

(1963) 03 KAR CK 0012

In the Karnataka High Court

Case No : Tax Referred Case No. 1 of 1963

Commissioner of Wealth Tax, Mysore

APPELLANT

Vs

D.C. Basappa

RESPONDENT

Date of Decision : 31-03-1963

Acts Referred:

Wealth Tax Act, 1957 — Section 2 (m), 27 (1), 6

Citation : (1964) 51 ITR 790

Hon'ble Judges : K.S. Hegde, J; Ahmed, J

Bench : Division Bench

Advocate : D.M. Chandrasekhar, for the Appellant; Ramani, for the Respondent

Judgement

1. The learned judge set out the statement of case which ran as follows :

By this, the Commissioner of Wealth-tax, Mysore, Bangalore, requires the Appellate Tribunal to refer to the High Court certain questions of law

which are said to arise out of the Tribunal's consolidated order dated 5th February, 1962, in W. T. A. Nos. 327 of 1960-61, 856 of 1959-60,

1199 of 1960-61 and 509 of 1961-62. Inasmuch as, in our opinion, questions of law do arise out of the aforesaid order (in W. T. A. No. 509 of

1961-62), we hereby draw up an agreed statement of the case and refer it to the High Court of Mysore at Bangalore u/s 27(1) of the Wealth-tax

Act.

2. The assessee is a planter and owner of coffee estates. He is one of three brothers between whom there was a partition on the 10th of May,

1938, by which the ancestral property was divided equally amongst them after due provision had been made for the female members. His family

consists of his wife and two daughters. The assessee was assessed in the status

of an individual, but then he claims his status was that of a Hindu undivided family. The Wealth-tax Officer wrote :

On verification, it is seen that in the past the assessment has been made in the status of an individual only. No information has been adduced to

show the status as that of the Hindu undivided family. The assessee has got absolute right over the properties as an individual and there is no other

male member who could claim right over the properties and partition of the same. Hence the status is held as that of an individual as in the past.

3. The assessee also contended before the Wealth-tax Officer that a sum of Rs. 85,000 provided as a liability for taxation should be allowed. The

Wealth-tax Officer wrote :

On examination of the claim, it is seen that it only represents a provision for taxation and is not an item of tax due as per any demand. A mere

provision for taxation is not a liability to be deducted as on the valuation date.

4. The assessee appealed to the Appellate Assistant Commissioner and contended, first, that he must be assessed as a Hindu undivided family and,

secondly, that the tax liability was a debt due and a statutory liability and so constituted a debt owing on the valuation date. The Appellate Assistant

Commissioner rejected both the contentions.

5. The assessee came on appeal to the Tribunal and contended that the reliance placed by the department upon the decisions of the Privy Council

in *Kalyanji Vithaldas v. Commissioner of Income Tax* for holding that the assessee was the only male coparcener and there were no other male

members in the family and so he held all the properties as an individual was wrong. On the other hand, it was urged that the decision of the Privy

Council in *Attorney-General of Ceylon v. AR. Arunachalam Chettiar* should have been relied upon.

6. As regards the other point, it was contended that deduction of tax liability was proper and must be allowed. The Tribunal preferred to rely upon

a decision of the President on a difference of opinion between two Members of the Tribunal in the case of *Pierce Leslie & Co.* to another decision

of a Bench in May, 1961, in the case of a batch of appeals by the *Gowcoody Estates Ltd. v. Lingapur Estates Ltd. and Wartyhully Estates Ltd.*

and held that the provision for agricultural Income Tax was a liability which required to be provided for and so should be allowed in the

computation of the net wealth of the assessee as a debt owed on the valuation date.

7. On the other ground, for reasons stated in their order, in paragraphs Nos. 11, 12, 13, and 14, excerpts from which form annexure ""A"" and form

part of the case, held that the assessee was the karta of the Hindu undivided family after considering the decisions placed before them.

