

Code does not anywhere refer to persons dealt with under section 118 as convicted persons; and section 406 which provides an appeal against an order under section 118 speaks of "any person who has been ordered under section 118 to give security....." This is in sharp contrast to sections 407, 408, 410 and 411 which give an appeal—an appeal from a sentence—to "any person convicted on a trial." Section 426 which is invoked on behalf of the petitioners provides for orders "pending any appeal by a convicted person." Having regard in particular to the fact that this section occurs in the same chapter as sections 406 to 411 with the distinction that they make between persons dealt with under section 118 and persons convicted on trials, I cannot see on what principle it can be held that the legislature gave up the distinction between the two classes of persons for the purposes of section 426. It is true that the section speaks of a "convicted person" instead of a "person convicted on a trial"; but there does not seem to be any real difference between these expressions, and I can see no reason to regard persons dealt with under section 118 as included in the category of "convicted" persons.

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 CHARAN
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DHAVLE, J.

**REFERENCE UNDER THE INCOME-TAX
ACT, 1922.**

Before Fazl Ali and Chatterji, JJ.

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v.

COMMISSIONER OF INCOME-TAX, BIHAR AND
ORISSA.*

Income-tax Act, 1922 (Act XI of 1922), sections 8, 10, 12 and 24—interest on securities—deduction for collection charges not allowable—deduction is not "loss."

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No deduction is allowable on account of commission paid to a bank for collecting interest on securities taxable under section 8 of the Income-tax Act, 1922.

Section 24 does not entitle an assessee to claim a deduction of expenses incurred in collecting his income under any particular head from the gross income under that head. Such an expenditure is not a "loss" within the meaning of the section.

Per Chatterji, J.—Even when an assessee carries on the business of buying and selling securities he is not entitled under section 10 to deduct from the receipts of the business the commission paid to his banker for collecting the interest on the securities.

The facts of the case material to this report were as follows:—

The assessee was the holder of debentures and Government securities to the value of Rs. 21,00,000. In the return of income which he filed under section 22 of the Income-tax Act, 1922, this amount was shown against the head "Interest on Securities."² The assessee claimed to deduct from the interest received from these securities the amount of commission which his bankers charged him for collecting it. In a petition to the Commissioner of Income-tax he also claimed that his income from securities was taxable not under section 8 but under section 10 as the profits of a business, and that the commission paid to the bankers was a deductible item of expenditure. The Income-tax Officer, the Assistant Commissioner and the Commissioner all held that the income was taxable under section 8 and that no deduction was permissible. The assessee then applied to the High Court under section 66 (3) praying that the Commissioner of Income-tax be called upon to refer the following question for the opinion of the High Court:—

"Whether the cost of collection in respect of securities and debentures is deductible under sections 8, 10, 12 or 24 of the Income-tax Act."

K. P. Jayaswal (with him *S. M. Imam*), for the assessee: The deduction claimed should be allowed as a matter of equity under section 8. Furthermore,

I am taxable only on the income received and the income which I received was the interest minus the commission. Then again, I am entitled to say that I carry on a business in securities and am therefore taxable under section 10. If I claim that a particular item of income falls under one of the heads enunciated in section 6 rather than under another such head, the income-tax authorities are bound to accept my statement. If the income is taxable under sections 10 or 12 the commission is deductible. In any case I am entitled under section 24 to set it off against other heads of income under section 24.

C. M. Agarwala, for the Commissioner: As section 8 specifically deals with interest from securities no other section can be applied to it. No deductions are permissible under that section. *Maharaja Guru Mahadeo Ashram Prasad Sahi Bahadur v. Commissioner of Income-tax, Bihar and Orissa* (1) referred to. "Receivable" in section 8 is not the same as "received." Even if the assessee had succeeded in showing that he carried on a business in securities within the meaning of business in section 10, the Commissioner would nevertheless be entitled to say that as the income is taxable either under section 8 or 10, it shall be taxed under section 8. The option lies with the revenue authorities and not with the assessee. In this case, moreover, the assessee himself showed the item in question against the head "Interest on Securities" in the return and not against the head "Business." Section 24 has no application, for an item of expenditure is not a "loss" within the meaning of that section. Furthermore, it is only when the expenditure under any particular head exceeds the income under that same head that the excess can be set off under section 24 against the income under other heads. In this case the commission paid to the bank did not exceed the income receivable from the securities.

