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Legislative History

Transfers of Income and Revocable Transfers of Assets

IT is not uncommon for a person to transfer the income from a property to a dependant for the beneficiary's or his own lifetime, without divesting himself of the ownership of the property. Where the property is also transferred, the duration of the transfer and the rights, if any, in the property that the transferor has reserved for himself assume importance. For this purpose, a transfer includes a trust, settlement,[1] covenant, agreement or arrangement.

Legislative efforts were directed in the first instance only against (a) transfers of income without transfer of assets and (b) revocable transfers of assets. Mere transfer of income without transfer of the asset from which the income arose would not free one from the liability to pay the income tax. The income continued to be included in the transferor's total income[2]. A revocable transfer of property did not also relieve the transferor of tax liability in respect of it.[3] Even a trust which was charitable could not escape the tax, if it was revocable.[4] A transfer is not taken to be revocable if it is operative during the lifetime of the beneficiary or transferee, without any scope for the exercise of any powers over it by the transferor[5]. It is deemed to be revocable only if—

i. it contains any provision for the retransfer directly or indirectly of the whole or any part of the income or assets to the transferor,[6] or
ii. it gives the tranferor a right to reassume power directly or indirectly over the whole or any part of the income or assets.[7]

These provisions led to considerable litigation. Their ambit has been examined in great detail in several court judgments[8]. It has been clarified, for instance , that assignment of shares in partnership concerns, followed by the declaration of the trustees that they are partners in the firms in question in a representative capacity may constitute an effective transfer of not merely income but the source of the income[9]. A transfer is not considered revocable merely because the trustees have acted in derogation or breach of the deed of transfer or even if the trust deed empowers the trustees to invest the trust property as they, in their discretion, think fit, despite the restrictions imposed by the Indian Trusts Act[10]. Provisions in the trust deed forfeiting the beneficiaries' interests in the event of their insolvency[11] or limiting the rights of the beneficiaries to question certain acts of the trustees and preventing frivolous litigation will not have the effect of giving the settlor a right to reassume power directly or indirectly over the income or assets[12]. Even if the author of a trust enjoys any benefit in the trust, the trust will not be deemed to be revocable unless the benefit has been reserved for him or he is permitted to enjoy it by the trust deed[13]. Where income from property settled on trust is included in the income of another person but the tax attributable to the income is proposed to be recovered from the trustees or the beneficiary, due notice will have to be given to them and appropriate action taken only after ascertaining their points of view[14]. A trust that is revocable or deemed to be revocable is not non-existent : a legal fiction may cause its income or wealth to be tagged to its author's, but not void it.[15]

Equivalence in Tax Liability Between Trustees and Beneficiaries—Irrevocable Trusts

If there was a transfer of assets which was not revocable, then the transferor himself was not embarrassed with the liability to pay the tax on the income from the assets, except in certain circumstances. The intention in India, as in England, has been that beneficiaries should be directly assessed to tax where they are *sui juris*, and in possession and control of the trust income. However, income is generally taxed where it is

found, as a matter of expediency[16]. The Revenue has gone to the trustee where there is a trust for accumulation of income against a contingency or for capital expenditure and no one has been specifically designated to receive the income in a particular year. The trustee has also been taxed where he is running a business in the interest of the beneficiaries : it is easier to arrive at the income of the trust on the basis of the books maintained for it than determine it in the hands of the beneficiaries who may be able to throw little light on the details needed for computation of their income. The liability of a trustee does not, however, preclude direct access to the beneficiary.[17]

Till the forties, a trustee was taxed as a representative assessee, on the income which he received on behalf of the beneficiaries. The Income-tax Amendment Act, 1939, altered the basis and made him liable for tax on the income that he was entitled to receive for their benefit.

There were two simple provisions for dealing with private trusts in the Income-tax Act, to start with. One related to a trustee appointed under a duly executed trust instrument. The other pertained to the Court of Wards, the Administrator General, the Official Trustee, or any person appointed by or under any order of a court. All of them were liable to tax on the income received by them on behalf of the beneficiaries concerned. The tax was to be raised on a trustee in the same manner and to the same extent as it would have been, had the assessment been made directly on the beneficiary.[18] The trust was not liable to pay tax on the entire income passing through it, as a unit.[19] If a beneficiary had an additional source of income apart from the trust, it was open to the Revenue to proceed against him and assess his entire income including the income from the trust directly in his hands, instead of assessing the income from the trust in the trustee's hands. Discretion to withhold distribution of income in a particular year would not affect the beneficiary's right to be assessed on the basis of his individual share, if it had been specified in the trust instrument.[20] Where only a part of the income was taxable, the beneficiary's share was chargeable *pro tanto*. These special provisions were taken to constitute an

enabling machinery which imposed no statutory obligation on the Revenue to proceed only against the trustee or only against the beneficiary : the Revenue could proceed against either of them.[21]

At the same time, it was conceded by the revenue authorities, that the option did not imply that the same income could be assessed twice, in the hands of both the trustee and the beneficiary.[22] By some process of ratiocination, it was concluded that once the trustee was taxed on the beneficiary's income, it would not be proper for the Revenue to reconsider whether it would not be better for it to subject the beneficiary to tax directly on his total income, including the income derived by him from the specific trust. The view was also taken that it would not be correct even to apply the average rate of tax on such total income to the beneficiary's other income, where the trustee had already been assessed to tax on the trust income.[23]

Income Tax on Discretionary Trusts

Discretionary trusts, i.e., trusts in which the beneficiaries were uncertain or their shares were not defined, were treated on a different footing : they were subjected to the income tax but not super-tax at the maximum rate.[24] The income of a discretionary trust bore tax as if it was the income of an association of persons, if none of its beneficiaries had any other income chargeable to tax or was an artificial juridical person like a Hindu idol ; and any amount paid out of it to a beneficiary was not assessable in his hands.[25] A trust was held to be specific and not discretionary if a beneficiary was entitled to recover a lump sum payment from it ; the share was taken to be indeterminate, and the trust discretionary, if there were any fluctuating additions to the amount.[26] A mere right to be maintained or educated could not be construed as a definite share in determining whether a trust was discretionary.[27]

When the Income-tax Act was overhauled in 1961, the opportunity to rationalise the trust provisions in keeping with the trust practices and development was missed. The only modification made in the Income-tax Act in 1961 related to the

provision for the charge of tax at the maximum rate from the trustees if the beneficiaries were unknown or their respective shares were not fixed.[28] This was substituted by a milder provision in section 164 allowing the assessment of trustees as a single unit consisting of an "association of persons," or when payments had actually been received by any of the beneficiaries, the levy of tax applicable to such individual beneficiaries, whichever course was more advantageous to the Revenue.[29] Where a beneficiary was directly assessed on a part of the income, the trustees could be assessed on the balance at the rate appropriate to that balance.[30] If the beneficiaries were not known or their shares were indeterminate in only a part of the trust, it was only that part that called for the differential treatment.[31] Variations in the class of beneficiaries in different years would not subject a trust to the provisions of section 164, if the beneficiaries and their shares were ascertainable in the particular year under consideration[32]. Income, which was notional or which was receivable but not received could not be taken to be income in which the shares of the beneficiaries were indeterminate or unknown.[33]

It is common knowledge that there was an upsurge of discretionary *inter vivos* trusts in the early sixties and that the incidence of tax on the income from the settled property was maintained at a low level by

a. splitting the income among multiple trusts and,

b. merely giving a class or list of eligible beneficiaries without quantifying the income apportionable among them.

Since some of the persons qualifying for benefits from the trusts were in the high income brackets and would have to pay heavy taxes if their shares had been specific, schemes were usually designed to regulate the distribution of trust income with an eye on the tax dues of the beneficiaries. With a view to discouraging this technique, the Finance Act, 1970, revised the charge to a flat rate of 65 per cent or the rate which would be appropriate to an "association of persons" with the same income, whichever might fetch more revenue. Legacies in

wills and trusts in which all the beneficiaries were persons with small income were, however, protected.

The amendment to the Income-tax Act in 1970 might have circumscribed the scope for discretionary trusts in the cases of taxpayers in the middle income groups, but the rage was unabated in the bigger cases. The maximum rate of tax was 72 per cent in 1980 and one could get away with a lower rate, *viz.*, 65 per cent or the marginal rate of an association of persons by setting up a trust.

The special dispensation that the rate of 65 per cent would not apply where none of the beneficiaries of a trust had other income chargeable to the income tax was also misused in some cases by spawning a large number of discretionary trusts, the beneficiaries of which did not have any other income chargeable to the income tax. Similarly, the exclusion of a discretionary trust created under a will from the purview of the provision regarding the flat rate of 65 per cent was made with a view to relieving hardship in genuine cases where testamentary benefits were sought to be conferred on near relations. Experience showed, however, that this legislative intention was also defeated by a testator's creating many discretionary trusts by will.

It was noticed further that in some cases discretion was given to the trustees to decide the allocation of income every year. This enabled the trustees to convert a discretionary trust into a specific trust whenever it suited the beneficiaries tax-wise.

Since the amendment in 1970 did not, therefore, prove to be a disincentive to the incessant resort to discretionary trusts, the following amendments were made in 1980 :

i. A discretionary trust would be liable to tax at the maximum marginal rate of income tax on its entire income. The maximum rate, including surcharge, was 72 per cent in 1980-81 and 66 per cent thereafter.

ii. The maximum marginal rate would be invoked if any beneficiaries had any income chargeable to tax or if any of them was also a beneficiary under any other private trust. In this context, "income chargeable to tax" would mean total income above the exemption limit for the relevant year.

iii. The concession for testamentary trusts would be restricted to cases where a person had made only one trust by will.

iv. Income of a trust set up before March 1, 1970 could be assessed as if it were the income of an association of persons, if it had been created *bona fide* exclusively for the benefit of the relatives of the settlor, or where the settlor was a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance.[34]

v. The annual conversion of a discretionary trust into a specific trust has been prevented by an amendment confining the relief available to specific trusts to cases in which the individual shares of the persons on whose behalf or for whose benefit any income is receivable are stated in the instrument of trust or the *waqf*-deed or the order of the court as the case may be, and are ascertainable as such on the date of such instrument, deed or order. As a result of this amendment, a trust under which the trustee can decide the allocation of the income every year will be regarded as no more than a revised version of the discretionary trust and taxed accordingly. Since there is no provision of law under which the trustees can vary the terms of the original trust-deed,[35] old trusts will be badly hit by this requirement.

Income Tax on Oral Trusts

The Revenue had all the time thought only in terms of discretionary trusts based on elaborately drawn instruments. The constraints to which the periodical amendments subjected such discretionary trusts did curb their growth, but the Revenue had not bargained for oral discretionary trusts. The Government observed that certain taxpayers managed to reduce their income tax and wealth tax liability, by creating a number of oral trusts, each having a small corpus.[36] The law was, therefore, amended again in 1981 to subject oral trusts to the

maximum marginal rate of income tax.[37] Opportunity has, however, been given to the trustee of an oral trust to file a statement in writing before the revenue authorities, setting out the purpose of the trust and particulars as to the trustees, the beneficiaries, and the trust property. The trustee of any parol trust that may be set up in future will have to file such a statement within three months of its coming into existence. If the trust is a specific one, it will receive the same treatment after filing such a statement as any specific trust declared by a duly executed instrument in writing. If it is discretionary, the maximum marginal rate of tax will be charged though under a different provision of the law.[38]

The Wealth Tax and Trusts

The Wealth- and Gift-tax Acts were enacted not as sources of revenue but rather as components of an integrated system of taxation, including taxation of income, wealth, gifts and expenditure, to countervail tax evasion.[39] The base for the wealth tax is narrow. It excludes, among other things, agricultural land and buildings in the vicinity of the land, used or occupied by the cultivators. It excludes also rights to annuities which are not commutable. Only annuities that have been purchased by the taxpayer or purchased by any one else in pursuance of a contract with him are to be included in his net wealth. Similarly, interest in property where such interest is available for less than six years from the date on which it vests in the taxpayer is not to be taken as a part of his net wealth. As regards trusts, the procedural and also some of the substantive provisions of the Wealth-tax Act correspond broadly to those of the Income-tax Act. The trustees of a trust constitute an assessable unit under the Wealth-tax Act : the word "individual" in section 3 of that Act includes individuals or more than one beneficiary.[40] The right of a settlor to have the net income of a trust applied for his support and maintenance is an interest in the trust property that has to be valued and included in the settlor's wealth.[41] Assets transferred to trusts or *waqf* for the benefit of the spouse or a minor child are to be included in the transferor's wealth.[42] Under the provision as originally enacted, only assets transferred for the immediate

benefit of the spouse or minor child could be added to the transferor's wealth, but section 4(i)(a)(iii) was amended by the Wealth-tax (Amendment) Act, 1964, to reach also assets offering deferred benefits.[43] Trust property utilised for residential purposes by a beneficiary will qualify for exemption upto the prescribed limit.[44] Where several beneficiaries occupy the same residential house held under trust, each will be eligible for a separate deduction upto the ceiling.[45] The value of the interest of a beneficiary in a trust is includible in his wealth.[46] Life-tenancy is taken to represent the right to the income as well as the underlying property for the beneficiary's life-time and subjected accordingly to both the income and wealth taxes. It is a wasting asset : while its value for the life-tenant diminishes from year to year, the value of the remainderman's interest goes up proportionately. A deferred benefit has to be discounted to arrive at the present market value of the beneficiary's interest. The beneficiary can be taxed directly ; and he will be entitled to all the exemptions conferred to a taxpayer by Section 5.[47] Alternatively, the trustees can be taxed as representative assessees, but their liability will be worked out on the same line as the beneficiary's, and cannot be wider than that liability.[48] The option to make the assessment in the hands of the beneficiaries or the trustees is not, however, available, to the revenue authorities when the shares of the beneficiaries are indeterminate or unknown.[49] Where the beneficiaries are not identifiable or their shares are unascertainable on the valuation date, there is a special provision in sub-section (4) of section 21 of the Wealth-tax Act for levying tax at a higher rate on the wealth about which there is such uncertainty.[50] Subsequent developments, like the death of one of the beneficiaries or increase in the number of beneficiaries by a birth, cannot affect the position as on the valuation date for any particular assessment[51]. The possibility that the shares of the remaindermen may be altered by later events is immaterial.[52]

When the Income-tax Act was amended from time to time to discourage discretionary trusts meant to avoid the income tax, there were parallel changes in the Wealth-tax Act also. Adverse court judgements led to the following amendments to make the

legislative intention clear :

i. In a case where the aggregate value of the interests of the beneficiaries falls short of the value of the assets held in trust, the trustees shall, in addition to the wealth tax payable on the basis of the value of the benefits derived by the beneficiaries, be chargeable to the wealth tax in respect of the difference between the value of the corpus of the property as a whole and the aggregate of the values of the interests of the beneficiaries. This has been necessitated by the failure of the wealth tax to reach the trust property in full, when it is proportioned to the individual beneficiary's quantum of ownership.[53] The tax will be levied at the flat rate of three per cent or at the appropriate rate of wealth tax which will be applicable if such excess value were the net wealth of an ordinarily resident Indian citizen, whichever course is beneficial to the revenue. There will be no tax-exempt threshold in either case.

ii. The flat rate of three per cent or the appropriate rate of wealth tax applicable to an individual, whichever results in larger revenue, has also to be invoked in cases where the beneficiaries are not identifiable or their entitlements are not ascertainable with reference to the trust instrument or the court order creating the trusts.[54] Creation of more than one discretionary trust by testament will also bring the trust in question within the mischief of the amended provision.

iii. Where a trust provided that the trust property could be sold (a) only to the beneficiaries and (b) at a price fixed in the trust-deed, the market value of the property, for wealth tax purposes, was being pegged to the amount specified in the trust-deed, however arbitrary, unrealistic, low or out-of-date it might be. Such a stipulation enabled avoidance of wealth tax on the true market value of the trust property. This has been countered by a new provision to the effect that such restrictive covenants, which create any kind of artificial disability, will be ignored for purposes of determining the value chargeable to tax.

