

# GUJARAT HIGH COURT

Commissioner of Wealth Tax

Vs.

Raipur Manufacturing Co., Ltd.

Wealth Tax Ref. No. 1 of 1961 with C. A. No. 7 of 1962

(K.T. Desai, C.J. and P.N. Bhagwati, J.)

16.10.1962

## JUDGMENT

### **K. T. Desai, C.J.**

1. This Reference under Section 27(1) of the Wealth Tax Act, 1957, raises some interesting and important questions relating to the construction of Section 2(m) and Section 7 of the Wealth Tax Act which have been argued with considerable vigour and ability by both the sides. One of the noteworthy features of this case is that some cases have been relied upon by both the sides in order to deduce contrary conclusions. The Raipur Manufacturing Company Limited is the assessee in this case. The assessment year in question is the year 1957-58, the relevant valuation date being the 31st December, 1956. On 11th May, 1956, a demand notice had been issued on the assessee under Section 18-A of the Indian Income-tax Act, 1922, for advance payment of tax requiring the Company to pay a sum of Rs. 3,59,549/- in four installments, the installments being payable on the 35th June, 1956, the 15th September, 1956, the 15th December, 1956 and the 15th March, 1957. Prior to the valuation date, the assessee paid the three installments payable on the 15th June, 1956, the 15th September, 1956 and the 15th December, 1956. On 31st December, 1956, the fourth installment of Rs. 89,889/- had remained unpaid, the same being payable on the 15th March, 1957. On 13th February, 1957, a revised demand was made under Section 18-A requiring the assessee to pay a sum of Rs. 4,02,068/- instead of Rs. 89,889/- on the 15th March, 1957. This amount of Rs. 4,02,068/- was duly paid by the assessee. The assessee submitted its wealth-tax return for the year 1957-58. On 26th September, 1957, a demand notice was issued against the assessee under Section 23-B of the Indian Income-tax Act, 1922, for a sum of Rs. 8,28,576/- on the basis of the assessee's return of income after adjusting the advance payments of tax made by the assessee. The Wealth Tax Officer computed the net wealth of the assessee as stated in his assessment order dated 31st January, 1958. The paid up capital was assessed at Rs. 30,00,000/- and the Reserve and Surplus as per balance-sheet at Rs. 1,12,39,079/- He added to these two amounts, three sums which were claimed by way of liabilities by the assessee which he

did not regard as constituting debts. One represented a provision for taxation amounting to Rs. 21,62,785/-, the second represented the amount of the proposed dividend of Rs. 5,83,188/- and the third related to over-provision in sundries amounting to Rs. 11,341/- The total of all these five items came to Rs. 1,69,96,393/- The Wealth Tax Officer deducted there out the value of the shares held by the assessee in other companies which were exempt from inclusion in the wealth of the assessee amounting to Rs. 24,51,416/- and the advance tax paid amounting to Rs. 9,37,943/- The net value of assets which was made the subject-matter of tax amounted to Rs. 1,36,07,034/- In the course of the assessment proceedings the assessee claimed Inter alia a deduction in respect of the sum of Rs. 21,62,785/- on account of provision, for taxation. The sum of Rs. 21,62,785/- was made up as follows : In the balance-sheet the assessee had made a provision for Rs. 14,32,275/- for taxation. The assessee had carried forward from the previous year a sum of Rs. 730,510/- on account of provision for taxation. These two amounts, totaled Rs. 21,62,785/- The assessee having made a provision of Rs. 21,62,785/- for taxation in its books of account, claimed that the assessee was entitled to a deduction in respect thereof. There was another sum of Rs. 3,00,000/- for which deduction was claimed. The relevant facts in connection with this claim are as under : In the balance sheet as at 31st December 1955 the assessee had shown the gross-block at Rs. 86,29,439/- As against this amount there was a depreciation fund amounting to Rs. 60,39,883/- The Companies Act, 1956, came into force on 1st April 1956. By Section 211 it is provided that every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of the said Section, be in the Form set out in Part I of Schedule VI, or as near thereto as circumstances admit. In the notes to Part I of Schedule VI it is stated as under :- "Depreciation written off or provided shall be allocated under the different asset heads and deducted in arriving at the value of Fixed Assets". In view of these provisions the assessee appropriated Rs. 58,29,794/- out of the Depreciation Fund of Rs. 60,39,883/- as against different assets and after taking into account depreciation for the year ended 31st December 1956, showed the depreciated value of the block at Rs. 37,32,148/- The assessee transferred the balance sum of Rs. 2,10,089/- from the Depreciation Fund to Development and Rehabilitation Reserve which it created. From the current profit of the year 1956 it transferred a sum of Rs. 89,911/- to the Development and Rehabilitation Reserve, making a total of Rs. 3,00,000/- In the balance sheet this sum of Rs. 3,00,000/- has been shown by way of Development and Rehabilitation Reserve. The assessee claimed that this sum of Rs. 3,00,000/- representing Development and Rehabilitation Reserve should be the amount which the assessee should be held entitled to deduct. The assessee contended before the Wealth Tax Officer that this sum represented the difference between the written down value of the fixed assets as found in the income-tax records and the value of the fixed assets as shown in the balance sheet. This has been subsequently found to be incorrect. When the matter came up before the Appellate Tribunal, the assessee made an application in which it was stated that the difference between the written down value of the assets of the Company as appearing from the records of the Income-tax authorities and the value of the assets as shown in the balance sheet came to Rs. 8,34,266/- and the assessee claimed before the Tribunal that the assessee was entitled to claim a deduction for this sum of Rs. 8,34,266/- We are

now told on behalf of the assessee that the real difference is not even Rs. 8,34,266/- as stated before the Income-tax Tribunal but that the same amounts to Rs. 8,45,147/-

2. The Wealth Tax Officer took the view that the income-tax became payable to Government when demand was made therefor. He only allowed a deduction for the sum of Rs. 2,69,658/- for the aggregate of the three instalments of tax which had been paid during the accounting year under Section 18-A of the Indian Income-tax Act, 1922, in pursuance of the demand made on 11th May 1956. He took the view that neither the amount which became payable on 15th March 1957 nor the amount which became payable under Section 23-B of the Act could be regarded as a debt owed by the assessee on the valuation date. He also disallowed the claim for the sum of Rs. 3,00,000/- which was then made before him. The assessee preferred an appeal from that decision before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner took the view that on the valuation date i.e., 31st December 1956, there was a demand already made for payment of the fourth instalment of the advance payment of tax under Section 18-A and as that amount was owing on the 31st December 1956, it constituted a debt and allowed the sum of Rs. 89,889/- to be deducted the substantially confirmed the rest of the assessment. Both the Department and the assessee being dissatisfied with the decision of the Appellate Assistant Commissioner, two appeals were filed before the Income-tax Appellate Tribunal. The Department objected to the allowance of the sum of Rs. 89,889/- The assessee objected to the various disallowances. Before the Tribunal the claim for further deduction on account of provision for taxation came to Rs. 11,40,755/- The sum of Rs. 11,40,755/- was made up as follows : - The fourth instalment of advance payment of tax paid by the assessee on 15th March 1957 was Rs. 4,02,068/- As against this sum of Rs. 4,02,068/-, the Appellate Assistant Commissioner had allowed a deduction of Rs. 89,889/- leaving the balance of Rs. 3,12,179/- To this sum was added the amount of tax paid under Section 23-B in accordance with the demand made on 26th September 1957 amounting to Rs. 8,28,576/-. The total of these sums came to Rs. 11,40,755/- A further sum of Rs. 54,693/- was also claimed on account of the wealth-tax for the assessment year 1957-58 That claim for Rs. 54,693/- is not pressed before us. The Tribunal came to the conclusion that the sum of Rs. 11,40,755/- was liable to be allowed. The Tribunal has stated that just as income accrued from day to day, the tax liability also accrued simultaneously and that no computation of net wealth was possible without taking into account the liability of taxation on the income which increased the wealth. As regards the question relating to the assets of the assessee being valued at the written down value as on 31st December 1956 for the purpose of Income-tax Act, the Tribunal took the view that depreciation in respect of assets should be computed on the basis of the provisions of the Income-tax Act as otherwise it would lead to numerous complications. It held that depreciation should be allowed on the basis of the depreciation allowed by the Income-tax authorities as otherwise it would lead to "absurd results". In the course of its decision it observed that the assessee may write off excessive depreciation or no depreciation at all to suit its convenience. The amount transferred to the depreciation fund may not reflect the actual depreciation suffered in the case of an asset. It observed that the depreciation allowed by the Income-tax authorities was on a very systematic basis and that by

deducting such depreciation it arrived at the correct value of the assets to the business. It directed that for the purpose of arriving at the correct value of the assets of a business the Income-tax Officer should take the original cost price as shown by the books of account and deduct therefrom such depreciation as had been allowed under the Income-tax Act. In other words, it is the written down value of an asset which should ordinarily be taken into account. On the application made before the Tribunal for altering the claim on this score from Rs. 3,00,000/- to Rs. 8,34,266/-, the Tribunal stated that it would lay down the principle and leave it to the Wealth Tax Officer to compute the amount in accordance with the principle laid down by it and make the necessary deduction. The Commissioner of Income-tax being aggrieved by the decision of the Tribunal required the Tribunal to state a case and refer questions of law arising out of the order of the Tribunal to this Court under Section 27(1) of the Wealth Tax Act. The Tribunal has accordingly referred to as the following questions of law for determination :

(1) Whether on the facts and in the circumstances of the case and in the case of a business valued under Section 7(2)(a) of the Wealth Tax Act, the sum of Rs. 11,40,755/- being the provision for taxation is liable to be allowed as a deduction under the provisions of Section 2(m) of the Wealth Tax Act, 1957 as debt owed by the assessee on the valuation date ?

(2) Whether on the facts and in the circumstances of the case, Rs. 89,889/- being the last instalment of advance tax due under Section 18-A as per the subsisting demand as on the valuation date though payable on 15-3-1957 is not liable to be allowed as a deduction in computation of the net wealth under Section 2(m) of the Wealth Tax Act ?

and

(3) Whether on the facts and in the circumstances of the case, when the net value of the assets is determined, under the provisions of Section 7(2)(a) the value of depreciable assets as shown in the balance-sheet of the company is liable to be adjusted with reference to the written down value of such assets as per income-tax records ?

