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section 5(1)(c) of Act II of 1947, the case can proceed without any sanction as provided in section 6 of the Act. I would accordingly accept the recommendation of the learned Sessions Judge and set aside the order of the trial Court discharging the accused and remand the case to it for trial according to law. The other revision petitions which were put up for hearing along with this may now be returned for hearing by Single Judges and decision on the various points involved in the light of the decision on the first point decided above.

KHOSLA, J.—I agree.

FULL BENCH

Before Harnam Singh, Falshaw, and Soni, JJ.

THE COMMISSIONER OF INCOME TAX, DELHI,—*Petitioner*

versus

THE DELHI FLOUR MILLS COMPANY, LIMITED, DELHI,—*Respondent*

1952

December, 30th

Civil Reference No. 18 of 1952

Excess Profits Tax Act (XV of 1940)—Section 4—Excess Profits Tax, nature of—Net profits, meaning of—Commission payable to managing Agents on net profits—Whether excess profits tax to be deducted from the profits before arriving at the net profits—Agreement—Construction of, rule stated.

Clause II of the agreement between the assessee Company and its managing agents provided :

> "In consideration for acting as Managing Agents the Company should pay to the firm—a commission equal to ten per cent of the annual profits. Such net profits will be arrived at after allowing the working expenses, interest on loans and due depreciation, but without setting aside anything to reserves or other special funds."

The question referred to the High Court was :

> "Whether on a true construction of the Managing Agency Agreement between the assessee Company and its Managing Agents entered into in

1936, the relevant clause of which is quoted above, the Excess Profits Tax payable should be deducted from the profits of the Company for the purpose of arriving at the annual net profits of which a percentage should be paid to the Managing Agents as their commission."

Held, that the agreement is to be interpretted as it is. The Courts are not to make a new agreement for the parties, or to speculate how they would have dealt with the new contingency had they anticipated it, but that (except in cases when the intervening event produces frustration) the Courts have to take the words of the agreement as they stand and apply them, as best as can be to the new situation which has caused the difficulty. A different agreement cannot be spelt out by means of judicial construction.

Held, on the construction of the managing agency agreement that excess profits tax does not fall to be deducted from the profits of the Company for the purpose of arriving at the annual net profits of which a percentage should be paid to the managing agents as their commission.

Held, that the excess profits tax is not an expenditure incurred in the earning of profits but is an impost which has to be paid as a portion of the profits which the company has made. It is a tax on income and a disbursement of profits earned.

L. C. Limited v. *G. B. Ollivant, Ltd. and others* (1), *James Finlay & Co., Ltd.* v. *Finlay Mills, Ltd.* (2), relied upon.

Held, that "net profits" of a trading company when ascertained in accordance with the ordinary commercial practice are the profits before and not after deducting the direct taxation which has to be paid in respect of them.

L. C. Limited v. *G. B. Ollivant, Ltd. and others* (1), *William Hollins and Co., Ltd.* v. *Pagent* (3), *and Thomas* v. *Hamlyn* (4), relied on.

Case-law reviewed.

Patent Casting Syndicate, Limited v. *Etherington* (5), and *Vulcan Motor and Engineering Company, Ltd.* v. *Hampson* (6), held not applicable; *Walchand & Company, Limited* v. *Hindustan Construction Company, Ltd.* (7), held wrongly decided.

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(1) (1944) 1 A.E.R. 510
(2) 47 B.L.R. 774
(3) (1917) 1 Ch. 187
(4) (1917) 1 K.B. 527
(5) (1919) 2 Ch. 254
(6) (1921) 3 K.B. 597
(7) A.I.R. 1944 Bom. 5

Case referred to the above full Bench, vide the order of Division Bench, consisting of the Hon'ble the Chief Justice, and Mr. Justice Harnam Singh, dated 30th October 1952.

Case referred by Shri K. Srinivassan, Registrar, Income-tax Appellate Tribunal, Bombay, with his letter No. R.A. 843 of 1951-52, dated the 29th May, 1952, under section 66(1) of the Indian Income-tax Act, 1922 (Act XI of 1922) as amended by section 92 of the Income-tax (Amendment) Act, 1939 (Act VII of 1939) for orders of the High Court.

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

KIRPA RAM BAJAJ, for Respondent.

