

(1975) 05 CAL CK 0012
In the Calcutta High Court
Case No : Income-tax Matter No. 389 of 1970

Dipti Kumar Basu

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 16-05-1975

Acts Referred:

Transfer of Property Act, 1882 — Section 130
Wealth Tax Act, 1957 — Section 2, 3, 7(1)

Citation : 80 CWN 153 : 80 CWN 152 : (1976) 105 ITR 450

Hon'ble Judges : S.C. Deb, J; R.N. Pyne, J

Bench : Division Bench

Advocate : P.P. Ginwalla, D. Pal, P.K. Pal and Arijit Chowdhury, for the Appellant; B.L. Pal and S. Sen, for the Respondent

Judgement

Deb, J.—The following questions of law of great importance are involved in this reference u/s 27(1) of the Wealth-tax Act, 1957, hereinafter stated as the " Act" :

"(a) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the "outstandings" due to the firm constituted assets the value of which was required to be included in its net wealth for the purpose of assessing the assessee's interest therein ?

(b) If the answer to question No. 1 is in the affirmative whether the value of the "outstandings" should not be reduced by

(i) the estimated tax payable by the firm on the outstandings ? and

(ii) the estimated tax payable by the assessee on his share therein ?

(c) Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the principle and method of valuation of the outstandings as adopted by the Appellate Assistant Commissioner ? "

2. The assessment year is 1964-65, and the valuation date is March 31, 1964. M/s. Om Dignam & Co., a firm of solicitors, is hereinafter stated as the "firm" The

assessee is a partner of the firm. The firm maintains its books on cash basis. The firm is entitled to get costs from its clients and has submitted the bills to them. In the assessment year, the firm did not include in its balance sheet these unrealised sums, hereinafter stated as the "outstandings". The Tax Officer has included them in the balance sheet on the ground that these outstandings are the assets of the firm and are includible in the computation of the net wealth of the assessee and on estimate, has determined the assessee's share in these outstandings at Rs. 2,50,000.

3. The Appellate Assistant Commissioner, on appeal by the assessee, has directed the Tax Officer to determine the assessee's share in the net wealth of the firm, under Rule 2 of the Wealth-tax Rules, 1957, by taking these outstandings into account in accordance with the percentage determined by him. And, save as to certain matters, the Appellate Tribunal has affirmed the decision of the Appellate Assistant Commissioner and has also passed an order u/s 35 of the Act with which we are not concerned.

4. Mr. Ginwalla, the learned counsel for the assessee, has accepted the percentages determined by the Appellate Assistant Commissioner without prejudice to his following submissions :

(i) In *Sandersons and Morgans, Solicitors (In the matter of Bill of Costs) Vs. Mohanlal Lalluchand Shah and Others*, it has been held that a solicitor is entitled to a reasonable and fair remuneration that may be allowed by the court on taxation of his bills in terms of the Rules of the Original Side of this court relating to the taxation of the bill of costs. Therefore, the amounts specified in these bills are unascertained sums of money, because these bills are liable to be taxed under our taxation rules. Hence, these outstandings are not debts within the meaning of the terms "debt", for a "debt", as stated in *Mulla's Transfer of Property Act* (5th edn.) at p. 794. "is an obligation to pay a liquidated or certain sum of money ". Further, a reasonable remuneration is not a debt, for it is a compensation and, therefore, these outstandings are not at all debts. Hence, they are not the assets of the firm and should be excluded from the computation of the net wealth of the assessee.

(ii) Section 2(e) of the Act defines the term "asset", but in order to determine whether these outstandings are assets or not the court should take into consideration Section 7(1) of the Act which provides that the valuation of any asset, other than cash, shall be estimated to be the price, which in the opinion of the Tax Officer, it would fetch if sold in the open market on the valuation date. There is no market in which these bills of the firm can be sold. In any event, nobody will buy the solicitor's bill, because the Rules of the Original Side of this court do not provide for taxation of the bill of costs at the instance of an assignee who will be left without any remedy. Therefore, the solicitor's bill is not a chose-in-action and it cannot be equated with a trader's bill. Hence, these outstandings are not the assets of the firm and, therefore, they are not includible in the computation of the net wealth of the assessee.

