
(1979) 01 MAD CK 0035
In the Madras High Court
Case No : Tax Case No. 426 of 1974

Waterfall Estates Ltd.

APPELLANT

Vs

Commissioner of Income Tax (No. 1)

RESPONDENT

Date of Decision : 11-01-1979

Acts Referred:

Citation : (1980) 16 CTR 279 : (1981) 131 ITR 207

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; J. Jayaraman and Nalini Chidambaram, for the Respondent

Judgement

Sethuraman, J.—In this reference u/s 256(1) of the I.T. Act, 1961, the following questions of law have been referred for the opinion of this court;

"(1) Whether, on the facts and in the circumstances of the case, the conclusion of the Appellate Tribunal that the entire managing agency commission claimed and shown in the accounts was not allowable as a deduction for the assessment year 1965-66 as per the ratio of the decision in Commissioner of Income Tax, Bombay Vs. Maharashtra Sugar Mills Ltd., Bombay, , is valid in law ?

(2) Whether, on the facts and in the circumstances of the case, the decision of the Appellate Tribunal that for the assessment year 1965-66, the various lines of activity like tea estate, coffee estate, coffee curing, plantation, etc., did not constitute one single and integrated activity or business but independent units of business is a correct-inference on the facts found and valid in law ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in its conclusion that the managing agency commission had to be allocated in accordance with the directions given by the Appellate Tribunal in para. 39 of its order, by allocating the same to the various sources of income, viz., tea, coffee, coffee curing works and so on ?"

2. Though, in the questions, reference is made only to the assessment year 1965-66, the statement of the case shows that the assessment years under consideration are 1964-65 to 1969-70. We, therefore, proceed to consider the case as if it relates to all the assessment years 1964-65 to 1969-70.

3. The assessee-company was incorporated on 29th April, 1943, and started its business by taking over the Waterfall Estates from a British "concern. The Coovercolly Estate in Coorg was purchased in the year 1956. The Kesinvurthy, Estate was also a later purchase. The company obtained a licence for the establishment of a coffee curing works at Hassan in Mysore State. The coffee curing works started their operations during the accounting year ending on 30th June, 1961. Out of the above estates, Waterfall Estates was one where both tea and coffee were grown and others, viz., Coovercolly Estate and Kesinvurthy Estate, were coffee estates.

4. The company derived income, (i) from tea, which is partly exempt as agricultural income, (ii) from coffee which is entirely exempt as agricultural income, (iii) from coffee curing works which is wholly taxable.

5. The company entered into an agreement of managing agency with M/s. Kothari Mehta and Co. Ltd., originally by an agreement dated 23rd March, 1950. This agreement underwent a modification by another agreement dated 17th March, 1960. Again, there was an agreement on 6th October, 1965, embodying almost the same terms of managing agency commissions as in the earlier agreement dated 17th March", 1960. As the first question itself shows, we are concerned with the claim for deduction of the managing agency commission. Under the agreement in force for the relevant years, the managing agents were to be paid for their work as managing agents, a commission on the net profits of the company computed in accordance with Sections 349 to 351 of the Companies Act, 1956, subject to a minimum remuneration of Rs. 50,000 in the event of absence or inadequacy of profits in any one year. The commission was payable at the rate of 10% on the first slab of Rs. 10 lakhs of profits or fraction thereof, at 9% on the next Rs. 10 lakhs of profits or fraction thereof and at rates thereafter which go down with the increase in the net profits. It is unnecessary for our present purpose to set out the various graded scale of percentages of commission payable to the managing agents.

6. Until the assessment for the assessment year 1964-65, the assessee-company used to work out the net income from taxable and non-taxable sources separately without taking into account the head office expenses. The head office expenses including the managing agency commission was thereafter apportioned between the three categories of incomes, viz., wholly taxable income, partially taxable income (from the tea estate) and wholly exempted income (from the coffee estate), in proportion to the expenditure incurred in the respective activities. The ITO completed the assessments for all the earlier years on the same basis. In the profit and loss account relating to the assessment year 1964-65, the assessee debited a sum of Rs. 1,62,215 as managing agency

commission. It worked out its taxable income from the tea business by deducting 10% of the total profits from the tea business on account of managing agency commission. The result was that out of the managing agency commission of Rs. 1,62,215, the assessee claimed only Rs. 90,149 as deduction from the profits of the tea business. The way in which the profit was worked out may be summarized as follows :

Rs. Rs.

