Ahmed Ibrahim Sahigra Dhoraji vs Commissioner Of Wealth Tax, Gujarat on 7 April, 1981

Equivalent citations: 1981 AIR 1562, 1981 SCR (3) 402, AIR 1981 SUPREME COURT 1562, 1981 TAX. L. R. 1127, 1981 SCC (TAX) 187, 1981 UPTC 1924, (1981) 21 CURTAXREP 356, (1981) 6 TAXMAN 51, 1981 (3) SCC 77, (1981) 61 TAXATION 61, (1981) 129 ITR 314, (1981) 2 SCWR 1

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, R.S. Pathak

PETITIONER:
AHMED IBRAHIM SAHIGRA DHORAJI

Vs.

RESPONDENT:
COMMISSIONER OF WEALTH TAX, GUJARAT

DATE OF JUDGMENT07/04/1981

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
PATHAK, R.S.

CITATION:
1981 AIR 1562 1981 SCR (3) 402
1981 SCC (3) 77 1981 SCALE (1)694
CITATOR INFO :
RF 1981 SC1759 (23)

ACT:
Wealth Tax Act, 1957 -Section 2(m)-Finance Act, 1965 gave incentives for voluntary disclosure of concealed income-Assessee declared large amount of such income and paid tax as provided by Finance Act-Tax so paid-Whether an allowable deduction as "debt owed " under the Wealth Tax Act.

HEADNOTE:
As part of a measure to mop up unaccounted money on which no income tax had been paid, an incentive scheme was prepared by the Government under which a person disclosing

such income was required to pay a specified rate of tax without attracting the penal provisions of the Income Tax Act. Section 68 of the Finance Act, 1965 provided that a person making voluntary disclosure of his income in accordance with the provisions of the section would be charged income tax at a specified rate notwithstanding anything contained in the Income Tax Act.

The assessee had a large sum of such unaccounted money in his possession. Without allocating the total sum amongst the different assessment years, he declared that he had a sum of Rs. 7 lakhs in his possession which was earned by him during the assessment years 1957-58 to 1964-65. Income Tax in respect of this income computed in accordance with section 68 of the Finance Act was paid by him.

In the wealth tax returns filed by him in response to the notice issued by the Wealth Tax officer for re-assessment consequent on the disclosure of his wealth the assessee claimed deductions of income-tax paid under section 68 of the Finance Act. But the Wealth Tax officer disallowed the claim holding that since the assessee had not shown the liability to pay income tax in his balance sheets for the respective years the deductions claimed by him could not be allowed in any of the assessment years.

The Appellate Assistant Commissioner dismissed the assessee's appeal. The Tribunal, on the other hand, held that the liability constituted a "debt owed" because in truth and substance, it was a liability under the Income Tax Act, 1922 or 1961 and not a new liability created by the Finance Act, 1965.

On reference the High Court held in favour of the Revenue on the ground that section 68 of the Finance Act enacted a new charge of tax on an ad hoc
403
basis on disclosed income and, therefore, it was not a "debt owed" which could be allowed as a deduction under the Wealth Tax Act.

On behalf of the Revenue it was contended that since the tax paid by the assessee under the voluntary disclosure scheme was in discharge of a liability created for the first time by the Finance Act, 1965 it was not an allowable deduction under the Wealth Tax Act.

Allowing the appeal,

^

HELD: The assessee was entitled to claim deduction of income tax paid on the amounts added to his total wealth under section 2 (m) of the Wealth Tax Act in the course of the assessment proceedings. [418 B] C

1. Merely because the amounts were disclosed in a declaration under section 68 of the Finance Act, they did not cease to be incomes not already charged to income tax. Although the Finance Act merely levied a fixed rate of tax in respect of all the income disclosed without allowing deductions, exemptions and such other allowances which are

allowable under the Income Tax Acts, its function was no more than that of an annual Finance Act despite the fact that it made certain alterations in regard to the filing of declaration and computation of taxable income. [414 G-H]

2. The nature of the declaration which was dependent on the volition of the declaring and the fact that the liability to tax the amount was contingent upon the willingness of the declaring to disclose the amount would not make a difference because such voluntary disclosure, even in the absence of section 68, would have exposed the assesseee to assessment or reassessment. The voluntary character of the declaration cannot alter the character of the tax. [415 A-B]

3. The true position is that the amount declared has the liability to pay income tax embedded in it on the valuation date but only the ascertainment of that liability is postponed to a future date. [417 C]