ORDER

The point in this matter is identical with that in Civil Reference No. 7 of 1950 which was referred for decision by a Full Bench by order made on the 12th of September, 1952. We order, therefore, that this case should similarly, be referred and be heard so far as is practical along with Civil Reference No. 7 of 1950. Papers to be sent to Simla, immediately.

(Sd.) E. Weston,

Chief Justice.

(Sd.)-A. N. Bhandari,

30th October, 1952. Judge.

Mr. S. M. SIKRI, Advocate-General, Punjab and Mr. HEM RAJ MAHAJAN, Advocate, for Petitioner.

MR. TEK CHAND, Advocate, for Respondent.

ORDER

Harnam Singh, J.

HARNAM SINGH, J. In Civil Reference Case No. 18 of 1952, the question referred to us for decision is in these terms :—

"Whether on a true construction of the Managing Agency Agreement between

the assessee Company and its Managing Agents entered into in 1936, the relevant clause of which is quoted above, the Excess Profits Tax payable should be deducted from the profits of the Company for the purpose of arriving at the annual net profits of which a percentage should be paid to the Managing Agents as their commission."

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By clause II of the managing agency agreement made in April, 1936, the Delhi Flour Mills Company, Limited, hereinafter referred to as the assessee-company, agreed to pay to the managing agents commission equal to ten per cent of the annual net profits to be computed after allowing the working expenses, interest on loans and due depreciation, but without setting aside anything to reserves or other special funds.

In calculating the commission of the managing agents for the period between the 1st of November, 1944, and the 31st of October 1945, the assessee-company did not take into account the income-tax and the excess profits tax. The Income-tax Officer, however, held that in arriving at the annual net profits of which a percentage was the commission of the managing agents the excess profits tax was to be deducted. On appeal the decision given by the Income-tax Officer was upheld by the Appellate Assistant Commissioner.

In proceedings under section 33 of the Indian Income-tax Act, 1922, hereinafter referred to as the Act, the Income-tax Appellate Tribunal found that the excess profits tax, not being an expense for the purpose of earning profits of the business, was not to be deducted in computing annual net profits of the Company on which commission was to be paid to the managing agents.

On the application of the Income-tax Commissioner under section 66(1) of the Act, the Appellate Tribunal referred for decision to this Court the question of law stated above.

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For the reason that the only reported case on the point, *Walchand & Co. Ltd.*, versus *Hindustan Construction Co. Ltd.* (1), did not arise on a reference under the Indian Income-tax Act, a Division Bench of this Court has referred for decision to the Full Bench the question stated above.

Clearly, the answer to the question referred to us for decision turns on the construction of clause II of the managing agency agreement which provides for payment of commission to the managing agents of the following amount:—

> "In consideration for acting as Managing Agents the Company should pay to the firm * * * * * * a commission equal to 10 per cent of the annual net profits. Such net profits will be arrived at after allowing the working expenses, interest on loans and due depreciation, but without setting aside anything to reserves or other special funds."

Now, the agreement says nothing about excess profits tax for the very good reason that in India no such tax was in existence or in contemplation in April, 1936, when the managing agency agreement was made. In construing such an agreement the rule to be followed was stated by Viscount Simon Lord Chancellor in *L. C. Limited* versus *C. B. Ollivant, Ltd., and others* (2), in these words—

> "The rule to be followed in such cases is clear. The only difficulty is in applying it. The rule is that we are not to make a new agreement for the parties, or to speculate how they would have dealt with the new contingency had they anticipated it; but that (except in cases when the intervening event produces frustration) we have to take the words of the agreement as they stand and apply them, as best we can, to the new situation which has caused the difficulty."

(1) A.I.R. 1944 Bom. 5
(2) (1944) 1 A.E.R. 510

Excess profits tax was imposed in India by Act XV of 1940, and the charging section, section 4, provides:—

> "Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as 'excess profits tax') which shall, in respect of any chargeable accounting period ending on or before the 31st day of March 1941, be equal to fifty per cent of that excess, and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act."

In the chargeable accounting period excess profits tax was an amount equal to sixty-six and two-third per cent of the amount by which the profits of the business during that period exceeded the standard profits.