Net sale of tea

40,74,863

Less : Expenditure on tea estate (Waterfall Estates as a whole) 23,67,575

Less : Expenditure on coffee 1,53,293

Balance 22,14,282

Add :

Sales tax, Excise duty, etc., debited in the tea office accounts 5,96,452

Proportionate expenses on head office in proportion to expenditure on tea, coffee and curing works 2,12,106

Proportionate normal and additional depreciation on acreage basis 1,20,985

Development rebate 29,547

31,73,372

Balance profits

9,01,491

Less : Managing agency commission at 10% of the above figure

90,149

Balance income from the tea estate

8,11,342

40% of the same being taxable as income from tea

3,24,536

7. There was a loss in coffee curing works during the year and the assessable income declared was Rs. 1,82,573.

8. For the subsequent three assessment years, viz., 1965-66 to 1967-68, the assessee filed the return of income on the same basis as the one adopted for the assessment year 1964-65. However, for the assessment year 1968-69, the assessee had paid a sum of Rs. 1,65,924 as managing agency commission, and

it claimed the whole of the amount for that year against the income from tea. But the claim was made in such a way that only that part of the managing agency commission proportionate to the taxable income from the tea would be deducted. This would be clear from the following figures for that year :

Rs.

Tea sales

50,52,794

Less : Total expenditure on tea excluding managing agency commission but including proportionate head office expenditure

47,17,135

Balance

3,35,659

Rs.

Less : Development allowance 92,589

Managing agency commission 1,65,924

2,58,513

Balance income

77,146

40% of the same being the taxable income from the tea business was worked out at Rs. 30,858 subject to further deductions under s. 80-I of Rs. 2,168. There was a net income of Rs. 28,390 shown under the head "Tea business ".

9. The same method was followed for the assessment year 1969-70 also.

10. The ITO in making the assessment for the assessment year 1964-65, noticed that the assessee had claimed allowance of the managing agency commission at a flat rate of 10% though from the managing agency agreement he found that 10% on the first slab of Rs. 10 lakhs of the income was deductible as managing agency commission and 9% on the next slab of Rs. 10 lakhs of the managing agency commission. As the profit in this case did not exceed Rs. 20 lakhs, he had not to go down further in the graded, scale of managing agency commission. He calculated that the managing agency commission payable worked out to 9.63% of the net profits and he, therefore, took that percentage as the managing agency commission allowable under the different heads of income proportionate to the income taxable under those heads. The result was that he allowed the managing agency commission only to the extent of Rs. 38,079 allocating it as follows:

Rs.

Tea business 23,787
Other sources 1,225
Capital gains 3,067 -----
38,079 -----

11. The balance of the managing agency commission was disallowed by him. For the subsequent assessment years also the ITO worked out the income from all the sources including the taxable income from tea, coffee curing works and other sources, and from the aggregate amount he deducted the managing agency commission at 10% of such income. The balance of the managing agency commission stood disallowed.

12. The assessee filed appeals before the AAC for all the years, who, following the decision of the Bombay High Court in the case of Commissioner of Income Tax Bombay City I Vs. Maharashtra Sugar Mills Ltd., , held that the apportionment made by the ITO was not justified. The result of the AAC's order was that the assessee got full deduction for the entire managing agency commission against the assessable income, so that a figure greater than that claimed by the assessee in its return of income came to be allowed. This has since been rectified. The revenue, aggrieved by the orders of the AAC, appealed to the Appellate Tribunal contesting the allowance of the entire managing agency commission in all the years against the assessable income. By the time the Tribunal came to dispose of the appeal, the appeal to the Supreme Court against the decision of the Bombay High Court in the case of Commissioner of Income Tax Bombay City I Vs. Maharashtra Sugar Mills Ltd., had been disposed of, and the judgment of the Supreme Court was available as reported in Commissioner of Income Tax, Bombay Vs. Maharashtra Sugar Mills Ltd., Bombay, . The Supreme Court upheld the decision of the Bombay High Court, The assessee placing reliance on the decision of the Supreme Court supported the order of the AAC, while the case for the revenue was that the said decision did not apply. The Tribunal, after elaborately examining the contentions of both the sides, came to the conclusion that a proper allocation of the managing agency commission against the respective activities of the assessee was clearly called for. It was pointed out that the proportion will have to be worked out in respect of the different activities on the basis of the expenditure incurred in those activities in the same way as the head office expenses had been allocated. The ITO was directed to work out the proportionate managing agency commission and allow the same in the computation of the taxable income for all these years. The result was that the allowance as granted by the AAC was reversed. It is as against this order of the Tribunal that the assessee has obtained reference of the question set out already.

