7

Tax Avoidance in India

Confusion caused by family trusts

IN 1969, Jerome Kurtz, former Legislative Counsel to the Treasury Department in the USA, pointed out that the drafting of wills and trusts had developed into a practice concerned primarily with taxes.[1] This is no less true of trusts in India.

Even if they are not deliberately designed to nullify the progressive element in the tax structure, intricacies in settlements leave a trail of confusion in their wake[2]. A will may create complex settlements. One document may provide for various strata of interest; and a multiplicity of trusts providing for diverse interests may compound the difficulty for the revenue authorities.[3] Where the same donor sets up several trusts, the trustees of a particular trust may often become beneficiaries in other trusts and similarly the beneficiaries of the trust may become trustees in others. A network of checks and counterbalances is a safeguard against trustees who may be vindictive or indifferent : all the beneficiaries have a built-in guarantee of even treatment.

In some of the trusts, life-tenants are specified and are also given powers to appoint the remaindermen. In such cases, the trust is discretionary only in regard to the assets receivable by the remaindermen and this will have repercussions in the wealth tax assessment alone.

Difficulty has been frequently experienced in deciding whether a trust is discretionary or specific. For instance, a certain trust was created in 1968 for the male members of the family of a settlor who reached the age of 50. Each such

member was to be given Rs. 6,000 per annum or such sum as made up Rs. 6,000 in a year if he had separate income. According to the Comptroller and Auditor General, the trust fell within the discretionary category, in view of the uncertainty of the number of beneficiaries. The assessing authorities had, however, treated it as a specific trust and did not apply the maximum marginal rate.[4]

The Comptroller and Auditor General has also given several instances of the confusion resulting from the game of hide and seek to which some of the taxpayers have recourse. A lady set up three trusts in 1957, each for the exclusive benefit of one of her sons. Since there was only one beneficiary in each trust, the only reason for resorting to the medium of a trust was apparently to cause complication, and she did succeed in her design. The fact that each of the sons had separate properties and that he would be liable to the wealth tax if the value of the trust property was added to the value of the rest of his properties, escaped the attention of the revenue authorities. It is significant that revocable transfers of certain shares had also been made by the same lady to her father-in-law and mother-in-law, and these were also not declared by her as part of her wealth.[5]

The Comptroller and Auditor General has similarly pointed out that a large industrial house escaped substantial wealth tax by holding unquoted equity shares of some companies under its control in a number of firms in which private family trusts were partners through their trustees. The firms and the trusts served as conduits for storage of valuable shares of the close companies. On a test check of the assessments in the cases of 13 of the private trusts, it was discovered that the book value of the unquoted shares had been accepted as the base for valuing the partnership interests of the trusts, and the under-assessment of wealth tax would be Rs. 4,57,384 for the assessment year 1976-77 alone, if the intrinsic worth of the shares or their probable market value in the event of their becoming saleable were taken into consideration.[6]

Since the same official does not always deal with the cases of the trusts as well as the beneficiaries, such escapement of properties from wealth tax assessment has been noticed by the Comptroller and Auditor General in several other cases also.

The avoidance is not limited to the non-filing of wealth tax returns or non-aggregation of the income of the beneficiary with his other income or under-valuation of assets.

The Comptroller and Auditor General has referred to a case in which the tax withheld from dividends has not been taken into account in evaluating the life-interest of the concerned beneficiary on the basis of his average income.[7] In one of the trusts, the trustee was himself the sole beneficiary. He sold some properties of the trust, making "long-term" capital gains to the extent of Rs. 2,51,155. While he accounted for his other income from the trust in his personal assessment, he offered the capital gains separately for tax in his capacity as a trustee, thus securing reduction in his tax liability to the extent of Rs. 84,873.[8]

The ruler of an erstwhile state, which has since been integrated with the rest of the country, created a trust for his wife with a sum of Rs. 6 lakh. He did not include the income from the amount so transferred in his own income or the asset in his wealth. The wife was separately assessed to the income tax and wealth tax, though if her income and wealth had been added to her husband's under section 64 of the Income-tax Act and section 4(1) of the Wealth-tax Act, the tax liability would have been heavier.[9]

The position in regard to the gift tax is no better, as evident from some of the cases scrutinised by the Comptroller and Auditor General. For example, unquoted shares of the same private limited company were transferred by a family group to several connected persons in 1973. The transferors and transferees were assessed to tax by different officers exercising jurisdiction over different "wards", though in the same city. While the shares gifted to the donees in one ward were valued at Rs. 7035 per share as against Rs. 7400 determined by the departmental valuer, shares transferred to two trusts in another ward were valued at Rs. 2668 per share, on the basis of an estimate made by a valuer appointed by the donor. The same lack of coordination between the concerned authorities is exhibited also in the cases of three private family trusts which contributed unquoted equity shares of three different private limited companies to certain firms in which they became partners, as part of their capital in the firms in the previous year

for their assessment for 1974-75. The values declared for the purpose of these transfers were Rs. 1800, Rs. 1404 and Rs. 122 per share as against the market values of Rs. 7730, Rs. 3650 and Rs. 219, respectively, per share, worked out by the departmental valuer and adopted in various other income tax assessments. Another private family trust of the same group made a similar capital subscription to a partnership concern in the form of shares. The value of the shares shown for the purpose of the transfer was only Rs. 1713 per share while the market value was Rs. 7200 per share. The Comptroller and Auditor General has calculated the gift tax which escaped assessment at Rs. 11,26,780 in the cases of all the four trusts together. A no less blatant case of evasion of gift tax was the transfer of 1000 shares of the admitted value of Rs. 2,57,620 to a private family trust which subsisted for the sole benefit of the transferor's son. The gift tax which had been avoided in this case was Rs. 44,655 in the assessment for 1976-77.

Cases of such escapement of not merely the gift tax but also the wealth and income taxes are not negligible in number, and the escapement cannot be attributed entirely to lack of coordination among the revenue authorities. The main object of the creation of trusts in most of these cases was only to bewilder the assessing officers: the smoke-screen created by the trusts hides and diffuses the tax liability. The Comptroller and Auditor General has referred, for instance, to a case in which two individuals created revocable private trusts in October 1969 and December 1971 and the revenue authorities failed to subject the income of these trusts amounting to Rs. 65,805 to the income tax for the assessment years 1977-78 and 1978-79 though they included the value of the assets in the relevant wealth tax assessment of the settlors : the short levy of income tax in these two cases amounted to as much as Rs. 53,040.[10] It will, however, be wrong to assume from such cases that if the revenue authorities are more alert, escapement of tax can always be prevented. As long as there are loop-holes in the law, it may not be possible to eliminate tax avoidance.

Common tax avoidance devices

A broad survey of some of the contrivances adopted by private trusts in India shows that they are not feeble imitations

of models elsewhere. Some of the methods that have come to notice through reports of cases which have been taken to the courts or through the annual audits made by the Comptroller and Auditor General are described below.

(*i*) *A specific trust as a mask for personal business*

Tax avoidance through family settlements, which assume the form of specific trusts, is sought to be counteracted through section 64 of the Income-tax Act.[11] The provisions of this section have been amended repeatedly, but many lacunae still remain. For instance, *A* can reduce his tax liability, distributing income from a source among as many beneficiaries as he likes, if he can find somebody, say *B*, to set up a trust for him (i.e., *A*), his wife and the other members of his family. *A* can be the trustee with power to commence a business with funds borrowed on behalf of the trust. *B* should be a person other than the relatives mentioned in section 64, *viz.*, husband, wife, father-in-law and grandfather. A big initial capital is not required : a nominal amount may serve as the nucleus. The power to borrow will enable the trust to obtain its working capital from *A* or concerns with which *A* is connected or the beneficiaries themselves or even banks or other outsiders. The profits of such a business, carried on by the trust, for all practical purposes, like a proprietary concern or a partnership, can be distributed to the beneficiaries, *viz.*, *A* and his family members, without attracting the aggregation provisions of section 64. If the concern is treated as *A*'s personal business, it may suffer tax at high rates. If it is held as a "registered firm" in which *A* and members of his family are partners, it will have to pay the income tax at rates ranging from 5 per cent on income in excess of Rs. 10,000 to 24 per cent in excess of Rs. 1,00,000 in addition to surcharge at 12½ per cent on the income-tax[12]. A specific trust is the simplest method of lowering one's tax liability.

If a business is transferred to a trust as a going concern, the income from the business may become liable to be included in the transferor's own income, if the beneficiaries are either the spouse or minor children or both.[13] If, however, the trust conducts a business with the transferred assets, e.g., dealings in shares of companies, it is only the income from the transferred assets, say dividends from shares, that will be caught by the

aggregation provisions of section 64 and not the gains from share-dealings.[14] The profits from the business in shares may be taxed to the beneficiaries either directly or through the trustees, but not to the author of the trust. It is the trust corpus that triggers the attribution provisions and its target is limited to the direct yield; a new business founded on loans is outside the firing range.

