PETITIONER:
ELEL HOTELS AND INVESTMENTS LIMITEDAND ANR. ETC. ETC.

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT02/05/1989

BENCH:
VENKATACHALLIAH, M.N. (J)
BENCH:
VENKATACHALLIAH, M.N. (J)
RANGNATHAN, S.
PATHAK, R.S. (CJ)
MUKHARJI, SABYASACHI (J)
NATRAJAN, S. (J)

CITATION:
1990 AIR 1664 1989 SCR (2) 880
1989 SCC (3) 698 JT 1989 Supl. 195
1989 SCALE (1)1194
CITATOR INFO :
RF 1992 SC 999 (12,13)

ACT:
Constitution of India, 1950: Articles 14 and 19(1)(g)---Hotel Receipts Act, 1980---Whether violative of.
Articles 246, 248 and 254 & Schedule VII--Entries in legislative list--Whether to be construed in a wide and comprehensive connotation.
Hotel Receipts Act, 1980: Sections 3, 5 and 6--Legislative competence--Whether falls under Entry 82, List 1.

HEADNOTE:
The Hotel Receipts Tax Act, 1980 came into force on 9.12.1980. The Act imposed a special tax of 15% on the gross receipts of certain hotels, where the room charges for residential accommodation provided to any person during the previous year were Rs.75 or more per day per individual. The levy commenced from the assessment year 1981-82 but was discontinued from 27.2.1982. Charges received from persons within the purview of certain Vienna Conventions were exempt from the tax.
The constitutional validity of the said Act was challenged in these writ petitions, on grounds of lack of legislative competence and of violation of Articles 14 and 19(1)(g).
It was contended on behalf of the petitioners that the reliance on Entry 82, List I in support of the tax was wholly misconceived and the tax in pith and substance was an impost under Entry 62, List II reserved to the States. It was also contended that the Act is patently violative of Article 14 since the basis of classification has no nexus with the object of the tax, in that other hotels which have much higher gross receipts are left out. It was contended by the petitioners that the law imposed unreasonable burden on their freedom of business and constituted a violation of Article 19(1)(g) of the Constitution.
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On behalf of the Respondent it was contended that the

said tax fails under Entry 82, List I and the word 'income' should not be read in a narrow and pedantic sense, but must be given its widest amplitude. The challenge to the Act on the ground that it was violative of Articles 14 and 19(1)(g), was also resisted by the Respondent.

Dismissing the writ petitions,

HELD: 1.1. The word 'income' is of elastic import. In interpreting expressions in the legislative lists a very 'wide meaning should be given to the entries. In understanding the scope and amplitude of the expression 'income' in Entry 82, List 1, any meaning which fails to accord with the plenitude of the concept of 'income' in all its width and comprehensiveness should be avoided. The cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction, according to the ordinary meaning of the words in the entry, must be put upon them. Reference to legislative practice maybe admissible in reconciling two conflicting provisions in rival legislative lists. In construing the words in a constitutional document confering legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.

1.2. The expression 'income' in Entry 82, List I, cannot be subjected, by implication, to any restriction by the way in which that term might have been deployed in a fiscal statute. A particular statute enacted under the Entry might, as a matter of fiscal policy, seek to tax some species of income alone. The definitions would, therefore, be limited by the consideration of fiscal policy of a particular statute. But the expression 'income' in the legislative entry has always been understood in a wide and comprehensive connotation to embrace within it every kind of receipt or gain either of a capital nature or of a revenue nature. The 'taxable-receipts' as defined in the statute cannot be held to fail outside such a 'wider connotation' of 'income' in the wider constitutional meaning and sense of the term as understood in Entry 82, List I.

Navinchandra Mafatlal v. CIT, Bombay City, [1955] 1 SCR 829 and Bhagwandas Jain v. Union of India, AIR 1981 S.C. 907, relied on.

Navnitlal v. K.K. Sen, [1965] 1 SCR 909; Governor-General in Council v. Province of Madras, [1945] FCR 179 and Kamakshya

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Narain Singh v. CIT, 1 ITR 513 (PC), referred to.

2.1. It is now well settled that a very wide latitude is available to the legislature in the matter of classification of objects, for purposes of taxation. It must needs to be so, having regard to the complexities involved in the formulation of a taxation policy. Taxation is not now a mere source of raising money to defray expenses of Government. It is a recognised fiscal-tool to achieve fiscal and social objectives. The differentia of classification presupposes and proceeds on the premise that it distinguishes and keeps apart as a distinct class hotels, with higher economic status reflected in one of the indicia of such economic superiority. The presumption of constitutionality has not been dislodged by the petitioners by demonstrating how even hotels, not brought into the class, have also equal or higher chargeable-receipts and how the assumption of economic superiority of hotels to which the Act is applied is

erroneous or irrelevant.