3. The Commissioner of Wealth Tax has filed an application before us for re-framing the questions on the ground that the questions framed by the Tribunal were vague and did not bring out clearly the points in issue in this reference. The Commissioner desires that we should frame the questions in the following form :-

(1) Whether on the facts and in the circumstances of the case, the provision for income-tax which may become due on the profits of the previous year ending on the relevant valuation date is a debt owed by the assessee on the valuation date within the meaning of Section 2(m) of the Wealth Tax Act, 1957 (as amended in 1959) ?

(2) Whether on the facts and in the circumstances of the case, when the net value of the

assets of the business as a whole is determined under Section 7(2)(a) of the Wealth Tax Act, 1957, the value of depreciable assets in the case of a limited company ought invariably to be so adjusted as to substitute the written down value of such assets for income-tax purposes for the value shown in the company's balance-sheet ?

(3) Whether on the facts and in the circumstances of the case, instalments of advance tax under Section 18-A which fell due for payment after the valuation date constitute a debt owed by the assessee on the valuation date within the meaning of Section 2(m) of the Wealth Tax Act, 1957 ?

and

(4) Whether on the facts and in the circumstances of the case, income-tax which might become payable on the income of the previous year ending on the valuation date, constitutes a debt owed by the assessee on the valuation date within the meaning of Section 2(m) of the Wealth Tax Act, 1957 ?

4. Before dealing with the questions which have been raised before us, it is necessary to examine some of the provisions of the Wealth Tax Act, 1957. The charging Section is Section 3. That Section runs as under :-

"3. Charge of Wealth-tax :- 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".

The expression "net wealth" has been defined in Section 2(m) as under :-

"In this Act, unless the context otherwise requires,-

(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 assess 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 owed by the assessee on the valuation date other than,-

(i) debts, which under Section 6 are not to be taken into account,

(ii) debts which are secured on, or which have been incurred in relation to, any asset in respect of which Wealth-tax is not payable under this Act; and

(iii) the amount of the tax, penalty or interest payable in consequence of any order passed ? under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953 (34 of 1953), the Expenditure Tax Act, 1957 (29 of 1957), or the Gift-tax Act, 1958 (18 of 1958) -

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal,

revision or other proceeding as not being payable by him, or

(b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date."

The expression "assets" appearing in Section 2(m) has been denned by Section 2(e) as follows :-

"(e) 'assets' includes property of every description, movable or immovable, but does not include-

(i) agricultural land and growing crops, grass or standing trees on such land;

(ii) any building owned or occupied by a cultivator or receiver of rent or revenue out of agricultural land :

Provided that the building is on or in the immediate vicinity of the land and is a building which the cultivator or the receiver of rent or revenue by reason of his connection with the land requires as a dwelling-house or a store-house or an out-house;

(iii) animals;

(iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant;

(v) any interest in property where the interest is available to an assessee for a period not exceeding six years;"

The definition of the expression "assets" is such .as to embrace within its ambit property of every description except the few kinds of property therein specified so that for the purpose of ascertaining the net wealth of an individual, on the assets side you have the aggregate value of all those assets. Under Section 2(m) what has to be taken into account is the aggregate value of such assets not merely belonging to the assessee but assets which may not belong to the assessee which are set out in Section 4 of the Act. That Section runs as under :-

"4. Net wealth to include certain assets :- (I) In computing the net wealth of an individual, there shall be included, as belonging to him -

(a) the value of assets which on the valuation date are held-

(i) by his wife to whom such assets have been transferred by the individual, directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live separately, or

(ii) by a minor child not being a married daughter to whom such assets have been transferred by the individual otherwise than for adequate consideration, or

(iii) by a person or association of persons to whom such assets have been transferred by the individual otherwise than for adequate consideration for the benefit of the individual or his wife or minor child, or

(iv) by a person or association of persons to whom such assets have been transferred by the individual otherwise than under an irrevocable transfer,

whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise;

(b) Where the assessee is a partner in a firm or a member of an association of persons, the value of his interest in the firm or association determined in the prescribed manner.

(2) x x x x

(3) Where the value of any assets is to be included in the net wealth of an assessee in accordance with clause (a) of Sub-Section (1), there shall be deducted from such value any debts owing on the valuation date by the transferee mentioned in that Sub-Section in so far as such debts are referable to the assets."

There are certain other provisions contained in Section 4 to which it is not necessary to refer. There is another Section of the Act where under certain assets are exempt from inclusion while ascertaining the net wealth of an individual. That Section is Section 5. Twenty-one categories of assets have been there set out which are not liable to be included in the net wealth of an assessee. We will have to advert to the same later on. By Section 6 a provision is made for exclusion of certain assets and debts. Under the scheme of the Act out of the assets which are liable to be included under Section 2(m), a deduction has to be made in respect of "the aggregate value of all the debts owed by the assessee on the valuation date" other than the debts expressly excluded. It is clear from the aforesaid provisions that save as otherwise expressly provided, on the assets side all types of property including debts owing to the assessee and obligation which others owe to the assessee are liable to be taken into account. The point that arises for consideration in this reference is what is sought to be conveyed by the words 'debts owed by the assessee on the valuation date'. On the one hand it was urged that the expression "debts owed" covered only obligations to pay ascertained sums of money which were legally recoverable on the valuation date. On the other hand it was urged that the expression "debts owed" covered all present obligations whether the obligations were in respect of an ascertained sum or an unascertained sum, whether the obligation was to pay a sum presently or in the future. There are two points on which, the parties before us were ad idem. One was that the expression "debts owed" related to an obligation to pay money and the other was that contingent liabilities were not covered by that expression. The words "debts owed by the assessee on the valuation date" are words which in the context in which they are used must be read in their widest significance. The aim and object of the Legislature is to tax the net wealth of an assessee. In ascertaining the net wealth all types of property have to be taken into account on the assets side barring a few. When we come to the deductions side, the only deduction that is permitted is in respect of "debts owed by the, assessee on the valuation date". Full effect must be given to these words, otherwise inequitable results may follow. We shall first turn to the dictionary meaning of the term "debt". In the Shorter Oxford English Dictionary Volume I, page 461, it is stated inter alia as under :-

"Debt I. : That which is owed or due; anything (as money, goods, or service) which one person is under obligation to pay or render to another. 2. A liability to pay or render

something".

According to Webster 'debt' is also defined as 'thing owed'. The same thing is said in one form or the other by Burrows on Words and Phrases and in Stroud's Judicial Dictionary. The plain meaning of the word in the English language indicates that "debt" is that which is owed or due; anything "as money, goods, or service". It is not necessary for the purpose of this case to consider whether "debts owed" within the meaning of those words in Section 2(m) would cover an obligation other than an obligation to pay a sum of money. It may be that a person apprehending a rising spiral of prices may when advancing money bargain for a return to be made to him in terms of certain commodities like silver. Whether in such an event an obligation to pay a particular quantity of that article would constitute a debt or not is a question which it is not necessary for us in this case to consider. In the present case the claim for deduction relates only to a claim in respect of money. It would not be out of place to refer to some of the English Cases where the expression has come up for consideration.

5. The first case to which we would advert is the one reported in *Webb v. Stenton*<sup>1</sup>. It was a case arising under Order 45, Rule 2 of the Supreme Court Rules in England concerning a garnishee. In that case the judgment-debtor was entitled for his life to the income arising from a fund vested in trustees, payable half-yearly in February and August. Upon application by the judgment-creditor in the month of November for a garnishee order attaching the debtor's share of the income in the hands of the trustees, it appeared that the last half-yearly payment had been made and that there was no money, the proceeds of the trust property, in the hands of the trustees. The question that arose then for consideration was whether there was no debt "owing or accruing" at the time when the order was

<sup>1</sup>(1883) 11 QBD 518

applied for which could be attached under Order 45, Rule 2. Brett, Master of the Soils, in posing the question that had arisen for consideration stated that the case showed that there was no debt payable in present and that the question that required consideration was whether that which was sought to be attached was an accruing debt within the meaning of Order 45, Rule 2 and that it cast upon the Court the duty of saying what was the meaning of "accruing debt" in the aforesaid rule. At p. 523 he observes as follows :

"Now can it mean any debt which may at any future time arise between the judgment-debtor and the person sought to be made a garnishee, "there being no contract at that time between the judgment-debtor and such person, or anything which can make any relation of any kind, legal or equitable, between them ? To state the proposition is to shew its absurdity. Then can it be this, that it may be a debt which there is some probability may in future arise ? Who can say where there is nothing out of which a debt can be said in law to arise, that it is probable that a debt may arise, as for instance a probability that the parties will make a contract. If it is not a debt it will not do. It must be something which the law recognizes as a debt".

He referred to the case of *Jones v. Thompson*<sup>2</sup>, where Wightman, J. said,

"Mr. Prentice relies on the words 'or accruing', but I think that these words are intended to apply to those cases in which there is debitum in praesenti, solvendum in futuro. I think that, to bring the case within the statute, there must be a debt, though it need not be yet due".

Crompton, J., in that case has observed as follows :

"There must, under this Act, be a debt as much as in bankruptcy. I do not agree that the use of the word 'accruing' makes a distinction on this point; there must be a debt, though it may be not yet due. I have always acted on the principle that it is not enough to shew that it is very probable that there soon will be a debt, but that it must be shew that there is a debt, though it need not be yet due".

