CALCUTTA HIGH COURT

Indian Steel & Wire Products Ltd

Vs

Commissioner of Income-Tax

(Banerjee and K Roy, JJ.)

03.07.1967

JUDGMENT

Banerjee, J.

1. The assessee, a public limited company, is a manufacturer and dealer, inter alia, in steel wire products. In the computation of the total income for the assessment year 1957-58 (corresponding to the accounting year ending with March 31, 1957), the assessee claimed the following amounts as deductions:

(1) Contribution of Rs. 1,50,000, to the Indian National Congress.
(2) Provision for payment of bonus amounting to Rs. 5,55,000, in addition to the actual payment of bonus during the accounting period, and (3) Anticipated wealth-tax liability amounting to Rs. 1,62,653.

2. The Income-tax Officer allowed the first and the second claim but disallowed the third and completed the assessment some time in March, 1958. The assessee preferred an appeal against the order of assessment, before the Appellate Assistant Commissioner, on or about April 8, 1958. During the pendency of the appeal before the Appellate Assistant Commissioner, the Income-tax Officer issued a notice, under Section 34(1)(b) of the Indian Income-tax Act, on August 30, 1958, requiring the assessee to submit a revised return for the year 1957-58. The assessee filed a return on September 9, 1958, under protest and subject to objection as to the jurisdiction of the Income-tax Officer to issue such a notice. Thereafter, the Income-tax Officer wrote a letter, on September 12, 1958, to the assessee calling upon the assessee to explain how the contribution to the Indian National Congress could be claimed as an allowable deduction. The assessee replied to the letter, on September 19, 1958, taking up the position that the contribution was allowable as an expenditure under Section 10(2)(xv), on the following lines of reasoning:

> " The Congress is a political party and in power ever since India attained independence in 1947. The company's memorandum of association authorises contributions to such parties. You will kindly recall the two recent decisions, one of the hon'ble High Court of Calcutta and the other by the Bombay High Court that donations by public companies to political organizations were intra vires and competent and not unlawful under the company law.

Cultivation of the patronage and good grace of the political party in power amounts to lubricating the machinery for carrying on of the business like our clients ; more so in the cases of assessees like our clients whose activities are controlled, namely, even about the supply of raw materials, fabrication, disposal and price by Iron & Steel Control Order and who have to dance attendance on and explain their view point before a hierarchy of executives.

Admittedly, the contribution was made not merely ex-gratia or merely by way of charity but was made by a public company with the prospect of promoting their innumerable business or trade interests. You are aware of the instances where mutual good relations and understanding resolve many a dispute, beget confidence and responsibility, promote expeditious disposal of the business and solution of problems and difficulties. The party in power has to offer the patronage of priorities, licences under the various laws and at various levels and stages. The contributions to such a party evince first the knowledge and belief of the contributor that the contribution is worth its while and secondly, that the contributor finds it prospective and conducive to its interest to make the contribution.

Whatever be the ethics of such conduct, even a smile of a Minister or a nod or a frown of an executive authority amenable to a Minister either of a State or of the Centre amounts to a very great help for businessmen or industrialists in getting priorities, in resolving labour disputes, in getting licences and so on. This contribution was inspired by nothing else than motives of commercial expediency and for promotion of the company's business interests.

Nationalisation is already in the air. The Imperial Bank has been nationalised, the insurance companies have been nationalised, the talk about nationalising the production and distribution of essential commodities like steel and iron or coal or textiles or sugar is already, according to the layman within the realms of probability, particularly in the proclaimed socialistic Constitution of India itself but also by the Congress in power. This contribution was inspired no less by concern, anxiety and motive to indirectly create some influence against nationalisation of our clients' particular industry or line of industry..."

3. Before the Income-tax Officer could take further proceedings, the appeal before the Appellate Assistant Commissioner came up for hearing, on November 21, 1958. On the second date of the hearing, the Appellate Assistant Commissioner addressed a letter to the assessee pointing out that the Income-tax Officer should have disallowed the contribution by the assessee to the Indian National Congress and requiring the assessee to show cause why the assessment should not be enhanced by inclusion of the said amount of contribution in the income of the assessee. The assessee, thereupon, challenged the jurisdiction of the Appellate Assistant Commissioner on the following two grounds:

(a) The Appellate Assistant Commissioner was not entitled to assume jurisdiction in the matter, when proceedings under Section 34(1), covering the same matter, were pending before the Income-tax Officer, and

(b) The power of enhancement given to the Appellate Assistant Commissioners was confined to matters which were the subject-matter of appeal and not to other matters.

4. The Appellate Assistant Commissioner overruled the objections as to jurisdiction, because he found nothing in the language of Section 31(3) of the Indian Income-tax Act to uphold the objections.

5. On the merits of the allowability of the contribution to the Indian National Congress as a

business expenditure, the assessee sent to the Appellate Assistant Commissioner a copy of the letter, dated September 19, 1958, addressed to the Income-tax Officer (already quoted) for being treated as a part of its explanation and also wrote to the Appellate Assistant Commissioner a letter, dated November 26, 1958, therein stating, inter alia, as follows:

> " ...May we respectfully submit that the item figures prominently in the printed report of the directors to the shareholders on the material annual accounts of this public company and that amount was properly examined and then allowed by the Income-tax Officer... "

6. The assessee also wrote a second letter to the Appellate Assistant Commissioner, on November 29, 1958, therein stating that the expenditure was incurred for the purpose of preventing nationalisation and as the Congress party guaranteed reasonable private enterprise it was considered expedient on the ground of commercial expediency to subscribe to the funds of that party. The Appellate Assistant Commissioner did not accept the cause shown by the assessee on the following line of reasoning:

(a) There was no question of the nationalisation of the appellant's trade and it cannot be said or accepted that the payment had anything to do with nationalisation or with the destruction of the assets of the business in consequence of nationalisation. Even assuming for the sake of argument that the payment was made for the purpose of preventing nationalisation of the appellant's trade, an expenditure laid out wholly and exclusively for the purpose of trade cannot be equated with the expenditure incurred for the purpose of enabling the owner of a particular trade to continue in that trade. In considering the question whether any expenditure was incurred for the purpose of trade, the trade has to be considered as an entity in itself, and it has to be seen whether the expenditure was for the advancement of that entity.

