

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

New India Assurance Co. Ltd

(Kotwal, C.J. V Desai, J.)

06.11.1967

JUDGMENT

Kotwal, C.J.

1. This is a consolidated reference pertaining to the assessments of three years upon the assessee. The consolidation is due to the fact that common question of law arise pertaining to the three years.

2. The assessee is the New India Assurance Co. Ltd., Bombay, with its head office at Bombay. It has, however, branches and agencies all over the world. It used to carry on business in both life and general insurance, but the life insurance business was taken away from the assessee-company in consequence of the nationalization of the life insurance business which took effect from the 1st of September, 1956. Thereafter, the life insurance business was vested in the Life Insurance Corporation of India. It appears that in respect of the life business done by the assessee during the years in question before us, certain questions of law had arisen, but, since, under the statute, the liabilities as well as the assets are those of the Life Insurance Corporation, those questions are being agitated by the Life Insurance Corporation in separate proceedings even for the years of account with which we are concerned. The questions which arise in the present reference, therefore, are solely concerned with the general insurance business of the assessee for those years.

3. We are concerned with the assessment years 1954-55, 1955-56 and 1956-57 corresponding to the account years which are the calendar years 1953, 1954 and 1955. In the assessment proceedings for the three years the assessee had, inter alia, claimed the following exemptions :

4. Firstly, under the provisions of section 15B of the Indian Income-tax Act, the assessee claimed exemption in respect of donations for charitable purposes. Secondly, it claimed that certain dividends received by them from companies in which they had invested moneys were exempt

from tax, because those companies were new companies and their dividend income in the hands of the assessee as a shareholder was exempt under the provisions of section 15C(4). Thirdly, the assessee claimed exemption in respect of interest on loans of the Mysore Government which, according to the assessee, were exempted by the Central Government Notification No. 39 dated 5th July, 1954, under section 60 of the Indian Income-tax Act. The Tribunal had given a chart showing the respective figures of exemption claimed by the assessee which we reproduce below which serves to give at a comprehensive glance the amounts of the exemptions claimed in each year of account :

Pr. Year	Asst. U/s.15B for donation	U/s 15C(4)	Under notification
Cal. Year.	for charitable purposes.	on dividends form compan- ies exempt for interest on U/s. 15C.	No.39 dt. 5.7.1954 issued U/s. 60 Mysore Govt. Loan.
	(General)	(General)	(General)

1953	1954-55	8,471	22,145	24,450
1954	1955-56	15,722	6,375	24,450
1955	1956-57	61,800	23,000	24,450

5. The Tribunal has noted at the foot of the chart that the exemption claimed under section 15C(4) was claimed for the first time in the above years of account.

6. Under the third proviso to section 4(1) of the Indian Income-tax Act exemption is granted in respect of an amount of Rs. 4,500 ".....if in any year the amount of income accruing or arising without the taxable territories exceeds the amount brought into the taxable territories in that year....." The exemption granted is by the following words ".....there shall not be included in the assessment of the income of that year so much of suchs excess as does not exceed four thousand five hundred rupees....." In respect of the business which the assessee-company carried on in foreign countries it claimed this exclusion of income under this proviso to section 4(1) to the extent of Rs. 4,500 in respect of each of the assessment years above.

7. Under the privations of the Indian Income-tax Act the profits and gains of any business of insurance is not taxed in the ordinary way but under the special provisions of the Schedule to the Act. Section 10(7) applies the provisions of the Act. Section 10(7) runs as follows :

"Notwithstanding anything to the contrary contained in section 8, 9, 10, 12, or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act."

8. A glance at the rules contained in the Schedule to the Act shows that rules 1 to 5 govern the computation of the profits and gains of only life insurance business and since, as we have said, we are only concerned in this reference with the profits and gains of the assessee-company from the general insurance, these rules as such will not directly apply. They were referred to in the arguments for certain purposes and we will refer to them when we deal with the arguments. But the rule which directly governs the case and which is concerned with the general business of insurance is rule 6 and it makes the following provisions :

"The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which required under the Insurance Act, 1938, to be furnished to the Controller of Insurance after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business. Profits and losses on the realisation of investments and depreciation and appreciation of the value of investments shall be dealt with as provided in rule 3 for the business of life insurance."

9. We have quoted these provisions of the law at this stage because they serve to explain the view taken by the tax authorities upon several of the items involved in this reference and the arguments.

10. Reverting to the claims made by the assessee-company for exemptions as indicated in the chart above, the Income-tax Officer disallowed the claims to exemptions because he took the view that, having regard to the provisions of rule 6, the profits or gains which fell to be assessed under rule 6 were only notional. It is a notional income which is directed by the rules under the Schedule to be assessed and, therefore, there is no scope for giving effect to the exemptions or the provisions granting the exemptions. By the time the assessee could appeal to the Appellate Assistant Commissioner, as we have said, the life insurance business came to be nationalised and, therefore, the assessee-company and the Life Insurance Corporation preferred separate appeals to the Appellate Assistant Commissioner in regard to the general insurance business and the life insurance business which by then vested in the Life Insurance Corporation of India. The Appellate Assistant Commissioner took the same view as taken by the Income-tax Officer and disallowed all the exemptions claimed as also the amount of Rs. 4,500, which the assessee claimed should be deducted under the third proviso to section 4(1)(c). The view of the Appellate Assistant Commissioner was the appellant has raised another ground of appeal stating that they

should be allowed relief under section 15C(4) on amounts received as dividend from newly established industries in India, viz., India Cement Ltd. and National Rayon Corporation Ltd. As discussed, while dealing with grounds Nos. 1, 2, 3 and 4, I hold that, in the case of general insurance, the income has been assessed as national income and, therefore, the other provisions of the Act would not apply relying on the decision of the Privy Council in the case of Commissioner of Income-tax v. Western India Life Insurance Co. Ltd.

11. The assessee carried the matter to the Tribunal by way of appeal and the Tribunal has, so far as the exemptions claimed are concerned, allowed the exemptions, but it did not accept the assessee's contention so far as the statutory allowance of Rs. 4,500 is concerned for each year of account under the third proviso to section 4(1). As regards the allowance the Tribunal somewhat summarily brushed it aside by saying that it was not permissible because it was specifically considered by the Privy Council in Commissioner of Income-tax v. Western India Life Insurance Co. Ltd. On the general contention, which was a contention which affected the grant of all the exemptions claimed by the assessee, the Tribunal did not accept the view of the tax authorities. It pointed out that the business of insurance is separately provided for in section 10(7) and section 10(7) excludes only the application of the provisions of sections 8, 9, 10, 12 and 18 to the extent that the rules in the Schedule to the Act apply. It does not exclude the operation of the entire Act. Next the Tribunal pointed out that rule 6 ordains that the profits as disclosed to the Controller of Insurance by the actuary of the company should be accepted for assessment and that the reasons for this procedure are fairly obvious. The computation of profits of an insurance company is a very difficult and technical process and can only be satisfactorily performed by a competent actuary. It is not merely a matter of guess work but of the application of a highly developed actuarial science. Therefore, the matter was taken out of the purview of the tax authorities so far as the figure of the profits or gains of insurance business is concerned, except to the extent permitted by rule 6. They then pointed out that, having regard to its provisions, section 10(7) does not replace the entire Income-tax Act by the Schedule, but only certain sections of the Income-tax Act to the extent indicated in section 10(7) and that section 10(7) does not inhibit the considerations of the exemptions provided in the other portions of the Act. They, therefore, held that a plain reading of the Act did not suggest that section 15C and other sections were inoperative in the case of insurance business.

12. It is in respect of this decision of the Tribunal on these questions that the first question which contains several parts has been referred to us. The following is the question :

"1. Whether in the assessments of all the years 1954-55, 1955-56 and 1956-57 made under rule 6 of the rules contained in the Schedule,

(i) the assessable income of the assessee from its general insurance business was notional

?

(ii) the assessee-company is entitled to the following :

(a) deduction of Rs. 4,500 under the proviso to section 4(1)(c);

(b) exemption from tax on account of donations for charitable purpose under section 15B;

(c) exemption under section 15C(4); and

(d) exemption in respect of interest on Mysore Government Loan under the Notification No. 39 dated July 5, 1954, issued under section 60 ?"

13. As we have said, the Tribunal had disallowed the claim of the assessee to the deduction of Rs. 4,500 and, therefore, the question No. 1(ii)(a) has been referred at the instance of the assessee and the rest of the above questions have been referred at the instance of the Commissioner.

14. Apart from these exemptions, there were three items involved which were disallowed by the departmental authorities and which formed the subject-matter of questions Nos. 2, 3 and 4 referred for our decision. Questions Nos. 2, 3 and 4 are as follows :

"2. Whether the claim of the assessee-company in regard to the payment of Rs. 1 lakh from the general department funds to the mutual benefit society is admissible in the assessment of 1954-55 having due regard to section 10(2)(xv), section 10(4)(c) and section 58K of the Act ?

3. Whether Rs. 79,592, being the difference in the exchange rates of Pakistan currency before and after its devaluation on July 31, 1955, on account of payment under section 18A of the Pakistan Income-tax Act is deductible in the assessment of 1956-57 under any of the provisions of the Income-tax Act or Schedule ?

4. Whether Rs. 1,33,694, being the difference in the exchange rates of the Pakistan currency before and after its devaluation on July 31, 1955, on account of double taxation relief till then ascertained to be due, is deductible in the assessment of 1956-57 under any of the provisions of the Income-tax Act or the Schedule ?"

