ANDHRA PRADESH HIGH COURT

V. Chandramani Pattamaha Devi

Vs

Commissioner of Wealth-Tax

(Gopalakrishnan Nair J.)

10.03.1966

JUDGMENT

Gopalakrishnan Nair J.

1. This is a reference under section 27 (1) of the Wealth-tax Act (XXVII of 1957). These assessee is the deceased Rani Saheba of Chemudu. She died on July 24, 1957, leaving a will dated July 20, 1957, under which she appointed her son-in-law, the Raja Saheb of Gangapur, as executor. In his capacity as executor, he filed the return of wealth under sub-section (2) of section 14 of the Wealth-tax Act in respect of the assessment year 1957-58 for which the relevant valuation date was March 31, 1957. The total wealth admitted was Rs. 11,36,378. The Wealth-tax Officer, however, computed the total net wealth of the assessee at Rs. 16,45,509. In doing so, the Wealth-tax officer included a sum of Rs. 4,40,400 in the total wealth overruling the objections of the assessee. The present reference relates to the validity of the inclusion of this amount in the total wealth of the assessee. One-half of this disputed amount viz., Rs. 2,20,200, paid to the assessee in the shape of debentures of the Andhra Land Mortgage Bank Ltd., represented the advance payment on account of compensation under section 54A of the Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948). The other half was the probable amount of balance compensation which was yet to be ascertained and paid to the assessee-landholder under section 39 of the Act XXVI of 1948.Regarding the advance payment on account of compensation under section 54A of Act XXVI of 1948, the assessee contended that as the Chemudu estate taken over by the Government under the Act consisted of agricultural lands, the amount paid as part compensation must be held to represent agricultural property which was to be excluded in computing the taxable wealth. The other contention was that as the Chemudu estate which was taken over by the Government was an impartible estate, the advance compensation paid in respect of it under section 54A must be deemed to be impressed with the character of impartibility. On this reasoning, the assessee claimed that only the interest on the amount could be taken into account in ascertaining the total wealth for purposes of the Wealth-tax Act. Regarding the probable amount of balance compensation yet to be ascertained and paid by the Government to the assessee-landholder, it was urged on behalf of the assessee that it was

not a "debt" due to the land-holder by the Government and that, therefore, it could not at all be taken into consideration in determining the total wealth of the assessee. The argument was that an amount which remained to be ascertained and paid in the future could not be regarded as a "debt" due or owing to be assessee and could not therefore be treated as an asset of the assessee within the meaning of section 2 (e) of the Wealth-tax Act. These contentions were repelled by the Wealth-tax Officer. An appeal to the Appellate Assistant Commissioner met with the same result. A further appeal to the Appellate Tribunal was also unsuccessful. The Appellate Tribunal, however, directed that the order of assessment should be suitably revised later in accordance with the amount of compensation finally determined to be due to the assessee under section 39 of the Act XXVI of 1948. This direction was obviously intended to ensure ultimately fairness to both the assessee and the department in the matter of payment of wealth-tax.Being dissatisfied with the Tribunals decision, the assessee presented an application under section 27 (1) of the Wealth-tax Act requiring the Appellate Tribunal to make a reference to the High Court. Accordingly, the Appellate Tribunal stated the case and referred the following question to this court :

> "Whether the Wealth-tax Officer was justified in including in the total wealth of the assessee the two sums of Rs. 2,20,200 each, being the interim payments made by the Government and the probable amount of compensation yet receivable by the assessee from the Government respectively ?"

When the reference came on before us, the learned counsel for the assessee and the department agreed that the question referred is not correctly worded and desired us to recast it. We have accordingly framed the question as follows :

> "Whether the Wealth-tax Officer was justified in including in the total wealth of the assessee a sum of Rs. 2,20,200 being the advance payment already made on account of compensation under section 54A of the Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948) and another sum of Rs. 2,20,200 being the probable amount of balance compensation to be ascertained and paid in the future ?"

Mr. Kuppuswamy, the learned counsel for the assessee, has not contended before us that the advance amount of Rs. 2,20,200 already paid to the assessee should not be included in the total wealth of the assessee. Nor has he pressed the contention that the amount of compensation paid or payable to the assessee under the Act XXVI of 1948 must be treated as representing agricultural land and therefore excluded from consideration. He also stated that it is unnecessary in this reference to advance the argument that the amount of compensation already received or yet to be received by the assessee will be impressed with the character of impartibility because the Chemudu estate which was taken over by the Government under Act XXVI of 1948 was an impartible estate. According to him, whatever might be the dispute between the landholder and the other members of her family regarding the absolute ownership or powers of disposal over the

