

Kewal Krishan of section 4 does not appear in the corresponding provision
 Omi Parkash, in the Nagpur Act. That, in our view, makes no difference.
 Taxable quantum having been defined the definition has
 to be incorporated in sub-section (1) of section 4. When so
 incorporated the presence of the word "gross" in the
 earlier part of this section will make no difference. In
 this view our answer to the question referred is that the
 taxable turnover in this case had to be determined under
 clause (c) of sub-section (5) of section 4. In the circum-
 stances, however, there will be no order as to costs.

The State
 Kapur, J.

Grover, J.

A. N. GROVER, J.—I agree.

B. R. T.

INCOME-TAX REFERENCE

Before A. N. Grover and S. K. Kapur, JJ.

RAM GOPAL MOHTA (DECEASED) THROUGH SURAJRAT-
 TAN MOHATTA,—Petitioner.

versus

THE COMMISSIONER OF INCOME-TAX,, DELHI AND
 RAJASTHAN,—Respondent.

Income-Tax Reference No. 22-D of 1963.

1965
 May, 14th.

*Income-tax Act (XI of 1922)—S. 8—Proviso—Income from inter-
 est on securities—Expenditure for earning it in excess of income (i.e.
 negative income)—Deduction thereof—Whether allowable.*

Held, that the use of the word "such" before "interest" in the
 proviso to section 8 of the Indian Income-Tax, Act, 1922, necessarily
 refers to the interest receivable on the securities. Therefore, only a
 reasonable sum expended for the purposes of realising the interest can
 be deducted and it follows that if no interest is realised, the assessee
 cannot claim deduction of any expenses for such realisation. The in-
 tention clearly is to allow deduction only when there has been income
 by way of interest on the securities. The words "in respect of any
 interest payable on money borrowed for the purpose of investment in
 the securities" immediately follow the provision relating to expenses
 incurred for the purposes of realising interest. The same meaning,
 therefore, should normally be attributed to these words, namely, that
 such interest paid on borrowed capital would be deductible only if there

is receipt of interest. It is also significant, that the phraseology employed in section 8 is different and distinct from the phraseology used in the sections to other heads of income and the provisions made therein with regard to the allowances which can be claimed as permissible deductions. Hence the expenditure in excess of income (i.e. negative income) cannot be allowed under section 8 of the Indian Income-tax Act, 1922.

Reference under section 66(1) of the Indian Income-Tax Act, (Act of 1922) referred for opinion of their Lordships on the following question of Law :—

“Whether in the circumstances of the case, Expenditure in excess of Income (i.e., Negative Income) could be allowed under Section 8?”

S. K. AIYAR AND B. N. KIRPAL, ADVOCATES, for the Petitioner.

H. HARDY, AND D. K. KAPUR, ADVOCATES, for the Respondent.

ORDER

GROVER, J.—This is a reference under section 66(1) of the Indian Income-tax Act, 1922 (to be referred to as the Act), made by the Appellate Tribunal, of the following question:—

Grover, J.

“Whether in the circumstances of the case, expenditure in excess of income (i.e., negative income) could be allowed under section 8?”

On 23rd May, 1949, the assessee purchased debentures of a company, called Messers Malwa Vanaspati and Chemicals, Ltd., Indore, for a sum of Rs. 7,00,000. The price of the debentures was paid by the assessee partly from the funds available with him and partly from a loan in the sum of Rs. 4,90,000 taken by him from the Bank of Bikaner, Bombay. For the assessment years 1953-54 and 1954-55, to which this reference relates, the assessee received no interest on the aforesaid debentures. He, however, paid interest to the Bank of Bikaner on the money which had been borrowed by him for purchasing them. It appears that the assessee derived income from some other debentures. During the assessment year 1953-54 the total income from debentures was shown as Rs. 2,130 and against

Ram Gopal Mohta (deceased) through Suraj-rattan Mohatta v. The Commissioner of Income-tax, Delhi and Rajasthan
 Grover, J.

that interest and expenses claimed were shown to be Rs. 20,629. Similarly, for the assessment year 1954-55 a sum of Rs. 5,048 was shown as income from debentures and against that a sum of Rs. 17,026 was claimed on account of interest and expenses. Thus, for the year 1953-54, loss (negative income) was claimed amounting to Rs. 18,490 and for the subsequent year this figure was shown at Rs. 11,980. The Income-tax Officer disallowed these items. The Appellate Assistant Commissioner allowed the deductions claimed by the assessee for these years and also for certain other years (the total period being of five years). The Department filed appeals before the Appellate Tribunal. By a common order, dated 28th October, 1961, the Tribunal set aside the decision of the Appellate Assistant Commissioner and upheld the order of the Income-tax Officer. Subsequently, there was some settlement between the assessee and the Department, and no dispute was left with regard to the assessment years 1950-51, 1951-52 and 1952-53. But for the two subsequent years, there was no settlement and since no deduction had been allowed to the assessee as claimed by him for those years, he moved the Tribunal for referring the question mentioned above.

