of the suit as we would in suits for movable property other than money under section 7(iii) of the Act which mentions suits for movable property other than money where the subject-matter has a market value and lays down that the court fee shall be calculated upon such market value at the date of presenting the plaint. The proviso to section 7(iv-B) also mentions market value and in some cases the fee payable would depend upon such market value. It seems to me that the market value would be such value at the date of presenting the plaint. If we are to go back to the date of the presentation of the plaint, then, as the proviso was not in force on that date, the relief was rightly valued at Rs.5 and the court fee paid on the memorandum of appeal was sufficient. I hold accordingly.

Before Mr. Justice Collister and Mr. Justice Bajpai

KANHAIYA LAL GOENKA (APPLICANT) *v.* COMMISSIONER OF INCOME-TAX (OPPOSITE PARTY)*

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September, 19

Income-tax Act (XI of 1922), section 14(2)(b)—"Assessed to income-tax", meaning of—Not merely taken into calculation of the profits and losses—Sum advanced or invested by a partner in a firm—Interest on such sum paid to him by the firm—Interest not deducted in calculating the profits of the firm—Claim by the partner to exemption in respect of the interest from his individual assessment.

The assessee who had some property at Meerut was also a partner in a Calcutta firm. He and the other partners of the firm had advanced certain sums to the firm on interest. The firm was assessed to income-tax in Calcutta, and in calculating the profits of the firm no deduction was allowed in respect of the interest which the firm had to pay to the partners on these advances. On his individual assessment at Meerut, the assessee's share of the profits of the firm which were assessed to income-tax in Calcutta was exempted but he claimed a further exemption in respect of the interest which had been paid to him by the firm, basing his claim under

*Miscellaneous Case No. 409 of 1938.

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section 14(2)(*b*) of the Income-tax Act on the allegation that the refusal to allow deduction of the interest from the profits of the firm was tantamount to the payment of tax by the firm on the interest, which should not be taxed over again: *Held,* that the assessee was not entitled to the exemption claimed by him.

What section 14(2)(*b*) of the Income-tax Act provides is that where profits made by a firm have been taxed, the proportionate share of those profits in the hands of a partner can not be re-taxed when the partner's individual assessment is being made, and this relief had been given to the present assessee. Beyond this, the assessee was not entitled to any other relief under that provision. In order to bring section 14(2)(*b*) into play it must be shown by the assessee that any income in his hands had already been assessed to income-tax in the hands of the firm of which he is a partner. Any particular item can not be said to have been "assessed to income-tax", within the meaning of the sub-section, merely by reason of the fact that it was taken into consideration by the Income-tax authorities in calculating the tax payable by the firm—whether in fact income-tax was or was not found to be payable in respect to such item; the sub-section will apply to such item only if it has actually been assessed to tax. The interest which the Calcutta firm paid to the assessee was never treated as the income of the firm and was never assessed to any tax there. The utmost that the assessee could say was that no allowance was made under section 10 of the Act so far as this interest paid by the firm was concerned, but that was a quite different thing from saying that this sum suffered tax at Calcutta.

Messrs. *G. S. Pathak* and *S. B. L. Gour,* for the applicant.

Dr. *N. P. Asthana,* for the opposite party.

BAJPAI, J.:—This is a reference under section 66(2) of the Indian Income-tax Act and a case has been stated before us on the application of the assessee by the learned Commissioner of Income-tax, Central and United Provinces. Although the assessee in his application to the Commissioner formulated three questions of law, it is manifest that those questions were not happily worded in the application of the assessee and can be summarised, as the learned Commissioner has done, in one question.

That question is: "Whether in the circumstances of the case the assessee was entitled under section 14(2)(*b*) of the Income-tax Act to claim an exemption in respect of the amount of Rs.59,011 received by him from the registered firm of Sadhuram Tularam at Calcutta when the firm itself was assessed in income-tax on a smaller sum, viz., Rs.12,829 only."

This question arises before us in connection with the assessment year 1934-35 when Seth Kanhaiya Lal was being assessed to income-tax by the Additional Income-tax Officer of Meerut. He was assessed on a total income of Rs.59,371 and that income was made up as follows:

	Rs.
(1) Income from property ...	360
(2) One-third share income in the registered firm of Sadhuram Tularam, Calcutta, already assessed	4,276
(3) Interest income from Calcutta firm of Sadhuram Tularam	54,735
Total Rs.	59,371

It appears that the assessee is a partner in the registered firm of Sadhuram Tularam of Calcutta and the other two partners of the said firm are Gourishankar and Mannalal. These three partners have invested large sums of money in the said firm and under the terms of partnership (this is what we gather from the record) they are entitled to certain interest on their investments. Kanhaiya Lal, the assessee, got a sum of Rs.54,735 as interest from the Calcutta firm of Sadhuram Tularam, and this amount was taken into consideration by the Income-tax Officer of Meerut when he was assessing Kanhaiya Lal at Meerut. The firm itself was assessed to income-tax at Calcutta for the assessment

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year 1934-35 on an income of Rs.12,829. This income was made up of the following items:

	Rs.
(1) Interest on securities	11,573
(2) Property	12,606
Total ...	24,179

There was a business loss of Rs.11,350, and thus the profit was reduced to Rs.12,829 and the firm was assessed on this income. From what is stated above it is clear that the firm had to pay large sums of interest to its three partners, and before the Income-tax Officer of Calcutta a submission was advanced on behalf of the firm that the profits or gains of the firm should be computed after making allowance for the amount of interest paid in respect of the advances made by the partners to the firm. The submission obviously was repelled by the Income-tax Officer of Calcutta, presumably on the view that the sums advanced or invested by the partners did not represent the capital borrowed by the firm for the purposes of the business. The question whether the Income-tax Officer of Calcutta was right in his method of assessment is not before us, and all that we have got to see for the purposes of the present reference is whether the income which Kanhaiya Lal has received from the Calcutta firm of Sadhuram Tularam, namely the sum of Rs.54,735 is liable to tax or is exempt from taxation under section 14(2)(*b*) of the Act, and the question has been correctly formulated by the learned Commissioner.

