

BOMBAY HIGH COURT

Commissioner of Wealth-Tax

Vs

Standard Mills Co. Ltd

(V Desai, C.J. Y Tambe, J.)

17.04.1963

JUDGMENT

Y.S. Tambe, J.

1. This is a reference under sub-section (1) of section 27 of the Wealth-tax Act (hereinafter referred to as the Act). The assessee is a public limited company. The valuation date is 31st December, 1956, the corresponding assessment year being 1957-58. The company made up its accounts as at 31st December, 1956, and a copy of the balance-sheet and profit and loss account of the company is on the record of this reference as annexure "A". The Wealth-tax Officer proceeded to compute the net wealth of the assessee in accordance with sub-section (2) of section 7 of the Act without ascertaining the market value of each of the assets of the company in accordance with sub-section (1) of section 7 of the Act. In short, in making the valuation under sub-section (2) of section 7 the Wealth-tax Officer took the net value of the assets of the business as a whole having regard to the balance-sheet of the assessee as on the valuation date. He, however, made certain adjustments. The contentions raised by the assessee before the Wealth-tax Officer were two-fold. It first contended that provision had been made by it on an estimate basis to the extent of Rs. 33,14,504 to meet its tax liabilities in respect of the income-tax for the accounting year to the extent of Rs. 29,45,421 and in respect of the additional liability to pay business profits tax to the extent of Rs. 3,70,083 for the chargeable accounting periods between April 1, 1946, to 31st March, 1949. These amounts should be allowed as a deduction, they being debts owing by the assessee on the date of valuation. Its second contention was that provision had been made by it for the proposed dividends to be declared at the next annual general body meeting of the company to the extent of Rs. 20,23,500 and that amount should also be allowed as a deduction in the computation of the net wealth inasmuch as it was a debt owing by the assessee company on the valuation date. The Wealth-tax Officer did not allow the claim of the assessee for the sum of Rs. 3,70,083, which, according to the assessee, represented the taxes that would have been due on finalisation of the business profits tax assessment. He, therefore, directed that the sum of Rs. 3,70,083 should be added back. The Wealth-tax Officer also did not allow the claim of the assessee to the extent of Rs. 29,44,421, which, according to the assessee, represented the estimated liability of income-tax payable for the accounting year ending with 31st December, 1956, on the ground that the liability to pay income-tax would arise only on April, 1957, and not on the valuation date. He also did not allow the claim of the assessee for the deduction of the aforesaid proposed amounts set apart for being distributed as dividends. In the result, the Wealth-

tax Officer computed the net wealth of the assessee at Rs. 4,01,56,268.

2. Against the order of the Wealth-tax Officer the assessee preferred an appeal before the Appellate Assistant Commissioner and there again reiterated its contentions, which it had raised before the Wealth-tax Officer. The assessee also raised an additional contention before the Appellate Assistant Commissioner that as a result of awards made on October 28, 1948, October 17, 1954, and November 28, 1956, by the Industrial Court, liability to pay gratuity to the extent of Rs. 25,02,675 had accrued before the valuation date and deduction to the extent of the said amount should be allowed as a debt owing by the assessee on the valuation date. The Appellate Assistant Commissioner rejected the contention of the assessee relating to the claim for deduction on the ground of provisions for estimated excess for business profits tax and gratuity. As regards the estimated income-tax liability, the Appellate Assistant Commissioner found that in response to a notice of demand dated October 20, 1956, served on the assessee under section 18A(1) the assessee had paid the last instalment amounting to Rs. 2,95,869 in March, 1957. The Appellate Assistant Commissioner directed that this amount should be deducted in computing the net value of the assets of the assessee. In short the assessee obtained relief only to the extent of Rs. 2,95,869 and its other contentions were rejected by the Appellate Assistant Commissioner.

3. Now, as against the relief granted by the Appellate Assistant Commissioner in respect of the said amount of Rs. 2,95,869, the department preferred an appeal to the Tribunal. That was Wealth-tax Appeal No. 119 of 1958-59. It was dismissed. The assessee company also preferred an appeal against the rejection of its other claims and again reiterated before the Tribunal all its aforesaid contentions. As regards the assessee's appeal, the Tribunal held that the sum of Rs. 29,44,421 claimed as deduction in respect of the estimated income-tax liability relating to the assessment year 1957-58 should be allowed. Similarly, it held that the assessee's claim for deduction of Rs. 3,70,083 in respect of the estimated excess of the business profits tax liability could also be allowed. The Tribunal further allowed the claim of the assessee for deduction of a sum of Rs. 25,02,675, which, according to the assessee, represented the liability for payment of gratuity in accordance with the awards of the Industrial Court. The Tribunal rejected the assessee's claim for deduction of Rs. 20,23,500 representing the provision made by it for paying the proposed dividends to be declared in the next annual general body meeting of the assessee company.

4. On an application made by the Commissioner of Wealth-tax under sub-section (1) of section 27 of the Act, the Tribunal has drawn up a statement of the case and referred to us the following four questions of law as arising out of its orders :

"(1) Whether on the facts and circumstances of this case the last instalment of advance tax in the sum of Rs. 2,95,869 paid by the assessee after the valuation date in accordance with the notice of

demand dated October 20, 1956, is an admissible deduction under sections 7(2) and 2(m) of the Wealth-tax Act for the purpose of computation of the net wealth of the assessee for the assessment year 1957-58 ?