From a perusal of section 4 of Act XV of 1940, it is plain that the excess profits tax is not an expenditure incurred in the earning of profits but is an impost which has to be paid as a portion of the profits which the Company has made. On this point *L. C., Ltd.* v. *G. B. Ollivant, Ltd. and others* (1), and *James Finlay & Co., Ltd.*, v. *Finlay Mills, Ltd.* (2), may be seen.

In (1944) I A.E.R. 510, Vicount Simon, L. C. said at page 513 :—

> "Both by name and by nature it is part of the profits, and it is none the less so, because the Crown takes this part and

(1) (1944) 1 A.E.R. 510
(2) 47 B.L.R. 774

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leaves only the balance, if any, available for distribution among shareholders. If the excess profits tax were to be retrospectively repealed, this would not increase the profits of the Company in the least, it would only change their destination. The profits would be the same as before, but, as the Crown in that event would take less, the shareholders would receive more."

In 47 Bombay Law Reporter 774, Beaumount, C. J. said—

> "But the tax itself is undoubtedly a tax on the profits of the business, and is collected under the provisions of the later sections of the Act by reference to powers contained in the Income-tax Act, for the collection of Income-tax. If default in payment is made, the assessee is liable, and not merely the assets of the business. In my opinion there can be no question that excess profits tax is a tax on income, * * *."

In agreeing with the opinion expressed by Beaumount, C. J., Kania, J., said in 47 Bombay Law Reporter 774 :—

> "It seems to me that the Legislature, instead of amending very largely the Income-tax Act and embodying the provisions of the Excess Profits Tax Act therein, found it more convenient to enact a separate piece of legislation to deal with the particular set of circumstances under which it was considered desirable and necessary to impose an additional tax. The fact, that the Excess Profits Tax Act is a different Act from the Income-tax Act, does not by itself, therefore, make the tax any the less a tax on income."

Excess profits tax being a tax on income the question is whether on a true construction of the managing agency agreement the excess profits tax should be deducted from the profits of the Company for the purpose of arriving at the annual *net profits* of which a percentage is to be paid to the managing agents as their commission.

In plain English clause II of the managing agency agreement provides what and what only are to be the deductions before net profits are to be ascertained, and only those items have priority. Subject to those items, the commission of the managing agents comes next as a charge on the net profits, and in priority to income-tax or excess profits tax.

But it is said that the list of deductions given in clause II of the agreement is not exhaustive and that in assessing the amount of the net profits of the Company account must necessarily be taken of all expenses incurred in the earning of profits. The argument amounts to saying that excess profits tax is an expenditure incurred in the earning of profits. For the reasons given hereinbefore I think that the payment of a tax levied on profits cannot be considered to be an expense incurred to earn those profits. Indeed, excess profits tax is a disbursement of profits earned.

Then, it is said that in the relevant clause of the agreement computation of net profits means the computation of profits which would be divisible amongst the shareholders as dividend. The word 'divisible' does not occur in the agreement and I have no doubt that in reading the word 'divisible' for the word 'net' occurring in clause II of the agreement the Court would not be construing the agreement but making a new agreement for the parties. That this is not permissible is conceded.

Indeed, *Profits of a trading company available for* distribution amongst shareholders of that Company are a part of the net profits of the Company. In considering this matter Viscount Simon, L. C., said in *L. C., Limited* v. *G. B. Ollivant, Ltd. and others* (1), at p. 513—

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> "Moreover, it is a misapprehension to suppose that excess profits tax is, as a matter of course, introduced into a profit and loss account. If the accounts of the enterprise are set out in full, there will normally be first a trading account in which the receipts of the business are set off against the expenses directly incurred in earning those receipts. The "gross profits" arrived at in the trading account will then be carried to a profit and loss account as its opening item, to which would be added on the credit side such items as interest on investments, rents or the like, and against these will be set the overhead expenses of the business, so as to produce the 'net profit.' So far, according to the more usual practice of accountants in dealing with the affairs of a company, no charge in the nature of direct taxation will have been debited at all. The net profit from the profit and loss account will then be taken to an appropriation account, where there will be set against the net profits the various purposes for which the *net profits are being used so much for taxation, so much for reserves, so much for dividends*, etc."

