

BOMBAY HIGH COURT

Manilal Dahyabhai

Vs.

Commissioner of Income-tax

Income-tax Ref. No. 42 of 1958

(Shah and S.T. Desai, JJ.)

17.06.1959

JUDGMENT

Shah, J.

1. The assessee is a Hindu undivided family. It carries on business as a wholesale dealer in cloth in two names (1) Manilal Dayabhai, Vithalwadi, Bombay, and (2) Dayabhai Sobharam, Champa Galli, Bombay. The business with the up-country merchants is carried on in the name of Manilal Dayabhai, and the local business is carried on in the name of Dayabhai Sobharam. The assessee also carries on business in speculation in gold, silver, cotton, etc. Two separate sets of books of account are maintained by the assessee in respect of the business carried on in the two names. We are in this reference concerned with the business which is carried on by the assessee in the name of Dayabhai Sobharam. For the assessment year 1949-50 the assessee returned a total income of Rs. 1,38,946/- from the business done in the name of Dayabhai Sobharam. In arriving at that figure the assessee deducted from the gross income an amount of Rs. 1,04,042/- as loss suffered in the speculation business in shares, cotton, gold, silver and other commodities. In the assessment years 1947-48 and 1948-49 the assessee had suffered losses in speculation in gold, silver, cotton and shares as also in seeds, hessian and linseed. The assessee claimed that against the profit made by it in the cloth business in the year of assessment 1949-50 should be set off the losses suffered in the speculation business which were brought forward from the preceding year. It was claimed by the assessee that the cloth business and the business in speculation in gold, silver, cotton, shares, hessian and linseed constituted the same business. The income-tax authorities negatived the contention raised by the assessee. The assessment proceedings were brought before the Income-tax Appellate Tribunal, and Mr. Aggarwal the Judicial Member and Mr. Malhotra the Accountant Member, constituting the Tribunal, disagreed in their conclusion on that question raised before them. Mr. Aggarwal was of the view that the speculation business and the cloth business constituted the same business within the meaning of section 24(2) of the Income-tax Act. He observed :

"Taking all the facts and circumstances into consideration I am firmly of the opinion that the speculation business carried on by the assessee is 'the same business' within the meaning of section 24(2) of the Indian Income-tax Act and the loss carried forward must be adjusted against the assessee's profit under the head 'profits and gains of business, profession or vocation'."

In Mr. Malhotra's view, the speculation business carried on by the assessee had no concern with the normal cloth business conducted by it. In view of the difference of opinion between the two members the matter was referred to the President of the Tribunal who agreed with the conclusion of Mr. Malhotra. He held that the assessee had failed to prove that the speculation business carried on by it was the same business as the business in cloth, and observed that, if a finding was necessary, in his view the cloth business and the speculation business were "not one and the same business in spite of the trivial connection pointed out by the assessee". We may point out that whereas the two members of the Tribunal expressed their respective opinions on the question whether the cloth business and the business in speculation carried on by the assessee could be regarded as one and the same business, the President decided the appeal primarily on the view that the burden lay upon the assessee to establish that the speculation business was the same business as the cloth business carried on by it and that burden was not discharged by the assessee, and observed that if it was necessary for him to express an opinion he would agree with the view taken by Mr. Malhotra.

2. In this reference Mr. Kolah for the assessee has strenuously contended that all the usual indicia which are regarded as determinative of "same business" within the meaning of section 24(2) of the Income-tax Act are found present in this case by all the three members of the Tribunal and that Mr. Malhotra and the President were in error in coming to the conclusion that on those indicia the doth business and the business in speculation carried on by the assessee did not constitute one and the same business.

3. Normally where the assessee carries on two different lines of business, it is a question of fact whether they constitute two separate and distinct businesses or whether they are in truth branches or departments of one and the same business. It is true that the conclusion of the Tribunal, which is founded on no evidence or which is unreasonable or perverse may not be regarded as binding even if it is apparently on a question of fact. Again, if the question is one of legal inference to be drawn from the facts proved, it may be regarded as a question of law.

