under section 253, Criminal Procedure Code, go back, take into consideration the report made to him under section 202, Criminal Procedure Code, then with great respect I doubt very much the correctness of that decision. In the present case on merits two things are clear. The complainant and his witness had mentioned all the six accused and no distinction can be made between the part ascribed to Ganga Ram and the other accused who have not been discharged. No reasons are forthcoming why the learned Magistrate has done so. In my view, therefore, the learned Magistrate took into consideration material on which he could not rely and to which he could not refer and consequently his order is vitiated. I, therefore, accept this revision and set aside the impugned order. The case will now go back to the Chief Judicial Magistrate, Hissar, who will either try the case himself or send it to any other Magistrate of competent jurisdiction to be decided in accordance with law. Parties are directed to appear before the Chief Judicial Magistrate, Hissar, on 9th January, 1967.

R.N.M.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and Gurdev Singh, JJ.

COL. HIS HIGHNESS RAJA SIR HARINDAR SINGH BRAR BANS BAHADUR,—*Petitioner*

versus

THE WEALTH-TAX OFFICER, BHATINDA AND OTHERS,—*Respondents*

Civil Writ No. 1841 of 1962

December 23, 1966

Wealth Tax Act (XXVII of 1957)—S. 2(m)—"Net Wealth"—Meaning of—Computation of net wealth—Expenditure Tax, Gift Tax and Wealth Tax payable by an assessee in a particular year—Whether can be deducted from the aggregate value of his assets.

Held, that "net wealth" as defined in section 2(m) of the Wealth Tax Act, 1957, means the amount by which the aggregate value of the assets of the assessee as on the valuation date exceeds the aggregate value of the debts owed by him on the said date.

Held, that the charging provisions of the Expenditure Tax Act and the Gift Tax Act are similar. The Expenditure Tax is levied upon the expenses incurred in the previous year and the Gift Tax is on the gifts made during the previous year. It is thus obvious that liability for tax under both these Acts arises not later than the close of the previous year. The rates of both these categories of taxes being fixed under the schedules to the relevant Acts, the liability incurred for their payment is neither uncertain nor contingent, but *in praesenti,* though the demand and payment of the same are made later. Such liability has all the ingredients of a debt and is a present liability of ascertainable amount. Hence deductions on account of expenditure and gift taxes for which an assessee has incurred liability have to be made in computing his net wealth.

Held, further that the Wealth Tax is to be leived on the net assets in the hands of the assessee on the date of valuation. The total assets held by an assessee on any date prior to the date of valuation are not relevant for that purpose. The position with regard to Income-tax, Expenditure Tax and Gift Tax is, however, different. The assessee's liability to pay these taxes arises on the day his income, expenditure or value of gifts exceeds the amount which is exempt from such taxes under the respective Acts though his full liability for such taxes will be ascertained at the close of the accounting year. As the assessment of Wealth Tax is to be made on the valuation date, which is the last date of the previous year, it cannot be said that the liability to tax had already arisen and was thus in the nature of debt owed by the assessee. Therefore, no deduction on account of Wealth Tax can be allowed to the assessee in arriving at his net assets for the purpose of computing the wealth tax payable by him.

Case referred by the Hon'ble Mr. Justice Gurdev Singh on 5th August, 1965, *to a larger Bench for decision of the important question of law involved in the case and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice Gurdev Singh on 23rd December,* 1966.

Petition under Articles 226 *and* 227 *of the Constitution of India, praying that a writ of* certiorari, mandamus *or any other appropriate writ, order or direction be issued, quashing the order, dated* 30*th Sepaember,* 1961, *of Respondent No.* 1; (*ii*) *the order, dated* 25*th April,* 1962, *of Respondent No.* 2; *and* (*iii*) *the order, dated* 28*th August,* 1962, *of Respondent No.* 3, *refusing the said relief; and to direct the Respondent to reduce the "net wealth" of the Petitioner by Rs.* 1,93,169.49 *Paise and to grant consequent refund to the petitioner.*

K. C. Puri and S. K. Sayal, Advocates, for the Petitioner.

D. N. Awasthy and B. S. Gupta, Advocates, for the Respondents.

ORDER OF THE DIVISION BENCH

Gurdev Singh, J.—This order will dispose of four petitions under Articles 226 and 227 of the Constitution (Civil Writ Nos. 1841

to 1844 of 1962), which involve common question relating to the interpretation of the expression 'net wealth' as defined in section 2(m) of the Wealth Tax Act 27 of 1957 (hereinafter referred to as the Act).