From the observations of Viscount Simon, L. C. set out in the preceding paragraph it appears that the net profits of a trading company when ascertained in accordance with the ordinary commercial practice are the profits *before, and not after, deducting the direct taxation which* has to be paid in respect of them. That income-tax is not a deduction which has to be made in order to arrive at profits is admitted. In no case cited before us was it said that the excess profits tax is not a tax on income. In *L. C., Limited* v. *G. B. Ollivant, Ltd. and others* (1), Lord Macmillan said that excess profits tax is in short a "super income tax." For the purposes of the excess

(1) (1944) 1 A.E.R. 510

profits tax the profits arising from a trade or business are to be "computed on income-tax principles" with certain adaptations. In dealing with this point Lord Macmillan said in *L. C., Limited* v. *G. B. Ollivant, Ltd. and others* (1), at page 517 :—

> "How can it be a necessary implication of this agreement that income-tax should not be deducted and at the same time a necessary implication that excess profits tax should be deducted ; that a tax on profits should not be deducted, but a tax on excess profits should be deducted."

With very great respect I accept the view expressed by Lord Macmillan, and think it unnecessary to discuss the difference in detail between income-tax and excess profits tax which has been pointed out in the different English cases cited.

Mr. Sarv Mittar Sikri urges that we should approach a profit sharing agreement of the type that we are called upon to construe with the presumption, that unless the parties have otherwise provided, they probably did not intend to base commission on excess profits which the employer is not entitled to retain.

In an earlier part of this judgment I have examined the implications of the agreement and shown that there are indications in the agreement that the parties intended to base commission on exeess profits tax. In any case, the commission paid to the managing agents is for the efforts they put in the affairs of the company, and it is not their concern that the company is not allowed to retain part of such profits.

For the foregoing reasons, I think that in calculating the annual net profits of the company for the purposes of the managing agents commission excess profits tax is not to be deducted.

Before parting with this case it is necessary that I should say a few words about some of the previous cases which have been cited to us. *Patent Casting Syndicate, Limited* v. *Etherington* (2),

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(2) (1919) 2 Ch. 254

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was the first case in the English Court of Appeal decided in May 1919. In that case clause 5 of the agreement dated the 30th of October, 1916, which came up for construction provided for the payment of the following commission to the Works Manager of the company :

> "And shall also pay to the Works Manager at the end of each business year of the Company during the continuance of this agreement and within seven days of the holding of the annual general meeting a further sum by way of commission, such sums to be made up as follows : (1) 5 per cent upon the net profits for the year (if any), of the said business up to 5,000 £ and (2) 7½ per cent upon such net profits for the year as exceeds 5,000 £."

In giving the leading judgment in *Patent Casting Syndicate, Limited* v. *Etherington* (1), Warrington, L. J. said—

> "One would have thought that in dealing with a business agreement of this kind, made between a company and their servant for the division of the net profits of the company between themselves and their servant in certain proportions, that the Company would be intending to divide between them and their servant, and that in which they were proposing to give the servant an interest, would be what belonged to themselves, and not a sum of money which did not belong to themselves, but was payable to another person, namely, in the case of excess profits duty to His Majesty's Treasury."

In that case Dukes, L. J. and Eve, J., agreed with Warrington, L. J. From the report it appears that Dukes, L. J., based himself upon grounds of equality and rateability whereas Eve, J. thought

(1) (1919) 2 Ch. 254

that the expression "profits of the business" occurring in the agreement meant the ultimate balance of the gross profits which was capable of being lawfully divided as dividend.

In the first place, the agreement which was to be construed in that case was made after the coming into operation of the Finance Act of 1915. In the second place, no definition of the expression "net profits" was given in that agreement. In any case, the agreement in that case was worded differently from the agreement that we have to construe. In these circumstances the decision given in *Patent Casting Syndicate, Limited* v. *Etherington* (1), does not govern the present case.

In May 1921, was decided by the English Court of Appeal *Vulcan Motor and Engineering Company, Limited* v. *Hampson* (2). In that case by an agreement made in 1912 the defendant was appointed Works Manager of the business of the plaintiff Company at a salary, and in addition he was to be paid a commission equal to 50 £ for every 5 per cent "profit earned by the Company", or fraction of five per cent *pro rata* after ten per cent had been earned by the Company. Of the three Judges who decided that case Warrington, L. J., followed his previous decision in *Patent Casting Syndicate, Limited* v. *Etherington* (1). Bankes, L. J., followed that decision without expressing approval or disapproval, but Scrutton, L. J. indicated that but for the decision in *Etherington's case*, he would have felt a difficulty in distinguishing for the purposes of that case excess profits tax from income-tax.

