BOMBAY HIGH COURT

Bhawanidas Binani

Vs

Commissioner of Wealth-Tax

(Kantawala, C.J. Desai, J.)

27.06.1978

JUDGMENT

Desai, J.

1. In this reference the question referred to us for our opinion by the Income-tax Appellate Tribunal under Section 27(1) of the W.T. Act, 1957, is as follows :

> " Whether, on the facts and in the circumstances of the case, any part of the tax paid under Section 68 of the Finance Act, 1965, was a ' debt owed ' on the relevant valuation dates within the meaning of Section 2(m) of the Wealth-tax Act, 1957 ? "

2. The assessee is an individual and is a regular assessee under the I.T. Act. He follows the Samvat Year as the previous year for his income-tax assessment. He had been last assessed to tax for the year 1962-63 by the order of the ITO dated 16th October, 1962. For the assessment year 1963-64, for which the previous year was S.Y. 2018 (ending on 28th October, 1962), the assessee had filed a return of income. Similarly, he had filed a return of income for the assessment year 1964-65, for which the previous year was S.Y. 2019. The assessments for these two years were, however, pending. Thereafter, Parliament enacted the Finance Act, 1965, which, inter alia, provided for voluntary disclosure of certain income under Section 68 of the said Act. Taking advantage of the scheme, the assessee first made a voluntary disclosure on 30th March, 1965 (though dated 27th March, 1965), of an income of Rs. 16,16,193. He made a subsequent disclosure on 19th May, 1965 (though dated 17th May, 1965), of a further income of Rs. 1,75,000. Thus, the total disclosure was in the aggregate amount of Rs. 17,91,193, With regard to the amount initially disclosed, viz., Rs. 16,16,193, the assessee was liable to pay tax at the flat rate of 57% of the amount disclosed, which was duly paid before the stipulated date. With regard to the further disclosure of Rs. 1,75,000, he was liable to pay income-tax at the flat rate of 60% which was also paid before the stipulated date. The aggregate tax so paid totalled Rs. 10,26,230. Now, according to the first disclosure, the income of Rs. 16,16,193 was represented by the total

assets held by the assessee on 15th November, 1963. Again, according to the second disclosure, the further income disclosed, viz., Rs. 1,75,000, was represented by further assets, again as on 15th November, 1963. In the annexures to the disclosures the assessee gave certain details of the financial year or years in which the income disclosed was earned ; this break-up, however, was given only in respect of the initial disclosure of Rs. 16,16,193 and no break-up was given in respect of the further disclosure of Rs. 1,75,000.

3. It would appear that although the assessee had wealth liable to be taxed, built up out of the income as disclosed, he had neither made a return of his net wealth nor had he been assessed to wealth-tax in any of the years to date. Acting on the information thus revealed, the WTO started proceedings under the W.T, Act and completed the assessments for all the years from 1957-58 to 1965-66 under consideration in this reference, all on the same day, namely, 18th January, 1966. The WTO, however, did not allow as a deduction any part of the tax paid by the assessee in accordance with the disclosures made under Section 68 of the Finance Act, 1965, as a " debt owed " in computing the " net wealth " of the assessee in terms of Section 2(m) of the W.T. Act for any of the years. He just computed the " net wealth " of the assessee for the respective years on the basis of the income finally disclosed as above and as represented by the assets held by the assessee. The following table gives the necessary details in this connection :Assessment year (Income-tax and wealth -tax) Previous year (S.Y.) (Income-tax) Valuation date (Wealth-tax) Total wealth on the basis of income disclosed Net wealth assessed I. T. according to Finance Acts (as earned income) Tax at 57% or 60% as per sec. 68 of Finance Act, 1965 Tax claimed as deduction (being " debt owed") 1957-58 2-11-1956 14,87,095 14,74,645 11,19,534 8,47,644 8,47,644 1958-59 23-10-1957 14,89,092 14,75,342 11,21,072 8,48,782 8,41,686 1959-6011-11-1958 14,89,596 14,58,246 11,21,60 8,49,070 8,41,232 1960-61 31-10-1959 15,03,404 14,69,947 11,32,092 8,56,940 8,39,071 1961-62 20-10-1960 15,58,933 14,86,992 12,25,912 8,88,592 8,57,698 1962-63 8-11-1961 16,41,454 15,56,438 13,39,520 9,36,387 8,86,732 1963-6428-10-1962 17,40,600 16,82,106 14,22,182 9,95,874 8,31,845 1964-65 17-10-1963 17,91,193 16,86,522 15,15,292 10,26,230 9,47,003 1965-66 4-11-1964 4-11-1964 16,92,030 13,01,610 10,26,230 10,26,230

4. Being aggrieved by this disallowance, the assessee preferred an appeal to the AAC. Before the AAC reliance was placed on the decision of the Supreme Court in Kesoram Industries and Cotton Mills Ltd. v. CWT [1966] 59 ITR 767. The AAC was of the opinion that the decision did not at all help the assessee. He dismissed the appeal as to the main contention but gave partial relief to the assessee, with which we are not concerned.