15. Of these amounts, the first amount which forms the subject-matter of question No. 2 is an amount of Rs. 1 lakh contributed by the assessee-company towards a society called the New India Mutual Benefit Society started with the object of promoting the welfare and interest of all permanent employees of the New India Assurance Company and their families. This society is governed by certain rules and regulations, a copy of which has been placed before us. The funds

of this society were initially contributed from the funds of the assessee company and were derived from the voluntary contributions from all permanent members of the staff and from further grants or donations by the company itself. The total amount with which the society commenced was a sum of Rs. 2,19,650 contributed by the directors as follows :

Rs.

From the life department	...	1,00,000
From the general department (profit and loss account)	...	1,00,000
From the staff compassionate and charitable allowance fund	...	19,650

		2,19,650

thus making a total of Rs. 2,19,650. As to the contribution from the life fund also it appears that the same dispute had arisen but, since the life business has now been separated and vests in the Life Insurance Corporation of India, that item cannot be agitated by the assessee. We were told that the Life Insurance Corporation of India did not appeal in respect of that item after the Income-tax Officer disallowed that item as an item of the expenditure. We are only concerned with the amount of Rs. 1 lakh contributed from the funds of the company from its general department. The society was incorporated pursuant to the announcement of the General Manager dated 18th July, 1952, but, till about the year, 1959, it does not appear to have been very active in carrying out its objects. From the year, 1950, onwards, however, the society commenced to receive larger funds both from the staff and from the assessee-company. The society itself is being assessed separately on its own income and in the three accounting years it has spent amounts as mentioned below from its own funds :

Calendar year	Assessment year	General department
		Rs.
1953	1954-55	2,420
1954	1955-56	3,274
1955	1956-57	1,540

16. The Income-tax Officer disallowed this claim on the short ground that the amount

contributed by the company was a capital expenditure and should, therefore, be disallowed on general principles but also because it could not be allowed under section 58K(1) of the Income-tax Act. He, however, took the view that such amounts as are actually paid by the society to the employees for their benefit would be allowed as expenditure. Accordingly, the Income-tax Officer allowed the sum of Rs. 2,420 as a deduction in the assessment year 1954-55. In appeal, the Appellate Assistant Commissioner confirmed the view of the Income-tax Officer. He held that the assessee had, so to say, constituted a fund or the nucleus of a fund which would be in the nature of a capital expenditure and, therefore, could not be allowed on the authority of the decision in *Atherton v. British Insulated & Helsby Cables Ltd.* The Appellate Assistant Commissioner took the view that the initial contribution by the company had enabled it to divert itself from the future liabilities for payment to its employees and, since the extinguished future liability was a capital asset, the payment of this lump sum "had acquired a capital asset of enduring nature". Since under rule 6 any expenditure which was not allowable under the provisions of section 10 could be disallowed, the Income-tax Officer was right in disallowing this item. The Appellate Assistant Commissioner also added that the item of expenditure would also not be allowable under the provisions upon section 10(4)(c) of the Income-tax Act. Each one of these provisions upon which either the Income-tax Officer or the Appellate Assistant Commissioner disallowed this item is reflected in the question No. 2 which we have quoted above.

17. So far as this item is concerned, the Tribunal has taken the view that it is clear law that under section 10(2)(xv) any expenditure incurred as a matter of commercial expediency must be allowed and since in this case the company chose to set apart some amount for the benefit of the staff such payment could be allowable if it was made in the interest of business. In this case the assessee did not remain any dominion over the funds, though, no doubt, it has a certain amount of say in the matter of its distribution. The claim ought to be allowed especially because the contribution is made to a society which is a separate legal entity.

18. The third question relates to an item of Rs. 79,592 which, according to the assessee, is the loss incurred by it in the currency exchange rates prevailing between Pakistan and India before and after the devaluation of the Pakistan currency on 31st July, 1955. On the date of the devaluation, the assessee-company had paid to the Pakistan Government large amounts equal to its estimate of income-tax and super-tax liability on the basis of the last completed assessment. On the date of devaluation, i.e., 31st July, 1955, a sum of 1,80,892 Pakistan rupees was due from the Pakistan Government to the assessee, but in the meanwhile the Pakistan currency came to be devalued and the assessee suffered a loss thereby of Rs. 79,592. The assessee claimed this as an allowable loss.

19. The same is the position regarding the item of Rs. 1,33,694 which is the subject-matter of the fourth question referred for our decision. This is an item of loss sustained by the assessee on account of devaluation and arising out of an amount of 4,37,542 Pakistan rupees due and payable to the assessee under the double taxation avoidance agreement between India and Pakistan. As a result of the devaluation this amount at the new exchange rate was reduced by a sum of Rs. 1,33,694, which difference is due to the devaluation of the Pakistan currency. The Income-tax Officer disallowed both the above items, because according to him this was an item which the assessee claimed to be allowed to it on account of taxes which could never be a valid item of expenditure, taxes are expressly excluded as an item of expenditure. He remarked that "the proper entry in this case is not to debit this amount of loss to exchange reserve, but to debit to reserve for taxes account". In the appeal by the assessee, it appears that the Appellate Assistant Commissioner through an oversight failed to deal with this claim of the assessee altogether. The Tribunal on its part allowed both the items, because it felt that both the items constituted a business loss of the assessee. They had business all over the world and if, as a result of devaluation of a foreign currency, loss is sustained it would be purely a business loss. The Tribunal also remarked that, when Indian currency was devalued and the assessee-company derived a profit, the department had brought that profit to tax and recovered tax thereon. The tax thus recovered was in 1951 on a profit of Rs. 25,787. On these items the questions Nos. 3 and 4 quoted above have been referred for our decision.

20. It will be convenient first of all to deal with the question No. 1, which is of general importance and which affects all the exemptions granted to the assessee, the question being whether, having regard to the provisions of section 10(7) read with the provisions of rule 6 of the Schedule, one or more of the exemptions claimed cannot at all be granted because the Schedule provides for an independent "code" for assessments of insurance business. We have already reproduced sub-section (7) of section 10 and it commences with the non-obstante clause "notwithstanding anything to the contrary contained in section 8, 9, 10, 12 or 18". Therefore, it clearly excludes the operation of the stated sections, but it does not entirely exclude those sections, for the subsequent part of sub-section (7) says merely that "the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act." The primary provision, thus, is that the profits and gains of any business of insurance and the tax payable thereon should be computed in accordance with the rules in the Schedule and nothing contained in the stated sections to the contrary should be allowed to interfere with that computation. In other words, in computing the profits and gains of any insurance business and the tax payable thereon, the rules in the Schedule will govern and prevail over the section mentioned in the non-obstante clause, namely, sections 8, 9, 10, 12 and 18. Sections 8, 9, 10 and 12 are sections which relate to the computation of income under the respective heads of income mentioned in section 6(ii), (iii), (iv) and (v). So far as the business of

general insurance with which we are dealing in the present case is concerned, the rule in the Schedule which governs and, as we have said, prevails over the sections 8, 9, 10 and 12 is rule 6. As to the remaining section, viz., section 18, the rule in the Schedule which replaces it is rule 4 but that rule is applicable to the business of life insurance only. The effect of section 10(7), therefore, so far as general insurance is concerned, is that rule 6 in the Schedule governs and prevails over sections 8, 9, 10 and 12 in the matter of computation of the profits and gains of general insurance business.

21. The contention on behalf of the department has been two-fold. The first is that sub-section (7) of section 10 does not only speak of computing the profits and gains of any business of insurance, but it also speaks of "the tax payable thereon" and it says that both "the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act". Therefore, the first contention is that not only is the computation of the profits and gains of the business to be in accordance with the Schedule but also the tax payable thereon must be only according to the rules contained in the Schedule. Therefore, the assessee cannot claim the exemption granted by the Act. Secondly, it is contended that, having regard to rule 6, which applied in the case of general insurance business, the profits and gains which it contemplates is indicated by the words used in the rule "the profits and gains of any business of insurance..... shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Controller of Insurance". It is, therefore, urged that this is not really a computation of any actual profits and gains of the business of an insurer, but by the use of the words "shall be taken to be" a sort of a fictional income is being referred to. Counsel called it a notional income having regard to certain decisions to which we will presently refer. The second point, therefore, taken is that if it is not the actual income, but only the notional income, that has to be taken into account for the purpose of rule 6 in computing the profits and gains of an insurance business, then by necessary implication the several provisions of the Income-tax Act granting the several exemptions would not apply, because those exemptions are only exemptions upon actual profits and gains and not upon such notional profits and/or gains.

22. Before we deal with these two contentions, it is necessary to emphasise that, in the present case, the assessee claims exemption under sections 15B, 15C(4) and upon the terms of the Notification No. 39 issued under section 60. The deduction which it claims is under section 4(1). Sub-section (7) of section 10, while it expressly refers to certain sections, does not refer to any one of the sections on the basis of which the assessee claims the exemption or the deduction. In other words, neither section 4(1) nor section 15B nor section 15C(4) nor the Notification No. 39 under section 60 of the Income-tax Act is referred to in sub-section (7) of section 10. The question then is whether, having regard to its provisions and reading it along with rule 6, can we

by a process of inference hold that the intention of the legislature nevertheless was to do away with the exemptions granted by section 15B and 15C(4) and by the Notification No. 39 under section 60 or to do away with the deduction under section 4(1).