(2) Whether, on the facts and circumstances of the case in computing the net wealth of the assessee under section 7(2) read with section 2(m) of the Wealth-tax Act, the liability for income-tax and business profits tax could be allowed as a deduction ?"Counsel for parties agree that the second question requires a little modification. We, therefore, reframe the said question in the following terms : "Whether on the facts and circumstances of the case, in computing the net wealth of the assessee, the estimated liability for income-tax and business profits tax, as claimed by the assessee, could be allowed as a deduction under section 7(2) read with section 2(m) of the Act ?

(3) Whether on the facts and circumstances of the case the liability in the sum of Rs. 25,02,675 which arose as a result of the awards dated October 28, 1948, November 28, 1954, and October 17, 1954, before the valuation date or any part thereof is allowable as a deduction in determining the net wealth of the assessee under section 7(2) read with section 2(m) of the Wealth-tax Act ?

(4) Whether on the facts and circumstances of the case the sum of Rs. 20,23,500 being the provision made for dividends and shown as a liability in the balance-sheet of the assessee company could be allowed as a deduction in computing the net wealth of the assessee company ?"

5. Mr. Palkhivala, learned counsel appearing for the assessee, stated that the assessee does not press the fourth question, which has been referred at its instance. We are, therefore, here concerned only with the first three questions.

6. Before we proceed to deal with the questions, it would be convenient to refer to the relevant provisions of the Act. Section 3 is the charging section and provides :

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

"Valuation date" is defined in section 2(q) of the Act in the following terms :

"2. (q) 'Valuation date', in relation to any year for which an assessment is to be made under this Act, means the last day of the previous year as defined in clause (ii) of section

2 of the Income-tax Act if an assessment were to be made under that Act for that year."

7. The proviso is not material for the purpose of this case.

"Net wealth" has been defined in clause (m) of section 2 of the Act, which provides : "'net wealth' means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts 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, the Expenditure-tax Act, 1957, or the Gift-tax Act, 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."

8. Clause (e) of section 2 provides that "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."

9. Section 4 provides for inclusion of certain assets in computing the net wealth of an individual assessee even though they do not belong to him. It is not necessary to refer to all the items. Suffice it to say that they are in general assets which have been transferred by an individual assessee to his wife and minor child, not being a married daughter, otherwise than for adequate consideration. Section 5 provides that wealth-tax shall not be payable by an assessee in respect of

certain assets enumerated in the section and that such assets shall not be included in the net wealth of the assessee. It is not necessary to reproduce the various items mentioned in that section. Section 6 provides for exclusion of certain assets and debts in computing the net wealth of an assessee, who is not a citizen of India or who is not a resident in India, or a resident but not ordinarily resident in India. It is not necessary to refer to the items mentioned in the said section. Clause (1) of section 7 provides :

"The value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date.

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

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

10. It is not necessary to reproduce clause (b). It provides the mode for valuing the assets of an assessee company carrying on business where the assessee company is 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. Reading these provisions together it becomes clear that wealth-tax is a tax imposed on an individual, Hindu undivided family or a company in respect of his or its net wealth. Value of net wealth of the assessee is ascertained by valuing the assets in accordance with the mode provided in the Act, i.e., the total value as computed in accordance with the provisions of section 7 of the Act of the property of every description, movable or immovable, belonging to the assessee on the valuation date or which is deemed to belong to him minus the debts owed by the assessee on the valuation date, other than certain debts which are excluded by the express provisions of the Act. Here the deductions, which have been claimed by the assessee, were claimed on the ground that they were debts owed by the assessee on the valuation date. It is, therefore, necessary first to consider the ambit and scope of the expression "debt" within the meaning of clause (m) of section 2 of the Act.

11. Mr. Joshi, appearing for the revenue, had first contended that the word "debt" within the meaning of clause (m) of section 2 is an existing debt on the date of valuation or an ascertained sum payable either before or on the valuation date. He, however, later did not press his contention that a debt must be a debt which had become payable either before or on the valuation

date. In the result Mr. Joshi's contention before us had been that the expression "debt" within the meaning of section 2(m) is a liability existing on the date of valuation to pay an ascertained sum of money. In support of his contention Mr. Joshi referred us to the definition of the word "debt" in Earl Jowitt's Dictionary of English Law, certain observations from Mulla's Transfer of Property Act, Sabju Sahib v. Noordin Sahib, Doraisami Padayachi v. Vaithilinga Padayachi, Inland Revenue Commissioners v. Bagnall Ltd., Commissioner of Income-tax v. Basumal Jagat Narain and Kesoram Cotton Mills Ltd. v. Commissioner of Wealth-tax.

12. Mr. Palkhivala, on the other hand, contends that a "debt" within the meaning of section 2(m) means an existing obligation on the date of valuation to pay either in praesenti or in futuro, a sum of money ascertained or unascertained. According to him, what is the essence of a debt is a present existing obligation and not a contingent liability, which may or may not materialise. He referred us to certain observations in Webb v. Stenton, O'Driscoll v. Manchester Insurance Committee and Dawson v. Preston.

13. Having regard to these rival contentions, it may be noticed that Mr. Joshi as well as Mr. Palkhivala agree that on the valuation date there must be an existing obligation on the part of the assessee to pay money. The only difference between them is whether that obligation should be to pay an ascertained sum of money. The question, therefore, that arises for consideration is whether a debt within the meaning of section 2(m) is an obligation to pay an ascertained sum of money. Jowitt defines "debt" as :

"a sum of money due from one person to another. A debt exists when a certain sum of money is owing from one person (the debtor) to another (the creditor). Hence 'debt' is properly opposed to unliquidated damages; to liability, when used in the sense of an inchoate or contingent debt; and to certain obligations not enforceable by ordinary process. 'Debt' denotes not only the obligation of the debtor to pay, but also the right of the creditor to receive and enforce payment."