The Master of the Rolls laid down that the meaning of "accruing debt" was "debitum in praesenti, solvendum in futuro". Lord Justice Lindley dealing with the matter has observed that a debt legal or equitable can be attached whether it be a debt owing or accruing; but it must be a debt and 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 praesenti, solvendum in futuro. An accruing debt, therefore, is a debt not yet actually payable, but a debt which is represented by an existing obligation. Lord Justice Fry, at p. 529 observes as under :

".....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 praesenti or in futuro and I think that the words 'all debts owing or accruing' mean the same thing. They describe all debita in praesenti, whether solvenda in futuro, or solvenda in praesenti. The material question which has been argued before us is this does the

<sup>2</sup>(1858) 27 LJ QB 234

meaning go further and does it include debts which may hereafter arise ? If they may hereafter arise, it is possible also they may not hereafter arise and it would require explicit words to include such future possible debts". This authority has been strongly relied upon by Mr. Palkhivala on behalf of the assesses to show that the expression "debt" is sufficiently wide to cover an existing obligation, whether it is payable immediately or payable in the future, i.e., all debita in praesenti, whether solvenda in futuro or solvenda in praesenti as expressed by Lord Justice Fry.

6. On the other hand this very case has been relied upon by the learned Advocate General on behalf of the Commissioner to show that what the Court there had to interpret were the words "debt accruing" and that it was because of the use of the word "accruing" that the Court there

held that even though a debt may be payable in future, it was regarded as a debt within the meaning of Order 45, Rule 2 of the Supreme Court Rules. The observations of Lord Justice Fry and Lord Justice Lindley seem to us to be clear that in order that there may be a debt the obligation need not be an obligation solvendum in presenti. It may be an obligation solvendum in futuro. The words used in Section 2(m) are "debts owed by the assessee". If the contention of the learned Advocate General was accepted that this expression meant that only those obligations which are presently payable are covered, then the result would be that if a person borrowed a million rupees on the first of November of any year and promised to pay the same with interest on the 1st of January of the succeeding year, then if the valuation date was 31st of December the million rupees would go to augment his wealth whilst there would be no debt owed by him which was liable to be deducted in assessing the net wealth of the individual. We do not think such a result was ever contemplated by the Legislature. A debt may be, owed but may not be presently payable. It may be payable in future and there is nothing in the word "debts" or in the word "owed" which either taken singly or together would indicate that an obligation to pay a sum of money at a future date beyond the valuation date is not covered by the expression. As the Shorter Oxford Dictionary states "debt" itself is that which is owed. The Legislature has used the words "owed by the assessee" in connection with debts in Clause 2(m) in order to distinguish them from debts which, form part of the assets of the assessee namely debts owing to the assessee. The Legislature has not used the word "owed" with a view to qualify or limit the meaning borne by the word "debts" in ordinary English. The word "owe" has been defined in the Shorter Oxford English Dictionary as meaning "to have to pay; to be under obligation to pay or repay; to be indebted in, or to the amount of;" The Legislature has in Section 4, Sub-Section (3) also used the words "debts owing on the valuation date". Those words have been used in the following context :

"Where the value of any assets is to be included in the net wealth of an assessee in accordance with clause (a) of Sub-Section (1), there shall be deducted from such value any debts owing on the valuation date by the transferee mentioned in that Sub-Section in so far as such debts are referable to the assets".

This Section provides that where the value of any assets in the hands of the transferee is to be taken into account as therein provided, the value of any debts owing on the valuation date by the transferee in so far as such debts are referable to the assets has to be taken into account. The expression "debts owing" cannot in this context be given a limited meaning so as to cover only debts which are presently payable. If a person has borrowed monies on the assets and the amount of such debt is payable after the lapse of a particular period of time, there is no reason why such debt should not be deducted. The non-deduction of such a debt would obviously be unfair and unjust to the assessee and the Legislature could not be considered to have contemplated such unjust result. The same is neither warranted by the language used nor by the context in which the said words are used. Similar words appear in Section 6 of the Act. The words "the value of the assets in India represented by any loans or debts owing to the assessee" appearing in Section 6

cannot be held only to cover debts owing to the assessee which were then immediately payable. The context in which these expressions have been used do not indicate any necessity which would compel us to come to the conclusion that the words "owing" or "owed" have been used with a view to qualify or limit the meaning of the term "debts" or "debt".

7. We may refer to the Rules framed under the Wealth Tax Act, 1957. These Rules are statutory rules framed under Section 46 of the Wealth-tax Act, 1957. Rule 3 provides that the return of net wealth referred to in Sub-Sections (1) and (2) of Section 14 shall, in the case of individuals and Hindu undivided families, be in Form A annexed to the Rules. When we turn to Form A, it provides in Part 1 for three Sections. Section A relates to immovable property, Section B relates to movable property and Section C provides for all assets. That Section after referring to the total value of all assets located in India being the total of Sections A and B further provides as under :- "Deduct-Total value of debts in India owing by the assessee (i) relating to business-as per Annexure V and (ii) other debts as per Annexure VI". When we turn to Annexure VI it provides for Statement of debts located in India owing by the assessee other than those included in Annexure V. There is a Note appended to that form reading as under :

"Note :- Debts which have been incurred for acquiring assets which are exempted from Wealth tax or for utilization on such assets, or debts which have been secured for repayment on such assets should not be included in Annexures-V and VI. Liabilities which are purely in the nature of contingent liabilities should not be included in these statements".

When we turn to Form B which relates to the Form of return of net wealth to be submitted by Companies, we have again Sections A and B relating to immovable property and movable property respectively. Section C which relates to all assets, after providing for the total value of all assets located in India i.e., (total of Sections A and B) provides as under :-

"Deduct : Total value of debts in India owing by the Company as per Annexure III".

When we turn to Annexure III which relates to "Statement of debts located in India owing by the company", we have under the heading "Description of debt" :-

"I. Secured Loans : (a) Debentures, (b) Loans and advances from banks; (c) Loans and advances from subsidiaries and (d) Other loans and advances".

II. Unsecured Loans : (a) Fixed Deposits; (b) Loans and advances from subsidiaries; (c) Short term loans and advances and (d) Other loans and advances.

III. Current liabilities : (a) Sundry creditors and (b) Other miscellaneous items;

IV. Ascertained liabilities treated as contingent liabilities".

Debentures and fixed deposits referred to in Annexure III clearly refer to monies which may be payable at a future date and they are regarded as debts owing by the company. One cannot look at a form with a view to give a meaning to the words used by the Legislature in an enactment. In

this case, in our view, the language used by the Legislature is clear by itself. Only we derive support for the view which we have taken by a reference to the statutory rules and forms with a view to show that we are not alone in the view which we have taken of the Section.

8. We shall next refer to the case of *O'Driscoll v. Manchester Insurance Committee*<sup>3</sup>, 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 their 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 available for medical benefit so received by the Committee was to be the limit of their liability to the panel doctors; and if the total pool was insufficient to meet all the proper charges of the panel doctors in accordance with the scale there was to be a pro rata reduction for each doctor and on the other hand if it should be in excess of the amount required, the balance was to be distributed among the panel doctors. In that case the panel doctor concerned had served for the requisite period with the Insurance Committee. The Committee had received funds in respect of medical benefit from the National Insurance Commissioners. The question had arisen whether there was a debt owing or accruing to the panel doctor which may be attached under Order 45, Rule 1 of the Rules of the Supreme Court notwithstanding the fact that as a matter of calculation the exact share payable to him was not at all then ascertained. The Court there came to the conclusion that there was a debt owing or accruing from the Insurance Committee to the panel doctor which could be so attached. Lord Justice Swinfen Eady in dealing with the matter observed that there was no contingency which could happen to deprive the doctor of his right to payment on the figures being finally adjusted. Even though the contractual liability to pay out of that fund was incapable of being ascertained until some future date, there was a debt owing or accruing and the same could be attached. At page 512, he observes as follows :

"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....."

Lord Justice Banks at pages 516 and 517 in that case has observed as follows :

<sup>3</sup>(1915) 3 KB 499

"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, p. 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."

He has further observed in that case at page 517 that a debt arose in that case though the amount of it was not ascertained on the date of the garnishee order and was not then payable. This case is an authority for the proposition that a debt which is not ascertained and which is not presently payable may still be a debt.

9. We shall next refer to a decision of a Full Bench of the Calcutta High Court in *Banchharam Majumdar v. Adyanath Bhattacharjee*<sup>4</sup>, The question in that case related to the necessity of a succession certificate before a decree could be obtained in a suit. The question which had arisen was whether in the case of a debt existing in the life of the creditor, but which did not become payable until after the death of the creditor, the heirs of the creditor could not obtain a decree without the production of a certificate under the Succession Certificate Act. It was a case where though the liability was incurred it had not matured for payment during the lifetime of the creditor. Chief Justice Jenkins in dealing with the matter observes at pages 938 and 939 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 (1883) 11 QBD 518....."

He held that in the case of a debt existing in the life of the creditor which did not become payable until after his death, his heirs could not obtain a decree without the production of a certificate granted under the Succession Certificate Act. Mookerjee J., in that case has observed that the 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*<sup>5</sup>, where it has been observed 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."

<sup>4</sup>ILR 36 Cal 936

<sup>5</sup>(1869) 37 Calif 524

These words clearly show that a debt is owing even though it is payable at a future time.

10. We shall next refer to the case in *Inland Revenue Commissioners v. Bagnall Ltd*<sup>6</sup>. That was a case relating to Excess profits tax. For the purpose of calculation of the excess profits tax it was provided by the rules that in computation of the capital "debts" were to be deducted from the capital employed in the trade or business during both the standard period and any chargeable accounting period. In that case a claim had been made in respect of unpaid excess profits duty for certain years. As the Inland Revenue authorities contended that the respondent in that case had underpaid a particular sum of money, the respondent resisted the demand contending that there had been no fraud or wilful default on the part of the respondent and that the revenue authorities had no right to make a claim upon the respondent. In the course of the proceedings the respondents without prejudice to its contention that it was under no liability whatsoever made an offer of settlement through its counsel offering a sum of £. 10,000 in full and final settlement of any claim against the respondent or its directors. Whilst making the offer it was stated as under :

".....our clients and ourselves have been guided, by the opinion of counsel that assessments to excess profits duty are problematical and that, if assessments were competent the amount of such assessments is still more in doubt owing to the provisions of Section 38(6) of the Finance Act, 1926 which required the necessity of proving fraud or wilful default".

