Metal Box Company of India Ltd.

Vs

Their Workmen

Civil Appeals Nos. 2138 and 2196 of 1966

(J. M. Shelat, C. A. Vaidialingam JJ)

20.08.1968

JUDGMENT

SHELAT J. –

By a reference dated 17th September, 1965, the Government of West Bengal referred to the Sixth Industrial Tribunal the following question for adjudication :

> "Whether computation of bonus in respect of the accounting year ending 31st March, 1965, payable to the employees is in accordance with the Payment of Bonus Ordinance ? If not, what should be the quantum of bonus for the employees ?"

The dispute between the appellant company and its employees arose in the following manner. The company's accounting year is from 1st April to 31st March of the following year and its books of account are maintained on the mercantile system of accounting. The company computed the amount of bonus payable to its employees and the Payment of Bonus Ordinance which was promulgated on 29th May, 1965, and furnished on 5th July, 1965, copies of its computation to the three respondent unions representing its employees. The available surplus and allocable surplus, according to this computation, were Rs. 49.96 lakhs and Rs. 29.98 lakhs respectively. On this basis the company declared the bonus at 13.28 per cent. of the total wages paid to the employees. According to this computation, the gross profits came to Rs. 2,70,64,234. Out of this the company deducted the following amounts allowed under the Ordinance, namely :

Rs. 28,64,000 as depreciation admissible under the Income-tax Act, 1961;

Rs. 9,00,000 as development rebate;

Rs. 1,36,33,000 as direct taxes;

Rs. 1,50,000 as dividend on preference shares;

Rs. 23,37,000 as interest at 8.5 per cent. on paid up capital;

Rs. 17,80,358 as interest at 6 per cent. on reserves.

Thus the available surplus came to Rs. 49,96,876, sixty per cent. of which namely, Rs. 29,98,125 was the allocable surplus. The employees disputed the computation contending that the company had wrongly reduced the gross profits and the available surplus and that the following amounts should be added back, viz., provision for gratuity, Rs. 8,38,605, and provision for the doubtful

debts, Rs. 50,000. They also challenged deduction of interest on the reserves on the ground that the capital reserve of Rs. 57,00,151 was artificially arrived at by a mere revaluation of the company's fixed assets as on 1st April, 1956. They also disputed the figures of depreciation, development rebate and direct taxes deducted by the company while working out the available surplus.

Parliament in the meantime passed the Payment of Bonus Act, 1965, which by section 40 repealed the Ordinance but which saved all things done and action taken under the Ordinance as having been done or taken under the Act. On 27th September, 1965, the company paid, subject to the result of the reference, bonus at the rate of 13.28 per cent. of the wages including dearness allowance to its employees.

In this award the Tribunal allowed Rs. 23,48,226 instead of Rs. 28,82,261 claimed by the company as depreciation. Similarly it allowed only Rs. 7 lakhs instead of Rs. 8,87,371 claimed by the company as development rebate. As regards Rs. 18.38 lakhs claimed under the head of gratuity, the Tribunal held that that amount was not liable to be added back. But it held that the company could deduct only Rs. 10 lakhs and odd as also Rs. 1.31 lakhs and Rs. 87,000 and odd actually paid during the year to employees who retired during that year and added back the balance of Rs. 6 lakhs to the gross profits. Except for these amounts, the Tribunal found the available surplus and the allocable surplus to be 54 lakhs and odd and Rs. 32.42 lakhs respectively, and directed payment of bonus at 14.55 per cent. of the total wages. Both the unions and the company obtained special leave and filed appeals challenging the correctness of the award.