(iii) These outstandings do not form part of the assets of the firm on the valuation date because of its cash system of accounting and they should be excluded from the computation of the net wealth of the assessee in view of the decision of the Orissa High Court in the case of Commissioner of Wealth Tax Vs. Vysyaraju Badreenarayanamoorthy Raju, .

(iv) The Tax Officer should not have included these outstandings in the balance-sheet of the firm, because the assessee will not get his share in these outstandings in the event of his not remaining in the firm on the date of realisation of these outstandings under Clause 20 of the partnership deed and this is a circumstance which justifies their non-inclusion u/s 7(2)(a) of the Act.

(v) If these outstandings are included in the computation of the net wealth of the firm the estimated Income Tax liability of the firm on these outstandings should also be taken into account and the assessee should be allowed a proportionate deduction in respect thereof in accordance with his share in the firm.

5. There is no dispute that property of every description, movable and immovable, is included in the term "asset" barring the properties specified in Section 2(e) and other sections of the Act. "Property", as said by the Supreme Court in Ahmed. G.H. Ariff v. Commissioner of Wealth-tax [1974] 76 ITR 471 "is a term of the widest import and, subject to any limitation which the context may require, it signifies every possible interest which a person can clearly hold and enjoy". It has also been said, at page 476 of the report, as follows :

"The meaning of the word "property" has come up for examination before this court in a number of cases it was observed in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., that there was no reason why that word should not be given a liberal and wide connotation and should not be extended to those well-recognised types of interests which had the insignia or characteristic of proprietary right."

6. To put it briefly, the "net wealth" is the amount which is arrived at after deducting the aggregate value of all the debts and liabilities allowable under the Act on the valuation date from the aggregate value of all the assets of the assessee as on that date. The Bombay High Court has considered the scope and ambit of Sections 2(e) and 2(m) of the Act in Commissioner of Wealth-tax, Bombay City II Vs. Purshottam N. Amersey and Another, and the Supreme Court has approved it in Ariff's case, at p. 477 of the report, in the following terms:

"It was held that the definition of the word "assets" in Section 2(e) and that of "net wealth" in Section 2(m) were comprehensive provisions and all assets were included in the net wealth by the very definition. Therefore, when Section 3 imposed the charge of wealth-tax on the net wealth it necessarily included in it every description of the property of the assessee, movable and immovable, barring the exceptions stated in Section 2(e) and other provisions of the Act. We are in entire concurrence with that view. There is no reason or justification to give any restricted meaning to the word "asset" as defined by Section 2(e) of the

Act when the language employed shows that it was intended to include property of every description."

7. A debt "is a property" is also the decision of the Supreme Court in *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, . Hence, in our opinion, the expression "property" should include a debt due to an assessee, and it is an asset under the Act.

8. Then, what is a debt ? Is it as stated in Mulla's book and quoted by Mr. Ginwalla ? Or the later part of it requires some clarification ? These questions lead us immediately to the decision of the Supreme Court in *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta*, . In the majority judgment after considering a few well-known decisions and also approving the Full Bench decision of this court, Subba Rao J. (as he then was), at p. 780 of the report, says this:

"We have briefly noticed the judgments cited at the Bar. There is no conflict on the definition of the word "debt". All the decisions agree that the meaning of the expression "debt" may take colour from the provisions of the concerned Act: it may have different shades of meaning. But the following definition is unanimously accepted :

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

9. The said decisions also accept the legal position that a liability depending upon a contingency is not a debt in *praesenti* or in future till the contingency happened. But if there is a debt the fact that the amount is to be ascertained does not make it any the less a debt if the liability is certain and what remains is only the quantification of the amount. In short, a debt owed within the meaning of Section 2(m) of the Wealth-tax Act can be defined as a liability to pay in *praesenti* or in future an ascertainable sum of money.

10. And in his dissenting judgment, Shah J. (as he then was), at p. 786 of the report, said as follows :

"The expression "debt" is a sum of money due from one person to another : it involves an obligation to satisfy liability to pay a sum of money. The liability must be an existing liability but not necessarily enforceable in *praesenti*; an existing liability to pay a sum of money even in future is a debt, but the expression does not include "liability" to pay unliquidated damages nor obligations which are inchoate or contingent. Lord Justice Lindley in *Webb v. Stenton* [1883] 11 QBD 518 observed that:

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

That definition for the purpose of the Wealth-tax Act correctly describes the concept of debt. A debt, therefore, involves a present obligation incurred by the

debtor and a liability to pay a sum of money in praesenti or in future. The liability must, however, be to pay a sum of money, i.e., to pay an amount which is determined or determinable in the light of the factors existing at the date when the nature of the liability has to be ascertained."

