PETITIONER:
NEW DELHI MUNICIPAL CORPORATION ETC.

Vs.

RESPONDENT:
STATE OF PUNJAB ETC.ETC.

DATE OF JUDGMENT: 19/12/1996

BENCH:
B.P. JEEVAN REDDY, A.S. ANAND, SUBHAS C.SEN, K.S.PAARIPOORNAN, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT OF HON'BLE B.P. JEEVAN REDDY,
A.S. ANAND, SUHAS C. SEN, K.S. PARIPOORHAN
AND B.N. KIRPAL, JJ. DELIVERED BY
B.P. JEEVAN REDDY.J.

Article 289(1) of the Constitution of India declares that the "property and income of a State shall be exempt from Union taxation". The question in this batch of appeals is whether the properties of the States situated in the Union Territory of Delhi are exempt from property taxes levied under the municipal enactments in force in the Union Territory of Delhi. The Delhi High Court has taken the view that they are. That view is challenged in these appeals preferred by the New Delhi Municipal Corporation and the Delhi Municipal Corporation.

Leave granted in the Special Leave Petitions.

Prior to 1911-12, a large part of the territory now comprised in the Union Territory of Delhi was a district of the Province of Punjab. By a proclamation dated September 17, 1912, the Governor General took the said territory under his immediate authority and management, to be administered as a separate Province to be known as the Province of Delhi. [This was in connection with the decision to shift the Capital from Calcutta to Delhi.] In the same year, the Delhi Laws Act, 1912 {1912 Act] was enacted. It came into force on and with effect from the Ist day of October, 1912. Schedule-A to the Act defined the "territory" covered by the new Province. Sections 2 and 3 of the 1912 Act provided inter alia that the creation of the new Province of Delhi shall not effect any change in the territorial application of any enactment. One of the Acts so applying to the territory comprised in the new Province of Delhi was the Punjab Municipal Act, 1911.

In the year 1915, another Act called "The Delhi Laws Act, 1915" [1915 Act] was enacted. Under this enactment, certain areas formerly comprised in the United Provinces of Agra and Oudh were included in and added to the Province of Delhi with effect from Ist April, 1915. Section 2 of the 1915 Act also contained a saving clause similar to Section 2 of the 1912 Act.

In the Constitution of India, 1950, as originally

enacted, the First Schedule contained four categories of States, viz., Part 'A', Part 'B', Part 'C' and Part 'D'. Part 'D' comprised only of Andaman and Nicobar Islands. The Chief Commissioner's Province of Delhi was one of the Part 'C' States. By virtue of the Part 'C' States [Laws] Act, 1950, the laws in force in the erstwhile Chief Commissioner's Province of Delhi were continued in the Part 'C' State of Delhi. This Act came into force on the 16th day of April, 1950.

In the year 1951, the Parliament enacted the Government of Part 'C' States Act, 1951. This Act contemplated that there shall be a legislature for each of the Part 'C' States specified therein which included Delhi. Section 21 stated that the legislature of a Part 'C' State shall have the power to make laws with respect to any of the matters enumerated in List-II and List-III of the Seventh Schedule to the Constitution. In the case of Delhi legislature, however, it was provided that it shall not have power to make laws with respect to matters specified therein including "the constitution and powers of municipal corporations and other local authorities, of improvement trusts and of water supply, drainage, electricity, transport and other public utility authorities in Delhi or in New Delhi". Section 22 provided that any law made by the legislature of a Part'C' State shall, to the extent of repugnancy with any law made by Parliament, whether enacted earlier or later, be void. It is necessary to notice the two distinctive features of the legislatures of Part 'C' States; not only were they created under an Act made by Parliament, the laws made by them even with respect to any of the matters enumerated in List-II were subject to any law made by the Parliament. In case of repugnancy, the law made by legislature was to be of no effect. So far as Delhi is concerned, the Parliament placed certain additional fetters referred to in Section 26.

It is stated that in the year 1952, a legislature was created for Delhi which functioned upto November 1, 1956 when the Government of Part 'C' States Act, 1951 was repealed by Section 130 of the States' Reorganisation Act, 1956. While repealing the Government of Part 'C' States Act, 1951, the States' Reorganisation Act, 1956 did not provide for the creation or continuance of legislatures for the Part 'C' States. The legislature constituted for Delhi thus came to an end.

By Constitution Seventh [Amendment] Act, 1956, some of the Part 'C' States ceased to exist, having been merged in one or the other State while some others continued - designated as Union territories. The categorisation of the States into Parts A,B,C and D was done away with. In its place, the First Schedule came to provide only two categories, viz., "(i) the States" and "(ii) the Union territories". The Seventh [Amendment] Act specified six Union territories, viz., Delhi, Himachal Pradesh, Manipur,Tripura, Andaman and Nicobar Islands and Laccadiv Minicoy and Amindivi Islands. Delhi thus became a Union territory. With the inclusion of Goa and other former Portugese territories in the Union, the number of Union territories grew to eight by 1962. In that year, the Constitution Fourteenth [Amendment} Act, 1962 was enacted. Pondicherry was added as a Union territory as S1.No.9. More important, the said Amendment Act introduced Article 239-A. The new Article provided that "Parliament may by law create for any of the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry, a body, whether elected or partly nominated, and partly

elected to function as a legislature for the Union territory, or a council of ministers, or both with such constitutional powers and functions in each case, as may be specified in the law" [Emphasis added]. It is significant to note that the said article did not provide for creation of a legislature or a council of ministers, as the case may be, for the Union Territory of Delhi.

Pursuant to Article 239-A, Parliament enacted the Government of Union Territories Act, 1963 [1963 Act]. Obviously, this Act applied only to those Union territories as were referred to in Article 239-A. It did not apply to Delhi. This Act provided for creation of Legislative Assemblies for the Union territories mentioned in Article 239-A and the extent of their legislative power. Section 3(1) declared that "there shall be a Legislative Assembly for each Union territory" whereas Section 18(1) provided that "subject to the provisions of this Act, the Legislative Assembly of a Union territory may make laws for the whole or any part of the Union territory with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution insofar as any such matter is applicable in relation to Union territories." Sub-section (2) of Section 18 read with Section 21, however, conferred over-riding power upon the Parliament to make any law with respect to any matter for a Union territory or any part thereof. In case of inconsistency between a law made by Parliament and a law made by the legislature of any of these Union territories, the latter was to be void to the extent of repugnancy, notwithstanding whether the Parliamentary law was earlier or subsequent in point if time. Section 19 of the Act exempted the property of the Union from all taxes imposed by or under any law made by the Legislative Assembly of a Union territory except insofar as is permitted by a law made by Parliament.

By the Constitution Sixty Ninth [Amendment] Act, 1991, Article 239-AA was introduced in Part-VIII of the Constitution . This Article re-named the Union Territory of Delhi as the "National Capital Territory of Delhi" and provided that there shall be a Legislative Assembly for such National Capital Territory. The Legislative Assembly so created was empowered by clause (3) of the said Article "to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List, insofar as any such matter is applicable to Union territories, except, matters with respect to Entries 1,2 and 18 of the State List and Entries 64,65 and 66 of that List insofar as they relate to the said Entries 1, 2 and 18". Clause (3) further provided that the power conferred upon the Legislative Assembly of Delhi by the said article shall not derogate from the powers of the Parliament "to make laws with respect to any matter for a Union territory or any part thereof". It further provided that in the case of repugnancy, the law made by Parliament shall prevail, whether the Parliamentary law is earlier or later to the law made by the Delhi Legislative Assembly. The Parliament is also empowered to amend, vary or repeal any law made by the Legislative Assembly. Article 239-AA came into force with effect from February 1, 1991. Pursuant to the article, the Parliament enacted the Government of National Capital Territory of Delhi Act, 1991. It not only provided for constitution of a Legislative Assembly but also its powers as contemplated by Article 239-AA. This Act too came into force on February 1, 1991. The subordinate status of the Delhi Legislature is too obvious to merit any emphasis.