4. The test for ascertaining whether two lines of business conducted by the same assessee constitute the same business or distinct businesses was happily expressed by Mr. Justice Rowlatt in *Scales v. George Thompson and Co. Ltd*¹., The learned Judge observed : "... the real question is, was there any inter-connection, any interlacing, any inter-dependence, any unity at all embracing those two businesses." In considering a similar question in Scale's Case 1928-13 Tax

Cas 83 Mr. Justice Rowlatt observed that he could not conceive of two businesses that could, be more easily separated than the two which were conducted by the assessee in that case. He pointed out that both the businesses had something to do with ships and that was all that could be said about them. He then observed :

"One does not depend upon the other; they are not interlaced; they do not dovetail into each other, except that the people who are in them know about ships; but the
¹1928-13 Tax Cas. 83
actual conduct of the business shows no dovetailing of the one into the other at all. They might stop the underwriting; it does not affect the ships. They might stop the ships and it does not affect the underwriting. They might carry on underwriting in a country where there were no ships, except that it would not be commercially convenient; but the two things have nothing whatever to do with one another."

The learned Judge also pointed out that the method of book-keeping did not seem to him to throw any light upon the matter at all.

5. Mr. Agarwal in the reasons in support of his order observed that the cloth business and the speculation business carried on by the assessee constituted the same business and that was clear from the following six factors :

- (i) That only one set of accounts was maintained; i.e. in the set of books maintained for the assessee's cloth business the dealings in speculation were also entered. There was one Cash Book and the bank accounts were also the same both for the dealings in cloth as well as in speculation. Receipts either from the assessee's dealings in cloth or from speculation were deposited in these books and similarly withdrawals for purposes of payment either in regard to dealings in cloth or dealings in speculation were made from these books and accounts;
- (ii) That the speculation business as well as the dealings in cloth were carried on from the assessee's shop in Champa Galli in the name of Shah Dayabhai Sobharam :
- (iii) That the business was carried on with the help of the same staff :
- (iv) That the capital employed for both the businesses was the same :
- (v) That the receipts in respect of one business were utilized for purposes of the other business indiscriminately and vice versa : and
- (vi) That the items of overheads and other expenses were common.

In the view of Mr. Agarwal, all these factors led to the inevitable inference that the two lines of business conducted by the assessee constituted the same business. In his view, it could not be said that merely because the nature of the speculation business was different from that of dealing in cloth that the two lines of business constituted separate businesses. Mr. Malhotra was of the view that the principal business of the assessee was the cloth business and that the speculation

business was carried on by the assessee by debiting the funds to the cloth business, and merely because there were withdrawals made from the cloth business for the purpose of the business in speculation it could not be said that there was identity between the two lines of business carried on by the assessee. He analysed the reasons given for drawing the inference from the six factors set out by Mr. Agarwal and came to the conclusion that between the two lines of business conducted by the assessee there was no inter-connection, inter-lacing, inter-dependence or dovetailing or unity embracing the two lines. With this view, as we have already observed, the President appeared to agree. Prima facie it may appear that when the two members of the Tribunal agreed that there was no inter-connection, interlacing, inter-dependence or dovetailing of the two lines of business nor any unity in the conduct thereof the finding recorded by the Tribunal is binding upon this Court; but we do not propose to rest our judgment merely on this view.

6. It is true that one set of books of account was maintained in respect of two lines of the business conducted, in the name of Dayabhai Sobharam, and in that set of books of account entries were indiscriminately posted in respect of the cloth and the speculation transactions. Again, it appears that withdrawals of funds were made from the banking accounts and were allocated to the two lines of business. But the mere maintenance of one set of books of account will not necessarily lead to the inference that two lines of the business in respect of which entries are made in the books of account are the same business. It may be possible for an assessee to conduct two independent businesses having no connection with each other and post entries in respect thereof in one set of books of account. The posting of entries in the same set out of books of account does not justify the inference that the two lines of business constitute the same business, nor does the circumstance that the source from which the monies were obtained for conducting the two lines of business was common lead to the inference that the two lines of business must be regarded as one and the same business.

7. By section 24(2) of the Income-tax Act, as it stood before its amendment by the Finance Act, 1955, it was in so far as it is material provided :

"Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March 1940, in any business, profession or vocation, and the loss cannot be wholly set off under sub-section (1), so much of the loss as is not so set off . . . shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year "

It is evident that under this section the losses incurred by the assessee in his business in any year may, if unabsorbed, be carried forward to the following year and set off against the profits and gains of the assessee from the "same business" for that year, but not of any distinct business. It is true that the circumstance that accounts were maintained in the same set of books in respect of two different lines of business may have to be considered in the context of the other

circumstances, but, in our judgment, that is not decisive.