Oral trusts came for a drubbing in the Wealth-tax Act also when a special provision regarding them was made in the Income-tax Act. With effect from April 1, 1981, they are liable to the wealth tax at the rate of three per cent or the rate applicable to an ordinarily resident Indian citizen, whichever course is more beneficial to the Revenue.[55]

Gift Tax and Trusts

As for the gift tax, it is confined to *inter vivos* gifts,[56] since the estate duty regime covers gifts *mortis causa* and also all properties gifted by will. A gift has been defined to mean a transfer of movable or immovable property without consideration and includes the creation of a trust in property. When property is transferred to a trustee and the beneficiaries of the trust have no legal right to the trust fund, it does not mean that no interest has been created in favour of the beneficiaries : the trust is a gift to the extent of the benefits it provides to one or more persons.[57] The execution of a settlement reserving for the settlor the limited right to enjoy the profits of a business for his lifetime and transferring his proprietary interests in the business to his grandchildren subject to this reservation would be a gift *inter vivos*.[58] A gift of a movable property, including a beneficial interest in a trust situated outside India will not be chargeable to the gift tax unless the donor is an Indian citizen and has also been ordinarily resident in India.[59] Gift tax rates are more steeply graduated than the estate duty upto a value of Rs. 350,000, the rates being identical above that value upto Rs. 15 lakh. The maximum rate of gift tax is 75 per cent, and of the estate duty 85 per cent, above Rs. 20 lakh. The gift tax paid on assets included in the computation of the estate of the deceased is deducted from the estate duty, to avoid double taxation of the value of the same asset.[60]

There is no "gift" when a settlor reserves to himself the power of revocation of a trust without any limit as to the time of its exercise.[61] No gift tax is exigible on the natural extinguishment of a beneficiary's interest, but there is no reason why deliberate acceleration of a successor's or remainderman's interest by its premature termination should escape

tax.[62] It was pointed out by one of the courts that no gift tax would be attracted under the existing provisions of the Gift-tax Act, where a beneficiary of a trust exercised the power of appointment conferred on him under a trust-deed and released his life-interest in the trust in favour of other persons.[63] The definition of the expression "transfer of property" in the Act has been amended to make it clear that the exercise of a power of appointment will amount to a transfer, irrespective of whether such power is general or special or subject to any restriction as to the persons in whose favour the appointment may be made. It has also been clarified that where a person who has an interest in property as a tenant for a term or for life, or a remainderman, surrenders his interest in the property or otherwise allows his interest to be terminated without consideration, or for a consideration which is not adequate, the value in excess of the consideration received shall be deemed to be a gift made by such person.[64]

Present Position in Regard to the Three Taxes

On a review of the development of the provisions dealing with trusts in the Income-tax, the Wealth-tax and Gift-tax Acts, the following is found to be the prevalent regime :

i. The direct taxes Acts in India do not have any provisions for taxing a trust as such. They do not even attempt to define a trust or distinguish between a private trust and a public trust, though they have their own definitions of a partnership, a company, a company in which the public are substantially interested, etc. The term "trustee" is used not in the strict sense which it carries in the English law but in a wider sense.

ii. Though a trust may be constituted even without an instrument in writing, the Income-tax and Wealth-tax Acts accord a preferential treatment to trusts supported by such instruments.[65] While the opening of an account in one's books and his disclaiming benefit from that account may serve as evidence of his intention to set up a trust, a trust will not be perfected till the trust fund or property is handed over to the trustees.[66]

iii. "Property" is a term of the widest import and it signifies every possible interest which a person can acquire, hold and enjoy.[67] A settlor can carve out of a property as many time-enjoyment interests and distribute the slices to as many persons as he desires. It is possible to transfer a property to a trust *minus* a particular right or subject to an existing liability.[68] There is no bar to beneficiaries being companies or persons who are not competent in law to enter into a contract, e.g., minors or individuals who are insane. The taxation laws do not seek to supersede or nullify any of the provisions of the trust law and practices.[69] They try merely to ensure that tax is not avoided through the provisions[70].

iv. The income of trusts can be taxed to one of three possible taxpayers : (a) the founder of the trust, (b) the trustee and (c) one or more beneficiaries. Ordinarily, the author of a trust cannot be assessed on the trust income if the trust is valid and effective in law, unless there is a statutory provision requiring its aggregation with his income or deeming it to be his.[71] Where a founder retains substantial dominion and control over any part of the income and property of the trust even during the life-time of the beneficiary, he is deemed for tax purposes, to continue to be its owner. In such cases, the grantor is liable to tax on the income of the trust that is at his command, whether he actually enjoys it or not.[72] The settlor will be chargeable to tax in respect of the entire income and wealth of the trust created by him even if he can assume indirect power over a portion of the income or wealth.[73] Similarly, when a trust fails, the income belongs to the settlor or his legal heirs and representatives in the resulting trust ; and they will be taxable accordingly.[74] In all the other cases the income derived through the trust is assessed to tax in the hands of either the fiduciaries or the beneficiaries.[75] Collecting the tax from a fiduciary is easier than proceeding against a beneficiary, for it is only when the latter can enforce

payment of an amount that it can be treated as his income.

v. Once a valid trust has been created and the founder has divested himself of the trust properties, his subsequent conduct cannot result in the defeasance of the trust.[76] While reservation of any power to dispose of trust property is equivalent to retention of ownership and the disponer will not therefore be relieved of his tax liability for the settled income and wealth, the mere fact that the guiding mind and will behind the trust is his and that the trustees are susceptible to his influence cannot provoke any action against him by the Revenue.[77] If he is not legally competent to redesignate the beneficiaries or redirect the flow of income or revoke the trust, any intermeddling by him may make him liable for action for breach of trust but will not vacate the trust or warrant the inclusion of the value of the trust assets in the estate of the settlor on his death.[78] Where the founder of a trust disposes of a settled property while he is not competent to do so or his legal heirs avoid giving effect to the direction in his will for utilising the income from a specified property for charitable purposes or his heirs dispose of the property or the trustees have not applied the trust funds to the object specified in the trust-deed, there is nothing that the revenue authorities can do in the matter. It will be a case of violation of the trust law for which remedial action lies elsewhere.[79] Similarly, if the trustees were to advance money to themselves, despite the clear prohibition under section 54 of the Trusts Act, they would be committing a breach of the law.[80] A trust is not voided if a trustee exceeds his powers under the deed and diverts the trust income to purposes other than those laid down in the deed. However, the revenue authorities may take due notice of such deviations in the relevant tax assessments of the trustees or the beneficiaries.

vi. The income and wealth of an individual will include, for tax purposes, the income and the value of

properties settled in trust without "adequate consideration" for the benefit of the spouse[81] or a minor child (not being a married daughter or an illegitimate child or a foster child).[82] The income may not be received in species : its notional value will be aggregated with the income of the transferor even if it is no more than the advantage of occupation of a house.[83]

It is doubtful, however, whether the unilateral release or renunciation of life-interest by a beneficiary will amount to transfer of an asset and whether the accelerated income of the remaindermen who happen to be minors can be included in the income of the person entitled to the life-interest, if he is a parent of the remaindermen,[84] despite the definition of a "transfer" in section 2(47) of the Income-tax Act to include relinquishment of an asset or extinguishment of a right therein. But assignment of life-interest will fall within the sweep of the definition.[85]

Assessment of the income in the hands of the spouse or minor children will not affect the validity of the inclusion of the trust income in the hands of the settlor,[86] unless the asset from which the income has been derived was transferred to the trust for adequate consideration. However, if the income is taxed to the settlor, it cannot again be considered in the assessment of the spouse or minor children or the trustees.[87] Natural love and affection would not be "adequate consideration"[88] for a spouse trust or for a settlement in trust for minor children. It is also open to question whether every individual has a legal obligation to maintain and educate his or her minor children and whether a court decree requiring payment to them of a part of his or her income or approving a settlement for this purpose will result in the exclusion of that part of the income and the value of the settled assets from the computation of the individual's income and wealth.[89]

Aggregation of income or wealth cannot be averted merely by deferment of enjoyment of the benefit if the beneficiary is entitled to claim it immediately

and it has already accrued or become available.[90] When only a part of the income of a trust is earmarked for the benefit of the spouse or minor child, the part so reserved will alone be added to the income of the transferor.[91] But if no income accrues in favour of either of them and no other benefit is derived by them, the aggregation provisions are not obviously attracted.[92]

vii. When the minor child of a taxpayer is a beneficiary under a trust and the trustee is a partner in a firm on behalf of the trust, the income derived by the trust from the partnership business will be includible in the hands of the taxpayer whether it is accumulated or paid to the child and whether the taxpayer is also a partner in that firm or not.[93] If the spouse of the taxpayer is a beneficiary, the income of the trust from the firm will be clubbed with the taxpayer's income irrespective of whether the spouse is entitled to the income immediately or it is accumulated in terms of the trust-deed, only if the taxpayer is also a partner in the same firm.[94]

viii. The tax liability of a trustee is a vicarious one[95] where a link between the beneficiaries and the income of the trust is established. It is co-extensive with the tax liability of the beneficiaries.[96] But where a trust has income that is not distributed to the beneficiaries, the trustee has additional tax liability independent of what the beneficiaries may receive.[97] As many assessments may be made on him as there are beneficiaries. His "status", i.e., whether it is that of an individual or a Hindu undivided family or a limited company, is taken as that of the beneficiary for the purpose of working out the latter's tax liability for which he is accountable in his representative capacity. That will be the position even if the trustee happens to be a bank or a company providing trusteeship services.[98] A single order may be passed by the assessing officer, as a matter of administrative convenience, but the order will have to compute the income of each beneficiary

and determine the tax payable for him or on his behalf, separately.

Where the beneficiaries are unknown or their shares are indeterminate, the entire trust income is assessable in the hands of the trustee in the status of an association of persons or a body of individuals.[99]

The taxes cover the chain of interests held in trust, as long as they last. When eventually the remainder-man or reversioner gets the absolute interest in the property, the taxes turn to him and stop chasing the trustee.

ix. The nature of a beneficiary's interest, i.e., whether it is the bare chance of a relation in a legacy or a vested interest, can be ascertained only with reference to the terms of the instrument. A person with a contingent interest in a trust does not become a beneficiary till the contingency occurs ; there is only a chance of his being able to enjoy the benefit. Even when the interests of the beneficiaries are vested, their respective shares may be indeterminate.[100] The intentions of the founder of a trust must be manifest from the words used in the instrument.[101] The interest granted to a beneficiary under a settlement or will should be held to be vested unless a condition precedent to the vesting is expressed clearly. Where a settlement provides that the corpus should be given absolutely to the beneficiary if alive on a particular date and that the intermediate income should be applied for his benefit and the beneficiary has also been given the power of appointment to dispose of the corpus, the beneficiary's interest is not contingent but vested.[102]

x. Where the income of a beneficiary has been charged to tax in the hands of the trustees, the alternative course of directly taxing the beneficiary will not be available,[103] even if two different officers deal with the cases of the trust and the beneficiary. The choice between the two methods is not required to be made only at the time of the assessment of the trustees or only by the officer assessing the trustees ;[104] it may also be made

by the officer dealing with the case of the beneficiary while making the beneficiary's assessment. While assessment of the same income in the hands of the trustees and the beneficiary is not possible, there is no bar to charging the trustees to tax on income other than that which has borne tax in the hands of the beneficiary. The liability of the beneficiary is confined to what he receives while that of the trustees is independent of it.[105]

xi. A discretionary trust is one in which the trustees can apply its income and capital as they will and the beneficiary in the field of choice has no more than a hope that he may attract their favourable notice.[106] A trust will not cease to be discretionary if the trustees distribute specific amounts in the exercise of their discretion.[107] A beneficiary is entitled to demand that money may be paid over to him only when the trustees have exercised their discretion in his favour.[108]

But if the beneficiaries and their shares are specified, the possibility of a change in the beneficiaries in the event of any development in future will not make any difference : the trust is "specific" for the present.[109]

Discretionary trusts, whether oral or supported by an instrument are, with certain exceptions,[110] being subjected to the income tax at the maximum rate applicable to an individual and the wealth tax at a relatively high rate; discretionary disbursements cannot be treated as gifts to the beneficiaries merely because they are not obligatory. In computing the income, no allowance will be made for a tax-free slice of investment income, as in the case of an individual or a Hindu undivided family (section 80L of the Income-tax Act) ; there will not even be a tax-exempt threshold. Similarly, amounts which are excluded in arriving at the net wealth of an individual or a Hindu undivided family under sub-section (1) of section 5 of the Wealth-tax Act will not be so excluded in the assessment of the trustees of a discretionary trust in terms of explanation 2 to sub-section 4 of section 21

of the Wealth-tax Act.

