N.M. Shah Vs. Second Wealth-tax Officer

LegalCrystal Citation : legalcrystal.com/59005

Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Jan-29-1982

Reported in : (1982)1ITD244(Mum.)

Judge : T Sugla, B Palekar, Vice-, A Krishnamurthy

Appellant : N.M. Shah

Respondent : Second Wealth-tax Officer

Judgement :

1. The appeal of the assesses and interveuers involves question of far-reaching importance vitally affecting particularly individual assessees engaged in profession who maintain their accounts on what is called "the cash system". The question has been referred to the Special Bench in view of conflict of views by different Benches of the Tribunal and also its considerable general importance to persons engaged in profession, either individually or in partnership with others. We have, therefore, had the benefit of hearing not only the counsel appearing for the particular assessee, but also hearing the counsels for interveners, representatives including professional bodies and associations like the Institute of Chartered Accountants of India and the Bombay Chartered Accountants' Society, who sought permission, and were allowed to intervene. Counsel for another assessee, Y. P. Trivedi in WT Appeal No. 197 (Bom.) of 1980, on somewhat different facts, was also heard as involving some identical issue and it was understood that whatever was the ultimate decision in regard to the point raised in the appeal in WT Appeal No. 769 (Bom.) of 1980 would govern that appeal also in regard to the said point. We shall, therefore, take up the particular appeal [WT Appeal No. 769 (Bom.) of 1980] relating to the assessee, N.M. Shah, who is chartered accountant and is a partner in the firm of Shah & Co., Chartered Accountants.

2. The firm of Shah & Co., Chartered Accountants, maintains its accounts in what is called "cash basis" and, therefore, it took into its accounts only the professional fees which were actually received, and not professional fees which were outstanding as on the valuation date which coincides with the end of the accounting year 13-11-1974, relevant for the income-tax assessment for the year 1975-76. The return of net wealth submitted by the assessee, therefore, did not include the assessee's share of the outstanding professional fees of the firm. The assessee's claim before the WTO in this respect was that his share in the outstanding fees of the firm cannot be included as the firm follows cash system of accounting, and he relied in support of his claim on some orders of the Tribunal and also the decision of the Orissa High Court in CWT v. Vysyaraju Badreenarayana Moorthy Raju [1971] 79 ITR 330. The WTO negatived the claim, following another order of the Tribunal wherein it was held that the outstanding fee in the case of a professional is an asset and, accordingly, includible in the taxable wealth* and further that though such outstanding fees are includible, no

deductions can be allowed on account of income-tax liabilities in respect of the same. He, therefore, added to the wealth declared by the assessee the sum of Rs. 20,000 as the estimated amount in respect of the assessee's 20 per cent share of the outstanding fees of the firm.

3. The AAC rejected the contention of the assessee before him in the appeal preferred, following the decision of the Calcutta High Court in the case of Dipti Kumar Basil v. CWT [1976] 105 ITR 450.

4. Aggrieved by the order of the AAC, the assessee is in further appeal before us.

5. N.A. Palkhiwala, the learned counsel appearing for the assessee in this case, formulated certain propositions and made his submissions thereon, on the dispute involved as under : 1. That what is required to be taxed under the Wealth-tax Act is the real wealth just as in income-tax what is sought to be assessed is the real income and not any hypothetical or artificial or fictional amount, as the doctrine and theory of real income and the principles governing it in income-tax assessment is equally applicable for the purpose of assessing the net wealth.

2. That just as the method of accounting employed by an assessee carrying on a profession affects the ambit of income-tax liability, so does it affect the ambit of wealth-tax liability and, therefore, the computation of net wealth must be governed by the method of accounting adopted by the assessee. The method of accounting, it was argued, is nonetheless important as has been emphasised by Lord Denning in Mason (Inspector of Taxes) v. limes [1968] 70 ITR 491 at page 500 and which decision has since been followed by the Karnataka High Court in A.T. Mirji v. CWT [1980] 126 ITR 93. It is argued that in the case of a profession the commercial method adopted generally for the business of showing income on accrual basis is not relevant since it is inappropriate and inapplicable. For instance, the method of showing work-in-progress in a manufacturing or commercial business cannot in its very nature apply to the case of a person rendering professional service like the assessee as, for instance, taking value of any amount as due for half completed audit.

3. That in a learned profession such as that of a lawyer or doctor and now, also a chartered accountant, debts of honour should not be confused with legal debts in the case of a business concern.

It was contended that in the case of a learned profession like the assessee's, regard must be had to the principle of greater sensitivity and it cannot be treated on a par with commercial debts outstanding and due to trading or other concerns engaged in business. In this connection, a reference is made to the affidavit of the assessee, according to which the two partnership firms, of which the assessee is a partner, were maintaining their accounts on cash basis, that the outstanding professional fees are not reflected in the balance sheets of the said partnership firms as the firms are maintaining accounts on cash basis, and that during the course of their entire professional practice, neither the assessee nor the two partnership firms, of which he is a partner, or any other partner of the said firms have regarded the unpaid professional fees as debts legally recoverable by litigation in the event of non-payment and that they have merely considered them as debts of honour. It was also pointed out that in the entire period of profession of over 40 years, the assessee or the firms in which he is a partner have never filed any suit for recovery of outstanding fees except in two cases of outside Maharashtra where orders of court had to be

obtained as technical formalities for complying with legal requirements. Ft was also further urged that throughout the professional practice, both the assessee and the other co-partners of the firm have regarded themselves as carrying on an honourable profession and not as persons engaged in a commercial activity. In this connection, the learned counsel for the assessee also drew our attention to the amendment brought in 1975 to Section 5(5)(1)of the Wealth-tax Act, 1957 (the Act) by the addition of Clause (xa) exempting and excluding from the inclusion in the net wealth of an assessee the amount of any fees due to an assessee in respect of services rendered by him as a legal practitioner within the meaning of the Advocates Act, 1961. It was, therefore, argued that the amount of outstanding fees in the case of a person engaged in rendering professional services cannot be regarded as any debt at all and consequently cannot constitute an asset as envisaged under the Wealth-tax Act.

It was submitted that the provisions of Section 7(2) can only apply to an assessee who is carrying on a business which is distinct and different from a profession as brought out by the use of the two expressions separately in some of the provisions of the Act and the Rules as, for instance, in Rule 1 of Schedule I defining "business premises" where it is mentioned "used throughout the previous year for the purpose of business or profession "and Clause (ii) defining" previous year" as in relation to a business or profession. Therefore, Rule 2, it was contended, does not apply to a profession as distinct from business, and the adjustments contemplated therein cannot be made by the WTO as they apply only to a business. The learned counsel for the assessee, however, fairly pointed out that in a decision of the Supreme Court in Barendra Prasad Ray v. ITO [1981] 129 ITR 295, it has been held that for the purpose of Sections 9(1) and 163 of the Income-tax Act, the expression "business" does not necessarily mean trade or manufacture only, and it is being used as including within its scope professions, vocations and callings for a fairly long time and, therefore, there is no warrant for giving a restricted meaning to the expression "business connection", so as to exclude from its scope professional connections in the context in which the expression "business connection" is used in Section 9(1). It was, however, submitted by him that the correctness of the proposition laid down by the Supreme Court in that case should be held to be confined to the facts in that case in the context of Section 9 and not as wide enough to extend to all other cases. 4. Even assuming that Section 7(2) applies to an assessee carrying on profession, the provisions thereof cannot be applied in the case of a partner of a firm carrying on a profession. The computation of the value of the share of a partner of the firm in such a case is, it is submitted, governed by Section 4(1)(b) of the Act read with Rule 2 of the Wealth-tax Rules and not by Section 7(2) of the Act read with Rules 2A to 2G which apply only to an assessee who is carrying on a business as a sole proprietor. This proposition is stated to have been accepted by the Tribunal in certain orders which have been referred to and copies of which have been filed before us.

5. Even if it is held that Rules 2A to 2G will be applicable in the case of an assessee engaged in a profession, the adjustment contemplated in Rule 2C with regard to the value of an asset "not disclosed" in the balance sheet does not cover any adjustment which changed the very basis of the method adopted by the assessee.

In other words the submission is that the WTO cannot convert the cash system of accounting into mercantile system by resorting to Rule 2C.The point emphasised is that Rule 2C authorises only those adjustments which are required by the method of accounting regularly employed by the assessee. Support for this proposition is sought

in certain orders of the Tribunal, copies of which have been furnished, the decision of the Orissa High Court in CWT v. Vysyaraju Badreenarayana Moorthy Raju (supra) and the Karnataka High Court in A.T. Mirji v. CWT (supra). It was submitted that the rule does not lay down any new proposition but merely recognises the principle which is already implicit, and supported by judicial authority. Reference in this connection is made to the Commentary by Kanga and Palkhivala at pages 871 and 872 where it is stated that the ITO may include in the computation of income an amount which does not figure in the accounts but the inclusion of which is required by the assessee's method of accounting, that is to say, the ITO may, without deviating from the assessee's method, make certain adjustments in the profit and loss account as are necessary for giving true and full effect to that method itself.

6. The value of interest of a partner in a firm has to be computed in.

accordance with Section 4(1)(b) read with Rule 2 and in so computing the net wealth under Rule 2, no adjustments can be made as provided in Rules 2A to 2G because they apply only in computing the net wealth of an assessee under the Wealth-tax Act, which a firm is not. The net wealth in the case of a firm, therefore, it is stated, should be computed on the basis of commercial principles based on the method of accounting followed by the firm.

Support is sought for this proposition from the decision of the Allahabad High Court in CWT v. Padampat Singhania [1973] 90 ITR 418 and Seth Satish Kumar Modi v. ITO [1949] 15 ITR 340.

7. An alternative proposition in case the earlier propositions are not accepted is that even if any adjustment is required to be made in respect of the outstanding professional fees, what is required to be included is not the "gross" outstanding professional fees, but the amount after making necessary adjustments on account of: (a) possible bad debts ;(b) tax liability of the firm in which the assessee is a partner; and (c) the tax liability of the partner himself in respect of the same.

This proposition is really on the question of valuation of the asset represented by the debt outstanding in respect of professional fees and the argument is that the outstanding professional fee has imbedded in it the three elements stated above, namely, the possibility of the amounts becoming bad debts, the income-tax liability of the firm when it realises the income and also the assessee-partner's tax liability in respect of his share of income.