5. Aggrieved by the order of the AAC, the assessee then went in further appeal to the Tribunal. Before the Tribunal, it was argued :

" (i) It was accepted by the department that the net wealth of the assessee on different valuation dates was computed on the basis of the income earned in the various years which had remained unassessed till the same was disclosed by the assessee by his disclosure under Section 68 of the Finance Act, 1965 ;

(ii) once it is accepted that the wealth was comprised of the incomes earned during the different years, it is plain that the same attracted tax at the rates prescribed by the respective Finance Acts and that till the same were actually paid they could be claimed as debts due ; and

(iii) the quantum of tax due according to the respective Finance Acts were always higher than the tax paid by the assessee under the disclosure scheme. The smaller amounts, in proportion to the tax actually paid later, were claimed as debts due. These should have been allowed."

6. The Tribunal, however, examined several decisions and the relevant statutory provisions and ultimately rejected the contentions advanced on behalf of the assessee in the following words :

" After a very careful consideration of the matter, we have come to the final conclusion that it is only Section 68 of the Finance Act which cast the liability on the assessee, though in a sense that liability was left to be invited by the assessee, to pay the tax and there was no such liability for payment of tax on the concerned valuation dates as the liability under the charging section of the Income-tax Acts could only be attracted if the income disclosed could be said to have formed part of the total income of the assessee in the respective years. We are, therefore, of the opinion that the department was right in not allowing any deduction of the proportionate tax paid by the assessee as a debt owed on the respective valuation dates."

7. Accordingly, the Tribunal dismissed the appeals for the several years under consideration. Being aggrieved by this decision, the assessee has carried the matter further and invited the High Court to give its opinion oh the question which we have earlier set out.

8. Before us counsel on behalf of the assessee has urged that the tax at the flat rates paid by the assessee under Section 68(3) of the Finance Act, 1965, is income-tax which, is payable under the I.T. Act, although at the rate fixed by Section 68(3) of the Finance Act, and, therefore, the matter would be squarely covered by the decision in Kesoram Industries and *Cotton Mills Ltd.'s case*[1] in which the Supreme Court had held that this was a debt owed which was liable to be allowed as a deduction in computing the net wealth for the purpose of levy of wealth-tax. In other words, it was submitted that Section 68 of the Finance Act, 1965, was not the charging section but merely

prescribed the procedure for assessment of concealed income and the rate of tax. According to this submission, the charging section remains what it was under the I.T. Act, i.e., Section 3 of the Indian I.T. Act, 1922, or Section 4 of the I.T. Act, 1961. According to this submission, the income-tax liability of the assessce was assessed and quantified in 1965 in the manner provided under Section 68 of the Finance Act which would qualify the amount paid as income-tax under the provisions as a deduction allowable, which deduction fell squarely within the ratio of the Supreme Court decision in Kesoram Industries and Cotton Mills Ltd.'s case [1966] 59 ITR 767. On the other hand, counsel on behalf of the revenue strongly urged that the tax at the flat rates paid on concealed income disclosed by the assessee under Section 68 of the Finance Act, 1965, was not in satisfaction of any liability under Section 3 of the Indian I.T. Act, 1922, or Section 4 of the I.T. Act, 1961, but was in satisfaction of a new liability to tax in respect of a particular item of income, viz., concealed income disclosed by the assessee. It was, therefore, submitted that for the purposes of computing the net wealth of the assessee the amount paid as provided under Section 68(3) of the Finance Act, 1965, could not be deducted as a debt owed by him on the last day of the relevant accounting year in which such concealed income was earned. It may be stated that in support of the respective contentions counsel relied on authorities of different High Courts, the High Courts of Kerala, Delhi, Allahabad and Calcutta having taken the view canvassed for our acceptance by counsel for the assessee, whereas the submissions made on behalf of the revenue have found favour with the Gujarat High Court. It may be further stated that the decision of the Gujarat High Court, which upheld the contentions advanced on behalf of the revenue, was subsequently considered by the Delhi, Allahabad and Calcutta High Courts in their decisions which expressly dissented from the Gujarat view.