In the case of a discretionary trust the revenue authorities do not have the option of going to the beneficiary under section 21(2). They have to assess the trustees to tax.[111]

xii. The surrender of interest by a prior beneficiary accelerates the interest of the subsequent beneficiary. A settlement does not become "discretionary" if the beneficiaries and their respective shares are specifically determinable at any point of time, after taking such relinquishment of interest into account.[112] But no one can have any interest or estate at law or in equity, contingent or other, in the property of a living person to which he hopes to succeed as heir at law or next of kin of such living person.[113] A married woman cannot also deprive herself, during the subsistence of her marriage, of her beneficial interest in property which is transferred or bequeathed for her benefit [114]

xiii. The character of the income in a beneficiary's hands will not be altered by its being derived through a trust. The income of each beneficiary in a trust will partake of the nature of the income of the trust itself, unless the trust-deed has allocated to him income from particular assets or sources. For example, if the trust has income from property, interest on securities, business or income from other sources, including dividends, the beneficiary's share will be composed of proportionate income falling under the same heads.[115] Likewise, if a house belonging to a trust is used by a beneficiary as his residence the property will be eligible for exemption from the wealth tax in terms of section 5(1) (iv) of the Wealth-tax Act.[116]

xiv. A trust is entitled to maintain its books either on the cash or the mercantile basis and establish an accounting year of its choice, which it cannot subsequently alter except on such conditions as the revenue authorities may lay down. The beneficiary will have to declare his income from a trust in the same manner as he returns his income from other sources, say, a

partnership concern, for which he does not have to keep day-to-day records. There is, however, a difference between a share in a firm and interest in a trust in the matter of accounting year. The accounting year of a firm is also the partner's accounting year, but there is no similar provision for a trust. All the income due to or actually received by a beneficiary in the financial year immediately preceding the assessment year is liable to be included in his total income. The income of a trust will have to be computed for tax purposes as if it were the income of a taxpayer who is an individual or an association of persons.[117] The entire trust income will be liable to tax without any deduction for the administration charges incurred by the trust.[118] All expenses not incurred for earning the trust income, e.g., interest on money borrowed for the beneficiary's personal purposes, will also be inadmissible.[119]

If the trust is a specific one, with several beneficiaries with distinct shares in the income and if the trustees are assessed to tax in their representative capacity, the tax liability will be the aggregate of (a) the liability of the beneficiaries on the income to which they are entitled and (b) the trustees' direct liability on the undistributed income, including the amount of income spent on the administrative expenses, etc., which are not deductible from the trust income.

xv. Where the income from a property is alone held for charitable or religious purposes and not the property itself, exemption from the income tax is not available. If the property consists of a business run by a firm, the income will be assessable to tax in the hands of the firm.[120]

xvi. Sums spent on religious or charitable purposes will not be exempt from tax if the trust income does not enure for the benefit of the public.[121] When the claim of a trust to be a public charitable trust is found untenable, the outcome may be a "resulting trust" in favour of the settlor.[122] There may be a private trust for religious purposes but no private charitable trust.[123]

Trusts for a *sadavart* or for the political advancement of the country are liable to be treated as trusts in which the income is not receivable on behalf of any one known person.[124]

Income derived from property held under trust in part for charitable or religious purposes, is exempt from the income tax to the extent of the actual expenditure on such purposes. Even if the income spent for such purposes exceeds the proportion for which the trust-deed provides, tax exemption will be available in respect of the amount applied to such purposes.[125]

xvii. A Hindu deity, personified by an idol, is a juristic entity, capable of holding property, and also liable to tax where the endowment is private.[126] Dedication to a deity is distinguishable from a trust in which a family deity is made a beneficiary. An endowment does not technically create a trust as understood in the English law, but in a larger sense, but evidence is required to decide whether an endowment is real or illusory.[127] The income of the deity includes the amounts spent on daily worship and religious ceremonies connected with the deity. The surplus income of an estate resting in a deity under a will, after meeting its expenses, cannot be taken to be held in trust for charitable purposes and is not, therefore, entitled to tax exemption.[128] Where, instead of dedication of assets to a deity, a trust is formed for daily worship and performance of ceremonies "for the benefit of the author and members of his family" the trust properties are not includible in the settlor's hands.[129] The trust income can not also be aggregated with the author's.

xviii. Where any properties are consecrated to a deity and the *shebaits* are required to give effect to the pious purposes symbolised in it, e.g., to arrange for the daily worship and other services and hold and manage the properties for and on behalf of the deity, it will be a case of a specific trust for a single person.[130] If there

are two deities, separate assessments may be necessary.[131]

xix. Even the deities for whom an endowment is made are not excepted by the provision regarding discretionary trusts. Where the *shebait* of a private religious trust is empowered to vary the amounts to be spent for two deities, the shares of the deities in the income of the trust are considered indeterminate.[132] Where, however, a bequest does not specify the shares of the different deities, the income will have to be apportioned equally among them and they will also be taxed accordingly.[133]

xx. Proceedings for the recovery of the tax due from the deity will be against the trustees where a trust as such is constituted and the trust properties are transferred to the trustees.[134]

xxi. There is no element of gift in a *waqf* which is a settlement.[135] A *waqf* which is revocable or contingent is not valid.[136] A *waqf* is treated like an irrevocable trust for tax purposes, and the liability to tax of the *waqif* or the founder, the *mutawalli* or the manager,[137] and the beneficiaries will depend on the terms of the *waqf*-deed.[138] Where the surplus income of a religious trust is distributed among certain specified class of beneficiaries under a court scheme, their shares cannot be considered to be indeterminate.[139] A private *waqf* is not entitled to tax exemption.[140] A *waqf-alal-aulad* in which no one is entitled to a specific share, may be treated like a discretionary trust. But, where the income of the *waqf* is required to be distributed among the beneficiaries in accordance with the Mohammedan law it has to be dealt with as a trust in which the shares of the beneficiaries are fixed, unless the terms of the *waqf*-instrument point to the contrary.[141] The *mutawalli* is treated as a trustee though he is not one, in the technical sense, under the Mohammedan law.[142] He can represent the *waqf* in a partnership like the trustee of a trust.[143]

xxii. A trust which is not exempted as a public trust is

liable to tax through the trustees, like an "association of persons"[144] or a "body of individuals",[145] depending on whether it is carrying on a business or is merely deriving income from investments.

xxiii. The interest of the settlor or a beneficiary in a trust or a *waqf* must be valued for levying the wealth tax even though it may be a personal estate, incapable of being sold in the open market. For this purpose, a hypothetical sale must be assumed in a fictional market.[146]

xxiv. Joint trustees of a trust will be taken to be a single unit and not as an "association of persons" for wealth tax purposes. The unit will be assessable to the wealth tax as an individual under section 21(1) or (4) of the Wealth-tax Act.[147] The liability will, however, be determined "in the like manner and to the extent" it will be leviable upon and recoverable from the individual beneficiaries.[148] Where the value of the trust estate exceeds the sum of the values of the individual beneficiaries' interests the trustees will bear tax on the difference at not less than three per cent.[149]

xxv. Sub-section (1) of section 21 of the Weath-tax Act will be applicable with the option to the Revenue to tax either the beneficiaries or the trustees where the beneficiaries have a life interest in the trust or get specified sums of money periodically or are entitled to a fixed share in the assets or specified assets. But if there is any indefiniteness in regard to the shares of the beneficiaries in the trust properties or the beneficiaries are not known e.g., the number and identity of the remaindermen, the value of the relevant "interest" about which there is uncertainty will be assessable to tax under section 21(4) at the rates specified in Part I of Schedule I of the Wealth-tax Act or at the rate of three per cent, whichever may be more beneficial to the revenue.[150] The exemption under section 5(1)(xvi) in respect of notified securities will be available only to the person in whose name they stand and not to the beneficial owners.[151]

Estate Duty

Estate duty, introduced in 1953, before the wealth tax (1957) and the gift tax (1958), was modelled on the English law. It had, therefore, the advantage of the experience in the administration of the law in the UK. Many of the intricacies caused by the use of trusts in that country repeated themselves in India too. The following are some of the noteworthy features of the treatment of settlements in trust in the levy of estate duty in India :

i. Beneficial interest in a settlement is movable property. There will be liability to the estate duty, irrespective of domicile, in respect of all properties, movable or immovable in India, "passing" or changing hands on a death. When an individual domiciled in India expires, his movable property outside India is also exigible to duty.[152] On the death of a person not domiciled in India, there will be liability for duty on movable property outside India, only if it is settled property, and the settlor had been domiciled in India when the settlement was effected.[153]

ii. Beneficial interest in a settlement may be absolute or limited. It will attract liability to the duty, only if its disposal had been within the competence of the deceased.[154] For example, when L is given a life-estate in certain property and R, the remainderman, is to get the absolute estate after L's death, the duty is chargeable on L's death.[155]

iii. However, an interest in expectancy that does not ripen into an interest in possession before the death, will not suffer duty. To illustrate, if R the remainderman predeceases L who has been holding the life-estate, there will be no duty. Interest in possession implies that the intended benefit has materialised.[156]

iv. Life interest reserved by a settlor is includible in the dutiable estate even if the immediately succeeding beneficiaries are also given only a life-interest[157].

v. A limited right to withdraw income from a trust and the right to receive share of trust property on the revocation of the trust would be interests that pass on

the death of the beneficiary.[158] There is no cesser of interest on the death of the beneficiary when a trust is terminated under an enactment and the beneficiary receives the same income as before by way of bounty and not as a right till his or her death. But a life interest that ceases by the operation of a statute is also includible in the estate of the deceased beneficiary as a limited interest disposed of less than two years before the death.[159]

vi. Property does not pass where there is mere enlargement of an existing beneficial interest.[160] It does, however, pass when ownership right is acquired over the residuary estate by some persons who, along with others, had beneficial interest in it earlier.[161]

vii. Ordinarily, executors assume the duties of trustees as soon as debts are paid and an asset has been given to the legacies.[162] But, the interest of a benificiary in an estate can be an interest in possession, even before the completion of the administration of the estate of the deceased settlor.[163] The beneficiary's interest in the property will bear duty in the event of his demise during the pendency of the administration.[164] Where the Official Trustee is appointed as the sole executor as well as trustee in terms of sections 7(6) and 9 of the Official Trustees Act, he ceases to be the executor as soon as he obtains the probate and he is accountable for the properties, which vest in him from that moment, as a trustee.[165]

viii. The value of property settled for non-charitable purposes less than two years before death will be includible in the estate. of the deceased settlor. The date of the settlement is the relevant one for this purpose. Accretions to the settled property between the date of the settlement and the death of the settlor will be ignored.[166]

ix. The transfer of legal ownership to the beneficial owner is not required for the levy of the duty[167] but a trust will be imperfect unless the legal ownership of the trust property vests in the trustee. Immovable

property of which the owner had not divested himself through a proper transfer document registered according to the law of registration, will be considered to be a part of the estate of the owner at its market value as on the date of his death.[168] The expression of a desire to transfer the property to a trust is alone not sufficient to bring about a trust.[169]

x. Employment of the income of a trust property by way of loans from the trust or reservation of any interest in a settled property for the settlor and his relatives will result in duty being charged on the entire property.[170] A gift conditional on the maintenance of the donor and some of his relatives is a settlement with reservation[171]. A gift from which the donor is not excluded entirely, e.g., money transfered to a trust account but not withdrawn from the settlor's firm will be treated as a part of the estate of the donor on his death[172]. When a part of the premises transferred to a trust for the benefit of the settlor's son was leased to the settlor after the creation of the trust, it was held that there would be estate duty liability despite the lease consideration being adequate. But a mere expression of hope that the beneficiaries in a settlement will look after the settlor during his life-time without creation of any charge on the settled properties cannot be taken to be reservation of an interest in the properties[173]. No damage is also caused where the life with reference to which any interest is reserved in a settled property is not the settlor's life.[174]

vir Property which is to revert to the disponer will not be deemed to pass on the temporary beneficiary's death. If S settles some property on L for either a stipulated period or L's life-time, and then for himself, no duty is payable on L's death. The reason is that L is not competent to dispose of the property. If the property does not go back to the settlor himself but his legal heirs and successors, duty is exigible.[175]

xii. An endowment providing for the worship of family deities, in which the public do not have the right to

participate, is a private trust but it will not offend the rule of perpetuity. There will be no estate duty on the death of the settlor if the endowment was made at least two years earlier ; and the "beneficiary" is immortal. There may, however, be some liability to duty on the death of the *shebait*, who manages the estate, since he is not the mere holder of an office or a trustee. A *shebait* has interest in the property, which passes on his death to his successor, who is usually his legal heir[176].

xiii. The *mahanth* of a *math* is in charge of a religious institution. Where one is the elected head of an institution and celibacy is a prerequisite for the election, there can be no liability to the estate duty on his demise. Nobody can have a vested right to the dead man's shoes. The *mahanth* is merely a trustee for a trust without any heritable beneficial interest in it[177].

xxiv A *waqf* is a permanent dedication of property for any purpose recognised by the Mohammaden law as religious, pious or charitable[178]. But *waqf* property is settled property. If the *waqif* or settlor is entitled to a share of the income from the property, or the *mutawalli* has the power to nominate additional beneficiaries which may enable him to include himself as one of them, duty will be imposed on the property as a whole[179]. Reservation of the right of residence in a property under a *waqf* will result in the value of the residential property becoming liable to duty on the death of the *waqif*[180]. But the right to reside in a settled property as a *mutawalli* or trustee and not as the settlor will not amount to reservation of any interest by the settlor.[181]

xv. Property held by anyone in a fiduciary capacity as a trustee for any other person, or the *mutawalli* of a *waqf* is not liable to duty on his death[182], unless he had himself settled the property in trust, in which case also it will be excluded from his estate if the beneficiary had assumed possesssion and was in enjoyment of the property at least two years before his death[183]. Settled

property cannot be taken to be within the disposing capacity of the settlor, merely because he is the managing trustee and the other trustees are obliged to act on his directions[184]. Provisions in the trust deed empowering the settlor-trustee to rectify the deed to make it more effective will not make the trust revocable[185]. But if the deed confers on the settlor the authority to vary or cancel the trust and this authority has not been surrendered at least two years before the settlor's death, the trust property will not be excludible from the settlor's estate when he expires[186]. The offending clauses may, however, be nullified when the trust is blended with other trusts which do not provide any scope for revocation of the trust[187].

xvi. Where trust funds are kept by the trustees in deposit with the founder of the trust at any time during the two years preceding his death, the amount so held will be liable to the estate duty on his death on the ground that he had not been excluded from its possession and enjoyment[188].

xvii. If a part of a trust contravenes the rule against perpetuity and is voided, the relevant properties would continue to be the properties of the author and pass to his legal heirs and successors on his death[189].

