CALCUTTA HIGH COURT

Madanlal Sohanlal

Vs

Commissioner of Income-Tax

(P.B. Mukharji J.)

10.03.1961

JUDGMENT

P. B. Mukharji J.

1. This income-tax reference under section 66(1) of the Income-tax Act raises the following question of law for the decision :

> "Whether, on the facts and in the circumstances of the case, Rs. 31,500 paid by the applicant as interest on the loan taken for an investment and which investment did not yield any income during the relevant previous year was allowable as a deduction in computing the assessable profits ?"

Before proceeding to decide the question, it will be appropriate to give a brief account of the relevant facts. The applicant is a registered firm with four partners and the assessment year in question is 1948-49, the relevant previous year being 2004 R. N. The bone of contention relates to the payment of interest on an overdraft. The applicant firm took a loan on overdraft from the Hongkong Shanghai Banking Corporation Ltd., during the year 2003 R. N., in the name of Madanlal Sohanlal H. A. A/c., meaning thereby Hall & Anderson Ltd. account. The overdraft was utilised for purchasing shares of the value of Rs. 1,40,625 in the names of the partners of the applicant firm in two companies, Norton Brown Ltd. and Hall & Anderson Ltd. On this overdraft a sum of Rs. 63,298 was paid as interest during the previous year relevant to this assessment. The essential point of significance in this case is that on the investment no income or dividend was received at all during the relevant previous year. The applicant claimed Rs. 63,298 so paid as interest as a deduction in computing the profits. The Income-tax Officer disallowed it on the ground that "it represents interest on loan taken for the purpose of acquiring shares by the partners and members of their family. As such the loans cannot be treated as one for the purpose of the business of the assessee."

On appeal to the Appellate Assistant Commissioner, it was found by the said Appellate Assistant Commissioner that Rs. 63,298 represented payment of interest for two years, i.e., 2003 and 2004 R. N., that Rs. 31,500 related to the accounting year 2004 R. N., and that the assessee was entitled to deduct only Rs. 31,500 and granted relief accordingly. It was found as a fact by the Appellate Assistant Commissioner that the "appellant in order to have control over the business of Hall & Anderson Ltd. jointly purchased with some other partners the entire share of the company as well Norton Brown Ltd.s shares". The assessee in this case is a registered firm by the name of Madanlal Sohanlal. The Income-tax Officer thereupon appealed to the Appellate Tribunal contending (1) that as the shares were acquired mainly with a view to control the companies, it could not be said that the expenditure was incurred solely for earning dividend and (2) as there was no receipt by way of dividend the interest paid could not be said to have been incurred for the purpose of making or earning the income. The assessee contended that as the assessee firm jointly held with four other parties only 2,76,640 shares out six lakhs shares of Hall & Anderson Ltd., it could not be said that the purchase was to obtain the controlling interest or control over the company. The Appellate Tribunal found that in company matters a large block of shares, as in this case, did, on occasions, confer such a majority as to amount almost to a control and came to the conclusion that the amount had been admittedly borrowed for the purpose of investment and as such interest on the loan could be claimed only under section 12(2) of the Income-tax Act, but as no dividend was received during the year, interest paid or payable on the amount borrowed for the purpose of investment could not be allowed as an expenditure. The Appellate Tribunal, therefore, set aside the order of the Appellate Assistant Commissioner.It will be apparent from the above statement of facts that the decision in this case will involve an interpretation and comparison of section 12(2) and section 10(2) (xv) of the Income-tax Act. The points controversial and, as usual with almost every section of the Income-tax Act, there are conflicting decisions of the courts. A brief reference to them will, therefore, be essential and inevitable.The earliest decision relevant on the point is Eastern Investments Ltd. v. Commissioner of Income-tax. It was a decision on section 12(2) of the Income-tax Act and although the appeal was allowed by the Supreme Court, Bose J. at page 598 expressed the view that the law on the point of true construction of section 12(2) of the Income-tax Act was correctly summarised in the judgment of the High Court. Bose J. at page 598 of the Supreme Court Reports laid down four principles as "relevant". One such principle was "it is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned". This principle was supported by reference to two English decisions, one being Moore v. Stewarts & Lloyds Ltd. and the other in Ushers case.

