(1979) 10 MAD CK 0011

Madras High Court

Case No: Tax Cases No''s. 22 and 23 of 1976 (Reference No. 3 of 1976)

Commissioner of Income Tax (Central)		APPELLANT
	Vs	
Express Newspapers Ltd.		RESPONDENT

Date of Decision: Oct. 30, 1979

Acts Referred:

- Income Tax Act, 1961 - Section 2(24), 24, 24(1), 36, 36(1)

Citation: (1980) 15 CTR 383 : (1980) 124 ITR 117

Hon'ble Judges: Sethuraman, J; Balasubrahmanyan, J

Bench: Division Bench

Advocate: A.N. Rangaswamy and Nalini Chidambaram, for the Appellant; K.R. Ramamani, for the Respondent

Judgement

Sethuraman, J.
This is a common reference, u/s 256(1) of the I.T. Act, 1961, of questions referred at the instance of the Commissioner of

Income Tax as well as the assessee for the assessment years 1963-64 and 1964-65. We shall first deal with the question referred at the instance

of the Commissioner of Income Tax, which runs as follows:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to the deduction of interest

on mortgage once under the head '' Property '' and again under the head '' Business '' for the assessment years 1963-64 and 1964-65 ?

2. The assessee is running a well known newspaper in English, ""The Indian Express "", and other vernacular dailies and periodicals having its

headquarters at Madras and branches at Bombay, Delhi and Madurai. It owns a building called "" Bosotto Building "" in Madras and another

building called "" Newspaper House "" in Bombay. There was an equitable mortgage of these two properties in favour of the United Commercial

Bank Ltd. and the Regional Provident Fund Commissioner, Madras, as security for loans taken from these institutions. The assessee paid interest

of Rs. 2,32,499 for the year 1963-64 and Rs. 2,20,293 for the year 1964-65 to the two mortgagees. In the computation of the property income

assessed in the hands of the assessee, the interest paid to these two mortgagees was allowed as deduction u/s 24(1)(iii) of the Act. The assessee

claimed, in addition, these two identical amounts as deduction u/s 36(1)(iii) of the Act in the computation of its business income. The ITO

negatived the claim u/s 36(1)(iii) on the ground, that when Section 24 spoke of payment of interest on mortgage as one of the specific items of

deduction, in computing the income from property, the allowance exhausted itself and that it did not survive for consideration as interest paid on

borrowed monies under any other section.

3. The AAC confirmed the disallowance under the said provision. On further appeal, the Tribunal held that the chargeable income of the assessee

fell under two heads, viz., "" Property income "" and "" Income from business "", that in computing the property income all the statutory deductions

provided u/s 24 had to be allowed, that similarly in computing the business income, all the statutory deductions provided u/s 36 had to be allowed

and that since the assessee fulfilled all the conditions laid down in the respective provisions, the interest paid on the equitable mortgages had to be

allowed as deduction in computing the income from the "" property "" and also the income from "" business "". The Commissioner, feeling aggrieved by

this order, has brought the matter on reference raising the question as extracted above.

4. Section 24 of the I.T. Act, so far as it is material, ran as follows :

Income chargeable under the head '' Income from house property '' shall, subject to the provisions of Sub-section (2), be computed after making

the following deductions, namely :--...

(iii) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge.

5. The above clause was omitted by Section 30 and the Third Schedule of the Finance Act, 1968, with effect from 1st April, 1969. As the

assessment years under consideration fall prior to 1st April, 1969, the provisions would be applicable to the present case .

6. Section 36, in so far as it is material, runs as follows ;

The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred

to in Section 28--...

(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession..... .

7. There is an Explanation to Clause (iii). But that is not material for our purpose.

8. In the present case, there is a finding of the AAC, about which there is no dispute, running as follows :

It is also not disputed that the monies borrowed by mortgaging these properties were also used by the appellants in the business of publishers of

newspapers and periodicals.

9. The only question that calls for our determination in the present case is whether the assesses is eligible for the allowance u/s 36(1)(iii) of the Act

even after the same amount was taken into account in computing the property income u/s 24(1)(iii).

10. Section 4 provides for the levy of Income Tax in respect of the total income of the previous year of every person. The expression ""total income

is denned as meaning the total income referred to in Section 5 computed in the manner laid down in the Act. Chapter IV deals with the

computation of total income, and Section 14, which is the very first provision in that Chapter, is as follows :

Save as otherwise provided by this Act, all income shall, for the purposes of charge of Income Tax and computation of total income, be classified

under the following heads of income :--

A. Salaries.

B. Interest on securities.

C. Income from house property.

D. Profits and gains of business or profession.

E. Capital gains.

F. Income from other sources.

11. This provision is substantially similar to Section 6 of the Indian I.T. Act, 1922.

12. In the United Commercial Bank Ltd. Vs. Commissioner of Income Tax, West Bengal, , the assessee, a bank, derived income from interest on

securities. It claimed that in the computation of its profits it was entitled to set off the carried over loss from the previous year against the profits of

the year of assessment u/s 24(2) of the 1922 Act. The interest on securities was liable to be assessed u/s 8 of the 1922 Act. However, the

assessee claimed that because it was a bank, and had acquired the securities in the course of its business, the income from the securities was liable

to be assessed under the head ""Business"". The Supreme Court rejected this contention. In doing so, it observed at page 695 as follows :