The innovation which dispenses with the annual rituals which firms have to go through for the continuance of their registration with the revenue authorities, has been getting increasingly popular after the courts held that there was nothing legally wrong with it. Since the income is derived by the beneficiary not from any asset entrusted to the trustee but out of the trustee's income-producing skills, the provisions of section 60 which seek to nullify transfers of income without transfer of assets, cannot be invoked for assessing the income in the hands of the trustee who conducts the business, though it is obvious that he is deliberately deflating his own income and average tax-rate by this means. The contention that the income from the business belongs to the trust and that it is receivable for or on behalf of the beneficiaries is supported by a court ruling.[15] There is also a ruling to the effect that if, under a settlement, a portion of the gains from speculation made with the settled resources is to be made over to the settlor, it cannot be held that the settlor is having a portion of the assets or income of the trust retransferred to himself and the trust is, therefore, revocable.[16]

An interesting illustration of the extent to which the Revenue is required to suspend its disbelief, is provided by the case of a lady who settled Rs. 5,000 in trust for the benefit of her son, his wife and his two minor sons. The son and his wife were appointed as the trustees. The trust-deed expressly authorised them to undertake a new business or industry. The trustees obediently ventured into business, which included consultancy services based on the professional experience of the son, in the interest of the four beneficiaries including himself, his wife and his two minor children. The revenue authorities sought to tax the son on the entire income of that business, but this was not approved by the court. The court held that the Revenue had no right to see through the

business to ascertain whether it was in reality the son's "show". According to the court, it is not permissible in law, so far as trusts are concerned, to pierce the veil as in the case of a company, with a view to finding out the person behind the scene. The trustees have been held to be under a legal obligation to carry out the objects of the trust and follow the directions in the trust-deed, subject to the provisions of the Indian Trusts Act. If they fail in their duty they are accountable for their omissions and commissions in their capacity as trustees.[17] This seems to be a case of the triumph of form over the substance of a settlement.

It is obvious that it will not be proper to leave the choice of taxable persons to judicial construction alone. If trusts are to have unrestricted freedom to manoeuver, resort to *benami* transactions will be rendered unnecessary. Tax can be comfortably avoided within the framework of the trust law.

(ii) Trusts for daughter-in-law and son's minor children

The utmost care will be required in making any modifications in the statute that may be called for, since the plugging of one loop-hole may sometimes result in the opening up of another. How an oversight in drafting can leave a gap, which the taxpayers are quick to exploit, can be illustrated with reference to trusts which are created for daughters-in-law and grandchildren, as substitutes for direct and indirect transfers of assets, which were covered by a provision in section 64(1)(vi) of the Income-tax Act, in accordance with one of the recommendations of the Direct Taxes Enquiry Committee (Wanchoo Committee).[18] However, it appears that generation-skipping is feasible even without a separate trust : a grandmother who has a life interest in the income from some settled property is free to assign it to her grandchildren. When there is diversion of income before it accrues in favour of the life-tenant there is no scope for taxing the life-tenant[19].

(iii) Cross trusts

Since direct transfers to spouse, minor child, daughter-in-law or minor child of a son are hit by the aggregation provisions of sections 64(1)(iv) and (v) of the Income-tax Act and 4(1)(a)(i) and (ii) of the Wealth-tax Act, log-rolling is resorted

to. If *A* and *B* find themselves in the same predicament, i.e., if both have close relatives to whom they want to transfer funds without being stalked by the Revenue, *A* can set up a trust for *B*'s relatives and *B* can create a trust for the members of *A*'s family.[20] The inter-relation between the trusts should not be manifest, for the courts have held that covenants actuated by a mutual understanding can be taken to form a single disposition.[21] But even replicated operations may be made less vulnerable if they are skilfully devised and staggered over a period of time. It is difficult for the Revenue to establish the motive of every transaction and to bring on record definite evidence to show that two transactions occurring on different dates were planned at the same time.

(iv) Trusts of brief duration in which discretion is exercised by beneficiaries

Since the scope for tax avoidance through the conventional specific trusts is limited and discretionary trusts have got into disrepute, new types of trusts have been evolved during the last ten years, with the following features :

(i) The period of duration of the trusts is divided into several sub-periods and the beneficiaries, who are usually young and have relatively small income, are shuffled from time to time. The trust provisions are also diversified for the different sub-periods, which never stretch beyond six years.

(ii) The income beneficiaries in each sub-period are specified, say, as *A*, *B*, *C*, and *D*. The trustee is authorised to offer the income of the trust first to *A*, say between the 1st September and the 30th October. If the offer is rejected by *A*, the trustee turns to *B* between the 1st November and the 31st December, and goes through a similar drill. The same motions are followed on every disclaimer. If the income cannot be distributed on account of renunciation by all the specified beneficiaries, the trustee can apply it to charities. This ritual is repeated with varied beneficiaries in each sub-period, till the end of the drama. In the last sub-period, the corpus of the trust fund is

> distributed in definite, prescribed proportions either to the beneficiaries or their legal heirs or their nominees. The beneficiaries, who receive any income may declare it as part of their total income; and the trust itself will not be assessed to tax on it.

This is a type of trust in which the last word rests with the beneficiaries; and the trustees are not armed with any discretionary powers. How far annual disclaimers of interest are tenable is not free from doubt : a disclaimer is considered ineffective in Canada unless it is absolute and unqualified.

For purposes of the wealth tax, however, the uncertainties in regard to the quantum of wealth receivable by a beneficiary may result in the application of the provisions of section 21(4) of the Wealth-tax Act. Under section 2(e)(i)(v) of the Wealth-tax Act, an asset is so defined as not to include any interest in property, where the interest is available to an assessee for a period not exceeding 6 years from the date on which it vests in him. Since, in these trusts, the duration of the sub-periods is less than 6 years, none of the beneficiaries is likely to derive any interest from the trust fund for more than 6 years and therefore, the present value of the interest for such sub-periods cannot be considered as an asset assessable to the wealth-tax in the case of any of them. In the result, the wealth tax may be levied on the value of the assets held on trust either at the rates specified in Part I of Schedule 1 or at the rate of 3 per cent, whichever is more beneficial to the Revenue.

(*v*) *Charity as a beneficiary in a private trust*

The competence of a trustee of a charitable trust to embark on a business which does not subserve the primary purpose of the trust is open to doubt. However, if a business is held in a private trust, there can be no objection in law to making a charitable institution a beneficiary in it.[22] In such a private trust, the shares of the beneficiaries, including the charity, may be identifiable and the income of the charity will be liable to tax like the income of an individual or an association of persons. If one is unable to make donations to a public charity in excess of the ceiling prescribed for tax relief purposes under section 80G of the Income-tax Act, one can get round the restriction

by setting up a trust for carrying on his business and assigning a part of the business income to charity[23].

An interesting variant is a trust which is a public charity and a private family settlement by turns. Charity is declared as the sole intermediate beneficiary of the income and the corpus during the minority of a person in respect of whom the provisions of section 64 regarding income-splitting may otherwise be applicable.[24] Gift tax is also avoided in such a case.[25]

(*vi*) *Ambivalence in regard to accumulation trusts*

Accumulation trusts have not fared badly, thanks to judicial construction of the implications of accumulation of income in terms of a trust deed.

Section 64(1) (vii) of the Income-tax Act provides that in computing the total income of an individual, there shall be included all such income as arises, directly or indirectly, to any person or association of persons from assets transferred otherwise than for adequate consideration to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse or minor child (not being a married daughter) or both.[26] This provision does not appear to be adequate for aggregating the income accumulating for the benefit of an infant during the period of his minority, with the income of the parent who has made the settlement. It may cover a benefit that is immediately available, but the actual enjoyment of which is put off to a subsequent year but not one dependent on his becoming a major.[27] The distinction is between an income or a benefit that has materialised but that is stored for the beneficiary's advantage later and income or benefit that will accrue to the beneficiary only on a certain contingency.

When a settlement by a parent directs the capitalisation of the income every year till a child attains majority or for a specific period extending beyond the minority of the child, when the enlarged capital, with all its accretions, will be paid to him, the beneficiary has only a contingent interest, which will not ripen into a vested interest before he reaches the age of majority or the stipulated period expires. No benefit has immediately arisen and been shelved. In such circumstances, therefore, there is no income to be added to the income of the settlor.[28]

When the accumulated income becomes payable to the beneficiary eventually, he is no longer under the disability of infancy. He is capable of exercising his rights; and the income ceases to be includible in the income of the parent who made the settlement under the existing provisions of the Income-tax Act which cover only income accruing or arising to the child, immediately or on deferred basis, while he is still a minor.

The value of the property, which is held in trust, is includible, however, in the wealth of the parent who has transferred it to the trust as long as the beneficiaries are minor sons or minor unmarried daughters in terms of section 4(1)(a) of the Wealth-tax Act.[29] Such inclusion may be challengeable where a public charity is made the sole beneficiary of the income as well as the corpus for the duration of the minority of the settlor's children with the further stipulation that the charity will have the interest in the remainder, if the children do not survive their minority.

Where three separate trusts were created for accumulation of the income from shares in a private company for a period of ten years, the interest of the beneficiary, though contingent on his being alive beyond ten years, was held to be still includible in his taxable wealth from the vesting date.[30] The position would be different if the beneficiary had no right to demand that the trustees should spend any particular amount out of the trust fund for any of the purposes mentioned in the trust deed and the trustees had the absolute discretion to expend such part of the corpus as they thought fit for the benefit of the beneficiary. In such a case, the beneficiary's interest which is contingent, say, on his completing a certain age, will not be an asset includible in his or his parent's wealth.[31] The interest cannot be taken to be even contingent, if the trustees are empowered to distribute the corpus among the income beneficiary, his wife, and his children in the manner they consider best and on a date of their choice.[32]

(vii) A trust for a Hindu Undivided Family

While a discretionary trust has been surviving like a cat with nine lives and the accumulation trust is tied to minors, the specific trust has been widening the range of its service. It is possible to set up a trust exclusively for the benefit of all the

members of a family.[33] The converse, *viz.*, the creation of a trust by a Hindu undivided family for the benefit of its members is, however, disapproved by some of the courts because a trust cannot alter the course of devolution of property under the Hindu law of succession. Trusts can be created only with properties that can be gifted; and the assets of a Hindu undivided family cannot be abstracted from the family estate or gifted even to the members by the *karta* except in certain specific circumstances.[34] It may not, therefore, be proper to set up a trust with any assets of the family as the corpus for the benefit of some of the corparceners or even of all of them.[35]

Settlements are not, however, precluded in a case in which there is only one male member. No partial or total partition can be effected in such a family, in the absence of a coparcener entitled to demand partition; but settlements can be made by the *karta*, distributing assets among the ladies in the family. Shares in firms can be allotted by him to the individual ladies and the income from them cannot be added to the family's. The Hindu undivided family can thus divest itself of some of its sources of income and reduce its tax liability.