8. On these facts, the question for payment of agricultural Income Tax constitutes a liability for allowance in the computation of net wealth of the assessee as a debt owed on the valuation date;

1. Whether the provision for payment of agricultural Income Tax constitutes a liability for allowance in the computation of net wealth of the assessee was a debt owed on the valuation date;

2. Whether the assessment should not have been made on the karta of a Hindu undivided family, but on an individual ?

9. Taking first the second question, namely, whether the assessee should be assessed as the karta of his Hindu undivided family or whether he

should be assessed as an individual, it is necessary to bear in mind that the wealth, which is the subject-matter of assessment, was derived from the

family of the assessee. The coffee estates in question admittedly till 1938 belonged to the joint family of the assessee and his two brothers. On May

10, 1958, there was a partition in the family of the assessee, as a result of which the estate with which we are concerned in the case fell to the

share of the assessee. The assessee is the only male member in his family at present, the other members of the family being his wife and two

daughters. Therefore, the question has arisen, whether the properties held by the assessee should be still considered as the properties of his

undivided Hindu family or as the properties of an individual. A similar question arose for decision in Income Tax Referred Case No. 15/61 (Gowli

Buddanna v. Commissioner of income tax) on the file of this court. I delivered the judgment of the court. This is what I observed therein :

According to Sri Srinivasan Buddanna being the sole surviving coparcener in his family and he having become the absolute owner of the quondam

family properties, he should have been assessed as an individual and not as the karta of a Hindu undivided family. In other words, the contention of

Sri Srinivasan is that unless the family consists of more than one coparcener,

there cannot be an assessment on a Hindu undivided family. This view appears to have commended itself to the Calcutta High Court in *In re Moolji Sicka*. Speaking for the Bench Lord Williams J. observed thus at page 136 :

"The necessity for making Hindu undivided families liable as such for Income Tax was, that the income and property of Hindu undivided family is undivided. The members have no separate income or property and cannot, therefore, be taxed as individuals. According to Mitakshara, until partition it cannot be said of any member that he has any definite share in the joint property. But an Income Tax Act obviously is concerned only with income available for taxation and the owners of such income, and if there is no property or no income, an Income Tax Act has no application. It follows that the Act has no application to a Hindu undivided family in the wider sense to which I have referred. Its provisions are attracted only where there exists property or income that is to say, where there is joint family property or joint family income or, in other words, where there exists a Hindu coparcenery."

The above case went up in appeal to the Judicial Committee. We shall presently refer to the judgment of the Judicial Committee on the point in controversy. But before doing so, we would like to refer to a decision of the Bombay High Court in *Commissioner of Income Tax v. Gomedalli Lakshminarayan*. Dealing with the point under consideration, Beaumont C.J. observed at page 368 thus :

"The facts are that there was a joint Hindu family consisting of a father and his wife and a son and his wife, the son being the present assessee. The father died in 1929 before the year of assessment, so the joint Hindu family then consisted of the son, his mother and his wife and the question raised by the Commissioner appears to me to admit the existence of a joint Hindu family. Of such existence, I think there can be no question. It is clear law that you may have a joint Hindu family consisting of one male member and female members who are entitled to maintenance, although that does not mean that every Hindu who possesses a wife and a mother is necessarily a member of a joint Hindu family as Lord-Williams J. seems to think in the Calcutta case referred to below. The question raised is whether the assessee is to be assessed as an individual or as a member of the

joint Hindu family, and the importance of the question lies in this, that for the purposes of super-tax he will be allowed a large exemption if he is

taxed as the manager of a joint Hindu family than if he is taxed as an individual."

A little lower down in the judgment, the learned judge proceeded to observe as follows :

"The nature of a Hindu undivided family was perfectly well known to the legislature when the Income Tax Act was drafted, and it was well known

that the expression "Hindu undivided family" includes females, and is much wider than the expression "coparcenary" which includes only the males

in whom the joint family property is vested. It is argued by the Advocate-General that the Act, dealing as it does with property, when it refers to a

Hindu undivided family, really means to denote the coparceners, that is to say, male members of the family in whom the family property is vested. I

see no ground for arriving at that conclusion, since the meaning of the two expressions was well known when the Act was drafted, and the

legislature has thought fit to use the wider expression rather than the narrower one. I have no doubt that this was deliberate. The more liberal

allowance to a joint family in respect of super-tax was presumably given because the whole income of the family would not go to one individual. If

there were a large number of male members, each member would get only a small portion of the income, and it would be hard to charge the family

with super-tax merely because the joint income was over the limit at which super-tax commences for an individual. But the same principle would

apply, though perhaps to a less extent, to the case of a Hindu joint family consisting of one male member and several female members entitled to

maintenance, where maintenance might absorb a large share of the family income."