So every item of income, whatever its source, would fall under one particular head and for the purpose of computing the income for charging of

Income Tax the particular section dealing with that head will have to be looked at. The various sources of income, profits and gains have been so

classified that the items falling under those heads become chargeable under sections 7 to 12 according as they are income of which the source is ''

salaries '', '' interest on securities '', '' property '', '' business, profession or vocation '', '' other sources '' or '' capital gains ''. Looked at thus the

contention of counsel for the revenue that under the scheme of the Act and on a true construction of these relevant sections '' interest on securities ''

by whomsoever and for whatever purpose held has to be taxed u/s 8 and under no other section is well founded and must be sustained.

13. Again, at page 702, the legal position is reiterated as follows :

Thus, on a true construction of the various sections of the Act, the income of an assessee is one and the various sections 7 to 12 are modes in

which the statute directs that Income Tax is to be levied and these sections are mutually exclusive. The head of income of which the source is ''

interest on securities '', has its characteristics for Income Tax purposes and falls under the specific head covered by Section 8 of the Act, and

where an item falls specifically under one head it has to be charged under that head and no other. This interpretation follows from the words used

in sections 6, 8 and 10 which must be read so as to give effect to the contrast between '' income, profits and gains '' chargeable under the head ''

interest on securities '' and '' income, profits and gains '' chargeable under the head '' business ''. Thus, on this construction the various heads of ''

income, profits and gains '' must be held to be mutually exclusive, each head being specific to cover the item arising from a particular source.

14. In East India Housing and Land Development Trust Ltd. Vs. Commissioner of Income Tax, West Bengal, , the Supreme Court again referred

to the classification of income under distinct heads u/s 6 of the 1922 Act and pointed out as follows (headnote):

Income Tax is undoubtedly levied on the total taxable income of the taxpayer and the tax levied is a single tax on aggregate taxable receipts from

all the sources ; it is not a collection of taxes separately levied on distinct heads of income. But the distinct heads specified in Section 6 of the

Income Tax Act, indicating the sources are mutually exclusive and income derived from different sources falling under specific heads has to be

computed for the purpose of taxation in the manner provided by the appropriate section. If the income from a source falls within a specific head set

out in Section 6, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head.

15. In both these cases, the Supreme Court referred with approval to the decision of the House of Lords in Fry v. Salisbury House Estate Ltd,

[1930] 15 TC 266. It is unnecessary to refer to the other decisions on the point which have all been considered in Commissioner of Income Tax

Vs. Central Studios (P.) Ltd., , a decision of this court. From these pronouncements of the Supreme Court, it is clear that the source or heads of

income set out in Section 14 are mutually exclusive and that the income derived from the different heads has to be computed for the purpose of

taxation in the manner provided by the appropriate section or sections.

16. In Fry v. Salisbury House Estate Ltd. [1930] 15 TC 266 the question was whether a company occupying a large block of buildings let out to

tenants was liable to be assessed under Schedule D of the U.K. Act with reference to the income in excess over what was already assessed under

Schedule A. As pointed out by Lord Atkin at page 318, the scheme of the Income Tax Act is, and always has been, to provide for the taxation of

specific properties under Schedules appropriate to them and under a general Schedule D to provide for the taxation of income not dealt with

specifically. Schedule A provides for the taxation of income derived from property in land ; B for income derived from the occupation of land ; C

for income derived from Government securities ; E for income derived from employment in public service. At page 319, it was stated as follows :

Moreover, the dominance of each Schedule A, B, C and E over its own subject matter is confirmed by reference to the Sections and Rules which

respectively regulate them in the Act of 1842. They afford a complete code for each class of income, dealing with allowances and exemptions, with

the mode of assessment, and with the officials whose duty it is to make the assessments.

17. In that case it was held that after the assessment under Schedule A there was no possibility for any assessment of any surplus unassessed under

Schedule A, under Schedule D. It is in this context that the House of Lords referred to the cardinal proposition that the Income Tax was one tax,

the Schedules being merely the different means of collecting it, and that there were not as many taxes as there were Schedules.

18. This principle that each Schedule was ""a complete code was reiterated in Mitchell and Edon v. Ross [1961] 40 TC 11 . In that case, the

assessee was a radiologist. He was also having private practice. As a radiologist, he was attached to a hospital run by the State. He was assessed

under Schedule E in respect of the work done as a radiologist attached to a State hospital and under Schedule D in respect of professional fees

received as a private practitioner. Schedule E allowed expenses which were wholly and exclusively and necessarily incurred in the performance of

his office, while Schedule D was more liberal in the matter of allowances of expenditure. The assessee claimed that over and above what was

allowed as expenditure under Schedule E, he should get the deduction for the amounts expended by him under Schedule D. The Commissioners

found that the assessee exercised the profession of consultant radiologist, his part-time hospital appointment being a necessary part of the exercise

of that profession by him or being merely incidental thereto notwithstanding that a great deal of time was taken up by the part-time appointment.

