Supreme Court of India
Commissioner Of Wealth Tax, ... vs M/S. J.K. Cotton Manufacturers ... on 28 February, 1984
Equivalent citations: 1984 AIR 946, 1984 SCR (3) 37
Author: V Tulzapurkar
Bench: Tulzapurkar, V.D.

PETITIONER:
COMMISSIONER OF WEALTH TAX, KANPUR

Vs.

RESPONDENT:
M/S. J.K. COTTON MANUFACTURERS LTD.

DATE OF JUDGMENT28/02/1984

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
MUKHARJI, SABYASACHI (J)

CITATION:
1984 AIR 946 1984 SCR (3) 37
1984 SCC (3) 393 1984 SCALE (1)445

ACT:
Wealth Tax Act , 1967 Sections 2(m), 4(3), 5 and 6-Wealth tax-Deductions-settlement allowing payment in instalments-Instalments unpaid and showed in balance sheet as "debt" owed by assessees-Whether allowable deduction-Whether `debt owed and outstanding'.
Words & Phrases: "all the debts owed by the assessee"-Meaning of-S. 2 (m) Wealth Tax Act, 1957.

HEADNOTE:
As a result of proceedings taken and settlement arrived at in 1952 under the Taxation on Income (Investigation Commission) Act, 1947 certain sums were determined as payable by the respondents-assessee-companies on its secreted profits, and schemes for the payment of the said liability by instalments were laid down.
The assessee-companies claimed that the balance of the demand that had remained unpaid was a debt owed by it and should be allowed as a deduction while computing its net-wealth for the concerned year of assessment.(1957-58)
The Wealth-tax Officer computed the net-wealth of each company by adopting the figures of assets and liabilities as shown in their balance-sheets as on their respective valuation dates after making such adjustments as considered

necessary but in both the cases he disallowed the aforesaid claim for deduction on the ground that the liability was outstanding for more than 12 months on the valuation dates.

The Appellate Assistant Commissioner confirmed the disallowance. He took the view that the tax liabilities assessed by the Income-tax Investigation Commission had no relation to the assets or the declared wealth of assessee-companies, which were the basis of the wealth-tax assessment and since the assets on which the said liability was assessed, namely, the secret profits, were not included in the declared assets the disallowance was justified.

In further appeals by the assessee-companies to the Tribunal, the Tribunal confirmed the disallowance on the ground that sections 2(m) (i), 2 (m) (ii), 5 (1) and 5 (2) indicated a scheme of the Act which suggested that debts which qualified for deduction in computation of the net-wealth were only those which were incurred in relation to the assets declared by the assessee, that is to say, in computing the net-wealth the principle to be adopted was that when any assets were included the corresponding debts should be allowed, but that when such assets were excluded or were liable to be excluded from the net-wealth the corresponding debts should also be excluded.

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In the References to the High Court, at the instance of the assessee-companies the Tribunal's conclusion was overruled and the High Court opined that the deductions claimed were allowable in computing the net wealth of the assessee-companies.

In the appeals to this Court, by the Revenue on the question whether the balance of the payments payable by the companies as a result of the findings and orders of the Income-Tax Investigation Commission in the settlements made under the Taxation on Income (Investigation Commission) Act 1947 are deductible as debts owed by them in determining the net wealth of the companies.

Dismissing the appeals,

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HELD: [By the Court]

Section 2 (m) (iii) requires that the tax liability must be one which is "payable in consequence of any order passed" under any law relating to taxation on income or profits etc. such liability so payable under an order must remain "outstanding for a period of more than 12 months on the valuation date". The expression `outstanding' in section 2 (m) (iii) (a) and(b) will have to be construed in the background of the phrase "amount of tax payable in consequence of an order," and in that context it must mean remaining unpaid after the obligation to pay is incurred. [48D, 48G]

In the instant case, it was the admitted position before the Tribunal that under the scheme of instalments sanctioned in the settlements the two sums, in respect

thereof deductions were claimed, had not become due for payment before the valuation dates. The deductions claimed, therefore, do not fall within the exclusionary part contained in section 2 (m) (iii) of the Act. [48H-49A]

Per Tulzapurkar, J.