On the basis, it is contended on behalf of the assessee that although on the facts of this case no income whatever or no dividend whatever has been earned or made, the making or earning of a dividend or income is not necessary to come within section 12(2) of the Income-tax Act.

Therefore, it is contended that the Tribunal was wrong. This argument of the assessee would have been unanswerable but for the fact that the principle which the Supreme Court was laying down for the construction of section 12(2) has to be read with the observation which the Supreme Court made in that very case at page 601, where Bose J. observed as follows :

> "This being an investment company, if it borrowed money and utilised the same for its investments on which it earned income, the interest paid by it on the loans will clearly be a permissible deduction under section 12(2) of the Income-tax Act."

On the strength of this observation it is contended by the learned counsel for the Commissioner of Income-tax before us that the decision in the case of Eastern Investment Ltd. is a decision where there was some income and some return and, in fact, the words "earned income" clearly showed that the Supreme Court proceeded on the basis that the principle of construction that it was not necessary to show that the expenditure in fact earned any profit was related to the question of net profit only and not where there was no income whatever. In support of this contention, Mr. Meyer, the learned counsel for the Commissioner of Income-tax, specially referred to the two English decisions of Moore v. Stewarts & Lloyds Ltd. and Ushers case of which notice was taken by the Supreme Court for that propositions. A reading of the two cases shows clearly that there the language used in the statute was not only entirely different from the one now used in section 12(2) of the Indian Income-tax Act but that it was more near to what is now section 10(2) (xv) of the Indian Income-tax Act. In both those English cases, Schedule D, rule 1, of the English Act which was consideration reads as follows :

> "No sum shall be set against or deducted from or allowed to be set against or deducted from such profits or gains for any disbursements or expenses whatever not being money wholly and exclusively laid out or expended for the purpose of such trade."

That has a ring familiar with section 10(2) (xv) of the Income-tax Act which uses the relevant words laid out or expended wholly or exclusively for the purpose of such business, profession or vocation.

This was the view taken by the Patna High Court *in Maharajadhiraj Sir Kameshwar Singh v. Commissioner of Income-tax. One of the* points decided by the Patna High Court in this case that section 12(2) of the Income-tax Act is narrower in its scope than section 10(2) (xv) and unless the expenditure is incurred solely for the purpose of making or earning such income, profits or gains which are mentioned in section 12(1), such expenditure cannot be allowed as a deduction. In fact, the relevant observations of the Patna High Court in that case appear at page 389, which are as follows :

> "The answer to this question is that section 12(2) is narrow than section 10(2) (xv). Section 10(2) (xv) speaks of an expenditure which is laid out or expended wholly and exclusively for the purpose of such business, profession or vocation, whereas section 12(2) speaks of an expenditure, which is incurred solely for the purpose of making or earning such income, profits or gains. On the language of these two sections, it is plain that section 12(2) is narrower than section 10(2) (xv), and, therefore, unless an expenditure is incurred solely for the purpose of making or earning such income, profits or gains which are mentioned under section 12(2), such expenditure cannot be allowed as a deduction under section 12(2) of the Act. In the present case, the definite finding of fact is that the expenditure incurred was not for the purpose of earning or making any income, and, as such, no allowance could possibly be made on that account under section 12(2) of the Act."

Again at page 389, the Patna High Court distinguished the decision of the Supreme Court in*Eastern Investments Ltd. v. Commissioner of Income-tax* by these observations :

> "In the Supreme Court case, the interest was paid the company on the money borrowed by it and utilised for investment which earned income, and, as such, it was held that although the loan was taken on an overdraft, as it was utilised for investment on which the company earned income, the interest paid by the company on such loan was a permissible deduction under section 12(2) of Act. In the present case, however, the position is different."

The Patna decision in Maharajadhiraj Sir Kameshwar Singh v. Commissioner of Income-tax has been the subject of dissent and controversy. Dissent was expressed by the Division Bench of the Bombay High Court consisting of S. T. Desai and K. T. Desai JJ. in Ormerods (India) Private Ltd. v. Commissioner of Income tax. S. T. Desai J. in that case, after quoting the particular sentence of the Supreme Court decision in Eastern Investment Ltd., at page 334, observed as follows :

> "Sub-section (2) does not say that the deduction is permissible when any income has been earned or profits or gains made. All that it speaks of is that the expenditure must have been laid out solely for the purpose of earning income. There is nothing in the language of the section to suggest that the purpose needs to be fulfilled nor is it necessary by way of the purpose should fructify in to any benefit to the assessee by way of return in the shape of income."