The Appellate Tribunal examined the language of section 8 of the Act, which, indisputably, is applicable in this case, pointing out the unhappy wording employed in the first proviso to that section. A distinction was made between the words "no tax is payable" and "deductions or allowances" as employed in other sections of the Act, and it was held that no negative income or loss could arise under the head "Interest on securities" under section 8.

Our attention has been invited by the learned counsel for the assessee to various provisions of the Act, some of which may be mentioned. Under section 3 income-tax is charged for any year in respect of the total income of the previous year. According to section 2(15) "total income" means total amount of income, profits and gains computed in the manner laid down in the Act. Section 6 gives the "Heads of income chargeable to income-tax". These are—

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Income from property.

- (iv) Profits and gains of business, profession or vocation, Ram Gopal Mohta (deceased) through Suraj-rattan Mohatta
- (v) Income from other sources.
- (vi) Capital gains." The Commissioner of Income-tax, Delhi and Rajasthan

Section 7 deals with the first head "Salaries", and section 8 with the second head, namely, "Interest on securities". The material portion of section 8 is as follows:—

Grover, J.

"The tax shall be payable by an assessee under the head 'Interest on securities' in respect of the interest receivable by him on any security of the Central Government or of a State Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company:

Provided that no income-tax shall be payable under this section by the assessee in respect of any reasonable sum expended by him for the purpose of realising such interest or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee * * * * *

Section 9 relates to "Property", and the allowances, which can be deducted from the income under the head, are given in that section. Section 10 relates to the next head of "Business", and there also sub-section (2) says that profits or gain shall be computed after making the allowances set out therein. Section 12 provides for tax payable by an assessee under the head "Income from other sources". Sub-section (2) provides that such income, profits and gains shall be computed after making certain allowances, which are indicated in the section. Under section 12B, which relates to "Capital gains", deductions of various items given in sub-section (2) from the full value of the consideration for the sale, etc., are allowable while computing the amount of capital gains. It is unnecessary to mention the other provisions except section 24(1), which provides that where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year.

Ram Gopal
 Moha (deceased)
 through Suraj-
 rattan Mohatta
 v.
 The Commis-
 sioner of Income-
 tax, Delhi and
 Rajasthan
 Grover, J.

According to the learned counsel for the assessee although there is a marked difference between the language employed in section 8 relating to the head "Interest on securities" and the other provisions mentioned before relating to the other heads, but the entire scheme of the Act is that allowances and deductions are allowed on such items, as, even according to the ordinary common sense and business point of view, ought to be allowed. If an assessee has to pay a substantial amount of interest, as in the present case, on the capital borrowed for purchasing debentures or securities, there can be no reason why deduction or allowances of that amount should not be claimable in the same way as similar items are deductible under other heads. The language of the proviso, undoubtedly, is not happy and clear, and it is somewhat difficult to follow what is meant by the words "no income-tax shall be payable * * * * in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee* * *". So far as the proviso is concerned, there is no difficulty because it provides that the tax shall be payable in respect of interest receivable by the assessee on any security or debentures. But then the same phraseology is continued with the addition of the negative expression "No", in respect of interest, which the assessee has to pay to the creditor and which by no stretch of reasoning can be regarded as income in his hands on which tax could ever be payable. The argument of the learned counsel for the assessee is that the language employed has only one implication, and, that is, that the assessee can deduct or claim as an allowance the amount of interest which he pays to the creditor on the borrowed money under the head "Interest on securities", so as to be able to claim a set-off under section 24 if the income is negative and more in the nature of a loss, as in the present case. On behalf of the Department, the contention was and is that section 8 is worded differently from the sections relating to other heads and that shows that the intention of the legislature was to treat the aforesaid head distinctly and differently from the other heads.

The learned counsel for the assessee has invited our attention to the statement contained in clause 19 of the draft Bill which later on was incorporated in section 19 of the Income-tax Act of 1961. That section makes it clear that the income chargeable under the head "Interest on

securities" shall be computed after making the following deductions:—

- “(i) any reasonable sum expended by the assessee for the purpose of realising such interest;
- (ii) any interest payable on moneys borrowed for the purpose of investment in the securities by the assessee.”

Ram Gopal
Mohta (deceased)
through Suraj-
rattan Mohatta

v.
The Commis-
sioner of Income-
tax, Delhi and
Rajasthan

Grover, J.