The scheme emerging from the key provisions of the Act, Sections 2 (m), 3 and 4 clearly show that barring those debts which fall within the exclusionary part of section 2 (m) all other debts owed by the assessee have to be deducted from the aggregate value of the assets belonging to him on the valuation date. In order to get disqualified for the purposes of deduction a debt must fall within the exclusionary part and there is nothing in the exclusionary part which suggests that the debt must either by relatable to any asset at all or if it is relatable to any asset, such asset must be included in the books of accounts or the balance sheet of the assessee before a deduction in respect thereof is allowed. [45C-D]

In the instant cases, the secret profits admittedly earned by the assessee-companies related to an assessment year prior to September, 1948 (as proceedings under Taxation on Income (Investigation Commission) Act. 1947 could be taken only in respect of the assessment year prior to 1.9.1948) and the tax liability in respect thereof was determined in 1952, but the valuation dates are 30.6.1956 and 31.12.1956. [47D]

Annamma Paul Perincherry v. Commissioner of Wealth-Tax, Kerala 88 I.T.R. 204 and Commissioner of Wealth-Tax, Kanpur v. J.K. Jute Mills Co.Ltd., 120 I.T.R. 150, approved

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[Per Sabyasachi Mukharji J.]

There is no evidence to show whether the profits had remained with the assessee-companies either in the form of assets in the Balance sheet or otherwise. The relevant valuation dates were much later. Had there been any finding that these profits, in some form, either as assets in the Balance Sheet or otherwise were with the assessee. It could have perhaps been examined whether so long as the assessee does not bring those profits in the computation of the wealth, the assessee would be disentitled to the deductions of liabilities in respect of the same. These should have been examined by the Wealth-tax Officer with the aid of the principles of section 106 and section-114 of the Evidence Act. Had that been done it could have, perhaps been examined whether by the principle of purposive interpretation, in order the give effect to the intention of the legislature in enacting the Wealth Tax and evolving the scheme of settlement under Taxation on Income (Investigation Commission Act, 1947, whether the assessee was entitled to the deduction of these two tax liabilities. [50 A-D]

Commissioner of Wealth-Tax, West Bengal III v. Banarashi Prashad Kedia, 77 I.T.R. 159 and Commissioner of Wealth-Tax, U.P. and others v. Padampat Singhania, 84 I.T.R.

799, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1179- 1180 (NT) of 1973.

Appeals by Special leave from the judgment and Order dated the 29th April, 1970 of the Allahabad High Court in W.T.R. Nos. 327 & 330 of 1964.

T. A. Ramachandran, Mrs. Janki Ramachandran, Miss A. Subhashini and Mrs. Sarla Chandra for the Appellant.

S.T. Desai, B.P. Maheshwari and B.P. Singh for the Respondents.

The following Judgments were delivered TULZAPURKAR J, The only question raised in these appeals is whether the two sums of Rs. 5,49,041 (in the case of M/s J.K. Cotton Ltd.) and Rs. 21,61,788 (in the case of J.K. Jute Ltd.) being the balance of the demands payable as a result of the findings and orders of the Income-tax Investigation Commission in the settlements made under the Taxation on Income (Investigation Commission) Act (30 of 1947) are deductible as debts owed by them in determining the net-wealth of these companies ?

The question arises in these circumstances:

M/s. J.K. Cotton Manufactures Ltd., the assessee, is a limited company engaged in the manufacture of cotton textiles, etc. and the assessment involved is the wealth-tax assessment for the year 1957-58 based on the valuation date 30.9.1956. It appears that as a result of proceedings taken and a settlement arrived at in 1952 under the Taxation on Income (Investigation Commission) Act 1947, a sum of Rs. 15,99,041 was determined as payable by the assessee company on its secreted profits and a scheme for the payment of the said liability by instalments was laid down. Out of this, a sum of Rs. 10,50,000 had been paid before the valuation date (30.9.1956) and Rs. 5,49,041 remained unpaid on that date. The assessee company claimed that the balance of the demand that had remained unpaid was a debt owed by it and should be allowed as a deduction while computing its net wealth for the concerned year of assessment (1957-58).

