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is common ground that this firm was never asked to make the payment. It is provided by section 115 of the Act that when a drawee in case of need is named in a bill of exchange, or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee. This section makes the presentment to the drawee in case of need obligatory on the holder, and non-presentment of the bill to him absolves the drawer from liability.

For the aforesaid reasons we concur in the conclusion of the Lower Appellate Court and dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

CIVIL REFERENCE.

Before Tek Chand and Agha Haidar JJ.

KARAM ILAHI-MUHAMMAD SHAFI, (ASSESSEES) Petitioners

versus

COMMISSIONER, INCOME-TAX, DELHI, Respondent.

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April 8.

Civil Reference No 31 of 1927.

Indian Income Tax Act, XI of 1922, section 10 (2) (vi), proviso (b) and section 24—Depreciation on buildings and machinery—loss arising from—whether assessee can set off against profits or gains derived from a different source of income—"Profits or gains"—interpretation of.

During the year in question the assessee derived income from house property, but carried on a factory at a loss, the amount allowable as depreciation of the factory buildings and machinery exceeding the profits derived from the factory; and the question was whether the assessee could set off such a loss against the income derived from his house property.

Held, that it is settled law that if a person carries on two or more distinct businesses, the profits and losses of all of

them are to be added together and the aggregate sum so arrived at represents his "profits or gains" under the head "Business." If the net result of this calculation shows a loss, such loss may under section 24 of the Income Tax Act be set off against the "profits and gains" derived by the assessee from other heads of income.

Commissioner of Income Tax v. *Arunachelam Chettiar* (1), followed.

Held also, that under clause (*vi*) of section 10 (2) depreciation on buildings and machinery can be set off against gains and profits accrued to the owner of those buildings and machinery from other sources, such as rental from house property during the year in question ; and that proviso (*b*) to that clause does not debar the assessee from claiming the benefit of the clause itself.

Case referred, under section 66 (2) of the Income Tax Act, by A. M. Stow, Esquire, Chief Commissioner, Delhi, with his letter No. 244 of the 24th September 1927, for the orders of the High Court.

MOTI SAGAR and BISHAN NARAIN, for Petitioners.

CARDEN-NOAD, Government Advocate, for Repondent.

Judgment of the High Court.

TEK CHAND J.—In order to understand clearly the point of law involved in this reference, it is necessary to state the following facts which are admitted as correct by counsel for both sides. The Assessee, Messrs. Karam Ilahi-Muhammad Shafi of Delhi, had in the accounting period in question three different sources of income :— TEK CHAND J

(*a*) rent from house property at Delhi,

(*b*) business of oilman's stores, etc., in Saddar Bazar, Delhi, and

(*c*) business known as Rahman Ice Factory, Delhi.

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The assessee submitted a return showing profits in (*a*), but losses in (*b*) and (*c*) and claimed to set off the latter against the former. The Income Tax Officer admitted the claim so far as the loss in (*b*) was concerned and there is now no dispute with regard to it. He, however, refused to allow the set off in respect of the alleged 'loss' in Rahman Ice Factory (*c*), in so far as it consisted of depreciation of buildings and machinery, which the assessee claimed to deduct under sub-clause (*vi*) of section 10 (2) of the Act. This order was upheld on appeal by the Assistant Commissioner, and on review by the Commissioner who held that under the Act, this allowance was permissible only if there had been actual gain or profit under *this particular head of business*, *i.e.*, the Rahman Ice Factory in the year in question, and that failing such income the proper procedure under proviso (*b*) to sub-clause (*vi*) of section 10 (2) was to carry over the depreciation to succeeding years, until there were sufficient profits from this particular business, against which alone it could be set off. On the application of the assessee the Commissioner has, however, referred the following question to this Court for decision under section 66 :—

"Can depreciation on buildings and machinery be set off against gains and profits accrued to the owner of those buildings and machinery from other sources, such as rental from house property.?"

The decision of the question depends on the interpretation of sections 6, 10 and 24 (*i*) of the Income Tax Act. Section 6 enumerates the various heads of income, profits and gains chargeable to income tax. Of these we are concerned in this case with heads (*iii*) and (*iv*), *i.e.*, "Property" and "Business" only. Section 24 (*i*) lays down that where 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. The loss of profits or gains under "Business" can, therefore, be set off against the income from rental on property.