In the instant case its determination was allowed to be done in accordance with the provisions of section 68. Even though this section was a complete code in itself it was only a scheme which provided a method for the liquidation of an already existing income tax liability which was present on the relevant valuation date. [417 D]

4. Nor did the absence of allocation of the amount disclosed amongst different assessment years detract the tax from being called a tax on income because such allocation would not achieve any additional purpose in the scheme of section 68 This section is in the nature of a package deal. The net result achieved was that the declarant was treated as having discharged all his liability in respect of such income under the income tax law. [415E]

404

5. The finding of the High Court that section 68 created a fresh charge is incompatible with the foundation of the very reassessment proceedings under section 17 of the Wealth Tax Act. [415 H]

6. Moreover section 68, at more than one place stated that what was pay able was income tax which clearly showed that what was payable under the section was income tax. [412 B-C]

C.I.T. v. Khalau Makanji Spinning and Weaving Co. Ltd.,40 I.T.R. 189. Madurai District Central Cooperative Bank Ltd. v. Third I.T.O. 101 I.T.R. 24, distinguished.

C. K. Bahu Naidu v. Wealth Tax Officer, 112 ITR 34; C. Ii T v. GirdhariLal, 99 ITR 79; C.W.T. v. B.K Sharma, 110 I.T.R. 902; C.W.T. v. Bansidhar Poddar. 112 ITR 957; D.C. Shah v. C.W.T., 117 ITR 348; Bhagwandas Jain v. Addl. C.W.T. 116 ITR 347 and Bhagwanidas Binani v. C.W.T., 124 ITR 783, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1217 1222 of 1973.

Appeals by certificate from the Judgment and order dated 21.12 1972 of the Gujarat High Court in Wealth Tax Reference No. 2 of 1969.

V. S. Desai, Shardul S. Shroff and H. S. Parihar for the Appellant.

S. T. Desai, P. A. Francis and Miss A. Subhashini for the Respondent.

The Judgment of the Court was delivered by VENKATARAMIAH, J. On the basis of a certificate granted under section 29(1) of the Wealth-tax Act 1957 (hereinafter referred to as the Act) the appellant has filed these appeals against the judgment and order dated December 21 1972 of the High Court of Gujarat in Wealth-tax Reference No 2 of 1969. The questions referred to the High Court under section 27 of the Act by the In come-tax Appellate Tribunal Ahmedabad Bench read thus:

> "(1) Whether on the facts and in the circumstances of the case the liability in respect of income-tax payable on the concealed income disclosed by the assessee pursuant to section 68 of the Finance Act 1965 is deductible under section 2(m) of the Wealth-tax Act 1957 in computing the net wealth of the assessee for the assessment years 1959-60 1960-61 1961-62 1962-63 A 1963-64 and 1964-65.
>
> (2) Whether the Tribunal was right in holding that the liability to pay tax on the amount disclosed under section 68 of the Finance Act 1965 arose not under that Finance Act but under section 3 of the Indian Income-tax Act 1922.

Having regard to the assessment years in question the second question should be read as including within its scope also the question whether the Tribunal was right in holding that the liability to pay tax on the amount disclosed under section 68 of the Finance Act, 1965 arose not under that Finance Act but under section 4 of the Income-tax Act 1961.

The assessee who is the appellant in these appeals had been assessed on the basis of his returns of net wealth and the statements filed therewith in the status of an individual to wealth-tax under section 16(3) of the Act during the assessment years 1957-58 t 1964-65 on various dates between January 15 1960 and July 14 1964. Subsequently the assessee made a disclosure under section 68 of the Finance Act 1965 (hereinafter referred to as the Finance Act) of Rs.7,00,000 which had been shown as having been covered by some hundi transactions with a concern known as M/s Abdul Razack & Co. in his books of account at the Bombay branch of his business. Alongwith the declaration the assessee filed a statement that this concealed income had been earned by him during the assessment years 1957-58 to 1964-65. He however did not allocate the total sum disclosed amongst different assessment years but showed it in a lump sum. The amount of income-tax was computed at 60% of the total concealed income and it was paid as contemplated under section 68 of the Finance Act. The Wealth-tax officer thereafter reopened the assessments or the assessee to wealth-tax for assessment years 1957-58 to 1964-65 on the ground that he had reason to believe that

certain wealth of the assessee had escaped assessment during the said years and that his belief was founded on the disclosure made by the assessee under section 68 of the Finance Act. We are concerned in these appeals only with the assessment years 1959-60 to 1964-65. On scrutiny it was found on the basis of peak cash credits in each assessment year that the amounts covered by hundies were as under:

Assessment years	Peak cash credits
1959-60	RS. 4,57,465/-
1960-61	RS. 5,59,8231-
1961-62	RS. 6,38,325/-
1962-63	RS. 6,82,974/-
1963-64	RS. 7,01,578/-
1964-65	RS. 7,01,578/-

As can be seen from the above statement the assessee had substantial sums with him in the years in question which had not been disclosed earlier. Since these amounts constituted the wealth which was liable to tax on the respective valuation dates the assessee filed returns of wealth for the above mentioned years in compliance with the notices issued to him and in the course of the assessment proceedings he claimed the deduction for income- tax payable by him in respect of the sums which had been progressively earned by him from year to year and which were liable to income tax under the relevant income tax law in force during the years relying upon the decision of this Court in Kesoram Industries and Cotton Mills Ltd v. Commissioner of Wealth- tax (Central), Calcutta. The Wealth-tax officer however held that since in his balance selects the assessee had not shown the liability to pay income-tax the deduction of the amounts claimed could not be allowed in any of the assessment years and accordingly the orders of reassessment were passed by him after disallowing the claim made by the assessee. He however included the sums mentioned in the above statement in the net wealth of the respective assessment years and determined the wealth-tax payable by the assessee. The appeals filed by the assessee against the orders of the Wealth-tax officer before the Appellate Assistant Commissioner were dismissed. On further appeal to the Income-tax Appellate-Tribunal the Tribunal held that the deduction claimed in respect of each assessment year was in truth and substance a liability under the Indian Income-tax Act 1922 or the Income-tax Act 1961 as the case may be and not a new liability created by the Finance Act and therefore it constituted a debt owed by the assessee on the respective valuation dates within the meaning of section 2(m) of the Act and that the deduction claimed should be allowed while computing the net wealth of the assessee. Accordingly the Tribunal allowed the appeals of the assessee. Thereafter at the instance of the Commissioner of Wealth-tax the Tribunal referred under section 27 of the Act the two questions mentioned above to the High Court. After hearing the parties the High Court answered both the questions in the negative and in favour of the Revenue by its judgment dated December 21 1972. On a certificate granted by the High Court under section 29(1) of the Act the assessee has come up in appeal to this Court.

The relevant part of section 2(m) of the Act reads:

> "2. (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 In the case of Kesoram Industries and Cotton Mills Ltd. (supra.) this Court has held that income-tax other than that falling under clause (iii) of section 2(m) of the Act payable on the valuation date is a debt owed by the assessee and hence is deductible from the total wealth of the assessee while determining the net wealth for the purpose of levying wealth-tax.

The principal question which arises for consideration in these appeals relates to the true character of the tax paid by the assessee in the proceedings under section 68 of the Finance Act and the applicability of the ratio of the decision of this Court in the case of Kesoram Industries and Cotton Mills Ltd. (supra). Since it is contended by the assessee that the tax so paid was the tax which he was liable to pay under the relevant income-tax law in force during the assessment years in question and it is urged by the Department that the said payment was in discharge of a liability created for the first time by the Finance Act it is necessary to examine the provisions of section 68 of the Finance Act in some detail in so far as they relate to the question involved in this case. The relevant part of section 68 of the Finance Act which came into force on March 1 1965 reads:

"68. Voluntary disclosure of income-(1) Where any person makes a declaration in accordance with sub-section (2) in respect of the amount representing income-

(a) which he has failed to disclose in a return of income for any assessment year filed by him before the first day of March 1965 under the Indian Income-tax Act 1922 (Xl of 1922) or the Income-tax Act 1961 (XLIII of 1961) or

(b) which has escaped assessment for any assessment year for which an assessment has been made before the 1st day of March 1965 under either of the said Acts or

(c) for the assessment of which no proceeding under either of the said Acts has been taken before the 1st day of March 1965, he shall notwithstanding anything contained in the said Acts be charged income-tax at the rate specified in sub section (3) in respect of the amount so declared if he-

(i) pays the amount of income-tax as computed at the said rate or

(ii) furnishes adequate security for the payment there of in accordance with sub-section (4) and under takes to pay such income-tax within a period not exceeding six months from the date of the declaration as may be specified by him therein or

(iii)On or before the 31st day of May 1965 pays such amount as is not less than one-half of the amount of income-tax as computed at the said rate or furnishes adequate security for the payment there-

of in accordance with sub-section (4) and in either case assigns any shares in or debentures of a joint stock company or mortgages any immovable property in favour of the President of India by way o f security for the payment of the balance and undertakes to Fay such balance within the period referred to in clause (ii).

