of submission of the final report, but it is not understood how this authority possibly helps the accused.

(12) For the foregoing reasons, I am of the considered view that the sanction (Exhibit P.A.) accorded by the Secretary to the Government, Punjab, Health and Family Planning Department, has been given by the State Government in accordance with law and that it cannot be held to be invalid so as to bar the Court from taking cognizance of the offences for which the accused is being tried.

B. S. G.

INCOME TAX REFERENCE

Before Prem Chand Pandit and Bhopinder Singh Dhillon, JJ.

THE COMMISSIONER OF INCOME-TAX, HARYANA, HIMACHAL PRADESH & DELHI-III, NEW DELHI,—*Applicant*

versus

THE SARASWATI INDUSTRIAL SYNDICATE LTD.,—*Respondent*

Income Tax Reference No. 24 of 1971.

August 2, 1972.

Punjab General Sales Tax Act (XLVI of 1948)—Sections 2, 4 and 5—Income-tax Act (XLIII of 1961)—Section 28—Sale-tax on an article sold—Whether component part of the price of the article—Receipt of the sale-tax by a dealer not liable to pay such tax to the Government—Whether trading receipt for the purpose of section 28 of Income-tax Act—Right of the purchaser of the article to claim the tax from the dealer—Whether affects the character of the receipt.

Held, that the incidence of taxation is provided under section 4 of the Punjab General Sales Tax Act, 1948 wherein it is provided that every dealer, whose gross turnover exceeds taxable quantum, is liable to pay sales-tax under the Act. It is the dealer selling goods who is liable to pay the tax as prescribed under the Act. The valuable consideration for the transfer of the property in goods is the total amount received by the dealer from the purchaser. The dealer is liable to pay the sales-tax irrespective of the fact whether he chooses to charge the sales-tax along with the price of the goods as consideration for passing the goods on to the purchaser or not. It is, therefore, evident that the sales tax is an integral component of the sale price. Since the incidence of tax is on the assessee and the purchaser is not responsible for the payment of the sales tax to the authorities, therefore, the true content of the sale price is the total

consideration received by the assessee from the purchaser. The mere fact that the sales-tax is shown as sales tax does not denude the contract of its character of trade contract whereby one party sells and the other party buys merchandise in which the business or trade is carried on. It is wholly immaterial if the dealer is not liable to pay the sale-tax to the Government. The fact that the purchaser is entitled to claim the tax back from the dealer at some subsequent time will not change the legal character of the receipt. Hence the total amount received by an assessee of income-tax during the relevant assessment year including the sales tax not paid to the Government is a trading receipt for the relevant assessment year in view of the provisions of section 28(i) of the Income Tax Act, 1961. However, if and when the assessee pays back the amount in question to the purchasers on their demand being made, the assessee may be entitled to ask for the relief in the assessment year in which the amount in question is paid back, but so far as the assessment year in which the amount was received is concerned, the total amount received by the assessee including the sales tax is a trading receipt and is liable to income tax.

Reference made by Income-Tax Appellate Tribunal, Chandigarh Bench, for opinion of the High Court on the following question of law arising out of I.T.A. No. 8276 of 1968-69 for the assessment year :—

> *"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in excluding from the assessment the sum of Rs. 4,155 representing sales tax deposits?"*

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

H. L. Sibal, Advocate, with S. C. Sibal, Advocate, *for the respondent.*

JUDGMENT

DHILLON, J.—The question of law referred by the Income Tax Appellate Tribunal, Chandigarh Bench, at the instance of the revenue is in the following terms:—

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in excluding from the assessment the sum of Rs. 4,155 representing sales tax deposits?"