6. Y.P. Trivedi, learned counsel appearing on behalf of another assessee, Rajendra Kumar Tuli heard analogously on this point, besides adopting the arguments and submissions by the learned counsel Palkhiwala, mainly laid stress on the facts of the assessee maintaining the accounts under the cash system in which outstanding remuneration for services rendered is not required to be included or taken into consideration and it cannot be assessed to income-tax. Strong reliance is placed on an order of the Tribunal in WT Appeal Hos. 334 to 336 (Bom.) of 1978-79, copy of which has been filed before us in the course of hearing, as also an order of the Tribunal reported in 1978 Bombay Chartered Accountants' Journal, page 594. Further support was sought in the observation of the Karnataka High Court in the case of A.T. Mirji v. CWT (supra) to the effect that in a case of the type considered, the source for the wealth is the income or in other words, the effect of the receipt of income is the wealth and, therefore, it would be anomalous to say that the wealth which would be

the effect of the receipt of the income was possessed by the assessee on the valuation date, though its cause did not exist, i.e., the income itself is not received, further that since the Wealth-tax Act and the Income-tax Act are cognate enactments, if the amount representing the outstanding bills of an assessee who maintains his accounts on cash basis, is not income under the Income-tax Act for the relevant year, in the absence of any specific provision to the contrary in the Wealth-tax Act, it should be held that it is not wealth as on the valuation date, and that Section 7(2) also indicates that the method of accounting employed by the assessee is a relevant factor in assessing the wealth of the assessee under the Act. It was further submitted by Shri Trivedi that as against the stand of the revenue supported by the solitary decision of the Calcutta High Court in Dipti Kumar Basil v. CWT (supra), there are two High Court decisions in favour of the assessee, one of which specifically considered the Calcutta High Court decision and dissented from the view taken therein. It was, therefore, submitted that in view of the well-settled principle that if there are two views reasonably possible on the construction of the provisions of the statute, the one in favour of the assessee should be adopted, the view taken by the Orissa and Karnataka High Courts should be followed particularly because the view taken by the Karnataka High Court in favour of the assessee is the latest one. Shri Trivedi also stated that he does not wish to dispute the proposition that "business" includes "profession" and, therefore, he would confine his stand with reference to the method of accounting of the assessee in his case which is the cash system.

7. S.E. Dastur, learned counsel on behalf of the interveners, the Institute of Chartered Accountants of India and the Bombay Chartered Accountants' Society, who had addressed us next, conceded that he does not dispute the proposition that the expression "business" is a comprehensive term which includes "profession" and, therefore, the provisions of Section 7(2) would be clearly applicable to a person carrying on a profession also. He submitted that Section 7(2) brings in the concept of method of accounting adopted for the purpose of determination of the net wealth of the business as a whole. It was pointed out that the cash system of accounting is a well-known method and there are even instances of limited companies governed by the Companies Act maintaining their accounts on cash basis as would be evident from the fact that in the Report of Sachar Committee on the Companies and MRTP Acts, there is a recommendation on Section 209, dealing with accounts and audit, wherein it is stated that some companies maintain all or certain accounts on "cash basis" ; that in such cases a true and fair picture of the state of affairs of the company may not always be reflected and, therefore, the Committee recommends that Section 209 be suitably amended so as to make it obligatory on all companies to maintain accounts on mercantile system of accounting only. It was stated that under the Companies Act, a limited company must necessarily have a balance sheet besides profit and loss account as contemplated by Sections 209 to 211 and, therefore, it follows that even in a case where a limited company maintains its accounts on cash basis, drawing a balance sheet In respect of such accounts is contemplated. A reference was made to the definition of "balance sheet" in Batliboi's Advanced Accounting, 12th edn., according to which it is not a mere statement of assets and liabilities but it also includes items which do not necessarily represent the assets ; further the balance sheet is a classified summary of assets and liabilities and all other balances. A reference is made to Kohler's Dictionary for Accountancy, 4th edn., page 47 and Yorston Smith's Accounting, Vol. II, page 250, dealing with cash and accrual system of accounts, ft was contended that according to these authorities in cash system of accounting money due on revenue account cannot become wealth unless received in cash. Reference was also made in the course of hearing to the following

books of account and accounting principles : 1. Accounting Fundamentals by Yorston, Smyth and Brown, 1961 edn., pp. 51 and 471 on topic of balance sheet and statement of affairs, 2. Advanced Accounting by Batliboi, 20th edn., p. 78, dealing with balance sheet and p. 348, dealing with statement of affairs.

4. Advanced Accounting by Batliboi, 20th edn., Ch. IX, entitled Single Entry System.

8. Reference was then made to Sections 7(1) and 7(2). It is submitted that Section 7(2) which governs the case of business for which accounts are maintained by the assessee regularly, contemplated adjustments to be made to the balance sheet as may be prescribed, and the ajustments contemplated arc slated in Rule 2A. Referring to Rule 2C under which the outstanding professional fees are sought to be included by way of adjustment, it is pointed out that the adjustments contemplated under this rule related to an asset not disclosed in the balance sheet. The words "not disclosed in the balance sheet" refer, according to the learned counsel, to those assets which are required to be disclosed in the balance sheet in accordance with the method or system of accounts maintained, and do not cover any other asset which the assessee is not required to disclose in the balance sheet in accordance with the method of accounting employed. It was argued that Rule 2C, Clause (a), providing for adjustments in the case of a debt due to an assessee contemplates a debt due which is presently payable to the assessee according to the mercantile system of accounts, as is said to be indicated by the provision therein to the effect that where an amount or part of any debt has been allowed as a deduction under Section 36(1)(vii) of the Income-tax Act, in computing the total income of the assessee for income-tax purposes, the amount has to be reduced by the deduction so allowed, that is to say, for a debt to come within this clause, it must be one which is capable of being deducted or allowed as a bad debt in computing the income of the assessed under the Income-tax Act and this can apply only where the accounts maintained are of mercantile system and not of cash system. It was further argued that the outstanding fees of a professional assessee maintaining his accounts under the cash system cannot also be included in the residual clause of Rule 2C as any other asset as it does not fall under Clause (a) which, as it was already argued, refers only to a debt under the mercantile system of accounting, because Clause (a) is an exhaustive provision for considering any asset in the nature of a debt which, if at all, can be brought; to charge only by inclusion under Clause (a) and the residual clause cannot be resorted to bring in any item which, for some reason or the other, does not get caught within the specific provision contained in the rule. Any other construction would, it is submitted, lead to an anomalous result. For instance, it is argued, Clause (b) of Rule 2 provides for inclusion, as an asset not disclosed in the balance sheet, of the value of goodwill purchased by the assessee for a price and its value required to be included according to the rule is its market value or the value actually paid by the assessee, whichever is less, but if it is to be held that the goodwill which is self-generated and not purchased falls within the residual Clause (d) as any other asset, then, according to that clause, the value thereof to be taken is only the market value. Thus, the anomaly that would arise, it is stated, is that whereas in the case of goodwill purchased for a price, it gets the benefit of being included either at the cost or market value whichever is lower, in the case of self-generated asset, it requires to be included at market value which is rather harsh and cannot be the intention of the Legislature or the rule making authority. For the contention that if a particular item for which a specific head of charge is provided does not get caught by the specific provision for any reason, it cannot be brought to charge under residual head, the learned counsel referred to and relied on the following authorities, besides the

observation at page 298 of the Commentary on Income-tax by Kanga and Palkhivala-Nalinikant Ambalal Mody v. S.A.L. Narayana Row, CIT [1966] 61 ITR 428 and CIT v. Kalia District Co-operative Milk Producers' Union Ltd. [1979] 116 ITR 319. It was contended that the rule applied to a case of an assessee who prepares a balance sheet integrated to the system of accounting adopted or followed by him and the adjustments contemplated under the rule cannot strike at the root of the system of accounts so as to change the very basis of accounting adopted. The rules, it was submitted, must be interpreted so as to make them readily workable and not involved and complicated. The learned counsel then next contended that in interpreting the provisions of the Wealth-tax Act and the Rules, the various direct taxes should be held as part of an integrated system and, therefore, if the system of accounts maintained by the assessee is a factor affecting the determination of the income according to the provisions of the Income-tax Act, it must equally govern the accrual of asset or wealth for the purpose of wealth-tax as a deciding factor. The learned counsel referred in the context of the observation of S.K.Desai, J. in the case of CGT v. Dr. R.B. Kamdin [1974] 95 ITR 476 (Bom.) according to which "in ascertaining the correct construction of statutes taxing gifts"-the decision was under the Gift-tax Act-"it would be proper to read them in the light of the closely related provisions of revenue laws taxing transfer at deaths" and that "in a sense gift-tax is supplementary to estate duty and the main purpose of the gift-tax is to compensate for avoidance of estate duty by taxing the gift of property made during life which property, but for the gift, would be subject to the tax laid down upon a transfer at death". With regard to the amendment brought about by introduction of Clause (xa) in Section 5(1) exempting and excluding from inclusion in the net wealth the amount of any fee due to an assessee as a legal practitioner, it was submitted that the absence of such a provision earlier did not necessarily mean that such professional fee due would be liable to inclusion as the amendment could be held to have been introduced by way of clarification. Reference was made to the decision of the Supreme Court, viz., CIT v. Madurai Mills Co. Ltd. [1973] 89 ITR 45, where an argument based on omission of distribution of capital asset on the dissolution of firm or association of persons, etc., under the first proviso to Section 12B(1), as showing the Legislature wanted such distribution of capital assets to be regarded as sale, exchange or transfer, was repelled. The learned counsel then referred to and relied on the decision of the Karnataka High Court in A.T. Mirji v. CWT (supra) which proceeds on the basis that the provisions of Section 7(2) are applicable to a case of professional assessee maintaining accounts on cash basis as supporting the assessee's case.

9. Lastly, it was argued that even if it is held that the view taken by the departmental authorities is right, the other view which is favourable to the assessee is equally possible as per the two High Court decisions of the Orissa and Karnataka and, therefore, according to the authorities well-settled, we are bound to follow the view which is in favour of the assessee. Moreover, it is submitted that the decision of the Calcutta High Court on which the reliance is placed by the revenue was rendered in regard to the provisions of the Wealth-tax Act before the rules considered were introduced. It was submitted that the principles stated with regard to the determination of wealth based on the system of accounts and the adjustments contemplated by the rules would equally apply to the case of an individual assessee carrying on profession as sole proprietor, or a firm engaged in business.

10. It is then submitted that in the case of the assessee who is a partner in the firm, there is a further difficulty in the way of the revenue in making the adjustments because as laid down in the decision of the Allahabad High Court in Seth Satish

Kumar Modi v, WTO, though the interest of a partner has to be determined as laid down in Rule 2 of the Wealth-tax Rules, neither the provisions of the Act, nor the Rules lay down any particular procedure for calculation of the net wealth of a firm and, therefore, the net wealth of the firm has to be calculated under Rule 2 in accordance with commercial principles, and the special provision in the Act for computation of net wealth cannot be applied for purposes of computing the net wealth of a firm under Rule 2. As in this case, in computing the net wealth of the firm of which the assessee is a partner, the special provisions of the Act and the rules requiring adjustments to be made cannot be resorted to as laid down in this decision, it is argued, the adjustment made by the WTO in respect of the outstanding professional fees is not justified or correct.

