CHAPTER VII

STATUTORY METHODS - I

(For direct tax purposes)

A. Valuation of shares in the context of direct taxation

It is said that two things are certain in this World, - one is death and the other is taxes. The statement is correct with the only exception that the time of death and the amount of taxes to be paid are uncertain. This uncertainty as to the amount of taxes to be paid on the value of properties and also on the gains made by the tax payers is the root cause of many evils in taxation and it has brought about a hitch between the two warring groups of tax payers and tax officers, - the former expecting to pay less and the latter wanting to collect more.

Again with the rapid economic, industrial, social and scientific development in India, whatever is being amassed in the hands of individuals and institutions is property in one way or the other and as in other modern welfare states of the world in India too, the Government of India
expect a share of the accumulated resources in the hands of the individuals and institutions for the purpose of utilizing the same in order to achieve equitable planned welfare of the people. Accordingly, the Government have installed a net of taxation, both direct and indirect. It is generally noticed that whenever a transaction involves any sort of property, movable or immovable, tangible or intangible, fixed or circulating, other than cash and those which are statutorily kept aloof, direct tax laws make it incumbent to value the property so as to ascertain the amount of income or wealth, or gift for the purpose of income tax, or wealth tax, or gift tax. Even death has failed to escape the valuation of property for taxation. All the properties of a deceased must be valued on the date of death to determine the value of the net estate on which estate duty is payable.

Shares which constitute to be an important item in the schedule of property are definitely not out of context in the process of valuation of properties for the purpose of imposing direct taxes. On the contrary, the problem of valuation of shares is a little more complicated than the valuation of many other properties subjected to direct taxation particularly because this
field of valuation is vast and it involves intricate, discerning and ticklish issues of corporate sector which since independence, Valuation of shares in the context of direct taxation is on its long march to its glorious growth. The problem is aggravated by the fact that there is a lot of variations in the form and operations of companies so that it has been difficult even for the courts and legislatures to evolve a set of standard rules for the valuation of shares for the purpose of direct taxation. Nevertheless there is no escape from proceeding to value the shares in companies in which both individual and institutional investments are increasing day by day with the rapid industrial development.

The importance of valuation of shares for the purpose of direct taxation can be viewed from another angle. In the context of existing oppressive tax rates and in view of the tendency of the Government to make more and more hike in the tax rates, both direct and indirect, it is being increasingly felt that a proper valuation of shares for taxation should be made. Since valuation of shares affects the tax liability of a person directly, any slight over-valuation of shares may cause a substantial enhancement of his tax liability. Conversely, even a slight undervaluation may invoke considerable suspicion in the mind of the tax authority and the person concerned may be
subjected to extremely harsh panel provisions of the direct taxation statutes. Thus it is in no way beneficial to make a foul play by undervaluing or overvaluing the shares or for that matter any other property for the purpose of direct taxation. The best course is to make a proper valuation of shares in accordance with the provisions of the direct tax statutes.

B. Principles of Valuation of shares under direct tax laws:

The principles of valuation of shares under direct tax laws may be discussed under two broad groups, - the first relating to the basic general principles of valuation enshrined in the various direct taxation Acts and the second relating to the principles of valuation of shares enunciated in the specific provisions of the said acts which really constitute to be the exceptions to the basic general principles of valuation of shares. The discussion on the basic general principles of valuation of shares comes first.

(X) Basic valuation principles:

Before outlining the fundamental principles of valuation of shares under the direct taxation statutes it is essential to
remember that listed shares do not pose so much of a problem for valuation and that major controversies arise only in the valuation of unquoted shares.

The basic general principle of valuation as embodied in the direct tax statutes is the following:

The value of a share shall be estimated to be the price which, in the opinion of the assessing authorities, it would fetch if sold in the open market on the valuation date.

Statutory General principle

This statutory general principle of valuation is contained in sec. 2(22A) of the Income tax Act, in Sec. 36 of the Estate duty Act, in Sec. 7 of the Wealth Tax Act, and in sec. 6 of the Gift tax Act. The discerning reader will observe that the wordings of Sec. 2(22A) of the Income Tax Act, Sec. 36 of the Estate Duty Act, Sec. 7 of the Wealth Tax Act and sec. 6 of the Gift tax Act are all nearly alike in meaning, if not in words. To admit frankly, in the case of various direct taxation statutes the open market concept of value has been postulated as the basic general principle of valuation. The idea behind the statutory acceptance of the open market concept has been outlined by Lord Reid in Lynall vs. I.R.C. in the following words:
"No doubt, sale in the open market may take many forms. But it appears to me that the idea behind this provision is the classical theory that the best way to determine the value in exchange of any property is to let the price be determined by economic forces - by throwing the sale open to competition when the price will be the highest that anyone offers. That implies that there has been adequate publicity or advertisement before the sale, and the nature of the property must determine what is adequate publicity...."

The open market concept presumes a sale between a willing buyer and a willing seller. In the estate duty case of Findlay's Trustees Vs. I.R.C., Lord Fleming stated:

"In estimating the price which might be fetched in the open market... it must be assumed that the transaction takes place between a willing seller and a willing purchaser...."

Thus the general principle of valuation of shares under the various direct taxation statutes may be simply stated in the following terms:
The value of a share shall be the price which a willing seller would receive from a willing buyer in the atmosphere of an open market.

A detailed discussion of the basic features of the general principle will facilitate its application for all practical purposes. From the plain reading of the provision of the various direct taxation statutes containing the general principles it will be seen that the provision contains the following essential elements:

1. The value of a share shall be estimated to be the price,
2. which in the opinion of the assessing authorities
3. the share would fetch if sold in the open market
4. on the valuation date.

An effort is, now, being made to have a clarification of these elements.

1. Shall be estimated to be the price:

The expression signifies that the price of a share is to be estimated. The question of estimating the price of the shares will arise in two cases, - the first being where the share are not quoted on the stock exchange and the prevailing market prices are not available and the second being where the
shares are actually in the hands of the assessee on the valuation date. If the shares are quoted on the stock exchange and there are dealings in them, the price prevailing on the date of valuation is the value of the shares and there is no question of estimating the price of the shares. If the shares have been sold or transferred on or before the valuation date, the question of estimating the price will not arise, because in case of (say) sale, the sale price would have been known and utilized for all purposes. Thus the crucial question to be considered is about estimating the price which the existing shares would fetch on the valuation date.

The expression "shall be estimated to be the price" includes two important terms, - "estimate" and "price" which need detailed explanation.

(a) **Estimation**: The term means an approximate calculation on the basis of some probabilities. It is wrong to assume that in an estimate there is an ingredient of necessary in accuracy and uncertainty. The foundation of an estimate is the experience and sound personal judgement of the estimator. The chief requisite of an estimate is that it should be honest and not arbitrary or capricious. The task of estimation becomes easier when it is made with reference to the actual data relating to comparable cases.
If no actual data are available, but an estimate has to be made, it has to be done on the basis of the honest personal judgement of the estimator. In an estate duty case, the Madras High Court held that in the absence of actual data, the estimate has to be made on the basis of the opinion of the Controller. It is to be noted here that even where it is to be an opinion of the controller or any taxation authority such opinion must be based on reason and must not be whimsical or arbitrary.

(b) Price:

The term means the amount available in exchange for the shares. The price should be the best possible price that is obtainable. In other words, the price should be determined in such a manner that it may be considered to be the best possible price in the market under the facts and circumstances of the particular case. Thus, in the estate duty case of the Earl of Ellesmere Vs. I.R.C., Sankey, J. stated:

"...it does not at all follow that the price which he obtains...is "the price which it would fetch if sold in the open market". What is meant by those words is the best possible price that is obtainable, and what that is largely, if not entirely, a question of fact...."
But the requirement to obtain the best possible price should not be carried to extremes. In the case of Duke of Beccleuch vs. I.R.C., Lord Reid stated:

"It is sometimes said that the estate must be supposed to have been realised in such a way that the best possible prices were obtained for its parts. But that can not be a universal rule. Suppose that the owner of a wholesale business dies possessed of a large quantity of hardware or clothing, or whatever he deals in. It would have been possible by extensive advertising to obtain offers for small lots at something near retail prices. So it would have been possible to realise the stock at much more than wholesale prices. It would not have been reasonable and it would not have been economic, but it would have been possible. Counsel for the respondent did not contend that would be a proper method of valuation. But that necessarily amounts to an admission that there is no universal rule that the best possible prices at the date of death must be taken.

However, the amount determined as price must be fair and reasonable with reference to the facts and circumstances of a particular case."
Price estimation is not an easy job; rather it is a meticulous task which involves a detailed investigation into the ins and outs, merits and demerits of the particular case. The taxation authority has to take into account all the relevant factors in estimating the price. But it is necessary to retain in mind that valuation is an art and not an exact science. Thus mathematical certainty is not demanded nor indeed is it possible in making price estimation. In Gold coast Selection Trust Ltd. Vs. Humphrey, Viscount Simon stated:

"... Valuation is an art, not an exact science. Mathematical certainty is not demanded nor indeed is it possible. It is for the Commissioners to express in the money value attributed by them to the asset their estimate and this is a conclusion of fact to be drawn from the evidence before them."

In other words, the taxation authority has to make an estimate on the basis of the evidence and materials before him in the light of the statutory guidance. The whole effort should be directed to arrive at as near an approximation to the market price as is possible.

In price estimation there is plenty of scope for freedom in considerations and calculations. But it does not mean that the
power and liberty given to the taxation authorities should be misused. Price estimation should be done in such a way that it bears a distinct flavour of honesty and integrity without any trace of arbitrariness. Need for discretion may arise. But there is no scope for applying unfettered discretion.

The taxation authority may apply the best suited method for price estimation. But where more than one method are possible, the one which renders the estimate as near as the true value is to be adopted.

(2) **In the opinion of the assessing authorities:**

The need for the use of this phrase arises from the fact that the assessing authorities are not in the possession of any exact yardstick to apply for the purpose of making the required estimate of price of shares. Consequently, the assessing authorities are to form and apply their opinion about the estimated price. However, the authorities are required to form their opinion about the price on the basis of a consideration of the facts of (i) a sale (ii) in the open market (iii) on the valuation date. Any opinion, formed which does not take into consideration these ingredients is not an opinion in the eye of law. This, in other words, means that an opinion has to be made after a judicious application of mind to these ingredients. This is the conclusion drawn from the legal
interpretation of the phrase that the opinion referred to in the phrase has to be judicial opinion and not an arbitrary opinion. It may be possible to say that the opinion is an opinion. It may appear that there is enough scope for discretion. But the whole power of forming an opinion or of exercising a discretion is judicial power and this judicial power has to be exercised in a judicial manner. Again the opinion formed by an assessing authority can not be taken as "final" by any means, because this is open to review in appeal to higher authorities and this process may end at last in an adjudication by the Supreme Court.

Thus the power of forming an opinion as referred to in the above phrase is not an unrestricted power. It is not the sweetwill or the pleasure of the assessing authority that is allowed to decide the fate of an assessee regarding price estimation. As already said, the opinion of an assessing authority is neither sacrosanct nor binding, because there is scope for attacking the opinion in appellate proceedings. It is, therefore, essential that the assessing authority must give reasons and back-ground for arriving at the opinion. He must proceed on the basis of materials and data before him and for this purpose he must make an honest attempt to collect such materials and data. There are some statutory means of collecting necessary information, particulars, materials and data by the assessing authorities for the purpose of forming an opinion. For instance, they may ask
the assessee to furnish such particulars as may be required to form an opinion. An independent valuer may be appointed. There are provisions for inspection. On the whole, an opinion has to be formed honestly and judicially, and not arbitrarily or capriciously after a careful consideration of all the relevant facts and circumstances of each case.

(3) **the share would fetch if sold in the open market:**

This expression is by far the most important part of the general principle of valuation enunciated in the direct taxation statutes. In order to have a comprehensive idea about the expression it is necessary to try to understand the meaning of the terms, "fetch", "if sold" and "open market".

(A) **the price the share would fetch:**

The expression has been held to connote that the price which a share would fetch, is the gross price, - that is the price arrived at without the deduction of any selling expenses. It refers to the amount offered by a purchaser and not that which would be left over in the hands of the seller after deducting relevant expenses incurred in sale. The question of interpretation of the expression came up before the court of Appeals in Duke of Buccleuch Vs. Inland Revenue Commissioners. Lord Denning, M.R. in his epoch - making judgement stated the following:-

"You are to estimate on this hypothetical sale the price which the properties 'would fetch'. That means the price which a purchaser would pay, and not the amount which the seller would receive. I mean that the gross price which
the purchaser would pay and not the net amount which the seller would receive, after deducting the agent's commissions and so forth.\textsuperscript{17}

Similar question came up for consideration before the Patna High Court in Pandit Lakshmi Kant Jha Vs. C.W.T. In this case the question was whether the assessee was entitled to the deduction of a sum of Rs.2,30,546/- by way of brokerage commission in computing the market value of the shares. The learned Chief Justice observed:

"...... in construing taxation statutes equitable considerations are out of place ...... The word 'fetch', in the context must mean the quoted price only, and brokerage and other inevitable expenses incurred by the seller will have to be ignored."\textsuperscript{18}

This view was affirmed by the Supreme Court.\textsuperscript{19} Thus the actual price (meaning the gross price) which the stocks and shares would fetch, if sold in the open market should alone be taken into consideration without deduction of any expenses which a seller may be required to incur on advertising, brokerage, legal expenses, selling commission, stamp duty etc. Further enlightenment on this vital issue may be had from famous treatise, Dymond's Death uties in which the following opinion was expressed:

"The price which the property 'fetched' is the gross sale price, without deduction for the costs of sale, ......"\textsuperscript{20}
The expression implies a hypothetical sale and not an actual sale. It is a sale by assumption in a hypothetical market. In other words an assumption of sale of the shares in an open market (explained later on) is established on the valuation date. The expression indicates no intention on the part of the law-makers to contemplate any actual sale or the actual state of market. The whole purpose is to instruct the taxation authorities to assume a sale in a hypothetical market. In C.M.T. Vs. Purshotam N. Amersey [affirmed by the Supreme Court] the Bombay High Court made the following observations:

"When the statute uses the words, "if sold in the open market" it does not contemplate any actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and on that basis directs that the value should be found out. It is a hypothetical case which is contemplated by those words of the sub-section...... The use of the words 'if sold' creates a fictional position which the tax officer has to assume." While interpreting the six crucial words (if sold in the open market) in the abovementioned case, the Bombay High Court further observed:

"......The second of the six words, 'sold' which is the most impressive and indicative, creates a fictional position, which the tax officer is supposed to bear in mind."
The observations of the Bombay High Court were approved by the Supreme Court in Ahmed G.H. Ariff Vs. C.W.T. Their Lordships referred to the above observations of the Bombay High Court and held:

"It has been rightly observed by the High Court that where the statute uses the words 'if sold in the open market', it does not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market........" The expression is definitely a statutory fiction which ignores the impossibility of an actual sale. In the estate duty case of Duke of Buccleuch Vs. I.R.C. the Court observed:

"It is irrelevant in arriving at the value to consider that would have been the circumstances attending an actual sale........... The impossibility of putting the property on the market at the time of death........... is irrelevant. In other words, you do not have to assume that the property had actually to be sold; the assumption is that it is sold at the moment of death..."
Open Market:

1) Introduction:

The concept of open market is the basic principle laid down in the various direct taxation statutes for the valuation of shares and other assets. There may not exist an open market for all types of assets and shares. But the law requires that the open market has to be assumed for the purpose of valuation.

ii) Meaning and basic features:

The term 'open market' means the market to which every buyer and seller has got access. The buyers and sellers in such a market act without any compulsion and with full knowledge of all the uses to which the property may be put and for which it is capable of being utilized. The term is used as distinguished from an offer to a limited class of persons only. It excludes any special buyer in a special market.
The concept of open market has been referred to in many important court cases and a brief mention of them will be of immense benefit in understanding the real meaning and the basic features of the concept.

(1) Sale by auction or sale by public announcement:

The idea behind the concept is to include every possible purchaser. The market has to be open as distinguished from an offer to a limited class of persons. It includes a sale by auction but is not confined to that. It also includes a sale by public advertisement in the press. The idea behind the concept is not to exclude a sale without reserve, but to exclude a sale without the public being aware of the fact that the property is being put to the market for sale. The forceful observations made in the Clay case are of immense value in comprehending the idea behind the concept. In this case Cozens-Hardy, K.C., outlined the meaning and basic features of the term 'open market' in the following words:

"Open market" includes a sale by auction but is not confined to that. It would include property publicly announced in the usual way by insertion in the list of house agents. But it does not necessarily involve the idea of a sale without reserve. I can see no ground for excluding from consideration the fact that the property is so situate that to one or more persons it presents greater attractions than to anybody else. The house or the land may immediately adjoin one or more land-owners likely to offer more than the property would be worth to anybody else. This is a fact that cannot be disregarded."
In the same case Swinfen v. T.J. made the following valued observations about the open market concept:

"A value, ascertained by a reference to the amount obtainable in an open market, shows an intention to include every possible purchaser. The market is to be the open market, as distinguished from an offer to a limited class only, such as the members of the family. The market is not necessarily an auction sale. The section means such amount as the land might be expected to realise if offered under conditions enabling every person desirous of purchasing to come in and make an offer, and if the proper steps were taken to advertise the property and let all likely purchasers know that the land is in the market for sale."

(M) Dim World:

It is an established principle that where evidence from an actual market place is lacking, valuation of shares is to be made on the basis of a hypothetical open and unrestricted market on the valuation date. It is essential to assume (1) market conditions under which sales would have taken place and (2) the market from which no reasonable buyer and seller possessing relevant information is excluded. The open market concept of Danckwerts, J., in the Holt case is classic indeed. He stated:

"......The result is that I must enter into a dim world peopled by the indeterminate spirits of fictitious or unborn sales. It is necessary to assume the prophetic vision of a prospective purchaser at the moment of the death of the deceased, and firmly to reject the wisdom which might be provided by the knowledge of subsequent events."

