
(1975) 10 KL CK 0010
In the High Court Of Kerala

Harrisons and Crosfield Limited

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 24-10-1975

Acts Referred:

COMPANIES ACT, 1956 — Section 226, 309

Payment of Bonus Act, 1965 — Section 10, 11, 12, 2, 23

Citation : (1976) 2 LLJ 289

Hon'ble Judges : T. Chandrasekara Menon, J;P. Subramonian Poti, J

Bench : Division Bench

Judgement

P. Subromanian Poti, J.—In these petitions two awards, those in Industrial Dispute No. 14 of 1966 and Industrial Dispute No. 23 of 1967 are under attack. The first two original petitions relate to the former award, O.P. No. 4747 of 1972 being that by the management and O.P. No. 4921 of 1972 being that by the union. The last two petitions challenge the latter award, O.P. No. 4734 of 1972 being that by the management and O.P. No. 4945 of 1972 being that by the union. Industrial Dispute No. 14 of 1966 concerns bonus for the year 1964-65 ending with 30-6-1965 and Industrial Dispute No. 23 of 1967 relates to the bonus for the year 1965-66 ending with 30-6-1966. The question arising for decision in respect of these two awards is the same and, therefore, the petitions are disposed of by a common judgment.

2. The dispute is between M/s. Harrisons & Crosfield Limited and its workmen represented by several unions. In the award the allocable surplus has been worked out and bonus has been determined accordingly. The controversy concerns the determination of such allocable surplus for both the years.

3. The Industrial Tribunal, Alleppey found that the employees are entitled to 1964-65 bonus at 3.7% based upon the allocable surplus and, therefore, in accordance with SECTION 10 of the Payment of Bonus Act declared the minimum bonus of 4 per cent as due to the workmen for that year. For the next year, 1965-66 such bonus was found to be 10.6% of the total salaries and wages, In

the two petitions by the management it is contended that for the year 1965-66 the bonus determined is excessive and for the year 1964-65 though the bonus is determined at 4 per cent the allocable surplus must be held to be less than what it has been found to be in the award so as to enable the management to claim set on in the subsequent years.

4. At the hearing before us dispute was raised only in regard to two items and it is agreed on both sides that in these petitions we need concern ourselves only with these two items. Therefore, these are the only matters considered by us in these petitions.

5. At the instance of the management the claim is that the Industrial Tribunal was in error in finding that the amounts paid to the Executive Officers under the Additional Remuneration Scheme should be added back to the net profit of the company to arrive at the gross profit and consequently the available surplus. On behalf of the workmen the only contention pressed is that the Tribunal was in error in taking into account the proportionate Head Office expenses in computing the gross profit.

6. It has been the practice with the management to pay to its Executive Officers a certain percentage of the profit, ranging from 1/8 per cent to 2.25 per cent, in addition to their salary as remuneration. It is admitted that this was the case even long prior to the commencement of operation of the Payment of Bonus Act. This was being so paid under the terms of the contracts with the employees. Exhibit M8 before the Tribunal is a specimen of such contract. A copy of the same is filed in O.P. No. 4747 of 1972 marked as Ext. P2. It is agreed that this may be taken as the usual form in which the contract for additional remuneration is agreed to. Exhibit P2 shows that the management offers to the Executive Officer concerns salary, C.O.L. allowance and A.R.S. which means "Additional Remuneration Scheme", the last of these being stipulated as a percentage of the branch profits. That it is the term of the contract of appointment and is part of the remuneration payable to the employee is evident. But according to the unions the class of employees who earn this additional remuneration, though under the terms of the contracts, are persons receiving a salary of more than Rs. 1,600 per mensem and, therefore, are not employees within the meaning of that term in the Payment of Bonus Act. Though termed as additional remuneration the payment should be really taken as payment of bonus to such persons and such payment being not authorised by the Act must be added on to the net profit of the company otherwise determined. This addition would be reflected in the available surplus. As a matter of fact the total payment for the year 1964-65 by way of additional remuneration under the Additional Remuneration Scheme amounted to Rs. 2,47,540 while for the year 1965-66 this amounted to Rs. 3,58,308. The case of the unions is that if this amount is added on to the net profit the available surplus would be more and that would mean that the bonus to be determined would be higher. The unions took the stand before the Tribunal as well as before this Court that the payment made to the Executive Officers by

way of additional remuneration has considerably deflated the bonus due to the workmen, that such payment of additional remuneration is not reasonable and, therefore, adjustment is called for by the Tribunal when determining the percentage of bonus payable to the workmen.

