

(1994) 11 MAD CK 0075

In the Madras High Court

Case No : Tax Case No. 1189 of 1981 (Reference No. 633 of 1981)

K.V. Iyer

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 10-11-1994

Acts Referred:

Gift Tax Act, 1958 — Section 4, 5

Wealth Tax Act, 1957 — Section 3, 4, 4(1), 4(1A)

Citation : (1995) 129 CTR 397 : (1995) 215 ITR 461

Hon'ble Judges : Mishra, J;A.S. Venkatachala Moorthy, J

Bench : Division Bench

Advocate : Ramamani, for the Appellant; N.V. Balasubramaniam, for the Respondent

Judgement

Mishra, J.—We record, before we enter on the reference, that it is entirely on account of such acts of the assessee, to which we shall

advert, while taking note of the statement of the case, which have put him in a mess, that if there are any complications, they are all created by him.

2. The assessee is a Hindu, having a family consisting of his wife and unmarried minor daughters. He purportedly put certain monies in the common

stock of the family, calling it a Hindu undivided family, and such monies in the common stock were later gifted to his wife and minor daughters.

Various dates, on which he purportedly put certain monies in the common stock of the so called Hindu undivided family and the dates on which the

said amounts were gifted to his wife and daughters are shown as under :

Date on which Amount and Date of gift Amount Donee

property of nature of by Hindu

applicant was property undivided

thrown into family

common stock (FD)

3-3-1972 1,80,000 22-3-1972 18,000 Wife of

karta

21-2-1973 12,000 23-3-1973 12,000 Wife of

karta

20-2-1974 10,000 26-3-1974 10,000 Wife of

karta

4-3-1975 20,000 23-3-1975 10,000 Minor

daughter

23-3-1975 10,000 Minor

daughter

19-3-1973 12,000 24-3-1975 12,500 Wife of

karta

72,500

3. The Wealth-tax Officer, applying section 4(1A) of the Wealth-tax Act, added the said amount to net wealth declared for the purpose of

assessment. The Appellate Assistant Commissioner upheld the addition on the reasoning that section 4(1A) of the Wealth-tax Act is applicable to

this case. The Revenue appealed to the Tribunal, and the Tribunal has held that the property in the common stock of the Hindu undivided family

was a converted property for the purpose of section 4(1A) and accordingly concluded as follows :

. . . . Then what section 4(1A) of the Wealth-tax Act says is that then, notwithstanding anything contained in any other provision of the Wealth-tax

Act, or any other law for the time being in force, for the purpose of computing the net wealth of the individual under the Wealth-tax Act for any

assessment year commencing on or after the 1st day of April, 1972, the

converted property or any part thereof in so far as it is attributable to the interest of the individual in the property of the family, shall be deemed to be assets belonging to the individual and not to the family. So, the next question is what is the meaning of the expression "interest of the individual" (in this case the husband) in the property of the family ? According to Explanation (d) of section 4 (deleted only with effect from 1-4-1976), the expression ""interest of the individual in the property of the family"" means, the proportion in which the individual would be entitled to share the property of the family if there had been a total partition in the family as on the valuation date of the family relevant to the assessment year for which the individual is to be assessed under sub-section (1A). So if that test of the partition is applied to the facts of this case, the whole property belongs to the assessee-husband (see the Supreme Court judgment in Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, . The wife and children are not entitled to any share in such a partition. That is the personal law applicable to the assessee husband, who follows the Hindu Mitakshara system of Hindu law. So the whole property is includible in the asset of the assessee-husband by virtue of section 4(1A) of the Wealth-tax Act.

4. The Tribunal accepted the contention of the assessee that any separate property of a male Hindu can be validly thrown in the hotchpotch of the joint family, in the instant case, the Hindu undivided family, consisting of husband, his wife and their two daughters, but rejected the contention that the gift to the wife and minor daughters was wrongly accepted as valid by the Gift-tax Officer, and, accordingly, the assessee was wrongly charged on the transaction to gift-tax and since the property stood converted to a property transferred to the Hindu undivided family on the valuation date, the gift created no interest in favour of the wife and unmarried daughters. The Tribunal rejected the case of the assessee accordingly, and held that the gifts were to be included in the wealth of the husband. The Wealth-tax Act, 1957, brought a charge for every assessment year commencing on and from the 1st day of April, 1957, by way of a tax called the wealth-tax, in respect of net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in Schedule I. The assets, in computing the net wealth of an individual,

are required to be assessed, as specified in section 4 of the Act.

5. It states, inter alia, that there shall be included as belonging to that individual, the value of assets which on the valuation date are held :

(i) by the spouse of such individual to whom such assets have been transferred by the individual, directly or indirectly, otherwise than for adequate

consideration or in connection with an agreement to live apart, or

(ii) by a minor child, not being a married daughter of such individual, to whom such assets have been transferred by the individual, directly or

indirectly, otherwise than for adequate consideration, or

(iii) by a person or association of persons to whom such assets have been transferred by the individual, directly or indirectly otherwise than for

adequate consideration for the immediate or deferred benefit of the individual, his or her spouse or minor child (not being a married daughter) or

both, or

(iv) by a person or association of persons to whom such assets have been transferred by the individual otherwise than under an irrevocable

transfer, or

(v) by the son's wife, or the son's minor child, of such individual, to whom such assets have been transferred by the individual, directly or

indirectly, on or after the first day of June, 1973, otherwise than for adequate consideration;

whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise;

6. The above provision has an Explanation in the shape of a proviso, which says that where the transfer of such assets or any part thereof is either

chargeable to gift-tax under the Gift-tax Act, 1958 (18 of 1958), or is not chargeable u/s 5 of that Act, for any assessment year commencing after

the 31st day of March, 1964, but before the 1st day of April, 1972, the value of such assets or part thereof, as the case may be, shall not be

included in computing the net wealth of the individual. In the case of an individual being a member of a Hindu undivided family, a special provision

is made under sub-section (1A) of section 4 of the Act, in these words :

(1A) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the

individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family or been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration (the property so converted or transferred being hereinafter referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computing the net wealth of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1972, -

(a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by

them jointly;

(b) the converted property or any part thereof shall be deemed to be assets belonging to the individual and not to the family;

(c) where the converted property has been the subject-matter of a partition (whether partial or total) amongst the members of the family, the

converted property or any part thereof which is received by the spouse or minor child of the individual on such partition shall be deemed to be

assets transferred indirectly by the individual to the spouse or minor child and the provisions of sub-section (1), shall, so far as may be, apply

accordingly.

