Workmen of National & Grindlays Bank Ltd.

Vs

The National & Grindlays Bank Ltd.

Civil Appeal No. 2533 of 1969

(H.R. Khanna, P.N. Bhagwati, Syed M. Fazal Ali JJ)

16.01.1976

JUDGMENT

BHAGWATI, J. -

1. This appeal by special leave is directed against award made by the Industrial Tribunal, Calcutta in a reference between the National and Grindlays Bank Ltd. (hereinafter referred to as the Bank) and its workmen represented by the All-India National and Grindlays Bank Employees Federation. The bank is a banking company within the meaning of Section 5 of the Banking Companies Act, 1949 and has its head office in London and branch offices in different parts of the world, including India. The principal office of the bank in India is situate in Calcutta. The bank maintains its accounts according to the calendar year and it brings out only a consolidated balance sheet and profit and loss account for its world business, but also a separate balance sheet and profit and loss account for its Indian business. There was an industrial dispute between the bank and its workmen in regard to bonus for the years 1956 to 1964 and as a result of negotiations, this industrial dispute was settled between the parties on an ad hoc basis under a memorandum of settlement dated December 28, 1965. The material terms of the settlement were :

1. The bank will pay and the workmen and non-workmen staff will receive a sum of Rs. 27 lakhs (Rupees twenty-seven lakhs only) in full and final settlement of all bonus claims covering the periods from January 1, 1956 to December 31, 1964, including any claims relating to Centenary bonus.

2. The above sum of Rs. 27 lakhs will be allocated as to one-third thereof to award-staff only and as to the remaining two-thirds to both the award and non-award staff, in both cases based on the basic salary paid over the period, namely, January 1, 1956 to December 31, 1964, and unrelated to any particular year.

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8. The parties agree that this settlement shall not be taken as the basis or govern the principle for this determination of bonus in future, but nevertheless this settlement shall be final and binding on the parties as regards bonus claims for the years 1956 to 1964 (both inclusive) and any claim relating to Centenary Bonus, as also regards qualifications for eligibility and procedure as set out above.

It may be noted that this settlement was arrived at between the parties after the Payment of Bonus Act, 1965 came into force on September 25, 1965. This Act provided a statutory formula for

computation and payment of bonus and it was admittedly applicable in respect of the accounting year 1964, but no separate computation of bonus for that year was made in accordance with this statutory formula and it was settled on an ad hoc basis as a part of an omnibus settlement for the accounting years 1956 to 1964. So far as the claim for bonus for the accounting year 1965 was concerned, computation was made in accordance with the statutory formula provided in the Payment of Bonus Act and the maximum 20% of the salary or wage earned during that accounting year was paid by way of bonus to the workmen. The claim for bonus for the accounting year 1966, however, could not be settled between the parties and, though the bank paid 18% of the wage or salary earned by the workmen during that accounting year as bonus, the workmen were not satisfied and the industrial dispute arising from their claim had to be referred for adjudication. There were different aspects of this industrial dispute which required consideration and the Central Government, therefore, formulated each aspect as a separate question and referred those questions for adjudication to the Industrial Tribunal, Calcutta. The industrial tribunal made an award holding that, on an application of the statutory formula, the amount available for payment of bonus was Rs. 22.17 lakhs and the workmen were therefore, entitled to a little over 9% of their salary or wage as bonus, but since they had already been paid by the bank bonus at the rate of 18% of their salary or wage, which was much more than what they were entitled to receive, nothing further remained to be paid and they were not entitled to any relief. This award is impugned in the present appeal brought by the workmen with special leave.

2. There are only certain items in the computation of bonus which are now in dispute in the appeal before us and we shall confine our attention to them. But before we deal specifically with these items, it could be convenient to refer to some of the relevant provisions of the Payment of Bonus Act. We will refer only to those provisions which have a bearing on the items in dispute between the parties. Section 2 is the definition section and clause (13) of that section defines 'employee' to mean any person employed on a salary or wage not exceeding one thousand and six hundred rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward. The mode of computation of gross profits in the case of a banking company is laid down in Section 4, clause (a) which provides that the gross profit shall be calculated in the manner specified in the First Schedule. The First Schedule sets out in item 2, 3 and 4 various amounts which are to be added and in item 6, various amounts which are to be deducted from the net profit as shown in the profit and loss account. We are concerned in this appeal only with items 2, 3(a) and 6(e) which read as follows :

#----------Item Particulars Amount of Amount of RemarksNo. sub-items main items---------- 2. Add back provision for : (a) Bonus to employees (b) Depreciation (c) Development Rebate Reserve (d) Any other reserves ---------- Total of Item No. 2 Rs. ----------3. Add back also (a) Bonus paid to employees in respect of previous accounting years * * * *6. Deduct : * * * * (e) In the case of foreign banking companies proportionate administrative (overhead) expenses of head office allocable to Indian business * * * *----------##

