

(1976) 07 BOM CK 0033

Bombay High Court

Case No: Income-tax Reference No. 67 of 1966

N. Sirur and Co. Pvt.
Ltd.

APPELLANT

Vs

Commissioner of
Income Tax, Bombay
City-I

RESPONDENT

Date of Decision: July 9, 1976

Acts Referred:

- Income Tax Act, 1922 - Section 10(2)
- Income Tax Act, 1961 - Section 147, 263, 37

Citation: (1977) 109 ITR 432

Hon'ble Judges: R.M. Kantawala, C.J; V.D. Tulzapurkar, J

Bench: Division Bench

Advocate: F.N. Kaka, for the Appellant; R.J. Joshi, for the Respondent

Judgement

Kantawala, C.J.

At the instance of the assessee the following question has been referred to us for our determination by the Tribunal :

"Whether, on the facts and in the circumstances of the case, the payments made to Lady Chandavarkar by way of pension, etc., under clause 14 of the agreement were allowable as deduction u/s 10(2)(xv) of the Indian Income Tax Act, 1922, for 1959-60 to 1961-62 and section 37 of the Income Tax Act, 1961, for 1962-63 or on ordinary principles or commercial accounting ?"

2. This reference relates to four assessment years which are referred to in the question. For the assessment years 1959-60 and 1960-61 the assessments were reopened u/s 147 of the Income Tax Act, 1961, and the appeals which came before the Tribunal were after the reopened assessments were dealt with on appeal by the Appellate Assistant Commissioner. For the assessment years 1961-62 and 1962-63,

the Commissioner of Income Tax had passed orders u/s 33B of the Indian Income Tax Act, 1922, and section 263 of the Income Tax Act, 1961. The appeals before the Tribunal arose out of these orders and in all these years the common question that arose for consideration was whether the amounts paid to the widow of the managing director was allowable as a deduction.

3. Sir Vithal Narayan Chandavarkar was the managing director of the assessee-company which carried on business as the managing agents for some companies and also derived income from insurance agencies and interest on investments and advances. Sir Chandavarkar became the managing director of the assessee-company on March 23, 1937, and continued as such till his death on January 28, 1959. At the time of his death he was acting as managing director pursuant to an agreement dated April 18, 1957, between the assessee-company and himself. Under this agreement Sir Chandavarkar was appointed as managing director of the assessee-company for a period of five years commencing from April 1, 1957, determinable as provided in the agreement. It was one of the obligations of Sir Chandavarkar under the agreement to serve well and faithfully the assessee-company and use his utmost endeavours to promote the interests thereof. Under this agreement Sir Chandavarkar was to be paid salary at the rate of Rs. 5,375 per month as such managing director. He was also entitled to continue membership of the company's provident fund scheme and in addition thereto he was entitled to commission at the rate of two annas in the rupee on the net profits of the assessee-company. He was also entitled to be provided with a car and a monthly allowance of Rs. 300 towards the cost of running the car. He was also entitled to entertainment allowance as provided in the agreement. At the time when the agreement was entered into during his past services he had not enjoyed leave for 25 months and under the terms of this agreement he was entitled to enjoy the said 25 months' leave and also one month's leave for every completed year of service under this agreement. If such leave was not taken during the continuance of this agreement it was open to him to take such leave after the expiration or sooner determination of the said agreement and for the purpose of any such leave but not otherwise the agreement shall be deemed to be extended until the expiry such leave. Clause 13 of the agreement provided for termination of the agreement on either side by giving 12 calendar months' notice. Clause 14 of the agreement is as under :

"14. (i) In the event of the death of the managing director occurring during the currency of this agreement, the company shall pay to the widow of the managing director, if she be alive at the date of his death but not otherwise, the undermentioned sums in consideration of the long and faithful services rendered by the managing director to the company :

(a) A sum of Rs. 36,000.

(b) In addition to the above, one-half of the sum equivalent to two annas in the rupees of the net profits of the company for the completed financial year of the company immediately preceding the date of the death of the managing director; and such net profits shall be calculated in the manner laid down in clause 8 of this agreement.