Even where the *karta* of a Hindu undivided family that has several coparceners sets up a trust with cash and other movable assets of substantial value, it is not free from controversy whether such a trust which may be voidable if the coparceners object, can be taken to be, *per se*, void[36], particularly if the claims of all the members of the family have been given due consideration in devising the trust. A family settlement, in which all the coparceners acquiesce, may sidestep partitions. A trust of this type offers an alternative to a partial partition, of which the income-tax authorities may refuse to take cognisance under sub-section 9 of section 171 of the Income-tax Act.

Apart from by-passing the legal objections to recognition of a partial partition, the creation of a trust safeguarding the interests of all the members of the family and making suitable provisions for them in conformity with the line of devolution prescribed under the Hindu Succession Act, 1956, has the advantage of avoiding the gift tax. Since the instrument of trust will merely define and specify the benefits which the individual members of the family will be entitled to and which they have been enjoying through their dormant rights in the family, there

is no transfer, as such, of any property. The coparceners will continue to hold in severalty what they would have obtained by the law of survivorship or on a partition, in the normal course.

It is open to a coparcener, who has interest in a trust property, to impress his interest under the trust with the character of Hindu undivided family property. Since section 58 of the Trusts Act permits any beneficiary, who is competent, to contract to transfer his interest, the coparcener can throw his right to receive any income from a trust property into the common stock of the joint family by making a unilateral declaration to that effect.[37] Section 64(2) of the Income-tax Act and section 4(1A) of the Wealth-tax Act have been recently amended to frustrate avoidance of tax by an individual's impressing his own property in this way with the character of a "Hindu undivided family" property. However, the amendment can still be made ineffective by creating a trust for the benefit of the members of the family individually, instead of transferring the income or the corpus to the joint family as such. The income and the assets cannot be added to the individual's income or wealth after the creation of the trust, unless the beneficiary is the spouse or a minor child.

(viii) A trust for a company or a chamber of commerce

There can be a trust of the shares of a company for the company's own benefit. While a company is prohibited from purchasing or holding its own shares by section 77 of the Companies Act in India, there is no bar on a shareholder's bequeathing his shares to the company. If a shareholder sets up a trust, a trustee appointed by the shareholder may hold the shares for the benefit of the company. Where a company holds its own shares directly, the effect is a reduction in its capital to that extent. The position is slightly different where the shares are registered in the name of a trustee; there is no reduction in capital, though the trustee will have to vote in accordance with the company's directions, whenever necessary.[38] A trust of this type raises the question of the tax treatment of the dividend declared by the company in respect of the shares in trust. The Companies Act, 1981, in the UK now allows a limited company to buy back its own shares out of distributable profits

or out of the proceeds of fresh issue. Earlier, this was prohibited by section 54 of the Act.

Equally intriguing is the case of a trust set up by a chamber of commerce for constructing a building and letting it out for meetings, etc., 75 per cent of the net collections being payable to the chamber. While the Comptroller and Auditor General has taken the view that the trust is liable to the wealth tax, the revenue authorities have assumed that it is saved from the tax, since the chamber, which is the main beneficiary of the trust income, is exempt from the tax. The Comptroller and Auditor General's point is that the ownership of the property does not vest in the chamber and the wealth tax liability, which attaches itself to the trust under section 21(1A), of the Wealth-tax Act, is not affected by the limited interest enjoyed in the income by the chamber.[39]

(ix) Partnership concern for thwarting the gift tax

A trust is a multi-purpose tool. It can secure large savings not merely in the income and wealth taxes, but also in the companion taxes, *viz.*, the gift tax and the estate duty. A gift has been defined to mean the transfer by one person to another of any movable or immovable property, made voluntarily and without consideration in money or money's worth. Accordingly, any property settled in trust in favour of any person other than a public charitable or religious institution is liable to the gift tax. The tax is avoided, however, by the transfer of a property, in the first instance, to a partnership concern which is formed temporarily. Since one cannot trade with oneself, there is no tax liability when properties which were acquired at a nominal cost years ago are passed on to the firm as part of the partner's capital.[40] As there is no bar under the Partnership Act to a trust's being a partner through a trustee,[41] the settlor and the trust that he has created can both be partners in a firm. The partnership may be dissolved after some time, the under-valued assets held by the firm being transferred to the trust at the value at which they have been transferred to the firm by the settlor against his capital in the firm. The transfer of the properties to the trust cannot be subjected to either the capital gains tax or the gift tax, in view of section 47 (ii) of the Income-tax Act and the general trend of opinion in the courts that is there is no

tax liability when assets are distributed by a firm to its partners.[42]

(*x*) *Artificial stipulations in regard to sale of trust property*

Where a covenant provides that a certain property held in trust can be sold only to the beneficiaries and at a price fixed in the covenant or the trust deed, the market value of the property is, for tax purposes, ordinarily to be pegged to the value specified in the covenant or trust deed. A provision has been made in the Wealth-tax Act with effect from April 1, 1980, to ignore any such restriction in the valuation of the property for wealth-tax purposes.[43] In the absence of a similar provision in the Gift-tax Act, the gift tax and estate duty liability can be substantially lowered through such covenanted restrictions when any property is gifted in settlement. If *G* has thus left a property to *S*, his son, subject to the condition that if he sells it, the first option to make the purchase should go to his grandsons or any other relatives who need pay only a specified amount (which is much less than the market value), gift tax and estate duty will be assessable only on the value so frozen, though the market value may be the basis adopted in a comparable case without any such condition. An amendment to the Gift-tax and Estate Duty Acts, similar to the one already made in the Wealth-tax Act, may remove this discrimination. The market value does not diminish merely because there is a dynasty situation, i.e., a gift is made within the family and the asset gifted has been received as a part of the family heritage. The anomaly is heightened when a larger tax is demanded in similar circumstances where the only element that is lacking is the grandfather's fiat.

(*xi*) *Deemed gifts outside the purview of the Estate Duty Act*

A novel technique use to foil the gift-tax liability was utilisation of powers of appointment and release of interest. The beneficiary who had the powers of appointment and also the right to release his interest in a trust, designated several other trusts as beneficiaries in his place and thereafter relinquished his interest in the trust. By this process a beneficiary transferred his interest from one set of trusts to another without incurring any gift-tax liability on the transfers. This device was counteracted by amending the definition of the expression "transfer

of property" in section 2 (XXIV) (c) and also including a provision covering renunciations of interest in section 4(1)(e) of the Gift-tax Act. The exercise of a power of appointment of property vested in any person who is not the owner of the property, to determine its disposition in favour of any person other than the donee of the power, is to be taken as "transfer of property" with effect from April 1, 1980. It will be immaterial whether the power of appointment is general, or special or subject to any restrictions as to the persons in whose favour the appointment may be made. Similarly, where a life tenant or a remainderman surrenders or relinquishes his interest in the property or otherwise allows his interest to be terminated without consideration or with inadequate consideration, the value of the interest surrendered or forfeited shall also be deemed to be a gift after April 1, 1980.[44]

There are, however, areas where these amendments to the Gift-tax Act may not achieve their object. To illustrate, the terms of a settlement were altered and the settlor's son made the sole beneficiary under the powers reserved to the settlor. The settlor thereafter released and disclaimed his power of revocation and alteration or new appointment of beneficiary. The court held that the change in the beneficiary was a unilateral act and the subsequent *bona fide* surrender of the power of appointment would not be chargeable to the gift-tax. The contention of the Revenue was that in view of the power of revocation, the settlor should be taken to have been the absolute owner of the trust assets till he appointed his son as a beneficiary and surrendered his powers of fresh appointment or change. This was not accepted by the court.[45]

The estate duty is chargeable on gifts other than charitable gifts, made by the deceased less than two years before his death. In the absence of any provision to hold that, in this context, gifts should be taken to include releases of life interest, etc., deemed to be gifts under the Gift-tax Act, there is no scope for including the value of the relinquished life interest, etc., in the estate of the deceased for estate duty purposes. There is no transfer of property within the meaning of section 53 of the Transfer of Property Act where the life-estate holder surrenders his interest and thereby accelerates the interest of the remaindermen. The courts have held that there will be no estate

duty liability where the surrender has been made in favour of the entire body of persons with reversionary and absolute interest and not in favour of any chosen individuals forming part of the body of remaindermen. The release of life interest is a self-induced, unilateral action, while a gift is, ordinarily, a bilateral transaction.[46]

(xii) Discretionary trusts

The reduction in the maximum rate of income tax including surcharge to 67.5 per cent in non-company cases and the levy of tax at that rate on discretionary trusts have diminished their attraction but not put them out of commission. The reason is that the proviso to section 164(1) makes exceptions in certain circumstances. One of these exceptions relates to a trust in which "none of the beneficiaries has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an association of persons or is a beneficiary under any other trust." If a trust has two private limited companies as its beneficiaries and the income of each of them is below Rs. 15,000 they will gain by this provision, since the tax-exempt threshold for an association of persons is Rs. 15,000 at present. This is a gap in the fence which requires mending. The proviso to section 164(1) lays down that tax shall be charged on the discretionary part of a trust's income "as if it were the total income of an association of persons",[47] and once the trust is charged to tax, the beneficiary companies cannot be assessed on the same income again on its distribution to either or both of them. Persons controlling or owning non-industrial private limited companies which are liable to tax at 65 per cent plus surcharge on their total income may plan to form trusts if the other income of the companies is below Rs. 15,000.

