
(1970) 11 AHC CK 0022

In the Allahabad High Court

Case No : Wealth-tax Reference No. 26 of 1964

Chintamani Ghosh Trust

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 17-11-1970

Acts Referred:

Wealth Tax Act, 1957 — Section 21(1), 21(4), 5(1), 7(1)

Citation : (1971) 80 ITR 331

Hon'ble Judges : V.G. Oak, C.J;T.P. Mukerjee, J;R.S. Pathak, J;K.B. Asthana, J;H.N. Seth, J

Bench : Full Bench

Advocate : B.L. Gupta and Ashok Gupta, for the Appellant; R.R. Misra, for the Respondent

Final Decision : Disposed Of

Judgement

T.P. Mukerjee, J.—The present reference made by the Appellate Tribunal u/s 27(1) of the Wealth-tax Act, hereafter referred to as the Act, arises out of the assessment of net wealth of the applicant, Chintamani Ghosh Trust, Allahabad, hereinafter referred to as " the trust". The statement of the case relates to the assessment years 1957-58, 1958-59, and 1959-60. The corresponding valuation dates are 31st March, 1957, 31st March, 1958, and 31st March, 1959, respectively. Four questions of law, to be set out presently, have been raised by the Tribunal for the opinion of this court.

2. The trust was created by the late Sri Chintamani Ghosh by and under written and registered deed dated July 24, 1924, for making provision for defendants and other relatives of the settlor, for charity, and for due performance of the worship of the family deity, Sri Sri Sridharjee. The property settled on trust consisted of certain shares valued at Rs. 2,19, 765 and also a sum of Rs. 2,80,235, which had been deposited by the settlor with the Indian Press Ltd., Allahabad. The total value of the amount settled on trust was, thus, Rs. 5,00,000 only, at the inception. The property so settled has been referred to in the deed as

endowed property. Subsequently, the trustees acquired extensive house properties in Allahabad and also movable properties with the trust money which constituted the basis of the assessment of the net wealth of the trust, during the three relevant: assessment years.

3. Under the terms of the deed of trust, the settlor constituted himself the sole trustee and the absolute sebayet of his family deity, Sri Sri Sridharjee, who is one of the beneficiaries. After the settlor's death, the management and administration of the trust estate vested in a board of trustees.

4. The habendum of the deed runs as follows :

"Now these presents witnessed... .that the settlor... .doth herebyconvey, transfer, alienate and make over... .to and in favour of the trustees (after divesting himself fully and completely) the said endowed property... .by way of endowment of religious and charitable trust to unto, and in favour of and on behalf of the said deity known as and called Sri Sri Sridharjee, subject to the provisions, conditions, stipulations and terms herein set out TO HAVE AND TO HOLD unto and to the use, enjoyment and benefit of the said deity Sri Sri Sridharjee through the trustees... .for the purposes of puja, seva and utsab as for carrying out the objects of trust and charity mentioned hereinbelow."

Clause 7 of the deed of trust sets out the names of the different beneficiaries and the extent of the benefits conferred on them. The terms of this clause are set out below in extense :

" 7. That, out of the income and rents arising out of endowed property all taxes, revenues, cesses, rent, repairing charges, costs of litigation and other periodical dues, payable in respect of the endowed property or any portion thereof or for the upkeep thereof, shall in the first instance be paid. Out of the balance left, shall be devoted, spent and utilised various sums of money for the following objects, in the manner following, that is ta say:

(1) That the trustees shall set apart 15 per cent, of the net income every year, which shall be invested in securities and properties allowable under law in the case of trustees and this shall be added to the endowed property.

(2) That 15 per cent, of the net income shall be devoted, in such share and proportion as the trustees may decide :

(a) to the worship, performance of ceremonies, festivals and rituals in connection with or relating to the worship of the said deity Sri Sri Sridharjee in the manner enjoined by the Hindu sastras and by the traditions of the family of the settlor and for the salary, remuneration or sacerdotal dues of the priest or priests as the case may be, as well as for the wages and salaries of the servants, employees and menials engaged for the seva, puja and utsab of the said deity. The said sum shall be spent by the sebayets hereinafter mentioned who shall render six monthly accounts of the same to the trustees ;

(b) for the maintenance of the following institutions and funds, of which the trustees shall themselves keep accounts :

(i) a charitable homeopathic dispensary to be known as "Hari Pada Infirmary" to be located at Allahabad.

(ii) "Golapmohini Fund", a fund for the maintenance of widows, orphans and students at Allahabad or elsewhere, to be located at Allahabad.

(3) that 10 per cent, of the net income shall be devoted to the granting of allowance to relatives and dependants of the settlor. The first recipients -of the allowances shall be the following, and they shall respectively receive the following allowance during life:--

(a) the settlor's eldest daughter-in-law, Srimati Durgamoni Ghosh, Rs. 50 per mensem for life ;

(b) the settlor's daughter, Hari Bibha alias Chhabi, Rs. 50 per mensem for life ;

(c) the settlor's niece-in-law, Srimati Megh Mala Dasi, wife of the settlor's nephew, the late Hari Charan Bose Rs. 30 per mensem, for life ;

(d) the settlor's grand nephew, Sriman Kedar Nath Bose, Rs. 30 per mensem, for life.

(4) Without prejudice to the above payments and out of the said 10% of net income, the trustees shall have liberty, from time to time, to select for enjoyment of allowances, other relatives and dependants of the settlor or the settlor's family, out of such funds as may be available under this deed of trust. Any amount left after disbursement of the allowances mentioned above shall be made into a separate fund, called the "Relatives" Allowances Fund" for maintenance of relatives and dependants of the settlor and shall be available for the benefit of the relatives (other than those mentioned above) that the trustees may select. The trustees will hold the said fund and will decide the quantum of allowance and the object thereof. (5) That sixty per cent, of the net income of the trust property shall be applied as follows :

(a) 25 per cent, of the said sixty per cent of income is to be granted to the sebayets as remuneration for their services, in equal shares. This portion is to be called " A " allowance.

(b) The remaining 75 per cent, of the said sixty per cent, of income shall be divided into five equal shares. Each such share is to be paid to each sebayets for the maintenance of his family....."