These observation were followed by certain discussions about attempted distinction between purpose and motive which we do not consider relevant from our point of view. What is important

is that the Division Bench of the Bombay High Court disagrees with the view taken by the Patna High Court and that will be found at pages 336-37 of the Income Tax Reports. The Allahabad High Court in Chhail Behari Lal v. Commissioner of Income-tax preferred the Bombay view to the Patna view. In that case, the Division Bench of the Allahabad High Court consisting of Bhargava and Upadhya JJ. did not give any separate reasons but adopted the reasons of the Bombay High Court at page 700 of that report by the following observation.

> "Since the reasons which led us to take the view have already been mentioned in detail in judgment of the Bombay High Court, we do not consider it necessary to express them again in this judgment and we think it enough for us to say that, with respect, we agree with the reasons as well as the decision of the Bombay High Court in the case cited above."

In the Allahabad case, the assessees who were partners in firm borrowed a sum of money to purchase shares in a company and during the relevant accounting year they did not receive any dividends but had each to pay a sum of Rs. 6,668 as interest on the money borrowed. There the assessees claimed that the amount so paid by each of them was expenditure deductible under section 12(2) of the Income-tax Act and could be set off under section 24(1) against their income under other heads. The assessees claim to deduction was allowed.In the midst of this controversy and conflict of decisions, it will be proper in our view to remind ourselves again of the Income-tax Act and the language of the particular statute with which we are dealing. We are dealing with section 10(2) (xv) and section 12(2) of the Indian Income-tax Act. This statute must be our primary guide in interpreting the law under those sections. With a view to appreciate the context it is necessary to note that Chapter III of the Income-tax Act deals with the subject "Taxable Income". Section 10 and section 12 come within this Chapter. The Chapter begins with section 6 indicating heads of income chargeable to income-tax. The heads with which we are concerned are those under business, profession or vocation and income from other sources. Section 10 deals with business. Section 10(1) provides that the tax shall be payable by an assessee under the head "profits and gains of business, profession or vocation", in respect of profits or gains of any business, profession or vocation carried on by him. We are concerned with the case of a business in this reference. In other words, therefore, in this context section 10(1) of the Act means a tax on the profits or gains of a business. Section 10(2) goes on to provide how such profits or gains" shall be computed after making the allowances mentioned thereunder. The allowance that is relevant for our purpose is contained in clause (xv) which reads as follows :

> "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 the assessee) laid out or expended wholly and exclusively for the purpose of such

> business, profession or vocation."

The next section with which this reference is concerned relates to "Other sources" and is mentioned in section 12. Section 12(1) of the Act provides that the tax shall be payable by an assessee under the head "Income from other sources" in respect of income, profits and gains of every kind which may be included in his total income (if not included under any of the preceding heads). This, therefore, again is a tax on income from other sources or a tax on profits or gains from other sources. Section 12(2) then proceeds to provide.

> "Such income, profits and gains shall be computed after making allowance for any expenditure (not being in nature of capital expenditure) incurred solely for purpose of making or earning such income, profits or gains and further in the case of any income by way of dividend, for any reasonable sum paid by way of commission or remuneration to a banker or any other person realising such dividend on behalf of the assessee..."