23. Before we turn to consider the provisions of sub-section (7) of section 10 read along with rule 6 in detail, it would be necessary first to deal with the contention based on the words "and the tax payable thereon" in sub-section (7). It was urged that, since sub-section (7) of section 10 says that the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules, the tax payable must be computed only having regard to the rules and no other provision of the Act can be availed of. Now, the first five rules in the Schedule do not deal with the profits and gains of the business of general insurance. They are only concerned with the life insurance. The only rule which is admittedly applicable to the case of a business of general insurance is rule 6 and curiously enough rule 6 does not deal with the question of tax or taxes payable on the profits and gains of the business of insurance. All that rule 6 says is that so far as the profits and gains of any business of insurance other than life insurance is concerned, it shall be taken to be the balance of the profits disclosed by the annual accounts furnished to the Controller of Insurance. That is the initial mandate of the rule. After accepting that balance as being the profits and gains of the business of general insurance what the tax officer is empowered to do is made clear. What he is to do is that, after adjusting such balance, he has to exclude from it any expenditure other than expenditure which may, under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business. In other words, the balance as shown in the annual accounts furnished to the Controller of Insurance must first of all be taken as the profits and gains of the business of general insurance and that amount can only be adjusted so as to exclude any expenditure which is not allowable under the provisions of section 10 as a business expenditure. That and that alone is the power of the Income-tax Officer under the first part of rule 6. The second part of the rule goes on to say that he can deal with two more questions (a) profits and losses on the realisation of investments and (b) depreciation and appreciation of the value of investments. These subjects or questions are to be dealt with "as provided in rule 3 for the business of life insurance". So far as the second part is concerned, therefore, any item which the tax officer deals with under this part of the rule must partake of the nature of profits and losses on the realisation of investments or depreciation and appreciation of the value of the value of investments. We need not refer to rule 3, for, as we shall presently show some of the items which it had claimed could be dealt with under this part of rule 6, do not fall under either of the two categories which we have indicated above. If they do not fall under either of these two categories then there is no power to deal with them at all.

24. Having analysed rule 6, we turn back to the point raised that the words in section 10(7) "the tax payable thereon shall be computed in accordance with the rules contained in the Schedule"

are plenary and have the necessary result of excluding the provisions of the Income-tax Act, particularly the provisions relating to exemption. We have already said that the only rule which applies in the case of business of general insurance is rule 6 and rule 6 has no reference to the payment or collection of tax nor even by inference can it be suggested that it has any reference to the payment or collection of tax. Therefore, at any rate, so far as the business of general insurance is concerned, the words "the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act" cannot apply.

25. It has been pointed out on behalf of the assessee that the words have been put into subsection (7) of section 10 in order to cover just such a subject as is dealt with in rule 4 of the Rules. Rule 4 is only concerned with the business of life insurance and, in order to understand its full implication, it is necessary to refer to some other rules. The profits and gains of life insurance business according to rule 2 can be computed in one of two ways, under sub-rule (a) or sub-rule (b), whichever is the greater. Under sub-rule (a) the computation is of "the gross external incomings of the preceding year from that business less the management expenses of that year". The words "the gross external incomings" are defined in rule 5(ii). Thus, broadly speaking, it is the full amount of incomings from whatever source derived of the preceding year less the expenses of management of that year. The other mode of computation is as prescribed under rule 2(b), which is an alternative to rule 2(a) and which is in these terms :

"2. The profits and gains of life insurance business shall be taken to be either - ...

(b) the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938, (4 of 1938), in respect of the last inter-valuation period ending before the year for which the assessment is to be made, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business....."

26. This rule serves to emphasise two circumstances : The peculiar nature of the business of life insurance and the necessity, therefore, to make the special rule for computation of its profits and gains and its separation into a special class by itself. The business of life insurance depends upon a number of factors which are taken into account in actuarial calculations such as mortality rates, experience as to the life span in different parts of a country and in different communities and various other factors. Upon that depends not only the basis of which it fixes its premia and the terms of its policy. Now all these factors not only are of a special and complicated nature but are factors which are not susceptible of computation in ordinary income-tax proceedings. Therefore, it was thought proper to relegate the subject of taxation of life insurance business to a special

class by itself and make special provisions for it. The basis of calculation is not the income earned in the previous year but the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act in respect of the last inter-valuation period ending before the year for which the assessment is to be made.

27. It is with reference to this mode of computation of the profits and gains of the life insurance business that rule 4 has been made and rule 4 says "where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that year, credit shall not be given in accordance with sub-section (5) of section 18 for the tax paid in the preceding year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period." The rule refers to section 18, sub-section (5). Section 18 provides for deduction of tax at source in different cases and sub-section (5) of section 18 provides that any deduction made in accordance with the provisions of the section shall be treated as a payment of income-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him therefore on the production of the certificate to be furnished according to law. Now, section 10(7), as we have said, expressly excludes section 18 and, notwithstanding anything to the contrary contained in section 18, that sub-section directs that the profits and gains of any business of insurance shall be computed in accordance with the rules. In the case of a life insurance business, if tax is deducted from source on any item of income, that deduction of tax will be lost to the insurance company because of the exclusion of section 18. Therefore, it became necessary to provide specially for such a case and that provision was made by rule 4 and all that rule 4 does is to replace the provisions of sub-section (5) of section 18 so far as credit to be allowed for tax paid at source is concerned in the case of a business of life insurance.

28. Having regard to the manner of computation of its profits and gains, instead of the normal allowance of the whole amount of tax deducted at source, rule 4 says that credit shall not be given for the tax paid in the preceding year, but "credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period". Rule 4 thus provides for the special case where tax is deducted at source in the case of a life insurance business and indicates how the tax payable for that year should be computed. It is to this rule that the words of section 10(7) "and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act" would apply. Rule 4 is the only rule in the Rules contained in the Schedule which refers to the subject of computation of the tax payable. This discussion will show what, in our opinion, is the true scope and meaning of the

words used in sub-section (7) of section 10 "and the tax payable thereon". They only apply to the case contemplated by rule 4 of the Rules contained in the Schedule. If so, the necessary consequence must be that, it was not intended by the use of those words to exclude generally the application of any of the provisions of the Income-tax Act other than the sections expressly mentioned in the opening non-obstante clause. We cannot, therefore, accept the first contention raised on behalf of the department that in view of the use of the words "and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act", the other provisions of the Income-tax Act, particularly the provisions relating to exemptions, would not apply and that the tax payable must be computed in the instant case only under rule 6. There is nothing to indicate in sub-section (7) of section 10 that the exemptions under sections 15B and 15C and the exemption under the Notification No. 39 issued under section 60 or the deduction under section 4(1) cannot be allowed and the only ground upon which it has been urged, that by inferences these provisions are excluded, cannot be accepted.

29. Then we turn to the other branch of this argument that rule 6 clearly contemplates notional profits and gains and does not deal with the actual profits and gains and all the exemptions laid down in the Act can only be attracted where there is an actual profit or gain and not to mere notional profits and gains. Now, in the first place, it is extremely difficult to accept that the profits and gains of any business of insurance contemplated by rule 6 is some kind of notional profits and gains. No doubt, rule 6 says that "profits and gains of any business of insurance (other than life insurance) shall be taken to be the balance of the profits disclosed...." The words "taken to be" would suggest that the tax officer is bound to accept the balance of the profits disclosed by the annual accounts, but it is not the same thing as saying that it shall be deemed to be profits and gains of any business of insurance. What is rather sought to be indicated by rule 6 is a sort of rule of evidence that the profits appearing in the balance-sheet as furnished to the Controller of Insurance shall be the starting point for the purpose of the exercise of his jurisdiction by the Income-tax Officer. If one turns to the provisions of the Indian Insurance Act, one finds careful provisions made for preparation of accounts of an insurance business and barring such changes or differences as of necessity are dictated by the peculiar nature of an insurance business the balance sheet and the profit and loss account are made to reflect as nearly as may be the actual profits derived by the insurance company. The balance of the profits disclosed by the annual accounts thus prepared is by no means a notional figure of profit, but is an actual figure, though, no doubt, computed in a special way because of the exigencies and nature of the business. But, as we have said, it is not necessary for us to go as far as this in the application of section 10(7) read with rule 6 because, upon the language of sub-section (7) of section 10 read along with rule 6, it seems to us impossible to hold that the provisions relating to exemptions and the exclusions in the Act, particularly sections 4(1), 15B, 15C(4) and the exemption granted by the Notification No. 39 under section 60, are in any way excluded from operation.

30. Secondly, we have already indicated what in our opinion is the true meaning of the words "and tax payable thereon" used in sub-section (7) of section 10 and upon that view it is clear that sub-section (7) only refers to the computation of the profits and gains of an insurance business and not to exemption. It is only after the profits and gains of a business are computed that any question of granting exemptions arise and if the latter stage were intended to be excluded by the law we should have thought that a clearer provision than is made in sub-section (7) of section 10 and in rule 6 would have been made.

31. Thirdly, there are indications in the Act itself to show that where the legislature intended to take away an exemption granted, it has done so in express terms. For instance, it has done so in the second proviso to sub-section (3) of section 14. By section 14(3) a co-operative society is not liable to pay income-tax, but the proviso (ii) expressly enacts that nothing contained in the sub-section shall apply to a co-operative society carrying on insurance business comprised in rule 9 of the Schedule. If the contention of counsel for the department were to be accepted, that because of the provisions of sub-section (7) of section 10 all exemptions are at an end and exemptions cannot be granted for reasons which we have already dealt with, then it seems to us that provisions of the second proviso to sub-section (3) of section 14 would be quite unnecessary. That the legislature felt itself bound to expressly exclude an exemption granted, suggests that the exemption is not negated by the provisions of section 10(7).

