These observations do not help the respondent in any way; nor do they lay down any rule contrary to the rules laid down in *Seth Gurmukh Singh's case*(1).

1957

Raghubar Mandal Harihar Mandal
v.
The State of Bihar

S. K. Das J.

For these reasons we hold that the High Court was in error in answering the question referred to it. The appeal is accordingly allowed and the judgment and order of the High Court are set aside. The answer to the question referred to the High Court is in the negative. The appellant will be entitled to its costs both in this Court and in the High Court.

Appeal allowed.

THE ORIENTAL INVESTMENT CO., LTD.
v.
THE COMMISSIONER OF INCOME-TAX, BOMBAY.

1957

May 22

(BHAGWATI, S. K. DAS, and J. L. KAPUR JJ.)

Income-tax—Reference to High Court—Questions of law—Investment company—Dealer or Investor—Mixed question of law and fact—Legal effect of facts found, a question of law.

The appellant company was incorporated as an investment company which by its memorandum of association enabled it, *inter alia*, to deal in investments and properties. For the purposes of assessment to income-tax the appellant claimed, for the assessment year in question, to be treated as an investor and not as a dealer on the ground that it did not carry on any business in the purchase or sale of shares, securities or properties. The Income-tax Appellate Tribunal held that according to the company's memorandum of association and its own assertions made all along in the past, it should be treated as a dealer in investments and properties and that its income arising from the sales of shares and properties should be taxed as business profits. The appellant's applications for a reference to the High Courts were rejected on the ground that no question of law arose out of the order of the Tribunal.

Held, that the question whether the appellant's business amounted to dealing in shares and properties or to investment, is a mixed question of law and fact and that the legal effect of the facts found by the Tribunal as a result of which the appellant could be treated as a dealer or an investor, is a question of law.

Accordingly, the order of the High Court was set aside and the case remitted to the High Court for directing the Tribunal to state a case.

(1)(1944) 12 I.T.R. 393.

1957

The Oriental Investment Co., Ltd v. *The Commissioner of Income-tax, Bombay*

Meenakshi Mills, Madurai v. *Commissioner of Income Tax, Madras*, (1956) S.C.R. 691, applied.

Case law reviewed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 153 of 1954.

Appeal by special leave from the judgment and order dated January 15, 1952, of the Bombay High Court in Income-tax Application No. 54 of 1951.

R. J. Kolah, J. B. Dadachanji, S. N. Andley and *Rameshwar Nath*, for the appellant.

C. K. Daphtary, Solicitor-General of India, G. N. Joshi and *R. H. Dhebar*, for the respondent.

1957. May 22. The Judgment of the Court was delivered by

Kapur J.

KAPUR J.—This is an appeal by the assessee by special leave and the question for decision is whether questions of law, if any, arise out of the order of the Appellate Tribunal.

The facts giving rise to the appeal are that the petitioner company was incorporated on July 29, 1924, as an investment company, the objects of which are set out in cl. III of the memorandum of association and more particularly in sub-cls. 1, 2, 15 and 16 of that clause. The assessment years under review are 1943-44 to 1948-49, excepting the year 1947-48. According to its petition made in the High Court of Bombay, the petitioner company dealt with its assets as follows:

"The Petitioner Company purchased during the period 1st July 1925 to 30th June 1928 shares of the value of Rs. 1,86,47,789/- major portion of which was comprised of shares in the Sassoon Group of Mills. During the year ended 30th June 1929 the Petitioner Company promoted two companies known as Loyal Mills Ltd. and Hamilton Studios Ltd. and took over all their shares of the value of Rs. 10½ lacs. In the year 1930, the Petitioner Company purchased shares of Rs. 1,33,930. During the period of 9 years from 1st July 1930 to 30th July 1939 no purchases were made with the exception of a few shares of Loyal Mills Ltd.,

taken over from the staff of E. D. Sassoon & Co. Ltd., who retired from service. In the year ended 30th June 1940 reconstruction scheme of the Appollo Mills Ltd., took place under which debentures held by the Petitioner Company in the Appollo Mills Ltd., were redeemed and the proceeds were reinvested in the new issue of shares made by the Appollo Mills Ltd. Out of the purchases of the value of Rs. 2,794 made by the Petitioner Company during the year ended 30th June 1941 Rs. 2,000/- was the value of shares of the Loyal Mills Ltd., taken over from the retiring staff In the year ended 30th June 1943 the Petitioner Company took over from the David Mills Co Ltd., shares of The Associated Building Co., of the value of Rs. 56,700/- After this there were no purchases at all to this date excepting purchases of the value of Rs. 34,954 during the year ended 30th June 1946."