25
Hypothetical sales in a hypothetical open market:

(1) Hypothetical sales:

It has already been stated that for the purpose of valuing shares under direct taxation statutes on an open market basis, it is important to remember that it is a hypothetical sale that must be assumed. In Lynall Vs. I.R.C., Plowman, J., stated:

"It is common ground that the shares must be valued on the basis of a hypothetical sale... in a hypothetical open market between a hypothetical willing vendor (who would not necessarily be a director) and a hypothetical willing purchaser on the hypothesis that no one is excluded from buying and that the purchaser would be registered as the holder of his shares but would then hold them subject to the articles of association of the company, including the restrictions on transfer." 26

In J. V. T. Vs. pursbotan M. Amersey affirmed by the Supreme Court the Bombay High Court referred to the hypothetical nature of open market. The Court observed:

"When the statute uses the words 'if sold in the open market' it does not contemplate any actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and on that basis directs that the value should be found out. It is a hypothetical case which is contemplated by those words of the sub-section..." 27
In Ahmed G.H. Ariff Vs. C.V.T., the Supreme Court approved the observations of the Bombay High Court.

Open market sale is a legal hypothesis and is not generally based upon a foundation of reality. In fact, many assets like shares in a private company cannot be readily sold in the open market and sometimes it is even difficult to envisage hypothetical open market sales. But the courts have held that the principle must nonetheless be applied. In Re Lynall (1970), Widgery, L.J. stated:

"It is desirable that when the court is constructing the conditions under which the hypothetical sale is deemed to take place, it should build upon a foundation of reality so far as this is possible, but it is even more important that it should not defeat the intention of the section by an undue concern for reality in what is essentially a hypothetical situation."

In case of hypothetical sales, the question whether there was in fact a market and the property could be sold is wholly immaterial. In I.N.C. Vs. Crossman, Lord Russell observed:

"...the shares are imagined to be the subject matter of a sale in the open market at the time of death..... and an opinion must be framed as to the price which they would fetch. The whole process is hypothetical,......."
In a hypothetical sale in an open market the question of considering the intention of the seller to place the property for sale before the market place needs little attention. In C.W.T. Vs. V.C. Ram-Chandran, the Court observed:

"If the view that an item of property will have market value only when its owner intends to sell it is correct, then all assets, other than cash, will not be exigible to tax until they are put on the market for sale. This view, by and large, will defeat the provisions of the 'Act'. It is strange that the tribunal thought that an asset has no market value until it is put for sale..."31

(ii) Legal fiction: It has already been stated that the use of the words 'if sold' in the general principle of valuation creates a fictional position which the tax office has to assume.32 Thus the open market value for the purpose of direct taxation is a statutory fiction which takes no account of the impossibility of actual sale. In the case of Duke of Buccleuch Vs. I.R.C.33 the Court ignored the impossibility of selling the Hardwick estate after the death of the Duke. The Court thought quite irrelevant the fact that it would have been impossible to sell the property on the date of death either as a whole or in separate units.

The matter does not end in the reluctance of the Court to accept actual sale as the criterion. In determining open market value the Court even ignores the fact that actual sale would be illegal. In Re Aschrott, Clifton Vs. Strauss, the learned judge observed:
At the testator's death part of the property passing under his Will consisted of shares saleable in the open market. It is true that, by reason of the subsisting war, he was disqualified, and his executors after his death were disqualified, from transferring the shares, but these shares were only part of the share capital of the several companies in which he was interested, and in order to ascertain the market price of the shares which were disposed of by his will the broker was bound, I think, to find out at what price some of the shares were being sold and dealt with on the market and to return that as being the correct valuation; it was not open to the valuer to say: "The market price of shares in this particular company is so much, but, in view of the fact that the transferrer of these shares is an alien enemy, the market for some of the shares (those which he would be purporting to transfer) would be nil."

Another instance of estimating open market value, when, in fact, there was no legitimate open market, is available in British Motor Trade Association Vs. Gilbert in which the court held that although there was no legitimate open market for the car during the period in which it was subject to the deed of covenant, damages should be assessed on the assumption that there was an open market on the date of breach of agreement.

The idea of open market value being a legal fiction obtains momentum when some instances are cited in which the court refused to accept prior sales and subsequent sales as the conclusive evidence. In other words, in the opinion of the court, whereas actual sales around the valuation date may be shown as persuasive
evidence in determining the open market value, such sales can not be taken as a conclusive evidence, because actual circumstances may be different from those which are to be assumed in an open market.

Thus in an estate duty case of Mc-Namee Vs. I.R.C. relating to the valuation of 175, 81 ordinary shares in Convoy Woolen Company Ltd., the court ignored the actual selling price prior to the valuation date.

Again the estate duty case of I.R.C. Vs. Farr's Trustees relating to the valuation of a herd of cattle, the court was of the view that the factors which may apply to a subsequent sale may not have been applicable at the date of valuation because of the change in circumstances.

Thus although arm's length sales prior to the valuation date can be of some assistance, a subsequent sale made after the date of valuation does not, of itself, provides grounds for consideration in calculating the open market value.

(iii) Warranties: Hypothetical sales are very much distinct from actual sales and are virtually removed from any actual sales. Therefore, there is nothing in law to assume that the vendor will give any of the warranties or indemnities which are normally applicable in the case of an actual sale. So far as the employees and other operational factors are concerned, no abnormalities are to be assumed. For instance no assumption should be made to the effect that the key employees would enter into service agreements and could, therefore, be free to set up in competition.
Again in the case of an actual sale, very often there are some deferred terms for the payment of sale proceeds. For instance, at times negotiable documents like shares or loan stock are issued by the company making the purchases. But in a hypothetical sale, the whole operation would be on the basis of an immediate cash sale.

(iv) Cost of hypothetical sale:

So far as the cost of hypothetical sale is concerned, it is necessary to keep in mind that the open market value of shares gives no allowance for notional expenses on the notional disposal. In the estate duty case of Duke of Buccleuch Vs. I.R.C., Lord Guest upheld this view in the following words:

"...... The words "price the property would fetch"...... mean that it is not the price which the vendor would have received but what the purchaser would have paid to be put into the shoes of the deceased. This means that the costs of realisation do not form a legitimate deduction in arriving at the valuation." 39

(v) Prior and subsequent events:

The valuation must be made at the appropriate date on the basis of the situation at that time. In this context it is useful to examine the effects of prior and subsequent events on valuation.

So far as the valuation of shares is concerned, there may have been previous arm's length sales which may be considered as a good and substantial evidence for a subsequent valuation. Of course, in practice instances of prior sales which may be taken to be truly at arm's length are only few and far between. However, an instance of a Court case in which previous arm's length sales influenced the value, may be given. In the estate duty case of Mo-Namee Vs.
"Accepting Mr. Me-Nulty's evidence as to the bonafides of the sale of these shares to Mr. Kilrattick and granting that this price of £1-10s is the highest ever paid for these shares in the history of the company, I still must bear in mind that this was not a sale in any real or any imaginary open market. I must make allowances for the sale in an imaginary open market. It is here. I find evidence of Mr. Chott and Mr. Butler of great value. I have given anxious thought and consideration to this perhaps in some ways the most difficult part of my task. I am satisfied that not more than £1-12s-6d, certainly not more than that, might have been obtained in the open market, an imaginary open market, for this lot of 175 shares. Accordingly, fix and determine the value of these shares at £1-12s-6d each."

"But while accepting the evidence of prior events, it is necessary to see that the situations are truly comparable. An attempt at an unrealistic comparison is surely misleading."

"Now coming to the question of events subsequent to the valuation date, the general principle that is followed is that they must be ignored. In the estate duty case of Me Colt, Bancewerts, J. stated:

"I rule out of consideration the knowledge provided by the passage of time since March 11, 1944, that the company's dividend on ordinary shares has not been increased from 5% and that the company has been able to avoid a public issue of ordinary shares by launching an exceedingly successful issue of new preference shares in September, 1950."
In the case of the Trustees of Johan Thomas Salvesen Vs. I.R.C., Lord Fleming stated:

"I quite recognise that the problem I have to deal with must be solved in the light of the information available at or about the time of the testator's death."

Again in the estate duty case of Re Lynall, Lynall Vs. I.R.C., Flowman, J., stated:

"......(1) The accounts for the year ending 31 July, 1962 being post death documents, are not admissible as evidence of the value of Dr. Lynall's shares at the date of her death, except possibly to the limited extent..................

(2) the Chairman's speech is a post-death document and is not admissible......" 

In the case of I.R.C. Vs. Farr's Trustees, the Court ignored a subsequent sale as an admissible evidence. In course of judgement Lord Johnston stated:

"...... even if I had not considered the special circumstances to be immediately adverted to, I should have no hesitation in stating that the herd must be valued at the date of the death, though it might have been imprudent to bring it to the hammer until three or four months later, and that the commissioners of Inland Revenue were not entitled to have a valuation as in October, when the best market may be anticipated, or a valuation based on the results of actual sale at that period."
He further added:—

"I think that the sale which actually did take place in October was accompanied by certain adventitious circumstances which, though they rebounded very much to the advantage of the estate, render the sale price obtained a misleading criterion of the true market value of the herd at the date of the death, or indeed at any other date ........."

However events subsequent to the date of valuation and any important information from such events may be taken as an aid to shed light on the valuation at the valuation date. Thus Lord Fleming stated the following in the Salvesen's case:—

"I quite recognise that the problem I have to deal with must be solved in the light of the information available at or about the time of the testator's death. I think that, however, does not deter me completely from making any reference to the balance sheet at 31 July, 1927 which includes a period of nearly three months prior to the testator's death (24 October, 1926)."

In Re Pry, Taster v. Gulliford, the learned judge stated:—

".....although the moment at which the damages in a case are to be fixed is the moment of the death, that did not mean that the court was to shut its eyes to subsequent happenings and that the court could, in assessing damages, inform its mind of circumstances which had arisen since the cause of action accrued and which threw light on the realities of the case."
Thus although the subsequent events are, as a matter of general principle, avoided, in appropriate cases such events may be considered as a bulb which throws light on the practical situation. Moreover, since facts tell the truth and the background behind such truth, there is no reason why such facts, whenever available, should not be preferred to prophecies. At least there is no reason for shutting eyes to the happenings subsequent to the valuation date.

(vi) Information available:

Availability of adequate information is an important consideration in a hypothetical open market sale, because the extent of information available to a hypothetical buyer will influence the price, that he will be ready to pay. While favourable information regarding the future of a business tends to enhance the price, adverse information will definitely reduce the price. With regard to information that may be available in a hypothetical sale, there may arise two questions. (X) To what extent can a purchaser in an open market expect to have information? Can a potential bidder expect to have confidential information? (Y) What may be the sources of information to a willing buyer? (X) Extent of information: Since open market sale denotes sale held under conditions enabling every person, desirous of purchasing, to come in and make an offer, it has been found that the courts generally attempt to ensure that the information hypothetically presented to an imaginary purchaser is both unbiased and complete. A prudent purchaser will definitely make inquiries and receive information concerning major factors affecting the value of the shares. In I.R.C. Vs. Clay, Cozens, - Hardy, M.R., said:
".....An "open market" sale of property "in its then condition" presupposes a knowledge of its situation with all surrounding circumstances."\(^{47}\)

The extent of information available to a willing buyer in a hypothetical sale was considered in re Lynall.\(^{48}\) The question in that case was whether or not a hypothetical purchaser should be assumed to have possession of the pertinent information. The Court of Appeal held that such knowledge should be imputed to a hypothetical purchaser. Then the Lynall's case went up to the House of Lords, the House of Lords made observations on the following points as regards the availability of information in an open market:

(a) Same information to all bidders - A sale in the open market required that all potential bidders would have the same information. No discrimination should be allowed. Lord Reid stated:

"If the hypothetical sale on the open market requires us to suppose that competition has been invited then we would have to suppose that steps had been taken before the sale to enable a variety of persons, institutions or financial groups to consider what offers they would be prepared to make. It would not be true sale in the open market if the seller were to discriminate between genuine potential buyers and give to some of them information which he withheld from others, because one from whom he withheld information might be the one who if he had had the information, would have made the highest offer."
(b) Extent of knowledge - On the extent and type of knowledge which a hypothetical buyer can expect Lord Reid stated:

"The decision of this case turns on the question what knowledge the hypothetical bidders must be supposed to have had about the affairs of Linread. One solution would be that they must be supposed to have been omniscient. But we have to consider what would in fact have happened if this imaginary sale had taken place, .... One thing which would not happen would be that the bidders would be omniscient. They would derive their knowledge from facts made available to them by the shareholder exposing the shares for sale. We must suppose that being a willing seller and an honest man, he would give as much information as he was entitled to give. If he was not a director he would give the information which he could get as a shareholder. If he was a director and had confidential information, he could not disclose that information without the consent of the board of directors."

(c) Information from published documents - Information contained in published documents is available to a willing purchaser. No information shall be deemed to be available to a willing purchaser unless the information is a published information. Lord Morris stated in Lynall's case:

"..... The issue which was raised turned largely on the question as to what knowledge and information would be available for and would be at the command of the purchaser. There were certain documents in existence the contents of which would have influenced a purchaser who had access to them. The learned judges (in the Crossman's Case (1936)1 ALL E.R. 762) decided that as the
information contained in these documents was not published information, it would not have been available to a purchaser...."

If a hypothetical purchaser is not content with published information, he may look for other avenues of information. In this context Lord Forbis stated:

"A purchaser in the open market would probably not be content merely with what would be published information in the sense of information which had been in print in some documents sent out by a company to its shareholders. He would form his own idea as to the company's prospects having regard to trends and developments which are matters of public knowledge."

(d) **Reasonable information** - Where it is difficult to purchase and sell shares in the stock exchange a hypothetical purchaser, generally, would not be willing to buy unless he obtains reasonable information about relevant facts. Lord Morris stated:

"It is obvious that no purchaser would expend such money unless he had such reasonable information as would give him confidence."

Lord Morris referred to Findlay's trustees *vs.* IRC (1938) 22 ATC 437 in which Lord Dixon spoke of a willing buyer as being a man of reasonable prudence who would try to obtain reasonable information regarding the history, present position and future prospects of the company before forming an opinion for purchasing the shares.
(e) **Information through diligent enquiries** - Information available through diligent enquiries may be cited as a good evidence. Lord Pearson stated: -

"The crucial question, therefore, is whether this information should be deemed to be available to participants in hypothetical market. I should agree with what was said by Lord Fleming in Salvesen's case (1930) SLT 387 and by Danckwerts, J., in Holt Vs. IRC (1953) 2 All. & R. 1499 to the effect that a purchaser of shares in a private company subject to restrictions on transfer would be diligent in his enquiries."

(f) **Confidential or secret information** - So far as the availability of confidential information is concerned, it was held that such information shall not be deemed to be available to a hypothetical buyer. The following observations of the judges will help to focus light on the issue of availability of confidential information. Lord Donovan: "It is now proved to have been right that confidential information is irrelevant to the determination of the value of share......; and being irrelevant is therefore, inadmissible".

Lord Pearson: "It is reasonable to imagine that in that situation the board would have kept these matters confidential and would have been unwilling to make them available to participants in the open market. Prima facie the information would not have been available."
Lord Reid: The directors are under no legal obligation to make any confidential information available.

"Circumstances vary so much that I have some difficulty in seeing how we could lay down any general rule that directors must be supposed to have done something which they were not obliged to do. The farthest we could possibly go would be to hold that directors must be deemed to have done what all reasonable directors would do. Then it might be reasonable to say that they would disclose information provided that its disclosure could not possibly prejudice the interests of the company."

The House of Lords came to the conclusion that since it could not be assumed that the board of directors of a company would be prepared to prejudice the interests of the company by disclosing confidential information to all potential bidders and thus making it public knowledge, the shares are to be valued on the basis that none of the potential bidders had that information.

So far as the willingness of the directors to supply information is concerned, it can be said without any reservation that no confidential information should be expected from directors. Even they refuse to supply any other information which is not approved by the board. This situation prompted Hamilton Baynes to make the following comment:—

"It is curious that the only opportunity given to a member or a prospective member of a company to have the fullest possible information to assist him in valuing the shares is on the occasion
where the company issues a prospectus. Thereafter he has to be content with the relatively meagre information vouchsafed to him by the directors once a year. He may expect but will seldom receive details of the business connections of the directors, the relationships with the staff, the failures or ambitions with regard to new products. 

(Y) Sources of information:

The discussion on the availability of information will be concluded after a brief reference to the various sources of published and unpublished information which may be available to a hypothetical purchaser in an open market. The main sources of published information are:

(i) Annual accounts and reports of public companies;
(ii) Stock exchange official list and report;
(iii) Trade Directories and Journals;
(iv) Reserve Bank Bulletins etc.;

The important sources of unpublished information are:

(i) Memorandum and Articles of Association;
(ii) Annual Accounts of Private Companies;
(iii) Interim accounts;
(iv) Budgets;
(v) Tax returns;
(vi) Stock list;
(vii) Managerial remuneration;
(viii) Property registers (including plant register);
(ix) Managerial personnel;
(x) List of Debtors and Creditors;
(xi) Company's work force;
(xii) Pension scheme;
(xiii) Customers and suppliers;
(xiv) Insurance records;
(xv) Contractual obligations;
(xvi) Contingent liabilities and assets;
(xvii) Company's auditors, solicitors and bankers;
(xviii) Important accounting ratios, e.g. credit ratio, debtors ratio, ratio of turnover, working capital ratio, return on capital invested, current ratio, acid test ratio, EPS, debt-equity ratio, dividend cover, fixed interest charges cover etc.

The open market sale is assumed to be a transaction between a willing buyer and a willing seller. Thus in determining the price which would be fetched in a hypothetical sale in the open market, it is to be assumed that the transaction takes place between a hypothetical willing seller and a hypothetical willing, prudent and cautious buyer. In C.W.T. vs. V.C. Ramachandran, the court appreciated the concept of "willing buyer and willing seller" in the following words:
"...in determining the market value of the assets......., the true test would be the price the assessee would get on the valua-
tion date for his landlord's right in a transaction between a
willing seller and a willing buyer".  

In Re Lynall, Laynall Vs. IRC, Harman, L.J. Stated :-

"The sale envisaged by the section is, as is agreed not a real
but a hypothetical sale and must be taken to be a sale between
a willing vendor and a willing purchaser..........It is true
that the so called willing vendor is a person who must sell, he
cannot simply call off the sale if he does not like the price,
but there must be on the other side a willing purchaser, so that
the conditions of the sale must be such as to induce in him a
willing frame of mind."

Lord Guest in the Estate Duty case of Winter (Sutherlands
Trustees) Vs. IRC referred to the criterion of price in the
open market as between a willing seller and a willing buyer as a
familiar basis of valuation. In the estate duty case of Duke of
Buccleuch Vs. IRC , Lord Reid also approved of this criterion
for value (price in the open market as between a willing seller
and a willing buyer).