The concept of 'available surplus' is defined in Section 2, clause (6) to mean available surplus computed under Section 5 and that section lays down that the available surplus in respect of any accounting year shall be the gross profit of that year after deducting therefrom the sums referred to in Section 6. Clauses (a) and (d) of Section 6 provide that the following sums shall be deducted from the gross profits as prior charge, namely,

(a) any amount by way of depreciation admissible in accordance with the provisions of sub-section

(1) of Section 32 of the Income Tax Act, or in accordance with the provisions of the agricultural income-tax law, as the case may be :

(d) Such further sums as are specified in respect of the employer in the Third Schedule.

The Third Schedule is rather material as it bears on one item in dispute between the parties. Clauses (ii) and (iii) of the proviso to item 2 in the Third Schedule enact that in case of a banking company which is a foreign company within the meaning of Section 591 of the Companies Act, 1956 - the bank in the present case being such banking company - the amount to be deducted shall be the aggregate of -

(ii) 7.5 per cent of such amount as bears the same proportion to its total paid up equity share capital as its total working funds in India bear to its total world working funds;

(iii) 5 per cent of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its bear world working funds;.

Then we come to the concept of allocable surplus which is defined in Section 2, clause (4) and under that clause, 60% of the available surplus it to be taken to be the allocable surplus and it is this allocable surplus which is to be distributed by way of bonus to the workmen, subject to a limit of 20 per cent of the total salary or wage of the employees employed in the establishment. Section 10, sub-section (1) provides for payment of a minimum bonus of 4 per cent of the salary or wage earned by the employees, irrespective whether or not there are profits in the accounting year, and sub-section (1) of Section 11 lays down that where the allocable surplus exceeds the amount of minimum bonus payable under Section 10, sub-section (1)

the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in the accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

Section 15 is the next material section and it provides, inter alia :

(1) Where for any accounting year the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of twenty per cent, of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.

(2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

(4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating for the succeeding accounting year, the amount of set-on or set-off

carried forward from the earliest accounting year shall first be taken into account.

Section 34, sub-section (3) enables employees employed in any establishment or class of establishments to enter into agreements with their employer for grant of bonus under a formula which is different from that under the Payment of Bonus Act, so long as it does not deprive them of the minimum bonus payable under Section 10, sub-section (1). It is in the light of these provisions that we have to consider the various points arising for determination in the appeal.

3. We will first take up for consideration question No. 2 referred to the industrial tribunal. That question raises the issue whether any amount is liable to be carried forward for being set on in the accounting year 1956 (sic 1965) and if so, what amount. The claim of the workmen was that there was excess of allocable surplus over the amount of maximum bonus in both accounting years 1964 and 1965 and the excess in respect of both these years was, by reason of Section 15, sub-section (1), liable to be carried forward for being set on in the succeeding accounting year 1966. Now, so far as the claim in respect of the accounting year 1965 was concerned, the amount to be carried forward and set on was settled at the figure of Rs. 10.23 lakhs under an agreement arrived at between the parties and no dispute, therefore, survived in respect of that claim. But the claim in respect of the accounting year 1964 was strongly resisted on behalf of the bank and a preliminary objection was raised that the question whether any amount was liable to be carried forward and set on out of the profits of the accounting year 1964 did not from the subject-matter of the reference and hence this Court, in appeal from the industrial tribunal, had no jurisdiction upon this question. We do not think there is any substance in this preliminary objection. Question No. 2, referred to the industrial tribunal, in terms raises the issue "whether any amount is to be carried forward for being set on ... in the accounting year 1966", and this issue is wide enough to cover the question in regard to carry-forward and set-on of an amount of the profits of the accounting year 1964. The bank then contended that since the bonus payable for the accounting year 1964 was settled on an ad hoc basis, it was not possible to say that the allocable surplus exceeds the maximum bonus payable for that year and hence there could be no question of any excess to be carried forward and set on in the succeeding year. There is great force in this contention. Section 15, sub-section (1) provides for carry-forward and set-on and, on its plain terms, it comes into operation only when, in a given accounting year, the allocable exceeds the maximum bonus payable under the Act, so that after payment of the maximum bonus, there is surplus left which can be carried forward and set on, subject, of course, to the limit of 20 per cent of the total salary or wage. It is clear from the scheme of the Act and the context in which this sub-section occurs, following closely upon Section 4 to 10, that the basic condition for the applicability of this sub-section is that bonus is computed in accordance with the statutory formula provided in the preceding section of the Act and as a result of such computation, it is found that the allocable surplus is more than sufficient ... to cover the maximum bonus payable under the Act and where such is the case, the sub-section provides that the excess over the amount of the maximum bonus shall, to the extent of 20 per cent of the total wage or salary, be carried forward and set on in the succeeding year. This sub-section can have no application where no computation is made under the Act and bonus is paid not in accordance with the statutory formula, but on an ad hoc basis. Then it is not possible to say what was really the bonus payable under the Act. It may be less or more than the bonus in fact paid. That inquiry being rendered irrelevant by the ad hoc settlement, there can be no question of carry-forward and set-on of any amount, unless specifically agreed upon as part of the settlement. The workman in the present case were, therefor, not entitled to contend that, though the claim for bonus for the accounting year 1964 was settled on an ad hoc basis without making computation under the provisions of the Act, such computation must now be made, for the purpose of determining the bonus payable to them, which is the only purpose for which such computation is contemplated to be made, but the purpose