7. The Payment of Bonus Act, 1965 (hereinafter called the Act) provides in Section 11(1) that where in respect of any accounting year the allocable surplus exceeds the amount of minimum bonus payable to the employees u/s 10, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in the accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage. This means that the entire allocable surplus is available for payment as bonus to the employees and the division of such allocable surplus between the employees entitled thereto is in proportion to the salary or wage earned by such employees during the accounting year. But there is the maximum of 20 per cent prescribed by the Section and a minimum of 4 per cent prescribed by Section 10. If the allocable surplus is not sufficient to pay the 4 per cent minimum and yet payment is made, the excess payment could be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year. If there is excess after payment of the maximum rate of 20 per cent, it can be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for payment of bonus. The percentage of bonus to be paid to the workmen is to be worked out on the allocable surplus. Allocable surplus is defined in Section 2(4) of the Act thus:

(4) "allocable surplus" means--

(a) in relation to an employer, being a company (other than a banking company) which has not made the arrangement prescribed under the Income Tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act, sixty-seven per cent, of the available surplus in an accounting year;

(b) in any other case, sixty per cent of such available surplus, and includes any amount treated as such under Sub-section (2) of Section 34;

Therefore, allocable surplus is a percentage of the available surplus. How available surplus is to be computed is provided for in Section 5. The proviso to that section may not be relevant for the purpose of this case. "Available surplus" is to be determined by deducting from the gross profits such sums as are referred to in Section 6 of the Act. Therefore, the gross profits has to be worked out first and from such gross profits the prior charges mentioned in Sub-sections (a) to (d) of Section 6 have to be deducted. These are deductions by way of depreciation admissible in accordance with the provisions of the Income Tax Act, development rebate or development allowance which the employer is entitled to

deduct from his income under the Income Tax Act, any direct tax which the employer is liable to pay and such further sums as are specified in respect of the employer in the Third Schedule. "Gross profit" is also to be determined in terms of the provision in Section 4 of the Act, In the case of a non-banking company it has to be calculated in the manner specified in the Second Schedule. This available surplus is to be determined by first determining the gross profits in accordance with the Second Schedule and by deducting from it the prior charges mentioned in Section 6. Once available surplus is so determined the allocable surplus is determined as a percentage thereof.

8. The question in these cases, therefor, is one of determination of gross profits. Reference has to be made to the Second Schedule, That provides that to the net profit as per profit and loss account certain additions have to be made while certain deductions also have to be made therefrom. The items of additions are shown as items 2, 3 and 4 and item of deduction is shown as 6. The resultant gross profit is item 7. It is that which is to be reckoned for the purpose of determining the available surplus. The question then concerns the net profit as per profit and loss account.

9. Net profit is not a term defined in the Act. Of course, it need not be, for, it is a term of common usage and in the normal course there may not be scope for controversy as to its scope. Expenses incurred for the purpose of carrying on the business are deductible from the gross income to arrive at the net profits. There would be no scope for dispute that remuneration paid to employees are to be taken as expenses deductible in determining the net profit. But if certain items of expenses claimed as incurred are challenged as fictitious it may be open to an Industrial Tribunal to go into the question whether such expenses have actually been incurred to determine the real net profit. In other words, the fact that the profit and loss account shows any particular sum as the net profit need not be conclusive, for, if it would be so, it would always be open to the employer to deflate the net profit by accounting expenses not actually met and thus reducing the bonus payable to the employees. Even before the Payment of Bonus Act was enacted, it was well-settled that the Industrial Tribunal could go into the genuineness of the items of expenses claimed as having been met by the employer.

