SUPREME COURT OF INDIA

Kesoram Industries and Cotton Mills Ltd.

Vs.

Commissioner of Wealth Tax (Central), Calcutta

C.A.No.539 of 1964

(K. Subba Rao, J. C. Shah and S. M. Sikri, JJ.)

24.11.1965

JUDGEMENT

SUBBA RAO, J.:

1. Kesoram Industries and Cotton Mills Limited, the appellant herein, is a company incorporated under the Indian Companies Act. Its subscribed capital at the end of the relevant accounting year ending March 31, 1957, was Rupees 2,29,99,125. The original cost of the said assets was Rs. 2,30,32,833. During the year ended March 31, 1950, the company made a revaluation of its assets and added an amount of Rs. 1,45,87,000 to the cost of the said fixed assets. After certain adjustments, the value of the fixed assets was fixed at Rs. 2,60,52,357. The said fixed assets of the assessee were shown in the balance-sheets issued by the assessee from time to time at the added value less depreciation calculated on the original cost. In the balance-sheet of the relevant accounting year also the said amount was shown as the value of the fixed assets. In the profit and loss account for the said year a sum of Rs. 15,29,855 was shown as the amount of dividend proposed to be distributed for that year. The said amount was declared as dividend at the General Body Meeting of the assessee held on November 27, 1957. The said balance-sheet as on March 31, 1957, also showed a provisions for taxation amounting to Rupees 1,03,69,009 and as against the said amount a sum of Rs. 84,76,690 was shown as the taxes paid during the said accounting year.

2. In computing the net wealth for the purposes of Wealth Tax Act, 1957, the Wealth Tax Officer accepted the said valuation of the fixed assets under S. 7 (2) of the said Act, rejecting the plea of the assessee that each item of the assets should be valued at the market rate under S. 7 (1) thereof. He also disallowed the claim of the assessee in respect of the proposed dividend and estimated income-tax and super-tax on the ground that the said items were not debts on the valuation date, i.e., March 31, 1957, within the meaning of S. 2 (m) of the Wealth Tax Act. On appeal, the said order was confirmed by the Appellate Assistant Commissioner except to the extent of outstanding demand of income-tax for Rs. 30,305. On further appeals, the Income-tax Appellate Tribunal Calcutta Bench "A", not only disallowed the claims of the assessee but also allowed the appeal of the Department in regard to Rs. 30,305 subject to certain directions given by it. At the instance of the assessee, the following three questions were referred to the High Court under S. 27 of the Wealth Tax Act:

(1) Whether, on the facts and in the circumstances of the case, the Wealth Tax Officer was justified in taking the value of the assets of the assessee as shown in its balance-sheet on the relevant valuation date.

(2) Whether, on the facts and in the circumstances of the case, in computing the net wealth of the assessee the amount of proposed dividend was deductible from its total assets.

(3) Whether, on the facts and in the circumstances of the case, in computing the net wealth of the assessee, the amount of the provision for payment of income-tax and super-tax in respect of the year of account was a debt owed within the meaning of S. 2 (m) of the Wealth Tax Act, 1957, and as such a deductible in computing the net wealth of the assessee.

The High Court answered the three questions against the assessee. Hence the present appeal.

3. Mr. Palkhivala, learned counsel for the assessee raised before us the same arguments as he had unsuccessfully pressed before the High Court. We shall take each of them seriatim for our consideration.

4. The first question is whether the High Court was right in agreeing with the Tribunal that the assessee's revaluation of the assets should be accepted for the purposes of the Wealth Tax Act. Section 7 of the Wealth Tax Act lays down how the value of assets is to be ascertained for the purposes of the said Act. It reads :

"(1) The value of any asset, 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.

(2) Notwithstanding anything contained in sub-s. (1) -

(a) where the assesee is carrying on a business for which accounts are maintained by him regularly, the Wealth Tax Officer may, instead of determining separately the value of each, asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustments therein as the circumstances of the case may require."

Under this section in the case of an assessee carrying on business the Wealth Tax Officer may determine the net value of the assets of the business as a whole having regard to the balance-sheet of the business as on the valuation date. The balance-sheet, as indicated earlier, as on March 31, 1957, showed the appreciated value on revaluation of the assets at Rs. 2,60,52,357. As the value of the assets had increased, a corresponding balancing figure, viz., Rs. 1,45,87,000 was introduced in capital reserve surplus: that figure represented the increase in the value of the assets. It was argued that the revaluation was done for other purposes, that it did not represent the real value of the assets and that fact was also reflected by the said amount representing the difference being shown as a capital surplus. Apart from the argument raised, there is nothing on the record to disclose why the said figure did not represent the correct value of the assets. We do not also see how the fact that the said increase was shown as capital surplus would detract from the correctness of the valuation, for the corresponding balancing figure had to be introduced in the balance-sheet. Under S. 211 of the Companies Act, 1956, every balance-sheet of a company must give a true and fair view of the state of its affairs as at the end of the financial year. When the assessee himself has shown the net value of the assets at a figure, the Wealth Tax Officer, in our view, rightly accepted it, as no one could know better the value of the assets than the assessee himself. It was open to the assessee to convince the authorities that the said figure was inflated for acceptable reasons; but it did not make any such attempt. It was also open to the Wealth Tax Officer to reject the figure given by the assessee and to substitute inits place another figure, if he was, for sufficient reasons, satisfied that the figure given by the assessee was wrong. But he did not find any such reasons to do so. When he accepted the figure shown by the assessee himself, he did the right thing and there is nothing to complain about. The High Court was right in answering the first question in the affirmative.

5. The second question does not call for a detailed scrutiny. Under S. 2 (m) of the Wealth Tax Act, "net-wealth" means the amount by which the aggregate value computed in accordance with the provisions of the said Act of all the assets of the assessee on the valuation date is in excess of the aggregate value of all the debts owed by the assessee on the said date. The Directors of the assessee-company showed in the profit and loss account a sum of Rs. 15,29,855 as the amount of dividend proposed to be distributed for the year ending March 31, 1957; but the said dividend was declared

by the company at its General Body Meeting only on March 31, 1957. The question is whether the amount set apart as dividend by the Directors was a debt owed by the company on the valuation date.

6. The Directors cannot distribute dividends but they can only recommend to the General Body of the Company the quantum of dividend to be distributed. Under S. 217 of the Indian Companies Act, there shall be attached to every balance-sheet laid before a company in general meeting a report by its board of directors with respect to inter alia, the amount, if any, which it recommends to be paid by way of dividend. Till the company in its general body meeting accepts the recommendation and declares the dividend, the report of the directors in that regard is only a recommendation which may be withdrawn or modified, as the case may be. As on the valuation date nothing further happened than a mere recommendation by the directors as to the amount that might be distributed as dividend, it is not possible to hold that there was any debt owed by the assessee to the shareholders on the valuation date. The High Court rightly answered the second question in the negative.