7. The specific provision as to the Hindu undivided family is that the monies put in the hotchpot of the Hindu undivided family, and divided

according to the shares of the members of the undivided family are not a gift, and the amounts allotted to each member of the joint family are not

liable to gift-tax. The individual, who otherwise is the owner, could bring a property or estate exclusively belonging to him in the hotchpot of the

joint family and after such conversion, as envisaged under the Wealth-tax Act, the individual who otherwise is the owner, is not liable to wealth-tax,

as the property ceases to be the property in his hands.

8. In the case of an assessee, who had won a jackpot in a horse-race stated that the money spent for the purchase of tickets of the jackpot was

joint family money and the prize amount was divided amongst the members of

the joint family, this court in *M. Raghava Mudaliar Vs.*

Commissioner of Gift Tax and Another, held that the prize amount was property belonging to the Hindu undivided family, and no part thereof was

the individual property of the assessee which could be assessed in his individual wealth-tax assessment.

9. The above, however, is the legal consequence of a property in the hands of a joint family. A Hindu undivided family, which has consanguineous

incidents of a joint tenancy, can have female members, but shall be so, only if there are more than one male member constituting the family. It has

its origin in the concept of coparcenary, which, in legal parlance, is an undivided family of male members, who hold a property together until

divided by metes and bounds and thus the nuclei of the family are brought in. We are not required, however, to go to a textual interpretation as the

issue is settled by a judgment of the Supreme Court in *Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay*. The assessee before

the Supreme Court, had three sources of income - had a share in the profits of two partnership firms, he received interest from bank accounts and

he received rent from an immovable property, called Kathoke Lodge. These were his self-acquired properties and until the assessment year 1956-

57, he used to be assessed as an individual in respect of the income thereof. In January 1956, he made a sworn declaration before a Presidency

Magistrate in Bombay, that he had thrown the property, Kathoke Lodge, into the "family hotchpot" in order to impress that property with the

character of joint family property and that he would be holding that property as the karta of the joint Hindu family consisting of himself, his wife and

one child. That child was an unmarried daughter. In the assessment proceedings for 1957-58, he contended that since he had abandoned all

separate claims to Kathoke Lodge, the income which he received from that property should be assessed in the status of a Hindu undivided family.

The Income Tax authorities and the Income Tax Appellate Tribunal rejected that contention for varying reasons. The Income Tax Officer held that

in the absence of a nucleus of joint family property, there was nothing with which the appellant could mingle his separate property and, secondly,

that there could not be a Hindu undivided family without there being undivided family property. The appellant/assessee carried the matter in appeal

to the Appellate Assistant Commissioner, who differed from the Income Tax Officer on both the points but dismissed the appeal on two other

grounds. The Appellate Assistant Commissioner held that even after the declaration, the appellant was dealing with the income of Kathoke Lodge

in the same way as before which showed that the declaration was not acted upon and, secondly, that even assuming that the property was thrown

into the common stock and was, therefore, joint family property, the income from that property could still be taxed in the appellant's hands as he

was the sole male member of the family. The Tribunal accepted the declaration as genuine and differed from the Appellate Assistant

Commissioner's finding that it was not acted upon. The appellant, according to the Tribunal, was the karta of the joint Hindu family and it was

irrelevant as to how he dealt with the joint family income. The Tribunal, however, held that though the appellant had invested his separate property

with the character of joint family property, he being the sole surviving coparcener continued to have the same absolute and unrestricted interest in

the property as before and, therefore, in law, the property had to be treated as his separate property. The assessee sought a reference and the

Bombay High Court, finally entered on the question whether, on the facts and in the circumstances of the case, the income from property known as

"Kathoke Lodge" was to be assessed separately as the income of the Hindu undivided family of which the assessee was the karta. Although the

real controversy before the Bombay High Court was whether a single male can form a joint Hindu family with his wife and unmarried daughter; if

yes, whether the karta of such a family can impress his self-acquired property with the character of joint family property by throwing it into the

family hotchpot; and, lastly, whether the income of such property can be assessed as the income of the joint family, the High Court did not enter

into these questions, as observed in the judgment of the Supreme Court. The Supreme Court has observed (at page 779) :

The High Court assumed for the purposes of argument that there need not be more than one male member for forming a joint Hindu family as a

taxable unit and that a joint Hindu family could lawfully consist of a single male member, his wife and unmarried daughter. On these assumptions the

High Court concluded that Kathoke Lodge, from the date of the declaration by which it was thrown into the common stock, was the property of

the Hindu undivided family. It, however, held :

"But the assessee has no son and, therefore, no undivided family. His ownership of the property and its income in fact remains the same as before.

The fact of the existence of a wife or of a wife and daughter would make no difference to his ownership of that property . . . His position as a

member of the joint family after the declaration would be the same as that of a sole surviving coparcener, but it is now settled law that a person

who for the time being is the sole surviving coparcener is entitled to dispose of the co-parcenary property as if it were his separate property . . .

That is the position which the assessee held so far as this property is concerned. So far as the income is concerned, he has the complete power of

disposal over the income and, even assuming that he is the karta of a joint Hindu family, there is no one who can question his spending, i.e.,

whether or not it is for legal necessity or other justifiable purpose : If then, his right to the income remains under his personal law the same as it was

before he made the declaration, the question arises whether under the Income Tax Act it must be held to be the income of the karta of the Hindu

undivided family. That is precisely the question which the Privy Council answered against the assessee in Kalyanji's case [1937] 5 ITR 90. In our

opinion, therefore, the assessee's case would fall squarely within the principle enunciated by their Lordships of the Privy Council in Kalyanji's case

[1937] 5 ITR 90 and upon that view the income in the hands of the assessee would be liable to be assessed as his individual income".

The Privy Council decision on which the High Court relies is Kalyanji Vithaldas v. CIT [1937] 5 ITR 90 . The judgment of the High Court is

reported in Surjitlal Chhabda Vs. Commissioner of Income Tax, Bombay City-I, .

