
(1954) 09 PAT CK 0012

In the Patna High Court

Case No : Misc. Judicial Case No. 318 of 1952

Sukhdeodas Jalan

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 13-09-1954

Acts Referred:

Income Tax Act, 1961 — Section 13, 3

Citation : AIR 1955 Patna 258 : (1954) 26 ITR 617

Hon'ble Judges : Ramaswami, J;Ahmad, J

Bench : Division Bench

Advocate : S.N. Dutt, Tarkeshwar Pd., Madan Kishore and A.N. Lall, for the Appellant; R.J. Bahadur, for the Respondent

Judgement

Ramaswami, J.—In this case the assessment relates to the year 1944-45. The assessee is a Hindu undivided family and during the accounting year the assessee carried on contract business and had a share in the firm of Jokhiram Jagannath. The accounting year corresponds to the period from 1-4-1943 to 31-3-1944. The assessee had obtained contracts from the Public Works Department and from the Defence Department. For the Public Works Department the assessee executed two contracts. The work of these contracts was taken up on 14-4-1943 and completed on 12-5-1944. For the Defence Department the assessee executed a contract known as Hirji Hospital contract. The work of this contract was started on 14-4-1943 and was closed on 3-12-1944. In the return for the assessment year 1944-45 the assessee did not show any income with respect to the contracts of the Public Works Department or with respect to the military contract. The assessee, on the other hand, showed an income of Rs. 12,000 in respect of his share of profit from the partnership business.

Before the Income Tax Officer the case of the assessee was that the contracts of the Public Works Department and the military contract were not closed within the accounting year and so the income from these contracts was not shown in the return filed by the assessee. The Income Tax Officer held that for the accounting

year the assessee had realised a net income of Rs. 19,683 from the Public Works Department contracts. With respect to the military contract the Income Tax Officer held that the entire contract had been completed within the accounting year and the assessee had received a sum of Rs. 3,67,578 on account of this contract from the military authorities. In view of the defective state of the account books produced by the assessee the Income Tax Officer considered that the profit should be estimated at 15 per cent of this amount. He determined the net income from the military contract as Rs. 55,135 and included this amount in the total income of the assessee.

An appeal was taken to the Appellate Assistant Commissioner on behalf of the assessee and it was argued on his behalf that the military contract was not fully executed before 31-3-1944 and that the Income Tax Officer was not justified in holding that the income from the military contract should be included in the return of the assessee for the accounting year in question. This argument was accepted by the Appellate Assistant Commissioner who directed the Income Tax Officer to exclude the profit from the military contract. The Income Tax Department preferred an appeal to the Income Tax Appellate Tribunal against the order of the Appellate Assistant Commissioner. The Tribunal held that the account maintained by the assessee did not reflect the true profits of the assessee for the accounting year.

The Tribunal accepted the case of the assessee that the military contract was executed on 3-12-1944; nevertheless, the Tribunal held that 9/10th of the contract work had been done in the accounting year and the assessee had received from the military department about Rs. 3,00,000 on account of the execution of the contract. The Tribunal took the view that the proviso to Section 13 was applicable to the case and the profits of the assessee for the accounting year should be determined by the Income Tax Officer. The Tribunal observed--

"There is a well known method of ascertaining the profits accruing in any particular period in a contract. This is done by deducting from the receipts in the period the total expenses incurred on the contract in the period. To the balance is added the value of work in progress, for which payments have not been received, as the total expenditure would include expenditure on work in progress for which payments have not been received. The resulting amount will represent the profit accruing in the contract in that particular period. The assessee has not adopted this method nor has he ascertained the profits of the year in proportion to the receipts in each year. As stated already, even the total profits of the contract cannot be properly deducted from the accounts in view of the defects mentioned above in para 6. The method of accounting followed by the assessee, which is to ascertain the profits after the conclusion of the contract, does not reflect the assessee's true profits in the year of account. In spite of the fact that assessee had executed 9/10th of the contract work, he did not ascertain any profit or loss for the year of account. We therefore hold that the proviso to Section 13 is applicable to this case and that the assessee's profits have to be determined by

esti mate."