The Chancery Division rejected the assessee''s claim for the allowance under Schedule D in excess of what had been allowed under Schedule E.

The Court of Appeal reversed this decision. The matter thereafter reached the House of Lords. A point urged before the Chancery Division and

before the Court of Appeal was whether the assessee was holding an office or employment of profit so as to fall within Schedule E. Both the

courts negatived this contention. It was held that the assessee was holding an office or employment of profit when he worked in the State hospital

as consultant radiologist and that he was taxable under Schedule E on the income therefrom. In spite of this conclusion, the claim for the deduction

of the excess or the balance of the amount over what was allowed under Schedule E was accepted by the Court of Appeal. Lord Evershed M.R.

referred to Section 137(a) which provided that no sum shall be deducted in respect of any expenses not being money wholly and exclusively laid

out or expended for the purpose of the provisions and observed at page 45 as follows :

It was, and was necessarily, of the essence of the argument of the Crown that, having regard to the present context of the paragraph, the word ''

profession '' must be limited so as to be confined to that '' profession '' or part of the profession, the profits or gains arising from which are taxable

under Schedule D. In my judgment, the language of the paragraph is too clear and unambiguous to admit of such a limitation in a case such as the

present, where, according to the findings of the Commissioners, the taxpayer''s calling for '' job in life'', that is, his '' profession '' is the single

profession of a consultant radiologist. If that is in truth his profession, as has been found and as we must, in my view, clearly hold, then sums in fact

wholly and exclusively expended for the purposes of that profession are deductible in his Schedule D assessment, and none the less so because

they may have been attributable to his hospital appointment and cannot, wholly or partly, be allowed in the assessment of the emoluments of that

appointment under Schedule E.

19. Pearcc L.J. at page 47 observed as follows :

In the infrequent cases where an office is found to be a necessary part of the exercise of a profession and to be merely incidental to it, I see

nothing absurd in treating the expenses of the office as part of the expenses of the profession.

20. As a matter of interpretation, Pearce L.J. observed at page 48 as follows :

It is clear that this particular problem was not in the mind of the draftsman of the relevant Sections. No doubt it never occurred to him that a

taxpayer carrying on the profession of a consultant radiologist, whose hospital appointment was a necessary part of his profession and was in fact

inextricably mixed up with it, would be divided by theoretical binary fission into two halves having unequal rights to expenses laid out in the exercise

of that profession.

21. Harman L.J. also pointed out at page 51 as follows :

It is the object of the Crown, therefore, to split the doctor in two and to treat him as if he was in the enjoyment of two sorts of profit, one arising

under Schedule D and one under Schedule E, to oblige him to make two returns, and to attribute to each activity the expenses exclusively incurred

in the course of it.

22. This unanimous pronouncement of the Court of Appeal was reversed unanimously by the House of Lords. Before the House of Lords the

assessee conceded that an appointment under the National Health Service, to such a post as that held by him, fell within Schedule E and that an

assessment must accordingly be made under that Schedule. In the light of this concession, the only question that arose for the consideration of the

House of Lords was whether expenses incurred in earning the profits or gains which were assessable under Schedule E were, so far as they were

riot allowed in that assessment, deductible for the purposes of the assessment under Schedule D. After referring to Fry v. Salisbury House Estate

Ltd. [1930] 15 TC 266, Viscount Simonds pointed out at page 58 that it was conclusive authority for the proposition that the scheme of the I.T.

Acts demanded that each source of profit should be assessed under the appropriate Schedule, and in accordance with the rules applicable to that

schedule alone.

23. Lord Radcliffe, in his speech reported at page 61, stated :

Before you can assess a profit to tax you must be sure that you have properly identified its source or other description according to the correct

schedule : but, once you have done that, it is obligatory that it should be charged, if at all, under that Schedule and strictly in accordance with the

Rules that are there laid down for assessments under it. It is a necessary consequence of this conception that the sources of profit in the different

Schedules are mutually exclusive.

24. The other members of the House were also of the same view. The result was that the assessee lost his claim for allowance of the expenses in

excess of what had been allowed under Schedule E.

25. One point of interest of this decision is the statement of Lord Cohen, that, though Fry v. Salisbury House Estate Ltd. [1930] 15 TC 266 dealt

with what profits or gains should be brought into charge to tax, the same principle would be applicable to a case where the question was what

deductions are to be allowed. In other words, both for the purposes of considering whether any particular receipt falls under any particular

Schedule, so also for the purposes of considering the deductions to be allowed in computing the said income, the Schedule should be taken to be

mutually exclusive. As the decision in Fry v. Salisbury House Estate Ltd. [1930] 15 TC 266 has been approved and adopted by the Supreme

Court in construing the parallel provision of the I.T. Act in India, the result would be that for the purpose of computation of receipts as well as

expenditure (as in Mitchell''s case [1961] 40 TC 11 the relevant heads of "" income "" would be mutually exclusive and the respective provisions

would be separate codes in themselves. We would have to consider the allowability of the expenditure in the light of the respective provisions

dealing with the distinct heads of income.

