

(1979) 11 DEL CK 0034

In the Delhi High Court

Case No : Income-tax Reference No. 39 of 1972

K.S. Malik

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-11-1979

Acts Referred:

Citation : (1980) 124 ITR 522

Hon'ble Judges : S. Ranganathan, J; D.R. Khanna, J

Bench : Division Bench

Advocate : S.C. Manchanda and S.L. Aneja, for the Appellant; B.N. Kirpal and M.L. Verma, for the Respondent

Judgement

S. Ranganathan, J.—The Income Tax Appellate Tribunal has referred the following two questions of law for the decision of this court :

"(1) Whether, on the facts and in the circumstances of the case, the amount of Rs. 3,83,996 written off in the account of the assessed with the company could be treated as income u/s 2(24)(iv) of the Income Tax Act, 1961, or u/s 2(6C)(iii) of the Act of 1922 ?

(2) If the answer to the first question is in the affirmative, whether, on the facts and in the circumstances of the case, income is chargeable to tax for the assessment year 1957-58, as falling within the previous year relevant thereto ? "

2. The reference arises out of proceedings for assessment to Income Tax of Sri K.S. Malik, New Delhi, and relates to the assessment year 1957-58.

3. Sri K. S. Malik (hereinafter referred to as " the assessed ") was one of the governing directors of M/s. Phelps & Company Pvt. Ltd. (hereinafter referred to as "the company"). The company was owned by some Europeans till 1944. Its share capital consisted of 2,000 ordinary shares of the face value of Rs. 100 each and a preference share capital of Rs. 1 lakh. The assessed and his brother, Ujjal Singh, purchased these shares in 1944 for a total consideration of Rs. II lakhs.

They did not, however, have sufficient funds with them for payments towards the consideration. The assessed Therefore borrowed an amount of Rs. 3,45,000 from the company itself and this amount was debited to his account in the company's books and paid by the company on behalf of the assessed to the vendors. The amount of dividends payable to the assessed in respect of the shares held by him was credited to the account and the amount of the loan also carried interest which was debited to the account. On January 31, 1957, the debit balance of the assessed in this account was Rs. 3,83,996, The position was similar in the case of the assessed's brother also.

4. The assessed and his brother appear to have addressed letters to the company requesting that the amount lying to their debit should be written off. These letters dated February 24, 1957, were duly considered by the company. The board of directors of the company at their meeting held on March 28, 1957, noticed that the amounts due from the two governing directors represented the principal amounts of the loans advanced to them since they had cleared the interest which was charged and debited to their accounts by the company. It was further noted that the governing directors were not financially in a position to pay back the loans to the company. In these circumstances the board of directors resolved that the sum of Rs. 3,83,996 due from the assessed as well as the sum of Rs. 72,286 due from his brother should be written off. This action of the board of directors was approved in the annual general meeting of the company held on March 31, 1957.

5. As already stated, the assessed was a governing director and he was in receipt of salary income from the company. He also received dividend income in respect of the shares which he held in the company. He had also to pay interest on the loan taken by him from the company. All these transactions were accounted for by the assessed in a set of account books maintained by him in the name and style of M/s. K.S. Malik & Sons. There was some controversy at the earlier stages as to the previous year adopted by the assessed while filing his returns of income for various years. The position has now been fully clarified by the Tribunal. For the assessment years 1952-53, 1953-54 and 1954-55, the assessed adopted the 31st March as the previous year in respect of all his sources of income. However, for the assessment years 1955-56, 1956-57 and 1957-58 he had shown the previous year which ended on the 30th September preceding as the previous year in respect of the sources compendiously described as K.S. Malik & Sons, and the financial year ended on 31st March in respect of the other sources of income. Similarly, though the accounting year as mentioned in the assessment orders for the earlier years was different it has been found that for the assessment years 1955-56, 1956-57 and 1957-58, the previous year has been taken as the year ending on 30th September, for K. S. Malik & Sons and the financial year in respect of the other sources of income. The adoption of the previous year ending on 30th September, each year in respect of K. S. Malik & Sons was also upheld by the Tribunal in relation to the assessment year 1953-54 by its order dated February 27, 1958, for that assessment year.