7. The third question raised a serious controversy between the parties. On this question the High Court held that although the assessee was liable to pay income-tax on the valuation date the actual amount of the liability was not ascertained until some time after the passing of the Finance Act and determination made by the income-tax authorities and, therefore, no debt was owed by the assessee on the valuation date. In that view, it answered the third question in the negative.

8. A few facts relevant to this question may be recapitulated. Under the Wealth Tax Act, 1957, the Wealth Tax Officer valued the net wealth of the assessee as on March 31, 1957, which was the valuation date as defined under the said Act. The Finance Act came into force on April 1, 1957. The question is whether the liability to pay income-tax and super-tax became a debt owed by the assesee on March 31, 1957, or on April 1, 1957; if it was a debt on the latter date, it could not be deducted from the gross assets of the assessee to arrive at the net wealth, if it was on the former date, it could be Mr. Palkhivala argued that the liability to pay tax arose by virtue of the charging section i.e., S. 3 of the Income-tax Act, and that it arose not later than the close of the previous year though the quantification of the amount payable was postponed till the Finance Act was passed and that, therefore, it being a liability in praesenti existing on the valuation date, it was a debt owed by the assessee on the said date. Mr. A. V. Viswanatha Sastri, learned counsel for the Revenue, argued that the expression "debt owed" meant an obligation to pay an ascertained amount, that the said obligation to pay income-tax arose only on the passing of the Finance Act and that, therefore, on the valuation date no debt was owned by the assessee to the Department within the meaning of S. 2 (m) of the Wealth Tax Act.

9. At the outset it will be convenient to gather the material provisions of the relevant Acts at one place. They read :

WEALTH TAX ACT, 1957

Section 2(m), "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owned by the assessee on the valuation date.

Section 3, Subject to the other provisions contained in this Act there shall be charged for every financial year commencing on and from the first day of April, 1957 a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule.

Section 2 (q). "valuation date" in relation to any year for which an assessment has to be made under this Act, is the last day of the previous year as defined in clause (11) of Section 2 of the Income-tax Act if an assessment were to be made under that Act for that year .....

INCOME-TAX ACT, 1922

Section 2(11), "previous year" means -

(i) in respect of any separate source of income profits and gains -

(a) the twelve months ending on the 31 day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then, at the option of the assessee, the year ending on the date to which his accounts have been so made up.

Section 8. Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other associated of persons or the partners of the firm or the members of the association individually.

Section 55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, company, local authority, unregistered firm or other association of persons, not being a registered firm, or the partners of the firm or members of the association individually, an additional duty of income-tax (in this Act referred to as Super-tax) at the rate or rates laid down from that year by a Central Act.

Section 67B. If on the 1st day of April in any year provision has not yet been made by a Central Act for the charging of income-tax for that year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force.

The Finance (No. 2) Act, 1957

(Act No. XXVI of 1957)

(It received the assent of the President on September 11, 1957.)

Section 2. (1) Subject to the provisions of sub-ss. (2), (3), (4) and (5) for the year beginning on the 1st day of April, 1957, -

(a) income-tax shall be charged at the rates specified in Part I of the First Schedule, and, in the cases to which Paras. A, B and C of that Part apply, shall be increased by a surcharge of purposes of the Union and a special surcharge on unearned income, calculated in either case in the manner provided therein; and

(b) super-tax shall for the purposes of S. 55 of the Indian Income-tax Act, 1922 (XI of 1922) (hereinafter referred to as the Income-tax Act), be charged at the rates specified in Part II of the First Schedule.

10. A gist of the said provisions, excluding the controversial points, relevant to the assessment under scrutiny may be given thus : Under S. 3 of the Wealth Tax Act, the net wealth of the assessee was assessable as on the valuation date, i.e., March 31, 1957, at the rate or rates specified in the

Schedule to the said Act. "Net wealth" is the amount by which the aggregate value of the assets of the assessee as on the said date is in excess of the aggregate value of the debts owed by it on the said date. Under S. 3 of the Income-tax Act, the assessee was liable to pay income-tax and super-tax on its income ascertained during the accounting year ending with March 31, 1957, at the rates prescribed under the Finance Bill or the previous Finance Act whichever was less, as the Finance Act of 1957 was passed only in September 1957. On those facts, the question is whether, the liability of the assessee to pay income-tax and super-tax arose on the valuation date, i.e., March 31, 1957, the last day of the accounting year, or subsequently during the assessment year, i.e., during the period April 1, 1957 to March 31, 1958.

11. Looking at the problem from the standpoint of a businessman or looking at the question from a commonsense view, one will reasonably hold that the net wealth of an assessee during the accounting year is the income earned by him minus the tax payable by him in respect of that income. If a person earns Rs. 1,00,000 during the accounting year and has to pay Rs. 60,000 as tax in respect of that income, it will be incongruous to suggest that his wealth at the end of that year is Rs. 1,00,000. A reasonable man will say that his income is only Rs. 40,000, which represents his wealth at the end of the year. But it is said that what is just is not always legal. This Court has, on more than one occasion, emphasized the fact that the real income of an assessee has to be ascertained on commercial principles subject to the provisions of the Income-tax Act. Is there any provision in the Wealth Tax Act which compels us to come to a conclusion which is unjust on the face of it?

12. The problem presented can satisfactorily be solved by answering two questions, namely, (1) what does the expression "debt owed" mean? and (2) when does the liability to pay income-tax and super-tax under the Income-tax Act become a debt owed within the meaning of that expression?

13. If we ascertain the meaning of the word "debt", the expression "owed" does not cause any difficulty. The verb "owe" means "to be under an obligation to pay". It does not really add to the meaning of the word "debt". What does the word "debt" mean? A simple but a clear definition of the word is found in Webb v. Stenton, (1883) 11 QBD 518 at p. 527 wherein Lindley, L. J., said :

".....a debt is a sum of money which is now payable or will become payable in the future by reasons of a present obligation, debitum in praesenti, solvendum in futuro." This view, was accepted by the other Lord Justices. The Court of Appeal in O'Driscoll v. Manchester Insurance Committee, (1915) 3 KB 499 at pp. 512, 515, 517 considered the word "debt in the context of fees payable by National Insurance Committee to Panel Doctor. The Insurance Committee entered into agreements with the panel doctors of their district by which the whole amounts received by the committee from the National Insurance Commissioners were to be pooled and distributed among the panel doctors in accordance with a scale of fees. The Court held that where a panel doctor had done work under his agreement with the insurance committee, and the committee had received funds in respect of medical benefit from the National Insurance Commissioners, there was a debt owing or accruing

from the insurance committee to the penal doctor which might be attached, though the exact share payable to him was not yet ascertained. It was argued there that there could not be a debt until the amount had been ascertained and in support of that contention cases relating to unliquidated damages were cited. Distinguishing those cases on the ground that there was no debt until the verdict of the jury was pronounced assessing the damages and judgment was given, Swinfen Eady, L. J. observed :

"Here there is a debt, uncertain in amount, which will become certain when the accounts are finally dealt with by the Insurance Committee. Therefore, there was a "debt" at the material date, though it was not presently payable and the amount was not ascertained."