The view expressed by Beaumont C.J. was fully shared by Rangnekar J., the other judge who constituted the Bench. Both the judges differed from

the decision of the Calcutta High Court referred to above. In our opinion, if we may say so with respect, this decision lays down the law correctly.

It accords with the principles of Hindu law.

We had earlier mentioned that the decision of the Calcutta High Court in *In re Moolji Sicka*, had been taken to the Judicial Committee in appeal.

The decision of the Judicial Committee is reported as *Kalyanji Vithaldas v.*

Commissioner of Income Tax. The Judicial Committee disagreed with the view of the Calcutta High Court as regards the meaning to be given to the expression "Hindu undivided family" found in section 3 of the Indian

Income Tax Act, 1922. Sir George Rankin, speaking for the Judicial Committee, observed :

"The phrase "Hindu undivided family" is used in the statute with reference not to one school only of Hindu law, but to all schools; and it is a

mistake in method to begin by pasting over the wider phrase of the Act the words "Hindu coparcenary". All the more it is not possible to say on

the face of the Act that on female can be a member. Where therefore the income belongs not to the assessee himself but to the assessee, his wife

and daughter jointly, the association of such individuals can be described as "Hindu undivided family"."

But unfortunately the Judicial Committee did not stop at that. It proceeded to observe :

"It would not be in consonance with ordinary notions or with a correct interpretation of the law of the Mitakshara to hold that property which a

man has obtained from his father belongs to a Hindu undivided family by reason of his having a wife and daughters."

In the instant case, it is unnecessary for us to find out the effect of these observations. As seen from the statement of facts referred to above, the

assessee had only his wife out also had an adoptive mother. He also had a sister. Hence this case does not fall within the exception pointed out by

the Judicial Committee even if it is thought that any exception was really contemplated by the Judicial Committee.

Sri Srinivasan next placed reliance on the decision of the Madras High Court in Commissioner of Income Tax v. A. V. P. MR. M. Lakshmanan

Chettiar. That decision undoubtedly helps him in a way. The learned judges who decided that case opined that the Judicial Committee in Kalyanji's

case had decided that the existence of a step-mother to a sole surviving coparcener is not sufficient to convert the income of the ancestral property

into an income of a Hindu undivided family. We really fail to see how this conclusion follows from the decision of the Judicial Committee in

Kalyanji's case. Obviously the learned judges in the Madras case proceeded on the basis that though the family of the assessee in that case is a

Hindu undivided family, the assessee being solely entitled to the income of the family property, he must be considered to be the sole owner of that income. This view, if accepted as sound, would amount to accepting the correctness of the view of the Calcutta High Court in Moolji Sicka's case, as regards the meaning of the expression "Hindu undivided family". Once we come to the conclusion that there is a Hindu undivided family and the assessable income is the income of the properties belonging to that family, we must necessarily hold that for the purposes of the Income Tax Act, the Hindu undivided family is the owner of that income also. Inter se, the rights of the members of the family are governed by Hindu law. In other words, though the female members are entitled to only maintenance from the income of the family, the income as such must be considered to be the income of the family and not of any individual thereof.