In Raja Vyricharla Narayana Vs. The Revenue Divisional Officer,
Vizagepatam, Lord Romer referred to the concept of a willing
seller and a willing buyer, but added that such a willing vendor
should not be disinclined to sell and at the same time the willing
buyer should not be in an urgent necessity of buying.

"......The compensation must be determined therefore, by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be regarded as acting under compulsion......"\(^57\)

Thus in the case of a willing seller and a willing buyer, there is no question of a forced sale. So far only a reference has been made to a willing seller and a willing buyer in the open market. But who are those willing sellers and willing buyers? These are definitely imaginary persons and it is difficult to say with certainty who these persons are. However, an effort is being made to outline the precise meaning and characteristics of these persons with particular reference to various court decisions.

(1) Meaning of Willing seller:

Simply speaking, a willing seller is one who is prepared to sell provided a fair price is available under the prevailing circumstances of the particular case. He is in a sense a free man having option to sell or not to sell and he can wait for a better offer. In the cases of IRC Vs. Clay and IRC Vs. Buchanan "willing seller" was defined as follows :-
"...I think a willing seller means one who is prepared to sell provided a fair price is obtained under all the circumstances of the case. I do not think it means only a seller who is prepared to sell at any price and on any terms, and who is actually at the time wishing to sell. In other words, I do not think it means an anxious seller" (Pickford, L.J.)

"A sale by a willing seller is distinguished from a sale which is made by reason of compulsory powers, where the vendor frequently obtains an addition to the price by reason of being under compulsion to sell. It does not mean a sale by a person willing to sell his property without reserve for any price he can obtain. Mrs. Buchanan was a willing seller where she accepted £1,000. The fact that she was persuaded or induced to agree voluntarily to sell at that price did not make her any the less a willing seller. There was no evidence of any compulsion; there was friendly bargaining, some discussion, some haggling about price, and there an agreement come to. This is the normal course of most private contract sales. She was nonetheless a willing seller because she had not previously put the property into the hands of an agent for sale - she was offered a price less than the maximum which the intending purchasers were willing to give, and she took it." (Swinfen Eady, L.J.)

(ii) Meanings of willing buyer: In simple terms a willing buyer is a person who has the will and money to buy. It does not mean that he should be an anxious buyer nor does it mean that he will be a reluctant buyer. He is expected to be a man
of reasonable prudence. He is also a cautious buyer. So far as the willing buyer is concerned Lord Fleming in the estate duty case of Findlay's Trustees Vs. IRC Stated:

"In estimating the price which might be fetched in the open market for the goodwill of the business it must be assumed that the transaction takes place between a willing seller and a willing purchaser; and that the purchaser is a person of reasonable prudence, who has informed himself with regard to all relevant facts such as history of the business, its present position, its future prospects and the general conditions of the industry;...."

In the estate duty case of Re Holt, Holt Vs. IRC Danck-Werts, J. Stated:

"I think the kind of investor who would purchase shares in a private company of this kind, in circumstances which must preclude him disposing of his shares freely whenever he would wish, would be different from any common kind of purchaser for shares on the stock exchange, and would be rather the exceptional kind of investor, who had some special reason for putting his money into shares of this kind. He would, in my view, be the kind of investor who would not rush hurriedly into the transaction, but would consider carefully the prudence of the course, and would seek to get the fullest possible information about the past history of the company, the particular trade in which it was engaged and the future prospects of the company."
The concept of willing buyer and willing seller is a simple one based on the philosophy that both the parties would agree to a common price for a transaction. The legal implication of the concept lies in the presumption of an equal degree of willingness on the part of both the parties. One characteristic of willing sellers and willing buyers is that both of them are supposed to be honest men. Apart from these and other characteristics already outlined above, there are some more characteristics which are important and interesting in the context of complete comprehension of the concept of willing buyers and willing sellers.

(a) Bound by Articles of Association - The hypothetical willing buyer will be bound by Articles. He may be restricted to sell his shares, but at the same time he may have opportunities to buy other members' shares.

(b) Human attributes - In re Courthope (deceased) case, Rowlett, J., gave his hypothetical willing purchaser quite human attributes. He stated:

"I have to look for a man who has considered those things and has considered everything else and what else he could do with his money and all the rest of it finally makes up his mind to give a certain price."

Rowlett, J., Pictures the willing buyer as saying to himself:

"Well, I may be met with difficulties.....Lawyers tell me that I possibly might be able to compel a winding up."
There are cases upon it, and all the rest of it, but I do not know how they may be."

c) Well informed man\textsuperscript{64} - A feat of imagination has to be performed\textsuperscript{65} to understand the willing buyer who is imagined to have knowledge about varieties and diversities, uncertainties and difficulties, ills and well-beings of the company.

d) Unpopular person - There is a general impression that the hypothetical purchaser would be likely to be unpopular. In salvesen's Trustees Vs. I.R.C., Lord Fleming\textsuperscript{66} was of the view that this person would be apprehensive that he would find himself in an uncomfortable position as an intruder into a family concern. In re Samuel Thornley, Rowlatt, J., went a step forward and added that this man might find himself a detested intruder with a minority interest.\textsuperscript{67}

e) Special buyer - A question may arise whether a special buyer is a willing buyer. A special buyer is a person or a class of persons to whom a particular item of property subject to sale in the open market is more important or more valuable or more desirable than to the general public. Because of the special interest the special buyer is definitely willing to pay more than others. But he is a competitor in the market in which there may exist other buyers who may be willing to buy the property for selling it to special buyers at a profit. In this case the market price will be a little less than what the special buyer is willing to pay. Where there are more special buyers, the price
is likely to go up. The position of special buyers may be considered with reference to some court cases.

It is clear, that a special buyer has to be included as a possible willing buyer. The only point to consider is what effect this would have on the price. In I.R.C. Vs. Clay, I.R.C. Vs. Buchanan which was a case involving the value of land, Swiften Wady, L.J., stated:—

"It was then urged by the Solicitor General that if the probability of the special buyer purchasing, above the price, which but for his needs would have been the market price, could be taken into consideration at all, then only one further point or bid could be allowed, and it must be assumed that this special buyer would have become the purchaser upon making this one extra bid. Such an assumption would ordinarily be quite erroneous. The knowledge of the special need would affect the market price and others would join in competing for the property with a view of obtaining it at a price less than that of which the opinion would be formed that it would be worth the while of the special buyer to purchase."

With regard to the position of special buyers Lord Johnston in Glass Vs. I.R.C. stated:—

"But he (the referee) is further mistaken, I think, in that he has forgotten that, where a public body is expected in the near future to require certain property, there are generally found and must be assumed to be, people who are prepared to trade on
that fact, and prepared to bid up to a point to which they think they may safely go and leave themselves a chance of profit in turning over the property to the public body. That point would doubtless be below the value to the public body, but where, as here, the public body has no compulsory powers all depends on how near a certainty it is that the commissioners must acquire. In fact if the acquisition by the public body has become a practical certainty, the margin depends on what it would cost the public body to obtain compulsory powers, or to adopt some other course of attaining their end if such is feasible. The phrase "willing seller" is not to receive a restricted meaning. He is only hypothetically willing if he gets the advantage of all surrounding circumstances,..........

The position of special purchaser was considered in the case of Raja Vyriherla Narayana GajapatiRaju Vs. Revenue Divisional Officer in which Lord Romer stated:–

"Proceeding, therefore, with the imaginary auction at which are present two classes of buyers, namely the "poramboke buyers" (persons who are in no way interested in the land's potentialities) and the "potentiality buyers", the former will disappear from the biddings as soon as the "poramboke" value has been reached and the bidding will thereafter be confined to the "Potentiality buyers". But at what figure will this bidding stop? As already pointed out it can not be imagined as going on until the ultimate purchaser has been driven by the competition up to a fantastic price. For he is ex-hypothesis a willing purchaser."
and not one who is by circumstances forced to buy. Nor can the bidding be imagined to stop at the first advance on the "poramboke value". For the vendor is a willing vendor and not one compelled by circumstances to sell his potentiality for anything that he can get. The arbitrator will, therefore, continue the imaginary bidding until a bid is reached which in the arbitrator's estimate, represents the true value to the vendor of the potentiality......

It was contended on behalf of the respondent that at an auction where there is only one possible purchaser of the potentiality the bidding will only rise above the "poramboke" value sufficiently to enable the land to be knocked down to that purchaser. But if the potentiality is of value to the vendor, if there happen to be two or more possible purchasers of it, it is difficult to see why he should be willing to part with it for nothing merely because there is only one purchaser. To compel him to do so is to treat him as a vendor parting with his land under compulsion and not as a willing vendor. The fact is that the only possible purchaser of a potentiality is usually quite willing to pay for it."

That the inclusion of all potential purchasers in the hypothetical market is necessary was also confirmed in the case of Robinson Bros. (Brewers) Ltd. v. Houghton and Chester-Le-Street Assessment Committee. In this case Lord Macmillan stated:

"......The brewer who wishes the premises because he thinks he can make money by sub-letting them to a tied tenant is
influenced by perfectly legitimate business considerations.

He offers the rent he thinks it worth his while to pay to obtain the tenancy. Why should the rent which he is prepared to pay be excluded from consideration in fixing the market value of the tenancy? He is one of the competitors in the market and the figure which he is prepared to pay is an element which ought clearly to be taken into account in arriving at the market price."

However, the fact that a special purchaser is to be included as a potential purchaser does not mean that he will be blackmailed to pay the maximum sum which the shares could be worth to him. In the estate duty cases of Re Grossman and Re Paulin, Viscount Hailsham, L.C., stated:

"......the learned judge fixed the value,........, at £ 351 in the Grossman case and £ 355 in the other. In fixing those figures, it appears from the judgement that Lord Plender "did not exclude anybody or include anybody in particular; he considered the matter generally". In my opinion that is the right way in which to arrive at the value in the open market. But the learned judge goes on to say that evidence was called for the Crown which indicated that a particular trust company would be willing to give a good deal more than the ordinary market price, because of certain particular attractions........ The learned judge says that he excluded trust companies from the possible buyers because he had evidence to satisfy him that the directors would not have contended to put them upon the register. I can not think that this is a proper reason....."
On the other hand, I think it is a fair construction to put upon the learned judge's judgement that the extra sum which could be obtained from trust companies was not an element of the value in the open market, but rather a particular price beyond the ordinary market price which a trust company would give for special reasons of its own. I do not think it would be right to appreciate the value of the shares because of this special demand for a special purchase from a particular buyer. 72

Although, in the above case it was argued that shares were so attractive to a trust company that these could be valued at £ 395 per share instead of £ 355 per share, the argument was rejected. Lord Blanesburgh stated:

"I agree with, I believe, all your lordships in thinking that any possible bid for the shares by a trust company was allowed for by Lord Plender in his estimate of £ 355 a share accepted by the learned judge as reliable." 72

So far as the special purchasers are concerned three points are very important. (1) A special purchaser is to be considered as one of the potential purchasers because "all likely purchasers are deemed to be in the market." 73 (2) If the existence of special purchasers is known, the price will be estimated keeping in view the price that the special purchaser will pay. (3) When the existence of a special purchaser is not known, there will be no effect on the price. 74
(f) Reasonable ability and intelligence - Both the willing buyer and the willing seller are assumed to possess reasonable ability and intelligence. A willing seller is assumed to be a person who is content to continue as a shareholder, but at the same time he is quite glad to have the opportunity of selling the shares, if he is offered a reasonable price. Similarly a willing buyer is assumed to be a person who would purchase the shares if and only if some advantages (less disadvantages) accrue to him on becoming the holder of the shares.

(g) Psychological set-up - A willing seller is psychologically prepared to sell on reasonable terms. But like every seller he wishes to sell at the earliest opportunity as well as at the highest price regardless of the quantitative and qualitative merits of his articles. This psychological set up of the willing seller can not be interpreted as the anxious state of mind. That the willing seller is ready to make a rational compromise and to take a decision by being impartial to the two extremes of the state of his mind with the one extreme representing an anxious seller and the other a reluctant seller is far more important to the valuer.

(P) Best possible price:

Open market value assumes a sale for the best possible price obtainable in the market. In the estate duty case of the Earl of Ellesmere Vs. I.R.C. Sankey, J., stated:

".......No doubt a sale in one lot of a varied property such as that in the present case may be highly convenient
to the vendor. He may want to get the money quickly, he may not care to risk an auction. But it does not at all follow that the price which he obtains under such circumstances is "the price which it would fetch if sold in the open market." What is meant by those words is the best possible price that is obtainable, and what that is largely, if not entirely, a question of fact.

With regard to the best possible price, it is necessary to take care that it is not fanatically carried to the extreme. In the estate duty case of Duke of Buccleuch Vs. I.R.C. Lord Reid stated:–

"It is sometimes said that the estate must be supposed to have been realised in such a way that the best possible prices were obtained for its parts. But that can not be a universal rule."

In the context of the best obtainable price as the indication of open market value, the following points need careful consideration.

(i) Sub-division of shares:

The hypothetical open market sale can assume the disposal of the shareholdings by sub-dividing them for the purpose of obtaining the best possible price. Division of a single shareholding into saleable blocks of shares was considered in two estate duty cases, namely Smyth Vs. I.R.C. and Earl of Ellesmere Vs. I.R.C.
In Smyth Vs. I.R.C., Hanna, J., stated:—

"I think that the weakness underlying the submission of the Revenue Commissioners is the assumption that the shares in this case would be necessarily or even likely to be sold en bloc to one purchaser. I do not think that the section of the Act contemplates in the term "open market", not only a market which is hypothetical, but also only hypothetical purchasers wanting a block of shares. In my judgement, you must take into consideration the possibility of the shares being divided up among several purchasers, either members of the family or of the public......"78

The question of sub-division was beautifully presented by examples by Sankey, J., in Earl of Ellesmere Vs. I.R.C. in the following words:

"Now the Act of 1894 says that the value of the property shall be estimated to be the price which it would fetch if sold in the open market. That, in my opinion, does not necessarily mean the price which it would fetch if sold to a single purchaser. There may be many cases where a sale to a single purchaser can not realise "the price which it would fetch if sold in the open market." Take the case of an owner having property, including a colliery and a draper's shop. It is conceivable that if the colliery and the draper's shop were sold separately the best possible price might be obtained for each. On the other hand a purchaser who was anxious to
buy the draper's shop might not wish to be encumbered with
the colliery and vice versa, and consequently if the owner
insisted upon selling the whole property to one purchaser, he
would not obtain the market price which the Act contemplates.
So, too, with regard to property of the same character situate
in different areas. It may well be that if in such a case
the vendor insists upon the different parts being all sold
to the same person, he will not get as good a price as if he
allowed different persons to buy the portions situate in
the different districts. 79

While considering the case of sub-division, it is necessary to
keep in mind that there may be cases in which sub-division into
easily saleable lots is not practicable. In the Salvesen's case,
Lord Fleming stated:

"......at the hearing attention was directed to article 12.
The terms of that article are very drastic and unusual. It
provides for the compulsory retiral from the company of a
person holding not more than 10% of the shares of the company..
......Nevertheless I am of opinion that this article would
have considerable effect in depreciating the value of the
shares. Its effect would be to prevent them being sold in
lots of less than 10,000 shares. Furthermore, a person
who was considering what price he ought to offer for the
whole of the testator's shareholding would certainly take
into account that he could not transfer less than one third
of the holding even to one of his own relatives......" 80
(ii) Consolidation of shareholdings:

The hypothetical sale in the open market can assume a sale by consolidating shareholdings for obtaining a better price. Even the sale of a combined holding of ordinary and preference shares of a shareholder may be assumed, if such a step is expected to yield the best possible price. In this connection, the judgement of Lord Reid in A-G. of Ceylon Vs. Mackie appears to be interesting. Lord Reid stated:

".........It was admitted for the appellant that no purchaser would have paid anything like Rs.250 per share for the management shares in the face of the company's articles unless he could buy at the same time a large block of the preference shares and so have a majority of the votes. But the appellant contends that the respondent must be supposed to have taken the course which would get the largest price for the combined holding of management and preference shares and to have offered for sale together with the management shares the whole or at least the greater part of the preference shares owned by the deceased. In their Lordships judgement this contention is correct."

An interesting question may arise as to whether this Principle of consolidation, applicable to different types of shares of the same company, can be applied in certain appropriate situations to the holdings of two or more different companies. When in appropriate circumstances it is unreasonable to think of selling the
shares of one company without expecting a relatively small value for the shares of the other company, the course may obviously be to think of the shares of the different companies in combination. Thus where a person holds controlling interest in two different companies, one only producing goods while the other only selling the goods produced by the former, it is quite natural that the shares of one company in isolation from the shares of the other will have a relatively small value and it may even be impossible to sell one controlling interest without the other. In such cases the shares of both the companies may be considered in combination.

(iii) Minority holdings:

In the context of the availability of the best possible price for shares in the open market, the question of minority holding is relevant. The disadvantages attached to the minority holding will have a discounting effect on the share. Thus in the estate duty case of Re Thornley, where there was evidence that the shares were saleable privately on a 15% basis and were worth perhaps £4 each, adequate number of third parties was not available to buy the shares and Rowlatt J., commented:

"If it were a matter of arranging for a new shareholder coming in under circumstances of cordiality between all concerned and perhaps with an understanding that articles might have to be altered and so on, I can understand it. But the imagined purchaser of the 4,000 shares of the deceased in this case would find himself a detested intruder with a minority interest and under articles .... and I wonder very much whether anyone could be found to take the position on Lucrative terms to the seller of the shares....."
(v) **Articles of Association and restriction on transfer:**

The question of restrictive provisions in the articles of association regarding transferability of shares will be considered in details in connection with the valuation of shares in a private company in a later chapter. In the context of the availability of the best possible price, it can be said that restrictions on transfer can have a depreciatory effect on the value of shares. Thus in the Salvesen's case, Lord Fleming stated:

"The last matter which I have to consider is the effect which the restrictive conditions in the articles would have on the value of the shares. I may have said once that I regard these restrictions as depreciating their value very considerably. Nobody, except a person who was prepared to have his capital locked up for many years, could afford to buy them at more than par value." 

In relation to the restrictive provisions in the articles of association two important points are notable.

(a) The value of the shares is to be determined on the basis of the price which such shares would fetch, if sold in the open market irrespective of any price for the shares mentioned in the articles of association.