26. It would be relevant at this stage to refer to a recent pronouncement of the House of Lords on the general concept of income, in Lord

Chetwode v. IRC [1977] 1 All ER 638 . At all material times, the taxpayer was ordinarily resident in the United Kingdom. He created a settlement

and appointed an entity called ""Trust Corporation of Bahamas Ltd."" as trustee of the settlement. The trustee held the trust fund on trust to pay the

income thereof to the taxpayer for life, with remainder to his issue. The Trust Corporation acquired the entire share capital of the company called

Attleborough Investment Co. Ltd."", incorporated in Bahamas, That company used its assets to acquire securities in the United States.

Attleborough Investment Co. Ltd. received dividends from the United States'' securities and incurred, in relation to those securities, certain

management expenses of a revenue nature. Section 412 of the U.K. Act provided that the taxpayer was liable to be charged on the income as if

the said income had been received in the United Kingdom. If the income had been received in the United Kingdom, there would be no deduction

for the management expenses. The assessee, however, claimed that even in construing what the dividends were, it was necessary to give the

deduction for the management expenses. In dealing with this contention, Lord Wilberforce observed at page 641 as follows :

It is notorious that there is not and never has been any definition of income in the U. K. tax code. What, as income, is chargeable with Income Tax

is left to be determined according to particular heads of charge under the Schedules.

27. Reference was made to the speech of Viscount Radcliffe in IRC v. Frere [1965] AC 402, in which it was stated :

Income that is assessed to tax is neither measured by expenditure nor is it the residual income that lies after expenditure of an income nature. It is

not the savings of income. In principle, it is gross income as reduced for the purposes of assessment by such deductions only as are actually

specified in the tax code or are granted by way of reliefs, usually in the form of fixed sums or proportions.

28. On the above question, Lord Wilberforce again pointed out that the general principle was that the ""income"", i.e., what was received was taxed

under the Act and that there could be no computation, by reference to any ""general principles"". On this aspect, he observed at page [1977] 1 AH

ER 642 as follows :

The alternative--the only one that I can see--is to compute the ''income'' by reference to '' general principles ''. One can express this variously, by

invoking a kind of '' common law '' income, which it could be claimed involves, in general understanding, a ''net'' sum after deducting expenses, or

by invoking accepted principles of commercial accounting, which may lead though somewhat uncertainly in the same direction. My Lords, I cannot

accept either of these. I can find no principle on which to decide in relation to investment income whether, for taxation purposes, any deductions

ought to be made, and if so, what those deductions ought to be. There is no common law, or common sense, or common practice in such a matter.

By contrast with such general conceptions used in the code as income (versus capital) and trade, which the courts are called on to interpret on

general principles and analogy, deductions are a statutory matter and the question is what the tax code allows.....If it is true that there is no equity

about a tax, it is equally true that there is no common law of deductions--either they are authorised or they are not, and in this case they are not.

29. At page 645, Lord Viscount Dilhorne stated:

Income is an ordinary word in the English language and unless the context otherwise requires, it should be given its ordinary natural meaning in a

statute,

30. Thus, there are two principles to be borne in mind. Though there is a definition of the word "" income "" in Section 2(24), it is only inclusive and

not exhaustive. It includes whatever is income construed in its natural or ordinary sense. There are also artificial categories added to that income.

But barring those artificial categories, the natural concept would determine the quality of income. It is in this sense that the word "" profits "" is

understood in its natural and proper sense, that is in a sense which no commercial man would misunderstand. See Gresham Life Assurance Society

v. Styles [1892] 3 TC 185 . It is also in this sense that under the Indian law it is stated that profits to be assessed are the real profits and that they

must be ascertained on ordinary principles of commercial trading and commercial accounting : See Commissioner of Income Tax, Bombay City I

Vs. Shoorji Vallabhdas and Co., and Calcutta Company Ltd. Vs. The Commissioner of Income Tax, West Bengal, and the other cases cited at

pages 340 and 341 of Kanga and Palkhivala''s The Law and Parctice of Income Tax, 7th Edn., under footnotes 19 and 20. In certain contexts, it

would be necessary to take income as meaning commercial or real income. Where the context shows that the gross income is to be taxed, there

can be no deduction of any amount therefrom. Parliament is free to define income in its own way and tax it, and so long as there is nothing

unconstitutional about such a definition, the will of the Legislature would have to prevail. Parliament can also regulate the deductions to be allowed

in the computation under the respective heads. The net income after the deductions under the respective heads would be the statutory income. The

provisions governing each head being mutually exclusive, the respective groups of provisions being separate codes in themselves, the provisions

would have to be applied as they are, without reading into them, what are called, common law concepts.

