to see that the fence which under the Act it was his duty to see was kept in position all along had not been removed. It seems to us clear that if it was his duty to exercise due diligence for the purpose in a case where he could establish that somebody else had removed the fence, it would be equally his duty to exercise that diligence where he could not prove who had removed it. If it were not so, the intention of the Act to give protection to workmen would be wholly defeated.

For these reasons we are unable to agree with the view of the High Court or the learned trial magistrate. Accordingly we allow the appeal and set aside the judgment of the Courts below and convict the respondent under s. 92 for contravening the terms of s. 21(1)(iv)(c). We impose on him a fine of Rs. 200. In default he shall undergo one week's simple imprisonment.

Appeal allowed.

SULTAN BROTHERS (P) LTD.

v.

COMMISSIONER OF INCOME-TAX

(B.P. SINHA, C.J., A.K. SARKAR, M. HIDAYATULLAH, K.C. DAS GUPTA AND N. RAJAGOPALA AYYANGAR JJ.)

Income Tax—Assessment—Letting of building and furniture—Such letting, if business—Income Tax Act, 1922 (11 *of* 1922), *ss.* 10, 12(4).

The appellant assessee let out a building fully equipped and furnished, for a term of six years for running a hotel and for certain ancillary purposes. The lease provided for a rent for the building and a hire for the furniture and fixtures. In the assessment of the income under the lease to income-tax,

Held: Whether a particular letting is business has to be decided in the circumstances of each case. It would not be the doing

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of a business if it was exploitation of his property by an owner. A thing cannot by its very nature be a commercial asset. A commercial asset is only an asset used in a business and nothing else. An activity is not business because it is concerned with an asset with which trade is commonly carried on.

The present letting of the building did not amount to the doing of a business by the assessee and as such the income under the lease could not be assessed under s. 10 of the Income-tax Act as the income of a business.

Commissioner of Income-tax v. *Mangalagiri Sri Umamaheswara Gin and Rice Factory Ltd.* (1927) I.L.R. 50 Mad. 529 and *Commissioner of Income-tax* v. *Basotto Brothers Ltd. Madras.* (1940) 8 I.T.R. 41, distinguished.

United Commercial Bank Ltd. v. *Commissioner of Income-tax, West Bengal,* 32 I.T.R. 688. referred to.

Even if the object of the assessee, a company, which was to acquire lands and buildings and to turn them into account by leasing, be assumed to be a business activity, that would not turn the income from the lease to income from business.

East Indian Housing & Land Development Trust Ltd. v. *Commissioner of Income-tax,* (1961) 42 I.T.R. 49, relied on.

The income from the hire of the furniture and fixture was assessable under s. 12 of the Act after providing for the allowances mentioned in sub-s. (3) of that section.

Sub-section (4) of s. 12 is not confined to a case where the building let out does not belong to the person who let it out.

The income contemplated in sub-s. (4) of s. 12 is an income which does not come within any of the earlier sections dealing with specific heads of income.

In order that sub-s. (4) of s. 12 may apply, it is not necessary that the primary letting must be of the machinery, plant or furniture and together with such letting there is a letting of the building.

When sub-s. (4) of s. 12 says that "the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture" it only means that the parties to the letting must have so intended. There would be such an intention when they were intended to be enjoyed together.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 63 of 1961.

Appeal from the judgment and order dated July 2, 1959, of the Bombay High Court in Income-tax Reference No. 59/1958.

A.V. Viswanatha Sastri, T.S. Diwanji, O.C. Mathur, J.B. Dadachanji and *Ravinder Narain*, for the appellant.

K.N. Rajagopal Sastri and *R.N. Sachthey*, for the respondent.

December 6, 1963. The Judgment of the Court was delivered by.

SARKAR J.—The appellant, which is a limited company is the owner of a certain building constructed on Plot No. 7 on the Church Gate Reclamation in Bombay which it had fitted up with furniture and fixtures for being run as a hotel. By a lease dated August 30, 1949, the appellant let out the building fully equipped and furnished to one Voyantzis for a term of six years certain from December 9, 1946 for running a hotel and for certain other ancillary purposes. The lease provided for a monthly rent of Rs. 5,950 for the building and a hire of Rs. 5,000 for the furniture and fixtures. The question in this appeal is how the income received as rent and hire is to be assessed, that is, under which section of the Income-tax Act, 1922 is it assessable. The appellant contends that the entire income should be assessed under s. 10 as the income of a business or, in the alternative, the income should be assessed under s. 12 as income from a residuary source, that is, a source not specified in the preceding sections 7 to 11, with the allowances respectively specified in sub-ss. (3) and (4) of that section.