So far as the MUNICIPAL LAWS GOVERNING THE TERRITORY OF DELHI is concerned, the following is the position: by Delhi Laws Act, 1912, referred to supra, the Punjab Municipal Act continued to govern the territory comprised in the Chief Commissioner's Province of Delhi. The Act is stated to have been extended to Part 'C' State of Delhi under a notification issued under Part 'C' State [Laws] Act, 1950. In the impugned judgment, the High Court has stated the following facts:

> "The various Punjab enactments which were then in force in the territory of Delhi continued to be in force by virtue of the Delhi Laws Act of 1912 and later by the Part C States Laws Act of 1950 and the Union Territories Laws Act of 1950. The application and the later extension of this law to the Union Territory of Delhi was, therefore, not by the authority of the State Legislature but that of the Central Legislature, that is, the Central Legislature under the Government of India Act followed by the Central legislature under the Constitution of India, that is, the Parliament of India..... The Delhi Laws Act 1912, the Union Territories [Laws] Act, 1950 as indeed the Part C States [Laws] Act, 1950 were all central statutes and when a provincial Act or an Act which may be treated as a provincial Act or State Act was extended to a territory by a particular legislature, it would be deemed to be the enactment of such a legislature and this principle is clearly recognised by the Supreme Court in the case of Mithan Lal v. The State of Delhi and another, 1959 S.C.R.445...It is thus clear that on the extension of the Act to the Union Territory of Delhi by the various Central Legislative enactments referred to above, it became a Central Act or an Act of Parliament as if made by virtue of power of Parliament to legislate for the Union territory of Delhi by virtue of clause (4) of Article 246 of the Constitution of India."

The correctness of the above factual statement has not been disputed by anyone before us. Indeed, the contention of Sri P.P. Rao, who led the argument on behalf of the respondents-State governments was to the same effect. He contended that inasmuch as the Punjab Municipal Act has been extended to Part 'C' State of Delhi Under the Part 'C' State [Laws] Act, 1950 with effect from April 16, 1950, it is a post-constitutional enactment made by Parliament and hence the taxes levied thereunder constitute Union taxation. He placed strong reliance upon the decision in Mithan Lal v. The State of Delhi & Anr. [1959 S.C.R.445] and also certain observations in T.M. Kanniyan v. Income Tax Officer, Pondicherry & Anr. [1968 (2) S.C.R.103] in that behalf. It

is obvious that this was also the case of the State governments before the Delhi High Court. We, therefore, proceed on the basis that the Punjab Municipal Act was extended to Part 'C' State of Delhi under and by virtue of the Part 'C' State of Delhi under and by virtue of the Part 'C' States [Laws] Act, 1950 which came into of the force on April 16, 1950.

By virtue of the Constitution Seventh [Amendment] Act, 1956, the Part 'C' State of Delhi was designated as a Union Territory. The Punjab Municipal Act continued to govern the Union Territory of Delhi. In the year 1957, the Parliament enacted the Delhi Municipality Act, 1957. The First Schedule to the Act specified the boundaries of New Delhi within which area the Punjab Municipal Act continued to be in force. The remaining area was designated as the Delhi Municipal Corporation area and the Delhi Municipal Corporation Act, 1957 was made applicable to it. In the year 1994, the Parliament enacted the new Delhi Municipal Corporation Act, 1994 repealing Punjab Municipal Act, 1911. This Act has been brought into force with effect from May 25, 1994. It is, however, confined in its application to the area comprised in the New Delhi Municipal Corporation. Delhi and New Delhi are thus governed by different municipal enactments. The Delhi Municipal Corporation Act and New Delhi Municipal Corporation Act are, without a doubt, post-constitutional laws enacted by Parliament.

PART - II

Article 1(1) of the Constitution of India declares that India, i.e., Bharat, shall be a Union of States. As amended by the Constitution Seventh [Amendment] Act, clauses (2) and (3) Article 1 read:

> "(2) The States and the territories thereof shall be as specified in the First Schedule.
> (3) The territory of India shall comprise--
> (a) the territories of State;
> (b) the Union territories specified in the First Schedule; and
> (c) such other territories as may be acquired."

Clause (30) in Article 366 defines the "Union territory" in the following words:

> "'Union territory' means any Union Territory specified in the First Schedule and includes any other territory comprised with the territory of India but not specified in that Schedule."

The expression "State" is not defined in the Constitution. It is defined in the General Clauses act, 1397 which is made applicable to the interpretation of the Constitution by Article 367. As on the date of the commencement of the Constitution, clause (58) in Section 3 of the General Clauses Act defined "State" in the following words"

> "(58). 'State' shall mean a Part A State, a Part B State or a Part C State."

The said definition was amended by the adaptation of Laws Order No.1 of 1956 issued by the President in exercise of the power conferred upon him by Article 372-A of the Constitution introduced by the Constitution Seventh [Amendment] Act. The amended definition reads thus:

> "(58) 'States'--

> (a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1958, shall mean a Part A State, a Part B State or a Part C State; and
> (b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory."

The definitions in the General Clauses Act, it is necessary to remember, have to be read and applied subject to the opening words in Section 3, viz., "unless there is anything repugnant in the subject or context....".

Part-XI of the Constitution contains provision governing relations between the Union and the States. This part is divided into two chapters, viz., Chapter-I containing Articles 245 to 255 and Chapter-II containing Articles 256 to 263. Chapter-I carries the title "legislative relations" while Chapter-II is called "Administrative relations". Article 245, which carries the heading/marginal note "The extent of laws made by Parliament and the Legislature of States" contains two clauses. Clause (1) says that subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State." Article 246 is of crucial relevance herein and must, therefore, be set out in its entirety:

> "246. subject-matter of laws made by Parliament and by the Legislatures of States.-(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule to the Constitution referred to as the 'Union List').
> (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1) the legislature of any State...also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule to the Constitution referred to as the 'Concurrent List').
> (3) Subject to clauses (1) and (2), the Legislature of any State....has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule to the Constitution referred to as the 'State List').
> (4) Parliament has power to make laws with respect to any matter for any of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

[Emphasis added]

It is relevant to point out that in clauses (2) and (3), as originally enacted - and upto the Seventh [Amendment] Act - the expression "State" was followed by the words "specified in Part-A or Part-B of the First Schedule". Similarly, the words, "in a State" in clause (3), were followed by the words "in Part-A or Part-B of the First Schedule". In other words, clauses (2) and (3) of Article 246 expressly excluded Part 'C' and Part 'D' States from their purview. The position is no different after the Constitution Seventh [Amendment] Act, which designated the Part-C States as Union territories. They ceased to be states. As rightly pointed out by a Constitution Beach of this Court in T.M. Kanniyan, the context of Article 246 excludes Union territories from the ambit of the expression "State" occurring therein. As a matter of fact, this is true of Chapter-I of Part-XI of the Constitution as a whole. It may be remembered that during the period intervening between The Constitution Seventh [Amendment] Act, 1962, there was no provision for a legislature for any of the Union territories. Article 239-A in Part-VII - "The Union Territories" - [which before the Seventh Amendment was entitled "The States in Part-C of the First Schedule"] introduced by Constitution Fourteenth [Amendment] Act did not itself create a legislature for Union territories; it merely empowered the Parliament to create them for certain specified Union territories [excluding Delhi] and to confer upon them such powers as the Parliament may think appropriate. Thus, the legislatures created for certain Union territories under the 1963 Act were not legislatures in the sense used in Chapter-III of Part-IV of the Constitution, but were mere creatures of the Parliament - some sort of subordinate legislative bodies. They were unlike the legislatures contemplated by Chapter-III of Part-VI of the Constitution which are supreme in the field allotted to them, i.e., in the field designated by List-II of the Seventh Schedule. The legislatures created by the 1963 Act for certain Union territories owe their existence and derive their powers from the Act of the Parliament and are subject to its over-riding authority. In short, the State legislatures contemplated by Chapter-I of Part-XI are the legislatures of States referred to in Chapter-III of Part-VI and not the legislatures of Union territories created by the 1963 Act. Union territories are not States for the purposes of Part-XI [Chapter-I] of the Constitution.

Article 248 confers the residuary legislative power upon the Parliament. The said power includes the power to make any law imposing a tax not mentioned in either List-II or List-III. Articles 249, 250, 252 and 357 confer upon the Parliament power to make laws with respect to matters enumerated in List-II in certain exceptional situations, which may, for the sake of convenience, be called a case of "substitute legislation". It would be enough to refer to the marginal headings of these four Articles. They read:

> "249. Power of Parliament to legislate with respect to a matter in the State in the national interest.
>
> 250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.
>
> 252. Power of Parliament to legislate for two or more States by

consent and adoption of such legislation by any other State.
357. Exercise of legislative powers under Proclamation issued under article 356."

We may now set out ARTICLE 285 AND 289:

"285. exemption of property of the Union from State taxation.-- (1) The property of the Union Shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by an authority within a State.
(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.
289. Exemption of property and income of a State from Union taxation.-- (1) The property and income of a State shall be exempt from Union taxation.
(2) Nothing in clause (1) shall prevent the Union from imposing or authorising the imposition of, any tax to such extent, if any, as Parliament many by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business or any income accruing in connection therewith.
(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government."