6. For the assessment year 1957-58, the assessment was completed in the first instance on a total income of Rs. 17,208. Subsequently, the assessment was reopened u/s 147(a) read with Section 148 as the ITO was of opinion that the amount of Rs. 3,83,996 written off by the company was includible in the assessed's total income u/s 2(24)(iv) of the I.T. Act, 1961. The assessed filed, in response to the notice u/s 148, a return of income showing the same income as had been assessed previously but including in Part F of the return the above sum of Rs. 3,83,996, This inclusion has been upheld by the AAC and on further appeal by the Tribunal and hence this reference.

7. The first question for consideration is whether the sum of Rs. 3,83,996 can be treated as the income of the assessed. It is quite obvious that this sum cannot constitute the income of the assessed in the normal acceptance of that expression. It is well settled that the concept of income indicates something which goes into the pocket of an assessed and not what saves his pocket. It has also been held that the remission of a debt by a creditor would not result in the creation of income in the hands of the debtor. According to the department, however, the amount in question becomes the income of the assessed by virtue of the inclusive definition of the word "income" contained in Section 2(6C)(ii) of the 1922 Act which finds its counterpart, in Section 2(24)(iv) of the 1961 Act. According to this provision the expression "income" includes :

"the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for "such payment, would have been payable by the director or other person aforesaid ".

8. The simple case of the department is that the assessed was indebted to the company in the above sum and that as a result of the resolution of the company writing off the said sum the assessed has obtained a benefit from. the company which is covered by the above inclusive definition.

9. We are unable to see any satisfactory answer to the above contention of the department. Sri Manchanda, learned counsel appearing for the assessed, emphasised that in construing a provision which creates a statutory fiction a rule of strict construction should be applied. He points out that u/s 41(1) as well as Section 41(4) the I.T. Act provides for bringing to charge amounts or benefit received by an assessed even by way of a remission or concessions of a liability, only in cases where he had originally obtained a deduction from the revenue and he submits that since in the present case the debt owed by the assessed to the company did not figure in any trading account and was not claimed as a deduction at any stage the benefit received by the assessed, if at all, is only on capital account. He also contended that the expression "benefit" should be read in the light of the word "perquisite" in association with which it is employed and it should be taken to connote only tangible advantages received by an assessed

which put something into his pocket. Referring to certain English decisions he contended that no benefit to the assessed can be implied in a case where the company merely gives up a monetary claim due to it; there should be some expenditure or payment made by the company either to the assessed or a third person by which the assessed stands to gain. He further emphasised that the reference to the word "obtained" in the section shows that the benefit which an assessed receives should be something not ex gratia as in the present case but one which he is entitled to receive as a matter of right.

10. Interesting as these arguments are, we are unable to find any scope for introducing all these refinements into the simple language of the section. Even in construing an inclusive definition one has to give full effect to the ordinary meaning of the words employed in the statute. As pointed out by the department the assessed was indebted to the company in a large sum and it can hardly be gainsaid that when the company acceded to the request of the assessed to write off the said amount, the assessed did receive a benefit at the hands of the company. In some cases a benefit which an assessed obtains from the company may not be easily convertible in terms of money but the provisions require that even in such a case an attempt should be made to evaluate the benefit and treat the value as the assessed's income. In the present case, there is no such difficulty of valuation.