2. In these circumstances the Tribunal has referred the following question of law for the opinion of the High Court

"Whether the proviso to Section 13, Income Tax Act is applicable in regard to the accounts maintained for the contract business, which were not closed to profit at the end of each previous year but were closed to profit only after the completion of a contract?"

3. The answer to this question turns upon the construction to be placed on Section 13, Income Tax Act which states

"Income, profits and gains shall be computed, for the purposes of Sections 10 and 12, in accordance with the method of accounting regularly employed by the assessee; Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income Tax Officer, the income, profits and gains cannot properly be deducted therefrom, then the computation shall be made upon such basis and in such manner as the Income Tax Officer may determine."

It is clear from the language of this section that profits from the business should be computed in accordance with the method of accounting regularly employed by the assessee, but if the method of accounting regularly employed by the assessee does not reflect the true profits of the business, then the Income Tax Officer has authority to determine upon what basis the computation of profit should be made. In this context Section 3 of the Act is important. Section 3 provides that

"where any Central Act enacts that Income Tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of "the previous year" of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually."

The section indicates that the charge is created in the first instance by the Annual Finance Act to be passed by the Parliament. The Annual Finance Act imposes the levy of tax and determines the rates. The Income Tax Act reimposes the said charge and proceeds to deal with the principle of assessment and machinery of assessment. The scheme and structure of the Income Tax Act is therefore to make the tax an annual tax for the purposes of assessment. Section 3 makes each "previous year" a distinct unit of time for the purpose of assessment and the profits made before or after that unit of time are entirely immaterial in assessing the profits of that year. If the provisions of Section 3 are read in the context of Section 13, it is clear that the accounts maintained by the assessee must correctly show or reflect the profits of the preceding year. If the method of accounting adopted by the assessee does not reflect the true profits of

the preceding year the proviso to Section 13 will apply and the Income Tax Officer would be entitled to compute the profits upon such basis and in such manner as he may determine.

In the present case the Tribunal has found that for the assessment years 1939-40 and 1940-41 the assessee did not keep any accounts of the contracts he had executed. For the assessment year 1943-44 the assessee wrote a letter to the Income Tax Officer admitting that he had no accounts to produce. For the assessment year 1944-45 the assessee produced two sets of accounts before the Income Tax Officer. One set of account was maintained for the two contracts he had taken from the Public Works Department but the profit of each contract was not separately worked out and there was out consolidated receipts and payments account maintained for both the contracts. For the military contract the assessee kept a separate set of accounts. These accounts were maintained from 14-4-1943 upto 3-12-1944. The total value of the military contract was Rs. 3,78,766 and out of this amount the assessee received a sum of Rs. 3,00,000 before 31-3-1944. The assessee did not close the accounts on 31-3-1944 or prepare balance sheet but the accounts were kept open till 3-12-1944 when the execution of the contract was completed.

It was argued by Mr. Dutt on behalf of the assessee that the accounts were maintained on completed contract basis and the assessee had no objection if the income of the Hirji Hospital contract was taxed for the assessment year 1945-46. The argument of the learned counsel was that there was a single and indivisible contract for the Hirji Hospital and the work upon the entire contract was completed on 3-12-1944 and that was the proper date on which the profits of the assessee should be ascertained, I am unable to accept this argument. If accounts are maintained and completed on contract basis the profits or gains of the previous year cannot properly be extracted from these accounts, for a contract may take several years for being completed. The payments in regard to the contract may also be received by the assessee in several years. It may be convenient from the point of view of the assessee that profit should be ascertained on the completion of the contract and assessment of the profit should take place on the date of the completion of the contract.

But Section 3 imposes a charge of Income Tax upon the profits and gains of the assessee for the accounting year and it is the duty of the Income Tax authorities to make ascertainment of such profits" and gains according to the assessee in respect of the payments received during the accounting year. It is clear in the present case that the accounts maintained by the assessee do not correctly reflect the profits of the assessee for the accounting year and the Tribunal was right in holding that the Proviso to Section 13 of the Act applied and that the Income Tax Officer was entitled to discard the accounting method of the assessee and instead to make computation of the profits of the assessee on such basis as he thought fit.