31. If these principles are borne in mind, then it would be difficult to accept the submission of the learned counsel for the Commissioner that there

could be no double deduction of any expenditure. It is true that the courts have devised a rule of interpretation that the same income cannot be

taxed twice in the same hands. However, even in the I.T. Act, this concept is eroded or given the go-by by taxing the registered firm as well as the

partners on the same income, of course by taking the firm as a statutory entity for the purpose of taxation. It cannot be denied that Parliament may,

in conceivable cases, in the plenitude of its powers, seek to tax income twice over if it chooses, subject to any constitutional limitations. The rule of

interpretation against double taxation will not avail in such a case. Similarly, Parliament is free to provide for deductions or for none, and if it grants

certain statutory allowances, the authorities administering the law cannot seek to deny the deduction allowable under the statute, by resorting to any

maxim that just as there can be no double taxation of income in the same hands, similarly there can be no double deduction of the same amount

under different provisions. Acceptance of such submission would run counter to the mutual exclusiveness of the respective groups of provisions

dealing with the heads of income. We did have considerable reservations--at any rate one of us--in accepting the proposition that the assessee is

entitled to the deduction of the same amount u/s 36(1)(iii), which had already been allowed u/s 24(1)(iii). However, the logical effect of keeping

two distinct groups of provisions as mutually exclusive and requiring computation of the respective heads under the particular group of provisions

as if the group is a code by itself, is to show that we have only to look to the particular group of provisions in arriving at the income liable to be

taxed under that head. In doing so, it would be irrelevant, at any rate as far as the statute goes, to consider whether the assessee had obtained any

deduction for the same expenditure under a different head.

32. Even in this Act, wherever it was considered that the assessee should not have the benefit of any such double deduction, appropriate provision

has been made therefor. For instance, the group of provisions dealing with interest on securities is Sections 18 to 21. Section 19(i) provides for

deduction of any reasonable amount expended by the assessee for the purpose of realising such interest, and Section 19(ii) provides for deduction

of any interest payable on moneys borrowed for the purpose of investment in the securities by the assessee. In the case of a banking company, a

special provision is made in Section 20, and it envisages deduction of the admissible expenses falling under Sections 30, 31, 36 and 37, in the

same proportion as the gross receipts from interest on securities chargeable to Income Tax bore to the gross receipts of the banking company from

all sources which were included in the profit and loss account of the company. This proportionate amount was to be taken to be the sum

reasonably expended for the purpose referred to in Clause (i) of Section 19. Similarly, the amount to be regarded as interest payable on moneys

borrowed for investment of the securities was to be the proportionate amount of interest payable on all monies borrowed, For the purpose of

working out these proportions, the gross receipts from interest on securities and the gross receipts from all sources are to be taken into account. In

Sub-section (2) of Section 20 it is provided specifically that the expenses deducted under Sub-section (1) of Section 20 should not again form part

of the deductions admissible under Sections 30 to 37 for the purpose of computing the income of the banking company under the head ""Business"".

Section 40(d) also enacted that in the case of a banking company, the amounts which had been allowed as deduction in computing its income

chargeable to Income Tax under the head ""Interest on securities"", should not be deducted in computing the income chargeable under the head

Business"". Section 38 provides for cases where a part of any premises is used as dwelling house by the assessee or any building, machinery, plant

or furniture is not exclusively used for the purposes of the business. In such a case, there has to be deduction only of a proportionate part of the

expenses relating to the premises, or the machinery or the plant, as the case may be. Section 80A deals with the deduction in the case of the

categories of income dealt with under Chap. VI-A. It is specifically provided that the aggregate amount of the deductions under the said chapter

should not exceed the gross total income of the assessee. Thus, wherever Parliament considered that it was necessary to make a provision against

any double deduction or to restrict the deduction in any manner, it did so in appropriate words. There is no such provision with reference to the

matter before us.

33. Our attention was drawn to a passage occurring at pages 513 and 514 of Kanga and Palkhivala''s The Law and Practice of Income Tax, 7th

Edn., in which the learned authors have stated that on general principles an expense once allowed as a deduction under one head could not

possibly be allowed over again and that the express provision in Section 20(2) was due to the over-anxiety of the draftsman to make the provision

beyond doubt. But as pointed out earlier, the logical effect of the principle of mutual exclusion of the respective heads of income and dealing with

the different groups of provisions pertaining to the respective heads of income as complete codes in themselves would be to cut at the propriety of

importing into the provisions any common law aspect of prohibition of double deduction.

34. The case of Mitchell and Edon v. Ross [1961] 40 TC 11 did not deal with any question like the one before us. In that case, to the extent the

expenditure had been incurred in appointing the assessee to the public office as a consultative radiologist, there could be no question of its being

deducted as any expenditure wholly and exclusively laid out for the purpose of carrying on the profession. The assessee was deriving income under

two heads, one under Schedule D as a private practitioner and the other under Schedule E as an employee, and what was not allowable as

deduction under Schedule E could not be the subject of deduction under Schedule D, the Schedules being mutually exclusive. The effect of the

finding that there was a kind of single activity when he acted as consultative radiologist and also when he carried on his private practice could not

blur the distinctive features associated with the assessment under the respective heads. We are not concerned here with any amount disallowed

under the head being claimed as deduction under another head so as to apply this decision.