(b) The appellant has assumed without any justification that the Congress party is the same as the Government. The aims and objects of the Congress party are diverse in character and many of them have no connection with the carrying on of the appellant's trade. When the appellant makes a donation to a political party, it will naturally be utilised by the party for any of its aims and objects and such objects may have no bearing on the carrying on of the appellant's trade. It cannot, therefore, be said that the appellant's payment is to an organisation which is committed to the advancement of the appellant's trade. Also this payment appears to be ultra vires the company. It is true that Clause 37 of the memorandum of association, as it now stands, entitles the appellant to make donations to political parties. This has been possible as a result of the order of the High Court dated the 17th June, 1957, sanctioning the application of the appellant-company for modifying the object clauses of the memorandum of association of the company. The payment of Rs. 1,50,000 may be authorised after the aforesaid change. But the payment was made in the financial year 1956-57, i.e., before the appellant-company was authorised to make such a donation.

7. In the view taken, the Appellate Assistant Commissioner disallowed the claim for deduction of Rs. 1,50,000 as contribution to the Indian National Congress. He also exercised his power under Section 31 of the Indian Income-tax Act and disallowed the provision for bonus amounting to Rs. 5,55,000, which had been allowed by the Income-tax Officer. Lastly, he dismissed the claim of the assessee against the order of the Income-tax Officer disallowing the provision for anticipated wealth-tax liability amounting to Rs. 1,62,653. Order of the Appellate Assistant Commissioner bears the date July 30, 1959.

8. The purpose for which the Section 34 proceedings had been started against the assessee being satisfied by the order of the Appellate Assistant Commissioner, the Income-tax Officer dropped the proceedings on or about September 9, 1959,

9. The assessee appealed before the Appellate Tribunal against the order of the Appellate Assistant Commissioner and amongst other grounds canvassed the ground that in enhancing the assessment of income, namely, by adding back the provision of bonus and the contribution to the Indian National Congress, the Appellate Assistant Commissioner :

(a) did not act as a free agent in the matter inasmuch as the enhancement was made at the instance of the Income-tax Officer ;
(b) since some other proceedings under Sections 34 and 35 of the Income-tax Act had also been initiated by the Income-tax Officer for bringing under assessment the same amounts, the Appellate Assistant Commissioner could not resort to enhancement while those proceedings were pending ; and
(c) the power of enhancement given to the Appellate Assistant Commissioner was confined to matters which had been raised in appeal and not to other matters and, therefore, the exercise of the power of enhancement by the Appellate Assistant Commissioner, in the circumstances of the case, was unwarranted and in excess of his jurisdiction.

10. The Tribunal repelled the objections with the observation :

> " There is also no evidence that the Appellate Assistant Commissioner did not exercise his own judgment in making the enhancement. The fact that he looked into the report that was submitted by the Income-tax Officer does not lead to the conclusion that the Appellate Assistant Commissioner's judgment in the matter was in any way fettered. In fact, Sub-section (2) of Section 31 authorises the Appellate Assistant Commissioner to call for a report from the Income-tax Officer on such further enquiry as may be directed, if the facts are not clear from the records of the case. In our opinion, it is also immaterial and of no consequence that the Income-tax Officer initiated some other proceedings for the purpose of revising or rectifying the assessment already made by him. The Appellate Assistant Commissioner's powers, in our opinion, are not curtailed by the existence of these proceedings. The powers given to the Income-tax Officer as well as to the Appellate Assistant Commissioner are concurrent and can be exercised by either of them if the circumstance of the case so demands. The Appellate Assistant Commissioner, on appeal filed before him, has the power to correct any error in assessment provided he acts within the ambit of his powers under Section 31."

11. The Tribunal thereafter turned to the merits of the case of the assessee and held that the provision for anticipated wealth-tax was not an allowable deduction, either under Section 10(1) or Section 10(2)(ix) or Section 10(2)(xv) of the Indian Income-tax Act. The Tribunal further overruled the contention that the contribution to the Indian National Congress was an allowable deduction with the following observation :

> " The Appellate Assistant Commissioner, we find, has dealt with this contention very elaborately in his order. Substantially for the reasons given by him, we agree with his finding that there is no evidence to show that the payment was made out of sheer

commercial expediency so as to be of some assistance to the day-to-day carrying out of the assessee's trade or that the objective was to prevent nationalisation. We also agree with his views that the payment appears to be ultra vires the company. It is true that Clause 37(b) of the memorandum of association, as it now stands, entitles the appellant to make donations to political parties but the sanction relating to this amendment in the memorandum of association of the company was authorised by an order of the High Court, dated 17th June, 1957, whereas, in fact, the actual payment was made in the financial year 1956-57, i.e., before the company was authorised to make such a donation."