9. The claim of the assessee starts from the decision of the Supreme Court in Kesoram Industries and *Cotton Mills Ltd.'s case [1966] 59 ITR 767(Supra).* The assessee before the Supreme Court was a public limited company which had in its balance-sheet for the year ending 31st March, 1957, shown certain amount as a provision for payment of income-tax and super-tax in respect of that year of account. The question was whether that amount was a debt owed within the meaning of Section 2(m) of the W.T. Act, 1957, as on 31st March, 1957, which was the valuation date, and as such was deductible in computing the net wealth of the assessee-company. It was held by a majority, (i) that the word " owe " meant " to be under an obligation to pay " ; it did not really add to the .meaning of the word " debt " , (ii) that " debt owed " within the meaning of Section 2(m) of the W.T. Act, 1957, could be defined as the liability to pay in praesenti or in future an ascertainable sum of money, (iii) that the charging section for the purposes of income-tax was Section 3 of the Indian I.T. Act, 1922,, and the annual Finance Acts only gave the rate for quantifying the tax, and (iv) that a liability to pay income-tax was a present liability though the tax became payable after it was quantified in accordance with ascertainable data. It was held

further that there was a perfected debt at any rate on the last day of the accounting year and not a mere contingent liability. It was observed that the rate was always easily ascertainable ; if the Finance Act was passed, it was the rate fixed by that Act; if the Finance Act was not yet passed, it was the rate proposed in the Finance Bill pending before Parliament or the rate in force in the preceding year, whichever was more favourable to the assessee. On these considerations, it was concluded that the amount of the provision for payment of income-tax and super-tax in respect of the year of account ending 31st March, 1957, was a debt owed within the meaning of Section 2(m) on the valuation date, viz., 31st March, 1957, and was as such deductible in computing the net wealth.

10. This view was subsequently reiterated by the Supreme Court (for wealth-tax liability) in *H. H. Setu Parvati Bayi v. CWT*[3]

11. In the matter before us we are concerned with the charge of income-tax provided under Section 3 of the Indian I.T. Act, 1922, which will involve application of both Section 3 of the said Act as well as Section 4 of the I.T. Act, 1961. Section 3 of the Act of 1922 reads as follows:

> "3. 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. "

12. " Total income " has been defined under Section 2(15) of the said Act and reads as under :

> " 2. (15) ' Total income ' means total amount of income, profits and gains referred to in Sub-section (1) of Section 4 computed in the manner laid down in this Act, and ' total world income ' includes all income, profits....."

13. The charging section under the I.T. Act, 1961, is Section 4; the relevant portion thereof reads as follows :

> " 4. Charge of income-tax.--(1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-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 or previous years, as the case may be, of every person....."

14. The definition of " total income " is to be found in Section 2(45) of the above Act and that of

" previous year " in Section 3 of the said Act. It is found that between the two charging sections there is no material difference.

15. Chronologically speaking, the matter came up for consideration, for the first time, before the Kerala High Court in *C. K. Babu Naidu v. WTO* [3]In that decision, the learned single judge of the Kerala High Court upheld the action of the WTO in not deducting income-tax liability on the various valuation dates for the four years in question on the amount declared by the assessee under Section 68(2) of the Finance Act, 1965. This was on the basis of the reasoning which was subsequently observed as unsatisfactory by a Division Bench of the Gujarat High Court, which came to a similar conclusion but for different reasons. We need not examine this decision further inasmuch as the decision of the learned single judge was subsequently set aside in appeal by a Division Bench of the Kerala High Court in *C, K. Babu Naidu v. WTO*[4] The Division Bench of the Kerala High Court has observed whilst allowing the appeal that if the provisions of Section 68 of the Finance Act, 1965, are read along with Section 4 of the I.T. Act, 1961, the irresistible conclusion would be that the Finance Act, 1965, only provided the rate of tax that is to be imposed and the same was considered to be only a machinery provision to provide for what was envisaged under Section 4 of the I.T. Act, 1961. According to the Division Bench, the provision for voluntary disclosure did not alter the liability of the assessee, a liability which arose and stemmed from the existence of the I.T. Act containing the charging section, viz., Section 4. In the view of the appeal court of the Kerala High Court, therefore, the matter fell squarely within the ratio of the decision of the Supreme Court in Kesoram Industries and Cotton Mills Ltd.'s case [1966] 59 ITR 767(Supra) and Setu Parvati Bayi's case [1968] 69 ITR 864, and was required to be decided in favour of the assessee. We do not find, however, very detailed or careful analysis of the provisions of Section 68, although the conclusion of the Kerala High Court summarised above was given in fairly categorical terms.