(2) Briefly stated, the facts giving rise to this reference are that M/s. Saraswati Industrial Syndicate Limited, Yamunanagar, the assessee firm, prior to the year 1956 recovered from its customers a sum of Rs. 4,155 as sales-tax, but no demand was received for the

payment of the sale-tax as it was held by the Supreme Court that no sales-tax was payable on such transaction. The assessee firm then wrote back this amount in the profit and loss account for the year 1963-64. The Income-Tax Officer, Patiala, while making the assessment of the firm for the year 1963-64, came to the conclusion that this amount was realised by the assessee firm in the ordinary course of business, therefore, the said amount was taxable. The assessee firm aggrieved against this order, dated 18th February, 1967, filed an appeal before the Appellate Assistant Commissioner of Income-Tax, A Range, Patiala, who upheld the orders of the Income-Tax Officer, regarding this amount,—*vide* his order, dated 4th May, 1968. The contention of the assessee firm that the amount in question was deposited with the assessee firm as atrustee and the same could be demanded by the purchasers any time, therefore, the said amount could not be taxed, was repelled by the Appellate Assistant Commissioner. The Appellate Assistant Commissioner, while discussing the authorities relied upon by the assessee recorded the findings of fact in the following terms which findings were not upset by the Appellate Tribunal.

> "This decision is not applicable to the appellant's case as no evidence has been produced to show that the amount was recoverd as a deposit. The bills in question are not available. Besides, in the appellant's case the amount has been treated by the appellant itself as a revenue receipt of the year by virtue of its action in transferring the amount to the profit and loss account. For the same reasons the Tribunal's decision cited by the appellant is inapplicable to the facts of the present case for in the case decided by the Tribunal the amount of sales tax stood credited separately under an account styled 'Sales-tax'. The important fact in the appellant's case that the amount was transferred to the credit of the profit and loss account during the year clearly shows that the company itself did not regard the amount as a deposit, but as in item of income."

(3) In second appeal by the assessee firm before the Income-Tax Appellate Tribunal, the Income-Tax Appellate Tribunal, relying upon the judgment of the Delhi Tribunal 'B' Bench in I.T.A. No. 14957 of 1965-66 accepted the appeal of the assessee firm. It was held in the judgment of the Delhi Tribunal 'B' Bench that—

> "the sales tax remaining unutilised even if appropriated by the assessee does not cease to be a liability of the assessee

because the depositors may at any time call back their deposits if the same had remained unutilised. The deposit always remains in the nature of a Sales-tax deposit and nothing else."

(4) The Income-Tax Appellate Tribunal, Chandigarh Bench, followed this judgment and allowed the claim of the assesee firm. Subsequently, on the application of the Revenue, the question of law reproduced in the earlier part of the judgment has been referred to us.

(5) It is pertinent to note that the finding of fact recorded by the Appellate Assistant Commissioner that the amount in question was received by the assessee as a trading receipt and that there is no evidence that the said amount was recovered as a deposit, was not set aside by the Appellate Tribunal. Therefore, we are bound by this finding of fact. It is on these facts that the question of law referred to us has to be answered.

(6) In order to answer this question, the important point which has to be decided first is, whether the sales tax along with the price of an article sold is a trading receipt or not? In order to answer this question, it shall have to be determined whether sales-tax is an integral component of the sale-price or not? If it is found that the sales-tax is an integral component of the sale-price, it is obvious that the sales-tax including the price of the articles sold is a trading receipt and the same is subject to income-tax. In other words, the nature of the transaction at the time of the sale is to be adjudged. Any subsequent event, for instance, as in the present case, because of the Supreme Court judgment, the sales tax was not chargeable from the dealer, would not change the nature of the original transaction.

(7) Sale is defined in clause (h) of section 2 of the Punjab General Sales Tax Act, 1948, which is also applicable to Haryana as amended, is in the following terms:—

"2(*A*) 'sale' means any transfer of property in goods other than goods specified in Schedule C, for cash or deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge;

Explanation.—(1) A transfer of goods on hire purchase or other instalment system of payment shall, notwithstanding

that the seller retains a title to any goods as security for payment of the price, be deemed to be sale."

(8) Clause (1) of the same section defines turnover in the following terms:—

"(i) turnover includes—

(i) the aggregate of the amounts of sales and purchases and parts of sales purchases actually made by any dealer during the given period less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof."

(9) The incidence of taxation is provided under section 4 of the Act wherein it is provided that every dealer except one dealing exclusively in goods declared tax free under section 6 of the Act, whose gross turnover exceeds taxable quantum, shall be liable to pay tax under this Act. Sub-section (5) of this section defines the taxable quantum in regard to differnt categories of dealers.

