Supreme Court of India

Bharat Hari Singhania And Ors. ... vs Commissioner Of Wealth Tax ... on 16 February, 1994

Bench: S.C. Agrawal, B.P. Jeevan Reddy, A.S. Anand

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                CASE NO.:
Writ Petition (civil)  1213 of 1990

PETITIONER:
BHARAT HARI SINGHANIA AND ORS. ETC. ETC.

RESPONDENT:
COMMISSIONER OF WEALTH TAX (CENTRAL) AND ORS.

DATE OF JUDGMENT: 16/02/1994

BENCH:
S.C. AGRAWAL & B.P. JEEVAN REDDY & A.S. ANAND

JUDGMENT:
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JUDGMENT 1994(1)SCR 1033 The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J. Delay condoned, Leave granted.

Substitution in Civil Appeal No. 1587 of 1980 is allowed.

1. The Wealth Tax Act, 1957 was enacted by Parliament providing for levy of wealth tax. Section 3 is the charging section. It levies wealth tax on an individual, Hindu Undivided Family and Company in respect of their net wealth on the corresponding valuation date at the rate or rates specified in Schedule-I. The expression 'net wealth' is defined in clause (m) of Section 2. In short, it means the aggregate value of all the assets belonging to the assessee on the valuation date minus all his liabilities. Section 7 prescribes the manner in which the value of the assets is to be determined. At the relevant time, sub-section (1) of Section 7 read: "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." Section 46(1) empowers the Board (Central Board of Direct Taxes) to make rules for carrying out the purposes of the Act. Sub-section (2) particularises the topics with respect to which rules can be made. Clause (a) in sub-section (2) says that Rules made by the Board may provide for the manner in which the market value of an asset may be determined. Rules been made as contemplated by the said sub-section. Rule 1-B provides the manner in which the life interest is to be valued. Rule 1-BB prescribes the manner of valuing the house property. Rule 1-C prescribes the manner in which the market value of unquoted preference shares has to be determined. Rule 1-D, with which we are concerned herein, prescribes the manner in which the market value of unquoted equity shares of companies other than investment companies and managing agency companies is to be determined. Inasmuch we are concerned herein with the interpretation of the said rule in its various aspects, it would be appropriate to set out the rule in full, as it obtained at the relevant time:

"1D. The market value of an unquoted equity share of any company, other than an investment company or a managing agency company, shall be determined as follows:

The value of all the liabilities as shown in the balance sheet of such company shall be deducted from the value of all its assets shown in the balance sheet. The net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance sheet. The resultant amount multiplied by the paid-up value of each equity share shall be the break-up value of each unquoted equity share. The market value of each such share shall be 85 per cent of the break-up value so determined.

Provided that where, in respect of any equity share, no dividend has been paid by such company continuously for not less than three accounting years ending on the valuation date, or in the case where the accounting year of that company does not end on the valuation date for not less than three continuous accounting years ending on a date immediately before the valuation date the market of such share shall be as indicated in the Table below:

THE TABLE Number of accounting years ending on the valuation date or in the case where the accounting year does not end on the valuation date, the number of accounting years ending on a date immediately preceding the valuation date, for which no dividend has been paid. Market value Three years 82 1/2 per cent of the break-up value of such share Four years 80 --- -do-- -

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Five years            77r                    ----do----

Six years and above   75                     ---do---
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Explanation I: For the purposes of this rule, "balance sheet", in relation to any company, means the balance sheet of such company as drawn up on the valuation date and where there is no such balance sheet, the balance sheet drawn up on a date immediately preceding the valuation date and in the absence of both, the balance sheet drawn up on a date immediately after the valuation date.

Explanation II: For the purpose of this rule-

(i) The following amounts shown, as assets in the balance sheet shall not be treated as assets, namely: -

(a) Any amount paid as advance tax under section 18A of the Indian Income- tax Act, 1922 (11 of 1922), or under Section 210 of the Income-tax Act, 1961 (43 of 1961);

(b) Any amount shown, as liabilities in the balance sheet shall not be treated as liabilities, namely: -

(a) The paid-up capital in respect of equity shares;

(b) The amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the valuation date at a general body meeting of the company;

(c) Reserves, by whatever name called, other than those set apart towards depreciation;

(d) Credit balance of the profit and loss account;

(e) Any amount representing provision for taxation [other than the amount referred to in clause (i)(e)] to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(f) Any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares."

2. Rule 1-D was introduced with effect from November 6, 1967. It may be noticed that by Direct Tax Laws (Amendment) Act, 1989, these Rules have been incorporated in Schedule-III to the Act. Rule 11 in the Schedule corresponds to Rule 1-D.

3. Among the companies incorporated in India, more than 85% are private companies (excluding government own companies). In private limited companies, there is always a restriction upon the transfer of shares with the result that their shares are not quoted on the stock exchange.

Apart from private companies, there may be some public limited companies whose shares are also not quoted on the stock exchange for one or the other reason. Where the shares are quoted on the stock exchange, it is evident that their value on the valuation date is the value for the purposes of the Act. In case of unquoted equity shares, a formula, a method, has to be devised to ascertain their value on the valuation date. Rule 1-D provides for this situation. It is one of the rules contemplated by the opening words in sub-section (1) of Section 7.

4. Let us now analyse the rule to find out what it says. The formula prescribed in the main limb of the Rule is this: take the balance-sheet of the company; deduct the value of all the liabilities as shown in the balance-sheet from the value of all the assets shown therein; divide the net amount so arrived at by the total amount of its paid-up equity share capital as shown in the balance-sheet; multiply the resultant amount thus obtained by the paid-up value of each equity share; the value so arrived at is the break-up value of each unquoted equity share; 85% of such break-up value shall be treated as the market value of the share.

5. The balance sheet of the company thus constitutes the basis for working the rule. The rule cannot be worked without the balance sheet. No problem will arise if the date of the balance sheet and the valuation date coincide. But this may not always happen. There may be a case where the balance sheet is prepared on a date earlier than the valuation date of the assessee (shareholder) concerned. This situation is met by Explanation-I. The Explanation contemplates a situation where the valuation date of the assessee concerned and the date of balance sheet of the company is not the same. In such a situation, it says, take the balance-sheet drawn up on a date immediately preceding the valuation date of the assessee In case, both these balance-sheets are not available, the Rule says, take the balance- sheet drawn up on a date immediately following the valuation date of the assessee.

6. The proviso to the rule deals with the situation where no dividend has been paid by the company continuously for not less than three account-ing years ending on the valuation date of the assessee

concerned. Since we are not concerned with the proviso in these matters, it is not necessary to set out its purport except to say that in the cases contemplated by it, it provides a still lower percentage of break-up value to be the market value of the share. Depending upon the number of years the dividend is not declared, the percentage goes down.