A federation pre-supposes two coalescing units: the Federal Government/Centre and the States/Provinces. Each is supposed to be supreme in the sphere allotted it/them. Power to tax is an incident of sovereignty. Basic premise is that one sovereign cannot tax the other sovereign. Article 285 and 289 manifest this mutual regard and immunity but in a manner peculiar to our constitutional scheme. While the immunity created in favour of the Union is absolute, the immunity created in favour of the States is a qualified one. We may elaborate: Article 285 says that "the property of the Union shall...be exempt from all tax imposed by a State or by any authority within a State" unless, of course, Parliament itself permits the same and to the extent permitted by it. [Clause (2) of Article 285 saves the existing taxes until the Parliament otherwise provides, but this is only a transitional provision.] The ban, if it can

be called one, is absolute and emphatic in terms. There is no way a State legislature can levy a tax upon the property of the Union. So far as Article 289 is concerned, the position is different. Clause (1), had it stood by itself, would have been similar to clause (1) of Article 285. It says that "the property-and income-of a State shall be exempt from Union taxation". But it does not stand alone. It is qualified by clause (2) and clause (3) is an exception to clause (2). But before we refer to clause (2), a word with respect to the meaning and ambit of the expression "property" occurring in this article. Expression "property" is wide enough to take in all kinds of property. In Re. the Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944 [1964 (3) S.C.R.787], all the learned Judges [both majority and dissenting] were agreed that the expression must be understood in its widest sense. There is no reason to put a restricted construction thereon. Indeed, there is no controversy about this proposition before us. Coming to clause (2), it says that the ban imposed by clause (1) shall not prevent the Union from imposing or authorising the imposition of any tax to such extent, if any, as the Parliament may by law provide, in respect of (a) trade or business of any kind carried on by or on behalf of the Government of a State or (b) any operations connected with such trade or business or (c) any property used or occupied for the purposes of such trade or business or (d) any income accruing or arising in connection with such trade or business. [The inspiration for this provision may perhaps be found in certain United States' decision on the question of the power of the units of a federal polity to tax each others' properties.] Clause (3) empowers the Parliament to declare, by law, which trade or business or any class of trades or businesses is incidental to the ordinary functions of the Government, whereupon the trades/businesses so specified go out of the purview of clause (2).

It would be appropriate at this state to notice the ratio of two judgments of this Court dealing with Article 289. In Re: Sea Customs Act, a Special Bench of nine learned Judges, by a majority, laid down the following propositions: (a) clause (1) of Article 289 provides for exemption of property and income of the States only from taxes imposed directly upon them; it has no application to indirect taxes like duties of excise and customs; (b) duties of excise and customs are not taxes on property or income; they are taxes on manufacture/production of goods and on import/export of goods, as the case may be, and hence, outside the purview of clause (1) of Article 239. The other decision in Andhra Pradesh State Road Transport Corporation v. The Income Tax Office [1964 (7) S.C.R.17] is the decision of a Constitution Bench. The main holding in this case is that income of the A.P.S.R.T.C. is not the income of the State of Andhra Pradesh since the former is an independent legal entity and hence, Article 289(1) does not avail it. At the same time, certain observations are made in the decision regarding the scheme of Article 289. It is held that clause (2) is an exception of a proviso to clause (1) and as such whatever is included in clause (2) must be deemed to be included in clause (1). In other words, the trading and business activities referred to in clause (2) are included in clause (1) and precisely for this reason the exception in clause (2) was provided. Clause (3), it was held, is an exception to clause (2). In the words of the Constitution Bench:

> "The scheme of Art.289 appears to be that ordinarily, the income

derived by a State both from government and non-governmental or commercial activities shall be immune from income-tax levied by the Union, provided, of course, the income in question can be said to be income of the State. This general proposition flows from clause (1).

Clause (2) then provides an exception and authorises the Union to impose a tax in respect of the income derived by the Government of a State from trade or business carried on by it, or on its behalf: that is to say, the income from trade or business carried on by the Government of a State or on its behalf which would not have been taxable under clause (1), can be taxed, provided a law is made by Parliament in that behalf. If clause (1) had stood by itself, it may not have been easy to include within its purview income derived by a State from commercial activities, but since clause (2), in terms, empowers Parliament to make a law levying a tax on commercial activities carried on by or on behalf of a State, the conclusion is inescapable that these activities were deemed to have been included in cl. (1) and that alone can be the justification for the words in which cl. (2) has been adopted by the Constitution. It is plain that cl.(2) proceeds on the basis that but for its provision, the trading activity which is covered by it would have claimed exemption from Union taxation under cl.(1). That is the result of reading clauses (1) and (2) together.

Clause (3) then empowers Parliament to declare by law that any trade or business would be taken out of the purview of cl.(2) and restored to the area covered by cl.(1) by declaring that the said trade or business is incidental to the ordinary functions of government. In other words, cl.(3) is an exception to the exception prescribed by cl.(2). Whatever trade or business is declared to be incidental to the ordinary functions of government, would then be exempt from by cl.(2). and would then be exempt from Union taxation. That, broadly stated, appears to be the result of the scheme adopted by the three clause of Art.289."

PART - III

The crucial question arising in this batch of appeals pertains to the meaning of the expression "Union taxation" occurring in Article 289(1). According to the appellants-municipal corporations, the property taxes levied either by Punjab Municipal Act, 1911, as extended to and applicable in the New Delhi Municipal Corporation area or by the Delhi Municipal Corporation Act, 1957 applicable to the Delhi Municipal Corporation area do not fall within the ambit of the expression "Union taxation". According to them, "Union taxation" means levy of any of the taxes mentioned in the Union List [List-I in the Seventh Schedule to the Constitution]. May be, it may also take in levy of Stamp duties [which is the only taxation entry in the Concurrent List] by Parliament, but by no stretch of imagination, they contend, can levy of any tax provided in the State List [List-II in the Seventh Schedule] can be characterised as Union taxation. Merely because the Parliament levies the tax provided in List-II, such taxation does not amount to Union taxation. There are many situations where the Parliament is empowered by Constitution to make laws with respect to matters enumerated in List-II. For example, Articles 249, 250, 252 and 357 empower the Parliament to make laws with respect to matters enumerated in List-II in certain specified situations. If any taxes are levied by Parliament while legislating under any of the above articles, such taxation cannot certainly be termed as "Union taxation". It would still be State taxation. The levy of taxation by Parliament within the Union territories is of a similar nature. Either because the Union territory has no legislature or because the Union territory has a legislature but the Parliament chooses to act in exercise of its over-riding power, the taxes levied by a Parliamentary enactment within such Union territories would not be Union taxation. It is relevant to notice, the learned counsel contend, that the legislatures of the Union territories referred to in Article 239-A as well as the legislature of Delhi created by Article 239-AA are empowered to make laws with respect to any of the matters enumerated in List-II and List-III of the Seventh Schedule, just like any other State legislature; any taxes levied by these legislatures cannot certainly be characterised as "Union taxation". Merely because the Parliament has been given an over-riding power to make a law with respect to matters enumerated even in List-II, in suppression of the law made by the legislature of the Union territory, it does not follow that the law so made is any the less a law belonging to the sphere of the State. The test in such matters - it is contended - is not who makes the law but to which matter in which List does the law in question pertain. Clause (4) of Article 246 specifically empowers the Parliament to make laws with respect to any matter enumerated in List-II in the case of Union territories. This shows that even the said clause recognises the distinction between List-I and List-II in the Seventh Schedule, it is submitted.

The learned Attorney General appearing for the Union of India supported the contentions of the appellant-municipal corporations.

On the other hand, the contentions of the learned counted for the respondents are to the following effect: a Union territory is not a "State" within the meaning of Article 246. Even prior to the Seventh [Amendment] Act, Part ‘C’ States, or for that matter Part-D States, were not within the purview of the said article. The division of the legislative powers provided by clauses (1), (2) and (3) of article 246 has no relevance in the case of a Union

territory. Union territory, as the name itself indicates, is a territory belonging to Union. A Union territory has no legislature as contemplated by Part-VI of the Constitution. A Union territory may have a legislature or may not. Even if it is bestowed with one, it is not by virtue of the Constitution but by virtue of a Parliamentary enactments, e.g., Government of Part 'C' States Act, 1951 [prior to November 1, 1956] and Government of Union Territories Act, 1963. Even the legislature provided for Delhi by Article 239-AA of the Constitution with effect from February 1, 1992 is not a legislature like that of the States governed by Part-VI of the Constitution. Not only the powers of he legislature are circumscribed by providing that such legislature cannot make laws with reference to certain specified entries in List-II but any law made by it even with reference to a matter enumerated in the State List is subject to the law made by Parliament. In any event, the position obtaining in Delhi after February 1, 1992 is not relevant in these appeals since these appeals pertain to a period anterior to the said date. The Punjab Municipal Act, 1911[as extended and applied to the Union Territory of Delhi by Part 'C' States [Laws] Act] and the Delhi Municipal Corporation Act, 1957 are Parliamentary laws enacted under and by virtue of the legislative power vested in Parliament by clause (4) of Article 246. The taxes levied by the said enactments constitute "Union taxation" within the meaning of Article 289(1) and hence, the properties of the States in the Union Territory of Delhi are exempt therefrom. Reliance is placed upon the majority opinion in Re.: Sea Customs Act in support of the above propositions. It is submitted that there are no reasons to take a different view now.