Phillimore, L. J., dealing with the argument based on the fact that the sums were not ascertained at the time they were sought to be attached, observed :

"No doubt these debts were not presently payable and the amounts were not, on April 9, 1914, ascertained in the sense that no one could say what the result of the calculations would be, but it was certain on that date that a payment would become due from the committee to the doctors out of the balance of the moneys in the hands of the committee for 1913 ....."

So also Banks, L. J., observed :

"Dr. Sweeny fulfilled that condition, and a debt arose, though the amount of it was not ascertained on April 9, 1914, and was not then payable."

This judgment in substance ruled that a present liability to pay an amount in future, thought it was not ascertained but was ascertainable, was a debt liable to attachment.

14. The word "debt" was again considered in Inland Revenue Commrs. v. Bagnall Ltd., 1944-1 All ER 204 at p. 206 in connection with the excess profits tax. There, the Board of Inland Revenue accepted an offer of ₹10,000 made by the respondent-company's accountants in settlement of their earlier liability. That offer was accepted only on September 22, 1937. The company contended that the sum was a debt due from the respondent to the Inland Revenue as from January 1, 1935. As the offer was not accepted, it was held that the sum was not a debt. It was argued that even if there was a liability on January 1, 1935, that liability did not become a debt within the meaning of the Finance (No. 2) Act, 1939. Adverting to that argument, Macnaghten, J., observed :

"It is true that the word 'debt' may, in certain connections, he used so as to cover a mere liability, but I think that in this Act it is used in the proper sense of an ascertained sum and that the contention of the Attorney-General is well founded."

This decision, while holding that in the context of the Finance Act of 1939 there was no debt until the liability was quantified, conceded that the expression "debt" was wide enough to take in a liability; it also did not define the scope of the expression "ascertained", that is to say, whether the said expression would take in amounts ascertainable.

15. The King's Bench Division in Seabrook Estate Co., Ltd. v. Ford, (1949) 2 All ER 94 (96), held that money in the hands of a Receiver for debenture-holders was not a debt owing or accruing and, therefore, was not liable to attachment. But Hallet, J. accepted the following proposition laid down by Rowlatt, J. in (1915) 3 KB 499.

".....where a debt is established in praesenti, it is not sufficient objection to say that the exact amount of the debt will be the subject of a calculation which has not yet been made and, it may be, cannot yet be made."

This question fell to be decided again in Dawson v. Preston (Law Society, Garnishee), 1955-3 All ER 314 (318). The question there was whether sum representing damages paid to legal aid fund could be attached by a creditor of a legally aided plaintiff. At the time when the garnishee order was sought to be issued, a part of the decree amount was with the Law Society, subject to any charge conferred on the Law Society to cover the prescribed deductions which remained to be quantified, e.g., deduction for the taxed costs of the action. The Court held that there was an existing debt although the payment of the debt was deferred pending the ascertainment of the amount of the charge in favour of the Law Society Ormerod, J., observed:

"..... that is merely a question of ascertaining the debt which has to be paid over to the assisted person and does not prevent that debt from being an existing debt at the material date."

This decision also recognized that, if there was a liability in praesenti, the fact that the amount was to be ascertained did not make it any the less a debt.

16. In Dunlop and Ranken Ltd. v. Hendall Steel Structures Ltd. (Pitchers Ltd. - Garnishees), (1957)

1 WLR 1102, 1104 it was held that the issuing of the architect's certificate was just as much a necessity for investing a cause of action in sub-contractors as it was in the main contracts, and the judgment-debtors had no right to be paid, and, therefore, there was no debt, until the architect had certified the amount to be paid for the work ordered by the garnishees. On that reasoning it was held that no gurnishee order should have been made. Strong reliance was placed on this decision in support of the contention of the Revenue that there could not be a debt if the ascertainment of the debt depended upon a certificate to be issued by a third party. But a perusal of the judgment shows that in such contracts a certificate by the architect was a condition for imposing a liability and that, therefore, till such a condition was complied with there could not be any debt. This decision does not throw any light on the question that now arises before us. The principle of the matter is well put in the Annual Practice, 1950, at p. 808, thus :

"But the distinction must be borne in mind between the case where there is an existing debt, payment whereof is deferred, and a case where both the debt and its payment rest in the future. In the former case there is an attachable debt, in the latter case there is no. If for instance, a sum of money is payable on the happening of a contingency, there is no debt owing or accruing. But the mere fact that the amount is not ascertained does not show that there is no debt."

In our view this is a full and accurate statement of law on the subject and the said statement is supported by English decisions we have discussed earlier.

17. We shall now notice some of the decisions of the Indian Courts on this aspect.

18. A Special Bench of the Madras High Court in Sabju Sahib v. Noordin Sahib, (1899), ILR 22 Mad 139 at p. 141, held that a claim for unliquidated sum of money was not a debt within the meaning of the Succession Certificate Act, 1889, S. 4 (1) (a). The claim was to have an account taken of the partnership business that was carried on between the deceased and others and to have the share of the deceased paid over to him as the representative of the deceased. Shephard, Officiating, C. J., said :

"It is quite clear that this is not a debt, for there was at the time of the death no present obligation to pay a liquidated sum of money. The claim is one about which there is no certainty; it may turn out that there is nothing due to the plaintiff."

Subramania Ayyar, J., did not consider that claim as a debt for the reason that the liability arising from the obligation of a partner to account to the other partners could not be held to be a debt in the accepted ordinary legal sense of the term for the obvious reason that the liability was not in respect of a liquidated sum. An obligation to account does not give rise to a debt, for the liability to pay will arise only after the accounts were taken and the liability was ascertained. In the context of the Succession Certificate Act, such an obligation was rightly held not to be a debt.

19. The decision of a Full Bench of the Calcutta High Court in Banchharam Majumdar v. Adyanath Bhattacharjee, (1909) ILR 36 Cal 936, 938-939, 941 throws considerable light on the connotation of the word "debt". Jenkins, C. J., defined that word thus :

"..... I take it to be well established that a debt is a sum of money which is now payable or will become payable in future by reason of a present obligation."