4. In the case of -- AIR 1938 1 (Privy Council) . It was observed by Lord

Thankerton while pronouncing the opinion of the Judicial Committee as follows:

"Their Lordships desire to add that the view of the Assistant Commissioner that the Income Tax Officer is prima facie entitled to accept the profits shown by the accounts, where there is a method of accounting regularly employed by the assessee is not a correct view. It is the duty of the Income Tax Officer, where there is such a method of accounting to consider whether income, profits and gains can properly be deduced therefrom, and to proceed according to his judgment, on this question. It is clear that the Income Tax Officer, acted on the same view as that expressed by the Assistant Commissioner, and did not perform the duty above stated. The case of -- AIR 1930 56 (Privy Council) , is of no assistance on the present question."

On behalf of the assessee Mr. Dutt put forward the argument that in the case of an incomplete contract it was not possible to determine the profits of the assessee for the accounting year. It was pointed out by the learned counsel that the Hirji Hospital contract was taken up on 14-4-1943, and the work was completed on 3-12-1944 and the total value of the contract was Rs. 3,78,768 and out of this amount the assessee received payments to the extent of about Rs. 3,00,000, during the accounting year. I do not agree with the argument of the learned counsel that the profits of the assessee for the accounting year in question cannot be ascertained in such a case. It is also fallacious to argue that merely because the military contract was completed after the accounting year, no profits arose or accrued to the assessee in the accounting year. In the case of an incomplete contract there is a well established method of calculating profits accruing in the accounting year. The method is set out at page 971 of Batliboi's Advanced Accounting as follows :

"If a contract is nearly complete and only a small portion of the work remains to be done, an estimate will be made of the further expenditure on the portion remaining to be done, and an allowance will also be made for the margin of profit on that portion. This estimate should be added, to the amount already expended to the contract and the total will represent the cost of finding the whole work. This cost should be compared with the contract price, and if the, latter exceeds the former, the excess will represent profit on the completed portion of the contract."

If a contract has not reached a sufficient stage as to enable one to make a reasonable estimate of the remaining portion of the work, the profit or loss on the portion already completed is ascertained thus. The cost of the work completed will be represented by the total of the debit side on the Contract Account, less the cost of stores, materials and plant on hand. This net cost should be compared with the amount of work certified by Contractee's Architect plus the cost of work done but not certified.

If the latter exceeds the former, the excess represent profit and may be taken into account.

It is not advisable, however, to take full credit for the whole of the profit thus ascertained, but to reserve a portion of it for contingencies, such as a likely rise in the price of materials or labour.

A sound method, therefore, is to transfer to profit & loss account only two-thirds or three-fourths of the profit ascertained, and to carry forward the balance to the next year's account by debiting contract account and crediting work in progress account. At the commencement of the next year, the above entry will be reserved."

In view of this accountancy practice I do not agree with the contention of Mr. Dutt that the profits of an incomplete contract cannot be ascertained during the accounting year. Mr. Dutt objected that the estimate of income on this formula would still be an estimate and would not be mathematically accurate. There is no substance in this objection, for mathematical certainty is not demanded in a matter of this description. To quote the language of Viscount Simon in -- "Gold Coast Selection, Trust, Ltd. v. Humphrey" 1949 17 ITR 19 (C)

"If the asset is difficult to value but is none the less of a money value, the best valuation possible must be made. Valuation, is an art, not an exact science. Mathematical certainty is not demanded nor indeed is it possible. It is for the Commissioners to express in the money value attributed by them to the asset their estimate and this is a conclusion of fact to be drawn from the evidence before them,"

5. In this connection the decision of the Judicial Committee in the case of -- "British South Africa Co. v. Commr. of income tax" AIR 1946 PC 25 (D), is important. In that case the appellant Company carried on the business of trading in mining rights and concession. It had acquired numerous mining rights and concessions over territories together with a lump sum and in the relevant-accounting year made grants of mining rights to other companies in return for fully paid up shares in the latter and recurring annual payments in cash for a number of years. The Income Tax authorities . of Northern Rhodesia treated these amounts "rents, royalties, premiums and profits arising from .property" falling within Section 5 (f), Income Tax Ordinance of Northern Rhodesia of 1926 and assessed to income tax the full amount of the par value of the shares and the annual payments received by the appellant company under these grants without deducting the unrecouped balance of the cost of acquisition.