The estate duty attaches itself only to property which "passes" on an individual's death, i.e., property which he has left or which changes hands or in which rights have been modified by reason of his death. Since no such consequence can follow when any property is held in a discretionary trust, particularly one from which the deceased has not derived any tangible benefit, it is unharmed by the estate duty, unless it has been set up by the deceased and he is one of its beneficiaries[190].

NOTES

1. "Settlement" means settling a property, right or claim, coveyance or disposition of a property for the benefit of another : CGT v N.S Getti Chettiar (1971) 182 IRT 599 (SC). The implications of a settlement have been examined at length in English cases : Chamber. lain v IR (1943) 2 All ER 200, 25 TC 317 (HL) ; Hood-Barrs v IR-

(1946) 2 All ER 768, 27 TC 385 (CA); IR v Leiner (1964)41 TC 589; IR v Plummer (1979) 3 All ER 755. See also para 1 (2) of Schedule 5 to the UK Finance Act 1975.

2. S. 60, Income-tax Act, which neutralises the Bombay High Court ruling in D.R. Shahapure v CIT (1946) 14 ITR 781 (Bom). Transfer by over-riding title does not protect the transferor : Ganpatari Sagarmal (Trustees) For Charity Fund v CIT (1963) 47 ITR 625 (Cal); Provat Kumar Mitter v CIT (1961) 41 ITR 624 (SC); S. Kartar Singh v CIT (1969) 73 ITR 438 (Del). Sections 60 and 61 will be inapplicable to the case of a bare trustee who continues to hold the trust property for the beneficiaries even after the trust has come to an end : Behramji Sorabji Lalkaka v CIT (1948) 16 ITR 301 (Bom). The right to income may itself be an asset, and it may not be easy to decide in some cases whether an asset or income is being transferred : Smt. M.S. Subbulakshmi v CIT (1955) 28 IRT 561 (Mad). Assignment of share of profits in a partnership concern is application of income : K. A. Ramachar v CIT Madras (1961) 42 IRT 25 (SC), affirming Rangachari, A.R., v CIT Madras (1955) 28 IRT 528 (Mad).
3. S.61 Ibid. A trust will be considered revocable even if the settlor needs the concurrence of others for its revocation : Wiggins v Watson's Trustees 1934 AC264 ; Ramji Keshavji v CIT (1945) 13 ITR 105 (Bom); Behramji Sorabji Lalkaka v CIT (1948) 16 IRT 301 (Bom). The authority to appoint additional beneficiaries will make a trust revocable : Keshavlal Punjaram v CIT (1944) 12 ITR 185 (Bom); K. Subramania Pillai v Agl ITO (1964) 53 ITR 764 (Mad). A trust will not be the less revocable because the power of revocation can be exercised only by the trustees and not by the settlor : IR v Warden 22 TC 416 ; IR v Countess of Kenmare 34 ITR 811 (HL). Cancellation of a provision in the trust deed forfeiting the interest of a beneficiary in certain circumstances will not, however, imply revocation of the deed : Tayabali Abdul Hussain Mandiwala v CIT (1949) 17 ITR 187 (Sind).
4. CIT v Radhaswami Satsang (1981) 132 ITR 647 (All).
5. S.62 Income-tax Act. CIT v Bhuwaneswari Kuer (1964) 53 ITR 195 (SC); Hrishikesh Ganguly v CIT (1971) 82 ITR 160 (SC); CIT v Kikabhai Premchand (1948) 16 ITR 207 (Bom); Ramji Keshavji v CIT (1945) 13 ITR 105 (Bom) ; CIT v Jitendra Nath Mullick (1963) 50 ITR 313, 320-2 (Cal); Dr. A.J. Kohiyar v CIT (1964) 51 ITR 221 (Bom) ; CIT v Raghbir Singh (1965) 57 ITR 408 (SC) ; Manikkavasagam Chettiar v CIT (1964) 53 ITR 292 (Mad). The exclusion of the income is conditional on the transferor's not deriving any direct or indirect benefit from the income. Further, the income will be chargeable to income tax as the income of the transferor as and when the power to revoke the transfer arises. In the UK, the income arising under a settlement in includible in the top slice of the income of the settlor if a settlement can be revoked. The tax paid can,

however, be realised from the trustees by the settlor : section 446 and section 449(3) and (5) ICTA 1970.

6. Chunilal Mulji Motani v CIT Tax LR 283, 290-1 (Cal), (1981) Taxman 400 (Cal) ; (1913) 139 ITR 166 (Cal). Unlike sec. 63 (a) of the Income-tax Act, 1961, sec. 16 (1) (c) of the Income-tax Act 1922 did not make a trust revocable, if only a part of the income or benefit of the trust was reserved for its author ; the benefit which was or could be enjoyed by the author of the trust was includible in his income : Hrishikesh Ganguly v CIT (1971) 82 ITR 160 (SC) ; CIT v Rani Bhuwaneswari Kuer (1964) 53 ITR 195 (SC) ; CIT v Jitendra Nath Mullick (1963) 50 ITR 313 (Cal). Power to remove trustee and alter terms of trust deed will make a trust revocable : Panchanan Dey (decd) v CIT (1983) 142 ITR 762 (Cal).

7. S.63 Income-tax Act. C.T. Senthilnathan Chettiar v State of Madras (1968) 67 ITR 102 (SC) ; CIT v Kikabhai Premchand (1948) 16 ITR 207 (Bom) ; Ramji Keshavji v CIT (1945) 13 ITR 105 (Bom).

8. Re. Jayantilal Amritlal (1965) 55 ITR 214 (Guj), affirmed in (1958) 67 ITR 1 (SC) ; Also see CIT v Raghbir Singh (1965) 57 ITR 498 (SC) affirming Raghbir Singh v CIT (1961) 42 ITR 410 (Punj) Nathalal Ratilal v CIT (1954) 25 ITR 426 (SC) ; CIT v Nawab Sir Mir Osman Ali Bahadur (1974) Tax LR 86 (AP) ; CIT v Shyamlal Bhuwalka (1978) 113 ITR 127 (Cal) ; CIT v Brojendranath Kundu (1977) 110 ITR 336 (Cal) ; CIT v Smt. Nathi Bai Binani, IT Ref. 423 of 1975 decided by the Calcutta High Court on 12.5.1975 ; Tulsidas Kilachand v CIT (1961) 42 ITR (SC) ; Manikavasagam Chettiar v CIT (1964) 53 ITR 292 (Mad) ; CIT v Gopal Krishna Kone (1965) 57 ITR 569 (Mad) ; Keshavlal Punjaram v CIT (1944) 12 ITR 185 (Bom) ; R.B. Shan v CIT (1976) CTR 493 (Bom) ; Ramji Keshavji v CIT (1945) 13 ITR 105 (Bom) ; CIT v Sir S.M. Bose (1952) 21 ITR 135 (Cal) ; Chunilal Mulji Motani v CIT (1913) 139 ITR 166 (Cal) ; CIT v Rani Bhuwaneswari Kuer (1964) 53 ITR 195 (SC) ; CIT v Trustees of Sreeram Surajmall Charity Trust (1971) 79 ITR 649 (Cal) ; CIT v Kikabhai Premchand (1948) 16 ITR 207 (Bom) ; CIT v Jagdish Pratap Soha (1971) 79 ITR 235 (All) ; CIT v Jitendra Nath Mullick (1963) 50 ITR 310 (Cal) ; Hrishikesh Ganguly v CIT (1971) 82 ITR 160 (SC) ; Subramania Pillai v Agl ITO (1964) 53 ITR 764 (Mad)

9. CIT v Juggilal Kamalapat (1967) 63 ITR 292 (SC), affirming Juggilal Kamalapat v CIT (1964) 53 ITR 351 (Cal) ; CIT v Smt. Nandiniben Narottamdas (1981) 7 Taxman 389 (Guj).

10. Mrs. Leela Nath v CIT (1982) 134 ITR 507 (Cal). Also, S. Raghbir Singh v CIT (1961) 42 ITR 410 (Punjab) affirmed in CIT v S. Raghbir Singh (1965) 57 ITR 408 (SC), where the settlor's debts were repaid out of the income of a trust, but the view was expressed that the discharge of a settlor's liability through a trust would not bring the trust within the purview of s. 16 (1) (C) of the Income-tax Act, 1922,

corresponding to s.63 of the Income-tax Act, 1961. In the UK, reservation of power by the settlor to use the settled funds is treated as power to revoke the settlement : s. 446 (2) ICTA 1970 ; Also IR v Kenmare (1958) 34 ITR 811 (HL) ; 37 TC 383 ; (1957) 3 All ER 33. The equivalent of any loan advanced by the trustees to the settlor or his spouse is deemed to be his income. Even where a settlor lent money to a settlement made by him, repayment of the loan has been held to be retention of an interest in the funds of the settlement; IR v De Vigier 42 TC 25 (HL) ; (1964) 2 All ER 907.

11. Tayab Ali Abdul Hussain Mandiwala v CIT (1949) 17 ITR 187 (Sind).
12. CIT v Sir S.M. Bose (1952) 21 ITR 135 (Cal).
13. Mrs. Leela Nath v CIT (1982) 134 ITR 507, 517 (Cal).
14. Nawal Kishore Choudhury v ITO (1980) 122 ITR 576 (Cal).
15. Nawal Kishore Choudhury v ITO (1980) 122 ITR 576 (Cal).
16. Williams v Singer (1920) 7 TC 387, 411. The trustees can be assessed even if there is only one beneficiary : Hamilton-Russel's Executors v IR (1943) 25 TC 200. As for Indian authority, see Aggarwal Chamber of Commerce Ltd. v Ganpatrai Hiralal (1958) 33 ITR 245, 251, 252 (SC) ; Executors of the Estate of J.K. Dubash v CIT (1951) 19 ITR 182, 189, (SC) ; Official Trustees of West Bengal v CIT (1968) 67 ITR 218 (Cal).
17. M/s Haji Abdul Hamid v CIT (1967) Tax LR 165 167 (All).
18. C.R. Nagappa v CIT (1969) 73 ITR 626 (SC) ; CIT v Mir Osman Ali (1966) 59 ITR 758 (SC) ; CIT v Balwantrai Vaidya (1958) 34 ITR 187 (Bom) ; Birendra Kumar Dutta v CIT (1961) 42 ITR 661 (Cal) ; A. Razzak v CIT (1963) 48 ITR 276 (Cal) ; J.N.A. Hobbs v Dy. Commissioner of Agricultural Income Tax (1963) 49 ITR 811 (Mys) ; Haji Abdul Hamid v CIT (1967) Tax LR 165, 167 (All); Aggarwal Chamber of Commerce Ltd. v Ganpatra Hiralal (1958) 33 ITR 245, 251 (SC).
19. CIT v Balwantrai Jethalal Vaidya (1958) 34 ITR 187 (Bom) ; Khan Bahadur M. Habibur Rahman v CIT (1945) 13 ITR 189 (Pat).
20. Khimji Keshavji Trust Estate v CIT (1978) 113 ITR 751, 758 (Cal).
21. C.R. Nagappa v CIT (1969) 73 ITR 626, 629 (SC) ; CIT v Manilal Dhanji (1962) 44 ITR 876, 886 (SC) ; CIT v Arvind Narottam (1969) 73 ITR 490, 496 (Guj) ; Mahanth Ramswaroop Das v State of Bihar (1961) 42 ITR 770, 773 (SC) ; Shrimant Govinda Rao Narayan Rao Ghorpade v CIT (1973) 48 ITR 54, 73, 64 (Bom) ; Arundhati Balkrishna v CIT (1976) 102 ITR 356 (Guj)
22. Mrs. Saldana v CIT 6 ITC 114 (Mad-FB) ; AIR 1932 M 378 ; Hotz Trust, Simla v CIT Punjab AIR 1930 LAH 929 ; (1930) 5 ITC 8 ; Sir Sorabji Mehta v CIT Bombay (1933) 6 ITC 386. Panna Sanjay Trust v CIT (1969) 74 ITR 396 (Guj) ; Trustees of Chaturbhuji Raghavji Trust v CIT (1963) 50 ITR 693 (Bom) ; C.R. Nagappa v CIT (1969) 73 ITR 626 (SC) ; CWT v Kum. Manna G. Sarabhai (1972) 86 ITR 153) Guj).

23. CBDT instruction no. 45/78/66-ITJ (5) Dated Feb. 22, 1967 and Circular 157 Fro. 228/8/73 IT (AII) Dated Dec. 26, 1974.
24. In re. Lokmanya Tilak Jubilee Fund (1942) 10 ITR 26; Estate of Harendra Kumar Roy v CIT Bengal (1944) 12 ITR 68 (Cal); D.V. Arur v CIT (1945) 13 ITR 465; Income-tax Appellate Tribunal Bombay Lalji Radha Madho Trust (1946) 14 ITR 460 (Nag); Yakub Versey Shri v CIT (1946) 14 ITR 548 (Bom); CIT v Indubala Sen Trust (1975) 101 ITR 561 (Pat); CIT v Puthiya Ponmani Chintakam Waqf (1962) 44 ITR 172 (SC); CIT v Manilal Dhanji (1962) 44 ITR 876 (SC); Bankim Chandra Dutta v CIT (1966) 62 ITR 239 (Cal); Nirmala Bala Sarkar v CIT (1969) 74 ITR 268 (Cal); CIT v Trust Estate of Tarun Kumar Roy ((1974) 94 ITR 361 (Cal); CWT v Arvind Narottam (1976) 102 ITR 232 (Guj); CIT v Arvind Narottam (1969) 73 ITR 490 (Guj); V.E.A. Vairavan Chettiar v CIT (1973) 92 ITR 474 (Mad); Smt. Santimoyee Bose v CIT (1969) 74 ITR 133 (Cal); CIT v Lady Ratanbai Mathuradas (1968) 67 ITR 504 (Bom); D.M. Vakil v CIT (1946) 14 ITR 298 (Bom).
25. CIT v Hemant Bhagubai Mafatlal (1982) 135 ITR 768 (Bom).
26. Bankim Chandra Dutta v CIT (1966) 62 ITR 239 (Cal).
27. CIT v Indu Bala Sen Trust (1975) 101 ITR 561, 567 (Pat).
28. Sahebzadas of Sarf-e-khas Trust, Trustees of, v CIT (1962) 44 ITR 332 (AP); CIT v Arvind Narottam (1969) 73 ITR 490 (Guj); CIT v Puthiya Ponmani Chintakam Waqf (1962) 44 ITR 172 (SC); Shamsuddin Khan v CIT (1958) 33 ITR 733 (Orissa); B.P. Mahalaxmiwala, v CIT (1954) 26 ITR 177 (Bom) dissenting from Yakub Versey Lalji v CIT (1946) 14 ITR 548 (Bom); Official Trustee of West Bengal v CIT (1954) 26 ITR 410 (Cal). Lady Ratanbai Mathuradas (1968) 67 ITR 504 (Bom); CIT v Indu Bala Sen Trust (1975) 101 ITR 561 (Pat); G.T. Rajamannar v CIT (1964) 51 ITR 339 (Mys); Nirmala Bala Sarkar v CIT (1969) 74 ITR 268 (Cal); Santimoyee Bose v CIT (1969) 74 ITR 133 (Cal).
29. This was done in implementation of a recommendation of the Law Commission, *12th Report*: List 1, p. 66.
30. Panna Sanjay Trust v CIT (1969) 74 ITR 396 (Guj). The 1st proviso to Sec. 41 of the Act of 1922 provided for the maximum rate of income tax and also for super-tax at the appropriate rate in such cases: Official Trustee of West Bengal v CIT (1954) 26 ITR 410 (Cal).
31. Official Trustee of West Bengal v CIT (1954) 26 ITR 410 (Cal); Sahebzadas of Sarf-e-khas Trust v CIT (1962) 44 ITR 332 (AP); CIT v Trustees of the Estate of Tarun Kumar Roy (1974) 94 ITR 361 (Cal).
32. R.H. Pandit v CIT (1972) 83 ITR 136 (Bom); Suhasini Karuri v WTO (1962) 46 ITR 953 (Cal); Padmavati Jaykrishna Trust v CWT (1966) 61 ITR 66 (Guj); Trustees of Putlibai R.F. Mulla Trust v CWT (1967) 66 ITR 653 (Bom); CWT v Trustees of Hansabai Tribhuwandas Trust (1968) 69 ITR 527 (Bom); Habibur Rahman v

CIT (1945) 13 ITR 189 (Pat) ; CIT v Puthiya Ponmani Chintakam Waqf (1962) 44 ITR 172 (SC).