In the profit and loss account for the year 1964-65, the company had shown Rs. 17 crores and odd as gross receipts and out of that amount had deducted diverse amounts as expenditure including the sum of Rs. 23,48,226 by way of depreciation. In its computation filed before the Tribunal, the company, however, claimed depreciation at Rs. 28.82 lakhs worked out by its auditors in accordance with the provisions of the Income-tax Act, 1961. The unions disputed this amount on the ground (1) that there was no evidence that the amount of depreciation came to Rs. 28.82 lakhs and (2) that since the profit and loss account mentioned Rs. 23.48 lakhs as depreciation, the company could claim that amount only. The Tribunal accepted the unions' contention stating that there was nothing to show that the company through mistake had shown Rs. 23.48 lakhs as depreciation in the profit and loss account and that subsequently on finding out the mistake it had revised in its computation depreciation at Rs. 28.82 lakhs. The Tribunal,

Under section 205(1) of the Companies Act, 1956, no dividend can be declared or paid by a company for any financial year except out of profits arrived at after providing for depreciation in accordance with sub-section (2). Sub-section (2) provides different methods of calculating depreciation, one of which is to calculate it by dividing 95 per cent. of the original cost of each of the depreciable assets by a specified period in respect of each such asset. The depreciation deducted in the expenditure column in the P. & L. account, therefore, was the depreciation worked out under section 205(2) of the Companies Act. Under section 205(2) of the Bonus Act, gross profits mean gross profits calculated under section 4. In the case of companies other than a banking company, gross profits under section 4 are to be computed other than a banking company, gross profits under section 4 are to be computed in the manner laid down in the 2nd Schedule. That Schedule requires adding back to the net profit shown in the P. & L.

The fact that the company, while preparing its P. & L. account and its computation (exhibit 6) produced before the Tribunal, had kept the distinction between depreciation worked out under the Companies Act and the one to be worked under the Income-tax Act for the purpose of the Bonus

Act is clear from the evidence of its witness, Verma. It was for this reason that Rs. 23 lakhs and odd were shown as depreciation in the P. & L. account while in the computation (exhibit 6) the company claimed Rs. 28.64 lakhs as depreciation. There was, therefore, no question of the company having made any mistake in calculating depreciation in the P. & L. account or its trying to amend that mistake as erroneously thought by the Tribunal. The only mistake, the company in claimed it had made, was that the true figure of depreciation deductible under section 6(a) of the Bonus Act was Rs. 28.82 lakhs and not Rs. 28.64 lakhs. The company produced as certificate of its auditors(exhibit U-2) dated 20th December, 1965, where in the aud

> "So far as books and records mentioned in the first part of exhibit U- 2 are concerned, the books and records relating to the branches were produced before the representatives of the auditors' firm there, and the other books and records mentioned in the second part of the certificate are concerned, they are different records. The informations and explanations given to the auditors were given verbally after consulting our books of accounts."

These books and records not having been produced or disclosed, there was obviously no opportunity to the unions to verify either of the two figures, viz., Rs. 28.64 lakhs or Rs. 28.82 lakhs. It is true that Verma said that the calculation shown to the auditors could be produced but he qualified the offer by saying that that would be done if the Tribunal required.

Since the company claimed the deduction of depreciation, it stands to reason that the burden of proof that the depreciation claimed by it was the correct amount in accordance with the Income-tax Act was on the company and that burden the company must discharge once its figure were challenged. But it was contended that once the company produced its auditors' certificate that should be sufficient and must be accepted and that the Tribunal should not insist either on the auditors proving their certificate or on the company proving depreciation on each and every item of depreciable asset. Such an enquiry before the Tribunal, it was argued, would be a harassing and prolonged enquiry, not contemplated in industrial adjudication and, therefore, the Tribunal ought to have accepted as correct Rs. 28.82 lakhs certified by the auditors. Under section 23 of the Act the presumption of accuracy is allowed only to the balance sheet and the P. & L. account of companies. No such presumption is provided for by the Act to audi

> "The importance of this question (the procedure to be followed for ascertaining facts) in the context of fixing the amount required for rehabilitation cannot be overestimated. The item of rehabilitation is generally a major item that enters into the calculations for the purpose of ascertaining the surplus and, therefore, the amount of bonus. So, there would be a tendency on the part of the employer to inflate this figure and the employees to deflate it. The accounts of a company are prepared by the management. The balance-sheet and the profit and loss account are also prepared by the company's officers. The labour has no concern in it. When so much depends on this item, the principles of equity and justice demand that an industrial court should insist upon a clear proof of the same and also give a real and adequate opportunity to the labour to canvass the correctness of the particulars furnished by the employer."