(c) In addition to the sums specified in sub-clauses (a) and (b) above, a sum of Rs. 1,500 per month will be paid to the widow of the managing director so long as she shall be alive :

Provided that the company shall be at liberty to discontinue such monthly payment of Rs. 1,500 in the event of the company ceasing for any reason whatsoever to act as managing agents or secretaries and treasurers, of the Mysore Spg. & Mfg. Co. Ltd. Minerva Mills Ltd. and the Modern Mills Ltd. or any of them."

4. Sub-clause (ii) of clause 14 provided for payment of certain amounts therein mentioned to the heirs, executors and administrators of the managing director in the event of the wife of the managing director predeceasing him during the currency of the agreement.

5. During the year ended February 28, 1959, the assessee-company paid in accordance with clause 14 the sum of Rs. 45,458 to Lady Chandavarkar. In the other years, the company paid her pension at the rate of Rs. 1,500 per month. The amounts paid as pension, etc., were claimed as deduction in the respective years. For all these years the Income Tax Officer allowed the claim made by the assessee. For the assessment years 1961-62 and 1962-63 the Commissioner of Income Tax took up proceedings u/s 33B of the Indian Income Tax Act, 1922, and u/s 263 of the Income Tax Act, 1961, respectively, as in his view the Income Tax Officer had come to an erroneous conclusion prejudicial to the interest of the revenue. After giving the assessee the necessary opportunity he held that in accordance with the decision of the Calcutta High Court reported in [COMMISSIONER OF Income Tax, CALCUTTA Vs. ANDERSON WRIGHT LTD.](#), the amount paid to the widow as pension was not liable to be allowed as deduction u/s 10(2)(xv) of the Indian Income Tax Act, 1922, or under the corresponding provisions of the Income Tax Act, 1961. After the said order was passed by the Commissioner of Income Tax, the Income Tax Officer reopened the assessments for the years 1959-60 and 1960-61. He held that the amounts paid to the widow could not be said to have been paid out of consideration of commercial expediency and for legitimate purposes of the company and disallowed the same u/s 10(2)(xv) of the India Income Tax Act, 1922. In an appeal by the assessee the Appellate Assistant Commissioner confirmed the orders for the said two years under his common order dated April 26, 1965.

6. The assessee preferred an appeal to the Tribunal being aggrieved by the orders of the Commissioner of Income Tax and also of the Appellate Assistant Commissioner. Before the Tribunal it was contended on behalf of the assessee that

the decision of the Calcutta High Court in [COMMISSIONER OF Income Tax, CALCUTTA Vs. ANDERSON WRIGHT LTD.,](#) was erroneous and it was not binding on the Tribunal and it need not be followed. It was submitted that the payment was made to Lady Chandavarkar under the terms of the agreement for long and faithful services rendered by her husband. It was said that if pension paid to Sir Chandavarkar under such circumstances could and should be allowed as a deduction, there was no reason why a payment to his widow should not be allowed as a deduction, especially when the motive behind the payment was only the rendering of long and continuous services. On behalf of the revenue it was contended that there was no commercial consideration behind the payment, that the absence of a provision for payment of any pension to Sir Chandavarkar did by itself establish this proposition, that Lady Chandavarkar had not rendered any services to deserve the payment and that if the long and faithful services rendered by Sir Chandavarkar was to be considered as a justification for the payment, then the expenditure would be capital expenditure. On behalf of the revenue the decision of the Calcutta High Court in [COMMISSIONER OF Income Tax, CALCUTTA Vs. ANDERSON WRIGHT LTD.,](#) was also relied upon. The Tribunal by its order followed the decision of the Calcutta High Court in [COMMISSIONER OF Income Tax, CALCUTTA Vs. ANDERSON WRIGHT LTD.,](#). Even independently it also considered the question whether the payment was made out of consideration of commercial expediency. The Tribunal pointed out that except for a bare statement made by the counsel there was no evidence produced with a view to show that the services of Sir Chandavarkar would not have been available to the company but for this provision. The mere fact that the payment was justified under the terms of the agreement was not sufficient to show that it was motivated by commercial expediency. The Tribunal found that there was no evidence led with a view to show that commercial expediency required payment of a pension to Lady Chandavarkar who had rendered no services to the company. The Tribunal emphasised the fact that when pension was not contemplated for payment to Sir Chandavarkar after the period of the agreement, the whole idea behind the payment was only to make some extra commercial benefit to Lady Chandavarkar. Ultimately, the Tribunal came to the conclusion that the assessee had not established the necessary facts to show that there was commercial expediency in making the payment. The question above referred to arises from this order of the Tribunal.