For the assessment year 1953-54, the appellant was taxed under s. 9 of the Income-tax Act in respect of the building and under s. 12 in respect of the hire received from the furniture and fixtures. The Income-tax Officer held that the building had to be assessed under s. 9 as it was the specific section covering it and there was, therfore, no scope for resorting to the residuary section, s. 12, in respect of its income. The Appellate Assistant Commissioner held on appeal that the rent from a building could only be assessed under s. 12 with the allowances mentioned in sub-

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s. (4) where for the letting of the furniture and fixtures it was indispensable to let the building also and as that was not the case here the building had been rightly assessed under s. 9 . The appellant then appealed to the Income-tax Appellate Tribunal. The Tribunal confirmed the decision of the authorities below holding that the allowances mentioned in sub-s. (4) of s. 12 could not be allowed as the sub-section permitted them only where the letting of the building was incidental to the letting of the furniture and fixtures and as that had not happened in the present case the rent could not be assessed under s. 12. It was also contended by the appellant before the Tribunal—a contention which does not appear to have been advanced at any earlier stage—that the entire income should really have been assessed under s. 10 of the Act inasmuch as the income taxed was from "the letting out of the totality of the assets which was the business of the assessee". The Tribunal rejected this contention also, holding that since there was a specific head in regard to income from property, namely, s. 9, the income from the property leased had to be computed under that section alone and referred to *United Commercial Bank Ltd.* v. *Commissioner of Income-tax, West Bengal*[1] in support of this view.

Thereafter at the request of the appellant the Tribunal stated a case under s. 66(1) of the Act to the High Court at Bombay for decision of the following question:—

> "Whether on the facts and circumstances of the case, the income derived from letting of the building constructed on Plot No. 7 is properly to be computed under section 9, 10 or under section 12 of the Income -tax Act."

The High Court answered the question as follows:—

> "The income from the building will be computed under section 9, income from furniture and fixtures under section 12(3) and that no part of the income is taxable under section 10."

(1) 32 I.T.R. 688.

The question framed is clearly somewhat inaccurate for what the appellant contends in the first place is that the entire income and not that from the building alone, should be assessed under s. 10. This inaccuracy has not however misled anyone and the matter has been argued before us without any objection from the respondent on the basis as if the question was in terms of the appellant's contention.

Now, it is beyond dispute that the several heads of income mentioned in s. 6 of the Act and dealt with separately in ss. 7 to 12 are mutually exclusive, each head being specific to cover the income arising from a particular source and that it cannot be said that any one of these sections is more specific than another: see *United Commercial Bank Ltd.* v. *Commissioner of Income-tax*[1]. Therefore a particular variety of income must be assignable to one or other of these sections.

A broad reference to ss. 9, 10 and 12 may now be profitably made. Section 9 provides for the payment of tax under the head "Income from property" in respect of the *bona fide* annual value of buildings or lands appurtenant thereto of which the assessee is the owner. Certain buildings are exempted but it is not necessary to refer to them. This section also sets out the method of calculation of the annual value of the property on which the tax is to be assessed. It is important to note here that under this section a building has to be assessed to tax on its annual value irrespective of the rent received from it, if any. Section 10 deals with profits and gains of business, profession or vocation. This section also provides the method of computing the income and the allowances that the assessee is entitled to deduct in making the computation. Section 12 is the residuary section covering income, profits and gains of every kind not assessable under any of the heads specified earlier. It follows that if the income now under consideration is taxable under s. 9 or s. 10, then it cannot be taxed under s. 12. This is not in dispute.

(1) 32 I.T.R. 688

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The first contention of the appellant, as already seen, is that the assessment should be made under s. 10 as of income from a business. The reason for this preference is that under that section it would be entitled to much larger allowances as deductions in the computation of the income than it would be under either s. 9 or s. 12. The appellant put the matter in this way. Letting out of a commercial asset is a business and what it did was to let out a commercial asset, namely, a fully equipped hotel building. It also said that the lessor's covenants in the lease showed that in making the lease, the appellant was carrying on a business and not letting out property. This is somewhat different from the way in which it was put before the Tribunal. The argument advanced before the Tribunal was not advanced in this Court and need not, therefore, be considered. It is indeed not very clear.

