

# CALCUTTA HIGH COURT

D.M. Wadhwana

Vs

Commissioner of Income-Tax

(Mitter J.)

06.04.1965

## JUDGMENT

### **Mitter J.**

1. The questions referred to this court under section 66(2) of the Act are as follows :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the transactions between the assessee and Messrs. Kedar Nath Hariram were speculative transactions within the meaning of the expression used in section 24(1) of the Indian Income-tax Act ?

(2) Whether, on the facts and in the circumstances of the case the Appellate Tribunal erred in rejecting the set-off of the loss claimed by the assessee of Rs. 40,572 under section 24(1) of the Indian Income-tax Act ? The facts taken from the statement of case are as follows : The assessment year concerned is 1953-54, the corresponding accounting year being 2008 Gujarati Diwali year ending on October 18, 1952. The assessee is a member of the Gunny Trades Association and is a registered dealer in jute and hessian. In the accounting year mentioned above, the assessee entered into three transactions for purchase and sale of hessian bags, heavy cess, etc., with Kedar Nath Hariram. Under the first contract, the assessee agreed to sell to the said firm 500 bales of heavy cess at the rate of Rs. 180 per hundred bags, on September 1, 1951. Out of these, 250 bales were deliverable on April 30, 1952. On October 13, 1951, the assessee entered into a second contract with the same party agreeing to purchase 500 bales of the same quality of heavy cess at Rs. 216-8-0 per hundred bags. The deliveries under the second contract were to be made as under the first contract. The assessee incurred a total loss of Rs. 81,072 on the two contracts. The assessee entered into an agreement to purchase 300 bales of hessian from the said firm on August 20, 1951, deliverable on November 15, 1951. On September 22, 1951, the assessee entered into another agreement to sell 300 bales of the same commodity to the same

party deliverable on the same date (November 15, 1951). As a result of the two last mentioned contracts, the assessee made a profits of Rs. 40,500. Thus, as a result of this series of transactions, the assessee suffered a net loss of Rs. 40,570. The contracts were in the standard form of contract prescribed by the Indian Jute Mills Association, the relevant clauses of which will be noted hereafter. It is admitted that there was no physical delivery of the commodity agreed to be purchased and sold. The parties to the contract exchanged pucca delivery orders which authorised the purchaser to take delivery of the stipulated number of bales from the mills concerned, but the goods were not actual sent by any party of the other. The mode of payment adopted under the contract was as follows : On April 15, 1952, Kedar Nath Hariram drew up a bill for Rs. 2,40,441-9-0 against the assessee in pursuance of the second contract dated October 10, 1951, being the value of the 250 bales of heavy cess purchased by the assessee. On the same date the assessee drew up a bill against Kedar Nath Hariram for Rs. 1,99,905-3-3 in pursuance of the first contract dated September 1, 1951, being the cost of the 250 bales agreed to be sold by the assessee. The books of the assessee showed a debit entry of Rs. 2,40,441-9-0 and a credit entry of Rs. 1,99,905-3-3 in respect of the transactions just now mentioned under date April 15, 1952. The bank pass book of the assessee corroborated the statement and showed a credit entry in favour of the assessee of Rs. 1,99,905-3-3 and a debit entry of Rs. 2,40,441-9-0. Similarly, bills were drawn by the two parties against each other and similar entries in the cash book and the bank pass book are to be found in respect of the deliveries to be effected on April 30, 1952. Again with regard to the contracts for the purchase and sale of 300 bales of heavy cess, bills were drawn up and delivery orders attached to the bills in the same manner and similar debit and credit entries for the entire amount in respect of the pucca delivery orders were to be found in the books of account of the assessee including the bank pass book. The Income-tax Officer held that the transactions entered into between the assessee and Kedar Nath Hariram were speculative in nature as none of the contracts were followed up by actual delivery of the goods. He, therefore, did not allow the set-off of the net loss against the business income of the assessee in view of the proviso to section 24(1) of the Income-tax Act. The Appellate Assistant Commissioner confirmed the disallowance. Elaborate arguments were put up before the Appellate Tribunal. In order to appreciate the same it is necessary to refer to the salient features of the terms and conditions of the contracts which were all in the same form. One of these contracts is an annexure to the statement of the case bearing date October 13, 1951. The firm of Kedar Nath Hariram appeared to have acted as the brokers in the transaction. The document shows that the said firm had bought by the order of International Trading Company (name and style in which the assessee worked) and on the assessee's account two lakhs bags of European mills standard make, quality, etc., as per margin at the rate of Rs. 216-8-0 per hundred bags free alongside export vessel in the port of Calcutta. In the margin the quality of the bags, their weight, etc., are shown. The important terms and conditions of the contract were :

"(1) Buyers to give seven clear working days notice to place goods alongside.