On a consideration of rival contentions, we are inclined to agree with the respondents-States. The States put together do not exhaust the territory of India. There are certain territories which do not form part of any State and yet are the territories of the Union. That the States and Union territories of the Union. That the States and Union territories are different entities, is evident from clause (2) of Article 1 - indeed from the entire scheme of the Constitution. Article 245(1) says that while Parliament may make laws for the whole or any part of the territory of India, the legislature of a State may make laws for the whole or any part of the State. Article 1(2) read with Article 245(1) shows that so far as the Union territories are concerned, the only law-making body is the Parliament. The legislature of a State cannot make any law for a Union territory; it can make laws only of that State. Clauses (1), (2) and (3) of Article 246 speak of division of legislative powers between the Parliament and State legislatures. This division is only between the Parliament and the State legislatures, i.e., between the Union and the States. There is no division of legislative powers between the Union and Union territories. Similarly, there is no division of powers between States and Union territories. So far as Union territories are concerned, it is clause (4) of Article 246 that is relevant. It says that the Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. Now, the Union territory is not included in the territory of any State. If so, Parliament is the only law-making body available for such Union territories. It is equally relevant to mention that the Constitution, as originally enacted did no provided for a legislature for any of the Part 'C' States [or, for that matter, Part'D' States]. It is only by virtue

of the Government of Part 'C' States Act, 1951 that some Part 'C' States including Delhi got a legislature. This was put an end to by the States Reorganisation Act, 1956. In 1962, the Constitution Fourteenth [Amendment] Act did provide for creation/constitution of legislatures for Union territories [excluding, of course, Delhi] but even here the Constitution did not itself provide for legislatures for those Part'C' States; it merely empowered the Parliament to provide for the same by making a law. In the year 1991, the Constitution did provide for a legislature for the Union Territory of Delhi [National Capital Territory of Delhi] by Sixty-Ninth [Amendment] Act [Article 239AA] but even here the legislature so created was not a full fledged legislature not did have the effect of - assuming that it could - lift the National Capital Territory of Delhi from Union territory category to the category of States within the meaning of Chapter-I of Part-XI of the Constitution . All this necessarily means that so far as the Union territories are concerned, there is not such thing as List-I, List-II or List-III. The only legislative body is Parliament - or a legislative body created by it. The Parliament can make any law in respect of the said territories - subject, of course, to constitutional limitations other than those specified in Chapter-I of Part-XI of the Constitution. Above all, Union Territories are not "States" as contemplated by Chapter-I of Part-XI; they are the territories of the Union falling outside the territories of the States. Once the Union territory is a part of the Union and not part of any State, it follows that any tax levied by its legislative body is Union taxation. Admittedly, it cannot be called "State taxation"- and under the constitutional scheme, there in no third kind of taxation. Either it is Union taxation or State taxation. This is also the opinion of the majority in Re.:Sea Customs Act. B.P. Sinha, C.J., speaking on behalf of himself, P.B. Gajendragadkar, Wanchoo and Shah, JJ. - while dealing with the argument that in the absence of a power in the Parliament to levy taxes on lands and buildings [which power exclusively belongs to State legislatures, i.e., Item 49 in List-II], the immunity provided by Article 289(1) does not make any sense - observed thus:

> "It is true that List I contains no tax directly on property like List II, but it does not follow from that the Union has no power to impose a tax directly on property under any circumstances. Article 246(4) gives power to Parliament to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. This means that so far as Union territories are concerned Parliament has power to legislate not only with respect to items in List I but also with respect to items in List I but also with respect to items in List II. Therefore, so far as Union territories are concerned, Parliament has power to impose a tax directly on property as such. It cannot therefore be said that

> the exemption of States' property from Union taxation directly on property under Art.289(1) would be meaningless as Parliament has no power to impose any tax directly on property. If a State has any property in any Union territory that property would be exempt from Union taxation on property under Art.289(1). The argument therefore that Art.289(1) cannot be confined to tax directly on property because there is no such tax provided in List I cannot be accepted."

Rajagopala Iyyengar,J. agreed with Sinha, CJ. on this aspect, as indeed on the main holding. The decision in Re.:Sea Customs Act has been rendered by a Bench of nine learned Judges. The decision of the majority is binding upon us and we see no reason to take a different view. Indeed, the view taken by the majority accords fully with the view expressed by us hereinabove.

Now, so far as the analogy of laws made by Parliament under Articles 249, 250, 252 and 357 are concerned, we think the analogy is odious. Articles 249, 250 and 357 are exceptional situations which call for the Parliament to step in and make laws in respect of matters enumerated in List-II and which laws have effect for a limited period. Article 252 is a case where the State legislatures themselves invite the Parliament to make a law on their behalf. These are all situations of what may be called "substitute legislation" - either because of a particular situation or because there is no legislature at a given moment to enact laws. As against these provisions, clause (4) of Article 246 is a permanent features and laws made thereunder are laws made in the regular course.

In this connection, it is necessary to remember that all the Union territories are not situate alike. There are certain Union territories [I.e., Andaman and Nicobar Islands and Chandigarh] for which there can be no legislature at all - as on today. there is a second category of Union territories covered by Article 239-A [which applied to Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry - now, of course, only Pondicherry survives in this category, the rest having acquired Statehood] which have legislatures by courtesy of Parliament. The Parliament can, by law, provide for constitution of legislatures for these States and confer upon these legislatures such powers, as it may think appropriate. The Parliament had created legislatures for these Union territories under the "The Government of Union Territories Act, 1963", empowering them to make laws with respect to matters in List-II and List-III, but subject to its over-riding power. The third category is Delhi. It had no legislature with effect from November 1, 1956 until one has been created under and by virtue of the Constitution Sixty-Ninth [Amendment] Act, 1991 which introduced Article 239-AA. We have already dealt with the special features of Article 239-AA and need not repeat it. Indeed, a reference to Article 239-B read with clause (8) of Article 239-AA shows how the Union Territory of Delhi is in a class by itself but is certainly not a State within the meaning of Article 246 or Part-VI of the Constitution. In us, it is also a territory governed by clause (4) of Article 246. As pointed out by the learned Attorney General, various Union territories are in different stages of evolution. Some have already acquired Statehood and some may

be on the way to it. The fact, however, remains that those surviving as Union territories are governed by Article 246(4) notwithstanding the differences in their respective set-ups - and Delhi, now called the "National Capital Territory of Delhi", is yet a Union territory.

It would be appropriate at this state to refer to a few decisions on his aspect. In T.M. Kanniyan, a Constitution Bench speaking through Bachawat, J. had this to say:

> "Parliament has plenary power to legislate for the Union territories with regard to any subject. With regard to Union territories, there is no distribution of legislative power. Article 246(4) enacts that 'Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.' In R.K. Sen v. Union [1966] 1 S.C.R.480, it was pointed out that having regard to Art.367, the definition of 'State' in s.3(58) of the General Clauses Act. 1897 applies for the interpretation of the Constitution unless there is anything repugnant in the subject or context. Under that definition, the expression 'State' as respect any period after the commencement of the Constitution (Seventh Amendment) Act, 1956 'shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory'. But this inclusive definition is repugnant to the subject and context of Art.246. There, the expression 'State' means the States specified in the First Schedule. There is a distribution of legislative power between Parliament and the legislatures of the States. Exclusive power to legislate with respect to the mattes enumerated in the State List is assigned to the legislatures of the State established by Part VI. There is no distribution of legislative power with respect to Union territories. That is why Parliament is given power by Art.246(4) to legislate even with respect to matters enumerated in the State List. If the inclusive definition of 'State' in s.3(58) of the General Clauses Act were to apply to Art.246(4), Parliament would have no power to legislate for the Union territories with respect to matters enumerated in the State List and until a legislature empowered to legislate on those matters is created under

> Art.239A for the Union territories, there would be no legislature competent to legislate on those matter is created under Art.239A for the Union territories, there would be no legislature competent to legislate on those matters; moreover, for certain territories such as the Andaman and Nicobar Islands no legislature can be created under Art.239A, and for such territories there can be no authority competent to legislate with respect to matter enumerated in the State List. Such a construction is repugnant to the subject and context to Art.246. It follows that in view of Art.246(4), Parliament has plenary powers to make laws for Union territories on all matters. Parliament can by law extend the Income-tax Act, 1961 to a Union territory with such modifications as it thinks fit. The President in the exercise of his powers under Art.240 can make regulations which have the same force and effect as an Act of Parliament which applies to that territory. The President can therefore by regulation made under Art.240 extend the Income-tax Act, 1961 to that territory with such modifications as he thinks it.
>
> The President can thus make regulations under Art.240 with respect to a Union territory occupying the same field on which Parliament can also make laws. We are not impressed by the argument that tush overlapping of powers would lead to a clash between the President and Parliament. The Union territories are centrally administered through the President acting through an administrator. In the cabinet system of Government the President acts on the advice of the Ministers who are responsible to Parliament....It is not necessary to make any distribution of income-tax with respect to Union territories as those territories are centrally administered through the President."
>
> [emphasis added]

We respectfully agree with the above statement of law.