11. The learned counsel also further submitted that according to authorities on accountancy, balance sheet, by whatever name it is called, is required to be kept according to the method of accounting followed or adopted by a businessman including accounts maintained in cash system. He also referred to the provisions of Section 44AA of the Income-tax Act which requires maintenance of accounts even by assessee engaged in medical and accountancy, etc., professions. It was contended that even if no formal balance sheet is drawn up, the term "asset" has to be understood, and any adjustment in respect of inclusion of an asset has to be made, only as is consistent, with the system or method of accounting. Since according to the cash system fees not collected cannot be regarded as asset it cannot be included in the net wealth and the principles stated in the Karnataka High Court decision will apply when the assessee follows the mercantile system of accounts irrespective of whether a balance sheet can be, or is, kept or not.

Reliance is also placed on the decision of the Orissa High Court in CWT v. Vysyaraju Badreenarayana Moorthy Raju (supra). Our attention was also drawn to the form of return of wealth to be filed under the Act, where in the note to Annexure V providing for statement of movable property (including sundry debtors) it is stated that a copy of the balance sheet or trial balance as on the valuation date or the date of closing of the accounts immediately preceding the valuation date, and a copy of the auditor's report, if any, must be attached as indicative of the fact that the requirement of balance sheet or trial balance is applicable accounts maintained on cash system also (sic), and further that balance sheet contemplated is not what is normally understood as relating to mercantile system of accounts, but a statement containing the balance according to method of accounting adopted.

12. Next, V.H. Patil, counsel representing one of the interveners, made his submission on the requirement of maintenance of balance sheet in a cash system of accounting. It was submitted that the fact that certain notes or observations are made by the auditors in regard to the balance sheet maintained under any particular system, including cash system, docs not mean that the balance sheet is not prepared in accordance with the system or method of accounting adopted and such notes or observations are intended to fulfil the requirements under the Companies Act of stating the true and fair state of affairs of a company and not as reflections on the correctness of the accounts. It was pointed out that earlier the Wealth-tax Act while providing for adjustments did not define the scope of the adjustments contemplated but has since circumscribed the scope by the amendment and the rules introduced. On the question of adjustments to be made, he adopted the arguments of the counsel S.E. Dastur, including the contention that the assets not disclosed only refer to the assets which are not disclosed according to the method of accounting and that the

adjustments cannot apply to the determination of the share of a partner in a firm carrying on profession.

13. Dinesh Vyas, counsel representing one of the interveners, submitted in the first place that it is only the income which becomes taxable under the Income tax Act becomes wealth for the purpose of wealth-tax.

He referred to the Commentary of Kanga and Palkhivala at page 170 on the topic of accrual of income, according to which the point of time when income accrues and can be charged should be determined according to the method of accounting regularly employed. He also referred to the decision of the Bombay High Court in CGT v. Dr. R.B. Kamdin (supra) and emphasised the aspect of the different direct taxes forming part of an integrated system. He further relied on the observation of the Single Judge of the Kerala High Court in the case of K.P. Varghese v. ITO [1970] 77 ITR 719 where it is observed that the income-tax, the wealth-tax, the gift-tax and the expenditure tax form different heads of an integrated system of taxation ; and imposition of tax under one head must have a relevance to the liability under the other heads of tax. It is pointed out that this decision has since been approved by the Supreme Court in A'./'. Varghese v. ITO [1981] 7 Taxman 13.

14. The learned standing counsel, Joshi, in reply submitted that the arguments concerning the principles of integrated system of taxation have no relevance in determining the chargeability under the Wealth-tax Act and the question has to be solely decided with reference to the express provisions of the statute. He submitted that what is required to be considered is whether the outstanding professional fee can be said to be a debt due and, therefore, -an asset. If it is found to be a debt due, then there can be no dispute that it is an asset within the meaning of its definition of Section 2(c) as such a debt would be property which is held to be a term of widest import in the Supreme Court decision in Ahmed G.H. Ariff v. CWT [1970] 76 ITR 471. That a debt is an asset is also further made clear by Rule 2C providing for value of an asset to be taken where a debt is also considered as an asset. It was further submitted that the whole argument on behalf of the assessees proceeded on the basis that Section 7 is a charging section whereas it is merely a machinery section, the charging section being Section 3 on the net wealth of an assessee. It was also further argued that once a debt is found to be due, it is an asset within the meaning of its definition and the charge is at once attracted irrespective of the method of accounting which has no relevance to the charge. Section 7 being a machinery section providing for the determination of the value of an asset, it was contended, has nothing to do with the charge and that Sub-sections (1) and (2) of Section 7 are not mutually exclusive. Therefore, it was argued in determining the value of the asset, the WTO can take resort to Section 7(1) itself and need not go by Section 7(2). It is pointed out that the original Section 7(1) did not contain the words "subject to any rules made in this behalf", but later this section was amended in 1964 by the introduction of these words. He further submitted that even where the determination is made under Section 7(2)(a), the WTO is not precluded from making such adjustments therein as may be considered necessary to determine the market value of the assets on the valuation date and that Section 7(2)(c) did not preclude resort to Section 7(1). Support for this proposition is sought on the decision of the Delhi High Court in CWT v. Mela Ram [1972] 84 ITR 323. He also contended that the rules made under Section 7 cannot be held to be binding on the WTO as they arc directory rather than mandatory as held by the Bombay High Court in Smt. Kusumben D. Muhudevia v. N.C. Upadhya [1980] 124 ITR 799. He also referred to the decision of the Allahabad

High Court in CWT \. Rani Kaniz Abid [1974] 93 ITR 332 and the observations of Justice Pathak where it is stated that Section 7(4) is merely concerned with the mode of valuing an asset and it in no way indicates what is an asset for the purpose of charging to wealth-tax which is indicated by Section 3 and the definition of "net wealth" and "assets". Joshi, therefore, contended that the charge under the wealth-tax of a debt due does not depend upon the method of accounting employed or followed and is independent of it, governed by the provisions of the statute itself.

15. It was next submitted that even if it is assumed that the valuation has to be made in accordance with Rule 2C, as contended for on behalf of the assessee, the "debt" contemplated by Clause (d) is not confined to a debt due under the mercantile system of accounting, but includes debt in general irrespective of the system of accounting and the later part of the provision only means that where a debt under the mercantile system of accounts is included and any deduction is allowed in respect of the same for the purpose of income-tax under Section 36(1)(vii) the amount of such debt would be reduced by the deduction allowed. It was further contended that even assuming that the debt referred to in Rule 2C is only a debt due under the mercantile system of accounting, the adjustment in respect of other debts can be made under Clause (d) of that rule itself which is a residual clause, and at any rate the WTO can fall upon the provision of Section 7(1) to include it. It was submitted by the learned standing counsel that the case cited in connection with revenue's attempts to charge any income which falls under a specific head which refers to a source under the residual head because it cannot fall under the "specific" head, were rendered in a different* context and their principles cannot apply to the instant case. With reference to the argument on behalf of the assessee that the words "not disclosed" in the "balance sheet" in relation to assets mean only such assets as are required to be shown in the balance sheet according to the system of accounts and not any other asset, it is the submission of the learned standing counsel that there is no warrant for such a construction. The words "not disclosed" simply mean "not appearing or shown" in the balance sheet and does not admit of any enquiry as to whether the debt was consciously not disclosed or was required to be disclosed according to the system of accounts followed by the assessee. He further reiterated his contention that the principles of integrated system of taxation had no application as wealth-tax is a self-contained code by itself and the ratio of the decisions based on the provisions of Section 145 of the Income-tax Act making it obligatory on the part of the income-tax authorities to compute the income in accordance with the method of accounting employed by an assessee cannot be invoked as held by the Calcutta High Court in Dipti Kumar Basu v. CWT (supra). It was submitted that the correct view on the point is that of the Calcutta High Court.

16. As regards the contention raised on behalf of the assessee that the outstanding fees due to a person engaged in a learned profession arc debts of honour, it was submitted that this principle is generally applicable only to Barristers and Senior Advocates and though as a matter of convention or principle the outstanding fees are not sought to be recovered by legal proceedings, there is no specific provision which debars the person practising the legal profession from resorting to legal proceedings for recovery of outstanding fees. ft was also his submission that the observations of Lord Denning referred to by the learned counsel for the assessee in Mason's case (supra) have no relevance as it was concerned with the system of accounting which does not govern the charge to wealth-tax. As regards the claim for reduction of income-tax liability in respect of the outstanding fees in determining the amount of such fees as debt due, the learned standing counsel strongly relied on the Calcutta

High Court decision in Dipti Kumar Basu v. CWT (supra).

17. S.P. Melita, learned counsel for the assessee, in reply submitted that the charge under the Wealth-lax Act is not on any asset but on the net wealth under Section 3 and net wealth has been defined under Section 2(m) to mean the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets of the assessee exceeds the aggregate value of all the debts owed by him.

Therefore, it was contended that it is necessary to ascertain the correct value of an asset and it is Section 7 which prescribes the two modes of determining the value. It is stated that the instruction of the Central Board in their circulars in this context is that ordinarily when accounts are maintained in respect of a business, the valuation of the assets is based on balance sheet drawn up in respect of the accounts as provided in Section 7(2)(a). It was submitted that the purpose of the enactment of the Wealth-tax Act is not the collection of the revenue but to find out the growth of the wealth of an assessee.

Reference is made in this connection to the circular of the Board No. 3 (WT) of 1957 dated 28-9-1957 which requires not of determination of the values of the different items but the net value of the assets of the business as a whole The rules framed in this connection, it was submitted, indicate the scope of the adjustments required to be made by the WTO and that they have to be interpreted so as to avoid difficulty and complicated working of the rule, it is further contended that the object of the amendment brought about in the Rules is to circumscribe the powers of adjustment and the power is given to be exercised in accordance therewith and not to ignore it. It was, therefore, submitted that the contention that the rule is merely directory and not mandatory and, therefore, the WTO can resort to the general provision is not justified or correct. It was his further submission that the power of adjustment contemplated by Section 7(2) is confined or restricted to what is specified in the rule and the WTO cannot travel beyond it.