13. Before proceeding further, there is one aspect which deserves to be noticed at this stage. The contention of the representative for the department before the Tribunal was that the assessee was carrying on a number of businesses and not a

single one and that, therefore, the decision in the case of Commissioner of Income Tax, Bombay Vs. Maharashtra Sugar Mills Ltd., Bombay, did not apply. The learned counsel for the assessee objected to the stand of the department on the ground that it was entirely a new case which the departmental representative was seeking to put forward before the Tribunal and that it should not, therefore, be considered. The departmental representative pointed out to the grounds of appeal that had been filed and also the way in which the assessment was made in the past, which showed that the assessee-company itself had treated the various activities as separate. He further pointed out that there was a separate account for each estate. It was only in the case of Waterfall Estates that the income was from both tea and coffee, whereas the other two estates, viz., Coovercolly Estate and Kesinvurthy Estate, were purely coffee estates and part of the managing agency commission had to be deducted from these income. The Tribunal considered that having regard to the past conduct of the assessee, the case put forward by the department could not be said to be a new case. However, the learned counsel for the assessee was given an opportunity to examine this aspect of the matter and consult his client, if necessary, and let the Tribunal know whether he would be prepared to argue the case on the basis of the materials on record or whether he would require an opportunity to lead evidence in this regard. In case the learned counsel required an opportunity to lead evidence, the Tribunal was prepared to remand the case for finding out all the relevant facts necessary for the determination of the issue. The case was accordingly adjourned by about 10 days. When the case came up again for hearing, this is what the Tribunal records in para. 10 of its order :

"When the case came up again for hearing the learned counsel for the assessee informed us that while he maintained his objection to the admission of what he called "the new case made out by the departmental representative ", he was prepared to argue the case on the facts on the record and did not want an opportunity to lead fresh evidence. Accordingly, both the learned counsel as well as the learned departmental representative were heard on that day as well as on the subsequent day."

14. It is after this hearing that the case was disposed of by the Tribunal.

15. The first question that requires to be considered is whether the conclusion of the Tribunal is inconsistent with the decision of the Supreme Court in the case of the Commissioner of Income Tax, Bombay Vs. Maharashtra Sugar Mills Ltd., Bombay, . In that case, the company carried on the business of manufacture of sugar from sugarcane. It owned extensive lands in which sugarcane was grown. The sugarcane grown in these lands was used by the assessee for the manufacture of sugar in its factory. The findings of the Tribunal was that the cultivation of sugarcane and the manufacture of sugar by the assessee constituted one single and indivisible business. The assessee-company was managed by managing agents, who were paid remuneration in accordance with the agreement. The remuneration worked out at 10 per cent, of profits of the

company. In the relevant assessment year, viz., 1957-58, the managing agents were entitled to a sum of Rs. 4,86,228-6-0 and this amount was claimed as deductible from the income from the manufacture of sugar u/s 10(2)(xv) of the Indian I.T. Act, 1922. The ITO disallowed a sum of Rs. 1,26,359 on the ground that the managing agency commission to that extent related to the sugarcane cultivation. While the A AC confirmed the disallowance so made, the Appellate Tribunal and the High Court on reference rejected the stand of the department and agreed with the assessee's claim for the allowance of the entire managing agency commission. After pointing out that it was not disputed that the cultivation of sugarcane and the manufacture of sugar constituted one single and indivisible business, the Supreme Court observed at pp. 454 and 455 as follows I