In the case of M/s. J. K. Jute Mills Co. Ltd. the assessment involved under the Wealth-tax Act is also for the assessment year 1957-58 but the valuation date is 31.12.1956. In the case of this company also as a result of proceeding taken and a settlement arrived at in 1952 under the Taxation on Income (Investigation Commission) Act 1947 a sum of Rs. 42,93,392 was determined as payable by it on its secreted profits and a scheme for the payment of the said liability by instalments was laid down. Out of this, a sum of Rs. 21,31,604 had been paid before the valuation date (31.12.1956) and Rs. 21,61,788 remained unpaid on that date. The assessee company claimed that the balance of the demand that had remained unpaid was a debt owed by it and should be allowed as a deduction while computing its net-wealth for the concerned year of assessment [1957-58].

The Wealth-Tax officer computed the net-wealth of each company by adopting the figures of assets and liabilities as shown in their balance-sheets as on their respective valuation dates after making such adjustments as he considered necessary but in both, the cases he disallowed the aforesaid claim for deduction on the ground that the liability was outstanding for more than 12 months on the valuation dates. The Appellate Assistant Commissioner confirmed the disallowance of the amounts but for different a reason. He took the view that the tax liabilities assessed by the Income-tax Investigation Commission had no relation to the assets or the declared wealth of the assessee companies, which were the basis of the wealth tax assessment and since the assets on which the said liability was assessed, namely, the secret profits were not included in the declared assets the disallowance was justified. In further appeals preferred by the assessee-companies to the Tribunal, the reasons given by the Wealth-Tax Officer as well as the Appellate Assistant Commissioner were assailed but without expressing any view on the validity or otherwise of the reason given by the Wealth-tax Officer, the Tribunal confirmed the disallowance by substantially agreeing with the view expressed by the Appellate Assistant Commissioner. The Tribunal pointed out that in s.2 (m, which defines 'net wealth', sub-s. (i) excludes debts located outside India in the case of certain classes of assessees, in whose case assets located out side India are excluded; that s.2 (m)

(ii) bars the deduction of debts secured on or incurred in relation to exempted assets mentioned in s. 5 (1) and 5 (2); that s.4 (3) permits the deduction of debts relating to assets, which do not stand in the name of the assessee, but which are nevertheless to be included in the net wealth of the assessee by virtue of the provision in s. 4 (1); that s.6 (1) repeats the provision in s. 2 (m) (i) excluding the debts located outside India where corresponding assets are excluded; and according to the Tribunal these provisions indicated a scheme of the Act which suggested that debts which qualified for deduction in computation of the net- wealth were only those which were incurred in relation to the assets declared by the assessee, that is to say, in computing the net-wealth the principle to be adopted was that when any assets were included the corresponding debts should be allowed but that when such assets were excluded or were liable to be excluded from the net-wealth the corresponding debts should also be excluded. The Tribunal further observed that since in the case of the two companies it was not disputed on their behalf that the tax demands made by the Investigation Commission were in respect of secret profits which were not disclosed in their books of accounts and since it was also conceded that the assets shown in the balance sheets did not include any assets acquired out of such secret profits the balance of tax demand (Rs. 5,49,041 in one case and Rs. 21,61,788 in the other case) was not deductible.

In the References that were made at the instance of the assessee-companies, the High Court took a contrary view. It over-ruled the Tribunal's conclusion that the provisions relied upon by it indicated any scheme leading to the principle that only such debts as were incurred in relation to the asset declared or disclosed in the books qualified for deduction because the concerned provisions merely dealt with typical situations or special categories of assets and no general pattern or scheme as suggested could be inferred therefrom. The High Court therefore opined that the deductions claimed were allowable in computing the net wealth of the assessee-companies. The revenue has come up in appeals to this Court.