7. Mr. Kaka, on behalf of the assessee, submitted that Sir Chandavarkar agreed to serve the assessee-company on the terms laid down in the agreement; that if all the terms therein laid down were not acceptable to the assessee-company then he might not have rendered his services as managing director. He further submitted that payment to Lady Chandavarkar was expressly mentioned to be in consideration of the long and faithful services rendered by Sir Chandavarkar to the assessee-company. In short, his submission was that when the payment is made pursuant to the agreement and in consideration of long and faithful services

rendered by Sir Chandavarkar it automatically follows that the payment is made out of commercial expediency and the expenditure thereunder is incurred wholly and exclusively for the purposes of business. Mr. Joshi, on the other hand, on behalf of the revenue, submitted that the Tribunal has found as a fact that the onus which lay upon the assessee to show that payment to Lady Chandavarkar was made out of consideration of commercial expediency has not been discharged. According to him the necessary and relevant records to establish such a contention were not brought on record by the assessee-company and the onus that lay upon the assessee has not been discharged. He submitted that but for the agreement itself no other evidence was led with a view to contend that the payment to Lady Chandavarkar was motivated by commercial expediency. The agreement by itself according to his submission was insufficient to come to this conclusion. He also emphasised the fact that the agreement did not contain any provision for payment of any pension or any other amount to Sir Chandavarkar in case he rendered services for the full duration of the agreement or to Lady Chandavarkar after his death after rendering such services. Under the agreement Lady Chandavarkar was likely to get the benefit under clause 14 of the agreement only if an unfortunate circumstance occurred, namely, that Sir Chandavarkar died during the pendency of the said agreement. The very fact that no benefit was contemplated either to Sir Chandavarkar or to Lady Chandavarkar in case he rendered services as managing director for the full duration of the agreement, showed that the remuneration payable to Lady Chandavarkar under clause 14 of the agreement cannot be regarded as motivated by commercial expediency. Section 10 of the Indian Income Tax Act, 1922, lays down how computation of the profits and gains of a business is to be done for the purpose of assessment of tax. Under sub-section (2) such profits or gains have to be computed after making the allowances set down seriatim in clauses (i) to (xiv). The legislature felt that there might be other expenses which ought in reason to be allowed although not specifically covered by the said items. Section 10(2)(xv) provides for the deduction of "any expenditure (not being an allowance of the nature described in any of the clauses (i) to (xiv) inclusive and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly or exclusively for the purposes of such business, profession or vocation".

8. To merit exemption under clause (xv) it is essential that the expenditure should not be in the nature of a capital one or personal expenses of the assessee. Very often it becomes extremely difficult to determine whether an expense incurred is capital or revenue in nature and many fine tests had been evolved from time to time to sift the matter. Once it is determined that the expenditure does not bear the characteristics of a capital expense or personal expenses of the assessee, the further question arises as to whether it is laid out or expended wholly or exclusively for the purpose of the assessee's business. In [ANDREW YULE and CO. LTD. Vs. COMMISSIONER OF Income Tax, CALCUTTA.](#), at page 65, the test to be applied in

such a case has been laid down as under :

""..... Has the expense been incurred with the sole object of furthering the trade or business interest of the assessee unalloyed or unmixed with any other consideration ?". If the expense is found to bear an element other than the trade or business interest of the assessee the expenditure is not an allowable one. To arrive at the conclusion that the expenditure was dictated solely by business consideration one has to consider the nature of the business, the way it is conducted and any likelihood of the business being adversely affected or its interest being promoted by the refusal or the incurring of the expenditure, as the case may be. When the assessee places all the facts and circumstances before the revenue authorities the latter must examine the same and must make up their minds as to whether the expenditure was necessitated or justified by commercial expediency. The ultimate finding that the expense is allowable u/s 10(2) (xv) is an inference of law to be deduced from the facts of the case. The question is a mixed one of law and fact."