10. The next question is this: Even if expenses have been incurred by the employer for the purpose of carrying on his business, could it be said that in all cases such expenses are to be deducted in arriving at the net profit for the purpose of computation of gross profit under the Second Schedule to the Act? It is the contention of the unions that if payments are made ex gratia they do not have the character of remuneration payable under the terms of the contract and the Industrial Tribunal could properly refuse to take note of such payments in determining the net profit. The deduction permissible would be on account of the payment of salary to the employees and not any other payment such as bonus to a person who is not entitled to bonus, The other argument is that even if it is

paid under the terms of the contract, it is open to the Tribunal to examine the propriety of such payment with a view to determine whether the payment is reasonable. Reasonableness in this context is to be determined with reference to the impact of such payment on the workmen concerned, whether that would unduly deflate the bonus payable to those who are entitled to such bonus under the Act.

11. We will now examine the question whether the additional remuneration paid to the Executive Officers during the two years was so paid as ex gratia or by way of bonus. It is difficult to accept the case of the unions in this regard. There is no case for the unions that these payments were really not made or that this scheme was introduced with a view to defeat the provisions of the Act. In respect of Executive Officers on higher scales of pay the company has deemed fit to offer as a term of remuneration a percentage of the profit of the Branch concerned in addition to their monthly salary. The remuneration could very well take that form. As an illustration, we may refer to Section 309(3) of the Companies Act, 1956, which envisages payment to the Managing Director or a Director who is in the whole-time employment of the company, of remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly one way and partly the other. This is just to illustrate that the concept of remuneration as a percentage of the profits in addition to a monthly salary is not unfamiliar. Probably "Additional remuneration" under the scheme is intended as incentive to the Executive Officers of the branch concerned to work more efficiently so as to cause more profit from the working of the branch. It is not necessary to consider whether this is something akin to bonus, for, it is plainly a payment to be made as part of the remuneration of an employee, depending upon the profit earned by the branch concerned. It is, therefore, a term of the contract of employment and forms part of the remuneration of the employee agreed under the contract of employment. It is pointed out that it would not be possible to determine the profits for the purpose of payment to the Executive Officers unless bonus is determined first and such bonus cannot be determined until the profit payable to these employees is determined. The question concerns only the computation and affects no principle. Therefore, if additional remuneration is a payment made as part of the remuneration under the terms of the contract of employment with the employees concerned, we see no reason why it should not be deducted as an allowable item of expenditure in determining the net profits, subject, of course, to the objection of reasonableness which question we will consider presently. If the employer is under an obligation to make the payments and the payments are not ex gratia and further the payments are by way of remuneration to the employees and, therefore, incurred for the purpose of the business in normal mercantile practice, such expenditure has to be deducted to determine the net profit. We can see no rhyme or reason in any plea that despite the obligation of the employer to pay such amount in accordance with the terms of the contract as remuneration to its employees, such payment is not an item to be deducted in ascertaining the net profit of the

employer.

12. Section 23 of the Act provides for a presumption of the accuracy of the statements and particulars contained in the balance sheet and profit and loss account of a corporation or a company other than a banking company duly audited by the Comptroller and Auditor General of India or by auditors duly qualified to act as auditors of companies under Sub-section (1) of Section 226 of the Companies Act, 1956. But this presumption is only as to the accuracy of the statements and particulars and not propriety of inclusion of any item of expenditure or income in the balance sheet as such. We are unable to accede to the contention that the net profit as per profit and loss account must be accepted as the final figure by the Tribunal and the Industrial Tribunal has no authority to go into the question whether certain items of expenditure deducted in arriving at the net profit are properly deductible. As the Supreme Court said in *Workmen of William Jacks v. Management of William Jacks* 1971--I L.L.J.503--

The presumption u/s 23 is confirmed to the accuracy of the statements and particulars contained in the balance sheet and the profit and loss account. If any item in the accounts is wrongly shown "as expenditure when, on the face of it, it is not so, the Court is not bound to hold that the method adopted in preparing the accounts is correct simply because the auditors raised no objection".

