(5) In these circumstances the applicant (respondent No. 4) is entitled to be cross-examined on Commission in connection with the averments made by him in his affidavit. The counsel for Mr. Bajwa would be entitled to put such questions in re-examination as may arise out of the answers given by the respondent in his cross-examination for purposes of clarification in accordance with law. I, therefore, allow this application and direct that Shri Bajwa, Minister of State in the Punjab Cabinet, be cross-examined by the counsel for the writ-petitioners on Commission at his residence No. 61, Sector 28, Chandigarh, at 10.00 a.m. on Sunday, the 15th of November, 1970. I appoint Shri Kartar Singh Kwatra, Advocate, as the Commissioner for recording the evidence of Mr. Bajwa at his residence. His fee is fixed at Rs. 200 in the first instance. The fees shall be paid to the Commissioner by respondent No. 4 within a week from today. There is no order as to costs in this Court.

(6) Mr. Kuldip Singh states that since the cross-examination of Mr. Bajwa might itself take the whole of the day, the Principal (respondent No. 3) may be called in Court for being cross-examined on the next day, that is, on 16th November, 1970. I direct accordingly. Mr. Gurbachan Singh undertakes to inform respondents 3 and 4 of this order.

(7) The main case may now be relisted for hearing as part-heard on November 16, 1970.

B. S. G.

INCOME TAX REFERENCE.

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

M/s. BAISHNO DASS KISHORI LALL BHALLA, PHILLAUR,—
Petitioners.

versus

THE COMMISSIONER OF INCOME TAX PUNJAB, PATIALA,—
Respondent

Income Tax Reference No. 41 of 1962

November 5, 1970.

Indian Income-Tax Act (XI of 1922)—Sections 17(3) and 17(4)(a)—Payment of super-tax—Mode of commutation for—Such tax—Whether to be calculated first under section 17(4)(a) and then benefit under section 17(3) be given.

Held, that the super-tax payable by an assessee has first to be determined under section 17(4)(a) of the Income Tax Act, 1922, and once this is done and the rate of tax ascertained, benefit of sub-section (3) of section 17 of the Act is to be given to the assessee to exclude super-tax payable on the State Income at the determined average rate. The effect of section 17(3) is to be given after proportionately increasing the super-tax under section 17(4)(a) of the Act.

(Paras 3 and 5)

Reference under Section 66(2) of the Indian Income Tax Act 1922 made by the Income Tax Appellate Tribunal, Delhi Bench 'C' in compliance with the order of this Court, dated 11th August, 1959, passed in Income Tax case 21 of 1953, for opinion on the following questions of law arising out of ITA No. 859 of 1952-53 regarding the assessment year 1948-49—

1. *"Is the mode of computation of super-tax as adopted by the Tribunal valid and in accordance with the provisions of section 17 of the Indian Income-tax Act?"*

2. *"Whether on the facts and circumstances of the case the effect of section 17(3) is to be given before proportionately increasing the super-tax under section 17(4)(a) or after?"*

C. L. AGGARWAL, ADVOCATE, for the petitioner.

D. N. AWASTHY, ADVOCATE WITH B. S. GUPTA, ADVOCATE, for the respondent.

JUDGMENT

The Judgment of this Court was delivered by :—

MAHAJAN, J.—The short question that requires determination in this reference under section 66(2) of the Indian Income Tax Act is whether the method of computation adopted by the Tribunal is correct or the one adopted by the assessee is correct. The method adopted by the Tribunal is as follows :—

> "According to Section 17(4), clause (a), the Super-tax payable by the assessee would be the Super-tax which would have been payable on his total income viz. Rs. 77,295 as reduced by the amount of Income brought into British India out of the past state profits viz., Rs. 27,229 (CC), i.e., the Super-tax on Rs. 50,066 (AA+BB), which amounts to Rs. 3,762/6, multiplied by the fraction 77,295/50,066. The Super-tax payable by the assessee, applying the provisions of section 17(4) alone would, therefore, be

Rs. 5,859. But the total income of the assessee in this case also included Rs. 27,436 (BB), income which accrued to the assessee in Indian states during the relevant asstt. year and exempt from Income-tax or Super-tax according to section 14(2)(c). Therefore, applying the provisions of section 17(3), the super-tax payable by the assessee would be further reduced as follows :—

Rs. 5,859 (Being the figure arrived at under section 17(4) multiplied by the fraction $\frac{77,295-27,436}{77,295} = \frac{49,859}{77,295}$

The resultant figure is Rs. 3747. The method which the assessee insists should be followed is stated below :—

"(a) Super Tax on Reduced Income is calculated as under:—

$$\text{Super Tax on } 50066 \times \frac{\text{British India Income}}{\text{British India Income. + Indian State Income}}$$

$$= 3762 \times \frac{22630}{50066} = 1700$$

(b) Super Tax on Total Income is calculated as under :—

$$\text{Tax on reduced Income} \times \frac{\text{Reduced Income + Remittance Income}}{\text{Reduced Income}}$$

$$= 1700 \times \frac{77295}{50066} = 2625."$$

When the matter came up before this Court at an earlier stage, my Lord the Chief Justice and Mr. Justice Khanna passed the following order :—