"Section 10(2) says that profits u/s 10(1) in respect of a business should be computed after deducting the allowances mentioned therein. One of the allowances allowed is that mentioned in Section 10(2)(xv) which says that any expenditure laid out or expended wholly and exclusively for the purpose of such business shall be deducted as an allowance. The mandate of Section 10(2)(xv) is plain and unambiguous. Undoubtedly, the allowance claimed in this case was laid out or expended for the purpose of the business carried on by the assessee. The fact that the income arising from a part of that business is not exigible to tax under the Act is not a relevant circumstance. For the foregoing reasons we agree with the view taken by the High Court ". (underlining* ours).

16. The earlier decisions relevant to the point were noticed, and one of those decisions, on which again very strong reliance was placed by the assessee before us, was that of the Supreme Court in Commissioner of Income Tax, Madras Vs. Indian Bank Ltd., . In that case, a banking company in the course of its business invested a large sum in securities both of the Central and State Govts. (including Mysore Govt.). The interest on Mysore Govt. securities was exempt from Income Tax and super-tax under a notification issued u/s 60 of the Indian I.T. Act, 1922. The assessee bought and sold the Govt. securities including Mysore Govt. securities and the profits and losses on the purchase and sale of such securities were duly taken into account in computing the income of the assessee under the head "Business ". For the assessment year 1951-52, the assessee claimed a deduction of Rs. 25,91,565 as interest paid to various depositors u/s 10(2)(iii) of the Indian I.T. Act of 1922. The I.T. authorities and the Tribunal disallowed a part of the interest to the extent of Rs. 2,80,194 by calculating the proportionate interest which would be payable on money borrowed for the purchases of Mysore Govt. securities for Rs. 2,49,93,511. It is this disallowance which was challenged successfully before the High Court on reference and the matter was taken on appeal to the Supreme Court by the revenue. At p. 80 of the report the following passage occurs I

" We are concerned with the interpretation of Section 10. Let us then look at the language employed. Sub-section (1) directs that an assessee be taxed in respect of the profits and gains of business carried on by him. What is the business of

the assessee must first be looked at. Does he carry on one business or two businesses or along with the business carried on by him some activity which is not a business ? If he is carrying on an activity which is not business, we must leave out of account the receipts of that activity. That is the first step. Secondly, we must look at Section 10(2) and deduct all the allowances permissible to him. In allowing a deduction which is permissible the question arises, " Do we look behind the expenditure and see whether it has the quality of directly or indirectly producing taxable income ?" The answer must be in the negative for two reasons. First, Parliament has not directed us to undertake this enquiry. There are no words in Section 10(2) to that effect. On the other hand, indications are to the contrary. In Section 10(2)(xv), what Parliament requires to be ascertained is whether the expenditure has been laid out or expended wholly and exclusively for the purpose of the business. The legislature stops short at directing that it be ascertained what was the purpose of the expenditure. If the answer is that it is for the purpose of the business Parliament is not concerned to find out whether the expenditure has produced or will produce taxable income. Secondly, the reason may well be that Parliament assumes that most types of expenditure which are laid out wholly and exclusively for the purpose of business would directly or indirectly produce taxable income, and it is not worth the administrative effort involved to go further and trace the expenditure to some taxable income.

Therefore, it seems to us that there is nothing in the language of Section 10 from which it can be fairly implied that an expenditure or allowance falling within the section must fulfill some other condition before it can be allowed."

17. These two decisions lay down the principle that where an assessee carried on an indivisible business, and a part of its profits is not liable to tax, the entire expenditure incurred for the purpose of business should be allowed as deduction, even though a part of the expenditure may, in a strict view, be attributable to the earning of the non-taxable profits.