(b) The hypothetical purchaser of shares with restrictive provisions in the articles is deemed to be registered as shareholder in the place of the deemed vendor and thereafter, would hold the shares subject to the company's memorandum and articles.
Thus in A - G. Vs. Jameson, where article 9 mentioned the fair value for the transfer of the shares, Lord Ashbourne in the Court of Appeal stated:

".....It requires no tremendous imagination to conceive what a purchaser would give in the open market for Henry Jameson's shares, .......\^86

In this case Walker, L. J., stated:

"I think the test of value, under section 7, is what the shares would fetch if sold in "open market" - a hypothetical "open market", upon the terms that the purchaser would be entitled to be registered in respect of the shares but would himself thereafter hold them subject to the provisions of the articles of association, including those relating to the alienation and transfer of them, and that this price is not limited to the "fair value"..."\^86

In Re Crossman and Re Paulin, Lord Roche stated:

"In so far as the passing or transfer of property is thus notional or hypothetical, no restriction upon actual passing or transfer comes into question, and the articles as to the prescribed price which is to rule under certain circumstances, though it is no doubt a constituent part of the bundle of rights which constitutes a share, does not as I think, govern such a notional transfer so as to make the notional purchaser no more than a person who acquires an obligation to offer the shares to others at the prescribed price."\^7
In Lynall's case their Lordships unanimously confirmed the Crossman decision and held that the hypothetical purchaser was to be registered as share holder and thereafter, was to hold the shares in accordance with the articles of association.

(4) On the valuation date:

Time at which the hypothetical sale takes place is an important consideration.

Under the Direct Taxes statutes valuation is to be made with reference to a specific date which is sometimes described as a valuation date. Thus open market value is to be estimated on the basis that the property is sold by a hypothetical willing seller to a hypothetical willing buyer on the valuation date.

The problem of estimation of the price of any property arises because the property is not actually sold on or before the date of valuation. If the property could be sold on the valuation date, its sale proceeds could form the basis of valuation. Since this is not possible, the estimation of price in the open market is made on the basis of a notion that the entire property is sold on one single date, the valuation date. Therefore, it is necessary to presume that all the necessary preliminary arrangements for sale, e.g. advertisement, etc. have been made prior to the date of valuation. In Duke of Buccleuch Vs. I.R.C., the learned Judge stated :-
"Here we come to the real point in this case - you are to envisage a hypothetical sale in which all the preliminary arrangements have been made prior to the time of death so that the sale can take place at the time of death. Only in that way you can estimate the price it would fetch if sold at the time of death. The object is to get the value at the time of death and not at any other time; and you can only do that by assuming that all preliminary arrangements have been made beforehand."

Another important point in connection with the consideration of valuation date is that the property must be valued in its actual state on the relevant date of valuation. So far as the date of valuation is concerned, two relevant points are to be mentioned here.

(i) The time of hypothetical sale is a definite time and it does not refer to a reasonable period of time. Thus in the estate duty case of the Duke of Buccleuch vs. I.R.C. Lord Reid stated:

"The section must mean the price which the property would have fetched if sold at the time of death. I agree with the argument of the respondents that "at the time of death" points to a definite time - the day on which the death occurred; it does not mean within a reasonable time after the death."

Lord Reid further stated:

"......But here what must be envisaged is a sale in the open market on a particular day. So there is not room for supposing that the owner would do, as many prudent owners do - withdraw the property if he does not get a sufficient offer and wait until a time
when he can get a better offer. The commissioners must estimate what the property would probably have fetched on that particular day if it had been exposed for sale....

In the same case Lord Guest also made the following remark:

"...at the time of the death, means at the moment of death, not within a reasonable time after the death."

(ii) The second relevant point relates to the purchase and sale of shares before the actual date of valuation. If the shares in a company are purchased before the date of valuation, these will have to be valued as the property of the purchaser, although the actual date of registration may happen to be date later than the date of valuation. Similarly, if certain shares are disposed of or transferred before the valuation date, irrespective of the date of registration of the shares under the Companies Act, 1956, the shares cannot be taken as the property of the seller or transferor on the valuation date. In the case of C.W.T., West Bengal VI Vs. Babulal Jatia (1982) 137 ITR 540, the Calcutta High Court held that the transfer of the interest in the shares from the transferor to the transferee is independent of the requirement of registration required under the Companies Act, 1956.

It has already been stated that the general principle is contained in Sec. 36 of the Estate Duty Act, 1953, in Section 7 of the Wealth Tax Act, 1957, in Sec. 6 of the Gift Tax Act, 1958 and in sections 52 and 55 read with Sec. 2(22A) of the Income Tax
1961. An analysis of these sections of the direct tax laws will provide the reader with a fairly good idea of the open market concept contained in the Acts.

U/S 36(1) of the Estate Duty Act, the Principal value of any property shall be estimated to be the price which, in the opinion of the controller, it would fetch if sold in the open market at the time of the deceased's death. The statute thus requires the controller to form an opinion about the price of an item of property on a consideration of the facts of a sale in the open market at the time of the death of the deceased.

Accordingly, if the estate of a deceased includes any shares, the Principal value of such shares, for the purpose of estate duty, shall be estimated to be the price which in the opinion of the controller, such shares would fetch if sold in the open market.

U/S 7(1) of the Wealth Tax Act, subject to any rules made in this behalf, the value of any assets, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth Tax Officer it would fetch if sold in the open market on the valuation date. On a close study of the subsection, the discerning reader will definitely note that the subsection prescribes the mode of valuation of any asset (which obviously includes shares) other than cash and such valuation is concerned with the estimation of price which in the opinion of the Wealth Tax Officer, any item of property would fetch if sold in the open market on the date of valuation.
Under the Gift-tax Act also the value of any item of property other than cash is to be estimated to be the price which, in the opinion of the Gift-tax officer, it would fetch if sold in the open market on the date on which the gift of the property is made (Sec. 6(1)). Thus under the Gift-tax Act the value of shares transferred by way of gift is to be estimated to be the price which they would fetch if sold in the open market on the date of the gift.

The idea of open market concept finds its place in Sec. 52 and Sec. 55 read with Section 2(22A) of the Income Tax Act while making assessment of capital gains arising out of the transfer of capital assets which may include shares in companies. Thus where certain shares are transferred, any gain resulting from the deduction from the full value of the consideration received or accruing as a result of the transfer of the shares, (i) any expenditure incurred wholly and exclusively in connection with such transfer; and (ii) cost of acquisition of the shares, shall be liable to income tax under the head, "capital gains". U/S. 52(1) of the Income Tax Act, where the transferor and the transferee of certain shares are directly or indirectly connected with each other and the Income Tax Officer has reason to believe that the transfer was effected with the object of avoidance or reduction of the transferor's liability to capital gains tax U/S 45, the Income Tax Officer, with the previous approval of his Inspecting Assistant Commissioner, is entitled to take as the full value of the consideration for the transfer, the fair market value.
Under sub-section (2) of section 52 the Income Tax Officer has an authority to substitute the fair market value as on the date of transfer whenever the full value of consideration declared by the transferee fell short of such fair market value by 15% or more of the value so declared.

Under sub sections (2) and (3) of section 55 fair market value of the capital assets transferred is an important consideration for the purpose of determination of cost of acquisition.

Clause (i) of sub section (2) of section 55 provides that where the capital asset became the property of the transferee prior to the 1st day of January, 1961, he has the option to choose as his 'cost of acquisition' for the purpose of ascertaining the amount of capital gains, the fair market value of the asset concerned on the 1st day of January, 1964. Thus if Mr. X acquired some shares at Rs.2,000 (say) in 1950 and their fair market value on 1-1-1964 was Rs.5,000, he would certainly exercise the option and if he had sold the shares for (say) Rs.8,000, the capital gains will amount to Rs.3,000/- and not Rs.6,000/- (assuming no selling expenses).

Clause (ii) of sub section (2) of Sec. 55 provides that where the capital asset became the property of the assessee by any of the modes specified in Sec. 49(1) but such acquisition took place after the 1st day of January, 1961 and if the previous owner had acquired the property before the 1st day of January, 1961, the assessee has the option to choose either the cost of acquisition of the property to the previous owner or the fair market value of the property on the 1st day of January, 1964 as the 'cost of acqui-
Clause (iii) of Sub Section (2) of Sec. 55 provides that where the capital asset became the property of the assessee on the distribution of the capital assets of the company on its liquidation and the assessee had been assessed to income tax under the head "capital gains" in respect of the asset under section 46, the 'cost of acquisition' to the assessee means the fair market value on the date of the distribution.

Under Sec. 55(3) where the cost for which the previous owner acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.

It appears from the above discussion that the fair market value of capital assets is a pre-requisite in the computation of capital gains tax under certain circumstances. U/s. 2(22A). "fair market value" in relation to a capital asset, means the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date. Thus the concept of open market sale has been well - recognised under the Income Tax Act for the assessment of capital gains tax.

Exceptions to the general principle provided in the various direct taxes Acts:

It is now well - established that the general principle of valuation is applicable for the valuation of shares under the various direct taxes Acts. The question now is whether there are some exceptions to the general principle so far as it applies to the valuation of shares for the purpose of direct taxation. The
answer is in the affirmative. The various direct taxation statutes contain specific provisions for the valuation of shares under certain specific circumstances. These specific provisions, being the expressed opinion of the legislature constitute to be the exceptions to the general rule of valuation. The discussion on these exceptions is now being made with reference to each statute of direct taxation.

The Estate Duty Act:

The provisions of Section 36(1) relating to the valuation of shares will apply in all companies except in two cases for which specific provisions for the valuation of shares have been made under the Estate Duty laws. These two cases constitute to be the exceptions to the general rule of valuation. One of these two cases is the valuation of shares in private companies for which specific provisions have been made under Sec. 37 of the Estate Duty Act and the other case is relating to the valuation of shares in controlled companies for which specific provisions have been made under Rule 15 of the Estate Duty (controlled companies) Rules, 1953 in the exercise of the powers conferred by section 20(1) of the Estate Duty Act.

1. Valuation of shares of private companies:

Sec. 37 of the Estate Duty Act contemplates that where the articles of association of a private company contain restrictive provisions as to the alienation of shares, the value of the shares, if not ascertainable by reference to the value of the total assets of the company, shall be estimated to be what they would fetch if they could be sold in the open market on the terms of the purchaser
being entitled to be registered as holder subject to the articles. Thus the shares in a private company in which there is restriction on the transfer of shares by the articles of association, are normally to be valued by reference to the total assets of the company. If this is not possible, the value of the shares is to be determined on the basis of the sale in the open market on the condition that the purchaser would be entitled to be registered as holder of the shares subject to the terms and conditions of the articles. However, the section lays down that the fact that a special buyer would for his own special reasons give a higher price than the price in the open market will be disregarded.

It appears, therefore, that Sec. 37 constitutes an exception to the general principle of valuation for the simple reason that the method of valuation stipulated under the section on open market sale is of the second resort, the first being the ascertainment of the break-up value with reference to the total assets of the company. It is only on the failure of the first method i.e., the break-up method, that the open market sale basis of valuation, can be adopted. The effect of special price that may be paid by a special purchaser is also required to be disregarded.

2. Valuation of shares in a controlled company.

Rule 15 of the Estate Duty (controlling companies) Rules, 1953 which prescribes the method of valuation of shares and debentures of a controlled company constitutes the second
except the following two liabilities:

(i) liabilities in respect of shares in or debentures of the company; and

(ii) liabilities which are not incurred wholly and exclusively for the purposes of the business of the company, if such liabilities are of the nature of (i) above.

Paragraph (b) - The aggregate value of all the shares and debentures of the controlled company issued and outstanding at the time of death shall be taken to be the same as the net value of the assets.

Paragraph (c) - The net value of the assets shall be apportioned between the shares and the debentures of the controlled company with due regard to the rights attaching thereto respectively.

Paragraph (d) - The value of a share or of a share of any class shall be a rateable proportion, ascertained by reference to nominal amount, of the net value of the assets of the company as determined under paragraph (a) above, or in cases falling under paragraph (c) above, of that part of the net value of the assets apportioned under that paragraph to the shares or to that class of shares of the controlled company.

An illustration will clarify the above points.

X died on 31-12-1980.
His estate comprised of 30,000 equity shares of Rs.10/- each, fully paid up, in X & Co. (Pvt.) Ltd., a Controlled Company.

Balance Sheet of X. & Co. (Pvt.) Ltd. as at 31.12.1980, showed the following assets and liabilities:

**Assets:**
- Land and Buildings Rs.3,00,000/-
- Machinery Rs.4,00,000/-
- Sundry Debtors Rs.2,00,000/-
- Stock Rs.2,00,000/-
- Bank Rs.1,00,000/-
(Total assets Rs.12,00,000/-)

**Liabilities:**
- Share Capital - Authorised 2,00,000 equity shares of Rs.10/- each Rs.20,00,000/-; Issued and subscribed (50,000 equity shares of Rs.10/- each, fully called up and paid up Rs.5,00,000/-); 4000 6% Debentures of Rs.100/- each Rs.4,00,000/-; Loan on mortgage of land Rs.1,00,000/-; Sundry Creditors Rs.1,00,000/-; Liabilities for income tax and sales tax Rs.50,000/-; profit & Loss A/c, Rs.50,000/- (Total liabilities Rs.12,00,000/-). Assuming the principal values of land and buildings and machinery estimated in accordance with Sec.36(1) on the date of death to be Rs.4,00,000 and Rs.5,00,000 respectively, the net value of the assets shall be -
Assets:

- Land and Buildings: Rs. 4,00,000
- Machinery: Rs. 5,00,000
- Stock: Rs. 2,00,000
- Sundry Debtors: Rs. 2,00,000
- Bank: Rs. 1,00,000

Assuming to be at their present market value:

Rs. 14,00,000

Less: Liabilities:

- Mortgage loan: Rs. 1,00,000
- Sundry Creditors: Rs. 1,00,000
- Liabilities for taxes: Rs. 50,000

Net value of the assets of the company:

Rs. 11,50,000

(Representing the aggregate value of all the shares and debentures of the company)

Less: Value of 65 debentures:

Rs. 1,00,000

Assuming that the debenture holders are entitled to the nominal value and to the fixed interest under the terms of the issue:

Net value of 50,000 equity shares:

Value of a share = Rs. 7,50,000 / 50,000 = Rs. 15/-

Value of 30,000 equity shares of X, the deceased = 30,000 x Rs. 15 = Rs. 4,50,000/-. 
The Wealth Tax Act

Under the Wealth Tax Act the general principle of valuation has been laid down by Sec. 7(1). But the section starts with the words 'subject to any rules made in this behalf'. With the insertion of the words 'Subject to any rules......' in the said section, the Wealth Tax Officer may feel to be bound to determine the value of the assets in respect of which rules have been framed as per the manner laid down in the Rules. The Central Board of Direct Taxes has, in fact, framed certain rules to prescribe the method of valuation in respect of some types of assets.

So far as the valuation of shares is concerned, Rules have been framed to lay down the method of valuation of equity and preference shares which are not quoted on the recognised Stock Exchange. The methods of valuation of shares prescribed by these Rules constitute an exception to the general principle enunciated in Sec. 7(1). Rule 11 of the Wealth Tax Rules, 1957 provide for the determination of the market value of unquoted preference shares and "Rule 1" contains the provisions for determining the market value of unquoted equity shares of companies other than investment companies and managing agency companies. Executive instructions contained in Board’s Circular No. 2(T) of 1967, dated 31.10.1967 have been issued for the valuation of unquoted equity shares of investment companies, holding companies and managing agency companies. However, since no specific rules have been formulated for the valuation of the unquoted shares of investment com-
panies and managing agency companies, these cases are still within the sphere of debate. It is, therefore, better to concentrate first on Rule 1C. and Rule 1D. which constitute to be the definite exceptions to the general principle of valuation.

**A. Market value of unquoted preference shares - (Rule 1C):**

Under this rule the preference shares have been divided into two categories: (1) preference shares carrying dividend at rates less than 8% and (2) Preference shares carrying dividends at rates not less than 8%. In the case of the first category of preference shares the market value is the "adjusted paid-up value" and in the case of the second category, it is the paid-up value itself. In this context "adjusted paid-up value" would be the amount which bears to the paid-up value of shares the same proportion as the stipulated rate of dividend bears to the rate of 8%. This can be put in the form of the following simple formula:

\[
\text{Paid-up value of the preference shares} \times \frac{\text{Rate at which dividend is payable}}{8\%} = \text{Adjusted paid-up value}
\]

**Illustration**

Paid-up value of 1,000 preference shares of X Y Ltd., is Rs.100/- per share. With the rate of dividend at 5%; the adjusted paid-up value will be Rs. 100 x \(\frac{5}{8}\) = Rs. 62.50. For the purpose of ascertaining the adjusted paid-up value, the rate of dividend should be taken to be the rate of dividend on the preference shares.
specified in the terms of issue of such shares, and in a case
where such dividend is required to be increased under the pro-
visions of Sec.3 of the preference shares (Regulation of Divi-
dends) Act, 1960 the rate of dividend should be taken as
increased according to the provisions of the said Act. Some
illustrations may be given to show how the rate of dividend is
enhanced under the provisions of the preference shares (Regula-
tion of Dividends) Act and the "adjusted paid up value" is calcu-
lated.

Note: The provisions of the preference shares (Regulations
of Dividends) Act apply only to preference shares which were
issued and subscribed before 1st April, 1960. In respect of
preference shares issued and subscribed after 31st March, 1960,
the companies and the shareholders are well aware of the legal
position and the shareholders must be knowing about their rights
as to the dividend on preference shares. If the preference sha-
res are issued subsequent to 31st March, 1960, the actual rate of
dividend and the stipulated rate of dividend are identical.

Illustration

1. 9% preference shares were issued by Ltd. on the 30th June,
1965. The paid up value per share as Rs.100/-.

In this case the value for the purposes of wealth tax is
Rs.100/- per share.

2. On 1st January, 1962, the issued share capital of a company
consisted of 7 preference shares of Rs.100/- each, fully paid
up. Here the value for wealth tax per share is the "adjusted
paid up value" which is 7/6 x Rs.100 = Rs.87.50
Note: If the preference shares were issued prior to 1st April, 1960, the actual rate of dividend and the stipulated rate will not be identical. By application of the provisions of preference shares (Regulation of Dividends) Act, 1960, the actual rate at which dividends are payable will be different from the stipulated rate. The provisions of the preference shares (Regulation of dividends) Act with regard to the enhancement of rate of dividend will apply. Accordingly, the preference shares, the dividends on which were being paid before 1st April, 1960 without deduction of tax, whether specified to be tax free or not, will be entitled to an increase of 30$. Again all the preference shares, the dividends on which were being paid before 1st April, 1960, after the deduction of income tax payable by the company, whether specified or not, will be entitled to an increase of 11.5$.

