**BOMBAY HIGH COURT**

Commissioner of Income-Tax

Vs

Poona Electric Supply Co. Ltd

(V Desai, Y Tambe)

24.07.1962

**JUDGMENT**

**Tambe, J.**

1. This is a reference under sub-section (1) of section 66 of the Indian Income-tax Act. The assessee is a public limited company engaged in the business of distribution of electricity in the City of Poona. It is a licensee within the meaning of sub-section (6) of section 2 of the Electricity (Supply) Act (54 of 1948) (hereinafter referred to as the Electricity Act). Section 57 of the Electricity Act provides that the provisions of the Sixth Schedule and the Seventh Schedule shall be deemed to be incorporated in the licence of every licensee, not being a local authority, and it further enjoins a duty on the licensee to comply with the provisions of the said Schedules notwithstanding any provisions to the contrary either in the Electricity Act, 1910, or the licence granted to him thereunder or any other law, agreement or instrument. The section also provides that any provisions contrary to the provisions of the Sixth and the Seventh Schedules contrary in the Electricity Act, 1910, or in the licence granted to the licensee under that Act or of any other law, agreement or instrument applicable to the licensee would be void. Clause I of the Sixth Schedule provides that notwithstanding any thing contained in the Indian Electricity Act, 1910 (except sub-section (2) of section 22A), and the provisions in the licence of a licensee, the licensee shall so adjust his rates for the sale of electricity whether by enhancing or reducing them that his clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return. The second proviso to that clause provides that the licensee shall not be deemed to have failed so to adjust his rates if the clear profits in any year of account has not exceeded the amount of reasonable return by fifteen per centum of the amount of reasonable return. The other provisions of clause I are not material for the present case. Sub-clause (1) of clause II is the following terms :

"II (1). If the clear profit of a licensee in any year of account is in excess of the amount of

reasonable return, one-third of such excess, not exceeding five per cent. of the amount of reasonable return, shall be at the disposal of the undertaking. Of the balance of the excess, one-half shall be appropriated to a reserve which shall be called the Tariffs and dividends Control Reserve and the remaining half shall either be distributed in the form of a proportional rebate on the amounts collected from the sale of electricity and meter rentals or carried forward in the accounts of the licensee for distribution to the consumers in the future, in such manner as the State Government may direct."

2. Purporting to act under Clause II of the Sixth Schedule, the assessee set apart a sum of Rs. 42,142 and a sum of Rs. 77,138 and credited them to an account styled as "consumers benefit reserve account", in the assessment years 1953-54 and 1954-55, respectively, corresponding accounting years being calendar year 1952 and calendar year 1953. The assessee claimed these amounts as permissible allowance under section 10(2) (xv) of the Income-tax Act. It appears that in the earlier years the practice of the department had been that the amounts credited to the "consumers benefit reserve account" were not allowed as deductions in those years but were so allowed in years as and when rebate was actually distributed amongst the consumers, and it also appears that no objection was raised thereto by the assessee. Following this practice the Income-tax Officer rejected the claim of the assessee. The assessee took an appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner dismissed the appeal. He observed :

"But I think that in crediting these sums to a reserve account, the company had not actually divested itself of the ownership of the amounts. They are still being utilised in the business of the company. No separate trust on the lines of a provident fund trust has been created for the purpose of receiving these sums every year. As such the credits are not made in favour of a different body but merely in the company's books, being adjustments from one head to another. Thus there is no transfer of actual ownership of those sums in these years. In these circumstances, I feel that the view taken by the Income-tax Officer which is based on the past practice, viz., that the payments out of these reserves should be allowed as and when they are actually paid to the consumers, is the right one."

3. The assessee took a further appeal to the Tribunal, and before it two contentions were raised. Firstly, it was argued that the income-tax authorities were in over-looking that the system of accounting adopted by the assessee was the mercantile system. The liability to make a refund to the consumers by virtue of the provisions of the Electricity Act had accrued, and was definite. A provision made to meet such a liability was not a reserve created for contingent liability and was, therefore, and allowable deduction. It was also argued that the said amounts were not in the true

sense the income of the assessee at all, but, on the other hand, the income within the meaning of sub-section (1) of section 10 received by the assessee fell short by these two amounts and on this ground also the said amounts had to be allowed as deduction in computing the assessable profits of the assessee. These two contentions appear to have been accepted by the Tribunal. The Tribunal has recorded its finding in the following terms :

> "We, therefore, hold that the two amounts were properly allowable, as expenditure under section 10(2) (xv) of the Income-tax Act. Not only so, but we think that it is proper to consider the deduction as falling under section 10(1) itself because it does not affect the out goings but it affects the incomings which are to be short-accounted for having once been accounted for in excess of that stipulated in clause I of the Sixth Schedule of the Electricity Act. After all what has to be taxed is the real profit and the real profit could only be ascertained after taking into account the amount which had to be set apart under the law for the benefit of the consumers and which could never be the property of the assessee, and, therefore, its profits."