In re. the Agreement of *G. B. Ollivant & Company, Limited*, that came up before the English Court of Appeal in October, 1942, the relevant clauses of the agreement were :—

> " (1) The profits of the purchasers shall be computed by the auditors for the time being of the purchasers. Subject to any special provision in this agreement contained, the general principles to be

(1) (1919) 2 Ch. 254
(2) (1921) 3 K.B. 597

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adopted by them in making such computations *shall be those of ordinary commercial practice* but they shall be entitled to make such adjustments as they think appropriate in order to give effect to the principles of this agreement.

(3) The account shall include all usual and proper expenditure attributable to the working of the business whether in this country or abroad.

(8) No deduction shall be made for general reserves or for income-tax."

In construing that agreement Lord Green, M. R., thought that when the agreement required the auditors for the purpose of computing the profits of the purchasers to apply *"the general principles of ordinary commercial practice," the* reference must be to the computation of the profits of a trading company in order to arrive at the amount of distributable profits. Lord Clauson and Du Parcq, L. J., agreed with the Master of the Rolls.

On appeal the decision given in *G. B. Ollivant & Co., Limited,* was upheld in the House of Lords by Lord Thankerton, Lord Russell of Killowen and Lord Wright, Viscount Simon, L. C. and Lord Macmillan dissenting.

In India the matter came up for decision in *Walchand & Company, Limited* v. *Hindustan Construction Company,* (1). In deciding that case Beaumont, C. J. (Rajadhyaksha, J., concurring), said—

> "I should approach a profit sharing agreement of this nature with the presumption that, unless the parties have otherwise provided, they probably did not intend to base commission on excess profit which the employer is not entitled to retain."

In deciding that case Beaumont, C. J., thought that the decisions given in *Patent Casting Syndi-*

(1) A.I.R. 1944 Bom. 5

cate, Limited v. *Etherington* (1), *Vulcan Motor & Engineering Company, Limited* v. *Hampson* (2), and *In re the Agreement of G. B. Ollivant & Co., Limited* (3), supported the view that he was inclined to take apart from authority.

In deciding this case I have examined the argument on which the judgment in *Walchand & Company, Limited* v. *Hindustan Construction Company* (4), proceeds with profound respect for the views of its author on such a point.

In *Walchand & Company, Limited* v. *Hindustan Construction Company* (4), Beaumont, C. J., noticed that it was open to the managing agents to say that their remuneration was based on the profits made as a result of their efforts and it was not their concern that the company was not allowed to retain a part of such profits. Beaumont, C. J., however, thought that in a profit sharing agreement, under which an employer is paying an employee a commission based on the profits of the business, in the absence of a contract to the contrary, it is reasonable to suppose that the parties did not intend to base commission on excess profits which the employer is not entitled to retain. In *James Finlay & Co., Limited* v. *Finlay Mills, Limited* (5), Beaumont, C. J., himself was critical of this line of reasoning. In that case, *Patent Casting Syndicate, Limited* v. *Etherington* (1), and *Vulcan Motor & Engineering Company, Limited* v. *Hampson* (2), were cited. In dealing with those cases Beaumont, C. J., said—

> "Those cases were, I think, founded on the general consideration, that where one is dealing with a profit sharing agreement, an agreement under which an employer is paying an employee a commission based on the profits of the business, it is reasonable to suppose that what the parties intended to share were the profits which otherwise would have belonged to the employer, and that a portion

(1) (1919) 2 Ch. 254
(2) (1921) 3 K.B. 597
(3) (1942) 2 A.E.R. 528
(4) A.I.R. 1944 Bom. 5
(5) 47 B.L.R. 774

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of the profits taken bodily by the revenue authorities, which the employer himself never gets the benefit of, was probably not intended to be shared with the employee. But in arriving at that conclusion, the Judges were in the difficulty of having to distinguish excess profit tax from income tax, because it was very well settled at the dates when those cases were decided that one could not deduct income-tax from divisible net profits in such a case. It had been held that income-tax is something which is payable out of profits after they are ascertained, and not a liability to be deducted in ascertaining the profits. No doubt, it was rather difficult to explain why the same principle should not be applied to excess profits duty, but I think the Judges felt, that if they did apply the same principle, they would be reaching very inequitable results, and they did manage to distinguish the case of excess profits duty from the case of income-tax. Whether all the grounds of distinction are sound in law, it is not necessary to consider, because those cases are really only relevant, if the excess profits tax is not expressly dealt with in this agreement as another tax on income."