7. Explanation-II contains two clauses, (i) and (ii). Clause (i) provides that two types of assets shown in the balance sheet shall not be treated as assets. We are concerned with the first among the two which reads:- "(a) any amount paid as advance tax under section 18A of the Indian Income-tax Act, 1922 (11 of 1922), or under section 210 of the Income-tax Act, 1961." Clause (ii) provides that the several items mentioned therein, which are shown, as liabilities in the balance sheet, shall not be treated as liabilities. We are concerned herein with the liability mentioned under sub-clause (e) which reads: "(e) any amount representing provision for taxation [other than the amount referred to in clause (i)(a)] to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto." Schedule-VI to the Companies Act prescribes the form in which the balance sheet of a company is to be prepared. It contains four columns. Second column mentions the liabilities and the third column the assets. The advance tax paid by the company under Section 210 of the Income Tax Act is shown as an asset while the amount set apart as provision for taxation is shown in the column of liabilities. Now, what Explanation does is to direct that the two items mentioned as assets shall not be treated as assets and the six items mentioned as liabilities shall not be treated as liabilities. In other words, it provides for modification of the balance sheet in certain respects for the purpose of working the Rule. After the said deletions, the balance sheet becomes the balance sheet for the purpose of Rule 1-D.

8. Elaborate arguments have been addressed before us by learned counsel appearing on both sides. Having regard to the contentions urged, the following questions arise for our determination:

(1) Whether it is obligatory to follow Rules 1-D while valuing the unquoted equity shares of companies (other than investment companies and managing agency companies) or is it merely optional? (To borrow the language of the learned counsel for the assessees, the Rule is not mandatory but 'directory'; while the learned counsel for the Revenue says that the valuation of an unquoted equity share shall have to be done only in the manner indicated by the Rule and in no other manner.) (2) Whether the valuation officer is bound by Rule 1-D when valuing the unquoted equity shares of the companies?

(3) Whether the application of the break-up method in Rule 1-D means that the capital gains-tax, which would be payable in case the said shares are sold on the valuation date, is liable to be deducted from the market value determined?

(4) Where the date of a balance sheet of the company is earlier to the valuation date of the assessee, is it obligatory to follow Rule 1-D? (The same question arises where in the absence of such a balance sheet; the balance sheet drawn up on a date immediately following the valuation date is taken as the basis).

(5) How are sub-clauses (a) of clause (i) and (e) of clause (ii) of Explanation-II to be read and understood?

(6) whether the assessee holding shares in a company whose assets comprise wholly of Tea Estates is entitled to exclude such shares from his wealth?

9. We shall deal with these questions in their proper order.

QUESTION NO. 1: Whether it is obligatory to follow Rule 1-D while valuing the unquoted equity shares of companies (other than investment companies and managing agency companies) or is it merely optional?

10. The formula prescribed by Rule 1-D for determining the market value of unquoted equity shares of a company has been set out by us hereinabove. To repeat, the formula is this: deduct all the liabilities from all the assets shown in the balance-sheet; the net amount so arrived at shall be divided by total amount of the paid-up equity share capital; the amount thus arrived at shall be multiplied by the paid-up value of each equity share; the value so arrived at is called the break-up value of the share and 85% of such break-up value shall be treated as the market value of the share. This method is, in short, called the 'break-up method'. The contention of the learned counsel for the assessees, S/Sri Debi Pal, M.L. Verma, Ramachandran, Harish Salve, G.C. Sharma and P.H. Parekh is this: Section 7(1) of the Act contemplates rules being made for determining the market value of an asset which means the value which that asset would fetch if sold in the open market on the valuation date. The rule-making authority is-to operates within the confines of Section 7(1). The Rules made by it should be directed towards ascertaining such market value. Rule 1-D, however, does not bring about the said result. It prescribes an arbitrary method, the application of which leads to an arbitrary figure unrelated to the market value of the share on the valuation date. This court has repeatedly held that the proper and appropriate method for valuing the unquoted equity shares of a going concern is the yield method. The court has pointed out that the break-up method is not appropriate for the purpose and that this method is adopted in exceptional situations or where the company is ripe for winding-up. A method which is appropriate only in the case of a company ripe for winding-up cannot be treated as a proper or appropriate method for the purpose of valuing the shares of a going concern. The formula prescribed in Rule 1-D is unrelated to realities. The Rule is thus contrary to Section 7(i) and beyond the rule-making authority conferred by the Act. Even if for some reason the Rule is held to be good, it should not be followed in the case of valuation of the unquoted equity shares of a company, which is a going concern. In such cases, the yield method alone should be adopted. Only in the case of a company, which is ripe for winding-up, its shares must be valued according to the break-up method contained in the Rule. In other words, Rule 1-D is not mandatory but directory. The majority of the High Courts in the country have taken this view and it should also be accepted by this court.

11. On the other hand, S/Sri Gauri Shanker, B.B. Ahuja and Murthy appearing for the Revenue submitted that according to the decisions of this Court and well-known rules of accountancy followed in this and other countries, break-up method is one of the recognised methods of valuing the unquoted equity shares. Where more than one method of valuation is available to the

rule-making authority, it is open to it to choose one of them. Counsel emphasised that Rule 1-D takes the balance sheet of the company itself as the basis and arrives at the valuation, which cannot be said to be either arbitrary or unrelated to realities. The counsel submitted that every authority under the Act is bound to follow and apply the said Rule whenever they have to value an unquoted equity share.

12. We may first lake up the question whether Rule 1-D is void for being inconsistent with the Act or for the reason that it is beyond the rule- making authority conferred by the Act. Section 7(1) indeed defines the expression "value of an asset." It is "the price which in the opinion of the Wealth Tax Officer it would fetch if sold in the open market on the valuation date", but this is made expressly subject to the Rule made in that behalf. No. guidance is furnished by the Act to the rule-making authority except to say that the Rule made must lead to ascertainment of the value of the asset (unquoted equity share) as defined in Section 7. It is thus left to the rule-making authority to prescribe an appropriate method for the purpose. Now, there may be several methods of valuing an asset or for that method an unquoted equity share. The rule-making authority cannot ob-viously prescribe all of them together. It has to choose one of them, which according to it is more appropriate. The rule- making authority has in this case chosen the break-up method, which is undoubtedly one of the recognised methods of valuing unquoted equity shares. Even if it is assumed that there was another method available, which was more appropriate, still the method chosen cannot be faulted so long as the method chosen is one of the recognised methods, though less popular. One probable reason why yield method or dividend method was not adopted in the case of unquoted equity shares was that bulk of these companies are private limited companies where the divided declared does not represent the correct state of affairs and to estimate the probable yield is no simple exercise. The dividends in these companies is declared to suit the purposes of the persons controlling the companies. Maintainable profits rather than the dividends declared represent the correct index of the value of their shares. The break-up method based upon the balance sheet of the company, incorporated in Rule 1-D, is a fairly simple one. Indeed, no serious objection can also be taken to this course since the basis of the Rule is the balance-sheet of the company prepared by the company itself - subject, of course, to certain modifications provided in Explanation-II.