33. Birendra Kumar Dutta v CIT (1961) 42 ITR 661, 670 (Cal).
34. Proviso (iii) to s. 164 (1). It has been held that a trust for beneficiaries who are not mainly dependent on the settlor at the time of the creation of the trust will not get the advantage of this treatment : CIT v Gunvantlal Family Trust (1982) 133 ITR 162 (Guj). The term "relative" has been construed to be wide enough to include "ladies of position" who were not legally wedded to the settlor and also mistresses of the settlor whom he chose to regard as his relatives and for whom he provided in a trust : CWT v Trustees of HEH the Nizam's Family Pocket Money Trust (1982) 134 ITR 444 (AP) dealing with the second proviso to s. 21 (4) of the Wealth-tax Act which is worded like proviso (iii) to s. 164 (1) of the Income-tax Act. If a trust has been created *bona fide* for the benefit of the relatives of the settlor, mere non-application of the funds for its objects in the subsequent years will not disentitle the trust to treatment like an association of persons for tax purposes : Seth Keshrichand Khaitan Education and Welfare Trust v CIT West Bengal, (1982) 138 ITR 351 (Cal).
35. Piarelal Sakseria Family Trust v CIT (1982) 136 ITR 583 (MP).
36. In India as in the UK, oral trusts could be proved by evidence : In re. Allen (H/L 1925) 9 TC 234 ; Brenan v Scanlon (K/B 1925) 9 TC 427.
37. Subsec. (1) (v) and explanations 1 and 2 to s. 160 and s.164 A of the Income-tax Act. Till this amendment, oral trusts were chargeable to tax under s.4 and not under the provisions relating to representative assessees, vide the Law Commission, *12th Report*, p. 424.
38. S. 164 (1) of the Income-tax Act covering discretionary trusts.
39. Nicholas Kaldor (1956) : *Indian Tax Reform—Report of a survey*.
40. Trustees of Gordhandas Govindram Family Charity Trust v CIT Bombay (1973) 88 ITR 47 (SC).
41. Purshottam N. Amarsey and Another v CWT (1973) 88 ITR 417 (SC), affirming CWT v Purshottam N. Amarsey (1969) 71 ITR 180 (Bom).
42. CIT v P.P. Hassan Koya (1967) 63 ITR 791 (Ker) ; Nelliyil Ummer Kutty v State of Kerala (1970) 77 ITR 489 (Ker) ; Tulsidas Kilachand v CIT (1961) 42 ITR 1 (SC); Harinder Singh v CIT (1969) 73 ITR 236 (Punj).
43. His Highness Yeshwant Rao Ghorpade v CWT (1966) 61 IRT 444 (SC).
44. Bai Hansabai Mehta v CIT 16 ITR 115 (Bom) ; CIT v Phirozsha Pestonji 96 ITR 185 (Guj) ; CWT v Official Trustee of West Bengal for Trust Murshidabed Estate (1982) 136 ITR 162 (Cal).
45. Chintamani Ghosh Trust v CWT (1971) 80 ITR 331 (All).
46. The Court directed the actuarial valuation of the life-interest of a beneficiary entitled to the income from certain shares and the use of jewellery of large value, some for daily purposes and others on

ceremonial occasions : CWT v Trustees of HEH the Nizam's Sahebzadi Anwar Begum Trust (1981) 129 ITR 796 (AP).

47. CWT v V. Thiruvenkata Reddiar (1981) 128 ITR 689 (Ker).
48. A beneficiary of a specific trust is eligible like any other taxpayer for the exemptions available under section 5 of the Wealth-tax Act : CWT v Thiruvenkata Reddiar (1981) 128 ITR 689 (Ker).
49. CWT v Purshottam N. Amarsey (1969) 71 ITR 180 (Bom), affirmed in 88 ITR 417 (SC).
50. CWT v Trustees of HEH Nizam's Family (Remainder Wealth) Trust (1977) 108 ITR 555 (SC) ; CWT v Trustees of HEH the Nizam's Miscellaneous Trust (1980) 126 ITR 233 (AP).
51. CWT v Trustees of HEH Nizam's Family (Remainder Wealth) Trust (1977) 108 ITR 555 (SC) ; Suhasini Karuri v WTO (1962) 46 ITR 953 (Cal) ; Trustees of Putlibai R.F. Mulla Trust v CWT (1967) 66 ITR 653 (Bom) ; CWT v Trustees of Mrs. Hansabai Tribhuwandas Trust (1968) 69 ITR5 27 (Bom) ; Padmavati Jaykrishna Trust v CWT (1966) 61 ITR 66 (Guj) ; CWT v Arundhati Balkrishna Trust (1975) 101 ITR 626 (Guj) ; CWT v Waqf K.B. Syed Ahmed Hussain Rizvi (1979) 116 ITR 344 (All); Trustees of HEH the Nizam's Supplemental Jewellery Trust v CWT 1975 Tax LR 1085 (AP) ; CWT v Trustees of HEH the Nizam's Sahebzadi Anwar Begum Trust (1981) 129 ITR 796 (AP).
52. CWT v K.J. Somaiya Trust (1977) 109 ITR 798 (Bom) ; CWT v Trustees of the Estate of V.R. Chetty and Brothers (1979) 120 ITR 329 (Mad).
53. CWT v Trustees of HEH Nizam's Family (Remainder Wealth) Trust (1977) 108 ITR 555 (SC).
54. The status of the beneficiaries has no relevance in the case of a discretionary trust : Maulik Trust v WTO, WT Appl. No. 235 (Ahmd) of 1981 (Assessment year 1980-81), Order dated April 3, 1982, of the ITAT Ahmedabad Bench "B" reproduced at pp. 721-4, *Selected Orders of ITAT*, vol. 2, Taxmann, Delhi, 1983.
55. Subsec. (4A) and the explanation to subsec. (1) of s. 21 of the Wealth-tax Act 1957.
56. The expression implies a transaction between two or more living persons, i.e. bilateral or multi-lateral transactions and not a unilateral transaction : CED v Smt. Laxmi Bai (1980) 126 ITR 73 (All) ; CGT v Maharaja Pateshwari Prasad Singh (1971) 82 ITR 654 (All).
57. CGT v Maharaja Pateshwari Prasad Singh (1975) 98 ITR 480 (All).
58. Pyndah Satti Raju v CGT (1977) 108 ITR 240 (AP) ; Vadulla Venkata Rao v CGT (1972) 85 ITR 240 (AP).
59. S. 5 (1) (ii) of the Gift-tax Act, 1958.
60. S. 50 A of the Estate Duty Act, 1953.
61. CGT v Dr. R.B. Kamdin (1974) 95 ITR 476 (Bom).
62. Levy of the tax was upheld in Mrs. Kunjharam Joseph v CGT (1973) 88 ITR 207 (Ker) ; V.S. Mani v CGT (1980) 123 ITR 414 (Mad). It

was upset in CGT v Smt. Anasuya Sarabhai (1982) 133 ITR 108 (Guj). For further illustrations of acceleration of interest : CIT v Bhagwandas S. Malvi & others (1977) 107 ITR 426 (Bom) ; CIT v Smt. Kasturbai Walchand Trust (1964) 51 ITR 255 (Bom) affirmed in (1967) 63 ITR 656 (SC).

63. CGT v Mrs. Jer Mavis Lubimoff (1978) 114 ITR 90 (Bom) ; CGT v Smt. Anasuya Sarabhai (1982) 133 ITR 108 (Guj).
64. S. 2 (xxiv) and s. 4 (1) (e) of the Gift-tax Act. Compare s. 23 (2) of the 1975 Act in the UK where a general power of appointment is equivalent to ownership : Re. Triffitt (1958) 2 All ER 299 ; Pilkington v IR (1962) 3 All ER 622.
65. See pages 38 and 41 supra.
66. CIT v Kalechand Motiram (1949) 17 ITR 304, 306, 307 (Sind) ; Hanmantram Ramnath v CIT (1946) 14 ITR 716 (Bom) ; Chambers v Chambers AIR (1944) PC 78 ; CIT v Trustees of Sreeram Surajmal Charity Trust (1971) 79 ITR 649, 657, 660 (Cal).
67. J.K. Trust v CIT (1957) 32 ITR 535, 541 (SC) ; Juggilal Kamlapat Bankers v WTO (1979) 116 ITR 646 (All) ; CIT v Nandiniben Narottamdas (1981) 26 CTR (Guj) 200 ; Pandit Lakshmikant Jha v CWT (1973) 90 ITR 97 (SC) ; Ahmed G.H. Ariff v CWT (1970) 76 ITR 471 (SC) ; CWT v H.H. Smt. Rajkuvarba (1972) 86 ITR 783 (Mys) ; CWT v Smt. Rani Kaniz Abid (1974) 93 ITR 332 (FB All) ; Dharma Vijaya Agency v CIT (1960) 38 ITR 392, 399 (Bom) ; A.J. Patel (by his legal representative) v CIT (1974) 97 ITR 683 (Bom). Even trusteeship can be property if emoluments are attached to the office : Angurbala Mullick v Debabrata Mullick AIR 1951 SC 293. Also see 182 below.
68. CIT v Jitendranath Mullick (1963) 50 ITR 313, 325 (Cal) ; H.R. Munro v Commissioner of Stamp Duties (1934) AC 61 ; 2 EDC 462.
69. Smt. M.S. Subbulakshmi v CIT (1955) 28 ITR 561 (Mad).
70. V.M. Raghavulu Naidu & Sons v CIT (1933) ITR 135 (Mad), where the claim of executors and trustees of a will for deduction of maintenance allowance to the mother and widow of the testator, was disallowed. Also, CIT v Dadabhoy G. Broacha (1968) 68 ITR 614 (Bom), where assignment of life interest to wife and minor children was held to be a transfer of an asset to them and the income from the relevant trust properties was aggregated accordingly with the other income of the assignor ; and Sunil Ramdas v CWT (1981) 132 ITR 92 (Bom), where contigent interest in trust property was held to be includible in taxable wealth.
71. CIT v Trustees of Sreeram Surajmal Charity Trust (1971) 79 ITR 649 (Cal) ; Dalooram Jainarayan v CIT (1962) 44 ITR 379 (Mad).
72. Where Trust funds were invested by the trustees with a proprietory concern of the settlor, it was taken to be a case of gift where the donor was not entirely excluded ; CED v Mrs. Sushila Umedlal Zaveri (1982) 135 ITR 727 (Bom).

73. Chunilal Mulji Motani v CIT (1983) 139 ITR 166 (Cal); CIT v Bai Navajbai N. Gamadia (1959) 35 ITR 793 (Bom). (This was an oral trust for a Parsi *Hunevsala*, followed later by a trust deed which vested the settlor with powers to revoke the trust wholly or in part). See Panchanan Dey (decd) v CIT (1983) 142 ITR 762 where a settlor retained the right to remove the *shebaits* and alter the terms of the settlement in a *debuttar* estate and the settlement was held to be revocable. See also Corliss v Bowers 281 US 376 (1930).
Expenditure incurred in setting up a trust for providing an annuity to an employee is not deductible from the employer's income, if the employer has any dominion over the sums paid through the trustees or if there is a possibility of a resulting trust emerging in favour of the employer in any contingency : Indian Molasses Co. v CIT (1959) 37 ITR 66 (SC).
74. Dwarkadas Bhimji v CIT (1948) 16 ITR 160 (Bom); CGT v Maharaja Pateshwari Prasad Singh (1971) 82 ITR 654 (All); Aked v Shaw 28 TC 286 ; IR v Allan 9 TC 234 (HL) ; IR v Parsons 13 TC 700 (CA).
75. The fiduciary is only the medium for the assessment of the income or wealth of the beneficiary. Though he may be the legal owner of the property, his ownership is subject to his obligation to hold and use the corpus as well as the income for the benefit of the concerned beneficiary : National and Grindlay's Bank Ltd. v CWT (1978) 115 ITR 211 (Bom). The income of a trust for the liquidation of creditors' dues is liable to be assessed in the hands of the trustees on behalf of the general body of creditors and not in the hands of the persons who made the settlement or whose liabilities were arranged to be cleared through the settlement : CIT v Dutt's Trust (1942) 10 ITR 477 (Mad).
76. Thanthi Trust v ITO (1973) 91 ITR 261, 284-85 (Mad) ; Mrs. Leela Nath v CIT (1981) 6 Taxman 357 (Cal)/(1981) 22 CTR (Cal) 303 ; (1982) 134 ITR 507 (Cal).
77. CIT v Trustees of Sreeram Surajmall Charity Trust (1971) 79 ITR 649 (Cal) ; CIT v Sri Brojendranath Kundu (1977) 110 ITR 326 (Cal).
78. CIT v Jeyantilal Amritlal (1968) 67 ITR 1,9 (SC) ; CED v Bhagwandas Velji Joshi (1981) 6 Taxman 202 (Bom) : (1981) 22 CTR (Bom) 29, (1983) 139 ITR 316 (Bom).
79. Thanthi Trust v ITO (1973) 91 ITR 261 (Mad) ; Jang v Webb (1912) 13 CLR 503 ; Clifford John Chick v Commissioner of Stamp Duties of New South Wales (1959) 37 ITR (ED) 89. See also Chapter 1, n. 46.
80. CIT v Mathuradas Mangaldas Parekh IT Ref 4 of 1954, unreported judgment dated August 26, 1954 of the Bombay HC quoted by the SC in CIT v Jayantilal Amritlal (1968) 67 ITR 1 (SC) ; Ramchandra v Ranjit ILR 27 Cal 242 ; Madhav Chandra v Rani Sarat Kumari (1911) 15 CWN 126 ; Girijanand v Sailajanand (1896) ILR 23

Cal. 645 ; Ramaswami v Madras Hindu Religious Endowments Board AIR 1954 Mad 1110.