9. The agreement dated April 18, 1957, whereunder Sir Chandavarkar was appointed as managing director for a period of five years commencing from April 1, 1957, laid down the various benefits to which he will be entitled if he acted as such managing director. It is also recited in the agreement that right from March 23, 1937, he had been working as managing director of the company. It is significant to notice that the agreement itself contains no provision whereby Sir Chandavarkar was to be given any benefit if he worked as such managing director for the full period of five years. Under clause 14 of the agreement payments are to be made to Lady Chandavarkar only if an unfortunate event like Sir Chandavarkar dying during the pendency of the agreement occurred. Such payment is sought to be justified under clause 14 of the agreement by using the words that such payment is to be made "in consideration of the long and faithful services rendered by the managing director to the company". It was sought to be urged by Mr. Kaka that, as such payment is to be made under the terms of the agreement, it should automatically be regarded as one being motivated by commercial expediency. However, our attention has not been invited to any decision which supports this omnibus contention. The question that has to be considered is whether payments of the various sums under this agreement to Lady Chandavarkar in consideration of long and faithful services rendered by Sir Chandavarkar to the company are to be regarded as payments out of commercial expediency, simply because such payments are to be made in the event of his death occurring during the currency of the agreement. In order to determine the question, we have to consider whether there was any likelihood of the business being adversely affected in case such payment was not made or whether there was any likelihood of the interest of the company being promoted by making such payment. No evidence whatsoever is led on behalf of the assessee to support the contention. The only document that has been relied upon is the agreement itself and no other evidence is produced. As we have stated above, one can understand if the object was to benefit Sir Chandavarkar after the period of

the agreement in view of his long and faithful services in the past so that other managing directors may think that such payment would be made to them and, therefore, could do their best to promote the interests of the business so as to make it very profitable, but in fact Sir Chandavarkar was not likely to get any benefit by way of pension or otherwise. The only benefit that has been given after the duration of the agreement was to avail of the leave if he had not enjoyed the same. If Sir Chandavarkar worked as the managing director throughout the duration of the agreement then even Lady Chandavarkar was not likely to be benefited by any amount. Thus, we are not satisfied that payment of pension at the rate of Rs. 1,500 per month for her lifetime to Lady Chandavarkar in case Sir Chandavarkar died during the pendency of the agreement is out of business consideration. There is no possibility of the business being adversely affected if such payment was not made nor is its interest likely to be promoted if the payment is made. It is common ground that it was only Sir Chandavarkar who had rendered very long and faithful services as managing director to the company. Thus, having regard to the test above laid down, it is not possible for us to accept the contention of Mr. Kaka that the provision for payment of Rs. 1,500 per month contained in the agreement was with the sole object of furthering the trade or business interest of the assessee unalloyed or unmixed with any other consideration.

10. Reference can be had to the decision in the case of *Alexander Howard & Co. Ltd. v. Bentley* [1948] 30 TC 334. In that case the assessee-company was formed in 1933, to take over a business carried on by Howard, who became governing director. In the discussions leading up to the formation of the company, the question of the sale, the remuneration to be paid to Howard and an annuity to be paid to his widow, were all discussed and decided at the same time. Howard originally demanded a salary of Pounds 3,000 per annum but later agreed to accept Pounds 2,000 per annum provided that an annuity was secured to his widow. The articles of association of the company and the service agreement entered into by Howard provided for the payment to his widow of an annuity of Pounds 1,000 per annum so long as his legal personal representatives held at least 10,000 shares. The directors later considered that the obligation to pay this annuity would be detrimental to the company if it wanted to dispose of its business, and in 1943 Howard surrendered all rights to the annuity in consideration of the payment to him by the company of Pounds 4,500. The question arose for consideration whether a sum of Pounds 4,500 was allowable as a deduction in computing its profits for Income Tax purposes. The Special Commissioners found against the company and their decision was upheld by Singleton J. The Special Commissioners found :