There is also scope for tax savings schemes based on the absence of a definition of the term "beneficiary". One can contend that he does not become a beneficiary till he actually receives a benefit and that the mere right to consideration by the trustee while distributing the trust income does not make that income belong to him. He can not, on this count, be deprived of the benefit conferred by clause (i) of the proviso to section 164(1). If two persons are eligible to receive benefits

under several discretionary trusts and they have no other income of their own chargeable to the income tax, and if the trustees of none of the trusts distribute any income to them during the relevant year of account but accumulate the income under the terms of the trust deed, the trusts having income above the tax-exempt threshold will be liable to pay tax as if their total income is that of an association of persons.

Another exception to the operation of the provisions of section 24(1) seems also to be unwarranted. A discretionary trust that has been constituted under a will escapes the automatic application of the maximum marginal rate to its entire income, if it is the "only trust so declared" by the testator. This stipulation has little relevance to the issue, for even a single discretionary trust can cause a large loss of revenue. And if it is a "warm body trust", its corpus may continue to receive transfers of valuable properties from relatives and friends of the testator or the beneficiaries even after the testator's death. It will not cease to be a testamentary trust merely because of its subsequent growth.[48]

Some confusion has been created by the introduction of section 167-A dealing with "associations of persons" from April 1, 1981. The new provision charges tax on the total income of an association at the maximum marginal rate, where the individual shares of the members (other than a company or a cooperative society) in the income of the association are indeterminate or unknown.[49] What are the implications of the proviso to sub-section(1) of section 164 in this context ? Will all the exceptions to the general rule regarding application of the maximum marginal rate to a discretionary trust cease to be relevant after April 1, 1981, since the income of a discretionary trust which satisfies any of the conditions set out in the proviso to sub-section (1) of section 164 will suffer tax "as if it were the total income of an association of persons"? There is a fear that the proviso may be taken to be nullified by section 167-A on the ground that a discretionary trust is, in effect, an association with members whose shares are indeterminate or unknown. The argument is that if the beneficiaries of a trust are to be assessed like an association of persons, section 167-A coalesces with the proviso to sub-section (1) of section 164. Tax will accordingly be chargeable at the maximum rate, even if none of the bene-

ficiaries is a beneficiary under any other trust or has any other income chargeable under the Act. The position may be the same where the trust is a testamentary one and the testator has not been responsible for any other trust. This fear may be unjustified in view of the fact that section 164 is directed against the trustees, who are representative assessees and not against the beneficiaries, and that in the absence of an express provision to the contrary, trustees of the discretionary trusts coming within the purview of the proviso will be liable to pay tax under the proviso and not as an association under section 167-A. The fact that discretionary trusts which conform to the provisions of the almost identically worded proviso under section 21(4) of the Wealth-tax Act are required to pay tax at the relevant marginal rates specified in Part I of Schedule I to the Act and not like an association of persons with members whose shares are unknown, governed by section 21AA of the Wealth-tax Act, supports the view that the proviso to section 164(1) is unaffected by the new section 167-A of the Income-tax Act.

The attack on discretionary trusts under the Wealth-tax Act is two-pronged. In determining their total wealth, no deduction under clauses XV, XVI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII and XXIX of section 5(1) of the Wealth-tax Act is allowed, vide explanation 2 to section 21(4) of the Wealth-tax Act. This means that even if the funds of discretionary trusts are invested as deposits in banks or cooperative societies or under schemes notified by the Central government or in Government securities, shares, approved debentures, etc., such investment will not enable them to get any relief in the computation of their net wealth. Apart from this, a discretionary trust has to pay tax on its net wealth at the rate of three per cent or at the rates specified in Part I of Schedule I, whichever course is more beneficial to the revenue. The categories of trusts that are saved from the operation of section 164(1) of the Income-tax Act are, however, excepted for wealth tax purposes also, under the proviso to section 21(4) of the Wealth-tax Act. Tax will be levied in the excepted cases at the rates specified in Part I of Schedule I.

If the discretionary trusts have not been jettisoned despite the severe damages they have suffered through the amendments to the Income-tax and Wealth-tax Acts during the last few

years, it is because they have not ceased to be serviceable, in certain circumstances, even for avoidance of these taxes, and they are not hit by the estate duty. The estate duty is attracted only by 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 where any property is held in a discretionary trust and the deceased is only one of several persons eligible for consideration by the trustees while assigning the benefits available in the trust, the property is unharmed by the estate duty.

Properties under discretionary trusts were escaping the duty in the UK also till, by an amendment of the law, the dutiable slice of the trust capital was worked out on the basis of the income paid to a beneficiary during a specified period preceding his death, expressed as a fraction of the entire income of the trust during that period. As pointed out in Chapter 4, the change in the law to enable the determination of the property passing on the death of a discretionary beneficiary at a proportionate value of the corpus based on the ratio of the income derived by the beneficiary discouraged the formation of these trusts to some extent; and the current levy of a periodical capital transfer tax on all properties held in discretionary trusts may further contribute to their discarding.

Where a settlor is himself one of the discretionary beneficiaries, he has been held in India to have reserved to himself an interest in the settled properties and thus been trapped by section 12 of the Estate Duty Act which subjects settlements with reservation to the estate duty.[50] The implied assumption is that the trustees are likely to be susceptible to the settlor's influence. If this assumption is carried to its logical conclusion, the trustees may follow the settlor's secret instructions even if he is not a direct beneficiary himself, and the settled property should be deemed to pass on his death. This conclusion is not, however, acceptable to courts. A trust does not cease to be discretionary even if there is only one surviving beneficiary, and the trustees can either refrain from application of the trust income or make payments to the beneficiary. It is only if the beneficiary is entitled to assign or surrender or release his interest in the trust that he will be liable to the wealth tax and

that the estate will be subjected to the estate duty on his death. The need for a modification of the Estate Duty Act is obvious.

(*xiii*) *Purchase of interest after death*

Certainty has been counted as one of the principal merits of the levy of the estate duty; but how one can give the slip to the duty on death is shown by a trick taking its cue from a decision in the House of Lords in the UK. All that is necessary is the acquisition of the remainderman's interest for a short period extending beyond the life-tenant's death, and its "grafting" on the life tenancy. This results in the continuance of the life-tenant's interest in the property in question till the expiry of the stipulated period, even after he has closed his eyes on this world. According to the House of Lords, what passes on the death of the life-tenant in such a case is only the actuarial value of the interest superimposed on the life-tenancy for the short while that it is projected beyond the grave.[51]

(*xiv*) *Reservation of benefit without charging it to any specific asset*

Certain provisions of the Indian Estate Duty Act are in *pari materia* with those which were in force in the UK till 1975. Despite this fact, however, there is an occasional divergence in the construction of almost identical provisions.

The Supreme Court in India has, for example, held[52] that duty cannot be charged under section 10 of the Estate Duty Act unless the benefit reserved to the deceased has arisen out of the gifted property itself and that a collateral benefit will not be adequate to attract it. This differs from the view taken in the UK.[53] The Supreme Court decision can lend itself to abuse by enabling a settlor to reserve all the benefits he wants for himself without specifically charging them on the estate settled by him. As long as the benefits do not attach themselves to any particular asset, the Revenue cannot reach them.

(*xv*) *Annuities payable by a trust*

A good way of reducing tax liability for the head of a family owning and managing a thriving business may be to have the ownership of the business transferred in trust for the benefit of his children, keeping for himself only the right to a

fixed annuity for life. The same course can be availed of for transfer of patents, copyright and the like to the family without attracting gift tax liability, for the annuity can be reasonably argued to be the consideration for the transfer of the assets. The trust is thus used as a pipe through which assets as well as the taxpayer's income pass to the recipients.

While a life interest in the income from a property is, in a sense, a life interest in the capital, an annuity does not have to be correlated to any fixed proportion of the capital.[54] An annuity is a fixed amount, unaltered by changes in the yield of a trust property[55], and where a beneficiary receives an annuity from a trust, it cannot be said that his interest in the trust is indeterminate or unknown.[56] What is important is the intention of the settlor—whether the beneficiary has been offered a pre-determined sum every year, encroaching on the capital if there is a short-fall in income, or whether he can get only the net income of the trust fund.[57] Section 40 of the Estate Duty Act provides that the value of the benefit accruing or arising from the cesser of interest on the death of the beneficiary shall

(i) if the interest extends to the whole income of the property, be the principal value of the property; and

(ii) if the interest extends to less than the whole income, be the principal value of an aliquot part of the property, i.e., proportionate to the income to which the interest extended.[58]

Where an annuity of a fixed amount is payable, the annuitant can accordingly be taken to be entitled to such proportion of the capital as his annuity bears to the whole income of the settled property[59].