81. S. 64 (1) (vii) of the Income-tax Act and s. 4 (1) (a) of the Wealth-tax Act : D.M. Netarwala v CIT (1979) 120 ITR 848 (Bom) ; K.M. Sheth v CIT/CWT (1977) 107 ITR 45 (Bom) ; Shardaben Jayantilal Mulji v CWT (1977) 106 ITR 667 (Bom) ; Col. H H Sir Harinder Singh v CIT (1972) 83 ITR 416 (SC) ; Dr. T.M.A. Pai, In re. (1954) 25 ITR 75 (Mad); CIT v Mohd. Yusuf Ismail (1944) 12 ITR 8 (Bom); Chandulal Shivlal v CWT (1965) 55 ITR 441 (Guj); K.A. Ramachar and another v CIT (1961) 42 ITR 25 (SC) ; Baidyanath De v CIT (1960) 40 ITR 175 (Cal). The expression "spouse" takes in only the person who is lawfully wedded : CWT v Khan Sahib Dost Mohd. Alladin (1973) 91 ITR 179 (AP). Description of a lady as "wife" or reference to her children as the settlor's children in a trust deed would not make the income from the trust assets includible in the settlor's if the lady had not gone through the formalities of a valid marriage under the relevant personal law : ITO v Nawab Mir Barkat Ali Khan Bahadur (1974) 97 ITR 239 (SC) affirming Nawab Sir Mir Osman Ali Khan Bahadur v ITO (1970) 75 ITR 133 (AP). "Ladies of position", who are not legally wedded, and mistresses who have been regarded and provided for as relatives by the settlor would, however, qualify as "relatives" within the meaning of the term in the second proviso to s. 21(4) of the Wealth-tax Act and presumably also the proviso to s. 164 (1) of the Income-tax Act. That is to say, the trusts in question will be liable to the income tax on their income as if the income belonged to an association of persons and to the wealth tax at the rates applicable to an individual : CWT v Trustees of HEH the Nizam's Family Pocket Money Trust (1982) 134 ITR 444 (AP). See n. 34 above.

82. A "child" does not include a foster-child or an illegimate child for income tax purposes : s. 2 (15A) : Krishna Iyer's Executors v CIT (1960) 38 ITR 144 (Ker) ; But cl (ii) of sec. 27 (7) of the Estate Duty Act specifically provides for inclusion of illegitimate children in the term "relative" in considering dispositions in favour of relatives.

83. G.B. Banerjee v CIT (1979) 117 ITR 446, 452 (Cal) ; R. Ganesan v CIT (1965) 58 ITR 411 (Mad).

84. Dady R.D. Wadia v CIT (1971) 81 ITR 289, 292, 293 (Bom) ; CIT v Neville N. Wadia (1973) 90 ITR 155, 161, 162 (Bom).

85. CIT v Dadabhoy G Broacha (1968) 68 ITR 614 (Bom).

86. C.R. Nagappa v CIT (1969) 73 ITR 626 (SC) affirming C.R. Nagappa v CIT (1968) 67 ITR 740 (Mys) ; V.D. M.R.M. Muthiah Chettiar v CIT (1969) 74 ITR 183 (SC).

87. Arun Kumar Sarraf v CIT (1976) 104 ITR 90 (All).

88. Tulsidas Kilachand v CIT (1961) 42 ITR 1 (SC), affirming (1958) 33 ITR 383 (Bom.).

89. CIT v J.P.M. Pailly Pillai (1972) 86 ITR 516 (Ker FB) overruling

S. Viswasom v CIT (1963) 50 ITR 503 (Ker) on the question of the legal obligation of a Christian father to support his minor son. A court decree requiring maintenance of minor children by the mother out of the alimony she is to get from her husband results in the diversion of the decreed amount before it reaches the lady and, therefore, in its exclusion from her income : CIT v Smt. Shanti Meattle (1973) 90 ITR 385 (All). In such a case the father is not however relieved of the requirements to pay the income tax on the income he is compelled to apply for the children's maintenance through his wife. The payment to the wife is not liable to be aggregated with his income when it is made "in connection with an agreement to live apart" in terms of Sec. 64 (1) (iv), but not a payment made directly or indirectly for the maintenance of the children. Income spent by a widow on the maintenance and education of her children in accordance with a provision in her husband's bequest cannot be claimed to be a diversion of the income before it goes to her : CIT v Mrs. Jayalakshmi Duraiswamy (1964) 53 ITR 525 (Mad).

90. Section 64 (1) (vii) of the Income-tax Act which seeks to reach deferred benefits, superseding CIT v Manilal Dhanji (1962) 44 ITR 876 (SC).
91. Baidyanath De v CIT (1960) 40 ITR 175 (Cal).
92. CIT v Dr. B.B.A. Dalal (1974) 96 ITR 408 (Pat).
93. Explanation 2A to section 64 (1) of the Income-tax Act.
94. Explanation 1A to section 64 (1) of the Income-tax Act.
95. Clubbing the value of lands held by a taxpayer as trustee with the value of land owned by her absolutely is not permissible : K. Andalammal v Commr. of Agl. Income-tax, Madras (1981) 132 IIR 349 (Mad) ; Birendra Kumar Dutta v CIT (1961) 42 ITR 661 (Cal) ; Managing Trustees of Nagore Durgah v CIT (1962) 44 ITR 341 (Mad) affirmed in (1965) 57 ITR 321 (SC) ; Abdul Jalil Khan v Agl. IT Board, Lucknow (1958) 34 ITR 421 (All).
96. CIT v Balwantrai Jethalal Vaidya (1958) 34 ITR 187 (Bom); Birendra Kumar Dutta v CIT (1961) 42 ITR 661 (Cal) ; Mohammad Nurula v CIT (1961) 42 ITR 115 (SC); A. Razzak v CIT (1963) 48 ITR 276 (Cal) ; Harendra Kumar Roy's Estate v CIT (1944) 12 ITR 68 (Cal) ; Habibur Rahman v CIT (1945) 13 ITR 189 (Pat) ; ITAT v Radha Madho Trust (1946) 14 ITR 470 (MP) ; N.V. Shanmugam and Co. v CIT (1971) 81 ITR 310 (SC) ; N. Annamalai v CIT (1969) 73 ITR 809 (Mad) ; CIT v Pulinchandra Daw (1967) 63 ITR 179 (Cal) ; Sri Sri Sridhar Jiew v ITO (1967) 63 ITR 192 (Cal) ; CIT v Mir Osman Ali (1966) 59 ITR 666 (SC) ; CIT v Nandlal Agarwal (1966) 59 ITR 758 (SC) ; C.R. Nagappa v CIT (1969) 73 ITR 626 (SC) ; J.N.A. Hobbs v Dy. Commr. of Agl. Income-tax (1963) 49 ITR 811 (Mys) ; Currimbhoy Elbrahim Baronetcy Trust v CIT (1934) 2 ITR 148 (PC).

97. Where a trust has capital gains or any income not derived for the benefit of any particular beneficiary or it accumulates income till its beneficiaries, who are minors, attain majority or its wealth exceeds the aggregate value of the interests specifically assigned to the different beneficiaries, the trustee is subjected to the income tax or the wealth tax, as the case may be, regardless of the separate liabilities of the beneficiaries. See n. 105.
98. N.V. Shanmugam & Co. v CIT 81 ITR (1971) 310 (SC); CWT v Trustees of HEH Nizam's Family (Remainder Wealth) Trust (1977) 108 ITR 555 (SC). If there are several trustees engaged in a business they may have to be assessed as an association of persons, representing the individuals, Hindu undivided families or companies, as the case may be. under section 161 : CIT v Gangadhar Sikaria Family Trust (1983) 142 ITR 677 (Gauhati).
99. Trustees of Gordhandas Family Charity Trust v CIT (1968) 70 ITR 600 (Bom), affirmed in (1973) 88 ITR 47 (SC); G.T. Rajamannar v CIT (1964) 51 ITR 339 (Mys); J.N.A. Hobbs v Commr of Agl. IT (1963) 49 ITR 811 (Mys).
100. Nirmala Bala Sarkar v CIT (1969) 74 ITR 268, 275 (Cal); CIT v Trustees of the Trust Estate of Tarun Kumar Roy (1974) 94 ITR 361, 369 (Cal); Trustees of Putlibai R.F. Mulla Trust v CWT (1967) 66 ITR 653, 662 (Bom) : R.H. Pandit v CIT (1972) 83 ITR 136 (Bom).
101. CWT v Km. Manna G. Sarabhai (1972) 86 ITR 153 (Guj); CIT v Lady Ratanbai Mathuradas (1968) 67 ITR 504, 515 (Bom).
102. K.M. Sheth v CWT (1977) 107 ITR 45 (Bom); CWT v Ashok Kumar Ramanlal (1967) 63 ITR 133 (Guj); Rajesh Kanta Roy v Smt. Shanti Debi AIR 957 SC 255; Harrison v Grimwood (1849) 12 Beavan 192; Fox v Fox 23 W.R. 314.
103. Saldhana v CIT 6 ITC 114, 117 (FB-Mad.); Sahibuddin Ali Mohamed v CIT (1954) 25 ITR 237, 247 (Bom); CIT v Balwantrai Jethalal Vaidya (1958) 34 ITR 187 (Bom); CIT v Arvind Narottam (1969) 73 ITR 490, 497. This option is not available in respect of guardians or trustees of minors, lunatics or idiots who come under sec. 21 (3) of the Wealth-tax Act, though the reason for such differential treatment is not evident, vide Law Commission, *Twelfth Report*, p. 428.
104. Trustees of Chaturbhuj Raghavji Trust v CIT (1963) 50 ITR 693 (Bom).
105. CIT v Smt. Kasturba Walchand Trust (1967) 63 ITR 656 (SC), affirming (1964) 51 ITR 255 (Bom); Williams v Singer (1920) 7 TC 387; Reid's Trustees V IR 14 TC 512; Fry v Shiel's Trustees (1915) 6TC 583; Hamilton Russel's Executors v IR (1943) 25TC 200.
106. Mozley and Whiteley's Law Dictionary, 8th ed. p. 114; Snell's Principles of Equity, 25th ed., p. 129 (1965); Gartside v IR (1968) 70 ITR 663, 710, 719 and 720 (HL); IR v Holmden (1968) 1 All ER 148; Sainsbury v IR (1969) 3 All ER 919; Re. Weir's Settlement

Trust (1970) 1 All ER 297. It has been pointed out that *spes successionis* or the expectancy to succeed to the property of a living person, confers neither an actual nor even a contingent interest, liable to the estate duty. If the trust is "exhaustive", i.e., if the trustees are required to distribute the entire income to the beneficiaries, the beneficiaries can demand the payment of the fund to them, provided all of them are *sui juris* and the class of beneficiaries is also "closed" and cannot be modified by the trustees. Such demand has to be made collectively and not individually : Re. Smith (1928) All ER Rep 520. A *spes successionis* is distinguishable from a contingent interest : CWT v Ashok Kumar Ramanlal (1967) 63 ITR 133 (Guj) ; CWT v Anarkali Sarabhai (1971) 81 ITR 375 (Guj); CWT v N.D. Petit (1981) 128 ITR 650 (Bom) ; CWT v Kum. Manna Sarabhai (1972) 86 ITR 153 (Guj) ; CWT v Bhogilal Maganlal Shah (1968) 69 ITR 288 (Guj). It is pertinent to note that if the settlor is a potential beneficiary in a discretionary trust, the undistributed income of the trust can be deemed to be that of the settlor, in the UK : Sec 441 of the Income and Corporation Taxes Act, 1970.

107. Trustees of Chaturbhuj Raghavji Trust v CIT (1963) 50 ITR 693 (Bom).
108. Drummond v Collins (1915) 6TC 525 (HL) ; Lindus and Hortin v IR 17TC 442 ; Johnstone v Chamberlain 17 TC 706.
109. CWT v Trustees of HEH Nizam's Family (Remainder Wealth) Trust (1977) 108 ITR 555 (SC) ; CWT v Trustees of Mrs Hansabai Tribhuwandas Trust (1968) 69 ITR 527 (Bom) ; Padmavati Jaykrishna Trust v CWT (1966) 61 ITR 66, 81 (Guj) ; Court Receiver v CIT (1964) 54 ISR 189 (Bom) ; CWT v Trustee of HEH Nizam's Supplemental Family Trust (1968) 68 ITR 508 (AP) ; CWT v Administrator General of West Bengal (1971) 79 ITR 154 (Cal) ; Trustees of Putli Bai R.F. Mulla Trust v CWT (1967) 66 ITR 653 (Bom) ; Suhasini Karuri v WTO (1962) 46 ITR 953 (Cal) ; CWT v K.J. Somaiya Trust (1977) 109 ITR 798 (Bom) ; CWT v Waqf Syed Ahmed Hussain Rizvi (1979) 116 ITR 344 (All) : CIT v Puthiya Ponmani Chintakam Waqf (1962) 44 ITR 172 (SC) ; Habibur Rahman v CIT (1945) 13 ITR 189 (Pat). Where the beneficiaries are specified, but not their *inter se* shares, all of them may be taken to have equal shares, in which case their shares cannot be held to be indeterminate : Jogeshwar Narain Dev v Ramchand Dutt 23IA 37, (1896) ILR 23 Cal 670 (PC) ; CIT v Bhim Chandra Ghosh (1956) 30 ITR 46 (Cal) ; Visheshwar Singh v CIT (1951) 19 ITR 522 (Pat) ; Jyotishwari Kalimata v CIT (1946) 14 ITR 703 (Pat) ; CIT v Pulin Behari Dey (1951) 20 ITR 314 (Cal). The importance of the trust deed is brought out in the following cases : Arur v CIT (1945) 13 ITR 465 (Bom) ; B.P. Mahalaxmiwala v CIT (1954) 26 ITR 177 (Bom) ; Panchanan Das v CIT (1951) 20 ITR 75 (Cal) ; CIT v Arvind Narottam (1969) 73 ITR 490 (Guj).
110. GT Rajamannar v CIT (1964) 51 ITR 339 (Mys).