13. We are not satisfied that the break-up method adopted by Rule 1-D does not lead to proper determination of the market value of the unquoted shares. The argument to this effect, advanced by the learned counsel for the assessees, is based upon the assumption/premise that the value determined by applying the yield method is the correct market value. We do not see any basis for this assumption. No empirical data is placed before us in support of this submission or assumption. It may be more advantageous to the assessees but that is not saying the same thing that it alone represents the true market value. It cannot be stated as a principle that only the method that leads to lesser value is the correct method. The idea is to find out the true market value and not the value more favourable to the assessee. Accordingly, the contention that rule 1-D is inconsistent with Section 7(1) or that it travels beyond that purview of Section 7 is rejected.

14. The next argument that Rule 1-D is not mandatory but directory proceeds upon a certain misconception. A provision is said to be directory when the absence of a strict or literal compliance with it - and in some cases, even non-compliance with it - may not vitiate the thing done. On the

other hand, a mandatory provision is one which has to be obeyed in its letter and spirit and anything done without such compliance stands vitiated. The counsel for the assessees, however, do not understand the said expressions in the above sense. What they really say is that following Rule 1-D should be optional. According to them, in all cases except in the case of companies ripe for winding-up, Rule 1-D ought not to be followed and that only the yield method should be. This is really substituting a Rule of the choice of assessees in the place of the Rule made by the rule-making authority under Section 46 of the Act. If the Rule is good and valid - as we find it to be, it has to be followed in each and every case. It is not a matter of choice or option. The rule-making authority has prescribed only one method for valuing the unquoted equity shares. If this method were not to be followed, there is no other method prescribed by the Rules. The acceptance of the assessees' contention would mean that it would be open to the Wealth Tax Officer to adopt such other method of valuation as he thinks appropriate in the circumstances. This is bound to lead to vesting of uncalled for wide discretion in the hands of Wealth Tax Officer/valuing authorities. It would lead to uncertainty and may be arbitrariness in practice. Where there is a Rule prescribing the manner in which a particular property has to be valued, the authorities under the Act have to follow it. They cannot devise (heir own ways and means for valuing the assets. It is equally well to remember that Rule 1-D does not treat the break-up value as the market value. A deduction of 15% is made in the break-up value to arrive at the market value. It is equally relevant to notice that Rule 1-D uses the expression 'shall'. Which prima facie indicates its mandatory character.

15. Two decisions of this court constitute the bed-rock upon which are founded (the several submission of the learned counsel for the assessees. They are Commr. of Wealth Tax. Assam v. Mahadeo Jatan & Ors., 86 I.T.R. 621 and Commissioner of Gift Tax, Bombay v. Kusumben D. Mahadevia, 122 I.T.R.

38. It is, therefore, necessary to examine the ratio of the said decisions to find out whether they do in fact support their contentions.

16. Mahadeo Jalan was concerned with assessment years 1957-58 and 1958-59. Rule 1-D was not in force at that time. The assessee owned shares in certain private limited companies, which had to be valued for determining the assessee's wealth. The question referred to the High Court under Section 66(1) of the Indian Income Tax Act. 1922 was: "whether, on the facts and in the circumstances of the case, the principle of 'break-up value' adopted by the Income-tax Tribunal as the basis for the valuation of the shares in question is sustainable in law." At the relevant time, sub- section (1) of Section 7 read differently. It provided that "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." The opening words "subject to any rules made in this behalf were not there. (These words were added with effect from April 1, 1965.) The question posed by Jaganmohan Reddy, J., speaking for the Bench comprising himself and H.R. Khanna, J. was "what is the basis of valuation of shares in private limited companies for the purpose of Section 7 of the Wealth Tax Act?" After discussing the relevant principles and decisions, the learned Judge enunciated the following principles:

"An examination of the various aspects of valuation of shares in a limited company would lead us to the following conclusion:

(1) Where the shares in a public limited company is quoted on the stock exchange and there are dealings in them, the price prevailing on the valuation date is the value of the shares.

(2) Where the shares are of a public limited company, which are not quoted on a stock exchange, or of a private limited company the value is determined by reference to the dividends if any, reflecting the profit- earning capacity on a reasonable commercial basis. But, where they do not, then the amount of yield on that basis will determine the value of the shares. In other words, the profits, which the company has been making and should be making will ordinarily, determine the value. The dividend and earning method or yield method are not mutually exclusive; both should help in ascertaining the profit earning capacity as indicated above. If the results of the two methods differ, an intermediate figure may have to be computed by adjustment of unreasonable expenses and adopting a reasonable proportion of profits.

(3) In the case of a private limited company also where the expenses are incurred out of all proportion to the commercial venture, they will be added back to the profits of the company in computing the yield. In such companies the restriction on share transfers will also be taken into consideration as earlier indicated in arriving at a valuation.

(4) Where the dividend yield and earning method break down by reason of the company's inability to earn profit and declare dividends, if the set-back is temporary then it is perhaps possible to take the estimate of the value of the shares before set-back and discount it by a percentage corresponding to the proportionate fall in the price of quoted shares of companies which have suffered similar reverses.

(5) Where the company is ripe for winding up then the break-up value method determines what would be realised by that process.

(6) As in Attorney-General of Ceylon v. Mackie, [1952] 2 All E.R. 775 (P.C.) a valuation by reference to the assets would be justified where as in that case the fluctuations of profits and uncertainty of the conditions at the date of the valuation prevented any reasonable estimation of prospective profits and dividends.

In setting out the above principles, we have not tried to lay down any hard and fast rule because ultimately the facts and circumstances of each case, the nature of business, the prospects of profitability and such other considerations will have to be taken into account as will be applicable to the facts of each case. But, one thing is clear, the market value, unless in exceptional circumstances to which we have referred, cannot be determined on the hypothesis that because in a private limited company one holder can bring it into liquidation, it should be valued as on liquidation by the break-up method. The yield method is the generally applicable method while the break-up method is the one resorted to in exceptional circumstances or where the company is ripe for liquidation but nonetheless is one of the methods."