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FAZL ALI, J.—This is an application asking this court to call upon the Commissioner of Income-tax to state a case under section 66 of the Income-tax Act; the question raised being as to whether the petitioner, who has paid to his bankers certain commission at the rate of a quarter per cent. for the realisation of interest on the Government securities held by him, is or is not entitled to claim that the amount paid to the bankers by way of commission should be deducted from the interest receivable on those securities, and that income-tax should be charged only on the sum actually received by him. The view taken by the Income-tax Commissioner is that section 8 of the Income-tax Act is conclusive on the point and that the tax is payable not on the amount actually received by the assessee but on the interest receivable by him on the securities held by him. Now, the language of section 8 is so clear that it is difficult to hold that the view taken by the Income-tax Commissioner is not correct. It was, however, contended that the present case may come under section 10 or section 24. Section 10, clause (1), runs as follows:—

“The tax shall be payable by an assessee under the head ‘business’ in respect of the profits or gains of any business carried on by him.”

Now, in this case the securities are held by the petitioner as investments and it is not his case that he carries on the business of buying or selling securities in the same way as one deals in stocks and shares in the share market. It is true that in his application to the Commissioner of Income-tax the petitioner contended that his case came under section 10 of the Income-tax Act, but the contention was based upon a curious reasoning which is to be found in the following passage in that application.

“That having little time to look after my *pecuniary investments* or to draw the interest and dividends receivable therefrom on due dates, I have been constrained to enter into business relations with the said Banks and Agents in accordance with their rules and practice, so

as to obtain the aforesaid interest and dividends and to have proper accounts of them, and in return I have to remunerate them by an allowance of commission both on the sums realised and the sums invested or paid out by them, they submitting the accounts at the close of the financial year by statements of account or by balancing the entries in the Pass Book when such have been supplied by them."

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Now, this is obviously a very laboured way of trying to bring the case under section 10 of the Income-tax Act. In fact, as has been pointed out by the Commissioner of Income-tax, there are six heads of income in the Act, namely, (1) salaries, (2) interest on securities, (3) property, (4) business, (5) professional earnings and (6) "other sources." The assessee, when submitting his return has to state under which and from how many of these heads he derives his income. In this particular case the return submitted by the petitioner shows that he described his earnings on securities under the head of "Interest on securities." This being so, it is clear that section 8 will apply to the case and the tax will be levied on the amount receivable by the petitioner as interest on security and not on the amount which actually came into his hands after deducting the commission payable to the bankers.

The next question is as to whether any relief can be given to the petitioner under section 24 of the Income-tax Act. Section 24, clause (1), runs as follows—

"Where an assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set off against his income profits or gains under any other head in that year."

Now, in the first place, I do not think that the payment of a commission to the bankers by the assessee himself can, without stretching the language, be held to constitute loss of profits or gains in the sense the expression has been used in section 24. Then again, all that section 24 says is that the loss of profits under one of the heads may be set off against

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the income profits or gains under *any other head* in a particular year. It does not provide that the assessee is entitled to claim a deduction of the expenses incurred by him in collecting his income under any particular head from the gross income under that head. Such a deduction may be claimed only under sections 9, 10, 11 and 12 in appropriate cases. But as I have already said, the present case does not fall under any of these sections, but falls directly under section 8 of the Income-tax Act. Besides, the petitioner did not urge in the application before the Income-tax Commissioner that his case came under section 24 of the Income-tax Act, and it is for the first time that the point has been raised in this court.

The decision of the Commissioner seems to be correct and the application is accordingly rejected.

It may, however, be observed that if the case had to be decided on equitable considerations alone the petitioner had no doubt a good case; but the case has to be decided with reference to the law in force, and all I can say is that this case brings into prominence one of the obvious deficiencies in the present law.

CHATTERJI, J.—This is an application for calling upon the Income-tax Officer to make a reference under section 66 (2) of the Income-tax Act on the following point of law:—

“Whether the cost of collection in respect of securities and debentures is deductible under sections 8, 10, or 12 or 24 of the Income-tax Act.”