10. The Supreme Court has further observed (at page 781) :

. . . For our limited purpose, fundamentals do not any more require a study of Sastric texts, digests and commentaries because judicial decisions

rendered over the last century and more have given a legalistic form to what was in a large measure a mingling of religious and moral edicts with

rules of positive law. Hindu law today, apart from the piecemeal codification of some of its branches like the laws of marriage, succession,

minority, guardianship, adoption and maintenance, is judge-made law, though that does not detract from the juristic weight of Smritis like the

Yajnavalkya Smriti nor from the profundity of Vijnaneshwara's commentary on it, the critique bearing the humble title of "Mitakshara".

11. The Supreme Court has also noted (at page 781) :

. . . The differences between the Mitakshara and Dayabhaga schools on the birth-right of coparceners and the rules of inheritance have no bearing

on the issues arising in this appeal, particularly on the question whether a single male can constitute a joint or undivided family with his wife and

unmarried daughter. A joint Hindu family under the Dayabhaga is, like a Mitakshara family, normally joint in food, worship and estate. In both

systems, the property of the joint family may consist of ancestral property, joint acquisitions and of self-acquisitions thrown into the common stock.

In fact, whatever be the school of Hindu law by which a person is governed, the basic concept of a Hindu undivided family in the sense of who can

be its members is just the same.

12. The Supreme Court thereafter took notice of section 2(9) of the Indian Income Tax Act, 1922, where a "person" is defined to include, inter

alia, a "Hindu undivided family". u/s 3 and u/s 55 of that Act, a Hindu undivided family is a taxable unit for the purposes of Income Tax and super-

tax. The expression "Hindu undivided family" finds reference in these and other provisions of the Act but that expression is not defined in the Act.

Saying that, the Supreme Court observed that (at page 781) :

The reason of the omission evidently is that the expression has a well-known connotation under the Hindu law and being aware of it, the

Legislature did not want to define the expression separately in the Act. Therefore, the expression "Hindu undivided family" must be construed in

the sense in which it is understood under the Hindu law.

13. Thereafter, the Supreme Court observed as follows (at page 781) :

There is no substance in the contention of the respondent that in the absence of an antecedent history of jointness, the appellant cannot constitute a

joint Hindu family with his wife and unmarried daughter. The lack of such history was never before pleaded and not only does it find no support

from the record but such an assumption ignores the plain truth that the joint and undivided family is the normal condition of Hindu society. The

presumption therefore, is that the members of a Hindu family are living in a state of union, unless the contrary is established. (Mayne's Hindu Law

and Usage, eleventh edition, page 323; Mulla's Hindu Law, fourteenth edition, page 284). The strength of the presumption may vary from case to

case depending upon the degree of relationship of the members and the farther one goes from the founder of the family, the weaker may be the

presumption. But, generally speaking, the normal state of every Hindu family is joint and in the absence of proof of division, such is the legal

presumption. Thus, a man who separates from his father or brothers may, nevertheless, continue to be joint with the members of his own branch.

He becomes the head of a new joint family, if he has a family, and if he obtains property on partition with his father and A brothers, that property

becomes the ancestral property of his branch qua him and his male issue.

It is true that the appellant cannot constitute a coparcenary with his wife and unmarried daughter but under the Income Tax Act, a Hindu undivided

family, not a coparcenary, is a taxable unit. A Hindu coparcenary is a much narrower body than the joint family. It includes only those persons who

acquire by birth an interest in the joint or coparcenary property and these are the sons, grandsons and great grandsons of the holder of the joint

property-for the time being, that is to say, the three generations next to the holder in unbroken male descent. Since under the Mitakshara law, the

right to joint family property by birth is vested in the male issue only, females who come in only as heirs to obstructed heritage

(Sapratibandhadaya), cannot be coparceners. But we are concerned under the Income Tax Act, with the question whether the appellant's wife

and unmarried daughter can with him be members of a Hindu undivided family and not of a coparcenary. In the words of Sir George Rankin, who

delivered the opinion of the Judicial Committee in Kalyanji's case [1937] 5 ITR 90 :

"The phrase ""Hindu undivided family"" is used in the statute with reference, not to one school only of Hindu law, but to all schools; and their

Lordships think it a mistake in method to begin by pasting over the wider phrase of the Act the words, ""Hindu coparcenary"", all the more that it is

not possible to say on the face of the Act that no female can be a member."

Outside the limits of coparcenary, there is a fringe of persons, males and females who constitute an undivided or joint family. There is no limit to the

number of persons who can compose it nor to their remoteness from the

common ancestor and to their relationship with one another. A joint Hindu family consists of persons lineally descended from a common ancestor and includes their wives and unmarried daughters. The daughter, on marriage, ceases to be a member of her father's family and becomes a member of her husband's family. The joint Hindu family is thus a larger body consisting of a group of persons who are united by the tie of sapindaship arising by birth, marriage or adoption. "The fundamental principle of the Hindu joint family is the sapindaship. Without that it is impossible to form a joint Hindu family. With it as long as a family is living together, it is almost impossible not to form a joint Hindu family. It is the family relation, the sapinda relation, which distinguishes the joint family, and is of its very essence," (Karsondas Dharamsey v. Gangabai [1908] ILR 32 Bom 479) (see also Hindu Law in British India by S. V. Gupte, second edition, page 59).

The joint Hindu family, with all its incidents, is thus a creature of law and cannot be created by act of parties, except to the extent to which a stranger may be affiliated to the family by adoption. But the absence of an antecedent history of jointness between the appellant and his ancestors is no impediment to the appellant, his wife and unmarried daughter forming a joint Hindu family. The appellant's wife became his sapinda on her marriage with him. The daughter too, on her birth, became a sapinda and until she leaves the family by marriage, the tie of sapindaship will bind her to the family of her birth. As said by Golapchandra Sarkar Sastri in his Hindu law (eighth edition page 240), "those that are called by nature to live together, continue to do so" and form a joint Hindu family. The appellant is not by contract seeking to introduce in his family strangers not bound to the family by the tie of sapindaship. The wife and unmarried daughter are members of his family. He is not by agreement making them so. And as a Hindu male, he himself can be the stock of a fresh descent so as to be able to constitute an undivided family with his wife and daughter.