It is interesting to see how the drafting of an instrument can determine whether a receipt is liable to or exempt from tax. If a settlement provides for an annuity, vesting the trustees with the discretion to make up deficiencies in income by drawing on their capital, the entire annuity is treated as income.[60] Capital sums which are successively received, stand the risk of being treated as income[61], unless the amounts vary, there is no regularity in the receipts and the payments are not planned in the trust deed. Sometimes the settlor is stung by

the income tax when he receives his own capital back.[62] But in the UK where a capital sum was paid by a charitable organisation in consideration of which the recipient covenanted to make annual payments, it was held that the payments were not really annuity in terms of section 52(1) of the Taxes Act 1970; the payments were treated as contributions to charity, in respect of which the charitable organisation claimed tax refund. When it was argued that Parliament could never have intended to exempt from the taxing provisions any arrangement solely designed to obtain fiscal advantages as in this case, Lord Wilberforce observed that such a canon of interpretation would not be workable. The question to be decided was whether a certain series of transactions in a certain legal form did or did not fall within the taxing words. If they did not, Parliament could change the law if it liked but the subject was entitled to be judged under the law as it stood at the relevant time.[63]

The precise terms of an instrument of trust are no less decisive in determining the liability to the wealth tax where an annuity is granted to a recipient for life and thereafter equally to all his children. If the annuitant is not entitled to call upon the trustee to commute the annuity into a lump sum grant or sell it for a capital payment or otherwise dispose of it, its value is excluded from his net wealth under section 2(e)(1)(iv) of the Wealth-tax Act.[64] It is only if the annuitant is vested with powers of disposition over the annuity, that the capitalised present value of the annuity will be included in his wealth for tax purposes. It is odd that the present value of life tenancy should be subjected to the wealth tax, but an annuity for a fixed amount for the life of the beneficiary should be exempted from the tax, though the value of the annuity can also be computed, like the value of life tenancy, on the basis of the life expectancy of the annuitant. An annuitant may have no more freedom to negotiate with the trust for a lump sum in settlement of his annuity than a life tenant in regard to his life tenancy. Any tax differentiation based on their respective rights to demand commutation would be artificial.

(*xvi*) *Personal services and income-earning assets*

There is no scope for setting up a trust for professional services.[65] Section 5 of the Indian Trusts Act visualises only

an obligation attached to property; and the most important characteristic of a property is that it shoulb be capable of being owned. The personal skill of a person cannot be classed as property for which a trust can be constituted. A trust cannot hinge on the services or professional competence of a third party. There cannot be a vested right to the services or the income earned by any individual. A trust cannot be founded on a transfer of income, but on the property which yields the income.[66] However, there is no legal impediment to a business being conducted by a trust and the services of individuals being fully utilised by it, with or without remuneration. Thus, if a doctor functions as a free consultant in a medical shop held in trust for his wife and minor son, to which he has not himself transferred any asset, no income can be attributed to the doctor and assessed in his hands. Since the object is to minimise the family taxes by accepting no fee or less than full compensation for the services, where a father undertakes to manage a corporation or a business that is held in trust for the benefit of his wife or children, there is reduction in the overall tax obligations of the family. There is no remedy in law, at present, to escapement of proper tax liability through the use of an individual's initiative, expertise and experience in the service of his family through the trust ploy. It is only the transfer of his financial and physical assets that is caught by the Income-tax and Wealth-tax Acts.

In the USA,[67] a taxpayer, on the termination of his insurance agency, assigned to a family trust his right to receive the renewal commission which he had earned through the insurance policies secured by him in the earlier years. Since the taxpayer was following the cash method of accounting, the commission could not be taxed to him unless he actually received it in cash. The commission was subsequently collected by the trustees and held for the benefit of the family members. The question was whether the commission was includible in the taxpayer's income or the assignee's income. The Court of Appeal held that it was a case of transfer of a property right. However, the Supreme Court reversed the order, holding that the mere power to collect commission was insufficient to shift the income to the assignee for tax purposes. Personal services income did not become property which could be transferred to any other tax payer. It

is difficult to say what view courts in India would take on the facts of this case. It is evident, however, that this is a case in which the services which had earned the right to the income had already been rendered. What had been postponed was the mere realisation of the income. Irrespective of whether the commission agent was taxable on the cash or mercantile system of accounting, the income was his and what he had assigned to his nominees was only his right to receive it or a debt. A case of this type does not pose as much difficulty as one in which some of the important ingredients of a business other than capital, e.g., entrepreneurship, managerial skill and personal labour are placed at the disposal or a trust by the settlor.[68] This is analogous to an individual's running a company for the advantage of his family, the shareholders of the company being members of his family. It is the difference in the tax treatment of a company and a trust that operates in favour of trusts; a company suffers tax at a relatively high rate on its entire income, while a specific trust entails tax on the beneficiaries at the marginal rates appropriate to their respective incomes.

(xvii) *The advantage in unauthorised use of trust assets by settlor*

Under section 63(a) of the Income-tax Act, a trust may be deemed to be revocable and its entire income added to that of its author if its instrument contains any provision for the retransfer, directly or indirectly, of even a part of its income or assets to him. While it will be courting trouble to provide for the exercise of unlimited powers by him which may result in the treatment of the trust income and assets like his income and assets[69], a subtler way of achieving the same end is probably to reserve only the power to advance loans.[70] Courts have held that this power is subject to the general law of trusts and will not be hit by section 63(a).[71] Even if the loan is availed of by the settlor himself and not by any concerns connected with him, money that is lent cannot be construed as retransfer of the income or assets of the trust to its author.[72] And if a benefit is enjoyed from the trust, despite there being no provision in the instrument authorising it, the beneficiary may protest or take legal action against the author and the trustees, but the revenue

has no cause for grievance. An impropriety on the part of the trustee or even settlor cannot justify the trust's being deemed to be revocable for tax purposes.[73] It is only a lawful right to reassume power over the trust assets that can result in the trust's being held revocable,[74] not an abuse of power.

(xviii) Trust assets used by beneficiary or his nominee or a concern in which he is interested

Trusts are also copying some of the tax-avoidance methods orginally patented by companies, without being subjected to the latter's disabilities. For instance, where a trust lends money to the nominee of a beneficiary, or a firm or a company in which the beneficiary or a close relative of the beneficiary is interested, without charging any interest, or on an interest which is much lower than the commercial rate, the advantage enjoyed by the beneficiary or his nominee or relative or associate from such a loan cannot be deemed to be income derived by the beneficiary for purposes of determining his liability to the income tax.[75]

Where a house which a trust can let out on a good rent is occupied by the beneficiary, the beneficiary can be assessed to tax on the basis of the rent that may be payable or might have been ordinarily paid for the house earlier, and also for the tax, if any, paid by the trustee.[76] If the house is permitted to be occupied by a nominee or a relative of a beneficiary for his residence at a pepper-corn rent or for being sublet to the advantage of the nominee or relative, there is no reason why the income which the trust has deliberately foregone should not be reckoned to be a part of its income for tax purposes.

These are not mere theoretical niceties but possibilities which have been recognised in section 13(1)(c) of the Income-tax Act dealing with cases in which the income or property of a charitable or religious institution is applied or used for the benefit of the author of the trust, any of the trustees or any of their relatives. It is only because discretionary trusts have been diverting their income to such of their beneficiaries as are liable to less tax than the others, that they have received so much legislative attention.

A typical example of the constant battle of wits between the taxpayer and the Revenue is provided by the wealth tax treatment of jewellery. A benefit in kind which was exempt

from the wealth tax till March 31, 1963, was use of jewellery held in trust.[77] The amendment of section 5 (1)(viii) of the Wealth-tax Act in 1971, with restrospective effect from 1963, withdrawing the tax exemption in respect of jewellery, had the effect of chasing the jewellery to take refuge in "close" companies which were not liable to the tax. Trusts were driven to hold shares of the close companies instead of the jewellery. This shelter has now been pulled down by section 40 of the Finance Act, 1983, which has revived the levy of the wealth tax in the case of close companies with effect from the assessment year 1984-85.

(*xix*) *Provisions out of step with public policy*

Under the Hindu law, the illegitimate son of a *brahman*, *kshatriya* or *vaishya* is entitled to maintenance and not to any share of inheritance, while the illegitimate son of a person belonging to any other castes is entitled to a share of the inheritance subject to certain conditions.[78] An illegitimate Muslim child does not inherit at all from either of its parents under the *Shia* law, while under the *Sunni* law, it inherits from its mother and other relations though it cannot inherit from the legitimate son of the same mother.[79]

The position in regard to a couple who cohabit without being married or whose marriage is voidable is similar. Neither of them has any claim on the other's property as a matter of right.

The treatment of income from assets transferred directly or through a trust to a child born out of wedlock or to its mother is, however, more liberal under the Income-tax and Wealth-tax Acts in India. "Child" includes an illegitimate child under section 444(1) of the UK Income and Corporation Taxes Act, 1970, but not under section 2(15A) of the Indian Income-tax Act, 1961.

The minor's income from a trust created by either of his parents is aggregated with the income of the concerned parent; and if the trustee is a partner in any firm for the benefit of the child, the share income is also included in the tax assessment of the parent with the larger income. These aggregation provisions do not, however, apply to persons who have illicit relations with each other or their offspring.[80] This differential treatment

is not in harmony with the provisions of any of the personal laws, and it serves to encourage the rich to enter into what have been called *Maitreyi Krar*—a friendship or companionship "contract"—which may be mere euphemism for concubinage.

It is significant that the English and the Australian laws have specifically removed the disabilities from which children born out of wedlock suffer; and such reform merits consideration in India too. However, irrespective of any reform that may be brought about in the personal law, particularly the law of inheritance, in this regard, it is evident that there is hardly any justification for extending a more favourable tax treatment to assets and income diverted to a person with whom one has been living in contravention of the law or a child born of a relationship not recognised in law, than to one's lawfully wedded spouse or a child of such union. It is true that tax laws do not have to take up moral postures but they certainly have to conform to the law of inheritance and other laws. Any concession, even if it is unintended, to those involved in transgressions of the law is untenable. A few stray deviations from conventions may not require notice in a permissive society, but what has been publicised as *Maitreyi Krar* is a recent phenomenon which cannot be ignored, since it is not negligible in scale, and it is incident to money-power and high life.