In support of these appeals Counsel for the revenue raised two contentions before us. In the first place the counsel canvassed for the acceptance by us of the Tribunal's view that the scheme of the Wealth Tax Act shows that where a liability is incurred in relation to any asset, that liability is not deductible if the asset is, for any reason, not included in the net-wealth and in this behalf provisions contained in sections 2 (m) (i) and (ii), 4 (3), 5 and 6 of the Act were relied upon. By way of elaboration it was further urged that since under the settlements made under the Taxation on Income (Investigation Commission) Act, 1947 certain tax liabilities were determined as payable by the assessee-companies, the assessees must be taken to have admitted having made secret profits and as such only the assessees could know about the use or destination thereof and it was for them to show that became of the secret profits and in the absence of any explanation from them in that behalf the secret profits must be presumed to be with them as on the valuation dates and when such was the position if such secret profits or other assets acquired out of them were not brought into or were not reflected in the Balance Sheets the tax liabilities in relation thereto could not be allowed to be deducted. Counsel pointed out that the presumption which he is seeking to raise against the assessees as above was only a different facet of the same rule which obtains in Income-tax cases that once a sum is found credited in the assessee's books then it is for him to prove the nature and source thereof failing which the cash credit is regarded as his income from undisclosed source (a rule previously enunciated by judicial decisions which now finds a statutory recognition in s.68 of the Income-Tax Act, 1961). Secondly, counsel contended that since the deductions claimed were in respect of tax liabilities which were outstanding for a period of more than 12 months on the valuation dates the deductions could not be allowed under s.2 (m) (iii) of the Act. On the other hand counsel for the assessee-companies supported the view taken by the High Court on the first contention and as regards the second it was urged that since the same did not find favour either with the A.A.C. or with the Tribunal and was not even urged before the High Court the Revenue must be taken to have given it up as being without any substance. In any event the tax liabilities herein do not fall within the exclusionary provision contained in sec. 2 (m) (iii).

In order to examine the first contention it will be necessary to est out the concerned provisions including the charging provision contained in sec. 3 of the Act. Section 3 provides that there shall be charged for every assessment year commencing from 1.4.1957 a tax, called Wealth-tax, 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 I. "Net- wealth" is defined in s.2 (m) which runs thus:

> 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-
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> (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 property in respect of which wealth-tax is not chargeable under this Act;

(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 proceeding 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;"

Section 4 (1) provides for inclusion of certain assets in computing the net-wealth of an individual-assets which on the valuation date are held not by that individual but by the spouse or by a minor child of such individual to whom they have been transferred by such individual directly or indirectly, otherwise than for adequate consideration, etc; in other words such assets held by the spouse or the minor are deemed to be the assets of such individual; and in respect of such deemed assets sub- sec. (3) provides:

"(3) Where the value of any assets is to be included in the net wealth of an assessee in accordance with clause (a) of subsection (1) or sub-section (1A)

(a) they shall be deducted from such value any debts owing on the valuation date by the transferee mentioned in that clause in so far as such debts are referable to such assets. and

(b) the provisions of section 5 shall apply in relation to such assets as if such assets were assets belonging to the assessee."

Section 5 exempts certain assets held by an assessee from being included in his net-wealth and provides that Wealth- tax shall not be payable by him in respect of those assets and then follows a list of a large number of such exempted assets. Section 6 deals with exclusion of assets and debts outside India and provides that in computing the net-wealth of an individual who is not a citizen of India or of an individual or a Hindu Undivided Family not resident of India or resident but not ordinarily resident in India, or of a company not resident in India during the year ending on the valuation date, the value of assets and debts located outside India and the value of assets in India of the types specified in cl. (ii) shall not be taken into account.

The question is whether the aforesaid provisions of the Act on which reliance has been placed by counsel for the revenue indicate a scheme of the Act suggestive of the principle that only such debts as are incurred in relation to the assets declared or disclosed in the books qualify for deduction in computing the net-wealth of an assessee ? In other words, do these provisions show that in computing the net-wealth the rule to be adopted is that when any assets are included while aggregating the total assets the corresponding debts should be allowed but when such assets are

excluded or are liable to be excluded the corresponding debts should also be excluded ?