3. 5% "tax-free" preference shares were issued on 1.1.1952. The paid up value per share is Rs.100. In this case the "adjusted paid up value" is required to be computed. In computing such value the rate of dividend to be considered under the preference shares (Regulation of Dividends) Act, 1960 is (5% + 30% of 5$) = 6.5$. The value per share for the purposes of Wealth Tax is, $6.5 \times Rs.100 = Rs.612.5$.

Now if the above mentioned 5% preference shares were "taxable" preference shares, the rate at which dividend is payable under the provisions of preference shares (Regulation of Dividends) Act, 1960 will be ascertained in the following
The exact provisions of Rule 10 are the following:

"The market value of an unquoted equity share of any company, other than an investment company or a managing agency company shall be determined as follows:

The value of all the liabilities as shown in the balance sheet of such company shall be deducted from the value of all its assets shown in that balance sheet. The net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance sheet. The resultant amount multiplied by the paid-up value of each equity share shall be break-up value of each unquoted equity share. The market value of each such share shall be 25 per cent of the break-up value so determined...."
to be considered. Thus, if the valuation date is (say) 31.3.1980, and the balance sheet is also drawn up on 31.3.1980, then perhaps no problem arises because the balance sheet drawn up on 31.3.1980 is to be taken into consideration. But if the valuation date is 31.3.1980, but the balance sheet was prepared on 31.12.1979 for the last time, then with no balance sheet being available on the valuation date, the balance sheet on 31.12.1979 has to be taken into account. Now assuming that a company prepares its balance sheet on 30th June every year, the balance sheet prepared on 30.6.1979 is to be taken into consideration for a valuation date falling on 31.3.1980.

Now for the purpose of valuation of unquoted equity shares the following procedures may be adopted:

1. Taking the value of all the assets of the company shown in the Balance Sheet. But Rule 12 lays down that the following amounts shown as assets in the balance sheet are not to be treated as assets:


So far as "advance tax" is concerned three possible cases may be anticipated. Firstly, the amount of advance tax may appear on the balance sheet as an item under the heading "Loans and Advances". In this case the amount of advance tax appearing on the assets side of the balance sheet can be easily excluded from the total assets of the company. Secondly, the amount of advance tax is at times shown under the "Liabilities Column" of the
balance sheet by way of deduction from the "provision for Taxation". In this case the gross amount of the provision and the amount of the advance tax are disclosed on the face of the balance sheet. Here also the amount of advance tax is to be treated as an asset to be excluded from the total assets for the simple reasons that the amount of advance tax is recorded on the face of the balance sheet and it is in fact an asset because an item of liability is never deducted from another item of liability or because an item of liability cannot be reduced by another item of liability. Thirdly, the provision for taxation is at times shown at a reduced figure as a result of the deduction of the amount of advance tax from the gross amount of provision for taxation or in other words the net provision for taxation after the deduction of advance tax is shown on the face of the balance sheet. In this case the question of exclusion from the total assets does not arise because here the amount of advance tax can not be said to have been shown as an item of asset on the face of the balance sheet.

(b) any amount shown in the balance sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset.

To comment is necessary for explaining this item because it is self-explanatory. All that can be said about the item is that any item of asset shown in the assets side of the balance sheet which is worthless is to be excluded from the total assets referred to in Rule 1D.
2. Deduction of the value of all the liabilities as shown in the balance sheet from the total assets arrived at in (1) above.

Generally speaking all the liabilities are to be deducted. But clause (ii) of Explanation II of Rule 10 provides that the following amounts shown as liabilities in the balance sheet are not to be treated as liabilities:

(a) the paid-up capital in respect of equity shares;
(b) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the valuation date at a general body meeting of the company;
(c) reserves, by whatever name called other than those set apart towards depreciation;
(d) credit balance of the profit and loss account;
(e) any amount representing provision for taxation other than the amount of advance tax to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
(f) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

The paid-up share capital in respect of equity shares only is not to be treated as a liability. But the paid-up value of preference shares will be treated as a liability and as such would have to be deducted from the total assets to determine the break-up value of equity shares. But for this deduction the market value of the preference shares as determined for wealth-tax purposes (if such market value is different from the paid-up
A question was raised as to how and why the Board fixed the arbitrary basis of taking the market value of the unquoted equity shares at 85% of the break-up value of such shares. A senior official of the Board who was intimately connected with the framing of the Wealth-Tax Rules defended the decision of the Board in a Taxation Seminar held in Delhi in November 1970 by making the following statement:

"............. we had studied the balance sheets of a very large number of public companies whose shares are quoted on the Stock Exchange. We tried to compare the break-up value of the shares of such companies with the market value not only on the date of balance-sheet, but also three months later and six months later, and ultimately we found that 15% discount was quite reasonable. So that is how 15% discount from the break-up value came to be taken." A proviso has been added to Rule 114 whereby adjustment is necessary if it appears that the company has not been paying any dividend on its equity shares continuously for not less than three accounting years ending on the valuation date or in a case where the accounting year of that company does not end on the valuation date, for not less than three continuous accounting years ending on a date immediately before the valuation date. The rate of deduction from the break-up value, inclusive of the general deduction of 15%, depends on the number of accounting years for which no dividend has been paid by the company. Thus instead of taking 85% of the break-up value as the market value of equity shares, the following percentages have to be taken to determine the market value...
of the equity shares:

<table>
<thead>
<tr>
<th>Number of accounting years ending on the valuation date or immediately prior to the valuation date for which no dividend has been paid</th>
<th>Market value</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Years -</td>
<td>25% of the break-up value as calculated above.</td>
</tr>
<tr>
<td>4 Years -</td>
<td>0% do-</td>
</tr>
<tr>
<td>5 Years -</td>
<td>75% do-</td>
</tr>
<tr>
<td>6 Years and above</td>
<td>75% -do-</td>
</tr>
</tbody>
</table>

Thus, depending on the number of accounting years for which no dividend has been paid, the rate of deduction from the break-up value will gradually increase and the maximum discount allowable when the company has not paid dividend for six years or more is 25%.

The Gujarat High Court in two important cases namely C.M.T. Vs. Ashok V. Barikh and C.M.T. vs. Rbindbhai Chimubhai held that the advance tax appearing on the asset side of a balance sheet cannot be included in the value of assets in determining the break-up value under rule 1.

The Bombay High Court in the cases of C.M.T. Vs. S. Varma and C.M.T. Vs. A. Faskal held that in determining the break-up value, the provision for additional income-tax under section 12B of the Income Tax Act is not a deductible sum.

In valuing unquoted equity shares, the estimated amount of capital gains tax which would be payable if such equity shares are sold, cannot be deducted. This was the view of the Allahabad High Court in Bharat Hari Singhania Vs. C.M.T. and of the
Illustration explaining Rule 1D.

'The Balance-Sheet of X. Ltd. whose shares are not quoted on the stock-exchange was the following on 31st March, 1980.'

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Assets</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>10,000 equity shares of Rs. 100/- each fully paid up</td>
<td>Fixed Assets Less Depreciation 10,00,000</td>
<td></td>
</tr>
<tr>
<td>General Reserve 3,00,000</td>
<td>6% Govt. securities (at cost) 3,00,000</td>
<td></td>
</tr>
<tr>
<td>Development Reserve 3,00,000</td>
<td>Stock-in-trade 2,00,000</td>
<td></td>
</tr>
<tr>
<td>P &amp; L A/c 7,00,000</td>
<td>Sundry debtors less provision for doubtful debts 5,00,000</td>
<td></td>
</tr>
<tr>
<td>7% Loans 2,00,000</td>
<td>Bank balances 6,00,000</td>
<td></td>
</tr>
<tr>
<td>Creditors 2,00,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision for Taxation 6,00,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less: Advance Tax 1,00,000</td>
<td>5,00,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>26,00,000</td>
</tr>
</tbody>
</table>

Break-up value of each share for the purpose of Rule 1D will be as follows:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total value of assets as per Balance Sheet</td>
<td>26,00,000</td>
</tr>
<tr>
<td>Less: Liabilities as per balance sheet:</td>
<td></td>
</tr>
<tr>
<td>7% loan Creditors</td>
<td>Rs. 2,00,000</td>
</tr>
<tr>
<td>Provision for Taxation</td>
<td>Rs. 8,00,000 10,00,000</td>
</tr>
</tbody>
</table>

(Assuming that the Provision is on book profits) 16,00,000
For the purposes of Rule 1D, therefore, the net value of the assets = Rs.16,00,000/-

Break up value per share will be - \[ \frac{Rs16,00,000}{10,000} = Rs.160/- \]

The market value of these shares will be 85% of Rs.160/- i.e. Rs.136.

\[
\text{Note - The above market value will be } 82\frac{1}{2}\%, 80\%, 77\frac{3}{4}\% \text{ and } 75\% \text{ of the break-up value if the dividend, have not been declared for 3 years, 4 years, 5 years and 6 years or above respectively.}
\]

(c) Valuation of unquoted equity shares of investment companies:

Board's Circular No.2(WT) of 1967, dated 31.10.1967

The valuation of unquoted equity shares of investment companies is regulated by the Board's instructions contained in the above circular. The executive instructions contained in the above circular have laid down the procedure of valuation of unquoted equity shares of two categories of investment companies, namely investment companies other than those which are substantially holding companies and investment companies which are substantially holding companies.

1. Valuation of unquoted equity shares of investment companies other than those which are substantially holding companies

The valuation of shares shall be made in the following manner:

The average of (a) the break-up value of the shares based on the book value of the assets and liabilities disclosed in the balance-sheet, and (b) the capitalised value arrived at by applying a rate of yield of 9% to its maintainable profits, will be taken to represent the fair market value of the shares of an investment company. The maintainable profits of a company should
be calculated as under:

(i) The book profits of the Company for the five years immediately preceding the valuation date will be ascertained.

(ii) Adjustments will be made to the book profits of each of the said five years for all non-recurring and extra-ordinary items of income and expenditure and losses.

(iii) Adjustments will be made for expenditure, which is not of a revenue nature and is debited in the accounts and for receipts which are revenue receipts and are not accounted for in the profit and loss account.

(iv) The development rebate, in case it is debited in the books of account, will be added back.

(v) The appropriate tax liability of the Company on the book profits so determined will be deducted.

(vi) The profits required for paying dividends on shares with prior rights i.e. preference shares, shall be excluded.

(vii) The average of the Company's book profits, as adjusted above, will be determined.

The maintainable profits thus arrived at will be capitalised, as stated above, by adopting 9% rate of capitalisation.

Note - It has to be noted here that the break-up value referred to above is generally to be computed in terms of Rule 1D of the Wealth-Tax Rules.
Illustration

Company - X. Ltd. 
Valuation date - 31.3.1978

Total shares = 10,000.

Book Profits for the last five years prior to the date of valuation :-

<table>
<thead>
<tr>
<th>Date</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>31-12-1973</td>
<td>4,00,000</td>
</tr>
<tr>
<td>31-12-1974</td>
<td>3,00,000</td>
</tr>
<tr>
<td>31-12-1975</td>
<td>4,50,000</td>
</tr>
<tr>
<td>31-12-1976</td>
<td>7,00,000</td>
</tr>
<tr>
<td>31-12-1977</td>
<td>6,50,000</td>
</tr>
</tbody>
</table>

Further information:

a) Development rebate Rs.2,00,000 debited to profit and loss account for the period ending 31.3.1974.

b) Expenditure on a research project Rs.1,00,000 incurred during the period ending on 31.3.1975 debited to Profit and Loss A/c.

c) Loss on sale of shares Rs.3,00,000 not debited to P. & L.A/c. for the period ending on 31.3.1976.

d) Compensation received from the Government for the acquisition of certain properties Rs.2,00,000. Cost of purchase of the properties to the company Rs.1,00,000. Excess compensation credited to profit and loss account for the year ended 31.3.1977.

Market value of the unquoted equity shares of the investment company for the date of valuation on 31.3.1978 assuming that the break-up value of the shares works out at Rs.600/- per share under Rule 10 of the Wealth-Tax Rules, 1957 will be found out in the following manner:-

Statement "A" showing the break-up value per share

<table>
<thead>
<tr>
<th>Break-up value per share as per Rule 10</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>600/-</td>
</tr>
</tbody>
</table>
Statement "B" showing the value of each equity share under the capitalised value of maintainable profits basis.

Maintainable profits for each year.

<table>
<thead>
<tr>
<th>Year</th>
<th>Profit Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 1973</td>
<td>Profits for the period ending 31.12.1973</td>
</tr>
<tr>
<td></td>
<td>(No adjustment required)</td>
</tr>
<tr>
<td></td>
<td>Less: Tax liability (say) @ 50%</td>
</tr>
<tr>
<td></td>
<td>Add Development Rebate</td>
</tr>
<tr>
<td></td>
<td>Less: Tax liability (say) @ 50%</td>
</tr>
<tr>
<td>3. 1975</td>
<td>Profits for the period ending 31.12.1975</td>
</tr>
<tr>
<td></td>
<td>Add: Cost of Research Project</td>
</tr>
<tr>
<td></td>
<td>Less: Tax liability (say) @ 60%</td>
</tr>
<tr>
<td></td>
<td>Less: Loss on sale of investment</td>
</tr>
<tr>
<td></td>
<td>(Revenue loss)</td>
</tr>
<tr>
<td></td>
<td>Less: Tax liability (say) @ 50%</td>
</tr>
<tr>
<td>5. 1977</td>
<td>Profits for the period ending 31.12.1977</td>
</tr>
<tr>
<td></td>
<td>Less: Profit on acquisition (non-recurring income)</td>
</tr>
<tr>
<td></td>
<td>Less: Tax liabilities (say) @ 60%</td>
</tr>
</tbody>
</table>

Average maintainable profits = Rs.2,00,000 + Rs.2,50,000 + Rs.2,20,000 + Rs.2,00,000 + Rs.2,20,000

= Rs.10,90,000 = Rs.2,18,000/-
Capitalised Value @ 9% = Rs.2,18,000 x \( \frac{100}{9} \) = Rs.24,22,200

Total shares being 10,000 the value per share = \( \frac{Rs.24,22,200}{10,000} \) = Rs.24.22 or (say) Rs.24 1/2.

Value of the equity shares in terms of C.R.D.T. Circular No. 2(W.T.) of 1967 dated 31.10.67 will be

1) Break up value as per statement A 600/-
2) Capitalised value as per statement B 24 1/2/-

Value of unquoted equity shares of investment companies which are substantially holding companies.

The market value of the shares of an investment company, which is also a holding company, will be determined by adding a premium of 10% to the value of the shares arrived at on the basis set out for the valuation of equity shares of investment companies other than those which are substantially holding companies.

Thus if in the above illustration the investment company were a substantially holding company, the value of its share will be as follows:-

Value of shares as worked out above + 10% of the value so worked out. That is to say the value per share in the present case will be, = Rs.42.1/- + 10% of Rs.42.1/- = Rs.42.1/- + Rs.4.21 = Rs.46.310

(Note: An investment company, whose assets to the extent of 50% or more consist of shares in companies controlled by it will be treated as a Holding Company).
(D) **Valuation of unquoted equity shares of managing agency companies**

Since managing agency has been abolished, there is no need to discuss the rules for the valuation of shares of managing agency companies.

**Gift Tax Act**: It has already been stated that under the Gift Tax Act also the principle of open market valuation has been adopted for computing the value of shares transferred by way of gift.

But sub sections (2) and (3) of section 6 of the Gift Tax Act hint upon the processes of valuation of property gifted, which are not quite the same as the process of valuation by means of "open market sale" enunciated in sub-section (1) of section 6. Thus these two sub sections constitute to be the exceptions to the general principle of valuation. So far as sub section (2) of section 6 is concerned, it provides for the valuation of a gift which is irrevocable for a specified period. The sub section states that the value shall be the capitalised value of the income from the property during the period for which the gift is not revocable. Rule 11 of the Gift Tax Rules, 1958 provides for the fixation of the capitalised value as required under sub section (2). Sub section (3) of section 6 lays down that where the value of any property can not be estimated under s/a 6(1) because it is not salable in the open market, the value of such property shall be determined in the prescribed manner. This provision will be applicable to the valuation of shares of private companies in which shares are
not saleable in the open market. Rule 10(2) of the Gift Tax Rules, 1958 makes provision for the valuation of shares of private companies. The said rule provides that in the case of private companies in which the articles of association contain restrictive provisions as to the alienation of shares, the value of shares, if not ascertainable by reference to the value of the total assets of the company, has to be estimated to be what they would fetch if they could be sold in the open market on the terms of the purchaser being entitled to be registered as holder subject to the articles. On plain reading of the provisions of Rule 10(2), it appears that prima facie the value of shares in a private company which puts restrictions on the alienation of shares, is to be determined by reference to the net worth of the company. The revenue claims that the basis of valuation for the shares of private companies or for other unquoted shares is rule 10(2). In case the value of shares of private companies can not be ascertained by reference to the value of the total assets, the open market value has to be ascertained.

Income Tax Act: No exception to the general principle of open market valuation for the purpose of valuing shares has been provided for in the Income Tax Act.

A critical review of the general principle and its exceptions:

In accordance with the principles laid down by the Supreme Court in C.A. vs. Vikings, the price prevailing on the valuation date is the value of the shares. This basic principle of valuation of quoted shares
on the basis of stock exchange quotations is applicable for all the direct taxes, because the quoted prices are the result of the interaction of the forces of demand and supply and such prices provide the factual evidence of the market value of the shares. The final report of the Direct Tax Laws Committee (Chokshi Committee report) accepted and appreciated this basic principle in the following words:

"Share market quotations in relation to shares which are freely quoted on the stock exchange are generally accepted as the best evidence of market value and there is no suggestion that for the three different direct taxes, such value needs any adjustment. This value would be directly applicable whenever the market value has to be determined for the purposes of wealth-tax, gift-tax or state duty."