(2) The declaration shall be made to the Commissioner and shall specify the period required to be specified under clause (ii) of sub-section (1) contain the name address and signature of the person making the declaration and also full information in respect of the following matters namely:- B

(a) Whether he was assessed to income-tax or not and if assessed the name of the Income-tax Circle in which he was assessed.

(b) The amount of income declared giving where available details of the financial year or years in which the income was earned and the amount pertaining to each such year.

(c) Whether the amount declared is represented by cash (including bank deposits) bullion investments in shares debts due from other persons commodities or any other assets and the name in which it is held and location thereof:

> Provided that the declaration shall be of no effect unless it is made after the 28th day of February 1965 and before the Ist day of June 1965. F (3) The rate of income-tax chargeable in respect of the amount referred to in sub-section (1) shall be sixty per cent of such amount:
>
> Provided that if before the Ist day of April 1965 the tax on the amount declared is paid by the declarant at the rate of fifty seven per cent of such amount he shall not be liable to pay any further tax on such amount.
>
> (4) A person shall not be considered to have furnished adequate security for the payment of the tax for the purposes of sub-section (I) unless the payment is guaranteed by a scheduled bank or the person makes an assignment in favour of the President of India of any security of the Central or State Government.

Explanation-For the purposes of this sub-section where an assignment of Government securities is made in favour of the President the amount covered by such assignment shall be the market value of the securities on the date of the assignment.

(5) Any amount of income-tax paid in pursuance of a declaration made under this section shall not be refundable in any circumstances and no person who has made the declaration shall be entitled i n respect of any amount so declared or any amount of tax so paid to reopen any assessment or reassessment made under the Indian Income-tax Act 1922 (XI of 1922) or the Income-tax Act 1961 (XLIII of 1961) or the Excess Profits Tax Act 1943 (XV of 1940) or the Business Profits Tax Act 1947 (XXI of 1963) or the Companies (Profits) Surtax Act 194 (VII of 1964) or claim any set-off or relief in any appeal reference revision or other proceeding in relation to any such assessment - or

reassessment.

(6) (a) Any amount declared by any person under this section in respect of which the tax referred to in subsection (3) is paid shall not be included in his total income for any assessment under any of the Acts mentioned hl sub-section (5) if he credits in the books of account if any maintained by him for any source of income or in any other record the amount declared as reduced by the tax paid thereon under this section...

Section 68(1) of the Finance Act provides that where any person makes a declaration in accordance with section 68(2) in respect of any amount represent n g income which he has failed to disclose in his return or which has escaped assessment for any assessment year for which an assessment has been made before March 1, 1965 under either of the two Acts namely the Indian Income-tax Act 1922 and the Income- tax Act 19 1 or for the assessment of which no proceeding is taken before March 1, 1965 he shall notwithstanding anything contained in the said Acts be charged income-tax at the rate specified in sub-section (3) thereof in respect of the amount so declared. If he pays the amount of income-tax as computed at the said rate or furnishes adequate security for the payment thereof in accordance with sub-section (4) thereof and undertakes to pay such income-tax within the period specified in the section he would be absolved from the liability under the relevant law of in come-tax. The declaration should however be filed with the particulars mentioned in section 68(2). Section 68(3) provides that the rate of income-tax chargeable in respect of the amount referred to in the declaration shall be sixty percent of such amount provided that if the tax is paid within April 1, 1965 the tax payable would be fifty seven percent. Sub-section (5) of section 68 of the Finance Act provides that any amount of income-tax paid in pursuance of a declaration made under that section shall not be refundable in any circumstances nor a declarant is entitled in respect of any amount declared or tax paid thereon to reopen any assessment or reassessment made under the Indian Income-tax Act 1922 or Income-tax Act 1961 or any other Act mentioned therein. He cannot also claim any set-off or relief in any appeal reference revision or other proceeding in relation to any such assessment or reassessment. Clause