The petitioner holds Government securities of the value of over Rs. 21,00,000 and debentures and shares of the value of several lakhs. The case for the petitioner is, that to obtain and collect interest thereon, the said securities are placed with the Imperial Bank of India which collects the interest and renders an account thereof to the petitioner charging a commission of $\frac{1}{4}$ per cent. The petitioner claims that no income-tax ought to be charged on the commission so paid to the Bank for realization of interest and Government Promissory Notes and debentures, and

that the Commissioner of Income-tax who refused his prayer may be called upon to state a case for the opinion of this court.

Section 6 of the Income-tax Act specifies the heads of income chargeable to income-tax. The heads are six in number :—

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Property.
- (iv) Business.
- (v) Professional earnings.
- (vi) Other sources.

Section 7 deals with salaries; section 8 with interest on securities; section 9 with property; section 10 with business; section 11 with professional earnings and section 12 with other sources. These heads are mutually exclusive of one another. The item regarding which this petition has been moved is dealt with in section 8. It provides that the tax shall be payable by an assessee in respect of "interest receivable by him" on any security of the Government of India or of a Local Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company. This section does not show any deductions to be made as in the case of the other items. As to property, clause (i) of section 9 (1) allows deduction in respect of collection charges. In business the assessment is to be made under section 10 in respect of profits or gains computed after making certain allowances. In professional earnings computation is to be made under section 11 after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains. Similarly, section

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12 provides for an allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning income, profits or gains under the head "Other sources." If really the legislature intended that any deduction is to be made for collection charges in respect of interest on securities or debentures, I have not the slightest doubt that some provision would have been made to that effect in the Act. Prima facie, therefore, the assessee is bound to pay income-tax upon all the interest receivable by him.

It is, however, contended that the transaction is a business and, therefore, in calculating the profits thereon, collection charges must be deducted; but no such case has been made in the petition made before this Court. It is true that it was contended before the Income-tax authorities that the dealings are in the nature of business; but all that was said was that the investment in the Government Promissory Notes is a business, not that he purchases or sells the shares as a business dealing. Then, the profit of a trade or business, as laid down by Lord Herschell in *Russell v. Aberdeen Bank* (1) is the surplus by which the receipts from the trade or business exceed the expenditure *necessary* for the purpose of earning these receipts. Therefore, if it be treated as a business, what can be deducted is the expenditure *necessary* for the purpose of earning these receipts. Now if the petitioner collected the interest himself then no Bank commission was required to be paid. Consequently, it cannot be maintained that the commission paid to the Bank for cost of realization is an item of expenditure necessary for the purpose of earning a receipt on account of interest.

It is next urged that the case falls within the provision of section 12, but section 12 deals with "Other sources." This expression means sources other than the preceding five heads as specified in

(1) (1888) 13 A. C. 418; 2 T. C. 521.

section 6. When there is a specific head for "Interest on securities" and a specific section providing for this head, I do not think that the residuary section 12 can be called into aid.

It is lastly urged that the case would fall at least under section 24 of the Income-tax Act where it is provided that if any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set-off against his income, profits or gains under *any other head* in that year. I do not see how the commission paid to the Bank for realization of interest can be said to be a loss of profits or gains sustained by the assessee. When a person carries on a trade or profession, if he actually incurs a loss from the same, the figure adopted under that head, in arriving at the aggregate amount of the income chargeable to tax, would be *nil*, and not a *minus* sum. It is, therefore, that this statutory provision is made that a loss under one head of income may be charged against profits under another in the same year. The provision that the loss is to be set-off against the income, profits or gains under any other head makes the position quite clear. Assuming that the commission paid to the Bank for collection is to be taken as a "loss" section 24 cannot be made applicable to such a condition, because, what the petitioner prays is that the payment of commission (treating it as loss) is to be set-off against the income of the same particular head. In my opinion the whole of the interest receivable by the petitioner is assessable income within the meaning of section 4 of the Income-tax Act and there is no reason why an allowance should be made for the commission paid to the Bank in arriving at the assessable income. The petitioner has clearly failed to show that he is entitled to any such exemption, as is claimed by him. The petition is accordingly rejected.

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