35. Learned counsel for the Commissioner relied on the decision in the COMMISSIONER OF Income Tax, WEST BENGAL Vs. NAWN

ESTATES PRIVATE LTD., . In this case, the assessee-company owned a building. It had given it as security for an overdraft from a bank to an

associated concern. With reference to the building, it was taxable u/s 9 of the 1922 Act. Section 9 of that Act as also the corresponding provision

of the 1961 Act permitted only one-half of the municipal taxes paid in respect of the building as deduction in computing the property income. The

assessee, however, claimed that it was deriving income by way of guarantee commission in respect of the overdraft granted to the associated

concern by the bank and that the balance of the municipal tax not allowed under the head ""Property"" should be allowed as deduction as against the

guarantee commission. This claim was negatived by the Calcutta High Court. In doing so, the learned judges applied the principle of the decision in

Mitchell v. Ross [1961] 40 TC 11 . This is not a case where an expenditure to the extent not allowable under the head "" Property "" is sought to be

claimed as deduction under the head ""Business "". This is a case where the assessee asks us to apply the respective groups of provisions without

any pre-disposition based on an allowance under one group of provisions in considering the claim under another group of provisions.

36. As indicated earlier, the position appears to be somewhat curious that the assessee is getting the benefit of deduction twice over. If such a

claim cannot be resisted on the basis of any provision of the statute it is not for us to deny the claim of the assessee on the basis of any judicial

concept against double deduction. We must accept, as inevitable, the imperatives of the statutory code of deduction. There, however, seems to be

a silver lining in prospect for the department owing to later day changes in the Act. Section 24(1)(iii) has disappeared from the statute book with

effect from 1st April, 1969. This might mean that the assessee cannot thereafter possibly put forward the same dual claims for the years thereafter.

37. We consider that the question referred to us is not happily worded and does not really bring out the controversy between the parties. We

would, therefore, reframe the question as follows :

Whether, on the facts and in the circumstances of the case, the assessee is entitled to the deduction of the interest paid on the equitable mortgages

u/s 36(1)(iii) of the Act, having obtained a rightful deduction of the same amount u/s 24(1)(iii) of the Act as it stood at the relevant time ?

38. This question is answered in the affirmative and in favour of the assessee.

39. We now turn to the reference made at the instance of the assessee. The following are the questions referred :

(1) Whether, on the facts and in the circumstances, the Tribunal was right in law in holding that the interest of Rs. 16,600 and Rs. 17,596 were

income liable to be assessed for assessment years 1963-64 and 1964-65 ?

(2) Whether the Tribunal was right in law in holding that the assessee was not entitled to a deduction of Rs. 32,245 being a portion of the amount

of municipal taxes disallowed for the assessment year 1964-65 ? and

(3) Whether the Tribunal was right in law in holding that since the sum of Rs. 3,39,000 was not dividend declared by the company in its general

meeting, Explanation 3 was not attracted and that the reduction in the rebate made under Sub-clause (c) of Clause (1) of the second proviso of

Paragraph D, Part II, to the First Schedule to the Finance Act, 1964, was perfectly legal and justified ?

40. We shall take each of these questions separately and consider them.

41. A substantial sum was due from one Jhajharia and a sum of Rs. 16,500 was due from him as interest for the assessment year 1963-64 and Rs.

17,596 for the assessment year 1964-65. The interest amounts were debited to Jhajharia''s account. But instead of taking credit for the

corresponding amount in the interest account, the assessee credited the said amount to an account called ""interest suspense account"" on the ground

that the recovery of the principal and interest from Jhajharia was doubtful and that the interest did not accrue to the assessee. The ITO and the

AAC found that the assessee has been following consistently the mercantile system of accounting, and that since the interest due from Jhajharia had

been debited as against the party in the books of account, relevant interest amounts were liable to be assessed in the respective years. The AAC

further held that the question whether the recovery of the principal and interest was recoverable was not relevant for considering the taxability of

the interest income. When the matter reached the Tribunal, the assessee contended that it had filed a suit against Jhajharia on 22nd March, 1963,

and that since the awarding of the interest from the date of suit to the date of decree and from the date of decree to date of payment was in the

discretion of the court, there was no accrual of interest income from the date of filing of the suit on 22nd March, 1963. The Tribunal found that the

loan of Jhajharia was on mortgage and held that Section 34 of the CPC applied only to the payment of money and that it did not apply where the

suit was for the enforcement of mortgage. It, therefore, confirmed the assessment of these two amounts. It is this part of the assessment that is now

challenged by the reference of the first question set out above.