The necessity of proper proof of the correctness of statements in the balance-sheet was repeated in Petlad Turkey Red Dye Works Ltd. v. Dyes & Chemical Workers' Union. And P. & L. accounts would equally apply to statements made in the auditors' certificates prepared on the instructions and

information supplied to them by employers. Mere production of auditors' certificate, especially when it is not admitted by labour, not by the auditor but by the employees of the company who admitted not to have been concerned with its preparation or the calculations on which it was based would not be conclusive. We do not say that in such a case the Tribunal should insist upon proof of depreciation on each and every item of the assets. It should however, insist on some reasonable proof of the correctness of the figure of depreciation claimed by the employer either by examining the auditors who calculated and certified it or by some other proper proof. Depreciation, in some cases, would be of a large amount affecting materi

An error of the same type seems to have been committed by the Tribunal in the matter of development rebate. It allowed Rs. 7 lakhs as development rebate instead of Rs. 8.87 lakhs claimed by the company. Under section 33 of the Income-tax Act, an assessee is allowed by way of development rebate a certain percentage of the cost of machinery or plant depending on the date of its installation. Section 34(3) of that Act provides, however, that the said allowance shall not be given unless an amount equal to 75 per cent of the development rebate to be allowed is debited to the P. & L. account of the relevant previous year and credited to a reverse account to be utilised by the assessee in the 8 years next following for the purpose of the undertaking. Accordingly, the company propertied Rs. 7 lakhs to the development rebate reverse as it was bound to do if it wanted to claim development rebate. The company took the round figure of Rs. 9 lakhs instead of Rs. 8.87 lakhs for development rebate and credited Rs. 7 lakhs, ll into was in mixing up the development rebate reserve to which the company had to appropriate Rs. 7 lakhs in P. & L. account and the development rebate of Rs. 8.87 lakhs allowable to it under section 6 of the Act. Mr. Chari for the unions fairly conceded that he could not challenge this position. There was, therefore, no justification for the Tribunal to allow Rs. 7 lakhs only instead of Rs. 8.87 lakhs as development rebate.

The next question relates to a sum of Rs. 18.38 lakhs, being the estimated liability under two gratuity schemes framed by the company, which was deducted from the gross receipts in the P. & L. account. In 1960 the company introduced a gratuity scheme for its employees other than its officers. Under that scheme gratuity was payable on the termination of an employee's service either due to retirement, death or termination of service, the amount of gratuity payable being dependent on his wages at that time and the number of years of service put in by him. The company had worked out on an actuarial valuation its estimated liability and made provision for such liability not all at once but spread over a number of years. Thus in 1959-60, 1960-61 and 1961-62 the company allocated towards this liability Rs. 5 lakhs, Rs. 10 lakhs and 5 lakhs respectively from out of the profits, debiting these amounts in the profit and loss account. In all Rs. 40 lakhs have so far been provided in the aforesaid manner against the sai

The contention of Mr. Chari was two-fold : (1) that the amount which could be debited was that which was actually paid and the company was not entitled to debit in the P. & L. account any amount worked out by it as estimated liability. The Tribunal, therefore, was not justified in allowing the company to debit any such amount and that the Tribunal arbitrarily fixed Rs. 10 lakhs and allowed wrongly that amount to be deducted; and (2) even if such estimated liability was debitable, the appropriation amounted to a reserve and under the Bonus Act such a reserve had to be added back while working out the gross profits under the 2nd Schedule to the Act.