(10) There is no other section in the Act, which makes the purchaser liable for payment of the sales-tax. It is the dealer, who sells goods, who is liable to pay the tax as prescribed under the Act.

(11) A particular dealer may, while calculating as to how much money is to be charged from the customers, specify sales-tax separately in addition to the price of the goods to be charged. Another dealer may ask the customers to pay a wholesome price specified by him without indicating as to what was the amount of sales-tax which was being charged by him. "Yet, another dealer may choose to charge only the sale-price of the goods and may decide to pay the sales tax from his own profits, if, due to competition in the market, he decides to have less profits on the goods sold. In all the three exigencies, the valuable consideration for the transfer of the property in goods will be the total amount received by the dealer from the purchaser because the dealer would have not transferred the property in goods to the customers without the payment of the amount demanded by him from the customers. It is up to the dealer to prepare the bill in the manner he likes, but the customers cannot get the property till they pay the total bill. It is, therefore, clear that the consideration for the transfer of the goods would be the total amount paid

by the purchaser for the transfer of the goods and the total amount charged by the dealer will be included in his turnover for the relevant year. As provided under section 4 of the Act, the incidence of tax is on the dealer and the moment he exceeds the taxable quantum as defined under section 5 of the Act, he is liable to pay the sales-tax irrespective of the fact whether he chose to charge the sales-tax along with the price of the goods as consideration for passing the goods on to the purchaser or not.

(12) In a case reported in *Punjab Distilling Industries Ltd.* v. *Commissioner of Income-Tax, Simla* (1), the assessee carried on business as a distiller of country liquor and sold the produce of its distillery to licensed wholesalers. After the war started difficulty was felt in finding bottles in which the liquor was to be sold and to relieve the scarcity, the Government devised a scheme whereby the distiller was entitled to charge the wholesaler a price for the bottles in which the liquor was supplied at rates fixed by the Government, which he was bound to repay when the bottles were returned. In addition to the price fixed under the Government scheme, the assessee took from the wholesalers certain further amounts, described as security deposits, without the Government's sanction and entirely as a condition imposed by the assessee itself for the sale of its liquor. The moneys described as security deposits were also returned as and when the bottles were returned, but in this case the entire sum taken in one transaction was refunded when 90 per cent of the bottles covered by it were returned. The price of the bottles received by the assessee was entered by it in its general trading account while the additional sum was entered in the general ledger under the heading 'empty bottles return security deposit account'. The question which arose for decision before the Supreme Court was whether the assessee could be assessed to tax on the balance of the amounts of those additional sums left after the refunds made thereout. It was held by the Supreme Court that the assessee in realising the additional amount described as security deposit was really charging an extra price for the bottles and the additional amount was actually a part of the consideration for the sale of the liquor and was part of the price of what was sold; it did not make any difference that the additional amount was entered in a separate ledger termed 'empty bottles return deposit account', for what was a consideration for the sale did not cease to be so by being written up in the books in a

(1) (1959) 35 I.T.R. 519.

particular manner; nor did the fact that the price of the bottles was repaid as and when the bottles were returned whereas the additional sums were repaid in full when 90 per cent of the bottles were returned, affects the question. It was also held that as the additional amounts taken were an integral part of the commercial transaction of the sale of liquor in bottles and when they were paid, were the moneys of the assessee and remained thereafter the moneys of the assessee, they were the assessee's trading receipts; and, therefore, the balance of these additional sums left after the refunds made thereout was assessable to tax. It is manifest from this decision of the Supreme Court that the amount though taken as security for the return of the empty bottles was held to be an integral part of the commercial transaction. Therefore, the real test is as to what was the consideration received by the assessee while passing the possession and the control over the goods sold. It is, therefore, evident that the sales-tax is an integral component of the sale price. Since the incidence of tax is on the assessee and the purchaser is not responsible for the payment of the sales-tax to the authorities, therefore, the true content of the sale price is the total consideration received by the assessee from the purchaser. The mere fact that the sales-tax is shown as sales-tax, does not denude the contract of its character of trade contract whereby one party sells and the other party buys merchandise in which the business or trade was carried on. The seller does not levy tax on the purchaser or collects the tax from the purchaser, but what he does is to increase the price of the articles so as to ensure that he as a dealer will not be a looser to pay the sales-tax levied upon him in token of the gross turnover.