Then follow clauses regulating the devolution of interest of the sebayets, and reserving the ultimate benefit to certain educational institutions, on the total extinction of the male line of the settlor. The three sons of the settlor and two other descendants have been named in the deed as the first five sebayets of the deity.

5. The Wealth-tax Officer assessed the trust in the status of an individual and computed the value of the net wealth at Rs. 17,09,030, Rs. 14,23,633 and Rs. 14,29,999 for the assessment years 1957-58, 1958-59 and 1959-60, respectively, as against about Rs. 6"5 lacs returned by the trust. Evidently the Wealth-tax Officer acted on the basis that the trust being the legal owner of the assets was assessable to wealth-tax on the net value thereof. He, therefore, taxed the entire value of the net wealth in the hands of the trust.

6. In the appeal before the Appellate Assistant Commissioner, it was contended that there being an endowment or gift in favour of the deity, who is not an assessable entity, the whole of the endowed property is exempt from wealth-tax. The Appellate Assistant Commissioner turned down the contention and held that the trust in question is a " family trust", as mentioned in the preamble to the deed dated July 24, 1927, and the major portion of the income of the trust property has been set apart for the benefit of the sons and other relatives of the settlor while only a small amount has been dedicated for performance of the worship of the family deity. He held, therefore, no exemption could be granted on the ground that the deity is the, sole owner of the properties.

7. The Appellate Assistant Commissioner, however, was of the opinion that the assessment should be made u/s 21 of the Wealth-tax Act, and there would be as many assessments as there are beneficiaries provided their shares are determinable or known. On an analysis of Clause 7 of the trust deed, quoted hereinabove, the Appellate Assistant Commissioner found that only 20 per cent, of the assets were assessable directly in the hands of the trustees u/s 21(4) of the Act and another 20 per cent, was completely exempt. As regards the remaining 60 per cent, the Appellate Assistant Commissioner held that the benefits were to be shared by the five sebayets equally and, therefore, there would be five separate assessments u/s 21(1) in respect of 12 per cent, of the assets in the hands of each of them.

8. Dissatisfied with the order of the Appellate Assistant Commissioner, the Wealth-tax Officer appealed to the Tribunal. The Tribunal held, on a construction of the deed dated July 24, 1924, that the settlor had transferred the properties to the trustees who were the owners thereof. The settlor, no doubt, enjoined upon the trustees to spend the income of the trust property for certain religious and charitable purposes as also for the benefit of his sons and other, relatives, but, according to the Tribunal, there is no clause in the document to show on whose behalf the properties were held by the trustees. In other words, according to the Tribunal, although in this case, the deity, charity and certain members of the settlor's family were the beneficiaries, their shares in the corpus of the trust property were not indicated in the document itself. Relying on a decision of the Bombay High Court in J.K. Trust Bombay Vs. Commissioner of Income Tax and Excess Profits Tax, Bombay City, which had been overruled by the Supreme Court, the Tribunal held that there could be trust of income, without there being a trust in respect of the corpus. In the instant case, the Tribunal noted, the mode

of distribution of income amongst the different beneficiaries, provided for in Clause 7 of the deed, did not determine their rights to the corpus of the trust estate and, therefore, Section 21(1) was not attracted here. The property having been transferred to the trustees, they were, legally, the owners thereof and, therefore, the trustees, according to the Tribunal, were assessable on the entire value of the corpus of the property u/s 21(4) of the Act. The Tribunal also held that no exemption was allowable u/s 5(1)(i) of the Act for religious and charitable purposes mentioned in Clause 7(2) of the deed, as the trustees had discretion in the matter of allocation of expenditure between the deity and charity.

9. Taking the view as aforesaid, the Tribunal allowed the departmental appeal, set aside the order of the Appellate Assistant Commissioner and restored that of the, Wealth-tax Officer.

10. At the instance of the assessee-trust, the Tribunal has formulated the following four questions of law for the opinion of this court:

" (1) Whether on a proper construction of annexure "A" the trustees held the assets assessed to wealth-tax on behalf of any beneficiaries?

(2) If the answer to the above question is in the affirmative, whether the shares of the beneficiaries, under annexure "A", in the said assets can be said to, be known or determinate, so as to attract assessment in the manner contemplated by Section 21(1) of the Wealth-tax Act?

(3) Whether, on the facts and in the Circumstances of the case, and on a proper construction of annexure "A" the Tribunal's conclusion that Section 21(4) of the Wealth-tax Act governed the assessments was right in law ?

(4) Whether, on a proper construction of annexure "A", particularly Clause 7(2) thereof, the assessee was eligible for any exemption based on Section 5(1)(i) of the Act?"

Sri B. L. Gupta, appearing on behalf of the assessee, contended that under the deed dated July 24, 1924, an insignificant portion of the income from the properties in question was dedicated to the deity, Sri Sri Sridharjee and the charitable institutions named in the deed, while the bulk of the income was intended to be given to the descendants and other relations of the settlor for their benefit, The benefit to the deity, according to Sri Gupta, being unsubstantial, the document does not evidence an endowment of the completent kind and the property continued to remain secular subject to a charge for charity and the deity. It was argued that the transaction, evidenced by the document, is, in essence, a gift to the named beneficiaries, who should be regarded as owners of the corpus of the property to the extent of their interest in the the income thereof. Sri Gupta referred to the principles laid down in Hindu Law of Religious & Charitable Trusts by the late Sri. B. K. Mukerjee, 3rd edition. At page 136 of that treatise the following passage appears :

" There are cases again where although the document purports, on the face of it, to be an out and out dedication of the entire property to the deity, yet a scrutiny of the actual provisions reveals the fact, that the donor did not intend to give the entire interest to the deity, but reserved some portion of the property or its profits for the benefit of his family relations. In all such cases debutter is partial and incomplete and the dedicated property does not vest in the deity as a juridical person. It remains with the grantees or secular heirs of the founder, subject to a charge for the religious uses. The earliest pronouncement of the law on the subject is to be found in the decision of the Judicial Committee in *Sonatum Bysack v. Sreemutty Juggutsoondree Dossee* [1859] 8 M.I.A. 66 (P.C.) which was followed and applied in the subsequent case of (1879) L.R. 6 I.A. 182 (Privy Council)

