MESSRS. CALCUTTA COMPANY LTD.

v.

THE COMMISSIONER OF INCOME-TAX, WEST BENGAL

1959

May 12.

(S. R. DAS, C. J., N. H. BHAGWATI and M. HIDAYATULLAH, JJ.)

Income-tax—Assessment of land-developing Company—Mercantile method of accounting adopted by assessee and accepted by Income-tax Officer—Accrued liability for future development expenses, if an allowable deduction in the accounting year—Indian Income-tax Act (XI of 1922), s. 10(1).

The appellant company carried on land-developing business and sold land after development on a profit. The whole of the development was not carried out before the land was sold nor the whole of the sale price received in cash at the time of the sale. In the accounting year in question the appellant sold a number of plots and received a portion of the sale price but as it maintained its accounts in the mercantile method it entered the whole price receivable, viz., Rs. 43,692-11-9, in credit side though only Rs. 29,392-11-9 was actually received and debited a sum of Rs. 24,809, being the estimated expenditure for the developments it had, by terms incorporated in the deeds of sale, undertaken to carry out within six months thereof, although no part of it was actually spent during that year. The appellant claimed a deduction of the said sum of Rs. 24,809 in computation of the profits and gains of its business during the assessment year. The Income-tax Officer, while accepting the method of accounting adopted by the appellant, disallowed the claim on the ground that no expenses had actually been incurred and the estimate was only a probable one. The Appellate Assistant Commissioner as well as the Income-tax Appellate Tribunal confirmed the disallowance on appeals and the High Court, on a reference under s. 66(1) of the Income-tax Act held against the appellant. The question was whether the deduction claimed was a legally allowable expense of the year in question.

Held, that the liability which was undertaken by the appellant under the deeds of sale was an accrued liability and not a contingent one. Although the time of six months was not of the essence of the contract, the undertaking it had given was unconditional and absolute in terms and the liability must be held to have accrued on the execution of the deeds of sale though it was to be discharged at a future date.

Keshav Mills Ltd. v. *Commissioner of Income-tax, Bombay*, [1953] S.C.R. 950, referred to.

Peter Merchant Ltd. v. *Stedeford (Inspector of Taxes)*, (1948) 30 T.C. 496. distinguished.

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The difficulty in estimating such a liability for purposes of debit under the mercantile system of accounting could be no ground for treating an accrued liability as a conditional one, since it was always open to the Income-tax authorities to arrive a proper estimate thereof having regard to all the circumstances of the case.

Gold Coast Selection Trust Ltd. v. *Humphrey (Inspector of Taxes)*, [1948] A.C. 459, referred to.

Regard being had, therefore, to the accepted commercial practice and trading principles, the estimated deduction, even if it did not come under any of the specific provisions of s. 10(2) of the Act, was certainly an allowable deduction under s. 10(1) of the Act, there being no prohibition, either express or implied, against it in the Act and, consequently, the question must be answered in the affirmative.

Badridas Daga v. *The Commissioner of Income-tax*, (1958) 34 I.T.R. 10; *Russel* v. *Town and County Bank Ltd.*, (1888) 13 App. Cas. 418; *Gresham Life Assurance Society* v. *Styles*, (1892) 3 T.C. 185; *Pondicherry Railway Co., Ltd.* v. *Commissioner of Income-tax, Madras*, (1913) L.R. 58 I.A. 239 and *Income-tax Commissioner* v. *Chitnavis*, (1932) L.R. 59 I.A. 290, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 213 of 1955.

Appeal from the judgment and order dated June 26, 1953 of the Calcutta High Court in I.T.R. No. 34 of 1952.

A. V. Viswanatha Sastri, *N. C. Talukdar* and *Sukumar Ghose*, for the appellant.

K. N Rajagopal Sastri and *D. Gupta*, for the respondent.

1959. May 12. The Judgment of the Court was delivered by

Bhagwati J.

BHAGWATI J.—This appeal with a certificate under Art. 135 of the Constitution read with s. 66A(2) of the Indian Income-tax Act raises the question as to whether the appellant was entitled to a deduction of Rs. 24,809 in the computation of its profits and gains for the assessment year 1948-49.