(1) the obligation undertaken by the company to pay the annuity was not part of the consideration for the purchase of Mr. Howard's business. To quote the exact words of the Commissioners "the sale agreement provides for a consideration which was a proper price based on the value of the assets as shown in a balance-sheet, and it does not refer to the annuity, which is provided for separately in the service

agreement"; (2) they accepted the evidence of Mr. Howard to the effect that during negotiations he had demanded a salary of Pounds 3,000 but had later agreed to reduce it to Pounds 2,000 provided the annuity was secured to his widow. The Special Commissioners, however, did not draw the inference therefrom that the annuity contract was part of the remuneration to Mr. Howard for his service as managing director; and (3) The Commissioners also found that the promised annuity could not be regarded as in any sense deferred remuneration and that it was more in the nature of an additional right appertaining to any shares which might be held by his personal representatives.

11. Singleton J. in his judgment at page 342, went on to observe :

"The way in which I look at the case is this. Mr. Alexander Charles Howard owned a business; he decided to hand that business over to a company upon terms as to remuneration for himself and his brothers as managing directors and upon terms as to dividend provided for in the agreement together with further terms as to commission, and one provision he wished to be made was a pension nor annuity for his widow in the event of his death; and to that terms his brothers agreed. The position, in my view, is different from the case of a company providing an annuity or pension for an employee, for the wife of Mr. Alexander Charles Howard had nothing whatever to do with the company. There were various reasons entering into the mind of Mr. Alexander Charles Howard as to why he wanted to provide for her in that way, but it cannot be said that in the event of the annuity becoming payable to her it would have been money wholly or exclusively laid out or expended for the purpose of trade."

12. In the present case there is no evidence produced on behalf of the assessee-company except the agreement for appointment of the managing director. In view of the various circumstances in relation to the agreement we have discussed above, there was no evidence even to show that but for the terms contained in clause 14 of the agreement Sir Chandavarkar was unwilling to be appointed or continued as a managing director. In that view of the matter it is not possible for us to accept the contention of Mr. Kaka and hold that the sum of Rs. 1,500 per month to be paid to Lady Chandavarkar was an expenditure incurred wholly or exclusively for the purpose of business.

13. Reference can be had to a decision of the Calcutta High Court in the case of [ANDREW YULE and CO. LTD. Vs. COMMISSIONER OF Income Tax, CALCUTTA.](#) . The head-note of the case precisely lays down the facts and the decision given by the court. The assessee in that case was a company which kept its accounts in the mercantile system and its accounting year was the calendar year. On March 26, 1950, C, the then chairman of the board of directors of the assessee, lost his life by the action of a riotous crowd while travelling otherwise than on the assessee's business. On June 5, 1950, the board of directors resolved to pay compensation to C's widow, feeling that if compensation was not paid there was the likelihood of

unfavourable criticism of the company and repercussion from their employees. Pending a decision as to the full amount of compensation, the board resolved to pay an interim payment of Rs. 1,20,000. At a further meeting of the directors held on January 22, 1951, the board referred to the earlier meeting and resolved to make a further and final payment of Rs. 2,00,000, which it considered fair and reasonable. It was stated that the company's auditors agreed with his view. The assessee claimed deduction of the sum of Rs. 2,00,000 as business expenditure for the calendar year 1950. The Income Tax Officer disallowed the payment of Rs. 2,00,000 on the ground that it was gratuitous. The Appellate Assistant Commissioner upheld the order of the Income Tax Officer and further held that the liability was not ascertained in the accounting year and was not allowable in the year 1950. On further appeal, the Appellate Tribunal held that having regard to the quantum of compensation as against the emoluments receivable by C, the amount paid as compensation was reasonable and based on commercial expediency alone, but as the liability for compensation was ascertained by and arose from the resolution dated January 22, 1961, it could not be allowed as an expense for the year 1950. On the application of the assessee the Tribunal referred the following question to the High Court : (i) Whether the sum of Rs. 2,00,000 was an expense admissible u/s 10(2)(xv) of the Income Tax Act, 1922; and (ii) if so, whether that sum could be treated as an expenditure of the calendar year 1960. The Calcutta High Court took the view that the question whether the sum of Rs. 2,00,000 was laid out or expended wholly or exclusively for the purposes of the assessee's business was a mixed question of law and fact and, therefore, the finding of the Appellate Tribunal on that question was open to review by the High Court on a reference. It further found on the facts that the payment of compensation to C's widow was not expense laid out wholly for the purposes of the assessee's business, as C's death had nothing to do with the object or purpose of the company. It also took the view that the sum of Rs. 2,00,000 could not be treated as an expenditure for the relevant calendar year 1950. It was in this case that the Calcutta High Court has laid down the test which we have referred to above. At page 70 [ANDREW YULE and CO. LTD. Vs. COMMISSIONER OF Income Tax, CALCUTTA,](#) it is observed :