Under section 3 of the Act, which is the charging section, Wealth Tax is to be charged for every financial year commencing on and from the 1st day of April, 1957, in respect of the Net Wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule to the Act. The valuation date as defined in section 2(1) in relation to any year of assessment means the last day of the previous year as defined in section 3 of the Income-tax Act. The petitioner had been maintaining his accounts according to the *Bikrami* calendar, which commences on the 13th of April, each year, and his valuation date is 12th April of every year. For the first assessment year (1957-58) he submitted his return on 31st January, 1958, the accounting year being from 13th April, 1956 to 12th April, 1957. Similarly for the subsequent assessment years 1958-59, 1959-60 and 1960-61, he furnished returns on 30th October, 1958, 7th September, 1959, and 15th September, 1960, respectively.The assessments for all these years were finalized on 13th March, 1961, but later those orders of assessments were amended on 3rd April, 1961, and the pettitioner was assessed to pay Wealth Tax for the following years as detailed below. He had, however, made certain payments during the respective assessment years, which are also shown in the following table :—

Assessment year	Wealth Tax assessed	Wealth Tax paid	Balance
	Rs	Rs	Rs
1957-58 ..	82,121.17 nP.	71,400/-	10,721.17 nP.
1958-59 ..	79,076.17 nP.	72,000/-	7,776.17 nP.
1959-60 ..	1,07,839.33 nP.	74,000/-	33,839.33 nP.
1960-61 ..	98,894.82 nP.	70,000/-	26,894.82 nP.

On 25th April, 1961, the petitioner applied under section 35 of the Act for rectification of the assessment by reducing his Net Wealth by the amount of the Income-tax (Rs. 82,285.61) and the Wealth-tax that he had to pay for the assessment year 1957-58. Similarly,

he claimed deductions on account of the Wealth Tax for the subsequent years 1958-59, 1959-60 and 1960-61 in computing his Net Wealth for those years. He also claimed deduction on account of Expenditure Tax of Rs. 30,282, Rs. 28,605 and Rs. 39,999 for the years 1958-59, 1959-60 and 1960-61, respectively, paid by him for those years. For the last year of assessment 1960-61 he further claimed deduction of Rs. 2,519 which he had paid as Gift Tax. His prayer was, however, rejected by the Wealth Tax Officer,—*vide* his order, dated 30th September, 1961, which forms annexure 'B' to each of these petitions. A petition for Revision under section 25 of the Act against this order was rejected by the Commissioner of Wealth Tax (respondent 2) on 28th April, 1962.

The petitioner's submission before the Wealth Tax authorities was that the Wealth Tax to which he was liable for the particular year under assessment constituted a debt which he owed, and he was entitled to its deduction from the aggregate value of his assets in computing the Net Wealth on which tax was payable by him for that year notwithstanding the fact that the tax had not till then been assessed and no demand notice for its payment issued to him. In rejecting this contention, the Commissioner, Wealth Tax, to whom revisions against the orders of the Wealth Tax Officer were taken, observed :—

> "The important thing to be considered is whether the tax demands, which have not yet been determined can be held to be debts owed by the assessee. A debt is owed only when it has actually been determined. It is only after the order of assessment has actually been passed and the officer has issued a notice of demand calling upon the assessee to make the payment by a particular date that it can be said that the assessee owes the amount of tax as a debt. The tax liabilities claimed by the assessee as deductions had not been determined on the relevant date. They cannot, therefore, be allowed as deductions in arriving at the Net Wealth of the assessee."

It is the validity of this order (annexure C to the petition) that has been assailed by the petitioner in these writ petitions.

Shri K. C. Puri, appearing for the petitioner, has argued that the view expressed by the Commissioner is not sustainable on a plain interpretation of clause (m) of section 2 of the Act. in which, except for certain types of debts, it is provided that the debts owed

by an assessee have to be deducted from the aggregate value of his assets in determining the Net Wealth on which he can be called upon to pay tax under section 3 of the Act. He has further urged that once the assessee has incurred the liability for payment of the tax, it constitutes a debt owed by him, irrespective of the fact whether his liability has actually been quantified or not by assessment or a notice of demand issued against him.

