was residing on the second floor of the building in dispute. On due appreciation of the evidence on the record, it is clear that the petitioner has led unimpeachable evidence that she is residing with her children on the second floor of the building in dispute, which is consequently exempt from attachment and sale in execution of the decree under section 60(1) (ccc) of the Code.

(9) Consequently, I allow this revision petition and hold that the second floor of the building in dispute is exempt from attachment under section 60(1) (ccc) of the Code and the same cannot be sold in execution of the decree. There shall, however, be no order as to costs. The executing Court shall now proceed with the execution application in accordance with law.

R.N.R.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX HARYANA AND CHANDIGARH, ROHTAK,—*Applicant.*

versus

M/S ANAND RUBBER AND PLASTICS (P) LTD,—*Respondent.*
Income Tax Reference No. 82 to 84 of 1978.

November 7, 1988.

Income Tax Act (XLIII of 1961)—S. 256(1)—Assessee incurring heavy losses—Rear shed of factory given on lease—Rental income—Whether can be treated as business income.

Held, that the entire premises were being used by the assessee for running its factory but due to heavy losses, the production was reduced with the result to minimise losses the rear portion was temporarily leased out as a commercial asset. Hence, the Tribunal was right in considering the income as business income. Moreover, on the peculiar facts of this case we are of the opinion that hardly any question of law arises and largely it is a question of fact.
(Para 6).

Reference under Section 256(1) of the Income Tax Act, 1981 by the Income Tax Appellate Tribunal Chandigarh Bench for the

opinion of the following question of Law arising out of in I.T.A. Nos. 1091 of 1975-76 and 816 and 1152 of 1976-77 to the Hon'ble High Court of Punjab and Haryana at Chandigarh for its opinion :

> *"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the rental income derived by the assessee—company for the assessment years 1971-72, 1973-74 and 1974-75 from letting out of a part of the factory building constituted 'business income'?*

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, *for the Appellant/Petitioner.*

S. S. Mahajan, Advocate, *for the Respondent.*

JUDGMENT

Gokal Chand Mital, J.

(1) The Income-tax Appellate Tribunal Chandigarh Bench has referred the following question for opinion of this Court :—

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the rental income derived by the assessee-company for the assessment years 1971-72, 1973-74 and 1974-75 from letting out of a part of the factory building constituted 'business income'?"

M/s. Anand Rubber and Plastics (P.) Ltd., Faridabad, the assessee is a private limited company incorporated in the year 1963. The objects of the Company included manufacture of all types of rubber goods from natural and synthetic rubber components, mattresses, pillows, sheets and solutions etc. To carry out the objects the assessee installed a plant for the manufacture of cycle and rickshaw tyres, rubber sheets etc. The factory premises consisted of three portions, the main building, the front shed and the rear shed. The main building comprised an area of 12500 Sq. feet, the front shed 6000 Sq. feet and the rear shed 4000 Sq. feet. In the first few years, the assessee incurred heavy losses due to various difficulties and the quality of the products being not up to the mark. As a result, it ran into financial difficulties. To curtail the losses the production was reduced with the result the rear shed became surplus and to reduce the business losses, the rear shed was given on lease for a period of 11 months on monthly rent of Rs. 1,480 to M/s Maheshwari and Company Private Limited,—*vide* lease deed

dated 1st September, 1970. For the assessment year 1971-72, rental income of Rs. 10,720 was shown as a part of business income but the Income-tax Officer treated the rental income as the income under the head 'property' and after allowing 1/6th for repairs, the balance was included in the taxable quantum.

(2) For the assessment year 1972-73 the rental income was shown by the assessee under the head 'business' and this time the Income-tax Officer accepted the assessee's claim.