42. It is not in dispute that the assessee is maintaining the accounts on mercantile basis. It is only on the basis of this system of accounting that the

assessee debited the interest due from Jhajharia in his account. By merely keeping it in the interest suspense account, the assessee cannot get over

the liability to tax. As the Tribunal rightly pointed out, the interest in mortgage suits is determined by Order 34, and not by Section 34 : See AIR

1927 1 (Privy Council) However, in passing the personal decree, the court would be governed by Section 34 : See Firm Daulat Ram Vidya

Parkash v. Sodhi Gurbaksh Singh AIR 1949 East Punj 213. We have no idea as to what is the rate of interest charged in the contract with

Jhajharia so as to consider the question whether the interest claimed was exorbitant or unreasonable so as to justify intervention by court. In these

circumstances, the assessee''s claim as if no interest accrued could not have been accepted by the Tribunal. The first question has, therefore, to be

answered against the assessee.

43. The second question arises on the following facts: The assessee constructed a building in Delhi. Portions of the building were found to be in

excess of its business requirements, and were let out. The total municipal tax paid by the assessee for the entire property was Rs. 1,32,978, It was

found that the assessee was occupying 50% of the space available in the building, the balance being having been let out. The ITO allocated 50% of

the municipal taxes, i.e., Rs. 64,489, to the portions let out and allocated the remaining 50% to business. Out of Rs. 64,489 allocated to the

portions let out, 50% thereof, viz., Rs. 32,245, was allowed in computing the income from ""property"". The other half of Rs. 64,489 was fully

allowed as deduction as against the business income. The AAC held that since the I.T. Act allowed only-one half of the municipal taxes as a

deduction in the computation of the property income, the assessee could not claim the balance in computing the business income. The Tribunal also

on further appeal rejected the assessee''s claim on the ground that the permissible deduction u/s 23(1) had already been allowed and that the

balance could not be claimed u/s 30 of the Act. It is this part of the order of the Tribunal that has given rise to the second question set out above.

44. In our opinion, the Tribunal was right in rejecting the assessee''s claim for the allowance of the balance of the municipal taxes paid with

reference to the portion of the property let out to the tenants. Section 38(1)(b) is clearly against the allowance claimed by the assessee. The order

of the Tribunal is also consistent with the decision of the Calcutta High Court in COMMISSIONER OF Income Tax, WEST BENGAL Vs.

NAWN ESTATES PRIVATE LTD., . The present claim is also against the principle of the decision in Mitchell v. Ross [1961] 40 TC 11 . The

second question is answered in the affirmative and against the assessee.

45. The third question arises on the following facts : The board of directors of the assessee-company at its meeting held on 6th. December, 1962,

declared an interim dividend payable on 16th January, 1963. For the assessment year 1963-64, the relevant previous year ended 31st December,

1962. In Paragraph D of Part II of the Finance Act, 1964, the company is liable to pay tax on the whole of the total income at the rate of 55%.

Rebates are admissible out of this 55%. But the amount of rebate is liable to be withdrawn in the case of companies declaring dividends. The

withdrawal of the rebate was at the rate of 7.5% of the amount of dividends declared. Expln. 3 to Part II stated that for the removal of doubts it

was declared that where any dividends were declared by the company before the commencement of the previous year and were distributed by it

during that year, no reduction in the rebate should be made under Sub-clause (c) of Clause (i) of the second proviso in respect of such dividends.

So, the result of this Explanation was that the withdrawal of rebate would have to be made in the year in which the dividend was declared and not

in the subsequent year in which it was paid.

46. The assessee claimed that this dividend declaration being made by the directors, it was a declaration of dividend by the company in the earlier

year and that the rebate could not be withdrawn at the rate of 7.5% on Rs. 3,39,000. The Tribunal rejected this contention and held that there was

a difference between the interim dividend declared by the directors and dividend declared by the company in the general meeting and that Expln. 3

to Part II of the Finance Act would apply only to the dividend declared by the company and not to the interim dividend declared by the directors.

Since the sum of Rs. 3,39,000 was not the dividend declared in the general meeting "", the "" reduction of the rebate "" was considered "" to be legal

and justified "". This part of the order has given rise to the third question referred at the instance of the assessee and extracted already. We find that

this part of the Tribunal''s order suffers from some misconceptions and obvious errors. As we discuss the principle applicable here we do not

proceed to describe the errors as such.

47. Learned counsel for the assessee would contend that the dividend declared in the earlier year was payable only in the next year and that the

interim dividend could not be taken into account in withdrawing the rebate. Reliance was placed on the decision of a learned single judge of the

Delhi High Court in Punjab National Bank Ltd. v. Union of India [1975] 45 Comp Cas 408. In that case on 16th July, 1969, the board of

directors of the Punjab National Bank passed a resolution declaring an interim dividend for the half year ending 31st June, 1969, in accordance

with the authority vested in the board under Article 84 of the articles of association. The interim dividend was payable to the shareholders borne in

the register as on 23rd August, 1969. On 19th July, 1969, an Ordinance was promulgated taking over the undertaking of this bank among others.