On a careful analysis of the aforesaid provisions it seems to us clear that the key provisions are the charging section and the definition of the net-wealth given in sec. 2

(m). Under sec. 3 wealth-tax is chargeable on the net-wealth held by every assessee on the valuation date and 'net- wealth' under sec. 2 (m) means the excess of the aggregate value of all his assets wherever located (computed in accordance with the Act) over the aggregate value of all the debts owed by him on the valuation date other than the debts which fall within the exclusionary part of sec. 2 (m). The scheme emerging from the key provisions clearly shows that barring those debts which fall within the exclusionary part of sec. 2 (m) all other debts owed by the assessee have to be deducted from the aggregate value of the assets belonging to him on the valuation date. In other words, in order to get disqualified for the purposes of deduction a debt must fall within the exclusionary part and there is nothing in the exclusionary part which suggests that the debt must either be relatable to any asset at all or if it is relatable to any asset such asset must be included in the books of accounts or the balance-sheet of the assessee before a deduction in respect thereof is allowed. If such were the intention of the Legislature the exclusionary part of sec. 2 (m) would have made a specific provision in that behalf by adding an appropriate sub-clause therein. In the absence of such a provision being found in the exclusionary part of sec. 2 (m) it would be difficult to accept the contention of counsel for the revenue which in substance requires a restricted meaning being given to the expression 'all debts' occurring therein in the context of its deducibility under the Act and the acceptance of such a contention would lead to anomalous results which could be demonstrated. For instance, where an assessee has taken an over-draft from the bank for the purpose of carrying on his day to day business and the over-draft is not utilised for acquisition of any tangible asset for the business then on the argument of counsel for the Revenue such overdraft would become disallowable because the liability is not referable to any asset reflected in his books but obviously under the scheme of sec. 3 read with the definition of net-wealth under sec. 2 (m) such a liability will have to be allowed as a debt owed by the assessee in computing his wealth-tax. Similarly, if a limited company after earning a certain amount of profits in a year were to distribute the whole of it to its share-holders by way of dividends, it would be absurd to suggest that the income-tax payable on such profits would not be allowable as a debt owed by the assessee in the computation of its net-wealth simply because such profits are no longer available for being reflected in its books while aggregating its total assets. In the absence of an appropriate provision in the exclusionary part of sec. 2 (m) therefore, it is difficult to accept the counsel's contention that a restricted meaning as suggested should be given to the expression 'all debts' occurring in sec. 2 (m).

Turning to the other provisions, namely, sec. 2 (m) (i) and (ii), sec. 4 (3) and secs. 5 and 6 of the Act, we are in agreement with the High Court's view that these provisions deal with typical situations or special categories of assets. Section 4, for instance, deals with certain assets which are deemed assets of an individual for computing his net-wealth-assets held by his or her spouse or minor child, etc. under a transfer made by him to them otherwise than for adequate consideration and when such assets, though held by the transferee, are to be included as if belonging to that individual it is but natural and fair that debts owed by the transferee on the valuation date in relation to such assets should be deducted while computing the value of such asset in the hands of the individual and this is

precisely what sec. 4 (3) provides; it is clearly a typical case dealing with deemed assets. Section 5 has to be read with sec. 2 (m)

(ii) and so read the provision is that debts in relation to exempted assets i.e. assets which are not chargeable to wealth-tax at all should not be allowed to be deducted; similarly sec. 6 has to be read with sec. 2 (m) (i) and so read the effect is that both the assets and debts located outside India of a non-citizen or of an assessee who is non- resident or is a resident but not ordinarily a resident in India during the year ending on the valuation date shall not be taken into account in computing the net-wealth of the assessee. From these particular or special provisions it will be illogical to deduce any general principle that only such debts as are incurred in relation to the assets declared or reflect in the books qualify for deduction in computing the net-wealth of an assessee, especially as in the definition of 'net-wealth' given in sec. 2 (m) there is no warrant for it.