4. At the instance of the department, the Tribunal has drawn up a statement of the case and referred to us the following question of law :

> "Whether the two sums of Rs. 42,148 in the assessment year 1953-54 and Rs. 77,138 in the assessment year 1954-55 were deductible in computing income, profits and gains from the assessee's business assessable to tax ?"

5. It may at the outset be stated that Mr. Joshi, learned counsel for the revenue, does not support the view taken by the income-tax authorities, namely, that the sums set apart were not deductible in the assessment years in which they had been set apart, but were deductible as and when payments were actually made. We are however not concerned here with that view of the Tribunal. Here we are only concerned as to whether the sums set apart are deductible in the assessment years with which we are concerned. The contentions raised by Mr. Joshi are that the amounts set apart are not deductible; they form part of the assessee's profits and gains arising out of its business, and are therefore liable to be taxed; the relevant provisions of the Electricity Act only relate to the distribution of the clear profits earned by the assessee in the course of its business; it is an income which has reached the assessee and had at no time been diverted at the source. He referred us to the decisions in Mersey Docks and Harbour Board v. Lucas, Paddington Burial Board v. Commissioners of Inland Revenue, Sowrey (Surveyor of Taxes) v. Harbour Mooring Commissioners of King's Lynn, Bharat Insurance Co. Ltd. v. Commissioner of Income-tax and Pondicherry Railway Co. Ltd. v. Commissioner Income-tax.

6. Mr. Kolah, on the other hand, contends that clause I of the Sixth Schedule enjoins a duty on

the assessee to so adjust his rates for the sale of electricity that his clear profits in any year of account shall not as far as possible exceed the amount of reasonable return. If the rates charged result in clear profits exceeding reasonable return, clause II of the Sixth Schedule requires him to refund a certain portion thereof to the consumers in the form of proportional rebates on the amounts collected from the sale of electricity and meter rentals. In other words, the sums set apart represent the over-charge made by the assessee company which has to be returned to the consumers. It therefore cannot in any sense be termed as the income, profits and gains of the assessee arising to it out of its business. The amount therefore has to be excluded in the computation of the assessable income of the assessee. In the alternative, Mr. Kolah contends that, at any rate, by reason of these provisions, the said income at the very source has been diverted to the consumers and, therefore, not liable to be taxed in the hands of the assessee. Mr. Kolah also contended that it is expenditure laid out wholly and exclusively for the purpose of the assessee's business, and is therefore a permissible allowance within the meaning of section 10(2) (xv) of the Income-tax Act. He has referred us to certain passages from the decisions in Union Cold Storage Co. Ltd. v. Adamson (H. M. Inspector of Taxes), Raja Bejoy *Singh Dudhuria v. Commissioner of Income-tax, Indian Radio and Cable Communications Company Ltd. v. Commissioner of Income-tax, British Sugar Manufacturers Ltd. v. Harris (Inspector of Taxes)* and Seth Motilal Manekchand v. Commissioner of Income-tax.

7. It may be stated that we express no opinion as to whether the assessee would be entitled to claim deductions of amounts paid by way of rebate to consumers in the years they are paid. This does not arise out of the order of the Tribunal. Our answer is confined to the two assessment years only. Before we proceed to consider the relevant provisions of the Electricity Act, it would be convenient to refer to some of the decisions to which our attention has been drawn.