(13) This aspect of the matter was gone into by the Supreme Court in *The Tata Iron and Steel Co. Ltd.*, v. *The State of Bihar* (2), where an argument was raised that the sales-tax was a direct tax on the dealer instead of an indirect tax to be passed on to the consumer. It was held by their Lordships of the Supreme Court as follows:—

> "From the point of view of the economist and as an economic theory, sales-tax may be an indirect tax on the consumers, but legaly it need not be so. Under the 1947 Act, the primary liability to pay the sales tax, so far as the State is concerned, is on the seller. Indeed before the amendment of the 1947 Act by the amending Act, the sellers had no authority to collect the sales-tax as such from the purchaser. The seller could undoubtedly have put up the price

(2) (1958) 9 S.T.C. 267.

so as to include the sales-tax, which he would have to pay but he could not realise any sales-tax as such from the purchaser. That circumstance could not prevent the sales-tax imposed on the seller to be any the less sales-tax on the sale of goods. The circumstance that the 1947 Act, after the amendment, permitted the seller, who was a registered dealer to collect the sales-tax as a tax from the purchaser does not do away with the primary liability of the seller to pay the sales-tax. This is further made clear by the fact that the registered dealer need not, if he so pleases or chooses, collect the tax from the purchaser and sometimes by reason of competition with other registered dealers he may find it profitable to sell his goods and retain his old customers even at the sacrifice of the sales tax. This also makes it clear that the sales-tax need not be passed on to the purchasers and this fact does not alter the real nature of the tax which, by the express provision of the law, is cast upon the seller. The buyer is under no liability to pay sales-tax in addition to the agreed sale price unless the contract specifically provides otherwise."

(14) These observation of the Supreme Court indicate firstly that the amount of sales tax even though shown separately in the transaction as sales-tax, is a part of the consideration which the seller charges as a transfer of the property and on part of the consideration; secondly, the seller may or may not charge the sales tax from the buyer, but that would not alter the legal character of transaction of sale or purchase. From what was stated above, it is obvious that the sales-tax received by the assessee from its purchasers was an integral component of the sale price and it is wholly immaterial if the assessee was not liable to pay the sales tax because of a subsequent judgment of the Supreme Court. It is again wholly immaterial if the purchaser is entitled to claim the said tax back from the assessee at some subsequent time. As far as the provisions of the Income-Tax Act are concerned, the total amount received by the assessee during the relevant assessment year including the sales-tax would be a trading receipt for the relevant assessment year in view of the provisions of section 28(i) of the Income-Tax Act, 1961, which are in the following terms:—

"28. The following income shall be chargeable to income-tax under the head 'Profits and gains of business or profession:—

(i) the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year.".

(15) If and when the assessee pays back the amount in question to the purchasers, on their demand being made, the assessee may be entitled to ask for the relief in the assessment year in which the amount in question is paid back, but as far as the assessment year in which the amount was received is concerned, the total amount received by the assessee including the sales-tax is a trading receipt and is liable to income-tax.

(16) It was held by the Supreme Court in a case reported in *Messrs George Oaks (Private) Ltd.* v. *The State of Madras and others* (3), that when the seller passes on the tax and the buyer agrees to pay sales-tax in addition to the price, the tax is really part of the entire consideration and the distinction between the two amounts—tax and price—loses all significance.