(3) For the next two assessment years 1973-74 and 1974-75 the assessee claimed the rental income as business income but the Income-tax Officer did not accept it and after allowing permissible deductions from the rental income for repairs etc. the same was treated as the income under the head 'other sources' and not as the business income. For the years 1971-72, 1973-74 and 1974-75, the assessee took the matter in appeal before the Appellate Assistant Commissioner who accepted the contention of the assessee and held that by giving the factory premises on lease the assets did not cease to be commercial assets and treated the rental income as the income from the business. Against the aforesaid the Revenue came up in appeal before the Tribunal. On consideration of the matter the Tribunal recorded the following findings :—

> "We have heard the parties and considered the matter. We are of the view that the Department does not have a strong case and the assessee must succeed. The learned Departmental Representative was not in a position to controvert the facts as stated by the learned counsel for the assessee. It is not disputed that the assessee had run into heavy losses. In fact, while computing the income for the year 1973-74, the Income-tax Officer adjusted a sum of Rs. 23,537 for the brought forward losses from the earlier years and in 1974-75, the brought forward loss was of Rs. 2,30,474. In 1974-75, the resultant business loss was computed by the Income-tax Officer at Rs. 1,08,600. We are inclined to agree with the Appellate Assistant Commissioner that a temporary leasing out of a part of the commercial asset would not controvert that part of the commercial asset into house property, income from which could be calculated as 'Income from property' only. The assessee had relied

on a number of decisions before the Appellate Assistant Commissioner. In fact, there could be no dispute that in such circumstances, the hire income from letting out of a part of the commercial asset would call for being considered as the business income of the lessor. The main part of the factory building was continued to be used by the assessee company for its own business activities and only that part of the building which could not be exploited by the assessee company was let out for a short while by it to some other manufacturing concern. We accordingly see no reason to interfere with the order of the Appellate Assistant Commissioner in this regard and up hold the same."

As a result, the decision given by the Appellate Assistant Commissioner was maintained by the Tribunal.

(4) After hearing the learned counsel for the parties and on consideration of the matter, we are of the view that on the facts of the case the Tribunal was right in holding that the rental income derived by the assessee for the three years in question from letting out a part of the factory building constituted the business income. One of the earlier decisions was rendered by the Supreme Court in *New Savan Sugar and Gur Refining Co. Ltd.* v. *C.I.T. Calcutta* (1), wherein the rental income received on letting out the entire factory premises was held to be the rental income from other source and not business income. The Delhi High Court in *C.I.T. Delhi-II* v. *Superfine Cables Private Ltd.* (2), had an occasion to deal with this matter and after referring to a large number of authorities came to the following conclusion :—

"Thus, in each case, what has to be seen is whether the asset is being exploited commercially by the letting out or whether it is being let out for the purpose of enjoying the rent. The distinction between the two is a narrow one and has to depend on certain facts peculiar to each case."

(5) Even before the Delhi High Court, the entire factory premises were let out and there was no material to show that the letting out was commercial motivation and, therefore, was treated as income from "Other sources".

(1) (1969) 74 I.T.R. 7.
(2) (1955) 154 I.T.R. 532.

(6) Adverting to the facts of the case, it is clear that the entire premises were being used by the assessee for running its factory but due to heavy losses, the production was reduced with the result to minimise losses the rear portion was temporarily leased out as a commercial asset. Hence, the Tribunal was right in considering the income as business income. Moreover, on the peculiar facts of this case we are of the opinion that hardly any question of law arises and largely it is a question of fact.

(7) Accordingly, we answer the question in affirmative, i.e., against the revenue, but with no order as to costs.

S.C.K.

Before G. C. Mital and S. S. Sodhi, JJ.

LUDHIANA CO-OPERATIVE MARKETING SOCIETY LTD.,—*Petitioner.*

versus

COMMISSIONER OF INCOME TAX, LUDHIANA,—*Respondent.*

Income Tax Reference No. 32 *of* 1979.

November 16, 1988.

Income Tax Act (XLIII of 1981)—Ss. 10(29), 80 *P—Co-operative Societies Act,* 1912—*Preamble—Society registered under the Co-operative Societies Act—Whether an authority under S.* 10(29) *of the Act—Rental income derived by the assessee/society—Whether exempt from tax.*

Held, that a plain reading of the preamble would show that the Co-operative Societies Act, 1912 was not a law enacted by the legislature to create an 'Authority', but was enacted to facilitate the formation of Co-operative Societies for the purposes mentioned therein. The fact that Co-operative Societies have been specifically dealt with under the provisions of S. 80 P of the Income Tax Act, 1961 is a clear pointer to the legislative intent in not having Co-operative Societies fall within the ambit of S. 10(29) of the Income Tax Act. Hence it has to be held that the assessee/co-operative society is not an 'Authority' within the meaning of S. 10(29) of the Income Tax Act, and therefore not entitled to claim exemption for whole of its income. (Paras 3, 4 and 5).