It is then followed by certain provisos which are not relevant for our purpose.A comparison between sections 10(2) (xv) and 12(2) of the Act at once shows the difference in language. That difference lies in the words "the purpose of making or earning such income, profits or gains." In section 10(2) (xv) if the expenditure satisfies the other conditions immaterial for our purpose here, then it is enough that it is laid out or expended wholly and exclusively for purpose of such business and it is not necessary to make or earn any income, profit or gain out of such business. It is not, however, the same situation under section 12(2) of the Act which insists that the expenditure is incurred solely for the purpose of making or earning "such income, profits or gains". Surely there must be some difference made between sections 10(2) (xv) and 12(2) of the Act because of the express difference in language. No construction should be made so as to equate them on the same level and exactly similar consequences in the face of express difference in language. It is all the more so because section 10(2) (xv) of the Act has been amended and has history which is relevant on the point. The original clause (ix) renumbered as (xii) by section 11 of the Indian Income-tax (Amendment) Act, 1939 (Act VII of I939), was future renumbered as (xv) by section 3 of the Indian Income-tax (Amendment) Act, 1946 Act VIII of 1946). Section 12(2) of the Act had some amendments as, for instance, introduction of income by way of dividend by section 9 of the Finance Act, 1955, which came into effect from the 1st April, 1959. Under section 12(2), the deductions that are not permissible are for "any expenditure, not being in the nature of capital expenditure incurred solely for the purpose of making or earning such income, profits or gains". This was the type of language which was used in section 10(2) (ix) of the old Act before the amendment which now corresponds, after the amendment, to section 10(2) (xv) of the present Act. The language of section 10(2) (xv) of the present Act reads, on this relevant part, excluding the features not necessary for our purpose :

> "Any expenditure.... laid out or expended wholly and exclusively for the purpose of such business, profession or vocation."

The question of "purpose of making or earning such income, profits of gains" no longer arises under section 10(2) (xv) of the Act. In other words, this kind of a change has not been introduced in the present sub-section (2) of section 12 of the Act. Having regard to this history of the amendment, it will not be right, in our view, to draw the conclusion that in spite of such material difference in the language, the effect of section 10(2) (xv) and section 12(2) of the present Indian Income-tax Act should be the same. That will be ignoring the difference in language which the legislature has deliberately introduced and maintained.Section 12(2) indicated the tax payable on the income from "Other sources". If there is no income in the sense that there is no return of any kind whatever, then the deduction that is intended to be claimed by the assessee in this case under section 12(2) of the Act becomes, in fact, a deduction against a notional income or a mere prospect of an income or a deduction against a mere expectation of a return. Section 12 operates on the field where there is some kind of an income or return against which the deduction can be claimed. That income may ultimately turn out after deductions to be a loss or be wiped out by the deductions but nevertheless there must be some return. That was also the case in *Eastern Investments Ltd. v. Commissioner of Income-tax. Toapply* section 12 including its sub-section (2) to a case where there has been only a mere expenditure in the hope of future return of income but no actual return or actual income is to create a base for a reference for taxation and deduction therefrom not recognised either in section 12 or in these groups of sections as salaries, property, business or other sources as in section 7, 9, 10 and 12 of the Act. Whether a return of the income under section 12 ultimately is reduced to nil or a loss is immaterial so long as there is some gross income or return, but where there is only an expenditure and no income whatever and no return whatever, then, I do not think it will be proper to apply the principle of deduction recognised in section 12(2) of the Act. The Supreme Court enunciated these principle in *Eastern Investments Ltd. v. Commissioner of Income-tax,* by emphasising, "it is not necessary to show that any expenditure was profitable or that, in fact, any profit was earned". It is of importance, therefore, to recognise the limits of that clear enunciation. That limit is that a "profit" need not be shown. The expenditure need not be shown to be profitable in fact. It will be a wrong application of this principle, in our view, to extend this doctrine to the case where it is not a question of actual profit but where there is no return whatever. That, in our view, would be to tax not an income or to allow a deduction not against such a mere prospect. This is not permissible, in our view, in the context and interpretation of section 12 of the Income-tax Act. It is precisely this difference which is made after the amendment in section 10(2) (xv) of the Act where no question of the purpose of making or earning such income arises and where it is enough to show only an expenditure wholly or exclusively for the purpose of the business itself. That is why the cases to which Mr. Mitter, learned counsel for the assessee, draws our attention, namely, to Anglo-Persian

Oil Co. (India) Ltd. v. Commissioner of Income-tax, In re Tata Iron & Steel Co. Ltd. and Vallambrosa Rubber Co. Ltd. v. Farmer, will not support the present case but, in fact, supports the view that we are taking. For instance, Rankin C.J. in Anglo-Persian Oil Co. (India) Ltd. v. Commissioner of Income-tax, at page 845, says :

> "Clause (ix) of sub-section (2) of section 10 of the Indian Act does not say and does not mean that the expenditure must be made with a view to produce profits in the year of account. This was held by the Bombay High Court in In re Tata Iron & Steel Co. Ltd. and though the case of Vallambrosa Rubber Co. Ltd. v. Farmer was not decided under the Indian Act, the judgment of the Lord President of the Court of Session in Scotland in that case may conveniently be referred to as very fully disclosing the soundness of the Bombay decision."
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> Here again, as will be seen, Rankin C.J. was emphasising "Profits" in the year of account but was not thinking of the case of no return at all. In all these cases, there was, in fact, a return and they were all cases on "business" and not on "other sources".