Two questions, therefore, arise : (1) whether it is legitimate in such a scheme of gratuity to estimate the liability on an actuarial valuation and deduct such estimated liability in the P. & L. account while working out its net profits; and (2) if it is, whether such appropriation amounts to a reserve or a

provision. If it is a reserve, obviously the amount has to be added back while computing the gross profits. But in that event the company would be entitled to interest thereon at 6 per cent. per annum under Item 1 (iii) of the Third Schedule to the Act. In the case of an assessee maintaining his accounts on mercantile system, a liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy. It is not as if such deduction is permissible only in case of amounts actually expended or paid. Just as receipts, though not actual receipts but

In Southern Railway of Peru Ltd. v. Owen, the House of Lords was concerned with the problem similar to the one before us and, therefore, the observations made there would be of assistance. An English company operating a railway in Peru was, under the laws of that country, liable to pay its employees compensation on the termination of their services either by dismissal or on termination of service by notice or on such termination by death or efflux of contractual time. The compensation so paid was an amount equivalent to one month's salary at the rate in force at the date of determination for every year of service. The company claimed to be entitled to charge against each year's receipts the cost of making provision for the retirement payments which would ultimately be thrown on it, calculating the sum required to be paid to each employee if he retired without forfeiture at the close of the year and setting aside the aggregate of what was required in so far as the year had contributed to the aggregate. The Ho

> "It is plain that the question of what is or is not profit or gain must primarily be one of fact, and of fact to be ascertained by the test applied in ordinary business. Questions of law can only arise when (as was not the case here) some express statutory direction applied and excludes ordinary commercial practice, or where, by reason of its being impracticable to ascertain the facts sufficiently, some presumption has to be invoked to fill the gap."

Holding that there was no such statutory rule prohibiting the commercial practice of providing for such an estimated liability for each year, he compared the two systems and observed at pages 351-352 as follows :-

> "Now the question is, how ought the effects of this statutory scheme to be reflected in the appellant's accounts of the annual profits arising from its trade ? One way, which is certainly the simplest one, is to let the payments made fall entirely as expenses of the year of payment and ignore any question of making provision for the maturing obligation during the years of service that precede it..... It has one considerable advantage; no element of estimate or valuation appears in the profit assessment and nothing is charged to profits except the actual cash outgoing. But, when this has been conceded, I think that there is the very serious disadvantage to be set against the cash basis that it affords a comparatively inefficient method of arriving at the true profits of any one year. The retirement benefit is not, obviously paid to obtain the services given in the year of retirement. The incidents of retirement payments must be variable from year to year, and they may inordinately depress the profits of one

Another method is that which the appellant is seeking to establish with regard to its assessments for the four years 1947-1950.... What the appellant claims the right to do is to charge against each year's receipts the cost of making provision for the retirement payments that will ultimately be thrown upon it by virtue of the fact that it has had the benefit of its employee's services during the year. As

a corollary it will not make any charge to cover the actual payments made in the year in respect of retirement benefits. Only by such a method, it is said, can it bring against the receipts of the year the true cost of the services that it has used to earn those receipts. Generally speaking, this must, I think, be true. For, whereas it is possible that any one of its many employees may forfeit his benefits and so never require a payments, the substantial facts of the situation are that when the company has paid every salary and wage that is due for current remuneration of the year it has not by any means who

Agreeing with the company's claim he observed that provision for retirement payments would give an accurate reflection of the true cost of earning the year's receipts than merely charging against them the year's payment to employees who retired in the year.

That there is no rule against providing for any such contingent liability but on the contrary such a provision is permissible can be seen from the form of balance-sheet in Schedule VI to the Companies Act, 1956, where provision for taxation, dividends, provident fund schemes, staff benefit scheme and other items for which a company is contingently liable are to be treated as current liabilities and, therefore, debitable against the gross receipts. Schedule VI, Part 2, lays down the requirements of profit and loss account and clause 3(ix) of it provides that a profit and loss account shall set out amongst other things the aggregate of amounts set aside or provisions made for meeting specific liabilities, contingencies or commitments. But the contention was that though Schedule VI to the Companies Act may permit a provision for contingent liabilities, the Income-tax Act, 1961, does not, for, under section 36(v), the only deduction from profits and gains permissible is of a sum paid by an assessee as an employe