14. Mulla in his Transfer of Property Act, 4th edition, at page 735, observes :

"A debt is an obligation to pay a liquidated or certain sum of money..... A debt may be present or future : if it is present, it is existent or now due or owing. If it is future, it is existent but accruing or payable in the future..... both present and future debts are existing debts and can be attached and are actionable claims. In order to be an accruing debt there must be a present debt, although it may be payable in the future."

15. Facts in Sabju Sahib v. Noordin Sahib were : A Mohammedan, being the son of a deceased member of a firm, 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 taken out neither the letters of administration nor a succession certificate. A contention was raised that the suit was not maintainable, the plaintiff not having obtained a succession certificate. The question that fell for consideration before the Madras High Court was whether the claim of the plaintiff was for recovery of a debt within the meaning of section 4 of the Succession Certificate Act, 1889. There being a difference of opinion between Shepherd C.J. and Benson J., the question was referred to a third judge, Subramania Ayyar J. The learned judge observed :

"Now the obligation, enforced in this case, is the implied one that every partner is accountable to the other partners with reference to the principle that each must share the profits and the losses proportionately. The liability arising from this obligation cannot be held to be a debt in the accepted ordinary legal sense of the term, for the obvious reason that the liability is not in respect of a liquidated sum."

16. In *Doraisami Padayachi v. Vaithilinga Padayachi* the facts in brief were : the plaintiffs and the defendants were partners. The partnership came to an end some time in 1905. Disputes having arisen between the partners, the matter was referred to arbitration in 1907. Nothing was done by the arbitrator till 1910. In that year the defendant wrote a letter in the following terms :

"As my sons, Govindan and Ponnann, are not in the village to settle the accounts relating to the trade carried on by me and Sinan, I shall bring and produce the said two persons at Vilandidasamudram before tomorrow 10 o'clock, and I shall settle the said accounts. In default I shall pay the amount due as per account together with interest thereon at the rate of 3 pies per rupee per day."

17. It appears that the defendant did not keep up his promise. The arbitrator also died in the year 1910 and the suit was instituted by the plaintiff against the defendants in the year 1911. The plea raised was that the suit was barred by time. The plaintiff countered the defendant's plea of bar of limitation by saying that the aforesaid letter given by the defendants in 1910 was a promise made in writing by the defendant to pay a debt within the meaning of section 25 of the Contract Act. The courts below upheld the plea of the defendants and dismissed the suit. The question whether the letter constituted an acknowledgment and a promise to pay the debt was referred to the Full Bench. It was held that the letter did not constitute a promise to pay a debt within the meaning of section 25 of the Contract Act. Following the decision in *Sabju Sahib v. Noordin Sahib*, it was, at page 34, observed :

"Assuming, as stated in the order of reference, that the meaning of the letter was that the writer promised to pay the amount which might be found due by the arbitrator on taking

the accounts of the partnership, we are clearly of opinion that this was not a promise to pay a 'debt' within the meaning of section 25 of the Indian Contract Act. We think that the word 'debt' used in this context must be taken to have been used in its ordinary meaning of a sum payable in respect of a money demand recoverable by action."

18. In *Commissioner of Income-tax v. Basumal Jagat Narain* the assessee had claimed certain deductions as his bad debts. The assessee was a distributor and an exhibitor of films. He had financed the film producers. The amount advanced by the assessee was recoverable in a particular manner mentioned in the contract between them. At page 453 of the report, it was observed :

"A debt is that which one owes to another; any money, goods or services that one is bound to pay another; a pecuniary due; a liquidated demand; a sum of money due by certain and express agreement. It includes any claim or demand upon which a judgment for a sum of money or directing the payment of money can be recovered in an action. Debt denotes not only the obligation of the debtor to pay but also the right of creditors to receive and enforce payment."

19. The question that arose for consideration in *Inland Revenue Commissioner v. Bagnall Ltd.* related to the construction of the word "debt" in the Finance Act (No. 2) of 1939, Schedule VII. At page 206 Macnaghten J. observed :

"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 Act (No. 2), 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."

20. One of the questions that arose for decision in *Kesoram Cotton Mills Ltd. v. Commissioner of Wealth-tax* and which also is one of the questions that arises before us, was whether in computing the net wealth of the assessee the amount for the payment of income-tax and super-tax in respect of the income of the year of account was a debt owed within the meaning of section 2(m) of the Wealth-tax Act and as such deductible in computing the net wealth of the assessee. It was held that the assessee was not entitled to claim deduction of the amount. At page 39, Mitter J. observed :

"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."

At page 44, he further observed :

"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 some time thereafter by the passing of the Finance Act and the determination made by the income-tax authorities. In any case no debt was owed by the assessee on the valuation date."

At page 49, Laik J. Observed :

"In the instant case when the words 'debt owed' have been intentionally used by the legislature they mean ascertained or certain amount which is opposed to inchoate, contingent, future, unascertained, uncertain or imperfect obligations."

21. Mr. Joshi also has placed reliance on the following observations at page 289 of *Doorga Prosad v. Secretary of State*, which are in the following terms :

"In their Lordships' opinion, although income-tax may be popularly described as due for a certain year, it is 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."

22. Relying on these observations, Mr. Joshi had contended that unless a notice of demand is issued, there is no debt owed by the assessee in respect of his income-tax liability.

23. The question that was being considered was that the point of time at which the tax is imposed on the total income of the assessee or the point of time at which there comes into existence an existing liability to pay tax by the assessee. On the other hand, these observations relate to the point of time at which the tax becomes payable. The last sentence repels the contention of the assessee that it was a debt due in respect of a particular year and that year not having been mentioned in the certificate, the recovery proceedings were bad and invalid.