The principles for deduction of expenditure are different in different sections under different heads of income. It is a wrong attempt to find or seek any universal principle of deduction for allowance for expenditure. A glance at the different sections such as 7, 8, 9, 10 and 12 will at once make it clear that each section is its own dictionary and vocabulary for creating and permitting deductions under the individual sections. For instance, the tax on property under section 9 is payable in respect of the bona fide annual value subject to the following allowances, namely, "where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value" [section 9(1) (i)]. Now, even if more than one-sixth is, in fact, spent genuinely for the repair, it is not permissible even though it may be the business of the owner to let house properties and the expenditure is incurred solely for that business. On the other hand, under section 10(2) (xv), so long as the expenditure is wholly or exclusively for the purpose of such business it is allowable. It will, therefore, be a wrong approach to the question to suggest that allowance must follow the same principle in section 10(2) (xv) of the Act as in section 12(2) of the Act in spite of the difference in language which has been noticed already.Mr. Mitter, learned counsel for the assessee, relied on the decision in Royal Calcutta Turf Club v. Commissioner of Income-tax. That was not a case under section 12(2) of the Income-tax Act but one under section 10(2) (xv) of the Act. The question there was whether expenditure incurred for the purpose of earning or ensuring the earning of future profits in a business by establishing schools for training of Indian boys as jockeys came within the meaning of section 10(2) (xv) of the Income-tax Act. Chakravartti C.J. at page 623 observed :

> "It is thus not merely direct benefit to the trade which can be the objective of expenditure made wholly and exclusively for the purpose of the trade. Expenditure incurred for securing ends which will indirectly facilitate the carrying on of business can also be expenditure laid out wholly and exclusively for the purpose of the business."

This case also quoted the observation of Lord Keith in Morgan v. Tata & Lyle Ltd., where it was said :

"If the purpose of the expenditure is to benefit the trade, it is not necessary to show by demonstration that in fact the expenditure has produced, or will produce, profit or has prevented loss of profit or has facilitated or will facilitate the earning of profit."Commenting on this observation of Lord Keith, Chakravartti C.J. in Royal Calcutta Turf Club v. Commissioner of Income-tax, at page 629 said :

"... the expenditure must be laid out for that purpose and with that expectation."This is exactly the view that we are also taking of section 10(2) (xv) and, on the very same reasons, we are coming to the conclusion, due to the express difference in language on this very point in section 12(2) of the Act, that this test does not hold good under section 12(2) of the Act in the sense we have indicated above. The Royal Calcutta Turf Club case went up in appeal to the Supreme Court. The Supreme Court upheld the decision and dismissed the appeal. The decision of the Supreme Court will be found as Commissioner of Income-tax v. Royal Calcutta Turf Club. The Supreme Court referred to the previous decision in Eastern Investments Ltd. v. Commissioner of Income-tax, on the question that the issue whether an item of expenditure was wholly and exclusively laid out for the purpose of business must be decided on the facts of each case, though the final conclusion was one of law, and to the observation in Commissioner of Income-tax v. Chandulal Keshavlal & Co., where the purpose of the trade or business of the assessee. In fact, Bose J. in Eastern Investments Ltd. v. Commissioner of Income-tax, in laying down the four principles, of which the relevant principle has already been quoted before, was doing so on this question, what is meant by the word "solely". The fourth principle which Bose J. laid down in that page is what is meant by the word solely." Therefore, the principle "It is not necessary to show that the expenditure was a profitable one or that, in fact, any profit was earned", which was principle (b), is to be read in the light of being a principle on the question as to what is meant by the word "solely" under principle (d) as laid down by Bose J. in the Supreme Court.Therefore, our answer to the question referred to us must be in the negative and we decide accordingly. The assessee will pay the costs of this reference.