8. The facts in Mersey Docks and Harbour Board v. Lucas were that the assessee, Mersey Docks and Harbour Board, was empowered by an Act of Parliament to levy dock dues, etc., to be applied in maintaining the concern, and to pay interest on moneys borrowed. Any surplus remaining thereafter was directed by the provisions of the Act to be applied in forming a sinking fund to extinguish the debt incurred for the construction of the docks. The scheme was to pay off all the debts from the sinking fund and then to reduce the dock charges. On behalf of the assessee it was claimed that this surplus which the Act of Parliament had directed to be applied in forming a sinking fund should be excluded from the computation of the income of the assessee for tax purposes. This contention of the assessee was not accepted, and it was held that it was liable to tax. The Lord Chancellor observed at page 31 : "The mode of application makes no difference whatever to the question of what is 'profit' and what is 'gain'." Lord Blackburn dealing with the same contention in his speech said :

"And the argument which is endeavoured to be urged is this, that, inasmuch as they are ordered to apply to that purpose the sum which remains after all those expenses have been deducted, therefore the Queen is not to have income tax upon it. With reference to that I have endeavoured in vain to grapple with what the counsel for the appellants were saying, in order to bring it to a definite point. There is no ground whatever for saying it, that I can see; there is nothing in the nature of things, there is nothing in the words of the Act, to say that when an income has been actually earned, when an actual profit upon which the tax is put has been earned and received by any person or corporation. Her Majesty's right to be paid the tax out of it in the least degree depends upon what they are to do with it afterwards, unless there is an express enactment, which I think there is in some cases, that they are to apply it to charities and other purposes. If the amount thus received is to be applied at their pleasure, they must pay the tax. If is to be paid over to shareholders or to creditors, or to anybody else, the Queen is still to have her tax. Although it is expressly said that she is to be paid 'before' they pay it over to any such person, it does not mean that she is not to be paid unless they are going to pay it over to any such person. It is impossible to construe it in that way. Whether it is to be applied in one way or the other, the Queen is to have her tax upon it."

9. The facts in Paddington Burial Board v. Commissioner of Inland Revenue were : Under a Public Act of Parliament, a burial ground was provided out of poor rates, and fees were charged by the Burial Board to persons using it. Any surplus of income over the expenditure was directed to be applied in aid of the poor rates as required by the Act. The question arose whether the surplus was profit assessable to income-tax, and it was held that it was chargeable to tax. Mr. Justice Smith, in the course of his judgment, observed :

"But in this case we have the fact that this Burial board is allowed to trade, they have a right to charge any fees they think fit, subject to the approval of the Secretary of State, and trading in that way, what do they do ? They make a profit. When once you have the fact that profit is made, that is taxable under the Income-tax Act, and it is perfectly immaterial since the case of the Mersey Docks v. Lucas what is the destination of that profit, when the profit is once made. It is absolutely immaterial whether it is appropriated to one person or another, or kept for the benefit of the person who makes the profit. Once the profit is made the Income-tax Act applies."

10. In Bharat Insurance Co. Ltd. v. Commissioner of Income-tax, the participating policyholders in the assessee insurance company were entitled under their contract to a certain share of profits made in the participating branch of business. The company claimed that in assessing the income of the company for the purposes of income-tax, the sum of money allotted for distribution to the participating policyholders should be deducted as expenditure incurred by the company for

earning the profits within the meaning of section 10(2) (xv) of the Income-tax Act (now 10(2) (xv)). This claim of the insurance company was not accepted, and it was held that the sum so allotted to the participating policyholders was part of the profits of the company and was, therefore, liable to tax. The principle laid down by their Lordships of the Privy Council in this case was that the profits on their coming into existence attract income-tax at that point and the revenue is not concerned with the subsequent application of the profits.

11. The facts in Pondicherry Railway company Ltd. v. Commissioner of Income-tax were that the appellant-assessee, Pondicherry Railway Company Limited, was incorporated in the U. K. with a registered office in London, and under a convention with the French Colonial Government it constructed a railway in the French Colony of Pondicherry under certain terms and conditions. Under one of its terms, the assessee company had agreed to pay to the French Government half of its net profits calculated in the manner provided in the convention. The assessee company claimed the amount paid by it to the French Colonial Government under this term as a permissible allowance. This contention was not accepted by their Lordships of the Privy Council. It was held that what was paid to the French Colonial Government was part of the profits of the assessee company, and, therefore, was liable to be included in the assessable income of the company. Lord Macmillan, delivering the judgment of the Board of the Judicial Committee of the Privy Council, at page 251, observed :

> "A payment out of profits and conditional on profits being earned cannot accurately be described as a payment made to earn profits. It assumes that profits have first come into existence. But profits on their coming into existence attract tax at that point, and the revenue is not concerned with the subsequent application of the profits. It was persuasively argued that inasmuch as the Pondicherry company as a condition of making any profits must pay over one-half of them to the French authorities, and could never itself receive the whole profits, the payment so made was of the nature of a rent payable by the company or a charge on the undertaking. But the analogy in their Lordships' opinion is imperfect, and the form in which the parties have contracted that the French Government shall participate in the success of the undertaking precludes the deduction claimed."