Mookerjee, J., quoted the following passage with approval from the judgment of the Supreme Court of California in People v. Arguello, (1869) 37 Calif 524 :

"Standing alone, the word 'debt' is as applicable to a sum of money which has been promised at a future day as to a sum now due and payable. If we wish to distinguish between the two, we say of the former that it is a debt owing, and of the latter that it is a debt due. In other words, debts are of two kinds; solvendum in praesenti and solvendum in futuro ..... A sum of money which is certainly and in all events payable is a debt, without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt or does not become a debt until the contingency has happened."

This passage brings out with clarity the essential characteristics of a debt. It also indicates that a debt owing is a debt payable in future. It also distinguishes a debt from a liability for a sum payable upon a contingency.

20. A Full Bench of the Madras High Court in Doraisami Padayachi v. Vaithilinga Padayachi, ILR 40 Mad 31 : (AIR 1918 Mad 1145 (FB), ruled that :

"a promise to pay the amount which may be found due by an arbitrator on taking accounts between the parties is not a promise to pay a "debt" within the meaning of S. 25 of the Indian Contract Act, 1872, the amount not being a liquidated sum."

This was because the liability to pay the amount arose only after the arbitrator decided that a particular amount was due to one or other of the parties.

21. The Calcutta High Court in Jabed Sheikh v. Tahar Mallik, 45 Cal WN 519: (AIR 1941 Cal 639) held that

"a liability for mesne profits under a preliminary decree therefor, though not a contingent liability, does not become a 'debt' till the amount recoverable, if any, is ascertained and a final decree for a specified sum is passed".

That conclusion was arrived at on the basis of the principle that it claim for damages does not become a debt till the judgment is actually delivered.

22. We have briefly noticed the judgments cited at the Bar. There is no conflict on the definition of the word "debt". All the decisions agree that the meaning of the expression "debt" may take colour from the provisions of the concerned Act: it may have different shades of meaning. But the following definition is unanimously accepted :

"a debt" is a sum of money which is now payable or will become payable in future by reason of a present obligation; debitum in praesenti, solvendum in futuro."

The said decisions also accept the legal position that a liability depending upon a contingency is not a debt in praesenti or in future till the contingency happened. But if there is a debt the fact that the amount is to be ascertained does not make it any the less a debt if the liability is certain and what remains is only the quantification of the amount. In short, a debt owed within the meaning of S. 2 (m) of the Wealth Tax Act can be defined as a liability to pay in praesenti or in future an ascertainable sum of money.

23. With this background let us look at the provisions of the Income-tax Act and the decisions bearing on them to ascertain whether a liability to pay income-tax and super-tax on the income of the accounting year is a debt within the meaning of S. 2 (m) of the Wealth Tax Act.

24. The first question is whether S. 3 of the Indian Income-tax Act, 1922, or S. 2 of the Finance (No. 2) Act, 1957, is the charging section. The Revenue contends that the Finance Act is the charging section and that, therefore, the liability accrued only on the first day of April 1957, while the assessee says that S. 3 of the Income-tax Act is the charging section and that the Finance Act only prescribed the rate of tax payable.

25. Uninfluenced by judicial decisions let us at the out-set look at the relevant provisions of the two Acts. Under S. 3 of the Income-tax Act, where any Central Act enacts that income-tax shall be

charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of the said Act. The expression "charged" is used both in the case of the Central Act, i.e., the Finance Act, and the Income-tax Act. It could not have been the intention of the Legislature to charge the income to income-tax under two Acts. Necessarily, therefore, they are used in two different senses. The tax is to be charged for that year in accordance with, and subject to, the provisions of the Income-tax Act; but the said charge will be in accordance with the rates prescribed under the Finance Act. This construction will harmonize the apparent conflict between the two Acts. When you look at S. 2 of the Finance Act, it shows that income-tax shall be charged at the rates specified in Part I of the First Schedule, and super-tax, for purpose of S. 55 of the Income-tax Act, 1922, shall be charged at the rates specified in Part II of the First Schedule. The primary object of the Finance Act is only to prescribe the rates so that the tax can be charged under the income-tax Act. The Income-tax Act is a permanent Act, whereas the Finance Act is passed every year and its main purpose is to fix the rates to be charged under the Income-tax Act for that year. That should be the construction is also made clear by S. 55 of the Income-tax Act, whereunder super-tax shall be charged for any year in respect of the total income of the previous year of any individual, Hindu undivided family, company, etc., at the rate or rates laid down for that year by a Central Act. This section brings out the distinction between a tax charged and the rate at which it is charged. This construction is also emphasized by S. 67B of the Income-tax Act, whereunder if on the 1st day of April in any year provision has not yet been made by a Central Act for the charging of income-tax for that year, the Income-tax Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, was actually in force. This shows that the charging section is only S. 3 of the Income-tax Act and that S. 2 of the Finance Act only gives the rate for quantifying the tax; for, this section given an alternative for quantification in the contingency of the Finance Act not having been made on the 1st day of April of that year. Even if such an Act was made, the charge under the Income-tax Act could be imposed and worked out only in terms of the provisions of the Income-tax Act. If that be the construction, the conclusion will flow that the tax liability at the latest will arise on the last day of the accounting year.

26. The decisions cited at the Bar though at the first blush appear to be conflicting, they do not in effect run counter to the said conclusion.

27. The first decision is that of the Judicial Committee in Commr. of Income-tax v. Western India Turf Club Ltd., 55 Ind App 14 at p. 17 : (AIR 1928 PC 1 at p. 2). Therein, the Judicial Committee held that the rate of super-tax payable by a company fixed by the Finance Act would apply, though an incorporated association was formed into a company only on April 1, 1925. In that connection the Board, adverting to the argument that the rate should have been only that applicable to an unincorporated association, observed:

"The argument which has been used in favour of the appeal seems to involve the fallacy that liability to tax attached to the income in the previous year. That is not so. No liability to tax attached to the income of this company until the passing of the Act of 1925, and it was then, to be taxed at

the rate appropriate to a company."

The observations appear to be rather wide. Be that as it may, the subsequent decisions of the Judicial Committee made it abundantly clear that the liability to tax arises during the accounting year though its quantification is postponed to a later date.

28. In Maharajah of Pithapuram v. Commr. of Income-tax Madras, 1945-13 ITR 221 at p. 223 : (AIR 1945 PC 89 at p. 90), the Privy Council explained the scope of S. 3 of the Income-tax Act, 1922. Lord Thankerton, speaking for the Board, laid down two principles, namely,

(i) "under the express terms of S. 3 of the Indian Income-tax Act, 1922, the subject of charge is not the income of the year of assessment, but the income of the previous year; and (ii) the Indian Income-tax Act, 1922, as amended from time to time, forms a code, which has no operative effect except so far is it is rendered applicable for the recovery of tax imposed for a particular fiscal year by a Finance Act."