11. Therefore, the latter part of Mulla's definition, namely, that "a debt is an obligation to pay a certain sum of money" should be understood in the light of the above decision of the Supreme Court. Now, in the Full Bench case of this court in Banchharam Majumdar v. Adyanath Bhattacharjee ILR[1909] Cal 936 the learned Chief Justice, at pp. 938-39 of the report, said :

"I take it to be well-established that a debt is a sum of money which is now payable or will become payable in future by reason of a present obligation."

12. And Sir Ashutosh Mukherjee, at p. 940 of the report, said: "the term "debt" includes both present and future debt" and thereafter his Lordship, at p. 941 of the report, said as follows:

"The view that the term " debt" ordinarily includes both debts owing and accruing appears to have been affirmed in the recent case of Edmunds v. Edmunds [1204] P 362 where reference is made to the decision of Chief Baron Pigot in Sparks v. Younge ILR [1858] CaL 251 to the effect that money not payable until a future date is a debt, and does not lose its character of a debt, because of the possibility that a future state of things may intervene before the day assigned for payment and may thus create a valid defence against the recovery of the debt: in other words, a debt is no less a debt because it has not yet matured, if it will certainly become payable in the future."

13. It is well-settled that a debt is an obligation to pay forthwith or in future an ascertained or an unascertained sum of money if it can be ascertained on a subsequent date. It also includes a future debt.

14. It has been held in Sandersons and Morgans, Solicitors (In the matter of Bill of Costs) Vs. Mohanlal Lalluchand Shah and Others, that notwithstanding any special agreement to pay the attorney and client cost, the court has jurisdiction to disallow the costs unreasonably and in excess of the limits prescribed by the Rules of the Original Side of this court charged by the solicitors from the clients, It was also held that in a proper case the court can direct taxation of the bill of costs and the solicitor is also entitled to a reasonable and fair remuneration for the professional services rendered by him to his client, but not the costs which are unnecessarily and unreasonably incurred by him for his client.

15. No doubt, under certain special circumstances, the court can disallow certain items of cost, but it has no sweeping power to absolve the client altogether from paying the costs of his solicitor, for their rights and obligations are essentially governed by their contract and the court cannot abrogate their contractual rights and obligations. Further, the solicitor and the client can settle the bill of costs outside the court and if they do so they will be bound by their settlement, save in

cases of fraud, misrepresentation, mistake, undue influence, coercion, duress and the like.

16. The moment a solicitor renders any professional service to his client in terms of the contract between them he is legally entitled to his fees and costs from his client, who incurs a corresponding legal obligation to pay those fees and costs to this solicitor. And though the amount is liable to be quantified later on if the client disputes any item, yet it is not a case where nothing is due or payable by the client. Moreover, their rights and obligations flow from their contract and, therefore, their rights and obligations are not inchoate or contingent.

17. It is true that if the clients raise any dispute or refuse to pay these bills, the firm will have to process these bills through the machinery of this court relating to taxation before realisation, but the moment the taxation will be completed the actual amount payable by the clients to the firm will be immediately ascertained and, therefore, we are not impressed by the contention of Mr. Ginwalla that these outstandings are not debts within the meaning of the term "debt".

18. Even on a wrongful assumption that a reasonable remuneration is a compensation and that these outstandings are not debts due to the firm, the contention of Mr. Ginwalla must also fail, for a right to receive compensation is an asset under the Act as held by the Supreme Court in *Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa*, in the following terms :

"Section 2(e) of the Act defines "assets" to include property of every description, movable or immovable, but does not include certain categories of property with which we are not concerned. The word " property ", as mentioned by this court in the case of *Ahmed G.H. Ariff v. Commissioner of Wealth-tax* is a term of the widest import and, subject to any limitation which the context may require, it signifies every possible interest which a person can clearly hold and enjoy. The definition of the "assets" as given in Section 2(e) of the Act, though not exhaustive, shows its wide amplitude and we see no reason as to why the right to receive compensation cannot be included "amongst the assets of an assessee."