16. It is the Gujarat High Court which then applied its mind to the matter and in a careful considered judgment in CWT v. Ahmed Ibrahim Sahigara [1974] 93 ITR 288, decided in favour of the revenue. It consider-

ed the charge under Section 3 of the Indian I.T. Act, 1922, and under Section 4 of the I.T. Act, 1961, and the provisions of Section 68 of the Finance Act, 1965, and concluded that the tax paid on the concealed income disclosed by the assessee under Section 68 of the Finance Act, 1965, was not in satisfaction of any liability under Section 3 of the Act of 1922 or under Section 4 of the Act of 1961, but in satisfaction of a new liability to tax in respect of a particular item of income, viz., concealed income disclosed by the assessee, which arose for the first time under Section 68 of the Finance Act, 1965. On that basis it was concluded that it was not available for being deducted as a debt owed by the assessee for the purpose of computing the net wealth of the

assessee on the last date of the relevant account year in which such concealed income was earned. The Division Bench of the Gujarat High Court very fairly stated that the question was not free from difficulty, and, indeed, it was observed that it had caused to the Bench some anxiety before the conclusion was reached. As stated earlier, the provisions of Section 68 of the Finance Act, 1965, have been carefully considered in the above decision and the following extract from the judgment may be usefully reproduced (p. 293):

> " If we examine the language of Section 68 of the Finance Act, 1965, it is clear that it does not provide for quantification, at a concessional rate of the liability under Section 3 of the Indian Income-tax Act, 1922, or Section 4 of the Income-tax Act, 1961, and payment of income-tax under Section 68 is not in satisfaction of that liability. Sub-section (1) of Section 68 provides that where any person makes a declaration in respect of the concealed income, he shall, notwithstanding anything contained in the Income-tax Act, be charged income-tax at the rate specified in subsection (3) in respect of the concealed income so declared, if one of the three conditions specified in Clauses (i) to (iii) is satisfied. The important words in Sub-sectionl(1) are 'charged income-tax'. These words show that subsection (1) imposes a charge to income-tax on the concealed income disclosed by the assessee. Now, it may be argued that these words are used in the same sense in which the words ' income-tax shall be charged ' are used in various Finance Acts, They have reference to charge of income-tax under the Income-tax Act but that charge has to be made in accordance with the rate specified in Sub-section (3). What Sub-section (1) seeks to provide is that the disclosed income shall be charged to tax under the Income-tax Act not at the rate laid down in the Finance Act but at the rate specified in Sub-section (3). The emphasis in Sub-section (1) is on the prescription of the rate at which the income-tax is to be charged and not on charging, which is done by the Income-tax Act. But this argument cannot prevail because it is contrary to the provisions of Section 68 as also against the scheme of the Income-tax Act. In the first place, the charge under the Income-tax Act is on the total income of the previous year and not on any particular item of income. Section 3 of the Indian Income-tax Act, 1922, as also Section 4 of the Income-tax Act, 1961, do not levy the charge of income-tax on a particular item of income. The concept of a charge on a particular item of income is completely alien to the Income-tax Act. In fact, it would be wholly inappropriate under the Ineome-tax Act to speak of quantification of tax liability on a particular item of income. The charge of income-tax referred to in Sub-section (1) of Section 68 cannot, therefore, be construed to mean charge of income-tax under the Income-tax Act. Secondly, payment of income-tax under Section 68 has no reference to any assessment year. It is outside the pale of assessment for any particular assessment year. Clause (b) of Sub-section (2) does contemplate that the

assessee may give details of the financial year or years in which the disclosed income was earned and the amount pertaining to each year, but that is expected to be given only ' where available ', and, therefore, there may be cases--the present being one of them--where the disclosed income may not be related to any particular financial year or years. The chargeability to income-tax under the Income-tax Act would break down in such cases, because the whole basis of the charge under the Income-tax Act is the total income of the previous year and if the disclosed income is not related to any particular year or years, it cannot be included as part of the total income of a particular previous year so as to be brought to tax. Yet, under Section 68, it would be chargeable to income-tax irrespective of the financial year or years in which it was earned. Thirdly, the disclosed income is chargeable to income-tax under Section 68 without taking into account any deductions or allowances which would be permissible if the charges were under the Income-tax Act. These three circumstances clearly show that Section 68 is not intended to lay down a concessional rate at which income-tax may be charged under the Income-tax Act. It does not provide a method of quantification of the liability to income-tax under the Income-tax Act. It enacts a new charge to tax, on an ad hoc basis, on disclosed income irrespective of the assessment year in which it was earned..."