Thus if the shares of a company are quoted on the stock exchange, the quotation on the date of valuation may be accepted as the open market value. If no transaction takes place on the date of valuation, the quotation of a day close to the valuation date may be acceptable. But where the stock market is rigged or quotations available are manipulated quotations based on collusive transactions, it may be possible to displace such quotations by evidence (Chort Vs. Treasury Commissioners [1957] 2 ALL E.R. 298). An illuminating and instructive example as to how market quotations were manipulated and how subsequent investigation discredited the veracity of such quotations is available in Sit. Nirmala Birla Vs. C.T.O. [1976] 105 ITR 483 (Cal.) (FB). In G.V. Kasturi- swami Naidu Vs. C.O [1973] 92 ITR 145 (Mad.), the Madras High
Court held that if there are circumstances to show that the
stock exchange quotation does not reflect the true value because
of certain factors, the same can be ignored. In Mahadeo Jalan's
case, (C.W.T. Vs. Mahadeo Jalan (1972) 86 ITR 621 (Sc.) the
Supreme Court expressed the same sentiment in the following
words:—

"If there are no abnormalities affecting the market price,
the price at which the shares are changing hands in the ordinary
course of business is usually their true value".

A problem arises in the case of the determination of the
market value of unquoted shares for which the direct evidence
of value is not available. Apart from some exceptional cases
for which different methods of valuation have been suggested in
the direct taxation statutes, the concept of open market value
is commonly found in all direct taxes laws. The Income Tax Act,
1961, however, refers to the fair market value (Sections 52, 55,
& 2(22A)) for the purpose of assessment of capital gains tax.
A question may arise as to whether open market value is different
from fair market value. Apparently the open market value and
the fair market value may appear to represent two distinct ideas
of value. But a close examination of Sec.2(22A) of the Income
Tax Act, 1961 and of the opinions of various authorities and
Courts will reveal that so far as direct tax laws are concerned
these two concepts are almost synonymous.
It has been stated that under Section 2(22A) of the Income Tax Act, 1961 "fair market value" is the price which the capital asset would ordinarily fetch on sale in the open market on the relevant date. Opinion of various authorities on fair market value is given below:

(i) Handbook of F.F. Regulations:

"The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts."

(ii) Business and securities valuation:

"Fair market value has often been defined as the highest price obtainable in an open and unrestricted market between knowledgeable and willing parties dealing at arm's length who are fully informed and not under any compulsion to transact. Fair market value depends on the conditions of the open market at a particular time since value fluctuates to accommodate the forces of supply and demand."

(iii) Tax valuations (Immovable properties):

"The fair market value means the price the property would fetch in an open market according to current price level of comparable properties. It presupposes more than one buyer with reasonable competition between them."
Fair market value is the price, at which a willing seller and a willing buyer would agree to trade, though both were quite aware of the facts. This necessitates reading of minds of an entirely fictitious willing buyer and equally non-existent willing seller."

Opinion of various courts on fair market value is given below:

(i) James Courzens case:

"... Recognizing all the facts in existence or in contemplation... as shown by the evidence and from them attempting reasonably to predict those to come, being neither unduly skeptical nor unduly optimistic, we sought to determine what an intelligent and reasonable seller and an intelligent and reasonable buyer would, in their fairly mercenary interests, have been most likely to agree upon as a price for the property in question?"

(ii) Ahmadabad properties case:

The concept of fair market value as is now well settled in the income tax law and other cognate fiscal statutes,
brings in the question of a hypothetical seller and hypothetical buyer in a hypothetical market.

(iii) Chemudu case:

In estimating the fair market value, the basic conditions of an open market must be fulfilled, i.e., willing buyers and willing sellers (neither acting under compulsion) must face reasonable competition between them and the price has to be fixed after a consideration of the then existing advantages and disadvantages and future potentialities (Chemudu case).

It is evident from the above discussion that so far as the direct taxation statutes are concerned, virtually there exists little distinction between fair market value and open market value. A value estimated in a hypothetical open market between a willing buyer and a willing seller is considered to be the fair...
value for the purpose of direct taxes statutes in India. In this context the question is whether it is possible or rather fair to call the open market value, enunciated by various direct taxation statutes as unfair and unreliable. The answer is in the negative and many courts have reposed confidence in the fair estimate of the open market value of shares and other properties because the open market concept facilitates an estimate of the best possible price which would be realised in an open and unrestricted market under the reasonable competitive conditions on a particular date (Buccleuch's case).

The open market concept always presupposes that there should be an honest and earnest endeavour on the part of department to arrive at a value of the shares in accordance with the accepted principles of valuation (Pingle Venkatarama Reddy Vs. C.V.T.). Where different methods of valuation are available, the method which is more objective and reliable has to be preferred (Debi prasad Poddar Vs. C.V.T.). Similarly, if more than one valuation is available, the one which is more reasonable and fair under the facts and circumstances of the particular case has to be accepted (V.C.Ramachandran Vs. C.V.T.). There is no scope under the concept for over or under valuation, even unconsciously. But certainly the concept provides the ground for estimation of the true value by the department (T.K. Pillai Vs. C.W.T.). On the whole the open market concept provides the genuine ground
for the fair estimation of the value of shares on the basis of reasonableness and objectivity.

The open market concept conforms to the classical theory of determining the value in exchange of a property by the economic forces. The sale is assumed to be thrown open to competition so that the highest price may be the highest that any one offers (Lynall's case). There is scope of adequate publicity and reasonable competition between more than one buyer and more than one seller. (Chemudu case). Thus the concept provides reasonable opportunity of honouring the basic economic principles of determining the price of a property. Since the question of actually selling the property is irrelevant and there is no need to be concerned about the impossibility of putting the property on the actual market place (C.I.T. Vs. Purshottam; N. Amarsay; Duke of Buccleuch case), it can reasonably be stated that the concept provides the golden opportunity of estimating the value of shares of companies in which marketability of the shares is restricted with utmost fairness.

The direct taxes statutes and Rules framed thereunder have prescribed more than one method of valuing shares. But no method has succeeded to raise so much enthusiasm and to achieve so much spontaneous appreciation as the open market valuation.
One reason why the open market concept is highly acclaimed by both the bench and the bar is the flexibility and adoptability of the concept to varying facts and circumstances. The superiority of the open market concept is established in its designation as the Principal basis of valuation. In the opinion of the Supreme Court it is the primary method of determining the value of assets. (Juggilal Kamalapat Bankers Vs. W.T.O.)

The inherent power of the open market valuation method is so high that it may be compared to a mighty ocean which is infinite and spread to the four corners of the earth. The method gives recognition and honour to 'freedom', one of the greatest human values. The open market is like a constituency in a free democracy in which every eligible voter, regardless of his caste and creed, status and qualifications, has the right to vote for the candidate he thinks fit. With the will and resources at his command, anybody can have an entrance into the open market and that person has the right and opportunity to bid for whatever he desires. This characteristic of an open market is really commendable.

Open market value is praiseworthy on another count also. It is not the product of the sweetwill and pleasure of the taxation authorities. Instead the authorities function under constant pulls and pressures of their superiors and they are legally bound to exercise their judicial power in a judicial manner. The fact
that the exercise of the power by the authorities is open to review in appeal (C.W.T. Vs. V.C. Ramachandran), acts as a safety bulb.

But it is often said that even the moon is not free from some black spots. Similarly it can be said that the open market concept is not totally free from criticism. Firstly, it is said that the valuation in a hypothetical open market is after all an estimate and likely to result in the differences of opinion between any two valuers as the element of subjectivity is bound to creep in. The extent of difference of opinion will, of course, depend to a large extent upon the experience of the valuers. But at times the difference of opinion between the taxing department and the tax payers is of so wide dimension that the method itself becomes susceptible to criticism as being a failure to inspire confidence and amity between the two age-old adversaries, the tax payers and the tax collector with a view to putting an end to a good number of avoidable confrontations. Instead the differences in many cases lead to long standing disputes which are settled by the appellate courts but definitely at the cost of the hard earned money of the tax payers and the exchequer.

Secondly, it is said that the open market concept is not free from dangers of distortions. Open market sale has to be distinguished from an offer to a limited class or group such as
offer to friends or family members. The danger of distortion is imminent in the fact that a manipulated or abnormal sale, or a collusive sale, or a sale between close companies or family members or friends may take the place of open market sale.

Thirdly, with regard to open market value three important questions need clarification. These questions are the following:

(a) Does open market which for fiscal purposes is a statutory fiction have any connexion with reality? If the answer is 'yes', is the open market a real open market?

(b) How open is the open market under the present circumstances when underhand transactions have created a parallel economy and Government regulations and restrictions have corroded the openness?

(c) Is it right to say that an open market value discounts minority interest excessively?

The answer to these questions are very interesting and are given below:

(a) Open market value for the purpose of direct taxation is statutory fiction which ignores impossibility of actual sale. (Duke of Buccleuch's case) But does the open market contemplate a market divorced from reality? In re Lynell,
Widgery, L.J., described the open market as a blend of reality and hypothesis elaborating his contention in the following lucid manner:

"... it is desirable that when the court is constructing the conditions under which the hypothetical sale is deemed to take place, it should build upon a foundation of reality so far as this is possible...."

In Priestman Colleries Ltd. vs. Northern District Valuation Board, their Lordships observed:

"In the opinion of the court the phrase, 'open market' does not contemplate a purely hypothetical market which is to be regarded as exempt from any restrictions imposed by law. The section does not postulate conditions wholly divorced from reality...."

The vitality of this observation has been recognised by the Calcutta High Court in India in Radha Devi Jalan's case. But since open market is considered to be a hypothetical market with hypothetical willing buyers and willing sellers, and since one must feel constrained to speak of hypothesis and reality in one breath, the fact that the open market is not completely separated from reality provides an evidence of the limitation of the effectiveness of such a market.
(b) The second question arises as a corollary to the first question. In our country black money, shady dealings and underhand transactions have already created a parallel economy. The law of the land, which prohibits the underhand transactions can not be ignored at the time of considering open market bargains between the willing buyers and sellers. Similarly in order to control the inflationary pressures, brought about by the scarce economy, the Government at times takes resort to statutes which take care to see that a particular property fetches the price fixed only by them and not by others. Thus increasing state regulations, and restrictions on possession, enjoyment and transfer of shares and other properties e.g. Rent Control Act, Urban Land Ceiling Act, Government approval for transfer of shares under certain circumstances under the Companies Act etc. have corroded the 'openness' of the open market to a great extent and the open market has become only 'partially open'.

(c) Open market value is one of the several methods of valuation of shares. It may so happen in a company that its articles provide for the fixation of a 'fair value', to be certified by the auditors. Now a parcel of shares insufficient to have a controlling voice in the affairs of the company or in the words of Mr. Justice Williams in Murdoch's case, "to carry a special resolution", will definitely have lower open market value as a result of the adverse reaction of the willing buyers towards the
minority interest. But the fair value determined in the light of the provisions in the article may be higher. Thus it is possible to say that open market value discounts minority interests and to that extent is unfair. In this context the following statement made by N.A. Eastaway and Harry Booth in their book, "practical share valuation" is significant.

"Open market value is not the only basis of valuation for company shares. Many private agreement, and indeed many company articles of association, provide that a transfer should take place at a 'fair value' which is often a value to be certified by the auditors. The main reason for preferring a fair value to an open market value is that it is thought that an open market value discounts minority interests excessively.

However, these criticisms are not so grave as to nullify the good effects of the open market valuation method. On the contrary, the method has a driving force which helps to fulfill the purpose for which the method has been employed in the direct taxation statutes. A little bit of serious thinking will reveal that the criticisms are standing like rootless trees and are somewhat superfluous. Firstly, in reply to the allegation that the concept has given rise to a lot of controversies and legal disputes, it can be easily stated that since valuation of shares is an expression of an art rather than a science and mathematical precision is neither possible nor desirable, honest
differences of opinion can always exist. In valuation of shares, as in other valuations, the whole approach is to make an earnest endeavour to arrive at the value of shares in accordance with a more objective and reliable method of valuation which is generally acceptable (Pingle Venkatarama Reddy Vs. C.W.T.; Debi Prasad Poddar Vs. C.W.T.). The open market concept is exactly at par with this approach and no court has ever declared that the method is not objective or not reliable. Moreover, open market concept facilitates the solution of the problem of valuation of shares by intelligent and imaginative handling of the facts and circumstances of the particular case rather than by any cut and dried formula. Secondly, the open market concept will be free from the danger of distortion, if the valuer remains alert to see that the market is kept as wide as the sky and is not limited to any particular persons or class of persons. Thirdly, it is true that Widgery, L.J. in Re Lynall described the open market as a blend of reality and hypothesis. But it will be a travesty of truth and an exaggeration of facts to state that the Lord Justice gave much emphasis on reality. On the contrary, he cautioned against showing an undue concern for reality, because the classical theory of open market valuation assumes a hypothetical market and a willing buyer and a willing seller. In fact the last part of his observation which runs like "... it is even more important that it should not defeat the intention of the section by an undue concern for reality in what is essentially a hypothetical situation" is
even more significant. Fourthly, in any country the law of the land together with the regulations made by the duly elected Government for the welfare of the people must reign supreme and hence, any restrictions imposed by law or governmental regulations, no matter when, where and how they affect the buyer and the seller, shall have to be taken into account in estimating the value of shares. It does not imply that the principle of sale in a hypothetical open market has been abandoned. The principle remains, but subject to the law of the land. In fact "openess" of the open market should not be so construed as to act as an instigation to the citizens of a country to disregard the law of the land. Finally, to state that the open market value discounts minority interest excessively and to that extent is unfair, is to cast undue aspersion on a great method of valuation of shares and is rather unfortunate. In fact it is difficult to remember any court which has ever declared the open market value concept to be unfair. If the purpose of the fair value is to enable the valuer to exercise his discretion and judgement in the light of all the facts and circumstances, in order to arrive at a value of shares, the open market concept can serve the purpose best.

Thus open market valuation method is the best recognised and the most effective statutory method of valuation of shares under the direct taxes statutes in India. The open market concept is an
effective tool in the hands of the valuer. Controversial results obtained by mishandling the tool is the fault of someone other than the tool itself.

Apart from the general principle of valuation of shares, the direct taxes statutes through some rules framed by the Government have provided for certain exceptions to the general principle. A critical review of these exceptions will reveal whether these exceptional provisions have facilitated the imposition and collection of direct taxes or these have further complicated the matter. But one argument forwarded in favour of the exceptional provisions is that these provisions will lead to simplification and standardisation of taxation procedures under the direct taxes Acts. Apart from these objectives, these provisions are also meant for ensuring uniformity in the procedure of imposition and collection of taxes. How far these objectives behind the exceptional provisions have been achieved or are likely to be achieved is a debatable question. But it will be a travesty of facts to say that the department has succeeded in achieving these objectives completely. An attempt is being made in the following paragraphs for a critical examination of the exceptional provisions to ascertain to what extent they have succeeded to fulfil the hopes and aspirations of the department without at the same time causing undue inconvenience to other interested parties.
or without encouraging unnecessary litigations.

Under the Estate Duty laws there are two exceptional provisions of which one is section 37 of the Estate Duty Act, 1953 relating to the valuation of shares in a private company where alienation is restricted and the other is Rule 15 of the Estate Duty (controlled companies) Rules, 1953 relating to the valuation for estate duty of shares in a controlled company. The first challenge to which these exceptional provisions may be subjected is relating to the necessity of these special provisions under the estate duty laws. It can be argued that these provisions have been made to deal with the special cases of valuation of shares on the death of a deceased. For instance, where the deceased had the control of a company, his shareholding therein should not be valued without a proper consideration of the fact that along with the shares of the controlled company that further passes to the legal heirs is a valuable intangible asset in the form of the deceased's "control" over the company. Similarly it may be said that valuation of shares in a private company with its Articles of Association containing restrictive provisions as to the alienation of its shares presents a very peculiar problem and as such there is room for special provision in this regard.

Now considering the utility and the special purpose served by Rule 15 of the Estate Duty (controlled companies) Rules, 1953,
it can be safely said that the provisions should be allowed to
continue and should not be done away with even though the
provisions fail to fulfill the criterion of a uniform system of
valuation of unquoted shares for the direct tax purposes. Rule 15
has a very useful role to play particularly in the matter of
valuation of shares in a delicate situation arising out of the
controlling interest held by the deceased. Thus the Chokshi
Committee in its final report vigorously supported the continuance
of Rule 15. The report stated :-

"... where the deceased had the control of a company, his
debenture holding or shareholding therein cannot properly be
valued as for Wealth Tax purposes, since along with the shares
and debentures, what further passes to the legal heirs is the
intangible asset in the form of the deceased's "control" over
the affairs of the company. The special provision in rule 15
of Estate Duty (controlled companies) Rules, 1953, cannot there­
fore, be done away with, even though a uniform system of valuation
of unquoted shares could be adopted in cases where rule 15 does
not apply. Such special provisions must, therefore, be continued
for the purposes of Estate Duty."

Of course, the judiciousness of the method of valuation on the
basis of the net value of the assets of the controlled company
provided for in the rule may be questionable. While the valuation
of controlling shares undoubtedly requires a reference to the net
assets of the company, it does not essentially mean that the break-up value method is to be adopted as a matter of compulsion for the valuation of controlling shares, because in the opinion of the Supreme court, the method is applicable only when the company is ripe for liquidation. (Mahadeo Jalan's case).

The method contemplated in Rule 15 makes no reference to the profit earning capacity of the company on a reasonable commercial basis. However, from the principles set out by the Supreme Court in C.W.T. Vs. Mahadeo Jalan (1972) 86 ITR 621 (SC) it can be seen that the break up value method can be resorted to in exceptional circumstances. Valuation of shares in a controlled company on the death of the deceased is an exceptional situation in which break up value method may be applied. But the credibility and general acceptability of the value of shares obtained by applying the break up value method will rise substantially, if an arrangement is made to give at least a little consideration to the profit earning capacity of the company.

In respect of the valuation of shares in a private company where alienation is restricted, the extent to which section 37 gives due recognition to the general principle of valuation, it is on the right track and is deemed to be immune from any criticism. But the section has resulted in a great controversy by enjoining that the method of valuation on the basis of open market is of the second resort, the first being the break-up value method.
It is only on failure of the break-up method, that the 'open market value' method can be adopted. The section has lost much of its vitality and popular support by attempting to undermine the general principle and by placing it second in order of importance. In fact, except in cases where Rule 15 of the Estate Duty (controlled companies) Rules, 1953 applies, the general principle of open market valuation adumbrated in section 36 of the Estate Duty Act should govern the valuation of shares. The refinement at present found in section 37 of the Estate Duty Act without a specific reference to the aforesaid Rule 15 is not palatable, particularly because the section has given rise to certain unnecessary controversies as to the exact meaning of the expression "if not ascertainable by reference to the value of the total assets of the Company". In the vitiated atmosphere the assessing officers, as per departmental instructions, proceed to adopt the break-up value method of ascertaining the value of the shares, and this step worsens the already existing strained relationship between the tax payers and the tax collector. A ground is prepared for a trial of strength between the two parties. Thus the provisions of section 37 appear to have the effect of adding salt to the sore and corrective steps are an urgent requirement. The continuance of section 37 in its present form and without any reference to Rule 15 will only create confusion and will not serve the purpose properly.
Wealth Tax:

Under the Wealth-Tax Act, the 1965 amendment and connected rules are the root cause of all troubles, controversies and disputes. The Wealth Tax (Amendment) Act, 1961, having effect from 1.4.65, provided for the insertion of the expression "subject to any rules made in this behalf" before the opening words "the value" in section 7(1) of the Wealth Tax Act, 1957. This amendment contributed to the growth of an impression that valuation of shares and other assets under Section 7(1) of the Wealth Tax Act is to be made only after a proper consideration of the rules framed by the Central Board of Direct Taxes in the exercise of the power conferred by section 46 of the wealth tax Act, 1957. But the impression led to the creation of a controversy as to whether valuation under the rules is mandatory or directory.