Finally, it was submitted that even assuming that the decision of the Calcutta High Court in Dipti Kumar Basu v. CWT (supra) correctly holds that the determination of wealth is not dependent upon the method of accounting followed, the decision was rendered in the context of the provisions of the Act which were then in force and does not take into consideration the amendment subsequently brought about and the only decision directly on the point after the change is introduced in the provision is the decision of the Karnataka High Court reported in A.T.Mirji v. CWT (supra). It was, therefore, argued that the decision of the Karnataka High Court should be preferred, The points highlighted by the other counsels in reply are, according to the learned counsel Dastur, that Section 7(1), when it states "subject to any rules made in this behalf", restricts its scope and the rules framed thereunder circumscribe the ambit of the adjustment and the determination of the value. As an instance of how otherwise the construction would lead to an absurdity or anomaly, it is pointed out that Sub-rule (2) of Rule 2B provides that where the market value of an asset exceeds its written down value or the book value or the value adopted for the purpose of the Income-tax Act by more than 20 per cent, the value of such asset shall be taken to be the market value. In other words, so long as the written down value or the value adopted for the purpose of the Income-tax Act does not exceed market value by more than 20 per cent, then according to this rule, the written down value or the book value has to be adopted and if the WTO does not have to resort to this rule, he can still adopt the market value notwithstanding the fact that the difference is less than 20 per cent

under Section 7(1) which leads to an absurd result. What is contemplated by the provisions of Section 7(1) is not a power of insertion of an asset which is not includible but the power of valuation. Emphasis is again laid on the principle of integrated scheme of taxation and the need to harmonise the provisions of the different direct tax laws relying on the decision of the Supreme Court in K.P. Varghese's case (supra). Y.P. Trivedi argued on the alternative contention, as to the values of the debts if held to be includible as an asset, that even if the tax liability thereon is not to be deducted or deductible, in valuing the asset, consideration must be had to the inherent liability and the value accordingly reduced. It was also submitted that unlike the proviso to Section 145 of the Income-tax Act which authorises rejection of the accounts and sets out the guidelines for determination of the income, there is no such guidelines under the Wealth-tax Act and it cannot mean that the determination is left to the caprice of the WTO, for no such intention can be attributed or read into the provisions. Therefore, it was argued that Sections 7(1) and 7(2) should be held to operate in separate fields.

18. The crucial points that have been thrown into focus for our consideration by the highly interesting debates at the Bar on the dispute, according to us, are : 1. Whether in the case of an individual assessee, engaged in a learned profession, whether independently on their own or in partnership with other persons of the same profession, the outstanding fees for services rendered can be held to constitute a debt, and, therefore, an asset and is includible in computing their net wealth under the Wealth-tax Act.

2. Whether the term "business" occurring in Section 7(2)(a) includes a "profession" carried on by an individual and as such the provisions of the said clause would apply to the case of persons engaged in the carrying on of a profession for which they maintain accounts regularly.

3. Whether, if the term "business" includes profession ; in the case of individual assessee engaged in a profession or rendering professional services for which they maintain accounts regularly, the valuation of the assets of such profession or business requires to be made only under Section 7(2)(a) or the WTO is entitled to determine the wealth even in respect of such business or profession in terms of Section 7(1).

4. Whether, even where the WTO proceeds to determine the net value of the business as a whole in regard to a profession carried on by an assessee under Section 7(2)(a) read with the rules prescribed, he is at liberty to include by way of adjustment the value of an asset not disclosed in the balance sheet either as falling within Clause (a) or (b) of Section 2 (m)(iii) (d) the outstanding professional fees as a debt in a case where the accounts are maintained under cash system as distinct from mercantile system of accounting even though such outstanding fees are not charged to income-tax under the Income-tax Act until and unless they are realised.

5. Whether granting that the WTO is competent to make any such adjustments in respect of outstanding fees even in a case where an assessee engaged in a profession maintains his account under cash system, is the amount of such outstanding fees required to be reduced either on account of the tax liabilities that would naturally attach to it when it constitutes income by its receipt and for likelihood of its non-realisation and its becoming a bad debt, or otherwise, as determining the market value of the same on the concerned valuation date.

6. Whether in the case of an individual assessee engaged in a profession as a partner in a professional firm, in determining his interest in the partnership firm for inclusion in his net wealth in accordance with Rule 2 of the Wealth-tax Rules, no adjustments are contemplated to be made as provided in Rule 2A arid the net wealth of the firm has to be determined only on commercial principles on the basis of the balance sheet drawn up in respect of its business with the consequence that there is no scope for inclusion of any outstanding professional fees which are not shown in the balance sheet in accordance with the cash system of accounting followed by the firm.

19. There is no merit, in our view, for the contention urged on behalf of the assessee that in the case of learned profession like medicine or law, regard must be had to the theory of greater sensitivity and the outstanding fees should not be regarded as a debt merely because the persons choose not to recover the amounts by appropriate legal proceedings. In the course of the debate at the Bar, we specifically put to the counsels as to whether there is any legal bar or such professionals taking appropriate proceedings against clients for recovering their dues on account of professional fees, but no provision of any law has been pointed out to us which would indicate any such bar. The introduction of Clause (xa) to Section 5(1) by an amendment adverted to in the submissions made before us, it is noticed, stems not from the recognition of any theory of greater sensitivity or respect or regard for the learned professions but from the fact as stated in the Memorandum explaining the provisions of the Finance Bill, 1976, by which the clause was introduced, that there was a representation that the outstanding fees in the case of leading advocates and senior advocates who are briefed by junior advocates are not legally recoverable and as such cannot be regarded as "assets" for the purposes of the Wealth-tax Act. It is further stated in the Memorandum that the ascertainment of the correct amount of outstanding fees of advocates and solicitors also present practical difficulty, and, therefore, it is proposed to exempt from wealth-tax the value of outstanding fees due to a person in respect of services rendered by him as a legal practitioner within the meaning of the Advocates Act, 1961. This amendment takes effect from 1-4-1975 and applies to the assessment year 1975-76 and subsequent years.

20. But in the decision of the Calcutta High Court in the case of Dipti Kumar Baxu v. CWT (supra), it has been held that a solicitor is legally entitled to his fees and cost from his client the moment the solicitor renders service to his client and in the commentary by A.C. Sam path lyengar on the Three New Taxes, 4th edn., vol. I, page 154, it is stated that in India it has been decided that by virtue of the Legal Practitioners (Fees) Act, 1926, Sections 3 and 4, and by the Rules of the High Courts, fees due to "advocates" (which expression would include barristers enrolled as advocates and other legal practitioners) are recoverable by legal process K L. Gauba v. I Vasic AIR 1956 Bom. 34 and Nihal Chand Shasiri v. Dilawar Khan AIR 1933 All. 417 and consequently if the client had entered into an arrangement to pay on or before the valuation date, an ascertained mm of fees, the said sum would be a "debt" due to the "Advocate" and includible in his assets.

Therefore, according to, us, the argument based on the theory of the outstanding fees of a professional being debts of honour can no longer hold good or be relevant. In other words, even a person engaged in a learned profession is entitled to recover his fees for services rendered by appropriate legal proceedings, if necessary. Whether the outstanding fees of an individual engaged in profession can be regarded as a debt for the purpose of wealth-tax and is liable to be, included, as posted in point No. I, has, we think, to be decided on a consideration of the other points stated in 2 to 4

above, but what is clear at this stage is that if they constitute debt within the meaning of that expression used in the Wealth-tax Act, then, undoubtedly it is liable to be included in computing the wealth of such individual, if the provisions of the Act require or permit such inclusion.

21. The question as to whether a profession would not amount to "business" within the meaning of the expression in Section 7(2)(a) need not engage our attention for long because though the point was canvassed before us by the learned counsel Shri Palkhivala for the assessee, he was fair enough to concede that the decision of the Supreme Court in Barendra Prasad Ray v. I TO (supra), considering the identical question, prima facie, negatives his contention. But it was his submission that the correctness of this decision should be held to be on the facts of that case, although no convincing argument has been advanced to show why and how the ratio of the decision cannot be extended to the facts of the assessee's case before us. Again, the learned counsels who followed Mr. Palkhivala specifically stated that they do not want to take this stand and conceded that the expression "profession" is comprehended by the term "business" and, therefore, the provisions of Section 7(2)(a) are attracted. We also do not find any substance in the contention of the learned counsel Shri Palkhivala on this aspect. Merely because the two expressions "business" and "profession" have been separately used in certain provisions of the statute and in certain other provisions only the term "business" is used, it does not necessarily follow that where the expression "business" is used, it per se or automatically excludes the concept of profession. As stated by the Supreme Court in Barendra Prasad Ray v.ITO (supra), the expression "business" is a comprehensive term which includes in its fold not only a trading or a commercial activity but also an activity by way of profession or vocation. There may be various reasons why only one of the two expressions or both is or are used in some provisions. For instance, where the Legislature wants to make certain provisions applicable only to profession the term "profession" may be used. It may be that sometimes the two expressions are used, not intending to bring out any distinction but as synonymous terms in the context of the relevant provisions (see Section 28). Unless, therefore, it can be said that the concept of profession in the use of the expression "business" is inconsistent with the context and is necessarily excluded thereby, it must be held to include a profession also. Therefore, it follows that Section 7(2) would be applicable not only to a trading or commercial activity but also to a profession for which accounts are maintained by an assessee regularly.

22. Coming to the third point set out above which arises for our consideration, it appears to us on a plain reading of the relevant sections, that where an assessee carries on a business including a profession for which accounts are maintained by him regularly, the WTO has necessarily to act in accordance with Section 7(2) and not under Section 7(1) and it is not possible to accept the contention of the learned standing counsel for the department that the WTO is entitled even in a case which falls under Section 7(2) to proceed to determine the wealth under Section 7(1) in respect of any business or profession carried on by the assessee. The contention that Section 7 is merely a procedural one and the ambit of charge is governed only by Section 3 is not, we think, altogether correct. Section 3 merely gives a general outline of the scope of the charge and cannot be read in isolation without regard to the other provisions of the Act which specify the details of the charge. It merely sets out in a nutshell or in a summary form the extent or scope of the charge, namely, the net wealth of an assessee, but what are the items that are required to be included in the net wealth and how it is to be computed and which assets are to be brought to charge

and which liabilities are to be excluded are stated in different provisions of the Act. Therefore, to know full implications of the charge, it is necessary to have regard to the other connected provisions setting out the details, such as, for instance, the definition of "net wealth" in Section 2(m), the definition of "asset" in Section 2(e), etc. It is further to be noted that the provisions of Section 3 open with the words "subject to the other provisions contained in this Act" which would, according to us, mean not only that such charge has to be in accordance with other provisions contained in the Act, but also that there can be exceptions to or modifications of the charge. Now, "net wealth" has been defined to mean the aggregate value of all assets which is in excess of the aggregate value of all the debts owed by an assessee on the valuation date. The definition also provides 'that the aggregate value of all the assets shall have to be computed in accordance with the provisions of the Act and the relevant provision for computation of the aggregate value of the assets are to be found in Section 7. It is only Section 7 which activates the charge under Section 3 on the market value or otherwise, of the asset and, therefore, it is also part of the charging provisions of the Act. Otherwise, it appears to us, in the absence of definition of "value" contained in Section 2(m), that it is not possible to invoke the charge on the market value of an asset as the "value" can mean any value, for instance, cost or book value and not necessarily the price which it would fetch if sold in the open market. As we have already seen, Section 1(m) defining the expression "net wealth" speaks of the aggregate value of all the assets computed in accordance with the provisions of the Act and the computation is provided in Section 7.