32. In a recent decision of the Supreme Court in *Pandyan Insurance Co. Ltd. v. Commissioner of Income-tax*, after examining the several provisions of the Indian Insurance Act and the effect of section 10(7) and rule 6 read with rule 3(b), the Supreme Court indicated what in its opinion was the effect of the Insurance Act and the nature of the accounts to be maintained thereunder. At page 719 the Supreme Court held :

"Mr. Viswanatha Sastri contends that the Insurance Act, 1938 (IV of 1938), makes detailed provisions to ensure the true valuation of assets and the determination of the true balance of profits of an insurance business. An examination of the various sections of the Insurance Act discloses that he is right in this respect."

33. In that case rule 6 read with rule 3(b) fell to be considered and the Supreme Court further pointed out that, acting under his powers under rule 6, the Income-tax Officer cannot adjust the accounts of an insurer on the basis of a revaluation made by him. They observed at page 721, after quoting with approval the decision in *Life Insurance Corporation of India v. Commissioner of Income-tax* :

"The entire subject of such disparity between fact and actual entries is comprehended in the proviso. It seems to us that this court has held in categorical terms that rule 3(b) does

not empower the Income-tax Officer to adjust the accounts on the basis of a revaluation made by him or to correct the discrepancy between what is entered in the accounts and what is fact."

Rule 3(b) incidentally is in terms referred to in rule 6 and the remark, therefore, is equally apposite here.

34. With this discussion upon the general question involved on a consideration of the exemption claimed by the assessee, we turn to consider each one of the deductions and exemptions claimed in the several questions framed under question No. 1.

35. The first item is covered by the question No. 1(ii)(a), namely, "deduction of Rs. 4,500 under the third proviso to section 4(1)". The exclusion of income by that proviso is in the following terms :

"Provided further that if in any year the amount of income accruing or arising without the taxable territories exceeds the amount brought into the taxable territories in that year so much of such excess as does not exceed four thousand five hundred rupees."

36. We would first of all consider the claim to this exclusion of income upon the terms of the proviso itself. The Tribunal, as we have said, summarily brushed it aside because they felt that it was specifically dealt with by the Privy Council in *Commissioner of Income-tax v. Western India Life Insurance Co. Ltd.* We will presently advert to that decision, but before we go to that decision and other decided cases, it is necessary to consider whether the terms of the proviso have, in the first place, been fulfilled by the assessee. Upon the terms of the proviso there requirements have to be fulfilled. First, there must be a foreign income, secondly, it must be brought into India and, thirdly, that the amount in the foreign country must exceed the amount brought into India in which case Rs. 4,500 out of the amount in the foreign country would be exempted from tax. It seems that upon the facts here every ingredient of this proviso is fulfilled.

37. It is not in dispute that this company was carrying on business in Pakistan and earning income outside the taxable territories. It is also not in dispute that this income was brought into India and that the amount accruing or arising outside India exceeded the amount brought into India and that that amount exceeded Rs. 4,500. If, then, it is income arising outside the taxable territories, it is difficult to see how it ceases to be income earned without the taxable territories simply because it may be included in the balance of the profits disclosed to the Controller of Insurance. At no stage of the proceedings before the tax authorities or before the Tribunal was it in dispute that this was income earned without the taxable territories and that the requirements of section 4(1), third proviso, were fulfilled. The only ground upon which this item was not allowed

to the assessee was on the basis of the decision of the Privy Council in Commissioner of Income-tax v. Western India Life Insurance Co. Ltd. As we have shown, beyond referring to that decision, the Tribunal did not give any reason why this allowance should be denied to the assessee. In Western India Life Insurance Company's case the question was whether the assessee, which was doing business in life insurance, would be entitled to this statutory allowance under section 4(1) in respect of the profits and gains of its insurance business which have been computed in accordance with rules 1 and 2 of the Schedule. Now we have already indicated above the distinction drawn in the rule between the method by which the profits and gains of life insurance business are to be computed and the method by which the profits and gains of general insurance are to be computed. Generally speaking, the distinction is that the whole basis of valuation in the case of life insurance is upon the annual average of the surplus disclosed by the actuarial valuation, whereas in the case of general insurance it is taken to be the balance of the profits disclosed by the annual accounts of each year. In the case of life insurance the valuation period is usually much longer than one year, accounts of which are taken into account in computing the profits and gains, whereas in the case of general insurance it is the annual balance of the profits as disclosed in the annual accounts filed with the Controller of Insurance. Now it was in that particular context of the business of a life insurance company that the Privy Council held in Western India Life Insurance Company's case that the assessee could not avail of the allowance granted by the third proviso to section 4(1). The reason is obvious that it is impossible to dovetail the annual allowance with the profits and gains which are directed to be computed either on a triennial or quinquennial basis and that is precisely what their Lordships said in terms in spite of the general argument that the income was a notional income and for that reason the allowance could not be granted. At page 129 their Lordships noted the contention of counsel on behalf of the appellant that the assessments in that case for the years 1939-40 and 1940-41 were based upon a computation of income under rule 2(b) by reference to the annual average of the surplus disclosed by the actuarial valuation made for the last intervaluation period, namely, the triennium ending 31st December, 1938, and that the assessments on such a basis were of a notional and not of the actual income of the year preceding the year of assessment and that, therefore, the third proviso to section 4(1) had no application. The Privy Council also referred to the decision of the House of Lords in Inland Revenue Commissioners v. Australian Mutual Provident Society. Their Lordships noted the contention but did not decide upon it. On the other hand, what they said was that the case had been cited but it was "decided upon provisions of the British Income-tax Act of 1918, which are not the same as the proviso to section 4 of the Act now in question". Their Lordships then went on to observe :

".....the case does draw attention to the distinction between an assessment upon actual income and an assessment upon a notional income and in so far as an average derived from a triennial period is the basis for computation of the income of one year in this Act

the case has an important bearing."

38. Beyond saying this their Lordships did not decide the issue. The group upon which the Privy Council actually decided the case is thus stated at page 129 :

"But apart from authority, their Lordships are of opinion that the appellant's contention is correct and they find it impossible to apply the words of the third proviso to section 4(1) to an assessment under rule 2(b) of the Schedule and they will therefore humbly advise His Majesty that this appeal should be allowed....."

39. Therefore, the precise point upon which the Privy Council decided the case of Western India Life Insurance Co.'s case was shortly this that, having regard to the wording of the third proviso to section 4(1), it could not be applied to a case where an assessment of the profits and gains of a life insurance company is made under rule 2(b) of the Schedule. That case, therefore, must be limited to the particular facts upon which it was decided and cannot be an authority for holding that, even in the case of the assessment of a general insurance business under rule 6, the same principle would apply.

40. A similar question arose before the Supreme Court in the case of *Vanguard Fire & General Insurance Co. Ltd. v. Commissioner of Income-tax*. There the insurance company was claiming the exclusion of income under section 4(3)(xii) under the head "income from property" in respect of a building the erection of which was begun and completed between the 1st of April, 1946, and the 31st of March, 1956, which exemption is to be claimed within a period of two years from the date of completion of such building. In that connection the decision of the House of Lords in the Western India Life Insurance Co.'s case was relied on. The Supreme Court once again considered the provisions of section 4(3)(xii) upon its terms and came to the conclusion that it was impossible to apply the provisions of section 4(3)(xii) to an assessment made under section 10(7) of the Act read with paragraph 6 of the Schedule thereto. The reason once again was that the terms upon which the exemption was granted could not fit in with the special scheme of assessment indicated by rule 6. In this case a different head of exemption was involved and, moreover, the terms on which that exemption was granted were also different.

41. Mr. Joshi on behalf of the department, however, relied upon certain general observations of the Supreme Court at page 500 in connection with the effect of section 10(7) as follows :

"In our opinion, it is equally impossible to apply the provisions of section 4(3)(xii) to an assessment made under section 10(7), read with paragraph 6 of the Schedule. There is no income chargeable under the head 'income from property' as far as a general insurance business is concerned. The effect of section 10(7) is to delete the heads 'interest on

securities', 'income from property' and 'income from other sources' from section 6 of the Act, as far as general insurance business are concerned."

42. It was the last sentence in the above passage which has been emphasised before us. It was urged that here the Supreme Court has categorically found that the heads mentioned in section 6, clauses (ii), (iii) and (v) have, according to the decision of the Supreme Court, been deleted by virtue of section 10(7). No doubt their Lordships used the word "deleted" but what they intended to say is clear from the earlier portions of that judgment at pages 498 and 499. While considering the provisions of section 10(7) they referred to their earlier decision in *Life Insurance Corporation of India v. Commissioner of Income-tax* and pointed out that they had already held that "the assessment of the profits of an insurance business is completely governed by the rules in the Schedule to the Income-tax Act and the Income-tax Officer has no power to do anything not contained in it; there is no general right to correct the errors in the accounts of an insurance business." They also indicated that rule 2(b) of the Schedule did not empower the Income-tax Officer to adjust the accounts on the basis of a revaluation made by him or to correct the discrepancy between what was entered in the accounts and what was fact. Then at page 499 they observed :

"It seems to us that insurance companies are assessed on a special basis, though the special basis is different for life insurance companies and companies carrying on general insurance business. In the case of life insurance business, while defining 'gross external incomings' in paragraph 5 of the Schedule, it is provided that 'incomings, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 10 would have been assessable under section 9, shall be computed upon the basis laid down in the last-named section, and that there shall be allowed from such gross comings such deductions as are permissible under that section', but there is no mention of income from property in paragraph 6 of the Schedule. The form of revenue account applicable to fire insurance business, marine insurance and miscellaneous insurance business contains the items on the right side 'Interest, dividends and rents, less income-tax thereon'. Presumably, the rents here would be actual rents received, and not annual value as determined under section 9."