12. The following principle laid down by Lord Chancellor Halsbury has also been cited with approval as equally applicable to the Indian Income-tax Act :

> "The thing to be taxed... is the amount of profits or gains. The word 'profits' I think is to be understood in its natural and proper sense - in a sense which no commercial man would misunderstand. But when once an individual or a company has in that proper sense ascertained what are the profits of his business or his trade, the destination of those profits

> or the charge which has been made on those profits by previous agreement or otherwise is perfectly immaterial. The tax is payable upon the profits realized and the meaning to my mind is rendered plain by the words 'payable out of profits'."

13. Now, it may be stated that the proposition laid down by Lord Macmillan "that payment conditional on profits being earned cannot accurately be described as payment made to earn profits" does not appear to have been accepted by their Lordships of the Privy Council in a later case as one of universal application. In Indian Radio and Cable Communications Company Ltd. v. Commissioner of Income-tax, it has been observed :

> ".... it is not universally true to say that a payment the making of which is conditional on profits being earned cannot properly be described as an expenditure incurred for the purpose of earning such profits. The typical exception is that of a payment to a director or a manager of a commission on the profits of a company."

14. To the same effect is the decision in British Sugar Manufacturers Ltd. v. Harris (Inspector of Taxes). The other decision in Union Cold Storage Co. Ltd. v. Adamson (H. M. Inspector of Taxes), to which Mr. Kolah drew our attention, is of little assistance to the decision of the question raised before us. The principle deducible from the aforesaid decisions in our view is that once profit is earned, tax at that point is attracted to it irrespective of the manner of its disposal. Whether the assessee would have control over the profits or not is wholly immaterial for the purpose of ascertaining the tax liability of the assessee. Even if part of it goes back to persons who contribute towards making of those profits that by itself dose not save tax liability thereon.

15. We have already reproduced the provisions of section 57 and clauses I and II of the Sixth Schedule of the Electricity Act. To recapitulate, by virtue of section 57, the provisions of the Sixth and Seventh Schedules get incorporated in the licence of the licensee under the Electricity Act, and he is enjoined with a duty to comply with those provisions. Clause I of the Sixth Schedule requires a licensee to adjust his rates for the sale of electricity in such manner that his clear profits in any year of account do not as far as possible exceed the amount of reasonable return. The second provision provides that in the event the clear profits do not exceed the amount of reasonable return by 15 per cent. that would not be deemed to be the failure on the part of the assessee to adjust his rates. Clause II deals with disposal of excess of clear profits over reasonable return and it provides that one-third of such excess not exceeding five per cent. be retained and dealt with by the licensee in any manner he likes, and of the balance one-half shall be appropriated to a reserve which shall be called the tariffs and dividends control reserve. Sub-clause (2) of clause II provides that the tariffs and dividends control reserve shall be available for disposal by the licensee only to the extent by which the clear profit is less than the reasonable return in any year of account. In other words, the tariffs and dividend control reserve is again at