18. It is this aspect which has been brought out in *M.S.P. Raja and Another Vs. Commissioner of Income Tax*, . Two brothers were partners in two different firms, and were also partners in a firm which owned a coffee estate. The capital for the purchase of this coffee estate was provided by them by withdrawing the required amount from one or the other firms in which they were partners, and in which they had a running account. The two firms from which they had borrowed charged interest on the drawings made by the respective partners. The interest so charged was claimed as deduction by them in their personal assessments. The ITO disallowed a part of the interest on the ground that the withdrawals related to non-business purposes, namely, for the purchase of agricultural estate, income from which was not taxable, and the AAC and the Tribunal confirmed the disallowance so made. When the matter came before this court on reference, reliance was placed on the two decisions of the Supreme Court referred to above, and also on other decisions, on behalf of the assessee. In dealing with the above

two Supreme Court decisions, it was pointed out by a Bench of this court, to which one of us was a party, at p. 303 as follows:

"Having regard to the decisions cited above and in particular the cases of the Commissioner of Income Tax, Madras Vs. Indian Bank Ltd., and of the Commissioner of Income Tax, Bombay Vs. Maharashtra Sugar Mills Ltd., Bombay, , it is clear that the principle applicable to a case where an assessee carried on a single business part of whose profits is not assessable to tax is different from a case where the assessee carries on more than one business. From the fact that the Supreme Court has quoted with approval the decisions of the Madras High Court in The Commissioner of Income Tax Vs. M.T.T.K.M.M.S.M.A.R. Somasundaram Chettiar, and of the Bombay High Court in Provident Investment Co. Ltd., In ye [1932] 2 Comp Cas 312 ; [1932] 6 ITC 21 and from the distinction made between the two types of cases in both the cases of Commissioner of Income Tax, Madras Vs. Indian Bank Ltd., and Commissioner of Income Tax, Bombay Vs. Maharashtra Sugar Mills Ltd., Bombay, the principle applicable to these two sets of cases is clearly different. It is thus necessary to keep the distinction between these two types of cases in considering the question of deductibility of the expenditure. In the present case, there is a finding by the Tribunal, which is binding on us, that the businesses carried on by the assessee through three different firms do not constitute a single business. This finding as such was not attempted to be challenged. In these circumstances, we have to apply the law as laid down consistently in cases where the assessee carries on distinct and separate businesses, and exclude from deduction the interest in so far as it related to the non-taxable activity. "

19. The two types of businesses referred to in the above passages are: (1) of an assessee carrying on a single business, and (2) of an assessee carrying on more than one business. Whatever applied to interest in that case would apply here to the managing agency commission, if the assessee is found to have carried on several businesses and not a single business. The Tribunal has found that the assessee carries on several distinct businesses.

20. In the present case, however, question No. 2 challenges the correctness of the inference drawn by the Tribunal that the several lines of activity like tea estate, coffee estate, coffee curing, plantation, etc., did not constitute one single and integrated activity or business, but independent units of business. Mr. K. Srinivasan, learned counsel for the assessee, vehemently contended that the assessee was carrying on only one business as shown by the fact that there was a single account and a single balance-sheet and profit and loss account and that the activities were all controlled from the head office. It is, therefore, necessary to examine whether the different lines of activities constituted a single business or not.

21. On this aspect, the learned counsel for the assessee drew our attention to the latest decision of the Supreme Court in B.R. Limited Vs. V.P. Gupta, Commissioner of Income Tax, Bombay, . In that case, the Supreme Court

disposed of an appeal by special leave granted under Article 136 of the Constitution, against the order of the Commissioner, Bombay. The assessee, in that case, carried on business in (i) general insurance, (ii) brokerage and commission, and (iii) import and sale of woollen fabrics, leather beltings, hardware, toilet goods, chemicals, cotton fabrics, etc. The business of import and sale of woollen fabrics, etc., was closed towards the end of the calendar year 1952, and the assessee had suffered an accumulated business loss of Rs. 56,488 in that activity. From the next year the assessee started exporting cotton textiles instead of importing woollen fabrics, and claimed the loss mentioned above, viz., Rs. 56,488 to be set off against the profit made in this business of export. The I.T. authorities disallowed the assessee's claim, and when the matter came before the Supreme Court, after examining the earlier decisions, it was held that there was a common management, a common business organisation, a common administration, a common fund and a common place of business and that these showed that there was interlacing and inter-dependence of the business carried on by the assessee so as to treat them as a single business. What requires to be noticed about the case before the Supreme Court is that the assessee had, instead of importing woollen fabrics, etc., and selling them, started exporting cotton textiles in the same way as the import had been previously carried on. The nature of the business organisation when the import was going on did not appear to have changed when the export activities were taken up. It was held that the business of import and export was the same. This case itself shows that a company can carry on more than one business. The claim for set-off related only to the import or export business carried on by the assessee and not the others. This proposition that a company can carry on more than one business has also been laid down by a Full Bench of this court in *SOUTH INDIAN INDUSTRIALS, LTD. Vs. COMMISSIONER OF INCOME TAX, MADRAS.*, . In that case, the assessee-company was carrying on business in several lines like running a spinning and weaving mill, manufacturing portland cement and tiles, running a rice mill and foundry, etc. The company had purchased shares in a jute company and derived income by way of dividends. The assessee claimed to set off the loss sustained in the rice mills, cement works, etc., against the dividend income. It was held that the various activities carried on by the assessee were separate businesses. At p. 20 it was observed as follows :