11. We find it difficult to accept the contention of Sri Manchanda that the section only takes in cases where the company has paid out certain monies or incurred certain expenditure the benefit of which the assessed receives. Such cases of payments made by the company to third persons which ensure to the benefit of the assessed are covered by the latter part of Section 2(6C)(iii). The English cases relied upon by Sri Manchanda are not very helpful. In *Doyle v. Davison* [1961] 40 TC 140, it was held that the managing director of a company could be taxed in respect of suras spent by the company on repairs of a premises belonging to the company, which he occupied as its managing director. In *Butter v. Bennett* [1962] 40 TC 402, the payment made by the company for coal and electricity supplied to the house and for the services of a gardener to the house provided by the company which was occupied by the assessed as its mill manager were held not to be assessable benefits. These two decisions turned on the language of Sections 161 and 162 of the English Income Tax Act. The statutory provisions applied where a company incurred certain types of expenses in or in connection with the provision of living or other accommodation and of certain other benefits or facilities. It cannot be inferred from these decisions that even under the Indian I.T. Act an actual expenditure incurred by the company is necessary before the provisions of Section 2(6C)(iii) may become applicable.

12. Sri Manchanda also placed considerable reliance on the decision of the House of Lords in *IRC v. Luke* [1963] 40 TC 630; [1964] 54 ITR 692. He relied on certain passages in the speeches of the learned law Lords to support his plea of strict construction. In that case, the respondent was the managing director of a

public company and he was occupying as a tenant a house belonging to the company under a tenancy agreement which made the company responsible for repairs to the fabric and for the fences and boundary walls. The excess of the company's expenses on owner's rates, insurance and duties over the amount paid by the assessed as rent was included as a benefit chargeable u/s 161 of the Act. Interpreting the effect of Sections 161 and 162 read together it was pointed out by Lord Dilhorne that they could be interpreted to mean that except where the expenditure incurred by the company resulted in the acquisition or production of an asset which remained its property, the director or the employee was liable to be taxed on an amount of equivalent value and also on the expenditure of repairs. In other words, the more expensive the repair, the greater would be the amount to be notionally added to his income. Lord Dilhorne proceeded to observe (p. 642):

"I cannot believe that it was the intention of Parliament that these provisions should have this effect. As I have said, the object of this Chapter appears to have been to prevent avoidance of tax liability by the payment of expenses allowances and, as a corollary to that, to bring into tax the value of benefits in kind. I cannot believe that it was the intention of Parliament to treat the cost of carrying out repairs, for which a landlord is normally responsible and the carrying out of which is to both his and the tenant's advantage, as a benefit in kind to the tenant."

13. Lord Reid said (p. 645):

"Section 160 deals with sums paid by the company to the director. Section 161 deals with sums paid by the company to other persons. It appears to me obvious that Section 161 cannot have been intended to bring in sums paid for things which are of no benefit at all to the director. I infer that not only from the apparent purpose of the whole chapter but also from internal evidence. The specified purposes: living accommodation, entertainment and domestic and other services, are typical benefits. The section then refers to "other benefits or facilities", making it clear that benefits alone are in contemplation... No doubt it is a long time since Lord Macnaghten said that Income Tax is a tax on income, and there are now a few cases where Income Tax is expressly made payable in respect of moneys which are not in any sense income of the taxpayer. But one is entitled to expect that any such exception will be enacted in clear terms. "

14. We do not see how this decision or" these observations assist the assessed in the present case. In the case before the House of Lords the company had carried out in respect of the premises belonging to it certain types of repairs for which a landlord is normally responsible and it was held that the expenses incurred by the company for this purpose cannot be said to have been for the provision of any benefit to the director. The language of Section 2(6C)(iii) is, however, different and it is also difficult to say, having regard to the purposes of the enactment of such a fiction in very sweeping terms, that cases of the present type should be excluded from its ambit.