24. The decisions and passages on which Mr. Joshi has placed reliance, no doubt, go to support his contention that in the accepted ordinary and proper sense "debt" means an existing liability in respect of a liquidated sum. However, it has been held in the decisions, on which Mr. Palkhivala has placed reliance and to which we will presently advert, that for an existing obligation to be a debt it is not necessarily a condition precedent that it should be for an ascertained amount, but as it would appear from the observations of Macnaghten J. as well as from the two decisions which have been referred to us, that the word "debt" has been used in certain enactments so as to cover a mere liability to pay money though not an ascertained sum of money.

25. Facts in *O'Driscoll v. Manchester Insurance Committee* were : An insurance committee, acting under the National Insurance Acts, 1911 and 1913, and the Regulations made thereunder, entered into an agreement with the panel doctors of their district by which the whole amounts received by the committee from the National Insurance Commissioners were to be pooled and distributed among the panel doctors in accordance with a scale of fees; the 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. Dr. Sweeny was one of the medical practitioners in the panel of doctors of that particular district. He had done work and an amount which would be found due to him under the scheme was payable to him. The judgment creditor of Dr. Sweeny attached the sum in the hands of the National Insurance Committee, which would be found payable to Dr. Sweeny. Question that arose for consideration was whether, in the circumstances, there was any debt owed by the insurance committee to Dr. Sweeny, which could be attached in the hands of the insurance committee in execution of a decree obtained by the judgment creditors against Dr. Sweeny. It was contended that there was no debt owing by the insurance committee to Dr. Sweeny, inasmuch as the sum payable to Dr. Sweeny was not ascertained. This contention was overruled and it was held that there was a debt owing by the insurance committee to Dr. Sweeny which could be attached. Lord Justice Swinfen Eady, at page 512 of the report, observed :

"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."

At page 515, Lord Justice Phillimore observed :

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

for 1913, and that there was a provisional payment due to the doctors for the first quarter of 1914. Therefore for each of those periods there was a debt owing or accruing from the insurance committee to Dr. Sweeny, and it is well established that a debt so payable, though solvendum in futuro is attachable under Order XLV, rule 1. It is not like the case of unliquidated damages which are not a debt until judgment."

26. A similar question arose in *Dawson v. Preston*. The facts of that case were : The plaintiff, who was a legally aided person, received pound 350 damages in consequence of a settlement of his action. The said sum was paid in July, 1954, to the Law Society for the Legal Aid Fund in accordance with the Legal Aid and Advice Act, 1949, and the Legal Aid (General) Regulations, 1950. Part of the sum was paid to the plaintiff leaving a balance in the legal aid fund subject to any charge conferred on the Law Society by the Act to cover the prescribed deductions, which remained to be quantified, i.e., the deduction for taxed costs of the action. In November, 1954, the judgment creditor, who had previously obtained a decree against the plaintiff, obtained a garnishee order nisi on the Law Society as administrators of the Legal Aid Fund. Objection was raised on behalf of the plaintiff on the ground that at the date of the garnishee order, there was not a debt owing to him from the Law Society, inasmuch as there was no ascertained amount payable to him by the Law Society and, therefore, there was not an existing debt which could be attached. This contention raised by the plaintiff was not accepted. At page 317 of the report, the learned Chief Justice Lord Goddard observed :

"A garnishee order on the Law Society will act as an attachment of the money in the hands of the Law Society, but it will only attach the money which is payable by the Law Society to the legally aided person. The fact that the amount which they have to pay over has not been ascertained at the date of the order nisi is quite immaterial. If there is a debt, the fact that the debt has to be quantified does not make it any the less a debt which is owing, although the amount which is to be paid may have to wait until some calculations or taxations are gone through."

27. It would thus be seen that it cannot, as an invariable rule, be said that for an existing obligation to pay money to be a "debt", it must necessarily be for an ascertained sum. The word "debt" has been used in certain enactments in the sense of an existing obligation to pay an ascertained sum of money and in some other enactments to include an existing obligation to pay a sum of money, though its ascertainment may come at a later stage. The word "debt" in section 2(m), which we have to construe, is in a taxation statute and as we have already shown, it is capable of being understood to include an existing obligation to pay an ascertained sum of money as well as an existing obligation to pay money, though the amount may not have been yet ascertained. It is a well settled principle of construction of taxation statutes that the construction

more favourable to an assessee should be preferred unless the context requires otherwise. It can hardly be disputed that it would be to the advantage of the assessee that he should be entitled to claim deduction in respect of his tax liability on its getting attached to his income. Otherwise, he would for some years be required to pay tax not on his net wealth but what in reality is his tax liability. In normal course, completion of assessment proceedings takes time, even years.

28. Mr. Joshi next contends that even assuming that the word "debt" in section 2(m) is wide enough to include a mere existing obligation to pay money, it has not been used in that sense as clause (iii) of section 2(m) would indicate. Clause (iii) speaks of exclusion of debts in respect of tax, penalty or interest payable in consequence of any order from the aggregate value of all the debts when conditions in either of the sub-clause (a) or (b) are fulfilled. The obligation is for an ascertained sum. The argument is that the liability directed to be excluded from the aggregate value of the debt being for an ascertained sum, "the debts" from the aggregate value of which it is directed to be excluded, must be for ascertained sums.