The sales are contained in para 3(b) which may be quoted :

"In relation to the purchases made by the Petitioner Company as stated above no appreciable sales of shares were made during the period 29th July 1924 to 30th June 1942, the sales made in the year ended 30th June 1929 of the value of Rs. 1,29,333 included shares of the value of Rs. 45,000 in the Loyal Mills Ltd., sold to the members of the staff and shares of the value of Rs. 83,833 representing sterling investments handed over to the creditors of the Petitioner Company in part repayment of the loan taken from them in the year ended 30th June 1931, shares of the value of Rs. 7,48,356 were handed over to the creditors in payment of the loan granted by them. From the year ended 30th June 1943 E. D. Sassoon & Co. Ltd., started relinquishing the managing agencies of the various Mills under their agency and the shares held by the Petitioner Company in the Sassoon Group of Mills were handed over to the respective purchasers of the Mills agencies."

This gives the history of the acquisition and disposal of shares and also how the various transactions were entered into and why. Prior to 1940 the assessee company made a claim every year for being treated as

1957

Investment Co., Ltd.
v.
The Commissioner of Income-tax, Bombay

Kapur J.

a dealer in investments and properties but this contention was consistently repelled and up to the assessment year 1939-40 the assessee company was assessed on the basis of being an investor but it appears that for the assessment year 1940-41 and the two following years 1941-42 and 1942-43 the Department accepting the plea of the assessee company treated it as a dealer in shares, securities and immovable properties and assessed it on that basis. For these years and for the assessment year 1943-44 the company made its Return on that basis. But after the Return had been filed for the year 1943-44 the assessee company withdrew its Return and filed a revised Return on March 7, 1944, contending that it was not a dealer but merely an investor. Along with the Return it filed a letter dated March 6, 1944, in which *inter alia* it stated :

"The Return of Total Income which was submitted with the Company's letter of 25th May 1943 was prepared in conformity with the ruling of the Income-tax Officer in the 1940-41 assessment that the company was to be assessed as a dealer in investments. Since that Return was submitted the Central Board of Revenue has decided that the Company is an Investment Holding Company and accordingly an amended Return of Total Income under Section 22(1) of the Indian Income-tax Act is submitted herewith on which the assessment for 1943-44 may be based, as on this particular question the company obviously cannot have one status for Excess Profits Tax and another for Income-tax."

It was also contended that it never carried on any business in the purchase or sale of shares, securities or properties and therefore prayed that in view of the order of the Central Board of Revenue made on its application under s. 26(1) of the Excess Profits Tax Act it should be assessed for income-tax purpose as an investor and not as a dealer.

The Income-tax Officer rejected this plea and "held the investments as the stock-in-trade of its business therein which it carried on during the 'previous year' also". The company took an appeal to the Appellate Assistant Commissioner which was dismissed and the

order of the Income-tax Officer upheld. It then appealed to the Income-tax Appellate Tribunal, Bombay, where the same contentions were raised but were repelled. The Tribunal said :

"The company having itself raised the point in all the prior years that it was a dealer in investments and properties, it would appear to be difficult to understand why the company now seeks to get the position changed and desires the Income-tax Officer to treat it as if it was not dealing in shares, securities and immovable properties."

The Tribunal after holding that the company was under no misapprehension when it claimed to be a dealer in investments in the earlier years because it was then always incurring losses and that the present contention was raised because it made "substantial profits" said :

"but we have no doubt that, according to the company's memorandum of association and its own assertions made all along in the past, the assessee company is a dealer in investments and properties and the income arising to it on the sale thereof has been rightly held by the Income-tax Officer to be business profits liable to tax under the ordinary provisions of the Income-tax Act."

Thus the grounds on which the case was decided against the assessee were (1) that the assessee claimed to be a dealer or an investor according as it incurred losses or made profits and (2) that because of the objects contained in the memorandum of association and because of its assertion made in the past as being a dealer the assessee could not be held to be an investor.

The company then applied to the Appallate Tribunal under s. 66(1) of the Indian Income-tax Act for a reference of the following questions for the opinion of the High Court :

"(1) Whether on the facts and in the circumstances of the case the assessee company can rightly be treated as a dealer in investments and properties; and

1957

The Oriental Investment Co., Ltd.
v.
The Commissioner of Income-tax, Bombay

Kapur J.