A very large number of cases was referred to in support of this contention but it does not seem to us that much assistance can be derived from them. Whether a particular letting is business has to be decided in the circumstances of each case. We do not think that the cases cited lay down a test for deciding when a letting amounts to a business. We think each case has to be looked at from a business-man's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner. We do not further think that a thing can by its very nature be a commercial asset. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly carried on. We find nothing in the cases referred, to support the proposition that certain assets are commercial assets in their very nature.

The object of the appellant company no doubt was to acquire land and buildings and to turn the same into account by construction and reconstruc-

tion, decoration, furnishing and maintenance of them and by leasing and selling the same. The activity contemplated in the aforesaid object of the company, assuming it to be a business activity, would not by itself turn the lease in the present case into a business deal. That would follow from the decision of this Court in *East India Housing and Land Development Trust Ltd.* v. *Commissioner of Income-tax*[1] where it was observed that "the income derived by the company from shops and stalls is income received from property and falls under the specific head described in s. 9. The character of that income is not altered because it is received by a company formed with the object of developing and setting up markets."

Now the cases on which learned counsel for the appellant especially relied were cases of the letting out of plant and machinery, in some instances along with the factory buildings in which they had been housed. In all of them, except one, which we will presently mention, the assessee had previously been operating the factory or mill as a business and had only temporarily let it out as it was not convenient for him at the time to carry on the business of running the mill or factory. In these circumstances, it was held that by letting out the plant, machinery and building the assessee was still conducting a business though not the business of running the mill or factory.

In *Commissioner of Income-tax* v. *Mangalagiri Sri Umamaheswara Gin and Rice Factory Ltd.*[2], the assessee who was the owner of a fully equipped rice mill which it had constructed for its own trade but had never worked it, decided to lease it out to another person. It was held that the income was income from business. The reason given by one of the learned Judges, Krishnan J., was, "the rent received is not only for the use of the mill but also to cover the necessary wear and tear" and the lease was of the mill as a working concern. Beasley J. agreed but perhaps with a certain amount of hesita-

(1) [1961] 42 I.T.R. 49. (2) [1927] I.L.R. 50 Mad. 529.

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tion. In the later case of *Commissioner of Income-tax* v. *Bosotto Brothers Limited, Madras*(1) which concerned income from the letting out of a fully equipped hotel which had previously been run by the assessee himself as a hotel, Krishnaswami Ayyangar J. felt himself bound by the *Mangalagiri Gin and Rice factory*(2) and apparently for that reason only decided to agree with his colleagues that the case might fall under s. 10. Mockett J. thought that what was done was to lease out an undertaking of a hotel known as a hotel business and in that view he agreed that the case might come under s. 10.

It seems to us that *Bosotto Brothers Ltd. case*(1) would have no application because it cannot possibly be said in the case in hand that the appellant had let out any business undertaking. Admittedly it never carried on any business of a hotel in the premises let out or otherwise at all. Nor is there anything to show that it intended to carry on a hotel business itself in the same building even if it had the power under its memorandum to do so, as to which a great deal of doubt may be entertained. In *Mangalagiri Gin and Rice Factory case*(2), what appears to have been really let out was the plant and machinery and the case was decided on the basis of the wear and tear caused to them. Furthermore, in that case it does not appear at all to have been contended that s. 9 had any application. Whether that case was rightly decided or not, is not a question that properly arises in this case for none of the considerations which led to the decision arrived at there, exists here; there is no question of any wear and tear to machinery nor of a letting out of any working concern. Besides, the cases of *Mangalagiri Gin and Rice Factory*(2) and *Bosotto Brothers Limited*(1) were both decided before sub-s. (4) of s. 12 was enacted. Sub-section (4) covers a case where a building and furniture are inseparably let out. It cannot be said what the decision in those cases would have been if s. 12(4) was then in existence. We do not think that it would be

(1) [1940] 8 I.T.R. 41. (2) [1927] I.L.R. 50 Mad. 529.

profitable to refer to the other cases cited at the bar for they carry the matter no further.