A combined reading of the said two principles leads to the position that though the Income-tax Act has no operative effect till the Finance Act is passed, after the passing of the said Act, the charge to tax would be under the Income-tax Act in terms of the relevant provisions of the said Act. In Doorga Prosad v. Secy. of State, (1945) 13 ITR 285: (AIR 1945 PC 62), the Judicial Committee, held that income-tax was calculated and assessed by reference to the income of an assessee for a given year, but it was due when demand was made under Ss. 29 and 45 of the Income-tax Act. The Judicial Committee in that decision was not considering the question of liability to pay income-tax but only the payability.

29. The Federal Court in Chatturam v. Commr. of Income-tax, Bihar, (1947) 15 ITR 302 at p. 308 : (AIR 1947 FC 32 at p. 35), after considering the relevant English decisions, held that the liability to pay tax was founded on Ss. 3 and 4 of the Income-tax Act which were the charging sections. It quoted with approval the observations of Sargant, L. J., in Willaims v. Henry Williams Ltd. (Not Reported), wherein the learned Judge held that the liability was definitely and finally created by the charging section and the subsequent provisions as to assessment and so on were machinery only for the purpose of quantifying the liability.

30. The Privy Council again in Wallace Brothers and Co. Ltd. v. Commr. of Income-tax, Bombay, (1948) 16 ITR 240 at p. 244 : (AIR 1948 PC 118 at p. 119), in clear terms expounded the scope of a tax liability under the Income-tax Act. It held that,

"..... the rate of tax for the year of assessment may be fixed after the close of the previous year and the assessment will necessarily be made after the close of that year. But the liability to tax arises by virtue of the charging section alone, and it arises not later than the close of the previous year though quantification of the amount payable is postponed."

This decision clarifies what the Judicial Committee meant in (1945) 13 ITR 221 : (AIR 1945 PC 89) when it said that the Income-tax Act wold come into operation after the Finance Act was passed. It was referring not to the liability but to the quantification of the amount under that Act.

31. This Court in Chatturam Horilram Ltd. v. Commr. of Income-tax, Bihar (1955) 27 ITR 709 at p. 716; ((8) AIR 1955 SC 619 at p. 623), reviewed the legal position vis-_is the question of charge to income-tax under the Income-tax Act. The facts in that case were, the assessee-company carrying on business in Chota Nagpur was assessed to tax for the year 1939-40 but the assessment was set aside by the Income-tax Appellate Tribunal on March 28, 1942, on the ground that the Indian Finance Act, 1939, was not in force during the assessment year 1939-40 in Chota Nagpur which was a partially excluded area. On June 30, 1942, a Regulation was promulgated by which the Indian Finance Act of 1939 was brought into force in Chota Nagpur retrospectively as from March 30, 1939, Thereupon the Income-tax Officer made an order holding that the income of the assessee for the year 1939-40 had escaped assessment and issued to the assessee a notice under S. 34 of the Income-tax Act. The validity of the notice was questioned. This Court, speaking through Jagannadhadas, J., held that though the Finance Act was not in force in that area in 1939-40, the income of the assessee was liable to tax in that year and, therefore, it had escaped assessment within the meaning of S. 34 of the Income-tax Act. The reasons for tax conclusion were given by the learned Judge thus :

"Thus, income is chargeable to tax independently of the passing of the Finance Act but until the Finance Act is passed no tax can be actually levied."

The learned Judge also added :

"..... according to the scheme of the Act the quality of chargeability of any income is independent of the passing of the Finance Act."

This Court, therefore, accepted the principle that the liability to pay tax arose under the Income-tax Act, though its quantification depended upon the passing of the Finance Act. If there was no liability under the Income-tax Act during the relevant accounting year, no question of escaped assessment during that year would have arisen in that case. The same principle was reiterated by this Court in Kalwa Devadattam v. Union of India, (1963) 49 ITR (SC) 165 at p. 171 : (AIR 1964 SC

880 at p. 883). There, the question was whether the liability of a Hindu undivided family arose before or after partition of the family. In that case, this Court speaking though Shah, J., stated in clear terms thus :

"Under the Indian Income-tax Act liability to pay income-tax arises on the accrual of the income, and not from the computation made by the taxing authorities in the course of assessment proceedings; it arises at a point of time not later than the close of the year of account."

The learned Judge expressed his concurrence with the observations of the Privy Council in (1948) 16 ITR 240; (AIR 1948 PC 118), which we have extracted earlier.

32. To summarize: A debt is a present obligation to pay an ascertainable sum of money, whether the amount is payable in praesenti or in futuro; debitum in praesenti, solvendum in futuro. But a sum payable upon a contingency does not become a debt until the said contigency has happened. A liability to pay income-tax is a present liability though it becomes payable after it is quantified in accordance with ascertainable data. There is a perfected debt at any rate on the last day of the accounting year and not a contingent liability. The rate is always easily ascertainable. If the Finance Act is passed, it is the rate fixed by that Act; if the Finance Act has not yet been passed, it is the rate proposed in the Finance Bill pending before Parliament or the rate in force in the preceding year, whichever is more favourable to the assessee. All the ingredients of a "debt" are present. It is a present liability of an ascertainable amount.

33. Looking from a practical standpoint also, there cannot possibly be any difficulty in ascertaining the liability. As the actual assessment will invariably be made subsequent to the close of the accounting year, the rate would certainly be available to the authorities concerned for the purpose of quantification.

34. The High Courts of Bombay, Gujarat and Kerala have expressed conflicting views on this question. The Bombay High Court in Commr. of Wealth Tax, Bombay v. Standard Mills Co. Ltd., (1963) 50 ITR 267 (Bom), came to the conclusion that the point of time at which the tax got attached to the income and the tax was imposed on the person would be the passing of the Finance Act. A Division Bench of the Gujarat High Court in Commr., of Wealth Tax, Gujarat v. Raipur Manufacturing Co. Ltd., (1964) 52 ITR 482 : (AIR 1964 Guj 154), held that the liability to income-tax arose under the Income-tax Act, that it accrued on the valuation date and did not arise for the first time when the Finance Act was passed. The Kerala High Court in Commr. of Wealth Tax, Kerala v. Travancore Rayons, (1964) 54 ITR 332 : (AIR 1965 Ker 66), held that the said liability did not become a debt until April 1, 1959, when the rate of tax for that accounting year would be available.