The appellant deals in land and property and carries on land developing business and in the course of the said business, it buys land, develops it so as to make it fit for building purposes and sells it at a profit in plots. The developments undertaken are in the main,

that roads are to be laid out, a drainage system to be provided and street lights installed and they are to be maintained till the same are taken over by the Municipality. The whole of the development is not carried out before the land is sold, nor the whole of the sale price received in cash at the time of the sales. The procedure followed is that when a plot is sold, the purchaser pays about 25% of the purchase price in cash and undertakes to pay the balance with interest at a certain rate in ten annual instalments which he secures by creating a charge on the land purchased. The appellant, in its turn, undertakes to carry out the developments within six months from the date of the sale, but this time is not of the essence of the contract and what the appellant undertakes is to carry out the developments within a reasonable time. The undertaking is incorporated in the deed of sale itself, whereas the security is given by the purchaser by means of a separate document.

In the accounting year relating to the assessment year 1948-49 the appellant sold a number of plots and received a portion of the sale price from the purchasers according to the scheme mentioned above. The appellant maintains its accounts in the mercantile method under which money not actually received but only treated as received on the basis that it was due and receivable is entered in the books of account on the credit side. Even though the appellant did not receive the whole of the price, viz., Rs. 43,692-11-9, it entered in the credit side of its books of account the whole of that sum representing the full sale price of the lands sold during the accounting year though only a sum of Rs. 29,392-11-9 was actually received in cash from the purchaser and the balance of Rs. 14,300 represented the unpaid balance retained by the purchasers the payment of which was secured by creating charge on the said lands as also the interest received or receivable in the year of account under the deeds of charge. The whole of this sum of Rs. 43,692-11-9 was, however, credited in the books of account by the appellant according to the mercantile system of accounting adopted by it.

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In so far as under the terms of the deeds of sale the appellant had undertaken to carry out the developments within six months from the date of sale it estimated a sum of Rs. 24,809 as the expenditure for the developments to be carried out in respect of the plots which had been sold during the year and debited the same in its books of account on the ground that the liability for the said sum of Rs. 24,809 had actually arisen, the appellant being bound to provide the facilities it had undertaken to do, even though no part of that amount represented any expenditure actually made during that year.

In the course of its assessment to income-tax for the year 1948-49, the appellant claimed a deduction of the said sum of Rs. 24,809 in the computation of the profits and gains of its business. The Income-tax Officer disallowed that claim on the ground that the expenses had not been actually incurred in the year of account and also on the ground that the estimate had not been proved to be based on a consideration of the real expenses which the Company would have to incur for the purpose. The Appellate Assistant Commissioner, on appeal, confirmed the disallowance by the I.T.O. on the ground that there was as yet no accrued liability and on the further ground that as the development would be carried out in the future, the expenditure estimated at current prices could not be allowed.

On appeal taken by the appellant before the Income-tax Appellate Tribunal, the Tribunal, held that it was by no means certain what the actual cost would be when the developments were carried out and that although the appellant had undertaken to carry out certain developments, it could bring expenses into account only when the expenses were actually incurred. The Tribunal accordingly dismissed the appeal.

The appellant thereafter made an application before the Tribunal requiring it to refer to the High Court under s. 66(1) of the Income-tax Act certain questions of law arising out of its order. The Tribunal thereupon stated a case and referred the following question to the High Court for its decision :—

"Whether on the facts and circumstances stated above, the sum of Rs. 24,809 can legally be allowed as an expense of the year under consideration."

The statement of case drawn by the Tribunal was severely criticized by the High Court as under: –

"Unfortunately, the treatment of the question by the authorities below has been of a somewhat summary character, presumably because it was raised and argued before them in a superficial form. But even if such was the case, there is hardly any justification for the Tribunal failing to realise at least what facts were required to be found and stated. The statement of case is sketchy and bare and like most of the statements we have to deal with during this session, has hardly any appearance of a case seriously stated."

In spite of the above observations the High Court dealt with the question and after dealing exhaustively with the arguments which were urged before it by the learned Counsel for the appellant answered the question in the negative. On an application made by the appellant, however, the High Court granted the requisite certificate under Art. 135 of the Constitution to appeal to this Court and hence this appeal.

The question which really arises for our determination in this appeal is whether having regard to the fact that the appellant's method of accounting, viz., the Mercantile method was accepted by the Income Tax Officer and the receipts appearing in the books of account included the unpaid balance of the sale price of the plots in question, the amount of liability undertaken by the appellant to earn those receipts was to be deducted even if there had not been actual disbursement made by it during the accounting year. Put in other words, the question was whether in view of the fact that the sum of Rs. 43,692-11-9 had been entered on the credit side in the books of account even though it was not money actually received but only money treated as received on the basis that it was due and receivable, the sum of Rs. 24,809 which had been entered as debit, being the liability of the appellant

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undertaken by it to earn those receipts, should be deducted in determining the taxable profits and gains of the appellant.