compensation amount, it need not be projected into the present case which is concerned only with ascertaining the total wealth of the landholder (assessee) which will include the value of the estate in terms of the amount of compensation payable for it. He rightly stated that the amount of compensation paid under Act XXVI of 1948 in respect of the Chemudu estate taken over by the Government will be an asset to be included in the total wealth of the landholder-assessee for the purposes of the Wealth-tax Act.The only question that falls for determination by us, therefore, is whether the probable amount of balance compensation by us, therefore, is holder in the future, on its being ascertained in accordance with section 39 of Act XXVI of 1948, can now be included in the total wealth of the assessee. Mr. Kuppuswamy for the assessee has strenuously contended that this amount which was estimated by the Tribunal below at Rs. 2,20,200 is not a "debt" due or owing to the assessee by the Government and therefore cannot be considered to be an asset of the assessee within the meaning of section 2 (e) of the Wealth-tax Act. He did not contest the position that if the amount of balance compensation which has to be ascertained and paid in the future is a "debt" in the eye of law, it will be an asset of the assessee under section 2 (e) of the Wealth-tax Act which can consequently be included in the total wealth of the assessee. The question, therefore, is whether this amount of balance compensation which is to be paid to the assessee in the future can be considered to be a "debt" due or owing to the assessee. The argument of Mr. Kuppuswamy is that it is only a sum of money which is payable at present and not in the future that can be regarded as a "debt". His further contention is that an unascertained sum of money cannot be a "debt" in the eye of law. It is on these two contention that Mr. Kuppuswamy has rested his entire case. The learned counsel for the revenue has argued that both these contentions are untenable. We shall now proceed to examine the correct legal position.In Webb v. Stenton, a garnishee order was issued under Order XLV, rule 2 of the Supreme Court Rules, at the instance of the judgment-creditor, attaching the judgment-debtors share in the income in the hands of the trustees. The judgment-debtor was entitled for his life to the income arising from a fund vested in the trustees. The annual income from the fund was payable to the judgment-debtor in two half-yearly installments in February and August. The garnishee order was issued in November. The trustees contended that in November there was no money in their hands which can be said to be due to the judgment-debtor and that therefore the garnishee order served on them was unsustainable. The question that arose for consideration was whether there was a "debt" owing or accruing to the judgment-debtor at the time of the garnishee order.

Lindley L. J. said :

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

Fry L. J. observed at page 528 :

> "I have further no doubt that the word indebted describes the condition of a person when there is a present debt, whether it be payable in present or in future and I think that the words all debts owing or accruing mean the same thing. They describe all debita in praesenti, whether solvenda in future, or solvenda in praesenti."

Brett, Master of the Rolls, also agreed with this view.A Full Bench of the Calcutta High Court in Banchharam Majumdar v. adyanath Bhattacharjee had to consider the question whether a decree on a debt could be passed in favour of heirs of a creditor without the production of a certificate under the Succession Certificate Act in a case where the debt did not become payable to the creditor until after his death. The argument advanced on behalf of the heirs of the creditor, a decree on the debt could be given to them without the necessity to produce a succession certificate. This argument did not find favour with the court. Chief Justice Jenkins pointed out as follows :

> "... there can be no doubt that a debt, such as is described, is a debt, for 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. That is the definition given by Lord Justice Lindley in the case of Webb v. Stenton ...."

Mookerjee J. in that case observed that a debt was no less a debt because it had not yet matured, if it would certainly become payable in the future. he relied upon the judgment of the Supreme Court of California in People v. Arguello, where the position was stated as under :

> "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. Whether a claim or demand is a debt or not is in no respect determined by a reference to the time of payment. 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."

In E. D. Sassoon & Co. v. Commissioner of Income-tax the Supreme Court had to deal with the question as to the point of time when managing agency commission became payable to the managing agents of a company. In the course of his judgment Bhagwati J. stated thus :

> "If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained. The basic

> conception is that he must have acquired a right to receive the income. there must be a debt owed to him by somebody. there must be as is otherwise expressed debitum in praesenti, solvendum in futuro : see W. S. Try Ltd. v. Johnson and Webb v. Stenton."