35. For the reasons we have stated earlier, we agree with the conclusion arrived at by the Gujarat High Court. We, therefore, hold that the liability to pay income-tax is a debt within the meaning of S. 2 (m) of the Wealth Tax Act and it arises on the valuation date during the accounting year.

36. We will close the discussion on this subject with the words of Earl Jowitt in British Transport Commission v. Gourley, 1956 AC 185 at p. 203 :

"The obligation to pay tax - save for those in possession of exiguous incomes - is almost universal in its application. That obligation is ever present in the minds of those who are called upon to pay taxes, and no sensible person any longer regards the net earnings from his trade or profession as the equivalent of his available income."

We are glad that our conclusion coincides with the current conception of net wealth in the commercial sense.

37. Mr. Palkhivala, learned counsel for the assessee, raised an alternative contention in regard to the manner of ascertaining the net wealth of an assessee carrying on a business based on S. 7 (2) (a) of the Wealth Tax Act. The said section has already been extracted in the earlier stage of the judgment. The argument of Mr. Palkhivala was that sub-s. (2) of S. 7 of the Wealth Tax Act provided an alternative method of valuation of the net wealth of an assessee who was carrying on a business, that the expression "net wealth of the assets of the business as a whole" had a distinct meaning in accountancy, that the expression "net value" meant only "net wealth" and that it was arrived at only after deducting the liabilities of the business disclosed in the balance-sheet from the value of the assets. Mr. A. V. Viswanatha Sastri, on the other hand, argued that S. 7 (2) of the Wealth Tax Act only dealt with the ascertainment of the value of the assets of a business as a whole and that it had nothing to do with the liabilities. Learned arguments were advanced in support of the rival contentions. But, in the view we have taken on the expression "debt owed" found in S. 2 (m) of the Wealth Tax Act, it is not necessary to express our opinion on the alternative contention raised on behalf of the assessee.

38. In the result, we answer the first question in the affirmative; the second question, in the negative; and the third question, in the affirmative. We accordingly modify the order of the High Court. As the parties succeeded in part and failed in part, the will bear their own costs here and in the High Court.

39. **SHAH, J. :** I am unable to agree with the answer propounded by Subba Rao, J., on the third question referred to the High Court.

40. In the balance-sheet of the company for the year of account ending on March 31, 1957, provision was made for income-tax liability estimated at Rupees 1,03,69,009 and against this amount credit for Rs. 84,76,690 paid as advance tax was taken. The Company claimed in proceedings for assessment of wealth tax for the assessment year 1957-58 that in the computation of net wealth the balance of Rupees 18,92,319 was liable to be deducted from the net value of the total assets as a debt owed by the Company on the valuation date. This claim was disallowed by the tax authorities, and by the High Court in a reference under S. 27 of the Wealth Tax Act, 1957.

41. The Wealth Tax Act, 1957 was brought into force on April 1, 1957. Section 3 of the Act imposes a charge for every financial year commencing on and from the first day of April 1957, for tax in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule. The expression "valuation date" by S. 2 (q) means in relation to any year for which an assessment is to be made the last day of the previous year as defined in Cl. (11) of S. 2 of the Income-tax Act if an assessment were to be made under that Act for that year. "Net wealth" as defined in S. 2 (m) at the relevant time meant the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in the net wealth as on that date under the Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than * * * * Charge of the wealth tax under the Act is, it is plain, on the terms of S. 3 imposed on the net wealth of the assessee computed on the valuation date after adjusting the debts owed by the assessee on that date and permitted to be taken into account. Unlike the Income-tax Act the Wealth Tax Act prescribes the rate of tax, and prima facie by S. 3 of the Act liability to pay wealth tax gets crystallized on the valuation date, and not on the first day' of the year of assessment.

42. Counsel for the Company claims that in determining liability for wealth tax, income-tax, which would become payable on the income, profits or gains for the assessment year may be deemed a debt owed in the previous year, and liable to be adjusted in determining the aggregate value of debts for the purpose of S. 2 (m). The expression "debt" is a sum of money due from one person to another: it involves an obligation to satisfy liability to pay a sum of money. The liability must be an existing liability but not necessarily enforceable in praesenti: an existing liability to pay a sum of money even in future is a debt, but the expression does not include liability to pay unliquidated damages nor obligations which are inchoate or contingent. Lord Justice Lindley in (1883) 11 QBD at p. 527, observed that :

"a debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation".

The definition for the purpose of the Wealth Tax Act correctly describes the concept of debt. A debt, therefore, involves a present obligation incurred by the debtor and a liability to pay a sum of money

in present or in future. The liability must, however, be to pay a sum of money, i.e., to pay an amount which is determined or determinable in the light of factors existing at the date when the nature of the liability has to be ascertained.

43. In resolving the problem whether an amount estimated by the Company in its balance-sheet on the valuation date as payable to satisfy income-tax liability in the year of assessment, the nature of the charge imposed by the Indian Income-tax Act, 1922 upon income earned by an assessee in the previous year must first be considered. Section 3 of the Income-tax Act provides:

"Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually."

Charge imposed by the Income-tax Act is on the assessable entities enumerated in S. 3 in respect of the income of the previous year and not on the income of the year of assessment. But the charge is for the tax for the year of assessment, and levied at the rate or rates fixed on the total income of the assessable entity computed in accordance with and subject to the provisions of the Income-tax Act.

44. The Income-tax Act is the basic and permanent statute. Tax under that Act is directed to be charged in accordance with and subject to the provisions of the Act in respect of the income of the previous year of the assessable entities, but the charge imposed by the Income-tax Act is an inchoate or incomplete charge. Until the annual Finance Act is passed, imposition of the charge of income-tax does not, on the plaint words used in S. 3, become complete or effective, for income-tax is to be charged in accordance with the Income-tax Act, when the Finance Act for the year enacts that the tax shall be charged at the rate or rates prescribed thereby. Liability to be taxed is therefore declared by the Income-tax Act, but the liability does not give rise to a present obligation to pay a sum of money until the Finance Act becomes operative. It may be recalled that the liability to pay wealth-tax becomes crystallized on the valuation date though the tax is levied for the assessment year, and on the valuation date there is normally no completed or effective charge for income-tax payable for the assessment year.

45. Section 67B, inserted in the Act by the Income-tax Law (amendment) Act 12 of 1940, on which reliance is placed by the Company was enacted merely to maintain continuity of the levy of tax. It operates only on the first day of the assessment year i.e., after the valuation date and not before. If on the first day of the financial year the Finance Act for charging income-tax for that year has not been enacted, the basic provisions of S. 3 of the Act read with the provisions in force in the preceding year or with the provision then introduced in the Bill before Parliament whichever is more favourable to the assessee applies. The existence on the statute book of S. 67B does not, in my

judgment, convert date i.e., on the last day of the previous year, into a completed or effective liability to pay tax.