The question that thus arises for consideration in these petitions before us is whether the Expenditure Tax, the Gift Tax and the Wealth Tax which a person has to pay for a particular year can be deducted from the aggregate value of his assets in computing his Net Wealth for the purposes of assessing the Wealth Tax payable by him for that year. Under section 3, which is the charging section, Wealth Tax is to be levied in respect of the Net Wealth on the corresponding date of valuation of each individual, Hindu undivided family and company. The expression 'Net Wealth' has been defined thus in clause (m) of section 2 of the Act :—

> "(m) 'Net Wealth' means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets wherever located, belonging to the assessee on the valuation date, including assets required to be included in his Net Wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than—
>
> (i) debts which under section 6 are not to be taken into account;
>
> (ii) debts which are secured on, or which have been incurred in relation to, any asset in respect of which Wealth Tax is not payable under this Act; and
>
> (iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953 (34 of 1953), the Expenditure Tax Act, 1957 (29 of 1957), or the Gift Tax Act, 1958 (18 of 1958), (a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceedings as not being payable by him, or (b) which, although not

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

From this, it is obvious that in computing the Net Wealth debts owed by an assessee on the date of valuation, excepting those specified in clauses (i), (ii) and (iii), have to be deducted. It is, however, not disputed that none of these clauses has any applicability to the facts of the case before us.

The question whether the amount of Wealth-Tax, Expenditure-Tax and Gift-Tax, for the payment of which the petitioner had incurred liability in various years, can be deducted from his total assets in computing his net wealth for the purposes of Wealth-Tax depends upon the interpretation of the expression "debts owed" by the assessee as used in this clause. The Commissioner of Wealth-Tax has taken the view that a tax which the assessee may be liable to pay, does not become a debt owed by him unless the order of assessment has been actually passed, amount of the tax determined, his liability quantified and notice of demand issued. On the other hand, Shri K. C. Puri appearing for the petitioner has urged that since all the debts owed by the assessee have to be excluded in computing the net wealth the taxes for which the assessee has incurred liability during the relevant year have to be excluded from consideration notwithstanding the fact that the assessment had not taken place and the tax payable has not been quantified. Elaborating his argument learned counsel has contended that when a tax becomes payable, it becomes a debt owed by the assessee and the mere fact that the amount has to be ascertained subsequently or its demand is made later, does not effect the liability of the assessee to pay it or alter the nature of this liability.

This matter has come up for consideration before various High Courts of this country. Their decisions prior to the year 1964 disclose a sharp conflict of opinion. In support of the view taken by the Commissioner of Income-Tax, Shri D. N. Awasthy has invited our attention to the decisions of the Madras, Calcutta, Bombay and Kerala High Courts in *Commissioner of Wealth-Tax, Madras* v. *Pierce Leslie and Co., Ltd. Kozhikode* (1), *K. R. Ramachandra Rao* v. *Commissioner of Wealth-Tax, Madras* (2), *Kesoram, Cotton Mills,*

(1) 48 I.T.R. 1005.

(2) 48 I.T.R. 959.

Ltd. v. *Commissioner of Wealth-Tax, Calcutta* (3), *Assam Oil Co. Ltd.* v. *Commissioner of Wealth-Tax (Central), Calcutta* (4), *Commissioner of Wealth-Tax, Bombay* v. *Standard Mills Co. Ltd.,* (5) *Commissioner of Income-tax, Bihar* v. *Ramnik Lal Kothsi* (6), *and Commissioner of Wealth-tax, Kerala* v. *Harrison & Crossfield Ltd.,* (7). On the other hand, the High Courts of Gujrat, Assam and Mysore have taken a contrary view in *Commissioner of Wealth-Tax, Gujrat* v. *Raipur Manufacturing Co. Ltd.* (8), *Commissioner of Wealth-Tax, Gujrat,* v. *Ajit Mills Limited* (9), *Commissioner of Wealth-Tax, Assam* v. *Ahmed Tea Co. (Pvt.)Ltd.* (10), *Commissioner of Wealth-Tax Gujrat,* v. *Raipur Manufacturing Co. Ltd.* (8), *Commissioner of Income-Tax/Wealth-Tax* v. *Amco Batteries (P.) Ltd.* (11), *and Commissioner of Wealth-Tax, Mysore* v. *Lt. Col. D. C. Basappa* (12), and have ruled that the word debt comprised an ascertained sum of money provided it was ascertainable by reference to relevant data and the liability to pay was unconditional, that is to say, it had to be paid anyhow and inall circumstances. This later set of decisions supports the petitioner's plea that the taxes for which the petitioner had incurred liability during the accounting years were debts owed by him and had to be excluded from consideration in arriving at his net wealth. The matter has, however, been set at rest by the recent decision of their Lordships of the Supreme Court in *Kesoram Industries and Cotton Mills Ltd.* v. *Commissioner of Wealth-Tax (Central), Calcutta* (13), wherein the view expressed by the Division Bench of the Gujrat High Court in *Commissioner of Wealth-Tax* v. *Raipur Manufacturing Co. Ltd.* (8), was expressly approved. The decisions to the contrary thus stand overruled. This case came up before their Lordships of the Supreme Court on appeal against the judgment of the Calcutta High Court in *Kesoram Cotton Mills Ltd.* v. *Commissioner of Wealth-Tax* (3) in which a Division Bench of that Court has held that in computing the