(2) Whether the profits and losses arising from the sale of shares, securities and immovable properties of the assessee company can be taxed as business profits."

This prayer was rejected because in the opinion of the Tribunal no question of law arose out of its order. It said :

"The Tribunal did not decide this point merely because the company's memorandum of association gave power to the company to deal in investments and properties, but it was actually found that the company had dealt in investments and properties throughout and had also all along in the past asserted that it was a dealer in investments and properties."

This was more than it had said in its appellate order.

The assessee company then made an application under s. 66(2) of the Indian Income-tax Act for requiring the Appellate Tribunal to state the case and refer it to the High Court but this applicaton was dismissed, and then the company obtained special leave to appeal to this Court.

Counsel for the assessee company contends that the questions of law arise out of the order of the Tribunal because the Tribunal has ignored the documentary evidence produced before it, has based it decision on irrelevant matters, has failed to consider crucial facts and has misdirected itself by assuming that the petitioner was a dealer from the very beginning which was contrary to the documents produced before it.

Section 66(1) of the Income-tax Act (hereinafter termed the Act) provides that any assessee may require the Appellate Tribunal to refer to the High Court any question of law arising out of its appellate order and it is the statutory duty of the Appellate Tribunal to draft the statement of the case and refer the question of law arising out of such order to the High Court but the primary requirement is that there must be a question of law arising out of the order. Should the Tribunal refuse to state the case as required under s. 66(1) of the Act on the ground that no question of law arises, the assessee has the right to apply to the High

Court requiring the Appellate Tribunal to state a case and refer it to the High Court but again the essential consideration is the existence of a question of law arising out of the order.

To draw a line between what is a question of law and what is a question of fact is not always easy. It is difficult to define this distinction which has given rise to a number of decisions, which it will be useful to discuss at this stage.

In *Stanley* v. *Gramophone and Typewriter, Limited*(1) the Master of the Rolls discussed this question as follows:

"It is undoubtedly true that, the Commissioners find a fact, it is not open to this court to question that finding unless there is no evidence to support it. If, however, the Commissioners state the evidence which was before them, and add that upon such evidence they hold that certain results follow, I think it is open, and was intended by the Commissioners that it should be open, to the court to say whether the evidence justified what the Commissioners held."

These observations were explained by Hamilton J. in *The American Thread Co.* v. *Toyce* (2) as implying that by giving the material on which their finding was based the Commissioners were inviting the court to determine whether on that material they could reasonably arrive at the conclusion on which they did arrive. The House of Lords on appeal categorically confirmed that the Courts had no jurisdiction over conclusions of fact except to see whether there was evidence to justify them and that proper legal principles had been applied.

Lord Clerk in *Californian Copper Syndicate* v. *Harris* (3) has laid down the test in the following words :

"the question to be determined being—Is the sum of gain that has been made a mere enhancement of value by realising a security, or is it a gain made in an

(1) (1908) 5 T.C. 358, 374.
(2) (1911) 6 T.C. 1.
(3) (1904) 5 T.C. 159, 166.

1957

The Oriental Investment Co., Ltd. v. *The Commissioner of Income-tax, Bombay*

Kapur J.

operation of business in carrying out a scheme for profit-making."

In that case the objects set out in the memorandum of association pointed distinctly to a highly speculative business and the mode of actual procedure of the company was also directed in the same direction. Taking into consideration the course of dealing of the shares by the company and also that the turning of investment to account was not merely incidental but was an essential feature of the business, speculation being among the appointed means of the company's business the court came to the conclusion that the company was carrying on a business.

The Lord President in a Scottish case *Cayzer, Irvine & Co., Ltd* v. *Commissioners of Inland Revenue*[1] stated the grounds on which the court can interfere with the finding of the Commissioner as follows :

"I think we have jurisdiction to entertain the question at law, which is whether the majority of the Commissioners were warranted on the evidence in determining as they did. At the narrowest it is always open to this Court in a Stated Case to review a finding in fact on the ground that there is no evidence to support it."

Lord Parker in *Farmer* v. *Trustees of the Late William Cotton* (2) after referring to the difficulty of distinguishing between a question of fact and a question of law observed :

"Where all the material facts are fully found, and the only question is whether the facts are such as to bring the case within the provisions properly construed of some statutory enactment, the question is one of law only."