111. CWT v Purshottam Amarsay (1969) 71 ITR 108 (Bom); CWT v Kripashankar Dayashankar Worah (1971) 81 ITR 763 (SC); Suhasini Karuri v WTO (1962) 46 ITR 953 (Cal); Chintamani Ghosh Trust v CWT (1971) 80 ITR 331 (All). Also see n. 99 above.
112. CIT v Bhagwandas S Malvi (1977) 107 ITR 426 (Bom); CIT v Smt Kasturbai Walchand Trust (1964) 51 ITR 255 (Bom) affirmed in (1967) 63 ITR 656. Shares of beneficiaries were held to be indefinite and the trustees accordingly assessable at the maximum rate of income tax where the trustees were given the absolute discretion to accumulate income or use it for the benefit of any one or more of the beneficiaries to the exclusion of others in CIT v Lady Ratanbai Mathuradas and others (1968) 67 ITR 504 (Bom).
113. Parsons Stockley v Parsons (1890) 45 Ch. D 51 ; CWT v N.D. Petit (1981) 128 ITR 650 (Bom); CIT v Lady Ratanbai Mathuradas and others (1968) 67 ITR 504 (Bom).
114. Proviso to sec. 58 of the Indian Trusts Act : CIT v Nawab Mir Sarket Ali Khan Bahadur (1974) 97 ITR 246, 266 (SC).
115. N.V. Shanmugam & Co. v CIT (1971) 81 ITR 310 (SC); CWT v Trustees of Nizam's Family Remainder Wealth Trust (1977) 108 ITR 555 (SC) ; A.K. Gopalan Pillai v Agricultural ITO (1970) 75 ITR 120 (Mad); CIT v P. Krishna Warrier (1970) 75 ITR 154 (SC); K.K. Hamique v Member, Board of Agl. Income-tax (1966) 60 ITR 216 (SC); CIT v HEH Sir Osman Ali Bahadur (1966) 59 ITR 666, 682 (SC). The principle has also been applied to the case of a trustee who is remunerated by allotment of the agricultural income from a portion of the agricultural estate belonging to a trust : Mohammad Isa (Syed) v CIT (1942) 10 ITR 267 (All). Where, however, a *mutawalli* is appointed on a fixed salary, he is assessable to tax under the head "salary" despite the fact that the trust income is agricultural : Nawab Habibulla v CIT (1943) 11 ITR 295 (PC). The remuneration of a trustee fixed at 15 per cent of the estimated net income from agricultural properties held in trust for certain temples was also held to be liable to the income tax not being derived as rent or revenue of land : Maharajadhiraja Sir Kameshwar Singh v CIT Bihar and Orissa (1961) 41 ITR 169 (SC).
116. CWT v Official Trustee of West Bengal for Trust Murshidabad Estate (1982) 136 ITR 162 (Cal).
117. Harendra Kumar Roy's Estate v CIT (1944) 12 ITR 68 (Cal).
118. Hotz Trust v CIT (1930) 5 ITC 8 ; AIR 1930 Lah 929 ; Aikin v Macdonald's Trustees (1894) 3 TC 306 ; Reid's Trustees v IR (1929) 14 TC 512, 523 ; IR v Dewar 16 TC 84, 94, (HL) ; IR v Mc Intosh (1955) 36 TC 335.
119. Arundhati Balkrishna v CIT (1976) 102 ITR 356 (Guj).
120. Ganpatrai Sagarmal (Trustees) for Charity Fund v CIT (1963) 47 ITR 625 (Cal) ; Ganpatrai Sagarmal v CIT (1982) 138 ITR 294 (Cal).
121. Shri Jyotishwari Kali Mata v CIT (1946) 14 ITR 703 (Pat.) ; Neliyil Ummer Kutty v State of Kerala (1970) 77 ITR 489 (Ker).

122. Dwarkadas Bhimji v CIT (1948) 16 ITR 160 (Bom).
123. CIT v M. Jamal Mohammad Sahib (1941) 9 ITR 375 (Mad FB); Ramibai Agarwal v Baldeoraj 1977 (1) MPWN 123- See also p. 13.
124. ITAT v Managing Trustee Sree Radha Madho Trust (1946) 14 ITR 470 (Nag); Re. Lokmanya Tilak Jubilee National Trust Fund (1942) 10 ITR 26 (Bom).
125. Addl. CIT v Sherwani Charitable Trust (1975) 99 ITR 284 (All); Hakim Abdul Hamid v CIT (1973) 90 ITR 203 (Del) (F B). These cases related to the provisions of the 1922 Act, but the position has not altered, so far as actual expenditure is concerned.
126. A deity in a private *debuttar* estate is assessable to tax in the status of an "individual" : Sri Sri Sridhar Jiew v ITO (1963) 50 ITR 480 (Cal.); Jogendar Nath Naskar v CIT (1969) 74 ITR 33 (SC) ; Official Trustee of West Bengal v CIT (1968) 67 ITR 218 (Cal); (1974) 93 ITR 348 (SC); Sri Bhagwan Radha Krishna Ji v CIT (1962) 46 ITR 741 (All). An endowment may fail for uncertainty if the donor does not instal or even name or specify any particular idol, but a gift for building a temple to the formless and absolute *Brahman* would not be void : Veluswami v Dandapani ILR (1947) Mad 47 ; Phundanlal v Arya Pratinidhi Sabha ILR 30 All 793; Chandi Charam Mitra v Hariboladas 1919 ILR 46 Cal 951. A Hindu image irrespective of whether it is permanent or is immersed in a river after a festival, has been recognised by the courts as capable of suing and being sued : Purna Chandra v Kalipada Roy AIR 1942 Cal 386. Property which is dedicated to it vests in it. Its interests are attended to by its *shebait*, i.e., its human ministrant, who enjoys the same powers as the manager of an infant heir and is competent to file tax-returns on its behalf: Pramatha Nath Mullick v Pradyumna Kumar Mullick (1925) LR 52, IA 245 ; Jagadindranath Roy v Rani Hemantha Kumari Devi LR 31 IA 203 ; Sri Sri Sridhar Jiew v ITO (1963) 50 ITR 480 (Cal). A gift may be made on behalf of one deity to another : Bhupatinath v Ramlal ILR 37 Cal 128. However, it is a moot point whether such a gift will be liable to the gift tax.
127. Sree Sree Iswar Gopal Jew v CIT (1950) 18 ITR 743 ; Official Trustee of West Bengal v CIT (1968) 67 ITR 218 (Cal) ; Jogendar Nath Naskar and Hemchandra Naskar (decd) *shebaits* of Sri Sri Kubeswar Madhav v CIT (1969) 74 ITR 33 (SC). The Supreme Court has outlined the principles governing dedication in S. Shanmugam Pillai v K. Shanmugam Pillai AIR 1972 SC 2069. For determining whether an endowment is fictitious or real, see Ramratanlal v Kashinath Tewari AIR 1966 Pat 235 ; Shri Thakurji v Sukhdeo ILR 42 All 295 (F B).
128. CIT v Sri Jagannath Jiew (1977) 107 ITR 9 (SC) ; Trustee to the Debuttar Estate of Sri Iswar Radha Govind Jiew v CIT (1972) 84 ITR 150 (All).
129. CWT v H H Sri Rama Varma Maharaja of Travancore (1975) 100 ITR 91 (Ker).

130. CIT v Kokila Devi (1970) 77 ITR 350 (SC); CIT v Trustees of the Trust Estate of Tarun Kumar Roy (1974) 94 ITR 361 (Cal); Official Trustee of West Bengal v CIT (1974) 93 ITR 348 (SC); CIT v Uma Maheswari, through *shebait barat* (1969) 71 ITR 614 (Pat); Sri Sri Sridhar Jiew v ITO (1963) 50 ITR 480 (Cal); Sri Sri Sridhar Jiew v ITO (1967) 63 ITR 192 (Cal) ; CIT v Pulin Behari Dey (1951) 20 ITR 314 (Cal).
131. CIT v Official Trustee of West Bengal for the Estate of Smt. Chitra Dessi (1981) 7 Taxman 109 (Cal) (1981) 23 CTR (Cal) 276.
132. Panchanan Das v CIT (1951) 20 ITR 57 (Cal); Bankim Chandra Dutta v CIT (1966) 62 ITR 239 (Cal).
133. CIT v Pulin Behari Dey (1951) 20 ITR 314 (Cal); CIT v Ashalata Devi (1951) 20 ITR 326 (Cal); CIT v Bhimchandra Ghosh (1956) 30 ITR 46 (Cal) ; Sri Jyotishwari Kalmata v CIT (1946) 14 ITR 703 (Pat) ; Raja Bahadur Visheshwar Singh v CIT (1951) 19 ITR 522 (Pat) doubting the correctness of the view in 14 ITR 703 (Pat.) Gopi v Musamat Jaldhara (1911) ILR 33 All 41 : Jogeshwar Narain Deo v Ramchandra Dutt (1896) ILR 23 Cal 670. For a case in which there was only one deity as beneficiary : CIT v Kokila Devi (1970) 77 ITR 350 (SC).
134. N.C. Sen and B.C. Sen v ITO (1964) 51 ITR 218 where the Court negatived the objection of the trustees that the certificate issued by the Income Tax Officer to the Certificate Officer for recovery of the tax outstanding against the deity did not show them as trustees but made it appear that taxes were due from them and was, therefore, invalid.
135. Hamid Hussain v CED (1972) 83 ITR 309 (All); Khatizabai Mohamed Ibrahim v CED (1959) 37 ITR (ED) 53 (Bom).
136. Janabal Sardar v Sabiha Khatun AIR 1938 Cal 257 ; Abdul Sattar v Advocate-General AIR 1933 Bom 87 ; Habib Ashraff v Syed Wajihuddin AIR 1933 Oudh 222 ; Pathukutti v Avathalakutti (1890) 13 Mad 66 ; Mohamed Safi v Khadim Ali AIR 1944 Oudh 291 ; Commissioner of Waqfs, West Bengal v Haji Rashid Ali Dina AIR 1958 Cal 413.
137. CIT v Hassan Koya (1967) 63 ITR 791 (Ker); Ahmed G.H. Ariff v CWT (1970) 76 ITR 471 (SC) ; CWT v Smt. Rani Kaniz Abid (1974) 93 ITR 332 (All) ; Sri Vidya Varuthi Thirtha Swamigal v Baluswami Ayyar AIR 1922 PC 123.
138. M. Habibur Rahman v CIT (1945) 13 ITR 189 (Pat) where the settlor's family and all his descendants were to share the *waqf* income concurrently and in equal shares. The court held that it was not a discretionary trust. Also, Mohd. Ishaq v CIT (1951) 19 ITR 70 (All); Neilliyil Ummer Kutty v State of Kerala (1970) 77 ITR 489 (Ker); Abdul Jalil Khan v Agl. IT Board (1958) 34 ITR 421 (All); CIT v Sir Muhammad Yusuf Ismail (1944) 12 ITR 8 (Bom), approved in Col. H.H. Raja Sir Harinder Singh v CIT (1972) 83 ITR 416 (SC).

139. CIT v Managing Trustees, Nagore Durgah (1965) 57 ITR 321 (SC), affirming (1954) 26 ITR 805 (Mad).
140. CWT v Puthiya Ponmani Chintakam Waqf (1967) 63 ITR 787 (Ker) ; CWT v Begum Hashmat Bai (1970) 77 ITR 581 (MP) ; Umar Baksh v CIT AIR 1931 Lah 578 ; 5 ITC 402 ; CIT v Sir Muhammad Yusuf Ismail (1944) 12 ITR 8 (Bom) ; CIT v Aga Abbas Ali Shirazi (1944) 12 ITR 179 (Mad) ; Nelliyil Ummer Kutty v State of Kerala (1970) 77 ITR 489 (Ker) ; CIT v Abubakar Abdul Rahman (1939) 7 ITR 139 (Bom) ; CIT v Ibrahim Hakimji (1940) 8 ITR 501 (Sind) ; CIT v Jamal Mohamad Sahib (1941) 9 ITR 375 (Mad-FB) ; CIT v Karim Brothers Charity Fund (1943) 11 ITR 603 (Bom) ; Mohammed Ishaq CIT (1951) 19 ITR 70 (All) ; CIT v P.P. Hassan Koya (1967) 63 ITR 791 (Ker) ; CIT v Humayum Raza AIR 1936 Pat 532 ; Nawab Bahadur of Murshidabad v CIT (1955) 28 ITR 510 (Cal).
141. CWT v Waqf K.B. Syed Ahmed Hussain Rizvi (1979) 116 ITR 344 (All).
142. Section 160(1)(iv) of the Income-tax Act : CIT v Puthiya Ponmani Chintakam Waqf (1962) 44 ITR 172 (SC). But where a *waqf* had come into existence for the maintenance of a mosque out of the income from some lands, and the maintenance of the male descendants of the grantee out of the balance income, it was the *mutawalli's* duty to see that all the descendants got the benefit of the usufruct by the application of the per capita rule. No income accrued to the *mutawalli* and only his proportionate interest in the property would pass on his death : CED v S.M. Kamaluddin Fakri (1980) 124 ITR 98 (Mad).
143. CIT v Puthiya Ponmani Chintakam Waqf (1962) 44 ITR 172 (SC) ; Hoosein Kassam Dada v CIT (1937) 5 ITR 182 (Cal) ; Mohammad Ishaq v CIT (1951) 19 ITR 70 (All) ; CWT v Puthiya Ponmani Chintakam Waqf (1967) 63 ITR 787 (Ker) ; CIT v P.P. Hassan Koya (1967) 63 ITR 791 (Ker).
144. Sec. 164(2) of the Income-tax Act. The corresponding provision for assessment of the wealth tax in case of diversion of property or of income from property held under trust for public charitable or religious purposes is in sec. 21A of the Wealth-tax Act, 1957. For wealth tax levy, the trust is treated like an individual.
145. A 'body of individuals' indicates a combination of individuals who have unity of interest but not a common design, e.g., trustees of a trust or the executors of an estate : M/s Deccan Wine & General Stores v CIT (1977) 106 ITR 111 (AP) ; Meera & Co. v CIT (1979) 120 ITR 564 (Punj) ; CIT v Harivadan Tribhuwandas (1977) 106 ITR 494, 503 (Guj) ; CIT v Deghamwala Estates (1980) 121 ITR 684 (Mad) ; CIT v T.V. Suresh Chandran (1980) 121 ITR 985, 995 (Ker). An association of persons connotes not only unity of purpose but common action. An association of "persons" implies also a wider group than a body of "individuals" since a "person" can include a company, etc. : CIT v Indira Balkrishna (1960) 39 ITR 546, 551 (SC) ;

CIT v N.V. Shanmugam & Co., (1966) 62 ITR 701 (Mad) affirmed in (1971) 81 ITR 310 (SC). Trustees can operate as an association of persons : CIT v Ibrahimji Hakimji (1940) 8 ITR 501 (Sind). There is deemed to be an association of persons in the circumstances covered by sub-secs. (2) and 3(a) and the provisos to sub-secs. (1) and (3)(a) of sec. 164, despite there being strictly no "association" in terms of sec. 2(3) : Smt. Santimoyee Bose v CIT (1969) 74 ITR 133, 137 (Cal). For wealth-tax assessment a group of trustees will have to be treated as an "individual" in respect of the wealth held by them and not as an association of persons : Abhay L. Khatau v CWT (1965) 57 ITR 202 (Bom) ; Suhasini Karuri v WTO (1962) 46 ITR 953 (Cal).