the disposal of the assessee to make good the deficiency in its profits in any subsequent year of account, and the remaining half is directed to be distributed in the form of a proportional rebate on the amounts collected from the sale of electricity and meter rentals or carried forward in the accounts of the licensee for distribution to the consumers in future, in such manner as the State Government may direct. On a fair reading of clause II, in our view, what is distributed amongst the consumers is the part of the clear profits of the licensee. There cannot be any dispute that one-third that is placed at the disposal of the licensee is not a permissible deduction, as also the amount that goes to the reserve called tariffs and dividends control reserve. There appears no good reason to hold that the remaining part of this excess which is directed to be distributed amongst the consumers has any different character or colour or that it does not form part of the clear profits of the business of the assessee. When we proceed to consider the import of the expression "clear profits" and "reasonable return", we gather further support for the aforesaid construction of clauses I and II of the Sixth Schedule read together. "Clear profits" are defined in sub-clause (2) of clause XVII of the Sixth Schedule as "the difference between the amount of income and the sum of expenditure plus specific appropriations made up in each case as mentioned in that sub-clause. Item (a) of sub-clause (2) gives the various heads of income. It may be mentioned that gross receipts from sale of energy, less discounts applicable thereby, and the rental of meters and other apparatus hired to consumers, are amongst the heads of income. Item (b) describes various heads of expenditure. It is an exhaustive list and it includes "expenses (excluding interest on debentures and loans) admissible under the law for the time being in force in the assessment of Indian income-tax and arising from and ancillary or incidental to the business of electricity supply". Item (c) enumerates the heads of special appropriation, and it may be mentioned that all taxes on income and profits is one of the items of special appropriation which are to be dedicated from income on ascertaining clear profits under the provisions of the Sixth Schedule. "Reasonable return" is defined in sub-clause (9) of clause XVII of the Sixth Schedule. It is not necessary to go into the details of that definition. Having regard to the definition of "clear profits" it is abundantly clear the "clear profits" is a sum ascertained after income-tax chargeable on the profits and gains of the business is ascertained and is deducted from its income. It would follow that a part thereof which the Act directs to be distributed amongst the consumers is distribution of in come and not a refund of an over-charge. Sub-section (1) of section 10 provides that tax shall be payable by an assessed under the head "profits and gains of business, profession or vocation in respect of all profits and gains of any business, profession or vocation carried on by him". Sub-section (2) of section 10 provides that such profits and gains shall be computed after making the following allowances. The sub-section then enumerates the various heads of allowances. The expression "profits" has to be understood in its natural and proper sense, in a sense which no commercial man would misunderstand, and in that sense profits from trade or business would be surplus by which the receipts from trading and

business exceed the expenditure incurred for earning those profits or for the purpose of the business that yields those profits. The assessable profits from the business are computed in the manner and the mode provided by section 10 of the Act. But the "clear profits" under the Electricity Act are not the same thing as the "assessable profits" under the Income-tax Act. Clear profits under the Electricity Act are profits arrived at in a manner provided in the said Act. As already seen, they are the profits remaining after making various deductions including deduction of the income-tax payable by a licensee in respect of his business income. Those clear profits are directed by clause II to be apportioned in the manner provided in clause II of the Sixth Schedule. What the licensee is entitled to retain out of clear profits is reasonable return as determined under the Act plus one-third not exceeding five per cent. plus one-half of the remaining balance. The remaining part of the clear profits, the Act directs to be distributed amongst the consumers in the form of rebate. It is true that the Electricity Act exercises control on the business of the licensee, but the control that is exercised by reason of the aforesaid proviso is to compel the assessee to distribute part of its it clear profits if it is found that "clear profits" are in excess of the reasonable return as contemplated under the Act. That, in out opinion, would only amount to apportionment or distribution of the profits after they have been earned. It cannot, therefore, be said that the amount set apart for the purpose of distribution amongst the consumers is not chargeable to tax on the ground that it represents over-charge.

16. It is next to be seen whether the said two amounts of Rs. 42,142 and Rs. 77,138 were diverted at the very source to the consumers before they had reached the assessee as a part of its income. In all cases of tax, what has to be considered is what is the real income of the assessee. If on considering the transactions as a whole it is found that what appears to be the income of the assessee is legally claimable by some other person then that part has to be excluded from the computation of then that part has to be excluded from the computation of the income of the assessee, for the reason that that part of the income gets diverted at the very source of its earning to the person who has a legally enforceable claim in respect thereof against the assessee. The two decisions on which reliance is placed by Mr. Kolah on this aspect of the case lead to this conclusion. The facts in Raja Bejoy Singh Dudhuria v. Commissioner of Income-tax, are that the assessee had succeeded to the family ancestral estate on the death of his father. Subsequently, his step-mother brought suit for maintenance against him, in which a consent decree was made directing the assessee to make a monthly payment of the fixed sum to his step-mother, and declaring that the maintenance was a charge on the ancestral estate in the hands of the assessee. In the computation of income, the assessee claimed that the amounts paid by him to his step-mother under the decree should be excluded. The privy Council upheld this claim of the assessee, holding that this was not a case of application by the appellant of part of his income in a particular way : it was rather the allocation of a sum out of his revenue before it became income in his hands. The facts in Seth Motilal Manekchand v. Commissioner of Income-tax were that a

