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the contrary also by learned Single Judges of this Court, *Ram Datt* v. *Ram Chand* (1) and *Ranpat Singh* v. *Mangal* (2). In both these cases, however, section 17 (1) (*c*) is not set out and the actual words of the section do not appear to have been considered. In any event we overrule these two decisions. The appeal is dismissed with costs.

A. N. C

Appeal dismissed.

CIVIL REFERENCE.

Before Addison and Sale JJ.

PIONEER SPORTS, LIMITED, SIALKOT (ASSESSEE) Petitioner.

versus

COMMISSIONER OF INCOME-TAX, PUNJAB—Respondent.

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June 29.

Civil Reference No. 30 of 1933.

Indian Income-tax Act, XI of 1922, Sections 13 proviso, and 66 : Law point—question whether Income-tax Officer was justified in making an arbitrary assessment under the proviso—Reference to High Court.

The Assessee Company filed a return accompanied by copies of the balance sheet, trading and profit and loss account. The Income-tax Officer considered that the profits shown by the Company were not reasonable and computed the profits under the proviso to section 13. He held that a trading account based on an inventory not supported by a stock book could only be accepted if it disclosed a reasonable rate of profit. It appeared that the Company never had a stock book.

Held, that though the Income-tax Officer is the sole arbiter for determining under the proviso to Section 13 how the profits are to be computed, it is a question of law into

(1) 1925 A. I. R. (Lah.) 348. (2) 1926 A. I. R. (Lah.) 220.

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which the High Court is entitled to enquire whether there is any evidence on which the Income-tax Officer could come to the decision that the method of accounting is such that the gains could not be computed except by the arbitrary method contemplated by the proviso.

Held also, that the mere fact that the Company chose to charge a low rate of profit was no reason for the Income-tax Officer to reject the total profits, as stated by the Company in their return, nor was the absence of a stock register, when admittedly the Company had never used a stock register.

And, that in the present case the use of the proviso to section 13 for the purpose of introducing an arbitrary manner of computing the profits was not justified and that the assessment should have been made under the first part of Section 13.

Case referred by Mr. W. R. Pearce, Commissioner of Income-tax, Punjab, with his No. 221-26/33-1048, dated the 16th December, 1933, for orders of the High Court.

M. C. MAHAJAN, for Petitioner.

ASA RAM AGGARWAL, for J. N. AGGARWAL, for Respondent.

The order of the Court was delivered by—

SALE J.—The Pioneer Sports, Limited, Sialkot, a private limited company, carrying on business in the manufacture and sale of sport goods, with head office at Sialkot, applied to this Court under section 66 of the Income-tax Act against the refusal of the Income-tax Commissioner to state a case arising out of assessment of tax on this company for the year 1931-32. By order, dated 5th July, the Commissioner was directed to refer to this Court the following question of law:—" Whether under the circumstances mentioned in the order of the Income-tax Officer an assessment under the proviso to section 13 could legally be

made or whether the assessment should have been under the first part of section 13."

The material facts of this case are that in connection with the assessment for 1931-32, the Company filed a return accompanied by copies of its balance-sheet, trading and profit and loss accounts. The Commissioner states that "the assessment has been made according to the entries in the books of the assessee with a slight variation which the Income-tax Officer considered necessary." This slight variation consisted in the fact that the Income-tax Officer declined to accept a profit of Rs.36,943-8-6 as shown by the company's books. He framed his own estimate of 30 per cent. profit on the miscellaneous sales as shown by the company amounting to Rs.2,00,059-8-6 and assessed the company on a profit, thus computed, of Rs.60,015.

The reason given by the Income-tax Officer himself for not accepting profit shown by the company is as follows:—"A trading account based on an inventory not supported by a stock book can only be accepted if it discloses a reasonable rate of profit, and since the one in case of company's head office does not, I reject the result arrived at as being incorrect." In other words, because the Income-tax Officer considered the profits earned by the company in this case were not reasonable, he computed the profits under the proviso to section 13.

It is true that it has frequently been held by this Court that the Income-tax Officer is the sole arbiter for determining under the proviso to section 13 how the profits are to be computed. But it is a question of law, into which this Court is entitled to enquire, whether there is any evidence on which the Income-tax Officer could come to the decision that the method of

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accounting is such that the gains could not be computed except by the arbitrary method contemplated by the proviso. If there was no evidence to justify the Income-tax Officer's rejection of the method of accounting in this case, it is clear that the assessment should have been made under the first part of section 13 and not under the proviso.

It has been alleged before us, and has not been denied, that the method of accounting disclosed by the petitioner in connection with the assessment under review is the same method which has been accepted by the Income-tax authorities both before and after the year in question. The exception taken in this particular instance by the Income-tax Officer to the method of accounting was based on the absence of a stock register. Counsel for the petitioner has assured us, and it has not been denied on behalf of the Income-tax authorities, that the company has never had a stock register. In this particular case the suspicions of the Income-tax Officer were aroused by the reduced rates of profit shown by the company, and the Income-tax Officer rejected the profits shown by the company in the accounts produced on the ground that a trading account based on an inventory, not supported by a stock book, can only be accepted if it discloses a reasonable rate of profit. In other words, the Income-tax Officer did not attack the method of accounting adopted by the assessee but he refused to accept the profits disclosed only because he considered the rate of profits shown to be unreasonably low.

It appears to us that the Income-tax Officer went beyond his function in this case in endeavouring to lay down certain principles of business. In one part of his order he wrote :—" The decrease in this case is partly due to not charging reasonable profit on con-

signments sent to the London Office and partly to the low valuation of the closing stock balances." Admittedly in this case the London Office is a separate entity for the purpose of income-tax assessment; and the rate of profits to be charged on consignments sent to the London Office is entirely a matter for the head office to decide. The mere fact that they may choose to charge a low rate of profit, is no reason for the Income-tax Officer to reject the total profits as stated by the company in their return. Nor is the absence of a stock register, when admittedly the company have never used a stock register, any reason for justifying the assumption of the Income-tax Officer that the profits cannot properly be deduced from the returns submitted, when there is no other reason except the fact of reduced profit to justify this assumption. The "economic blizzard," which affected trade in the year under review and still prevails, would explain reduction in profits; and unless the Income-tax Officer has some reason (other than the mere fact of this reduction) for holding that the profits and gain cannot be properly deduced from a method of accounting which admittedly has been regularly employed by the petitioner and has been accepted in the past, we are of opinion that use of the proviso to section 13 for the purpose of introducing an arbitrary manner of computing the profits is not justified.

We hold, therefore, that there was no material on which the Income-tax Officer could in this instance assess the petitioners arbitrarily under the proviso to section 13. We would, therefore, answer the first paragraph of the question of law propounded in the negative, and the second paragraph in the affirmative. We make no order as to costs.

A. N. C.