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vendors his specified share on payment of a proportionate share of the purchase-money. With great respect this seems to be the correct view. There is only the one sale transaction which is indivisible and the plaintiffs are, therefore, entitled to pre-empt. No other point was argued.

For the reasons given, the appeal is dismissed with costs.

P. S.

*Appeal dismissed.*

**MISCELLANEOUS CIVIL.**

*Before Addison and Sale JJ.*

RULIA MAL - RAUNAK RAM (ASSEESSEES)

Petitioners

*versus*

COMMISSIONER OF INCOME TAX

Respondent.

Civil Miscellaneous No. 351 of 1933.

*Indian Income-tax Act, XI of 1922, section 13, proviso : Complete accounts not produced — whether Income Tax Officer can proceed to estimate profits — Bad debts — decision of — whether rests with Income Tax Officer.*

*Held*, that the Income Tax Officer is the sole arbiter as to whether it is possible to estimate the income, profit and gains of the assessee from the method of accountancy employed by the latter, and when he finds as a fact on the evidence that complete accounts had not been produced before him, he can proceed to estimate the income under the *proviso* to section 13 of the Act.

*Gokal Chand - Jagan Nath v. Commissioner of Income Tax* (1) followed.

Held also, that the questions whether a debt is a bad debt and when it becomes bad, are questions of fact to be determined in case of dispute, not by the assessee but by

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the appropriate tribunal upon a consideration of all the relevant and admissible evidence. But the Income Tax Commissioner's decision on the point operates only for the particular year under assessment and it is open to the assessee to repeat his claim in respect of any particular debt in any subsequent year, provided the debt has not been recovered in the interval.

*Commissioner of Income Tax v. Sir S. M. Chitnavis* (1), followed.

And, that no question of law arises on either of these points.

*Petition under section 66 (3) of the Indian Income Tax Act, XI of 1922, praying that the Commissioner of Income Tax be required to state and refer the case for orders of the High Court.*

DHARAM BHUSHAN, for Petitioner.

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

The order of the Court was delivered by—

SALE J.—This is an application by a firm Rulia Mal - Raunak Ram of Mandi Dabwali, district Hissar, under sub-section (3) of section 66 of the Income Tax Act against a refusal of the Commissioner to state a case on the ground that no question of law arises.

The questions which the Commissioner was asked to refer are recited in the order of the Commissioner rejecting the applicant's petition. The material facts appear from a discussion of the questions, which we deal with *seriatim* :—

(1) When the assessee had been calculating profits in past years according to the mercantile accountancy system, could the Income Tax Officer, with whom the Assistant Commissioner concurred, overrule the system and adopt one of his own?

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It is admitted that the method of accounting adopted in this case is the mercantile accountancy system except in regard to certain transactions referred to in questions Nos. 3 and 4 which will be discussed below. It is conceded, therefore, that no question of law arises in this connection.

(2) Whether the Assistant Commissioner had any right to overrule the assessee's exercise of his right to write off a book debt as bad or irrecoverable at any time and to investigate or determine when, in the Commissioner's opinion, certain specified debts became bad or irrecoverable?

This question is concluded by the Privy Council ruling cited as *Commissioner of Income Tax v. Sir S. M. Chitnavis* (1). In that case their Lordships held that an assessee has no option of declaring debts bad. "Whether a debt is a bad debt and when it becomes bad are questions of fact to be determined in case of dispute not by the assessee but by the appropriate Tribunal upon a consideration of all relevant and admissible evidence." We have only to add that the decision of the Income Tax Commissioner on the question whether a debt is bad or irrecoverable operates only for the particular year under assessment and it would be open to the assessee to repeat his claim in respect of any particular debt in any subsequent year provided the debt had not been recovered in the interval.

(3) Whether the Assistant Commissioner was justified in arriving at the decision that the assessee had made a profit of Rs.6,000 in *satta* business without any evidence, relying on hearsay and inadmissible evidence? and

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(1) (1932) 6 I. T. C. 453: 59 I. A. 290 (P.C.).

(4) Whether the Assistant Commissioner was justified in disallowing Rs.313 as losses paid to Sarsa Chamber on account of *satta* transaction?

The material facts as stated by the Commissioner in regard to these two questions, which can conveniently be considered together, are that the Income Tax Officer found as a fact on the evidence that complete accounts had not been produced before him. In consequence, he proceeded to estimate the income under the proviso to section 13 of the Act. It has been held by a Division Bench of this Court cited as *Gokal Chand-Jagan Nath v. Commissioner of Income Tax* (1), that under the proviso to section 13 the Income Tax Officer is the sole arbiter on the question of the possibility of estimating the income, profits and gains of the assessee from the method of accounting employed by him. Thus no question of law arises in this reference.

In these circumstances, we hold that the Commissioner was right in refusing to state a case. We, therefore, dismiss this application with costs.

C. H. O.

*Application dismissed.*

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(1) (1926) 2 I. T. C. 180

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