29. We find it difficult to accept the argument of Mr. Joshi. Clause (i) to (iii) of section 2(m) enumerate certain debts owed by the assessee which are excluded from the aggregate value of all the debts. Clause (iii) is one of such debts. The fact that certain amounts due in consequence of an order made are excluded in certain circumstances from the aggregate amount of the value of the debts cannot lead to an inference that for an existing obligation to be a debt, it must be for an ascertained sum. No doubt, an obligation to pay an ascertained sum of money is a debt, but that does not mean that an existing obligation to pay later a sum of money to be ascertained is not a debt. In our opinion, therefore, on an examination of the aforesaid decisions, a "debt" in its wider import means an existing obligation to pay a sum of money either ascertained or unascertained whether payable in praesenti or in futuro, but not a contingent obligation to pay a sum of money or an obligation to pay damages, though in its restricted sense it means an existing obligation to pay an ascertained or liquidated sum of money either payable in praesenti or in futuro.

30. For reasons stated above, in our opinion, the word "debt" has been used in section 2(m) in its wider import.

31. Turning to the first question, which relates to the deduction claimed by the assessee in respect of the sum of Rs. 2,95,869, facts found are that on 20th October, 1956, i.e., some time before the valuation date, the Income-tax Officer had issued a notice of demand for advance payment of tax under section 18A(1); the last installment of which was for a sum of Rs. 2,95,869 payable in March, 1957. It has also been found as a fact that the assessee did pay the said amount in March, 1957. The facts found show that on the date of valuation, i.e., 31st December, 1956, there was an existing obligation on the part of the assessee to pay the amount of Rs. 2,95,869 to the revenue, though the amount was not payable on the valuation date. On the view we have taken of the

meaning of the word "debt" in section 2(m) of the Act, there was clearly an existing debt on the date of valuation within the meaning of section 2(m) of the Act. The Appellate Assistant Commissioner as well as the Tribunal were, therefore, right in allowing the deduction of the said amount as claimed by the assessee.

32. Our answer to the first question, therefore, is that the said sum is an admissible deduction under section 2(m) of the Act for the purpose of computation of net wealth of the assessee for the assessment year 1957-58.

33. This brings us to the second question. It is a composite question and relates to both the liabilities of the assessee in respect of the payment of income-tax and business profits tax. Deduction to the extent of Rs. 3,70,083 has been claimed as estimated liability relating to the payment of business profits tax and Rs. 29,44,421 have been claimed as representing the estimated liability for payment of income-tax on the profits of the accounting year ending 31st December, 1956. We would first deal with the deduction claimed to the extent of Rs. 3,70,083 as an estimated liability for payment of the business profits tax, which, according to the assessee, would be due from it, in addition to the business profits tax paid by it on a provisional assessment of the business profits tax made on it. The assessee's claim has been allowed by the Tribunal, but the Tribunal does not appear to have accepted that the estimated liability may amount to Rs. 3,70,083. On the other hand, the Tribunal has held that the assessee would be entitled to deduction of the estimated sum found due on verification by the department towards the business profits tax. He has left the verification of the figures to the Wealth-tax Officer. Now, it is not in dispute that the Business Profits Tax Act was in force only during the period from April 1, 1946, to March 31, 1949. The period is much before the valuation date. There can hardly be any doubt that the liability, if any, of the assessee to pay any further sum towards business profits tax would be an obligation existing much prior to the valuation date and would be a subsisting obligation on the valuation date. On the view taken by us, therefore, the assessee would be entitled to claim a deduction in respect of the estimated liability towards the business profits tax as would be verified by the department in computation of its net wealth under section 2(m) of the Act.

34. This brings us to the alleged claim by the assessee for a deduction of Rs. 29,44,421 which, according to the assessee, would be payable by it as income-tax for the assessment year 1957-58 according to their estimation. The said sum was, according to the assessee, an estimated liability on 31st December, 1956, and it included the amount of Rs. 2,95,869 covered in the first question. The relief in respect of the said amount was granted to it by the Appellate Assistant Commissioner. The claim of the assessee for deduction on the ground of provision for estimated income-tax liability would now stand reduced to Rs. 26,48,552 (29,44,421 minus 2,95,869). The provision for the income-tax liability which has been made, is for the current accounting year,

viz., accounting year ending on the 31st December, 1956. The question that falls for consideration is whether on the last date of the accounting year does any obligation in law fasten on an assessee to pay income-tax ? In other words, if in law income-tax is imposed on the assessee on the last date of the accounting year, then it would be an existing obligation to pay the sum on that day. It is the contention of Mr. Joshi that having regard to the provisions of section 3 of the Indian Income-tax Act, it is clear that the tax is not imposed on the assessee by any of the provisions of the Indian Income-tax Act, but on the other hand the tax is imposed by the Finance Act passed by the Central Legislature. In other words, the contention of Mr. Joshi is that the tax is imposed after the expiry of the previous year because the relevant Finance Act necessarily is passed after the expiry of the previous year. In support of his contention Mr. Joshi has referred us to the two decisions in *Commissioner of Income-tax v. Western India Turf Club and Maharajah of Pithapuram v. Commissioner of Income-tax*. Mr. Palkhivala, on the other hand, contends that the tax liability under the Indian Income-tax Act arises not later than the close of the accounting year and is, therefore, an existing obligation to pay a sum of money on the valuation date, and the Finance Act only prescribes the rate at which the tax is to be charged, the Finance Act only quantifies the amount of tax payable. He placed reliance on the decisions reported in Wallace Brothers and Co. Ltd. v. Commissioner of Income-tax and Chatturam v. Commissioner of Income-tax. Mr. Mehta, who also appears for the assessee, has also referred us to a decision of the Supreme Court reported in Chatturam Horilram Ltd. v. Commissioner of Income-tax.