17. The Division Bench of the Gujarat High Court thereafter considered the provisions of Sub-section (6) of Section 68 and observed that if the conditions specified in Sub-section (6) of Section 68 are satisfied, the concealed income disclosed by the assessee would cease to be liable to be included in his total income for the purpose of assessment under the I.T. Act, This was obviously because it had already borne tax under Section 68. Thus, according to the Division Bench (p. 295) :

" This item of income having been subjected to a distinct and separate process of assessment under Section 68 is taken out of the purview of assessment under the Income-tax Act."

18. On these considerations the Division Bench came to the conclusion that the tax paid on the concealed income disclosed by an assessee under Section 68 was not in satisfaction of any liability under Section 3 of the Act of 1922 or under Section 4 of the Act of 1961 but in satisfaction of a new liability. It was, therefore, of the opinion that it cannot be deducted as a debt owed by the assessee on the last day of the relevant accounting year.

19. A Division Bench of the Delhi High Court in *CWT v. Girdhari Lal*[5], dissented from the view expressed by the Gujarat High Court in *Ahmed Ibrahim Sahigara's case*[6] observing that the amount which a person declared under Section 68 of the Finance Act, 1965, represented the assessee's income which in the ordinary course was assessable under the Indian I.T. Act, 1922, or

the I.T. Act, 1961. In the view of the Delhi High Court, Section 68 of the Finance Act, 1965, like the Finance Act of every year, only prescribed the rate of tax which is to be charged. This view of the Delhi High Court appears to be based on a proposition that the Finance Acts by themselves cannot impose a tax on any amount which is not the total income of a person under the Indian I.T. Act, 1922, or under the I.T. Act, 1961. In other words, the charge to tax was required to be under the I.T. Acts only. For this proposition the Delhi High Court found support in the decision of the Supreme Court in *CIT v. Khatau Makanji Spinning and Weaving Co. Ltd*[7]. In the view of the Delhi High Court if Section 68 of the Finance Act, 1965, was required to be considered as a separate charging provision, it would not be in conformity with what was decided by the Supreme Court in Khatau Makanji's case [1960] 40 tTR 189(Supra) and, therefore, would suffer from the vice of un-constitutionality. It was principally on this footing that it proposed to read the provisions of Section 68 of the Finance Act, 1965, as merely prescribing a rate of tax, which has the character of income-tax which is payable by virtue of the charging provision of the Income-tax Act (see page 92 of the report). In arriving at this conclusion it expressly disagreed with the reasons given by the Gujarat High Court in Ahmed Ibrahim Sahigara's case [1974] 93 ITR 288(supra). As stated earlier, if the observations of the Supreme Court in Khatau Makanji's case [1960] 40 ITR 189(Supra) are carefully examined, it does not appear that the Supreme Court in the said case laid down any rule of the nature as considered by the learned judges of the Delhi High Court, and our attention was expressly drawn at the bar to a later decision of the Supreme Court in Madurai *District Central Co-operative Bank Ltd. v. Third 1TO*[8] in which the power of Parliament to impose a new charge by a Finance Act was considered and upheld. It is true that counsel for the appellants before the Supreme Court expressly gave up the challenge to the power of Parliament ; but the court proceeded to consider the argument observing that the concession was properly made and gave its reasons for the observation.