10. Same view of the law was taken by another Bench of this court in *S. Melagiriappa v. Lalithamma*. It was laid down therein that the fact that the Mitakshara recognises proprietary rights in respect of joint family property only in the males while conferring only such rights or right to maintenance on the females does not mean that a Mitakshara joint family should consist only of men and not of women also; so also the character of the family property does not change by reason of the fact that it may come to be held by a single male coparcener because if and when the male coparcener either begets or adopts a son or the widow of a deceased coparcener makes an adoption the son so born or adopted acquires a right by birth of adoption in that property; thus when joint family property comes to be held by a single coparcener there is, according to the theory of Mitakshara law, neither an extinction of the family nor a complete transmutation of the character of the property. The department has taken a contrary view purporting to follow the decision of the Privy Council in *Kalayanji Vithaldas v. Commissioner of Income Tax*. We have already noticed this decision. The more appropriate decision is that of the Privy Council in *Attorney-General of Ceylon v. AR. Arunachalam Chettiar*.

11. The facts of that case were as follows : The father, the sole surviving coparcener of a Hindu undivided family, to which also a number of females belonged, died in 1938, shortly after the Ceylon Estate Duty Ordinance, 1938, came into operation; no other coparcener came into

existence during his lifetime (his son had died in 1934), but powers of adoption in his deceased son's widow and in his own widows were in fact

exercised after his death; at all material times the female members of the family had the right of maintenance and other rights which belonged to

them as such members. Section 73 of the Ceylon Ordinance, 1938, provided that "where a member of a Hindu undivided family dies, no estate

duty shall be payable on any property proved to the satisfaction of the Commissioner to be the joint property of that Hindu undivided family." On a

claim of estate duty in respect of the father's estate in Ceylon, the Privy Council held that the father was at his death a member of a Hindu

undivided family, the same undivided family of which his son, when alive, was a member, and of which the continuity was preserved after the

father's death by the adoptions. It was observed in that decision that it was only by analysing the nature of the rights of the members of the

undivided family, both those in being and those yet to be born, that it could be born, that it could be determined whether the family property could

properly be described a "joint property" of the undivided family. While it might be correct to describe the sole surviving coparcener as the "owner

of the family property, that which he "owned" was joint family property. His ownership was such that on the adoption of a son it assumed a

different quality; it was such, too, that female members of the family had a right to maintenance from it. The extent to which he could alienate it was

an irrelevant consideration, for if he did not alienate it, it remained joint family property. The temporary reduction of the coparcenary unit to a single

individual did not convert what was previously joint property of the undivided family into the separate property of the surviving coparcener.

Accordingly, while the undivided family persisted the property in the hands of a single coparcener could properly be described as the "joint

property of" that family, and was, therefore, exempt from estate duty on - in this case - the death of the father, u/s 73 of the Ordinance.

12. For the reasons mentioned above, our answer to the second question is that the assessment should have been made on the assessee as the

karta of his undivided family and not as an individual.

13. This takes us to the first question, which, undoubtedly, is a highly controversial question. Judicial opinion is sharply divided on the question

whether the provisions for payment of Income Tax or agricultural Income Tax constitutes a "debt owed" and, therefore, a liability to be deducted in ascertaining the taxable wealth.

14. Under the Wealth-tax Act (to be hereinafter referred to as the "Act"), while determining the "net wealth", the revenue has to deduct the "debts owed". Section 2(m) of the Act says :

"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 u/s 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.

15. The controversy is as regards the true meaning of the expression "debts owed" found in section 2(m) of the Act. This expression is not defined

in the Act. In the instant case we have to decided whether the agricultural Income Tax to be paid for the assessment year 1959-60 is a "debt

owed". Admittedly, the tax payable had not been quantified. The valuation date for the purpose of the wealth-tax was March 31, 1959, i.e., the

last day of the accounting year, relevant to the assessment year 1959-60. In the absence of any definition in the Act of the expression "debts

owed", we are compelled to seek assistance from other sources in determining the meaning of that expression.