The construction of the document proposed by Sri Gupta is not acceptable. It is well-recognised that an endowment or debutter can be created either by a forthright gift to the idol by means of an or pan namah (deed of deduction) or by means of a trust in; the English sense in which the dedicated property is conveyed to the trustees subject to a charge or trust in favour of the deity. (See *Iswar Gopal Jew Vs. Commissioner of Income Tax*, . In the former case the idol is the legal owner of the property managing the same through sebayets and in the latter case, the trustees are the legal owners and the deity is only a cestui quo trust. The observations of the late learned author of *Hindu Law of Religious and Charitable Trusts* relied upon by Sri Gupta as well as the decisions of the Judicial Committee cited therein, refer to endowments in which the gift is to the idol directly by an arpan natnah and are not applicable to a case, like the one before us, in which there has been a legal conveyance of the property to the trustees and in which the de jure owners are the trustees and not the secular heirs of the founder as such.

11. On a reference to the extracts from the deed quoted above, it would appear that the settlor divested himself completely of the property and conveyed the same absolutely to the trustees for the worship and upkeep of the family deity as also to carry out the objects of the trust mentioned in the deed. It is true that the property has been referred to in the deed as " endowed property " and the settlor also states that the conveyance was made " by way of endowment of religious and charitable trust, to, unto and in favour and on behalf of the said deity....." but these words do not detract from the real tenor of the document. It is a clear case of the creation of a trust conveying the property to the trustees. The ownership of the property, therefore, vested in the trustees and not in the grantees or the beneficiaries as contended by Sri Gupta.

12. The relevant provisions of Sub-sections (I) and (4) of Section 21 of the Act may be quoted here with advantage :

" 21. (1) In the case of assets chargeable to tax under this Act which are held by..... any trustee appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise..... the wealth-tax

shall be levied upon and recoverable from..... .trustee,in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf the assets are held, and the provisions of this Act shall apply accordingly.....

(4) Notwithstanding anything contained in this section, where the shares of the persons on whose behalf any such assets are held are indeterminate or unknown, the wealth-tax may be levied upon and recoverable from the..... .trustee..... .aforesaid as if the persons on whose behalf the assets are held were an individual for the purposes of this Act."

The Tribunal came to the conclusion that the trustees being the legal owners of the assets, they did not hold the same "on behalf of" anybody and, therefore, the shares of the beneficiaries were indeterminate or unknown. That being so, the Tribunal concluded, Section 21(1) had no application in terms, and that Section 21(4) would have to be applied treating the trust as an individual and taxing the trust in respect of all the assets held by them.

13. The reasoning given by the Tribunal is patently fallacious. If the application of Section 21(1) of the Act is excluded, because the trustees did not hold the assets on behalf of any person, Section 21(4) would have to be excluded for the same reason.

14. The words "on behalf of" came in for interpretation in an elaborate judgment pronounced by Sinha J. (as he then was) in the case of *Suhashini Karuri v. Wealth-tax Officer, Calcutta*, [1962] 46 ITR 963 (Cal.). There the learned judges held that the words "on behalf of" used in Section 21(1) of the Act are synonymous with the expression "for the benefit of". The learned judge distinguished the decision of the Supreme Court in the case of *W.O. Holdsworth and Others Vs. The State of Uttar Pradesh*, in which the expression "on behalf of" in Section 11(1) of the U. P. Agricultural Income Tax Act, 1948, was interpreted differently. The decision of Sinha J. in the above case was followed by a Bench of the Bombay High Court in the case of *Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income Tax* [1968] 70 I.T.R, 600 (Bom.). The learned judges of the Bombay High Court pointed out that the view taken by the Calcutta High Court received support from a later decision of the Supreme Court in *Commissioner of Income Tax, Madras Vs. Managing Trustees, Nagore Durgha, Nagore*, which was a case u/s 41 of the Indian Income Tax Act analogous to Section 21 of the Act. The learned judges did not find it possible to agree with the contrary view taken by the Patna High Court in *Kripa Shankar D. Worah Vs. Commissioner of Wealth Tax*, . With respect, I concur with the view taken by the Calcutta High Court and the Bombay High Court on the connotation of the words "on behalf of" in the context of Section 21 of the Act. The trustees should, therefore, be regarded as holding the property on behalf of, that is, for the benefit of the beneficiaries. We are of opinion, therefore, that Section 21(1) of the Act would be applicable in the instant case, provided the shares of the beneficiaries are determinate or known ; otherwise, Section 21(4)

would apply.

15. If Section 21(1) applies, the trustees will be assessable " in the like manner and to the same extent " as the beneficiaries. This means three things : (i) there will be as many assessments in the hands of the trustees as there are beneficiaries with known or determinate shares; (ii) the assessments would be made in the same status as that attributable to the beneficiaries ; and (iii) the extent, or the amount of the tax payable by the trustees, would be the same as that payable by such beneficiaries if they had been assessed separately.

16. As already noted, the Tribunal held that the provisions of Section 21(1) were not applicable inasmuch as the beneficiaries in the present case were entitled only to a share of the income from the trust properties and they had no interest in the corpus thereof. In my opinion, the Tribunal entirely misconceived the law in point. Section 21(1) of the Act does not lay down that in order that the trustees might be assessable " in the like manner and to the same extent" as the beneficiaries, the latter must have a definite share in the corpus of the trust property. The trustees being the legal heirs, the trust property vests in them, and the beneficiaries cannot have any share therein. For the application of Section 21(1) of the Act, all that is necessary is that the beneficiaries should be assessable under the Act in respect of the benefits they derive from the trust. In the present case the beneficiaries are entitled to a certain percentage of the net income from the trust property. In the case of Ahmed G. H. Ariff v. Commissioner of Wealth-tax [1966] 69 ITR 230 (Cal.) the Calcutta High Court has held that the right of an assessee to receive an aliquot share of the net income of wakf property is an asset, the capitalised value of which is assessable to wealth-tax and this value would depend upon actuarial valuation with due regard to the estimated length of his life. The decision of the Calcutta High Court has been affirmed by the Supreme Court in Ahmed G. H. Ariff v. Commissioner of Wealth-tax [1969] 74 ITR (Sh. N.) 15 [1970] 76 ITR 471 (S.C.). It follows, therefore, that where the benefit receivable by a beneficiary is in the shape of an annuity or income from a trust estate and it is possible to evaluate its capitalised value, the share or interest of that beneficiary is not "indeterminate or unknown", within the meaning of Section 21(4). The assessment in such a case shall have to be made under the provisions of Section 21(1) of the Act.