We do not think it necessary to refer to or discuss the propositions laid down in Management of Advance Insurance Co.Ltd. V. Shri Gurudasmal & Ors. [1970 (3) S.C.R.881] holding that the amended definition of "State" in clause (58) of Section 3 of the General Clauses Act applies to interpretation of Constitution by virtue of Article 372-A nor with the contrary proposition in the dissenting judgment of Bhargava, J. in Shiv Kirpal Singh v. Shri V.V. Giri [1971

(2) S.C.R.197 at 313]. It is enough to say that context of Article 246 - indeed of Chapter - I in Part XI - excludes the application of the said amended definition.

In Mithanlan [Supra], T.L. Venkatrama Iyer, J., speaking for the Constitution Bench, while dealing with an argument based on Article 248(2) observed:

> "That Article has reference to the distribution of legislative powers between the Centre and the States mentioned in Parts A and B under the three Lists in Sch.VII, and it provided that in respect of matters not enumerated in the Lists including taxation, it is Parliament that has power to enact laws. It has no application to Part C States for which the governing provision is Art, 246(4). Moreover, when a notification is issued by the appropriate Government extending the law of a Part A State to a Part C State, the law so extended derives its force in the State to which it is extended from 6.2 of the part C States (Laws) Act enacted by Parliament. The result of a notification issued under that section is that the provisions of the law which is extended become incorporated by reference in the Act itself, and therefore a tax imposed thereunder is a tax imposed by Parliament. There is thus no substance in this contention."
>
> [Emphasis added]

To the same effect is the decision of a Division Bench in Satpal & Co. v. Lt. Governor [1979 (3) S.C.R 651].

It is then argued for the appellants that if the above view is taken, it would lead to an inconsistency. The reasoning in this behalf runs thus: a law made by the legislature of a Union territory levying taxes on lands and buildings would be "State taxation", but if the same tax is levied by a law made by the Parliament, it is being characterised as "Union taxation"; this is indeed a curious and inconsistent position, say the learned counsel for the appellants. In our opinion, however, the very premise upon which this argument is urged is incorrect. A tax levied under a law made by a legislature of a Union territory cannot be called "State taxation" for the simple reason that Union territory is not a "State" within the meaning of Article 246 [or for that matter, Chapter-I of Part-XI] or Part-VI or Article 285 to 289.

Lastly, we may refer to the circumstance that Delhi Municipal Corporation Act, 1957 was enacted by Parliament. Hence, so far as the Delhi Municipal Corporation area is concerned, the taxes are levied under and by virtue of a Parliamentary enactment. So far as the New Delhi Municipal Corporation area is concerned, the taxes were levied till 1994 under the Punjab municipal Act, 1911 as extended and applied by the Part 'C' State [Laws] Act, 1950 enacted by Parliament. It is held by this Court in Mithanlal that extension of an Act to an area has the same effect as if that Act has been made by the extending legislature for the area. The Court Said:

> "Moreover, when a notification is

> issued by the appropriate Government extending the law of a Part A State to a Part C State, the law so extended derives its force in the State to which it is extended from s.2 of the Part C States (Laws) Act enacted by Parliament. The result of a notification issued under that section is that the provisions of the law which is extended become incorporated by reference in the Act itself, and therefore a tax imposed thereunder is a tax imposed by Parliament. There is thus no substance in this contention."

[Also see T.M. Kanniyan [1968 (2) S.C.R.203 at 108].]

It must accordingly be held that with effect from 1950, it is as if the property taxes are levied by a Parliamentary enactment. In 1994, of course, Parliament itself enacted the New Delhi Municipal Corporation Act [with effect from May 25, 1994] repealing the Punjab Municipal Act. Taxes levied under these enactments cannot but be Union taxation - Union taxation in a Union Territory.

For all the above reason, we hold that the levy of taxes on property by the Punjab Municipal Act, 1911 [as extended to Part 'C' States of Delhi by Part 'C' States (Laws) Act, 1950], the Delhi Municipal Corporation Act, 1957 and the New Delhi Municipal Corporation Act, 1994 [both Parliamentary enactments] constitutes "Union taxation " within the meaning of Article 289(1).

PART - IV

The Delhi Municipal Corporation Act, 1957, the Punjab Municipal Act, 1911 [as extended to the Union Territory of Delhi] and the New Delhi Municipal Corporation Act, 1994 [N.D.M.C. Act] specifically exempt the properties of the Union from taxation. Section 119 of the Delhi Municipal Corporation Act is in terms of Article 285 of the Constitution. It reads:

> "119. Taxation of Union properties -- (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, lands and buildings being properties of the Union shall be exempt from the property taxes specified in section 114:
>
> Provided that nothing in this sub-section shall prevent the Corporation from levying any of the said taxes on such lands and buildings to which immediately before the 26th January 1950, they were liable or treated as liable, so long as that tax continues to be levied by the Corporation on other lands and buildings."

Sub-section (3) of Section 61 is also in terms of Article 285 of the Constitution. It reads:

> "Nothing in this sub-section shall authorise the imposition of any tax which the provincial legislature has no power to impose in the Province under the Constitution--
>
> Provided that a committee which

> immediately before the commencement of the Constitution shall lawfully levying any such tax under this section as then in force may continue to levy such tax until provision to the contrary is made by Parliament."

Sub-section (1) of Section 65 of the N.D.M.C. Act is again in the same terms as Article 285.

None of the above enactments provide any exemption in favour of the properties of a State. Section 115(4) of the Delhi Municipal Corporation Act, Section 61 of the Punjab Municipal Act and Section 62 of the N.D.M.C Act levy property tax on all the properties within their jurisdiction. From the fact that properties of the Union have been specifically exempted in terms of Article 285 but the properties of the States have not been exempted in terms of Article 289 shows that so far as these enactments go, they purport to levy tax on the properties of the States as well. The State governments, it is equally obvious, are not claiming exemption from municipal taxation under any provision of the concerned State enactment but only under and by virtue of Article 289 of the Constitution. They are relying upon clause (1) of Article 889 which is undoubtedly in absolute terms. Clause (1) of Article 289 says, "the property and income of a State shall be exempt from Union taxation". But clause (1) does not stand alone. It is qualified by clause (2) - which in turn is qualified by clause (3). Where an exemption is claimed under clause (1), we cannot shut our eyes to the said qualifying clause and give effect to clause (1) alone. In the decision in A.P.S.R.T.C., this Court has held that clause (2) is an exception to clause (1) and that clause (3) is an exception to clause (2). When a claim for exemption is made under clause (1) of Article 289, the Court has to examine and determine the field occupied by clause (1) by reading clauses (1) and (2) together. If there is a la w made by Parliament within the meaning of clause (2), the area covered by that law will be removed from the field occupied by clause (1). By way of analogy, we may refer to sub-clause (f) of clause (1) and clause (5) of Article 19, which has been explained by a Special Bench of eleven Judges in R.C. Cooper v. Union of India [1970 (1) S.C.C.248] in the following words: "Clause (5) of Article 19 and clauses (1) and (2) of Article 31 prescribe restrictions upon State action, subject to which the right to property may be exercised." But before we elaborate this aspect, it would be appropriate to examine the meaning and scheme of Article 289 and the object underlying it.

Since Article 289 is successor to Section 155 of the Government of India Act, 1935 - no doubt, with certain changes - it would be helpful to refer to and examine the purport and scope of Section 155 [as it obtained prior to its amendment in 1947]. We would also be simultaneously examining the scheme and purport of Article 289. It would be appropriate to read both Article 289 and Section 155 together:

> "289. Exemption of property and income of a State from Union taxation -- (1) The property and income of a State shall be exempt from Union taxation.
>
> (2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any

tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.

(3) nothing in clause (2) shall apply to any trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government.