16. It was urged on behalf of the assessee that the liability to pay agricultural Income Tax for the accounting year ended March 31, 1959, had

already been incurred; such a liability is a "debt owed" and therefore the same is liable to be deducted in computing the "net wealth". On the other

hand, it was urged on behalf of the revenue that the "debt" contemplated in the "Act" is a "liquidated debt" or an "ascertained debt", the liability to

pay the agricultural Income Tax payable not having been quantified on March 31, 1959, the same cannot be considered as a "debt owed" for the

purpose of computing the "net wealth". If the legislature intended to give deduction only to "debt due" or to "ascertained sums", in that event the tax

liability having not been ascertained on the date of the valuation, i.e., on March 31, 1959, the same cannot be deducted. If, on the other hand, the

word ""debt"" found in section 2(m) means an existing obligation on the date of valuation to pay either in praesenti or in future, a sum of money

ascertained or unascertainable, then the liability in question is a ""debt"" within the meaning of section 2(m). What is meant by ""debt due"" ?

17. Mulla in his Transfer of Property Act, 4th edition, at page 735, observed that ""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. The distinction between present and future debts is made in the case of Subramanian v. Arunachalam where the phrase "now due,

owing or payable" was held to exclude debts accruing after the date of the deed. 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.

18. Earl Jowitt in his Dictionary of English Law, defines ""debt"" as follows :

A sum of money due from one person to another. A debt exists when a certain sum of money is owing from one present to another.... "Debt"

denotes not only the obligation of the debtor to pay, but also the right of the creditor to receive and enforce payment....

Wharton in his Law Lexicon, 14th edition, defines ""debt"" as follows :

A sum of money due from one person to another....

Stroud in his Judicial Dictionary, 3rd edition, defines ""debt"" thus :

A "debt" is a sum payable in respect of a liquidated money demand, recoverable by action.

19. In support of his contention that a ""debt"" means a liquidated liability, the learned counsel for the revenue invited our attention to various decisions.

20. In Sabju Sahib v. Noordin Sahib the Madras High Court, in a suit brought by a Muhammadan as a legal representative of his deceased father

who was a member of a firm, against the surviving partners praying for an account of the partnership assets and for the payment to him of the

amount which might be found due to the share of the deceased, without producing letters of administration or a succession certificate, held that the

plaintiff's claim, being unliquidated, was not a ""debt"" within the meaning of section 4(1) (a) of the Succession Certificate Act, 1889.

21. In the quite clear of his judgment, Shephard, O. C.J., observed as follows :

It is quite clear that this is not a debt, for there was at the time of the death no present obligation to pay a liquidated sum of money. The claim is

one about which there is no certainty; it may turn out that there is nothing due to the plaintiff.

22. Bensen J. differed from the O. C.J. He observed :

I think the word "debt" must be understood as including not only debts due to the deceased at the time of his death, but also debts accruing due

to his estate or ascertained to be due to his estate after his death up to the day on which the inclusion of the debt in the certificate is applied for, just

as the amount of a debt includes interest due thereon, up to that day. The provisions of the Act with regard to securities enable the representative

of a deceased person to collect the interest on Government promissory notes, dividends on shares and other sums accruing to the estate of the

deceased after his death. Is there any reason why these should be included as within the scope of the Act, while other debts falling due or

ascertained to be due, to the estate, should be excluded ? I should say no, yet this is the result if the word "debt" is used in the restricted sense

contended for by the appellant.

23. In view of this difference of opinion, the case was posted before a third judge (Subramania Ayyar J.) who concurred with the O. C.J. In the

course of his judgment he remarked :

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 reasons that

the liability is not in respect of a liquidated sum.

24. The above decision was affirmed by a Full Bench of the Madras High Court in Doraisami Padayachi v. Vaithilinga Padayachi. Therein the Full

Bench held that a promise to pay the amount which may be found due, by an arbitrator, on taking accounts between the parties is not a promise to

pay a ""debt"" within the meaning of section 25 of the Indian Contract Act, the amount not being a liquidated sum.

25. In Commissioner of Income Tax v. Basumal Jagat Narain a Bench of the Punjab High Court opined that 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 the creditor to receive and enforce payment. To constitute a valid debt the money must have been advanced with reasonable belief at the time that it would be paid. For purposes of taxation, a debt is a legally enforceable obligation for payment of money.

