commence on the expiry of the period of continuous membership for six years.

(7) There is, therefore, no merit in the writ petition and the Arbitrator rightly held that the respondent was eligible to seek re-election.

(8) The writ petition merits dismissal on another ground as well that the petitioner did not pursue an alternative legal remedy which could be quite efficacious and was available to him. A power of revision has been given to the State Government and the Registrar to *suo motu* or on the application of a party to a reference, call for and examine the records of any proceedings in which no appeal lies to the Government or the Registrar as the case may be. These two authorities could pass any order as they thought fit and it is conceded before me that the case was covered by section 69. The only reason given is that the existence of an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction by this Court under Articles 226 and 227 of the Constitution of India. I quite agree that in an appropriate case this Court may interfere in spite of an alternative remedy being uavailable, but the present is not that case. The petitioner could have, in my opinion, gone to the revisional authority first before coming to this Court. It is not a case where there was any inherent lack of jurisdiction and the issue involved was one within the jurisdiction of the authorities concerned, no matter that, according to the petitioner, their decision was erroneous and depended on an interpretation of a provision in a statute.

(9) In the result, the writ petition fails, but in the peculiar circumstances of the case, the parties are left to bear their own costs.

B. S. G.

INCOME TAX REFERENCE.

Before D. K. Mahajan and Bal Raj Tuli, JJ.

THE COMMISSIONER OF INCOME-TAX,—*Applicant.*

versus

SARDAR SINGH SACHDEVA,—*Respondent.*

Income Tax Reference No. 15 of 1968

October 21, 1970.

Indian Income-tax Act (XI of 1922)—Section 10(2) (vi-b), Proviso (b)—Development Rebate—Claim for—Assessee not making necessary entries

for such claim before the expiry of accounting year—Entries however made before the completion of the assessment of the year—Requirements of proviso (b) to section 10(2) (vi-b)—Whether complied with—Development rebate—Whether allowable.

Held, that it is not necessary that the relevant entries in the account books creating a development rebate reserve must be made before the close of the accounting year or at the time of the preparation of the profit and loss account. It is not permissible to read something more into the statutory provision of proviso (b) to section 10(2)(vi-b) of Income-tax Act, 1922, namely, that in order to get the development rebate the requirements of the proviso must be satisfied before the close of the accounting year. If the intention of the Legislature were that entries had to be made before the close of the accounting year or before the completion of the profit and loss account it would have said so. The profit and loss account cannot be made immediately on the close of the year. It depends upon the facts and circumstances of each case as to at what time the profit and loss account can be made. It is no doubt true that in the profit and loss account the assessee is to make the debit entry regarding the development rebate but if he has not done so before the close of the accounting year, he has a right to correct the mistake in his account books or the statement of profit and loss account or to modify his return upto the date the assessment for the year is completed. The entries only become final as and when they are accepted or rejected by the Income-tax Officer, i.e., when the assessment is made. Till then, they are in fluid state and any error or defect in them can be corrected. Hence if an assessee has not made necessary entries in his account books for the claim of development rebate before the close of accounting year, but made such entries before the completion of assessment of income-tax for the year, the requirements of proviso (b) to section 10(2) (vi-b) of the Act are complied with and the development rebate is allowable. (Para 4)

Reference made under Section 66(1) of the Income-tax Act, 1922, by the Income-tax Appellate Tribunal (Delhi Bench) arising out of ITA No. 4571 of 1966-67 for the Assessment year, 1961-62, to this Hon'ble Court for decision of the below-noted important question of law:—

> *"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the requirements of proviso (b) to clause (vi-b) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922, for creation development rebate reserve have been satisfied."*

B. S. Gupta and D. N. Awasthy, Advocates, for the applicant.

Atma Ram and Jagmohan Singh, Advocates, for the respondent.

JUDGMENT

The judgment of this Court was delivered by:—

MAHAJAN, J.—The Income-tax Appellate Tribunal (Delhi Bench 'C') has referred the following question of law for opinion :—

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the requirements of proviso (b) to clause (vi-b) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922, for creation of development rebate reserve have been satisfied."

(2) On facts there is no dispute. We are concerned with the assessment year, 1961-62. The previous year is the financial year ending 31st March, 1961. The assessee at all material times was carrying on business of manufacture and sale of chain links used in Sugar Mills. The assessee filed return, dated 6th of July, 1961, and in that return no development rebate was claimed. With this return a profit and loss account had been filed. In the profit and loss account no claim was made for the development rebate. The assessee then filed a revised return, dated 10th July, 1962. In this return again no claim was made for the development rebate. On 29th October, 1963, the assessee filed a second revised return. Along with this return he filed revised profit and loss account in which development rebate of Rs. 8,101.50 was claimed. The procedure adopted was that in the account book ending March 31, 1961, a development rebate reserve was created and this account was credited with the sum of Rs. 8,101.50. In the profit and loss account this amount was debited. The Income-Tax Officer completed the assessment on March 30, 1966. The claim on account of development rebate under section 10(2)(vi-b) proviso (b) of the Income-tax Act, 1922, was disallowed. The reasoning adopted by the Income-tax Officer may best be stated in his own words :—

> "It is, therefore, clear that when the books of accounts were closed and profit and loss account was drawn, no reserve for development rebate was created as is clear from the balance-sheet and profit and loss account accompanying the original return. The assessee, therefore, did not comply with an essential condition for the allowance of development rebate. The reserve created on 29th October, 1963, cannot help the assessee. The asseessee must have carried forward his balance on 1st April, 1961, to the books or

assessment year 1962-63 and again balances of assessment year 1962-63 must have been carried forward to the books of assessment year 1963-64 on 1st April, 1961. The assessee, therefore, created the reserve when the balances for not only assessment year 1961-62 were struck, but balances were also struck for the assessment year 1962-63 and 1963-64. *Vide* his written explanation filed on 29th March, 1966, the assessee has argued that reserve can be created at any time provided the entries are passed in the books of the relevant year."