The above offer was accepted. The assessee claimed a deduction in respect of this amount on the footing that the same constituted a debt within the meaning of the Finance Act, 1939, Schedule VII. In dealing with this matter the Court observed as follows :

"There was a further point raised by the Attorney-General, that, assuming that there was a liability on January 1, 1935, that liability did not become a 'debt' within the meaning of that word as used in the Finance (No. 2) Act, 1939, Schedule VII, until the liability was quantified. It is true that the word 'debt' may, in certain connections, be 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."

These words clearly indicate that the expression "debt" is sufficiently wide to cover a mere liability. It is only in the context of the Act in question that it was held that it represented "an ascertained sum" and that as there was no such ascertained sum on the relevant date, there was no debt within the meaning of the Act. There is no discussion showing the reason why it was held in the context of the Act in question that the word "debt" was used in the Act in a limited sense. Both sides have sought to show, after making reference to the Finance Act of 1939 the

reason why the word "debt" in the context in which the same was used had that particular meaning. It is not necessary for us for the purpose of this case to solve that question.

11. We shall next deal with the case of *E.D. Sassoon and Co. Ltd. v. Commissioner of Income-tax, Bombay City*<sup>7</sup>, The Supreme Court in that case had to

<sup>6</sup>(1944) 1 All England Reporter 204

<sup>7</sup>(1954) 26 ITR 27

deal with the question about the point of time when managing agency commission became payable to the managing agents of a company. In dealing with the question Bhagwati, J., has observed that it was clear having regard to the authorities referred to by him that income may accrue to an assessee without the actual receipt of the same. In the course of his judgment, he has expressed himself at page 51 (of ITR) in terms following :

"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*<sup>8</sup>, at pp. 522, 527. Unless and until there is created in favour of the assessee a debt due by somebody it cannot be said that he has acquired a right to receive the income or that income has accrued to him."

12. The next case to which we will advert is the case of *Seabrook Estate Co. Ltd. v. Ford*<sup>9</sup>, which has been cited by the learned Advocate General in support of his contention. In that case a debenture holder a limited company appointed a receiver and manager of the premises charged by the debentures. The receiver had filed returns showing a balance of £891 IS. 4d., in his hands out of which, he expected to have to pay 425 to debenture holders, the costs and legal charges of the receivership (which were then only estimated items) and a preferential claim for income-tax. A judgment creditor of the company served on the receiver an order nisi of attachment of £559 13s. or part of that sum, out of the amount in the hands of the receiver, as a debt due by the receiver to the company. The question that arose for consideration was whether the receiver for debenture holders was a debtor to the company in respect of the balance in his hands after payment of preferential claims and of the principal and interest due to the debenture holders. Hallet, J., in dealing with the matter observed that in order that a sum can be attached, there must be an actual debt existing at the time the order was sought, though the debt need not be then payable. After referring to the case of (1883) 11 QBD 518 (supra), he observed that it was then well-settled that a sum of money may; properly be the subject of a garnishee order although the time for payment of it was in the future - solvendum in futuro - provided that it constituted debitum in praesenti, viz., a sum of money the obligation to pay which was in existence at the date when the garnishee order was sought. The case of (1915) 3 KB 499 was relied upon in that case by the counsel for the judgment creditor. In dealing with that case the learned Judge observed that it was an authority which was binding on him, for the proposition that "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". After examining the authorities on the subject, the learned Judge thereafter proceeded to observe as follows :-

"The question I have to ask myself on the facts of this case is whether, although its payment might be deferred and its amount might not have been calculated and might, at that time, be incapable of calculation, there was, on February 22, any existing debt from the receiver to the company."

8(1946) 1 All England Reporter 532 at p. 539 and (1883) 11 QBD 518

9(1949) 2 All England Reporter 94

He observed that it was not correct to say a receiver for debenture-holders was a debtor to the company from time to time of such sum as may ultimately prove to be the balance in his hand after payment of preferential claims and after the discharge of whatever may be due to debenture-holders in respect of principal and interest. This case does not in any sense support the learned Advocate-General. It on the contrary, reiterates that a sum of money need not be presently payable in order to constitute the obligation to pay the same into a debt. It further lays down that even if the amount of the obligation has not been ascertained and is subject to calculation, which had not then been made and could not then be made, it could still be a debt.

13. The next case to which reference made at the bar is the case of *Dawson v. Preston (Law Society Garnishees)*<sup>10</sup>, Great reliance has been placed on this case. We will set out the facts which were material for the purpose of the decision in that case. A legally aided plaintiff, received 350 as damages in consequence of the settlement of his action. That sum was paid to the Law Society for the legal aid fund in accordance with the Legal Aid and Advice Act, 1949, Section 2(2)(d) and the Legal Aid (General) Regulations, 1950, Regulation 16. Part of that amount was paid out to the plaintiff, leaving a balance in the legal aid fund subject to any charge conferred on the Law Society by Section 3(4) of the Act of 1949, to cover the prescribed deductions, which remained to be quantified, e.g., deduction for the taxed costs of the action. The judgment creditor of the plaintiff obtained a garnishee order nisi on the Law Society as administrators of the legal aid fund. Lord Goddard, Chief Justice, in dealing with the matter observed that the effect of the Legal Aid and Advice Act, 1949 and the Legal Aid (General) Regulations, 1950, was that a charge was imposed on that money in the Law Society's hands in their favour in order that they might reimburse from the legal aid fund any additional sums of costs to which they had been put, other than the costs which they recovered from the other side. In the course of his judgment, he observed that the fact that the amount which they had to pay over had not been ascertained at the date of the order nisi was quite immaterial. If there was a debt, the fact that the debt had to be quantified did not make it any the less a debt which was owing, although the amount which was to be paid may have to wait until some calculations or taxations were gone through. Ormerod, J., in the course of his judgment observes as under :-

"The argument of 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 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

<sup>10</sup>(1955) 3 All England Reporter 314

from that money in exercise of some charge which they may have 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 at the material date."

14. Another case relied upon in the course of the argument was the case of *Edmunds v. Edmunds*<sup>11</sup>, At page 373 of that judgment Gorell Barnes, J., has observed that if authority was needed for the proposition that money could be attached, although not actually payable, it was to be found in *Tapp v. Jones*<sup>12</sup>, and in the Irish case of *Sparks v. Younge*<sup>13</sup>,

15. The learned Advocate-General placed some reliance upon the case of *Rex v. Leon*<sup>14</sup>, That was a case under Section 13 of the Debtors Act, 1869, which enacted as under :-

"Any person shall ..... be deemed guilty of a misdemeanour : (1) if in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud ....."

The question that then arose was whether a debt or liability incurred in wagering which, by Section 18 of the Gaming Act, 1845, was declared to be null and void could be said to be a debt within the meaning of the aforesaid Section. It was held that the word "debt" in the Section meant an actionable debt. This decision cannot throw light on the question which we have to determine as regards the meaning of the expression "debt" in Section 2(m) of the Wealth Tax Act.

16. There are references made to some other cases where in the light of the contest in which the word "debt" was used, a restricted meaning was given to that expression. No useful purpose will be served by referring to such cases.

17. From a discussion of all these cases it seems to us to be abundantly clear that in order to

constitute a debt it is not pre-requisite that there must be an ascertained sum of money legally recoverable in praesenti. It is sufficient if there is a present obligation to pay a sum of money, whether the amount thereof is ascertained or not and whether the amount is presently payable or payable at a future date. It must not be a contingent obligation.

18. We shall next proceed to consider the nature of the liability in respect of tax under the provisions of the Income-tax Act, 1922. Section 3 of the Act provides as under :-

"Charge of income-tax :- 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."

It has been strongly urged by the learned Advocate-General on behalf of the revenue that

<sup>11</sup>(1904) Probate 362

<sup>13</sup>(1858) 8 1r CLR 251

<sup>12</sup>(1875) 10 QB 591

<sup>14</sup>(1945) 1 KB 136

unless and until a Central Act like the Finance Act enacts that income-tax shall be charged for any year at any rate or rates therein specified, there is no liability which accrues under Section 3. In his submission it was only when the Finance Act, 1957, was passed that liability for payment of tax for the assessment year 1957-58 arose. He urges that what we have to ascertain is the net wealth of the assesses on 31st December, 1956, i.e., a date prior to the commencement of the Finance Act, 1957. He relies upon the provisions contained in Sections 29 and 45 of the Income-tax Act, 1922, in order to show that the liability for income-tax becomes due when a demand is made therefor under Section 29 on the completion of the assessment proceedings before the income-tax Officer. Section 29 provides as under :-

"Notice of Demand :- When any tax, penalty or interest is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax, penalty or interest a notice of demand in the prescribed form specifying the sum so payable."

Section 45 of the Act relates to the time when tax becomes payable. It provides as under :-

"Tax when payable :- Any amount specified as payable in a notice of demand under Sub-Section (3) of Section 23-A or under Section 29 ..... shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under Section 30, the Income-tax

Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of."

The result of these provisions is that a tax becomes payable at the time provided in the notice issued under Section 29 after the assessment takes place. The submission of the learned Advocate-General would be correct if the meaning of the expression "debt" had been that it only referred to an ascertained sum of money which had become payable and legally recoverable.

19. The learned Advocate-General very strongly relied upon a Privy Council Judgment in *Doorga Prosad Chamaria v. Secretary of State*<sup>15</sup>, In that case a question had arisen as regards the validity of a certificate which had been issued for the purpose of recovery of tax. There were several objections raised as regards the validity of the certificate. After negating various objections and dealing with the last objection to the certificate on the ground that the certificate did not mention the period for which the demand was due, the Privy Council observed that although income-tax may be popularly described as due for a certain year, it was not in law so due. It is calculated and assessed by reference to the income of the assessee for a given year, but it is due when demand is made under Section 29 and Section 45. It then becomes a debt due to the Crown but not for any particular period. These observations were made when dealing with a question relating to the invalidity of a certificate on the ground that it did not mention the period for which the

<sup>15</sup>72 Ind App 114 same as (1945) 13 ITR 285

demand was due. These observations cannot be relied upon for the purpose of ascertaining when it could be said that a debt was owing within the meaning of Section 2(m) of the Wealth-tax Act.