As regards the elaboration of the contention based on a presumption sought to be raised by counsel for the revenue against the assessee-companies from the analogy of the presumption arising in income-tax cases under sec. 68 of the Income-tax Act, 1961, the contention is fallacious for two reasons. It is true that by reason of the settlement made under the Taxation on Income (Investigation Commission) Act, 1947 the assessee companies must be taken to have admitted that they had made secret profits which were kept out of the books of accounts and it is also true that no explanation was forthcoming from the assessee companies as to what became of such secret profits but the question is whether from such absence of explanation any presumption can be raised that such secret profits were still retained by them on the valuation date in the circumstances of the case ? In the first place the analogy of the rule applicable in income-tax cases would be inapplicable in wealth-tax cases inasmuch as in the former case the unexplained cash credit item is regarded as income of the assessee from undisclosed source having accrued to him during the accounting year while in the latter case only the valuation date is relevant on which date the assets (secret profits) must be held by the assessee and it will not do that such asset was held by him some time during the concerned year. Secondly, after a lapse of sufficiently long period no presumption can be raised that a secret profit earned some time during the concerned year has continued to be held by the assessee on the valuation date. In the instant case the secret profits admittedly earned by the assessee companies related to assessment years prior to September, 1948 (as proceedings under Taxation on Income (Investigation Commission) Act 1947 could be taken only in respect of assessment years prior to 1.9. 1948) and the tax liability in respect thereof was determined in 1952 but we are concerned with the valuation dates 30.6. 1956 and 31.12.1956 and, therefore, the presumption as suggested by the counsel cannot be drawn against the assessee companies after a lapse of 8 long years. In Annamma Paul Perincherry v. Commissioner of Wealth-Tax, Kerala(1) and Commissioner of Wealth-Tax. Kanpur v. J.K. Jute Mills Co. Ltd(2)., the Kerala High Court as well as the Allahabad High Court have taken a similar view that no such presumption can be raised after a lapse of sufficiently long period and we approve of the said view. In any case, as stated above, the deducibility of the two tax liabilities in question does not depend upon whether the assets, in respect whereof such liability has been determined, are available or not while aggregating the assets of the assessee companies. The contention of the counsel for revenue, therefore, must fail.

Coming to the second contention the question is whether the deductions claimed fall within the exclusionary part of sec. 2(m) (iii) of the Act, that is whether the two sums of tax liabilities were outstanding for more than 12 months on the respective valuation dates ? According to counsel the expression "outstanding" means remaining unpaid after becoming due and since the liability to pay income-tax for any assessment year crystalises on the last day of the previous year and becomes payable for that assessment year even before it gets quantified, the two tax liabilities in question which pertained to assessment years prior to 1948, must be regarded as having become due by the last day of the concerned previous years and since these were not cleared soon thereafter these were outstanding since at least 1948 and thus became disallowable. In the alternative counsel urged that if payability is made to depend upon the date of an order passed quantifying the same then at least in 1952 these became payable when the order of the Investigation Commission was passed and more than 12 months had passed since then. Counsel urged that granting of instalments under the settlement merely amounted to showing some concessions to the assessee-companies and did not affect the payability in 1952 of the arrears of tax. In our view, there is no force in any of these submissions made by counsel. The aspect that the liability to pay income-tax for any assessment year crystalises on the last day of the previous year and, therefore, becomes payable on the expiry of the last day irrespective of quantification of the dues would be irrelevant having regard to the express language of sec. 2

(m) (iii). Sub-cl.(iii) requires that the tax liability must be one which is "payable in consequence of any order passed" under any law relating to taxation on income or profits, etc. such liability so payable under an order passed must remain "outstanding for a period of more than 12 months on the valuation date." The alternative submission that the tax liabilities in the instant case must be taken to have become payable in 1952 under the Investigation Commission's order and must be regarded as having remained outstanding since 1952 is equally of no avail for the payability of the dues must depend upon the terms of the Commission's order and admittedly a scheme for payment of the dues by instalments was provided in the order and each instalment would become payable on the date on which it is directed to be paid. In our view, the expression 'outstanding' in sec. 2 (m) (iii)