17. In Kusumben D. Mahadevia, a Bench comprising P.N. Bhagwati and R.S. Pathak, JJ. affirmed the aforesaid principles and added the following observation:

"Now it is true, as observed by the court, that there cannot be any hard and fast rule in the matter or valuation of shares in a limited company and ultimately the valuation must depend upon the facts and circumstances of each case, but that does not mean that there are no well-settled principles of valuation applicable in specific fact-situations and whenever a question of valuation of shares arises, the taxing authority is in an uncharted sea and it has to innovate new methods of valuation according to the facts and circumstances of each case. The principles of valuation as formulated by the court are clear and well defined and it is only in deciding which particular principle must be applied in a given situation at the facts and circumstances of the case become material. It is significant to note that immediately after making the above observation the court hastened to make it clear, as if in answer to a possible argument which might be advanced on behalf of the revenue on the basis of that observation that the yield method it the generally applicable method while the break-up method is the one resorted to in exceptional circumstances or where the company is ripe for liquidation."

18. Kusumben D. Mahadevia was concerned with the valuation of shares in an investment company, which was, of course, a going concern. The valuation of unquoted equity shares in investment companies is governed by a different Rule, viz., Rule 1-E - which was later incorporated as Rule 12 in Schedule- Ill of the Act.

19. Now, let us examine the principles enunciated in Mahadeo Jalan. The decision recognises that the break-up method "nonetheless is one of the methods" of valuation of such shares, though the said method is said to be appropriate in exceptional circumstances or where the company is ripe for liquidation. The normal method in the case of a going concern is stated to be the dividend method or they yield method. If one reads the proposition (2) enunciated in the decisions carefully, one would immediately recognise the several practical difficulties. Firstly, it is stated that the "dividends, if any, reflecting the profit-earning capacity on a reasonable commercial basis" shall be the basis. It is worth pointing out that it is not the dividends declared that is the basis but the "dividends reflecting the profit-earning capacity on a reasonable commercial basis." It is then stated that if the dividends declared do not reflect the profit-earning capacity on a reasonable commercial basis, one has to adopt the 'earning method', which is explained as meaning "the profits which the company has been making and should be making." It is then stated that if the results of two methods (dividend method and earning method) differ, "an intermediate figure may have to be computed by adjustment of unreasonable expenses and adopting a reasonable proportion of profits." One need not emphasise the amount of investigation the Wealth Tax Officer has to do in each case - and an assessee may own shares in any number of companies. This is not all. Where in a private limited company, disproportionate expenses are incurred; such disproportionate expenses have to be added back to the profits of the company in computing the yield. Again, in a case where dividend and earning method break down "by reason of the company's inability to earn profits and declare dividends" and "if the set-back is temporary", then "it is perhaps possible to take the estimate of the value of the shares before set-back and discount it by a percentage corresponding to the proportionate fall in the price of quoted shares of companies which have suffered similar reverses." A very daunting task

indeed even for the most efficient and expert valuer. Propositions (5) and (6) set out in the judgment recognise that where the company is ripe for winding-up or where the fluctuation of profits and uncertainty of conditions at the date of valuation prevent a reasonable estimation of prospective profits and dividends, the break-up method can be adopted. All the above propositions, it is relevant to point out, are qualified by the statement: "in setting out the above principles, we have not tried to lay down any hard and fast rule because ultimately the facts and circumstances of each case, the nature of the business, the prospects of profitability and such other considerations will have to be taken into account as will be applicable to the facts of each case."

20. The statement of law in the decision would thus establish that it does not purport to "lay down any hard and fast rule." It recognises that various factors in each case will have to be taken into account to determine the method of valuation to be applied in that case. The dividend yield method is not the only method indicated in the case of a going concern; there is the 'earning method' and then a combination of both methods. The several qualifications added to the above rules, as already stated, make them highly cumbersome and time-consuming. The Wealth Tax Officer has to examine the facts and circumstances of each case including the nature of the business, prospects of profitability and similar other considerations before finally determining whether to apply the dividend method, yield method or whether the break-up method should be followed. There may be cases where an assessee may be holding shares of a large number of private companies or other public limited companies whose shares are not quoted. Compared to them, the break-up method incorporated in Rule 1-D is far simpler and far less time-consuming. It prescribes a simple uniform method to be followed in all cases. All that the Wealth Tax Officer has to do is to take the balance sheet, delete some items from the columns relating to assets and liabilities as directed by Explanation-II, and then apply the formula contained in the Rule. He need not have to look into the profitability, the earning capacity and the various other factors mentioned in propositions (2), (3) and (4) of the decision. The decision, it bears repetition, recognises that break-up method ''nonetheless is one of the methods." In the circumstances, it is difficult to agree with the learned counsel for the assessees either that break-up method is not a recognised method or that yield method is the only permissible method for valuing the unquoted equity shares. It is not as if the rule-making authority has adopted a method unknown in the relevant circles or has devised an impermissible method. There is no empirical data produced before us to show that break-up method does not lead to the determination of market value of the shares. Merely because yield method may be more advantageous from the assessee's point of view, it does not follow that it alone leads to the ascertainment of true market value and that all other methods are erroneous or misleading. This aspect we have emphasised hereinbefore too.

21. The decision in Kusumben D. Mahadevia does no more than reiterate the principles and observations in Mahadeo Jalan.

22. Dr. Gauri Shanker brought to our notice a brochure entitled "Guidelines for valuation of equity shares of companies and the business and net assets of branches", issued by the Ministry of Finance, Department of Economic Affairs, Investment Division (vide F. No. S.l l (21) C.C.I.(11)/90 dated July 13, 1990, published in (1990) 60 Company Case (St.) 121] . The said guidelines are stated to be applicable to the valuation of inter alia equity shares of companies, private and public limited. Para

(5) in Part-II says that the object of the valuation process is to make a best reasonable judgment of the value of the equity shares of a company, referred to in the said guidelines as 'fair value'. For determining the fair value, three methods are devised, viz., (1) net asset value method; (2) profit earning capacity value method; and (3) market value method in the case of listed shares. Para (6) shows that what is referred to, as net asset value is roughly the break-up method incorporated in Rule. 1-D. The relevance of these guidelines lies in the fact that they do indicate and reaffirm that break-up method is one of the recognised methods of valuing equity shares.

23. Sri ML. Verma placed strong reliance upon the decisions of this Court in Commissioner of Gift-Tax v. Executors & Trustees of the Estate of Late Sh. Ambalal Sarabhai, 170 I.T.R. 144 in support of his contention. The question in the said case related to valuation of certain shares, which were the subject matter of a gift. The shares were of a company incorporated in the United Kingdom, which was analogous to a private company in India. The assessee contended that the shares must be valued applying the break-up method taking the average of the balance sheets dated March 31, 1963 and March 31, 1964. The Gift Tax Officer adopted the break- up method but only on the basis of the balance sheet as on March 31, 1964. When the matter reached the High Court, it opined that the Gift Tax Officer ought to have taken the balance sheet as on March 31, 1963 and not as on March 31, 1964. Before this Court, however, the Revenue contended, on the basis of Mahadeo Jalan and Kusumben D. Mahadevia, that the correct method was to adopt the yield method and not the break-up method. While upholding the contention of the Revenue, the Court refused to interfere in the matter having regard to the numbers of years that have elapsed since the controversy arose and also because the amount involved was very small. Firstly, it may be seen that the matter had arisen under the Gift Tax Act and Rule 1-D did not in terms apply to it. The shares were of a British Company, which was analogous to a private limited company in India. Upto the stage of High Court, both the Revenue and the assessee were ad aidem in applying the break-up method. The only question was which balance sheet was required to be taken as the basis? In this Court, however, the Revenue shifted its stand and wanted the yield method to be applied, which contention was upheld following the aforesaid two decisions. This decision does not, therefore, lay down any different propositions than those enunciated in Mahadeo Jalan and Kusumben D. Mahadevia. Incidently, this case establishes that in case of some companies, break-up method is more advantageous to the assessees than the yield method. In other words, it is not always that yield method is more advantageous to the assessees.