17. The manner in which the income of the trust property shall be distributed by the trustees amongst different beneficiaries has been laid down in Clause 7 of the deed which has been set out above. I proceed now to examine which of the different beneficiaries mentioned in the different sub-clauses of Clause 7 have determinate shares or interest that may be capitalised. As already stated, if the share is indeterminate or unknown, the assessment would be made u/s 21(4) of the Act; otherwise Section 21(1) would apply.

Sub-clause (/):

This sub-clause accounts for fifteen per cent, of the net income of the trust

estate and prescribes that the amount shall be invested in securities and properties and this shall be added to the endowed property. This was, evidently, intended for augmenting the corpus of the trust estate. It is not possible, therefore, to say that, so far as 15 per cent, of the net income of the property is concerned, it was held by any beneficiary. The assessment must, therefore, be made *protanto* u/s 21(4) of the Act.

Sub-clause (2) :

Under this sub-clause there are three beneficiaries, namely, (i) the deity, Sri Sri Sridharjee and two charitable institutions, namely, (ii) " Haripada Infirmary", a homeopathic dispensary and, (iii) "Golapmohini Fund", a fund for the maintenance of widows, orphans and students. They are entitled, as between themselves, to receive 15 per cent, of the net income of the trust. The deed does not, however, say in what proportion this income shall be divided between the three beneficiaries; The allocation has been left entirely to the discretion of the trustees. The Appellate Assistant Commissioner found that, in the past, five per cent, of the net income had been expended for the deity, and the remaining ten per cent, for the two charitable institutions. But that does not make the shares of the three beneficiaries determinate for the obvious reason that the allocation may be varied by the trustees at their discretion. The result is that the shares of the three beneficiaries must be regarded as indeterminate or unknown, and the entire fifteen per cent, of the net income devoted to the deity and the charitable institutions are liable to be assessed in the hands of the trustees u/s 21(4) of the Act.

Sub-clauses (3) and (4) :

These two sub-clauses relate to the disbursement of ten per cent, of the net income of the trust estate. The amount has to be paid to certain relatives and dependants of the settlor. The names of the first recipients of the allowances and the amounts payable to them have been mentioned in Sub-clause (3). The trustees were authorised to select for enjoyment of this allowance other relatives and dependants of the settlor or the settlor's family. Subsequent to the creation of the trust two of the named relatives, Smt. Durgamoni Ghosh and Smt. Meghmala Dasi, expired and, in their place, certain others were selected by the trustees to receive fixed monthly allowances.

Obviously, the amounts of the allowance payable to the named beneficiaries who are still alive are known and determinate and their interest can be easily capitalised on the basis of the standard valuation and mortality tables, with due regard to the age of the beneficiaries and the expectancy of their respective lives: vide *Ahmed G.H. Ariff v. Commissioner of Wealth tax*. Such tables are to be found appended to the book entitled *Principles and Practice of Valuations* by J. A. Parks and other standard books on valuation. The capitalised value of the interest should, normally, represent the market value thereof as contemplated in Section 7(1) of the Act. The trustees would be separately assessable in respect

of the capitalised value of the allowances payable to these two surviving beneficiaries.

Any amount left after the disbursement of the allowances is to be constituted into a separate fund called the " Relatives" Allowances Fund " for the maintenance of the relatives and dependants of the settlor. The selection of the relatives and dependants to whom the benefit of the "Relatives" Allowances Fund " is to be extended and amounts to be granted to them have been left entirely to the discretion of the trustees. It must, therefore, be held that the beneficiaries as well as the amounts payable to them out of the aforesaid fund are both unknown and indeterminate. This part of the 10 per cent, of the net income has necessarily to be assessed u/s 21(4) of the Act in the hands of the trustees.

Sub-clause (5):

Under this sub-clause sixty per cent, of the net income of the trust property has to be granted to the sebayets in the manner prescribed in items Nos. (a) and (b) of that sub-clause. Under item No. (a) the trustees have to pay 25 per cent, of the said sixty per cent, of the net income, or, in other words, fifteen per cent, of the net income, to to the sebayets of the deity, in equal shares, as remuneration for their services. Under item No. (b) the remaining 75 per cent, of the said sixty percent, of the net income, or, in other words, 45 per cent, of the net income, was required to be divided into five equal shares. Each such share was to be paid to each sebayets for the maintenance of his family. The trustees have been directed to divide each such shares among such members of the line of each sebayets as they (the trustees) may decide, the direction of the settlor in point was, obviously, to ensure that the allowance was paid to persons deserving at the same. The relevant provision in Sub-clause (5)(b) states :

" The remaining 75 per cent, of the said sixty per cent, of income shall be divided into five equal shares, Each such share is to be paid to each sebayets for the maintenance of his family. This portion is to be called "B" allowance."

Stopping here for a moment, it would be seen that there is a clear and unequivocal direction to the trustees to pay the specified share to each sebayets. The sebayets thus becomes the immediate recipient or beneficiary in respect of that share. If the matter had stood there, there would be no difficulty in holding that the share of the immediate beneficiaries being known, the assessee gets the benefit of Section 21(1) of the Act. There is, however, the further direction that the trustees shall divide or distribute such share among such members of the family of the sebayets and in such proportion as the trustees may decide. The relevant provision is as follows :

"The trustees shall divide each such share among such members of the line of each sebayets, as in their judgment shall be considered entitled to the same and the division shall be in such shares as the trustees may decide."