12. The Tribunal also overruled the contention that provision for payment of bonus was an allowable deduction. In the result, the Tribunal dismissed the appeal.

13. Thereupon, the assessee obtained a reference to this court on the following questions of law :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Appellate Assistant Commissioner was justified in enhancing the assessment by disallowing certain items which had been allowed by the Income-tax Officer ?
(2) Whether, on the facts and in the circumstances of the case, the wealth-tax payable by the assessee was a permissible deduction under the provisions of Section 10(1), Section 10(2)(ix) read with Section 10{4) or Section 10{2)(xv) of the Indian Income-tax Act, 1922 ?
(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the subscription of Rs. 1,50,000 to the Indian National Congress was ultra vires the memorandum of association of the company ?
(4) Whether, on the facts and in the circumstances of case, the Tribunal was right in holding that the subscription of Rs. 1,50,000 was not an expenditure laid out wholly and exclusively for the purpose of the assessee's business ? "

14. Question No. 2 is now completely covered by a decision of the Supreme Court in *Travancore Titanium Products Ltd. v. Commissioner of Income-tax, and nextly*, by a decision of this court in Income-tax Reference No. 44 of 1963 (Indian Steel & Wire Products Ltd. v. Commissioner of Income-tax) in all its aspects against the contention of the assessee. In the Supreme Court decision it was held that wealth-tax was not an allowable expenditure under Section 10(2}(xv) of the Income-tax Act. In Income-tax Reference No. 44 of 1963 it has further been held that wealth-tax is not an allowable expenditure under Section 10(1) or Section 10(2)(ix) of the Income-tax Act. In the result, we answer question No. 2 in the negative and against the assessee.

15. So far as question No, 1 is concerned, Mr. S. R. Banerjee, learned counsel for the assessee, advanced a two-fold argument. He contended, in the first place, that in disallowing the assessee's claim for deduction of Rs. 1,50,000, contributed to the Indian National Congress, which had been allowed by the Income-tax Officer, the Appellate Assistant Commissioner did not act as a free agent and was influenced by the Income-tax Officer who became nervous about his own order allowing the contribution as a business contribution and approached the Appellate Assistant Commissioner to nullify his own order. He contended, in the next place, that the sum of Rs. 1,50,000, contributed by the assessee towards the Indian National Congress, was not considered by the Income-tax Officer from the point of view of its taxability but from the point

of view of its allowability as a deduction and, therefore, the Appellate Assistant Commissioner had no jurisdiction under Section 31(3) of the Indian Income-tax Act to include that sum in the income of the assessee for the purpose of being taxed.

16. The charge that the Income-tax Officer influenced the Appellate Assistant Commissioner is a serious charge and must be affirmatively established by evidence. There is no such evidence before us, excepting that the Appellate Assistant Commissioner took into consideration a report from the Income-tax Officer. Now, Sub-section (2) of Section 31 authorises the Appellate Assistant Commissioner to call for a report from the Income-tax Officer on such matters as he may require. The fact that he took into consideration a report from the Income-tax Officer must not lead to the conclusion that the report was a purposive report or that the report was caused to be called for, at the instance of the Income-tax Officer, so that, the Appellate Assistant Commissioner might save the Income-tax Officer from the embarrassment which he felt after having allowed the amount of contribution as a business expenditure, by setting aside that part of his order. We do not, therefore, make much of the first branch of the argument of Mr, Banerjee on this point. The other branch of argument of Mr. Banerjee on this point is equally unsubstantial. The extent of the power of the Appellate Assistant Commissioner has been considered by the Supreme Court in Commissioner of Income-tax v. McMillan & Co., In that case the Supreme Court considered Section 13 and Section 31 of the Indian Income-tax Act and laid down the following proposition of law :

(1) The proviso to Section 13 does not import any limitation on the power of the Appellate Assistant Commissioner under Section 31 which gives him power to revise every process which leads to the ultimate computation or assessment, and there is nothing in the language of Section 31 which imposes any restriction on the powers of an Appellate Assistant Commissioner so as to prevent him from exercising the power under the proviso to Section 13.

(2) It is open to the Appellate Assistant Commissioner, on an appeal preferred by the assessee, to reject for the first time the method of accounting employed by the assessee on the ground that the income, profits and gains of the assessee cannot be properly deduced therefrom even though the Income-tax Officer has not applied the proviso to Section 13 and has not expressly said so.
(3) It is open to the Appellate Assistant Commissioner on an appeal preferred by the assessee to invoke, for the first time, the provisions of rule 33 of the Indian Income-tax Rules, 1922, for the purpose of computing the income of a non-resident even if the Income-tax Officer has not done so in the assessment proceedings.

17. That being the extent of the jurisdiction of the Appellate Assistant Commissioner, we do not find any substance in the argument. He took into consideration the allowability of the contribution made by the assessee to the Indian National Congress and found that the same was not allowable under law and, therefore, directed that the same be included in the total income of the assessee for the purpose of taxation.