Learned counsel for the Department and learned counsel for the assessee have relied upon the case of *Seth Kanhaiyalal* v. *Commissioner of Income-tax* (1), where we by means of separate judgments overruled a similar contention advanced on behalf of this very assessee. As both parties rely upon our judgments, it

(1) (1936) 5 Income Tax Reports, 739.

might be necessary for us once again to explain separately what we meant by our observations. At page 747 I said: "The question of the liability of the firm to income-tax is not before us, and the only question is whether the amount of Rs.51,180 had been correctly treated as the assessee's share in the Calcutta firm for the assessment year in dispute, and learned counsel for the assessee has not been able to show any mistake of the Department in the calculations made except to argue generally that there has been double taxation of the same income, once in the hands of the firm and a second time in the hands of the assessee who is a partner of the firm . . . The income made by the assessee on the head of interest received from the firm can be exempted under section 14(2)(*b*) only if the firm had made certain profits and those profits *had been assessed to income-tax*. Profits can be said to be assessed to income-tax only when an order has been made by the Department determining the sum payable by an assessee as income-tax and not when calculation only of the profits and losses has been made."

The last sentence is tersely put and I take this opportunity of amplifying its meaning. Section 14 gives exemptions of a general nature and provides for relief in certain cases where but for that section there might have been double taxation. I am concerned at the present moment with section 14(2)(*b*) which says that a tax shall not be payable by an assessee in respect of such an amount of the profits or gains of any firm which have been assessed to income-tax as is proportionate to his share in the firm at the time of such assessment. It postulates that the firm made certain profits and those profits were assessed to income-tax, and if they had been so assessed a particular partner, when he was being assessed in his individual capacity, would not be liable to pay any income-tax on any sum which he might have received from the firm as his proportionate share of the profits in the firm. In the former case before us I held that the question of exemp-

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tion could arise only when profits of the firm *had been assessed to income-tax* and not when during the course of the assessment the revenue authorities might have made certain calculations in respect to a particular item by ignoring it or by paying some regard to it. What is contended by the assessee in the present case is that the Income-tax Officer of Calcutta did not pay any regard to the amount of interest which the firm had to pay to its partners and therefore it should be deemed (how I do not understand) that the interest paid by the firm suffered a tax. The best that can be said is that no allowance was made under section 10 of the Act so far as this interest paid by the firm was concerned, but that is quite a different thing from saying that this sum suffered tax at Calcutta.

It was then argued by learned counsel for the assessee that the moment the Calcutta firm was assessed to income-tax the present assessee, who is a partner in that firm, was not liable to be taxed in respect of any interest which he might have received from the Calcutta firm. The phraseology of section 14(2)(*b*) does not lend support to this contention. If the Calcutta firm made any profits and if those profits were taxed then the proportionate share of the profits in the hands of the assessee could not be re-taxed when the assessee's assessment was being made; and this is all that the section says and this relief has been given to the assessee in the present case. The Calcutta firm made a profit of Rs.12,829; the assessee's one-third share in this profit is Rs.4,276, and this amount of profit or income has not been re-taxed in the hands of the assessee. Beyond this the assessee is not entitled to any relief in respect to the sum of Rs.54,735. This represents the interest which the Calcutta firm paid to the assessee and this sum or any multiple of this sum was never treated as the income of the Calcutta firm and was never assessed to any tax there. I emphasised in the earlier case that if in the course of any calculation made by the Income-tax Officer any sum was somewhere entered, that was not sufficient

for bringing into play section 14(2)(*b*), but it must be shown by the assessee that *any income in his hands had already been assessed to income-tax* in the hands of the firm of which he happened to be a partner. My answer to the question formulated by the Commissioner is in the negative.

COLLISTER, J.:—I agree. I should like to add a few words in order to clarify an obscurity in my judgment in the case of *Seth Kanhaiyalal* v. *Commissioner of Income-tax* (1) to which my learned brother has referred. At page 746 I said: "Learned counsel for the assessee argues that 'to assess to income-tax' means 'to calculate the income-tax payable by the assessee'. I am unable to accept this contention. It seems to me that the only meaning which the words can bear is 'to ascertain or calculate the income-tax payable'." These observations are, I fear, somewhat cryptic and call for elucidation. What I meant was this: An argument was advanced by counsel for the assessee that it was the intention of the legislature in enacting section 14(2)(*b*) that it should apply to any particular amount which may have been taken into consideration by the Income-tax authorities in calculating the tax payable by the assessee firm—whether in fact income-tax was or was not found to be payable in respect to such amount. I did not accept that argument and the view which I intended to express was that the sub-section will only apply to such amount if it has actually been assessed to tax.

BY THE COURT: The answer to the question referred to us is in the negative and, in our opinion, in the circumstances of the case the assessee is not entitled under section 14(2)(*b*) of the Income-tax Act to claim exemption in respect to the whole amount of Rs.59,011 received by him from the registered firm of Sadhuram Tularam at Calcutta. Let a copy of our judgment be sent to the Commissioner of Income-tax under the seal of the Court and the signature of the Registrar. The assessee will have to pay the costs of this reference. The counsel for the department is entitled to a fee of Rs.200.

(1) (1936) 5 Income Tax Reports, 739.