It is sought to be argued from the comments relating to clause 19 in the draft Bill that the intention always was the same which has now been expressed and declared in section 19 of the Act of 1961. It is, however, not permissible to refer to any statement contained in the draft Bill relating to an enactment for the purpose of interpreting a section in that enactment much less in a subsequent enactment. The learned counsel for the assessee has also not been able to show how according to the established canons of interpretation of statutes, section 19 of the Act of 1961 should be regarded as declaratory of the provisions contained in section 8 of the Act. Reliance has been placed on the view expressed by the learned author of the Law of Income-tax in India by V. S. Sundaram (8th Edition) at page 383 that the net income under section 8, after deducting the interest paid out, can be negative; and in that case the loss can be set off under section 24 against other heads of income, and the fact that on a certain item “no tax is payable” and that it is not called an “allowance” would not seem to be material.

The question, which we are called upon to answer, is *res integra* and does not appear to have come up directly for consideration in any other case. It is needless to reiterate the view that the language of the proviso to section 8 is very unhappy and indeed has been described as “crude” by Chakravarti C.J. in *United Commercial Bank Ltd. v. Commissioner of Income-tax, West Bengal* (1). There are certain observations in the aforesaid Calcutta case which may be noticed as these are, with respect, helpful in understanding the scope of the proviso to section 8. It was observed at page 432—

“What the first proviso to section 8 says is that in cases where the securities, from which the

Ram Gopal
Mohta (deceased)
through Suraj-
rattan Mohta

v.
The Commis-
sioner of Incom-
e-tax, Delhi and
Rajasthan

Grover, J.

interest charged to tax is derived, have been acquired with money "borrowed for the purpose, the assessee will be allowed to deduct the interest payable on the moneys so borrowed and invested. The reason is plain, because the interest paid on the borrowings is expenditure incurred for the purpose of earning the interest income which is charged to tax. But as regards tax-free securities, the third proviso to section 8 exempts the interest received on such securities from tax liability altogether and there is no valid reason why an assessee, while paying no tax to the State on a particular item of income, should yet receive from the State credit for the expenditure incurred for earning that income. Section 8 does not, in my view, provide for any such credit."

The observations in the Calcutta case do lend support to the contention put forward on behalf of the Commissioner for taking the view which was accepted by the Appellate Tribunal. In this connection the importance of the provision contained in the proviso relating to sums expended for the purposes of realising interest on the securities or debentures must be considered. The use of the word "such" before "interest" necessarily refers to the interest receivable on the securities. Therefore, only a reasonable sum expended for the purposes of realising the interest can be deducted and it follows that if no interest is realised the assessee cannot claim deduction of any expenses for such realisation. Thus the intention clearly is to allow deduction only when there has been income by way of interest on the securities. The words "in respect of any interest payable on money borrowed for the purpose of investment in the securities" immediately follow the provision relating to expenses incurred for the purposes of realising interest. The same meaning, therefore, should normally be attributed to these words, namely, that such interest paid on borrowed capital would be deductible only if there is receipt of interest. It is also significant, as has already been mentioned before, that the phraseology employed in section 8 is different and distinct from the phraseology used in the sections relating to other heads and the provisions made therein with regard to the allowances which can be claimed as permissible deductions. We

are, therefore, of the opinion that the view taken by the Appellate Tribunal in the matter was correct. The answer to the question referred would be in the negative.

In view of the nature of the point involved the parties are left to bear their own costs.

S. K. KAPUR, J.—I agree.

Kapur, J.

K. S. K.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and Gurdev Singh, JJ.

KARTA RAM,—*Petitioner.*

versus

THE STATE OF PUNJAB, AND OTHERS,—*Respondents.*

Civil Writ No. 2046 of 1964.

Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 6(5) (f) and (1)—“Notified as disqualified for appointment in public service”—Meaning of—Mere dismissal from Government service—Whether sufficient—Person obtaining lease of land in auction under Gram Sabha and paying lease money but not taking possession of the land—Whether lessee under Gram Sabha and thus disqualified under S. 6(5)(1).

1965

May, 17th

Held, that the disabling and disqualifying provisions in statutes, more particularly in laws relating to elections, have to be strictly construed and the Legislature must be intended to have confined the disqualification or disablement strictly within the ambit of its terms. What is sought to disable a person from standing as a Panch or to continue in this office as such under clause (f) of sub-section (5) of section 6 of the Punjab Gram Panchayat Act, 1952, is disqualification for appointment in public service and it is also important to observe that such a disqualification has to be “notified”. The sole exception is the disqualification for such appointment on medical grounds. Mere dismissal from Government service is not sufficient as every dismissal from service of the State does not entail disqualification for future employment. The language employed in clause (f) of sub-section 5 of section 6 of the Act plainly requires the disqualification to be notified in some manner. A mere information of an order of dismissal or removal, would not be sufficient to warrant the conclusion that the disqualification, if intended, has been notified as well.