20. In this connection it would not be out of place to refer to a decision of the House of Lords in the case of *Whitney v. Commissioners of Inland Revenue*<sup>16</sup>, No doubt that was a case which arose under the provisions relating to income-tax then prevailing in England, But the observations therein made can be said equally to apply to the Indian Income-tax Act, 1922, which to a large extent has drawn its inspiration from the provisions of the English Statute. Lord Dunedin in the course of his observes at page 52 in that case as under :-

"My Lords, I shall now permit myself a general observation. Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to be workable and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable. Now, there are three stages in the imposition of a tax : there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesis, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

These words indicate that the liability arises under the statute imposing the liability and that such liability does not depend on assessment. The Finance Acts are Acts which relate to the rates at which assessments have to be made and they relate to the quantum of the assessment and not to the liability of being assessed.

21. The learned Advocate-General places some reliance upon a decision of the Patna High Court in *Kamakshya Narain Singh v. Commissioner of Income-tax, B. and O*<sup>17</sup>, and the observations appearing therein at page 693 (of ITR) . That was a case where the assessee who was residing in a partially excluded area in the Province of Bihar was assessed for the year 1939-40 on his income for the year ended 31st March, 1939. He was assessed on 14th February, 1940. On the 13th June, 1941, the Governor of Bihar, acting under Section 92(2) of the Government of India Act, 1935, enacted Regulation 1 of 1941 which declared inter alia that the Indian Income-tax (Amendment) Act, 1939, should be deemed to have come into force in the area on the 1st April, 1939. By an oversight the Indian Finance Act of 1939 was not mentioned in this Regulation. On 30th June, 1942, Regulation IV of 1942 was, therefore, enacted by the Governor of Bihar with the sanction of the Governor-General and the Regulation provided inter alia that the Indian Finance Act, 1939, should be deemed to have come into force in this area on 30th March, 1939. The assessee contended that the assessment was ultra vires inasmuch as the Indian Finance Act, 1939, was not in operation at the date of the assessment and that the validating Regulations passed by the Bihar Governor were ultra vires. In dealing with this situation, the Patna High Court expressed itself in words following:-

<sup>16</sup>(1926) AC 37

<sup>17</sup>1946-14 ITR 683 : AIR 1947 Patna 13 (SB)

"The contention of Dr. Mitter that there is no liability to tax unless the Finance Act has been passed is perfectly correct. In the case of *Commissioner of Income Tax, Bombay v. Western India Turf Club*<sup>18</sup>, the Lord Chancellor in delivering the judgment of the Privy Council observed at page 495 (of ITC) : '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. This 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 same view was taken by their Lordships of the Judicial Committee in *Maharajah of Pithapuram v. Commissioner of Income Tax, Madras*<sup>19</sup>, Lord Thankerton in delivering the judgment of the Board made these observations at page 223 : (of ITR) : 'It should be remembered that the Indian Income-tax Act of 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 authorized the present assessment etc'. But this conclusion does not help the assessee because, as already stated, the effect of the Regulation of 1942 is that the Indian Finance

Act of 1939 must be deemed to have been in operation on the date when the assessment proceedings started and on the date when they were completed."

22. We shall first deal with the judgment in the case of *Western India Turf Club*, 2 ITC 490 referred to in that case. The Western India Turf Club was originally an unregistered association; but as from the 1st April, 1925, it was converted into a company by being registered under the Companies Act as a Company limited by guarantee, the object of the company being to take over the assets, effects and liabilities of the Western India Turf Club. The question that arose was at what rate that company should pay super-tax for the tax-year commencing on the 1st April, 1925. Section 26 of the Income-tax Act provided that where any change occurs in the constitution of a firm or where any person has succeeded to any business, profession or vocation, the assessment shall be made on the firm as constituted, or on the person engaged in the business, profession or vocation, as the case may be, at the time of the making of the assessment. It is by virtue of this provision that the Western India Turf Club the company that had been constituted, was made subject to proceedings for assessment in respect of the income of the unregistered association of the Western India Turf Club which existed prior to the constitution of the Company. The Commissioner of Income-tax was the appellant in that case and he urged that the Western India Turf Club, the transferee company, was liable to pay super-tax at the rate not applicable to Companies, namely, one anna but at the much higher rate applicable to association of persons. The contention was that as the income in respect whereof the limited liability company was sought to be charged was the income of the unregistered association, the rate applicable was the rate applicable in respect of unregistered association. The Lord Chancellor in dealing with the question as regards the rate at which super-tax was payable, observed as under :-

<sup>182</sup> ITC 490

<sup>19</sup>(1945) 13 ITR 221

"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."

These observations were made with a view to show that the tax was payable by the company in respect of the income of the unregistered association and that the liability did not attach to the income in the hands of the unregistered association as the Finance Act 13 of 1925 under which the liability was to be assessed was not in existence at the time when the income accrued to the unregistered association. These observations shorn of their context cannot be utilized for the purpose of saying that until the passing of the relevant Finance Act, there is no obligation whatsoever incurred by an assessee in connection with his income.

23. There are observations made in several cases which clearly indicate what is the nature of the liability in connection with income-tax under the provisions of the Income-tax Act.

24. In the case of *Chatturam v. Commissioner of Income Tax, Bihar*<sup>20</sup>, the Federal Court had to deal with the question as to when liability to pay tax arose. At p. 308 (of ITR) , Kania, J.,

observes as under :-

"The liability to pay the tax is founded on Sections 3 and 4 of the Income-tax Act, which are the charging sections. Section 22 etc., are the machinery sections to determine the amount of tax. Lord Dunedin in (1926) AC 37, stated as follows :- 'Now, there are three stages in the imposition of a tax. There is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment, that ex hypothesi has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery if the person taxed does not voluntarily pay'. In *W.H. Cockerline and Co. v. Commissioners of Inland Revenue*<sup>21</sup>, at p. 19. Lord Hanworth, M.R., observed as follows :- Lord Dunedin, speaking, of course, with accuracy as to these taxes, was not unmindful of the fact that it is the duty of the subject to whom a notice is given to render a return in order to enable the Crown to make an assessment upon him; but the charge is made in consequence of the Act, upon the subject; the assessment is only for the purpose of quantifying it. He quoted with approval the following passage from the judgment of Sargant, L.J., in the case of *Williams*, (not reported) :- 'I cannot see that the non-assessment prevents the incidence of the liability, though the amount of the deduction is not ascertained until assessment. The liability is imposed by the charging section, namely, Section 38 (of the English Act) the words of which are clear. The subsequent provisions as to assessment and so on are machinery only. They enable the liability to be quantified and when quantified to be enforced against the subject, but the liability is definitely and finally created by the charging section and all the materials for ascertaining it are available immediately' ..... In India these well considered pronouncements are accepted without reservation as laying down the true principles of taxation under the Income-tax Act."

<sup>20</sup>(1947) 15 ITR 302

<sup>21</sup>(1930) 16 Tax Cas 1

25. In the case of *Wallace Brothers and Co. Ltd. v. Commissioner of Income-tax, Bombay City*<sup>22</sup>, the Privy Council in construing the provisions of the Indian Income-tax Act, 1922, has observed as follows :-

"..... 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".

These observations of the Privy Council completely support the argument of Mr. Palkivala that the liability arises by virtue of the charging Section and it arises at the close of the previous year. It may be pertinent to note that at the close of the previous year the relevant Finance Act may even have been enacted.

26. In the case of *Chatturam Horiram Ltd. v. Commissioner of Income-tax, B. and O.*, reported in<sup>23</sup> the Supreme Court has dealt with this question. After setting out the provisions of Section 3 of the Indian Income-tax Act, 1922, Jagannadhadas, J., who delivered the judgment of the Court has observed at page 716 (of ITR) as follows :-

"It is by virtue of this section 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 payability 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."

At page 717 (of ITR) , he further observed as under :-

"Hence, according to the scheme of the Act the quality of chargeability of any income is independent of the passing of the Finance Act. In this view, therefore, though, as a fact, on account of the Finance Act not having been extended to the relevant area during the year 1939-40, legal authority was then lacking for the quantification of the tax and imposition of the liability therefor, the income of the assessee for the relevant year was none the less chargeable to tax at the time, in the sense explained above."

Thereafter he proceeds to observe :-

"Indeed, it can also be said that the very fact of Regulation IV of 1942, having brought the Finance Act of 1939 into operation retrospectively, in this area, has factually brought about, in any case, the chargeability of the tax during that very year."

<sup>22</sup>1948-16. ITR 240

<sup>23</sup>1955-27 ITR 709 : AIR 1955 SC 619

27. In the case of the *United Commercial Bank Ltd., Calcutta v. Commissioner of Income-tax, West Bengal*<sup>24</sup>, the Supreme Court has quoted with approval the observations of the Federal Court in 1947-15 ITR 302 referred to by us earlier and the judgment of the Privy Council in (1948) 16 ITR 240 .

28. In view of these observations we hold that the liability for tax had accrued for the assessment year in question at the end of 31st December 1956. The liability to tax did not for the first time arise only when the Finance Act, 1957, was passed.