Section 7(1) is a general provision stating that the value of an asset shall be estimated to be the price it would fetch if sold in the open market. But Section 7(2) is a special provision dealing with the case of an assessee carrying on business and who maintains accounts regularly. Apart from the rule of construction that when there is a general provision dealing with all the matters covered in a statute generally and also there is a special provision dealing with the specified class of items or things, the special provisions will override the general provisions in Section 7(2), this position has been expressly made clear by the opening words "notwithstanding anything contained in Sub-section (1)" which means that the provisions of this sub-section override the provision for determination of the value under Section 7(1). There is, therefore, no merit in the contention of the learned standing counsel that even though Sub-section (2) deals with a special case of the assessee engaged in business for which accounts are maintained regularly, the WTO can still resort to Section 7(1) for inclusion of any asset or wealth relating to business. It is also our view that the word "may" in this sub-section does not indicate that the WTO has the discretion either to resort to this provision or not. He is bound to determine the value of assets relating to the business in accordance with the provisions of this sub-section. The use of the word "may", according to us, is merely intended to clothe him with power, or authorise him to depart from the generality contained in Section 7(1) so that his action in acting under Sub-section (2) is not open to challenge. Another striking feature which may be noted is that this sub-section provides for determination of the net value of the assets of the business as a whole instead of the value of each asset separately held by an assessee in the business. The sub-section also requires the WTO to have regard to the balance sheet of the business as on the valuation date. The conditions necessary to attract this sub-section are (1) that the assessee should be carrying on a business which, as we have already seen, includes profession, and (a) that accounts for the business are regularly maintained. There is nothing in the sub-section which would restrict the scope of its application only to a business which maintains accounts on mercantile system and not under the cash system because

maintenance of accounts under both the systems are equally well recognised. Since it directs the WTO to have regard to the balance sheet of such business, it implies that a balance sheet is contemplated even in regard to accounts maintained on cash basis. If the concept of balance sheet is peculiar only to a mercantile system of accounts, the sub-section could have indicated accordingly by use of the appropriate words such as "for which accounts are maintained Under the mercantile system regularly". Now, this sub-section also contemplates certain adjustments in the balance sheet. Again such adjustments are not left to the arbitrary discretion of the WTO, but are prescribed by the rules which leave no scope for him to act otherwise than under the provisions. The relevant rules are Rules 2A to 2G. Rule 2A by the use of the mandatory term "shall" clearly enjoins the WTO to make the adjustments specified in Rules 2A to 2G. It is, therefore, clear that Sub-section (2) of Section 7 read with Rules 2A to 2G circumscribes the scope of the adjustments to be made by the WTO.The learned standing counsel for the department, therefore, is not, according to us, correct in stating that for any adjustments not provided in the rules, the WTO can still make them under the general authority conferred under Section 7(1).

23. The reasonings and conclusions reached by us above are based on the plain and natural constructions of the provisions as we understand them to be without reference to authority of decided cases. We may, therefore, consider the cases referred to and relied on by the parties.

24. In Sahu Dharmata Saran v. CWT [1971] 80 ITR 194 the Allahabad High Court while stating that Sub-section (2) of Section 7 makes a special provision for valuation of business, held that it is a permissible mode of valuation of business assets where accounts are maintained regularly, and that Sub-section (2)(a) also authorises the WTO to make adjustments to book value of assets as circumstances of the case justify and such a provision is not interrogative of Section 7(1), but an enabling provision. It was further held that Sub-section (2) is introduced as a non obstante clause and not as a proviso carving it out from Section 7(1) and that having regard to the clear and unequivocal terms, Sections 7, 7(1) and 7(2) are not mutually exclusive, and where an assessee carries on business and maintains regular accounts it is still open to the WTO to resort to the method in Section 7(1). It was again held that where the WTO proceeds under Section 7(2)(a) and adopts balance sheet value it is open to him to make adjustments in regard to value as may be necessary, namely, either a reduction or enhancement according to circumstances.

The decision apparently supports the stand of the learned standing counsel. It is, however, pertinent to note that the question arose in regard to the provisions of the Wealth-tax Act where Section 7(2)(a) contemplates adjustments to book value as the circumstance of the case may require. The facts in that case were that the business of the assessee-HUF consisted of among others, money-lending and in the wealth-tax assessment the WTO computed the value of the movable assets at Rs. 4,70,574 which included a sum of Rs. 2,94,556 invested in money-lending business which was taken at par. The assessee's objection was to the taking of the value of investments as per balance sheet at par because it was the claim of the assessee that investment in money-lending business could not be sold in open market at face value and the investments in money-lending business were generally sold at 50 per cent of the book value and, therefore, the WTO was not correct in taking the value of the investments at the figures shown in the balance sheet of the business. The High Court in its judgment at page 197 of the report referred to the first contention of the assessee that the investments in the money-lending business were generally sold at 50 per

cent of the book value and, therefore, it was not correct on the part of the authorities to have taken the value at the figure shown in the books, and stated that "apparently this contention as to the market value of the investment was based on the terms of Section 7(1)". The second contention noticed by it was that it is wrong to suppose that under Section 7(2) the value of an asset must necessarily be taken at the figure shown in the balance sheet and it was suggested on behalf of the assessee that an adjustment of 50 per cent should be made as regards the value of investment mentioned in the balance sheet of the business, which contention was evidently based on Section 7(2). Whether the assessee in that case specifically claimed a valuation of the investments at market value under Section 7(1) is not clear from the facts stated in the judgment, but what is clear is that the assessee in that case claimed that the investments should be valued at 50 per cent at which generally they are sold, but the High Court appears to have proceeded on the basis that apparently this contention is based on Section 7(1). What appears to have been agitated by the assessee in that case is evidently that an adjustment of the value of the investments is called for to reflect the value at which they can be sold even under Section 7(2)(a). Whatever be the position, in our view, this cannot be taken as a direct decision on the question arising before us in this appeal under the provisions of Sections 7(1) and 7(2) of the Act as they stood for the relevant years under appeal because the decision was rendered when the provisions of Section 7(2)(a) contemplated adjustment of book value as the circumstances of the case may require and not where adjustments were prescribed and the scope and ambit of power of adjustment of the WTO were circumscribed by the rules as in the appeal of the present assessee. In the context of the facts of that case and the law as they then stood, the observation of the Court that Sections 7(1) and 7(2) are not mutually exclusive, is according tons the way of obiter dicta because the decision even otherwise can and will stand on the basis of Section 7(2)(a) as it then stood.

25. In CWT v. Mela Ram (supra) the assessee and his brother were partners in a firm. The WTO making the assessment in the case of the assessee for the purpose of determining his interest in the firm took the value of the assets of the firm as shown in the balance sheet except for one property in regard to which he took the value at Rs. 5 lakhs and the assessee's share was at Rs. 2,50,000 as against the value shown in the balance sheet at Rs. 1,26,996. Reversing the order of the Tribunal that Section 7(1) is the general provision and Section 7(2) is a special provision which excludes the general one and under Section 7(2)(a) it was obligatory upon the WTO to determine the net value of the assets of the business as a whole where accounts are maintained and no piecemeal valuation of assets are warranted, the High Court held that the main object of Section 7 was to evaluate assets and that evaluation was to be on the basis of market value, that Section 7(2) is not a special provision so as to exclude Section 7(1), and that under Section 7(2)(a) the WTO could go beyond the balance sheet figure if it was not the true value. It was held further that under Section 7(1) the WTO can value each asset of the business and if he can do so he can also value one of the assets. This decision also apparently supports the department's stand. It is, however, considered necessary to point out that this decision proceeds, on the premises, firstly, that cases to which attention of the Court was drawn, (sic) distinction between Section 7(1) and Section 7(2) as being respectively a general and special provision of the Act, was not made while on the other hand the two provisions have been regarded as alternative provisions and when so read the WTO has the discretion either to value the assets separately and to value the business as a whole, and secondly, the main object of Section 7 is to evaluate the assets on the valuation date which has to be on the basis of market value. So far as the first premises is

concerned it is to be noted that the construction placed by us on a plain reading and interpretation of the two provisions that while Section 7(1) is a general provision, Section 7(2) is a special provision applicable to valuation of business as a whole has the support of the identical view taken by the Allahabad High Court in Sahu Dharmata Saran v. CIT (supra). As regards the second premises, while it is true that the main object of Section 7 is to evaluate the assets for the purpose of the charge as we have already stated in considering the provision earlier, the proposition that evaluation has necessarily to be on the basis of market value will, according to us, no longer hold good in the context of the amended provisions where the basis of valuation has been fixed by the adjustments prescribed under the rules : and we have already seen that the rules do not necessarily provide for adopting the market value in every case. The decision was rendered on the provisions of the law which authorised the WTO under Section 7(2) to make adjustments therein as the circumstances of the case may require, thus, leaving it to the discretion of the WTO and on the basis that there was guidance for exercise of such discretion rebutting the plea that the Legislature would have provided in the Rules for guidance, if there was discretion left. In other words, both the premises, namely, that the provisions of Sections 7(1) and 7(2) are not general and special provisions and are not mutually exclusive and that evaluation of the asset under Section 7 has necessarily to be on the basis of market value can, in our view, no longer hold good in the context of the amended provisions, where it will be seen, the basis of valuation under Sections 7(1) and 7(2) are not necessarily the same and the provisions of Section 7(2)(a) envisaging a somewhat different basis are apparently mandatory. It may be further noticed that this decision has noted in passing the amendment brought about by Act No. 46 of 1964 substituting the words "subject to any Rules made in this behalf" for the words "the value" at the beginning of Sub-section (1) of Section 7 and the addition of the words "may be prescribed in Sub-section 2(a) of Section 7" and further stated that the object of the amendment and the introduction of Rules 2(a) and 2(g) was to circumscribe the powers of adjustment which the WTO had.