of determining whether there is any amount liable to be carried forward and set on. The claim of the workman for carry-forward and set-on respect of the accounting year 1964 must accordingly stand rejected.

4. We now proceed to consider the items in dispute in the computation of 'available surplus' for the accounting year 1966, which fall within question No. 1 referred to the industrial tribunal. The first item to which we must refer is the item of provision for bonus to employees made in the profit and loss account. This item figures as item 2(a) in the First Schedule to the Act and it is required to be added back in the computation of the gross profit under Section 4(a). Now, so far as the profit and loss account of the bank in respect of its Indian business was concerned, the provision for bonus to employees did not figure in it as a separate item, but, according to the bank, it was included under the hearing "Salaries and Allowances" or "Other Expenditure" and it came to Rs. 19.52 lakhs. The bank thus agreed to an add-back of Rs. 19.52 lakhs in respect of provision for bonus to employees. The workmen, however, contended that the provision for bonus made by the bank was for a much larger amount and the amount of Rs. 19.52 lakhs represented provision for bonus only in respect of those workmen who were 'employees' within the meaning of Section 2, clause (13) and the bank had failed to take into account the provision for bonus in respect of those workmen who were no such 'employees'. The argument of the workmen was that the word 'employees' in item 2(a) of the First Schedule was not limited to 'employees' as defined in Section 2, clause (13), but covered all employees, because the object of adding back provision for bonus to employees was to arrive at the figure of profit available for distribution of bonus and that required the entire amount set part as provision for bonus should be added back, for in determining what is the available fund with reference to which bonus should be paid, one cannot exclude the amount already paid or provided as bonus, whether to employees drawing more than Rs. 1,600 or to employees drawing less. It is true, said the workmen, that the word 'employees' is defined in Section 2, clause (13), but they contended that every definition is subject to the requirement of the context clearly showed that the word 'employees' was not used in the restricted sense, but in a wider sense, including all employees. Now, this argument of the workmen would have required serious consideration by us, but we do not think we can permit the workmen to raise it, as it does not appear to have been advanced by them before the industrial tribunal. The award of the industrial tribunal does not show that this argument was at any time urged by the workmen. The only argument raised by the workmen before the industrial tribunal was that the amount of bonus payable to them for the accounting year 1966 was Rs. 38.66 lakhs representing 18 per cent of their wage or salary and this amount of Rs. 38.66 lakhs was liable to be added back and not the amount of Rs. 19.52 lakhs. This argument was rightly rejected by the industrial tribunal because what is liable to be added back under item 2(a) of the First Schedule is not the amount of bonus payable to the workmen, nor the amount of the bonus in fact paid, but the provision for bonus made in the profit and loss account. We cannot, therefore, permit the workmen to raise a new contention for the first time in this Court that the provision for bonus liable to be added back was not merely the provision for bonus to 'employees' as defined in Section 2, clause (13), but also the provision for bonus workmen who were not such 'employees'.

5. The next item in dispute relates to the amount liable to be deducted from the gross profits under Section 6, clause (a). What is required to be deducted under this clause is the amount of depreciation admissible in accordance with the provision of sub-section (1) of Section 32 of the Income Tax Act. Now, depreciation represents the diminution in value of a capital asset when applied to the purpose of making profit or gain. There are various methods known to accountancy practice for measuring such diminution in value and a banking company, like any other firm or company, may follow any one of these methods in maintaining its accounts and the amount of depreciation calculated according to such method would be reflected in its profit and loss amount. But, though such amount