It is needless to cite more decisions on this point which appears to us to be well settled. The contention of Mr. Kuppuswamy that it is only debitum in praesenti, solvendum in praesenti that can be regarded in the eye of law as a debt cannot therefore be accepted. A payment to be made in the future on account of an existing obligation is as much a debt as a payment to be made in praesenti on account of a liability in praesenti.We shall now deal with the other argument of Mr. Kuppuswamy that it is only a present liability to pay an ascertained sum of money that can constitute a debt and not a liability to pay a sum of money which is only ascertainable or is yet to be ascertained. But authorities on this point also appear to be against Mr. Kuppuswamy. In ODriscoll v. Manchester Insurance Committee, the Court of Appeal had to consider whether an amount which was not ascertained but was ascertainable only in the future would satisfy the legal concept of "debt". In that case, an insurance committee, acting under the National Insurance Acts, 1911 and 1913, and the regulations made thereunder, entered into agreements with the panel doctors of that district by which the 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 total amount to be so distributed among the panel doctors was not to exceed the amount received for medical benefits by the committee from the insurance commissioners. If the total amount received from the insurance commissioners was insufficient to meet all the proper charges of the panel doctors in accordance with the scale of fees, there was to be a pro rata reduction in the payment to be made to each panel doctor. On the other hand, if the amount received from the insurance commissioners happened to be in excess of the amount required to be paid to the panel doctors, the balance was to be distributed among the panel doctors. A panel doctor served for the requisite period with the insurance committee. The committee received funds in respect of the medical benefit from the National Insurance Commissioners. But the exact amount payable to the panel doctors had not been calculated and ascertained. While so, a judgment creditor of a panel doctor attached the share payable to him by the insurance committee in spite of the fact that the share due to him had not been calculated and ascertained. the contention was that there was no "debt" owing to the judgment-debtor panel doctor in the hands of the insurance committee. Lord Justice Swinfen Eady dealt with this contention in the following words :

> "It is contended, however, that there cannot be a debt until the amount has been ascertained, and in support of this contention cases have been cited to us where it was attempted to attach unliquidated damages. But in such cases there is no debt at all until

> the verdict of the jury is pronounced assessing the damages and judgment is given. 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. It is not like a case where there is a mere probability of a debt, as, for instance, where a person has to serve for a fixed period before being entitled to any salary, and he has served part of that period at the time the garnishee order nisi is served..."

Phillimore L. J., dealing with the argument that the amount was not ascertained at the time the garnishee order nisi was served, 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..."

Lord Justice Bankes in his concurring judgment said :

> "It is well established that debts owing or accruing include debts debita in praesenti solvenda in futuro. The matter is well put in the Annual Practice, 1915, page 808 : But the distinction must be borne in mind between the case where there is an existing debt, payment whereof is deferred, and the 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 not. 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 Dawson v. Preston (Law Society, Garnishees) a similar point arose for determination. The question there was whether an amount representing the damages awarded by the court which was paid to the legal aid fund could be attached by a creditor of a legally aided plaintiff. At the instance of the judgment-creditor of the legally aided plaintiff, a garnishee order was issued on the law society. The law society was entitled under the relevant provisions of law to make certain deductions from the amount held by it and only the balance was payable to the legally aided plaintiff. when the garnishee order was issued, the amount to be deducted by the law society had not been ascertained. Consequently, the precise amount payable to the legally aided plaintiff was not then known. On this ground it was urged that there was no debt owing to the legally aided plaintiff by the law society. The court held that there was an existing debt although the payment

of it was deferred pending the ascertainment of the amount deductible in favour of the law society. Ormerod J. stated thus :

> "The argument of the counsel for the judgment debtor, as I understand it, is this, that an existing debt may be attached even although the payment of the debt is deferred to some future date. he says that a debt which is not ascertainable at the particular time when the garnishee order is made cannot be an existing debt unless all the factors are present at that time which enable the debt to be ascertained. Counsel says that in this case those factors could not be present, because the law society, by virtue of the Act and certain regulations made thereunder, had the power of exercising their discretion in various ways and of exercising it solely at some future time, and counsel says that in those circumstances this cannot be an existing debt. I cannot agree with that submission... It appears to be clear that, under the regulation there is in such circumstances an existing debt, because there is a liability on the law society having received that money, to pay it over to the assisted person. It may be that, by reason of the regulations and by reason of certain provisions of the Act, the law society have power to deduct further sums from that money in exercise of some charge which they may be arising from the regulation, but 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."

These decisions are sufficient to show that if there is an existing liability, the mere circumstance that the amount payable can be ascertained or quantified only at a future date after taking certain proceedings and following certain procedures, cannot rob the existing liability of the character of "debt". A present liability to pay a sum of money which is ascertainable only in the future constitutes a "debt" in law.It follows from the above that the balance amount of compensation which is to be ascertained in future under section 39 of Act XXVI of 1948 and paid to the assessee is a debt owing to the assessee. That being so, it is an asset of the assessee which has to be reckoned in assessing the total wealth of the assessee for purposes of the Wealth-tax Act. We may add that the direction given by the Appellate Tribunal to the effect that in case the amount finally ascertained under section 39 of the Act XXVI of 1948 happens to differ from the amount now included in the total wealth was compensation for the estate taken over, the assessment of wealth-tax should be suitably revised as a fair and appropriate safeguard for both the assessee and the department. Subject to this safeguard, we answer the reference in the affirmative.The assessee will pay the costs of department. Counsels fee Rs. 250.