43. Therefore, the ratio of the decision of the Supreme Court was that there is no scope for valuation on the basis of the annual letting value contemplated by section 9 where assessment is being made under rule 6 and to that extent only is their subsequent remark to be understood that the effect of section 10(7) is to delete the item "income from property". We cannot understand it to mean that it has been altogether removed from consideration in an assessment under section 10(7). As a matter of fact, to the extent that it does not conflict with rule 6, section 9 would still

continue to operate because the opening words of the sub-section are "notwithstanding anything to the contrary contained in section 9 the profits and gains of any business of insurance...shall be computed in accordance with the rules contained in the Schedule to this Act." Only to the extent to which the rules are contrary to the section is the section overruled and we do not think that the Supreme Court intended to say anything more than that, nor do the facts and circumstances in the Vanguard Fire & General Insurance Co.'s case indicate otherwise. We have already said that all the requirements of the third proviso to section 4(1) have been fulfilled in the present case. Section 4(1) is not one of the sections referred to in the non-obstante clause with which section 10(7) is concerned. We have shown there is nothing in rule 6 or section 10(7) to exclude the operations of section 4(1). This assessee would, therefore, be entitled to the statutory allowance granted to it by section 4(1) because there is nothing to the contrary in the rule.

44. A curious argument was then advanced on behalf of the department that, since there is a separate assessment of the two departments of the assessee's business, namely, the life department and the general department, the assessee would be claiming the exclusion of the amount of Rs. 4,500 twice over and that cannot be permitted even having regard to the provisions of the proviso to section 4(1). This contention cannot for a moment be accepted for the simple reason that there is nothing shown that the amount of Rs. 4,500 was claimed or allowed in connection with the life insurance business. In any case, we are not concerned with the assessment of life business in the present reference and so long as the assessee would upon the terms of the exemption granted be entitled to it on the basis of its general business, we can see no reason why it should not be allowed upon the terms of that provision. We are unable to accept this contention. So far as the Tribunal is concerned, we have already said that the only reason why it did not consider this a permissible item was because of the decision of the Privy Council in Commissioner of Income-tax v. Western India Life Insurance Co. Ltd., which, in our opinion, is clearly distinguishable. Therefore, we must hold that the Tribunal erred in not granting this statutory allowance to the assessee for the three assessment years 1954-55, 1955-56 and 1956-57. We answer the question No. 1(ii)(a) in favour of the assessee in the affirmative.

45. Then we turn to the exemption claimed by the assessee under section 15B. This was not even challenged by Mr. Joshi on behalf of the department except on the general ground which we have dealt with. The claim is unassailable upon the terms of section 15B. The terms in which section 15B grants the exemption is as follows :

"The tax shall not be payable by an assessee in respect of any sums paid by him or after the first day of April, 1953, as donations to any institution or fund to which this section applies...."

46. There is no dispute here that the donations were paid by the assessee in the respective

accounting years as shown in the chart we have reproduced above and they were for a proper charitable purpose. The exemption is, unlike section 15C and other sections, granted in respect of the sums paid and nothing else. Under section 15C(1) for instance by contrast the exemption is on "so much of the profits or gains derived from any industrial undertaking". Here it is upon the sum paid and since that is the term upon which the exemption is granted, there can be hardly any scope for the argument that the exemption cannot be granted because the profits and gains of an insurance business are on a notional basis under rule 6. The terms of the exemption are so plain and nothing in section 10(7) or rule 6 comes in the way of the grant of that exemption. We must, therefore, agreeing with the decision of the Tribunal, hold that the assessee was entitled to this exemption under section 15B in respect of the three amounts mentioned against the three years of the account in the chart. The question No. 1(ii)(b) is answered in the affirmative.

47. Then we turn to the claim for exemption under section 15C(4). In the three accounting years the assessee owned shares of several companies such as India Cements Ltd., National Rayons Ltd., etc., which were new businesses and as such entitled to exemption under the provisions of section 15C(1) in respect of part of their capital. The amounts of dividends received from such companies are in the fourth column of the chart reproduced above in the respective years. Sub-section (4) of section 15C grants exemption to a shareholder in respect of so much of any dividend paid or deemed to be paid to him by an industrial undertaking to whom sub-section (1) applies. It says "the tax shall not be payable by a shareholder in respect of so much of any dividend paid or deemed to be paid to him by an industrial undertaking as it attributable to that part of the profits or gains on which the tax is not payable under this section." This item was also disallowed both by the Income-tax Officer and the Appellate Assistant Commissioner on the same ground as the other items, namely, that the income assessed under rule 6 read with section 10(7) was a notional income and, therefore, the other provisions of the Act will not apply. The Appellate Assistant Commissioner held "as discussed while dealing with grounds Nos. 1, 2, 3 and 4, I hold that in the case of general insurance, the income has been assessed as a notional income and, therefore, the other provisions of the Act would not apply relying on the decision of the Privy Council in the case of Commissioner of Income-tax v. Western India Life Insurance Co. Ltd." We have already discussed this ground above and we have shown that, in the first place, the income assessed under rule 6 is not necessarily a notional income but in addition we have shown that that consideration cannot deprive the assessee of the exemption if the terms upon which the exemption is granted are once fulfilled. We may also point out that during the assessment years with which we are concerned, the income of this company derived from dividends was liable to be treated as an income from business and would not as it now falls be treated under "other sources". This was decided by a Division Bench of this court in Commissioner of Income-tax v. Ahmuty and Co. Ltd. In that case the assessee-company was dealing in shares which constituted its stock-in-trade. In the year 1950-51 it had suffered a

business loss which was allowed to be carried forward and in the year 1951-52 it also suffered a further business loss. It claimed a set-off of its loss against its dividend income and a small balance remained of the dividend income. The tax authorities declined to allow the assessee to set off under section 24(2) the loss brought forward from the assessment year 1950-51 against the dividend income on the ground that the latter was not a profit from the same business. This court held that the dividend income received by the assessee in respect of the shares was income from business chargeable under section 10 and that the Income-tax authorities had no power to compel the assessee to show that income as being under section 12. They, therefore, allowed the set-off. It was in direct consequence of the decision of this court that section 9 of the Finance Act of 1955 with effect from 1st April, 1955, making dividend income chargeable to tax under section 12, "other sources". At any rate, so far as the accounting years are concerned, the entire income of the assessee in the case before us would, therefore, be liable to be treated as income from business under section 10. If that be so, we can see no reason why the assessee should be deprived of the exemption granted to him by the operation of section 15C(4). In our opinion, the assessee was rightly held entitled to the exemption under section 15C(4) in respect of the amounts for the respective years mentioned in column 4 of the chart. We accordingly answer the question No. 1(ii)(c) in the affirmative.

48. For the same reasons we think that the assessee would be entitled to the exemption claimed in respect of interest on the Mysore Government loan which is the subject-matter of question No. 1(ii)(d). By the notification of the Mysore Government No. 39 dated 5th July, 1954, the interest receivable on certain securities issued by the Mysore Government was declared to be exempt from income-tax payable under the Act, though they would be liable to be included in the total income of such assessee and not be exempt from super-tax payable under the said Act. The loan in question in the present case was the Mysore Government 3% loan. The exemption was granted under the provisions of section 60(1) which gives power to the Government by notification to make an exemption in respect of income-tax in favour of any class of persons. Some distinction was sought to be made on behalf of the department because of the use of the word "class of income" in section 60. It was urged that the power of the Government is to exempt any class of income which does not necessarily mean any head of income as indicated in section 6. The exemption may be in respect of any class of persons, but in this case, there is no question of any class of persons being exempted. The exemption must come under the words "class of income". Now it was sought to be urged that the specification of the particular loan is not a specification of any class of income, though it may be a specification of a head of income, but since section 60 permits the grant of exemption only in regard to a class of income, the exemption cannot be availed of by the assessee in respect of the Mysore Government loan.

49. It seems to us that this is a distinction without any material difference, for the expression

"class of income" would comprise within it the heads of income contemplated by section 6. In a decision of a Division Bench of this court in Commissioner of Income-tax v. B.B. & C.I. Railway Co-operative Mutual Death Benefit Society for Indian Staff Ltd. the question arose in connection with the issue of a notification by the Central Government under section 60 of the Income-tax Act granting certain exemptions to co-operative societies which are not doing insurance business and to co-operative societies which are doing insurance business, but the exemptions granted in regard to co-operative societies doing insurance business did not fall under any of the heads set out in the explanation to the second sub-clause of the notification. It was, therefore, argued that the notification could not justify the exemption. In answering the point this court pointed out that a "class of income" really means a category of income and it is a much wider expression than a head of income. Therefore, in that case the income derived by co-operative societies was a category of income. Applying the same principle here we must hold that when the notification to exempt the income derived from the Mysore State Government loan was issued it was an exemption of income-tax in favour of a category of income. Therefore, the notification would be perfectly valid and justify the exemption granted.

50. We may also point out that the exemption is on interest "receivable on the following securities", etc. The exemption, therefore, has nothing to do with how the interest is chargeable so long as it partakes of the description contained in the notification as interest "receivable". That being the exemption, it seems clear to us that the interest arising from the Mysore Government Loan would clearly be exempt. There is nothing in section 10(7) or in rule 6 to suggest that the exemption granted by the notification cannot be availed of in the case of an insurance business. Indeed, as we have pointed out in the other cases, neither section 60 nor any of the notifications granting exemption thereunder is referred to in section 10(7) or in rule 6. We agree with the Tribunal, therefore, that the interest received by the assessee on the Mysore Government Loan under the notification would be exempt from tax. We answer the question No. 1(ii)(d) in the affirmative.