2.2. As regards reasonableness of classification and restriction on the petitioners' freedom of trade and business, similar contentions were raised in a connected case. As has been held in that case and for the reasons given therein, the challenge to constitutionality of the provisions of the Act, based on Articles 14 and 19(1)(g) is rejected.

Federation of Hotel & Restaurant Association of India etc. v. Union of India, [1989] 2 SCR 918, followed.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 254 to 261 of 1981.

Under Article 32 of the Constitution of India.

N.A. Palkhiwala, Soli J. Sorabjee, T.R. Andhyarujina, H.P. Ranina, S. Ganesh, J.B. Dadachanji, Ravinder Narain, Mrs. A.K. Verma, D.N. Misra, S. Sukumaran, Lira Goswami, Joel Pares, Ms. Rubia Anand, R.F. Nariman, P.H. Parekh, Sanjay Bhartari, M.K.S, Menon, R.K. Dhillon, Ms. Rohini Chhabra, Sunita Sharma, Ms. Ayesha Misra, A. Subba Rao, S. Balakrishnan, Harish N. Salve, S.S. Shroff, Mrs. P.S. Shroff, Ms. Malvika Rajkotia, B. Parthasarthi, Vijay Kumar Verma, Mukul Mudgal, Suresh Verma, Praveen Kumar and Vishnu Mathur for the Petitioners.

K. Parasaran, B. Datta, V. Jaganatha Rao, K. Sudhakaran, Dr. 883

V. Gauri Shankar, S.K. Dholakia, P.S. Poti, G.A. Shah, Ms. A. Subhashini, B.B. Ahuja, H.K. Puri, A. Subba Rao, K.R. Nambiar, A.S. Bhasme and M.N. Shroff for the Respondents.

The Judgment of the Court was delivered by

VENKATACHALIAH, J. In this batch of writ petitions under Article 32 of the Constitution of India petitioners who are hoteliers challenge on grounds of lack of legislative competence and of violation of Articles 14 and 19(1)(g) the constitutional validity of the Hotel Receipts Tax Act, 1980 ('Act' for short) which imposes a special tax on the gross receipts of certain cetegory of hotels. Section 3 of the Act limits the application of the 'Act' to those hotels where the "roomcharges" for residential accommodation provided to any person during the previous year are Rs.75 or more per day per individual. If a hotel is within this class, then, Section 5 brings to charge the Hotel's 'chargeable-receipts' as defined under Sec. 6 of the Act.

The Act was passed on 4.12.1980 and came into force on 9.12.1980 when it received the assent of the President of India. The levy under the 'Act' commences from the assessment-year 1981-82 and brings to tax the chargeable receipts of the corresponding previous year. The rate of tax is a flat rate of 15 per cent of the "chargeablereceipts" defined in sec. 6 as the total amount of all charges, by whatever name called, received by or accruing or arising to the assessee in the previous-year in connection with the provision of residential accommodation, food, drink and other services in the course of carrying on the business of a hotel. But such charges received from persons within purview of Vienna Convention on Diplomatic Relations, 1961, or Vienna Convention on Consular Relations are exempt from the tax. The machinery under the Income-tax Act, 1961, is engrafted for purposes of assessment, levy and collection of tax under the Act.

It is, however, relevant to note that though the 'Act' is put into force from the Asst. Year 1981-82 the levy was

discontinued from 27.2.1982.

2. This batch of writ petitions were heard along with Writ Petition 1395 of 1987 and the connected writ petitions in which the constitutional validity of the Expenditure Tax Act, 1987, was challenged on substantially similar grounds. In the present 'Act' the levy is on 'Chargeable-Receipts' while in the Expenditure Tax Act, 1987, it is on "Chargeable-Expenditure" which represents substantially the same items as to constitute 'Chargeable-Receipts' under the present 'Act'. We have disposed WP 1395 of 1987 and the connected matters by a separate Judgment.