"Speaking for myself I cannot hold that payment of compensation to the widow of Mr. Cameron on the facts of this case is an expense laid out wholly for the purposes of the assessee's business. The company certainly behaved very generously towards the widow of a person who had served it faithfully and efficiently for many years. His death in the circumstances attending it was a great tragedy. The loss of this valuable life certainly affected both the assessee and Mr. Cameron's dependents very seriously. It cannot be denied that the payment of the compensation was likely to engender a feeling in the minds of other servants of the assessee that the company would look after the dependents if anything untoward happened to them. However this may be, I fail to see how the payment can be said to be an expense incurred for the company's business. If Mr. Cameron had met his

death in the course of a travel for the purposes of the company's business, the more so if the conditions in the country were so unsettled at the time as would lead one to hold that Mr. Cameron was taking a risk in the interest of the company, reasonable compensation paid to his widow for the loss of his life might be a justifiable expense. Nothing of the kind however happened here. Mr. Cameron's death had nothing to do with the object or purpose of the company."

14. The ratio of this decision is clearly applicable to the facts of the present case. Under clause 14 of the agreement payment of compensation or pension to the widow is not dependent upon the death of Sir Chandavarkar taking place during the pendency of the agreement in the course of discharge of his duties for the company. Thus, having regard to the view taken by the Calcutta High Court, in this case it is quite apparent that payment of compensation to Lady Chandavarkar cannot be regarded as a justifiable expense admissible u/s 10(2)(xv).

15. The Tribunal while disposing of the appeal before it had relied upon the decision of the Calcutta High Court in the case of [COMMISSIONER OF Income Tax, CALCUTTA Vs. ANDERSON WRIGHT LTD.,](#) . In that case in 1948 a company entered into an agreement with its manager that the company would pay him a pension for life of Pounds 1,000 per annum in London from April 1, 1955, and in the event of his death provide a similar pension for his wife. By a deed of trust dated February 10, 1950, the company undertook to provide for such pension by paying annually the rupee equivalent of Pounds 2,546 13s. until 7 such annual payments were made to the trustees or until the manager's death earlier, and in pursuance of this agreement the company paid a sum of Rs. 33,955 in the year of account to the trustees. Under the agreement the manager was not entitled to the pension if he was dismissed. The question being whether this payment to the trustees was an expenditure allowable u/s 10(2)(xv) of the Income Tax Act, it was held that as the expenditure was not incurred to meet any actual existing liability but only amounted to setting apart of money for a contingent and future liability it was not allowable u/s 10(2)(xv). It was further held that the provision for payment of pension to the wife was not, in any event, an expenditure incurred for the purposes of the business and was not allowable. It may be stated that the last part of the finding in relation to payment to the wife which is put in an absolute form has been toned down later on in subsequent cases by the Calcutta High Court and it is laid down that whether the payment to the wife could be regarded as expenditure wholly and exclusively incurred for the purposes of the business will depend upon the facts and circumstances of each case.