19. Section 7(1) of the Act provides that the value of any asset, other than cash, shall be estimated to be the price which, in the opinion of the tax officer, it would fetch, if sold in the open market on the valuation date. The Bombay High Court has construed this section in *Commissioner of Wealth-tax, Bombay City II Vs. Purshottam N. Amersey and Another*, and its interpretation, has been approved in *Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa*, of the report, in the following terms:

"It has been rightly observed by the High Court that when this statute uses the words " if sold in the open market" it does not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and on that basis the value has to be found on. It is a hypothetical case which is contemplated and the tax officer must assume that there is an open market in

which the asset can be sold."

20. The Supreme Court has also dismissed the appeal filed by the assessee from the decision of the Bombay High Court in Commissioner of Wealth-tax, Bombay City II Vs. Purshottam N. Amersey and Another, and the judgment of the Supreme Court is reported as Purshottam N. Amarsay and Another Vs. The Commissioner of Wealth Tax, Bombay, . Hence the submissions of Mr, Ginwalla founded upon Section 7(1) of the Act must also fail.

21. Now, the following observation appears in Sandersons & Morgans" case, at p. 328 of the report:

"Jurisprudence has never looked at the relationship between an attorney and client as on a par with a common contract between private persons."

22. Therefore, the submission of Mr. Ginwalla is that a trader's bill should not be equated with a solicitor's bill, because a trader's bill cannot be taxed under the Rules of our court. A trader's bill from its very nature cannot be taxed under our Rules and subject to the fiduciary relationship between the solicitor and the client, the jurisprudence, in our opinion, does not admit any distinction between a trader's bill and solicitor's bill. The court will disallow an inflated sum charged by a trader in his bill. Similarly, the taxing officer will disallow the inflated cost charged by the solicitor. In the absence of a settled remuneration, the cost is always payable in accordance with the schedule of fees prescribed by our Rules. Similarly, the court will determine the price where the contract is silent on the price of the goods sold and delivered. Moreover, the court often passes a preliminary decree for accounts where the disputed items are numerous and cannot conveniently be dealt with by the court at the time of hearing of the suit filed by the trader. Therefore, in our opinion, the above observation in Sandersons and Morgans, Solicitors (In the matter of Bill of Costs) Vs. Mohanlal Lalluchand Shah and Others, has no application so far as this Act is concerned and no distinction should be made between a trader's bill and a solicitor's bill under the Act.

23. It has been held in Ingle v. M^r Cutchan [1884] 12 QBD 518 by the Queen's Bench Division that a suit is maintainable by an assignee of a solicitor's bill of costs. It is stated in Halsbury's Laws of England (3rd edn.), vol. IV, art. 1003, at p. 484, that a solicitor's bill of costs is a chose-in-action. The submission of Mr. Ginwalla is that in England a solicitor's bill is an equitable chose-in-action and no equitable chose-in-action is recognised in India and, therefore, Ingle's case cannot be applied here. But the opinion of Manisty J. in Ingle's case is that the cost payable to a solicitor is a debt, and in Snell's Equity (21st edn.), at p. 69, it is said that a debt is a legal chose-in-action. Hence, we overrule this plea of Mr. Ginwalla.

24. Further, an actionable claim means a debt, other than the debts specified in Section 3 of the Transfer of Property Act. Where a debt is transferred in accordance with the provisions of Section 130 of the Transfer of Property Act it

carries with it all legal incidents thereof including the securities for such debt u/s 8 of the Transfer of Property Act. The moment a debt is validly transferred the transferee is vested with all the rights and remedies of the transferor u/s 130 of the Transfer of Property Act. And the language of this section is "positive" and the right conferred by it cannot be whittled down by the application of "the principles of English law" is the decision of the Judicial Committee of the Privy Council in *Mulraj Khatau v. Vishwanath Prabhuram Vaidya* ILR[1913] IA 24 : ilr [1912] Bom 198 .