of depreciation shown in the profit and loss account may be unexceptionable from the point of view of commercial accountancy principle, it would not necessarily be admissible as a deduction from gross profits under Section 6, clause (a). What is allowable as a deduction from the gross profit under that clause is not depreciation calculated according to any recognised method of accountancy followed by a banking company, but only such depreciation as is admissible in accordance with the provisions of sub-section (1) of Section 32 of the Income Tax Act. The profit and loss account of the bank for the accounting year 1966 showed an amount of Rs. 22.40 lakhs debited against the composite item "Depreciation and Repairs to the Banking Company's Property" and according to the bank, this figure included an amount of Rs. 1.89 lakhs by way of depreciation. Now, there would be no difficulty if the bank claimed to deduct only the amount of Rs. 1.89 lakhs by way of depreciation under Section 6, clause (a), as that was the amount of depreciation debited in the profit and loss account. But the bank claimed that, though it had debited by way of depreciation in the profit and loss account only an amount of Rs. 1.89 lakhs, the amount of depreciation actually admissible in accordance with the provisions of sub-section (1) of Section 32 of the Income Tax Act was Rs. 12.79 lakhs and in support of this claim, the bank produced a certificate issued by the Income Tax Officer which was marked Ex. 12 in evidence. The industrial tribunal relying solely on the certificate Ex. 12 held that "depreciation admissible in accordance with the provisions of sub-sectio n (1) of Section 32 of the Income Tax Act" was Rs. 12.79 lakhs as evidence by the certificate Ex. 12 and the bank was, therefore, entitled to deduct that amount from the gross profit under Section 6, clause (a).

6. This decision of the industrial tribunal was assailed before us and it was contended on behalf of the workmen that the burden of showing what was the amount of depreciation admissible in accordance with the provisions of sub-section (1) of Section 32 of the Income Tax Act was on the bank and this burden, the bank had failed to discharge by producing proper evidence. The only evidence produced on behalf of the bank, said workmen, was the certificate Ex. 12 issued by the Income Tax Officer, but that certificate was no evidence and could not be taken into account for the purpose of holding that the depreciation admissible under sub-section (1), of Section 32 of the Income Tax Act was Rs. 12.79 lakhs. The bank, however, contended that the workmen did not at any time dispute that the depreciation admissible under sub-section (1) of Section 32 of the Income Tax Act was Rs. 12.79 lakhs nor did they at any time challenge the correctness of the certificate Ex. 12 issued by the Income Tax Officer and in the circumstances, this certificate was sufficient to establish the claim of the bank.

7. Now, in the first place, it is not correct to say that the workmen did not at any time dispute the correctness of the figure of depreciation claimed by the bank. Both the workmen and the bank filed their respective computations of bonus before the industrial tribunal and while the bank, in its computation, claimed to deduct the amount of Rs. 12.79 lakhs as depreciation, the workmen agreed to deduction only of the amount of Rs. 1.89 lakhs as appearing in profit and loss account. The workmen did not at any time accept the position that the correct amount of depreciation admissible under Section 32, sub-section (1) of the Income Tax Act came to Rs. 12.79 lakhs as claimed by the bank. They seriously disputed it before the industrial tribunal and hence the industrial tribunal had to go into that question and come to a finding upon it. Even prior to the making to the reference, when the calculation sheet regarding bonus payable for the accounting year 1966 was sent by the bank to the workmen with its letter dated July 26, 1967, the workmen by their letter dated August 3, 1967 called upon the bank to furnish particulars in regard to the amount to Rs. 12.79 lakhs claimed by the bank as depreciation and the only reply given by the bank to this demand was that the information required by the workmen went "far beyond any legal requirements" and the bank was not in a position to accede to the same. Vide bank's letter dated August 8, 1967. This circumstances

would also show that the workmen did not accept the figure of depreciation claimed by the bank. It is true that in the application made by the workmen to the industrial tribunal for certain clarifications on January 8, 1969, the workmen did not ask for any clarification in regard to the a mount of Rs. 12.79 lakhs claimed by the bank by way of depreciation, but if we look at this application, it will be clear that the clarifications sought by the workmen were

on various aspects of the published balance-sheet of the company for the accounting years ... January 1, 1966 to December 31, 1966 and other figures and there was no attempt at seeking clarification in respect of the various items in the computation sheet filed by the bank. Moreover, when these clarifications were sought by the application dated January 8, 1969, the controversy between the parties was already crystallised in their pleadings and it was clear from the computation sheets filed by them that there was read dispute in regard to the amount of depreciation and, therefore, mere failure on the part of the workmen to ask for clarification in respect of the amount of Rs. 12.79 lakhs claimed by the bank, could not justify an inference that the workmen had conceded the claim of bank and abandoned the dispute. There can be no doubt that the dispute in regard to the amount of depreciation was very must there between the parties and it had to be resolved by the industrial tribunal.