Learned counsel for the appellant also relied on certain clauses in the lease and a clause in the memorandum of the appellant company to show that the lease amounted to the carrying on of a business. We shall now turn to these provisions. Clause 3(b) of the memorandum gave power to the appellant to manage land, buildings, and other property and to supply the tenants and occupiers thereof refreshment, attendants, messengers, light, waiting-room, reading room, meeting room, libraries, laundry convenience, electric conveniences, lifts, stables and other advantages. The contention was that this clause in the memorandum gave the appellant a power to carry on a business of the nature of running a hotel. We do not think, it did. But in any case, by the lease none of the objects mentioned in this clause was sought to be achieved. We find nothing in the lessor's covenants to some of which we were referred to bring the matter within cl. 3(b) of the memorandum. None of these clauses support the contention that by granting the lease, the appellant did anything like carrying on the business of running a hotel. Thus cl. (a) is a covenant for quiet enjoyment. Clause (b) provides for a renewal of the lease of the demised premises being granted to the lessee for a further term of six years at his request. Clause (c) deals with payment of municipal bills and similar charges and ground rent. Clause (d) provides that the lessor shall during the continuance of the lease and on its renewal provide various things which included furniture, pillows, mattresses, gas-stoves, bottle coolers, refrigerators, lift, electric fittings and the like and also paint the outside of the building with oil once in five years and keep the building insured. These are ordinary covenants in a lease of a furnished building. These do not at all show that the lessor was rendering any service in the hotel business carried on by the lessee or in fact doing any business at all. On the facts of this case we are unable to agree that

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the letting of the building amounted to the doing of a business. The income under the lease cannot, therefore be assessed under s. 10 of the Act as the income of a business.

The next question is about sub-s. (4) of s. 12. The relevant part of s. 12 may now be set out.

> S. 12. (1) The tax shall be payable by an assessee under the head 'Income from other sources' in respect of income, profits and gains of every kind which may be included in his total income if not included under any of the preceding heads.
>
> x x x x x
>
> (3) Where an assessee lets on hire machinery plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v), (vi) and (vii) of sub-section (2) of section 10.
>
> (4) Where an assessee lets on hire machinery plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, he shall be entitled to allowances in accordance with the provisions of the clauses (iv), (v), (vi) and (vii) of sub-section (2) of section 10 in respect of such buildings.

To clear the ground it may be stated here that once s. 10 is found inapplicable to the case, there is no dispute that the income from the hire of the furniture and fixtures was rightly assessed under s. 12 after providing for the allowances mentioned in sub-s. (3) of that section. The only dispute that then remains is whether, the building is to be assessed under s. 9 which of course will have to be on the basis of its annual value or whether the rent from the building has to be assessed under s. 12 after the allowances mentioned in sub-s. (4) have been deducted.

We have earlier said that s. 12 can only apply if no other section is applicable, because it deals

with the residuary head of income. Now sub-s. (4) of s. 12 only deals with certain allowances and it obviously proceeds on the basis that the income mentioned in it, namely, that from the buildings when inseparably let with plant, machinery or furniture is not income falling under any of the specific heads dealt with by ss. 7 to 11 and is, therefore, income falling under the residuary head contained in s. 12. There a preliminary difficulty arises. In respect of buildings—and with them alone sub-s. (4) of s. 12 is concerned—as already seen, the owner is liable to tax under s. 9 not on the actual income received from it but on its annual value and in fact quite irrespective of whether he has let it out or not. How then can it be said that the rent received from a building could at all come under s. 12? In other words, why can it not be said that the specific section, that is, s. 9, covers the case and the income from the building cannot be assessed under s. 12 and no question of giving any allowances under s. 12 (4) arises? It has sometimes been suggested as a solution for this difficulty that sub-s. (4) of s. 12 applies only when the building is let out by a person who is not the owner because such a case would not come under s. 9. Counsel for neither party however was prepared to accept that suggestion. Indeed that suggestion has its own difficulty. Under sub-s. (4) of s. 12 the assessee becomes entitled among others to an allowance in accordance with s. 10(2)(vi) which is on account of depreciation of the building "being the property of the assessee" from which it follows that sub-s. (4) of s. 12 contemplates the letting of the building by the owner. Sub-section (4) of s. 12 must, therefore, be applicable when machinery, plant or furniture are inseparably let along with the building by the owner. If sub-s. (4) of s. 12 is to have any effect—and it is the duty of the court so to construe every part of a statute that it has effect—it must be held that the income arising from the letting of a building in the circumstances mentioned in it is an income coming within the residuary head. If a person cannot be assessed under s. 12 in respect of the rent

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of a building owned by him, sub-s. (4) will become redundant; there will be no case in which the allowances mentioned by it can be granted in computing the actual income from a building. An interpretation producing such a result is not natural. We must, therefore, hold that when a building and plant, machinery or furniture are inseparably let the Act contemplates the rent from the building as a residuary head of income.