51. Then we turn to the question No. 2, which relates to an item of Rs. 1 lakh contributed by the assessee-company to the Mutual Benefit society started by the company. The amount actually is not Rs. 1 lakh as stated in the question. The correct amount is Rs. 96,665. The facts relating to this question are briefly as follows :

52. On 18th July, 1952, the general manager of the company made an announcement that a society to be called the New India Mutual Benefit Society would be incorporated, and the objects of the society were, inter alia, to secure the welfare and interest of the permanent and retired employees, their families and dependants of the deceased employees of the New India Assurance Co. A copy of the rules and regulations pertaining to this society have been placed before us and

from the rules one finds that initially the company transferred from its own funds a total sum of Rs. 2,19,650 for utilisation as a fund of the society. It is not in dispute that this amount was contributed from different accounts, i.e., Rs. 1 lakh from the life department, Rs. 1 lakh from the general department (profit and loss account) and Rs. 19,650 from the staff compassionate and charitable allowance fund. So far as the question before us is concerned, we are only concerned with the amount of Rs. 1 lakh contributed from the profit and loss account from the general department.

53. The fund was to be administered by the society through a committee consisting of a chairman and two members appointed by the company and two members elected by the members of the staff. It was also mentioned in the rules that, in order to promote the spirit of self-help and mutual assistance, it was imperative that every member should make his best contribution to the funds of the society, which contribution need not necessarily be only in cash. After its incorporation, no doubt, for a number of years, the society did not function very actively and its funds remained somewhat stagnant, but from 1960 onwards the society not only commenced receiving larger contributions but began to be more active in the pursuits of its aims and objects. It has been found that in one year from 1st June, 1959, to 8th June, 1960, the assessee-company contributed towards the funds of this society Rs. 30,000 and a sum of Rs. 11,100 was contributed by the staff. The society is being assessed to tax separately. In the years of account with which we are concerned, the society paid amounts as mentioned below in fulfilment of the objects and purpose of the society :

Calendar year	Assessment year	General department
		Rs.
1953	1954-55	2,420
1954	1955-56	3,274
1955	1956-57	1,540

54. We are only concerned with the contribution which the assessee - company made from the profit and loss account of its general business towards the funds of this society.

55. The Income-tax Officer and the Appellate Assistant Commissioner disallowed the claim to the deduction on the ground that the assessee had transferred a lump sum to the credit of the trust to be held as a sort of a benefit fund for the benefit of the employees, the Income-tax Officer holding, "Therefore on general principles as well as under section 58K(1) such a nucleus of a provident fund would be capital expenses". Taking this view the Income-tax Officer held that the actual payments made by the assessee in the years of account out of the funds of the society

towards its purposes and objects could be claimed as expenses but not the amount transferred by the company to the funds of the society. The Appellate Assistant Commissioner held, "the appellant had, therefore, transferred this lump sum amount to the trustees to be held as a sort of benefit fund for the benefit of its employees and, therefore, such a nucleus of funds would be capital expenses and would not be deducted : vide the case of Atherton v. British Insulated and Helsby Cables Ltd. The appellant is not correct in stating that it is not a capital expenditure, because no enduring asset has been secured by the appellant-company. If no contribution to this mutual benefit society were made by the company, the company would have been liable to make payments for the benefit of its employees. By this initial contribution the company had been able to divest itself from future liabilities for payment to the employees. This extinguishment of a future liability (sic) of the company is a capital asset and the company, therefore, by payment of this lump sum had acquired a capital asset of enduring nature." Since rule 6 under which the assessee's profits and gains were to be assessed permitted the allowance of expenditure, this being a capital expenditure, was not allowable under section 10(4)(c) of the Indian Income-tax Act. The Tribunal reversed this decision on the short ground that the amount was laid out by the company as a matter of commercial expediency and it was settled law that under section 10(2)(xv) any expenditure incurred as a matter of commercial expediency had to be allowed. They pointed out a number of circumstances to indicate why they considered the payment by the company as laid down for the purposes of its business. Now, substantially it is thus contention which prevailed before the Appellate Assistant Commissioner that has been again pressed for our acceptance by Mr. Joshi on behalf of the department.

56. We would first of all dispose of any contention that section 58K(1) or section 10(4)(c) would be attracted. Clause(c) of section 10(4) takes away the exemption in case of "any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under a head 'salaries'." There is no question here of a provident fund but it was urged that the case will come under "other fund established for the benefit of employees". Even so, we do not think that section 10(4)(c) can bar the grant of this exemption because of the concluding words "unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head 'salaries'." There is no question here of payment of any salaries from fund. This is a fund which is useable purely at the discretion of the committee appointed for the benefit of the employees and dependents of the deceased members. The opening words of sub-section(4) "nothing in clause (xv) of sub-section(2) shall be deemed to authorize" show that, unless the case falls under clause(c), the allowance would be in conflict with the provisions of sub-section(2), clause(xv), which allows to an assessee "any expenditure not being an allowance of the nature described in any of the clauses(i) to (xiv) inclusive, and not

being in the nature of capital expenditure or personal expenses of the assessee." We do not think, therefore, that there is anything in section 10(4)(c) to bar the grant of this allowance.

57. So far as section 58K(1) is concerned, it only envisages a provident fund and, since this fund can by no stretch of language be held to be a provident fund, we do not think that section 18K(1) would be attracted.

58. That leaves for consideration section 10(2)(xv) and, as we have shown, it speaks of an allowance "not being in the nature of capital expenditure" and the principal endeavor on behalf of the department has been to show that this item contributed by the assessee-company was of a capital nature. It was not disputed that but for that contention section 10(2)(xv) would be attracted. The Appellate Assistant Commissioner, we have shown, relied upon the decision in *Atherton (H. M. Inspector of Taxes) v. British Insulated and Helsby Cables Ltd.* and the principle of that case as well as of the earlier decision of the English Court of Appeal in *Rowntree and Co. Ltd. v. Curtis* were pressed before us.

59. In *Atherton's* case the assessee-company had claimed a deduction in computing its income for the purpose of income-tax of a lump sum of Pound 31,784 which it had contributed irrevocably as the nucleus of a pension fund established by a trust deed for the benefit of its clerical and technical salaried staff. That sum, it was found, was arrived at upon actuarial calculations and it was a sum which was thought necessary to enable past years of service of the then existing staff to be taken into account for the purposes of pension. It was held that that sum was not an admissible deduction in arriving at the company's profits for purposes of income-tax, but was of a capital nature. Now the terms upon which that amount was paid were wholly different from the terms upon which the amount before us was paid by the assessee-company to the New Indian Mutual Benefit Society and this would appear very clearly from the following passage in the judgment of Viscount Cave L. C. (see page 193) :

"My Lords, in my opinion, the present case falls within the same principle. The payment of Pound 31,784, which is the subject of dispute, was made, not merely as a gift or bonus to the older servants of the appellant company, but (as the deed shows) to 'form a nucleus' of the pension fund which it was desired to create; and it is a fair inference from the terms of the deed and from the Commissioners' findings that without this contribution the fund might not have come into existence at all. The object and effect of the payment of this large sum was to enable the company to establish the pension fund and to offer to all its existing and future employees a sure provision for their old age, and so to obtain for the company the substantial and lasting advantage of being in position throughout its business life to secure and retain the services of a contented and efficient staff. I am satisfied on full consideration that the payment was in the nature of capital expenditure"

60. The terms upon which the pension fund was created in that case are thus materially different from the terms of the trust before us.

61. In his decision the Lord Chancellor referred to some of the tests which would be decisive of the question whether the expenditure is a capital expenditure or in the nature of a revenue expenditure and he referred to the decision in *Vallambrosa Rubber Company Ltd. v. Farmer* and to the remark of Lord Dunedin that "in a rough way' it was 'not a bad criterion of what is capital expenditure as against what is income expenditure to say that capital expenditure is a thing that is going to be spent once and for all, and income expenditure is a thing which is going to recur every year'; and no doubt this is often a material consideration. But the criterion suggested is not, and was obviously not intended by Lord Dunedin to be, a decisive one in every case....." From the report it is difficult to find even though the entire statement of the case is reproduced and the document creating by the trust whether only the income arising out of the amount contributed the company was to be spent; but one thing is clear that in that case it was found as a fact that the sum was spent once and for all by the company in order to earn for itself a permanent and lasting benefit, namely, the goodwill and contentment of its employees. The committee itself described the fund as the nucleus of a pension fund which necessarily suggested that it was to remain permanently with the trustees. That is clear from Lord Chancellor Viscount Cave's judgment, the passage from which we have quoted above.

62. None of these circumstances are present in the case before us. the amount transferred by the company was not an amount transferred as a nucleus of a fund not is it anywhere clear that the amount transferred by the assessee was not to be utilised for payment to employees according to the purposes and objects of the society. On the other hand, it was urged by counsel on behalf of the assessee that the amount is not contributed once and for all but similar amounts have been contributed by the company in the subsequent years and spent away by the society. In other words, it is an amount of a recurring nature and was intended to be an amount commensurate with the needs of the workers and their dependents. It was urged before us that in most of the subsequent years also the assessee has contributed similar amounts. It seems from the terms indicated from the rules and regulations of the society that the entire fund was to be utilised for the general aims and objects mentioned in rule 2 and the manner in which the society administered the fund was more or less as occasion demanded rather than upon any principle. As and when applications are made by the employees or dependents of the deceased employees, if they are deserving cases, they are considered by the committee and amounts are sanctioned for the reliefs specified to the persons concerned and it is not dependent upon what is the income available for distribution nor even upon what is the amount at the credit of the fund. In fact it was stated that the company makes good the amounts from year to year as occasion demands.