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3. Sections 3, 5, 6 of the Act have a bearing on the application of the contentions urged in support of the challenge to the constitutionality of the Act. Section 3 reads:

> "3.(1) Subject to the provisions of sub-section (2) and subsection (3), this Act shall apply in relation to every hotel wherein the room charges for residential accommodation provided to any person at any time during the previous year are seventy-five rupees or more per day per individual.
>
> Explanation.--Where the room charges are payable otherwise than on daily basis or per individual, then the room charges shall be computed as for a day and per individual based on the period of occupation of the residential accommodation for which the charges are payable and the number of individuals ordinarily permitted to occupy such accommodation according to the rules and custom of the hotel.
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> (2) Where a composite charge is payable in respect of residential accommodation and food, the room charges included therein shall be determined in the prescribed manner.
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> (3) Where--
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> (i) a composite charge is payable in respect of residential accommodation, food, drink and other services, or any of them, and the case is not covered by the provisions of sub-section (2); or
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> (ii) it appears to the Income-tax Officer that the charges for residential accommodation, food, drink or other services are so arranged that the room charges are understated and the other charges are overstated,
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> the Income-tax Officer shall, for the purposes of subsection (1), determine the room charges on such reasonable basis as he may deem fit."
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> Section 5(1) provides:
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> "5.(1) Subject to the provisions of this Act, there shall be
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> charged on every person carrying on the business of a hotel in relation to which this Act applies, for every assessment year commencing on or after the 1st day of April, 198 1, a tax in respect of his chargeable receipts of the previous year at the rate of fifteen per cent of such receipts:
>
> Provided that Where such chargeable receipts include any charges received in foreign ex-

change, then, the tax payable by the assessee shall be reduced by an amount equal to five per cent of the charges (exclusive of the amounts payable by way of sales tax, entertainment tax, tax on luxuries or tax under this Act) so received in foreign exchange."

Explanation--omitted as unnecessary

Section 5(2)--omitted as unnecessary except explanation (ii)

Explanation (ii) to Section 5(2) provides:

"any food, drink or other services shall be deemed to have been provided on the premises of a hotel if the same is or are provided in the hotel or any place appurtenant thereto and where the hotel is situate in a part of building, in any other part of the building."

Section 6 provides:

"6(1) Subject to the provisions of this Act, the chargeable receipts of any previous year of an assessee shall be the total amount of all charges, by whatever name called, received by, or accruing or arising to, the assessee in connection with the provision of residential accommodation, food, drink and other services or any of them (including such charges from persons not provided with such accommodation) in the course of carrying on the business of a hotel to which this Act applies and shall also include every amount collected by the assessee by way of tax under this Act, sales tax, entertainment tax and tax on luxuries."

(2) For the removal of doubts, it is hereby declared that where any such charges have been included in the chargeable receipts of any previous year as charges accuring or arising to the assessee during that previous year,

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such charges shall not be included in the chargeable receipts of any subsequent previous year in which they are received by the assessee."

Other provisions are machinery-provisions, providing for the mode of assessment: levy and collection of the tax; for appeals; for offences: penalties; punishments, etc. The challenge to the 'Act' is, in the main, lack of legislative competence on the part of the Union Parliament to enact the law. Respondent-union seeks to support the legislation under and as referable to Entry 82 of List 1 i.e., Taxes on Income. The contentions raised in support of the petitions are these:

(a) That in pith and substance, the law is one imposing a tax on luxuries provided in Hotels and therefore, the law is one under Entry 62, List I of the 7th Schedule to the Constitution and outside the Union power;

(b) That, at all events, the Act is patently violative of Article 14 in that the basis of classification of hotels on the dividing line of room charges, though in itself an intelligible one, has, however, no nexus, let alone any rational nexus with the object of the law viz., to impose a tax on

income;

While hotels which collect room charges of Rs.75 per day from any individual in the previous year fail within the tax net, other hotels which have much higher gross-receipts are left out. The classification does not include all persons who, from the point of view of the objects of the Act, are similarly situated.

(c) That the law imposes unreasonable burden on the petitioners' freedom of business and constitutes a violation of Article 19(1)(g) of the Constitution.

4. Re: Contention (a):

Shri Palkhivala contended that the impugned law which seeks to impose a tax on what is styled 'Chargeable-receipts' which includes payments for residential accommodation, food, drink and other services at petitioners' hotels really brings to tax "luxuries"--an impost under Entry 62, List I, reserved to the States. Learned counsel submitted that the reliance by the Respondents on Entry 82, List I, to support the impost as a tax on income is wholly misconceived 887
inasmuch as, the concepts of "income" and "tax on income" have definite legal connotations crystallised by settled legislative-practice and do not admit of "gross-receipts" being treated as "income" for purposes of levy of tax under Entry 82, List I. Learned counsel submitted that neither the nomenclature given to the tax nor the standard by which it is measured can determine its true nature and the legislature cannot enlarge its power by choosing an appropriate name to the tax.