26. In the decision of the Calcutta High Court in Dipti Kumar Baau v.CIT (supra), another decision relied on by the revenue, it was held that the outstandings of a professional firm represented debt and since debt is an asset which includes all properties and net wealth is the aggregate of value of all assets after deducting the value of debts, the system of book-keeping is of no consequence in the computation of the net wealth. It was held that since the WTO is authorised to make adjustment in the balance sheet under Section 7(2)(a) as the circumstances of the case may require him to do, the fact that the book debt is not entered in the books was itself a circumstance justifying its inclusion and that such inclusion does not convert the cash system into mercantile system of accounting.

We shall deal with the question as to whether the outstandings of a professional assessee maintaining accounts on cash basis would constitute an asset and the system of account has any impact or relevance on the question of inclusion of any such asset in the computation of his net wealth more elaborately later, but suffice it to say at this juncture that a contrary view has been taken earlier by the Orissa High Court in CWT v. V.B. Raju (supra) and the views expressed in the Calcutta High Court decision have categorically been dissented by the Karnataka High Court in A.T. Mirji v. CWT (supra). In any case, this decision also was rendered under the provisions of the Act before the amendment to Section 7(2)(a) and the introduction of the Rules prescribed thereunder when the provisions of the Act contemplated adjustment of the values at the discretion of the WTO as circumstances of the case may require and it

cannot, therefore, be regarded as a direct decision on the provisions of the statute and the rules arising for our consideration in the present appeal.

27. In passing, we may observe that the following observation of the Court in paragraph 1 at page 463 is not quite clear to us : ... The Income-tax Act is concerned with the total income of the assessee, whereas the Wealth-tax Act is concerned with his net wealth. The system of accounting determines the tax liability of income under the Income-tax Act and the tax is assessed on the accrual of income under the mercantile system of accounting, where it is assessed on actual receipt under the cash system of booking receipt. Whatever be the system of accounting, a bad debt is always taken into account in the computation of the net income of the assessee under the Income-tax Act, and in our opinion, it should also be taken into account in computing the net wealth of the assessee under the Wealth-tax Act, but the Wealth-tax Act is not concerned with the income of the assessee but, as already stated, with his net wealth.

28. The only direct decision, therefore, that deals clearly with the problem similar to the one arising before us is the decision of the Karnataka High Court in A.T. Mirji v. CWT (supra). In this decision, the assessee, an individual tax practitioner keeping accounts on cash basis, claimed that the outstanding fees estimated at Rs. 1,05,000 is not includible in his net wealth. The ITO and the AAC rejected the assessee's claim, but the AAC accepted the alternative claim of the assessee for deduction of tax liability and, in the appeal and cross-objection filed by the department and the assessee respectively, the Tribunal upheld the order of the ITO and reversed the relief granted by the AAC in regard to tax liability. The High Court held that in the case of professionals only actual receipts constitute income and where accounts are on cash basis only the income received by the assessee on or before the valuation date and retained as on that date constitutes his wealth. The Calcutta High Court decision was dissented from as not furnishing sufficient reason and further holding that the Calcutta High Court's view that the method of accounting was of no significance under the Wealth-tax Act was contrary to the express provision contained under Section 7(2). The High Court further disagreed with the view that when an assessee maintains his account on cash basis regularly and has the balance sheet prepared on that basis and the assessing authority considers the amounts representing outstanding bills as assets not shown in the accounts, the assessing officer is not converting the assessing system from cash into mercantile system. On the other hand, it was held that it would change the accounting system.

29. We may next turn to examine the point in proposition No. 4, namely, as to whether the WTO who acts under Section 7(2)(a) is at liberty to include by way of adjustments in the value of an asset not disclosed in the balance sheet either as falling within Clause (a) or Clause (d) the outstanding professional fees in a case where the accounts are maintained under cash system. As we have already stated the provisions of Sub-section (2) are special provisions for the determination of net wealth of a business as a whole and contemplates, in our view, a departure, as already pointed out, from the general provision under Section 7(1). So far as cases coming under that clause is concerned, the considerations for determination of the value of assets contemplated in the sub-section must, therefore, be purely and solely governed by the conditions and the requirements set out therein. The conditions for applicability of the provisions are firstly, that there is a business or profession carried on by an assessee and secondly, that accounts for the said business are maintained by him regularly.

There is no point in setting out these requirements as a condition for determination of the value in accordance with the said sub-clause instead of the requirements of general provision of Section 7(1), unless these conditions have a direct and important bearing on the computation contemplated therein. It follows, therefore, that the maintenance of accounts for business carried on by an assessee is a governing factor for determination of the value of the assets of the business under the clause and we are fortified in this view by the decision of the Karnataka High Court in A.T. Mirji v. CIT (supra). In other words, the maintenance, of accounts by an assessee regularly according to well recognised methods affects the determination of the value of the assets for the purpose of charge under Section 3 read with Section 2(m). According to this clause, the WTO, as we have already seen, is bound to determine the net value of the assets of the business as a whole having regard to the balance sheet of such business as on the valuation date. The balance sheet contemplated obviously can only mean a balance sheet drawn up or prepared according to the method or system of accounts maintained by the assessee, namely, under the mercantile or the cash system, as the case may be.

30. This naturally raises the question as to whether the outstanding fees of a professional who follows the cash system of accounting has to be brought in as an asset in the balance sheet prepared for the business. The department's stand is, as we have already seen, only that it is a debt due to the assessee and is an asset and the inclusion thereof is required to be made by way of adjustment independent of Section 7(2) which contention already stands rejected in view of what we have stated earlier. It is not the case of the department that the outstanding fees due to a professional assessee maintaining accounts on cash system is a debt to be brought in as an asset in the balance sheet prepared under that system. We shall later advert to the question as to whether an outstanding fee of a professional maintaining accounts regularly under the cash system can be regarded as a debt so as to constitute an asset in the balance sheet or not and refer to the authorities based on accounting principles and rulings but we shall at this stage consider the contentions of the parties based on the provisions of Rule 2C which provides for adjustments in respect of an asset not disclosed in the balance sheet. Though it is true, as contended by the learned standing counsel, that the words "not disclosed" does not necessarily mean an erroneous or wilful omission of an assessee to disclose an asset in the balance sheet and may simply mean "not appearing" or "not shown", it is not possible for us to hold that it also contemplates an asset which has not been disclosed because it is not required to be disclosed according to the system of accounts maintained by the assessee. As we have seen Section 7(2) is a special provision in regard to the determination of the value of assets of a business and the scope of consideration and the ambit of application thereof is the balance sheet maintained according to the system of accounting. Therefore, it follows that the assets which are not disclosed, whether by mistake or deliberately, and which need adjustment, would only mean assets which require to be disclosed according to the method of accounting but have not been so disclosed.

IT this is the correct position, as we hold it to be, then it is clear that the WTO cannot bring in any debt either under Clause (a) or under Clause (d) by way of an adjustment as an asset not disclosed in the balance sheet for it would amount, as rightly contended at Bar on behalf of the assessee, to cutting at the very root or the basis, namely, altering the system of accounts maintained for the business and determining the value not warranted by the provisions of Section 7(2).

The Karnataka High Court's decision in Mirji's case (supra) supports this view. It is to be noted that Rules 2A to 2G provide for adjustments not only of assets and liabilities not disclosed in the balance sheet but also of assets and liabilities disclosed in the balance sheet. Rule 2B which provides for adjustments on the value of assets disclosed in the balance sheet states how an asset on which depreciation has been allowed and an asset on which no depreciation is admissible have to be valued and what is the value of the closing stock in the accounts. According to the said rule, where an asset is entitled to depreciation, the value to be taken is its written down value ; in the case of an asset which is not entitled to depreciation its book value has to be taken and in the case of closing stock the value to be taken is that adopted for the purpose of the Income-tax Act. These values do not represent market values. The rule provides that only if margin of market value and the value so taken exceeds 20 per cent of such values, then market values have to be taken. Again Rule 2D excludes certain assets even though they appear in the balance sheet and the nature of the items indicated shows that either the items do not represent any real asset as such or represent an asset which is outside the scope of charge to wealth-tax. Thus advance tax paid under Section 210 though may be shown as an asset in the balance sheet, being really in the nature of discharge of a liability of tax under the Income-tax Act is required to be excluded as it does not represent actually an asset. Debt due to an assessee which has been allowed or part of which has been allowed as a deduction by way of bad debt under Section 36(1) of the Income-tax Act in determining the assessee's income also requires to be excluded even if it appears on the balance sheet on the principle of its not representing any real asset, and similarly, the amount shown in the balance sheet representing the debit balance in the profit and loss account or the profit and loss appropriation account, which is really the amount of loss requires to be excluded as it does not represent any real asset. Again, Rule 2E provides for exclusion from the liabilities the amounts shown or appearing in the liabilities side which really do not represent any liability or debt such as, for instance, the capital of the business and the reserves. It also provides that any provision made for any future and contingent liability which is not an existing liability and any debt incurred in relation to an asset which is outside the scope of charge has to be excluded. Rule 2F provides for deduction of a debt relating to the business owed by an assessee but not disclosed in the balance sheet. Rules 2B to 2F having provided for determination of the value of the assets and liabilities disclosed or not disclosed in the balance sheet and for exclusion of certain assets and liabilities disclosed therein, etc., the Rules finally provided in Rule 2G for exclusion of certain assets or liabilities shown in the balance sheet which do not relate to the business. !t also provides that those assets which are required to be excluded under Rule 2G can be brought to charge under any provision of the Act other than Section 7(2) if it is so authorised. This provision in Rule 2G, Sub-rule (2), further reinforces our finding earlier that in the case of a business for which accounts are maintained there is no scope for determining the value of the assets of the business as a whole except under Section 7(2) read with the rules stated above.

31. We shall now address ourselves to the contentions raised on the construction of Rule 2C, Clause (a) and Clause (d). According to the assessee's contention the debt contemplated under Clause (a) is a debt required to be shown in the balance sheet according to the mercantile system of accounting only and, therefore, a debt under the mercantile system of accounting like the outstanding professional fees is not comprehended. It is also the assessee's contention that since Clause (a) deals exhaustively with (he topic of "debts due to the assessee" if a debt due to the assessee docs not fall within the purview of Clause (a), it cannot come under residual Clause

(d) of "any other asset". The standing counsel's submission on this point is that Clause (a) is not confined to debts due only under mercantile system as it consists of two parts and the earlier part is comprehensive enough to include every debt. It is his alternative submission that even if the assessee's contention on this aspect is correct any debts not falling under Clause (a) can be caught under the residual Clause (d) as "any other asset".