18. We have before us a case in which the Income-tax Officer considered whether the sum of Rs. 1,50,000 contributed by the assessee to the Indian National Congress should be allowable as deduction. For reasons which appealed to the Income-tax Officer, at that stage, he allowed the same as a business expenditure in the computation of the assessee's income. The Appellate Assistant Commissioner took a different view and, in exercise of his power under Section 31(3),

set aside that part of the order of the Income-tax Officer and directed inclusion of the said amount in the computation of the assessee's income. In so doing the Appellate Assistant Commissioner did not act without any jurisdiction. Mr. Banerjee, as a last resort, wanted to introduce some refinement in his argument drawing inspiration from the judgment of the Supreme Court in Commissioner of Income-tax v. Rai Bahadur Hardulroy Motilal, reported in the Notes portion of [1967] 64 I.T.R. 211. He submitted that it may be that the sum of Rs. 1,50,000 had been considered by the Income-tax Officer but the Income-tax Officer did not do so from the point of view of taxability of the amount but from the point of view of its liability as a business expenditure. Since the Income-tax Officer had not examined the same from the point of view of taxability, the Appellate Assistant Commissioner could not do so. We do not find any substance in this argument. What is required is that the Income-tax Officer shall consider a source of income and come to his decision whether to tax that amount or to leave it. In the instant case, the Income-tax Officer had before him the claim of the assessee that the sum of Rs. 1,50,000 contributed to the Indian National Congress, should not be taxed but should be allowed as deduction under Section 10(2)(xv). The Income-tax Officer upheld the claim of the assessee. In so doing it cannot be said that he did not direct his mind to the taxability of the amount. He had the claim of the assessee before him asking deduction of the amount in the computation of income-tax. He might have rejected the claim. He did not, however, do that and held that the amount was not taxable but allowable under Section 10(2)(xv). There is nothing in the judgment of the Supreme Court in the case of Rai
Bahadur Hardutroy Motilal, which supports the contention of Mr. Banerjee.

19. In the result, we answer the question No. 1 in the affirmative and against the assessee.

20. We now take up for consideration questions Nos. 3 and 4 together. Mr. Banerjee drew inspiration from certain decisions under the Companies Act, by different High Courts, in support of his contention that contribution to the Indian National Congress should be allowed as an expenditure wholly and exclusively laid out for the business of the assessee within the meaning of Section 10(2)(xv) of the Indian Income-tax Act. We need at first deal with the cases relied upon by him. The first decision, to which he invited our attention, was a Calcutta decision in In re Indian Iron and Steel Company Limited, [1957] 27 Comp. Cas. 361 in which this court had to deal with an application under Section 17 of the Companies Act, 1956, by a company engaged in manufacture and production of iron and steel, seeking court's confirmation of the alteration of the memorandum of association of the company, effected by a special resolution, for enabling the company, inter alia, to subscribe or contribute money to any political fund. The reason put forward in support of the alteration was :

> " Prosperity of the company's business is very much dependent upon the industrial policy of the Central Government of the day. Further, the company's principal business being the manufacture of iron and steel, the sale and distribution of the company's products, the price to be received by the company for the sale and manufacture and other policies to be followed by the company are all subject to and closely related to the requirements of the Central Government with which the company has intimate dealings, transactions and connections. In order to enable the company to cany on its business very efficiently it is necessary that the company should be enabled to contribute to the funds of the political parties which will advance policies conducive to the interest of industries in general and to the company in particular, and also the company should be able to contribute to other

funds and objects of national importance."

21. P.B. Mukharji J., who allowed the application on terms, prefaced his judgment with the following observation;

> " To the cynic it appears to be a plea of the company to have a legal sanction to bribe the Government of the day, to induce policies that will help the company in its business, A company's policy should be determined by its shareholders, who subscribe to its capital, and carried out by its board of directors, who manage the company. Such policy should, therefore, stand on its own merits and on the convictions of its shareholders. To induce the Government of the day by contributing money to the political funds of political parties, is to adopt the most sinister principle fraught with grave dangers to commercial as well as public standards of administration."

22. His Lordship noticed that in India there was no legislation, as in America, against such purposive political contributions, and administered a caution to the following effect:

> " As the number of applications here are becoming more and more numerous by which companies are trying to divert commercial funds to political purposes, it is essential in the interest of both commercial and public standards to have immediately similar legislation on the subject to keep the springs of democracy and administration reasonably pure and unsullied and before it is too late to control the dangers and mischiefs inherent in the situation. "

23. Although of that opinion, his Lordship was not prepared to condemn the practice as unlawful, being bribery in nature. He preferred to proceed on the following basis :

> " Under Section 17 of the Companies Act, 1956, it is the court's business to sanction the amendment of the memorandum and that legislative provision implies that the wisdom of the shareholders is neither supreme nor impeccable and for good reasons or bad it has to be passed by such wisdom as the courts possess. The decision on this application for the present must depend on the actual provisions of the Companies Act, 1956, and their interpretation. If the Companies Act, 1956, permits such alteration and if the Constitution of India does not prevent it then no further question in my view arises and the amendment of the memorandum must have to be allowed and sanctioned although even then the court can impose any terms and conditions as it thinks fit."

24. Thereafter, turning to Section 17(1)(a) of the Companies Act, his Lordship observed;

> " The question then becomes whether a company's contribution to the political funds of political parties can be said ' to be required to enable it to carry on its business more economically or more efficiently'. Words ' economically ' and ' efficiently ' are designedly vague with large import, for the obvious purpose of enabling the company to alter its memorandum in respect of its objects with as much freedom as possible. The crux of the problem then is, can it be said that a company by contributing its moneys to the political funds of political parties carries on its business more economically or more efficiently ? It is no doubt true that iron and steel are commodities of national concern in any modern political state. It is equally true that such an industry or business has to come in close and

constant touch with the Government and the administration, be it of collaboration or friction. Efficiency, as I conceive it, is certainly involved in the idea of running the business in such a manner that it will steer clear between the devil of too much of Governmental, political and administrative interference and the deep sea of their patronage. Business efficiency is a word of large connotation. A healthy relationship between the Government and administration on the one hand and iron and steel industry on the other, does in my view lead to business efficiency in the modern age. I do not consider it requires any straining of language to arrive at that interpretation of business efficiency. Tact and discretion as much as practical wisdom are part of this relationship and therefore, of business efficiency. Good and harmonious relationship is a manifest part of business efficiency. I am, therefore, of the opinion that the proposed alteration of the objects of the memorandum of the company successfully passes through the test provided in Sub-clause (a) of Section 17(1) of the Companies Act, 1956."