To show the essential characteristics of what is the concept of 'income' learned counsel referred to certain observations of the Supreme Court of the United Stated of America:

"... it becomes essential to distinguish between what is and what is not "income" as the term is there used; and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised.

The fundamental relation of "capital" to "income" has been much discussed by economists, the former being likened to the tree or the land, the latter to the fruit or the crop; the former depicted as a reservoir supplied from springs, the latter as the outlet stream, to be measured by its flow during a period of time."

[See: Eisner v. Macomber, 64 Law Ed. 521 at 528]

Learned counsel also relied upon the following observations of Gajendragadkar, J. in Navnitlal v. K.K.Sen, [1965] 1 SCR 909 at 915

"This doctrine does not, however, mean that ..... "

" Parliament can choose to tax as income an item which in no rational sense can be regard-

> ed as a citizen's income. The item taxed should rationally be capable of being considered as the income of a citizen ..... "

Learned counsel submitted that the grosS-receipts of a hotel received from a customer towards room charges, food, drink and other services provided at the hotel cannot constitute 'income' known as

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such to law. The submission, in substance are two fold: first that while the "Chargeable-Receipts" as conceived in the "Act" do not constitute 'income' for purposes, and within the meaning of Entry 82 list I, as the receipts cannot rationally be related to the concept of 'income'; and, secondly, that in pith and substance the levy is one under Entry 62 list I within the States' power. Learned counsel inviting attention to the following observations of Lord Salmond's in Governor-General in Council v. Province of Madras, [1945] FCR 179at 191

> " ..... Their Lordships do not doubt that the effect of these words is that, if the legislative powers of the Federal and Provincial legislatures, which are enumerated in List I and List II of the seventh schedule, cannot fairly be reconciled, the latter must give way to the former. But it appears to them that it is right first to consider whether a fair reconciliation cannot be effected by giving to the language of the Federal Legislative List a meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it, and equally giving to the language of the Provincial Legislative List a meaning which it can properly bear."

submitted that Entry 62 list II and Entry 82 list I would require to be reconciled accordingly.

5. Learned Attorney General, appearing for the Union of India sought to support the impost as a tax on income under Entry 82 of list I. It was urged that the word 'income' in that entry broadly indicates the topic or field of legislation and that it should not be read in a narrow and pedantic sense, but must be given its widest amplitude and should not be limited by any particular definition which a legislature might have chosen for the limited purposes of that legislation. The Statutory-definitions of and meanings given to 'income' are matters of legislative policy and do not exhaust the content of the legislative entry by the particular manner in which, and the extent to which, the statute has chosen to define that expression.

6. On a consideration of the matter, we arc of the opinion that the submission of the learned Attorney General as to the source of the legislative power to enact a law of the kind in question require to be accepted. The Word 'income' is of elastic import. In interpreting expressions in the legislative lists a very wide meaning should be given to the entries. In understanding the scope and amplitude of the expres-

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sion 'income' in Entry 82, list I, any meaning which fails to accord with the plenitude of the concept of 'income' in all its width and comprehensiveness should be avoided. The cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or restricted sense and that each general'word should be held to extend to all ancillary or subsidiary matters which can

fairly and reasonably be said to be comprehended in it. The widest possible construction, according to the ordinary meaning of the words in the entry, must be put upon them. Reference to legislative practice may be admissible in reconciling two conflicting provisions in rival legislative lists. In construing the words in a constitutional document conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.

In Navinchandra Mafatlal v. CIT, Bombay City, [1955] 1 SCR 829 the question was whether the provisions of section 12(b) of the Indian Income-tax Act, 1922, imposing a tax on capital gains was ultra-vires the powers of the federal legislature under Government of India Act, 1935. It was contended that taxes on income under Entry 54, list I, of the Government of India Act, 1935, did not embrace within its scope a tax on capital gains. This contention was rejected. This Court after referring to the following observations of the judicial committee in Kamakshya Narain Singh v. CIT, 1 ITR 5 13 (PC)

> "income it is true, is a word difficult and perhaps impossible to define in any precise general formula. It is a word of the broadest connotation."
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> proceeded to observe:
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> "What, then, is the ordinary, natural and grammatical meaning of the word "income"? According to the dictionary it means "a thing that comes in". (See Oxford Dictionary, Vol. V, page 162; Stroud, Vol. II, pages 14-16). In the United States of America and in Australia both of which also are English speaking countries the word "income" is understood in a wide sense so as to include a capital gain: Reference may be made to Eisner v. Macomber, Merchants' Loan & Trust Co. v. Smietunka, and United States v. Stewart, and Resch v. Federal Commissioner of Taxation.. In each of these cases very wide meaning was ascribed to the word "income" as its natural meaning. The relevant observations of learned
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> Judges deciding those cases which have been quoted in the judgment of Tendolkar J. quite clearly indicate that such wide meaning was put upon the word "income" not because of any particular legislative practice either in the United States or in the Commonwealth of Australia but because such was the normal concept and connotation of the ordinary English word "income". Its natural meaning embraces any profit or gain which is actually received. This is in consonance with the observations of Lord Wright to which reference has already been made."
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> (Emphasis Supplied)

