applicable to the parties states that in case land has to be allotted to a party away from his major portions, an attempt should be made to see that it is situated in the same *patti* as those portions. A major grouse of the petitioner is that the land which the order allots to him is not situated in the *patti* where his other land is, that no attempt was made to allot the said land to him in that *patti* and that, in fact, his son never cared to request the Additional Director to make an effort to allot all the land to the petitioner in one *patti*. Clearly, therefore, the order of the Additional Director is not in accordance with the scheme and it cannot be said that substantial justice has been done by him to the parties.

4. In the result, the petition is accepted and the impugned order is quashed. The Additional Director shall rehear the petition under section 42 *ibid* after hearing the parties who have been directed to appear before him on the 29th of September, 1971. There will be no order as to costs.

N. K. S.

INCOME TAX REFERENCE

Before D. K. Mahajan and H. R. Sodhi, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, J & K AND CHANDIGARH, PATIALA.—*Applicant.*

versus

M/s. THE ORIENTAL CARPET MFR. (INDIA) P.LTD., AMRITSAR,—*Respondent.*

Income Tax Reference No. 15 of 1971

September 7, 1971.

Income-Tax Act (XLIII of 1961)—Sections 36(1) (iii) and 37—Payment of income-tax due for a particular year delayed—Interest on such delayed payment—Whether permissible deduction as revenue expenditure—Expression "for the purpose of business" occurring in section 37(1)—Scope of—Stated.

Held, that interest on delayed payment of income-tax has no connection with the business of the assessee and as such it has nothing to do with

business activity. The liability to tax, though arising out of business activity, cannot be said to be in any manner a liability which has anything to do with the business of the assessee. It is merely a consequence of income accruing in such business and nothing more. The interest earned by the Income-tax Department for the delayed payment of income-tax due in particular year is interest on tax and is, therefore, part of the tax. Hence such a payment of interest is not permissible deduction as revenue expenditure. (Para 6)

Held, that expression "for purpose of business" occurring in section 37(1) of Income-tax Act, 1961 is wider in scope than the expression "for the purpose of earning profits". Its range is wide: it may take in not only the day today running of a business but also the rationalization of its administration and modernization of its machinery; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business. However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business. It cannot include sums spent by the assessee as agent of a third party, whether the origin of the agency is voluntary or statutory; in that event, he pays the amount on behalf of another and for a purpose unconnected with the business. (Para 6)

Reference made under section 256(1) *of the Income Tax Act*, 1961 *by the Income-tax Appellate Tribunal, (Chandigarh Bench) to this Hon'ble Court for the opinion on the following question of law in R.A. No.* 56 *of* 1970-71 *arising out of I.T.A. Nos.* 1611 *of* 68-69 & 49 *of* 70-71 *for the assessment years* 1966-67 *and* 1967-68.

"Whether on the facts and in the circumstances of the case, the interest of Rs. 6,733 *was a permissible deduction as a revenue expenditure?"*

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

Kirpa Ram Bajaj, Senior Advocate, B. S. Chawla, Prem Nath Monga and M. M. Punchi, Advocates with him, *for the respondent.*

JUDGMENT

The judgment of this Court was delivered by:—

MAHAJAN, J.—(1) The income-tax Appellate Tribunal, Chandigarh Bench, have referred the following question of law for our opinion :—

"Whether on the facts and in the circumstances of the case the interest of Rs. 6,733 was a permissible deduction as a revenue expenditure?"

The assessee is a private limited company. It manufactures woollen cloth and carpets. These items are also exported out of India. In the year 1966-67, the assesee could not pay the provisional demand of tax in respect of earlier assessment and approached the Income-tax Officer for time which was allowed. In respect of these delayed payments, the assessee was charged interest and he paid a sum of Rs. 6,733. This payment of interest has been claimed by the assessee as permissible deduction under sections 37 and 36(1)(iii) of the Income-tax Act, 1961. The Income-tax Officer disallowed this claim and held that the assessee was not entitled to claim it as a permissible deduction under the Act.

(2) On appeal before the Appellate Assistant Commissioner, a claim was made that the Income-tax Officer was wrong in not allowing the amount of interest paid as a permissible deduction. This contention was rejected by the Appellate Assistant Commissioner as follows:—

> "The assessee did not borrow any capital for the purposes of its business. The question of allowing the deduction under section 36(1)(iii) therefore, does not arise. Even otherwise, the claim is not admissible under section 37(1) inasmuch as it cannot be said to be an expenditure incurred, laid out or expended wholly and exclusively for the purposes of the business and in any case, it is an expenditure of personal nature."

The Assistant Commissioner in support of his view followed the decisions of the Bombay, Patna and the Calcutta High Courts in *Bhai Bhuriven Lallu Bhai* Vs. *C. I. T. Bombay* (1), *Maharaj Adhiraj Sir Kameshwar Singh* v. *C. I. T. Patna* (2), and *Mana Lal Rattan Lal* v. *C.I.T. Calcutta* (3), respectively.