That it does not take more than one male to form a Joint Hindu family with females is well-established. In Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, , one Buddappa, his wife, his two unmarried daughters and his adopted son, Buddanna, were members of a Hindu undivided family. On Buddappa's death a question arose whether the

adopted son who was the sole surviving coparcener could form a joint Hindu family with his mother and sisters and could accordingly be assessed in the status of a manager of the Hindu undivided family. Speaking

for the court, Shah J., observed :

"The plea that there must be at least two male members to form a Hindu undivided family as a taxable entity also has no force. The expression

Hindu undivided family"" in the Income Tax Act is used in the sense in which a Hindu joint family is understood under the personal law of Hindus.

Under the Hindu system of law a joint family may consist of a single male member and widows of deceased male members, and apparently, the

Income Tax Act does not indicate that a Hindu undivided family as an assessable entity must consist of at least two male members."

In N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, , the appellant filed returns for wealth-tax in the status of a Hindu

undivided family which at the material time consisted of himself, his wife and two minor daughters. The claim to be assessed in the status of a Hindu

undivided family rested on the circumstance that the wealth returned consisted of ancestral property received or deemed to have been received by

the appellant on partition with his father and brothers. The High Court held that as the appellant's family did not have any other male coparcener,

the assets must be held to belong to him as an individual and not to the Hindu undivided family. That decision was set side by this court on the

ground that a joint Hindu family could consist under the Hindu law of a single male member, his wife and daughters and that it was not necessary

that the assessable unit should consist of at least two male members.

In both of these cases, Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, and N.V. Narendranath Vs. Commissioner of

Wealth-tax, Andhra Pradesh, , the assessee was a member of a pre-existing joint family and had, in one case on the death of his father and in the

other on partition, become the sole surviving coparcener. But the decision in those cases did not rest on the consideration that there was an

antecedent history of jointness. The alternative argument in Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, was an

independent argument uncorrelated to the pre-existence of a joint family. The passage which we have extracted from the judgment of Shah J., in

that case shows that the decision of this court did not proceed from any such consideration. The court held in terms categorical that the Hindu

undivided family as an assessable entity need not consist of at least two male members. The same is true of the decision in N.V. Narendranath Vs.

Commissioner of Wealth-tax, Andhra Pradesh, .

Thus, the contention of the Department that in the absence of a pre-existing joint family the appellant cannot constitute a Hindu undivided family

with his wife and unmarried daughter must fail. The view of the High Court that the appellant has "no son and, therefore, no undivided family" is

plainly unsound and must also be rejected. Accordingly, the question whether the income of the Kathoke Lodge can be assessed in the hands of

the appellant as a karta or manager of the joint family must be decided on the basis that the appellant, his wife and unmarried daughter are

members of a Hindu undivided family.

By the declaration of January 26, 1956, the appellant threw Kathoke Lodge into the family hotchpot abandoning all separate claims to that

property. The genuineness of that declaration was accepted by the Tribunal. The High Court too decided the reference on the footing that the

appellant had thrown the property into the common hotchpot and that "after the declaration, the property . . . would be property of a Hindu

undivided family in the hands of the assessee" (at page 471) Surjitlal Chhabda Vs. Commissioner of Income Tax, Bombay City-I, . Learned

counsel for the Department attempted to raise a new contention before us that there is no such thing under the Hindu law as impressing separate

property with the character of joint family property, that the only doctrine known in this behalf to Hindu law is the doctrine of blending and since,

prior to the declaration the family hotchpot in the instant case was empty, there was nothing with which the Kathoke Lodge or its income could be

blended and, therefore, the declaration is ineffective to convert that property into joint family property. Learned counsel for the appellant cited

several decisions of the High Courts to controvert the Department's contention. But apart from the merits of the point we ruled that the contention

was not open to the Department. The statement of case framed by the Tribunal shows that such a contention was not raised before the Tribunal.

The Commissioner of Income Tax himself asked for the reference of a question to

the High Court for its opinion. That question concerns the point whether having regard to the conduct of the appellant his self-acquired property could be said to be impressed with the character of joint family property. The question did not cover the contention raised before us on behalf of the Department. But above all, though an argument was raised in the High Court on behalf of the Department that for the operation of the doctrine of blending it was essential that there should exist not only a coparcenary but also a coparcenary property, learned counsel who appeared for the Department in the High Court, "did not, after some discussion, press that there should necessarily be coparcenary property". This was not a concession on a question of law in the sense as to what the true legal position was. What the Department's counsel stated in the High Court was that he did not want to press the particular point. In our opinion, it is not open to the Department to take before us a contention which in the first place does not arise out of the reference and which the Department's counsel in the High Court raised but did not press. Having examined the true nature of an undivided family under the Hindu law and in view of the findings of the Tribunal and the High Court on the second aspect, two points emerge clear; firstly, that the appellant constituted a Hindu undivided family with his wife and unmarried daughter and, secondly, that Kathoke Lodge which was the appellant's separate property was thrown by him into the family hotchpot.

14. The Supreme Court, thereafter proceeded to consider whether the income of Kathoke Lodge would be assessed in the hands of the appellant as an individual or whether it can be assessed in his status as manager of the Hindu undivided family. On these questions, the Supreme Court held

(at page 795) :

There are thus two classes of cases, each requiring a different approach. In cases falling within the rule in *Gowli Buddanna Vs. Commissioner of*

Income Tax, Mysore, Bangalore, , the question to ask is whether property which belonged to a subsisting undivided family ceases to have that

character merely because the family is represented by a sole surviving coparcener who possesses rights which an owner of property may possess.

For the matter of that, the same question has to be asked in cases where the family, for the time being, consists of widows of deceased

coparceners as in Commissioner of Income Tax, Madras Vs. Rm. Ar. Ar. Veerappa Cheitiar, , so long as the property which was originally of the

joint Hindu family remains in the hands of the widows of the members of the family and is not divided amongst them. In cases falling within the rule

in Kalyanji's case [1937] 5 ITR 90 , the question to ask is whether property which did not belong to a subsisting undivided family has truly

acquired the character of joint family property in the hands of the assessee. In this class of cases, the composition of the family is a matter of great

relevance for, though a joint Hindu family may consist of a man, his wife and daughter, the mere existence of a wife and daughter will not justify the

assessment of income from the joint family property in the status of the head as a manager of the joint family. The appellant's case falls within the

rule in Kalyanji's case [1937] 5 ITR 90 , since the property, before it came into his hands, was not impressed with the character of joint family

property. It is of great relevance that he has no son and his joint family consists, for the time being, of himself, his wife and daughter.