35. Section 3 of the Income-tax Act provides :

"3. 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."

36. Section 6 enumerates the different heads of income chargeable to income-tax. Now, it is true that income-tax at the rate provided in the Central Act is charged on the assessee in respect of his total income of the previous year by virtue of the provisions of section 3, but the clause "where any Central Act enacts that income-tax shall be charged for any year at the rate of rates" clearly indicates that the passing of the Central Act referred to in section 3 is a condition precedent to the imposition of the income-tax under section 3. In effect, therefore, it is the passing of the Central Act, known as the Finance Act, which virtually imposes income-tax on an assessee and not the provisions of section 3 by themselves. Section 3 determines what person and in respect of what income are liable to be charged. It is the enacting of the Central Act that brings into existence the

imposition of tax on that person in respect of his income of the previous year. It would, therefore, follow that unless a Central Act providing that income-tax shall be charged for any year at the rate mentioned in the Act is enacted, there is no imposition of income-tax on an assessee. It is not in dispute that the Central Act, i.e., the Finance Act, is passed on 1st April of the year or some time thereafter. Clearly, therefore, it cannot be said that income-tax is imposed on an assessee at the close of the accounting year, but the imposition of tax takes place subsequent thereto on the passing of the Central Act. In 1940 there has been an amendment to the Income-tax Act and section 67B has been brought on the statute book. It reads :

"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."

37. Section 67B has been brought on the statute book obviously to get over the difficulty that may arise in the event the Central Act is not enacted on the 1st day of April of any year. In such a contingency this section gives continuity to the Finance Act of the preceding year and extends the life of the earlier Finance Act to the date of the passing of the Finance Act of the current year, giving benefit, however, to the assessee as to rates, which would be favourable to him, that is, those under the Finance Act of the previous year or those provided in the proposed Bill of the Finance Act of the current year, which is then pending before Parliament. This section takes effect on 1st of April and not earlier.

38. Facts in Commissioner of Income-tax v. Western India Turf Club Ltd. were : The assessee, the Western India Turf Club Limited, originally was an unincorporated association and was converted into a limited company under the Indian Companies Act, 1913, on the 1st day of April, 1925. On an assessment to super-tax for the year 1925-26 on the income of the club in the previous year at the scale of rates prescribed under Schedule III of Part II(b) of the Finance Act, 1925, the assessee company contended that the assessment must be made at the flat rate of one anna applicable to a company. On the other hand, the department contended that the tax must be levied at the rate applicable to corporations, individuals or associations not being companies, which was more advantageous to the revenue than the rate applicable to companies. The contention of the department had not been accepted and an appeal was taken to the Privy Council by the Commissioner of Income-tax. One of the contentions raised on behalf of the Commissioner was that because under section 55 of the Indian Income-tax Act, 1922, the super-tax is to be charged on an unincorporated club in respect of the total income of the previous year and the rate of tax applicable is the rate applicable to that company and not the rate applicable to

an incorporated company. As already stated, the unincorporated association was converted into a limited company on 1st April, 1925. If the tax was imposed at the close of the accounting year, the imposition would be on an unincorporated association. If, on the other hand, the tax was imposed after the close of the accounting year, on the passing of the Central Act, then imposition of tax was on a company. That would affect the rate at which the tax was to be computed. The contention of the Commissioner was not accepted by their Lordships of the Privy Council. At page 495 of the report, it has been observed :

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

39. The following observations of their Lordships of the Privy Council are also to the same effect. At page 223 of the case in *Maharajah of Pithapuram v. Commissioner of Income-tax*, it is observed :

40. These observations of their Lordships make it abundantly clear that no liability to tax g"
"In the second place it should be remembered that the Indian Income- tax Act, 1922, as amended from time to time, forms a code, which has no operative effect except so far as it is rendered applicable for the recovery of tax imposed for a particular fiscal year by a Finance Act. This may be illustrated by pointing out that there was no charge on the 1938-39 income either of the appellant or his daughters, nor assessment of such income until the passing of the Indian Finance Act of 1939, which imposed the tax for 1939-40 on the 1938-39 income and authorised the present assessment."

ets attached to the income of the assessee until the passing of the Finance Act.

41. The observations on which Mr. Palkhivala has placed reliance in *Wallace Brothers and Co. Ltd. v. Commissioner of Income-tax* are 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."

42. The observations in *Chatturam v. Commissioner of Income-tax*, on which reliance has been placed by Mr. Palkhivala, are the observations made by Lord Dunedin in *Whitney v. Commissioners of Inland Revenue*. They are in the following terms :

"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 particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

43. In our view neither of these observations relate to the point of time at which the tax gets attached to the total income of the assessee. Nor do they run counter to the rule laid down by their Lordships of the Privy Council in the two decisions on which Mr. Joshi has placed reliance. All these decisions read together indicate that the income earned by the close of the accounting year is liable to attract tax and a person earning the income renders himself liable to be taxed at that point of time, but the point of time at which the tax gets attached to the income and the tax is imposed on the person in relation to his income, would be the passing of the Finance Act, which would, as already stated, necessarily be after the close of the accounting year. The position is made clear by their Lordships of the Supreme Court in Chatturam Horilram Ltd. v. Commissioner of Income-tax. The facts in that case were that the assessee company carrying on business in Chota Nagpur was assessed to tax in the year 1939-40 but the assessment was set aside by the Income-tax Appellate Tribunal on 28th March, 1942, on the ground that the Indian Finance Act of 1939 was not in force during the assessment year 1939-40 in Chota Nagpur which was a partially excluded area. The High Court agreed with this view. On 30th June, 1942, Bihar Regulation IV of 1942 was promulgated by which the Indian Finance Act of 1939 was brought into force in Chota Nagpur retrospectively as from 30th March, 1939. In 1944 the Income-tax Officer passed an order that the income of the assessee for the year 1939-40 had escaped assessment and issued to the assessee on 12th January, 1944, a notice under section 34. The question that was raised before their Lordships of the Supreme Court was whether this notice was a valid notice. The main contention raised on behalf of the assessee before their Lordships was that during the relevant year 1939-40 the income was not chargeable to tax as a fact and that the retrospective operation of the Finance Act for the relevant year by virtue of the later legislation does not make a difference for this purpose. This contention was rejected by their Lordships. In considering the question their Lordships considered the scheme of the Income-tax Act and its correlation to the Finance Act of each year. At page 715, it is observed :