It was held by the Judicial- Committee that the sums received by the appellant company could not be regarded as "rents, royalties, premiums, or any other profits arising from property" falling within Section 5(f), Income tax Ordinance. It was held on the contrary that the amounts should be taxed under the head "gains or profits from any trade, business, profession or vocation", mentioned in Section 5(a), Income tax Ordinance. It was argued on behalf of the appellant company that the profits or gains. could not be ascertained until a balance had been struck between the cost of acquisition and the proceeds of sale. It was

further argued on behalf of the appellant company that it was impossible to allocate any part of the cost to any one or other of the individual assets or any block of such assets and the appellant company was therefore entitled to have the assessments, of. its profits postponed until the whole of the unrecouped balance of expenditure had been made good.

The Judicial Committee rejected this argument and held that the mere fact that it was not convenient or easy to allocate receipts as against various items of trading assets is no reason for holding that profits emerge only after entire expenditure on the assets had been recouped and that the allocation of expenditure and receipts must somehow be made on a reasonable basis and the debts and trading assets should be valued as it stood on the closing date of the accounting year. At p. 29 Viscount Simon states :

"The more difficult question arises u/s 5(a) In the Courts of Rhodesia the, argument of the company was largely influenced and directed by a fact which was agreed between the parties, viz., that it is impossible to allocate any part of such cost (i.e., the sums of ? 5,140,383, 17s. 2d. and ? 924, 289, 15s. 5d., to which reference has already been made) to any one of other of the individual assets described above (i.e., the mineral rights, concessions, land and land rights acquired by the company) or any blocks of such assets or as between the total of such assets situate in Northern Rhodesia and the total of such assets situate in all or any of the other territories.

Therefore the company, while contending that there could be no gains or profits from its trade in respect of the sums in question until the cost . of the assets realised had been brought into account was faced by the fact that by its own admission the cost could not be ascertained it therefore contended that the proper and indeed the only method by which its gains of profits could be determined was to wait until the whole of the unrecouped balance of expenditure had been made good and thereafter to assess all receipts in full.

In this contention the company claimed the support of the expert evidence of accountants that thus only could its profits be ascertained and of an arrangement made with the Inland Revenue Authorities in the United Kingdom that for the purpose of British income tax" it. should be thus assessed. Their Lordships can see no justification in law for this contention. It is no doubt true from the point of view of accountancy that there is no other way of finding the company"s ultimate profit and equally it may be a convenient arrangement if the taxing authority chooses to adopt it. But it is impossible to find support for it in the terms of the Ordinance. The question under the Ordinance, is, what is the income of the company in the particular year of assessment, and it must be answered by applying its relevant provisions as best they can be applied, not by introducing some new and supposedly more convenient method of ascertainment."

6. In the course of his argument Mr. Dutt referred to several authorities -- "J.P. Hall & Co. Ltd. v. Commr. of Inland Revenue (1921) 12 Tax Cas 382 (E); -- "K.H.

Mody, K. H. MODY, IN RE., ; -- AL. VR. ST. VEERAPPA CHETTIAR Vs. COMMISSIONER OF Income Tax, MADRAS., ; -- "Commr. of Income Tax, Burma v. A.K.A.R. Chettiar Family" AIR 1941 Rang 263 (H); -- AIR 1928 102 (Nagpur) . In my opinion one of these authorities has any bearing on the question which is at issue in the present case. In (1921) 12 Tax Cas 382 (E), the appellant company had In March 1914 entered into a contract to supply certain electric motors, complete with control gear, to be delivered between 1-7-1914 and 30-9-1915, payment to be made one month after delivery. In accordance with the provisions of this contract, the appellant company in April 1914 made a sub-contract for the purchase of the control gear at a price which would yield them a profit of ₹-1,064. Owing to the war, deliveries of the control gear, which were to be made direct from the sub-contractors to the purchasers under the main contract, were delayed and were actually made at various dates between August 1914 and July 1916.