The next question is, does the present letting come within the term of sub-s. (4) of s. 12 ? That provision requires two conditions, namely, that the furniture should be let and also buildings and the letting of the buildings should be inseparable from the letting of the furniture. Now here both furniture and building have no doubt been let. The question is, are they inseparably let? The High Court does not appear to have answered this question for it was of the view that not only must the two be inseparably let out but also that "the primary letting must be of the machinery, plant or furniture and that together with such letting or along with such letting, there is a letting of buildings". The High Court held that the primary letting in the present case was of the building and, therefore, deprived the appellant of the benefit of s. 12 (4). We may state here that the Tribunal had thought that by requiring that the letting of one should be inseparable from the letting of the other, the section really meant that the primary letting was of the machinery and the letting of the building was only incidental to the letting of the machinery. It also held that in the present case the primary letting was of the building.

Now the difficulty that we feel in accepting the view which appealed to the High Court and the Tribunal is that we find nothing in the language of sub-s. (4) of s. 12 to support it. No doubt the sub-section first mentions the letting of the machinery, plant or furniture and then refers to the letting of the building and further uses the word 'also' in connection with

the letting of the building. We, however, think that this is too slender a foundation for the conclusion that the intention was that the primary letting must be of the machinery, plant or furnitures. In the absence of a much stronger indication in the language used, there is no warrant for saying that the sub-section contemplated that the letting of the building had to be incidental to the letting of the plant, machinery or furniture. It is pertinent to ask that if the intention was that the letting of the plant, machinery or furniture should be primary, why did not the section say so? Furthermore, we find it practically impossible to imagine how the letting of a building could be incidental to the letting of furniture, though we can see that the letting of a factory building may be incidental to the letting of the machinery or plant in it for the object there may be really to work the machinery. If we are right in our view, as we think we are, that the letting of a building can never be incidental to the letting of furniture contained in it, then it must be held that no consideration of primary or secondary lettings arises in construing the section for what must apply when furniture is let and also buildings must equally apply when plant and machinery are let and also buildings. We think all that sub-s. (4) of s. 12 contemplates is that the letting of machinery, plant or furniture should be inseparable from the letting of the buildings.

What, then, is inseparable letting? It was suggested on behalf of the respondent Commissioner that the sub-section contemplates a case where the machinery, plant or furniture are by their nature inseparable from a building so that if the machinery, plant or furniture are let, the building has also necessarily to be let along with it. There are two objections to this argument. In the first place, if this was the intention, the section might well have provided that where machinery, plant or furniture are inseparable from a building and both are let etc. etc. The language however is not that the two must be

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inseparably connected when let but that the letting of one is to be inseparable from the letting of the other. The next objection is that there can be no case in which one cannot be separated from the other. In every case that we can conceive of, it may be possible to dismantle the machinery or plant or fixtures from where it was implanted or fixed and set it up in a new building. As regards furniture, of course, they simply rest on the floor of the building in which it lies and the two indeed are always separable. We are unable, therefore, to accept the contention that inseparable in the sub-section means that the plant, machinery or furniture are affixed to a building.

It seems to us that the inseparability referred to in sub-s. (4) is an inseparability arising from the intention of the parties. That intention may be ascertained by framing the following questions: Was it the intention in making the lease—and it matters not whether there is one lease or two, that is, separate leases in respect of the furniture and the building—that the two should be enjoyed together? Was it the intention to make the letting of the two practically one letting? Would one have been let alone a lease of it accepted without the other? If the answers to the first two questions are in the affirmative, and the last in the negative then, in our view, it has to be held that it was intended that the lettings would be inseparable. This view also provides a justification for taking the case of the income from the lease of a building out of s. 9 and putting it under s. 12 as a residuary head of income. It then becomes a new kind of income, not covered by s. 9, that is, income not from the ownership of the building alone but an income which though arising from a building would not have arisen if the plant, machinery and furniture had not also been let along with it.

That takes us to the question, was the letting in the present case of the building and the furniture and fixtures inseparable in the sense contemplated in the sub-section as we have found that sense to be?