It is argued that the sections dealing with the valuation under the Wealth tax Act are machinery sections. In Standard Mills Co. Ltd., Vs. C.W.T. 152 the Supreme Court observed that section 7 deals with the manner of valuation of assets. It is intended to provide a machinery for computation of the value of shares and other assets. Following this established dictum the Bombay High Court in Smt. Kusumben D. Mahadevia Vs. N.C. Upadhye held that valuation under the rules is directory and not mandatory. But the Allahabad High Court following its earlier decision in C.W.T. Vs. Laxmipat Singhania held in Bharat Hari Singhania Vs. C.W.T. 154 held in Bharat Hari Singhania Vs. C.W.T.
that the valuation under the rules is mandatory. Appeals against both these decisions are pending in the Supreme Court which is the final authority to bring an end to this current controversy. But there is no doubt that the 1965 amendment and the connected rules had affected the limbs of section 7 vitally. Actually the changes were perhaps expected not to take away the substance of the taxing provisions, contained in the machinery section, but merely to authorise the Board to make what may be called subsidiary legislation. But the rules framed by the Board are being applied by the authorities in such a way that there is scope to assume that the rules are designed to be enactments of a conclusive or mandatory nature and the result is that certain fictions of law appear to be created by the back-door. The rules prescribing the methods of valuation of shares are, however, the rules of procedure and not the substantive law and therefore, so far as the current controversy as to whether valuation under the rules framed by the Board is mandatory or directory is concerned, the better view appears to be that the rules are directory and not mandatory. This, in other words, means that the decision of the Bombay High Court gives, with respect, the correct view.

Apart from the controversy already referred to, the rules which constitute to be the exceptions to the general principle of valuation are subjected to some other charges. As a background for the introduction of the rules it may be argued that the rules
were framed to reduce the area of disputes and controversies regarding (i) the method of valuation of certain types of shares, (ii) adjustments to be made in arriving at the net wealth and (iii) rebate (if any) to be allowed when the shares are not marketable. It may be said that some of these controversies have been set at rest with the introduction of the rules regarding the valuation. But it is imprudent to assume that one yardstick or one uniform formula can be applied in valuing shares of different types and different kinds of companies. The value of shares to be true or real, can not be contained within the compass of a legal enactment because it is next to impossibility to compute the value by means of a universal legal formula which can be applied to all kinds of circumstances in the vast field of company operations. Thus the Supreme Court in C.V.T. vs. Mahadeo Jalan even after setting out the several methods of valuation of shares in relation to different situations laid it down as axiomatic that no single formula or hard and fast rule can be applied to each and every case.

Their Lordships stated:

".... In setting out the above principles, we have not tried to lay down any hard and fast rule, because ultimately the facts and circumstances of each case, the nature of the business, the prospects for profitability and such other considerations will
have to be taken into account as will be applicable to the facts of each case...."

In the face of this imperative desideratum, it is quite possible to declare that the rules framed by the Board, laying down the fixed or sole method of valuation of shares in certain cases are definitely anomalous, irrational and contrary to the judicial dicta. While their Lordships in the Supreme Court in the above mentioned case expressed their opinion against any hard and fast rule, the impugned rules regarding the valuation of shares do lay down "hard and fast rules". This automatically signals that the basis of valuation under the rules is inconsistent with the principles of valuation of shares as laid down in Mahadeo Jalan's case.

A general critical review has so far been done about the rules framed by the Board for the valuation of shares. It will be an interesting job now to go deep into each rule made for the valuation of shares for a critical review.

**Rule 1C**

The procedure of valuation of preference shares under Rule 1C is simple and easily workable. But the rule has been expressed in mandatory language, using the word "shall" and not "may" at the beginning of the rule. The rule as it stands now covers the
unquoted preference shares of all companies whether the accumulated losses of such companies are more or less than their paid up capital. Thus in the case of companies whose accumulated losses exceed the total paid up capital of the company, the value of the shares, under this rule, will be (say) 80% of the paid up capital. Actually, the shares of such companies cannot be sold for any price in the market. No buyer will touch these shares because the intrinsic value of such shares is virtually nil and no yield can be expected therefrom.

Thus the rule will miserably fail to consider the worst cases of companies in which the realisable assets are not enough to meet all the external liabilities even, so that the preference shares are nothing better than the waste papers with little or no utility. But in these circumstances also, the Wealth Tax officers will, definitely say that since they are bound by the rule, they must value the shares at (say) 80% of the paid up value or adjusted paid up value under rule 10(2) and they are not to bother whether the realisable assets of the company are enough to meet the external liabilities or not, or whether the losses of the company exceed the paid up capital or not. Herein lies the irrationality or unreasonableness of making the impugned rule mandatory, rather than optional. Again if the losses of a company exceed its paid up capital and still the shares are valued at (say) 80% of the paid up capital as per rule
1C, the whole exercise would be inconsistent with the basic principle of open market valuation given in section 7(1) of the Wealth Tax Act, because shares of the company cannot be sold for any price in the market. Since it will be imprudent to interpret rule 1C in such a manner as to override the main provisions of the Wealth Tax Act because it is a recognised rule of construction that the rules framed under any Act cannot abrogate the main provisions of the same Act, it can be said that the whole idea of making the rule mandatory rather than directory is wrong.

The method of valuation of preference shares prescribed by Rule 1C has another lacuna. It fails to take into consideration some of the very important factors affecting valuation of preference shares, e.g. (i) voting rights of preference shares under certain circumstances, (ii) proximity of time of redemption, (iii) participating rights and (iv) whether the redemption is at par or with premium.

Rule 1D

Rule 1D can also be denounced on the ground that it has been expressed in a mandatory language, using the word "shall". In fact, the method prescribed by Rule 1D as a mandatory one is only one of the several methods of valuation of equity shares. Considerations based on the variable factors of economic, social and political life may call for a different method. In view of the observations of the Supreme Court in Mahadeo Jalan's case,
Rule 1D which provides for the sole method of valuation of equity shares, is ostensibly anomalous and irrational. The rule is logically ineffective and is a clear manifestation of the absence of a pragmatic attitude on the part of the revenue. In an everchanging business and economic situation and in an hour of need for adjustments and consideration of specific situations, the rigidity in Rule 1D is deplorable. Even, where the break up value was disapproved by the Supreme Court, firstly, in C.W.T. Vs. Mahadeo Jalan and then again in C.G.T. Vs. Kusuben Mahadevia in the case of companies which are going concerns and whose shares are not quoted on the stock exchange, the revenue raised a contention in Smt. Kusuben D. Mahadevia's case that the Supreme Court dealt with investment companies and, therefore, that decision is not applicable to shares which are valued under Rule 1D. Alas! What a wrong perception of the motive behind the great court decisions. The opinion against the indiscriminate and arbitrary use of Rule 1D has gained such momentum that by and large, valuation under Rule 1D may be said to be illusory or unreasonable and may, on given facts, be displaced on the basis of Mahadeo Jalan's case and Kusuben D. Mahadevia's case.

Now so far as the details of Rule 1D are concerned, there are some points which demand a critical review. These are as follows:

(a) Under Rule 1D the market value of each share is normally
85% of the break up value. The question is, what is the criterion of fixing up the discount rate of 15%? The answer from the revenue was that after studying the balance sheets of a very large number of public companies whose shares are quoted on the stock exchange and after a careful comparison of break up values of shares of such public companies with the market value, it was decided that 15% discount was quite reasonable. But this process of finding out the market value by allowing 15% discount on break up value is a mystery and objectionable. Apart from this, the rule makes no room for the adjustment of this fixed rate 15% under the changing situations of the capital markets. For instance if the capital market is shy or there are restrictions on the declaration of dividend, the discount rate may require appropriate adjustment. But there is no scope for such adjustment under the rule.

(b) The table in proviso to Rule 1D containing the different rates of discount for determining the market value of equity shares on which no dividend has been paid continuously for three or more years is arbitrary and questionable.

(c) Valuation under Rule 1D proceeds on the basis of the relevant balance sheet which has been defined. But it has not been definitely mentioned that the shares under valuation must appear in that balance sheet. In the absence of such specific provision there arose a problem with regard to the issue of right shares.
after the balance sheet date in a particular case before the Delhi High Court. The valuation date was 31.3.75. The company concerned drew its balance sheet as on 31.12.74. Right shares were issued on 29.3.75. The revenue's contention was that the balance sheet as on 31.12.74 should be taken. But it was held that the valuation has to be done in accordance with that balance sheet in which the shares under valuation appear. Since the balance sheet as on 31.12.74 did not contain these shares, a later balance sheet had to be considered. (C.W.T. Vs. Brij Raj Punj).

(d) The anomalies with regard to provision for taxation under the rule have been beautifully outlined by S. Bhattacharya in his well-known book, Indian Direct Taxes, Law and practice in the following words: -

"The rule requires all liabilities except those mentioned ... to be deducted in order to determine the break up value. This means that the liability to taxation also has to be deducted. Clause (e) indicates that such liability can be only to the extent of the tax calculated on the book profits and that any excess provision is to be ignored, but by a rider it is stated that this does not restrict the allowance of a provision for advance tax. The language of law used in this connection is obscure to the extreme and one is at a loss to make any sense out of the enacted provisions. Apparently the idea is that a
provision for advance tax is a liability which does not come under the mischief of clause (e). But who has even heard of a provision being created in the accounts for advance tax?"

While concluding the discussion on Rule 1D it is interesting to note that the rule fails to take into account three very vital factors in relation to valuation of shares.

These are:

(i) payment of dividend. The fact that a company regularly pays very handsome dividends is ignored vis-a-vis another company which pays much lower dividends.

(ii) Restrictions on transfer of shares remain uncared for.

(iii) The fact that an adjustment may be necessary in respect of ex-dividend or cum-dividend shares is ignored.

These factors are bound to operate either against the revenue or against the tax-payer.

Investment companies:

The definition of investment companies given in Rule (1g) is unsatisfactory. What is the interpretation of the term "mainly"? Is it 51% income or more? Again it is unwise to treat a company as investment company solely on the basis of income test with particular reference to the chargeability of such income under Income-Tax Act, because there is a risk of an investment company in one year losing its character in the next
No provision has been made for an alternative test of investment companies with reference to the assets of such companies as per the decisions in C.I.T. Vs. Hawn Estate (P) Ltd.

The Supreme Court also spoke of an alternative test of assets in the case of C.I.T. Vs. Distributors (Baroda) (P) Ltd.

The Executive instructions for the valuation of unquoted equity shares of investment companies other than those which are substantially holding companies were to take an average of break up value and capitalised value of maintainable profits. But the entire gamut of valuation of shares was reviewed by the Supreme Court in Mahadeo Jalan's case and Kusumben D. Mahadevia's case. The Supreme Court laid down that a combination of profit earning method and break up method, though it may sound acceptable as a compromise formula, cannot be accepted as a valid principle of share valuation.

The Board issued a circular No.332A of 31.3.82 modifying its earlier circulars dated 31.10.67 and 15.9.73. The modified circular laid down certain guidelines for the valuation of unquoted equity shares of investment companies on the basis of the Supreme Court's decisions in Mahadeo Jalan's case and Smt. Kusumben D. Mahadevia's case.
The guidelines constitute a welcome development on the part of the revenue in its approach towards the valuation of shares. The department has come to realise that no one fixed formula can serve as a Panacea against all the complications associated with share valuation.

Paragraph 4 of the modified circular contains provisions relating to the calculation of the maintainable profits. These provisions are the same as those in the previous circular with only one exception that the rate of capitalisation of the maintainable profits may now be taken at 10% (previously 9%) in the case of investment companies other than those which derive the major part of their income from house property and at 8.5% in the case of investment companies which derive the major part of their income from house property. These rates of yield, i.e. 10% and 8.5% will also apply to the valuation of unquoted equity shares of an investment company which has a wholly owned subsidiary.

Now so far as the rates of capitalisation are concerned, one question needs clear answer. What is the basis of the fixation of these rates? Unless a basis can be established, the rates may be criticised as arbitrary. Company securities like preference shares and debentures and the securities issued by Govt. carry higher rate of return now-a-days.
Managing Agency Companies:

There is little need to make a critical review of the executive instructions contained in circular No.2(WT) of 31.10.67 for the valuation of shares of managing agency companies because these executive instructions became obsolete with the abolition of managing agencies from 3.4.70.

Gift-tax Act:

A controversy has arisen in relation to the valuation of shares of private companies in which transferability is restricted. In such cases the revenue claims that the provisions of Sec.6(3) read with rule 10(2) would apply so that the shares are to be valued on the basis of the company's assets. But this claim of the revenue is not tenable and the assets basis of valuation has to be rejected on the following grounds:

(a) The assets basis stands disapproved in Kusumber D. Mahadevia's case. The unquoted shares are to be valued in accordance with the principles laid down in Mahadeo Jalan's case.

(b) There is no doubt that Rule 10(2) is a verbatim copy of section 37 of the Estate Duty Act except for five words 'on the date of gift'. But the assets basis under the Estate Duty Act
is applicable on a very different consideration. Moreover, section 37 of the Estate Duty Act is a substantive provision under the Estate Duty Act. It is not a part of the Estate Duty Rules which are only procedural laws, framed by the executive authorities. But under the Gift tax laws, the basis of valuation with reference to the assets is found in the Gift Tax Rules which, at least to the extent of the provisions of Rule 10(2), come in conflict with section 6 of the Gift Tax Act which is a substantive law. It is a common rule of jurisprudence that where a rule framed by the executive branch of the Govt. comes in conflict with a substantive law, the latter shall prevail. Thus valuation of shares should be made under section 6(1) of the Gift Tax Act. In Seth Hemant Bhagubhai Mafatlal Vs. N. Rama Iyer, G.T.O., the Bombay High Court held that unquoted shares fall to be valued under section 6(1) and not under section 6(3) and hence Rule 10(2) does not apply and therefore, any valuation of shares under Rule 10(2) is not binding.

SUGGESTIONS:

This part of the present chapter is the most difficult part, not because certain suggestions can not be given, but because it is really difficult to put forward some effective suggestions which are acceptable to both the conflicting groups of taxpayers.
and the tax collectors. While the revenue endeavours to stick to the provisions of direct taxation laws, the tax payers continue to clamour about irrationality and legal impropriety of some of the provisions of the said laws in regard to the valuation of shares. It is to bridge the gap between the tax payers and the tax collectors that a humble approach is being made to put forward a few rational suggestions, which, it is hoped, will pave the way for obliterating some of the lacuna of the direct taxation laws in relation to the valuation of shares.

Estate Duty Act : ( No suggestions are made as the Act has been made in-operative.

Wealth Tax Act :

1) The word "shall" in the rules for valuation of shares to be substituted :

Since the methods prescribed by the Board for the valuation of shares under the Wealth-Tax Rules are to be viewed as only some methods which may be adopted for the valuation of shares and since the Wealth Tax Rules are to be taken as directory and not mandatory, the word "shall" used in the rules will have to be substituted by the word "may" so that it may be open to the parties concerned to consider other acceptable methods of valuation along with the methods prescribed by the rules.
In other words, the rules for valuation of shares should be made optional and not mandatory.

2) **Nil value for shares:**

If the net worth of a company is negative and is, thus, insufficient even to meet the external liabilities, the value of the shares, preference or ordinary, should be taken to be nil. (C.W.T. Vs. Y.P. Punj) Thus no rules should be made applicable to financially insolvent companies.

3) **No hard and fast rule:**

It is better to avoid as far as practicable the prescription of any hard and fast rule or one uniform formula for valuing shares of different types of companies. The views expressed by the Supreme Court in setting out the principles of valuation of shares in C.W.T. Vs. Mahadeo Jalan's case should be an eye-opener and should act as a guidance to both the revenue and the tax payers.

4) **Important factors to be considered:**

Whatever method of valuation of shares is adopted, provision should be made to see that as many factors as possible are considered and impartially evaluated. It has already been noticed that the existing rules for valuation of shares under the Wealth tax Rules leave many important factors unconsidered.
importance, the question of reducing litigation is by no means less important. All efforts should be directed to ensure a cordial relationship between tax-payers and the tax-collectors. The tax-payers on their part are to imbibe the spirit of service to the nation. The department at the same time should be ready for all rational adjustments instead of paving the way for an unholy showdown which in the ultimate analysis increases costs and brings bitterness.

2. Since the basic concept of price in the open market is common in all direct taxation statutes and since the attempt is to determine what corresponds to the open market value on a fair basis, there is no reason why the guiding principles should not necessarily be the same under similar circumstances. Thus a uniform system of valuation under direct tax statutes should be evolved to meet similar situations as far as practicable. Provision may be made for different methods of valuation of shares under certain special situations which may be treated as exceptional cases.


Sec.2(22A) - "Fair market value" in relation to a capital asset means -

(1) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date.
   Sec. 36(1) - The principal value of any property shall be estimated to be the price which, in the opinion of the controller, it would fetch if sold in the open market at the time of the deceased's death.

   Sec. 70(1) - Subject to any rules made in this behalf the value of any assets, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the wealth-tax officer it would fetch if sold in the open market on the valuation date.

   Sec. 6(1) - The value of any property other than cash transferred by way of gift shall, subject to the provisions of sub-sections (2) and (3), be estimated to be the price which in the opinion of the gift-tax officer it would fetch if sold in the open market on the date on which the gift was made.