25. In the view taken, his Lordship allowed the memorandum subject to certain conditions.

26. The next case, Mr. Banerjee relied upon, was a Bombay decision in *Jayantilal Ranchoddas Koticha v. Tata Iron & Steel Co. Ltd.*[1], in which in dealing with a similar application, as in the case of Indian Iron & Steel Co. Ltd., [1957] 27 Corap. Cas. 361 Chagla C.J. observed :

" It is almost axiomatic that what an individual can lawfully do can be done by a joint stock corporation. The law imposes no restrictions upon the nature of an activity which a joint stock corporation can carry on. Confining ourselves to commercial institutions, whatever an individual can do in order to earn profit can equally be done by a joint stock corporation, and what has been strongly urged upon us by Mr. Gokhale is that contribution to political funds is unlawful and the court will not sanction an amendment of the memorandum by which an object is sought to be introduced which permits the company to indulge in an activity which is unlawful.

What is forcefully pointed out by Mr. Gokhale is that nothing could be more corruptive in a democracy than to permit industrial or commercial concerns to contribute funds to a political party. It is nothing short of buying over the party so that the party should pursue a policy which would be in the interests of the commercial and industrial concerns which make contributions to the political parties. Mr. Gokhale says that if this was permissible it would be impossible to get a party which is elected to power with the help of such financial aid to determine upon policies in the interests of the country, in the interests of socialism, or in the interests of democracy....Now, before we deal with the legal aspect, it may be pointed out in fairness to the company that it has made the position clear that the Congress has already come to a particular decision as to policy and contribution that is sought to be made is not to influence or mould that policy but to keep in power a party which having already laid down its policy, that policy is being looked'. upon by the company as conducive to its interests. We must confess that we realise the danger--and the grave danger--of the line between these two positions being overlooked or obliterated. The line is so thin that it is easy to step from one side of the line to the other.....But that brings us to the real question before us. Is there anything today in India, as the law stands, which prohibits any contribution being made to the political funds of a party by any individual, institution or organization ? We asked Mr, Gokhale to draw our attention to any such law in force in our country today and he very frankly and fairly conceded that

there was no such law.....
Therefore, to come back to the section, the new power or activity or object which is sought to be introduced by the company in its memorandum is not unlawful, but is indeed one which is countenanced by the law in England and the law in the United States. It cannot be said that it is an unlawful object which the court will not permit a company to carry out by the amendment or alteration of its memorandum. We should also like to point out here that even our legislature in the new Companies Act has taken cognizance of the practice or the possibility of companies contributing to political parties, because in Section 293 a restriction is put upon the power of the board of directors to make contributions to charitable or other funds. Therefore the very restriction assumes that the legislature was aware that the board of directors had the power in some companies and exercised that power to make contributions not only to charitable but other funds. If that be so, then the only question that we have to consider for the purpose of Section 17(1)(a) is whether it could be said that where a company contributes funds to a political party it is carrying on business more efficiently. Before we construe this expression, it is necessary to point out that a large volume of authority in England has clearly established that a liberal though not a strained construction should be placed upon this section.....
Therefore, we must give to the expression ' efficiently ' a very wide import and we agree with Mr. Seervai that we must construe ' carrying on business more efficiently ' to mean carrying on business in a manner which will produce the desired results or effects. In other words, if a particular method or mode or means in connection with the business is conducive to the business, producing more profits or improving security or stability, then that mode or means or method is a mode, means or method which is more efficient, and what the company tells us is that if you permit us to spend this money by helping a political party we expect results from that contribution which results would be beneficial to the company. It is difficult to accept Mr. Gokhale's suggestion that 'efficiently' in this context must be confined and limited to 'efficiently' with regard to actual production of iron and steel and that only that alteration should be permitted which would enable the company to produce iron and steel more efficiently. There is nothing in the expression ' efficiently ' which carries with it the connotation suggested by Mr. Gokhale, nor is there anything in the plain natural meaning of that expression which would compel us to limit that word to a case of production and to no other case."

27. The third decision on which he relied was a Madras decision In re Sri Natesar Spinning and Weaving Mills Private Limited, [1966] 30 Comp. Cas. 54 in which case, dealing with a similar application, Ramaswami J. observed :

" Modern democracies require for its successful working stable political parties and stable parties require, whether they are in or out of the Government, a costly machinery for strengthening and intensifying its hold on the electorate. This calls for legitimate unceasing expenditure of funds for the maintenance and widening of party's organisation and activities. The time when leaders in democracies were men of substance and could dispense with any extraneous aid for funds is a thing of the past. The present leaders in all democratic countries most often come up from scratch. The methods of appealing to the masses and the necessary contacts which have to be maintained with the masses are now far more intensified and require a continuous supply of funds. It is better on the balance that these funds should come from regular sources. The Labour Party in England is

> sustained and nourished by the regular levies made by the wealthy and powerful and ubiquitous trade unions, rather than degenerate into secret funds collected by all questionable methods. It is enough to recall how the late Mr. Lloyd George recruited funds for the Liberal Party upon sale of honours which necessitated drastic changes in the procedure for the conferment of honours in England. In America party funds are being collected by bizarre methods like holding dinners at 200 or 300 dollars a plate. In other countries where democracies are less advanced and more corrupt party funds are collected by sale of favours, permits, offices, etc. Therefore, on the balance, this becomes only a choice of evils and it is far better that political parties should depend upon regular sources, under Section 293 of the Indian Companies Act, than degenerate into adopting corrupt methods for securing funds. The price of democracy is the maintenance of stable political parties and the price of stable political parties is the existence of regular sources of subvention."