Indeed, Navneet Lal's case, relied upon by Shri Palkhiwala, would itself conclude the point:

> "In dealing with this point, it is necessary to consider what exactly is the denotation of the word "income" used in the relevant Entry. It is hardly necessary to emphasise that the entries in the Lists cannot be read in a

narrow or restricted sense."

"But in considering the question as to whether a particular item in the hands of a citizen can be regarded as his income or not, it would be inappropriate to apply the tests traditionally prescribed by the Income-tax Act as such."

In Bhagwandas Jain v. Union of India, AIR 1981 SC 907 the question of includibility, for purposes of income-tax, of the assessee's notional income from a house property in the personal residential occupation of the assessee was assailed on the ground that it did not constitute 'income' for the purposes and within the meaning of Entry 82 of List I. The amplitude of the expression 'income' in Entry 82 of List I came in for consideration. In that context, this Court said:

"Even in its ordinary economic sense, the expression 'income' includes not merely what is received or what comes in by exploiting the use of a property but also what one saves by using it oneself. That which can be converted into income can be reasonably regarded as giving rise to income. The tax levied under the Act is on the income (though computed in an artificial way) from house property in the above sense and not on house property."

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The expression 'income' in Entry 82, List I cannot, therefore, be subjected, by implication, to any restriction by the way in which that term might have been deplayed in a fiscal statute. A particular statute enacted under the Entry, might, as a matter of fiscal policy, seek to tax some species of income alone. The definitions would, therefore, be limited by the consideration of fiscal policy of a particular statute. But expression 'income' in the legislative entry has always been understood in a wide and comprehensive connotation to embrace within it every kind of receipt or gain either of a capital nature or of a revenue nature. The 'taxable-receipts' as defined in the statute cannot be held to fall outside such a 'wider connotation' of 'income' in the wider constitutional meaning and sense of the term as understood in Entry 82, List I.

Contention (a), therefore,, fails.

7. Re: Contention (b) and (c):

We had an occasion to deal with a similar argument in the other batch of cases dealing with the constitutionality of the Expenditure Tax Act, 1987, where the 'chargeable-expenditure' incurred in a particular class of hotels alone was brought to tax, leaving the other hotels out. We have rejected the challenge to the constitutionality of the provisions of that Act based on Article 14 and 19(1)(g). There, hotels in which room charges were Rs.400 or more per day per person were alone brought under the Act. The differentia was held to be both intelligible and endowed with a rational nexus to the objects of the legislation viz., bringing to tax certain class of expenditure incurred at hotels which were legislatively presumed to, attract an economically superior class of clientale. Having regard to the wide latitude available to the Legislature in fiscal adjustments, the classification was found not violative of Article 14.

8. Similar contentions as to the unreasonableness of the restrictions which the imposition of the impugned tax was

said to bring about on the petitioners' freedom of trade and business and the adverse affect of this tax on a significant area of national economy generally and the Tourism Industry in particular have been considered in the petitions assailing the vires of the Expenditure Tax Act, 1987. It is now well settled that a very wide latitude is available to the legislature in the matter of classification of objects, persons and things for purposes of taxation. It must needs to be so, having regard to the complexities involved in the formulation of a taxation policy. Taxation is not now a
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mere source of raising money to defray expenses of Government. It is a recognised fiscal-tool to chief fiscal and social objectives. The defferentia of classification presupposes and proceeds on the premise that it distinguishes and keeps apart as a distinct class hotels, with higher economic status reflected in one of the indicia of such economic superiority. The presumption of constitutionality has not been dislodged by the petitioners by demonstrating how even hotels, not brought into the class, have also equal or higher chargeable-receipts and how the assumption of economic superiority of hotels to which the Act is applied is erroneous or irrelevant.

9. For the reasons stated in and following our Judgment in the said W.P. 1395/87 and connected cases contentions (b) and (c) are also held and answered against the petitioners.

10. In the result, for the foregoing reasons these petitions are dismissed. There will, however, be no order as to costs in these petitions.

G.N. Petitions dismissed.
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