(2) Goods to be packed, folded, well pressed, marked and shipped by sellers in covered cargo boats in iron bound bales of 400 pcs. each.

(3) Payment to be made in cash in exchange for delivery orders on sellers, or for railway receipts, or for docks receipts or for mates receipts (which docks or mates receipts are to be handed over by a dock or ships officers to the sellers representatives).....

(5) Delivery of the said goods to given and taken as follows :

15th April, 1952 One lakh bags....

(9) In the event of the buyers failing to give to the sellers instructions for shipment or delivery of any portion of the goods in time to ship or deliver such portion within due date, a written intimation from the sellers sent by post or otherwise, to the buyers place of business, that the goods are already in godown at mill names overleaf, shall be considered a proper and sufficient tender, whether they have been specially set arise or not."Under section 24(1) an assessee, who sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, is to be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year. Under the first proviso to section 24(1) any loss sustained in speculative transactions which were in the nature of a business were however not to be allowed to be set off against the income of the assessee from any source other than business consisting of speculative transactions. Under Explanation 2 of Section 24(1) of the Income-tax Act "a speculative transaction means a transaction in which a contract for purchase and sale of any commodity including stocks and shares in periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips."The impact of the above provisions on the affairs of the assessee was that if the transactions with Kedar Nath Hariram were speculative transactions within the meaning of section 24(1) of the Income-tax Act, the net loss of Rs. 40,571 could not be allowed to be set off against the income of the assessee from other business.It was strenuously contended before the Appellate Tribunal and before this court that the said transactions could not be speculative transactions. Special reference was made to the words "periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips". It was said that there was actual delivery or transfer of the goods inasmuch as there was no settlement contract or dealing in differences only; the parties actually sent pucca delivery orders of the mills along with their bills. These pucca delivery orders, according to the learned advocate for the assessee, represented the goods and as such the transactions never had any speculative element in them. The whole question before us is whether, by the exchange of delivery orders, the transactions avoided the mischief of the Explanation. It was argued that the

exchange of delivery orders was one of permissible modes of delivery. This was sought to be supported by the decision of the Supreme Court in the case of *Dunichand Rataria v. Bhuwarka Brothers Ltd.* As that case proceeds largely on the construction and effect of the issue of pucca delivery orders by jute mails as expounded earlier in the case of *Anglo-India Jute Mills Co. v. Omademull*, it would be appropriate to take a note of the views expressed in that case. The facts in the *Anglo-India Jute Mills Cos Case* were as follows. The company sold 3,00,000 yards of hessian cloth of March, 1, 1908. In the sold note sent to them by the brokers the sale was expressed to be to the brokers principals. Under the conditions of the contract, payments were to be made in cash in exchange for delivery orders or on certain other specified terms which are not relevant and delivery of the goods was to be given and taken on the terms "ready payment against pucca delivery order". Three delivery orders bearing dated March 2, 1909, were issued by the company to the brokers who pledged, them with the firm of Chandermull Serahmull to secure repayment with interest of the sum of Rs. 18,000 advanced by them to the brokers. The plaintiff, Luchmiunarain Kanoria, was also interested in the advance. Subsequently, an agreement was made between the plaintiffs and the brokers under which for valuable consideration the plaintiffs gave up the two delivery orders and obtained from the brokers and assignment of their equity of redemption in the other delivery order and the 1,00,000 yards of hessian cloth represented thereby. It was on this third delivery order that the plaintiffs claim in the suit was based. The defendant company resisted the plaintiffs claim on the ground that they were unpaid sellers of the goods and that they had a lien on them so long as these remained in their possession and the price or any part of it remained unpaid. The real question was whether the defendant-company was estopped from denying that cash had been paid for the goods to which the delivery order related and whether they could not claim to be entitled to a lien as against the plaintiffs. The defendant-company contended that the plaintiffs could not succeed as the property in the goods had not passed since there was no appropriation of them to the delivery order. They also contended that the delivery order was not a document of title. Jenkins C.J. held that there was statutory recognition of a delivery order as a document of title in section 108 of the Contract Act and section 137 of the Transfer of Property Act and under the latter section the transferee acquired a title to the goods to which it related. The learned Chief Justice came to the conclusion that the defendant-company had adduced no evidence to prove that the goods had not been ascertained, though this was a fact especially within their knowledge and said that the defendant-company could not be heard to advance this plea, and for substantially the same reason as precluded them from showing that cash had not been paid. He observed that "having regard to the terms of the delivery order, the known course of dealing in this market, Mr. Youngs representations (who in reply to the enquiry as to whether the delivery orders were in order said that they were all right) and their own conduct, the defendant-company must be taken to have appropriated goods of the required quantity and description to this delivery order, and they cannot now be heard to deny