This Ordinance was considered by the Supreme Court to be invalid in certain respects in Rustom Cavasjee Cooper Vs. Union of India (UOI), . A

fresh ordinance promulgated was on 14th February, 1970, with retrospective effect. The contention of the shareholders of the bank was that on

16th July, 1969, there was an obligation on the Punjab National Bank to pay the interim dividend and that this obligation stood transferred to the

new entity that came into existence under the ordinance, which was subsequently enacted as an Act. The question that arose was whether the

interim dividend became a debt due from the nationalised bank or whether it was merely a pious obligation not enforceable in law. It was

contended by the transferee entity that the resolution of the board was nothing more than a declaration of the company and that it did not create an

enforceable obligation. It was held that the liability to pay the interim dividend was one of the liabilities taken over by the new entity. The claim of

the shareholders, however, failed, as there were no distributable profits for the year 1969 and the effect of the provision of the Banking Companies

(Acquisition and Transfer of Undertakings) Act, 1970, was a rescission of the resolution dated 16th July, 1969, and nothing could be paid to the

shareholders in violation of the statutory provision.

48. In this decision, a decision of the Supreme Court in J. Dalmia Vs. Commissioner of Income Tax, New Delhi, was referred to. In that case, the

Supreme Court pointed but that when a company declared a dividend on its shares a debt immediately became payable to each shareholder and

that the said rule was applicable only in the case of the dividends declared by the company in general meeting. The resolution of the board of

directors declaring an interim dividend did not, it was held, create a debt enforceable against the company, for it was always open to the directors

themselves to rescind the resolution before payment of the dividend. The fact that the articles of the company authorised the directors to declare an

interim dividend was held to make no difference to the true character of the right arising in favour of the members of the company on the exercise

by the board of directors of the power. This principle laid down by the Supreme Court was traced by the learned judge in Punjab National Bank

Ltd. v. Union of India [1915] 45 Comp Cas 408 (Delhi) to Halsbtiry''s Laws of England, 3rd Edn., Vol. 6, page 402.

49. The question whether the shareholder could take proceedings against the company for the purpose of realising the amount due as and by way

of an interim dividend declared by the directors has absolutely no relevance to the point now in issue. The company is ordinarily managed by the

board of directors. The company being an impersonal entity, has necessarily to act through human agency, i. e., the board of directors, subject to

the superintendence of the general body of shareholders.

50. Under the law, the board of directors are in charge of the company''s affairs. They are sometimes referred to as its agents. If the board of

directors had power under the articles of the company to declare an interim dividend, then they could exercise that power. They do so only on

behalf of the company. It may be that the shareholders did not acquire the corresponding right to enforce the obligation arising under the exercise

of this power. However, as far as the company is concerned, acting through its directors, it has declared dividends. What is relevant under the

provision is only the declaration of dividend. Whether the directors did so or the general body of shareholders exercised this power, the power has

been exercised only in the name of the company. The dividend would be a dividend declared by the company. This declaration would be subject

to the provisions of the Finance Act relating to withdrawal of the rebate. We do not agree that Explanation 3 is applicable only to the dividend

declared by the company in general meeting. The expression which occurs in the second proviso to Part II-B of the Finance Act is "" in the case of

a company referred to in Clause (i) or Clause (ii) or Clause (iii) of the preceding proviso..... which has declared or distributed to its shareholders

during the previous year any dividends...."" In the Explanation the corresponding words are "" where any dividends were declared by the company

before the commencement of the previous year "". So, in both the second proviso as well as in the Explanation, what is required to be looked into is

whether the company has declared any dividends. The second proviso uses also the expression "" distributed "". The result is that under the second

proviso, the rebate was liable to be withdrawn both in the year of declaration and in the year of distribution. The two contingencies of declaration

of distribution gave rise to the power to withdraw the rebate. This would be double taxation. However, the Explanation did away with any attempt

to withdraw the rebate both in the year of declaration and in the year of distribution if they fell in two different years. Under the Explanation the

withdrawal of the rebate could not be done in the year in which the dividends were distributed. The result is that the second proviso read with the

Explanation would stand in the way of the ITO withdrawing the rebate in the next year when the amount was paid. But in the year of declaration,

the rebate was liable to be withdrawn and that is not what has happened in the present case. Explanation 3 was attracted for this year, but there is

no liability to tax this year (1964-65). If the Tribunal was right in its construction of the Explanation, there could be no question of withdrawal of

rebate at all in any year, as there would be no declaration of dividends at all. The question is accordingly refrained as follows :

Whether, on the facts and in the circumstances of the case, the sum of Rs. 3,39,000 declared as dividends on 6th December, 1962, by the board

of directors, but payable only on 16th January, 1963, could be taken into account in withdrawing the rebate admissible under the first proviso to

the Finance Act of 1964 by reference to Sub-clause (c) of Clause (i) of the second proviso to the same Act read with Explanation 3 to the same

Act ?

51. The question as reframed is answered in the negative and in favour of the assessee. There will be no order as to costs.