Referring to the above provision, Dr. Misra for the revenue contended that the

beneficiaries under Sub-clause (5)(b) are the members of the sebayets' family to be selected by the trustees, and not the sebayets themselves. I am unable to agree with this interpretation of Sub-clause (5)(b). Such interpretation would be inconsistent with the earlier direction of the settlor that " each such share is to be paid to each sebayets for the maintenance of his family ". Reading Sub-clause (5) as a whole, it is manifest that the settlor intended that the sebayets should not only be paid the remuneration mentioned in Sub-clause (5)(a) as " A " allowance but they should also be relieved of the burden of maintaining the indigent or dependent members of their respective families. It was with this end in view that the settlor directed the trustees to divide the " B " allowance to the members of the sebayets' families to be chosen by the trustees. The authority given to the trustees in this regard does not detract from the fact that the " B " allowance is a payment to the sebayets for the maintenance of their families and the sebayets were the direct beneficiaries in respect "thereof. In fact, the " B " allowance to be given to each sebayets is in the nature of a gift subject to the condition that the members of the family to be maintained and the amounts of maintenance to be paid to them would be determined by the trustees. It is analogous to a onerous gift mentioned in Section 127 of the Transfer of Property Act. In such a case, the donee is regarded as the recipient of the gift despite the burden or the condition attached to the gift. Here, the sebayet must be regarded as the beneficiary of the "B" allowance in spite of the condition that the allowance must be utilised for maintenance of deserving members of his family. In this connection it should be borne in mind that the first three out of the six trustees mentioned in Clause 2 of the trust deed are also the first three out of the five sebayets mentioned in Clause 16 of the deed. The selection of the first trustees and the first sebayets and their successors in office has been so designed by the settlor as to leave little scope to the trustees to abuse the authority given to them under Sub-clause (5)(b).

18. Considering the over all scheme of the settlement and keeping in view the principle of harmonious construction, it seems to me clear that the sebayets were intended to be benefited by the "B" allowance in the manner mentioned in Sub-clause (5)(b) and they should, therefore, be regarded as the beneficiaries under that sub-clause. The shares of the beneficiaries being known, Section 21(4) of the Act is clearly excluded in so far as " B " allowance is concerned.

19. The combined effect of items Nos. (a.) and (b) of Sub-clause (5) is that, each of the five sebayets is entitled to receive 12 per cent, of the net income annually by way of remuneration for their services in connection with the worship of the deity and maintenance of the members of their respective families. It is true that the income from the trust property is subject to variation from year to year but, as held by the Gujarat High Court in the case of Padmavati Jaykrishna Trust and Another Vs. Commissioner of Wealth Tax, Gujarat, the position as on the valuation date will have to be considered.

20. If it is found that during the relative previous years one or more of the

sebayets named in the deed had expired and other sebayets or sebayets were appointed in their place, the allowances paid to the latter will have to be taken into consideration.

21. The shares of each of the five sebayets being 12 per cent, of the net. income is known and determinate and the capitalised value thereof would be assessable in the hands of the trustees u/s 21(1) of the Act. There would be five such assessments in each of which the net wealth would be equivalent to the capitalised value of 12 per cent, of the net income from the trust property calculated on the basis of the valuation and mortality tables as indicated above.

22. To sum up, the number of separate assessments to be made in the hands of the trustees u/s 21(1) of the Act, would be the number of the surviving beneficiaries named in Sub-clause (3) plus five more under Sub-clause (5) for each of the three assessment years. Such assessments, would be made in respect of the capitalised value of the income or the shares of the income receivable by the different beneficiaries.,

23. As I have already stated, 15 per cent, of the net income, under sub- Clause (1) of Clause 7, is not receivable on behalf of any beneficiary and another 15 per cent, of the net income is receivable by the trustees, under Sub-clause (2), for the benefit of the three beneficiaries whose shares are indeterminate and unknown. Therefore, the capitalised value of 30 per cent, of such income is assessable in the hands of the trustees u/s 21(4) of the Act. The Tribunal may choose a suitable multiplying; factor for the purpose of capitalisation in these cases.

24. As regards the claim for exemption u/s 5(1)(i) nothing can be allowed because the religious endowment under Sub-clause (2)(a) is a secular one and, moreover, the fund assigned to it is indeterminate, as mentioned above. Similarly, the fund assigned to the two charitable institutions is also indeterminate. It cannot, therefore, be said that the trustees were holding any specific property for any public purpose of a charitable or religious nature within the meaning of Section 5(1)(i) of the Act.

25. In view of what I have discussed above, I would answer the questions referred by the Tribunal as follows :

Question No. 1:

The trustees held the assets on behalf of the beneficiaries named in the deed of trust.

Question No. 2 :

This question as framed by the Tribunal, postulates that the beneficiaries have shares in the assets held by the trustees. I have pointed out above that the beneficiaries can have no share in the trust estate of which the trustees are the legal owners. Hence, the words " in the said assets " occurring in question No. 2,

as framed by the Tribunal, are deleted and the question is refrained as follows :

"If the answer to the above question is in the affirmative, whether the shares of the beneficiaries, under annexure " A ", can be said to be known or determinate so as to attract assessment in the manner contemplated by Section 21(1) of the Wealth-tax Act?"

My answer to this question is that the shares of the beneficiaries referred to in Sub-clauses (3) and (5) of Clause 7 of annexure "A "are known or determinate and attract assessment u/s 21(1) of the Act.

Question No. 3 :

The Tribunal's conclusion in point is only partially right as indicated above.

Question No. 4:

The question is answered in the negative.

I make no order as to costs in the circumstances of this case. Counsel's fee is assessed at Rs. 200.

Pathak, J.

26. I agree with my brother, Mukerjee, that the expressions "on behalf of " and " on whose behalf " in Section 21 of the Wealth-tax Act must be construed to mean " for the benefit of" and " for whose benefit " and in this regard I prefer to adopt the reasoning which prevailed with the Calcutta High Court in *Suhashini Karuri v. Wealth-tax Officer, Calcutta*, and the Bombay High Court in *Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of income tax*². Having regard to the context in which that expression appears in Section 21, I find myself, with respect, unable to agree with the view of the Patna High Court in *Kripashanker Worah v. Commissioner of Wealth-tax*.