29. In order to repel the argument that liability to tax in this case attached only when the Finance Act, 1957, applicable to assessment year 1957-58 was passed, one has only to refer to the scheme of the Act. Section 18 of the Act which relates to payment of tax by deduction at source provides by Sub-Section (2) that any person responsible for paying any income chargeable under

the head "salaries" shall, at the time of payment, deduct income-tax and super-tax on the amount payable at a rate representing the average of the rates applicable to the estimated total income of the assessee under that head. Where a deduction has been made in respect of salaries during the accounting year 1956, it could only be in respect of the tax payable for the assessment year 1957-58 and when salary is being paid during the year 1956, it would be at a time when the Finance Act applicable to the assessment year 1957-58 not merely would not be in operation but would not have been enacted. Sub-Section (3) similarly provides that the person responsible for paying any income chargeable under the head "Interest on securities" shall, unless otherwise prescribed in the case of any security of the Central Government, at the time of payment, deduct income-tax but not super-tax on the amount of the interest payable at the maximum rate. This deduction would equally be in respect of tax for the subsequent assessment year and would be a deduction made at a time when the Finance Act applicable to that assessment year may not have been put on the statute book. Sub-Section (5) of Section 18 provides that any deduction made and paid to the account of the Central Government in accordance with the provisions of Section 18 and any sum by which a dividend has been increased under Sub-Section (2) of Section 16 shall be treated as a payment of income-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security or of the share-holder, as the case may be and credit shall be given to him therefore on the production of the certificate furnished under Sub-Section (9) or Section 20, as the case may be, in the assessment, if any, made for the following year under the Act. Similarly when an assessee is required to pay advance payment of tax under Section 18-A it is an advance payment of tax in respect of the subsequent assessment year and the payment has to be made before the Finance Act fixing the rates would come into force. In view of these provisions it would be extremely difficult to accept the argument advanced on behalf of revenue that the liability for payment of tax for the assessment year 1957-58 on the 31st December 1956 was purely a contingent liability and that there could possibly be no debt in existence within the meaning of Section 2(m) of the Wealth Tax Act, 1957.

30. There is also what we may call a common sense view of the matter. When a person during an accounting year makes an income which is subject to tax, say, an income of a million rupees and the amount of tax payable in respect thereof may exceed 80 per cent of the same and if the amount of income that he has made, namely, a million rupees was

<sup>24</sup>1957-32 ITR 688 : AIR 1957 SC 918

liable to be added to his wealth for the purpose of Wealth Tax and if he was to be deprived of more than 80 per cent thereof under the provisions of the Income-tax Act on the Finance Act being passed, the result would be startling. A Legislature which sought to deprive him of the major portion of his income under the Income-tax Act would still be found willing to tax him in respect of the whole of that income for the purpose of the Wealth-tax Act. It is no doubt well-established that there is no equity in a tax and a Legislature may contemplate a piece of legislation which may be extremely ungenerous or harsh in its operation. What we have however, to consider is whether in the case in question the Legislature has intended to bring about such harsh result. When we turn to the provisions of the Wealth Tax Act we find that the Legislature

has been kind in exempting under Section 5 twenty one different species of property from the incidence of the Wealth Tax. It has for instance exempted one house belonging to the assessee exclusively used by him for residential purposes and situate in any place with a population not exceeding ten thousand and which is more than five miles distant from any area for which there is a municipality the population whereof exceeds ten thousand. It has excluded rights under any patent or copyright belonging to the assessee. It has excluded the right or interest of the assessee in any policy of insurance before the moneys covered by the policies become due and payable to the assessee. It has excluded the right of the assessee to receive a pension or other life annuity in respect of past services under an employer. It has excluded furniture, household utensils, wearing apparel, provisions and other articles intended for the personal or household use of the assessee. It has excluded the tools and implements used by the assessee for the raising of agricultural produce. It has excluded tools and instruments necessary to enable the assessee to carry on his profession or vocation, subject to a maximum of twenty thousand rupees in value. It has excluded instruments and other apparatus used by the assessee for purposes of scientific research. It has excluded any works of art, archaeological, scientific or art collections, books or manuscripts belonging to the assessee and not intended for sale. It has excluded even jewellery belonging to the assessee subject to a maximum of twenty-five thousand rupees in value and several other items.

31. If we were to accept the argument advanced on behalf of the revenue, the result, to say the least, would seem to be preposterous. In these days of high taxation when at the relevant time nearly 87 nP. in a rupee on the highest slab of income was sought to be taken by way of income-tax and super-tax, it would be a strange legislature which would seek to tax for the purpose of the Wealth-tax the full income of a year by considering it a part of his net wealth whilst it would seek to take away most of it by way of income-tax and super-tax under the provisions of the Income-tax Act and the Finance Act. As the preamble of the Wealth Tax Act, 1957, indicates, it is an Act to provide for the levy of wealth-tax. It is a tax on the net wealth of an individual. It is not a tax on merely his receipts. It is a tax on the aggregate value of all his assets computed in accordance with the provisions of the Act less the amount of debts owed by the assessee on the valuation date. The obligation to pay income-tax and super-tax on income could be said to arise when the income for a particular accounting year had accrued. The liability to pay income-tax and super-tax could be said to be an existing liability or obligation on the last date of the accounting year when the making of the accrual of the income for the year could be said to be complete and we see no reason why this tax liability should not be regarded as a debt owing by the assessee on the valuation date within the meaning of Section 2(m) of the Wealth Tax Act, though the quantification thereof could only be made on or after the commencement of the relevant assessment year. It was argued that a generous legislature may enact for any particular assessment year that there would be no income-tax or super-tax for that assessment year and that so long as such a possibility remained, the liability for tax could only be regarded as contingent until the relevant Finance Act was passed. In law any liability which imposes a present obligation does not become a contingent liability merely because it is possible that as a result of any

condition subsequent that liability may become extinct or may be deemed to be discharged. There is a difference between a condition which makes the liability contingent and a condition which makes an existing liability extinct. There may be a condition precedent to the attachment of any obligation and there may be a condition subsequent which may result in the discharge, defeasance or extinction of any existing obligation. If the legislature could possibly at any time absolve persons from payment of tax that would be a condition subsequent. Merely because there was such a bare possibility, it could not be said that there was no existing obligation. As a matter of fact the Indian Income-tax Act is a permanent Act on the statute book. So long as the Act remains on the statute book, the liability to tax is always there. The Legislature has been so careful as to provide even for a circumstance where for any length of time there may not be a Finance Act on the statute book after the commencement of a particular assessment year. The legislature has by Section 67-B enacted as under :

"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." This Section has been enacted with a view to prevent any argument being advanced that there was any point of time when no provision relating to rates of taxes was in force. The intention of the legislature seems to be clear. In this connection it may not be out of place to refer to the observations of the House of Lords in relation to liability for tax to which our attention has been drawn by counsel for the respondent.

32. The observations were made in the case of *British Transport Commission v. Gore and West*<sup>25</sup>, That was a case relating to the award of damages for negligence. In dealing with the question whether in awarding damages liability in connection with the incidence of taxation should be taken into account, Earl Jowitt in the course of his speech observed at page 203 as follows :

"My Lords, I agree with Lord Sorn in thinking that to ignore the tax element at the present day would be to act in a manner which is out of touch with reality. Nor can I regard the tax element as so remote that it should be disregarded in assessing damages. 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. Indeed, save for the fact that in many cases-though by no means in

<sup>25</sup>(1956) AC 185

all cases - the tax only becomes payable after the money has been received, there is, I think, no element of remoteness or uncertainty about its incidence."

The certainty of the tax is envisaged in provisions relating to deductions of tax at source and advance payment of tax long before the coming into force of the Finance Act, applicable to a particular assessment year. The only question that we have to consider is whether this certainty is merely a moral certainty or a legal certainty. In view of the observations made in various authorities quoted above, we are of the view that there is not merely a moral certainty but a legal certainty of tax and that the liability imposed under Section 3 of the Income-tax Act is an obligation which attaches as soon as the accounting year ends and it can be said that the obligation at the end of the accounting year has ripened into a debt which is owing within the meaning of Section 2(m).

33. We shall now proceed to deal with a very important unreported judgment bearing on the question delivered by a Division Bench of the Calcutta High Court in the case of *Kesoram Cotton Mills Ltd., Calcutta v. Commissioner of Wealth-tax, Calcutta*<sup>26</sup>, and is The question which we have to deal with in the present reference directly arose for determination in that case. A Division Bench consisting of Justice Mitter and Justice Laik has taken the view that the liability for payment of income-tax and super-tax cannot be regarded as a debt owing within the meaning of Section 2(m), of the Wealth Tax Act on the valuation date. After setting out the various provisions of the Wealth Tax Act and after referring to some of the cases whereunder the expression "debt" had to be construed, Justice Mitter, in the course of his judgment proceeds to observe as under :

"Even in a case where an assessee suffers no loss during the accounting year and it is possible to compute his income on the valuation date the exact amount of the liability to tax cannot be ascertained on that date because the rate of income-tax is fixed every year by the Finance Act on a date after April 1. There is no room for doubt that a debt must be for a liquidated sum of money and it can be either owed or accruing."

A reference has then been made to a decision of the Madras High Court in *Sabju Sahib v. Noordin Sahib*<sup>27</sup>. In that case the son of a deceased partner had brought a suit as his legal representative against the surviving partners praying for an account of the partnership assets and for payment to him of the amount which might be found due to the share of the deceased. The plaintiff had not obtained either letters of administration or a succession certificate. It was there held that the plaintiff's case, being for an unliquidated amount, was not a debt within the meaning of Succession Certificate Act, 1889, Section 4(1)(a). That was a case purely relating, to the interpretation of the provisions of Section 4(1)(a) and could not be regarded as an authority that wherever the liability was not a liability for a liquidated demand in money, there-can be no debt.

34. Another decision referred to in that case is a Full Bench decision of the Madras High Court, in *Doraisami Padayachi v. Vaithilinga Padayachi, ILR 40 Mad 31*. In that case the Madras High Court had to consider whether a promise to pay an amount which may

<sup>26</sup> in Matter No. 178 of 1960. The judgment is dated 14th May 1962 not yet reported (Since reported in AIR 1963 Cal 392)

<sup>27</sup> ILR 22 Mad 139

be found due by an arbitrator on taking accounts between the parties was not a promise to pay a debt within the meaning of Section 25 of the Indian Contract Act, the amount not being a liquidated, sum. The decision in that case depended on the language used in Section 25 of the Indian Contract Act and it was held that unless the amount was a liquidated amount, there could not be a promise to pay a debt within the meaning of Section 25. That decision cannot constitute an authority for the proposition that where there is no liquidated demand, there could be no debt. After referring to the decision reported in ILR 36 Cal 936 and the decision in (1883) 11 QBD 518, to which we have already referred, Mr. Justice G.K. Mitter came to the following conclusion :

"To merit deduction in the computation of net wealth the liability must not only be a debt but one solvendum in praesenti."