BOSE J.

The question propounded in this reference involves the interpretation of section 12(2) of the

Indian Income-tax Act. The crucial or leading words of section 12(2) are, "expenditure... incurred solely for the purpose of making or earning such income..." Now, section 12(1) of the Act deals with taxability of "Income from other sources" and the words "such income" in sub-section (2) evidently refer back to the "Income from other sources" mentioned in sub-section (1). In computing income under this head, "Income from the other sources", deductions can be allowed in respect of expenditure, the nature of which is indicated in sub-section (2). So, if there is no income at all from "Other sources" no expenditure can be deducted from the income which does not exist at all. In other words, unless there is some income from "Other sources" which is brought under assessment, there can be no question of allowing deductions in respect of expenditure incurred solely for making or earning such income. In a running business, items of expenditure are commonly treated as belonging to the accounting period in which they are met. A taxpayer may deduct expenditure in the year of assessment (provided it is not of a capital nature) connected with that year. In my view, by the words employed in sub-section (2), the intention to refer to the "Income from other sources" under assessment is clearly expressed.In construing these words of section 12(2) of the Act in the case of Commissioner of Income-tax v. Basant Rai Takhat Singh the Judicial Committee observed :

> "In their Lordships view, on the true construction of that sub-section, the allowance for any expenditure incurred must be an allowance for expenditure incurred in the year in respect of which arise the income, profits and gains forming the basis of the assessment. Upon that footing, therefore, there can be no justification for deducting from the profits and gains something in respect of expenditure, whether it be regarded as capital expenditure or not which occurred many years before."

The amount claimed as deduction in this case before the Privy Council was for expenditure relating to the costs of erecting certain buildings on the leasehold land which the assessee sought to spread over the term of the lease to deduct the proportionate parts from his gross income as an annual depreciation or loss. The deduction was not allowed.Mr. Sukumar Mitra, the learned counsel for the assessee, relied on the case of the Supreme Court in Eastern Investments Ltd. v. Commissioner of Income-tax, which lays down certain principles that should govern the construction of section 12(2) and pointed out that one of such principles is that under section 12(2) it is not necessary to show that the expenditure was a profitable one or that, in fact, any profit was earned. But in the case before the Supreme Court, the company concerned, which was an investment company and which borrowed money and utilised it for its investments on which it earned income, was allowed deduction under section 12(2) in respect of the interest paid by the company on the loan. So, in that case, there was income earned in the relevant year and so the provision of section 12(2) was applied.

Profit and income are not the same thing though the concept of profit includes the concept of income. As pointed out by the Supreme Court in a later case, Calcutta Company Ltd. v. Commissioner of Income-tax, quoting with approval the observation of Lord Herschell in Russell v. Town and County Bank Ltd. :

> "The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts. That seems to me to be the meaning of the word profits in relation to any trade or business. Unless and until you have ascertained that there is such a balance, nothing exists to which the name profits can properly be applied."

It is thus clear that profit presupposes the existence of income. The observations of the Supreme Court in Eastern Investments Ltd. v. Commissioner of Income-tax with regard to the principle enunciated in clause (b) are based on the case of John Moore v. Stewarts and Lloyds Ltd.; and Ushers Wiltshire Brewery, Ltd. v. Bruce, which dealt with the provisions analogous to the provisions of section 10(2) (xv) of the Indian Act, the wordings of which are different from the wordings of section 12(2).Mr. Mitra also relied on a decision of the Bombay High Court Ormerods (India) Private Ltd. v. Commissioner of Income-tax and a decision of the Allahabad High Court in Chhail Behari Lal v. Commissioner of Income-tax, which simply follows the Bombay case, in support of his contention. These cases have been dealt with at length by my learned brother and so I do not propose to deal with them over again.In my view the decision of the Patna High Court in Kameshwar Singh v. Commissioner of Income-tax is based on a correct reading of the scope and implication of the judgment of the Supreme Court in Eastern Investments Co.s case and is more in accord with the textual interpretation that should reasonably be put upon sub-section (2) of section 12.In my view, the finding of the Tribunal is correct and the question should be answered in the negative as proposed by my learned brother.

Question answered in the negative.