that they held these goods for the plaintiffs. And it must be borne in mind that we have not to consider whether property passed as between the original sellers and buyers but whether, in the events that have happened, the sellers can assert this against the plaintiffs who have acted on the faith of the sellers representation that no lien existed and that they held goods to answer the delivery order. In my opinion, the defendant-companys contention on this head must also fail, for, in the circumstances, the defendant-company have represented that the delivery order would pass and confer a good title, and they put it in the power of Messrs. Janki Dass & Co. to indorse the delivery order with this representation to the plaintiffs, who, dealing in good faith and for value, were induce to alter their position on the faith of the representation so made." It will be noted from the above that Jenkins C.J. stated expressly that the question whether property had passed as between the original seller and the buyer was not required to be examined and that the sellers were bound by their representation that they held the goods to answer the delivery order and that there was no lien over them. In Duni Chand Ratarias case, the facts were as follows : The appellant had entered into three contracts, two dated August 8, 1949, and the third August 17, 1949, with the respondent agreeing to purchase 1,80,000 bags of "B" twills at the price of Rs. 134-4-0 per 100 bags, a similar quantity at the rate of Rs. 134-4-0 per 100 bags and 90,000 bags at the rate of Rs. 138 per 100 bags respectively for October, November and December, 1949, deliveries in equal instalments on terms and conditions contained in the relative contract forms of the Indian Jute Mills Association. In September, 1949, the respondent expressed its inability to deliver the goods under the contracts and requested the appellant to settle the same by selling back the goods under the said contracts to the respondent at the price of Rs. 161-8-0 per 100 bags. Three settlement contracts were accordingly entered into between the parties on September 28, 1949, whereby the appellant agreed to sell the goods under the original contracts to the respondent at the rate of Rs. 161-8-0 per 100 bags on the terms an conditions contained in the relative contract forms of the Indian Jute Mills Association. The appellant submitted to the respondent his bills for the amounts due at the foot of the said contracts aggregating to Rs. 1,15,650 which the respondent accepted but failed and neglected to pay. In the suit filed by the appellant the defence taken by the respondent was that the three settlement contracts were illegal and prohibited by the West Bengal Jute Goods Future Ordinance, 1949. The respondent contended that it never dealt in the sale and/or purchase of jute goods involving "actual delivery of possession" thereof nor did it possess or have control over any godown and other means or equipments necessary of the storage and supply of jute goods. The court had to consider certain provisions of the West Bengal Jute Goods Future Ordinance, 1949, section 2 whereof provided that unless there was anything repugnant in the subject or context "a contract relating to jute goods futures" means a contract relating to the sale or purchase of jute goods made on a forward basis.

(a) providing for the payment or receipt, as the case may be, of margin in such manner and on

such dates as may be specified in the contract, or

(b) by or with any person, not being a person who, -

(i) habitually deals in the sale or purchase of jute goods involving the actual delivery of possession thereof, or

(ii) possesses, or has control over, a godown and other means and equipment necessary for the storage and supply of jute goods."