25. These bills of the firm, in our opinion, are choses-in-action and, therefore, the contention of Mr. Ginwalla must fail. We are also unable to entertain his contention that nobody is willing to purchase these bills of the firm, because no such fact has been stated or found by the Tribunal. That apart, Section 7(1) of the Act contemplates not an actual but a notional sale in an assumed market, and, therefore it cuts at the root of his contention. Moreover, the assignee of a debt stands in the shoes of the assignor and he is entitled to the remedies that are available to the assignor. It is true that there is no specific rule relating to taxation of an assigned bill of costs, but Rule 3 of Chapter XL of the Original Side Rules is as follows:

"Where no other provision is made by the Code or by these rules the present procedure and practice shall remain in force."

26. It is an ancient practice of this court to direct payment of costs as may be certified by two independent attorneys. The court can thus invoke this practice in an action on an assigned bill of costs in order to give an adequate relief to the assignee who has a statutory right u/s 130 of the Transfer of Property Act to enforce his claim and to "sue or initiate proceedings for the same" apart from directing taxation of the bill with a direction on the solicitor to appear before the officer concerned at the time of such taxation. Therefore, we are not convinced by the contention of Mr. Ginwalla that the assignee of a bill of costs will be left without any remedy.

27. These outstandings are debts on the valuation date. They are choses-in-action and can validly be assigned. An actionable claim does not cease to be an actionable claim merely because the claim is reduced by the court as pointed out by Dr. Mukherjee in *Purna Chandra Bhowmick Vs. Barna Kumari Devi and Another*, in the following terms :

"Here the plaintiff in the money suit did not sue for damages arising out of a breach of contract. He did certain building works for the defendants in the suit and some bills were unpaid. A suit was brought to recover the money due on these unpaid bills. In my opinion, what was transferred was the claim to a debt and as such would come within the definition of "actionable claim" as given in Section 3 of the Transfer of Property Act. The mere fact that the claim was reduced by the court did not make, in my opinion, any difference. It cannot be disputed that an assignment of future or non-existing property is quite valid and

the transfer becomes operative as soon as the property comes into existence."

28. In this view of the matter, we overrule the contentions of Mr. Giriwalla noted in points (i) and (ii) earlier. Now, in Commissioner of Wealth Tax Vs. Vysyaraju Badreenarayanamoorthy Raju, the assessee carried on money-lending business and maintained his books on cash basis. He did not include the interest realised by him in his wealth-tax return and, therefore, the tax officer included them in the computation of his net wealth, but the Tribunal deleted the same by holding that the tax officer has no power to do so u/s 7(2)(a) of the Act, because it would amount to a changing of the cash system of book-keeping into a mercantile system of accounting. The High Court accepted the said opinion of the Tribunal and, at page 332 of the report, said as follows :

"Admittedly, the Wealth-tax Act is a sister legislation of the Income Tax Act, and various provisions have been made in it which incorporates the machinery set up under the Income Tax Act for its working. The learned standing counsel for the revenue admits that, under the Income Tax Act, in the case of an assessee maintaining its accounts on cash basis, there is no scope for taking accrued income before receipt.....

In the absence of any specified provision in the Wealth-tax Act for a different mode of computation of net wealth, we find it difficult to accept the contention of the learned standing counsel for the revenue that under the Wealth-tax Act in the case of an assessee who maintains its accounts and prepares the balance-sheet on cash basis, accrued income not received would still be taken into account. It is quite possible that the interest in question which has accrued to the assessee may turn out to be a bad debt in whole or in part and thus, though accrued due, may not at all be received by the assessee. It can never be said to have been the intention of Parliament to include the same in the computation of net wealth in respect of an assessee who maintains its accounts on cash basis. In the case of the mercantile system of accounting the position would be quite different."

29. But, with respect, we are unable to agree. The Income Tax Act is concerned with the total income of the assessee, whereas the Wealth-tax Act is concerned with his net wealth. The system of accounting determines the taxability of income under the Income Tax Act and the tax is assessed on the accrual of income under the mercantile system of accounting, whereas it is assessed on actual receipt under the cash system of book-keeping. Whatever may be the system of accounting, a bad debt is always taken into account in the computation of the net income of the assessee under the Income Tax Act, and, in our opinion, it should also be taken into account in computing the net wealth of the assessee under the Wealth-tax Act, but the Wealth-tax Act is not concerned with the income of the assessee but, as already stated, with his net wealth.