26. In *Kesoram Cotton Mills Ltd. v. Commissioner of Wealth-tax* the tax Bench of the Calcutta High Court held that all liabilities are not debts and

for the purposes of section 2(m) it is only liabilities which have ripened into "debts owing" that can be taken into account. To merit deduction u/s

2(m) the liability must not only be a debt but one solvendum in praesenti. A debt accruing is not within the section.

27. A similar view was taken by a Bench of the Madras High Court in *Commissioner of Wealth-tax v. Pierce Leslie & Co. Ltd.* wherein it was

held that the liability to tax under the Income Tax Act becomes a debt only on the service of the notice of demand calling upon the assessee to pay

the tax levied; advance tax becomes due and payable when demand is made for its payment within the prescribed period; the term "debt" does not

cover an amount reserved for a tax liability in anticipation of assessment, or future demand if assessment has not been made.

28. In *Inland Revenue Commissioner v. Bagnall Ltd.* the King's Bench laid down that the word "debt" in the Finance (No. 2) Act, 1939, Schedule

VII, was used in its proper sense of an ascertained sum. The editorial note brings out the ratio of the decision accurately. It reads thus :

The question here is the meaning of the word "debt" in Schedule VII, and it is held that it does not refer to a mere liability the amount of which is

unascertained but refers only to an ascertained sum, that is, a liability which has been quantified.

29. Sri Ramamani, the learned counsel for the assessee, in his turn placed reliance on certain decision; in particular, he placed a great deal of

reliance on the decision of the Court of Appeal in *O'Driscoll v. Manchester Insurance Committee*. The facts of that case as summarised in the

head-note to the report are as follows :

An insurance committee, acting under the National Insurance Acts, 1911 and 1913, and the Regulations made thereunder, entered into

agreements with the panel doctors of their district by which the whole amounts received by the committee from the National Insurance

Commissioner 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. The court held that where a panel

doctor has done work under his agreement with the insurance committee, and the committee have received funds in respect of medical benefit from

the National Insurance Commissioners, there is a debt owing or accruing from the insurance committee to the panel doctor which may be attached

under XLV, rule 1, notwithstanding that as a matter of calculation the exact share payable to him may not yet have been ascertained.

30. In the course of his judgment Swinfen Eady L. J. observed thus at page 512 :

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 doubt 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 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. In such a case there is

no debt until he has served the whole period. There is another class of cases where the attempt has been made to attach income arising from a fund

vested in trustees for a cestui que trust. In such a case until the trustees receive

the income there is no debt owing or accruing from the trustees to

the cestui que trust, and consequently, there is nothing which can be attached to answer a judgment obtained against the cestui que trust.

31. In the same case Bankes L. J. observed at page 516 :

It is well established that debts owing or accruing include debts debts in praesenti solvenda in futuro. The matter is well put in the Annual Practice,

1915, page 808 : "But the distinction must be borne in mind between the case where there is an existing debt, payment whereof is deferred, and

the case where both the debt and its payment rest in the future. In the former case there is an attachable debt, in the latter case there is not".

32. A similar view was taken in Dawson v. Preston. The facts of that case are as follows :

In 1954 P., a legally aided plaintiff, received Pounds 350 damages in consequence of the settlement of his action. This 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, section 2(2) (d) and the Legal Aid (General)

Regulations, 1950, regulation 16. Part of that sum was paid out to P., leaving a balance in the legal aid fund subject to any charge conferred on the

Law Society by section 3 (4) of the Act of 1949, to cover the prescribed deductions, which remained to be quantified, e.g., deduction for the

taxed costs of the action. In November, 1954, the judgment creditor who had previously obtained judgment with costs against P., obtained a

garnishee order nisi on the Law Society as administrators of the legal aid fund, which order, after an enquiry as to the amount owing to P., when

allowance had been made for the prescribed deductions, was made absolute in April, 1955. On appeal by P. on the ground that, at the date of the

garnishee order nisi, there was not a debt owing to him from the Law Society as administrators of the legal aid fund, or that any such debt was not

then ascertainable and, therefore, was not an existing debt and could not be attached. The court held that under the Legal Aid and Advice Act,