But this statement of the law was considerably modified in *Inland Revenue Commissioners* v. *Lysaght* (3) where it was held that if the issue before the court could be described as a "question of degree" the conclusion must be a question of fact.

(1) (1942) 24 T.C. 491, 501.

(2) (1915) A.C. 922, 932.

(3) [1928] A.C. 234.

The *Commissioners of Inland Revenue* v. *The Korean Syndicate, Ltd.* (1) was a case where a syndicate was registered for the purpose of acquiring and working concessions and turning them to account, and of investing and dealing with monies not immediately required The syndicate acquired part of a right to a concession in Korea and then under an agreement described as a "lease", in consideration of receiving sums of money termed "royalties" but which were really percentages of profits made by assignee company, assigned the lease to a development company. Some moneys which were received from sale of certain shares obtained by the syndicate in exchange for shares originally acquired in the mining company were deposited in a bank. The activities of the company were during the relevant period confined to receiving the bank interest and royalties, distributing the amount amongst its shareholders as dividend. The question for decision was whether the syndicate was carrying on a business and was therefore liable to excess profits duty. From these facts it was concluded that they were carrying on a business.

Atkinson L.J. pointed out at p. 204 that merely because a company is incorporated it does not necessarily follow that it is carrying on business. Its memorandum only shows that the company was incorporated for a particular purpose but taking into consideration the surrounding circumstances and facts of the case it was concluded that the company was carrying on a business.

In *Great Western Railway Company* v. *Bater* (2) the question for decision was whether a clerk held a public office to fall within Sch. E. It was held that the determination by the Commissioners of questions of pure fact are not to be disturbed unless it should appear that there was no evidence before them upon which they, as reasonable men, could arrive at the conclusion which they came to. Lord Atkinson said :

"What I have many times in this House protested against is the attempt to secure for a finding on a mixed question of law and fact the unassailability

(1) (1921) 12 T.C. 181. (2) (1922) 8 T.C. 231, 244.

1957

The Oriental Investment Co., Ltd. v. The Commissioner of Income-tax, Bombay

Kapur J.

which belongs only to a finding on questions of pure fact. This is sought to be affected by styling the finding on a mixed question of law and fact a finding of fact."

According to the dictum of Lord Wrenbury the question for the Court was whether on the facts found and stated by the Commissioners the clerk held the office within the meaning of the Act which was a question of law.

In *Lysaght* v. *The Commissioners of Inland Revenue* (1) the question for decision was whether the assessee was a resident and ordinarily resident in United Kingdom in the year of assessment. Lord Buckmaster said :

"The distinction between questions of fact and questions of law is difficult to define,................ It is, of course, true that if the circumstances found by the Commissioners in the Special Case are incapable of constituting residence their conclusion cannot be protected by saying that it is a conclusion of fact since there are no materials upon which that conclusion could depend. But if the incidents relating to visits in this country are of such a nature that they might constitute residence, and their prolonged or repeated repetition would certainly produce that result, then the matter must be a matter of degree; and the determination of whether or not the degree extends so far as to make a main resident or ordinarily resident here is for the Commissioners and it is not for the Courts to say whether they would have reached the same conclusion."

Jones v. *Leeming* (2) was a case where the respondent with three other persons obtained an option to purchase a rubber estate in the Malay Peninsula. That estate along with another was sold at a profit. The Commissioners found that the respondent had acquired the property with the sole object of turning it over again at a profit and at no time had he the intention of holding it. This transaction was held not to be in the nature of trade nor the profits arising therefrom in the nature of income but they were accretions to

(1) (1928) 13 T.C. 511, 533, 534. (1) [1930] A.C. 415

capital and therefore not subject to tax under Case VI of Sch. D.

In *Cameron* v. *Prendergast* (1) the following test was laid down by Viscount Maugham :

"Inferences from facts stated by the Commissioners are matters of law, and can be questioned on appeal. The same remark is true as to the construction of documents. If the Commissioners state the evidence.................................it is open to the court to differ from such holding."

In *Bomford* v. *Osborne* (2) a farm was working as a mixed farm but as a single unit. The question for decision was whether the assessment could be apportioned one part being assessed as a farm and the other as a nursery. Viscount Simon laid down the test in the following words :

"No doubt there are many cases in which Commissioners, having had proved or admitted before them a series of facts, may deduce therefrom further conclusions which are themselves conclusions of pure fact. In such cases, however, the determination in point of law is that the facts proved or admitted provide evidence to support the Commissioner's conclusions." It was also held that this question was a mixed question of law and fact.