155.(1) Subject as hereinafter provided, the Government of a Province and the Ruler of a federated State shall not be liable to Federal taxation in respect of lands or buildings situate in British India or income accruing, arising or received in British India;

Provide that-

(a) where a trade or business of any kind is carried on by or on behalf of the Government of a province in any part of British India, outside that Province or by a Ruler in any part of British India, nothing in this sub-section shall exempt that Government or Ruler from any Federal taxation in respect of that trade or business, or any operations connected therewith, or any property occupied for the purposes thereof;

(b) nothing in this sub-section shall exempt a Ruler from any Federal taxation in respect of any lands, buildings or income being his personal property or personal income.

(2) Nothing in this Act affects any exemption from taxation enjoyed as of right at the passing of this act by the Ruler of an Indian State in respect of any Indian Government securities issued before that date."

The first distinguishing feature to be noticed is that while Section 155 spoke of "lands and buildings" belonging to the Government of a Province situate in British India being exempt from Federal taxation [we are leaving out the portion relating to Rulers of Acceding States/Federating States], Article 289(1) speaks of "the property" of a State being exempt from Union taxation. The second material difference is between proviso (a) to Section 155(1) and clause (2) of article 289 corresponding to it. Under the proviso, trade or business carried on by a Provincial government was excluded from the exemption provided in the main limb of sub-section (1) whereas clause (2) does not itself deny the exemption to such trade or business; it

merely enable the Parliament to make a law levying tax on such trade or business. This change has a certain background, which we shall refer to later. The third distinguishing feature between the said proviso and clause (2) is this: while the denial of exemption provided by the proviso was to the trade or business carried on by a Provincial government outside its territory, clause (2) of Article 289 contains no such restrictive words. The fourth distinguishing feature is the provision in clause (3) of Article 289, which enables the Parliament to declare which trades/ businesses are incidental to ordinary functions of government, in which event those trades/businesses go out of the purview of clause (2); no such provision existed in Section 155.

Even under the Government of India Act, 1935 the power to levy taxes on lands and buildings was vested in the Provincial legislatures alone. Federal legislature had no power to levy such taxes. If so, the question arises - why did the British Parliament provide that the lands and buildings of a Provincial government situated in British India are exempt from Federal taxation. Since, no Federal tax could ever have been levied by the Federal legislature on lands or buildings, is the exemption meaningless? This is the question which was also agitated before the learned Judges who answered the Presidential reference in Re.: Sea Customs Act. Sri P.P. Rao and other learned counsel appearing for the State governments submit that the said exemption is neither meaningless nor unnecessary. They submit that the language used in the main limb of sub-section (1) of Section 155 was used advisedly to meet a specific situation. Their explanation, as condensed by us in our words, is to the following effect:

> even at the time of enactment and commencement of the Government of India Act, 1935, the area now comprised in the Union Territory of Delhi was comprised in the Chief Commissioner's Province of Delhi; besides Delhi, there were several other Chief Commissioner's Provinces within British India; every Provinces government and almost every major native State had properties in Delhi for one or the other purpose; prior to the commencement of the 1935 Act, there was no such thing as division of powers between the Centre and the Provinces; Provinces were mere administrative units; the concept of division of powers between the Federation [Centre] and its units [Provinces], i.e., the concept of a Federation, broadly speaking, was introduced by the said Act for the first time; in such a situation, it was necessary that the mutual respect and regard between the Centre and the Provinces basic to a federal concept, is affirmed and given due constitutional recognition even before the enactment of the Delhi Laws Act, 1912, the Governor General in Council with the sanction and

approbation of the Secretary of State for India, had, by proclamation published in Notification No.911 dated the 17th day of September, 1912, taken under his immediate authority and management, the territories mentioned in Schedule-A to the Act [that portion of the district of Delhi comprising the tehsil of Delhi and police station of Mehrauli] which were formerly included in the Province of Punjab, with a view to provide for the administration thereof by a Chief Commissioner as a separate Province to be known as the Province of Delhi; it was the said status which was affirmed by the Delhi Laws Act, 1912; Section 5 of the Government of India Act, 1935 made a clear distinction between the Provinces and the Chief Commissioner's Provinces; while the Provinces were provided with legislatures [Chapter-III of Part-III of the Act], the Chief Commissioner's Provinces, governed by Part - IV of the Act, had no legislatures of their own; the only legislature for them was the Federal legislature; any tax levied in the Chief Commissioner's Province should have been levied only by the Federal legislature or the Governor General, as the case may be; Section 99(1) of the Act provided that "the Federal Legislature may make laws for the whole or any part of British India or for any Federated State and a Provincial Legislature may make laws for the Province or for any part thereof"; all this shows that the tax on lands or buildings in the Chief Commissioner's Provinces including Delhi could have been levied only by Federal legislature; Section 155(1) was meant to exempt the lands or buildings of Provincial governments from such federal taxation - it is submitted.

We find the above explanation cogent and acceptable. It fully explains the use of the words "lands and buildings" in Section 155(1) of the Act. We think it unnecessary to repeat the whole reasoning once again.

As against the words "lands and buildings" belonging to a Provincial government in Section 155 of the Government of India Act, 1935, Article 289(1) uses a single expression "Property" and says that property of a State shall be exempt from Union taxation. The expression "Property" is indubitably much wider. It takes in not only lands and buildings but all forms of property. While the Constituent Assembly debates do not throw any light upon the reason for this change - from "lands or buildings" to "property" - it

is, in all probability, attributable to the large number of representations made by several Provincial governments to the Constituent Assembly that not merely the lands or buildings but any and every trade and business carried on by a State government should equally be entitled to exemption. Sri B.Sen invited our attention to those representations and submitted that it is these representations which induced the Constituent Assembly to draft clause (2) of Article 289 in a manner different from proviso (1) to Section 155(1). Be that as it may, The fact remains that the expression "property" in Article 289(1) has to be given its natural and proper meaning. It includes not only lands and buildings but all forms of property. The explanation offered by the learned counsel appearing for the States, set out in extension hereinabove, for the use of the words "lands or buildings" in Section 155(1) is equally valid for clause (1) of Article 289 insofar as it pertains to lands and buildings.

It must be remembered that both Section 155(1) and Article 289(1) exempt the income as well derived by a Provincial Government/State government from Union taxation. Both the property and income of the States are thus exempt under clause (1) of Article 289 subject, of course, to clause (2) thereof.

Now what does clause (2) of Article 289 say? It may be noticed that the language of the first proviso to Section 155 and of clause (2) of Article 289 is practically identical [except for the two distinguishing features mentioned hereinbefore]. It would, therefore, suffice if we discuss the proviso. It says - omitting reference t Princely States - that where a trade or business of any kind is carried on by or on behalf of the government of a Province in any part of British India [outside that Province], nothing in sub-section (1) shall exempt that Government from any Federal taxation in respect of that trade of business or any operations connected therewith or any income arising in connection therewith or any property [i.e., lands and buildings] occupied for the purposes thereof. It is necessary to emphasis that the proviso to Section 155(1) which by its own force levied taxes upon the trading and business operations carried on by the Provincial governments did not either define the said expressions or specify which trading or business operations are subject to taxation. On this account. the proviso was not and could not be said to have been, ineffective or unenforceable. It was effective till January 26, 1950. Clause (2) of Article 289 also similarly does not define or specify - nor does it require that the law made thereunder should so define or specify. It cannot be said that unless the law made under and with reference to clause (2) specifies the particular trading or business operations to be taxed, it would not be a law within the meaning of clause (2). Coming back to the language of clause (2), a question is raised, why does the proviso speak of taxation in respect of trade or business when the main limb of sub-section (1) speaks only of taxes in respect of lands or buildings and income? Is the ambit of proviso wider than the main limb? Is it an independent provision of a substantive nature notwithstanding the label given to it as a proviso? Or is it only an exception? It is asked. We are, however, of the considered opinion that it is more important to give effect to the language of and the intention underlying the proviso than to find a label for it. It is clarificatory in nature without a doubt; it appears to be more indeed. It is concerned mainly with the "income" [of Provincial governments] referred to in the main limb of sub-section (1). It speaks of tax on the "lands or