20. Section 68 of the Finance Act, 1965, once again came to be considered by a Division Bench of the Allahabad High Court in *CWT v. B. K. Sharma*[9] where, without referring to the judgment of the Delhi High Court, the learned judges of the Allahabad High Court considered the statutory provisions. They examined the judgment of the Gujarat High Court in Sahigara's case [1974] 93 ITR 288(supra) and expressly differed therefrom. The Division Bench of the Allahabad High Court upheld the allowance of deduction to the assessee applying the ratio of Kesoram Industries and Cotton Mills Ltd.'s case . In the reference before the Allahabad High Court, the assessee concerned had made a voluntary disclosure of his concealed income of rupees five lakhs under Section 68 of the Finance Act, 1965, It was the assessee's case that he had earned this income during a number of years in the past, and in the wealth-tax returns for the assessment years 1960-61 and 1961-62 he included in his net wealth the sum of Rs. 2,25,000 in the first year and the sum of Rs. 2,80,000 in the next year out of the concealed income. The WTO accepted the

amounts, but when subsequently before the AAC the assessee claimed deduction on account of the income-tax payable on the two amounts, the claim was rejected on the basis that there was no debt owed by the assessee within the meaning of Section 2(m) of the W.T. Act. In appeal, the Tribunal upheld the contention of the assessee and it was from this decision that the reference was preferred to the Allahabad High Court, As regards the two amounts, which were subsequently disclosed under the Voluntary Disclosure Scheme enacted and provided for by Parliament under Section 68 of the Finance Act, 1965, but which amounts were originally concealed by the assessee, the Allahabad High Court observed as follows (p. 904-905) :

> " Now, admittedly, the assessee was in possession of the two sums of Rs. 2,25,000 and Rs. 2,80,000 on the respective valuation dates of the two assessment years in question on which the assessee was liable to pay the wealth-tax. Admittedly, again, these two amounts came out of the concealed income of rupees five lakhs which the assessee ultimately declared in the year 1965. Assuming that these two amounts were earned in the previous years relevant to the assessment years 1960-61 and 1961-62, which fact has been accepted by the income-tax authorities, the assessee was clearly liable to income-tax on these two amounts. If the assessee had not concealed the income and had offered it for assessment at the appropriate time and if the tax had remained unpaid on the valuation dates the arrears of tax would constitute a debt liable to be deducted in the computation of total income. This position is again unexceptionable. Now, the mere fact that the amounts had not been offered for assessment and no tax was levied thereon, will not, in our opinion, alter the position so far as the computation of wealth-tax is concerned. It must be remembered that under the Income-tax Act tax becomes payable immediately on the expiry of the previous year in which the income is earned. The assessment may take place later but the assessment merely quantifies the tax. The liability to pay tax arises much earlier, namely, on the close of the previous year in which the income is earned. It follows that if the assessee had offered these two amounts for assessment in the relevant assessment years but the assessments had not been made on the valuation dates, even then the assessee would be entitled to deduct the income-tax payable by him and such liability would amount to a debt owed by him. The fact that he did not disclose this income at the appropriate time and evaded the tax does not mean that he was not liable to pay the tax. As stated earlier, the liability to pay income-tax arises when the income is earned and not when it is disclosed or discovered. The quantification and determination of tax may be delayed because of the attempt of the assessee to conceal it from the department but his liability remains."

21. The position as expounded by the Allahabad High Court in respect of the normal income-tax liability for the amount of concealed income was not seriously disputed at the bar by counsel for

the revenue. But it was urged that the position would be different in respect of payment of income-tax under Section 68 of the Finance Act, 1965, and the same or similar considerations as would be available for the ordinary liability of income-tax under Sections 3 and 4 of the Indian I.T. Act of 1922 and the I.T. Act, 1961, respectively, read with the relevant Finance Acts for the assessment years in question would not be available for application to the payment of income-tax under Section 68 of the Finance Act, 1965. In dealing with such a contention, the Allahabad High Court observed (p. 905) :

> " It is not disputed that if the assessee had been assessed to tax under the Income-tax Act in respect of the two amounts in question in the relevant assessment years and if the tax liability was outstanding he would be entitled to a deduction of the tax liability in the computation of his net wealth. There is no reason why the tax payable under the disclosure scheme should also not be allowed to him as a deduction in computing his net wealth."