It was held by the English Court of Appeal that, for the purposes of Excels Profits Duty, the profits from the contracts for the purchase and sale of the control gear arose to the appellant company in the accounting periods in which the gear was actually delivered and not in the pre-war period ending 30-6-1914, in which the contracts were made. It should be noticed that there was no performance of contract during the accounting period and the control gear had not been supplied and payments had not been made. The facts of the present case are wholly dissimilar. There was performance of the military contract on the part of the assessee and there was payment of about Rs. 3,00,000 made to the assessee by the military authorities for the portion of the contract already executed. The "ratio" of (1921) 12 Tax Cas 382 (E), has therefore no application to the present case.

In the next case K. H. MODY, IN RE., , Kania, J. treated the transaction of the assessee as a single venture in the nature of trade and upon this basis held that the question of assessing profits arises only when the venture came to an end. This decision was followed by the Rangoon High Court in AIR 1941 Rang 263 (H). This case also proceeded upon the basis that there was a single transaction or a single venture in the nature of trade and therefore profits could not be ascertained for the purpose of tax till the whole transaction was complete. That is also the ratio of the decision of the Madras High Court in AL. VR. ST. VEERAPPA CHETTIAR Vs. COMMISSIONER OF Income Tax, MADRAS., . The facts of the present case are wholly dissimilar, for it is not the case of the assessee that execution of the military contract was a single venture in the nature of trade. I do not, therefore, think that the principle laid down in K. H. MODY, IN RE., and AIR 1941 Rang 263 (H), should be applied to the present case.

The last case upon which Mr, Dutt relied is AIR 1928 102 (Nagpur) . In that case the assessee carried on business as a stock jobber and dealer in various commodities. The accounts in respect of each line of business were not closed by the assessee each year, but the figures were carried forward as book balances

and the final gains or loss was ascertained at the end of the period when the transactions in that particular line of business ceased. In the year 1925-26 the assessee claimed a set off of about 6 lakhs of rupees shown in his accounts as losses in his stock jobbing and certain other businesses. The Income Tax authorities while accepting the assessee's account keeping basis when it showed a profit, rejected this claim on the ground that the assessee ought to have closed his accounts every year and that the sums claimed represented in reality the losses of the previous years when they ought to have been claimed.

It was held by the Judicial Commissioner that the assessee was entitled to be assessed and to claim the set off for loss on the basis of his special method of account keeping, it was observed by the Judicial Commissioner that the market prices of shares on the stock-exchange varied "immensely from day to day and any such system based on the idea of closing accounts on a certain date might prove a highly artificial and unsatisfactory system. The material facts of the present case are manifestly different.

7. For the reasons I have already assigned I hold that the proviso to Section 13, Income Tax Act has been rightly applied by the Appellate Tribunal and that the question referred to the High Court must be answered against the assessee and in favour of the Income Tax Department. The assessee must pay the cost of this reference. Hearing fee Rs. 250.

Ahmad, J.

8. I agree with my learned brother and I think on the case stated no other answer can be given to the question, referred to this Court for opinion than one in the affirmative.

9. The case of the assessee is that the military contract No. D.Z.H.H. was not fully executed before 31-3-1944, which was the last day of the accounting period. The whole contract, according to him, was completed on 3-12-1944, and the result of profit could only be ascertained on that day, the accounts being kept open till before that time. The Assistant Commissioner in appeal by the assessee accepted this part of his case. The Appellate Tribunal has in appeal against that order affirmed the finding of the Assistant Commissioner to the extent that the contract was not executed before 31-3-1944 and that "the accounts showed that expenditure on account of the contract had been incurred after 31-3-1944", and further by implication also accepted the view of the Assistant Commissioner that it was finally executed on 3-12-1944, and the accounts were kept open till before that date without any calculation of profit from that business. Then the Appellate Tribunal has come to its own finding that the account was not, as claimed by the assessee, closed on the completed job basis as no separate profit on the various jobs involved in his other contract business was found to have been worked out by him.

10. The other finding arrived at by the Tribunal is that the assessee never produced any account till the assessment in the present case and that no

account was maintained by the assessee, and, therefore, he had no method of accounting till 1943-44.