"We have heard Mr. Aggarwal on behalf of the assessee and Mr. Awasthy on behalf of the department and find that

though the order of reference as well as the order of the Tribunal give arithmetical tables of calculation, it is not clear from these orders as to how precisely the different legal provisions have been applied in adopting the method of calculation. Both the counsel are agreed that some assumptions have been made in the two orders but there is a difference between them with regard to the actual assumption. In the circumstances we agree with Mr. Awasthy that the reference may be sent back to the Tribunal with the direction that the point of controversy may be made more clear in terms of the different provisions of law having bearing on the subject. We order accordingly."

Thereafter the supplementary statement of the case was submitted by the Tribunal and that is how the matter has been placed before us.

(2) On the main facts there is no dispute. The assessee is a Hindu undivided family carrying on timber business. It does work in the name and style of M/s Baishno Das Kishori Lal Bhalla at Beas, Phillaur and Abdulapur. Formerly these places were in British India. They also carry on their business at Dhilwan and Doraha. Both these places were situate in two different Indian States. Their head office was at Phillaur in British India. The total income of the assessee during the relevant previous year for the assessment year 1948-49 was Rs. 77,295. The break up of this figure is as follows:—

(i) British Indian Income	...	22,630
(ii) Income accruing in Indian States during the relevant previous year.	...	27,436
(iii) Income which had accrued in the Indian States before the relevant previous year but which was subsequently brought into British India during the relevant previous year.	...	27,229
Total	...	77,295

The dispute between the department and the assessee is about the quantum of super tax payable. According to the department a sum of Rs. 3,747, is payable whereas according to the assessee the amount of Rs. 2,625 is payable.

(3) The relevant provision under which the super-tax has to be calculated is section 17, sub-section (3) and (4) (a), which read thus :

"17(3) Where there is included in the total income of any assessee any income exempted from tax under (clause 'aa' or) clause (c) of sub-section (2) of section 14, (or under section 15B) (or under section 15C), the super-tax payable by the assessee shall be an amount bearing to the total amount of the super-tax which would have been payable on the total income had no part of it been so exempted the same proportion as the total income less the portion so exempted bears to the total income.

17(4) (a) Where any income exempted from tax under clause (c) of sub-section (2) of section 14 which has been taken into account under sub-section (2) or sub-section (3) of this section as part of the total income of an assessee for the purpose of determining the income-tax or super-tax payable by him is in a subsequent year brought into or received in (the taxable territories) by the assessee and becomes chargeable with tax accordingly, the tax including super-tax payable by the assessee on his total income of that subsequent year shall be—

(a) the amount which bears to the total amount of the tax including super-tax which would have been payable on his total income as reduced by the amount of the income so brought into or received in (the taxable territories) had such reduced income been his total income the same proportion as his total income bears to such reduced income, or

(b) ————————"

The principal question before us is whether calculation is to be made first under sub-section (3) and then under sub-section (4) (a) or first under sub-section (4) (a) and then under sub-section (3). After considering the language of the provision we are of the view that super-tax payable by the assessee has first to be determined under section 17(4) (a) and once this is done and the rate of tax ascertained benefit of sub-section (3) is to be given to the assessee to exclude super-tax payable on the State income at the determined average

rate. Thus, the method adopted by the Tribunal is the correct one. We accordingly answer the following questions :—

"(1) Is the mode of computation of super-tax as adopted by the Tribunal valid and in accordance with the provisions of section 17 of the Indian Income-Tax Act?

(2)Whether on the facts and circumstances of the case the effect of section 17(3) is to be given before proportionately increasing the super-tax under section 17(4) (a) or after?"

which have been referred for our opinion as under :—

(4) The first question is answered in the affirmative. The second question is answered as follows :—

(5) The effect of section 17(3) is to be given after proportionately increasing the Super-tax under section 17(4) (a) of the Income-Tax Act, 1922.

(6) In the circumstances, we make no order as to costs.

B. S. G.

INCOME TAX REFERENCE.

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

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

versus

M/s. HARGOPAL BHALLA & SONS, CHHEHARATA,—*Respondent.*

Income Tax Reference No. 17 of 1969

November 10, 1970.

Income-Tax Act (XLIII of 1961)—Sections 143(3), 271(1)(c) and 297 (2)(a)—Income-Tax Act (XI of 1922)—Section 23(3)—Return filed before the commencement of the 1961 Act—Assessment made under section 143(3) of 1961 Act instead of section 23(3) of 1922 Act—Such assessment—Whether valid—Penalty proceedings on the basis of the assessment—Whether legal.

Held, that the provisions of section 23(3) of Income-tax Act, 1922 are *pari materia* with the provisions of section 143(3) of Income-tax Act, 1961