by an association of persons referred to in sub-section (1) has been discontinued or where such association of persons is dissolved, the Assessing Officer shall make an assessment of the net wealth of the association of persons as if no such discontinuance or dissolution had taken place and all the provisions of this had taken place and all the provisions of this Act, including the provisions relating to the levy of penalty or any other sum chargeable under any provisions of this Act, so far as may be, shall apply to such assessment. (3) Without prejudice to the generality of the provisions of sub-section (2), if the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (appeals) in the course of any proceedings under this Act in respect of any such association of persons as is referred to in sub- section (1) is satisfied that the association of persons was guilty of any of the acts specified in section 18 or section 18a, he may impose or direct the imposition of a penalty in accordance with the provisions of the said sections. (4) Every person who was at the time of such discontinuance or dissolution a member of the association of persons, and the legal representative of any such person who is deceased, shall be jointly and severally liable for he amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum. (5) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (4) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly."

It will be seen that assessment as an association of persons can be made only when the individual shares of members of the association in the income or assets or both of the association on the date of its formation or any time thereafter are indeterminate or unknown. It is only in such an eventually that an assessment can be made on an association of persons, otherwise not. Sub-section (2) of Section 21AA deals with cases of such associations as mentioned in sub-section (1). That means only association of persons in which individual shares of the members were unknown or indeterminate can be subjected to wealth tax. Sub-section (3) also deals with association of persons referred to in sub-section (1). Sub-sections (4) and (5) deal with some consequences which will follow the members of an association of persons spoken of in sub-section (1) in the case of discontinuance of dissolution.

It is not the case of the Revenue before us that the members of the club were unknown or that their interest in the assets of the club was indeterminate. In fact, or argument was advanced on this aspect of the matter in any of the cases that have come for hearing along with this case. In fact, a list of members of the club should be readily available. In any event, there is no finding of fact that particulars of members were unknown or their interest in the assets of the club were indeterminate.

In our view, Section 21AA far from helping the case of the Revenue directly goes against its contention. An association of persons cannot be taxed at all under Section 3 of the Act. That is why an amendment was necessary to be made by the Finance Act, 1981 whereby Section 21AA was inserted to bring to tax net wealth of an association of persons where individual shares of the members of the association were unknown or indeterminate.

We were referred to a large number of cases. It is not necessary to deal with them in detail. It may be noted that the Gujarat High Court in the case of Orient Club v. Wealth Tax Officer, 123 ITR 395 and the Bombay High Court in the case of Orient Club v. Commissioner of Wealth Tax, 136 ITR 697 were of the view that the charging provisions of the Wealth Tax had not treated a firm or an association of persons as a taxable unit. An unincorporated members' club was a society of persons and did not have any existence apart from the members of which it was composed. An unincorporated club being an association of persons could not be brought to tax as an individual under the Wealth Tax Act. The Kerala High Court in the case of Commissioner of Wealth Tax v. Mulam Club, 191 ITR 370 has taken a similar view.

A contrary view was taken by the Madras High Court in the case of Coimbatore Club v. Wealth Tax Officer, 153 ITR 172 where it was held that the expression "individual" occurring in Section 3 of the Act was wide enough to include within its scope a plurality of individuals forming a single collective unit even though formed without any profit motive.

In our judgment, the Kerala High Court in the case of Commissioner of Wealth Tax v. Mulam Club (supra), the Bombay High Court in the case of Orient club v. Commissioner of Wealth Tax (supra) and the Gujarat High Court in the case of Orient Club v. Wealth Tax Officer (supra) have come to a right decision. The judgment of the Madras High Court in the case of Coimbatore Club (supra) to the contrary is erroneous. The Madras High Court has overlooked the significance of omission of firms or association of persons or a body of individuals from the charging section even though these entities were specifically made taxable under various direct tax enactments from 1922 to 1961. Moreover, the Wealth Tax Assessment of an individual will involve computation of "net wealth". All the assets belonging to an individual will have to be included. If an individual is a partner of a firm or member of an Association of persons, the value of his share in these entities will have to be included in his individual assessment. We have already examined the scheme of the Wealth Tax Act and also the object behind the insertion of Section 21AA. All these will go to show, the legislature deliberately excluded a firm or an association of persons from the charge of wealth tax and the word "individual" in the charging section cannot be stretched to include entities which had been deliberately left out of the charge.

Strong reliance was placed on the judgment of this Court in Wealth Tax Officer, Calicut vs. C.M.Mammed Kayi 129 ITR 307. In that case, the question was whether Mapilla Marumkkathayam tarwards of North Malabar - Muslim undivided families governed by their Marumkkathayam Act (Madras Act 17 of 1939) - fell within the expression "individual" and were assessable to tax under section 3 of the Wealth Tax Act, 1957.