8. It was not seriously dispute on behalf of the bank, and indeed having regard to the well settled position in law it could not be so disputed, that since the bank claimed the deduction of depreciation at a figure higher than that appearing in the profit and loss account, the burden of proving that the depreciation claimed by it was the correct amount of depreciation admissible under Section 32, sub-section (1) of the Income Tax Act was on the bank and that burden had to be discharged by the bank by producing proper and satisfactory evidence. Though the industrial tribunal relied solely on the certificate Ex. 12 issued by the Income Tax Officer for the purpose of holding that correct amount of depreciation admissible under Section 32, sub-section (1) was Rs. 12.79 lakhs, the bank in the course of its arguments before us, placed reliance not only on this certificate also on the oral evidence of A. K. Basu who was the officer examined on behalf of the bank. We will first consider the oral evidence of A. K. Basu and then examine how far the certificate Ex. 12 helps to establish the claim of the bank. The statement in the oral evidence of A. K. Basu which was strongly relied upon on behalf of the bank, was :

Under the heading 'Prior Charge', the figure against 'depreciation' was collected from the income-tax assessment order

and it was contended that since there was no cross-examination of A. K. Basu in regard to this statement, it must be accepted as correct and that was sufficient to prove that the depreciation admissible under Section 32, sub-section (1) was Rs. 12.79 lakhs. This contention is wholly fallacious and it proceeds upon a misreading of the statement made by A. K. Basu. It is no doubt true that A. K. Basu stated that the figure against depreciation was collected from income-tax assessment order, but this statement was made in reference to the figure against depreciation appearing in the first enclosure to Annexure (C) to the written statement of the workmen, which was the computation sheet containing calculation of bonus for the accounting year 1965. That is evident from the context in which this statement occurs. This statement finds place in the paragraph which contains answers given by the witness to the industrial tribunal and the six sentences preceding this paragraph as also the first sentence of this paragraph clearly show that the answers were in reference to the accounting year 1965. We have carefully scanned through the entire evidence of A. K. Basu, but we do not find in it any statement in regard to the amount of depreciation shown in the second enclosure to Annexure (C) to the written statement of the workmen, which contained the

computation in regard to bonus for the accounting year 1966. There was no evidence given by A. K. Basu in regard to the amount of Rs. 12.79 lakhs claimed by the bank by way of depreciation in the computation sheet submitted by it. Not a word was said about it by A. K. Basu in his evidence and apart from A. K. Basu, no other witness was examined on behalf of the bank. There was, therefore, clearly no oral evidence to support the claim of the bank. Even if the statement of A. K. Basu that the figures against depreciation was collected from the income-tax assessment order be construed as referring to the computation sheet in respect of the accounting year 1966, it does not advance the case of the bank. The income-tax assessment order for the accounting year 1966 admittedly did not show depreciation at the figure of Rs. 12.79 lakhs and that figure could not, therefore, have been collected by Mr. A. K. Basu, from the income-tax assessment order. Even if the words 'income-tax assessment order' as appearing in his statement be read so as to include the income-tax return, it was admitted that the relevant income-tax return was not produced on behalf of the bank, and moreover, A. K. Basu admitted in his cross-examination that he did not prepare the income-tax return and consequently it must follow that he had no personal knowledge of the correctness or veracity of the income-tax return and what he stated had no probative or evidentiary value.

9. That leaves for consideration the certificate Ex. 12 issued by the Income Tax Officer which was strongly relied upon on behalf of the bank and on which the industrial tribunal rested its decision on this part of the case. It is clear on a plain natural reading of the language of Section 6, clause (a) that what is deductible under that clause is

depreciation admissible in accordance with the provisions of sub-section (1) of Section 32 of the Income Tax Act

and not "depreciation allowed by the Income Tax Officer in making assessment on the employer". It is the industrial tribunal which has to find for itself what is the amount of depreciation admissible under sub-section (1) of Section 32 and it cannot abdicate its duty and surrender its judgment to what has been done by the Income Tax Officer while making assessment under the Income Tax Act. Since depreciation may be computed according to various methods recognized by accountancy principles, Section 6, clause (a) while providing for deduction of depreciation, had to specify the method according to which depreciation to be deducted shall be calculated and it adopted the method specified in subsection (1) of Section 32. But the calculation of depreciation in accordance with this method would necessarily have to be done by the industrial tribunal which is entrusted with the task of determining the amount of bonus by applying the statutory formula. Therefore, it is the industrial tribunal which must in the exercise of its quasi judicial duty calculate the amount of depreciation by adopting the method set out in sub-section (1) of Section 32. The industrial tribunal cannot say that it will blindly accept the figure of depreciation arrived at by another authority charged with the function of determining depreciation under a different statute. The determination of the Income Tax Officer in regard to depreciation admissible under Section 32, sub-section (1) can be taken into account as evidence only if there is some provision of law which provides to that effect. We do not find anything in the Income Tax Act or in the Payment of Bonus Act or in any other provision of law which attaches presumption of accuracy to the determination of the Income Tax Officer in this matter or invests it with probative or evidentiary value in the proceedings before the industrial tribunal. And the reason for this is obvious, because the workmen, who are sought to be bound by the determination of the Income Tax Officer, would not be parties to the income-tax proceedings and they would have no opportunity of putting forward their point of view before the determination is arrived at by the Income Tax Officer. Moreover, the possibility cannot be ruled out that the determination made by the Income Tax Officer may be wrong and he might have made a bona fide mistake in arriving at the figure of depreciation. If the workmen were to be held bound by