13. Learned Counsel for the unions drew our attention to the decision of the Supreme Court in *Employers in Relation to The Management of Indian Cable Co. Vs. Their Workmen*, . The controversy the re concerned the claim for adding back the amount paid as bonus to the employees drawing a salary of above Rs. 750 per mensem in addition to what they would be entitled to under the Payment of Bonus Act. Those who draw salaries not exceeding Rs. 1,600 per mensem fall within the definition of employees and they are entitled to bonus under the Act. But u/s 12 of the Act, in respect of employees on a salary of above Rs. 750 per mensem only their salary up to Rs. 750 is to be taken into account for determining the bonus payable to them. That means that irrespective of their actual salary they would be entitled to bonus as if their salary was Rs. 750 per mensem. In the case before the Supreme Court the employer wanted to pay such employees bonus on their entire salary but payment of such bonus on their salary above Rs. 750 would not be under the Act and, therefore, would be in the nature of an ex gratia payment to those employees. The amount so paid to them was sought to be deducted by way of expenses incurred by the employer in arriving at the net profit. The employees entitled to bonus insisted that such payment should be added back as that was not bonus under the Act and if at all paid was not to be taken into account in determining the available surplus. The Tribunal found that the amount of Rs. 2.65 lakhs which was the total of the amount paid to the Officers in that category should be added back as that was not an item which could be deducted to determine the net profit as claimed by the Management. The Supreme Court was of the view that what the company had done was to pay the employees not only the bonus as calculated under the

Act, but also an additional amount, and this cannot be considered to be an expenditure debited directly to reserves. The Tribunal was satisfied in adding back this amount to the gross profits. Reliance has been placed on this decision by learned Counsel for the unions, M/s. P. Balagangadhara Menon and M.P. Menon. We are afraid this case is not of any assistance to them, for the nature of the payment in that case was entirely different from the nature of payment made as additional remuneration. In the case before the Supreme Court payment was of an amount which the employer was not bound to pay. The employer probably took the view that it was only fair that those officers who received salary even above Rs. 750 must also be paid bonus on their entire salary and, therefore, decided to make such payment, when there was no legal obligation to make such payment. That could not be said of the remuneration payable by the employer in terms of the contract of employment.

14. Now we come to the question of reasonableness of the payment. We must observe that this question was noticed by the Supreme Court in the decision in *Oriental Metal Pressing Works (P.) Ltd. Vs. The Workmen and Another*, The dispute in that case concerned a claim for bonus. One of the questions raised was whether the Tribunal was justified in reducing the remuneration of the Managing Director from Rs. 3,500 to Rs. 2,500 per mensem for the purpose of determining the net profit. According to the written agreement between the employer and the Managing Director the latter was entitled to a salary of Rs. 3,500 per mensem and it was, therefore, contended before the Supreme Court that the Tribunal was clearly wrong in not allowing deduction of this salary based on an agreement binding on the employer. The Supreme Court did not decide this question as it was unnecessary for the case before it. That was because it was admitted on behalf of the employer that it made no difference to the amount awarded as bonus whether this amount of Rs. 12,000 per year was allowed or not. The Supreme Court observed--

The question whether the Tribunal can reduce the remuneration which is based on a written agreement as binding on the employer is, therefore, left open to be decided in a case where it will matter.

Since on the facts of the case before us this question arises for decision, we have necessarily to advert to it.

15. We may refer, in this context, to the decision of the Supreme Court in *Crompton Parkinson (Works) v. Its Crompton Parkinson (Works) Private Ltd., Bombay Vs. Its Workmen and Others*, , a decision which was noticed in the later Supreme Court decision just adverted to. The question there concerned the claim to deduct an amount of Rs. 7.67 lakhs actually paid as service fee by the employer-company to its parent-company under an agreement concluded between the two companies in order to provide, on a long term basis, for the continuance of the technical assistance and service and other facilities afforded by the parent company on which the employer was wholly dependent. There was no dispute that the company had at its disposal the benefit of the parent-

company's accumulated knowledge and experience, technical data and goodwill and the reputation attaching to its products. Ordinarily the employer-company would have to maintain its own research laboratories and specialised staff to develop new methods, innovations and processes. The company did not maintain a separate research establishment of its own as it obtained the service of the parent-company under the agreement for all of which the return was the service fee. The Tribunal took the view that the test of commercial necessity applied by the Income Tax authorities for determining whether the expenditure was allowable u/s 10(2)(xv) of the Indian Income Tax Act should be applied by the Tribunal also. The Supreme Court pointed out that in the case of Income Tax the test of commercial necessity has to be applied by reason of the express provision in Section 12(2)(xv) which authorises making allowances for expenditures laid out and expended wholly and exclusively for the purpose of the business. The absence of such a provision in the Industrial Disputes Act was noticed and then the Supreme Court observed--

In the absence of cogent and compelling evidence leading to the definite conclusion and finding that a purported expenditure was sham or had been made with the express object of minimizing the profits with a view to deprive the workmen of their bonus, it is no part of the duty of an Industrial Tribunal to substitute its own judgment as to what was or was not commercially justified in the place of the judgment exercised by the company and its directors in whom in law the management of the company is confided.