8. The speculation business and the cloth business were, it is true, primarily conducted from the assessee's shop at Champa Galli in the name of Shah Dayabhai Sobharam, but, here again, that circumstance does not establish any inter-connection, between the two businesses conducted from the same shop. It also appears that in carrying on the speculation business some assistance of the staff employed in the cloth business may have been obtained; but in the view of the President of the Tribunal this assistance must have been trivial. In our view even if some assistance was obtained from the staff maintained for the cloth business, that is not a circumstance which establishes an inter-connection or inter-dependence between the two lines of business. The source of the capital which was employed for the two lines of business was undoubtedly the same and the receipts in respect of the business in cloth and the speculation business went into that source and from that source monies were withdrawn indiscriminately and even the overhead charges and the other expenses in the two lines of business were regarded by the members of the Tribunal as common. It is true that these circumstances may, in a proper case, together with other circumstances justify an inference that the two lines of business constituted one and the same business. But we are unable to hold that because these circumstances are found present it must follow that the two lines of business conducted by the assessee were parts of the same business. The Court must in each case ascertain whether, in view of the existence of these circumstances, unity between the two lines of business is established and we fail to find from the circumstances referred to in the present case any such unity. Though not a conclusive test, an important test, viz., whether one of the two businesses conducted by the assessee could be stopped without affecting the texture or framework of the other, may properly be applied in this case. It was possible for the assessee to close the cloth business and to conduct exclusively, the speculation business and the texture or framework of the speculation business would not have been affected thereby and by the closure of the speculation business the texture or framework of the cloth business could not have been affected. Again, the nature of the two lines of business conducted by the assessee are not the same. The only similarity if it can be called a similarity between the two lines of business is that one of the items of the speculation business was cotton whereas the other business conducted by the assessee was of cloth. The cloth business was, it appears, a business of purchase and sale of ready commodity, and the other business while the assessee was simultaneously conducting was forward dealings in gold, silver, linseed, hessian, shares and seeds. The nature of the two lines of business was entirely independent of each other, and there was no unity between the two lines of business conducted by the assessee. The financing of the two lines of business from the same source, conducting of the business from the same shop and attendance to the business by the same owner or with the aid of the same staff do not by themselves establish the necessary unity which would constitute the same business.

9. Mr. Kolah for the assessee cited a large number of decisions in support of his contention that the circumstances which are found in this case were present in the cases cited by him and that in those cases it was held that two lines of business conducted by the assesseees in those cases were

the same business. It would be fruitless, however, to enter upon a detailed analysis and comparison of the facts on which the various cases cited before us at the Bar were decided. The decisions in those cases evidently proceeded upon inferences drawn from the facts found proved by the Income-tax Tribunals. It may be sufficient to observe that in none of the cases cited any particular circumstances or set of circumstances was held decisive of the question whether two or more lines of business conducted by an assessee constituted the same business within the meaning of section 24(2) of the Income-tax Act. We may make a brief reference to the cases cited at the Bar which have, it is evident, been decided on a collective appreciation of the facts and circumstances of the cases and not on the application of any general principle.

10. The first case, which was referred to by Mr. Kolah, was *Chidambaram Chettiar v. Commissioner of Income-tax, Madras*² In that case a money-lending business carried on by the assessee at Karaikudi in British India and another similar business carried on by him in the Federated Malay States at Penang were regarded as the same business because the business operations abroad were conducted in the same manner as they were conducted in India. It was held that even though a separate set of books of account were maintained for the business conducted abroad, copies of the day book were periodically despatched to the headquarters, there was frequent correspondence between the agents abroad and the assessee who asked for particulars and explanations and issued

²(1945) 13 I.T.R. 177

instructions regarding the conduct of the business, and there was a flow of remittance both ways according to the needs of the business and the final trading result was brought into the accounts at the headquarters at the end of the year. This, according to the Court, presented a picture of a trading organization interconnected as head office and branch office with financial inter-dependence and unity of control. If on the facts found proved in that case, the Court came to the conclusion that there was a trading organization which was inter-connected and there was a financial inter-dependence and unity of control between the businesses conducted by the assessee at home and abroad, evidently the business, on the test which we have set out earlier, must be regarded as the same business.

11. In *Rekhabchand Sarogi v. Commissioner of Income-tax, B. and O*³. Mr. Justice Manohar Lall, who delivered the principal judgment of the Court, observed that the capital employed in the business of the assessee was the same, that the accounts of the business were mixed up, that the items of expenditure were interwoven, that the overhead expenses were common, that the registered firm was carrying on business as merchants and that, therefore, he was free to conclude that the registered firm by engaging in speculation in different commodities such as hardware, cement, rice, wheat, yarn, salt, grain and hessian was not entering into different businesses. Here again, the conclusion of the Court is founded upon the existence of interweaving in many respects between the different lines of business conducted by a firm of merchants.