22. At page 907 of the report the Allahabad High Court considered the decision of the Gujarat High Court in Ahmed Ibrahim Sahigara's case [1974] 93 ITR 288(supra) and considered the various reasons indicated by the Gujarat High Court as the basis for its ultimate conclusion. According to the Allahabad High Court, the Gujarat High Court had erroneously considered Sub-section (1) of Section 68. In the opinion of the Allahabad High Court the following words occurring therein, namely, " notwithstanding anything contained in the Income-tax Act" qualified the subsequent words " rate of tax ". It was observed further that if these words are understood in the sense as propounded by the Allahabad High Court, they would clearly indicate that the Finance Act, 1968, was prescribing a distinct rate of tax on an ifem of total income which was already subjected to the ordinary charge of income-tax under Section 3 and Section 4 of the I,T. Acts of 1922 and of 1961, respectively. In that view of the matter it was observed that the income-tax paid by the assessee in accordance with Section 68(3) was in lieu of his liability under the charging section of the two Income-tax Acts read with the relevant Finance Act and was not a new liability. The view taken by the Allahabad High Court of the ordinary liability of the assessee to pay income-tax even on the item of concealed income expressed in the lengthy passage earlier extracted appears to be unexceptionable. But it is difficult to agree fully with its observations on the provisions contained in Section 68(1) of the Finance Act, 1965, and its conclusion based on such reading of the said statutory provisions. It is true that payment of income-tax under Section 68 may be broadly stated to be in lieu, of the liability of the assessee to pay income tax under the charging sections of the Income-tax Acts read with the relevant Finance Acts for the appropriate years. But that would not be saying that it is the identical liability which is being provided for by a new rate or that this would merely constitute the Finance Act, 1965, a machinery provision like the usual Finance Acts for every year of account.

Here again, the Allahabad High Court seems to have missed or avoided giving consideration, to certain provisions to be found in Section 68 which have been considered by the Gujarat High Court, particularly Sub-section (6) of Section 68 of the Finance Act, 1965, which provides that if certain conditions are satisfied, the item of concealed income disclosed, on which income-tax as provided by Section 68(3) has been paid, would be excluded from the total income of the assessee for a particular year of account. This would seem to suggest that this is a different liability which is being provided for and a new and distinct charge and, further, that until the conditions specified are fully met, the original liability and charge under Section 3 and Section 4 would continue to remain.

23. The last of the decisions cited at the bar in which almost all the earlier judgments have been considered and a conclusion reached in favour of the assessee is the decision of the Calcutta High Court in CWT v. Bansidhar Poddar [1978] 112 ITR 957. In the said decision, it was observed by the Calcutta High Court that Section 68 of the Finance Act, 1965, did not impose an entirely new tax or a new charge. In *Bansidhar Poddar's case* [10]*the* Calcutta High Court considered the decision of the Gujarat High Court in Ahmed Ibrahim Sahigara's case [1974] 93 ITR 288(supra) and observed that the disclosure envisaged under Section 68 was in respect of the amount which is already liable to be assessed as income under the relevant I.T. Act, and, further, that the view that Section 68 does impose an entirely new tax was one which was difficult to accept since no machinery was provided by which the tax could be assessed, levied and the payment of the same enforced. It was further observed that the section, viz., Section 68, described the tax as income-tax and as such it is assessed and collected as income-tax under the I.T, Act. With respect to these observations, it may be respectfully pointed out that in view of the scheme of voluntary disclosure provided for in Section 68 of the Finance Act, 1965, the question of providing machinery for assessment, levy and payment of an amount at the flat rates contemplated by Section 68(3) does not arise. Further, although it is true that Section 68 designates the tax collected at the flat rates as income-tax, it does not necessarily follow that such income-tax collected at the fiat rates provided is income-tax assessed and collected under the I.T. Act. In respect of the income-tax, so called, paid under Section 68 and the income-tax paid and collected under Section 3 and Section 4 of the I.T. Acts, there are obvious and glaring differences which have been summarized by the Gujarat High Court in its decision. The Calcutta High Court, however, goes on to observe (at pp. 968-69):

> " In our opinion, the principles laid down by the Supreme Court in the case of Kesoram Industries & Cotton Mills Ltd. [1966] 59 ITR 767(supra) apply on all fours to the facts and circumstances of this case. The Supreme Court has clearly laid down that a liability to pay income-tax is a present liability though it becomes payable after it is quantified in accordance with its ascertainable data. The liability to pay tax on undisclosed income is

also a present liability. It may become payable when it is discovered and brought to tax or it may become payable when it is disclosed under Section 68 of the Finance Act, 1965, or otherwise disclosed. The liability is always there and is quantified either in the regular course under the Income-tax Act or under the said scheme as laid down by Section 68 of the Finance Act. All the ingredients of a debt are present in such a case."