24. Dr. Gauri Shankar submitted that in as much as Section 46 provides for the Rules being laid before both the Houses of Parliament for the specified period, it must be deemed that the Parliament has approved these Rules. The consequence, according to the learned counsel, is that the Rules have acquired a higher status - almost as good as that of the statute itself. It is not possible to agree. The requirement of laying before that House is one form of parliamentary control. But by that means, the Rules do not acquire the status of the statute made by Parliament. Indeed, the Rules are effective as soon as they are made and published. The Parliament is, no doubt, entitled to modify the said Rules in such manner as it thinks appropriate or even annul them. But it does not mean that the Rules become effective only after the expiry of the period for which they are to be laid before the Parliament. Section 46(4) expressly provides that any such modification or annulment of Rules by Parliament "shall be without prejudice to the validity of anything previously done under that rule."

To reiterate, the Rules even after they are laid before both Houses of Parliament for the specified period, yet continue to be delegated legislation. All that may be said is that the Parliament did not find any justification to amend or modify the Rules and nothing more.

25. It is brought to our notice that a good number of High Courts have taken the view now espoused by the assessees and that only the Allahabad High Court has taken the contrary view. Inasmuch as the decisions of the High Courts upholding the assessees' contention are based mainly upon the decisions of this Court in Mahadeo Jalan and Kusumben D. Mahadevia - which decisions we have already dealt with - we do not think it necessary to examine the reasoning of the High Courts separately. Sri M.L. Verma particularly emphasised the observation in Dr. D. Renuka v. Commissioner of Wealth-Tax 175 I.T.R. 615, a decision of Andhra Pradesh High Court (rendered by a Bench comprising one of us, Jeevan Reddy, J.) holding that the break-up method brings about a situation unrelatable to realities and unjust to the assessees in general. It must be stated that the said observations were influenced by the views of the majority of the High Courts and also because the Bench did not have the benefit of an in-depth debate, as has taken place now in this Court. Indeed, the decision of this Court in Executors of Ambalal Sarabhai indicates that 'break-up' method is not always advantageous to the Revenue nor is the 'yield method' always advantageous to the assessees.

26. For all the above reasons, we hold that Rule 1-D is not ineffective or invalid for any of the reasons suggested by the learned counsel for the assessees nor can it be said that the Wealth Tax Officer has an option to follow or not to follow the said Rule. He has to follow and apply the said Rule in each and every case where he has to value the unquoted equity shares of a company. The contention of the assessees that it is merely directory and that it need not be followed at the choice of the Wealth Tax Officer or the assessee, or in the case of a going concern, cannot be accepted.

Question No. 2:- Whether the valuation officer is bound by Rule 1-D when valuing the unquoted equity shares of the companies?

27. Ordinarily, it is for the Wealth Tax Officer to value the assets of an assessee, whatever be their nature. Section 7(1) says so. Sub-section (3) of Section 7, however, says that "(Notwithstanding anything contained in sub-section (1) where the valuation of any asset is referred by the Wealth Tax Officer to the Valuation Officer under Section 16A, the value of such asset shall be estimated to be the price which in the opinion of the Valuation Officer it would fetch if sold in the open market on the valuation date..........." Sub-section (1) of Section 16A prescribes the situations in which the Wealth Tax Officer may refer the valuation of any asset to the valuation officer. Sub-sections (2) to (4) prescribe the procedure to be followed by the valuation officer on such reference. In short, he has to give notice to the assessee, receive the evidence produced by him, make appropriate enquiry and then send his report under sub- section (5) to the Wealth Tax Officer. Sub-section (6) says that "on receipt of the order under sub-section (3)* or sub-section (5) from the valuation officer, the Wealth Tax Officer shall, so far as the valuation of the asset in question is concerned, proceed to complete of the assessment in conformity with the estimate of the Valuation Officer." In other words, the order or the valuation made by the valuation officer, as the case may be, is binding on the Wealth Tax Officer.

* Sub-Section (3) says that on reference from Wealth Tax Officer, if the valuation officer is of the opinion that the asset has been correctly valued in the return filed by the assessee. he shall pass an order to that effect and send it to the Wealth Tax Officer.

28. The contention of the learned counsel for the assessees is that the valuation officer is not bound by and is not obliged to observe Rule 1-D. It is submitted that the valuation officer has to determine the market value of the asset referred to him independently and applying such method as appears appropriate to him in the circumstances. His only object is to determine the correct market value. The contention is mainly based upon the non-obstante clause found at the inception of sub-section (3) of Section 7. It is argued that the non-obstante clause - "notwithstanding anything contained in sub-section (1)" - indicates clearly that the valuation officer is not bound by the rules referred to in and by sub-section (1) of Section 7. We find it difficult to agree. Valuation Officer is a creature of the statute. He is, therefore, bound by the provisions of the statute and the Rules made thereunder unless there is something either in the Act or in the rules to indicate otherwise. The question is whether the said non-obstante clause has that effect. The scope and purport of the said non-obstante clause has to be ascertained by reading it in the context of the provisions contained in Section 7 and consistent with the scheme of the enactment. If so read, it only means this: Ordinarily it is for the Wealth Tax Officer to estimate the price which in his opinion an asset would fetch if sold in the open market on the valuation date but where the Wealth Tax Officer refers the question of valuation of an asset to the valuation officer under Section 16-A, it is for the valuation officer to make the said estimate which estimate shall be binding upon the Wealth Tax Officer as provided in sub-section (5) of Section 16-A. Thus, in a case referred to valuing officer, the estimate is made by the valuing officer instead of Wealth Tax Officer. This is the limited function and purpose of the said non-obstante clause "notwithstanding anything contained in sub-section (1)" in Section 7(3). It may be noticed that the relevant language of sub- section (1) and sub-section (3) is identical, viz., "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." It would be rather odd to say that these words when used in sub-section (1) mean something different from what they mean in sub-section (3) - asset is the same, object (to find the market value) is the same, proceedings are one and the same and yet it is suggested that the method of valuation would differ from Wealth Tax Officer to valuation officer! If the intention of the Parliament was to say that the valuation officer is not bound by the Rules made under Section 46 governing the valuation of assets, it would have said so clearly. If a creature of the statute was sought to be elevated to a status above the Rules - an unusual thing to do - one would expect the Parliament to say so in clear and unambiguous words. Section 16-A, which provides for the reference to, enquiry by the order to be passed by the valuing officer gives no indication whatsoever that the valuation officer is not bound by the Rules made under the Act. The Rules provide for the method of valuing life interest (1B), house property (1BB), unquoted preference shares (1C), unquoted equity shares (1D), quoted equity and preference shares (1F), jewellery (1G), interest in partnership/association of persons (2) and assets of industrial undertakings (2H) and so on and so forth. The Rules also provide for certain assets and certain liabilities shown in the balance sheet to be ignored while valuing the net value of assets of a business as a whole under Rule 2-A. It is difficult to believe that none of these Rules govern the valuation by the valuation officer. The problem is that the learned counsel for the assessees tend to assume that valuation officers are meant only for valuing unquoted equity shares forgetting for a moment that they are meant for