11a. The Tribunal has also found that 9/10th of the military contract work had been by the end of March 1944 executed in the accounting period 1943-44 and that the assessee had in that period already received about Rs. 3,67,578 from the military department out of the total consideration of at contract.

11. Lastly, it is the admitted case of that assessee that he had not shown in his return any income from the contract business in the accounting period 1943-44 and that he had not, therefore, produced his account book of the contract business For that accounting year. It, however, appears that by the time the assessment of the year 1944-45 was still under consideration, the assessee submitted his return for the next assessment year 1945-46 showing therein his income from the contract business including that of the military contract and therewith also filed his account book of the relevant accounting period 1944-45. On a scrutiny of this account book the Tribunal while deciding the assessment for the year 1944-45 has further found that there are defects in the account and that the total profits of the contract cannot be properly deduced from them. In this connection it has also found that the assessee has not produced any stock issue register and there is nothing in the accounts to indicate that the material purchased had all been Utilised for the contract business and, therefore, the accounts do not reflect assessee's true profits.

12. On these findings of facts come to by the Tribunal, the point that arose for consideration before it was as to whether from the method of accounting followed by the assessee, his income, profits and gains could be properly deduced, and in answer to that it came to the following conclusion: "It a method of accounting discloses the assessee's total receipts accruing over a series of years, but does not reflect the profits of each previous year, that method does not reflect the true profits for the purposes of Section 13, Income Tax Act and so the proviso to Section 13 will come into operation in such a case. Section 3 is the charging section. Section 13 cannot be so construed as to make the profits of one year assessable in another year, which would be the case if a method of accounting which disclosed the total profits of several years is held to be a proper method."

13. And thereafter on the basis of the aforesaid conclusion the Tribunal finally fixed for assessment the income of the assessee from the military contract in that year at a flat rate of 15 per cent. profit on the amount received by the assessee in the accounting period 1943-44. Against that order the assessee prayed for a reference to be made u/s 66, Indian Income Tax Act whereupon the following question of law has been referred by the Tribunal for the opinion of this Court.

"Whether the proviso to Section 13, Income Tax Act is applicable in regard to the accounts maintained for the contract business, which were not closed to profit

only after the completion of a contract."

Section 13 of the Income Tax Act in general terms enacts

"Income, profits and gains shall be computed, for the purposes of Sections 10 and 12, in accordance with the method of accounting regularly employed by the assessee"

but thereafter adds a proviso to it which reads

"Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income Tax Officer, the income, profits and gains cannot properly be deducted therefrom, then the computation shall be made upon such basis and in such manner as the Income Tax Officer may determine."

14. The term of the section read with the proviso makes it clear that the choice of method in maintaining account for the purposes of assessment is left with the assessee and it is open to him to adopt any method of accounting that he likes. That, however, is subject to two minimum conditions--firstly that the method of accounting should be one which has been regularly employed by him and secondly that the method should be such as in the opinion of the Income Tax Officer should indicate properly the income, profits and gains of the assessee. As long as these two conditions are fulfilled by the account maintained by the assessee, that account in law has to be the basis of computation compulsorily and the Income Tax Officer has no option to follow any other method of accounting as held in the case of AIR 1938 1 (Privy Council) , and it follows from it that in case the Income Tax Officer; in his judgment on the materials before him finds that either of the two conditions is not complied with by the accounts of the assessee, it becomes his duty to find out the proper income, profits and gains of the assessee for the purposes of assessment and in the discharge of his duty it is open to him to compute the income, profits and gains upon such basis and in such manner as he may determine. In the case quoted above their Lordships observed:

"It is the duty of the Income Tax Officer, where there is such a method of accounting to consider whether income, profits and gains can properly be deduced therefrom and to proceed according to his judgment on this question."

15. In the present case the finding given by the Tribunal is that

"the assessee never produced any account till the assessment in the present case and that no account was maintained by the assessee and therefore he has no method of accounting till 1943-44."

On this finding of fact alone, therefore, this Court has to give the opinion that the case attracts at once the operation of the rule of law laid down in the proviso, that is, it was the duty of the Income Tax Officer in such a state of facts to compute the income, profits and gains of the assessee upon such basis and in

such manner as he thought best.