146. Ahmad G.H. Ariff v CWT (1970) 76 ITR 471 (SC) ; Purshottam N. Amarsay v CWT (1973) 88 ITR 417 (SC).
147. CWT v Trustees of HEH Nizam's Family (Remainder Wealth) Trust (1977) 108 ITR 555 (SC) ; CWT v Trustees of the Estate of V.R. Chetty Brothers (1979) 120 ITR 329 (Mad).
148. CWT v Kripashankar Dayashanker Worah (1971) 81 ITR 763 (SC) ; Chintamani Ghosh v CWT (1971) 80 ITR 331 (All) ; Abhay Khatau v CWT (1965) 57 ITR 202 (Bom), affirmed in (1973) 88 ITR 47 (SC) ; Trustees of Gordhandas Govindram Family Charity Trust v CWT (1968) 70 ITR 600 (Bom), affirmed in (1973) 88 ITR 47 (SC); Currimbhoy Ebrahim Baronetcy Trust v CIT 5 ITC 484 (Bom), affirmed in (1934) 2 ITR 148 (PC) ; C.R. Nagappa v CIT (1969) 73 ITR 626 (SC) affirming (1968) 67 ITR 740 (Mys) ; Suhasini Karuri and another v WTO Calcutta and another (1962) 46 ITR 953 (Cal); Vedakannu Nadar v N.T.S. Annadhana Chatram AIR 1938 Mad 982 ; Shri Mahadeo Jew v Balkrishna Vyas AIR 1952 Cal 763 ; Lewin on Trusts, 14th ed., p. 196.
149. See 21 (1A) inserted in the Wealth-tax Act by the Finance (No. 2) Act, 1980 with effect from April 1, 1980. See also p. 38ff above.
150. CWT v Trustees of HEH the Nizam's Miscellaneous Trust (1980) 126 ITR 233 (AP) ; CWT v Kripashankar Dayashankar Worah (1971) 81 ITR 763 (SC) ; CWT v Arvind Narottam (1976) 102 ITR 232 (Guj) ; CWT v Administrator General of West Bengal (1971) 79 ITR 154 (Cal) ; Prince Ranjit Singh P. Gaekwad v CWT (1969) 73 ITR 206 (Guj).
151. CWT v Harshad Rambhai Patel (1964) 54 ITR 740 (Guj).
152. CED v John D'Souza (1974) 95 ITR 460 (Ker).
153. CED v John D'Souza (1974) 95 ITR 460 (Ker) ; CED v The Estate of the late Mrs. Oakshott (1977) 106 ITR 126 (Mad). In this case, the deceased was entitled to receive only the residual income from dividends on shares of an Indian company held in a trust created by her husband domiciled in the UK. The Court held that there was no liability to duty on the death of the lady, since she was not interested in any of the shares, her right being limited to the residuary income of the estate.

154. Shakuntala Banerjee v CED (1980) 125 ITR 488 (All) ; CED v Hussainbhai Mohamedbhai Badri (1973) 90 ITR 146 (SC).
155. CED v Bai Suntokbai Damodar Govindji (1981) 132 ITR 6 ; Manian Natesan v CED (1965) 56 ITR (ED) 5 (Mad) ; CED v Jameela Begum (1975) 101 ITR 165 (Mad).
156. Mahendra Ram Bhai Patel v CED (1967) 63 ITR 645 (SC). No interest will cease on the death of a husband where a house has been transferred by his wife to a trust to be held for her life to the benefit of both and the settlement in his favour lapses if he predeceases her. An interest contingent upon the donee's surviving the life-tenant is not capable of measurement under sec. 40 of the Estate Duty Act : CED v State Bank of India (1981) 131 ITR 700 (Mad).
157. T.A. Devaki Ammal v CED (1978) 111 ITR 403 (Mad).
158. Badri Vishal Tandon v CED (1982) 136 ITR 426 (All).
159. Official Trustee of Bombay v CED (1979) 117 ITR 190 (Bom).
160. Where one of the grand-daughters of the settlor was entitled to certain benefits from the settled funds during his wife's life-time, and the income became fully payable to his grand-daughter on his wife's death, no duty was held to be leviable on the value of the settled property on the wife's death : CED v Trustees HEH The Nizam's Jamily Pocket Money Trust (1973) 87 ITR 33 (AP). But where the income of the trust was required to be spent on the widow of the deceased, her sons and their families during her life-time, and the property vested in the two sons equally and they became entitled to the beneficial enjoyment of the full income after her death, the property was held to be liable to the duty : CED v Govindji Jethabai Virjee (1978) 115 ITR 664 (Bom).
161. CED v Govindji Jethabai Virji (1978) 115 ITR 664 (Bom).
162. Suhasini Karuri & Another v WTO Calcutta & Another (1962) 46 ITR 953 (Cal) ; Gour Chandra Das v Smt Monmohini Dasi AIR 1921 Cal ; Sarnath Sanyal Hrishikesh Sanyal AIR 1949 All 93 ; Estate of Lala Shankar Shah v CIT (1945) 13 ITR 500, 509, 510 (Lah). A testator may create trusts by his will and appoint his executors as trustees to carry out the trusts : Estate of J.K. Dubash v CIT (1948) 16 ITR 90 (Bom), approved in (1951) 19 ITR 182 (SC).
163. CIT Madras v Sri T.P. Ramaswami Pillai (1962) 46 ITR 666 (Mad) ; Raghavalu Naidu and Sons v CIT (1950) 18 ITR 787 (Mad) ; Court Receiver v CIT (1964) 54 ITR 189 (Bom) ; K.P. Narayanan v CIT (1975) 98 ITR 130, 140, 141 (Ker) ; Rev. Lionel Corbett v IR (1937) 4 All ER 700 (CA) ; IR v Smith (1930) 1 KB ; 15 TC 661, 668 ; Carlish v IR (1958) 38 TC 37, 63.
164. Amal Kumar Chakraborty v CED 1976 Tax LR 62 (Cal).
165. CIT v Estate of V. L. Ethiraj (1979) 120 ITR 271 Mad).
166. P Gangadharan Pillai v CED (1968) 70 ITR 640 (Ker) ; Sneddon v Lord Advocate (1954) 25 ITR (ED) 6 ; CIT v Prahlad Rai (1972) 83 ITR 321 ; Mrs. Monie Ardeshir Baria & Mrs. Piloo F. Antia v CED

(1977) 106 ITR 203 (Bom); Smt. Gunwantibai v CED (1981) 130 ITR 122 (MP).

167. Baidyanath Banerjee v ACED (1965) 35 ITR (ED) 31 (Cal).

168. But see Deokinandan Khetan v CED (1968) 69 ITR 801 (All), where it was established that the income from endowed property and also the expenses relating to it were accounted for in the trust-books though the property stood in the name of the deceased long after his death. The court held that no other document was necessary for an endowment. In CED v Usha Kumar (1980) 121 ITR 735 (SC) it has been held that a partial dedication for religious purposes may have the effect that the properties endowed become subject to a charge for a religious purpose. Though they may retain their private and secular character, there may be no liability for the estate duty on the relevant portion of the property in such a case.

169. Smt Pan Kumari Kochar v CED (1969) 73 ITR 373 (AP). Transfer of funds in the books of the joint family to a separate trust account in accordance with the instructions of the *Karta's* wife, to whom the funds belonged is evidence of the creation of the trust : Jai Narayan Jai Govind v CED (1963) 49 ITR (ED) 105 (Mad).

170. CED v Estate of Late Sri E.M. Gopala Krishna Kone (1981) 129 ITR 738 (Mad) ; Khatizabai Mohd. Ibrahim v CED (1959) 37 ITR (ED) 53 (Bom); Ravindra Gunvantlal v CED (1969) 74 ITR 498 (Guj). The English cases on this point are discussed at length in this case by the Bombay High Court. The concept of mutually exclusive categories—property actually passing and property deemed to pass—as stated in the celebrated dictum of Lord Macnaghten in the case of Earl Cowley v IR (1899) AC 198 was held to be not relevant in the context of the provisions of the Estate Duty Act in India. The English law on "reserved interest" is analogous : Attorney General v Grey (1898) 1 QB 318 ; Cochrane, Cochrane & another v Turner (1945) CL 285. Where a number of properties had been settled in trust for running a school, it was held that each property had to be considered separately for the purpose of the exclusion of the settlor. If he held the right to residence in only one of the properties, his death would result in the "passing" of that property alone. Where, however, the settlor had reserved for himself a maintenance allowance out of funds of the school run by the trust, all the properties held by the trust would be deemed to pass on his death : K.C. Srivastava v CED (1979) 117 ITR 221 (All); Clifford John Chick v Commissioner of Stamp Duties (1959) 37 ITR (ED) 89 (PC); CED v Smt Parvathi Ammal (1974) 97 ITR 621 (SC); George Da Costa v CED (1967) 63 ITR 497 (SC); Norman Clyde Oakes v Commissioner of Stamp Duties of New South Wales (1954) 26 ITR ED 1 (PL); V.S. Mani v CED (1966) 60 ITR 810 (Mad); Rashmohan Chatterjee v CED (1964) 52 ITR (ED) 1 (Cal). The mere fact that the settlor resides with his wife in one of the settled properties

will not imply the reservation of interest in his favour : CED v Nirmal Kumar Roy (1981) 128 ITR 593 (Cal).

171. Kikabai Shamsuddin v CED (1969) 73 ITR 241 (Guj).

172. Gajra Bai v CED (1972) 86 ITR 92 (Mys).

173. CED v R. Kanakasabai (1973) 89 ITR 251 (SC).

174. CED v K.A. Kader (1974) 96 ITR 289 (Mad).

175. Official Trustee of Bombay v CED (1979) 117 ITR 190 (Bom).

176. Pran Kishan Das v CED (1968) 69 ITR 139 (Cal) ; Usha Kumar Banerjee v CED (1972) 84 ITR 6 reversed by the SC on other grounds in CED v Usha Kumar (1980) 121 ITR 735 (SC). The *shebait's* apanage which is usually heritable but not alienable, is liable also to the wealth tax. But the mere right to reside in a portion of the property dedicated to a deity which may be appurtenant to the duties that the *shebait* has to perform does not pass on his death : Satyanarain Bagla v CED (1982) 133 ITR 710 (Cal.).

177. Mahanth Umesh Narain Puri v CED (1982) 135 ITR 139 (SC), affirming (1970) 75 ITR 310 (Pat) ; Public Trustee v IR (1958) 2 All ER 720 affirmed in (1960) 1 All ER 1 ; (1959) 37 ITR ED 32, and (1961) 43 ITR Suppl. 19. While there is no estate duty liability on the death of a *mahanth*, the *mahanth* is subjected to the income tax on the income of the estate : Mahanth Ramswaroop Das v State of Bihar (1961) 42 ITR 770 (SC), affirming (1956) 30 ITR 640 (Pat), where the issue was liability to Bihar agricultural income tax. The *mahanth* is also entitled to protection of his "mahantship" which contains elements of office and property, under article 19(1) of the Constitution : Commissioner, Hindu Religious Endowments v Shri Lakshmindra Thirtha Swamiyar of Shirur Mutt (1954) SCR 1005 ; AIR 1954 SC 282.

178. Khatizabai Mohamed Ibrahim v CED (1959) 37 ITR (ED) 53 (Bom).

179. Hamid Hussain v CED (1972) 83 ITR 309 (All) ; Mohamed Hussain Sait v CED (1979) 117 ITR 654 (Mad).

180. Hamid Hussain v CED (1972) 83 ITR 309 (All).

181. CED v Sultan Alam Khan (1976) 116 ITR 360 (Bom).

182. CED v Hussainbai Mohamed Bai Badri (1973) 90 ITR 146 (SC) ; CED v S. M. Kamaluddin Fakri (1980) 124 ITR 98 (Mad).

183. Sitanath Mukherjee v CED (1968) 70 ITR 53 (Cal). Even where possession of settled property has been postponed till the death of the trustees, the property does not pass on the death of the trustee ; CED v H.N. Markandan (1974) 94 ITR 144 (Mad).

184. Ravindra Gunvantlal v CED (1969) 74 ITR 498 (Guj).

185. Mohindra Nath Mukherjee v ACED (1982) 11 Taxman 161 (Cal).

186. State Bank of India v CED (1968) 69 ITR 270 (P & H).

187. CED v Bhagwandas Valji Joshi (1981) 6 Taxman 202 (Bom), (1983) 139 ITR 316 (Bom).

188. CED v Mrs. Sushila Umedlal Zaveri and others (1982) 135 ITR 727 (Bom).

189. CED v Usha Kumar Banerjee (1980) 121 ITR 735 (SC).

190. Ravindra Gunvantlal v CED (1969) 74 ITR 498 (Guj).