the figure of depreciation determined by the Income Tax Officer, they would have no opportunity of challenging its correctness or showing that it is wrong, nor would they be able to verify the figure of depreciation by cross-examination of the employer or his witnesses who may have calculated the same. That would be contrary to the established principles of judicial procedure. There can, therefore, be no doubt that the certificate issued by the Income Tax Officer was not admissible in evidence to prove the depreciation admissible under sub-section (1) of Section 32 and ordinarily we would have refused to rely upon it and directed the industrial tribunal to arrive at a fresh decision after giving opportunity to the bank to prove its claim for depreciation by leading evidence, but we find that the certificate of the Income Tax Officer was admitted in evidence without any objection on the part of the workmen and at no stage of the hearing before the industrial tribunal, it was contended on behalf of the workmen that it was an inadmissible piece of evidence. If the workmen had contended before the industrial tribunal that the certificate of the Income Tax Officer was not admissible in evidence, the bank could have led other evidence to substantiate its claim for depreciation, but since no objection was raised on behalf of the workmen, the bank contented itself by producing and tendering in evidence only the certificate of the Income Tax Officer. We do not, in the circumstances see any reason to interfere with the decision of the industrial tribunal in regard to the amount of depreciation deductible under Section 6, clause (a).

10. We then come to item 3(a) of the First Schedule which requires bonus paid to the employees in respect of the previous accounting years to be added back in computing gross profits. The amount paid to the employees in the accounting year 1965 was Rs. 13.27 lakhs and the workmen claimed that this amount of Rs. 13.27 lakhs should be added back under item 3(a) of the First Schedule. The bank, in the computation sheet filed by it, also showed this amount of Rs. 13.27 lakhs as an add-back and, therefore, there should really have been no dispute about it. But the industrial tribunal refused to permit the bank to add back this amount of Rs. 13.27 lakhs on the ground that "a sum out of 1965 account must not be allowed to adulterate the account of 1966". This was an obvious error committed by the industrial tribunal. The amount of Rs. 13.27 lakhs paid to the employees in respect of bonus for the accounting year 1965 was clearly, on the plain terms of item 3(a) of the First Schedule, liable to be added back and we direct the industrial tribunal to do so when the case goes back to it.

11. The item which then requires to be considered is that under clause (iv) of the proviso to item 2 of the Third Schedule. That clause provides that in the case of a banking company, any sum which, in respect of the accounting year, is deposited by it with the Reserve Bank of India under Section 11(2)(b)(ii) of the Banking Regulation Act, 1949 not exceeding the amount required under the said provision to be so deposited, shall be deducted from the gross profits. The bank claimed to deduct under this item a sum of Rs. 13.48 lakhs on the ground that it represented the amount deposited by the bank with the Reserve of Bank under Section 11(2)(b)(ii) of the Banking Regulation Act, 1949 and produced in support of this claim, a certificate of the Reserve Bank of India dated February 3, 1969 confirming that the bank had deposited security adequate to fulfill the requirements of Section 11(2)(b)(ii) of the Banking Regulation Act, 1949 in respect of the accounting year 1966. This certificate was produced by A. K. Basu on behalf of the bank without any objection by the workmen and it was marked Ex. 11 the industrial tribunal accepted the claim of the bank on the strength of this certificate and permitted deduction of the amount of Rs. 13.38 lakhs. The workmen impugned this decision of the industrial tribunal on the ground that the balance-sheet of the bank for the accounting year 1966 showed that the amount deposited by the bank with the Reserve Bank of India during that accounting year was only Rs. 70,000 being the difference between Rs. 99.10 lakhs and Rs. 98.40 lakhs and it was, therefore only this amount which was liable to be deducted in respect of this claim. But this contention of the workmen is clearly fallacious. The balance sheet of the bank