(17) In *Chhatrasinhji Kesarisinhji Thakore* v. *Commissioner of Income-tax, Bombay City II* (4), it was held by the Supreme Court that when an assessee had received certain amount under the contract and if that amount was income, the fact that the person who paid it may claim refund thereof, will not deprivate the said rule of its character of income in the year in which it was received. In that case the assessee granted a mining lease and the lessee undertook to pay in addition to the rents and royalties, all taxes, rates, assessments and impositions in the nature of public demands which might be charged upon or in respect of the mines and works of the lessee or any part thereof except demands for land revenue. The lessee paid certain amounts to the lessor believing that it was liable to reimburse the appellant under clause I of part VII, a cess at the rate of 3 annas in the rupee of the amount of rent and royalties. It was held by the Supreme Court that as the same were paid under a covenant directly related to the payment they were also taxable income: it was immaterial that if the true position were appreciated, the lessee might not have paid the amount. The amounts had in fact been paid by the lessee and received and appropriated by the appellant as if he was entitled to receive them. It was held that the difference between the amounts which the appellant received and the amounts for which he could under the terms of the lease claim reimbursement had, therefore, to be regarded as income within the meaning of the Indian Income-Tax Act, 1922, and, unless specially exempt, were liable to tax. It was held that the fact that the lessee might claim refund did not deprive the payment of their character of income in

(3) (1961) 12 S.T.C. 476.
(4) (1966) 59 I.T.R. 562.

the year in which they were received. In that case the lessee had in fact instituted a suit for the refund of the amoun t but still it was held that the receipt of the payment in a particular year under reference would not deprive its character of trading receipt. Therefore, it was liable to income-tax.

(18) In *Ikrahnandi Coal Co.* v. *Commissioner of Income-Tax, Calcutta* (5), the assessee received a refund of the sales-tax as a result of an order of the Bombay Sales-Tax Authorities consequent upon a decision of the Supreme Court. The Income-Tax Authorities sought to assess this refunded amount as income of the assessee. It was contended on behalf of the assessee that sales-tax was collected by the assessee from the assessee's buyers and the same was under the statute to be paid to the sales-tax authorities and when the money representing the sales-tax was refunded by the sales-tax authorities the identical money became refundable by the assessee to the assessee's buyers, and, therefore, the refunded amount was not assessable as his income. It was held by the Calcutta High Court that the amount of sales-tax, even though shown separately in the transaction of sale as sales tax, is a part of the consideration which the seller charges for transfer of the property. The fact that the statute provides that the seller may collect sales-tax did not rob the transaction of its trading character, and consequently, the sum in question was assessable to income-tax as income of the assessee. The facts of that case are similar to the facts of the present case except that in the *Ikrahnadi Coal Co.'s case* (5) (supra), sales-tax was paid and the same was paid back to the assessee because of the Supreme Court judgment that the same was not due and in the present case the assessee did not deposit the sales-tax at all because before it was to be deposited, the Supreme Court decided that such a tax was not payable on the transactions in hand.

(19) A similar question arose before the Andhra Pradesh High Court in a case reported in *Badri Narayan Balakishan* v. *Commissioner of Income-tax, Andhra Pradesh* (6), wherein it was held that the principle applicable in the case of deposits or security deposits is that where it is part of the price or part of each transaction, whether the amount is returnable or not, it is deemed to be a trading receipt. But if the amount received has nothing to do with the transactions as

(5) (1968) 69 I.T.R. 488.
(6) (1965) 57 I.T.R. 752.

such or is no part of the price, but is only received for the due performance of an obligation or a service, then it is not considered as a trading receipt but is akin to money borrowed. In the said case, the assessee had collected the amounts by way of sales-tax from customers and credited it to a separate account called the deposit account. It was held on the facts that the amounts were part of every transaction and formed part of the price charged by the assessee. The amounts were consequently assessable as trading receipts. In the present case, as I have already referred to the finding of fact recorded by the Appellate Assistant Commissioner that there was no evidence led by the assessee that the amount in question was recovered as deposit, stands intact and the said finding of fact was neither assailed before the Appellate Tribunal nor it was sought to be assailed before us by raising a question of law, if it could be raised, before the Tribunal for referring this question of law to us. Therefore, this finding of fact is binding on us. There being no evidence that the amount in question was not recovered as deposit, therefore, the amount of sales-tax recovered by the assessee was clearly an integral component of the sale price and the same is subject to income tax.