16. Even, however, if it be assumed in favour of the assessee, for which there is no evidence, that the account presented before the Income Tax Officer in the next year was one in accordance with a method regularly employed by the assessee, we are faced by a finding of fact given by the Tribunal that the method employed by the assessee in that account is such that the income, profits and gains cannot properly be deducted therefrom. On that finding also the proviso to Section 13 at once comes into-play and the duty is cast on the Income Tax Officer to compute the income, profits and gains of the assessee upon such basis and upon such manner as the Income Tax Officer may determine.

17. Mr, Dutt appearing for the petitioner, in substance, in his argument tried to challenge this finding of fact given by the Tribunal and in support of his argument he submitted that in case of running contracts, like that of the present one, income, profits or gains can in fact be computed unless the contract is completed and if the contract is completed in a period more than a year, the crucial time for calculating the income, profits and gains arrives only when the entire contract is completed. In other words, his argument was that the only method by which the gains or profits of the assessee could be determined was to wait until the whole of the expenditure to be incurred by the assessee over this contract business had been made good and thereafter to assess all receipts in full. In my opinion, this argument is based on the assumption that unless and until the entire amount of expenditure to be incurred over the contract is known, no profit or gain can be calculated even if the contract moneys are received by an assessee in the course of the contract. I find no justification for this assumption.

It is true, as laid down in the case of -- "Gresham Life Assurance Society v. Styles" 1892 AC 309 (J) that "profits and gains must be ascertained on ordinary principles of commercial trading" and the word "profits" has to be understood as observed in that very case "In its natural and proper sense --in a sense which no commercial man would misunderstand." But that means only this much

"that no gain or profit could be said to arise unless and until a balance had been struck between the cost of construction and the proceeds of contract."

It, however, cannot be disputed that as a rule the balance between the cost of construction and the proceeds of the contract for the purpose of assessment under the Income Tax Act has to be struck at an interval of every accounting year because that is the unit of time stipulated under the Act. The exception may" arise when the balance cannot be struck between the cost of acquisition and the proceeds of sale on any method known in the field of commercial trading for in that case no profit can be said to arise in that period as in the case of a solitary adventure in the nature of trade. Here the Tribunal has given a finding that the balance could be struck at the end of the accounting year and in giving that finding it has laid reliance on a method generally followed in the field of commercial trading. Therefore, in this case there is no ground for the assertion

that on no basis known in the field of commercial trading the balance could be struck between the cost of construction and the proceeds of contract at the end of the accounting year.

Mr. Bahadur has further rightly in support of the finding given by the Tribunal drawn our attention to the system of accounting given by Batliboi in his Advanced Accounting to be followed in such cases. That gives an elaborate method of accounting which, if followed, can help in assessing the profit each year. Lastly, the point raised by Mr. Dutt stands negated by the decision in the case of AIR 1946 PC 25 (D). There -the facts were practically of similar nature and on those facts their Lordships of the Privy Council observed:

"Therefore the company, while contending that there could be no gains or profits from its trade in respect of the sums in question until the cost of the assets realised had been brought into account, was faced by the fact that by its own admission the cost could not be ascertained. It, therefore, contended that the proper, and indeed the only method by which its gains or profits could be determined was to wait until the whole of the unrecovered balance of expenditure had been made good and thereafter to assess all receipts in full. In this contention the company claimed the support of the expert evidence of accountants that thus only could its profits be ascertained and of an arrangement made with the Inland Revenue Authorities in the United Kingdom that for the purpose of British Income Tax it should be thus assessed.

Their Lordships can see no justification in law for this contention. It is no doubt true from the point of view of accountancy that there is no other way of finding the company's ultimate profit and equally it may be a convenient arrangement if the taxing authority chooses to adopt it. But it is impossible to find support for it in the terms of the Ordinance. The question under the Ordinance is, what is the income of the company in the particular year of assessment, and it must be answered by applying its relevant provisions as best they can be applied, not by introducing some new and supposedly more convenient method of ascertainment."

I, therefore, agree with my learned brother that the answer to the question referred for the opinion of this Court has to be given in the affirmative.