Once it is realised that there are two distinct classes of cases which require a different approach, there would be no difficulty in understanding the

implications of the apparently conflicting tests evolved as guides for deciding the two classes of cases in Kalyanji's case [1937] 5 ITR 90, the

Privy Council observed (at pages 95, 96) :

"In an extra legal sense, and even for some purposes of legal theory, ancestral property may perhaps be described, and usefully described, as

family property; but it does not follow that in the eye of the Hindu law, it belongs, save in certain circumstances, to the family as distinct from the

individual. By reason of its origin, a man's property may be liable to be divested wholly or in part on the happening of a particular event, or may be

answerable for particular obligations, or may pass at his death, in a particular way; but if, in spite of all such facts, his personal law regards him as

the owner, the property as his property and the income therefrom as his income, it is chargeable to Income Tax as his, i.e., as the income of an

individual. In their Lordships' view, it would not be in consonance with ordinary notions or with a correct interpretation of the law of the

Mitakshara, to hold that property which a man has obtained from his father belongs to a Hindu undivided family by reason of having a wife and

daughters."

On the other hand, in Arunachalam's case [1958] 34 ITR 42, which falls within the rule in Gowli Buddanna Vs. Commissioner of Income Tax,

Mysore, Bangalore, , the Privy Council observed :

"But though it may be correct to speak of him (the sole surviving coparcener) as the ""owner"", yet it is still correct to describe that which he owns as

the joint family property. For his ownership is such that upon the adoption of a son it assumes a different quality; it is such, too, that female

members of the family (whose members may increase) have a right to maintenance out of it and in some circumstances to a charge for maintenance

upon it. And these are incidents which arise, notwithstanding his so-called ownership, just because the property has been and has not ceased to be

joint family property . . . it would not appear reasonable to impart to the Legislature the intention to discriminate, so long as the family itself

subsists, between property in the hands of a single coparcener and that in the hands of two or more coparceners."

Holding that it was an irrelevant consideration that a single coparcener could alienate the property in a manner not open to one of several

coparceners, the Privy Council said :

"Let it be assumed that his power of alienation is unassailable : that means no more than that he has in the circumstances the power to alienate joint

family property. That is what it is until he alienates it, and, if he does not alienate it, that is what it remains. The fatal flaw in the argument of the

appellant appeared to be that, having labelled the surviving coparcener ""owner"", he then attributed to his ownership such a congeries of rights that

the property could no longer be called ""joint family property"". The family, a body fluctuating in numbers and comprised of male and female

members, may equally well be said to be owners of the property, but owners whose ownership is qualified by the powers of the coparceners.

There is in fact nothing to be gained by the use of the word ""owner"" in this connection. It is only by analysing the nature of the rights of the

members of the undivided family, both those in being and those yet to be born, that it can be determined, whether the family property can properly

be described as ""joint property"" of the undivided family."

These two sets of tests, both evolved by the Privy Council, govern two distinct

sets of cases and there is no inconsistency between the two tests.

The test evolved in Kalyanji's case [1937] 5 ITR 90 , not in Arunachalam's [1958] 34 ITR 42 or Gowli Buddanna Vs. Commissioner of Income

Tax, Mysore, Bangalore, has to be applied to the instant case.

Kathoke Lodge was not an asset of a pre-existing joint family of which the appellant was a member. It became an item of joint family property for

the first time when the appellant threw what was his separate property into the family hotchpot. The appellant has no son. His wife and unmarried

daughter were entitled to be maintained by him from out of the income of Kathoke Lodge while it was his separate property. Their rights in that

property are not enlarged for the reason that the property was thrown into the family hotchpot. Not being coparceners of the appellant, they have

neither a right by birth in the property nor the right to demand its partition nor indeed the right to restrain the appellant from alienating the property

for any purpose whatsoever. Their prior right to be maintained out of the income of Kathoke Lodge remains what it was even after the property

was thrown into the family hotchpot; the right of maintenance, neither more nor less. Thus, Kathoke Lodge may be usefully described as the

property of the family after it was thrown into the common stock, but it does not follow that in the eye of Hindu law it belongs to the family, as it

would have, if the property were to devolve on the appellant as a sole surviving coparcener.

The property which the appellant has put into the common stock may change its legal incidents on the birth of a son but until that event happens the

property, in the eye of Hindu law, is really his. He can deal with it as a full owner, unrestrained by considerations of legal necessity or benefit of the

estate. He may sell it, mortgage it or make a gift of it. Even a son born or adopted after the alienation shall have to take the family hotchpot as he

finds it. A son born, begotten or adopted after the alienation has no right to challenge the alienation.

Since the personal law of the appellant regards him as the owner of Kathoke Lodge and the income therefrom as his income even after the

property was thrown into the family hotchpot, the income would be chargeable to Income Tax as his individual income and not that of the family.

15. We have copiously quoted from the judgment of the Supreme Court, above

referred to only to point out that so long as the assessee is the sole surviving male member, and there are no incidents, under which, the property sought to be converted by him to be the property belonging to the Hindu undivided family, restricted his interest and enlarged interests of other members of the family it would not be termed as joint family property.

For that conclusion, it is of great relevance, as observed by the Supreme Court (at page 793) :

. . . that he has no son and his joint family consists, for the time being, of himself, his wife and daughter.

16. The question, however, is not answered in full, unless the subsequent acts of the joint family, in the instant case, of making gifts and the

assessee having been assessed to the gift-tax are understood. Therefore, it is important to take notice of the proviso to section 4(1)(a) of the

Wealth-tax Act, which says :

Provided that where the transfer of such assets or any part thereof is either chargeable to gift-tax under the Gift-tax Act, 1958 (18 of 1958), or is

not chargeable u/s 5 of that Act, for any assessment year commencing after the 31st day of March, 1964, but before the 1st day of April, 1972,

the value of such assets or part thereof, as the case may be, shall not be included in computing the net wealth of the individual.