27. When we proceed to apply Section 21, we are concerned with determining how the assets held by the trustees for the benefit of the beneficiaries should be assessed. In the case before us, the several beneficiaries enjoy certain shares in the income of the trust property and in deciding whether Section 21 can be invoked and if so which part of it, it is to those shares of the beneficiaries that we must refer. The beneficiaries, it cannot be disputed, have no share in the corpus of the trust property. In this respect, the Indian law has made a departure from the English law which affects a dichotomy between the legal ownership and the equitable ownership of the trust property. It seems to me that the Tribunal has erred in being influenced by the consideration that because beneficiaries do not enjoy, under the Indian law, any share in the corpus of the trust property, the benefit of Section 21(1) cannot be invoked.

28. As regards the questions referred by the Appellate Tribunal, I shall, set out the answers which seem to me most probable in law.

29. On question No. 1, I agree with my learned brother that the trustees, hold

the assets on behalf of the beneficiaries, in the sense that they hold those assets for the benefit of the beneficiaries, and that question must be answered in the affirmative.

30. The second question raises the point whether the shares of the beneficiaries can be said to be known or determinate so as to attract Sub-section (1) of Section 21. Under Clause (1) of paragraph 7 of the deed the trustees are required to set apart 15 per cent, of the net income annually for investing in securities and properties to be added to the endowed property. I agree that, in this regard, Sub-section (4) of Section 21 is attracted.

31. Clause (2) of paragraph 7 is concerned with the distribution of 15 per cent, of the net income for the purpose of the worship of the deity, Sri Sri Sridharjee, and the maintenance of the " Haripada Infirmary." and the " Golapmohini Fund ". I agree with my learned brother that as the shares, of the deity and the two charitable institutions in this 15 per cent. have, been left to the discretion of the trustees, Sub-section (4) of Section 21 comes into play.

32. Clause (3) of paragraph 7 specifies four persons as the recipients of specified allowances from out of 10 per cent, of the net income. I agree with my learned brother that to the extent that there is an obligation under this Clause to pay to the surviving recipient, the benefit of Sub-section (1) of Section 21 must be granted.

33. When we come to Clause (4) of paragraph 7 we find that, apart from, the payments contemplated under Clause (3), the trustees have been empowered to select for the enjoyment of allowances out of the balance of the 10 per cent, other relatives of the dependants of the settlor's family. Any amount left after the disbursement of the allowances is to be constituted into a separate fund called the " Relatives " Allowances Fund " for the maintenance of the relatives and dependants of the settlor. The selection of the relatives and dependants to whom the benefit of the balance of the 10 per cent, and of the " Relatives " Allowances Fund " is to be extended, and in what amount the allowances are to be granted, have been left, entirely to the trustees. I am unable to discern any provision or principle in Clause (4) on the basis of which the beneficiaries and their shares can be determined or known. In my opinion, the shares arising out of the application of Clause (4) of paragraph 7 of the deed attract Sub-section (4) of Section 21.

34. Clause (5) of paragraph 7 provides for the distribution of 60 per cent of the net income. Under Sub-clause (a) 25 per cent, of the said 60 per cent, is to be granted to the sebayets in equal shares. I am entirely in agreement with my learned brother that this provision attracts the benefit of Sub-section (1) of Section 21. Under Sub-clause (b) the remaining 75 per cent, of the said 60 per cent, of income is to be divided into five equal shares, and each such share is to be each paid to each sebayets for the maintenance of his family. But the selection of the individual members of the family, and the proportion in which

each share shall be distributed between those family members, has been left entirely to the discretion of the trustees. The sebayets will hold the share for the benefit of those members only of his family who are considered by the trustees entitled to the same. All the members of the sebayets' family are not automatically entitled to share in what is paid to the sebayets under Sub-clause (b). How the members will be selected by the trustee is not specified by the deed nor is there any principle for ascertaining who they will be ; what their specific shares will be or the principle for ascertaining those shares has not been, laid down by the deed. All this has been left to the unfettered decision of the trustees. In my opinion, the provision of Sub-clause (b) of Clause (5) invites the application of Sub-section (4) of Section 21. In this regard, I deeply regret, I am unable to share the opinion of my learned brother that Sub-section (I) of Section 21 is attracted. The beneficiaries under Sub-Clause (b) of Clause (5) are not the sebayets, but the members of their family. The sebayets are merely chosen as the immediate recipients of the amount which they hold for the benefit of those members of their respective families as have been selected by the trustees for the enjoyment of that benefit.

35. I answer the second question accordingly.

36. As regards the third question referred by the Appellate Tribunal, in view of my answer to the second question the conclusion of the Tribunal that Sub-section (4) of Section 21 governs the assessment cannot be accepted to the extent that it is contrary to what has been said in reply to the second question.

37. The fourth question raises the point whether the assessee is eligible for any exemption based on Clause (i) of Sub-section (1) of Section 5 having particular regard to Clause (2) of paragraph 7 of the deed. The clause of the statute exempts " any property held under trust or legal obligation for any public purpose of a charitable or religious nature in India " from inclusion in the net wealth of the assessee. Upon a perusal of Clause (2) of paragraph 7, it is clear that the property is held under trust in part only for a public purpose of a charitable or religious nature. It is a case where a specified part of the income is set apart by the settlor for such a purpose. It is not a case where¹ a specified part of the corpus is held for such purpose. The exemption must, therefore, be denied. The question is answered in the negative.

38. There is no order as to costs. Counsel's fee is assessed at Rs. 200.

39. As we have been unable to agree on the following question :

" Whether, on the true interpretation of the deed of trust dated July 24, 1924, the trustees are liable to be assessed in respect of the assets settled under Sub-clause (b) of Clause (5) of paragraph 7 of the deed in accordance with the provision of Sub-section (1), or Sub-section (4) of Section 21 of the Wealth-tax Act ?"

we refer the said question for the opinion of third hon"ble judge.

The papers of this case shall be laid before the hon''ble the Chief Justice for appropriate orders.

K.B. Asthana, J.