15. Sri Manchanda also invited our attention to the decision of the Madras High Court in CIT v. Venkakaraman [1978] MI ITR 444. In that case, one of the directors of a company had withdrawn moneys to the extent of about Rs. 6 lakhs from the company. After his death the matter was brought to the notice of his brother who was the karta of the joint family and he accepted liability of the estate to the extent of Rs. 4"5 lakhs. The ITO thereupon reopened the assessment of the assessed-family for the years 1960-61 and 1961-62, and included therein the sums of Rs. 45,000 and Rs. 63,000 as income u/s 2(6C)(iii) of the Act of 1922 on the ground that this represented the interest on borrowed moneys paid by the company relatable to the extent of Rs. 4,50,000 to which such borrowers had not been used for the purposes of the company's business but withdrawn by the director. The reasoning for such assessment was that the amounts disallowed in the hands of the company was income within the meaning of Section 2(6C)(iii) because the family had derived a benefit, namely, interest free loans. The assessed would have normally paid interest had he been forced to borrow money outside and, Therefore, to the extent the company had paid interest on loans which were diverted to the family the family derived a benefit taxable u/s 2(6C)(iii). This inclusion was not upheld by the High Court. The court pointed out that there were two aspects of the matter to be considered with reference to the above statutory provisions. In the first place, the use of the expression " whether convertible into money or not " indicated that the benefit or perquisite contemplated by the section could not be money itself. Also the very same section made a distinction between benefit and perquisite on the one hand and " any sum paid " on the other. This would show that the benefit or perquisite contemplated by this section should be other than money. The other aspect to which the High Court made a reference was that even assuming that money could be considered to be a benefit or perquisite, it should have been obtained from the company. It had been so held in an earlier decision in Commissioner of Income Tax Vs. A.R. Adaikappa Chettiar and Another, :

"Before a person could be said to have obtained a benefit or perquisite from a company there should be some legal or equitable claim even though it be contingent or contested in nature. A mere receipt of money or property which one is obliged to return or repay to the rightful owner as in the case of a loan or credit cannot definitely be taken as a benefit or perquisite obtained from the company. The benefit or advantage which might have been taken by a director or other person from a company without any claim of right has to be repaid or returned to the company if the company discovers the unauthorised taking and seeks to enforce its restitution."

16. The court pointed out that in the case before it what the late karta of the family had obtained was not an interest-free loan from the company but that he had embezzled its funds. On this finding the very basis for the invocation of Section 2(6C)(iii) was held to have disappeared. Sri Manchanda strongly relied on this decision and submitted that since it is desirable in tax matters that there should be uniformity of construction throughout the whole country we should

adopt the principles laid down by the Madras High Court and hold that the assessed in the present case had obtained no benefit from the company.

17. We are unable to see any substance in the contention of Sri Manchanda. The cases before the Madras High Court related to transactions of an entirely different type. In *Commissioner of Income Tax Vs. A.R. Adaikappa Chettiar and Another*, the partners of the managing agency of a company were alleged to have used for their private purposes the motor cars belonging to the company. A part of the expenses incurred by the company in relation to the motor cars had been disallowed on this ground u/s 10(4A) of the 1922 Act and Section 40(c) of the 1961 Act. Consequent on this an 1/4th portion out of the amounts disallowed in the hands of the company was sought to be treated as the income of each of the partners of the managing agency firm. This attempt failed and the High Court held that any benefit or perquisite obtained willy-nilly, whether authorised or unauthorised, would not attract the above section. It was pointed out that if the submission that even unauthorised benefit would attract the section is accepted, it would mean that even an article or money of the company misappropriated or forcibly taken against the wishes of a company by a director or other persons referred to in that section will come within the scope of that section. In their Lordships' opinion, this would not be so and the language of the section would only take in such benefits or perquisites which the company had agreed to provide and which the person concerned could claim as of right based on such agreement and a mere advantage derived from the company without its authority or knowledge will not amount to a benefit or perquisite obtained. The word "obtained" was agreement-oriented, in their Lordships' opinion. The subsequent case of *Venkataraman* [1978] 111 ITR 444, as already mentioned, was a case of embezzlement by one of the directors. While Sri Manchanda relies upon these decisions strongly, Sri Kirpal, for the department, contends that the language of the clause in question does not warrant the qualifications placed thereon by the Madras High Court. We find that the Madras view on the two aspects referred to above have been recently accepted by the Calcutta High Court--See *M. M. Metha v. CIT* [1979] 417 ITR 362 and *Commissioner of Income Tax Vs. Kanan Devan Hills Produce Company Ltd.*, . It is, however, not necessary for us to consider this question, for, as we see it, so far as the present case is concerned, neither of the aspects referred to by the Madras judgments comes in the way of the department. In the first place, this is not like the case of *Venkataraman* [1978] 441 ITR 444, a case where moneys given to or taken by an assessed by way of loan is treated as a benefit because it is granted interest-free. There is no money advanced by the company to the assessed. The assessed has not received any benefit in the form of money and, Therefore, that question does not arise here. What has happened here is that the assessed owed certain moneys to the company. The company was entitled to recover the amounts of loan which it had at one time given to the assessed. By writing off the amounts the company has precluded itself from recovering amounts from the assessed and equally the assessed has obtained, as a result of the wiping off of this