17. On a plain reading, the above proviso can be split into two parts, viz., (1) where the transfer of such assets or any part thereof is chargeable to

gift-tax under the Gift-tax Act, the value of such assets or part thereof, as the case may be, shall not be included in computing the net wealth of the

individual; and (2) where the transfer of such assets or any part thereof is not chargeable u/s 5 of the Gift-tax Act, 1958, for any assessment year

commencing after March 31, 1964, but before April 1, 1972, the value of such assets or part thereof, as the case may be, shall not be included in

computing the net wealth of the individual. If it is read as above, then, where the transfer of such assets or any part thereof, is chargeable to gift-tax

under the Gift-tax Act, the value of such assets shall not be included in computing the net wealth of the assessee. If it is not chargeable u/s 5 of the

Gift-tax Act, 1958, for any assessment year, commencing after March 31, 1964, but before April 1, 1972, the value of such assets shall not be

included in computing the net wealth of the individual. In the latter case, if it is

not chargeable u/s 5 of the Gift-tax Act, for any assessment year

before March 31, 1964, or after April 1, 1972, the value of such assets shall be included in computing the net wealth of the individual for the

purpose of charging under the Wealth-tax Act. If some assets are chargeable to gift-tax, it is obvious, there has to be an assessment and the donor

has to pay the gift-tax. If it is not chargeable u/s 5 of the Gift-tax Act, the assets are free of any gift-tax and those are assets liable to wealth-tax.

18. There appears to be an expression of exclusion from the charge u/s 3 of the Wealth-tax Act, of the assets which are not chargeable u/s 5 of the

Gift-tax Act for the assessment years falling between March 31, 1964 and April 1, 1972.

19. The Gift-tax Act, 1958, has stipulated that during the relevant period, the tax in respect of the gifts, if any, made by a person during the

previous year, at the rate or rates specified in Schedule I should reduce the wealth-tax, and for the said purpose, made certain provisions.

Otherwise, it may not have specified the conditions of the valid gift, u/s 4 thereof. Sub-section (2) of section 4 of the Act says :

Where, in the case of an individual, being a member of a Hindu undivided family, any property having been the separate property of the individual

has been converted by the individual into property belonging to the family through the act of impressing such separate property with the character

of property belonging to the family or throwing it into the common stock of the family (such property being hereafter in this sub-section referred to

as the converted property), then, notwithstanding anything contained in any other provision of this Act or any other law for the time being in force,

for the purpose of computation of the taxable gifts made by the individual, the individual shall be deemed to have made a gift of so much of the

converted property as the members of the Hindu undivided family other than such individual would be entitled to, if a partition of the converted

property had taken place immediately after such conversion.

20. The Tribunal has accepted the case of the assessee that the assessee had thrown his separate and exclusive property into the Hindu undivided

family consisting of himself, his wife and his unmarried daughters. The Tribunal has, however, referred to the judgment of the Supreme Court in

Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, , to reject the

case of the assessee that he, either as the karta of the family or as an individual who had been subjected to the gift-tax, was not liable to pay, for such converted property or property transferred by way of gift to other members of the joint family, on which he had paid the gift-tax, any tax under the Wealth-tax Act. In that case, the Supreme Court was considering whether the income, after the property was thrown into the family hotchpot by the individual, was chargeable to Income Tax in the individual's hands as his individual income and not that of the family. Sub-section (2) of section 4 of the Wealth-tax Act, to which we have referred earlier, was not under consideration before the Supreme Court.

21. In the case on hand, the assessee being a member of the Hindu undivided family, had thrown certain property into the common stock of the family and thus, notwithstanding anything contained in any provision of the Gift-tax Act or any other law for the time being in force for the purpose of computation of the taxable gifts made by the assessee, the assessee would be deemed to have made a gift of so much of the converted property as a member of the Hindu undivided family, to which he would be entitled to if a partition of the property had taken place immediately after such conversion. The expression "'or any other law for the time being in force'" must exclude the provisions of the Wealth-tax Act as well.

22. The Tribunal has held, however, that the gift was not valid and stated in its order,

In the light of the Supreme Court judgment in *Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay*, a gift by such a Hindu

undivided family is not permissible. All these propositions are well discussed by the Appellate Assistant Commissioner. The fact that gift-tax

assessment was made is immaterial. Such an assessment cannot make an otherwise invalid gift into a valid gift. Further the question whether that

Hindu undivided family validly transferred it to the wife, daughter, etc., is irrelevant for purposes of section 4(1A) of the Wealth-tax Act.

23. The Appellate Assistant Commissioner, in his order has stated :

In this case the Hindu undivided family consists of the appellant, his wife and unmarried daughters only. There is only one coparcener in the family,

viz., the appellant. It has been held by the Supreme Court in *Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay*, that when the

self-acquired property of a man is thrown by him into the common stock of a Hindu undivided family, consisting of himself, his wife and daughters

only, it does not follow that in the eye of Hindu law that property belongs to the family, since the wife and daughters have no right to ask for a

share therein. Hence, notwithstanding the "throwing" that is said to have taken place on the dates mentioned in paragraph 4(a), the fixed deposits

have continued to be the property of the appellant (the individual) till the dates mentioned in paragraph 4(b). Consequently, the gifts made on the

latter dates are gifts by the appellant (the individual). As such the Income Tax Officer has been correct in including the disputed items in the

appellant's wealth invoking section 4(1A).

24. There is no denying the fact, as held by the Supreme Court, and that appears to be the textual law also that, not being coparceners, the wife

and the daughters have neither a right by birth in the property, nor a right to demand its partition, nor indeed the right to restrain the assessee from

alienating the property for any purpose whatsoever, and that the prior right to be maintained out of the income of the property thrown into the

hotchpot of the joint family remains what was even after the property was thrown into the family hotchpot, that is the right of maintenance, neither

more nor less. In the event of a partition claimed by any male member of the family to have a share, the Supreme Court has categorically said in

Surjit Lal Chhabda v. CIT [1975] 101 ITR 276 referred to supra (at page 795) :

Thus, Kathoke Lodge may be usefully described as the property of the family after it was thrown into the common stock, but it does not follow

that in the eye of Hindu law it belongs to the family, as it would have, if the property were to devolve on the appellant as a sole surviving

coparcener.