"The Income-tax Act is a standing piece of legislation which provides the entire machinery for the levy of income-tax. The Finance Act of each year imposes the obligation for the payment of a determinate sum for each such year calculated with reference to that machinery."

44. After considering the various decisions and the provisions of section 3, at page 716, their

Lordships observed :

"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. A comparison of section 3 and 6 of the Act shows that the Act recognises the distinction between chargeability and the actual operation of the charge."

45. It is thus clear that it is the passing of the Finance Act that brings into operation the imposition of income-tax. In our judgment, therefore, there was no imposition of income-tax on 31st December, 1956, on the assessee, the Finance Act not having been passed by that time. Thus, there being no existing liability to pay tax on that date, which was the valuation date, there was on that date no debt owed within the meaning of section 2(m) of the Act. The deduction claimed by the assessee for the estimated income-tax liability on the ground that it was a debt owed by the assessee on the valuation date cannot, therefore, be allowed.

46. Mr. Palkhivala in the alternative contends that even assuming that the estimated tax liability was not a debt within the meaning of section 2(m) of the Act, it is still an allowable deduction under section 7(2)(a) of the Act. The argument is that the Wealth-tax Officer has valued the assets of the assessee under section 7(2)(a) having regard to the balance-sheet of the assessee-company. The assessee-company has in its balance-sheet shown the estimated income-tax liability as a liability. According to Mr. Palkhivala, the assessee having shown it as a liability in its balance-sheet, it was not open to the Wealth-tax Officer to exclude that amount in computing the aggregate value of the assets of the assessee-company even though it be not a debt. Laying emphasis on the clause "notwithstanding anything contained in sub-section (1)" appearing in the preamble of sub-section (2), the expressions "net value", "as a whole", and "having regard to the balance-sheet" occurring in clause (a) of sub-section (2) Mr. Palkhivala argues that section 7(2)(a) is a complete code for assessment of wealth-tax. What is contemplated by section 7(2)(a) is not merely ascertainment of the value of the assets, but ascertainment of the valuation of the net wealth of the assessee. In doing so, the Wealth-tax Officer must take the value off the totality of the business as such as shown in the balance-sheet and that is the excess of the assets over the liabilities as shown in the balance-sheet. The adjustment which the Wealth-tax Officer is permitted to make under section 7(2)(a) is only to exclude from the assets such assets which are not to be included in computing the net wealth of the assessee or exclude the liabilities which have to be excluded under the provisions of the Act from computing the aggregate value of debts. The Wealth-tax Officer may also, if he finds that the figures mentioned in the balance-

sheet have not been truly stated, examine the correctness of the figures, but beyond that the Wealth-tax Officer has no power to make any adjustment. The Wealth-tax Officer cannot disallow any amount shown as a liability in the balance-sheet merely because it is not a debt under section 2(m) of the Act.

47. We find it difficult to accept Mr. Palkhivala's contention that section 7(2)(a) is a complete code for ascertainment of the net wealth of the assessee. On the other hand, in our opinion, on a fair reading of sub-section (1) and (2) of section 7 they provide only the mode of valuing the assets. The primary mode as will be seen from sub-section (1) of section 7 is to make an estimate as to the price at which the asset would be sold and that would be the value of the asset. Sub-section (2), however, gives an option to the Wealth-tax Officer not to follow this method of valuing each asset by estimating its market price in case where the assessee is carrying on a business and the Wealth-tax Officer has to value the assets of the business belonging to the assessee. It provides that instead of valuing each asset separately, he may value the assets of the business as a whole in a bulk and ascertainment of that value should be having regard to the balance-sheet of the business. There would naturally be items in the balance-sheet which would show the assets as well as the liabilities. The Wealth-tax Officer has been given power to make necessary adjustments in the balance-sheet as the circumstances of the case may require. It is difficult to read any restriction on this power of the Wealth-tax Officer as is contended by Mr. Palkhivala. The expression "net value" also does not carry the matter any further. The word "net" means clear of all charges and deductions, but what kind of deductions again is a question. As we have said, the subject-matter of section 7(2)(a) is valuation of the assets of the business as a whole and it directs the Wealth-tax Officer to ascertain it, having regard to the balance-sheet, and make such adjustments therein in the ascertainment of the net value of the assets of the business and that, in our opinion, means taking into consideration for the purposes of ascertainment of net value, such liabilities as have a bearing on the question of valuation of the assets. To illustrate, we may take the case of an assessee, who has borrowed some money for acquisition of an asset on its mortgage and that amount is shown on the liabilities side. Now, the assessee would be entitled to ask the Wealth-tax Officer to take that amount into account in ascertaining the net value of the assets as it has a direct bearing on the question of assessing the net value of the assets, but the liabilities shown in the balance-sheet which have no bearing on the question of valuation of the assets, the assessee, in our opinion, on the terms of section 7(2)(a) would not be entitled to claim as a deduction under that section. Under section 7(2)(a) liabilities other than those having a bearing on the valuation of the assets could only be claimed if they are debts within the meaning of section 2(m) of the Act. Now, the deduction which is claimed is in respect of an amount of estimated income-tax liability. It can hardly have any bearing on the question of valuation of assets of business. Income earned in a business is a thing apart from the assets of the business. On the view taken by us the assessee is not entitled to claim it as a deduction under