There is no discussion of the subject as to why a debt which is not solvendum in praesenti but solvendum in futuro should not be regarded as a debt owing within the meaning of Section 2(m). The learned Judge seems to be drawing a distinction between the expression "debt owing" and "debt accruing" and has relied upon the decision in (1883) 11 QBD 518, as laying down that it is only where a debt is accruing that it can be said that it may be solvendum in futuro; otherwise in all other cases it should be a debt solvendum in praesenti. The learned Judge has in the course of his observations stated as under :

"In our case a debt accruing will not be within the section : it must be debt owed."

"We have already referred to various cases which deal with the meaning of the expression "debt" and we have also referred to the meaning of the expression "owe". With respect to the learned Judge, we are unable to agree with his conclusion that it is only a debt which is solvendum in praesenti which can be regarded as a debt owed. The learned Judge in the course of his judgment has concluded the matter in words following :

"The result therefore is that although the assessee was liable to pay income-tax on the valuation date the actual amount of the liability was not ascertained until sometime thereafter by the passing of the Finance Act and determination made by the Income-tax Authorities. In any case no debt was owed by the assessee on the valuation date."

To the extent that the learned Judge lays down that the assessee was liable to pay income-tax on the valuation date, the observations of the learned Judge are against the contention urged on behalf of the revenue. The Commissioner would only derive support from the judgment to the extent that it lays down that as the actual amount of liability was not ascertained until sometime after the valuation date by the passing of the relevant Finance Act there was no debt owing by the assessee. In the judgment of Justice Laik we find that after setting out the dictionary meaning of the word "owe" to mean "yet to be paid or rendered" he proceeds to observe that in his view the

words "debt owed" in Section 2(m) of the Act denote that the obligation to pay the debt must be one in praesenti and not in futuro. He has further stated that the said view derives support from the decision of *Subramanian Chettiar v. Arunachallam Chettiar*<sup>28</sup>, There is no such decision which throws any light on the problem and in all probability there is some typographical error

<sup>28</sup> 29 Ind App 138 (PC)

when a reference has been made to a decision in 29 Ind App 138 (PC). With respect to the learned Judge in our view there is nothing either in the word "debt" or in the word "owed" or in the two words put together, which would lead to the conclusion that the obligation must not be one which is payable in the future in order to constitute a debt which is owing. The learned Judge at the end observes that the words "debt owed" have been intentionally used by the legislature and that they meant ascertained or certain amount which is opposed to inchoate, contingent, future unascertained, uncertain or imperfect obligations. With respect to the learned Judges we are unable to accept the conclusion to which they have arrived at on this point. This is sufficient to dispose of the first question.

35. We shall next deal with another aspect of the matter based on the provisions contained in Section 7(2)(a). Section 7 provides as under :

"7. Value of assets how to be determined :- (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 asset 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 value 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."

There has been a considerable divergence in connection with the interpretation of the language of this Section. Section 7(1) does not present any difficulty as it provides for the valuation of any asset other than cash and lays down that the same 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. The difficulty arises when that method is not adopted and when the Wealth-tax Officer proceeds

under Section 7(2). The words "notwithstanding anything contained in Sub-Section (1)" clearly convey that it is open to the Wealth-tax Officer instead of proceeding to estimate the value of the assets as laid down in Section 7(1), to proceed to do so under Section 7(2). The conditions precedent to his acting under Section 7(2) are (1) that the assessee must be carrying on a business and (2) that the accounts in respect of such business are maintained by him regularly. In that event the Wealth-tax Officer instead of determining separately the value of each asset held by the assessee in such business, 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 is entitled to make such adjustments therein as the circumstances of the case may require. It is strongly urged on behalf of the Commissioner that under the provisions of Section 7(2) what is required to be done is that instead of valuing each asset separately, the Wealth-tax Officer has to determine the value of the totality of the assets of the business. It is urged that the word "net" is tautologous, that this Section should be read as if the word "net" had been, absent and that what is only provided is that the value of the assets of the business as a whole has to be ascertained as the subsequent words require this value to be ascertained having regard to the balance sheet of such business. It is urged that the words "as a whole" govern the word "assets" and what is required to be determined is the value of the assets as a whole. Mr. Palkhivala on the other hand says that the method of valuation laid down in Sub-Section (2) is entirely distinct and different from the method of valuation employed in Sub-Section (1). He says that the words "net value of the assets of the business" have been deliberately used in order to convey that what is required to be done is to find out the value of the assets of the business as a whole after deducting the liabilities of the business. It is urged that the words "net value of the assets of the business as a whole" have a distinct meaning in accountancy and that those words implied that one has to value the assets of the business as a whole after deducting the liabilities of the business. It is urged that the words "as a whole" do not govern assets but govern business. There is considerable force in the argument advanced on behalf of the respondent in this connection. The words "net value of the business as a whole" also appear in clause (b) of Section 7(2). Clause (b) refers to the business of a company not resident in India and which does not maintain a separate balance sheet drawn up in respect of the affairs of such business in India. In such a case it is provided that the Wealth-tax Officer may take the net value 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". The words "as a whole" in this context must be held to govern business and not to govern assets. If we have to accept the argument of the learned Advocate General on this point, we would have to read the words "net value of the assets of the business as a whole wherever carried on" to mean "net value of the assets as a whole of the business wherever carried on". There is no warrant for such a construction. When the words "as a whole wherever carried on" follow upon the words "net value of the assets of the business", the same can only govern the word "business" and could not possibly govern the net value of the assets and it is not possible to split up the words "as a whole" and the words "wherever carried on" and to apply the words "as a whole" to the assets and the words "wherever carried on" to business. The strong argument advanced by the learned Advocate General was that what is liable to tax is the net wealth and the same has been defined with

reference to the aggregate value of all the assets minus debts owed by the assessee. We urged that what Section 7(2) contemplated was not the ascertainment of the net wealth but as the marginal note itself indicates, the value of the assets of the business and that what was provided by Section 7(2)(a) was a method for finding the value of the assets which would not include the value of the debts owed by the assessee which are required to be deducted in order to ascertain the net wealth. The learned Advocate General's contention would have had some force if the word "net" had not been used and if the words "as a whole" were not used in connection with "business". When the words "net value of the assets of the business as a whole" are used together, they can only convey that what is required to be ascertained is the net value of the assets of the business considered as a whole i.e., what is required to be ascertained is the value of the assets of the business considered as a whole after taking into account the liabilities of the business. What is sought to be provided by Section 7(2)(a) is what is known as the global method of valuation.

36. There are two different methods generally adopted to arrive at a global valuation from the balance sheet of a company. This global method of valuation has been well-understood as is shown by the questions referred. One of the questions which has been referred to us is in terms following :

"Whether on the facts and in the circumstances of the case and in the case of a business valued under Section 7(2)(a) of the Wealth-tax Act, the sum of Rs. 11,40,755/- being the provision for taxation is liable to be allowed as a deduction under the provisions of Section 2(m) of the Wealth-tax Act, 1957, as debt owed by the assessee on the valuation date ?"

It is admitted by both the sides that the Wealth-tax Officer has proceeded under Section 7(2)(a) whilst assessing the assessee to wealth-tax, the assessee being a company which has been carrying on business and which has maintained accounts of such business regularly. As stated by the Wealth-tax Officer in his order of assessment, the net wealth of the assessee has been determined on the basis of the net value of the assets of the business as a whole. It is made up as follows :

Paid up capital	Rs. 30,00,000	
Reserves and surplus as per balance sheet.	Rs. 1,12,39,079	
Out of liabilities claimed which are not proper debts :		
(a) Provision for taxation as per para 9.	Rs. 21,62,785	
(b) Proposed dividends as per para 10.	Rs. 5,83,188	
(c) Over provision in sundries as per para 8.	Rs. 11,341	Rs. 27,57,314
		Rs. 1,69,96,393
Less assets which are exempt :		
(i) Shares of the companies as per para 5.	Rs. 24,51,416	

(ii) Advance tax paid as per para 7.

Rs. 9,37,943      Rs. 33,89,359

Balance being net value of assets.

Rs. 1,36,17,034

What the Wealth-tax Officer has done is that from the balance sheet he has taken the paid up capital, the reserves and surplus and he has made the adjustments therein as the circumstances of the case required. It was urged on behalf of the assessee that where the Wealth-tax Officer proceeds to find the net value of the assets of the business of the assessee as a whole, he has of necessity to take into account the liabilities of the business. Reliance was placed upon the provisions of the balance sheet as required under the Indian Companies Act, 1956. Under the said Act a balance sheet is required to be prepared in the form set out in Part I of Schedule VI or as near thereto as the circumstances admit. Part I of Schedule VI on the liabilities side refers to –

- (1) Share capital;
- (2) Reserves and surplus;
- (3) Secured Loans;
- (4) Unsecured Loans;
- (5) Current Liabilities and Provisions.

Amongst the provisions mentioned is "Provision for Taxation". Part II of Schedule VI which deals with "Requirements as to Profit and Loss Account" provides by Rule 3 as under :

"The profit and loss account shall set out the various items relating to the income and expenditure of the company arranged under the most convenient heads; and in particular, shall disclose the following information in respect of the period covered by the account :

X X X X X

X X X X X

- (vi) The amount of charge for Indian income-tax and other Indian taxation on profits, including, where practicable with Indian income-tax any taxation imposed elsewhere to the extent of the relief, if any, from Indian income-tax and distinguishing, where practicable between income-tax and other taxation."

The balance in profit and loss account after providing for proposed allocations, namely, dividends, bonus or reserves, is liable to be shown under the head "Reserves and surplus" on the liabilities side of the Balance Sheet. In view of the requirements relating to the balance sheet and profit and loss account, it is urged that liability on account of income-tax and super-tax is liable to be taken into account in ascertaining the net value of the assets of the business as a whole when the Wealth Tax Officer proceeds to determine the same under the provisions of Section 7(2). There is considerable force in this argument. When the Wealth Tax Officer proceeds under Section 7(2) and has to determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business on the valuation date, he has to take into account the liabilities of such, business and amongst the liabilities of such business is the liability for payment of tax. The expression "Provision for Taxation" under the head "Current Liabilities and

Provisions" appearing on the liabilities side of the balance-sheet has a meaning given to it in Part III by Rule 7 relating to interpretation. That rule runs as under :-

"7(1) For the purposes of Parts I and II of this Schedule, unless the context otherwise requires, -

(a) the expression "provision" shall, subject to sub-clause (2) of this clause, mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

(b) the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability.