(a) and (b) will have to be construed in the background of the phrase "amount of tax..... payable in consequence of an order" and in that context it must mean remaining unpaid after the obligation to pay is incurred. We are informed that similar construction has been placed on the expression 'outstanding' occurring in sec. 2 (m) (iii) of the Act by the Calcutta High Court in Commissioner of Wealth-tax, West Bengal III v. Banarshi Prasad Kedia(1) and by the Allahabad High Court in Commissioner of Wealth-Tax, U.P., and Others v. Padampat Singhania(2) and we affirm the same. In the instant case it was an admitted position before the Tribunal that under the scheme of instalments sanctioned in the settlements the two sums, in respect where of deductions were claimed, had not become due for payment before the valuation dates. It is therefore, clear that the deductions claimed do not fall within the exclusionary part contained in sec. 2 (m) (iii) of the Act.

In the result the High Court's view is confirmed and the appeals are dismissed. There will be no order as to costs SABYASACHI MUKHARJI, J. On the second aspect, namely whether the deductions of two sums of Rs. 5, 49, 041 and Rs. 21,61, 788 being the outstanding liabilities as a result of the determination under settlement arrived at in 1952 under the Taxation on Income

(Investigation Commission) Act, 1947, I respectfully agree with the views expressed by my learned brother. I adhere to the opinion I expressed on the expression 'outstanding' in Commission of Wealth-Tax, West Bengal III v. Banarashi Prasad Kedia(1) which is in consonance with the views expressed by the Allahabad High Court in Commissioner of Wealth-Tax, U.P. and Others V. Padampat Singhania(2). I am, therefore, of the opinion that these deductions do not fall within the exclusionary part contained in Section 2 (m) (iii) of the Wealth Tax Act, 1957.

On the first contention urged on behalf of the revenue I would, however, if I may, express my views. I respectfully agree with my learned brother that from the relevant provisions of the Wealth Tax Act to which my learned brother has referred, in the facts and circumstances available in this case, the deductibility of the two tax liabilities in question does not depend upon whether the assets in respect whereof such liability has been determined are available or not while aggregating the assets of the assessee companies. In the facts of this case, it appears that in the case of M/s J.K. Cotton Manufacturers Ltd., proceedings were taken under the Taxation on income (Investigation Commission) Act, 1947 and a settlement was arrived in 1952 and a sum of Rs. 15,99,041 was determined as payable by the assessee on its secreted profits and a scheme of payments of such liability by instalments was agreed upon. Similarly in the case of M/s J.K. Jute Mills Co. Ltd., a settlement was arrived at in 1952 under the aforesaid Act and a sum of Rs. 42,93,392 was determined as payable by it on its secreted profits and a scheme of liquidation of such liability was agreed upon. It is true that as a result of the admission made by the assessee, the assessee made profits, which year and when we have no material though the income tax liabilities for the same had been settled in 1952. There is no evidence to show whether these profits had remained with the assessee either in the form of assets in the Balance Sheet or otherwise. The relevant valuation dates were much later, 30. 9. 1956 and 31.12. 1956 respectively in the case of the two companies. Had there been any finding that these profits, in some form either as assets in the Balance Sheet or otherwise, were with the assessee, it could have perhaps been examined whether so long as the assessee does not bring those profits in the computation of the wealth, the assessee would be disentitled to the deductions of liabilities in respect of the same. These should have been examined by the Wealth-tax Officer with the aid of the principles of Section 106 and Section 114 of the Evidence Act. But these were not done. It is unfortunate. Had that been done, it could have, perhaps, been examined whether by the principle of purposive interpretation in order to give effect to the intention of legislature in enacting the Wealth Tax Act and evolving the scheme of settlement under Taxation on Income (Investigation Commission) Act, 1947 whether the assessee was entitled to the deduction of these two tax liabilities. On the materials on record, I respectfully agree with the conclusion arrived at by my learned brother on the first contention urged on behalf of the revenue..

N.V.K. Appeals dismissed.