The contention in that case was about the constitutionality of the charging Section of the Wealth Tax Act. The challenge was on two grounds; (a) that Parliament was not competent to include an Hindu Undivided Family in the charging Section 3 of the Act in view of Entry 86, List I of the Seventh Schedule of the Constitution and (b) that the charge of wealth tax on an Hindu Undivided Family Under Section 3 of the Act was violative of Article 14 of the Constitution. Entry 86 in List I of the Seventh Schedule of the Constitution is "Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies". The High Court rejected the challenge on the first ground and held that Parliament was competent to include an Hindu Undivided Family in Section 3 of the Act as constituting a body or group of individuals coming within the term "individuals" in entry 86. However, the challenge on the ground of Article 14 was upheld. The High Court was of the view that there was discrimination as between an Hindu Undivided Family and Muslim Mapilla Tarwards which were also undivided families and, therefore, the charging section so far as it governed undivided families was hit by Article 14. The Department came up in appeal before this Court and by a judgment dated February 17, 1964, this Court set aside the judgment and order of the High Court and remanded the case back to the High Court to consider whether Article 14 applied to the case or not after giving the parties further opportunity to put forward their cases supported by facts and figures.

On remand, out of the two contentions initially advanced by the assessee, the first relating to the constitutionality of the Act in relation to Entry 86, List I had become academic because the point was dealt with and overruled by this Court in the case of Banarsi Das v. Wealth Tax Officer, 56 ITR 224 (S.C). Therefore, only the second contention regarding validity of the charge imposed by Section 3 survived. A Special Bench of three Judges ultimately rejected the challenge and held that Section 3 was not violative of Article 14. But the three judges, by different reasonings held that non-HUFs like Mapilla Tarwards fell altogether outside the scope of the charge of Section 3. The Revenue once again came up in appeal to this Court. The Court drew distinction between canons of construction applicable to entries in the legislative lists and canons of construction applicable to construction of a charging section in a taxing statute. It was explained:

> "It cannot be disputed that the canon of construction applicable to entries in the three Legislative Lists occurring in a Constitution would be different from the canon of construction that would apply to terms or expressions used in a taxing statute. The object of an entry in any legislative field as possible by the use of compendious words or expressions while the rule of construction applicable to a taxing statute must ensure hat "the subject is not to be taxed unless the language of the statute clearly imposes the obligation" [per Lord Simonds in Russel v. Scott (1948) AC 422 (HL)."

The Court further held that the point in controversy has to be examined having regard to the general scheme of the Wealth Tax Act which was to assess all persons who had wealth beyond the statutory limit. The presumption would be equality of incidence rather than exemption of a few. Secondly, it was observed that the term "individual" can be read in plural and as such would include a body or group of individuals like a Mapilla Tarwad. Thirdly, there was no warrant for suggesting that the two terms of "individuals" and "Hindu Undivided Family" had been used in antithesis with each other. Section 3 being the charging provisions was merely concerned with specifying different assessing units for the purpose of assessment of wealth. There could be no dispute that the Legislature was competent to select persons, properties, transactions and objects for the imposition of a levy and for that purpose classify as many different assessing units as it could reasonably think necessary and that is how the three assessing units "individual" "Hindu Undivided Family" and "Company" (which was later omitted) came to be specified in Section 3. The Court concluded:

> "In our view, the specific mention of an HUF in the section does not result in the exclusion of group of individuals who only form a unit by reason of their birth like a Mapilla tarward from the operation of the section. It is difficult to accept the argument that if the term "individual" was intended to include joint families or undivided families it was redundant to specify HUFs."

The Court thereafter pointed out that this conclusion accorded with legislative history of the taxing statues in the country. Mapilla Tarwards have been consistently treated and taxed in the status of "individuals" under various taxing statutes. Reference was made to the Expenditure Tax Act, 1957 under which a similar question was considered by this Court in the case of V. Venugopala Ravi Varma Rajah v. union of India, 74 ITR 49 (SC). In that case, the question was whether a Mapilla Tarwad in North Malabar had to be treated as Hindu undivided family for the purpose of levy of expenditure tax. Expenditure tax was levied in respect of "expenditure incurred by any individual or Hindu undivided family in the previous year" (Section 3 of the Expenditure Tax Act). It was held by this Court that Mapilla Tarwad could not be assessed to tax in the status of Hindu undivided family. However, it was liable to pay tax as an individual. It was pointed out:

> "Under the taxing Acts the scheme of treating Hindu undivided family as a distinct taxable entity has been adopted for a long time, e.g., the Indian Income-tax Act, 1869 (IX of 1869), the Indian Income-tax Act, 1870 (IX of 1870), the Indian Income-Tax Act, 1871 (XII of 1871), Act No. VIII of 1872, Act No. II of 1886, Act No. VII of 1912, Act No. XI of 1922, Act No.43 of 1961, have treated a Hindu undivided family as a distinct taxable entity. Similarly, under the Wealth-tax Act, 1957 (27 of 1957), and the Gift-tax Act, 1958 (18 of 1958), the Hindu undivided family is made a unit of taxation. Under the Business Profits Tax Act, 1947 (21 of 1947), and the Excess Profits Tax Act, 1940, also the Hindu undivided family was made a unit of taxation. For the purposes of these Acts Mapilla tarwards governed by the Marumakkathayam law have been regarded as individuals."

