

ing is defined in section 66 (3) of the Income-tax Act of 1922, and this Court may be moved under section 66 (3) only when the assessee is competent to apply to the Commissioner under section 66 (2).

Now the assessee in this case was debarred from making such application to the Commissioner, for the reason that he had failed to comply with the assessing officer's demand for accounts and consequently had no right of appeal.

For the foregoing reasons, we hold this petition to be incompetent and we dismiss it with costs.

A. N. C.

Application rejected.

MISCELLANEOUS CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Martineau.

PUNJAB NATIONAL BANK, LIMITED,

Petitioner

versus

THE CROWN, Respondent.

Civil Miscellaneous No. 195 of 1924.

1926

Jan. 20.

Indian Income-tax Act, XI of 1922, section 10 (2), clause (ix)—Investment by a Bank in Government securities for use in emergency—Depreciation in value of—whether deductible from profits.

The petitioning Bank held high class Government securities for use in emergency and claimed that such investments were on the same footing as loans made to customers, and that depreciation in their value should be deducted in calculating the profits or gains of the Bank for the year under assessment. It was found that these securities were exhibited in the balance sheet as "investments", that their depreciation in value was only a potential or temporary loss, and that no actual expenditure in respect thereof had been made during the year in question.

1928

PUNJAB
NATIONAL
BANK
v.
THE CROWN.

Held, that as the securities in question were not a part of the *stock-in-trade* of the Bank, but part of its fixed capital, the deduction claimed was *not* admissible under section 10, nor under any other provision of the Income-tax Act.

Application under section 66 of the Indian Income-tax Act, praying that the Commissioner of Income-tax be required to state a case and reference by the Commissioner accordingly.

TEK CHAND AND HARGOPAL, for Petitioner.

CARDEN-NOAD, Government Advocate, for Respondent.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—This is a reference by the Income-tax Commissioner of the Punjab under section 66 of the Income-tax Act of 1922.

The assessee is the Punjab National Bank, Limited, a company incorporated under the Companies Act, which of course, keeps its accounts on the mercantile accountancy system. In calculating its profits for the calendar year 1921, on which profits it was assessable to income-tax for the year 1922-23, the company claimed a deduction of some 3 lacs in respect of its holding of high class Government securities which it asserted had suffered that degree of capital depreciation during the year. Its claim was disallowed on the ground that this was a capital depreciation and not an expenditure incurred solely for the purpose of earning profits.

After a careful consideration of the Act and the case law on the subject, we are of opinion that the decision of the learned Commissioner that this sum is not deductible in calculating the assessable income of the company is correct.

The scheme of the Income-tax Act is that profits only shall be liable to income-tax and profits are no

doubt commercial profits, *i.e.*, the net income arrived at by deducting gross expenditure from gross profits. At the same time it is not every kind of expenditure which is deductible. Admittedly no capital expenditure is deductible. But in this connection it is very necessary to retain the difference between fixed capital and floating capital, which latter may also be conveniently called stock-in-trade. It is conceded on behalf of the Crown that income-tax profits cannot be correctly calculated unless depreciation in stock-in-trade is allowed, at any rate in all cases where the system of accounting is not on a cash basis. Section 10 of the Act, in sub-section (2), clauses (i) to (viii), provides for certain specific allowances. Clause (ix) of the sub-section is an *omnibus* provision which permits the deduction of "any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains", and the question for decision is whether the depreciation in question can be allowed under this clause.

For the petitioner it is contended that the money employed by the company in purchasing these high class securities is money lent to Government and cannot be distinguished from the money employed by the bank and lent by it to its other customers. For the Crown it is replied that the depreciation claimed is not an expenditure, that the purchase of the securities in question was made long before the year 1921 and that the expenditure was not made solely for the purpose of earning profits and gains.

Now, it cannot be denied that the bank purchased these securities not for the purpose of trading in them but for the purpose of retaining them permanently for use in an emergency. It is the practice of all properly managed banks to invest a portion of their

1926

PUNJAB
NATIONAL
BANK
v.
THE CROWN.

1926
PUNJAB
NATIONAL
BANK
v.
THE CROWN.

capital in high class securities in order to have a readily available supply of cash in a crisis. It would not pay a bank to employ all or the bulk of its capital in such an investment. Those securities were not held by the bank as floating capital; they were not held by the bank with the object of being dealt in day by day in the ordinary course of business. They were held as an emergency reserve and were regarded as the equivalent of ready cash with this considerable advantage over ready cash that they brought in a small but secured amount of interest. The ordinary daily business of the bank, the business in which it employs its floating capital, is the purchase and sale of commercial bills and the advance of loans to its customers. That the bank itself did not consider these securities a part of its floating capital but rather regarded them as a permanent investment is clear from its own balance sheet where it exhibits these securities under the special head "investment". If instead of placing this capital in these securities it had been possible for the bank to sink this money in some other form of property the case would have been clearer. Let us suppose that it would be just as easy and sure to raise money on oil paintings as on these securities and the bank by way of holding an immediately available reserve had purchased oil paintings by Rembrandt or Reynolds and had subsequently discovered that one of its most expensive pictures was a forgery and was worth not 1/10th of the price paid for it, that no doubt would cause a loss of capital but it would be a loss of fixed capital not of that portion of the capital which was used as working capital.

Another definition of 'fixed capital' is capital which has been expended not merely for the production of profits in any given year but for the production of

profits over an indefinite number of years. Judged by this test also the investment in these securities represents fixed and not fluctuating or working capital.

Again the alleged depreciation can hardly be called an expenditure. It is only a potential or temporary loss which, though it may affect the policy of the directors in declaring a dividend for the year, may in the succeeding year be converted into an appreciation. There has been no actual expenditure in respect of that depreciation in the year 1921.

To take another illustration. If the banking company has sunk considerable capital in the construction of a head office and that building is burnt down and the company has neglected to insure that building, that depreciation in the company's assets would admittedly not be deductible from the profits accruing to the company.

For the foregoing reasons we hold that the securities with which this claim is concerned are permanent investments retained by the bank as capital in its own possession. They represent a non-recurrent expenditure of an extraordinary nature not made to earn profit in any particular year but to ensure for the future benefit of the business for several years to come.

Our answer, therefore, to the reference is that the securities in question are not a part of the stock-in-trade of the bank but part of its fixed capital and, therefore, the deduction claimed does not fall under section 10 of the Income-tax Act. Finally, if the deduction is not justifiable under section 10 we are unable to find that it is admissible under any other provision of the Act.

The petitioner must pay the costs of the Crown.

N. F. E.

Petition rejected.

1926

PUNJAB
NATIONAL
BANK

v.
THE CROWN.