X X X

(2) Where -

(a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act; or

(b) any amount retained by way of providing for any known liability, is in excess of the amount which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision".

The expression "Provision for Taxation", therefore, refers to a provision for any known liability of which the amount cannot be determined with substantial accuracy which in the opinion of that Directors is reasonably necessary for the purpose. It is strongly urged that even if such liability did not amount to a debt owed within the meaning of Section 2(m) of the Act, it was a liability which has to be taken into account when proceeding under Section 7(2).

37. In dealing with this argument we have to bear in mind the fact that Section 7(2) is applicable not merely to companies governed by the provisions of the Companies Act, 1956, which have to prepare balance-sheets in accordance with the provisions of the Act but is also applicable to individuals who are assesseees and who carry on a business. In the case of a company which carries on a business and has a balance-sheet prepared in connection with that business, the net value of the assets of such business as a whole will have to be determined as provided in Section 7(2) and in such a case, on a plain reading of Section 7(2), the liability in respect of tax would be a liability which will have to be taken into account in ascertaining the net value of the assets of such business. It would be somewhat anomalous if in the case of a company which carries on business and prepares its balance-sheet, the liability for tax has to be taken into account but in the case of an assessee other than a company, such a liability is not intended by the legislature to be taken into account. The construction which we are placing upon the provisions of Section 2(m) brings about a harmonious and a consistent result whether the assessee is an individual or an

Hindu undivided family or a company.

38. The next point with which we shall deal with relates to the valuation of assets. It has been strongly urged on behalf of the assessee that when the assets are required to be valued, whether the Wealth-tax Officer proceeds under Section 7(1) or under Section 7(2), he must accept the written down value as ascertained by the income-tax authorities as the final value of the asset under consideration. When we turn to the provisions of Section 7(1) what is required to be done by the Wealth-tax Officer is that he should estimate the value of an asset other than cash by estimating the price which in his opinion the asset would fetch if sold in the open market on the valuation date. The written down value of an asset could not in every case be said to be the value which an asset would fetch if sold in the open market on the valuation date. A written down value may be more approximate to the price which an asset would fetch if sold in the open market if between the date of its acquisition or purchase and the valuation date no fluctuations have taken place in the price of that asset i.e., if a similar new asset could be purchased on the valuation date at the same price at which it was purchased when that asset was acquired. In a case where assets have appreciated in value, the written down value cannot be considered to represent the price, which the asset would fetch if sold in the open market on the valuation date. A written down value is arrived at after providing for normal depreciation at the rate permissible for the purpose under the provisions of Section 10 of the Income-tax Act. When permitting such depreciation the income-tax authorities, as far as possible, try to give a deduction for depreciation which would approximate with the depreciation which an asset likely to suffer by reason of use or by lapse of time other conditions remaining equal. Where the conditions change, it would not be possible to say that the written down value represents the price of that asset in the open market. There are numerous assets prices of which have either increased or decreased and it cannot invariably be the rule that the written down value should be the value which the Wealth-tax Officer is under obligation to take in determining the value of an asset.

39. We shall next deal with a case falling under Section 7(2). Under Section 7(2) when net value of assets of a business as a whole has to be determined regard should be had to the balance-sheet of such business. In numerous balance-sheets it is found that several assets are shown at cost. The price at which the same are shown could not possibly be in such circumstances the price which such asset would fetch if sold in the open market on the valuation date. No doubt there is a power given to the Income-tax Officer to make such adjustments as the circumstances of the case may require. It is urged that this power has to be exercised in order that the price of assets as shown in the balance-sheet may equate with the written down value of such assets as appearing in the records of the Income-tax Department. There is no warrant for such a conclusion. The written down value may be far from the real value of the asset on the valuation date. There cannot be any hard and fast rule in this matter and the Wealth-tax Officer is under no obligation to consider the written down value as the proper value of an asset. What the Legislature has provided is that when individual assets have to be valued, the Wealth-tax Officer is under an obligation to estimate the price at which the asset could be sold in the open market on the

valuation date and when acting under Section 7(2), a discretion has been given to him to make adjustments in the valuation as given in the balance-sheet as the circumstances of the case may require.

40. The next point with which we shall deal is in connection with advance payment of tax under Section 18-A. We have already held that where there is a present obligation to pay a sum of money, a debt would accrue and could be said to be owing within the meaning of Section 2(m) of the Wealth-tax Act even though it is payable in future. A debt may be owing even though it may not be immediately payable. From that point of view, even if we are wrong in holding that the ordinary liability for payment of income-tax and super-tax for the accounting year 1956 constituted a debt owing by the assesses on the valuation date and if it is found that the said liability was or the valuation date in reality a contingent liability, even then when a demand has been made under Section 18-A of the Income-tax Act for payment of a sum of money, even though it may be payable after the valuation date, it is a debt owing on the valuation date. To meet this contention the learned Advocate-General has relied upon some of the provisions contained in Section 18-A. It is not disputed that the liability under Section 18-A is a liability for tax. Section 18-A in terms refers to the liability as a liability by way of tax. Reliance has been placed upon Sub-Section (2) of Section 18-A which provides as under :

'(2) If any assesses who is required to pay tax by an order under Sub-Section (1) estimates at any time before the last installment is due that the part of his income to which that Sub-Section applies for the period which would be the previous year for an assessment for the year next following is less than the income on which he is required to pay tax and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax Officer an estimate of the tax payable by him calculated in the manner laid down in Sub-Section (1) on that part of his income for such period and shall pay such amount as accords with his estimate in equal installments on such of the dates specified in Sub-Section (1)(a) as have not expired or in one sum if only the last of such dates has not expired :

Provided that the assesses may send a revised estimate of the tax payable by him before any one of the dates specified in Sub-Section (1)(a) and adjust any excess or deficiency in respect of any installment already paid in a subsequent installment or in subsequent installments."

It is urged that where a notice has been issued under Section 18-A for advance payment of tax, the liability for payment of the same is not absolute and that it is open to an assessee who estimates that a lesser amount would be payable by him to proceed as laid down in Sub-Section (2). The mere fact that it is open to an assessee to proceed under Sub-Section (2) would not result in the amount which he is required to pay under the notice served upon him under Section 18-A(1) not becoming a debt owing by him unless and until he takes the proceedings required under Sub-Section (2). Sub-Section (2) represents a provision where under a liability which has

attached under Section 18-A(1), may be either reduced or may be extinguished. A condition subsequent the fulfillment of which may result in the reduction or even, extinction of liability would not have the effect of converting the liability which attaches under such notice under Section 18-A into a contingent liability. We are of the view that the Appellate Assistant Commissioner was right when he allowed a deduction in respect of the sum of Rs. 89,889/- being the amount of the installment of advance payment of tax payable on the 15th March, 1957. The liability in respect of such payment had accrued and was a debt owing by the assessee on the valuation date namely 31st Dec. 1956, even though it was payable on 15th March, 1957.

41. We shall now deal with the questions as framed. As regards question No. 1 it is urged that though in this case the sum of Rs. 11,40,755/- represents a figure based on the actual assessment being made under Section 23-B of the Income-tax Act, the words "provision for taxation" appearing in the question are liable to be misconstrued as implying that the same may be representing an actual provision for taxation made in the balance-sheet. In fact there is no such provision made in the balance-sheet. A deduction on account of liability for tax has to be allowed whether provisions of Section 7(2)(a) have been adopted or not. Under the circumstances we would reframe the question as under :-

"Whether on the facts and in the circumstances of the case, the sum of Rs. 11,40,755/- is liable to be allowed as a deduction ?"

As this sum of Rs. 11,40,755/- is made up of the following items, namely, the fourth installment of advance payment of tax under Section 18-A i.e., Rs. 4,02,068/- less the sum of Rs. 89,889/- already allowed by the Appellate Assistant Commissioner and a sum of Rs. 8,28,576/- being the income-tax paid on assessment being made under Section 23-B, the same is liable to be allowed by way of deduction. In this case the amounts were ascertained very shortly after the valuation date. In cases where such liability is not ascertained, the Wealth-tax Officer will have to properly evaluate that liability and allow the amount which on such evaluation represents the value of the existing obligation to pay tax on the valuation, date. Our answer to question No. 1 is in the affirmative.

42. The second question also requires to be slightly altered. The second question in reality would not arise in view of our answer to question No. 1. We are, however, answering the same if the true answer to question No. 1 is different from the one given by us. Question No. 2 as re-framed will be as follows :-

"Whether on the facts and in the circumstances of the case, Rs. 89,889/- being the last installment of advance tax due under Section 18-A as per the subsisting demand as on the valuation date though payable on 15th March, 1957, is not liable to be allowed as a deduction ?"

Our answer to that question is in the affirmative.

43. As regards the third question the value of the depreciable assets as shown in the balance-sheet of a company is not necessarily liable to be adjusted with reference to the written down value of such assets as per the Income-tax records. In the present case no evidence has been led to show that the value of the assets as shown in the balance-sheet is not the true value of the assets or that circumstances exist which require that adjustment should be made in the valuation as shown in the balance-sheet. On the facts and in the circumstances of the case, the value of the depreciable assets as shown in the balance-sheet of the company is not liable to be adjusted with reference to the written down value of such assets as per the income-tax records.

44. The Commissioner has succeeded in part and failed in part. The hearing in respect of the matters on which the Commissioner has failed has taken considerably more time than the hearing of the matter on which he has succeeded. Taking every circumstance into account, we think that the fair order to pass in this case would be that the Commissioner do pay to the respondent a sum of Rs. 1,000/- by way of costs and we order accordingly.

45. The questions have been re-framed by us. There will be no order on the Civil Application No. 7 of 1962 for amending the questions which has been made by the petitioner. There will be no separate order for costs in connection with that application.  
Order accordingly.