The next question is whether the amount so provided is a provision or a reserve. The distinction between a provision and a reserve is in commercial accountancy fairly well known. Provisions made against anticipated losses and contingencies are charges against profits and, therefore, to be taken into account against gross receipts in the P. & L. account and the balance sheet. On the other hand, reserves are appropriations of profits, the assets by which they are represented being retained to form part of the capital employed in the business. Provisions are usually shown in the balance-sheet by way of deductions from the assets in respect of which they are made whereas general reserves and reserve funds are shown as part of the proprietor's interest (see Spicer and Pegler's Book-keeping and Accounts, 15th edition, page 42). An amount set aside out of profits and other surpluses, not designed to meet a liability, contingency, commitment or diminution in value of assets known to exist at the date of the balance-

Under section 23 of the Bonus Act, there is a presumption of the genuineness of the P. & L. account produced by the company unless it is challenged in the manner provided therein. The company's case was that the estimated liability under the gratuity schemes in respect of the accounting year was ascertainable with fair accuracy under the actuarial valuation and Rs. 16 lakhs which it took into account while making its P. & L. account was the present discounted liability. This position does not seem to have been disputed before the Tribunal. The principal contention urged against that figure was not that the estimated liability was not ascertainable or as in the case of Southern Railway of Peru, that it did not represent the present discounted value, but that the Bonus Act permits only the deduction of the amount actually paid during the accounting year. This was also the principal contention of Mr. Chari before us Mr. Ramamurthi, appearing for one of the interveners, argued that, though it may be possible to

The Tribunal in allowing Rs. 10 lakhs out of the estimated Rs. 16 lakhs impliedly accepted the

principle canvassed by the company. It, however, allowed only Rs. 10 lakhs because it thought it to be excessive as in some prior years the company had deducted Rs. 5 lakhs. But this was not done on the ground that the estimate of Rs. 16 lakhs was not warranted on any valuation. In our view, in the absence of any challenge as to the correctness of the valuation and in the absence of any challenge that such liability cannot be estimated on any fair standard, the Tribunal ought to have allowed the whole of Rs. 16 lakhs to be deducted while arriving at the net profits in the P. & L. account.

Turning now to the appeal filed by the employees two questions, besides those already disposed of, were raised : one dealing with interest on capital reserve and the other relating to the amount of direct taxes to be deducted from the gross profits.

As regards the first question, Verma's evidence was that the company had revalued its fixed assets in 1956 and credited the difference of Rs. 57 lakhs between its cost and the value fixed on such revaluation, to the capital reserve. The Tribunal accepted the valuation as bona fide and allowed interest on the said reserve at 6 per cent. in accordance with section 6(d) and clause 1 (iii) of the 3rd Schedule. Mr. Chari's contention was that the revaluation by the directors in 1956 was fictitious; that the difference of Rs. 57 lakhs was a mere book adjustment and did not add to take wealth of the company and, though that amount was transferred to the capital reserve, it was not as if any additional amount became available for the company's business and, therefore, no interest was permissible on such an artificial amount. At first blush it would seem as if there is some force in this contention, for it would be possible for a company to deflate its gross profits by fictitiously revaluing its fixed assets at regul

There remains now the question regarding computation of direct taxes. Section 6(c) of the Act provides :

> "subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year..."

Section 7, inter alia, provides :

> "For the purpose of clause (c) of section 6, any direct tax payable by the employer for any accounting year shall, subject to the following provision, be calculated at the rates applicable to the income of the employer for that year,....."