The mercantile system of accounting is well-known and this method has been explained in a judgment of this Court in *Keshav Mills Ltd.* v. *Commissioner of Income-tax, Bombay* (1).

> "That system brings into credit what is due, immediately it becomes legally due and before it is actually received and it brings into debit expenditure the amount for which a legal liability has been incurred before it is actually disbursed."

The main ground on which the claim of the appellant for deducting this sum of Rs. 24,809 was disallowed by all the authorities below was that the expenditure was not actually incurred in the year of account, it was by no means certain what the actual cost would be when the developments were carried out and that there was as yet no accrued liability but only a contingent liability undertaken by the appellant, even though the undertaking was incorporated in the deeds of sale themselves.

The following were the developments undertaken to be carried out by the appellant as appears from the order of the Appellate Assistant Commissioner:—

> "There was a condition in the Conveyance Deeds that the appellant does hereby covenant with the purchaser that the appellant shall complete the construction of roads, drains, provide suitable pucca surface drains on both sides of the roads and shall also make arrangements for lighting up the said roads and shall maintain the said roads, drains, lights till the same are taken over by the Municipality."

> "Besides provision for roads, drains, etc., the Deed provides for filling up of low lands and there is a clause in the Conveyance Deed which shows that the appellant's shall at his own cost fill the low lands and tank with earth and bring the same to road level."

(1) [1953] S.C.R. 950, 958.

This undertaking having been incorporated in the deeds of sale themselves there was certainly a liability undertaken by the appellant to carry out these developments within six months from the dates of those deeds. Time was of course not of the essence of the contract and the appellant therefore was at liberty to carry out that undertaking within a reasonable time. That, however, did not absolve it in any manner whatever from carrying out the undertaking and the purchasers were in a position to enforce the undertaking by taking appropriate proceedings in that behalf.

Reliance was placed on behalf of the Revenue on the case of *Peter Merchant Ltd.* v. *Stedeford* (*Inspector of Taxes*) (1) in which a distinction was drawn between an actual i.e., legal liability, which is deductible, and a liability which is future or contingent and for which no deduction can be made. The facts of that case were that the Company, which carried on the business of managing factory canteens, had contracted with a factory owner to maintain the crockery, cutlery and utensils used in the canteen otherwise known as the light equipment in its original quantity and quality. The cost of replacement was admittedly a proper deduction in computing profits, as was also any sum paid to a factory owner in settlement of the value of shortages on termination of the contract. Owing to war and other circumstances it was impossible or impracticable for the Company to obtain replacements in some cases, and the obligations under the contracts with the factory owners in those cases still remained to be performed. In the accounts for the year deductions had been made both of the amounts actually expended on replacements and the amounts which the company was liable to expend when the equipment became available. The Company claimed to be entitled to deduct in computing its profits amounts representing at current prices, the liability to effect replacements as soon as the required equipment became obtainable. The former amounts were allowed as deductions, and the latter the Court of Appeal (reversing the decision

(1) (1948) 30 T.C. 496.

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of the Court below) held not to be deductible. The basis of the decision was that the real liability under the contract was contingent, not actual, since the obligations of the company were not such that it might be sued for the cost of replacements at current prices, but only for possible damages for breach of contract in the event of the factory owner preferring a claim under the contract, and since no legal liability could arise until such a claim was made, the liability had to be regarded as contingent and not deductible.

It is clear from the above that on the facts and circumstances of that case the Court held that it was not an accrued liability but was merely a contingent one and if that was the case only the sums actually expended could be deducted and not those which the company was liable to expend in the future.

Simon in his "Income-tax", Second Edition, Vol. II, at p. 204 under the caption "Accrued Liability" observes as under, after citing the case mentioned above:—

> "In cases, however, where an actual liability exists, as is the case with accrued expenses, a deduction is allowable; and this is not affected by the fact that the amount of the liability and the deduction will subsequently have to be varied. A liability, the amount of which is deductible for income-tax purposes, is one which is actually existing at the time of making the deduction, and is distinct from the type of liability accruing in *Peter Merchants Ltd.* v. *Stedeford* (*Inspector of Taxes*) which although allowable on accountancy principles, is not deductible for the purpose of income-tax."

Approaching the question before us in the light of the observations made above we have got to determine what was the nature of the liability which was undertaken by the appellant in regard to the development of the lands in question, whether it was an accrued liability or was one which was contingent on the happening of a certain event in the future.