30. It is harsh to include a debt due to an assessee in the computation of his net wealth, but it cannot be helped, for it is an item of asset in his hands. The term

"assets" includes all properties, barring those specified in the Act. "Net wealth" is the amount which represents the aggregate value of the assets of the assessee on the valuation date after deducting the aggregate value of all the debts owed by him on the valuation date other than the debts and liabilities specified in the Act. Therefore, the system of book keeping, in our opinion, is of no consequence under the Wealth-tax Act.

31. A debt due to an assessee cannot be excluded from the computation of his net wealth, because it is an item of asset and not an item of liability in his hands. A book debt, though not entered in the books, is none-the-less a debt as held by Erle C.J. in the case of *Shipley v. Marshall* [1863] 14 CBNS 566. in the following terms:

"To constitute a " book debt" it cannot, to my mind, be necessary that the transaction should be entered in a book."

32. The tax officer is expressly authorised to make adjustments in the balance sheet u/s 7(2)(a) of the Act if "the circumstances of the case may require" him to do so. The fact that a book debt is not entered in the books is itself a circumstance which justifies its inclusion in the balance sheet under this section for the purpose of making the adjustment. In our opinion, by making such adjustment in the balance sheet, the tax officer does not convert the cash system of book-keeping into a mercantile system of book-keeping for the purpose of the Wealth-tax Act.

33. The Income Tax Act and the Wealth-tax Act may be sister legislations, but from the mere fact that the same machinery has been utilised it cannot be said that these two Acts are in *pari materia*. The legislative intent must be ascertained from the language used in these two statutes and not from the mere utilisation of the same machinery which has been adopted to utilise the experience of the officers and to save the expenditure of the exchequer. And, save as to common machinery, there is nothing in these two statutes to indicate that they are in *pari materia* and, therefore, the interpretation of the provisions of the Wealth-tax Act must not be influenced by the provisions of the Income Tax Act.

34. A debt can only be discharged by payment. A debt does not cease to be a debt merely because "its recovery is barred by limitation" as said by the Supreme Court in the case of *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, . And for all these reasons we are not in agreement with the decision of the Orissa High Court in the case of *Commissioner of Wealth Tax Vs. Vysyaraju Badreenarayanamoorthy Raju*, and overrule the contention of Mr. Ginwalla that these outstandings are not the assets of the firm and of the assessee on the valuation date.

35. Now, Section 7(2)(a) of the Act is as follows:

"Where the assessee is carrying on 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 business as on the valuation date and making such adjustments therein as the circumstances of the case may require."

36. And Clause 20 of the partnership deed reads as follows :

"In every case of the acquisition by purchase of the shares in the assets and effects of the partnership of any deceased or retiring or expelled partner or a partner as regards whom the partnership shall have been determined the price to be paid for such share shall be any sums as represent his share of the book value of the assets of the firm other than book debts on the date of acquisition.

For the purpose of determining the share of profits of any deceased or retired or expelled partner or a partner as regards whom the partnership shall have been determined for the year in which such death or retirement or expulsion or determination takes place, the profit of the firm for the period 1st March of that year to the date of such death Or retirement or expulsion or determination shall be such proportion of the profits of that year as this period bears to the whole year.

In addition, he or his legal representative shall be entitled to withdraw or receive out of the partnership any sums standing to the credit of his account in the books of the firm."

37. The submission of Mr. Ginwalla is that the assessee may not remain in the firm on the date of realisation of these outstandings and in that event he will not get his share in these outstanding under this clause and, there fore, the tax officer was not justified in including these outstandings in the balance-sheet of the firm, because this is a circumstance which justifies their non-inclusion u/s 7(2) of the Act, But the Act is concerned with net wealth of the assessee on the valuation date. These outstandings were assets and the wealth of the firm on that date. And the assessee was a partner of the firm on that date. Hence, there is no merit in this contention.

38. No Income Tax is payable by the firm on these outstandings on the valuation date in view of its cash system of accounting and Section 2(m) of the Act does not allow any such deductions. Therefore, the last contention of Mr. Ginwalla must also fail.

39. In the facts (and in the circumstances of the case, we make no order as to costs.

R.N. Pyne, J.

40. I agree.