section 7(2)(a) of the Act. We have already discussed above that it is not a debt within the meaning of section 2(m) of the Act. In our opinion, therefore, for reasons stated above, the second question will have to be answered in the negative, i.e., against the assessee, so far as its claim relating to the said estimated income-tax liability is concerned. We answer it accordingly.

48. This brings us to the third question. Facts relevant to the third question may briefly be stated. Before the valuation date three awards have been made by the Industrial Court on October 28, 1948, November 28, 1956, and October 17, 1954, one relating to the clerical staff of the assessee company, another relating to the employees excluding clerical staff and the third for technical and supervisory staff. These awards, inter alia, provide that gratuity should be paid at the rate of one month's salary for each year of service subject to the maximum of 15 months' salary on the death of an employee while in service or become physically or mentally incapacitated from further service, on voluntary retirement or resignation after 15 years' continuous service, on termination of service after ten years or more of continuous service. It further provides that gratuity will not be paid to any employee who is dismissed for dishonesty or misconduct. The assessee did not show any amount in its balance-sheet as a liability on the said account of gratuity. On the other hand, the balance-sheet mentions that gratuity amount, which, according to the assessee, is a contingent liability, is not shown as it was indeterminate. Even though no amount is shown as a liability on account of gratuity, the note at the foot of the balance-sheet is in the following terms :

"In the opinion of the board, the current assets are approximately of the values stated, if realised, in the ordinary course of business. The provision for depreciation and for all known liabilities is adequate and not in excess of the amount reasonably necessary."

49. No deduction was claimed by the assessee before the Wealth-tax Officer for any liability on this account on the ground that a liability had accrued in respect of the payment of gratuity. For the first time, deduction for a sum of Rs. 25,02,675 was claimed before the Appellate Assistant Commissioner on the ground that it was an accrued liability in respect of gratuity payable to its workmen and staff as per the aforesaid awards of the Industrial Court. This claim was, however, not allowed by the Appellate Assistant Commissioner. On behalf of the department it was contended before the Tribunal that the claim should not be allowed for the reason that the company had not made any provision in its balance-sheet therefore. The Tribunal relying on its previous decisions in Wealth-tax Appeal No. 81 of 1958-59 allowed the deduction claimed in respect of gratuity subject to the verification of the figures. The relevant extract of the decision in the aforesaid Appeal No. 81 of 1958-59 is made a part of the statement of the case. It also does not give any reasons for the view taken by the Tribunal. But it has been only observed :

"When a Labour Tribunal allows the employees' claim for gratuity a liability is created in

favour of the employees as from the date of the award. The income-tax authorities should, therefore, allow the assessee to treat the unpaid gratuity as a liability of the business as on the date of the valuation. Where the award is given subsequent to the date of the valuation it cannot be taken into account."

50. The reason which appears to have weighed with the Tribunal is that the employees' claim for gratuity when granted by the Industrial Court is a liability of the business and, therefore, should be allowed as a deduction.

51. We have discussed above that the deductions which the assessee can claim under the Wealth-tax Act are in respect of an amount which is a debt within the meaning of section 2(m) of the Act or a liability which has got a bearing on the question of valuation of the assets of the business as a whole when valued under section 7(2)(a) of the Act. We have also further observed that a contingent liability is not a debt within the meaning of the Act. Admittedly, it is not in dispute that the award allowing the claim of the employees for gratuity is not an existing liability, but would be a contingent liability on the happening of certain events, viz., death of an employee or incapacitation of the employee or retirement of an employee or resignation of an employee. The liability in respect of any particular employee may not even arise if his services are dispensed with on the ground of dishonesty or misconduct. Mr. Palkhivala conceded before us that a liability in respect of the claim of the employees for gratuity awarded by the Industrial Court is not a debt within the meaning of section 2(m) of the Act. He, however, has contended that it should be allowed as a deduction in valuing the assets of the business of the assessee under section 7(2)(a) of the Act. In the first instance, assuming that there is any liability, it has no bearing and could not have any bearing on the valuation of the assets. Apart from it, to sustain a claim for deduction under section 7(2)(a), it must, in the first instance, be shown that it is a liability shown in the balance-sheet. We have already stated that the balance-sheet for the relevant period does not show the liability in respect of gratuity as a liability. On the contrary, even without showing any amount on the liabilities side in respect of the claim of gratuity, there is a note of the directors that the balance-sheet depicts to the shareholders a correct picture of the affairs of the company and the value of its assets and liabilities. The balance-sheet further shows that the gratuity actually paid to its employees in the course of the accounting year has been shown as a current expenditure in the profit and loss account. These being the facts and circumstances of the case, the third question will have to be answered against the assessee.

52. In the result, we answer the first question in the affirmative.

53. The second question is answered in the affirmative so far as the deduction of the estimated business profits tax is concerned, subject, of course, to the verification of the figures by the Wealth-tax Officer. We answer the question in the negative so far as the estimated liability of

income-tax is concerned.

54. We answer the third question in the negative.

55. The assessee shall pay half the costs of the department.