for the accounting year 1966 would not show the amounts deposited by the bank with the Reserve Bank of India in respect of that accounting year, for, on a plain reading of Section 11(2)(b)(ii) of the Banking Regulation Act, 1949, that amount would ordinarily be deposited only after the expiration and not during the currency of that accounting year. No reliance can, therefore, be placed on behalf of the workmen on the balance sheet of the bank for the accounting year 1966 for the purpose of repelling the claim of the bank. On the other hand, the evidence given by A. K. Basu on behalf of the bank clearly showed that the bank had deposited with the Reserve Bank of India securities adequate to fulfill the requirements of Section 11(2)(b) (ii) of the Banking Regulation Act, 1949 and this statement made by the witness was sought to be supported by the certificate issued by the Reserve Bank of India. The workmen did question A. K. Basu on this point, but he clearly stated that the deposit was made in securities. Having regard to this evidence of A. K. Basu supported by the certificate of the Reserve Bank of India, we must hold that the claim of the bank to deduction of the amount of Rs. 13.48 lakhs was well founded and it was rightly allowed by the industrial tribunal.

13. That takes us to the last item in dispute which is item 6(e) of the First Schedule. That item requires that in the case of foreign banking companies, proportionate administrative (overhead) expenses of head office allocable to Indian business shall be deductible in computing gross profits. The bank claimed that a sum of Rs. 43.40 lakhs was liable to be deducted under this item, while according to the workmen, the claim for deduction was admissible only to the extent of Rs. 43.10 lakhs. The industrial tribunal, however, did not accept the figure of either party but made its own calculations and came to the conclusion that the proportionate administrative expenses allocable to Indian business amounted to Rs. 23.88 lakhs hence that was amount deductible under this item. This decision of the industrial tribunal was challenged on both sides. In order to appreciate the grounds of challenge, it is necessary to understand how the industrial tribunal actually calculated the proportionate administrative expense of head office allocable to Indian business. Footnote 3 of the First Schedule provides that proportionate administrative expense of head office allocable to Indian business should be calculated

in the proportion of Indian gross profit (item No. 7) to total world gross profit (as per consolidated profit and loss account, adjusted as in item No. 2 above only).

Now, the administrative expenses of head office were admittedly Rs. 120.52 lakhs and if X was the amount of proportionate administrative expences allocable to Indian business, X/120 would be equal to Indian gross profit under item No. 7/total world gross profit adjusted as in item No. 2. The Indian gross profit for the purpose of working out this proportion was calculated by the industrial tribunal by taking the figure of Rs. 67.39 lakhs which was the net profit shown in the profit and loss account and adding to it Rs. 19.52 lakhs representing bonus to employees and Rs. 1.89 lakhs representing depreciation and it was, thus, determined and it was, thus, determined at Rs. 88.80 lakhs. Here there was a manifest error committed by the industrial tribunal. The net profit of Rs. 677.39 lakhs shown in the profit and loss account was admittedly arrived at after deducing from the profit of the bank a sum of Rs. 43.10 lakhs in respect of actual head office administrative expenses allocable to India. This amount of Rs. 10 lakhs was obviously required to be added back, since item 6(e) provided for deduction of proportionate head office administrative expenses allocable to Indian business and the same item could not be deducted twice over in arriving at the Indian gross profit. It is true that item 1 of the First Schedule requires the industrial tribunal to take as the starting point of computation "net profit as shown in the profit and loss account after making usual and necessary provisions". But the fact that item 6(e) provides for deduction of proportionate administrative expenses of head office allocable to Indian business in arriving at the gross profit for the purpose of bonus under item 7

shows that the net profit contemplated in item 1 is net profit arrived at without deducting proportionate administrative expenses of head office allocable to Indian business. That is not regarded by the legislature as usual and necessary provision should be deducted for the purpose of ascertaining net profit under item 1. This position was indeed not disputed by the learned Counsel appearing on behalf of the bank and it is, therefore, obvious that the amount of Rs. 43.10 lakhs should be added back in arriving at the figure of net profit for the purpose of item 1. Then again, it is clear from the calculation made by the industrial tribunal that in computing the Indian gross profit at the figure of Rs. 88.80 lakhs, the industrial tribunal added back only the amounts representing bonus to employees and depreciation as set out in item 2 of the First Schedule. But footnote 3 requires that the Indian gross profit should be determined as shown in item 7 and, therefore, it was necessary to add back not only amounts under item 2 but also amounts under item 3 and 4 and to deduct amounts under item 6 for the purpose of arriving at the Indian gross profit under item 7. This, the industrial tribunal clearly failed to do. We would, therefore, direct the industrial tribunal, when the case goes back to it, to determine the figure of Indian gross profit as set out in item 7 after adding back the amount of Rs. 43.10 lakhs to the figure of net profit under item 1.