We consider that so far as Clause (a) is concerned, as rightly contended by the learned standing counsel, the topic of "debt" is dealt with in two parts. The earlier part, where it speaks of "a debt due to the assessee" deals with a debt in general and is not confined to a debt under the mercantile system of accounting in respect of which as a deduction under Section 36(1)(w7) is contemplated ; and the second or later part deals with a specific class of debts which are capable of being allowed as a deduction under Section 36(1) of the Income-tax Act.

Insofar as the clause in the earlier part reads that in the case of debts due to an assessee, the amount due to the assessee shall be taken, it deals with debts generally and, therefore, may and can include a debt which is not necessarily confined to the mercantile system of accounts and if a debt due requires to be shown even under the cash system. It would fall under that clause. In such a case, the later part will not be applicable. The clause does not require that every debt must be one where it or part of it is required to be or entitled to be allowed under Section 36(1)(v/7). The argument of the assessee appears to us to proceed on the assumption that the debt referred to in this clause is a debt arising from transactions of an assessee which are of a revenue nature, that is to say, where such debt or any part has been taken into account in computing the assessee's income as provided in Section 36(2), or where it represents the money lent in the course of money-lending business or banking where the money forms the stock-in-trade of the business. But there is nothing in the rules to show that the ''debts" contemplated by this clause are confined only to such debts. The balance sheet can also disclose other debts, namely, advances to parties for other purposes, such as, advances to staff or directors, etc. Moreover, the deduction is also contemplated under Section 36(1) of the Income-tax Act in regard to debts due in the ordinary course of money-lending business or backing and such debts are not taken in the computation of the income of the assessee in such cases. In Commentary on Income-tax by Kanga & Palkhivala, page 439, dealing with the case of deduction in this context, it is stated that in the case of banking .and money-lending business, the assessee is entitled to allowance under this clause in respect of irrecoverable loans advanced in the ordinary course of business, regardless of the method of accounting employed because that money is the stock-in-trade or the circulating capital of a bank or a money-lender and the loss of the stock-in-trade is a trade loss irrespective of the method of accounting employed. It is not, therefore, possible to accept the assessee's contention that the debt contemplated in Clause (a) is a debt under the mercantile system of accounting only as an allowance under Section 36(1)(v/z) of the Income-tax Act is contemplated. We, however, agree that this clause exhaustively deals with a topic of debt and if a debt does not come within the purview of this clause, it cannot come under the residual clause "any other asset" in Clause (d) of Rule 2G. The principles and ratio of decisions relied on by the assessee, in our view, clearly support his position. There might have been some scope for the argument advanced on behalf of the revenue in regard to Clause (d) if we had accepted the contention that the debts contemplated under Clause (a) are only such debts in respect of which a deduction under Section 36(1)(vii) is contemplated. But in view of our finding that the expression "debts due to an assessee" under Clause (a) is not confined to such class

of debts as are contemplated for deduction under Section 36(a)(vii), and cover all debts, the conclusion, according to us, necessarily follows that it is an exhaustive clause dealing with the topic of "debts". Therefore, any debt not falling within that clause cannot fall within the residual Clause (d) as "any other asset".

The real question, therefore, is as to whether the outstanding fees of a person carrying on a profession is a debt and it requires to be shown as such in the balance sheet maintained under the cash system of account or, in other words, whether the accrual or arisal of the amount as a debt is governed or affected by the method of accounting employed by an assessee in the business. It is here that we have to consider the accounting principles set out in the treatises of well-known authors on accountancy and also the authorities stated in the various decisions.

According to a note prepared by the Institute of Chartered Accountants of India, after referring to certain principles stated by the well-known author Shri J.R. Batliboi in his book Advanced Accounting first, 21st edn., it is stated that when accounts are maintained in a double entry book-keeping system, the accounts give a true and correct picture of the state of financial affairs of the person concerned and under the double entry system of book-keeping, the accounts may be maintained in any of the three recognised methods of accounting, namely, (7) mercantile method, (2) cash method, and (3) hybrid method.

Whatever method is followed, the accounts will give a true and correct view provided such method is regularly employed. It is further stated in the note that whatever be the method of accounting employed, the monetary transactions will have to be divided into two broad heads, namely, (7) transactions on capital account, and (2) transactions on revenue account and the end result for a given period under any of the methods will be to find out the surplus or deficit in revenue transactions of a particular period. The transactions on revenue account are summarised at the end of the year into a profit and loss account for persons carrying on business or trade, and into "income and expenditure account in case of non-business persons and associations including professional people. The transactions on capital account will appear in the accounts relating to such transactions in the ledger and they will appear in the balance sheet. The income and expenditure account and the balance sheet are complementary to each other. The statement of income and expenditure account records revenue items and the balance sheet records the capital items. The net balance in the income and expenditure account which may be a surplus or profit or a deficit or loss will also appear in the balance sheet in order to balance the figures on the assets and liabilities side of the balance sheet. A balance sheet is, therefore, claimed to be defined as a statement prepared to measure the exact financial position of a business on a certain fixed date. After setting out the various extracts from books of different authors as to what is balance sheet and what items it contains, it is stated in paragraph 15 of the note that balance sheet of a person maintaining his accounts on cash method of accounting will show on the left hand side his own capital and loan taken by him, on the right hand side of the balance sheet will appear the fixed assets acquired by him, the loans given by him and other capital expenditure which may include advances towards purchase of capital assets or towards capital work in progress. The cash and bank balances will also appear on the right hand side of the balance sheet.

The surplus or deficit as per income and expenditure account will be shown either on the left hand side or on the right hand side, as the case may be. In the cash method of

accounting, therefore, the assets shown on the assets side of the balance sheet will be either tangible assets like furniture, motor car, etc., or intangible assets like goodwill, etc., and these assets will be recorded on the basis of actual payments made by the person concerned. On the liabilities side will appear the capital account or liabilities which have arisen as a result of actual receipts. [Emphasis supplied.] 32. It is further stated in the note that under the Companies Act, 1956, even a limited company can maintain its accounts on cash system of accounting and if this system is regularly employed, the accounts will give a true and fair view of the financial position of the company and it would not be necessary for the auditors of the company to qualify the accounts on this ground. The cash method of accounting is recognised as a valid method of accounting and the income and expenditure statements as well as the balance sheet prepared by employing this method would reflect the true and correct financial position of a company. Companies engaged in consultancy services, business of selling agencies, money-lending and similar other activities, it is stated, maintain their accounts on cash method of accounting. As an instance, where a company maintains accounts under cash system, is cited the case of SICOM, which is a wholly owned Government company's, which follow the cash system of accounting regularly and drawing its profit and loss account under that method which are duly audited and where, it is stated, the auditors give an unqualified report.

33. The substance of the note is that the balance sheet maintained by a person employing cash system of accounts regularly will show only the amounts represented by actual money transactions on capital account such as actual advances made to any persons or parties, the advances for purchase of capital goods or assets, the actual money lying with the bank or the cash in hand and similarly on the liabilities side will show only the actual capital brought in, the loans taken and other such items.

34. The above position brought out in the note will show that there can be debts which have to be shown in the balance sheet maintained under the cash system of accounting also but such debts represent actual transactions of money by way of payment or receipt and not otherwise.

The outstanding fees of a professional the amount of which is not the result of any monetary transactions representing payment or receipt, therefore, does not and cannot appear as a debt due or as an asset in the balance sheet under the said system. When accounts are maintained and a correct balance sheet is drawn up on the basis of such accounts in accordance with any well recognised and scientific method of accounting, it is not possible to say that the transactions as reflected in the balance sheet or income and expenditure account or profit and loss account, as the case may be, do not represent the true and correct view of the state of affairs. One may at best say that it is not comprehensive enough to show the latent potentialities of receipts and outgoings or income and expenditure in respect of the business or profession and it may be considered ideal to bring in all such items. But it does not mean that the balance sheet or the profit and loss account or income and expenditure account is incomplete or that it does not disclose the true and correct state of affairs according to the system of accounts maintained by the assessee.

35. In the decision of the Court of Appeal in Mason v. Innes (supra) referred to in support of the assessee's case. Lord Denning has referred to the manner in which the professional man keep accounts, at page 500 of the report. It is stated therein that "they keep them on 'cash basis' by which I mean that on one side of the amount they enter the actual money they expend and on the other side the actual money they

receive. They have no stock-in-trade to bring into the account.

They do not bring in debts owing by or to them, nor work in progress.

They enter only expenses on the one side and receipts on the other." After stating that the proposition in Sharkcy v. Wernher [1965] AC 58 does not apply to professional men, it was observed by him that the proposition is confined to the case of traders who keep stock-in-trade and whose accounts are or should be kept on an earning basis, whereas a professional man comes within the general principles that when nothing is received, there is nothing to be brought into account.

36. In our view, the contention that though for the purpose of assessing income to income-tax, the system of accounts maintained by the assessee is material and must govern the charge because of special provision contained in Section 145 of the Income-tax Act that principle can have no application in the case of wealth-tax, is not correct. If the argument is based on the fact that charge is created in regard to net wealth by Section 3 of the Wealth-tax Act and, therefore Section 7(2) docs not alter the charge, the same principle would appear to apply in the case of income-tax also as in income-tax the charge is created by the provisions of Sections 4 and 5 of the Income-tax Act which provide that income-tax at the rates prescribed in the Central Act shall be charged in respect of the total income of the previous year or the previous years, as the case may be, and the scope of total income is defined in Section 5 to include all income which accrues or arises during the previous year. There is nothing in these provisions which show that the accrual of the income has to be governed or determined in accordance with the method of accounting. If Sections 4 and 5 are the, charging sections, then by the same logic of argument advanced on behalf of the revenue, that under the Wealth-tax Act Section 3 is the charging section and Section 7 is merely procedural, it would appear that Section 145 of the Income-tax Act is merely procedural and does not create any charge because it only provides for computing the income which should accrue or arise according to the charging provisions. This, therefore, is not in our view a correct approach to the question or construction of the relevant provisions.