40. After hearing the learned counsel for the assessee and for the revenue and after perusing the opinions of my brothers,, Pathak and Mukherjee, I have come to the conclusion that, no a true interpretation of the deed of trust dated July 24, 1924, the trustees are liable to be assessed in respect of the assets settled under Sub-clause (b) of Clause (5) of paragraph 7 of the deed in accordance with the provisions of Sub-section (1) and not of Sub-section (4) of Section 21 of the Wealth-tax Act. I shall give my reasons in brief later.

41. Let the papers of the case be sent to the Bench concerned.

K.B. Asthana, J.

42. On a difference of opinion between Pathak J. and T. P. Mukerjee J. the following question has been referred to me for opinion :

" Whether, on the true interpretation of the deed of trust dated July 24, 1924, the trustees are liable to be assessed in respect of the assets settled under Sub-clause (b) of Clause (5) of paragraph 7 of the deed in accordance with the provision of Sub-section (I) or Sub-section (4) of Section 21 of the Wealth-tax Act ?"

Having heard the learned counsel for the trustees and revenue on August 10,1970, I recorded my opinion to the effect that the trustees are liable to be assessed in respect of the assets in question in accordance with the provisions of Sub-section (1) of Section 21 of the Wealth-tax Act. I had then directed that I shall give my reasons for the opinion later which I proceed to do now.

43. It is unnecessary for me to detail the various terms of the deed of trust and discuss the scheme evidenced by the sale as they have been so ably set forth by Mukerjee J. Suffice it to say that Chintamani Ghosh, the author of the trust, had three main objects in view. The first one was, that 15% of the net income every year would be invested in securities and properties and allowed to be added to the endowed property. The second object was that 15% of the net income shall be spent on the worship, performance of ceremonies, festival and ritual of the family deity, Sri Sri. Sridharjee. The remainder of 70% of the net income was to be spent for the benefit of the members of the family of the author, 10% going out as allowances to relatives and dependants named by the author and 60% to the sons of the author and their family. It is with the settlement of this 60% of the net income dealt with in Clause (5) of paragraph 7 of the trust deed that we are concerned. Clause (5) of paragraph 7 is as follows :

"(5) That sixty per cent, of the net income of the trust property shall be applied as follows :

(a) 25 per cent, of the said sixty per cent, of income is to be granted to the

sebayets, as remuneration for their services, in equal shares. This portion is to be called "A" allowance.

(b) The remaining 75 per cent, of the said sixty per cent, of income shall be divided into five equal shares. Each such share is to be paid to each sebayets for the maintenance of his family. This portion is to be called "B" allowance. The trustees shall divide each such share among such members of the line of each sebayets as in their judgment shall be considered entitled to the same and the division shall be, in such shares, as the trustees may decide. In the case of the male line or lines of succession of any one or more of the first set of five sebayets herein mentioned,, being wholly extinct, the share of remuneration and maintenance for that particular line shall be divided in equal shares among the other lines of the surviving sebayets in the male succession, in the manner aforesaid."

The author of trust casts a duty on the trustees to apply 60% of the net income of the trust property in accordance with the directions given in Sub-clauses (a) and (b) of Clause (5). One-fourth of the 60%, that is; 15% of the net income is to be divided equally amongst the five sons of the author euphemistically described as sebayets. It is to be called " A " allowance. The remaining 3/4th, that is, 45 per cent, of the net income, is again to be divided equally in to five equal portions and paid to the five sons for the maintenance of their respective families. This is to be called " B " allowance. There is a further provision that the trustees will divide each such share amongst the members of the line of each son as in their judgment shall be considered entitled to and division of such shares shall be such as the trustees may decide and in case of the extinction of the male line of succession of any the five son the share of maintenance for that particular line shall be divided in equal shares in the male line of the surviving sons. This is then how 60 per cent, of the net income is to be spent by the trustees ; Sub-clause(a) relates to " A " allowance to be paid to the sons in five equal shares; the" B " allowance is also to be divided into five equal shares and paid to each of the five sons. Thus the whole amount of 60 per cent, is to be divided into five equal shares and paid by the trustees to the five sons. Therefore, the duty cast upon the trustees is to disburse the 60 per cent, of the net income by demarcating one-fourth into " A " allowance and the remaining three-fourths into " B " allowance and they are under a duty to pay the same to the sons in equal shares. The only difference between "A" allowance and " B " allowance seems to be that while " A " allowance is for the absolute enjoyment of the sons, the " B " allowance, is for the maintenance of their family. So far as the trustees are concerned they have to pay both the allowances to the sons. It is clear from Sub-clause (b) of Clause (5) which says that the "remaining 75 per cent, of the said 60 per cent, of the income shall be divided into five equal shares". Each such share is to be paid to each sebayets for the maintenance of his family. The trustees would be failing in their duty if they defaulted in paying each such share to each sebayets for the maintenance of his family. How the ""B" allowance is to be spent by the sons for the maintenance of their respective families is also

provided for. It would be seen that the "B" allowance representing the three-fourths is not to be divided directly by the trustees amongst the members of the line of each son as in their judgment shall be considered entitled to. The point to be noted is that the trustees are enjoined first to divide it into five equal shares, pay it to each of the sons and then make the division according to their judgment for, the maintenance of the family of each of the sons.

44. It is the natural, social or, may be, legal duty of a father of a family to support and maintain his family as the head. The clear intention is discernible from the scheme in Sub-clause (b) that the author preserved the status and prestige of each of his sons as the head of his own family. That is why the author enjoined upon the trustees to pay to each of his sons his share of the "B" allowance to enable the sons as head of the family to maintain their family. The question then that arises is whether by casting further duty on the trustees to divide each share amongst such members of the line of each son by exercising their best judgment or discretion the members of the family become the beneficiaries? In other words, could it be said that the amount of "B" allowance was held by the trustees for and on behalf of the members of the family of each of the sons of the author of the trust? The learned counsel for the revenue urged that the real beneficiaries were the members of the family and the amount representing the "B" allowance was held by the trustees in undefined shares or unknown shares for the benefit of the members of the family and it was not held by the trustees for the benefit of or on behalf of the sons of the author of the trust. I have some difficulty in accepting this argument as it omits to give any force to the direction by the author found in the sub-clause that the trustees will divide the amount of "B" allowance into five equal shares and each such share will be paid to each son for the maintenance of his family. Considering the fact that the maintenance of a family is a sacred duty of the head of the family it can always be said that any amount held by the trustees payable to the head of the family for the maintenance of the family would be so held by the trustees for the benefit or on behalf of the head of the family. Once the money goes into the hands of the head of the family how it is to be disbursed in my judgment, will not wipe out the benefit which accrues to each of the sons of the author, the benefit being money in their hands for the maintenance of their respective families. On a true construction of Sub-clause (b) the conclusion inescapable that each of the sons of the author as head of his family is to disburse the share of "B" allowance received by him from the trustees, though in disbursing the same he would be bound by the judgment of the trustees. The provision with regard to the fixation of the shares among members of the line of each of the sons is only a limitation on the absolute discretion of each of the sons as head of their respective families for spending the amount in maintaining the members of their families. If the trustees do not; perform their duties of dividing the "B" allowance into five equal shares and putting it in the hands of each of the sons for the maintenance of their respective families, that duty can legally be enforced at the instance of the sons. But a member of the family of a son will have no such right till the share