The Supreme Court also observed--

The reasonableness and legality of the payment of such fee is also supported by the fact that the Income Tax authorities and the Reserve Bank of India have not taken any exception to such payment.

16. In the case of Podar Plastics v. Its Podar Plastics (P) Ltd. Vs. Its Workmen, a sum of Rs. 60,000 was sought to be deducted as prior charges, that being a payment of notional remuneration to one of the Directors of the company, Sri K.R. Podar. The company was a private limited company of which Sri Podar was one of the four major share-holders. According to the company Sri Podar devoted the whole of his time to the supervision and management of the company and he was, therefore, entitled to charge remuneration at the rate of Rs. 5,000 per mensem. Though this amount was not paid to him this was sought to be deducted from the gross profits of the company for determining the bonus payable to the workmen. This is a case which arose before the Payment of Bonus Act came into force and at a time when bonus was being determined in accordance with the Full Bench formula. The Supreme Court observed that the working of the formula was no doubt notional to some extent. But it would not be permissible for the employer to make it still more notional by introducing claims for prior charges on purely hypothetical and almost fictional basis. In that context, Gajendragadkar, J. said--

If Podar had been paid remuneration regularly and it had been duly shown in the books of account, a claim in that behalf could have been made by the appellant and subject to the scrutiny by the Industrial Tribunal as to reasonableness of the said payment, such a claim would have been allowed; but if for any reasons Podar did not charge any remuneration, it would be unfair to allow a deduction on that account to be made notionally because the working of the formula is sometimes described as notional.

It appears to us that the Supreme Court has evidently indicated that the reasonableness of payment of Rs. 5,000 per mensem to Sri Podar would have been open to examination if as a matter of fact it had been paid.

17. The case before the Supreme Court in *The State of Mysore Vs. The Workers of Gold Mines*, , was one in which an award of the Industrial Tribunal relating to payment of bonus was under challenge. That was also a case where the question of bonus had to be determined under the law as it stood prior to the Payment of Bonus Act. One of the questions raised in that case concerned the case of the employer for deduction of the annual contribution towards the pension fund in determining the gross profit. This was disallowed by the Tribunal. The scheme of pension fund came into operation from 1-1-1951. Certain rules had been framed in respect of this pension fund and a trust had been created for the administration of the fund. Under these rules the employers made the "initial contribution" to the fund. In addition to this initial contribution, half-yearly installments of such contribution had to be made periodically. This was claimed as deductible by way of prior charges but that was disallowed by the Tribunal. The Supreme Court was of the view that the findings of the Tribunal being findings of fact cannot be challenged before the Supreme Court. The Court referred to the reliance by the Tribunal on certain circumstances under which this fund came into existence. Gajendragadkar, J. observed in this context thus:

The class of persons for whose benefit this fund has been created consists of a very small number of officers. It does not appear from the record that these persons claimed this benefit or that granting this benefit was otherwise necessary for the successful operation of the affairs of the company.

Again the learned Judge said--

...even in regard to the annual contribution the Tribunal was not satisfied that the amount was reasonable and that the payment of this amount was otherwise justified on the merits.

It may not be out of place to point out here that the Labour Courts of the land in the pre-Bonus Act period had been holding the view that reasonableness of items said to have been expended by the employer was a question open to examination by the Industrial Tribunal or the Labour Court. The Labour Appellate Court of India had indicated in the case of *Greaves Cotton & Co. Ltd.* 1957 I L.L.J. 418, that where commissions are paid by virtue of contracts those would be on the same footing as remuneration such payments being made as

