

(1924) 12 AHC CK 0019**Allahabad High Court****Case No:** None

In Re: Chunni Lal Kalyan Das

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 18, 1924**Hon'ble Judges:** Walsh, J**Bench:** Single Bench**Final Decision:** Disposed Of**Judgement**

Walsh, J.

We have no hesitation in answering the question submitted to us in this case by the Commissioner of Income Tax in the statement of the case dated the 23rd of May, 1924, "are the profits or losses arising from wagering contracts to be taken into account in an assessment for Income Tax purposes", in the affirmative. There is no ground for saying that the profits arising from an illegal business are not taxable. There is not a word in the Act to suggest anything of the kind, arid it is a fallacy to say because the taxing authority levies from a person who is carrying on a profitable business, but an improper and illegal business, or profession, that therefore the authorities are countenancing such a profession. They are doing nothing of the kind. Their permission is not required and is not given, and cannot be withheld to a person who chooses to carry on an illegal business, but the tax upon the profit arising therefrom has to be paid in common with the tax paid by every honest trader. Section 6(4) provides the head of income chargeable in respect of business. The mere fact that the business is speculative, or even gaming and wagering within the meaning of that expression, does not make is any the Ies3 business. For example, supposing the question was one of profit made by a bookmaker, as to whose business there can be no doubt whatever that it is entirely gaming and wagering. Section 11 provides that the tax shall be payable under the head of professional earnings in respect of the profits of any vocation followed by the assessee. In the year 1886 the English Courts decided and the decision has never been called in question, that a bookmaker attending a race course was carrying on a

vocation; *Patridge v. Mallandaine* 56 L.J.Q. 251. Where both the words "business" and "vocation" are used, it may be appropriate to describe a book-maker's business as a vocation, but the greater includes the less, and it is clearly included in the word "business" in our opinion. The same view seems to have been taken in the text-books on the subject with regard to the vocation of a singer or prostitute, and the Calcutta High Court in the case of [Maharaja Birendra Kishore Manikya Bahadur Vs. Secretary of State for India in Council](#), held that illegal cesses were assessable to Income Tax. No doubt a burden is placed on the Income Tax Commissioner to discover how far losses returned by assessee may be genuine, or to what extent an assessee may have attempted to conceal gain, but that is what the Commissioner is there for. Although it is not strictly relevant, we may point out "that any other view would result in an enormous burden being placed upon the Income Tax authorities, namely of deciding in every single transaction, which appeared in the books of any as sessae in their jurisdiction to be of a speculative nature, whether it was a gaming transaction within the meaning of the Contract Act, and, therefore, against public policy. That question is an extremely difficult question to decide in many cases. A large number of merchants and other people carry on extensive business of a speculative nature, which is not hit by the section in the Contract Act with regard to gaming because although the transaction may result in differences, the legal effect of the contract may be to entitle the party to actual delivery. It is nonetheless speculative in character, and anybody concerned with the daily business of the Courts knows how difficult it is sometimes to ascertain whether a speculative transaction is really a gaming one or not. All such transactions in our opinion, are business, and the profits arising therefrom are taxable under the Act.

2. The assessee must have his costs in this case as certified not to exceed Rs. 200.