24. It was submitted by learned counsel for the revenue that the view propounded by the Gujarat High, Court was the correct view and that it was impossible on a careful reading of the provisions of Section 68 of the Finance Act, 1965, to hold that this was a mere machinery section which provided for the rate, a special rate at which income-tax was to be charged on one item of total income. On the other hand, counsel on behalf of the assessee submitted that the view expressed and the conclusion reached by the Gujarat High Court had been considered and expressly dissented from subsequently by three High Courts, viz., the Delhi High Court in Girdhari Lal's case [1975] 99 ITR 79(Supra), the Allahabad High Court in B. K. Sharma's case [1977] 110 ITR .902(supra) and the Calcutta High Court in Bansidhar Poddar's case [1978] 112 ITR 957(Supra). He submitted that the view in favour of the assessee which had been arrived at on several different processes of reasoning by the three High Courts was the correct view. In the alternative, it was urged that even if it be regarded that two views were possible in the matter, it is now well settled that in construing or applying a taxing provision the court should adopt or prefer the view more favourable to the assessee; and we were on this footing invited to accept the conclusion reached by the Delhi, Allahabad and the Calcutta High Courts in preference to the conclusion reached by the Gujarat High Court, even though we may feel inclined to hold that the analysis of the statutory provision was more thoroughly done by the Gujarat High Court or even if the conclusions may appear more logical and, therefore, correct. In the further alternative, it was submitted that even on the footing that the amount paid under Section 68 was not the income-tax charged on the assessee under Section 3 or Section 4, the assessee was always entitled to claim a deduction of the amount chargeable as income-tax under the I.T. Acts (as quantified by the several Finance Acts) as a debt owed. Inasmuch as he has in fact paid income-tax at a figure (under the voluntary disclosure scheme provided for in the Finance Act, 1965) lower than the income-tax which would be chargeable under Section 3 or Section 4, the assessee would be precluded from claiming the higher deduction, which is allowable under the ratio in Kesoram Industries' case , and must be allowed deduction at the lower figure (to be found in col. 7 of the table earlier set out in this judgment), for each of the years in question. The submission was principally based upon the argument which was accepted by the Allahabad High Court and found contained in the lengthy passage from its judgment which we have extracted earlier. The observations were to the effect that in respect of concealed income the assessee was entitled to a deduction of the income-tax payable by him and such liability would amount to debt owed by

him irrespective of the fact that he had tried to conceal this income and not disclosed it at the appropriate time. Such concealment, even if successful, and the consequential non-disclosure in the year of account would seem to make no difference to the principle enunciated by the Supreme Court in Kesoram Industries and Cotton Mills Ltd.'s case [1966] 59 ITR 767(supra) and subsequently reiterated in Setu Parvati Bayi's case [1968] 69 ITR 864(Supra).

25. It was submitted that on a proper and fair reading of the voluntary disclosure scheme, the income-tax paid under Section 68 of the Finance Act, 1965, must be considered and accepted to be income-tax paid in lieu of the ordinary charge of income-tax under the I.T. Acts. This submission was made on the footing that the court may not be prepared to accept the principal contention that this was income-tax charged under the I.T. Act quantified by a special rate. It was urged that oven if it be regarded as composition of the ordinary liability of income-tax at an amount less than the ordinary normal income-tax liability, and even though quantified on a different footing the assessee would be entitled in the computation of his net wealth to deduct this lesser figure even though it may not be strictly , considered to be the income-tax charged under Section 3 or Section 4 of the two I.T. Acts. , It was submitted that an amount paid in lieu of such charge was liable to be considered in the same manner as the tax charged under the I.T. Acts. It is this consideration and reason which seems to us to have principally appealed to the Allahabad and the Calcutta High Courts in their decisions. Looked at from this angle, it appears to us that although it is not possible to say that the amount of income-tax paid under Section 68 of the Finance Act, 1965, is income-tax under the charging Section 3 or Section 4 of the I.T. Acts, it must be regarded as income-tax paid in lieu of such income-tax and would be entitled to the same considerations as lavished by the Supreme Court on the ordinary charge of income-tax.

26. It is on this footing that we would answer the question referred to us in the affirmative and in favour of the assesses. It is clarified that the deduction which the assessee will be entitled to will be the amounts specified in col. 7 of the table to be found in para. 3 of the statement of case which we have extracted earlier in our judgment.

27. We, however, direct the parties to bear their own costs of the reference.

Cases Referred.

1[1966] 59 ITR 767
2[1968] 69 ITR 864
3[1971] 82 ITR 410
4[1978] 112 ITR 341
5[1975] 99 ITR 79
6[1974] 93 ITR 288
7[I960] 40 ITR 189
8[1975] 101 ITR 24
9[1977] 110 ITR 902

10[1978] 112 ITR 957