(a) of sub-section (6) of section 68 grants immunity from proceedings under the Acts mentioned in section 68(5) to the assessee by providing that any amount declared by any person under section 68 in respect of which the tax referred to hl sub-section (3) thereof is paid shall not be included in his total income for any assessment under any of the assessments made under any of the Acts mentioned in section 68(5) if he credits in the books of account if any maintained by him for any source of income or hl any other record the amount declared as reduced by the tax paid thereon under section

68. On an examination of the several provisions contained in section 68 of the Finance Act it becomes clear that they had been enacted as a part of the measures adopted with a view to unearthing unaccounted money in possession of the members of the public on which income-tax had not been paid and also to create an incentive to such persons to make disclosure of their unaccounted incomes and to pay tax thereon at the specified rate without the liability to pay any interest thereon or penalties for non-compliance with the law of income-tax. The declaration to be riled by a person under section 68 is about an amount representing his income earned in an earlier

accounting period which has not been subjected to tax in the ordinary course although income-tax was payable hl respect of it. If the declarant pays tax at the rate specified in sub-section (3) of section 68 he would be absolved from any further liability to tax on such income. The declaration has to be made before the Commissioner of Income-tax and it should contain full information namely whether he was assessed to income-tax or not and if assessed the name of the Income-tax circle in which he was assessed the amount of income declared giving w ere available details of the financial year or years in which the income was earned and the amount pertaining to each such year and whether the amount declared is represented by cash (including bank deposits) bullion investment in shares debts due from other persons commodities or any other assets and the name in which it is held and the location thereof. Section 68 also states at more than one place that what is payable pursuant to a declaration is income-tax. Section 68 (1) contains words such as he shall notwithstanding anything contained in the said Acts be charged income tax at the rate specified in sub-section (3) . if he pays the amount of income-tax at the said rate and undertakes to pay such income-tax . Section 68(3) contains the words: the rate of income-tax chargeable. Section 68(5) refers to: (a) any amount of income-tax paid and section 68(7) contains the words: paid the income-tax under this section . These words show that Parliament was of the view that what was payable under section 68 was income- tax.

The points of difference between any Finance Act that may be passed annually fixing the rates of income tax and section 68 of the Finance Act however relate to (i) the time within which and the manner in which information in regard to the income is to be furnished (ii) the method of computation of taxable income and E(iii) the rate of tax payable on such income. The declaration which is equivalent to a return to be filed under the Indian Income-tax Act 1922 or Income-tax Act 1961 need not contain all the particulars that have to be furnished in such return. The declaration can be filed during the period mentioned in proviso to section 68(2). There is no provision to claim various deductions exemptions set off etc. in respect of the income disclosed in the declaration as in the case of income shown in an ordinary return. Since the rate of tax is a uniform one and does not vary with the quantum of the income disclosed there is no need to trace it to any specific assessment year. Further the declaration is a voluntary one and it is not pursuant to any notice issued by the Department.

The question is whether these distinguishing features make the amount disclosed in a declaration anything different from the income of an assessee and the tax paid under section 68 anything different from a tax on income. In other words does section 68 impose a new charge on the income of the declarant for the first time wholly independent of the levy under section 3 of the Indian Income-tax Act 192' or section 4 of the Income-tax Act 1961 ? The High Court has given the following reasons for holding that the tax paid under section 68 is not tax on income payable under the Indian Income-tax Act 1922 and Income-tax Act 1961: (i) the charge under the Income-tax Act is on the total income of the previous year and not on any particular item of income but that is not so under section 68,(ii) payment of tax under section 68 has no reference to any assessment year and unless it is correlated to an assessment year it can not be ordinary income-tax and (iii) the disclosed income is chargeable to tax without allowing usual deductions and without providing for any procedure for qualification.

The High Court proceeded to hold that section 68 enacted a new charge of tax on an ad hoc basis on disclosed income irrespective of the assessment year in which it was earned. The disclosure of concealed income coupled with the payment of tax as contemplated in clause (i) of sub-section (1) according to the High Court not only created a charge of tax but also satisfied it. In its view the disclosure of concealed income coupled with furnishing of security and undertaking as contemplated in clause (ii) created a new charge of tax and when the undertaking was carried out by payment of tax the liability arising from the charge of tax was satisfied.