valuing all kinds of assets and that many of the assets present inherent difficulties in valuing them, e.g., jewellery, pieces of art, antiques, industrial undertakings and businesses as a whole and so on.

29. There is yet another reason why the assessees' contention cannot be accepted. Sub-section (6) of Section 16-A makes the opinion of valuation officer binding upon the Wealth Tax Officer but not upon the appellate authorities. Indeed, sub-section (3-A) of Section 23 (which provides for appeal from the orders of Wealth Tax Officer to the Appellate Assistant Commissioner) indicates clearly that the A.A.C. can depart from the valuation officer's valuation. It reads:

"(3A) If the valuation of any asset is objected to in an appeal under clause (1) of sub-section (1) or of sub-section (1A), the Appellate Assistant Commissioner or, as the case may be, the Commissioner (Appeals) shall,--

(a) in a case where such valuation has been made by a Valuation Officer under section 16A, give such Valuation Officer an opportunity of being heard;

(b) in any other case, on a request being made in this behalf by the Wealth-tax Officer, give an opportunity of being heard to any Valuation Officer nominated for the purpose by the Wealth-tax Officer."

30. Now, it is not argued that the Appellate Assistant Commissioner is not bound by the Rules while valuing the assets. If he is so bound, does it not mean that he will necessarily have to set aside the valuation made by valuation officer if it is not in accordance with the Rules and value the asset himself in accordance with the Rules? Section 24, which provides for appeal to the Appellate Tribunal, too contains an identical provision [vide the proviso to sub-section (5)]. Again it is not suggested that the Appellate Tribunal is not bound by the Rules. It is rather odd to say that everybody else is bound by the Rules but not the valuation officer, though his valuation is subject to appeal to the very authorities who are bound by the Rules. Conversely, it cannot be suggested that nobody except the Wealth Tax Officer is bound by the Rules. This would be a ridiculous suggestion, if made. All this only means that there can be only one uniform method of valuation of assets under the Act - and not to or more. This would be so whether reference to valuation officer is obligatory - as contended on the basis of a Board circular - or otherwise.

31. We are, therefore, of the opinion that the valuation officer is equally bound by Rule 1-D - as indeed he is bound by all the other Rules made under the Act. This is the view taken by the Allahabad High Court in Commissioner of Wealth-Tax V. Smt. Pushpawati Devi Singhania, 188 I.T.R.

364. The contrary view taken by the Delhi High Court in Sharbati Devi Jhalani v. Commissioner of Wealth-Tax, 159 I.T.R. 549 and other High Courts, if any, is overruled.

32. Question No. 3:- Whether the application of the 'break-up method' in Rule 1-D means that the capital gains-tax, which would be payable in case the said shares are sold on the valuation date, is liable to be deducted from the market value determined?

33. The contention of the learned counsel, in this behalf, is rather involved if not obscure. The argument runs thus: Section 7(1) says that the value of an asset shall be the price which such asset would fetch if sold in the open market on the valuation date. In other words, the sub-section creates a fiction of sale of such asset on the valuation date for the purpose of determining its market value. Once a fiction is created, it must be carried to its logical extent and the court should not allow its imagination to be boggled by any other considerations. If an asset is sold, it would be subject to capital gains tax. For finding out the net wealth received in the hands of assessee, one must necessarily deduct the capital gains tax. Then alone one can arrive at the net price, which the assessee will receive - and that should be the market value. We must say that the entire argument is misplaced. There is no sale of the asset and there is no question of capital gains tax being attracted or being paid. For the purpose of determining the market value, the sub-section says that the Wealth Tax Officer shall make an estimate of the price, which the asset would fetch if sold in the open market on the valuation date. The sub- section speaks of the market value of the asset and not the net income or the net price received by the assessee. This is not a case where a fiction is created by the Parliament. It is only a case of prescribing the basis of determination of market value. On the same reasoning, it must be held that no other amounts like provision for taxation, provident fund and gratuity etc. can be deducted. The contention of the' learned counsel for the assessees is, therefore, wholly unacceptable.

Question No. 4:- Where the date of a balance sheet of the company is earlier to the valuation date of the assessee, is it obligatory to follow Rule 1-D? (The same question arises where in the absence of such a balance sheet; the balance-sheet drawn up on a date immediately following the valuation date is taken as the basis).

34. The 'break-up method' contained in Rule 1-D takes the balance sheet of the company as the basis for working the Rule. The said Rule cannot be worked in the absence of the balance sheet. But there may be cases where the date of balance sheet and valuation date of the assessee does not coincide. It is to meet such a situation that Explanation-I is provided in Rule 1-D. The Explanation says that where the date on which the balance sheet is drawn does not coincide with the valuation date of the assessee, "the balance sheet drawn up on a date immediately preceding the valuation date" shall be adopted as the basis for working the rule. Yet another situation contemplated by the Explanation is where both the above situations are absent, "the balance sheet drawn up on a date immediately after the valuation date" shall be adopted as the basis. Now, one would think that this was the most reasonable thing to do in the circumstances but the contention of the learned counsel for the assessees runs thus: the asset of an assessee has to be valued as on the valuation date and not with reference to any other date; if the balance-sheet is drawn up with reference to a date anterior to the valuation date, it cannot be said that such balance-sheet reflects the position obtaining on the valuation date; many things may happen between the date of balance sheet and the valuation date; the value of the shares may go down; the company may be closed or any other untoward development may depreciate the value of the shares; this difficulty would be more pronounced if the balance-sheet drawn up on a date immediately preceding the valuation date is taken irrespective of how many years before it may have been prepared. In our opinion, the submission has no substance. Once the basis of working the rule is the balance sheet, one must necessarily have the balance sheet. Without a balance sheet the Rule cannot be worked. It is for this reason that the Explanation-I says

what it does. Normally one would expect every company to prepare its balance sheet on the due date. Sometimes, there may be a default on the part of the company in preparing its balance sheet on time. But on the basis of such exceptional circumstances, the Rule cannot be faulted. Indeed the Explanation also provides that in the absence of both the said situations, the balance sheet drawn up on a date immediately after the valuation date shall be adopted. One must remember that we are dealing with a taxing statute and that in tax legislation, legislature must be provided a greater latitude and greater play in the joints. This aspect has been eludicated and explained in the decision of a Constitution Bench in R.K. Garg v. Union of India, 1981 A.I.R. 2138 and deserves to be quoted in full:

"Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes. J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud,* [1957] 354 US 457 where Frankfurter, J. said in has inimitable style:

"In the utilities, tax and economic regulation case, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events, self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry" that exact wisdom and nice adaption of remedy are not always possible and That "judgment is largely a prophecy based on meagre and uninterrupted experience." Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The Courts cannot, as pointed out by the United States Supreme Court in Secy, of Agriculture v. Central Roig. Refining Co., (1950) 94 L ed 381, be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the Legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care be-stowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or the possibilities of abuse come to light the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatice approach which must guide and inspire the legislature in dealing with complex economic issues."

(emphasis added) * It is true that Morey v. Doud, was overruled later by the United States Supreme Court in New Orleans v. Duke, [1976] 427 U.S. 297, but the said fact does not detract from the validity of the rule stated in Morey v. Doud, nor does it in any manner affect the principle stated by this Court.

35. The above statement of law of the Constitution Bench makes it clear that the mere fact that some crudities and inequities result as a result of complicated experimental economic legislation, the legislation cannot be struck down on that ground alone and that the courts cannot be converted into tribunals for relief from such crudities and inequities. The court must adjudge the constitutionality of legislation by the generality of its provisions and not by its crudities and inequities. Ordinarily speaking, the gap, if any, between the valuation date and the date of the balance sheet would not be too long. It would a few months. True it is that there may be some fluctuation in the fortunes of the company within that period. Precisely for this reason, the market value adopted by Rule 1-D is not the break-up value as such but only 85 per cent of it. Moreover, there is no reason to presume that the fluctuation, if any, would be only one way, i.e., to the prejudice of the assessee. The fluctuation may also be the other way, i.e., to the benefit of the assessee, in which case the Revenue will stand to lose its legitimate revenue. But all this is no ground for holding either that Explanation-I is inconsistent with Section 7(1) or that Rule 1-D should not be followed unless the valuation date and the date of balance sheet is identical. Saying so would be putting too restrictive an interpretation upon a taxation provision and would be contrary to the spirit of the statement of law in R.K. Garg.

36. Strong reliance is placed by the learned counsel for the assessees upon the decision of the Delhi High Court in Sharbati Devi Jhalani, which is indeed the subject matter of appeal before us, viz., Civil Appeal Nos.1591-96 of 1991. The first proposition affirmed by the High Court is: "when the Act enjoins the determination of the net wealth of an assessee on the valuation date, by a rule a different date cannot be fixed ......(and that).......If Rule 1-D provides such an outcome then it may have to be held that it is contrary to the Section 3 of the Act." The Court, however, did not declare the Rule void but held that the rule is merely directory and not mandatory in cases where the valuation date and the date of the balance sheet do not coincide. We are afraid, we cannot agree with this reasoning. It must be remembered that what is sought to be valued is an unquoted equity shares. Since it is not quoted on the stock exchange and there are no dealings in those shares, some formula has to be evolved for determining its value. So long as the formula evolved is reasonable having regard to available circumstances and practicable considerations, the formula cannot be faulted. No formula can be evolved to fit all conceivable situations. Even if the dividend method is adopted, the said problem would still be present. The dividend may have been declared on a date different from the valuation date.

37. For all the above reasons, it is not possible to agree that merely because the valuation date and the date of balance sheet are not the same, Rule 1-D need not be followed.

38. Question No. 5:- How are sub-clause (a) of clause (i) and sub-clause

(e) of clause (ii) of Explanation-II to be read and understood?

39. Explanation-II in Rule 1-D contains two clauses. Clause (i) provides that two items shown as assets in the balance sheet shall not be treated as assets for the purpose of Rule l-D. Similarly, clause (ii) says that six items shown, as liabilities in the balance sheet shall not be treated as liabilities for the purpose of Rule 1-D. In other words, the balance sheet of the company with the aforesaid modifications shall be the basis for working the rule. Schedule-VI to the Companies Act, as already stated, prescribes the form in which the balance sheet of a company has to be prepared. Of the four columns provided therein, columns (2) and (3) relate to liabilities and assets. The advance tax paid under Section 210 of the Income-tax Act, though already paid, is shown as an asset as required by Schedule-VI. Clause (i)(a) of Explanation-II, however, says that it shall not be treated as an asset. To this extent, it is in favour of the assessee because the assets as shown in the balance sheet will stand reduced to that extent. Now, Clause (ii)(e) says that in case the balance sheet specifies any amount as 'provision for taxation' in the column of liabilities, the Wealth Tax Officer shall treat only that amount as a liability, which is equal to the tax payable with reference to the Book profits. Any excess over the said amount shall not be treated as a liability. Sub-clause (e) of Clause (ii) while referring to the "amount representing provision for taxation" qualifies the said words by the words following, viz., "other than the amount referred to in clause (i)(a)". This is, as it ought to be. The amount referred to in clause (i)(a) is shown in the balance sheet as an asset whereas clause (ii)(e) is speaking of an amount shown as a liability in the balance sheet. Now no company would show the amount of advance tax paid, which is shown as an asset in the column relating to assets, simultaneously as a liability in the column of liabilities. The same amount cannot be shown both as an asset as well as a liability. No auditor would be a party to the preparation of such a balance sheet. Ordinarily, therefore, there will be no occasion for the Wealth Tax Officer to rely upon the said words "other than the amount referred to in clause (i)(a)". However, if in the case of the balance-sheet of any company, the said amount of advance tax paid is also shown as a liability, i.e., if the said amount is included in the amount set apart as provisions towards taxation, it would obviously have to be deleted from the column of liabilities - and this is also what the aforesaid words in clause (ii)(e) say. Clause (ii)(e) is in a sense complimentary to clause (i)(a). Truly speaking, the advance tax paid is not really an asset but the proforma of balance sheet in Schedule-VI to the Companies Act requires it to be shown as such. What clause (i)(a) does is to remove the said amount from the list of assets for the purpose of Rule 1-D. It is then that clause (ii)(e), which speaks of liabilities, says that only that amount which is still remaining to be paid shall only be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. It must be remembered that the advance tax has already gone out of the profits and debited in the account books of the company. This is the true function of both the sub- clauses. The situation is best explained by giving an illustration. Take a case where a company has paid eight lacs by way of advance tax, which is shown as an asset in the balance sheet. The company has made a provision of