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(3) 48 I.T.R. 31.
(4) 48 I.T.R. 49.
(5) 50 I.T.R. 267.
(6) 54 I.T.R. 332.
(7) 54 I.T.R. 587.
(8) 52 I.T.R. 482.
(9) 55 I.T.R. 556.
(10) 48 I.T.R. 943.
(11) 52 I.T.R. 370.
(12) 51 I.T.R. 790.
(13) (1956) 59 I.T.R 767.

net wealth of the assessee, the provision for payment of Income-Tax and Super-Tax in respect of the year of account was not a "debt owed" within the meaning of section 2(m) of the Wealth-Tax Act, 1957, and accordingly it was not deductible in computing the net wealth of the assessee. On consideration of the relevant provisions of the Wealth-Tax Act, the Finance Act, and the Income-Tax Act, their Lordships of the Supreme Court rejected this opinion and ruled that the liability to pay Income-tax is a debt within the meaning of section 2(m) of the Wealth-Tax Act and it arises on the valuation date during its continuance. Suba Rao, J. (as he then was), who delivered the majority judgment of the Court, summarised his conclusions thus:—

> "A debt is a present obligation to pay an ascertainable sum of money, whether the amount is payable in *praesenti* or *in futuro: debitum in praesenti, solvendum in futuro.* But a sum payable upon contingency does not become a debt until the said contingency has happened. A liability to pay Income-Tax is a present liability though it becomes payable after it is quantified in accordance with ascertainable date. There is prefected debt at any rate on the last day of the accounting year and not a contingent liability. The rate is always easily ascertainable. If the Finance Act is passed, it is the rate proposed in the Finance Bill pending before Parliament or the rate in force in the preceding year, whichever is more favourable to the assessee. All the ingredients of a "debt" are present. It is a present liability of an ascertainable amount."

In that case their Lordships were dealing with a claim for deduction of Income-Tax and Super-Tax in respect of the accounting year, for which provision had been made in the balance-sheet, in calculating the net wealth of the assessee company. Reference in this connection was made to section 3 of the Wealth-Tax Act and it was observed:—

> "Net Wealth" is the amount by which the aggregate value of the assets of the assessee as on the said date is in excess of the aggregate value of the debts owed by it on the said date. Under section 3 of the Income-Tax Act, the assessee was liable to pay Income-Tax and Super-Tax on its income ascertained during the accounting year ending with March 31, 1957, at the rates prescribed under the Finance Bill or

the previous Finance Act whichever was less, as the Finance Act of 1957 was passed only in September, 1957."

Proceeding further Subba Rao, J., said:

"Looking at the problem from the standpoint of a businessman or looking at the question from a commonsense view, one will reasonably hold that the net wealth of an assessee during the accounting year is the income earned by him minus the tax payable by him in respect of that income. If a person earns Rs. 1,00,000 during the accounting year and has to pay Rs. 60,000 as tax in respect of that income, it will be incongrous to suggest that his wealth at the end of that year is Rs. 1,00,000. A reasonable man will say that his income is only Rs. 40,000 which represents his wealth at the end of the year. But it is said that what is just is not always legal. This Court has, on more than one occasion, emphasized the fact that the real income of an assessee has to be ascertained on commercial principles subject to the provisions of the Income-Tax Act. Is there any provision in the Wealth-Tax Act which compels us to come to a conclusion which is unjust on the face of it?"