The property which the appellant has put into the common stock may change its legal incidents on the birth of a son but until that event happens the

property, in the eye of Hindu law, is really his. He can deal with it as a full owner, unrestrained by considerations of legal necessity or benefit of the

estate. He may sell it, mortgage it or make a gift of it. Even a son born or adopted after the alienation shall have to take the family hotchpot as he

finds it. A son born, begotten or adopted after the alienation has no right to challenge the alienation.

25. It is clear thus on the basis of the above to say that the property thrown into the hotchpot by the individual is not to be treated as having the character of the property belonging to the family unless other conditions as stated by the Supreme Court exist. The Supreme Court clearly has accepted that the individual owning the property can throw it into the common stock of the family. In the words of the Supreme Court (at page 795) :

Kathoke Lodge was not an asset of a pre-existing joint family of which the appellant was a member. It became an item of joint family property for the first time when the appellant threw what was his separate property into the family hotchpot. The appellant has no son. His wife and unmarried daughter were entitled to be maintained by him from out of the income of Kathoke Lodge while it was his separate property.

26. In the words of the Privy Council, in *Attorney-General of Ceylon v. A. R. Arunachalam Chettiar* [1958] 34 ITR 42, which are found in the quotation by us from the judgment of the Supreme Court in *Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay*, :

"But though it may be correct to speak of him (the sole surviving coparcener) as the ""owner"", yet it is still correct to disrobe that which he owns as the joint family property, for his ownership is such that upon the adoption of a son it assumes a different quality : it is such, too, that female members of the family (whose members may increase) have a right to maintenance out of it and in some circumstances to a charge for maintenance upon it. And these are incidents which arise, notwithstanding his so-called ownership, just because the property has been and has not ceased to be joint family property . . . it would not appear reasonable to impart to the Legislature the intention to discriminate, so long as the family itself subsists, between property in the hands of a single coparcener and that in the hands of two or more coparceners".

27. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be decided as joint family property of the Hindu undivided family or not. By throwing into the common stock of the family, whether the assessee in the instant case created any interest in favour of the other family members or not, he had

created a common stock of the family. The common stock of the family must be construed to be one which is covered by sub-section (2) of

section 4 of the Gift-tax Act.

28. Even if the objection as to the throwing of the property which the assessee possessed into the hotchpot of the family is rejected, it is difficult to

deny to him, since his ownership is not taken away, the right to make the gift and thus the validity of the gift cannot be decided on the basis of the

transfer of interests of the assessee to the members of the joint family. On a parity of reasoning either the assessee had validly thrown his property

into the common stock of the joint family or had not done so legally, but the validity of the gifts required separate determination. There may be

good reasons in the instant case for the tax-men to hold that any transfer by the assessee of his property to the joint family stock was not legal and

valid. But it was the assessee who acted in making the gift, of course on behalf of the Hindu undivided family. His own right to make the gift for the

said reason cannot be denied.

29. It will be necessary, however, to bear in mind that merely because a gift is said to have been made, it should not be accepted as validly made.

How a valid gift is made and whether such a gift will satisfy the requirements of a valid gift will always be required to be decided. This, however,

will be done not in a persuading under the Wealth-tax Act, but in a persuading under the Gift-tax Act. In Commissioner of Gift-Tax, Bombay City

I Vs. R.B. Kamdin, , the Bombay High Court has pointed out which appears to us the correct approach that for the purpose of deciding whether a

valid gift has been made under the Gift-tax Act, 1958, one must see whether the donor has really divested himself of the concerned property and

the donor cannot be said to have transferred the property if, while ostensibly handing it over, he holds on to it, by keeping an unrestricted power to

take it back the next minute.

30. In the instant case, however, the examination of the question of the validity of the gift deed is not possible. The gift has been held to be valid

and subjected to tax under the Gift-tax Act. If determination as to the validity or otherwise of the gift is permitted in collateral proceedings and in

one proceeding, it is held to be valid and in another invalid, the sufferer will be the assessee. It will be reiterating the obvious, if we remind

ourselves that the direct tax laws are supplementary to each other and as observed repeatedly by the courts, it is proper to read closely related

provisions of revenue laws together to get a proper meaning.

31. Learned counsel for the Revenue has drawn our attention to a judgment of the Supreme Court in Commissioner of Wealth Tax Vs. Smt.

Hashmatunnisa Begum, , which throws light on the proviso aforementioned to section 4(1)(a) of the Wealth-tax Act. The Supreme Court has

stated (headnote) :

On a reading of the plain words of the proviso to section 4(1)(a) of the Wealth-tax Act, 1957, the clause "for any assessment year commencing

after the 31st day of March, 1964" can only be read as relating to gift-tax assessments and not to wealth-tax assessments. The exemption under

the proviso, from inclusion in the net wealth, is attracted to assets which were the subject-matter of such gifts as were chargeable to gift-tax or not

chargeable to tax u/s 5 of the Gift-tax Act, 1958, for any assessment year commencing after March 31, 1964, but before April 1, 1972. Gifts

made earlier would not attract the benefit of the exemption.

32. The two appeals before the Supreme Court related to the gifts fading during the period before the reckoning date, i.e., March 31, 1964. As

respects the law in section 4(1)(a) and the proviso, the Supreme Court has stated thus (at page 103) :

The controversy generated on the point leading to the divergence of judicial opinion on the point is attributable to the somewhat inelegant and

inappropriate phraseology of the provision. To appreciate the relevant contentions, it is necessary to notice" the words of the proviso . . .

33. After quoting the proviso and the words later introduced by the Finance (No. 2) Act, 1971, ""but before the 1st day of April, 1972"", with effect

from April 1, 1972, to complete the phraseology as quoted above by us, the Supreme Court observed (at page 103) :

The proviso was introduced by the amending Act of 1964, but given effect to from April 1, 1965, by a notification (see [1965] 55 ITR 179).