63. Though, no doubt, the Appellate Assistant Commissioner tried to bring the case under the principle of Atherton's case by observing that the appellant before him was not correct in stating that "no enduring asset had been secured by the appellant company", he was hard put to it to make out any case that the assessee-company had secured an enduring benefit from this contribution. We may say at once that the reasoning which prevailed with the Appellate Assistant Commissioner that by this initial contribution the company was able to divest itself from future liabilities for payment to the employees does not commend itself to us. There was, in the first place, no liability upon the company to provide for the welfare and interest of its permanent and retired employees much less of their families and dependents beyond the actual emoluments which by contract has been fixed. No doubt, it would be a proper and perhaps a logical thing to do it, but one cannot say that the company was under a liability to make such a provision. If there was no such liability then the company secured no particular advantage nor got rid of any particular liability by making this contribution. The circumstances under which this amount was paid by the assessee-company were wholly different from the circumstances which prevailed in Atherton's case.

64. The same was the position in the other case which was relied upon namely, Rowntree and Co. Ltd. v. Curtis. There a sum of Pound 50,000 was claimed as a deduction from the year of account by the assessee, Messrs. Rowntree and Co. Ltd., the well known chocolate manufacturers, which the assessee had set aside in the hands of trustees as a fund for the relief, out of the income therefrom, of invalidity, etc., amongst its employees. The case again revealed the important circumstances on the basis of which it was held that it was in the nature of a capital expenditure. At page 698 these circumstances are set forth and the circumstances in brief were that the payment was for the maintenance of the workmen of the company during the invalidity and was made in order to avoid a recurring liability which the company had to bear. Thus, the company got rid of that continuous business demand upon them once for all. It capitalized its recurring liability. Secondly, it was found that the primary object of the payment of Pound 50,000 to the trustees was to establish a fund by setting aside that sum as a capital and by terms only the income was available to meet the demands of the company's workmen on the ground of invalidity. The Master of the Rolls held at page 698 :

"I have pointed out that although in certain special circumstances an inroad could be made upon the capital, the original intention was that the income alone should first of all be used to meet this continuous demand upon them. Then, thirdly, the Commissioners found that the actual amounts paid away for invalidity had not been ascertained at the time the payment was made and were contingent and not capable of ascertainment."

Under these circumstances the learned judge observed at page 699 :

"I think it more closely approximates to the case of the purchase of a freehold in order no longer to have the demand for rent than it does to a prudent business payment in order to be rid of what was an ascertained demand likely to continue over a series of years."

65. In the present case, the amount was not set apart as a nucleus. The income alone was not to be spent but even the amount contributed was to be spent towards the purposes of the fund and there was no liability upon the company which had to be got rid of. It was a pure and simple expenditure on the ground of commercial expediency out of the bounty of the assessee-company. It does not weaken the argument in favour of holding that this was a business expense that the whole thing was done with the approval of the Controller of Insurance, for the annual accounts of a general insurance company must be submitted under the Insurance Act to the Controller of Insurance. It was also pointed out by counsel for the assessee that the actual payments made out of this fund are being allowed year after year by the department as an allowable expenditure and it can be a matter of dispute today that the amount was spent on account of the assessee's business. Looking at it from any point of view and taking into account all circumstances, it is clear to us that this amount of Rs. 96,665 paid by the assessee out of the funds of its general department to the Mutual Benefit Society would be an allowable expenditure under section 10(2)(xv). It is not an expenditure of a capital nature. Accordingly, we answer question No. 2 in the affirmative.

66. Then we come to questions Nos. 3 and 4. As a common point of law is involved so far as these two questions are concerned, we would deal with both these questions together. The questions Nos. 3 and 4 are as follows :

"3. Whether Rs. 79,592, being the difference in the exchange rates of Pakistan currency before and after its devaluation on July 31, 1955, on account of payment under section 18A of the Pakistan Income-tax Act is deductible in the assessment of 1956-57 under any of the provisions of the Income-tax Act or the Schedule ?

4. Whether Rs. 1,33,694, being the difference in the exchange rates of Pakistan currency before and after its devaluation on July 31, 1955, on account of double taxation relief till then ascertained to be due, is deductible in the assessment of 1956-57 under any of the provisions of the Income-tax Act or the Schedule ?"

67. Both these questions arise as a consequence of the devaluation of currency by the Government of Pakistan on 31st July, 1955. As we have said, the assessee does business throughout the world over and has branches in Pakistan at Karachi and Dacca. On 31st July, 1955, the exchange ratio between Pakistan and India was that 144 Indian rupees were equivalent to 100 Pakistan rupees. On and after that date the Pakistan rupee became equal to the Indian

rupee. As a result of this devaluation the assets of the assessee were affected. In respect of taxation of its income in Pakistan the assessee had deposited with the Pakistan income-tax authorities under section 18A of the Pakistan Income-tax Act amounts equal to income-tax and super-tax payable on the basis of the last completed assessment. In satisfaction of this liability the assessee had deposited with the Pakistan authorities a certain ad hoc amount but upon computation of the tax payable the assessee had found that a sum of Rs. 1,80,892 would be due from the Pakistan Government under section 18A. That amount, prior to the devaluation, had been equal to Rs. 2,60,484 Indian rupees, but, as a result of the devaluation, the assessee found that that sum was less by Rs. 79,592. Therefore, the assessee claimed that it had sustained a loss in regard to that amount because of the devaluation of the Pakistan currency.

68. The item comprised in question No. 4 was in respect of money due to the assessee under the double taxation avoidance agreement between our country and Pakistan. On the date of devaluation of the Pakistan currency, i.e., July, 1955, in the books of the assessee the amount of relief due to the assessee arising out of the double taxation avoidance agreement was a sum of 3,03,848 Pakistan rupees which at the then prevailing rate of the exchange was equal to 4,37,542 Indian rupees. The amount in regard to which question No. 4 has been referred is the difference between these two amounts, namely, Rs. 1,33,694. The other fact which needs to be emphasised in connection with this question is as stated in the reference that when in 1951 the Indian rupee was devalued with reference to the Pakistan currency the advance payment of tax in Pakistan which was then outstanding had resulted in a profit to Rs. 25,787 to the assessee and that profit was in that year duly taxed as a profit on exchange.

69. Thus, in respect of these two items the assessee claimed that it had sustained a business loss because of the devaluation of the currency by the Pakistan Government. The Income-tax Officer disallowed the claim. There is hardly any reason to be found for his order but rather an officious suggestion was made to the assessee by observing :

"The proper entry in this case is not to debit this amount of loss to Exchange Reserve, but to debit it to reserve for taxes account." So far as the Appellate Assistant Commissioner is concerned, the statement of the case itself points out that through an oversight that officer failed to deal with the claim of the assessee-company. The Tribunal in appeal has allowed both these items as a deductible loss in business observing as follows :

"When the Pakistan currency was devalued the assessee lost Rs. 2,13,286 on its Pakistan portfolio of investments. It is obviously a business loss, particularly for insurance companies who have business all over the world and have large portfolios of foreign investments. Incidentally, the profits which arose on the devaluation of Indian currency were taxed and rightly so. The loss claimed should be allowed."

70. Upon the arguments before us a common question arises in regard to both these items but before we go into that common point we may mention a small contention. Section 18A of the Pakistan Income-tax Act, it was said, is in identical terms with section 18A of the Indian Income-tax Act, and, therefore, it was urged that the amount of Rs. 79,592 relating to the advance payment of tax was paid under the same terms and conditions as are contained in section 18A. Mr. Palkhivala did not agree that the provisions of the two sections are in pari materia but he agreed that, for the purposes of the point arising in this reference, he would assume that section 18A in the two Acts are similar.

71. Now, the contention on behalf of the department has been that both the items of Rs. 79,592 and Rs. 1,33,694 are really claims made by the assessee on account of amount to be refunded to it of tax and therefore having regard to the provisions of section 10(4), the tax paid could never be allowed as an expense nor any loss arising in connection with tax. It was also urged that the computation of the profits and gains of any business of insurance has to be made under rule 6 of the Rules under section 10(7) and in such a computation under rule 6 there is no scope for allowing such a loss because the balance is to be taken as the balance of the profits disclosed by the annual accounts filed before the Controller of Insurance. In this respect Mr. Joshi also urged that the Tribunal was clearly in error in so far as it referred to these items as investments.

72. Now, no doubt, in the short paragraph 14 in which the Tribunal disposed of both these questions, the Tribunal has referred to what the assessee lost "on its Pakistan portfolio of investments" and observed that all insurance companies doing business outside India "have large portfolios of foreign investments" and it is these statements which have invited the attack against the order of the Tribunal. In our opinion, the Tribunal has clearly found that both these items were items which amounted to a business loss and that the loss claimed should, therefore, be allowed, but in coming to that conclusion the Tribunal has erroneously used the word "investments". Nothing turns, however, upon the use of that word, because the finding of the Tribunal is clear "it is obviously a business loss" and "the loss claimed should be allowed". The substance of their decision is clear that the two items constituted a business loss.

73. As regard the contention based on the provisions of section 10(4), that sub-section provides that :

"Nothing in clause (ix) or clause (xv) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of tax levied on the profits or gains of any business..... or assessed at a proportion of or otherwise on the basis of any such profits or gains;"

74. The reference to clauses (ix) and (xv) of sub-section (2) of section 10 indicates that sub-

section (4) is an exception to the allowances contemplated in clauses (ix) and (xv) of section 10(2). Clause (ix) of section 10(2) deal with the allowance of sums paid on account of land revenue, local rates or municipal taxes and clause (xv) deals with other expenditure and not being an allowance of the nature described in clauses (i) to (xiv) of section 10(2) and not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of such business, profession or vocation. The contention on behalf of the assessee, however, has been that the two items claimed do not represent in any way any allowance or allowable deduction but represent nothing more or less than ordinary business loss which has to be taken into account in the ordinary method of accounting for the purposes of income-tax. The question, therefore, is what was the nature of the claim made by the assessee in regard to these two items ? Is it the allowable deduction which the assessee is claiming or is it in substance only the ordinary business loss which the assessee is claiming ?