Section 4 of the Income-tax Act provides that the charge of total income has to be subject to the provisions of the Act and in accordance there with, and similarly, Section 5 stating the scope of total income also opens with the words "subject to the provisions of this Act" which means that for determining the accrual of the income, you must have regard to other connected or relevant provisions of the Act. We have already seen more or less similar provisions in Section 3 and in the definition of "net wealth" under Section 2(m) which provides that the determination of a charge is subject to and has to be in accordance with other provisions of the Act. Thus, the method of accounting regularly employed by an assessee is, in our view, a determining factor in the computation of the net value of the assets of the business as a whole governed by the special provisions contained in Section 7(2) and there is no scope for resorting to any other mode based on any general principles of accrual of a debt under the charging provisions set out in Section 3. It is in the context that the contention on behalf of the assessee that the different enactments relating to direct taxes, such as income-tax, wealth-tax, etc., have to be construed as an integral system, they being complementary to one another and the observations of the Karnataka and other High Courts relied on by the assessee have become relevant in this context. According to the decision of the Karnataka High Court in A.T. Mirji \. CIT (supra) as already noted, it is only the income received by an assessee maintaining

his accounts on cash basis on or before the valuation date and retained by him as on the valuation date that would constitute his wealth. In a case of this type it was observed, the case for the wealth is the income or in other words the effect of the receipt of income is the wealth. Therefore, it is anomalous to say that the wealth which would be the effect of the receipt of income was possessed by the assessee on the valuation date, though its cause did not exist, i.e., the income is itself not received. The decision has also referred to the provisions of Section 7(2) as indicating that the method of accounting employed by the assessee is a relevant factor in assessing the wealth of the assessee.

The decision as already stated has expressly dissented from the view taken by the Calcutta High Court in the case of Dipti Kumar Basu v. CWT (supra) and has agreed with the view of the Orissa High Court in CWT v.V.B. Raju (supra).

37. Finally, we may briefly state our reasons for accepting the assessee's contentions and resolving the dispute in favour of the assessee as under: 1. According to us, a plain and natural construction of the relevant provisions of the Act, as we already indicated, supports the assessee's stand.

2. As against the decisions realied on by the revenue, there are also more than one decision which have taken a contrary view supporting the assessee's stand, one of which categorically dissented from the view and the decision o/ the Calcutta High Court, strongly relied on by the revenue, which shows that two views are reasonably possible on the question before us. It is well settled that if two views are reasonably possible in regard to interpretation of a taxing statute, then that view which is in favour of the assessee and leaves him with a lesser burden of tax has to be preferred.

3. All the decisions relied on by the revenue regarding the interpretation of Section 7(1) and 7(2) and inclusion of amounts as unrealised outstandings in the case of professionals maintaining accounts under the cash system were rendered with reference to the provisions of the Act before the amendment to Section 7(2)(a) by which the adjustments to the valuation of business assets were prescribed by rules. These rules, as already pointed out, circumscribe the scope and ambit of adjustments to be made by the WTO. The decisions, therefore, cannot, in our view, be regarded as direct decisions on the points involved in appeal before us. On the other hand, the Karnataka High Court decision in A.T. Mirji's case (supra) is a direct decision rendered with reference to the amended provisions and support the assessee's stand and, therefore, we consider it necessary to follow the law declared in this decision.

4. Further, on the basis of the principles stated, the Bombay High Court in CIT v. Godavari Devi [1978] 113 ITR 617, the Karnataka High Court decision being the only direct decision with reference to the amended provisions of the Act and there being no other contrary decision, we must follow and apply the law laid down in the Karnataka High Court decision.

38. The principles stated above apply for determining the net wealth of the business including the profession carried on by the assessee, whether individually or with other persons. It would also apply for computing the net wealth of a firm on the assumption that the provisions of the Act including the adjustments contemplated by the rules are applicable in such a case. In that view of the matter, it may not be necessary to give a finding on the proposition Nos. (v) and (vi) posed above but as the matter may not rest at this level, it is necessary to completely dispose of the

contentions raised in this case.

We may, therefore, proceed to deal with the proposition Nos. (v) and (vi) as well.

39. Assuming that the WTO is competent to make the adjustments in respect of outstanding fees even in a case where the assessee engaged in a profession maintains his accounts under the cash system, the next question that arises is as to whether it is the entire amount of outstanding fees for which bills have been sent which requires to be included or only its estimated market value as a debt. In other words whether amount of such debt has to be reduced suitably by way of determining its saleable value with reference to the imbedded tax liability and the possibility of the whole or part of it turning out to be a bad debt, or unrealizable. That, according to us, will depend upon whether the amount of the bill represents the remuneration or fees agreed to and not disputed by the clients or where the client disputes the quantum of the fees/charges and agrees to a lesser amount, what is the amount acknowledged as due by the client. If the figure of outstanding fees furnished by the assessee represents merely the amount claimed in the bill unilaterally and not agreed to or accepted by the client, then, only such amount thereof as is ultimately agreed to by the client that could be regarded as the debt and not the entire amount. In other words, the outstanding professional fees liable to be included in the computation of net wealth must be the amount agreed to by the client of the professional as payable to him for services rendered without any dispute because that alone will amount to a debt within the meaning of that expression, as stated in the Commentary on Three New Taxes by Shri A.C. Sampath lyengar. But once that figure of debt is ascertained and is required to be included in the asset of the business under the adjustment contemplated in Rule 2A, then there is, according to us, no scope for estimating its market or saleable value and including only that value, because Rule 2C, Clause (a) which, as we have already noticed, covers the topic of "debt" in regard to adjustments and, therefore, a debt cannot be brought within the residual Clause (d), provides for inclusion, the amount due to the assessee under that head and not its market value (sic). This contention of the assessee, therefore, necessarily requires to be rejected.

40. We now come to the last proposition concerning the determination of the interest of a partner in a professional firm. Undisputedly, the interest of a partner in the partnership firm has to be computed in accordance with Rule 2 of the Wealth-tax Rules. According to this rule, the net wealth of the firm has to be first determined. Then that part of the amount of net wealth of the firm as is equal to the amount of capital contributed by the partners shall be allocated amongst them in proportion to which they had contributed capital and the residue of the balance of the net wealth has to be allocated amongst the partners in accordance with the agreement in the partnership for distribution of the assets in the event of a dissolution of the firm ; if there is no such agreement, then according to their profit-sharing ratio. The amount allocated to a partner on account of capital contribution and the amount allocated to him of the residue represent the value of his interest in the firm. The only question agitated before us with regard to this rule is as to whether in computing the net wealth of the firm the adjustments provided in Rules 2A to 2G are permissible or authorised under the provisions of the Act. The assessee has relied on the decision of the Allahabad High Court in CWT v. Padampat Singhania (supra) wherein it was observed that the term "net wealth" in Rule 2 is to be determined in accordance with commercial principles since the firm is not an assessee and Rule 2 provides complete mode for determination of the net wealth of the firm for the purpose of allocating it amongst the partners. The further contention is that there is no rule prescribing the

method of computation of net wealth of a firm apart from the rule itself and, therefore, it has to be computed according to the general principles. It is, therefore, contended that the adjustments provided in the Rules cannot apply to such determination of the net wealth of the firm. In our view, there is no substance in this contention. The definition part of the Wealth-tax Rules, namely, rule I states that all other words and expressions not defined under the rule but defined in the Act (Wealth-tax Act) shall have the meanings assigned to them in the Act itself. Therefore, the net wealth for the purpose of Rule 2 is the net wealth as defined in Section 2(m) and for ascertaining the net wealth as defined under Section 2(m), one has to bring into play the other provisions connected with such determination. In other words, what would represent the net wealth of the firm according to the general provisions of the Act read with the Rules except those which do not fit in with the context as inapplicable or which are specifically referable or peculiar to an assessee under the Act in respect of whom act wealth is being computed would represent the net wealth of the firm (sic). Thus, the provisions relating to exemptions or exceptions and the amount of tax liability to be reduced for the purpose of deduction which are applicable only to actual assessee under the Act will have to be ignored but that does not mean that the provisions which pertain to the computation of net wealth contained in the Act including the adjustments contemplated under the Rules do not apply in such a case. However, even where such determination is called for, the principles applied and the findings given by us above in general in regard to the adjustments to be made in the case of an assessee engaged in business and maintaining accounts regularly under the cash system will equally apply and, therefore, the outstanding professional fees does not require to be taken into account in computing the net wealth.

1. In the case of individual assessees engaged in a learned profession, whether individually on their own or in partnership with other persons, the outstanding fees for services rendered cannot be regarded as a debt and therefore not an asset includible in computing their net wealth under the Act.

2. The term "business" occurring in Section 7(2)(a) includes a profession carried on by an individual, whether individually or in partnership, and, therefore, the provisions of the said clause would apply to the case of persons engaged in carrying on profession for which they maintain accounts regularly.

3. In such a case, the valuation of the assets of such business or profession is required to be made only under Section 7(2)(a) and the WTO is not entitled to determine the net wealth in that case in terms of Section 7(1).

4. Where the WTO is required to determine the net value of the business in regard to profession carried on by an assessee under Section 7(2)(a) read with the Rules prescribed, we cannot include by way of adjustment the value of an asset not disclosed in the balance sheet either as falling within Clause (a) or (d) where the accounts are maintained on cash system as distinct from mercantile system.

5. Assuming that the WTO is competent to include outstanding fees of an assessee engaged in profession maintaining accounts on cash system by way of adjustment, the amount to be included in respect of such outstanding cannot be reduced either on account of tax liabilities or for any anticipated bad debt by way of determining its market value.

6. In the case of an individual assessee engaged in profession as a partner in a professional firm, in determining his interest in the partnership firm for inclusion in his net wealth in accordance with Rule 2, the computation of net wealth of the firm itself has to be made according to the general provisions of the Act read with the Rules except those which do not fit with the context as inapplicable or which are peculiar to or specifically referable to an assessee under the Act that even in such determination no adjustment can be made for any outstanding fees if the accounts are maintained regularly under the cash system.

42. The assessee having succeeded on the main points regarding the adjustments to be made* under Section 7(2), the objection of the department is rejected.

43. Before closing the order, we must place on record our acknowledgment and appreciation of the considerable and competent assistance we received from the Bar led by the learned counsel Shri Palkhiwala on the assessee's side and on the revenue's side represented by Shri Joshi, standing counsel for the department, in this case. The somewhat unusual length of this order has been rendered necessary in our attempt to cover as fully as possible the submission and points made out by them.

1. I have carefully gone through the order of my colleague, the learned Judicial Member, and agree with the conclusion.

2. However, with great respect, 1 am of the view that it is not really necessary for the purpose of deciding this appeal, to examine and finally express on the questions, such as, (i) whether Section 7 is procedural or anything more, and (ii) whether Section 7(2)(a) is itself a direct or an implied authority for the proposition that a person carrying on business and maintaining accounts regularly on cash basis has a balance sheet.

Moreover, on the face of it, 1 am inclined to take the view that Section 7 is a procedural provision and that there is nothing in Section 7(2)(a) to indicate that a person carrying on business and maintaining accounts regularly on cash basis must have a balance sheet.

3. Hence, 1 am agreeing with the conclusion without expressing myself finally on the aforesaid two questions.