"A company can carry on several distinct and separate businesses and it must always be a question of fact whether those businesses are separate businesses or whether they are so interlocked with the main chief business of the company as to be really one business, for example, a railway company carrying on a steam boat business in connection with its railway."

22. Thus, the proposition put forward for the assessee that whenever a company carries on several activities, all those activities are to be construed as a single and integrated activity cannot be accepted.

23. Whether a company carried on a single activity or different businesses is a

matter to be ascertained from the facts of each case. Even where an assessee was carrying on a business in the exhibition of cinematograph films in theatres at two different places, viz., Ahmedabad and Bombay, the businesses were held to be separate in *L.M. Chhabda and Sons Vs. Commissioner of Income Tax, Gujarat*, . It was held that there is no such general principle that where an assessee carries on business ventures of the same character at different places, it must be held as a matter of law that the ventures are parts of a single business. In that case, the assessee had taken a lease of a cinema theatre in Ahmedabad and had also a similar business of exhibition of films in Bombay. The lease in respect of the theatre in Ahmedabad expired, and the landlord filed a suit in ejectment and obtained a decree for possession and for mesne profits. A sum of Rs. 92,240 became payable as mesne profits during the calendar year 1954 relevant to the assessment year 1955-56. The ITO disallowed the claim for deduction of this amount on the ground that the business of running a cinema theatre in Ahmedabad had not been carried on in the year 1954 and that the loss by payment of mesne profits, therefore, could not be allowed. The disallowance was upheld in reference. Thus, this problem is to be considered in the light of all the facts and not by seeing the nature of the business. In the course of the judgment, at p. 642, it was pointed out as follows :

" It was for the appellants to establish that different ventures constitute parts of the same business."

24. The onus is thus on the assessee to show that the different ventures in the present case constituted parts of the same business. As seen already, the assessee was given an opportunity to place relevant materials to establish that the several activities carried on by the assessee constituted a single business. As the assessee did not avail itself of this opportunity, the onus has not been discharged in the present case. The apportionment made by the assessee in all the earlier years clearly establishes that these businesses, viz., running the tea estate, the coffee estate and the coffee curing works were all treated as different businesses by the assessee itself. There is no change of circumstances in these years, which would justify a different stand being taken by the assessee. The assessee itself had been claiming only a part of the managing agency commission as deductible even in the assessment years under consideration, viz., 1964-65 to 1967-68. It is only in the return for 1968-69 and 1969-70 that a different stand came to be taken for which, as seen above, there is no basis made out on facts.

25. The Tribunal has extracted the speech of the chairman of the company at the 17th annual general meeting held on December 21, 1960. By that time, the assessee, which had a composite estate in tea and coffee, had acquired the two other coffee estates. The chairman observed in his speech as follows :

"In keeping with current trends of thinking we felt that Waterfall Estates, a purely agricultural company, should also have an industrial side so that if there is depression in any particular sectors of the economy, the company will be able to

withstand the strain drawing on the resources in the other sphere. With this end in view, we have obtained a licence for the establishment of a coffee curing works at Hassan which is in the course of construction."