The terms and conditions of the standard form of the Indian Jute Mills Association contained clauses (1), (3) and (4) which are the same as clauses 1, 2, and 3 of the contract in this case. The Supreme Court noted that "in respect of the goods deliverable under the contracts the mills would, in the case of goods sent by them alongside the vessel in accordance with the shippers instruction in that behalf, obtain in the mates receipts in respect of the same and such mates receipts would be delivered by the mills to their immediate buyers who in their turn would pass them on to their respective buyers in the chain of contracts resting with the ultimate shipper. If the mills held goods in their godown, they would issue s delivery orders on the due date, which delivery orders would be dealt with in the same manner as the mates receipts aforesaid. Both these sets of documents would present the goods and would be passed on from seller to buyer against payment of cash." It was common ground that the contract did not provide for the payment or receipt of margin and that the respondent did not possess or have control over a godown and other means and equipments necessary for the storage and supply of jute goods. The only point at issue was whether the respondent was a person who habitually dealt in the sale or purchase of jute goods involving the actual delivery of possession thereof. The contention of the respondent was that the transactions were purely speculative, that mere delivery orders passed between the parties and that such order did not represent the goods and that transfer thereof did not involve as between the intermediate parties actual delivery of possession of the goods. The learned judges of the Appeal Bench of the Calcutta High Court had come to the conclusion that "actual delivery of possession" meant physical or manual delivery as opposed to a symbolical or constructive delivery. According to the Supreme Court this consideration was too narrow. The court observed that "even if regard be had to mischief which was sought to be averted by the promulation of the Ordinance, the Government intended to prevent person who dealt in differences only and never intended to take delivery under any circumstances, from entering into the market. Provided a person habitually dealt in the sale or purchase of jute goods involving delivery of the goods, he was not to be included in the ban. This court be the only intendment of the Ordinance, because otherwise having regard to the ordinary course of business, business in jute goods would become absolutely impossible." The court founded that "the manufacturer of jute goods does not come normally into direct contract with the shipper. It is only through a chain

of contracting parties that the shipper obtains the goods from the manufacturer and if only actual delivery of possession as contrasted with symbolical or constructive delivery were contemplated it would be possible carry on the business. If the narrow construction which was put by the appeal court on the expression actual delivery of possession was accepted, it would involve each one of the intermediate parties actually taking physical or manual delivery of the goods from their sellers and again in their turn giving physical or manual delivery of the goods from their sellers and again in their turn giving physical or manual delivery of the goods which they had thus obtained to their immediate buyers. Such an eventuality could never have been contemplated by the Government and the only reasonable interpretation of the expression actual delivery of possession can be that actual delivery as contrasted with mere dealing in differences was within the intendment of the Ordinance and such actual delivery of possession include within its scope symbolical as well as constructive delivery of possession. The court laid great stress on the words used in section 2(1)b(1) involving the actual delivery of possession thereof and held that the word involving, in the context meant resulting in and this condition would be satisfied if the chain contracts as entered into in the market resulted in actual delivery of possession of goods in the ultimate analysis". In my opinion the decision of the Supreme Court does not lay down the broad proposition contended for by the learned advocate forth assesse before us that mere exchange of pucca delivery orders amounts to actual delivery or transfer of the goods within the meaning of Explanation 2 of section 24(1). As already noted, the Supreme Court pointed out that the whole object to the Ordinance was to prevent dealing in differences only by persons who never intended to take delivery under any circumstances and that the ban was not imposed in the case of person who habitually dealt in the sale or purchase of jute goods involving actual delivery of possession of the goods. Further, as already noted, the mischief of the Ordinance would be avoided if the chain contracts as entered not ultimately resulted in actual delivery of possession of goods. This means that, so far as the intermediate contracts were concerned, there need not have been actual transfer of the goods. The Explanation to section 24(1), however, does not prevent persons from entering into contracts in which the buyers and sellers may not actually hand over the goods physically. The Explanation is only designed at grating for income-tax purposes loss sustained in transactions of a certain kind. It may be that such transactions are not speculative in the light of section 30 of the Contract Act. It is well settled that to make a contract wagering within the meaning of section 30 of the Contract Act, there must be a common intention of both the parties to the contract not to give or take delivery but only to deal in differences. The Explanation to section 24(1) goes a step further and takes the transactions out of the domain of intention altogether in that there must be actual delivery or transfer of the commodity. The word "actual" means "real" as opposed to "theoretical or probable." Under section 33 of the Sale of Goods Act "delivery of the goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of

putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf." Under section 2(2) of the Sale of Goods Act delivery means voluntary transfer of possession from one person to another - the definition being the same as that given in section 62(1) of the English Sale of Goods Act. A symbolical delivery of goods divesting the sellers possession and lien may be sufficient compliance with the Sale of Goods Act. In enacting the Explanation 2 of section 24(1) of the Income-tax Act, the legislature did not intend to affect any transaction of sale wherein the goods were not physically delivered by the seller to the buyer but only laid down that if there was no actual or physical delivery, the loss, if any, would be a loss in a speculative transaction which could be allowed to be set off only against a profit in a transaction of the same nature. Even before the enactment of the Sale of Goods Act on the statute book it was held in *Chaplin v. Rogers* by Lord Kenyon that "where goods are ponderous and incapable of being handed over from one to another, there need not be an actual delivery, it may be done by that which is tantamount, such as the delivery of the key of a warehouse in which the goods are lodged, or by delivery of other Indicia of property." The question as to whether property in jute goods of the kind covered by the contracts in the present case passes with the transfer of the delivery orders came up for consideration before the Supreme Court in *Jute and Gunny Brokers Ltd. v. Union of India*. In that case the Government of India issued an order on September 30, 1946, to the managing agents of practically all the jute mills in and around Calcutta requisitioning the hessian specified in the schedule to the order and directing them and every other person in possession of the said property to deliver the same to the Directorate of Supplies, Calcutta. These orders were served upon the managing agents of mills under sub-rule (1) of rule 75A of the Defence of India Rules. On the same day the Government of India issued another notice under sub-rule (2) of rule 75A to the managing agents communicating its decision to acquire the property under that sub-rule. These agents were informed that property would vest in the Central Government at the beginning of the day on which the notice was served upon them free from any mortgage, pledge, lien or other encumbrances. On the same day the Deputy Director of Supplies, Government of India, wrote to the Secretary, Indian Jute Mills Association, that shipping instructions would be issued in due course by the Directors of Supplies, Calcutta, with respect to hessian requisitioned and acquired under the order and notes already referred. The Government then tried to take possession of the hessian but the mills and the holders of delivery orders resited the Governments attempt on the ground that the orders of requisitions and acquisition were invalid. The Government of Indian then filed a suit impleading the mills and the managing agents and a number of holders of delivery order for enforcing the order of acquisition and requisition and for the appointment of a receiver. One of the questions in that suit was whether in view of the usage that pucca delivery orders were issued only against payment and the same passed from hand to hand by endorsement and were sold and dealt with in the market as absolutely representing the goods to which they related and as the mills were estopped from

challenging that the property in the goods had passed (on the strength of the decision in Anglo-India Jute Mills Co.s case), the Government of India which was claiming ownership through the mills was also subject to estoppel and whether the holders of the delivery orders being the owners of the property who had not been served with the order of acquisition in and requisition, the property in the goods had passed to Government on September 30, 1946. The Supreme Court found on the evidence "that the goods covered by the pucca delivery orders are not ascertained at the time such order are issued and ascertainment takes place in the shape of appropriation when the goods are actually delivered in compliance therewith. Therefore, till appropriation takes place and goods are actually delivered, they are not ascertained. The contract represented by the pucca delivery orders is a contract for the sale of unascertained goods and no property in the goods is transferred to the buyer in view of Section 18 of the Indian Sale of Goods Act till the goods are ascertained by appropriation, which, in this case, takes place at the time only of actual delivery". The Supreme Court pointed out that the Anglo India Jute Mills Cos case "merely lays down the rule of estoppel as between the mill and the holder of the pucca delivery order and in a suit between them the mill will be estopped from denying the title of the holder of pucca delivery orders; but that does not mean that in law the title passed to the holder of the pucca delivery order as soon as it was issued even though it is not disputed that there was no ascertainment of goods at that time and that the ascertainment only takes place when the goods are appropriated to the pucca delivery orders at the time of actual delivery." In this case so far as the contracts are concerned, they took place in September, October and November while the goods were deliverable in the following April. Consequently, neither the assessee nor Kedarnath Hariram was called upon to give or to take delivery and the question of appropriation of the goods to the contract never arose as between them. In my opinion the decision of the Supreme Court in State of Andhra Pradesh v. K. S. Ramamurthy makes no difference so far as the question in this case is involved. The question there was whether certain transactions attracted sales tax under the Madras General Sales Tax Act (IX of 1939). It was common ground that the respondent, assessee, was a dealer within the meaning of the word in the Madras Sales Tax Act being a person who carried on business of buying or selling goods and the transactions involved were put through by way of business. Section 3 of the Act which was the charging section enacted that "every dealer shall pay for each year a tax on his total turnover for such year", "turnover" meant the "aggregate amount for which goods were bought or sold or supplied or distributed by dealer either directly or through another, on his own account or on account of other whether for cash or for deferred payment or other valuable consideration....." and "sale" meant "every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and included also a transfer of property in goods involved in the execution of works contract, but did not include a mortgage, hypothecation, charge or pledge". The assessee dealt in gunny bags manufactured in two mills