A similar anomaly resulting from the same blind attachment of importance to formal connubial relationship in disregard of realities is noticed in the treatment of direct or indirect pre-nuptial and post-nuptial transfers to a spouse. If a taxpayer transfers funds or other assets directly to his wife or has them held in trust for her, section 64 of the Income-tax Act and section 4 of the Wealth-tax Act immediately swing into operation. They require the inclusion of the income and the value of the transferred assets in the taxpayer's assessments to the income tax and wealth tax. If he is careful to do his tax-planning, he will set up a trust for the lady of his choice before he leads her to the altar.[81] It is passing strange that marriage, which unites a couple, should be taken to be the dividing line for tax purposes. Pre-marriage financial arrangements are considered sacrosanct and the revenue cannot go behind or ignore them; but the husband and wife are treated as one flesh and the tax

liability in respect of transfers of assets made after their marriage fastens on the transferor.

(*xx*) *Liability to the wealth-tax and estate duty where property is held in a private religious trust*

A Hindu deity is assessable as an individual through its *shebait*.[82] Trusts for worship of family deities are subject accordingly to the income tax[83]. Similarly, the *mutawalli* of a *waqf* functions like a *shebait* and is assessed to the income tax, although the *waqf* property is dedicated to God. The position is, however, not clear in regard to the wealth tax and estate duty. Properties settled in trust for "poojas" (offering of prayers to God) and other ceremonies that have been and are being performed for the benefit and well-being of the author and the members of his family cannot be aggregated with the author's wealth, since they are not for his individual benefit or the benefit of his wife and minor children alone. The trustees would be liable for assessment under section 21 of the Wealth-tax Act but there is no scope for the inclusion of the properties in the wealth of the settlor under section 4(1)(a)(iii) of the Wealth-tax Act[84] or for subjecting them to estate duty liability on the death of any of the members of the family who might have derived any spiritual benefit from them. So far as *waqfs* are concerned, it has been held that the right of a beneficiary to receive remuneration[85] or an aliquot share of the net income of the *waqf* property is an asset within the meaning of the Wealth-tax Act and that the capital value of such a right is assessable to the wealth tax[86].

It would appear that it is only the right of the *shebait* to any benefit from a Hindu private religious trust that is liable to the estate duty on his death. All properties dedicated to a deity in a Hindu endowment seem to be outside the purview of the Estate Duty Act, since the property belongs in perpetuity to God.[87] But, if the matter is considered objectively and realistically, the conclusion is irresistible that every private religious or quasi-religious trust, including a *debuttar* estate that is served by a *shebait*, a *math* that is managed by a *mahant* and a *waqf* that has a *mutawalli* to superintend it, should be subjected to both the wealth tax and the estate duty. Semi-religious endowments in which the public have no interest provide easy

means of avoidance of the wealth tax and the estate duty. The argument against the levy of the wealth tax on the estate as a whole is that God is treated as an individual only for the limited purpose of income tax liability of a *debuttar* estate. How far section 21(A) of the Wealth-tax Act will aid the Revenue in taxing the entire value of a *debuttar* or a *waqf* estate is yet to be tested in the courts while the estate duty is clearly out of the question[88]. The tax liability will be negligible if it is determined with reference to the usufruct of the individual beneficiaries, if any. In fact, even the income tax liability is inconsiderable in the case of a private religious trust, which is free from the inhibitions imposed by sections 11, 12, 12A and 13 of the Income-tax Act on a public religious or charitable trust, e.g., treatment of voluntary contributions as income. A private religious trust enables enjoyment of the exclusive privileges and other obvious advantages of privacy, including the performance of personal acts of piety, at the cost of the Revenue. The corpus of the trust, which is inalienable, passes also to the legal heirs and successors of the settlor, in perpetuity, without any erosion attributable to tax at any point of time. A private religious trust may not even come to the notice of the Revenue because it is not required to be registered with the Commissioner of Income Tax under section 12-A of the Income-tax Act.

NOTES

1. Hearings on Tax Reforms Act of 1969 before the House Committee on Ways and Means, 91st Cong., 1st Sess., pt. 11 at 3978-85 (1969).
2. CIT v Smt. Sindhubai Vasant Sahukar (1981) 7 Taxman 188 (Bom.); (1981) 24 CTR (Bom) 153; CIT v Bai Savita Gouri and others (1975) 100 ITR 680 (Bom).
3. Manilal Dhanji v CIT (1959) 35 ITR 647, affirmed in (1962) 44 ITR 876 (SC), vide paras 2 and 4 of the statement of the case at pp. 468-9 of 35 ITR; CIT v Mrs. Jayalakshmi Duraiswamy (1964) 53 ITR 525 (Mad).
4. C & AG, 1977-78, p. 123.
5. C & AG, 1973-74, pp. 140, 143 and 144.
6. C & AG, 1981-82, p. 173.
7. C & AG, 1974-75, p. 211.

8. C & AG, 1978-79, p. 211.
9. C & AG, 1974-75, p. 211.
10. C & AG, 1981-82, pp. 205-6, 200-1 and 153-4.
11. Tulsidas Kilachand and Others v CIT (1961) 42 ITR 1 (SC). In this case the Court held that love and affection as the consideration for declaring a trust for the settlor's wife might be good enough to support a contract but not adequate to avoid tax.
12. The surcharge which used to be 10 per cent has been increased to 12.5 per cent with effect from April 1, 1983.
13. Tulsidas Kilachand v CIT (1961) 42 ITR 1 (SC). Occasionally, a scheme may recoil on the originator, as witnessed in the case of Radhas Printers v CIT, Kerala and Others (1981) 132 ITR 300 (Ker), where the partners of a firm chose to turn into beneficiaries of a trust and, in the process, lost the firm's development rebate.
14. Executors of the Estate of the late J.J. Kapadia v CIT (1968) 67 ITR 590 (Bom).
15. A. Razaak v CIT (1963) 48 ITR 276 (Cal); CIT v Balwantrai Jethalal Vaidaya (1958) 34 ITR 187 (Bom); Khan Bahadur M. Habibur Rahman v CIT (1945) 13 ITR 189 (Pat).
16. CIT v Jitendra Mallick (1963) 50 ITR 313 (Cal).
17. K.T. Doctor v CIT Gujarat IV (1980) 124 ITR 501, 513 (Guj). Also see J. K. Trust v CIT (1957) 32 ITR 535 (SC) where a managing agency was held by the SC to be property held in trust, and Dharma Vijaya Agency v CIT Bombay City (1960) 38 ITR 392 (Bom), where this SC decision was applied and insurance agency conducted by a partnership was also treated as "property" held in trust. Both the J. K. Trust and Dharma Vijaya Agency were found to be public charitable trusts. As for the doctrine of lifting the veil in tax matters relating to companies, the following is the Supreme Court's observation :

    "It is true that from the juristic point of view the company is a legal personality entirely distinct from its members and the company is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members. But in exceptional cases, the court is entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade". CIT Madras v Sri Meenakshi Mills Ltd. (1967) 63 ITR 609 (SC); Juggilal Kamlapat v CIT (1969) 73 ITR 702 (SC).
18. Direct Taxes Enquiry Committee's Report, 1971, p. 77, para 3.37.
19. CIT v Smt. Kamlabai Juthalal (1977) 108 ITR 755 (Bom).
20. Sec. 64(1)(a)(vii) of the Income-tax Act and 4(1)(a)(iv) of the Wealth-tax Act. Also see IR v Clarkson Webb (1932) 17 TC 415; CIT v A.N. Chowdhury (1969) 71 ITR 326 (Cal), calling for an interpretation of sec. 16(3)(b) of the Income-tax Act, 1922 and CWT v B.N. Chowdhury (1978) 112 ITR 725, regarding sec. 4(1)(a)(iii) of the Wealth-tax Act, which was in *pari materia* with it before its amendment hitting "indirect" transfers of assets under the Wealth-tax (Amend-

ment) Act, 1964, taking effect from April 1, 1965. See also CIT v Framji Commissariat (1967) 64 ITR 588 (Bom), where a distinction was made between direct cross transfers and cross transfers through trusts.

21. CIT v C. M. Kothari (1963) 49 ITR 107 (SC); CIT v Keshavji Morarji (1967) 66 ITR 142 (SC); Amarchand Jalan v CIT (1964) 54 ITR 80 (Bom). Also C & AG, 1977-78, p. 112, para 62(i).

22. Hakim Abdul Hamid v CIT (1973) 90 ITR 203 (Del), where 7/8th of the income of the business styled "Hamdard Dawakhana" was exempt from tax, being required to be spent on public charities, and 1/8th was to be paid to the sole *mutawalli.*

23. The business income of a charitable or religious trust/institution is liable to tax from the assessment year 1984-85 in terms of s. 11(4A) of the Income-tax Act. However, an individual may still derive tax advantages by giving a share in a business conducted by a private trust to charity. In some cases, this course may be preferable to a donation under section 80G of the Income-tax Act.

24. H.H. Yeshwant Rao Ghorpade v CWT Bangalore (1966) 61 ITR 444 (SC). It is open to question whether the amendment of section 4(1)(a)(iii) of the Wealth-tax Act by the Wealth-tax (Amendment) Act, 1964 whereby the aggregation rule was extended to assets transferred to a trust or a third party for the "immediate or deferred" benefit of a minor child would help the Revenue. If the asset is to be used for the benefit of a charity as on the relevant valuation date, and the settlor's son becomes eligible for its enjoyment only after he attains majority, it is possible to argue that there is no deferment of benefit to minor child. The minor child is not beneficiary at all during the period of his minority. See also n. 25 below.