liability, a pecuniary benefit. The benefit here is not the loan but the pecuniary advantage or, in a loose sense, the profit derived by the assessed as a result of the extinguishment of the liability he owed to the company. What the assessed has obtained from the company is not money but a benefit easily evaluated in terms of money. Again this is not a case where the assessed has received some unauthorised or illegal benefit which he will eventually have to restore to the company. The assessed's request that the loans should be written off has been considered by the company and agreed to by it. The benefit to the assessed stems from the resolution of the company. Once the company has passed the resolution and communicated the same to the assessed he would also be entitled to plead it as a defense in the unlikely event of the company trying to recover it later on. The benefit in the present case is one which has been consciously and voluntarily conferred upon the assessed by the company and hence the second principle laid down in the Madras decisions has also no application to the present case.

18. For the reasons above discussed, we are of the opinion that the sum of Rs. 3,83,996 clearly represents an item of income within the meaning of Section 2(6C)(iii) of the 1922 Act.

19. The second contention which arises for consideration in the present case presents more difficulty. Under the I.T. Act, an assessed is taxed in every assessment year on the total income of the previous year. The previous year varies, even in respect of the same assessment year, in respect of different sources of income. Section 2(11) of the 1922 Act makes it clear that an assessed is entitled to have different previous years in respect of separate sources of his income. This would be so even where the sources of income fall under the same head. He is even permitted to treat each branch of a business as a separate source, It has also been held in this context that the expression "source" means not a legal concept but something which a practical man would regard as a real source of income. Section 2(11) also provides that where in respect of a particular source of income an assessed has once exercised an option in respect of the previous year he will not be entitled to vary the meaning of the expression in respect of the said source except with the permission of the ITO and subject to such conditions as he might impose. Similarly, once such a previous year has been adopted in respect of any particular source of income it will not be open to the department to vary the previous year for any subsequent assessment. To start with "previous year" means, in so far as we are concerned, " (a) the financial year immediately preceding the assessment year ; or (b) if the accounts of the assessed have been made up to a date within the said financial year then at the option of the assessed the twelve months ending on such date ". Once such an option has been exercised or assessment made on the above footing it will not normally be open either to the ITO or to the assessed to change the previous year in respect of such source.

20. In the present case, the assessed's case is that he has been maintaining

regular accounts under the name and style of K. S. Malik & Sons in which he has entered all his transactions with the company. The loans taken from the company figure in the balance-sheet of this set of accounts. The salary received from the company, the interest paid to the company and the dividends received on the shares held by him in the company are all accounted for in this set of account books. These books have been closed on the 30th September, every year, and though the income reflected in them has been taxed under different heads, namely, "Salaries" for the salary income, " Other sources " for the dividend income, and " Business " for the rest of it, the previous year in respect of these incomes has been treated as the year which ended on 30th September, every year. It is contended on behalf of the assessed that the income which is now being sought to be taxed is one which flows from the same source. As a result of the resolution passed by the company the indebtedness in the balance-sheet in favor of the company would stand wiped out. Though in one sense the amount which is sought to be taxed represents only a notional income, once the statutory fiction operates to make it an item of income all the other logical consequences would follow and the source of such income should be considered to be the same as the source of all other incomes which the assessed derived from the company. This being so it is argued that the previous year in respect of this notional source would also be the same as the previous year adopted and applied in respect of other items included in this set of account books maintained by the assessed.