26. Further, in the directors' report for the accounting year 1964-65, under the heading " Capital Expenditure " it was mentioned as follows :

"Building: The new tea factory was commissioned in May, 1965. With this the bifurcation of the two factories is complete and the two factories are independently managed ". (Underlined by us).

27. From the above speeches, the Tribunal has drawn the inference that the history of the company's expansion itself shows that the later additions of coffee estates as well as the commissioning of coffee curing works did not form an integral part of the original business of the assessee. The company itself has been apportioning all the expenses including managing agency commission among the different activities both in the past as well as in some of these years as shown above. It has been found that the same staff is not engaged in all the businesses of the company at the various places. In fact, there was separate staff even for coffee and tea estates in Waterfall Estates. In other words, there is separate staff in each of these places where the businesses are carried on. Apart from the existence of a head office, no material was placed before the Tribunal to show that the day-to-day functioning of the various estates and the coffee curing works was inter-dependent or that there were transactions inter se of such nature as to establish an interlacing or inter-connection or dovetailing of one another. The facts indicate the existence of several businesses, and there is no proof of the existence of a single business.

28. As against the above facts the only way in which the assessee's learned counsel wanted to support its stand, that what it was carrying on was a single business, was based on the following grounds set out in para. 19 of the Tribunal's order:

" (i) The source of the capital funds for all the activities of the company was the same. There was a single source of the funds at the head office, capital as such has not been and should not be distributed between the various estates and coffee curing works.

(ii) A single account was maintained at the head office on the basis of monthly returns obtained from the various estates and coffee curing works. These statements were obtained and classified under proper headings and necessary entries made in the accounts maintained in the head office. No separate accounts, according to the learned counsel, were maintained at different centres. No separate profit and loss account was prepared for any of the different centres.
"

29. The Tribunal had not accepted the plea that no separate accounts were maintained at different centres. In para. 30, the Tribunal observed as follows:

" But we find it difficult to believe that no accounts whatsoever are maintained in the various estates as on the spot. The estates are fairly large ones with large staff involving disbursements of millions of rupees. The very fact that these estates are sending monthly statements to the head office would indicate that they must be maintaining some sort of account. Otherwise it would be impossible for them to send such monthly statements. "

30. The submission that the assessee did not maintain any account in all these estates has been disbelieved and this finding of the Tribunal cannot be said to be wrong.

31. With regard to the plea of the maintenance of a single account at the head office, the Supreme Court has pointed out, in the case of L.M. Chhabda and Sons Vs. Commissioner of Income Tax, Gujarat, , noticed already, at p. 642 as follows:

" It is true that the appellants were conducting cinema theatres in Ahmedabad and Bombay, and the result of the accounts of the different ventures was entered in the accounts maintained at the head office, but from that circumstance no inference necessarily arises that the exhibition of films in different theatres constituted the same business. "

32. Therefore, the incorporation in the head office books of the financial statements sent from the different centres cannot by itself sustain the plea that a single business alone was carried on.

33. As regards the capital contribution, the Tribunal pointed out in para. 34 of its order as follows :

" It was claimed by the learned counsel for the assessee that the funds are all supplied from the head office to the various estates. In our opinion, this is a statement which will require verification and cannot be said to be proved on the material on record since there is nothing to show whether or not this claim is correct."

34. The plea of common finance is not also established. Therefore, the assessee's claim that a single business was carried on has to fail on facts. The claim of the assessee that the managing agency commission has to be deducted only from the taxable profits has thus no merit and cannot be accepted. The result is that the first two questions have to be answered and are answered in the affirmative and against the assessee.

35. As regards the third question it questions the direction for allocation as made in by the Tribunal in para. 39 of its order. The learned counsel for the assessee was not in a position to show as to how the direction given by the Tribunal was in any manner wrong. The Tribunal has only followed the same method in regard to the managing agency commission, as the assessee itself had followed in respect of the managing agency commission and the head office expenses in the earlier years and the head office expenses other than the managing agency commission in these years. The Tribunal cannot be said to have committed any error in giving

the direction in para. 39 of its order. The third question is also answered in the affirmative and against the assessee.

36. As the assessee has failed in the reference, the revenue is entitled to its costs. Counsel's fee Rs. 500.