CIVIL REFERENCE.

Before Bhandari, C. J. and Falshaw, J.

MESSRS RAJKISHEN PREM CHANDRA JAIN,—*Petitioners.*

versus

THE COMMISSIONER OF INCOME-TAX,—*Respondent*

Civil Reference No. 8 of 1955

1958

May, 7th

Income-tax Act (XI of 1922)—Section 10—Plot of land belonging to the assessee carrying on real estate business acquired by the Government—Compensation received being excess of the amount spent by the assessee—Excess amount —Whether revenue receipt—"Profits"—Meaning of.

Held, that the amount in excess of the cost price of the land (which was the assessee's stock-in-trade) received by

him from the Government for its compulsory acquisition under the Acquisition Act was revenue receipt of the relevant year of account.

Held, that the expression "profits" primarily means the arithmetical excess of the price received over the total of all costs incurred by the seller. It is the gain made in business, profession or vocation when both the receipts and payments are taken into consideration.

A. N. KIRPAL and D. K. KAPUR, for Petitioner.

K. N. RAJGOPAL SHASTRI and G. C. CHOPRA, for Respondent.

ORDER

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BHANDARI, C.J.—This is a reference under section 66(1) of the Indian Income-tax Act.

A plot of land belonging to the assessee, who was carrying on real estate business ,was acquired by Government under the provisions of the Land Acquisition Act, 1894. As the amounts of compensation paid to the assessee was in excess of the amount which was actually spent by him, the Income-tax Officer treated the excess as the assessee's income for the account year in which it was received, and the order of the Income-tax Officer was upheld by the Tribunal in appeal. At the request of the assessee, the Tribunal has referred the following question of law to this Court for decision.

> "Whether, on the facts and in the circumstances of this case, the amount in excess of the cost price of the land (which was the assessee's stock-in-trade) received by him from Government for its compulsory Acquisition under the Acquisition Act was revenue receipt of the relevant years of account"?

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Mr. A. N. Kirpal, who appears for the assessee admits that the compensation paid to his client by Government exceeded the total of all cost incurred by him for the purchase and development of the land; but he contends that the excess of compensation over cost cannot be said to fall within the ambit of the expression "profits and gains of business" for profits can arise only when the price for which property is sold is higher than the price for which it was purchased. The expression 'sale' according to him means a voluntary transfer of property for a price. If a person is compelled to part with property not voluntarily but under the mandate of a statute the transaction by which the transfer is effected cannot be designated as profit. Our attention has been invited to *Calcutta Electric Supply Corporation, Ltd.* v. *Commissioner of Income-tax, East Bengal* (1). In this case the Government requisitioned an electricity generating plant belonging to the assessee under the provisions of Defence of India Rules, the assessee having been paid a sum of Rs. 3,27,840 over and above the written down value of the plant. The taxing authorities treated the excess as assessee's profit under section 10(2) (vii) of the Indian Income-tax Act, 1922, which provides that profits and gains in respect of any building, machinery or plant which has been sold or discarded or demolished or destroyed, shall be computed after allowing for the amount by which the written down value thereof exceeds the amount for which the building, machinery or plant, is actually sold or its scrap value. A Division Bench of the Calcutta High Court, however, came to a contrary conclusion. It held that the transaction by which Government acquired the plant could not be regarded as a 'sale' within the meaning of section 10(2) (vii) for the ordinary conception of sale is that something is handed over for a price as a result of negotiations and agreement. It held, further,

(1) (1951) 19 I.T.R. 406

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that the amount paid by Government on account of the price was not taxable as profit under the provisions of section 10(2) (vii). This decision appears to me to be wholly irrelevant to the matter in controversy before us for it endeavours to construe the meaning of the expression "sold" appearing in section 10(2) (vii) of the Income-tax Act and not the meaning of the expression "profits and gains" appearing in section 10(1) of the said Act.