Under the various clauses of section 4(1)(a), certain transfers of assets made by an individual in favour of, or for the benefit of, the spouse or of a

minor child, not being a married daughter, of such individual, are required to be ignored and the transferred assets included in the wealth of the

assessee, as belonging to him. Section 4(1)(a) aims at foiling an individual's attempt at avoiding or reducing the incidence to wealth-tax by

transferring the assets to or for the benefit of the spouse or the minor child of the individual, by requiring the inclusion of such transferred assets in

computing the net wealth of the individual

However, the proviso makes the provision inoperative where and in so far as the transferred asset is either chargeable to gift-tax under, or is

exempt u/s 5 of the Gift-tax Act. The controversy surrounds the question whether the expression for any assessment year commencing after the

31st day of March, 1964," occurring in the proviso should be read with the first part and as referring to the eligibility of the gifts for exemption with

reference to the point of time at which the gifts were made or whether that expression does not condition the identity of the eligible gifts but only

signifies the starting point for the exemption from wealth-tax. The assessees contend that the date of the gift is immaterial and as long as the transfer

is chargeable to gift-tax or is exempt u/s 5, whatever may be the year in which the gift was made-the exemption from gift-tax must commence for

any assessment year commencing after the 31st day of March, 1964".

34. The judgment of the Calcutta High Court in Commissioner of Wealth Tax Vs. Smt. Sarala Debi Birla, has been affirmed by the Supreme Court

in Commissioner of Wealth Tax Vs. Smt. Hashmatunnisa Begum, The Calcutta High Court considered a case in which a mother had made a cash

gift to her daughter in the year 1959 and paid gift-tax. The question before the court was whether the amount of gift was exempt from inclusion in

the mother's wealth u/s 4(1)(a)(iv) of the Wealth-tax Act. The Calcutta High Court has started recording its opinion by saying that the proviso to

section 4(1)(a) introduced by the Act 46 of 1964 (the Supreme Court has noticed in the judgment referred to above, on or before the 1st day of

April, 1972, was not under consideration in the case) is unhappily worded and observed (at page 490) :

Having regard to the purpose for which the proviso was enacted and to the expression "is chargeable" in conjunction with the provisions of the

Gift-tax Act, 1958, the expression "for any assessment year commencing after 31st March, 1964" occurring in the proviso indicates that the

transfer of asset must be chargeable to gift-tax under the provisions of the Gift-

tax Act for any assessment year commencing after 31st March, 1964, or, where the transfer is not chargeable u/s 5 of that Act, then for any assessment year commencing after 31st March, 1964, the proviso would apply. The reason for our coming to this conclusion is that the proviso was really dealing with the effect of the assessment to wealth-tax and what is being dealt with in the proviso is that certain transfers which would, subsequent to the proviso coming into effect, be eliminated from the provision of the substantive part of the section. It is true that the location of the expression "for any assessment year commencing after 31st of March, 1964", is not quite appropriate. The punctuation mark is also suggestive of contrary conclusion but, having regard to the provisions of the Gift-tax Act, 1958, and having regard to the purposes for which the proviso came into effect we are of the opinion that the proviso really exempted transfer of assets which were chargeable for any assessment year commencing after 31st of March, 1964, or where the transfer was not chargeable u/s 5 of the Act for any assessment year commencing after 31st of March, 1964. This construction is in consonance with the later amendment made, though that is not a relevant factor.

35. We have earlier, in our judgment, indicated that the possible construction of the proviso is that the transfer of such assets or any part thereof, if chargeable to gift-tax, under the Gift-tax Act, 1958, is excluded from the net assets in the hands of the assessee in terms of section 4(1)(a)(i) and (ii) of the Act and when not chargeable u/s 5 of the Gift-tax Act, then only for any assessment year commencing after the 31st day of March, 1964, and on or before the 1st day of April, 1972. Since, however, the Calcutta High Court and the Supreme Court have taken the view that this conclusion, is not acceptable, although it is true that the location of the expression ""for any assessment year commencing after the 31st of March, 1964"" is not quite appropriate and the punctuation mark is also suggestive of contrary conclusion, to which we have arrived and held :

..... having regard to the provisions of the Gift-tax Act, 1958, and having regard to the purposes for which the proviso came into effect, we are of the opinion that the proviso really exempted transfer of assets which were chargeable for any assessment year commencing after 31st of March, 1964, or where the transfer was not chargeable u/s 5 of the Act for any

assessment year commencing after 31st of March, 1964

36. We prefer this approach.

37. There are good reasons to go into the constitutionality as the Supreme Court has also indicated in the above judgment of the restriction as to

period. But it will be unnecessary in the instant case, for the obvious reason that any liability to the wealth-tax has to be considered as the liability of

the owner thereof, and if the assessee is claiming a transfer through another person by way of gift, the transferee should be held to be the owner

and the liability to pay the wealth-tax for such assets, which are transferred, will be that of the transferee. The transferor, having paid the gift-tax

and transferred to another, will not be required to pay again wealth-tax on such assets. In the case, however, which falls u/s 4(1)(a) (i) and (ii) of

the Wealth-tax Act; the assets held by the transferees are clubbed with the assets of the individual, whose spouse or minor children they are and in

such a case, the assets held by the spouse of the individual or any minor child, will not bear any additional wealth-tax, but on account of additional

wealth by way of transfer. This can be illustrated by an example : If a relative, say, the maternal grandfather or the grandmother, gifted certain

assets to the minor child of the individual, the maternal grandfather or the maternal grandmother is chargeable to gift-tax. The individual whose child

received the gift is chargeable to wealth-tax.

38. Thus, in our view, for an exception from the general rule, to exclude from the net wealth of the individual, any gift by him to his spouse or his

minor child, it must fall under the proviso strictly. Chargeability to the gift-tax is the sine qua non of the transfer of assets by the individual, and such

chargeability alone is not enough, it should be for any assessment year commencing after 31st of March, 1964, but before the 1st of April, 1972.

The assessee, in the instant case, can legitimately claim exemption of such assets, which are covered by the gift by him for any assessment year

commencing after the 31st day of March, 1964, but before the 1st day of April, 1972, and since in the instant case, the assessee has been

subjected to gift-tax, and it appears, that the gift by him, has been charged for some assessment year commencing after the 31st day of March,

1964, but before the 1st day of April, 1972, he is entitled to exclude such assets, from the net wealth and the Revenue is not entitled to claim on

such assets any tax from him u/s 4(1)(a) (i) and (ii) of the Wealth-tax Act.

39. We have already indicated the error committed by the Tribunal in giving full effect to the provisions u/s 4(1)(a) (i) and (ii) of the Wealth-tax Act

and the proviso above mentioned. The Revenue is required to revise the assessment accordingly, and realise the tax from the assessee in

accordance with law.

40. The question under reference is answered accordingly. No costs