There is no doubt that the undertaking to carry out the developments within six months from the dates of

the deeds of sale was incorporated therein and that undertaking was unconditional, the appellant binding itself absolutely to carry out the same. It was not dependent on any condition being fulfilled or the happening of any event, the only condition being that it was to be carried out within six months which in view of the fact that the time was not of the essence of the contract meant a reasonable time. Whatever may be considered a reasonable time under the circumstances of the case, the setting up of that time limit did not prescribe any condition for the carrying out of that undertaking and the undertaking was absolute in terms. If that undertaking imported any liability on the appellant the liability had already accrued on the dates of the deeds of sale, though that liability was to be discharged at a future date. It was thus an accrued liability and the estimated expenditure which would be incurred in discharging the same could very well be deducted from the profits and gains of the business.

Inasmuch as the liability which had thus accrued during the accounting year was to be discharged at a future date the amount to be expended in the discharge of that liability would have to be estimated in order that under the mercantile system of accounting the amount could be debited before it was actually disbursed.

The difficulty in the estimation thereof again would not convert an accrued liability into a conditional one, because it is always open to the Income-tax authorities concerned to arrive at a proper estimate thereof having regard to all the circumstances of the case. That it can be so done is illustrated by *Gold Coast Selection Trust Ltd.* v *Humphrey* (*Inspector of Taxes*) (1) where a particular asset which could not be immediately realised in a commercial sense was valued in money for income-tax purposes in the year of its receipt and it was observed by Viscount Simon:—

> "It seems to me that it is not correct to say that an asset, such as this block of shares, cannot be valued in money for income-tax purposes in the

(1) [1948] A.C. 459, 469.

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year of its receipt because it cannot, in a commercial sense, be immediately realized. That is no reason for saying that it is incapable of being valued, though, if its realization cannot take place promptly, that may be a reason why the money figure set against it at the earlier date should be reduced in order to allow for an appropriate interval. Supposing, for example, the contract conferring the asset on the taxpayer included a stipulation that the asset should not be realized by the transferee for five years, and that if an attempt was made to realise it before that time, the property in it should revert to the transferor. This might seriously reduce the value of the asset when received, but it is no reason for saying that when received it must be regarded as having no value at all. The Commissioners, as its seems to me, in fixing what money equivalent should be taken as representing the asset, must fix an appropriate money value as at the end of the period to which the appellant's accounts are made up by taking all the circumstances into consideration."

As in the case of assets received during the accounting year which could not be immediately realized in a commercial sense, so in the case of liabilities which have already accrued during the accounting year, though they may not have to be discharged till a later date. It will be always open to the Income-tax authorities to fix an appropriate money value of that liability as at the end of the accounting period by taking all the circumstances into consideration and the estimate of expenses given by the assessee would be liable to scrutiny at their hands having regard to all the facts and circumstances of the case.

The High Court was, therefore, clearly in error when it stated :—

"In view of all the circumstances of the case it must in my opinion, be held that the amounts of sale-price, not received in cash, were also received and for the purpose of earning the receipts the assessee spent, besides giving the lands, nothing more than a promise. Since the whole amount was actually received in the year of account before and

without making the promised expenditure, no question of allowing a deduction of any expenditure from such receipts of the year arises."

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If then the estimated expenses which would have to be incurred in duly discharging that liability which was undertaken by the appellant and was incorporated in the deeds of sale could be deducted in accordance with the mercantile system of accounting adopted by the appellant and accepted by the I.T.O., is there anything in the Income-tax Act which would prevent this debit being allowed as a deduction in the computation of the profits and gains of the appellant's business? The appellant, had, it appears, claimed this deduction as and by way of expenditure wholly laid out for the purposes of its business under s. 10(2)(xv) of the Income-tax Act. On an interpretation of that provision, the High Court was inclined to hold, though it did not decide the question, that to the extent that a definite liability had accrued about which all preliminary proceedings causing the accrual of the liability in a concluded form had already been gone through although the actual disbursement had not yet taken place, s. 10(2)(xv) would cover accrued liabilities though the amount may not actually have been expended on the footing that the liability being certain, the amount was as good as spent and on that basis there would be room in the clause for debits which are proper debits under the mercantile system of accounting. It, however, distinguished the present case on the ground that the liability here was a floating liability, the measure of which depended upon the will of the appellant and the discharge of which rested only in a promise and that the expenses were entirely at large and the development work itself merely so.