The contention that profits can arise only when the sale price exceeds the purchase price appears to me to be wholly devoid of force. The expression "profits" primarily means the arithmetical excess of the price received over the total of all costs incurred by the seller. It is the gain made in business, profession or vocation when both the receipts and payments are taken into consideration. The Courts have held as a revenue or trading receipt, a sum which is received in lieu of and takes the place of an item which, if received, would have been revenue or trade receipt, (*Short Brothers Limited* v. *The Commissioner of Inland Revenue* (1), a sum received under insurance policies in respect of trade-in-stock (*Gliksten and Sons, Limited* v. *Green* (2), a sum received as war damage value payments (*London Investment and Mortgage Company Limited* v. *Inland Revenue Commissioner* (3), a sum received under a policy covering accidents to employees (*Gray and Company Limited* v. *Murphy Inspector of taxes* (4), a sum received on account of defalcations made good by auditors (*Gray Inspector of taxes* v. *Lord Penrhyn* (5), compensation awarded under the restriction of Ribbon Development Act, 1935 (*Jhonson* (*Inspector of taxes*) v. *W. S. Try Limited* (6), compensation paid by agreement for the

(1) (1927) XII T.C. 955
(2) 1929 A.C. 381 H.L.
(3) (1957) 1 A.E.R. 277 (C.A.)
(4) (1940) 23 Tax cases 225
(5) (1937) 3 A.E.R. 468
(6) (1946) XXVII Tax cases 167

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withdrawal of building plots from a scheme under which the company had acquired rights to build in the course of trade (*Shadbolt (H. M. Inspector of Taxes).* v.*Salmon Estate Limited* (1), and sums paid to terminate a renumerative contract (*Kelsall Parsons and Company* v. *Commissioner of Inland Revenue* (2), In *Commissioner of Inland Revenue* v. *Newcastle Breweries Limited* (3), a question arose whether a sum awarded to a company of brewers and wine and spirit merchants as compensation for a quantity of un-requisitioned by the Admiralty was a profit arising from its trade or business. The Company contended that it was not. Rowlatt, J., whose decision was upheld by the Court of Appeal and the House of Lords held that it was in fact a compulsory sale of rum. In the course of his judgment his Lordship observed as follows—

> "It is first of all said this was not a profit of the trade at all, but was a compensation for an interference with the trade and the taking away of the trade, but it was not profit arising from the trade, as the words go. Now I have no doubt that a Government requisition, such as took place during the war, could destroy a trade, and anything which was paid would be compensation for such destruction......Now, what is that except a compulsory sale of the rum. It seems to me, when you really look at the substance of the thing, it is in a very small compass. That is all it is, a compulsory sale of the rum..............."

In the House of Lords Viscount Cave L. C. observed as follows—

> "If the raw rum had been voluntarily sold to other traders, the price must clearly have

(1) (1943) XXV Tax Cases 52
(2) XXI Tax cases 608
(3) XII Tax cases 927

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come into the computation of the appellants' profits, and the circumstances that the sale was compulsory and was to the Crown makes no difference in principle. Both the sums received for the rum- the £10,300 and £5,300 were in fact brought into the appellants' books under the heading "Sales of, Rum"............... The transaction was a sale in the business and although no doubt it effected the circulation capital of the appellants, it was none the less proper to be brought into their porfits and loss account".

Viscount Dunedin observed as follows—

"The payment for the rum was in no sense a return of capital. It was simply a realisation of a portion of the stock-in-trade at rather an earlier stage of the process than was the case with ordinary sales".

In *Raghuvanshi Mills, Ltd., Bombay* v. *Commissioner of Income-tax, Bombay City* (1), the assessee company had insured its mills with certain insurance companies and had also taken out certain policies of the type known as 'Consequential Loss Policy' which insured against loss of profits standing charges and agency commission. The mills were completely destroyed as a result of fire and a certain amount was paid to the assessee by the insurance company. The question arose whether this amount which was treated as having been paid on account of loss of profit, was assessable to income-tax. Their Lordships of the Supreme Court held that the amount received by the assessee was income and was taxable. In dealing with this aspect of the matter the learned Judges

(1) XXII I.T.R. 484

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observed as follows:

> "The assessee is a business company. Its aim is to make profits and to insure against loss. In the ordinary way it does this by buying raw material manufacturing goods out of them and selling them so that on balance there is a profit or gain to itself. But it also has other ways of acquiring gain namely, by insuring against loss of profits It is indubitable that the money paid in such circumstances is a receipt and in so far as it represents loss of profits as opposed to loss of capital and so forth, it is an item of income in any normal sense of the term. It is equally clear that the receipt is inseparably connected with the ownership and conduct of the business and arises from it".

A subsidiary question has also been raised, namely that although the amount paid on account of the price of land may be deemed to be profit or gain of the business the amount of 15 per cent paid cannot be so regarded. The question whether this amount of 15 per cent does or does not fall within the ambit of the expression" profits or gains of the business" has not been referred to us by the Tribunal and does not need to be answered.

For these reasons I am of the opinion that the question which has been referred to us by the Tribunal must be answered in the affirmative.

The respondents will be entitled to costs of this Court, which we assess at Rs. 250.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.