situated in Chittivalsa and Nellimerla in Visakhapatnam District. The purchase from the mill was effected by written constructs in printed forms. These contracts were entered into by brokers acting for the assessee who sent him bought-notes setting out the terms upon which the purchases had been effected from the mills. Delivery was to be effected within a period of three months from the date of the contract. The buyer was required to make a deposit of Rs. 15 per bale within 24 hours after the contract was handed over. Thereafter, the mills issued delivery orders directing delivery of goods as per the contract and these were handed over to the buyer on his honouring a hundi for the value of the goods. It was common ground that by the date when the delivery orders were issued there were goods answering the contract description and of quantity sufficient to comply with the relative term in the contract, in the godowns of the mills wherefrom, on the terms of the contract, delivery was to be effected. It was open to the buyer himself to have gone to the mills and taken delivery of the goods but this was not done. Instead of taking delivery himself, the assessee endorsed the delivery orders and these passed through several hands before the ultimate holders of the delivery orders presented them to the mills and obtained delivery of the gunnies. It was held by the Supreme Court that at the date of the contract there was no completed sale of goods by the assessee because there was no appropriation of the goods : the transaction so far as he was concerned consisted merely of the endorsement of the delivery order issued by the mills. The Supreme Court referred to its earlier decision in *Bayyana Bhimayya v. Government of Andhra Pradesh*, where on facts very similar to those in the case in 1962, the court had held that : "At the moment of delivery by the mills to the third parties, there were in effect two deliveries, one by the mills to the appellants, represented in so far as the mill were concerned by the appellants agents, the third parties, and the other by the appellants to the third parties as buyers from the appellants. These two deliveries might synchronise in point of time, but were separate in point of fact and in the eye of law.... In our opinion, there being two separate transactions of sale, tax was payable at both the points...." The court was, however, careful, to point out in paragraph 10 of the judgment that "no doubt, if on the facts there was no delivery of the goods to the last holder of the delivery order, the entire fabric on which the case for the appellant rests would disappear. There is, however, no factual basis for this submission. This fact was not alleged by the respondent at any stage of the proceedings starting from the plaint in the court of the District Munsif right up to the statement of the case in this court and besides, all the courts have proceeded on the basis that such delivery was effected to the last endorsee of the delivery order but they held that such delivery did not become a sale by the respondent so as to attract the liability to tax under section 3 of the Act."

In this case the question as to whether there was delivery to the ultimate holders of the pucca delivery orders is not known. Even if the goods were ultimately delivered so far as the assessee and Kedarnath Hariram were concerned, there would be only symbolical delivery of the goods to complete the chain of transfer of property as opposed to actual delivery contemplated by

Explanation 2 of section 24(1).

I find myself unable to accept the argument that the wording of the Explanation shows that the legislature intended to affect only transactions in which there was no actual delivery of the goods even at the ultimate stage in a series of chain transactions. I do not think that the Explanation was intended to have this limited effect. The object of the Explanation is not to invalidate transactions which are not completed by actual delivery of the goods but only to brand them as "speculative transactions" so as to put them in a special category for income-tax purposes. The answer to the first question therefore is in the affirmative and the second in the negative. The assesses will pay the costs of this reference.

**Masud J. - I Agree.**

Reference answered accordingly.