buildings" in that context alone, as we shall explain in the next paragraph. The idea underlying the proviso is to make it clear that the exemption of income of Provincial government operates only where the income is earned or received by it as a government; it will not avail where the income is earned or received by the Provincial government on account of or from any trade or business carried on by it - that is a trade or a business carried on with profit motive. In the light of the language of the proviso to Section 155 and clause (2) of Article 289, it is not possible to say that every activity carried on by the government is governmental activity. A distinction has to be made between governmental activity and trade and business carried on by the government, at least for the purpose of this clause. It is for this reason, we say, that unless an activity in the nature of trade and business is carried on with a profit motive, it would not be a trade or business contemplated by clause (2). For example, mere sale of government properties, immovable or movable, or granting of leases and licences in respect of its properties does not amount to carrying on trade or business. Only where a trade or business is carried on with a profit motive - or any property is used or occupied for the purpose of carrying on such trade of business - that the proviso [or for that matter clause (2) of Article 289] would be attracted. Where there is no profit motive involved in any activity carried on by the State government, it cannot be said to be carrying on a trade or business within the meaning of the proviso/clause (2), merely because some profit results from the activity*. We may pause here a while and explain why we are attaching such restricted meaning to the words "trade or business" in the proviso to Section 155 and in clause (2) of Article 289. Both the word import substantially the same idea though, ordinarily speaking, the expression "business" appears to be wider in its content. The expression, however, has no definite meaning; its meaning varies with the context and several other factors. See Board of Revenue v. A.M. Ansari [1976 (3) S.C.C.512] and State of Gujarat v. Raipur Manufacturing Company [1967 (1) S.C.R.618]. As observed by Lord Diplock in Town Investments Limited v. Department of Environment [1977 (1) All.E.R.813-H.L.], "the word 'business' is an etymological chameleon; it suits its meaning to the context in which it is found. It is not a term of legal art and its dictionary meanings, as Lindley, C.J. pointed out in Rolls v. Miller embrace almost anything which is an occupation, as distinct from a pleasure - anything which is an occupation or a duty which requires attention is a business....'." Having regard to the context in which the words "trade or business" occur - whether in the proviso to Section 155 of the Government of Indian Act, 1935 or in clause (2) of Article 289 of our Constitution - they must be given, and we have given, a restricted meaning, the context being levy of tax by one unit of federal upon the income of the other unit, the manifold activities carried on by governments under out constitutional scheme, the necessity to maintain a balance between the Centre and the States and so on.

*For example, almost every State government maintains one or more guest-houses in Delhi for accommodation their officials and others connected with the affairs of the State. But, when some rooms/accommodation are not occupied by such persons and remain vacant, outsiders are accommodated therein, though at higher rates. This activity cannot obviously be called carrying on trade or business nor can it be said that the building is used or occupied for the

purpose of any trade or business carried on by the State government.
ordinarily speaking, the expression "business" appears to be wider in its content. The expression, however, has no definite meaning; its meaning varies with the context and several other factors. See Board of Revenue v. A.M.Ansari [1976 (3) S.C.C.512] and State of Gujarat v. Raipur Manufacturing Company [1967 (1) ALL.E.R.813-H.L.], "the word 'business' is an etymological chameleon; it suits its meaning to the context in which it is found. It is not a term of legal art and its dictionary meanings, as Lindlay,C.J. pointed out in Rolls v. Miller embrace 'almost anything which is an occupation, as distinct from a pleasure - anything which is an occupation or a duty which requires attention is a business..."-" Having regard to the context in which the words "trade or business" occur - whether in the proviso to Section 155 of the Government of Indian Act, 1935 or in clause (2) of Article 289 of our constitution - they must be given, and we have given, a restricted meaning, the context being levy of tax by one unit of federation upon the income of the other unit, the manifold activities carried on by governments under our constitutional scheme, the necessity to maintain a balance between the Centre and the State and so on.

Proviso (i) not only speaks of trade or business carried on by the Provincial governments [outside their respective territories] but also "any operations connected therewith or any income arising in connection therewith or any property occupied for the purposes thereof." So far as operations connected with the trade or business is concerned, they naturally go along with the main trade or business. No difficulty is expressed by anyone on this count. Similarly, with respect to any income arising in connection with such trade or business too, no difficulty is expressed since the income is an incident of the trade of business. Difficulty is, however, expressed regarding the other set of words "or any property occupied for the purposes thereof". The said words, in our opinion, mean that if any property, i.e., any land or building is occupied by the Provincial government for the purpose of any trade or business carried on by the Provincial government, such land or building too loses the benefit of exemption contained in the main limb of sub-section (1); it becomes liable to Federal taxation. To repeat, the central idea underlying the proviso is to remove the trading or business operations from the purview of the main limb of sub-section (1) of Section 155. Now, coming to clause (2) of Article 289, position is the same with the two distinguishing features mentioned supra, viz., (a) under this clause, removal of exemption is not automatic; it comes about only when the Parliament makes a law imposing taxes in respect of any trade or business carried on by a State government and all activities connected therewith or any property used or occupied for the purposes of such business as also the income derived therefrom. If any property - whether movable or immovable - is used or occupied for the purpose of any such trade or business, it can be denied the exemption provided by clause (1) but this denial can be only by way of a law made by Parliament and (b) the exception contemplated by clause (2) is not confined to trade and business carried on by a State outside its territory as was provided by the first proviso to Section 155. Even the trade or business carried on by a State within its own territory can also be brought within the purview of the enactment made [by Parliament] in terms of the said clause.

Adverting to the matters before us, the question is whether the Parliament has made any law as contemplated by clause (2) of Article 289? For, if no such law is made, it is evident, all the properties of State governments in the Union Territory of Delhi would be exempt from taxation. [Parliament has admittedly not made any law as contemplated by clause (3) of Article 289.] We have observed hereinbefore that the claim of exemption put forward by State governments in respect of their properties situated in N.D.M.C. and Delhi Municipal Corporation areas is founded - and can only be founded - on Article 289. The States invoke clause (1) of he article but we are of the considered opinion that clause (1) cannot be looked at in isolation; it must be read subject to clause (2). All the three clauses of Article 289 are parts of one single scheme. Hence, when a claim for exemption with reference to clause (1) is made, one must see what is the field on which it operates and that can be determined only by reading it along with clause (2). The exemption provided by Article 289(1) is a qualified one - qualified by clause (2), as explained hereinbefore. It is not an absolute exemption like the one provided by Article 285(1). If there is a law within the meaning of clause (2), the field occupied by clause (1) gets curtailed to the extent specified in clause (2) and the law made thereunder. It is, therefore, necessary in this case to determine whether the Punjab Municipal Act, Delhi Municipal Corporation Act and N.D.M.C. Act are or can be deemed to be enactments within the meaning of clause (2) of Article 289. These enactments - and certainly the Delhi Municipal Corporation Act and N.D.M.C. Act - are post-constitutional enactments. As stated hereinbefore, these enactments while specifically exempting the Union properties in terms of Article 285, do not exempt the properties of the States in terms of Article 289*. The

*As a matter of fact, "Section 115(4) of the Delhi Municipal Corporation Act and Section 62(1) of the N.D.M.C. Act expressly exempt properties used exclusively for 'charitable purposes' or 'for public worship' [as defined by them] but do not provide for an exemption in the case of the properties of the States in terms of Article 289. It cannot be said, or presumed, that Parliament was not aware of, or conscious of, Article 289 while enacting the said Acts. Section 62(1) and (2) of the N.D.M.C Act read: "62(1). Save as otherwise provided in this Act, the property tax shall be levied in respect of all lands and buildings in New Delhi except -- (a) lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by a society or body for a charitable purpose:

Provided that such society of body is supported wholly or in part by voluntary constitutions, applies its profits, if any, or other income in promoting its objects and does not pay any dividend or bonus to its members.

Explanation.-- 'Charitable purpose' includes relief of the poor, education and medical relief but does not include a purpose which relates exclusively to religious teaching;

(b) lands and buildings vested in the Council, in respect of which the said tax, if levied, would under the provisions of this Act be leviable primarily on the Council; omission cannot be said to be unintentional - particularly in the case of Delhi Municipal Corporation Act and N.D.M.C. Act. The intention is clear and obvious: the enactments do not wish to provide for any exemption in favour of properties of the States situated within their respective jurisdictions. Texes are levied on all properties within their jurisdiction [except the properties specifically

exempted], irrespective of who owns then and to what use they are put. In such a situation, the question is, how should they be understood? Two views can be taken: one that since the said enactments do not expressly purport to have been made under and as contemplated by clause (2) of Article 289, they should not be read and understood as laws contemplated by or within the meaning of the said clause (2). The effect of this view would be that the properties of the State in Union Territory of Delhi will be totally exempt irrespective of the manner of their

(c) agricultural lands and buildings (other than dwelling houses).