28. We have quoted from the above three judgments in great length, because Mr. Banerjee borrowed the language of his argument from the observations quoted above almost word for word. We need not, for reasons hereinafter stated, comment on the wisdom contained in the above quotations. We shall proceed on the basis that alterations in the memorandum of association, for enabling a company to make contribution to a political party fund, is permissible under the company law, because it may be helpful to the business of the company in certain circumstances. A company may possess such power if it cares to have it. But the question for our consideration is whether such a contribution is allowable as expenditure wholly and exclusively laid out for the business of the company, within the meaning of Section 10(2)(xv) of the Indian Income-tax Act. Mr. Banerjee contends that the expenditure " wholly and exclusively laid out for the purpose of the business" as in Section 10(2)(xv)of the Indian Income-tax Act does not mean expenses incurred only for earning minimum profit. Expenses incurred, he submits, though not directly related to the earning of income may be allowable deduction, if they are related to the efficient carriage of the business even indirectly. He further submits that in deciding what expenditure should be deemed to have been laid out wholly or exclusively for the purposes of business, the test should not be empiric or the test appealing to the court but the test of what a prudent businessman would or should do in similar circumstances. In support of this branch of his contention, he strongly relied upon a judgment of this court in *Birla Cotton Spinning and Weaving Mills Ltd. v. Commissioner of Income-tax*[2], and also on certain observations contained in the speeches of Lord Morton of Henryton and Lord Reid in the House of Lords decision in *Morgan v. Tate & Lyle Ltd.*[3], Mr. Banerjee is academically right in this branch of his submission and this appears to be so from several decisions of the Supreme Court. In the case of *Commissioner of Income-tax v. Malayalam Plantations Ltd.*[4], the Supreme Court observed:

> " The expression 'for the purpose of the business' is wider in scope than the expression ' for the purpose of earning profits '. Its range is wide : it may take in not only the day to day running of a business but also the rationalization of its administration and modernization of its machinery. "

29. Again, in the case of *Travancore Titanium Products Ltd. v. Commissioner of Income-tax, the Supreme Court* observed :

> " ...the nature of the expenditure or outgoing must be adjusted in the light of accepted

> commercial practice and trading principles. The expenditure must be incidental to the business and must be necessitated or justified by commercial expediency. It must be directly and intimately connected with the business and be laid out by the taxpayer in his character as a trader."

30. Lastly, in the case of *Sree Meenakshi Mills Ltd. v. Commissioner of Income-tax, the Supreme Court* went a step forward and observed :

> " Expenditure incurred not with a view to the direct and immediate benefit for purposes of commercial expediency and in order indirectly to facilitate the carrying on of the business is, therefore, expenditure laid out wholly and exclusively for the purposes of the trade. "

31. The expression " commercial expediency" is not a term of art. It means everything that serves to promote commerce and includes every means suitable to that end. It may be, as some believe, that if virtue be hazarded on the perilous cost of expediency, the pillars of democracy however apparent in their stability, are infected at the very centre. But it is for democracies to guard against such hazards and ban expediencies, which are unethical or sinful, as matters of public policy. So long as certain means of commercial expediency be not declared to be unlawful, nothing prevents recourse to such expediencies, if they facilitate trade or commerce even indirectly.

32. Now, is placating of a political party in power commercial expediency ? Does it facilitate business either directly or indirectly ? In the fertile field of democracy, it is well-known, political parties germinate and grow quickly. Different political parties have different political philosophies, different political programmes and different political passions. There are no bigotries or absurdities too gross for political parties to create or adopt under stimulus of political passions. This is a well-known historical fact. In countries where parliamentary form of Government prevails, no one political party can remain in power for ever. The fate of a political party in power depends on the support of public opinion, which is a deep sea of sentiments with billowingly wavering surface. Public opinion changes. The circumstances of the world are so variable that there can be no irrevocable opinion. When this change of opinion reflects itself in the polls of an election, one party gives way to another party, until such time as history repeats itself. But so long as a political party remains in power, it has favours to show and patronages to distribute, which attract aspirants for favour and patronage. A short-cut to such favours and patronage is considered to be payment of money to party funds, because fund-hunger at party level is well-known. In this country, where social controls over trade and industry are wide and varied, commercial men feel, for reasons good or bad, that their existence and prosperity depend upon Governmental graces. This feeling is not unreasonable. Since power of money is well-known to commercial men and since they know best to exploit that power, large scale contributions to political party funds may at times be considered to be commercially expedient. Since commercial men are best experienced in commercial expediency, we are prepared to proceed on the basis that some contributions to some political funds sometimes pay and prove to be expedient.

33. But although this is so, we are not prepared to proceed on the assumption that all contributions to all political funds must always be presumed to be commercially expedient. There may be some contributions made not in commercial interest or expediency but in order to save a commercial company from the consequences of unlawful acts, say, for example, to hush up a

company law investigation or a proceeding for breach of Foreign Exchange Regulations. Such contributions may also be made to satisfy a political fad or a political prejudice of the directorate of a company. Each case must, therefore, be decided on its own facts.