incentives to better business, but at the same time it cannot be said that whatever commission was paid was always sacrosanct and cannot be pruned down. The Labour Appellate Tribunal was of the view that it might have to be allowed at a lesser rate. Evidently this process of pruning is with a view to see that unreasonable payments are not allowed to reduce the bonus payable to the workmen otherwise. A similar view was taken by the Labour Court, Madras, in the decision in *United Bleachers Ltd.* 1960 I L.L.J. 701. Some textile mills floated a private limited company to run a bleaching and dyeing factory. This was mainly with a view to cater to the requirements of the constituents. The bulk of the business done by the factory was given by the constituent mills and a fraction of the work in a year was given by outsiders. The constituent mills were charged by the factory at a lower rate for the work than the outsiders. The result of the working was a trading loss. In considering the question whether bonus was payable the Labour Court took the view that the charges paid by the constituents did not reflect the real charges that had to be paid and that should be recomputed on the basis of prevailing rates. What the other customers paid would reflect the prevailing charges and when the charges of the constituents were so recomputed bonus was found payable and that was directed to be paid. We are referring to these cases only to point out the practice of taking into account reasonableness of the payments in deciding whether a particular payment by way of expenditure was admissible or not.

18. It appears to us that notwithstanding a particular payment having been made by the employer and he being shown to have made the payment under the terms of the agreement entered into by him, it is possible for the Tribunal to examine the question of reasonableness. Normally it would be assumed, in the absence of circumstances to the contrary, that any payment made under a contract is reasonable. But nevertheless on a plea by the employees that such payment is so unreasonable as to call for examination by the Tribunal or that such payment was made with a view to diminish the available surplus for payment under the Act the Tribunal must necessarily have power to examine this question. To illustrate instances when such examination may be called for: It may be that the payment of an exorbitant amount to one of the fulltime directors of a private limited company may, on the face of it, appear to a Tribunal as unwarranted. The reasonableness of such payment may then be open to examination. It may be that a section of the employees in the higher ranks in service are more favoured by the management. Instead of paying bonus to the low paid staff the management may think of diverting the surplus for assuring further pecuniary advantages to its executive officers in the higher ranks. Circumstances such as these and the consequences thereof are matters which may call for examination by Industrial Tribunals which have to determine the question of the bonus to be payable to the employees objectively and in the right perspective.

19. It is difficult to appreciate the consideration made by the Tribunal of the question of payment under the Additional Remuneration Scheme in the award of

the Tribunal in I.D. 14 of 1966. The finding in this regard by the Tribunal is in paragraph 26 of that award and that reads:

26. Taking into consideration the oral and documentary evidence adduced by both the parties and the contentions already set up by them in their respective statements and also their arguments regarding this objection, I am constrained to hold as follows:

Additional Remuneration Scheme is admittedly a scheme adopted by the Management unilaterally. Of course it cannot be denied that it is a contractual liability vested on the management since the terms of the contract of appointment contain this item also as one of the terms of the contract. At any rate the workmen are not entitled to question the authority of the management to pay amounts as per this scheme to the various executive officers of the company who are drawing more than Rs. 1,600 per mensem as salary. It can be seen that the Bonus Act envisages payment of bonus only to employees who are getting a monthly salary which is less than Rs. 1,600. Therefore, as an incentive to those executive officers who are drawing more than 1,600 as monthly salary, this scheme is introduced by the management. But the only contention set up by the union is that the amount thus paid to the various executive officers, i.e., Rs. 2,47,540 for the year ended 30th June, 1965, should be added back to the profits as per the annexed accounts, for the calculation of the available surplus. The management has opposed this contention on the ground that this cannot be considered as bonus to an employee as defined in the Act. Anyhow, it cannot be denied that an amount to the tune of 2½ lakhs of rupees is taken away from the profits to pay to some of the senior officers of the company who are drawing more than Rs. 1,600 as their monthly salary. Even according to MW1, the only witness examined by the management, the payment as per A.R.S. may range between Rs. 2,500 to Rs. 40,000 to the concerned officer. Taking all the facts and circumstances into consideration, I find that it is only just and reasonable on my part to hold, that the arguments put forward by the union to the effect that the real employees of the company who are to be benefited by the payment of bonus as per the provisions of the Act, are definitely put into a painful disadvantage when large amounts are taken away from the profits for making payments to the very-well-paid executive officers of the company, thus reducing the chances of the employees to get a better percentage of bonus, as very convincing and forceful. It is also forceful when the union contends that the very object of the enactment will be frustrated if such an action of the management is allowed without interference from a pedestal of justice. In the circumstances mentioned above I find that it is only just and reasonable on my part to interfere in this matter and direct the management to add back the amount of A.R.S. paid to their executive officers, in order to arrive at the gross profits and the available surplus and I do so. The latest ruling of the Supreme Court of India reported in *The Workmen of William Jacks and Co. Ltd., Madras, Represented by the William Jacks and Company Employees' Union Vs. Management of William Jacks and Co. Ltd., Madras*, as mentioned above, entitles the Tribunal to interfere when an item

in the account is wrongly shown as expenditure although the auditors have not raised any objection.