(3) The assessee took up the matter in further appeal to the Income-tax Appellate Tribunal and the Tribunal allowed the assessee's claim. On this part of the case, the Tribunal made the following observations:—

> "Thus, the income-tax paid is not an admissible charge only because of this prohibition (section 40). We find that there

(1) 29 I.T.R. 543.
(2) 42 I.T.R. 774.
(3) 58 I.T.R. 84.

is no prohibition on allowance of interest. Interest and tax, in our opinion, are two different items of altogether different character and apparently there is no prohibition against allowance of interest. Incidentally, we may point out that when an assessee receives any interest on the excess amount paid under the advance-tax payments, such interest is included in the total income. We think that such inclusion also is correct in law."

(4) The Department then moved the Tribunal under section 256(1) of the Income-tax Act requiring the Tribunal to state the question of law, already referred to, for opinion of this Court and that is how the said question of law has been referred for our opinion.

(5) Mr. Awasthy, learned counsel for the Department, contended that the payment of interest on delayed payment of income-tax, is not a permissible deduction and the learned counsel relied upon the three decisions relied on by the Appellate Assistant Commissioner, already referred to, and also on the decision in *Dalmia Dadri Cement Ltd., Dadri* v. *The Commissioner of Income-tax Delhi (Central) New Delhi* (4) to which I was a party and also our later decision in *Dalmia Dadri Cement Ltd., Charkhi Dadri* v. *The Commissioner of Income-tax, Delhi (Central) New Delhi* (5). In the latter decision, we merely followed the previous decision which in turn is based on the Patna and Calcutta decisions. The question that fell for consideration in the two *Dalmia Dadri Cement Ltd., cases* related to the commission paid on borrowing shares for purposes of pledging them as security with the Income-tax Department for securing stay of recovery of tax. The commission paid on the borrowing of shares was claimed as a permissible deduction on the ground that it was an expense incurred "for the purpose of business". It was held that the payment of commission could not be claimed as a permissible deduction inasmuch as "stay of recovery of tax has nothing to do with the carrying on of the business of the assessee, nor has it anything to do with its purpose."

(6) Mr. Bajaj, learned counsel for the assessee, basing himself on the decision of the Supreme Court in *Commissioner of Income-tax, Kerala* v. *Malayalam Plantations Ltd.* (6), contends that the amount

(4) I.T. Ref. No. 19 of 1970 decided on 1st February, 1971.

(5) I.T. Ref, No. 33 of 1970 decided on 24th August, 1971.

(6) 53 I.T,R. 140.

of interest in question is a business expense. It is maintained that if the tax the amount of which was heavy had been paid the business of the assessee would have been jeopardised. In order to raise money to pay the tax and save the business, interest had to be paid and as such its payment is a legitimate business expense. We considered this decision in *Dalmia Dadri's case* (4). The test that has been laid down in this decision is:—

> "The expression 'for the purpose of the business' is wider in scope than the expression 'for the purpose of earning profits'. Its range is wide: it may take in not only the day today running of a business, but also the rationalization of its administration and modernization of its machinery; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business. However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business. It cannot include sums spent by the assessee as agent of a third party, whether the origin of the agency is voluntary or statutory; in that event, he pays the amount on behalf of another and for a purpose unconnected with the business. In the present case, the company as a statutory agent of the deceased owners of the shares, paid the sums payable by the legal representatives of the deceased shareholders. The payments have nothing to do with the conduct of the business. The fact that on his default, if any, in the payment of the dues the revenue may realise the amounts from the business assets is a consequence of the default of the assessee in not discharging his statutory obligation, but it does not make the expenditure any the more expenditure incurred in the conduct of the business. It is manifest that the amounts in question were paid by

the assessee as a statutory agent to discharge a statutory duty unconnected with the business, though the occasion for the imposition arose because of the territorial nexus afforded by the accident of its doing business in India."

It cannot be said that the interest on payment of delayed tax has any connection with the business of the assessee within the four corners of the aforesaid test. The assessee paid interest in order to get adjustment from the Department to pay the income-tax by instalments, and this has nothing to do with his business activity. The liability to tax, though arising out of business activity, cannot be said to be in any manner a liability which has anything to do with the business of the assessee. It is merely a consequence of income accruing in such business and nothing more. We do not agree with the observations of the Tribunal that the treatment of interest earned on refund of tax, as income of the tax-payer, has anything to do with interest which an assessee incurs in order to raise money to discharge his income-tax liability. This interest will derive its colour from the principal payment, and will partake of it. The interest earned by the Department is interest on tax and must be held to be part of the tax. This does not follow when the assessee earns interest on excess payment of tax. The two situations are totally different.

(7) For the reasons recorded above, we answer the question referred to us in the negative, that is, in favour of the Department and against the assessee. There will be no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

RAM SARUP,—*Petitioner.*

versus.

SAMUNDER SINGH ETC.,—*Respondents.*

Civil Writ No. 2764 of 1971
and C. M. 5002 of 1971

September 7, 1971.

Punjab Gram Panchayat Act (IV of 1953) as amended by Punjab Gram Panchayat (Haryana Amendment) Act, (XIX of 1971)—Section 5(4), First