(2) Lands and buildings or portions thereof shall not be deemed to be exclusively occupied and used for public worship or for a charitable purpose within the meaning of clause (1) of sub-section (1) if any trade or business is carried on in such lands and buildings or portions thereof or if in respect of such lands and buildings or portions thereof, any rent is derived.

use and occupation. In other words, the consequence would be that the relevant provisions of the said enactments would be ineffective and unenforceable against all the properties held by the States in the Union Territory/National Capital Territory of Delhi, irrespective of the nature of their user or occupation. The second view is that since there is always a presumption of constitutionality in favour of the statutes and also because the declaration of invalidity or inapplicability of a statute should be only to the extent the enactment is clearly outside the legislative competence of the legislative body making it or is squarely covered by the ban or prohibition in question, the declaration of invalidity should not extend to the extent the enactments can be related to and upheld with reference to some constitutional provision, even though not cited by or recited in the enactment. Similarly, the declaration of inapplicability should only be to the extent the law is plainly covered by the ban or prohibition, as the case may be. What is not covered by the constitutional bar should be held to be applicable and effective. In our respectful opinion the latter view is consistent with the well-known principles of constitutional interpretation and should be preferred. We may pause here and explain our view-point. If the law had expressly stated that it is a law made under and with reference to clause (2) of Article 289, no further question would have arisen. The only question is where it does not say so*, can its validity or applicability be sustained with reference to clause (2). In our considered opinion, it should be so sustained, even though it may be that the appellant-corporations have not chose to argue this point specifically. As would b evident from some of the decisions referred to hereinafter, the fact that a party or a government does not choose to put forward an argument cannot be a ground for the court not to declare the correct position in law. The appellants are saying that all the properties of the States are not exempt because the taxes levied by them do not constitute "Union taxation" within the main of clause (1) of Article 289. We have not agreed with them. We have held that the taxes levied by the aforesaid enactments do constitute "Union taxation" within the meaning of

*This is the normal situation. No enactment states that it is made under and with reference to a particular head of legislation in the Seventh Schedule to the Constitution or a provision in the Constitution. Only when the enactment is questioned on the ground of legislative competence, is the

court required to ascertain the head of legislation or provision to which the enactment is referable.
clause (1) of Article 289 and that by virtue of the exemption provided by clause (1), taxes are not leviable on State properties. In view of the fact that clauses (1) and (2) of Article 289 go together, form part of one scheme and have to be read together, we cannot ignore the operation and applicability of clause (2), at the same time. Reference to a few decisions would bear out our view. In Charanjit Lal Chowdhary v. Union of India [1950 S.C.R.869], Fazl Ali, J. stated: "....it is the accepted doctrine of the American Courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles". In Burrakur Coal Co. V. Union of India [A.I.R.1961 S.C. 654 at 963 = 1962 (1) S.C.R.44], Mudholkar, j., speaking for the Constitution Bench, observed: "Where the validity of a law made by a competent legislature is challenged in a Court of law, that Court is bound to presume in favour of its validity. Further, while considering the validity of the law the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained." In Rt.Rev.Msgr. Mark Netto v. State of Kerala & Ors. [1979 (1) S.C.C.23], the Constitution Bench considered the question whether a rule made by the Government of Kerala is violative of the right conferred upon the minorities by Article 30. It was held:

> "In that view of the matter the Rule in question its wide amplitude sanctioning the withholding of permission for admission of girl students in the boys minority school is violative of Article 30. if so widely interpreted it crosses comes in the region of interference with the administration of the institution, a right which is guaranteed to the minority under Article 30. The Rule, therefore, must be interpreted narrowly and is held to be inapplicable to a minority educational institution in a situation of the kind with which we are concerned in this case. We do not think it necessary or advisable to strike down the Rule as a whole but do restrict its operation and make it inapplicable to a minority educational institution in a situation like the one which arose in this case."

Reference may also be made to another Constitution Bench decision in Sanjeev Coke Manufacturing Co. v. M/s. Bharat Coking Ltd. & Anr. [A.I.R.1983 S.C.239 = 1983 (1) S.C.C.147]. The following observation in Para 26 are apposite:

> "The deponents of the affidavits filed into Court may speak for the parties on whose behalf they swear to the statements. They do not speak for the Parliament. No one may speak for the Parliament and

> Parliament is never before the Court. After Parliament has said what it intends to say, only the Court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court's is the only authentic voice which may echo (interpret) the Parliament. This the Court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the Court their understanding of what Parliament has said or intended to say or what they think was Parliament's object and all the facts and circumstances which in their view led to the legislation. When they do so, they do not speak for Parliament. No Act of Parliament may be struck down because of the understanding or misunderstanding of Parliamentary intention by the executive government or because their (the Government's) spokesmen do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which the Court may ultimately find and more especially by what may be gathered from what the legislature has itself said."

Lastly, we may quote the pertinent propositions enunciated in Ram Krishna Dalmia v. Justice Tendolkar [1959 S.C.R.279] to the following effect:

> "(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
>
> (e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and...."

These are well-settled propositions. Applying them, it must be held that the aforesaid Municipal Laws are inapplicable to the properties of State governments to the extent such properties are governed and saved by clause (1) of Article 289 and that insofar as the properties used or occupied for the purpose of a trade or business carried on by the state government [as explained hereinbefore] are concerned, the

ban in clause (1) does not avail them and the taxes thereon must be held to be valid and effective. It may be reiterated that the Delhi Municipal Corporation Act, 1957 and the N.D.M.C. Act, 1994 are post-constitutional enactments and that the Punjab Municipal Act too must be deemed to be a post-constitutional enactment for the reasons given hereinabove. It must, therefore, be held that the levy of property taxes by the said enactments is valid to the extent it relates to lands and buildings owned by State governments and used or occupied for the purposes of any trade or business carried on by such State government. In other words, the levy must be held to be invalid and inapplicable only to the extent of those lands and buildings which are not used or occupied for the purposes of any trade or business carried on by the State government, as explained hereinbefore. It is for the appropriate assessing authorities to determine which land/building falls within which category in accordance with law and in the light of this judgment and take appropriate further action. In this connection, we may mention that the assessing authorities under the Act have to decide several questions under the Act including the questions whether any land or building is being used for "charitable purpose" or "public worship". They also have to decide whether a land is an "agricultural land". These are difficult questions as would be evident from a reference to the plethora of decisions under the Income Tax Act where these expressions occur. For this reason, neither the exemption can be held to be ineffective nor the authorities can be said to have no jurisdiction to decide these questions. Appeals are provided to civil courts against the orders of the assessing authorities.

In the light of the above position of law, it is for the Union of India to consider whether any steps are to be taken to maintain the balance between the Union and the States in the matter of taxation.

PART - V

The following conclusions flow from the above discussion:

(a) the property taxes levied by and under the Punjab Municipal Act, 1911, the New Delhi Municipal Corporation Act, 1994 and the Delhi Municipal Corporation Act, 1957 constitute "Union taxation" within the meaning of clause (1) of Article 289 of the Constitution of India;

(b) the levy of property taxes under the aforesaid enactments on lands and/or buildings belonging to the State governments is invalid and incompetent by virtue of the mandate contained in clause (1) of Article 289. However, if any land or building is used or occupied for the purposes of any trade or business - trade or business as explained in the body of this judgment - carried on by or on behalf of the State government, such land or building shall be subject to levy of property taxes levied by the said enactments. In other words, State property exempted under clause (1) means such property as is used for the purpose of the government and not for the purposes of trade or business;

(c) it is for the authorities under the said enactments to determine with notice to the affected State government, which land or building is used or occupied for the purposes of any trade or business carried on by or on behalf of that State government.

We direct that this judgment shall operate only prospectively. It will govern the Financial Year 1996-97 [commencing on April 1, 1996] and onwards. For this purpose, we invoke our power under Article 142 of the Constitution. The reasons are the following;

(a) according to the judgment under appeal, the properties of the State were exempt in toto whereas according to this judgment, some of the properties of the State situated within the Union Territory of Delhi may become liable to tax. The assessees are the State governments and the taxes are being levied under a Parliamentary enactment. This inter-State character of the dispute is a relevant factor;
(b) from the year 1975 upto now, there have been no assessments because of the judgment of the High Court; and
(c) retrospective assessment of properties under the above enactments appears to be a doubtful proposition - at any rate, not an advisable thing to do in all the facts and circumstances of this case.

Before parting with this case, it would be appropriate to refer to a submission of Sri B.Sen. He submitted that the exemption provided by clause (1) of Article 289 does not and cannot apply to compensatory taxes like water tax, drainage tax and so on. Even where the enactment does not specifically and individually enumerate these components of property taxes, i.e., where the levy is of a composite tax known as "Property tax", it must be presumed, says Sri B.Sen, that part of the property taxes are compensatory in nature. We are, however, not inclined to express any opinion on this aspect in the absence of any material placed in support thereof. We cannot permit this new plea, which does not appear to be a pure question of law, to be raised for the first time at the time of arguments in these appeals/writ petitions.

The appeals and writ petitions are accordingly disposed of in the above terms. The judgment of the High Court shall stand modified to the extent it is contrary to this judgment.

There shall be no order as to costs.