34. Now, turning to the facts of the instant case, we find that the following reasons are pleaded in justification of the contribution made to the Congress fund:

(1) Cultivation of the patronage and good grace of the political party in power amounts to lubricating the machinery for carrying on the business, particularly a controlled business, such as the assessee carries on.
(2) Contribution was made not ex gratia or out of charity but for the prospect of promoting the business interests of the assessee.
(3) Even a smile of a Minister or a nod or frown of an executive authority amenable to a Minister either of a State or of the Centre amounts to a very great help for businessmen or industrialists in getting priorities, in resolving labour disputes, in getting licences and so on. The contribution in question was made with the object of getting the above type of help from the party in power.
(4) The nationalisation of production and distribution of essential commodities like steel and iron was already, according to the laymen, within the realm of probability, particularly in the proclaimed socialistic Constitution of India itself, and also in the policies of the Congress in power. The contribution was inspired no less by concern, anxiety and motive to indirectly create some influence against nationalization of the particular industry in which the assessee was engaged.
(5) The contribution was brought to the knowledge of the shareholders by prominently printing the amount of contribution in the annual report of the directors to the shareholders. The shareholders never objected to the contribution.
(6) As the Congress party guaranteed reasonable private enterprise it was considered commercially expedient to subscribe to the funds of that party.

35. The first reason pleaded is far too general. It may be that it becomes at times expedient to lubricate a party in power by the grease of money, so as to obtain some commercial benefit not otherwise obtainable. But all contributions may not be made with that end in view as already observed. The second reason pleaded is uninformative. Which particular business interest was being sought to be served is not disclosed. The third reason is more or less a matter of opinion. How far priorities are guaranteed, or labour disputes are resolved or licences are given because a Minister smiles or an executive authority nods at a businessman is not well known. To part with large sums of money on such imaginary ground is very far away from experience. The fourth reason is couched in some guarded language. It is said that nationalisation of iron industry was " according to the layman within the realms of probability ". Commercial men are not usually nose-driven by laymen's belief. They are very well-informed people. For them to say that they become nervy and jumpy by laymen's belief, when in fact there was no talk of nationalization of the iron industry, is not to speak realistically. It was further urged that nationalization was part of the policy of the Congress in power. If the Congress party was bent on nationalization of iron industry there was no sense in making contributions to the fund of that political party, which was working for the annihilation of private entrepreneurs in that industry. The infirmity of the fourth reason became apparent to the assessee very soon. The assessee-company, therefore, sought to neutralize the fourth reason by pleading subsequently another reason hereinbefore set forth, namely, that the Congress party guaranteed reasonable private enterprise. Mr. Banerjee read to us

the following extract from the Industrial Resolution of the Government of India for the year 1956 :

> " 6. The adoption of the socialistic pattern of society as the national objective, as well as the need for planned and rapid development, require that all industries of basic and strategic importance, or in the nature of public utility service, should be in the public sector. Other industries which are essential and require investment on a scale which only the State in the present circumstances could provide, have also to be in the public sector . . .

8. Industries in the first category have been listed in schedule A of this resolution. New units in these industries, even where their establishment in the private sector had been approved will be set up only by the State. This does not preclude the expansion of the existing privately-owned units or the possibility of the State securing the co-operation of private enterprise in the establishment of new units when the national interest so require."

36. and submitted that it was a question of survival for the assessee against the rapid scheme of socialisation and since the Congress Government expressed itself in terms of co-existence, the assessee thought of strengthening the Congress party by political contribution, so that the Congress Government might remain in power and allow the assessee company to survive. There is too much of political speculation in this argument. We do not know that all other political parties in this country are absolutely opposed to private ownership or existence of a private sector in industries. Political prejudice and commercial expediency are not synonymous. The fourth reason only reveals the fixation of a political prejudice in the assessee, which should not be allowed to pass off as commercial expediency, without more. The last reason is no reason at all. Everybody knows that shareholders in large companies do not generally unite to put their foot upon what the directors may choose to do. They are satisfied and remain satisfied, if some return be made to them for their investments. The fact that the shareholders did not object is no indication of the approval of the contribution as one justified by commercial expediency. Theirs was an attitude of detachment which should not be mistaken as impliedly approving of everything done by the directors.

37. Thus, the reasons given are not enough to show that the contribution to the Congress political fund was justified by the commercial expediency of the assessee company or tended indirectly to facilitate the assessee's business. It may be that some such contributions at times facilitate business but then there is no presumption that all such contributions do so. There is nothing to show that the present contribution did so.

38. Mr. S. Mukherjee, learned counsel for the revenue, submitted that the nexus pleaded between the contribution and the business of the assessee was either imaginary or too remote and in either event the expenditure would not fall within the meaning of Section 10(2)(xv) of the Income-tax Act. We have already observed that the connection between the contribution and the expected business facility could not be established. Assuming that there was some such connection latent in the contribution, it must be treated as too remote to reckon with. That remote relationship should not count is established from the judgment of the Supreme Court in *Dr. A. Lakshmanaswami Mudaliar v. Life Insurance Coporation of India*[5], In that case a life insurance company passed a resolution sanctioning a donation of Rs. 2,00,000 out of the shareholders'

dividend account to a certain memorial trust proposed to be formed with the object of promoting technical or business knowledge, including knowledge in insurance, and authorising the directors to pay the sum to the said trust. In that context the Supreme Court observed :

> " The trust has numerous objects, one of which is undoubtedly to promote art, science, industrial, technical or business knowledge including knowledge in banking, insurance, commerce and industry. There is no obligation upon the trustees to utilise the fund or any part thereof for promoting education in insurance, and even if the trustees utilised the fund for that purpose, it was problematic whether any such persons trained in insurance business and practice were likely to take up employment with the company. Thus, the ultimate benefit which may result to the company from the availability of personnel trained in insurance, if the trust utilises the fund for promoting education, insurance practice and business is too indirect, to be regarded as incidental or naturally conducive to the objects of the company. We are, therefore, of the view that the resolution donating the funds of the company was not within the objects mentioned in the memorandum of association and on that account it was ultra vires."