1949, and the Legal Aid (General) Regulations, 1950 (particularly regulation 16 (6)), there was at the time of the garnishee order nisi an existing

debt owing by the Law Society as administrators of the legal aid fund to P., although payment of the debt was deferred pending the ascertainment

of the amount of the charge in favour of the Law Society, and the order absolute

for the attachment of the debt was, therefore, rightly made. In that case Lord Goddard C.J. observed :

It seems to me that this is a perfectly clear case. The money when it was paid to the Law Society and held by the Law Society was the judgment debtor's money. The Law Society were bound to account for it. They were bound to hand over the money to him, although, no doubt, by virtue of the statutory charge which is given, they could retain it in their hands until the amount of the charge was found; it is a case of debts in presenti solvenda in futuro, and debts, which partake of that nature are, and always have been, attachable. In my opinion, there is no doubt here that the master was right in making the order he did.

33. In Commissioner of Income Tax v. Ahmed Tea Co. (Pvt.) Ltd. it was held that provision for taxation shown in the balance-sheet of a company prepared as on the valuation date has to be deducted in computing the net wealth of the company for purposes of wealth-tax. It was further observed that the liability of the taxpayer to pay Income Tax arises as and when the income is earned; the tax may be quantified after the assessment order has been passed but the liability cannot be said to be contingent and arising only on the determination of the amount by an assessment order; as the liability to pay Income Tax is there, the assessee sets apart a certain amount which he thinks will be necessary for discharging that liability, and thus the amount of the liability is ascertained, the amount set part in the balance-sheet towards provision for taxation is, therefore, a "debt owed by the assessee on the valuation date" within the meaning of those words in the definition of "net wealth" in section 2(m) of the Act.

34. In Commissioner of Wealth-tax v. Standard Mills Co. Ltd. it was held that a "debt" in its restricted sense means an existing obligation to pay an ascertained or liquidated sum of money either payable in presenti or in future; in its wider import, it means an existing obligation to pay a sum of money, either ascertained or unascertained, whether payable in praesenti or in future, but not a contingent obligation to pay a sum of money or an obligation to pay damages; the word has been used in section 2(m) of the "Act" in its wider import.

35. In Wallace Brothers & Co. Ltd. v. Commissioner of Income Tax, Lord Uthwatt,

speaking for the Judicial Committee, observed as follows at

page 244 :

The general nature of the charging section is clear. First, the charge for tax at the rate fixed for the year of assessment is a charge in respect of the

income of the "previous year", not a charge in respect of the income of the year of assessment as measured by the income of the previous year.

That has been decided and the decision was not questioned in this appeal.

Second, the rate of tax for the year of assessment may be fixed after the close of the previous year and the assessment will necessarily be made

after the close of that year. But the liability to tax arises by virtue of the charging section alone, and it arises not later than the close of the previous

year, though quantification of the amount payable is postponed.

36. This view was reiterated by the Federal Court in *Chatturam v. Commissioner of Income Tax*.

37. The Supreme Court adopted that view in *Chatturam Horilram Ltd. v. Commissioner of Income Tax*, wherein it was laid down that under the

scheme of the Indian Income Tax Act, 1922, the income of the assessee attracts the quality of taxability with reference to the standing provisions of

the Act but the playability and the quantification of the tax deferred on the passing and application of the annual Finance Act.

38. The Supreme Court appears to have affirmed this view over again in *Kalwa Devadattam v. Union of India* (C. As. Nos. 641 and 642 of

1961) (not yet reported)

What is true of the Income Tax Act is also true of the Agricultural Income Tax Act. Hence it follows that on or before March 31, 1959, the

assessee had incurred the liability to pay agricultural Income Tax for the accounting year relevant to the assessment year 1959-60. The question for

decision is whether that liability can be considered as ""debt owed"" within the meaning of section 2(m) of the Act.