Apart, however, from the question whether s. 10(2) (xv) of the Income-tax Act would apply to the facts of the present case, the case is, in our opinion, well within the purview of s. 10(1) of the Income-tax Act. The appellant here is being assessed in respect of the profits and gains of its business and the profits and gains of the business cannot be determined unless and until he expenses or the obligations which have been

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incurred are set off against the receipts. The expression "profits and gains" has to be understood in its commercial sense and there can be no computation of such profits and gains until the expenditure which is necessary for the purpose of earning the receipts is deducted therefrom—whether the expenditure is actually incurred or the liability in respect thereof has accrued even though it may have to be discharged at some future date. As was observed by Lord Herschell in *Russel* v. *Town and County Bank, Ltd.*(1):

> "The duty is to be charged upon 'a sum not less than the full amount of the balance of the profits or gains of the trade, manufacture, adventure, or concern'; and it appears to me that that language implies that for the purpose of arriving at the balance of profits all that expenditure which is necessary for the purposes of earning the receipts must be deducted, otherwise you do not arrive at the balance of profits, indeed, otherwise you do not ascertain, and cannot ascertain, whether there is such a thing as profit or not. The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts. That seems to me to be the meaning of the word "profits" in relation to any trade or business. Unless and until you have ascertained that there is such a balance, nothing exists to which the name "profits" can properly be applied."

A similar opinion was expressed in the *Gresham Life Assurance Society* v. *Styles* (2):—

> "When we speak of the profits or gains of a trader we mean that which he had made by his trading. Whether there be such a thing as profit or gain can only be ascertained by setting against the receipts the expenditure or obligations to which they have given rise."

These are no doubt observations from the English cases dealing with English statutes of Income-tax, but the general principles which can he deduced therefrom

(1) (1888) 13 App. Cas. 418, 424 (2) (1892) 3 T. C. 185

are, nevertheless, applicable here and it was stated by Lord Macmillan in *Pondicherry Railway Co., Ltd.* v. *Commissioner of Income-tax, Madras* (1)

> " English authorities can only be utilised with caution in the consideration of Indian Income-tax cases owing to the difference in the relevant legislation, but the principle laid down by Lord Chancellor Halsbury in Gresham Life Assurance Society v. Styles (supra), is of general application unaffected by the specialities of the English Tax system. " The thing to be taxed ", said his Lordship, " is the amount of profits or gains ". The word " profits ", I think, is to be understood in its natural and proper sense—in a sense which no commercial man would misunderstand."

It may be useful to observe at this stage that prior to the amendment of the Indian Income-tax Act in 1939, bad and doubtful debts were not treated as deductible allowance for the purpose of computation of profits or gains of a business, The Privy Council in the *Income-tax Commissioner* v. *Chitnavis* (2) observed :—

> " Although the Act nowhere in terms authorises the deduction of bad debts of a business, such a deduction is necessarily allowable. What are chargeable to income-tax in respect of a business are the profits and gains of a year ; and in assessing the amount of the profits and gains of a year account must necessarily be taken of all losses incurred, otherwise you would not arrive at the true profits and gains."

The High Court in disallowing the claim of the appellant in the present case only considered the provisions of s. 10(2)(xv) of the Act and came to the conclusion that on a strict interpretation of those provisions the sum of Rs. 24,809 was not an allowable deduction. Its attention was drawn by the learned Counsel for the appellant to the provisions of s. 10(1) of the Act also but it negatived this argument observing that under the Indian Act, the profits must be

(1) (1931) L. R. 58 I. A. 239, 252. (2) (1932) L. R. 59 I. A. 290, 296.

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determined by the method of making the statutory deductions from the receipts and any deduction from the business receipts, if it was to be allowed, must be brought under one or the other of the deductions mentioned in s. 10(2) and that there was no scope for any preliminary deduction under general principles. It was, however, held by this Court in *Badridas Daga* v. *The Commissioner of Income-tax*(1)

"It is to be noted that while s. 10(1) imposes a charge on the profits or gains of a trade, it does not provide how those profits are to be computed. Section 10(2) enumerates various items which are admissible as deductions, but it is well settled that they are not exhaustive of all allowances which could be made in ascertaining profits taxable under s. 10(1)."