14. The workmen also pointed out another error in the calculation made by the industrial tribunal and that was in regard to computation of total world gross profit. Footnote 3 requires that the total world gross profit should be as per consolidated profit and loss account after adjustment as in item 2. That means that the provision made in the consolidated profit and loss account for bonus to employees, depreciation, development rebate reserve and any other reserves should be added back to the net profit as shown in the consolidated profit and loss account for the purpose of arriving at the total world gross profit. What the industrial tribunal, however, did in the present case was to add back merely the provision made in the profit and loss account of the Indian business for bonus to employees and depreciation. The industrial tribunal did not examine what was the provision made in the consolidated profit and loss account of the bank for bonus to employees, depreciation, development rebate reserve and other reserves. If any provision were made in the consolidated profit and loss account for bonus to employees, which would mean employees of the bank throughout the world, depreciation on world assets and development rebate and other reserves, such provision would have to be added back to the net profit as shown in the consolidated profit and loss account. This would have to be done by the industrial tribunal when the matter goes back to it on remand.

15. The industrial tribunal will, thus, after calculating the Indian gross profit and the total world gross profit in the manner indicated above apply the proportion of Indian gross profit/total world gross profit to the amount of Rs. 120.52 lakhs representing the administrative expenses of head office and determine the proportionate administrative expenses of head office allocable to Indian business for the purpose of deduction under item 6(e) of the First Schedule.

16. We must also refer to one other ground of challenge put forward on behalf of the bank against the decision of the industrial tribunal in regard to the amounts deductible under clauses (ii) and (iii) of the proviso to item 2 of the Third Schedule. This ground of challenge was urged on behalf of the bank in support of the ultimate award of the industrial tribunal determining the bonus payable to the workmen at a little over 9 per cent of their salary or wage. It was clearly open to the bank to urge this ground of challenge since the bank was entitled to support the award of the industrial tribunal even on a ground decided against it. Vide J. K. Synthetics Ltd. v. J. K. Synthetics Mazdoor Union ((1972) 1 SCR 651 : (1971) 3 SCC 509) and Management of I. C. C. v. Workmen 2 ((1973) 1 SCR 105 : (1974) 3 SCC 11). The controversy arising out of this ground of challenge turned on the true interpretation of the words 'working funds' in clauses (ii) and (iii) of the proviso to item 2 of the

Third Schedule. The industrial tribunal interpreted the words 'working funds' to mean "paid-up capital, reserves and deposits" and rejected the contention of the bank that they also include borrowings from other banking companies, bills payable and balance of profit and loss account. This view taken by the industrial tribunal was assailed on behalf of the bank at the hearing of the appeal before us. The bank contended that borrowings from other banking companies, the amounts of bills issued by the bank and balance of profit and loss account constituted part of the working funds of the bank and were, therefore, within the expression "working funds". This contention, plausible though it may seem at first sight is, in our opinion, not well founded. The words "working funds", when used in relation to a banking company, are not to be construed in their ordinary popular sense by reference to a dictionary. They have a history of their own and they have acquired a definite meaning. This words were first defined in the award made by Mr. K. C. Sen in 1949 in regard to banks and the definition he gave was that 'working funds' consisted of "paid-up capital, reserves and deposits". So also in the Sastri Award made in 1953 in regard to industrial disputes between certain banking companies and their workmen, the words 'working funds' were defined to mean

paid-up capital, reserves and the average of the deposits for 52 weeks of each year for which weekly returns of deposits are submitted to the Reserve Bank of India under the provisions of the Reserve Bank of India Act.

So far as banking companies are concerned, the words 'working funds' have always been understood in this sense and that is the sense in which they must be deemed to have been used by the legislature when it enacted clauses (ii) and (iii) of the proviso to item 2 of the Third Schedule. It is a well settled rule of interpretation that when the legislature uses certain words which have acquired a definite meaning over a period of time, it must be assumed that those words have been used by the legislature in the same sense. The words 'working funds' in clauses (ii) and (iii) of the proviso to item 2 of the Third Schedule must, therefore, be construed to mean paid-up capital, reserves and average of the deposits for 52 weeks of each year for which weekly returns of deposits are submitted to the Reserve Bank of India. It could hardly be disputed that borrowings from other banking companies, the amounts of bills issued by the bank and the balance of profit and loss account are neither reserves nor deposits and they are not liable to be shown in the weekly returns of deposits submitted to the Reserve Bank of India. The Industrial Tribunal was, therefore, right in excluding them from the category of 'working funds' and this ground of challenge urged on behalf of the bank must be rejected.

17. We accordingly set aside the award made by the industrial tribunal and remand the case to the industrial tribunal with a direction to dispose it according to law in the light of the decision given and observations made in this judgment. Since the workmen have partly succeeded and partly failed, we think that the fair order of costs would be that each party should bear and pay its own costs of these proceedings.

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