The following passage *from the Annual Practice*, 1950 (page 808) was quoted with approval as "a full and accurate statement of the law on the subject" supported by English decision:—

"But the distinction must be borne in mind between the case where there is an existing debt, payment whereof is deferred, and a case where both the debt and its payment rest in the future. In the former case there is an attachable debt, in the latter case there is not. If, for instance, a sum of money is payable on the happening of a contingency, there is no debt owing or accruing. But the mere fact that the amount is not ascertained does not show that there is no debt."

The definition of a debt which is, according to his Lordship, universally accepted, is:

"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.*"

The learned Judge concluded the discussion on this subject with the following words of Earl Jowitt in *British Transport Commission* v. *Gourley* (14) :—

> "The obligation to pay tax-save for those in possession of exiguous incomes—is almost universal in its application. That obligation is ever present in the minds of those who are called upon to pay taxes, and no sensible person any longer regards the net earnings from his trade or profession as the equivalent of his available income."

In view of this authority of their Lordships of the Supreme Court, Shri D. N. Awasthy appearing for the revenue had to concede that so far as the Income-Tax or Super-Tax payable by an assessee is concerned, it must be deducted from his total wealth in arriving at his net wealth irrespective of the fact whether the assessment has or has not taken place and notwithstanding that the Income-Tax has not been quantified nor notice for demand issued.

Thus in dealing with the various taxes for which the petitioner claims deduction in arriving at his net wealth for a particular year, we have to keep in view the meaning of "net wealth" as given by their Lordships of the Supreme Court in *Keshoram Industries case* (supra). The taxes of which the deduction is claimed by the petitioner before us are the Expenditure-Tax, Gift-Tax and Wealth-Tax. Deduction on account of the Expenditure-Tax is claimed for the assessment years 1958-59, 1959-60, and 1960-61, Gift-Tax for the year 1960-61, and the Wealth-Tax for all the four years 1957-58 1958-59, 1959-60 and 1960-61. It is not disputed that the assessment of these taxes was made after the date of valuation, but the liability for Expenditure-Tax for the respective years had been incurred during the corresponding accounting year. It is also not denied that the assessment of the Expenditure Tax for these three years took place during the corresponding year of the assessment of the Wealth-Tax and the paymenut was also made before the assessment of the Wealth-Tax for the four years from 1957 to 1961 was finalised. The assessment of Rs. 2,519 on account of Gift-Tax for the Wealth-Tax Act asssessment year 1960-61 was finalised during that year and the amount of the tax was paid on the 18th of February, 1961, i.e., before the Wealth-Tax for the corresponding year was assessed. Thus we find that the deductions which the petitioner claims on account of Expenditure-Tax and Gift-Tax were not in

(14) (1956) A. C. 185, 203.

the nature of debts that had to be paid in future, but liability that had been incurred and discharged as well during the corresponding year of the assessment. The mere fact that the amount of tax was determined later, would neither alter the nature of the petitioner's liability nor justify the refusal of the authorities to allow deduction of these amounts in arriving at the net wealth for corresponding accounting years. As liability for these taxes had been incurred, they were "debts owed" within the meaning of that expression in accordance with the rule laid down in *Kesoram Industries case* (supra).

In dealing with the question whether deduction can be allowed on account of liability for a tax incurred by the assessee, we have to refer to the relevant provisions of the Act under which that particular tax is levied. The Expenditure-Tax is levied under the Expenditure-Tax Act 29 of 1957. Its section 3 which is the charging section lays down:—

> "Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the 1st of April, 1958, a tax (hereinafter referred to as Expenditure-Tax) at the rate of rates specified in the Schedule in respect of the expenditure incurred by any individual or Hindu undivided family in the previous year."

The rate of tax is given in the schedule and thus there can be no difficulty in computing tax which a person is liable to pay on the expenditure incurred by him. Thus the liability to pay an Expenditure-Tax is a debt owed by the assessee and has to be excluded from the aggregate value of his assets in assessing his net wealth under clause (m) of section 2 of the Act.