The company claimed a deduction from the gross profits of Rs. 145 lakhs as direct taxes. It had made provision, however, for Rs. 130 lakhs for direct taxes in the P. & L. account. In its computation it had made a provision for Rs. 136 lakhs. At the stage of the evidence and arguments it contended, however that the proper amount would be Rs. 145 lakhs. It claimed that direct taxes are to be worked out under section 6(c) on the gross profits worked out under section 4 less the prior charges allowable under section 6, namely, depreciation and development rebate, but without deducting from such balance the bonus payable by the company in the particular accounting year. The Tribunal accepted the contention and allowed Rs. 145 lakhs as direct taxes to be deducted under section 6(c).

This conclusion has been seriously disputed by the unions. Mr. Chari's argument was that the Act lays down its statutory formula for working out available surplus and allocable surplus, that the deduction from gross profits allowable are those permissible under the act, namely, depreciation

admissible in accordance with the provisions of section 32(1) of the Income-tax Act, the development rebate and, subject to the provisions of section 7 of the Act, the amount of direct taxes which the employer "is liable to pay" for the accounting year in respect of "his income, profits and gains during that year". Mr. Chari laid stress on the words "is liable to pay" and in "respect of his income, gains and profits during that year" and argued that inasmuch as clause (c) incorporates the language of the Income-tax Act, it contemplates that the employer is entitled to deduct his actual tax liability. Such liability, therefore, is to be worked out in accordance with the provisions of the Income-tax Act and other relevant A xes.

Before we attempt to resolve this controversy, it will be worth our while to recount the principle consistently followed before the passing of this Act, not with a view to interpret section 6(c), but to ascertain whether Parliament has made a departure from that principle and laid down a new procedure on which direct taxes are to be computed. Mr. Chari's contention was that the Bonus Act is drafted on a clean slate giving a go-bye to the earlier principle of working out bonus, and, therefore, we must proceed on the footing of the language used in section 6(c). At first sight it would appear that the language of clause (c) lends support to his contention. But acceptance of that contention would mean incorporating into the Bonus Act but the elaborate and complicated provisions of not only the Income-tax Act but other Acts levying direct taxes and throwing a considerable burden on Tribunals, least equipped with working out the provisions of those Acts, entailing inevitably prolonged enquiries. Therefore, we mus

It appears that some Industrial Tribunal, while calculating the available surplus under the Full Bench Formula, used to work out notionally the amount of bonus which they though would be determined. The result of this procedure was that the amount of tax so worked out was proportionately less. Deprecating this procedure, Gajendragadkar J. (as he then was), observed in Associated Cement Companies Ltd. v. Their Workmen, as follows :

> "Logically it is only after all the prior charges have been determined and deducted from the gross profits that available surplus can be ascertained; and it is only after the available surplus is ascertained that the question of awarding bonus can be considered. Some tribunals seem to work out notionally the amount of bonus which they think can be awarded and place that amount higher up in the process of making calculations before the income tax payable is determined..... We wish to make it clear that this procedure should not be followed."

In Crompton Parkinson (Works) Private Ltd. v. Its Workmen, disapproval of the said procedure was once again voiced, Das C.J. observing that such a procedure is certainly not giving effect to the bonus formula "but amounts to ad hoc determination which may vary according to the length of the proverbial foot of the Lord Chancellor and is bound to lead to chaos and industrial unrest". In Workmen of India Explosives Ltd. v. India Explosives Ltd., the labour relied on the report of the directors which was to the effect that no income-tax was payable on the year's result and a total of Rs. 62.39 lakhs made up of income-tax and development rebate was being carried forward. On this report it was argued that no deduction should be made for income-tax. Negativing the contention it was held that in the application of the Full Bench Formula the deduction of income-tax is notional, the gross profits are arrived at by adding back certain items to the net profits and then the gross profits are reduced by making certain not

The question is whether the concept of notional tax liability which was adopted so long was laid aside by Parliament when it enacted section 6(c) and section 7 and replaced the concept of actual tax

liability. To answer this question we must examine the scheme of the Act and Schedule II. Broadly speaking, it can be safely said that Parliament has retained the main outlines of the Full Bench Formula in the Act. It maintained, for instance, the accounting year as the unit, the principle that the employer, and where it happens to be a company, the company and its shareholders and labour are each entitled as contributories to the profits to a share therein, the deduction of certain prior charges, the concept of gross profits, etc., which were the features of the formula. The principal change it introduced was the statutory formula of minimum and maximum bonus and the corollary flowing therefrom of "set on" and "set off" and the doing away of rehabilitation as a prior charge against which labour had clamoured lon