39. In the instant case, there is no evidence that there was any chance of immediate nationalisation of iron industry. There is no evidence to show that even such a talk was in the air. When the assessee company made the contribution to the Congress fund, it was not earmarked for the purpose that the Congress political party must utilise that fund in opposition to any scheme of nationalisation of the industry. The Congress political party was free to utilise the fund for any of their objects with which the assessee was least concerned. In such circumstances, the contribution cannot be justified as one paid out of commercial expediency. Mr. Banerjee emphasised upon the fact that the existence of the Congress Government itself would prove beneficial to the assessee as a private entrepreneur. This is a matter of political opinion or of political prejudice which we should not confuse with commercial expediency.

40. We, therefore, hold that the assessee has failed to establish the case that the contribution to the Congress political fund was laid out wholly and exclusively for the purposes of the business.

41. Then again, at the point of time when the contribution was made, there was no power in the memorandum of association of the assessee-company to make such contribution. The alteration of the memorandum of association was subsequently sanctioned by the High Court. That made the contribution ultra vires the memorandum of association. When a company does an act which is ultra vires, no legal relationship or effects ensues therefrom. Such an act is absolutely void and cannot be ratified, even if all the shareholders agree (vide In re Birkbeck Permanent Benefit Building Society, [1912] 2 Ch. 183(Supra) and also Dr. A. Lakshmanaswami Mudaliar's case, (1963) 33 Comp. Cas. 420. (S.C.))(SUPRA).

42. Mr. Banerjee submitted that a decision of this court in Nagaisuree Tea Company Ltd. v. Ram Chandra Karnani, (1966) 2 Comp. L.J. 208 laid down as a proposition of law that every order of confirmation of alteration of the memorandum related back and validated all acts done before the confirmation. This argument is based on a misreading of the judgment. What happened in Nagaisuree Tea Company Ltd. case was that the petitioner-company wanted to amalgamate with another company known as Killcott Tea Company Ltd., on the ground that such amalgamation would be beneficial to the shareholders of the first-named company. It, therefore, passed a special

resolution amending the memorandum of association, which did not contain any amalgamation clause, by adding another Clause reading : " To amalgamate, to be deemed to have always the power to amalgamate.... "

43. A.N. Ray J. confirmed the special resolution in exercise of his powers under the Companies Act and in that context observed:

> " The company desires to have an order that special resolution by which the memorandum is changed is that one of the objects of the company is to amalgamate and that the power to amalgamate be deemed to have been there. There is no limitation on the power of the court to make an order to that effect. Any order will relate back like an order of the amendment of plaint, with the result that the order will have the effect that company has the power in the memorandum. All that the court does is to sanction the resolution provided the court thinks it fit to sanction. I am of the opinion that the order asked for is free from any vice of infraction of the provisions contained in Section 17 of the Companies Act. I am unable to hold that there is any restriction on the part of the court to make an order as asked for. "

44. What his Lordship meant by the above passage was that if the court sanctioned a special resolution conferring power upon the company to amalgamate, with retrospective effect, the sanction would relate back. The decision is no authority for the proposition that if the court confirming the resolution did not expressly direct that the resolution would relate back even then the resolution would relate back of its own force. In the intant case, nothing was shown to us that the order confirming the resolution of alteration of the memorandum of association was to have retrospective effect. We, therefore, find that at the point of time when the contribution was made, the company had no jurisdiction to make such contribution and its action was ultra vires the memorandum of association. It is not necessary for us to go deeper into this aspect, because if the contribution was not justified by business expediency and was not laid out wholly or exclusively for the purposes of business, it would not matter whether the contribution was intra vires or ultra vires the powers of the company.

45. In the case of *Kishan Prasad & Co, Ltd. v. Commissioner of Income-tax, the Supreme Courtobserv*ed that whether a transaction was or was not within the company's power has no bearing on the nature of the transaction or the question whether the profits arising therefrom were capital accretion or revenue income. On the analogy of that authority we think that in deciding whether a particular expenditure falls within the four corners of Section 10(2)(xv) of the Indian Income-tax Act, the question whether the expenditure was within or outside the powers of the company is of little consequence.

46. Even if it was within the powers of the company, we have to see whether the expenditure passed through the rigours of Section 10(2)(xv)of the Indian Income-tax Act and became a deductible expenditure.

47. In the view that we take, we answer question No. 3 in the affirmative. We also answer question No. 4 in the affirmative and against the assessee.

48. The Commissioner of Income-tax is entitled to the costs of this reference, which we certify for two counsel.

K.L. ROY, J.

49. I agree.

Cases Referred.

1[1957] 27 Comp. Cas. 604
2[1967] 64 I.T.R. 568
3[1954] 26 I.T.R. 195 ; 35 Tax Cas. 367
4[1961] 53 I.T.R. 140 (S.C.)
5[1963] 33 Comp. Cas. 420, 433 (S.C.)