Du Parcq J. in *J. H. Bean* v. *Doncaster Amalgamated Collieries Ltd.* (3) held the following to be the test for determining whether the question in one of fact or law :

"Unless the Commissioners, having found the relevant facts and put to themselves the proper question, have proceeded to give the right answer, they may be said, on this view, to have erred in point of law. If an inference from facts does not logically accord with and follow from them, then one must say that there is no evidence to support it. To come to a conclusion which there is no evidence to support is to make an error in law."

(1) [1940] 2 All E.R. 35, 40
(2) [1941] 2 All E.R. 426, 430.
(3) [1944] 2 All E.R. 279, 284.

In *Edward* v. *Bairstow* (1) the respondent embarked upon a joint venture to purchase a spinning plant with the object of holding it for quick resale and at a profit. The General Commissioners found that there was no venture in the nature of trade but the court held that the facts found led inevitably to the conclusion that the transaction was a venture in the nature of trade and that the Commissioners inference to the contrary was erroneous.

Lord Simonds observed at p. 54 that :

"To say that a transaction is, or is not, an adventure in the nature of trade is to say that it has, or has not, the characteristics which distinguish such an adventure. But it is a question of law, not of fact, what are those characteristics......"

At p. 55 Lord Radcliffe pointed out :

"I think that it is a question of law what meaning is to be given to the words of the Income Tax Act "trade, manufacture, adventure or concern in the nature of trade" and for that matter what constitutes "profits or gains" arising from it. Here we have a statutory phrase involving a charge of tax, and it is for the courts to interpret its meaning, having regard to the context in which it occurs, and to the principles which they bring to bear on the meaning of income. and then at p. 57 laid down the test in the following words :

"When the case comes before the court, it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything *ex facie* which is bad law and which bears on the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal."

The dicta of Warrington L.J. in *Cooper* v *Stubbs* (2) that intervention by a court is proper only :

(1) [1955] 3 All E.R. 48.

(2) [1925] 2 K.B. 753, 768, 772.

"....in a very clear case, where either the Commissioners have come to their conclusion without evidence which should support it, that is to say, have come to a conclusion which on the evidence no reasonable person could arrive at, or have misdirected themselves in point of law."
and of Atkin L.J. that :

"....there may be a state of facts which can only lead to one conclusion of law."
were quoted with approval by Lord Radcliffe at pp. 56 and 57.

A review of these authorities shows that though the English decisions began with a broad definition of what are questions of law, ultimately the House of Lords decided that a "matter of degree" is a question of fact and it has also been decided that a finding by the Commissioners of a fact under a misapprehension of law or want of evidence to support a finding are both questions of law.

The Privy Council in *Commissioner of Income-tax* v. *Laxminarain Badridas* (1) said :

"No question of law was involved; nor is it possible to turn a mere question of fact into a question of law by asking whether as a matter of law the officer came to a correct conclusion upon a matter of fact."

Bose J. in *Seth Suwallal Chhogalal v. Commissioner of Income-tax* (2) stated the test as follows :

"A fact is a fact irrespective of the evidence by which it is proved. The only time a question of law can arise in such a case is when it is alleged that there is no material on which the conclusion can be based or no sufficient material."
Sufficiency of evidence was explained to mean whether the Income-tax authority considered its existence so probable that a prudent man ought under the circumstances of the case to act upon the supposition that it exists.

The question for decision in *Dhirajlal Girdharilal* v. *Commissioner of Income-tax, Bombay* (3) was whether a Hindu undivided family was carrying on business in shares and it was held that this was a question of fact

(1) [1937] 5 I.T.R. 170, 179.
(2)]1949] 17 I.T.R. 269, 277.
(3) [1954] 26 I.T.R. 736.

1957

The Oriental Investment Co., Ltd. v. *The Commissioner of Income-tax, Bombay*

Kapur J.

but if the Appellate Tribunal decided the question by taking into consideration materials which are irrelevant to the enquiry or partly relevant and partly irrelevant or based its decision partly on conjectures then in such a situation an issue of law arises, which would be subject to review by the court and the finding given by the Tribunal would be vitiated.

The result of the authorities is that inference from facts would be a question of fact or of law according as the point for determination is one of pure fact or a mixed question of law and fact and that a finding of fact without evidence to support it or if based on relevant and irrelevant matters is not unassailable.