Section 10 provides the mode of computing "profits or gains" under the head "Business." Sub-section (1) of this section is to the effect that 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. It has been ruled by the Madras High Court that the word 'any' in this clause means "each and every business" and not merely each business separately, *Commissioner of Income Tax* v. *Arunachelam Chettiar* (1), and this ruling has been followed in this Court. It may, therefore, be taken as settled law that if a person carries on two or more distinct businesses, the profits or losses of all of them are to be added together, and the aggregate sum so arrived at represents his "profits or gains" under the head "Business". If the net result of this calculation shows a loss, such loss may, under section 24, be set off against the profits or gains derived by the assessee from other heads of income in that year.

According to sub-section (2) of section 10 the "profits or gains" under each head of business are to be computed after making certain allowances which are enumerated therein. It is conceded by the learned Government Advocate that if after deducting the allowances described in clauses (*i*) to (*v*), (*viii*) and *ix*) of this sub-section there is a net loss in a particular

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business, such loss can be adjusted against the profits in another business as well as against profits or gains under other sources of income. But he contends that a different rule must be followed in respect of the allowances mentioned in clauses (*vi*) and (*vii*), inasmuch as they are in the nature of depreciation of capital and unless there is a profit in *that particular business* in the year in question they cannot be taken into account.

After carefully examining the provisions of the Act, I find myself unable to accept this contention as correct. Section 10 makes no such distinction among the various kinds of allowances to which an assessee is held entitled, and there is no justification for treating the allowances described in clauses (*vi*) and (*vii*) differently from those mentioned in the other clauses of the sub-section. It is, no doubt, true that these allowances do not represent actual payments made by the assessee during the year, but the legislature has expressly permitted the assessee to deduct every year a certain percentage of his outlay on buildings and machinery before his assessable income can be ascertained, and, in the absence of clear and explicit words to the contrary, I can see no reason for holding that this allowance can be claimed only if sufficient profits have accrued in the particular business in which the machinery and buildings were used.

For the respondent reliance is placed principally on proviso (*b*) to clause (*vi*) which runs as follows :—

"Provided that—

* * * * * *

"(*b*) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the

allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years."

This proviso, however, if construed according to its plain wording, cannot possibly bear the construction sought to be put on it on behalf of the Crown. The learned Government Advocate has very fairly and properly conceded that this interpretation is possible only if the words "no profits or gains" are read as meaning "no profits or gains *of the particular business of which the financial results are being computed.*" But I do not find any warrant for importing into the clear and explicit phraseology used in the statute the additional words suggested on behalf of the respondent. Reading the proviso in its plain meaning and interpreting it according to well-settled canons of construction of fiscal statutes, I have no hesitation in holding that the 'profits or gains' referred to above are profits or gains generally from whatsoever source derived and are not confined to profits or gains of the particular business alone in which the buildings and machinery were used. I have no doubt that the provision for carrying over the unabsorbed depreciation allowance to the succeeding years is not the exclusive remedy allowed to the assessee and cannot be interpreted as debarring him from claiming the benefit of the earlier part of the sub-section.

My answer to the question referred to this Court, therefore, is that under clause (*vi*) of section 10 (2) depreciation on buildings and machinery can be set off against gains and profits accrued to the owner of

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those buildings and machinery from other sources such as rental from house property during the year in question.

Having regard to all the circumstances, I would leave the parties to bear their own costs of these proceedings in this Court.

TEK CHAND J. The announcement of this judgment has been delayed as, after arguments in this case had been heard and judgment reserved, it was represented to me that the question involved in this reference had been considered and decided by a Full Bench of the Madras High Court in a case which had not yet been reported and that I should consult that decision before passing orders. I have since had the advantage of perusing the Madras judgment but am disappointed to find that it dealt with a totally different point, which had no bearing whatsoever on the question before us.

AGHA HAIDAR J. AGHA HAIDAR J.—I agree.

N. F. E.

Reference answered in the affirmative.