46. Decisions of Courts on the nature of the charge created by S. 3 of the Income-tax Act are unanimous. In 55 Ind. App. 14: (AIR 1928 P. C. 1), the Western India Turf Club - which was originally an unincorporated association, was registered on April 1, 1925 as a company limited by guarantee. The company was sought to be assessed to super-tax on the income in the assessment year commencing on April 1, 1925 at the rate applicable to an unincorporated association. The Judicial Committee held that for the purpose of super-tax the total income not of the company but of its predecessor-in-title had to be taken, but the taxpayer being a company falling within Part II of the Third Schedule of the Finance Act 13 of 1925, it had to pay tax at the rate applicable to a registered company and not to an unincorporated association. In dealing with the contention of the Commissioner of Income-tax that liability to tax attached to the income of the previous year, and therefore, the rate applicable to an unincorporated association applied, the Judicial Committee observed :

"The argument which has been used in favour of the appeal seems to involve the fallacy that liability to tax attached to the income in the previous year. That is not so. No liability to tax attached to the income of this company until the passing of the Act of 1925, and it was then to be taxed at the rate appropriate to a company."

In Western India Turf Club's case, 55 Ind. App. 14 : (AIR 1928 P. C.1) income of the previous year was earned by an unincorporated association, and if liability to tax attached to the income of the previous year it would have been taxable on that footing. But the Judicial Committee held that the income of the company which came into existence in the year of assessment had to be taxed, and liability did not attach to the income of the company till the Finance Act was enacted.

47. In (1945) 13 ITR 221: (AIR 1945 P. C. 89), by certain deeds of trust and settlement the Maharajah of Pithapuram had settled properties on each of his daughters with a provision reserving to himself power to revoke the settlements or to make fresh dispositions as he deemed fit. For the assessment year 1939-40, the Income-tax authorities held that the income of the previous year derived from the assets comprised in the deeds would be deemed to be the income of the assessee under S. 16 (1)(c) of the Income-tax Act. The judicial Committee held that the assessee was rightly assessed to income-tax under S. 16 (1)(c) in respect of the income of the previous year and observed :

".....it should be remembered that the Indian Income-tax Act, 1922, as amended from time to time, forms a code, which has no operative effect except so far as it is rendered applicable for the recovery of tax imposed for a particular fiscal year by a Finance Act. This may be illustrated by pointing out that there was no charge on the 1938-39 income either of the appellant or his daughters,

nor assessment of such income, until the passing of the Indian Finance Act of 1939, which imposed the tax for 1939-40 on the 1938-39 income and authorised the present assessment."

48. It has also been observed by this Court in (1955) 27 ITR 709 : (S) AIR 1955 SC 619) :

"It is by virtue of this (S. 3 of the Income-tax Act) that the actual levy of the tax and the rates at which the tax has to be computed is determined each year by the annual Finance Acts. Thus, under the scheme of the Income-tax Act, the income of an assessee 'attracts the quality of taxability with reference to the standing provisions of the Act but the playability and the quantification of the tax depend on the passing and the application of the annual Finance Act.' Thus, income is chargeable to tax independent of the passing of the Finance Act but until the Finance Act is passed no tax can be actually levied."

In that case, the assessee company assessed to tax for the assessment year 1939-40, but the assessment was discharged because the Finance Act of 1939 had not been extended to the Chhota Nagpur area in the year of assessment. Bihar Regulation 4 of 1942 was thereafter promulgated, by which the Finance Act was brought into force as from March 30, 1939. The Income-tax Officer then issued a notice under S. 34 of the Income-tax Act, 1922, for bringing to tax escaped income, and the assessee company challenged the validity of the notice. This Court held that the income of the company was chargeable to tax by the Income-tax Act, but unless the Finance Act was extended to the area in the assessment year 1939-40, legal authority for qualification of the tax, and for imposition of liability therefore was lacking.

49. Counsel for the Company however sought to contend, notwithstanding the view expressed in the cases cited, that under the Income-tax Act, 1922, liability to pay income-tax arises at the latest on the last day of the previous year, and that being the valuation date under the Wealth Tax Act, in computing wealth-tax, income-tax payable for the year ending March 31, 1957, could be regarded as a debt owed by the Company on the valuation date. Counsel relied upon the following observations made by the Judicial Committee in (1948) 16 ITR 240 at p. 244 : (AIR 1948 P. C. 118 at p. 119) :

"The general nature of the charging section is clear. First, the charge for tax at the rate fixed for the year of assessment is a charge in respect of the income of the "previous year", not a charge in respect of the income of the year of assessment as measured by the income of the previous year. That has been decided and the decision was not questioned in this appeal.

"Second, the rate of tax for the year of assessment may be fixed after the close of the previous year and the assessment will necessarily be made after the close of that year. But the liability to tax arises by virtue of the charging section alone, and it arises not later than the close of the previous year,

though quantification of the amount payable is postponed."

50. Reliance was also placed upon the judgment of this Court in (1963) 49 ITR (SC)165 : (AIR 1964 SC 880) in which the observations made by the Judicial Committee were repeated.

51. But the observations in both the cases were dicta, and have no bearing on the questions falling to be determined in those cases. In Wallace Brother and Co.'s case (1948) 16 ITR 240 : (AIR 1948 P.C. 118) the principal question which was referred for determination by the High Court was about the validity of S. 4A(c) and S. 4 (1)(b) (ii) of the Indian Income-tax Act, 1922, by virtue of which the appellant company was assessed to income-tax on income which arose without British India. the Judicial Committee held that the Indian Parliament had power to tax foreign income under the legislative head "taxes on income", if there was between the person sought to be charged and the country seeking to tax him a sufficient territorial connection. In considering the question whether the Parliament had power to enact the impugned sections, the Judicial Committee explained the scheme of the Income-tax Act as stated earlier.

52. In Kalwa Devadattam's case, (1963) 49 ITR (SC) 165: (AIR 1965 SC 880) this Court was dealing with a case in which properties of a joint Hindu family consisting of a father and his three minor sons were sold by public auction to satisfy liability to pay income-tax which was assessed by appropriate proceedings under the Act. The sons thereafter sued the Union of India and others for a declaration that the orders of assessment were unenforceable, and that the sale was without jurisdiction and illegal in that the properties sold at the auction in pursuance of the assessments did not belong to the joint family, and that in any event because there has been before the assessments were completed intimation to the Income-tax Officer that there had been severance of the undivided family. This Court rejected the claim to set aside the sale. It is clear that in Kalwa Devadattam's case (1963) 49 ITR (SC) 165: (AIR 1964 SC 880) assessment proceedings were held by the Income-tax Officer to assess income of the Hindu undivided family in the relevant years of assessment and the sale was challenged on the ground that the property sold did not belong to the family, and that assessments were procedurally irregular. The Court was not concerned to express any opinion on the question whether liability of the undivided family to pay tax arose before the years of assessment commenced.