25. CGT v Lady Hirabhai C. Jehangir (1982) 138 ITR 314 (Bom.); CGT v G. G. Morarji (1965) 58 ITR 505 (Bom); CGT v Yogendra N. Mafatlal (1965) 58 ITR 40 (Bom). The view that the children and others have only a contingent beneficial interest in such cases has been doubted in Vadulla Venkata Rao v CGT (1972) 85 ITR 249 (AP).

26. K.M. Sheth v CIT/CWT (1977) 107 ITR 45 (Bom); Additional CIT Gujarat v M.K. Doshi; CIT Gujarat III v Smt Devkunverben M. Doshi (1980) 122 ITR 499, 505 (Guj); Yogendraprasad N. Mafatlal v CIT (1977) 109 ITR 602 (Bom); Shardaben Mulji v CWT (1977) 106 ITR 667 (Bom); S.M.S. Ratnaswami Nadar v CIT (1975) 100 ITR 669 (Mad); CIT v B.A. Dalal (1974) 96 ITR 408 (Pat); Maharani Vijaya Kunverba Saheb v CIT (1975) 99 ITR 162 (Bom); CWT v Kumari Manna G. Sarabhai (1972) 86 ITR 153 (Guj); Col. H H Sir Harinder Singh v CIT (1972) 83 ITR 416 (SC); Manilal Dhanji v CIT Bombay City I (1959) 35 ITR 467, approved by the SC in (1962) 44 ITR 876; CIT Kerala v Hajee Hassan Yacoob Sait (Deceased) and others (1964) 53 ITR 5 (Ker).

27. The minor child will not obviously be entitled to enjoy a benefit as a minor, if the enjoyment is required to be deferred beyond the period of his minority; and it is only a benefit, enjoyment of which is postponed to some later date within the period of his minority, that will be caught by 64(1) (v) and (vii). A "deferred benefit" implies that a benefit has accrued or is available immediately but its enjoyment has been postponed. The emphasis is on the question whether a minor beneficiary or spouse has actually derived any benefit under the trust, or circumstances exist which can enable the minor to compel the trustees to apply any part of the trust funds in his favour immediately, consistently with the provisions of the trust deed, vide Chhaganlal Baid v CIT (1971) 79 ITR 258 (Cal); Maharani Vijayakunverba Saheb v CIT Bombay City I (1975) 99 ITR 162, 173 (Bom); CIT v B.A. Dalal (1974) 96 ITR 408 (Pat). Though these decisions relate to the provisions of the Act before the amendment covering deferred benefits, the points involved are still valid.
28. CIT v Arvind Narottam (1969) 73 ITR 490 (Guj). The law in Canada is similar : Harshman Trust v MNR 72 DTC 1191 (TRB).
29. Shardaben Jayantilal Mulji v CWT (1977) 106 ITR 667 (Bom). The interest in income is distinct from the right to possession of the property. See Sachs v The Queen 80 DTC 1369 (TRB), quoted at p. 592, Jack Bernstein, *Income-tax Consequences of Trust Distributions of Income and Capital*, 1981 Conference Report—Report of the Proceedings of the 33rd Tax Conference, Canadian Tax Foundation.
30. Tanil Ramdas v CWT (1981) 132 ITR 92 (Bom); CWT v Trustees of Mrs. Hansabai Tribhuwandas Trust (1968) 69 ITR 527 (Bom); Prince Ranjit Singh P. Gaekwad v CWT (1969) 73 ITR 206 (Guj). The contrary view was taken in Yeshwant Rao Ghorpade v CIT (1966) 61 ITR 444 (SC), in which the assets of the trust were held for the benefit of a charitable trust for some years, and thereafter absolutely for the settlor's children. This judgment was followed in CWT v Arvind Prasad N. Mafatlal (1975) 98 ITR 287 (Bom) in which the the annual accretions were added to the trust funds and the beneficiary was entitled to payments from the funds after a stipulated period. Both the cases related to the period before the amendment of sec. 4(1)(a)(iii) of the Wealth-tax Act to cover cases of "immediate or deferred" benefit w.e.f. the April 1, 1965. According to the Karnataka High Court, the amendment did not make any difference where, during the relevant period, the beneficiaries were minors and the assets in question were held for charitable purposes and not for their benefit: CWT v HH Yeshwant Rao Ghorpade (1978) 115 ITT 332 (Kar).
31. CWT Bombay v Master Jehangir H.C. Jehangir (1982) 137 ITR 48 (Bom).
32. CWT v Arvind Narottam (1976) 102 ITR 232 (Guj).

33. Manilal Dhanji v CIT Bombay City I (1959) 35 ITR 467, approved in (1962) 44 ITR 876 (SC); S. Raghbir Singh v CIT (1961) 42 ITR 410 (Pun), affirmed in CIT v S. Raghbir Singh (1965) 57 ITR 408 (SC); Badri Vishal Tandon v CED 136 ITR 427 (All); CIT v Mrs. Jayalakshmi Duraiswami (1964) 53 ITR 525 (Mad). Also CIT v Bhagwandas S. Malvi and others (1977) 107 ITR 426 (Bom), where the parents accelerated their children's interests by surrender of their prior life-interest. The interest intended to be given by the grantor—whether it is meant for the beneficiary as an individual or whether it belongs to his branch of the family—will have to be gathered from the language of the document: C.N. Arunachala Mudaliar v A. Muruganatha Mudaliar, AIR 1953 SC 495, 500; CIT v Gordhandas K Vohra (1974) 96 ITR 50 (Bom.).
34. A. Kannan Chetty v CIT (1963) 50 ITR 601 (Mad); Rajender Dutt v Shamchander Mitter (1881) ILR 6 Cal 106; In re. Kahandas Narandas (1881) ILR 5 Bom 154; Soorimoney Dossee v Deenabandhu Mullick 6 MIA 525; Tagore v Tagore 9 Beng, LR 377; Wilcock's Settlement (1875) 1 Ch. D. 229.
35. For the contrary view, CGT v Tej Nath (1972) 86 ITR 96 (Punj); CIT v Gangadhar Sikaria Family Trust (1983) 142 ITR 677 (Gau). A gift of the family property by the *Karta* to a trust of which the beneficiaries are members of his undivided family is only voidable and not void *ab initio*. Such a gift can be attacked only by the members of the family whose interests are affected thereby and not by strangers. Raghubanchamani Prasad Narain Singh v Ambika Prasad Singh AIR 1971 SC 776; CIT v Braham Dutt Bhargava (1962) 46 ITR 387 (Raj). Also see Ratilal Nathalal v CIT (1954) 25 ITR 426 (SC), affirming (1951) 20 ITR 307 (Bom).
36. CED v Estate of the late M.V.K. Papa Rao (1981) 128 ITR 813 (AP); CIT v Gangadhar Sikaria Family Trust; CIT v Kamakhya Rice Mill Trust (1983) 142 ITR 677 (Gau).
37. CIT v Gopaladas T. Agarwal (1979) 116 ITR 613 (Bom).
38. Castiglione's Will Trusts (1958) 1 All ER 480. Also AIR 1957 Cal 293; Kirby v Whitworth (1887) 12 App. Cas. 409.
39. C & AG, 1980-81, pp. 170-171.
40. D. Kanniah Pillai v CIT (1976) 104 ITR 520 (Mad); CIT v Abdul Khader Motor and Lorry Service (1978) 112 ITR 360 (Mad). The contrary view has been expressed in CIT v Kartikey Sarabhai (1981) 131 ITR 42 (Guj).
41. CIT v Abdul Rahim (1965) 55 ITR 651 (SC); CIT v Bhagyalakshmi (1965) 55 ITR 660 (SC). Explanations 1A and 2A to s. 64(1) implicitly accept the scope for a trustee's being a partner of a firm in a representative capacity.
42. CIT v Mohanbhai Pamabhai (1973) 91 ITR 393 (Guj); Velo Industries v Collector (1971) 80 ITR 291 (Guj); Addl. CIT v Naghdas Kilabhai (1975) 101 ITR 197 (Guj); CIT v Bankey Lal Vaidya 79 ITR 594, (SC); Ramanlal Khanna v CIT (1972) 84 ITR 217 (Punj).