managing agency belonged to a Hindu joint family composed of A, his son, B, and A's wife. In a partition between the members of the family, the managing agency was also divided, and the partition deed provided that A and B would be entitled to the managing agency remuneration in equal shares and that each of them should pay to A's wife 2 annas 8 pies out of their respective 8 annas shares in the managing agency. A and B constituted themselves into a registered firm, and carried on managing agency. In the assessment of the firm and each of the individual partners, it was claimed that 2 annas 8 pies share paid to A's wife by each of them should be deducted before ascertaining their taxable income. This claim made by the firm as well as by the individual partners was disallowed by the income-tax authorities as well as by the Tribunal, and the matter came to this court on a reference. The claim of the firm was not allowed, inasmuch as there was no agreement between the firm and A's wife as such and there was no legally enforceable claim against the firm by A's wife, but the deductions claimed by the two partners in their individual assessments were allowed. In allowing the claim of the partners, the learned Chief Justice, at page 743, observed :

> "In our opinion, the test would be the same even though there may not be a specific charge so long as there was an obligation upon the assessee to pay which could be enforced in a court of law."

17. It has, therefore, to be seen whether there was any obligation on the assessee in the instant case, to set apart the aforesaid sums for the purposes of distribution amongst the consumers, and whether on the failure on the part of the assessee to set apart and distribute these amounts amongst the consumers, the consumer could have any legally enforceable claim against the assessee to compel it to do so. We have been shown any provisions in the Electricity Act which would confer a legally enforceable right on the consumers to claim a share in the excess of "clear profits" over the reasonable returns, not have we come across any sub provision in the Act. Under the general law also, the consumers, in our view, would have no such right. Section 57 read with the Sixth schedule has not the effect of fixing the rate to be charged to the consumers to whom the electricity or meters are supplied. Clause I of the Sixth Schedule only gives a direction to the assessee to so adjust his rate for the sale of electricity that his clear profits in any year of account shall not, as far as possible, exceed the amount of reasonable return. But that does not mean that failure on the part of the assessee to so adjust the rates would render the rates charged illegal. Clause II is directory, and gives a direction to the assessee to deal with the excess or clear profits over the reasonable return in a certain manner. Failure to abide by the provisions of clause II does not visit any penal consequences on the licensee. The penal provisions are contained in section 77 which says that if the licensee fails without reasonable excuse to comply with or give effect to any direction, order or requirement made under certain provisions of the Act, he will be liable to penal consequences. Orders made under clause Ii of the Sixth Schedule is not one of the

provision mentioned in section 77. Now, section 57A empowers the State Government to take certain steps against the licensees who fail to comply with the provisions of the Sixth Schedule, and the provisions of section 57A show that, in that even, the Board or where no Board is constituted under the Act, the State Government can, after following the procedure mentioned in that section, fix the rate which the licensee should charge for the supply of electricity. It is only when the rates are fixed under section 57A that the licensees incur a penalty under section 77 in the event they charge rates higher than the rates fixed by the Board or the State Government under section 57A. In this connection, it would be pertinent to notice the fourth proviso to the 1st clause of the Sixth Schedule, which is in the following terms :

> "Provided further that if the rates of supply fixed in pursuance of the recommendations of a rating committee constituted under section 57A are lower than those notified by the licensee under and in accordance with the preceding proviso, the licensee shall refund to the consumers the excess amount recovered by him from them".

18. It will be noticed that when the licensee charges higher rate for supply of electricity that those fixed under section 57A, an obligation is cast on him to refund the excess. But when the result of trading of the assessee is that his clear profits exceed the reasonable return, it speaks of distribution of those clear profits. This clear difference in the language used by the legislature as regards these two provisions leads to the conclusion that the sums set apart which form part of the income of the assessee as a result of its trading operations have not been diverted at the source before they had reached the assessee.

19. As regards the third aspect as to whether the said amounts set apart can be claimed as an allowance deductible under section 10(2) (xv), in our view, in no sense it can be said to be an expenditure laid out wholly or exclusively for the purpose of the business, inasmuch as it is not expenditure which can be said to have been incurred either during the course of business or for the purpose of earning the profits of the business.

20. For the reasons stated above, our answer to the question referred to us is in the negative. The assessee will pay the costs of the department.

21. Question answered in the negative.