(20) In a case reported in *Commissioner of Income-Tax, Calcutta* v. *Sinclair Murray and Co. (P) Ltd.* (7), it was held by the Calcutta High Court as follows:—

> "If the sales-tax is validly exigible and is realised by a dealer from his customer, and is then utilised in his business, the tax so raised cannot, but from part of the sale price. It must, therefore, be included in the trading receipt of the dealer and it becomes income for the purpose of the Income-Tax Act, for the simple reason that the money realised from the purchaser on account of tax is employed by the dealer for the purpose of making profit and the tax is not separated from price simpliciter."

(21) From the above discussion it is evident that the question of law referred to us has to be answered in the negative.

(22) On the side of the assessee, the main reliance is being placed on *The State of Mysore and another* v. *Mysore Spinning and Manufacturing Co. Ltd. and another* (8). In that case the provisions of

(7) (1970) 25 S.T.C. 233:
(8) (1960) 11 S:T:C: 734:

section 11(1), (2) of the Mysore Sales-Tax Act were under examination which are as follows :—

> "11(1). No person, who is not a registered dealer shall collect any amount by way of tax under this Act; nor shall a registered dealer make any such collection except in accordance with such conditions and restrictions, if any, as may be prescribed.
>
> (2) Every person, who collects any amount by way of tax under this Act, shall pay over to the Government within such time and in such manner as may be prescribed, such collections as are in excess of the tax paid by him for the period during which the collections were made or, in case he has not paid any amount for the period in question, he shall pay over to Government all the amounts so collected by him; and in default of such payment, the amounts may be recovered as if they were arrears of land revenue."

(23) The sole question in that case was whether reference to amounts collected by way of tax under that Act in section 11(2) of the Act, could mean all the tax collected by the assessee irrespective of the fact whether he could collect the same under the Act or not, and while interpreting sub-sections (1) and (2) of section 11 of the Act, it was held by the Mysore High Court that the words "amount collected by way of tax under this Act" in section 11(2) of the Act could only mean sums collected in respect of sale-transactions on which a charge of sales-tax is constitutionally leviable and is factually imposed by the Act. This finding of the High Court was being assailed by the learned Soliciter General before the Supreme Court. This contention was not examined by the Supreme Court and it was held, keeping in view the admitted facts of the case, that the money in question could not eb termed as "collection" within the meaning of section 11(2) of the Act. This is clear from the following observations of the Supreme Court made in *Mysore Spinning and Manufacturing Co.'s case* (8) (supra):

> "After arguments as regards the proper interpretation of the words 'by way of tax under this Act' occurring in sub-sections (1) and (2) of section 11 had been advanced by the learned counsel on either side on the lines above indicated,

it was realised that on the facts of all these cases, there was no 'collection' at all, whether 'by way of tax' or otherwise, so as to bring the amounts received and held by the respondents within the scope of section 11. We have already set out the questions referred, which would clearly indicate that the amounts were received by the Cement Marketing Co. and by the Mysore Spinning and Manufacturing Co. and the Minerva Mills Ltd., only as 'a deposit' to cover a possible contingency of these companies being held liable to pay the tax. That this was the real nature of the transaction was never in dispute. Indeed even the Commissioner of Sales-Tax in making the reference in the three cases made it clear that the amounts were received by the companies on the definite understanding and condition that they were to be held only 'as deposits' to be refunded when the company in question was held not liable to include the relevant sales in its taxable turnover. The construction on which the Sales-Tax Authorities proceeded was that the Act made no difference between one type of receipt and another, and that any receipt of money by a dealer from the purchaser was a 'collection by way of tax' within section 11(2) of the Act, provided it had some relation to sales-tax, and that it mattered not that the receipt was merely a deposit by the payer carried to suspense account, the amount being received on the express undertaking and definite condition that the same would be refunded in the event of the dealer being held not liable to sales-tax on the transaction in regard to which the 'deposit' was made. We are unable to agree in this construction of the expression 'collection' occurring in section 11(2) of the Act. Where an amount is received merely by way of deposit, on the express understanding or undertaking as in these cases, the company held the money as a mere custodian, and on the fulfilment of the condition became a trustee for the depositor. It is sufficient to state that when once the tax authorities determined that the proceeds of the sales in question were not within the taxable turnover of the company, the beneficial ownership became vested in the depositors and the company ceased to have any right to continue to hold the moneys. The fact that the physical control of the moneys passed from the 'depositor' to the 'dealer' did not render the receipt a 'collection' within section 11(2) of the Act."