21. On the other hand Sri Kirpal, learned counsel for the revenue, contends that the source for this item of income is only the resolution passed by the company agreeing to forgo the debt due from the assessed. Though it suited the assessed's purpose to maintain one single set of accounts for all his transactions with the company it could hardly be said that he had only one source of income from which all this income was derived. His salary income was derived because of his agreement to serve the company as an employee. His dividend income was derived because of the shares he held in the company. The other items of income, if any, recorded in this set of books were derived because of the mutual transactions between the assessed and the company. This did not constitute the source for the notional income that is now sought to be taxed. This being a separate source of income, the assessed is liable to be taxed on the financial year as a previous year in respect of it unless he can prove that even in respect of this source he has opted for the same previous year as in respect of salary, dividend, etc. There is no such evidence of any action having been exercised by the assessed in this particular case. As pointed out by the Madhya Pradesh High Court in *Binodiram Balchand Vs. Commissioner of Income Tax*, [subsequently affirmed in *Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Binodiram Balchand*,], the exercise of an option involves an expression of an implicit claim or statement before the I.T. authorities by the assessed to show that he had applied his mind and that he had exercised the option given to him. The mere fact that the assessed has maintained certain books of account in

which the amounts in question are included and that these accounts have been made up to a particular date does not by itself mean that the assessed has exercised the option to adopt that previous year for, his tax purpose. That apart, in the present case, even while filing a return in response to the notice u/s 147 the assessed returned this item of income in Section F of the return. In other words, though he claimed that it was a receipt which did not constitute income, he did not put forward a specific claim that even assuming it was income it was taxable only in the previous year ending on September 30, 1957, and hence was not taxable in the previous year relevant to the assessment year 1957-58.

22. The question raised is somewhat ticklish but, after a careful consideration, we have come to the conclusion that the view taken by the Tribunal is the correct view. All that the assessed has been able to show is that the amounts of loan (the write-off of which has been treated as income) has been accounted for in the books maintained under the name and style of K. S. Malik & Sons. This set of accounts was maintained by the assessed for his own purposes and it represented all the transactions which the assessed chose to carry on under the name and style of K. S. Malik & Sons. The income reflected in the set of account books included the income derived by the assessed by way of salary, by way of dividends and by way of other business income. In other words, it is patent that this set of accounts included income derived by the assessed from various sources. We are now concerned with a source which the Tribunal has categorised as a special source, a description to which Sri Manchanda takes objection. But we see nothing wrong in the description given by the Tribunal. This is an item of income which does not represent income in the commercial or ordinary sense of the term. The assesses did not treat it as his income and in fact he has been contending all along that it does not represent his income at all. It is a statutorily declared income and merely because the amount of loan to which it is related appears in the books of the assessed closed to a particular accounting year, it cannot be said that this income must also have that previous year. To give an example questions have arisen as to the previous year to be adopted in cases where certain cash credits appear in the books of an assessed and are sought to be assessed as his income because the assessed's Explanations Therefore are found to be unsatisfactory. In such cases, the department adopted, but unsuccessfully, the previous year to which the accounts had been closed as the previous year in respect of such cash credits. It was pointed out that though the credits appeared in the books of account they were being taxed as secret profits from undisclosed sources and, Therefore, they would be relatable to a separate source in respect of which the financial year would be the previous year and that except in cases where the cash credits are added back as the undisclosed income of the business for which the accounts are maintained they cannot be treated as the income of the previous year of the business itself. This position was well settled (vide Kanga's Income Tax, 7th Edn., Vol. I, p. 610) under the 1922 Act and in view of this, the language of Section 68 of the I.T. Act, 1961, was appropriately modified. It appears to us that the position in the present case is