75. The distinction between a business loss and an expenditure is a palpable distinction and is settled upon the authority. The leading case drawing such a distinction is to be found in *Allen v. Farquharson Brothers and Co.* In that case, the question was whether a small amount of Pound 100 paid by the assessee to employ solicitors and counsel should be allowed to the assessee in computing their profits for income-tax purposes. In that the case, of course, it was held that legal costs were not an admissible deduction, but in coming to that conclusion Finlay J. compared the two rules of the Income-tax Rules, 3(a) and 3(e), and the distinction which he drew is found stated at page 64 as follows :

"Now a case might be put in which it was not very easy to say whether a thing was a disbursement or expense or was a loss. It is conceivable - such things sometimes happen - that there may be cases a which a thing might fall alternately - it might be either within the (a) or within (e) but, none the less, I do think that there is a distinction to be drawn between the two. (a) Relates to disbursements; that means something or other which the trader pays out; I think some sort of volition is indicated. He chooses to pay out some disbursements; it is an expense; it is something which comes out of his pocket. A loss is something different. That is not a thing which he expends or disburses. That is a thing which, so to speak, comes upon him ab extra. It is not very easy to formulate the thing, but it is easy enough to put illustrations falling on one side or the other of the line which may show what is, I think, the distinction, and the real distinction, between these things."

76. This passage emphasised one important point of distinction, namely, that an expenditure is voluntarily incurred while a business loss is fortuitous or ab extra as the learned judge put it.

77. The same distinction was accepted by a Division Bench of this court in *Lord's Dairy Farm Ltd. v. Commissioner of Income-tax.* In that case the loss was caused by defalcations by the

cashier of the company and the amount of the loss was claimed as a trading loss. It was urged that it was really a deduction contemplated by section 10(2)(xv) of the Income-tax Act, and that such an amount could be claimed only when the amount had been irrecoverable. In answering this point the Division Bench distinguished between the nature of a deduction claimable under section 10(2)(xv) and a business loss. They pointed out at page 705 :

"Then it is suggested that even if the case falls under section 10(2)(xv) the relevant time for claiming the deduction is not when the loss occurred but when the loss was written off. In the first place, in our opinion, the case cannot fall under section 10(2)(xv). Section 10(2)(xv) deals with any expenditure laid out or expended wholly or exclusively for the purpose of business, profession or vocation. Therefore, the deduction contemplated by section 10(2)(xv) must arise out of a voluntary act on the part of the assessee. He must spend an amount for the purpose of the business, profession or vocation and then claim that amount as having been spent wholly and exclusively for the purpose of business, profession or vocation. When the money is lost to the business as a result of embezzlement, there is no expenditure on the part of the employer. It is true that there is loss to the business, but that loss is entirely involuntary, and although the loss may arise in the course of the business or be incidental to the business, it cannot be said that the amount represented by the loss was an amount spent wholly and exclusively for the purpose of the business, profession or vocation."

78. A similar case of loss occurring as a result of misapplication of funds is to be found in *Associated Banking Corporation of India Ltd. v. Commissioner of Income-tax*. No doubt in this case it was held that the amount embezzled could not be said to be a trading loss but that was said because in that case there was still a reasonable prospect of recovering the amount embezzled. At the same time, at page 12, the Supreme Court adverted to the distinction between an allowable deduction and a business loss in the following words :

"It was urged by counsel for the liquidator that loss occurs to a banking institution when funds are withdrawn or misapplied by an agent or servant and misappropriated, and therefore the withdrawals or misapplication by the secretary having taken place in the year of account, the loss was admissible as an allowance in the year of account against the profits of that year. We are unable to agree with that contention. A claim to deduct an amount lost to the assessee because of embezzlement by his agent does not fall within the description of any allowance under clauses (i) to (xv) of sub-section (2) : to be admissible it must, if at all, fall within sub-section (1)."

79. Then their Lordships went on to point out that, though there had been embezzlement in the circumstances of that case, it did not result in a loss immediately because there was some

prospect of the asset embezzled being recovered. We are not concerned in the present case with any question of the amount of the loss being capable of reimbursement because in the present case the loss resulted because of the devaluation of the Pakistan currency. There is no question under these circumstances of any prospect of this loss being recovered.

80. In view of this distinction it seems to us clear upon the facts and circumstances of this case that what the assessee has been claiming here in regard to both the items covered by question Nos. 3 and 4 is only an ordinary business loss and the assessee is not claiming any allowance or any allowable deduction. A glance at the original order passed by the Income-tax Officer in the present case shows that he accepted the total figure of losses in exchange as were shown by the accounts of the assessee at Rs. 8,33,395 but he added back the two items which are comprised in questions Nos. 3 and 4 and, therefore, reduced the loss to Rs. 6,20,109. Now the amount of Rs. 8,33,395 is comprised of the figures shown in the accounts of the assessee for the year 1955 at pages 6,8 and 10, being the amounts of Rs. 5,19,751, Rs. 1,03,126 and Rs. 2,10,518 shown under the head "Exchange Adjustment" under the revenue accounts pertaining to fire, miscellaneous insurance and marine insurance. They have already been shown as a business loss in the accounts of the assessee. The exchange adjustment items shown at pages 6, 8 and 10 include the figures of the loss on account of the devaluation under both the accounts, namely, advance payment of tax and the double income-tax relief. These were the amounts which represent the difference between the amount as shown in the books of the assessee before the devaluation and the amount which the assessee will get after the devaluation. It is clear, therefore, that when the difference arose it was a difference which was entirely independent of the volition of the assessee. At no stage did the assessee intend to lay out this amount for any expenditure but, on the other hand, it was a fortuitous circumstance that Pakistan devalued its currency that resulted in this difference. It was, therefore, upon the tests laid down in the authorities, clearly a business loss which the assessee incurred.

81. Under rule 6 also the loss sustained and entered in the accounts is taken into account. In fact, the position is that it is not open to the tax authorities to go behind the balance of the profits disclosed by the annual accounts as filed before the Controller of Insurance. We have already shown that these two items have been entered in the accounts of the assessee and the profits and gains of their business of insurance assessed after taking into account both the items. That balance of profits as disclosed by their annual account is by rule 6 to be taken as the profits and gains of their business of insurance for the year of account. All that rule 6 permits is that the Income-tax Officer may adjust such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of section 10 be allowed. Since we have already found that these two items do not constitute "expenditure", but is a simple business loss sustained by the assessee, we do not think that the tax authorities would have any jurisdiction to go behind

the balance of profits as disclosed by the annual accounts and tamper with the figure by disallowing any item of business loss such as we have found it to be. In this respect the effect of rule 6 has been often dealt with. The earliest decision is to be found in *Commissioner of Income-tax v. Crown Life Insurance Co.*, where Chief Justice Chagla observed at page 371 :

"It is not disputed that this income arose to the assessee-company as a profits or gains from the business of insurance. This is not a profit made in any other business and, therefore, if it is a profit or gain from the business of insurance the profit cannot be computed in accordance with section 12, but it could only be computed in accordance with the rules contained in the Schedule to the Act, and when we turn to the Schedule there is no provision for computing this income as an income on which tax can be levied."

82. *In Commissioner of Income-tax v. Cocanada Radhaswami Bank Ltd.* the Supreme Court permitted the setting off of a business loss though the assessment was ad per rule 6. Under that rule the Income-tax Officer is bound to accept the balance of profit disclosed by the annual accounts, copies of which have been submitted to the Controller of Insurance. He can only adjust this balance "so as to exclude from it any expenditure other than expenditure, which may under the provisions of section 10 of this Act, be allowed for in computing the profits and gains of a business..... " Therefore, subject to the exceptional power to exclude expenditure not allowable under section 10, the Income-tax Officer cannot recompute the balance of the profit accepted by the Controller of Insurance or look into the accounts submitted to the Controller of Insurance.

83. *In Life Insurance Corporation of India v. Commissioner of Income-tax*, which was a case of life insurance business, the Supreme Court pointed out that "the assessment of the profits of an insurance business is completely governed by the rules in the Schedule to the Income-tax Act and the Income-tax Officer has no power to do anything not contained in it : there is no general right to correct the errors in the accounts of an insurance did not constitute items of expenditure but constituted items of ordinary loss sustained in business by the assessee-company, even having regard to rule 6, the tax authorities would not be entitled to interfere with the figure of profits and gains as disclosed in the annual accounts and, therefore, would not be entitled to consider these two items which went up to make up the total figure of the annual profits or gains.

84. Another short argument which Mr. Joshi urged in replying to the contentions on the basis of rule 6 and the distinction which has been drawn between an expenditure and a business loss, was to urge that the word "expenditure" as used in section 10(2)(xv) itself includes business loss. We cannot accept that argument for a moment, for clause (xv) is part of sub-section (2) of section 10, the opening words of which show that it deals with only the allowances granted in computing the profits and gains of the business as distinct from the profits and gains of the business itself. The allowance of expenditure referred to in clause (xv) of section 10(2), therefore, cannot

possibly include business loss. It has only reference to any items of allowance other than the items mentioned in clauses (i) to (xiv) of section 10(2). In the result, we answer the question Nos. 3 and 4 in the affirmative.

85. Since all the questions have been answered in favour of the assessee, the assessee will get the costs from the Commissioner.