There is no finding on the question whether the Tribunal can direct add back of the additional remuneration when that is paid as part of the remuneration. Normally it cannot be added back unless as pointed out, the question of reasonableness is also examined and the Tribunal finds that the payment is so unreasonable that it calls for adjustment. On that question we find absence of deliberation by the Tribunal. Since primarily this is a question to be adjudged on the facts and circumstances of the case, we think it appropriate to remit the award to the Industrial Tribunal, Alleppey for consideration of this question and this alone. In I.D. No. 23 of 1967 the finding in the other award has been adopted and, therefore, that also calls for reconsideration so far as the question concerns payment of additional remuneration.

20. Now we come to the plea by one of the unions that the deduction of proportionate head office expenses was not called for. It has only to be noticed that such deduction has been made in accordance with the provisions of the Act. Gross profit under the Act is a term defined in Section 2(18) to mean the gross profits calculated u/s 4. u/s 4(b) it has to be calculated in the manner specified in the Second Schedule. Deductions have to be made from the net profit in accordance with the Second Schedule and one of such deductions is that in item 6(c) of the Schedule. That refers to expenses of head office allocable to Indian business. In the case of foreign concerns it is explained as proportionate administrative overhead. In the case of a foreign concern the administrative expenses of the head office would take in expenses on account of its business in India too and evidently that is the reason why allowance has to be made from out of the profits for the expenses of the head office. It is immaterial whether such amount is being remitted to the foreign country or kept in India, for, the deduction is to be made not on the basis of what exactly is to be remitted but on the basis of what is shown as against item 6(c) in the Second Schedule. That shows that deduction is to be in the proportion of Indian gross profit (item No. 7) to total world gross profit. In determining this amount no question arises other than the determination of the proportion between these two and the amount determined accordingly has to be deducted. The Tribunal has rightly allowed this deduction. The question whether such amount can be remitted to a foreign country or whether it has to be reserved to the credit of the foreign concern in India or even whether that is being treated as an item of expenditure by the Indian company docs not appear to be material, for irrespective of such question what is provided for is deduction of a particular amount to be calculated in a particular manner.

21. It is true that the proportion is to be determined as between the Indian gross profit and the total world gross profit. The Indian gross profit so far as the Harrisons & Crosfield Limited is concerned is the gross profit not only from its business in South India, but also that in North India. If the complaint is that

what is reckoned as gross profit is only that of the business in South India there is certainly some scope for the unions to point out the error. But I am afraid that will be to the disadvantage of the employees, for, in the normal course the Indian gross profits must be more than the gross profits of the South Indian business. It is said that in the case of M/s. Harrisons & Crosfield, that is of course the case. If that be the case the deduction must be of a higher amount than what has been permitted which would further reduce the bonus. As we understand them the unions have no case that the total Indian gross profits would be less than the gross; profit of the business in South India which alone has been taken note of. It was frankly conceded before us that if it is to be refixed on the basis of Indian gross profit the deduction would be more. Since the bonus is to be paid only on the gross profit of the business in South India, to adopt the Indian gross profit would be inequitable and in fact would be; disadvantageous to the workmen. Since we feel that a remit of this issue to the Industrial Tribunal to work out the proportion on the Indian gross profit would not be to the advantage of the unions we think no interference is called for on account of this dispute.

22. The result is that we dismiss O.P. Nos. 4921 and 4945 of 1972. We allow O.P. Nos. 4734 and 4747 of 1972 to the extent of reopening the awards in the two cases in so far as they concern the question of additional remuneration. All the other questions have become final. The matter will be disposed of by the Industrial Tribunal in accordance with law and in the light of the observations made in this judgment. Parties are directed to suffer costs in these petitions.