The Gift-Tax is levied under the Gift-Tax Act 18 of 1958. Under its charging provision, section 3, Gift-Tax is charged for every assessment year on and from the 1st day of April, 1958 "in respect of the gifts, if any, made by a person during the previous year (other than gifts made before 1st day of April, 1957) at the rate or rates specified in the Schedule." It is thus apparent that even under this Act, the liability to pay tax arises on the day a gift is made or in any case on the last day of the accounting year. This liability can easily be determined with reference to the Schedule to the Act

containig rates on which the tax is to be charged. It is not a contingent liability and is thus a debt owed by the assessee within the meaning of that expression as used in clause (m) of section 2 of the Wealth-Tax Act.

Dealing with the nature of liability for payment of the tax that arises under the Income-Tax Act, Shah J. speaking for the Court observed as follows in *Kalwa Devadattam* v. *Union of India* (15):—

> "Under the Indian Income-Tax Act liability to pay Income-Tax arises on the accrual of the income, and not from the computation made by the taxing authorities in the course of assessment proceedings; it arises at a point of time not later than the close of the year of account."

The charging provisions of the Expenditure-Tax Act and the Gift-Tax Act are similar. The Expenditure-Tax is levied upon the expenses incurred in the previous year and the Gift-Tax is also on the gifts made during the previous year. It is thus obvious that liability for tax under both these Acts arises not later than the close of the previous year. Thus the principle laid down by their Lordships of the Supreme Court in *Kesoram Industries case* (supra) in dealing with the claim for deduction of Income-Tax and Super-Tax, will also apply to taxes payable under the Expenditure-Tax Act and Gift-Tax Act in assessing the net wealth as defined in section 2(m) of the Wealth-Tax Act. The rates of both these categories of taxes being fixed under the schedules to the relevant Acts, the Liability incurred for their payment was neither uncertain nor contingent, but *in praesenti*, though the demand and payment of the same was made later. In the words of their Lordships of the Supreme Court, such liability has all the ingredients of a debt and is a present liability of ascertainable amount. In *Maharaja of Pithajuram* v. *Commissioner of Income-Tax* (16), Lord Thankerton observed:

> "Under the express terms of section 3 of the Indian Income-Tax Act, 1922, the subject of charge is not the income of the year of assessment, but the income of the previous year."

The same is the position with regard to the Income-Tax Act which is now in force, and also under the Expenditure-Tax and the Gift-Tax Acts.

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(15) (1963) 49 I.T.R. (S.C.) 165.
(16) (1945) 13 I.T.R. 221 (P.C.).

Accordingly I find that the petitioner's claim for deductions on account of Expenditure and Gift taxes for which he had incurred liability during the accounting years under reference, is well-founded. The respondent Wealth-Tax authorities were thus clearly wrong in failing to give him the benefit of the same in computing his net wealth.

The only other tax for which the petitioner has claimed deduction is the wealth-tax to which he was liable in the various assessment years under reference. Shri K. C. Puri has argued that liability for the wealth-tax for the various years under reference was incurred by the petitioner during the respective years and thus the amount of the wealth-tax payable by him for that particular year constituted a debt owed by him and it had to be deducted from the total assets in arriving at his net wealth on which wealth-tax had to be assessed. Shri D. N. Awasthy, on the other hand, arguing for the Revenue, has contended that the amount of wealth-tax which an assessee has to pay for a particular year cannot be considered a debt as the liability for its payment arises only on the date of the valuation and the net value on which the tax has to be assessed, cannot be computed after deducting the wealth-tax which is still to be determined. It is no doubt true that, as has been laid down by their Lordships of the Supreme Court in *Kesoram Industries case* (supra), that the mere fact that the tax has not been assessed or quantified, would not exclude it from the category of debt owed, but what has to be considered is the date on which the liability to the tax is incurred. The tax under the charging section (3 of the Wealth-Tax Act) is to be paid in respect of the net wealth on the corresponding valuation date of every individual. "Valuation date" is defined in section 2(q) as meaning the last day of the previous year as defined in section 3 of the Income-tax Act. Thus if we take the first year of the petitioner's assessment (1957-58), the corresponding date of valuation would be 12th of April, 1957. According to the petitioner's return, his net wealth on that date was assessed at Rs. 94,77,191 on which he was assessed to the payment of Rs. 82,121.17 Paise as wealth-tax. If the petitioner's contention is accepted, it would mean that his net wealth for the purposes of assessment year 1957-58 would be Rs. 94,77,191 minus Rs. 82,121.17 Paise which equals Rs. 93,95,069.83. As a necessary consequence it would follow that the wealth-tax for that year had to be paid not on Rs. 94,77,191, but on Rs. 93,95,069.83. In that case, the amount of tax would be less than Rs. 82,121.17. This will create a queer and anomalous situation. If the correct amount of the wealth-tax which, according to the petitioner, he was liable