somewhat analogous. The item on the basis of which the income has been determined no doubt appeared in the balance-sheet of Malik & Sons but the source of this income is the result of an act of the company, something extraneous. The source of this income is not the same as that of the salary income, the dividend income or other business income accounted for in the said books. Its source can be described as the resolution of the company just as in the case of Raja Rameswara Rao Vs. Commissioner of Income Tax, Hyderabad, , a statute was described as the source of the income in that particular case. We have, Therefore, come to the conclusion that the view taken by the Tribunal that the source of this item of deemed income is different and separate from the sources of the other income in respect of which the assessed has been previously assessed and that the adoption of the financial year as the previous year in respect of this income was fully justified is correct.

23. Sri Manchanda made a reference to the decision of the Supreme Court in Chidambaram Mulraj and Co. P. Ltd. Vs. Commissioner of Income Tax, Bombay City I, . In that case, the assessed was a private limited company which was the managing agent of another company. This managing agency was given up by the assessed and it received compensation for the premature termination of the managing agency. This was accounted for in the appellant's books of account for the year ended on 30th June, 1954. The ITO assessed the above sum of compensation as income in the hands of the company u/s 10(5A) of the Indian I.T. Act, 1922. It was contended on behalf of the assessed that the amount received as compensation could not be the profits and gains of the managing agency business because that business itself had come to an end. It was further contended that the source for this compensation amount was a new source other than the managing agency business and that the assessed should have had an opportunity to choose the previous year in respect thereof. This contention was rejected. The amount received by the appellants as payment for the termination of the managing agency business was obviously related to that business ; while it was true that the amount was not earned in the carrying on of the business of managing agency it was clear that the source of the receipt was the managing agency business itself and it could not be said that the receipt was income from a new and independent source. In our opinion, this decision is not of much help in the context of the present case. Section 10(5A) of the 1922 Act deemed the amount of compensation or other payments for termination, etc., of certain categories of agreements as profits and gains of a business carried on by the recipients. It was on the basis of these words that an argument was put forward that the statute had created a new and independent source for the deemed income. This argument was rejected and it was pointed out that the section was only confined to treating as income something which was not considered to be so and with providing a head under which the receipt could be brought to tax. It was pointed out that the section was not concerned with creating a new source for that deemed income. The sub-section being out of the way, the position was that the assessed had a business and the payment made to him was directly

related to that business. From a practical point of view, the source of compensation amount was the business itself. But that analogy is not apposite in the present case. As we have already pointed out, the set of accounts maintained under the name and style of K. S. Malik & Sons do not reflect any business to which the deemed income is directly related : on the other hand it recorded the income from several sources. It is not possible to say, merely because the loan taken from the company was reflected in the balance-sheet of this set of accounts, that the source of the deemed income is also reflected in the account books. There can no doubt be one set of account books for several sources. But so far as this income is concerned it would not be appropriate to describe it as flowing from the same source from which the other income of the assessed accounted for in K, S. Malik & Sons flowed. This was a separate transaction which the assessed had on capital account with the company and the write-off in respect of this debt in our opinion constituted a separate cause as rightly held by the Tribunal.

24. For the reasons discussed above, we answer the questions referred to us as follows:

(i) The amount of Rs. 3,83,996 was rightly held as income of the assessed u/s 2(6C)(iii) / 2(24)(iv) of the 1922/1961 Act.

(ii) On the facts and in the circumstances of the case, the above income was chargeable to tax for the assessment year 1957-58 as the previous year relevant thereto was the financial year.

25. We make no order as to costs in the circumstances of the case.

26. Reference answered accordingly.