Section 4, 5, 6 and 7 together with the Schedules deal with computation of gross profits and available surplus out of which 67 per cent. in cases falling under clause (a) of section 2(4) and 60 per cent. in cases falling under clause (b) of that sub-section would be the allocable surplus. Under Schedule II, which applies to establishments which are not banking companies, the starting point is the net profit shown by the employer in his P. & L. account, verify the accounts from which it is worked out or find out for itself the true net profit. Parliament was aware that Tribunals which would adjudicate disputes under the Act would be the least efficacious for such a purpose, apart from the fact that such enquiries would be prolonged and bitter enquiries. That is why section 23 was enacted to raise a presumption about the correctness of the P. & L. account and balance-sheets of companies duly certified by auditors qualified under section 226 of the Companies Act, 1956. Since the P. & L. account would have taken

Coming now to clause (c) of section 6, is it the actual taxable income, the direct tax on which is prior charge, which is to be worked out, or the tax on the estimated balance of gross profits after deducting depreciation and development charges but without deducting the bonus payable during the year ? In other words, when the Tribunal reaches the stage of clause (c), does it have to assess the taxable income in accordance with the various provisions of the Income-tax Act just as an Income-tax Officer would do and assess the liability of income tax on such taxable income according to the rates applicable during the particular accounting year, or should it compute the balance of gross profits as stated above and apply the said rates and estimate the amount of direct taxes and deduct them from the remaining gross profits ? Bonus being payable within eight months after the close of the accounting year in cases where there is no dispute pending before an authority under section 22 of the Act as provided by secti

The key to the words in section 6(c), namely, "is liable to pay" emphasised on behalf of the unions and some of the interveners lies in the opening words "subject to the provisions of section 7" in clause (c). These words are used, whether the tax liability is to be calculated on actual taxable income or on the notional amount worked out under sections 4 and 6 and Schedule II, because the direct taxes payable by the employer are to be calculated at the rates applicable during that year as provided by section 7. That both such amounts cannot be the same is clear because section 7 in express terms prohibits taking into account unabsorbed losses and arrears of depreciation allowable under section 32(2), the exemption allowed under section 84 and the deduction allowed under section 101(1) of the Income-tax Act. Similarly, where an assessee is a religious or charitable institution and its income either wholly or partly, as the case may be, is exempt under the Income-tax Act, such an employer to whom section 32 of ose. It did away with rehabilitation as a prior charge partly because there were complaints that it was being ill-used, but partly also because it knew that the rebate in the Income-tax Act on bonus paid would go to the employer with which he could recoup the depreciation which would be larger than the one allowed under section 32 of the Income-tax Act. In our view it was for that it did not lay down that bonus is to be deducted before

computing the amount on which direct taxes are to be calculated under section 6(c). If Parliament intended to make a department from the rule laid down by courts and tribunals that the bonus amount should be calculated after provision for tax was made and not before, we would have expected an express provision for tax was made and not before, we would have expected an express provision to that effect either in the Act or in the Schedules. In our view the contention urged by the company that the tax liability is to be worked out by first working out the gross profits and deduct

In the result, the appellant company succeeds on the questions of development rebate and the provision for gratuity amount. Its appeal on those questions is, therefore, allowed and to that extent the award is set aside. As regards the question of depreciation amount, the Tribunal will ascertain the amount afresh after giving the parties opportunity to lead such evidence as they desire and taking that amount and the amounts of development rebate and of the provision for gratuity in the light of this judgment, the Tribunal will adjust its award and arrive at the quantum on bonus payable to the workmen.

Appeal by workmen is dismissed. There will be no order as to costs.

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