16. Mr. Kaka on behalf of the assessee has relied upon two decisions of the Calcutta High Court in [CALCUTTA LANDING and SHIPPING CO. LTD. Vs. COMMISSIONER OF Income Tax, WEST BENGAL,](#) and in *Commissioner of Income Tax v. Indian Molasses Co. Private Ltd.* [1968] 67 ITR. In the first case the Calcutta High Court took the view that the expression "expenditure laid out or expended wholly and exclusively for the

purpose of such business" includes expenditure voluntarily incurred for commercial expediency and in order indirectly to facilitate business. It is immaterial if a third party benefits thereby. The expression "commercial expediency" is an expression of wide import and expenditure in commercial expediency includes such expenditure as a prudent man may incur for the purpose of business. Payment made to employees in the expectation of creating impetus or encouraging them to put in selfless work for the employer is a payment made out of commercial considerations and commercial expediency and has to be regarded as an expenditure incurred wholly and exclusively for the purpose of the business. In that case the board of directors of the assessee-company, whose employee was murdered while on the company's business, sanctioned payment of pension to his wife on graded rates for a number of years as also passage money and railway fare for her and children to proceed to England as well as other sums. The assessee's claim for deducting the payments u/s 10(2)(xv) was negated by the department and the Tribunal. On a reference to the High Court u/s 66(2) at the instance of the assessee, the Calcutta High Court held that the payment of pension to the wife of the deceased employee was an expenditure solely laid out for the purpose of the business and hence allowable.

17. In the other case, in order to provide a pension to its managing director and his wife, the assessee-company paid to the trustees in 1948 a sum of Rs. 1,09,643, and, thereafter, undertook to pay annually a sum of Rs. 4,364 for six consecutive years. The assessee-company's claim for deduction of these annual payments in the respective years was negated by the department and this view was upheld by the Supreme Court in [COMMISSIONER OF Income Tax, WEST BENGAL I Vs. INDIAN MOLASSES CO. P. LTD.](#), on the ground that there was only a setting apart of funds for payment of pension and no actual expenditure. Thereafter, in 1954, the assessee-company in order to grant an enhanced pension, paid a further sum of Rs. 47,607 to the trustees. The managing director died in May, 1955, and the assessee-company claimed deduction of Rs. 1,83,434, the total sum paid to the trustees, in its assessment for the accounting year ended December 31, 1965, though no debit of this sum was made in the accounts of the company or in the balance-sheet for that year. The departmental authorities negated this claim, but the Tribunal held that, in view of the decision of the Supreme Court in the assessee's earlier case [Indian Molasses Co. \(Private\) Ltd. Vs. Commissioner of Income Tax, West Bengal](#), the payment because an effective disbursement in the accounting year on the death of the managing director, and, hence, was admissible as a deduction in computing the assessee's business profits of that year. On a reference at the instance of the Commissioner the High Court held that the sum of Rs. 1,83,434 was an expenditure effectively laid out or expended during the accounting year in which the managing director died and was also a revenue expenditure within the meaning of section 10(2)(xv). It is in this case that the Calcutta High Court has toned down the finding that was given in [COMMISSIONER OF](#)

[Income Tax, CALCUTTA Vs. ANDERSON WRIGHT LTD.,](#), which we have referred to above. In this case it is held that it cannot be laid down as an abstract and invariable rule of law that expenditure for payment of pension to the widow of an employee cannot be business expenditure.

18. One thing is clear from the decisions which have been referred to at the Bar that if payment to the widow was by reason of the death of the employee while discharging his duties in the course of the company's business, such payment of reasonable compensation to the widow for the loss of his pension may be a reasonable expenditure but there is nothing in any one of the cases cited at the Bar to show that payment to the widow by way of pension for her life simply because the managing director died during the tenure of the agreement, is an expenditure laid out wholly and exclusively for the purpose of business. This would be more so in a case where the managing director himself who had served faithfully for the entire duration of the agreement was not likely to get anything more nor was his widow in case of his death after the duration of the agreement entitled to any payment. Thus, in our opinion, the payment of Rs. 1,500 per month to Lady Chandavarkar under the provisions of clause 14 of the agreement cannot be regarded as expenditure laid out wholly and exclusively for the purpose of business.

19. For the same reasons the other amounts payable to Lady Chandavarkar under the provisions of clause 14 of the agreement cannot be regarded as permissible deductions either u/s 10 (2)(xv) of the Indian Income Tax Act, 1922, or u/s 37 of the Income Tax Act, 1961.

20. Accordingly, our answer to the question referred to us is in the negative. The assessee shall pay the costs of the revenue.