(Emphasis supplied) On the basis of the reasoning given in the case of Venugopala (supra), this Court had no difficulty in holding that having regard to the legislative history of revenue laws, Mapilla Tarward had to be assessed to tax as an "individual".

The Court laid special emphasis on the aforesaid passage in the judgment of Venugopala's case, and reiterated that for the purpose of various tax laws set out in that passage "Mapilla tarwards governed by the Marumakkathayam law have been regarded as individuals".

This judgment took note of the fact that long before the Wealth Tax Act was passed Mapilla Tarwad families had been treated as distinct taxable entities and had been taxed as individuals under various tax laws for a very long time. Therefore, "individual" in Section 3 of the Wealth Tax Act must be given the same meaning as was given in various other tax laws so as to include a Mapilla Tarward family .

This judgment really goes against the contention made on behalf of the Revenue. The Court first laid down that a charging section of a taxing statute has to be strictly construed. The Court found that the charging section of various taxing statutes had imposed tax on Hindu Undivided Families as well as on "individuals". It has been held under various fiscal statues that Mapilla Tarwads cannot be taxed as a Hindu undivided family but will have to be taxed as an "individual". If "individual" is understood under the Wealth Tax Act, in the same sense in which it has been understood in various fiscal statutes, then "individual" under Section 3 of the Wealth Tax Act will include a Mapilla Tarwad. But in the various tax Acts mentioned in that judgment `individual' has not been interpreted to include a firm or an association of persons.

That the charging section of the Wealth Tax Act does not impose a charge on a firm or association of persons has been made clear by explanatory notes on the provisions relating to direct taxes issued by the Central Board of Direct Taxes on June 29, 1981 clarifying the Finance Bill, 1981. The idea behind introduction of the new Section 21AA was explained in the following words:

> "21.1 Under the Wealth-tax Act, 1957, individuals and Hindu undivided families are taxable entities but an association of persons is not charged to wealth-
>
> tax on its net wealth. Where an individual or a Hindu undivided family is a member of an association of persons, the value of the interest of such member in the association of persons is determined in accordance with the provisions of the rules and is includible in the net wealth of the member.
>
> 21.2 Instances had come to the notice of the Government where certain assessees had resorted to the creation of a large number of associations of persons without specifically defining the shares of the members therein with a view to avoiding proper tax liability. Under the existing provisions, only the value of the interest of the member in the association which is ascertainable is includible in his net wealth. Accordingly, to the extent the value of the interest of the member in the association cannot be ascertained or is unknown, no wealth-tax is payable by such member in respect thereof. 21.3 In order to counter such attempts at tax avoidance through the medium of multiple associations of persons without defining the shares of the members, the Finance Act has inserted a new Section 21AA in the Wealth-tax Act to provide for assessment in the case of associations of persons which do not define the shares of the members in the assets thereof. Sub- section (1) provides that where assets chargeable to wealth-tax are held by an association of persons (other than a company or a co-

> operative society) and the individual shares of the members of the said association is income or the assets of the association on the date of its formation or at any time thereafter, are indeterminate or unknown, wealth-tax will be levied upon and recovered from such association in the like manner and to the same extent as it is leviable who is a citizen of India and is resident in India at the rates specified in Part I of Schedule I or at the rate of 3 per cent, whichever course is more beneficial to the revenue."

It will appear from this notification that the Central Board of Direct Taxes clearly recognised that the charge of wealth tax was on individuals and Hindu undivided families and not on any other body of individuals or association of persons. Section 21AA has been introduced to prevent evasion of tax. In a normal case, in assessment of an individual, his wealth from every source will be added up and computed in accordance with provisions of the Wealth Tax Act to arrive at the net-wealth which has to be taxed. So, if an individual has any interest in a firm or any other non- corporate body, then his interest in those bodies or associations will be added up in his wealth. it is only where such addition is not possible because the shares of the individual in a body holding property is unknown or indeterminate, resort will be taken to Section 21AA and association of individuals will be taxed as association of persons.

In the instant case, we are concerned with assessment years 1970-71 to 1977-78. Section 21AA was not in force during the relevant assessment period. There was no way that a club could be assessed as an association of persons in these assessment years. It is not even the case of the Revenue that individual member's interest in the club was indeterminate or unknown.

In view of the aforesaid, the appeal must fail. The question referred by the tribunal was correctly answered by the High Court in the affirmative and in favour of the assesee. The appeal is dismissed. There will be no order as to costs.

C.A. Nos. 3210-14/88, 1544/93, 1649/93, 5340/48/93, 5393/94, 948/95, 8347/95, 1796-1799/96, SLP (C) No. 2490/84, C.A.Nos. 2517/96, 9096/96, SLP (C) Nos. 7246-7250/97, C.A.Nos. 2366-2375/94, SLP (C) Nos. 16259-16275/94 with C.A. No.658/93 In view of our decision in C.A. No.650 of 1988, the above appeals and Special Leave Petitions are also dismissed with no order as to costs.

C.A.Nos.467/95, C.A.Nos.3532-38/1988 & C.A.Nos. 7420-22 of 1997 arising out of S.L.P. Nos. 4658-60/1990 Leave granted.

The appeals are allowed.