39. It is difficult to reconcile the two lines of cases noticed above. The cases cited on behalf of the revenue take the view that before a liability can

be considered as a ""debt"", the same must have been ascertained and quantified. On the other hand, the cases on which the learned counsel for the

assessee relied take the view that a liability ascertained or unascertained whether payable in praesenti or in future is a ""debt"". The question is not

free from doubt. But I prefer to follow the decisions cited on behalf of the assessee. Some of the observations made by the Supreme Court in

Shanti Prasad Jain v. Director of Enforcement accords with the view put forward on behalf of the assessee. This is what Venkatarama Iyer J., who

spoke for the court, observed at page 250 :

In its ordinary as well as its legal sense a debt is a sum of money payable under an existing obligation. It may be payable forthwith, solvendum in

praesenti, then it is a debt "due", or it may be payable at a future date, solvendum in futuro; then it is debt "accruing". But in either case it is a debt.

But a contingent debt has no present existence, because it is payable only when the contingency happens, and ex hypothesi that may or may not

happen..... The meaning of "accruing debt", observed Lord Blackburn in Tap v. Jones, is debitum in presenti solvendum in futuro, but it goes no

further, and it does not comprise anything which may be a debt, however probable or however soon it may be a debt.

40. Another way of looking at this question is to hold that the word ""debt"" is not a term of law and it has no definite legal import. Hence we have to

look to the context in which that word is used in conjunction with the word ""owed"" and not ""debt payable"" or ""debt due"".

41. Stroud in his Judicial Dictionary (Third edition, at page 889) gives the import of the word ""due"" as follow :

(1) A debt is "due" when it is payable.

(2) "Due" may mean immediately payable (its common signification), or a debt contracted but payable in future.

42. In the Dictionary of English Law by Earl Jowitt, the word ""owe"" or ""owing"" is explained thus (Volume II, at page 1283) :

To owe a sum of money is to be under an obligation to pay it either at once or at some future time, and such a debt is said to be "owing" as

opposed to "payable".

43. Hence the expression ""debts owed"" in section 2(m) must be held to include both debts payable at once as well as those payable in future. It

also includes debts which are ascertained as well as those that are not ascertained.

44. In Writ Petitions Nos. 243 and 256 of 1959 and 1166 of 1960, a Bench of this court, of which I was member, had to consider the various

items of assets that have to be taken into consideration in computing the "net wealth". The question for our decision in those cases was whether the

coffee points" secured by the grower can be considered as wealth belonging to the grower. It was contended before us that the "coffee points

can at best be considered as "debt". We repelled that contention with the following observation :

The controversy whether the value of the "coffee points" to which the registered owners are entitled is a "debt" due from the Coffee Board does

not appear to us to be relevant for our present purpose. In determining the "net wealth" of the assessee the relevant question is whether they are

"assets" of the assessee, on the valuation date, wherever they might have been located. A "debt" due to an assessee is undoubtedly an item of his

"asset". But the word "asset" has a larger connotation. Valuable rights are also "assets". Even a claim which is not attachable, if it is otherwise

valuable, is undoubtedly an "asset".

Under section 3 of the Transfer of Property Act, "actionable claim" means a claim to any debt, other than a debt secured by mortgage of

immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession,

either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest

be existent, accruing, conditional or contingent. It has been laid down in a large number of decisions that the right to recover the insurance money

on the death of the assured person or on the expiry of the endowment period is an actionable claim and the same is transferable.

45. If in computing the "net wealth" we have to take into consideration "assets" of every description, it is reasonable to assume that the legislature

would have provided for the deduction of all outgoings whether the same was quantified or not. If the contention of the revenue is accepted as

correct, then injustice is likely to be caused to the assessee if there is delay in quantifying the tax that may be payable. The interpretation that has

commended itself to us, we think, while providing against tax evasion, would at the same time ensure a fair deal to the assessee.

46. For the reasons mentioned above, our answer to the first question submitted for opinion is in the affirmative and in favour of the assessee. In

other words, the provision for payment of agricultural Income Tax constitutes a liability which is deductible at the time of the computation of the net wealth"" of the assessee. We have already answered the second question in favour of the assessee.

47. The revenue to pay the cost of the assessee. Advocate's fee Rs. 250.

48. Questions answered in favour of the assessee.