one basic fallacy underlying the conclusion of the High Court that a new charge is being levied under section 68 appears to be the assumption that the amount in question in respect of which tax is payable under that provision was not liable to income-tax earlier. lt should be borne in mind that the declaration contemplated under section 68 is a declaration in respect of income of earlier years which had been concealed and on which tax was payable during the relevant assessment years in the ordinary course. Section 3 of the Indian Income-tax Act 1922 and section 4 of Income- tax Act 1961 which are couched more or less in the same language state that where any Central Act enacts that inc me-tax shall be charged for any year at any rate or rates income-tax at that rate or those rates shall be charged for that year in accordance with and subject to the provisions of the relevant Act in respect of the total income of the previous year or previous years as the case may be of every person. Now it is well settled by a series of judicial decisions that the liability to income-tax arises by virtue of the charging section in the relevant Income-tax Act and it arises not later than the close of the previous year even though the rate of tax for the year of assessment may be fixed after the close of the previous year and the assessment has necessarily to be made after the previous year.

The quality of chargeability of any income to tax is not dependent upon the passing of the Finance Act though its quantification may be governed by the provisions of the Finance Act in respect of any assessment year vide Wallace Brothers and Co. Ltd. v. Commissioner of Income-tax. Messers Chatturam Horilram Ltd. v. Commissioner of Income-tax and Ors. and Kalwa Devadattam & Ors. v. The Union of India & Ors. In the case of Kesoram Industries and Cotton Mills Ltd. (supra) Subba Rao J. (as he then was) summarised the legal position thus :-

> To summarize: A debt is a present obligation to pay an ascertainable sum of money, whether the amount is payable in prasenti or in futuro: debitum in prsesenti, solvendum in futuro. But a Sum payable upon a 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 data. There is a perfected debt at any rate on the last day of the accounting year and not a contingent liability. The rate is always easily ascertainable. If tile Finance Act is passe l it is the rate fixed by that Act; if the Finance Act has not yet been passed it is the rate proposed in 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 ascertain able amount.

It is thus clear that it- the assessee had brought to the notice of the Department in the usual course the existence of incomes which were later on declared under section 68 they would have been taxed during the relevant assessment year. Hence merely because they are disclosed in a declaration filed under section 68, they cannot cease to be income not already charged for income tax. It is true that the Finance Act in question merely levied a fixed rate of tax in respect of all the income disclosed without allowing deductions exemptions and set-off under the relevant income-tax law yet its function was no more than that of a Finance Act passed annually even though it made certain alterations with regard to filing of declaration and computation of taxable income It was however urged on behalf of the Department that the nature of the declaration which was dependent upon the volition of the declarant and the fact that the liability to tax the amount mentioned therein was contingent upon the willingness of the declarant to disclose the amount ought to make a difference. We do not think so because any such voluntary disclosure by an assessee even in the absence of section 68 would have exposed him to an assessment or reassessment as the case may be being made in respect of the sum disclosed as part of the income of the relevant assessment year and of course with the additional liability to payment of interest and levy of penalty and perhaps with the right to claim deductions if any admissible in the circumstances of the case and the benefit of other procedural rights. The voluntary character of the declaration cannot therefore alter the character of the tax. There is also no substance in the contention that in the absence of the allocation of the amount disclosed amongst different assessment years the tax payable under section 68 cannot be termed as a tax on income because such allocation would not achieve any additional purpose in the scheme of section 68 Irrespective of the other income which may have been determined in an ordinary proceeding under the relevant law of income-tax a fixed rate of tax is payable under section 68(3) and hence the amount disclosed being treated as the income of any particular year would not make any difference regarding the quantum of tax. Nor is there any other purpose to be served by such allocation. Section 68 is in the nature of a package deal but the net result achieved is that the declarant is treated as having discharged all his liability in respect of the said income under the income-tax law.

There is one other circumstance which may be noticed here. The tax levied under section 68 can be only a tax on income. If we hold it otherwise it may become a tax on wealth itself. The basis of the liability in this case is the admission made by the declarant that the amount declared was his income earned in previous years but concealed from the knowledge of the Department. In these circumstances it cannot be said that the amount declared under section 68 is not income which was not taxable under the Indian Income-tax Act 1922 or the Income-tax Act 1961 as the case may be. The finding of the High Court that section 68 created a fresh charge is incompatible with the foundation of the very reassessment proceedings under section 17 of the Act. The basis of these proceedings is the information which the Wealth-tax officer acquired from the declaration filed by the assessee in this case that the assessee was in possession of unaccounted funds represented by the non-genuine

hundis which had progressively reached the level of Rs. 7,01,578 during the assessment year 1964-65 from the level of Rs. 4,57;465 in 1959-60 by gradual accumulation of income. But for this assumption in the absence of any other material reassessment under the Act would have been possible only in the last year in which the disclosure was made. That however is not the case here.