The limits of the boundary dividing questions of fact and questions of law were laid down by this court in *Meenakshi Mills, Madurai* v. *Commessioner of Income-tax, Madras* (1) where the question for decision was whether certain profits made and shown in the name of certain intermediaries were in fact profits actually earned by the assessee or the intermediaries. Taking the course of dealings and the extent of the transaction and the position of the intermediaries and all the evidence into consideration the Tribunal came to the conclusion that the intermediaries were dummies brought into existence by the appellant for concealing the true amount of profits and that the sales in their name were sham and fictitious and profits were actually earned by the assessee. The test laid down by this Court is to be found in the various passages in that judgment. At p. 701 Venkatarama Ayyar J. pointed out that questions of fact are not open to review by the court unless they are unsupported by any evidence or are perverse. At p. 706 it was observed :

"In between the domains occupied respectively by questions of fact and of law, there is a large area in which both these questions run into each other forming so to say, enclaves within each other. The questions that arise for determination in that area are known as mixed questions of law and fact. These questions involve first the ascertainment of facts on the evidence adduced and then a determination of the

(1) [1956] S.C.R. 691.

rights of the parties on an application of the appropriate principles of law to the facts ascertained."

The law was thus summed up at p. 720 :

(1) When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the court under s. 66(1).

(2) When the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the facts found is final its decision as to the legal effect of that finding is a question of law which can be reviewed by the court.

(3) A finding on a question of fact is open to attack under s. 66(1) as erroneous in law if there is no evidence to support it or if it is perverse.

(4) When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact.

1957

The Oriental Investment Co., Ltd.
v.
The Commissioner of Income-tax, Bombay

Kapur J.

In the instant case the Appellate Tribunal in its appellate order has set out the amount of profits made by the assessee company in the years of assessment 1943-44 to 1948-49. It has also mentioned the inconsistent positions taken up by the assessee in first claiming to be a dealer and then to be an investor which according to the Tribunal was due to the fact that it was incurring losses in the earlier year and had begun making profits when the claim of being an investor was put forward. But the two basic facts on which the Tribunal has based its findings are :

(1) the objects set out in the memorandum of association of the assessee company ;

(2) the previous assertion by the assessee company that it was a dealer in investments and not merely an investor.

Counsel for the assessee relies on the decision of *Kishan Prasad & Co., Ltd.* v. *Commissioner of Income-tax, Punjab* (1) where this Court held that the circumstance whether a transaction is or is not within the powers of the company has no bearing on the nature of the transaction or on the question whether the profits arising therefrom are capital or revenue income and, therefore, it is contended that the Tribunal has

(1) [1955] 27 I.T.R. 49.

1957

The Oriental Investment Co., Ltd.
v.
The Commissioner of Income-tax, Bombay

Kapur J.

relied upon an irrelevant circumstance. Counsel for Revenue on the other hand refer to the judgment in *Lakshminarayan Ram Gopal* v. *Government of Hyderabad* (1) where the objects of an incorporated company were held not to be conclusive but relevant for the purpose of determining the nature and scope of its activities. Merely because the company has within its objects the dealing in investment in shares does not give to it the characteristics of a dealer in shares. But if other circumstances are proved it may be a relevant consideration for the purpose of determining the nature of activities of an assessee. Whether in the instant case it will have any relevance because of other materials on which the assessee company was relying in support of its case that it was merely an investor and not a dealer will have to be considered when the suggested questions of law are answered.

As to what are the characteristics of the business of dealing in shares or that of an investor is a mixed question of fact and law. What is the legal effect of the facts found by the Tribunal and whether as a result the assessee can be termed a dealer or an investor is itself a question of law.

The questions of law that arise out of the order of the Tribunal are :

(1) Whether there are any materials on the record to support the finding of the Income-tax Officer that the assessee company was a dealer in shares, securities and immoveable property during the assessment year in question ?

(2) Whether the profits and losses arising from the sale of shares, securities and immoveable properties of the assessee company can be taxed as business profits ?

We would therefore allow this appeal, set aside the order of the High Court and remit the case to the High Court for directing the Tribunal to state a case on the aforesaid two questions. The appellant will have its costs in this Court and in the High Court for the proceedings so far taken. Further costs will be in the discretion of the High Court.

Appeal allowed. Case remitted.

(1) [1955] 1 S.C.R. 393; [1954] 25 I.T.R. 449.