12. In *Govindram Bros. Ltd. v. Commissioner of Income-tax Central, Bombay*⁴ the assessee-company was carrying on since its incorporation speculation in various commodities in several markets, and the business was conducted in the same premises, by the same staff, and with the aid of the same accounts, and when the assessee-company sought to set off the loss under section 24(2) of the Income-tax Act, it was held by this Court that speculation in cotton was the same business as speculation in silver and that the assessee-company was entitled to set off the loss in speculation in silver carried forward from the assessment year 1940-41 against the profits from speculation in cotton considered in the assessment year 1941-42 under section 24(2). Delivering the supplementary judgment of the Court, Mr. Justice Chagla, as he then was, observed that speculation by itself was not a nexus that connected the silver business with the cotton business conducted by the assessee and that what would make those businesses into one business was not the factor of speculation or the fact that the assessee did not take delivery of those commodities but did forward business, but some other inter-connection or a nexus which had to be found independently of the speculative character of those businesses. It appears that the learned Judge, though with some reluctance, agreed on the facts with the view taken by Sir Leonard Stone, Chief Justice that the business in speculation in cotton and speculation in silver conducted by the assessee was the same business. This case is evidently no authority for the proposition that certain facts found proved must inevitably lead to the inference that two sets of business conducted by an assessee are or are not the same business.

13. In *Hiralal Kalyanmal v. Commissioner of Income Tax, Bombay*⁵, the assessee was conducting the business of a selling agent of a textile mill and also the business of banking and speculation in cotton and cotton jatha business. For these businesses the

³(1947) 15 I.T.R. 465 ,

⁵(1943) 11 I.T.R. 128

⁴(1946) 14 I.T.R. 764 : AIR 1947 Bom 247

assessee maintained separate books of account. It was held by the income-tax authorities that the two businesses conducted by the assessee were separate and, therefore, disallowed certain expenses incurred by the assessee in collecting the outstandings of the cotton jatha business in computing the profits of the other business : and it was held by the Court that the question whether the two businesses conducted by the assessee were separate businesses or were in reality two branches of the same business was a question of fact and that there was no evidence in that case on which the income-tax authorities could come to the conclusion recorded by them. We may observe that this case did not arise under section 24(2) of the Income-tax Act, nor did the Court come to the conclusion that any particular facts or circumstances proved in the case must necessitate the inference of existence of the same business or of separate business.

14. In *Soundarapandia Nadar and Sons v. Commissioner of Income-tax, Madras*⁶, the assessee was conducting business in grain and rice at Tuticorin in British India and was purchasing certain goods at Rangoon through his agents. He also entered into forward contracts in respect of those goods through his agents at Rangoon. The agents sent to the assessee from time to time statements of account in respect of these transactions in a separate folio in the same account books at Tuticorin. The financing of all the transactions was from Tuticorin and the control of all the transactions was under a single management. The Court on these facts held that the

transactions in forward contracts carried on by the assessee in the Rangoon grain market were a part of the general business of the assessee as a dealer in rice and grain and that the assessee was, therefore, entitled to set off the loss against the profits under section 24(2) of the Income-tax Act. We may point out that Mr. Justice Vishwanatha Sastri, who delivered the supplementary judgment of the Court, on a review of the evidence came to the conclusion that the business was carried on by the same person, through the same agency with the same funds, both with reference to the dealings in futures and forward contracts as well as ready goods, that the speculations in futures were entered into with a view to increase the profits of the business and also perhaps to impress the commercial public in Rangoon and command credit facilities : and that speculations were merely ancillary to the ready goods business and they converged to the same point, namely, the earning of profits as a result of the rice and grains business. It was evident from the finding of the Court that the speculation business was ancillary to the principal business in rice and grains and, therefore, the two lines were regarded as the same business. This case also does not seem to lay down any principle of general application.