to pay for the assessment year 1958-59 was not Rs. 82,121.17 but much less, he cannot insist that Rs. 82,121.17, the tax that had been assessed by the authorities, should be deducted from his total assets. This illustration goes to show ridiculous results that would follow. If the wealth-tax which is to be assessed on net value is itself deducted from the total assets to arrive at the net wealth, it will be impossible to determine the net value as unless the exact amount of the tax payable is known, it cannot be deducted from the net assets, and the amount of the tax payable cannot be known unless the net value is first ascertained. This anomalous position was pointed out by K. S. Hedge, J. (as he then was) delivering the judgment of a Division Bench of the Mysore High Court in *Commissioner of Income-tax/Wealth-tax* v. *Amco Batteries (P) Ltd.* (11) which is a direct authority on the point. After finding, in consonance with the view expressed in the recent decision of the Supreme Court in *Kesoram Industries case (supra)*, that the provision made for the payment of income-tax was a debt owed and the same was deductible from the gross wealth to arrive at the net wealth, it was held in that case that the provision made for the payment of the wealth-tax was not such a debt and, therefore, it could not be deducted in computing the net wealth. In dealing with this matter, Hedge, J., said:—

> "But when we come to provision made for the payment of wealth-tax, we are faced with certain practical difficulties The wealth-tax is leviable on the "net wealth". If the provision made for the payment of wealth-tax is deductible from the "net wealth", the net wealth determined will have to be changed. This process will have to go on *ad infinitum*. In other words, the conception of "net wealth" will become an ever-receding phenomenon. Further, the contention advanced on behalf of the assessee in this regard does not accord with the pattern of our tax legislation. It is a well accepted practice that no tax can be deducted from the income on which the said tax is levied."

Except for the last sentence in these observations, I respectfully agree with the view expressed by Hedge, J., with regard to the practical difficulty in allowing the wealth-tax payable for a particular year to be deducted in computing the net wealth on which that tax is payable. As has been observed earlier, it is impossible to arrive at wealth-tax which according to the petitioner had to be

deducted from his assets to arrive at his net wealth without first knowing the amount of the net wealth on which that tax is to be levied. If the wealth-tax is assessed on the value of the total assets, it may be possible to calculate the amount of the tax, but the tax according to the scheme of the Wealth-tax Act has to be assessed on the net wealth and not on the total assets which an assessee possesses. Thus by very nature of things, in arriving at net assets, it is impossible to deduct the amount of the tax which is legally payable in respect of the net wealth.

We should not lose sight of the fact that the wealth-tax is different in nature from such taxes as income-tax, expenditure-tax and gift-tax. The wealth-tax is to be levied on the net assets in the hands of the assessee on the date of valuation. The total assets held by an assesee on any date prior to the date of valuation are not relevant for that purpose. The position with regard to income-tax, expenditure-tax and gift-tax is, however, different. The assessee's liability to pay these taxes arises on the day his income, expenditure or value of gifts exceeds the amount which is exempt from such taxes under the respective Acts though his full liability for such taxes will be ascertained at the close of the accounting year. As the assessment of wealth-tax is to be made on the valuation date, which is the last date of the previous year, it cannot be said that the liability to tax had already arisen and was thus in the nature of debt owed by the assessee. It may happen in some cases that one may not be in possession of any assets or his net assets may be much below the taxable limit though for a good part of the accounting year he was in possession of vast assets.

We are accordingly of the opinion that no deduction on account of wealth-tax could be allowed to the petitioner-assessee in arriving at his net assets for the purpose of computing the wealth-tax payable by him for the various years under reference.

In view, however, of our finding that the petitioner was entitled to deductions on account of expenditure-tax and the gift-tax, the orders of the wealth-tax authorities to that extent cannot be sustained, and we direct the respondent authorities to rectify the orders in view of the observations made by us above so as to give the petitioner relief for the amount paid by him on account of expenditure and gift taxes. All the four petitions are, accordingly, accepted to the extent indicated above. In the circumstances of the case, we leave the parties to bear their own costs.

SHAMSHER BAHADUR, J.—I agree.

K.S.K.