The High Court in support of its view has relied on the decision of the Kerala High Court though not the reason given in support of that decision in C. K. Babu Naidu v. Wealth-tax Officer. That decision has since been reversed in appeal by a Division Bench of that Court in C. K. Babu Naidu v. Wealth-tax Officer, 'A' Ward, Calicut & anr in which the Kerala High Court has held that the liability for tax arising under section 68 of the Finance Act was nothing other than the liability under the Income-tax Act 1961 itself and accordingly has allowed the deduction of tax paid under section 68 as a debt owed on the valuation date. In Commissioner of Wealth-Tax, Haryana, H.P. & Delhi-III v. Girdhari Lal, Commissioner of Wealth-tax v. B. K Sharma, Commissioner of Wealth tax, West Bengal-III, Calcutta v. Bansidhar Poddar, D. C. Shah v. commissioner of Wealth-tax Mysore and Shri Bhagwandas Jain v. Addl. Commissioner of Wealth-tax, M. P., the High Courts of Delhi Allahabad Calcutta Karnataka and Madhya Pradesh have accepted the view that the tax paid under section 68 of the Finance Act should be treated as a debt owed for purposes of determining net wealth as denied in section 2(m) of the Act. The High Court of Bombay has also recalled the same conclusion in Bhagwandas Binani v. Commissioner of Wealth-tax, Bombay City-III but in doing so it observed that it appears to us that although it is not possible to say that the amount of income-tax paid under section 68 of the Finance Act 1965 is income-tax under the charging sec-

tion 3 or section 4 of the I.T. Acts it must be regarded as income-tax paid in lieu of such income-tax and would be entitled to the same considerations as lavished by the Supreme Court on the ordinary charge of income-tax. The High Court of Bombay appears to take the view as the High Court of Gujarat has done in the decision under appeal that a new liability is created by section 68 but it however would not have any adverse effect on the right of the assessee to claim the deduction. While we approve of the conclusion reached by the High Court of Bombay we feel that the said decision to the extent it attempts to follow the reason given by the Gujarat High Court to hold that the liability under section 68 is a fresh liability is not correct. The true position is that the amount declared has the liability to pay income-tax imbedded in it on the valuation date but only the ascertainment of that liability is postponed to a future date. In the instant case its determination is allowed to he done in accordance with the provisions of section 68. Even though it may appear to be itself a complete code it is only a scheme which provides a method for the liquidation of an already existing income-tax liability which was present on the relevant valuation date. The view does not in any way To counter to any observations made by this Court in Commissioner of Income-Tax, Bombay City I v. Khatau Makanji Spinning and Weaving Co. Ltd. In that case this Court was concerned with the validity of a charge levied by the Finance

Act 1951 in respect of dividends distributed in excess of the specified limit under clause (ii) of the proviso to Paragraph of Part I of the First Schedule to that Act as applied to the assessment year 1953-54 by the Finance Act 1953. This Court held that income-tax was a tax on income of the previous year and it would not cover some thing which was not the income of the previous year or made fictionally so and according to the scheme of that provision it was impossible to say that the additional income-tax was properly laid upon the total income because what was actually taxed was never a part of the total income of the previous year. This decision is clearly distinguishable from the present case where what is taxed is the income which was ordinarily liable to tax but which had not been included in the return of the assessee or which had escaped assessment or which was still to be assessed to income-tax under the relevant Income-tax Act. It was in fact a part of the total income though not assessed till the declaration was made. Merely because it is stated that the rate of tax charged on the amount declared is sixty per cent or fifty-seven per cent as the case may be it does not cease to be a part of the total income. This is not a case where what was not in fact income had been converted into income by section 68. For the same reason the Department cannot derive any support from the observations made by this Court in Madurai District Central Co-operative Bank Ltd. v. Third Income tax officer, Madurai.(l) We are therefore of the view that the assessee was entitled to claim deduction of income tax payable on the amounts added to his total wealth under section 2(m) of the Act in the course of the reassessment proceedings.

In the result these appeals are allowed the judgment of the High Court is set aside and the questions referred to it are answered in the affirmative and in favour of the assessee. The Department will pay the costs of the appellant-assessee Hearing fee one set.

P.B.R. Appeals allowed.