The assessee was dissatisfied with the order of the Income-tax Officer and preferred an appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner also rejected the assessee's claim to the development rebate. The assessee then filed a further appeal to the Income-tax Appellate. Tribunal and the Tribunal by its order, dated August 8, 1967, accepted the assessee's contention and allowed the claim to the development rebate. The contention of the Department to the contrary before the Tribunal based on the decision of the Madras High Court in *Commisisoner of Income-tax, Madras* v. *Veeraswami Nainar and others* (1), was not accepted. It was held that this decision was not applicable and was clearly distinguishable. The Department being dissatisfied with the decision of the Tribunal made an application under section 66(1) of the Income-tax Act, 1922, for reference to this Court. That is how the matter has been placed before us.

(3) The contention of the learned counsel for the Department is that the relevant entries in the account books and the profit and loss account must be made before the close of the year. In the instant case it is argued they should have been made on or before the 31st of March, 1961, and in any case at the time of the preparation of the profit and loss account. The matter is not *res integra*. There are two direct decisions, dealing with this question, of the Andhra Pradesh High Court and the other of Rajasthan High Court, namely, *Veerabhadra Iron Foundry and another* v. *Commissioner of Income-tax, A.P.* (2) and *Commissioner of Income-tax Delhi and Rajasthan* v. *Mazdoor Kisan Sahkari Samiti* (3). Both these cases considered the decision of the Madras High Court in

(1) (1965) 55 I.T.R. 35.
(2) (1968) 69 I.T.R. 425.
(3) (1970) 75 I.T.R. 253.

Veeraswami Nainar case and have clearly explained it. It is not necessary to cover the same ground again. In a nut-shell if the argument urged by the learned counsel for the Department is accepted, we would be reading something into the proviso (b) to section 10(2) (vi-b), namely, that in order to get the development rebate the requirements of the proviso must be satisfied before the close of the account year. In our opinion this course would not be permissible. We cannot read something more into the statutory provision. If the intention of the Legislature was that the entries had to be made before the close of the account year or before the completion of the profit and loss account, it would have said so. It is well known that the profit and loss account cannot be made immediately on the close of the year. It depends upon the facts and circumstances of each case as to at what time the profit and loss account can be made. It is no doubt true that in the profit and loss account he is to make the debit entry regarding the development rebate but the question is up to what point of time it can be done? If a reference is made to section 22(3) of the Income-tax Act, the assessee has a right to modify his return right up to the date before the assessment is made which indicates that he can also correct the mistakes in his account books or the statement of profit and loss account. This provision fully justifies the conclusion at which the learned Judges of the Andhra Pradesh High Court reached while interpreting section 10(2)(vi-b) proviso (b) and we are entirely in agreement with that decision.

(4) The learned counsel for the Department strongly relies upon the decision of the Supreme Court in *Indian Overseas Bank Ltd.* v. *Commissioner of Income-tax, Madras* (4). This decision was delivered by their Lordships of the Supreme Court in an appeal from the judgment of the Madras High Court in *Indian Overseas Bank Ltd.* v. *Commissioner of Income-tax, Madras* (5). The question that fell for determination by their Lordships of the Supreme Court was whether a reserve under section 17 of the Banking Companies Act, 1949, was a reserve within the meaning of section 10(2)(vi-b) proviso (b) of the Income-tax Act and their Lordships were of the opinion that such a reserve could not be treated as a reserve for development rebate under section 10(2)(vi-b) proviso (b) of the Act. The question with which we are concerned, was not debated before their Lordships and all that their Lordships said was that the requirements

(4) (1970) 77 I.T.R. 512.
(5) (1967) 63 I.T.R. 733.

of the proviso had to be complied with. So far as the present case is concerned, the requirements have been complied with. The only argument stressed before us is that the requirements should be complied with before the close of the accounting year or before making of the profit and loss account. In our opinion, it was open to the assessee to make these entries at any time before the assessment was completed. The entries only become final as and when they are accepted or rejected by the Income-tax Officer, i.e., when the assessment is made. Till then, they are in fluid state and any error or defect in them could be corrected.

(5) For the reasons recorded above, we reply the question referred to us in the affirmative, that is, against the Department. There will be no order as to costs.

B. S. G.

CIVIL MISCELLANEOUS

Before S. S. Sandhawalia, J.

THE MUNICIPAL COMMITTEE,—*Petitioner.*

versus

THE INDUSTRIAL TRIBUNAL, PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 3502 of 1968

October 28, 1970.

The Industrial Disputes Act (XIV of 1947)—Sections 22 and 24—The Industrial Disputes (Central) Rules (1957)—Rule 71 and Form 'L' of the Schedule—Persons employed in a 'Public utility Service'—Such persons going on strike—Requirements of notice before the strike—Whether mandatory—Notice of strike not in the prescribed form 'L' and not giving the date of the commencement of the strike—Strike in consequence thereof—Whether legal.

Held, that the right of the Industrial worker to go on strike has now become well-recognised and has been even sometimes termed as fundamental. The Industrial Disputes Act, however, aims at the blending of this right and the liability of the employers and the employees as best as possible to suit the condition of the country. The Act as regards strikes and lock-outs makes a clear distinction between persons employed in a public utility service and