has been received by that son from the trustees. , Assuming that members of the family of each of the sons have a legal right to, call upon the trustees to decide upon the payments of allowances to them, it will involve also calling upon the trustees first to divide the "B" allowance into five equal shares, put it in the hands of each of the sons and then ask them to disburse the amount according to their decision. Thus, it is clear from Sub-clause (b) that the trustees held the amount of "B" allowance in their hands in well-defined shares payable to each of the five sons equally. I would prefer the construction that the amount so held by the trustees in their hands is on behalf of the five sons and for their benefit and the deed of trust-provides for ascertained shares to be paid to them. Even if it behind that a member of the family of each of the sons judged by the trustees to be deserving of receiving a share of the allowance is the ultimate beneficiary, the fact remains that benefit will go to him from one of the ascertained shares paid by the trustees in the hands of the head of the family. Merely because the amount payable to him will depend upon the exercise of discretion by the trustees, would not make the ascertained share in the hands of the trustees payable to each of the five sons from which the benefit will accrue to such member, unascertained or indefinite. In other words, the apportioned sum for maintenance of each of the five families is nothing but the ascertained share payable by the trustees to each of the five sons of the author of the trust for the maintenance of his family. Who will receive what part of the allowance and how much benefit will go to a particular member of the family would not be destructive of the ascertained amount representing the share payable to each of the five sons.

45. A number of cases were cited by the learned counsel for the parties which have been noticed by Pathak J. and T. P. Mukerjee J. in their opinions and I need not discuss them again. In my judgment the solution to the question posed turns entirely on the construction to be put on Clause (5) of paragraph 7 of the trust deed. The principles laid down in the decided! cases cited are not disputed. Sub-section (4) of Section 2 of the Wealth tax Act would be attracted where shares of the persons on whose behalf any such assets are held are indeterminate or unknown. Here, the shares from which the allowances ultimately are to be paid to the members of the family of each of the sons are determinate and known and as said above the amount of "B" allowance is held by the trustees on behalf of the sons of the author, though demarcated for the purpose of the maintenance of the family of each of the sons. The stage of distribution of allowances to the members of the family of each of the sons is reached after the amount of "B" allowance has passed but of the hands of the trustees on having been said out to each of the sons in equal shares. It is not possible, therefore to say that at the time when the payment of allowance actually is to be made to any member of the family of the sons as decided upon by the trustees, the trustees are holding any asset on behalf of any such member of the family, as the asset had already, passed put, of the hands of the trustees into the hands of the sons of the author in known and, determinate portion. In fact, at the, time of distribution of

allowances to members of the family the assets are held by the respective head of the .family of such member and not by the trustees, the trustees can only be said to hold the assets at a time just before the payment to each of the sons in equal shares and since the sons are entitled to the payment of "B" allowance for maintenance of their family, the assets are held by the trustees on behalf of the sons in known and determinate shares.

46. For the reasons given above, I agree with the opinion of T, P. Mukherjee J.

V.Q. Oak, C.J.

47. This is reference under the Wealth-tax Act. The Appellate Tribunal referred to this court four questions of law. Those questions are to be found on page 5 of 4he paper book. The reference was heard by a Division Bench consisting of Mr. Justice Pathak and Mr. Justice T. P. Mukherjee. The learned judges of the Division Bench agreed on most points. But they were unable to agree on one subsidiary point, which arose out of question No. 2 referred to this court. The subsidiary question was referred by the Division Bench to a third judge, The subsidiary question was considered by Mr. Justice Asthana as the third judge. He agreed with the view taken by Mr. Justice Mukherjee. The case is now ready for delivery of final answers on the four questions referred to this court. Since Mr. Justice Mukherjee has retired, the case has been listed before this Bench of final disposal of the reference.

48. Mr. Justice Pathak and Mr. Justice Mukherjee agreed on the answers to be given on questions Nos. 1 and 4. The answers on questions Nos. 1 and 4, therefore, present no difficulty.

49. In dealing with question No. 2, the Division Bench had to consider a number of Clauses. The learned judges differed as regards the applicability of one of the clauses. On the question of applicability of that particular clause, the view taken by Mr. Justice Mukherjee now holds the field. Question No. 2 has, therefore, to be answered in the manner indicated by Mr. Justice Mukherjee.

50. Question No. 3 was in a way connected with question No. 2. So the answer on question No. 2 has a bearing on the answer on question No, 3. Since the answer given by Mr. Justice Mukherjee on question No. 2 holds the field, question No. 3 has also to be answered in the manner indicated by Mr. Justice Mukherjee. We proceed to answer the four questions accordingly.

Question No. 1.--The trustees held the assets on behalf of the beneficiaries named in the deed of trust.

Question No. 2.--The shares of the beneficiaries referred to in sub- Clauses (3) and (5) of Clause7 of annexure " A" are known or determinate and attract assessment u/s 21(1) of the Act.

Question No. 3.--The Tribunal's conclusion in point is only partially right as indicated in the judgment of Mr. Justice T. P. Mukherjee, dated July 10, 1970.

Question No. 4.--The question is answered in the negative.

51. We make no order as to costs. Counsel's fee is assessed at Rs. 200.