53. In my judgment on the terms used in S. 3 of the Income-tax Act, liability to be taxed becomes effective not later than the last day of the year of account. But the liability to pay tax arises only when the Finance Act becomes operative on the first day of April of the assessment year either by enactment of an Act or by virtue of S. 67B of the Income-tax Act.

54. The Company sought to deduct in its balance-sheet an estimated amount as the probable amount of tax which it would have to pay in the year of assessment. Out of this amount advance tax was deducted. We have held in Commr. of Wealth Tax (Central), Calcutta v. M/s. Standard Vacuum Oil

Co. Ltd., Appeals Nos. 627-628 of 1964 dated 25-10-1965 : (AIR 1966 SC 995) that liability to pay advance tax arises when a demand notice is issued under S. 18A of the Act. For the balance taken into account in the balance-sheet there was no liability arising in the previous year which could be regarded as a debt owed by the Company. Liability to be assessed to tax may and does arise under S. 3 on the last day of the year of account. But that liability to tax did not give rise to any obligation to pay a sum of money either determined or determinable in the light of factors existing on that date. The liability at the earliest arises on the first day of April, 1957, but that under the Wealth Tax Act is not the valuation date.

55. It is not, in my judgment, open to the Court to put a strained construction upon the Act merely because a businessman may regard a liability to be taxed on the income of the previous year, as liability to pay tax on that income. To a commercial man the distinction between liability which arises immediately and a liability to arise in future may be blurred : but that in law is a real distinction, and a liability which arises in the year of assessment may not be projected into the account of the previous year. The provisions of the statute cannot be ignored on what are called "business considerations" and existence of a liability to pay a debt which has not in law arisen cannot be assumed. It is true that the Company did earn profits in the previous year, and for the purpose of its balance-sheet it could make as estimate but that estimate had no relevance in ascertaining whether tax payable in the assessment year would be regarded as a debt owed on the valuation date. Liability to pay tax arose not from the estimate, but from the Finance Act: it arose when the Finance Act became operative and not earlier than that.

56. The alternative argument raised by counsel for the Company from S. 7(2) has, in my judgment, no force. S. 7 of the Act provides :

"(1) The value of any asset, 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.

(2) Notwithstanding anything contained in sub-section (1):-

(a) where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustments therein as the circumstances of the case may require;

(b) where the assessee carrying on the business, is a company not resident in India and a

computation in accordance with clause (a) cannot be made by reason of the absence of any separate balance-sheet drawn up for the affairs of such business in India, the Wealth-tax Officer may take the net vaule of the assets of the business in India to be that proportion of the net value of the assets of the business as a whole wherever carried on determined as aforesaid as the income arising from the business in India during the year ending with the valuation date bears to the aggregate income from the business wherever arising during that year."

By the first sub-section the Wealth-tax. Officer is authorised to estimate for the purpose of determining the value of any asset the price which it would fetch, if sold in the open market on the valuation date. But this rule in the case of a running business may often by inconvenient, and may not yield a true estimate of the net value of the total assets of the business. The Legislature has therefore provided in sub-s. (2)(a) that where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may determine the net value of the assets of the business as a whole, having regard to the balance-sheet of such business as on the valuation date and make such adjustments therein as the circumstances of the case may require. But the power conferred upon the Tax Officer by S. 7(2) is to arrive at a valuation of the assets, and not to arrive at the net wealth of the assesssee. S. 7(2) merely provides machinery in certain special cases for valuation of assets, and it is from the aggregate valuation of assets that the net wealth chargeable to tax may be ascertained. Power conferred upon the Tax Officer to make adjustment as the circumstances of the case may require, is also for the purpose of arriving at the true value of the assets of the business. Sub-section (2)(a) of S. 7 contemplates the determination of the net value of the assets having regard to the balance-sheet and after making such adjustments as the circumstances of the case may require. It does not contemplate determination of the net wealth, because net wealth can only be determined from the net value of the assets by making appropriate deductions for debts owed by the assesses. Cl. (b) of sub-s. (2) of S. 7 also does not support the contention of the assessee that for the purposes of the Act net value of the assets of an assessee carrying on business is the same as his net wealth. Clause (b) of sub-.s (2) contemplates cases where a company not resident in India is carrying on business and it is not possible to make computation in accordance with Cl. (a) because of the absence of a separate balance-sheet of the Company. The Wealth-tax Officer is then entitled to take the net value of the assets of the business as a whole and to find the net value of the assets in India by multiplying the total value of the business with that fraction which the income arising from the business in India during the year ending on the valuation date bears to the aggregate income from the business wherever arising during the year. This is an artificial rule adopted with a view to avoid investigation of a mass of evidence which it would be difficult to secure or, if secured, may require prolonged investigation. The adoption of an artificial rule in Cl. (b) of S. 7(2) is also for determination of the net value of assets and not for determination of net wealth of the foreign company. It is true that Cl. (a) expressly confers powers upon the Tax Officer to make adjustments in the valuation of assets in the balance-sheet, and in Cl. (b) no such power is conferred. But it must be remembered that under Cl. (b) the Tax Officer's powers in determining the income of a foreign company arising from the business in Indian and the aggregate income from the business wherever arising are not subject to any artificial rule.

57. The argument raised by counsel for the assessee is that substantially S. 7(2) is a definition section, which extends for the purposes of the Act the definition of the "net wealth" of assessees carrying on business. There is no warrant for this argument in the language used in S. 7(2). Counsel

was unable to suggest any rational explanation why, if what he contends was the intention, Parliament should have adopted this somewhat roundabout way of incorporating a definition of net wealth in a section dealing with valuation of assets.

58. In my judgment, neither Cl. (a) nor Cl. (b) of S. 7(2) is directed towards the determination of the net wealth, and it would be impossible to hold that the Legislature intended that the net wealth for the purpose of the charge to tax under S. 3 should be the net value of the assets as determined under sub-s. (2) of S. 7.

59. The appeal must therefore stand dismissed with costs.

ORDER

60. In accordance with the opinion of the majority, Civil Appeal No. 539 of 1964 is partly allowed and parties will bear their own costs here and in the High Court. Civil Appeal No. 66 of 1965 is allowed with costs.

61. Civil Appeal No. 67 of 1965 is unanimously dismissed with costs.

Order accordingly.