15. The two members of the Tribunal have, in the present case, negatived the existence of interconnection, interlacing or inter-dependence between the two businesses conducted by the assessee. They have also negatived the existence of a unity of control and that finding is based on evidence. As we have already pointed out, the closure of one of the two businesses would not have affected the texture or framework of the other business. Having regard to these facts, we do not think that any case is made out which would justify us in holding that the majority view taken by the Tribunal was erroneous. On the view taken by us, the answers to the questions; referred will be :

(1) That the business in speculation and the cloth business conducted by the assessee did not constitute one and the same business :

⁶(1950) 18 I.T.R. 163

(2) That there was evidence to justify the Tribunal's finding that the speculation business and the business in cloth were two separate businesses, and the Tribunal has not misdirected itself in law in coming to that conclusion : and

(3) On the facts and in the circumstances of the case, the assessee was not entitled to set off against the profits from the cloth business in the year of account the losses of Rs. 3,57,403/- and Rs. 66,719/- in the speculation business brought forward from the preceding years of account.

The assessee to pay the costs of the reference to the Commissioner of Income-tax.

Desai, J.

16. This reference raises the rather vexed question of the connotation and meaning of the expression "the same business" in section 24(2) of the Income-tax Act in the context of set off of

losses in computing the aggregate income of an assessee. No specific criterion, no infallible rule - inclusive or exclusive, no test of universal application is to be expected in respect of a question which is largely one of fact. It has been said that we have to look at the nexus in determining whether two sets of business operations conducted by a person can or cannot be said to be the same business. Emphasis has sometimes been laid on the place where the business is carried on, or the mode or method of carrying on the business, or the source from which the capital employed in the business has flown and other similar facts which indubitably have relevance in their own setting, and at times are of considerable importance. But, as I have already stated, it is impossible to expect any general test which can be applied in all circumstances and to all facts. Therefore, what we have to do in this case is to find out whether looking at the facts already found by the Tribunal it can broadly be said that the business of the assessee was or was not the same business as found by the Tribunal. I may repeat that the question is largely one of fact, though, of course, a reference to Court is permissible, and indeed allowed, when it appears to the Court that the finding of the Tribunal was without any evidence to support it or that no proper legal inference had been drawn from proved facts or if the Court is satisfied that the Tribunal had misdirected itself in law. The facts leading up to this Reference and the somewhat chequered history of the case have been succinctly set out by my brother and it is not necessary for me to reiterate the same : nor is it necessary for me to set out in this judgment the six factors which found favour with the Judicial Member of the Tribunal and led him to the conclusion that in this case the business conducted by the assessee was "the same business" within the meaning of section 24(2) of the Income-tax Act. I shall very briefly refer to those six factors, which Mr. Kolah, learned Counsel for the assessee, has very strongly relied upon and indeed urged as decisive of the case. The argument has been that these six factors were not properly appreciated by the majority of the members of the Tribunal as was done by the Judicial Member when the matter first came up before the Tribunal.

17. The first factor relied on by Mr. Kolah is that the assessee maintained only one set of books of account. A person may indulge in numerous, distinct, separate and wholly unconnected businesses and may choose to keep his accounts in one set of books, even if he follows the mercantile system of accounts. There is no obligation on him to maintain separate sets of books of account in respect of his separate business activities or operations. This factor no doubt may be of cogency and even of particular importance in a given case. But that does not mean that it has to be looked upon as of such importance that it can lead the Court to the conclusion which it is asked to reach.

18. The second factor very strongly and strenuously pressed for our acceptance by Mr. Kolah is that the assessee carried on his speculation business as well as his business in cloth at the same place, viz., at his shop in Champa Galli. A cloth merchant may from his office or shop give instructions for purchase or sale of commodities or shares or securities on a very large scale : but that does not mean that he is carrying on that business from that very shop. At the time of giving instructions he merely happens to be there. In a case of this nature, viz., where speculation is

carried on in several commodities, the place from which instructions are given, or the place where instructions are received, or the place where the statements of accounts and ankadas are received, or even the place where the merchant keeps the record of his speculation transactions is not of any particular importance. In a loose sense, it may be said to be the place where he carries on his business, but that certainly is not a factor to which any importance can be attached.

19. Then there is the factor of the same staff being employed in respect of the speculation business and the business in cloth carried on by the assessee. It is not possible to attach any particular importance to this factor also in view of the nature of the two businesses. Very little work, if any, had to be done by the staff employed for the cloth business which, it is said, also helped in the speculation business.