fifteen lacs for taxation, which is shown as a liability in the balance sheet. The Wealth Tax Officer estimates the tax payable on the basis of Book profits at ten lacs. What he is asked to do by clause (ii)(e) is not to treat the excess five lacs as a liability. The tax liability as arrived at by him is only ten lacs, but inasmuch as eight lacs has already been paid and only two lacs remains payable, the said two lacs alone will be treated as a liability on the valuation date. It must be remembered that eight lacs already paid is deleted from the 'assets' shown in the balance- sheet. What is shown as an asset cannot at the same time be shown as a liability. This does not mean that tax liability is treated by Wealth Tax Officer only as two lacs. It is ten lacs. Eight lacs has already gone out of the profits and debited in the books of the company. By reading Clause

(i)(a) and Clause (ii)(e) together, the assessee will be getting the benefit of entire ten lacs but so far as the balance-sheet for the purpose of Rule 1-D is concerned, only two lacs will be treated as a liability on the valuation date since that is the actual amount still out-standing. We do not think that if the aforesaid clauses are understood as explained herein, there is any prejudice to the assessees or to the Revenue. It indeed reflects the true situation. It is brought to our notice that the Andhra Pradesh High Court has taken a similar view in Commissioner of Income Tax v. M. Lakshmaiah & Anr. 174 I.T.R. 4 and that similar view has also been taken by the Karnataka High Court in Commissioner of Wealth Tax v. N. Krishnan, 162 I.T.R. 309 and Punjab & Haryana High Court in Ashok Kumar Oswal (Minor) v. Commissioner of Wealth Tax, Patiala, 148 I.T.R. 620. On the other hand, Gujarat High Court in Com-missioner of Wealth Tax, Gujarat-I v. Ashok K. Parikh, 129 I.T.R. 46 has taken a different view which has been adopted by some other High Courts. It is enough to indicate that if the said sub-clauses are understood in the manner indicated and clarified by us, the counsel for the assessees agree that they have no grievance. In this view of the matter, we do not think necessary to deal with the opposing views of the High Courts at any length.

Question No. 6:- Whether the assessee holding shares in a company whose assets comprise wholly of Tea Estates is entitled to exclude such shares from his assets'?

40. Sri N.K. Poddar appearing for the petitioner in S.L.P.(C) No. 14869 of 1991 raised the above question. The assessment year concerned is 1983-84. His contention is that the company, shares whereof were held by the assessee on the relevant valuation date, is a company whose assets comprised wholly of agricultural land. He submitted that though the agricultural land was included in the definition of assets on and from April 1, 1970, they were excluded from the purview of assets by the two provisos (Provisos 1 & 2) appended to the definition of "assets" by the Finance Act, 1980 with effect from April 1, 1981 and Finance Act, 1982 with effect from April 1,1983 respectively. So far as the assessee in this S.L.P. is concerned, he falls under the 2nd proviso, which means that agricultural land including the land comprised in any tea plantation shall not be included in the "assets" of the company as defined in Section 2(e). In our opinion, the contention has no substance. Wealth being assessed is that of the shareholder and not of the company. The company may own agricultural assets and if company were to be liable to wealth tax, the said assets may be excludible in its hands. But that has no relevance to the case of a shareholder. The shareholder does not own and cannot claim any portion of the property held by the company of which he is a shareholder. The company is an independent juristic entity. This aspect has been put beyond any doubt by the decision of this Court in Bacha F. Guzdar v. Commissioner of Income-Tax, [1955] 1 S.C.R. 876. It is

held therein that even though a Tea company growing and manufacturing Tea gets an exemption of 60% of the profits as agricultural income in accordance with Rule 24 framed under Section 59 of the Indian Income Tax Act, 1922 the dividend income received by the shareholder of such company is not "agricultural income" within the meaning of Section 1 of the said Act, nor is it exempt from Income Tax under Section 4(3)(viii) of the Act. It was held further that the dividend of shareholder is the outcome of his right to participate in the profits of the company arising out of the contractual relation between the company and the shareholder and that the shareholder does not acquire any interest in the assets of the company till after the company is wound up. The position of a shareholder of a company, it was explained, is altogether different from that of a partner of a firm. In our opinion, the said decision of the Constitution Bench fully answers the said question. Accordingly, Sri Poddar's contention is rejected.

41. In view of our opinion that valuation officer is also bound by the Rules under the Act, the question of any conflict between Rule 1-D and sub- section (6) of Section 24 cannot and does not arise. This aspect has been dealt with by the Allahabad High Court in Smt. Pushpawati Devi Singhania. We agree with it.

42. We summarise our conclusions thus:

(1) Rule 1-D is perfectly valid and effective. The Rule has to be followed in every case where unquoted equity shares of a company (other than investment company or a managing agency company) have to be valued. All the authorities under the Act including the valuation officer are bound by the said Rule. The question of the Rule being mandatory or directory does not arise.

(2) While valuing the unquoted equity shares under Rule 1-D, no deductions on account of capital gains tax which would have payable in case the said shares were sold on the valuation date can be made. Similarly, no other deductions including provision for taxation, provident fund and gratuity are admissible. Rule 1-D is exhaustive on the subject.

(3) Explanation-I to Rule 1-D is a perfectly valid place of delegated legislation and has to be followed. Merely because the valuation date of the assessee and the date with reference to which the balance sheet of the company is drawn do not coincide, it cannot be said that Rule 1-D is not mandatory or that it need not be followed.

(4) Sub-clause (a) of clause (i) and sub-clause (e) of clause (ii) have to be read and understood in the manner indicated in this judgment hereinabove.

(5) An assessee holding shares in a company whose assets comprise wholly or partly of agricultural land, is not entitled to exclude such shares from his wealth.

43. For the above reasons, the writ petition questioning the validity of Rule 1-D is dismissed. So far as the appeals are concerned, some are by the assessees and some by the revenue. It is not possible, having regard to the very large number of matters posted before us, to answer the question separately in each case. Accordingly, we direct that all the appeals shall be disposed of in terms of

the opinion expressed herein. In cases, where the Tribunal has dismissed the applications of the Revenue filed under Section 27(3) of the Wealth Tax Act, the appeals filed by the Revenue against such orders are allowed herewith and the question asked for shall be deemed to have been referred and answered in the terms indicated in this judgment. Correspondingly, the appeals filed by the assessees against orders of the High Courts dismissing their applications under Section 27(3) are dismissed. The Tribunals shall pass appropriate orders in each case accordingly.