(24) This authority is of no help to the assessee in the present case. Firstly, it has been found as a fact in this case that there is no evidence that the purchasers in the present case deposited sales tax with the dealer on the express understanding or undertaking that the money would be refunded to the purchasers if the assessee was held not liable to income tax in the relevant assessment year in its taxable turnover. On the other hand, the finding of fact recorded is that there was no evidence that the said amount was recovered as a deposit. The bills in question were not available. Besides, the assessee himself treated the amounts in question as revenue receipt for the year 1963-64 by virtue of its action in transferring the said amount in profit and loss account. In the Supreme Court authority, referred to above, their Lordships specifically observed as follows:—

> "We should not be understood as saying that collections by a dealer a purchaser of amounts not lawfully demandable by him are not 'collections' within section 11, merely because the purchaser could in law make a claim for refund and enforce that right in appropriate proceedings. But such a case is far removed from the ones before us, where the payment by the purchaser was conditional and made on an express contract that the sum would be refunded in the contingency of the dealer being held not to be assessable in respect of the relevant turnover."

Therefore, it is clear that in the Supreme Court case referred to above it was on facts found that the amount in question was received by the assessee from the purchaser on the express undertaking that the money would be refunded to the purchaser if the assessee was held not liable to include the relevant sales in its taxable turnover whereas in the present case a clear finding of fact is that there is no evidence to hold that the money in question was received by the assessee as deposit muchless the evidence of any express undertaking of refund. Therefore, on this ground alone, it is to be held that this authority is of no help to the assessee. Moreover, the said case was only confined to the interpretation of the word 'collection' as contained in the provisions of section 11 of the Mysore Sales Tax Act and that was not a case under the Income Tax Act. The scheme of the Income Tax Act clearly provides that whatever amounts are recovered as a trading receipt are subject to income tax. The question whether the sales tax charged is an integral part of the trading receipt or not, was not considered by the Supreme Court in that case.

(25) The contention that the moment a purchaser makes a demand from the assessee for the return of the sales tax paid by him which was not chargeable, the assessee is bound to return the same, therefore, this amount should not be charged to income tax, is without any merit. The amount received by the assessee in the relevant assessment year is certainly a trading receipt as is clear from the above discussion and the same shall have to be charged for the said relevant year. If and when a purchaser demands the refund of the amount from the assessee and the assessee actually pays back that amount, it will be open to the assessee to claim relief regarding that amount at the time when it is refunded. Similar view was taken by the Calcutta High Court in *Sinclair Murray's case* (7) (supra).

(26) The amount received by the assessee in the relevant assessment year was his trading receipt and he utilised the said amount for the purposes of his business. In other words he charged further this amount in the course of his business and, therefore, the same is liable to be charged to income tax. From what has been stated above, it is obvious that the answer to the question referred to us is that on the facts and circumstances of this case, the Tribunal was not justified in law in excluding from assessment the sum of Rs. 4,155 representing sales tax deposit. Therefore, the reference is answered in the negative with no order as to costs.

Pandit, J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Rajendra Nath Mittal, J.

SHANKAR SINGH ETC.,—*Appellants.*

versus

MANGAL SINGH ETC.,—*Respondents.*

Regular Second Appeal No. 1159 of 1961.

August 2, 1972.

Punjab Security of Land Tenures Act (IV of 1953)—Punjab Security of Land Tenures Rules (1953)—Rule 11—Punjab Tenancy Act (XVI of 1887)—Section 50—Punjab Tenancy Rules (1909)—Rule 10—Ex-parte order of ejectment passed under the Punjab Security of Land Tenures Act—Tenant ejected—Ex-parte order set aside in appeal—No direction for restoration of possession—Revenue Officers—Whether have jurisdiction to restore possession to the tenant—Remedy of suit for possession under section 50 of the Punjab Tenancy