From the observations of Beaumont, C.J., in the passage cited it is plain that that eminent Judge himself doubted the correctness of the decision given by him in *Walchand & Co., Ltd.* v. *New Hindustan Construction Company* (1).

For the reasons given above, I think that *Walchand & Co., Limited* v. *Hindustan Construction Company* (1), was wrongly decided.

In parting with this case I wish to say a few words about two cases, *William Hollins & Co., Ltd.* v. *Paget* (2), and *Thomas* v. *Hamlyn* (3).

(1) A.I.R. 1944 Bom. 5
(2) (1917) 1 Ch. 187
(3) (1917) 1 K.B. 527

In *William Hollins & Co., Ltd.* v. *Paget* (1), the expression that came up for construction before Eve, J., was "profits made during the financial year." In construing that expression Eve, J., said :—

> "It (Excess Profits Duty) is, in my opinion, a contribution to the Exchequer of a proportion of the Company's profits, and for the purpose with which I am dealing stands very much on the same footing as the income-tax. It ought not, I think, be deducted before ascertaining the excess profits on which the defendant's commission is to be calculated."

In *Thomas* v. *Hamlyn & Co.* (2), it was held that the excess profits duty could not be deducted in computing the net profits upon which the plaintiff was entitled to receive commission.

I do not propose to deal with other English cases cited, because in none of them the construction of a document similarly worded as in this case was in question.

In these proceedings it is not absolutely necessary to express any final opinion upon the soundness of the decision given in *Patent Casting Syndicate, Limited* v. *Etherington* (3), *Vulcan Motor & Engineering Company, Limited* v. *Hampson* (4), and *L. C., Limited (in Liquidation) v. G. B. Ollivant, Limited and others* (5), for the language of the agreements in those cases was different from the language of the agreement in the present case. In *L. C., Limited (in Liquidation)* v. *G. B. Ollivant, Limited and others* (5), the agreement was not a managing agency agreement and that agreement required the auditor for the purpose of computing the profits of the purchasers to apply *'the general principles of ordinary commercial practice'* and *to make such adjustments as they thought 'appropriate in order to give effect to the principles of the agreement.'*

(1) (1917) 1 Ch. 187
(2) (1917) 1 K.B. 527
(3) (1919) 2 Ch. 254
(4) (1921) 3 K.B. 597
(5) (1944) 1 A.E.R. 510

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Giving the matter my anxious consideration, I find that we must answer the question put to us in the negative and hold on the construction of the managing agency agreement that excess profits tax does not fall to be deducted from the profits of the company for the purpose of arriving at the annual net profits of which a percentage should be paid to the managing agents as their commission.

No orders as to costs.

Harnam Singh, J.

SONI, J. I agree to the answer according to the facts of the case and the circumstances prevailing in the country. The agreement was entered into in 1936, while the Excess Profits Tax was imposed in 1940. In this country there is a most deplorable lack of interest taken by the shareholders in their company, and one can assume that had the Excess Profits Tax been in existence when the agreement was to have been entered into, the Managing Agents would have got the agreement differently worded without much difficulty. Had it not been because of this circumstance of lack of interest prevailing in the country I would have found it difficult not to agree with the majority opinion in the House of Lords in *Ollivant's case* (1), cited by my learned brother Harnam Singh. As matters stand in this country the agreement must be taken as it is. A different agreement cannot be spelt out by means of judicial construction.

FALSHAW, J. I have had the advantage of perusing the judgments of my learned brethren, and agree with the answer proposed. I cannot usefully add anything to the exhaustive statement of the case by my learned brother Harnam Singh, J, and I also agree with my learned brother Soni, J., that if the Excess Profits Tax had been in existence it is probable, that the Managing Agents would have had the agreement worded differently in their favour.

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(1) (1944) 1 A.E.R. 510