Venkatarama Aiyar, J., who delivered the Judgment of this Court then proceeded to discuss the cases of *Commissioner of Income-tax* v. *Chitnavis*(2), *Gresham Life Assurance Society* v. *Styles* (3) and *Pondicherry Railway Co.* v. *Income-tax Commissioner*(4), and observed:—

"The result is that when a claim is made for a deduction for which there is no specific provision in s. 10(2), whether it is admissible or not will depend on whether, having regard to accepted commercial practice and trading principles, it can be said to arise out of the carrying on of the business and to be incidental to it. If that is established, then the deduction must be allowed, provided of course there is no prohibition against it, express or implied, in the Act.

Turning now to the facts of the present case, we find that the sum of Rs. 24,809 represented the estimated expenditure which had to be incurred by the appellant in discharging a liability which it had already undertaken under the terms of the deeds of sale of the lands in question and was an accrued liability which according to the mercantile system of accounting the appellant was entitled to debit in its books of account

(1) (1958) 34 I.T.R. 10, 14.
(2) (1932) L.R. 59 I.A. 290, 296.
(3) (1892) 3 T.C. 185.
(4) (1931) L.R. 58 I.A. 239, 252.

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for the accounting year as against the receipts of Rs. 43,692-11-9 which represented the sale proceeds of the said lands. Even under s. 10(2) of the Income-tax Act, it might possibly be urged that the word "expended" was capable of being interpreted as "expendable" or "to be expended" at least in a case where a liability to incur the said expenses had been actually incurred by the assessee who adopted the mercantile system of accounting and the debit of Rs. 24,809 was thus a proper debit in the present case. We need not however base our decision on any such consideration. We are definitely of opinion that the sum of Rs. 24,809 represented the estimated amount which would have to be expended by the appellant in the course of carrying on its business and was incidental to the same and having regard to the accepted commercial practice and trading principles was a deduction which, if there was no specific provision for it under section 10(2) of the Act was certainly allowable deduction, in arriving at the profits and gains of the business of the appellant under section 10(1) of the Act, there being no prohibition against it, express or implied in the Act.

It is to be noted that the appellant had led evidence before the Income-tax authorities in regard to this estimated expenditure of Rs. 24,809 and no exception was taken to the same in regard to the quantum, though the permissibility of such a deduction was questioned by them relying upon the provisions of s. 10(2) of the Act.

It therefore follows that the conclusion reached by the High Court in regard to the disallowance of Rs. 24,809 was wrong and it should have answered the referred question in the affirmative.

Before we conclude, we are bound to observe that having accepted the receipts of Rs. 43,692-11-9 in their totality even though a sum of Rs. 29,392-11-9 only was actually received by the appellant in cash, thus making the appellant liable for income-tax on a sum of Rs. 14,300 which had not been received by it during the accounting year, it was hardly open to the Revenue to urge that the sum of Rs. 24,809 should not have been allowed as a permissible deduction before

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arriving at the profits or gains of the appellant which were liable to tax. Consistently enough with this attitude, the Revenue ought to have expressed its willingness to treat only a sum of Rs. 29,392-11-9 as the actual receipt of the appellant during the accounting year and made up the computation of the profits and gains of the appellant's business on that basis. The Revenue, however, did nothing of the sort and insisted upon having its pound of flesh, asking us to delete the whole of the item of Rs. 24,809 from the debit side of the account which it was certainly not entitled to do.

We accordingly allow the appeal, set aside the judgment of the High Court and answer the referred question in the affirmative. The respondent will of course pay the appellant's costs throughout.

Appeal allowed.

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May 12.

THE CENTRAL BANK OF INDIA
v.
THEIR WORKMEN
(and connected appeals)

(S. R. DAS, C. J., JAFER IMAM, S. K. DAS, K. N. WANCHOO and M. HIDAYATULLAH, JJ.)

Industrial Dispute—Bonus—Banking Companies—Bank Employees—Whether disentitled to bonus—" Remuneration " meaning of —Banking Companies (Amendment) Act, 1956 (95 of 1956), amended s. 10, whether retrospective—Banking Companies Act, 1949, (10 of 1949), s. 10.

Section 10(1)(b)(ii) of the Banking Companies Act, 1949, provided: "No banking company shall employ any person whose remuneration or part of whose remuneration takes the form . . . of a share in the profits of the company."

The dispute between the appellant Banks and their employees related, *inter alia*, to the question whether the provisions of the Banking Companies Act, 1949, prohibit the grant of bonus to bank employees. The Labour Appellate Tribunal took the view that s. 10 of the Act did not stand in the way of granting bonus to bank employees, because bonus according to it was not a share in the profits of the company. On appeal, it was contended for the appellant Banks that bonus as awarded by the Industrial Courts is remuneration within the meaning of s. 10