43. Explanation to section 7(1) of the Wealth-tax Act, inserted by the Finance Act, 1980. The problem is discussed at length in the Twenty-ninth Report of the Public Accounts Committee (Sixth Lok Sabha) on *Incorrect Valuation of Assets*, presented to the Lok Sabha and the Rajya Sabha on Dec. 19, 1977. In Canada where a trust property is sold to the beneficiary for a price less than the fair market value, the benefit is taken to be equal to the difference: Sec. 105(1) of the Income-tax Act, Canada.
44. Para 138 of the Government's Memorandum explaining the provisions in the Finance (No. 2) Bill, 1980.
45. CGT v Ebrahim Haji Usuf Botawala (1980) 122 ITR 62, 67 (Bom).
46. CGT v Smt Ansuya Sarabhai (1982) 133 ITR 108 (Guj); Palanivelu v Ouseph Mathai (1973) I MLJ 264 (Mad); AIR 1973 Mad 309; CGT v Mrs. Jer Mavis Lubimoff (1978) 114 ITR 90 (Bom); V.S. Mani v CGT (1980) 123 ITR 414 (Mad); IR v Buchanan (1958) 34 ITR 173 (Court of Appeal, UK); (1958) 1 Ch. 289; 37 TC 365.
47. Amounts received by a beneficiary from a discretionary trust cannot be taxed in the hands of the beneficiary under section 166 : CIT v Smt. Kamalini Khatau (1978) 112 ITR 652 (Guj – FB); Kum. Pallavi S. Mayor v CIT (1981) 127 ITR 701 (Guj).
48. Jack Bernstein, *Income-tax Consequences of Trust Distributions of Income and Capital*, p. 588, 1981 Conference Report—Report of the Proceedings of the 33rd Tax Conference, Canadian Tax Foundation.
49. CBDT circular No. 320 dated 11.1.1982 clarifies that unrecognised provident funds and unapproved superannuation and other funds created for the benefit of employees will continue to be charged to tax in the manner prescribed in sec. 164(1) and not at the maximum marginal rate.
50. Ravindra Gunvant Lal v CED (1969) 74 ITR 498 (Guj).
51. Ralli Bros. Trustee Co. Ltd. v IR (1966) 1 All ER 65. Also see Kirkwood, The Public Trustee and another v IR (1964) 53 ITR ED 75 (1964) 2 WLR 680.
52. CED Madras v R. Kanakasabai (1973) 89 ITR 251 (SC).
53. Attorney General v Worrall (1895) 1 AB 99.
54. Duke of Norfolk, Public Trustee v IR (1950) Ch. 467.
55. CWT v Kali D. Cawasji (1981) 131 ITR 158 (Bom); CWT v Mrs. Dorothy Martin (1968) 69 ITR 586 (Cal).
56. Chintamani Ghosh Trust v CWT (1971) 80 ITR 331 (All).
57. CWT Lucknow v P.K. Banerjee (1980) 125 ITR 641 (SC), reversing P.K. Banerjee v CWT (1972) 83 ITR 117 (All) and over-ruling CWT v Nawab Fareed Nawaz Jung (1970) 77 ITR 180 (AP); CWT v HH Maharani Gayatri Devi of Jaipur (1971) 82 ITR 699 (SC); CWT v Arundhati Balkrishna (1970) 77 ITR 505 (SC); Ahmed G.H. Ariff v CWT (1970) 76 ITR 471 (SC); CWT v Kali D. Cawasji (1981) 131 ITR 158 (Bom); CIT v Dorothy Martin (1968) 69 ITR 586 (Cal);

CWT v Anarkali Sarbhai (1971) 81 ITR 375 (Guj). If the terms of an instrument do not expressly vest an annuitant with the right to commute the annuity, the implication may be that commutation is precluded, and wealth tax exemption under sec. 2 (e)(1)(iv) is justified : CWT v Sir Hirji Cowasji Jehangir (1981) 129 ITR 642 (Bom).

58. Shakuntala Banerjee v CED (1980) 125 ITR 488 (All).
59. An annuity payable equally to such of three persons as may be living is a continuing annuity which passes to the remaining annuitants on the death of any them and is accordingly liable to the estate duty : In re. Tapp : Granville and King's College, Cambridge v IR (1959) CB 443 (CA); (1960) 40 ITR Supl. p. 7.
60. Brodie's Will Trustees v IR (1933) 17 TC 432; Lindus & Hortin v IR (1933) 17 TC 442; Peirse-Duncombe Trust v IR (1940) 23 TC 199; Michelham's Trustees v IR (1930) 15 TC 737.
61. Postlethwaite v IR (1963) 41 TC 224; Inchyra v Jennings (1966) 42 TC 388; Lawson v Rolfe (1970) 1 Ch. 612.
62. Morant's Settlement Trustees v IR (1948) 1 All ER 732; (1948) 30 TC 147; Williamson v Ough (1936) 20 TC 194. Different but equally interesting, CWT v Late Nawab Sir Mir Osman Ali Khan Bahadur 1974 Tax LR 367 (AP).
63. CIR v Plummer, (HL) reported in the *Taxation*, 17th May, 1980, pp. 183-4; also (1979) 3 All ER 775.
64. CWT v Dr. E.D. Ankelesaria (1964) 53 ITR 393 (Guj) which discusses, in this connection the relevance of section 174 of the Indian Sucession Act and some of the English decisions indicating when an annuitant can claim payment of the value of the annuity as a gross sum. Also see CWT v Bhalchamora D. Jokhakar (1978) 112 ITR 238 (Bom).
65. Professional income cannot also be diverted to a charitable trust by an overriding title or obligation : CIT v Thakur Das Bhargava (1960) 40 ITR 301 (SC), the case of an advocate stipulating payment of the fees due to him to a charitable trust. There is even less scope for dedicating the services of a professor as trust property. The money receivable by him as salary will become trust property only when it is actually received by a trust : Eggar v CIT 2 ITC 286.
66. Westminster Bank Ltd. v Barford (Inspector of Taxes) (1958) WLR 406; (1959) 37 ITR 477 (in the Chancery Division), case of periodical payments under an agreement on special services: "The consideration for the contract was the services of the testator, and the consideration for the payments was the contract, which by its independent vitality generated income" (1959) 37 ITR at p. 483.
67. Helvering v Eubank 311 US 122 (1940).
68. Managing agency of a company and insurance and commission agencies are businesses which can be held in trust according to the Supreme Court: J.K. Trust v CIT (1957) 32 ITR 535, 543. A partnership conducting insurance agency has been treated as "property" held

in trust in Dharma Vijaya Agency v CIT Bombay City I (1960) 38 ITR 392 (Bom), following the SC decision. In the UK, arrangements made by film stars for avoiding surtax through trusts and companies have been ignored by the courts: Crossland v Hawkins (1961) Ch. 537, 39 TC 493, where an actor agreed to render his services exclusively to a company, the shares of which were held in trust for his children. While he received a modest salary from the company, the company was entitled to large sums from the producers of the films in which he acted. The case of IR v Mills (1975) AC 38 (1974) 49 TC 367, was not very different. Similar tax reduction devices are known to have been tried also by film artistes in India. For a case of transfer of a right to receive collections from a motion picture, see Smt. M.S. Subbulakshmi v CIT (1955) 28 ITR 561 (Mad).

69. CIT v Sri Kikabai Premchand (1948) 16 ITR 207 (Bom).
70. CIT v Jayantilal Amratlal (1965) 55 ITR 214 (Guj), affirmed in (1968) 67 ITR 1 (SC).
71. CIT v Jayantilal Amratlal (1968) 67 ITR 1 (SC); CIT v Shyamlal Bhuwalka (1978) 113 ITR 127 (Cal).
72. CIT v Smt. Nathi Bai Binani, IT Ref. No. 423 of 1970, Calcutta High Court order dated May 12, 1975; CIT v Trustees of Sreeram Surajmull Charity Trust (1971) 79 ITR 649 (Cal).
73. Smt. Leela Nath v CIT (1982) 134 ITR 507, 517 (Cal).
74. CIT v Jayantilal Amratlal (1982) 67 ITR 1 (SC).
75. S. Raghbir Singh v CIT (1961) 42 ITR 410 (Punj) affirmed in CIT v S. Raghbir Singh (1965) 57 ITR 408 (SC) where the settlor obtained a benefit from the trust by way of payment of his debts, but the income utilised to clear his liability was not found includible in his total income.
76. Lady Miller v IR (1930) 15 TC 25 (HL).
77. Trustees of HEH the Nizam's Supplemental Jewellery Trust v CWT 1975 Tax LR 1085 (AP); CWT v Trusteee of HEH the Nizam's Sahebzadi Anwar Begum Trust (1981) 129 ITR 796 (AP).
78. Mulla's *Principles of Hindu Law*, edited by S.T. Desai, Tripathi 1974, p. 108, para 43.
79. Mulla's *Principles of Mahomedan Law*, 18th ed., edited by M. Hidayatullah, Tripathi 1977, p. 34, para 114 and p. 109, para 85.
80. Executors of the will of T.V. Krishna Iyer v CIT (1960) 38 ITR 144 (Ker); CIT v C.S. Rajasundaram Chetty (1950) 18 ITR 145 (Mad); ITO v Nawab Mir Barkat Ali Khan Bahadur (1974) 97 ITR 239 (SC); A. Vairavan Servai v Commr of Agl IT (1980) 124 ITR 557 (Mad). See also Chapter 3, nn. 34, 81 and 82.
81. P.J.P. Thomas v CIT (1962) 44 ITR 937 (Cal) reversed on a different ground in (1963) 49 ITR 97 (SC).
82. Jogendra Nath Naskar v CIT (1069) 74 ITR 33 (SC).
83. Smt. Ganesh Devi Rami Devi Charity Trust v CIT (1969) 71 ITR 696 (Cal).

84. CWT v HH Sri Rama Varma, Maharaja of Travancore, (1975) 100 ITR 91 (Ker).
85. CWT v Smt Rani Kaniz Abid (1974) 93 ITR 332 (All).
86. Ahmed G.H. Ariff v CWT Calcutta (1970) 76 ITR 471 (SC); CWT v Puthia Ponmani Chintakam Waqf (1967) 63 ITR 787 (Ker).
87. EDA No. 20/Pn/1974/1974-75 (Assessment Year 1974-75) ITAT, Poone Bench Order dated March 23, 1977—Case of three private trusts, one of which was a private temple and the other two were meant to organise daily worship and provide for the performance of annual ceremonies, like *sradh* ceremonies of some of the members of the family of the deceased settlor.
88. See Ch. 3, pp. 42-49 and 78-79, nn. 176-187. Courts have taken a different view in the UK : Public Trustee v IR (1958) Ch. 865 (In the Court of Appeal); (1958) Ch. 513 (In the Chancery Division) 37 ITR ED 32-52, where bequest of income for life to a trustee "so long as he shall act as . . . trustee . . . by way of remuneration" was held liable to the estate duty under Section 1 of the UK Finance Act, 1894, notwithstanding the fact that the trustee was receiving the income "only as holder of office" within the meaning of section 2(1) (b) of the Act.