It is true that the rent for the building and the hire for the furniture were separately reserved in the lease but that does not, in our view, make the two lettings separable. We may point out that the Tribunal has taken the same view and the High Court has not dissented from it. In spite of the sums payable for the enjoyment of two things being fixed separately, the intention may still be that the two shall be enjoyed together. We will now refer to the provisions in the lease to see whether the parties intended that the furniture, fixtures and the building shall all be enjoyed together. Clause 1 of the lessee's covenant, in our opinion, puts the matter beyond doubt and it is as follows:—

> 1. (a) To use the demised premises and the said furniture and fixtures for the purpose of running hotel, boarding and lodging house, restaurant, confectionary and such other ancillary businesses as are usually or otherwise can be conveniently carried on with the said business in the said premises such as providing show-cases show-windows, newspaper stall, dancing and other exhibition of arts, meeting rooms etc., and not for any other purpose without the previous permission in writing of the Lessors.

It is clear from this clause that the building and the fixtures and furniture were to be used for one purpose, namely, for the purpose of running a hotel with them all together. Again cl. 1(h) of the lessee's covenant provided that the lessee is not to remove any article or thing from the premises except for the purposes of and in the course of the hotel business which latter would be for effecting repairs to them or for replacing them where it was the duty of the lessee to do so under the lease. We think, therefore, that the lease clearly establishes that it was the intention of the parties to it that the furniture and fixture and the building should be enjoyed all together and not one separately from the other.

Before we conclude we think we should refer to two other covenants. First, there is a lessor's

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covenant No. II (b) to renew the lease of the demised premises which term, it may be conceded, means the building only, for a further term of six years. This clause says nothing about the renewal of any lease in respect of furniture or fixtures. Likewise, cl. III(2) provides that if the demised premises, that is to say, the building, be destroyed or damaged by fire it shall be the option of the lessee to determine the lease and in any event the rent shall be suspended until the premises shall again be rendered fit for occupation and use. Here also there is no mention of the furniture. It was said on behalf of the respondent that these two clauses indicate that the building and the furniture were being treated separately and therefore the lettings of them were not inseparable. We are unable to accept this contention. As regards renewal of the lease of the building, there is cl. (II)d making substantially a similar provision in respect of the furniture and fixtures. It requires the lessor to provide at all times during the continuance of the lease and the renewal thereof, the furniture and fixtures mentioned in the lease. Therefore, though the renewal clause in cl. II(b) does not mention the lease of furniture or fixtures being renewed, cl. II(d) makes it incumbent on the lessor to supply and maintain them during the renewed term of the lease of the building. Clause II(d) would also cover a case where by fire the furniture was destroyed. In such a case the lessee could under that clause require the lessor to provide and if necessary to replace, the destroyed furniture. To the same effect is cl. I(e) which says that the major repair to or replacement of the furniture, shall be made by the lessor. Such repair or replacement may, of course, be necessitated in a case where the furniture or fixtures are damaged by fire. We, therefore, think that the clauses in the lease on which the respondent relies do not indicate that the letting of the building was separable from the letting of the furniture and fixtures. We think that the lease satisfies all the conditions for the applicability of s. 12(4) and is covered by it.

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In the result we answer the question framed thus: The rent from the building will be computed separately from the income from the furniture and fixtures and in the case of rent from the building the appellant will be entitled to the allowances mentioned in sub-sec. (4) of s. 12 and in the case of income from the furniture and fixtures, to those mentioned in sub-s. (3), and that no part of the income can be assessed under s. 9 or under s. 10. The judgment of the High Court is set aside. The appellant will be entitled to the costs here and below.

Appeal allowed.

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December 6

BURN AND COMPANY LTD.

v.

ITS WORKMEN

(P.B. GAJENDRAGADKAR AND K.C. DAS GUPTA, JJ.)

Industrial Dispute—Bonus—Rehabilitation charges—Assessment on insufficient evidence, if binding—Salaries, rates and taxes for previous years—If proper expenses for year in question—Auditor's findings—If binding on Tribunal—Development rebate statutory reserve—Money paid into—If expenditure on revenue account—Provident Fund, contribution—If can be added to net profit for calculating gross profits—Preference & ordinary —Dividend rate.

Dispute arose between the company and its workmen over the profit bonus for the year 1960. The company was prepared to pay bonus at 3½ months' wages, but the workmen demanded more. Applying the principles laid down by this Court, the Tribunal worked out, the net available surplus after making deductions for income-tax return on working capital and rehabilitation charges from the gross profit. It appears that the Tribunal calculated the annual rehabilitation charge mainly on the basis of what had been decided on the question of rehabilitation charge in the bonus dispute in a previous year. The evidence adduced by the company, in the present Reference, on the question of rehabilitation was rejected by the Tribunal. In calculating the gross profits the