8. R. Vs. Cambridge County Council (1937) 1 A.T.C. 201.

9. K.C. Manavedan Vs. Dy.CFD (1965) 55 ITR (ST) 36 (Mad.)
10. Earl of Llessegere Vs. IRC (1918) 2 KB 735


27. C.W.T. Vs. Purshotam N.Amersey (1969) 71 ITR 180 (Bom.)
34. Re Aschrott, Clifton Vs. Strauss (1927) 1 Ch. 313.
35. British Motor Trade Association Vs. Gilbert (1951) 2 All ER 611.
37. I.R.C. Vs. Barr's Trustees (1906) 44 SLR 647.
38. Arm's length sales: Arm's length sales refer to sales in an open market in which a fair market value of an asset is available.

The phrase 'at arm's length' has been defined as "beyond the reach of personal influence or control." Parties are deemed to be at arm's length when each works strictly according to his own rights and conducts the business in the formal manner, without being subjected to others' control and without trusting in others' fairness or integrity.
42. The Trustees of Johan Thomas Salvesen Vs. I.R.C (1930) 9 ATC 43.
44. I.R.C. Vs. Marr's Trustees (1906) 44 SLT 647.
45. The Trustees of Johan Thomas Salvesen Vs. I.R.C., (1930) 9 ATC 43.
46. Re Fry, Tasker Vs. Gulliford (1943) 1 Ch 35.
47. I.R.C. Vs. Clay (1914) 3 K.B. 466.
50. Contingent liabilities - Contingent liabilities are those which will materialise upon the happening of some events in future. Contingent liabilities may arise from various sources. They may arise from the bills receivable discounted,
proposed assessment of additional taxes, merchandise guarantees, lawsuits etc., or any other prior acts or circumstances which may result in an actual obligation at some future date. (James A. Caskin, Editor-in-chief, Handbook for Auditors, (1971), (pp.27-23) (27-24).)

Contingent assets :- Contingent assets are those which are not shown on the balance sheet or shown purely at a nominal figure, but these will turn out to be valuable assets upon the happening of some future events. "Goodwill is obviously one such asset... other such assets however might consist of various forms of intellectual property such as copy right in industrial drawings or computer programmes, or books, records and tapes of publishing companies. Other important aspects of intellectual property would be patents, trademarks and registered designs" (Nigel A. Eastaway and Harry Booth, Practical share valuation, (1983), p. 302)

51. Important accounting ratios :-

(i) Credit ratio - \[
\frac{\text{Trade creditors}}{\text{Trade purchases}}
\]

(The ratio may be multiplied by 365 to indicate the average length of credit taken in days or by 7 if the information is required in weeks or by 12 if in months.)
(ii) Debtors ratio - Debtors (including bills receivable) / Sales.

(This ratio can be multiplied by 365, 52 or 12 to show the average length of credit granted to customers in days, weeks or months)

(iii) Rate of turnover - Cost of sales / Average stock

(This ratio can also be converted into the time taken to turnover stock by dividing it into 365, 52 and 12 depending on whether the information required is in days, weeks or months)

(iv) Working capital ratio = Working capital / Sales

(Working capital - current assets minus current liabilities)

(v) Return on capital invested = Net profit before taxation / Average net worth x 100

(Net profit after taxation may also be taken in some cases)

(vi) Current ratio = Current assets / Current liabilities

(This ratio should be about 2, indicating that current assets are twice the current liabilities. If the ratio is
less than unity e.g. 0.75 to 1, the reasons for the low ratio are to be enquired

(vii) Acid test ratio - \( \frac{\text{Current assets less stock}}{\text{Current liabilities}} \)

( The ratio should be 1:1. Current assets less stock are known as quick assets which consist of cash, bank, marketable securities and receivables. Where quick assets are less than the current liabilities, some doubt is thrown on the inherent strength of the balance sheet, even if the current ratio is high.* )


(vii) Debt-equity ratio - \( \frac{\text{Long term Debts}}{\text{Shareholders' Fund + Long term Debts}} \)

( For industrial concerns, a ratio of .50 is considered appropriate)

This ratio may also be calculated as follows :-

\( \frac{\text{Long term debts}}{\text{Shareholders' funds}} \)

( In this case the ratio should be 1.)

This ratio is an indication of the soundness of the financial policy.
(ix) Dividend Cover - Earnings yield

\[ \text{Dividend yield} = \frac{\text{Net dividend}}{\text{Current net profit}} \]

(The ratio indicates the number of times the net dividend can be paid out of current net profit. The ratio may also be calculated by dividing the earnings per share by dividend per share.)

(x) Fixed interest charges cover - Net income plus net loan interest after tax

\[ \frac{\text{Net loan interest after tax}}{\text{Net income plus net loan interest after tax}} \]

(The ratio indicates how many times the profit covers the fixed interest charges. The ratio measures the margin of safety for the lenders.)

(xi) EPS - Discussed in a previous chapter -

52. Findlay's Trustees Vs. IRC (1938) 22 A.T.C. 437.
53. C.W.T. Vs. V.C. Ramachandran (1966) 60 ITR 103(Mys.)
55. Winter (Sutherlands Trustees) Vs. IRC (1961)40 ATC 361.
56. Duke of Buccleuch Vs. IRC (1967) 1 AC 506.
57. Raja Vyricherla Narayana Vs. The Revenue Divisional Officer, Vizagapatam (1939) A.C. 302.
58. IRC Vs. Clay, IRC Vs. Buchanan (1914) 3 K.B. 466.
59. Findlay's Trustees Vs. IRC (1938) 22 ATC 437

60. Holt Vs. IRC (1953) 32 ATC 402.

61. Lynall Vs. IRC (1971) 3 All ER 914.


63. Re Coutthope (1928) 7 A.T.C. 538.


Prof. Paton referred to the willing sellers and willing buyers as being well-informed about the prevailing conditions.


70. Raja Vyepicherla Narayana Gajapatiraju Vs. Revenue Divisional Officer, Vizagapatam (1939) AC 302.


82. Ibid 74, - p.40.
83. Re Thomley (1928) 7 ATC 178.
86. A.G. Vs. Jameson (1904) 2 IR 644 in the High Court and (1905) 2 IR 218 in the Court of Appeal.
87. Re Grossman and Re Paulin (1936) 15 ATC 94.
89. Duke of Buccleuch Vs. IRC (1965) 3 All E.R. 458.
91. Principal value - sec. 36 of the Estate Duty Act is concerned not with value but with the "principal value". The dictionary meaning of "principal" when used as an adjective is "First in rank or importance, Chief; main, leading". (Ref.- The new oxford illustrated Dictionary, Vol. 2, (1983) p. 1342.) In the legal sense, the term is a hypothetical figure and such value will depend on the opinion of the controller.
92. U/S 45(1) of the Income Tax Act, any profits or gain arising from the transfer of a capital asset effected in a previous year shall, save as otherwise provided in
sections 53, 54, 54B, 54D, 54E and 54F be chargeable to income-tax under the head "capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

93. Sec. 2 (14) of the Income Tax Act provides that capital asset means property of any kind held by the assessee, whether or not connected with his business or profession except certain assets specifically mentioned. The definition includes shares of companies.

94. The ten special modes in which a capital asset may become the property of the assessee u/s 49(1) are the following:

(i) on any distribution of assets on the total or partial partition of a Hindu undivided family;

(ii) Under a gift or will;

(iii) by succession, inheritance or devolution;

(iv) On any distribution of assets on the dissolution of a firm, a body of individuals or other association of persons;

(v) on any distribution of assets on the liquidation of a company;
(vi) under a transfer to trust, whether revokable or irrevokable;

(vii) under a transfer by a parent company to its 100% Indian subsidiary;

(viii) under a transfer by a 100% subsidiary company to its parent company which is an Indian company.

(ix) under a transfer in a scheme of amalgamation of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian Company;

(x) Such Assessee being a Hindu undivided family, by throwing into the family properties after 31st December 1969 of self-acquired property by a member so as to blend it with the character of family property.

Controlled company: - A "Controlled company" means a company as defined in section 17 of the Estate Duty Act. (sec.2(4)). Under sec. 17(4) (1) "a controlled company is any company which at any relevant time, was or would, if these provisions had always been in force, have been deemed to be, under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially
interested".

Sec. 17(4) provides the explanation for various technical terms used in the definition of a controlled company.

The above definition is the general definition of the controlled company under the Estate Duty Act. For the purpose of Rule 15 of the Estate Duty (controlled companies) Rules, 1953, "a person shall be deemed to have had control of a company at any time if he then had -

(a) the control of powers of voting on all questions or on any particular question, affecting the company as a whole which if exercised would have yielded a majority of the votes capable of being exercised thereon; or

(b) the capacity to exercise, or to control the exercise, of any of the following powers that is to say, the powers of a board of directors or of a governing director of the company, power to nominate a majority of directors or a governing director thereof, power to veto the appointment of a director thereof, or powers of a like nature;

or if could have obtained such control or capacity by an exercise at that time of a power exercisable by him or with his consent." (sub-rule 3 of Rule 15.)
96. Sub-rule (1) of Rule 15 -

"Where for the purposes of estate duty there pass, on the death of a person shares in or debentures of a controlled company then if -

(a) the deceased had the control of the company at any time during the three years ending with his death; or

(b) dividends which were declared by the company for any period falling wholly or partly within those three years, or which, not having been declared for any particular period, were declared at a time within those three years together with any amounts which accrued due during any period falling wholly or partly within those three years for interest on debentures of the company, are, as to amounts forming in the aggregate more than one-half of the total amount of such dividends and interest to be treated by virtue of any of the provisions of rules 5 and 6 as benefits accruing to the deceased from the company, or would have fallen to be so treated if the deceased had made a transfer of property to the company; or

(c) the deceased had at any time during those three years a beneficial interest in possession in shares
in or debentures of the company, or in both, of an aggregate nominal amount representing one-half or more of the aggregate nominal amount of the shares in and debentures of the company then issued and outstanding, and no one other person had at that time the control of the company;

the principal value of the shares or debentures, in lieu of being estimated in accordance with the provisions of sub-section (1) of section 36 of the Act shall be estimated by reference to the net value of the assets of the company in accordance with the provisions of the next succeeding sub-rule."

97. Sub-rule (2) of Rule 15 -

For the purposes of ascertainment of the principal value under sub-rule (1) of Rule 15 -

"(a) the net value of the assets of the company shall be taken to be the principal value thereof estimated in accordance with sub-section (1) of section 36 of the Act less the like allowance for liabilities of the company as is provided by sub-rule (1) of rule 10 in relation to the assets of a company passing on a death by virtue of sec. 17 of the Act.
but subject to the modification that allowance shall
be made for such a liability as is mentioned in
paragraph (b) of that sub-rule unless it also
falls within paragraph (a) thereof;

(b) the aggregate value of all the shares in and
debentures of the company issued and outstanding
at the death of the deceased shall be taken to be
the same as the net value of the assets of the
company;

(c) in a case in which there are both shares in and
debentures of the company issued and outstanding
at the death, or different classes of either, the
net value of the assets of the company shall be
apportioned between them with due regard to the
rights attaching thereto respectively; and

(d) the value of any share, or of any debenture, or
of a share or debenture of any class, shall be a
rateable proportion, ascertained by reference to
nominal amount, of the net value of the assets of
the company as determined under paragraph (a) of
this sub-rule or, in the case mentioned in paragraph
(c) of this sub-rule, of that part thereof, apportioned
under that paragraph to the shares of the
company, or to its debentures, or to that class
thereof, as the case may be".

98. Sub-rule (1) of Rule 10 -

"In determining the value of the estate for the purpose of estate duty the provisions of sec. 44 of the Act as to making allowance for debts and incumbrances shall not have effect as respects any debt or incumbrance to which assets of the company passing on the death by virtue of sec. 17 of the Act were liable, but the controller shall make an allowance from the principal value of those assets for all liabilities of the company (computed, as regards liabilities which have not matured at the date of the death, by reference to the value thereof at that date, and, as regards contingent liabilities, by reference to such estimation as appears to the controller to be reasonable) other than -

(a) liabilities in respect of shares in or debentures of the company; and

(b) liabilities incurred otherwise than for the purposes of the business of the company wholly and exclusively".

99. Equity and preference shares -

(a) Equity shares - In the absence of any special definition to the contrary under the Wealth-Tax Act
and Wealth - Tax Rules, the equity shares will be taken to have the same meaning as given in section 85 of the companies Act, - 1956,

(b) Preference shares - "Preference Share" has the meaning assigned to it in sec. 85 of the companies Act, 1956 (1 of 1956) (Rule 1A(i) of the Wealth Tax Rules, - 1957)

100. "Unquoted share" means an equity share or a preference share of a company other than any such share the value of which is regularly quoted at any recognised stock exchange. (Rule 1A (l) of the Wealth-Tax Rules, - 1957)

101. "Recognised Stock Exchange" has the meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956. (42 of 1956) (Rule 1A (j) of Wealth - tax Rules, 1957)

102. "Investment company" means a company whose gross total income consists mainly of income which is chargeable to income-tax under the heads "Interest on securities", "Income from house property", "capital gains" and "Income from other sources".

Explanation: In this clause, the expression "gross total income" means the total income computed in
accordance with the provisions of the Income-tax Act, - 1961 before making any deduction under chapter VIA of that Act.

(Rule 1A (g) of the Wealth-tax Rules, 1957)

103. "Managing agency company" means a company the entire income of which or any part thereof is derived by way of managing agency. (Rule 1A (h) of the Wealth-tax Rules, 1957).

104. (Board's circular No. 2(WT) of 1967, dated 31.10.1967).

valuation of unquoted equity shares of Investment companies, Holding companies and Managing Agency companies.

- Instructions regarding.

The method of valuation of unquoted equity shares of (i) investment companies, and (ii) holding companies has since been further examined and certain instructions regarding the valuation of unquoted equity shares of (i) investment companies, (ii) holding companies, and (iii) managing agency companies have been issued in supersession of all the earlier instructions for the guidance of Wealth-tax officers.

105. Sub-rule (1) of Rule 1C of the Wealth-tax Rules, - 1957

106. Explanation to Rule 1C.
107. Section 3 of the Preference shares (Regulation of Dividends) Act, 1960 (LXIII of 1960) provides for the regulation of dividends on preference shares in certain cases specified in sub-sections (1), (2), (3) and (4).

108. U/S. 2(c) a preference share referred in the preference shares (Regulation of Dividends) Act means a share which having been issued and subscribed for before the 1st day of April, 1960, carries, as regards dividends, a preferential right to be paid a fixed sum or an amount calculated at a fixed rate.

109. U/S. 2(e) of the preference shares (Regulation of Dividends) Act "stipulated dividend" in relation to a preference share, means the fixed amount or the amount calculated at a fixed rate which the holder of such share has a preferential right to be paid as dividend.

110. Clause (1) of Explanation II of Rule 1D of the Wealth-tax Rules, 1957.

111. The main difference between 'provision, and 'reserve, is that provision is a 'charge against profit' while 'reserve' is an 'appropriation of profit'. Thus whereas provision is debited to profit and loss A/c, reserve is debited to profit and loss Appropriation A/c.
Initial depreciation - Under the Income-tax Act, 1961, initial depreciation is allowed in respect of certain buildings, plant and machinery, ship and aircraft. The relevant provisions are found in sections 32(i)(iv) and 32(i)(v). An assessee shall be entitled to an allowance for such initial depreciation u/s 32(i)(iv) @ 40% of the actual cost of the asset concerned in respect of a particular previous year (for instance in case of a newly constructed building in respect of the previous year in which the erection of the building is completed) on fulfilment of certain conditions.

Under Sec. 32 (i)(v) initial depreciation is allowed on new building which is used as hotel approved by the Central Government @ 25% of the actual cost of the building in respect of the previous year in which the erection is completed or if such a building is first brought into use as a hotel in the immediately succeeding previous year, then in respect of that previous year. In determining the written-down-value the initial depreciation will not be deductible. But account must be taken of such initial depreciation in determining the balancing charge or the terminal allowance in respect of a particular asset. After all total depreciation including initial depreciation for an asset can never exceed the actual cost of that asset.

114. Report on 5th All-India Conference of Tax Executives - pp. 43-44.


116. C.W.T. Vs. Arvindbhai Chimubhai (1982) 133 ITR 800 (Guj.)

117. C.W.T. Vs. S.K. Varma (1978) 113 ITR 882 (Bom.)


121. C.W.T. Vs. Mahadeo Jalan (1972) 86 ITR 621 (SC)


127. James Courzens (1928) 11 Board of Tax Appeals 1040.


129. Raja Vyricherla Narayan Gajapatiraju Vs. Revenue Divisional Officer, Vizagapatam, I.L.R. 1939. MAD.532; (1939) AC 302.

       ITR 132 (AP).

133. Debi prasad poddar Vs. C.W.T. (1977) 109 ITR 760 (Cal.)

134. V.C. Ramachandran Vs. C.W.T. (1980) 126 ITR 157 (Ker.)

135. T. Kanagasabapathy Pillai Vs. C.W.T. (1964) 51 ITR 146
       (Mad.)


137. Raja Vyricherla Narayan Gajapatriaju Vs.
       Revenue Divisional Officer, Vizagapatam, I.L.R. 1939,
       Mad. 532; (1939) AC 302.


140. C.W.T. Vs. V.C. Ramachandra (1966) 60: ITR 103 (Mys.)

       1 All E.R. 129.

142. Re Lynall (1970) 75 ITR 565 (CA); (1972) 83: ITR 563 (M.L.)

143. Priestman Collieries Ltd. Vs. Northern District valuation
       Board (1950) 2 K.B. 398.


147. Ibid 124, - P.2.


151. C.W.T. Vs. Mahadeo Jalan (1972) 86 ITR 621 (SC)


155. Bharat Hari Singhania Vs. C.W.T. (1979) 119 ITR 258 (All.)

156. C.W.T. Vs. Mahadeo Jalan (1972) 86 ITR 621 (SC)

157. Rule IC of the Wealth-Tax Rules, 1957 begins with the following words:

"Subject to the provisions of Sub-rule (2) the market value of an unquoted preference share of any company shall....."

158. C.W.T. Vs. Mahadeo Jalan (1972) 86 ITR 621 (SC)


160. Report on 5th All-India Conference of Tax Executives (held in Delhi in November, 1970) - Pp.43-44.


163. C.I.T. Vs. Nawn Estate (P) Ltd. (1972) 86 ITR 300(Cal)

164. C.I.T. Vs. Distributors (Baroda) (P) Ltd. (1972) 83 ITR 377 (SC).


169. C.W.T. Vs. Mahadeo Jalan (1972) 86 ITR 621 (SC)


171. C.G.T. Vs. S. Venu Srinivasan (1978) 112 ITR 771 (Mad.)