20. Then there is the factor of the capital employed for both the businesses being the same. There can be cases in which the employment of capital in the businesses may have some bearing on the determination of the question. But in the present case I do not see how the assessee can rely on the factor that it was the same capital which was employed in both the businesses. In the speculative business, which consisted of forward transactions, he received profits and paid off losses in respect of that business with his own monies and it was with his own monies that he carried on the cloth business. Therefore, the source of the capital employed in the two businesses cannot have any particular importance in the present case.

21. Then there are the last two elements relied on by Mr. Kolah. They relate to receipt of monies and overhead expenses. The factor of receipt of money has little bearing on the question before us; and the payment of overhead charges also has hardly any bearing on the point when we are dealing with a speculation business of the nature carried on by the assessee.

22. It has been argued by the learned counsel for the assessee that these six are all tests which have been applied by Courts in numerous cases in determining the question of the nature involved in this case and should be considered not separately but together. I agree that these are all relevant factors to be taken into consideration though I do not regard them as tests : it is their cumulative effect that should weigh in the ultimate determination of the question. Of course, it would not be a correct approach to put them in a series of separate compartments and see whether each of them by itself cannot pass the test of inter-connection and unity of business. This test of inter-connection and unity of business was emphasized by Rowlatt, J. in (1928) 13 Tax Cas 83, and his observations in that case have now become locus classicus : "I think the real question is, was there any inter-connection, any interlacing, any inter-dependence any unity at all embracing those two businesses". In that case, a similar question arose in respect of business activities of a limited company which engaged in ship owning and underwriting, and the view was taken that the operations of ship owning and underwriting did not constitute one business but were two separate businesses. The celebrated dictum of Rowlatt, J. has been referred to practically in every case decided by Courts in India under Section 24 and affords guidance to the

Court in determining the question. The emphasis, as I read this passage, is on the element of unity embracing the two businesses. The inter-connection, the interlacing or the inter-dependence must be real - one of substance - and such as would go to establish the unity of the business. An examination of the short judgment of the learned Judge in that case and the facts of that case go to show that it was the nature of the two business activities which weighed with the, Court in deciding the question. In the same judgment, the learned Judge also observed :

"I cannot conceive two businesses that could be more easily separated than those two. They both have something to do with ships; that is all that can be said about them. One does not depend upon the other; they are not interlaced; they do not dovetail into each other, except that the people who are in them know about ships; but the actual conduct of the business shows no dovetailing of the one into the other at all. They might stop the underwriting; it does not affect the ships. They might stop the ships and it does not affect the underwriting".

Having regard to the facts and circumstances of this case, I would prefer to lay stress on the nature of the two businesses. In determining the question whether the two businesses can be called the same business or not, consideration must be directed to the concordant activities, if any, and to the basic singleness, if any, of the two businesses. If the activities are diverse and distinct and there is no basic oneness in the nature of the two businesses, then it cannot be said that they are the same business for the purpose of Section 24(2) of the Income-tax Act.

23. Our attention was drawn by the learned Counsel for the assessee to a number of decisions which have already been examined by my brother. I do not see anything in those cases which lends support to the arguments pressed for our acceptance by Mr. Kolah. I shall make only one observation on those cases. From an examination of those cases it does emerge that the nature of the two businesses must in some way be shown to be connected; and in the case before us it is extremely difficult to see how the nature of the cloth business was connected with the nature of the business in speculation carried on by the assessee.

24. Here are two businesses conducted by the assessee with his own capital, and I shall assume that they were conducted from the same place, viz., his cloth shop in Champa Galli, which is one of the centres of cloth trade in Bombay. He is maintaining one set of books of account. In substance and reality, that is all there is to it. The other so-called factors are hardly of any importance. On the other hand, it is clear that in no sense one business depended on the other, unless the financial capacity of the assessee was to be taken into consideration. That certainly is not a relevant factor. There is no element of unity save the object of making profit. That, again, is not a factor which is relevant to the question before us. There was no interlacing and no blending of the two businesses which were totally diverse and distinct commercial operations. The nature of the two businesses, I may repeat, was wholly different. On these facts, it is extremely difficult to say that the majority of the members of the Tribunal were in error when they held against the

assessee. Moreover, in this reference we are not making an enquiry as to whether the Tribunal was right or was in error in the conclusion reached by it. We have only to satisfy ourselves whether there was any evidence on which the Tribunal could have reached the conclusion drawn by it. It is not possible to say that the Tribunal has failed to draw any proper legal inference from the proved facts of this case, nor is it possible to say that it has misdirected itself in law on any point; I agree that the answers to the three questions should be as stated by my learned brother. Reference answered accordingly.