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**Court :** Chennai

**Decided On :** Mar-19-1952

**Reported in :** [1953]24ITR585(Mad)

**Appellant :** Keshavalal and Co., in Re.

**Judgement :**

SATYANARAYAN RAO, J.-Two interesting questions have been referred to us by the Income-tax Appellate Tribunal under Section 66 (I) of the Indian Income-tax Act. They are :-

(1) Whether the Excess Profits Tax Officer was not justified in law in adopting the procedure laid down in the third proviso to Rule I of Schedule I of the Excess Profits Tax Act, when the chargeable accounting period were not conterminous.

(2) Whether on the facts and in the circumstances of the case the writing off Rs. 16,681 bad debts before 31st March, 1946, while the accounting period closed on 24th October, 1946, was a special circumstances to be taken into account in determining the profits to the chargeable accounting period ending 31st March, 1946.

The assessee is a firm and carries on business in yarn and money-lending. The assessment year for the purpose of income-tax is 1947-48 and the accounting year is Samvat year corresponding to 4th November, 1945, to 24th October, 1946. For the purpose of excess profits tax he adopted the Samvat year as the year of

account and the chargeable accounting period came to end on the 31st March, 1946, on which date the excess profits tax ceased to operate. During the accounting it has been found by the Income-tax \* that the assessee incurred a loss of Rs. 16,681 by reason of bad debts and that they were written to be bona fide by the Appellate Tribunal whose finding, therefore, must be taken as final.

The question raised by the assessee was that instead of adopting the method of apportioning the profits for the chargeable accounting period ending with 31st March, 1946, after ascertaining the profits for the accounting year commencing from 4th October, 1946, it was possible to ascertain the profits during the chargeable accounting period by taking the accounts for this period; and if so taken the loss of Rs. 16,000 and odd would be set off against the profit which accrued due during this short period between 4th November, 1945, to 31st March, 1946. His contention was that the accrual of loss before 31st March, 1946, of this magnitude is itself a special circumstances warranting the Excess Profits Tax Officer to alter not only the method of apportionment but even the mode of ascertaining the profits for the chargeable accounting period. This contention was rejected by the revenue authorities and by the Appellate Tribunal. The Appellate Tribunal rejected it on the ground that the loss incurred in the ordinary course of the business would not be taken as a special circumstance, justify the application of the proviso to Rule I of Schedule I of the Excess Profits Tax Act.

In the arguments before us, the learned counsel for the assessee took up the position and contended with insistence that the proviso empowered the Excess Profits Tax Officer to vary the method of computing the profits for the purposes of the Excess Profits Tax Act and that the loss incurred from 31st March, 1946, before the end of the chargeable accounting period was a special circumstance. In our opinion, assuming without deciding that the incurring of the loss is a special circumstance, that would by the rules in the schedule to ascertain the profits for the chargeable accounting period. 'Accounting period' is defined by Section 2 (I) of the Excess Profits Tax Act, as :-

' (a) Where the accounts of the business are made up for successive periods of twelve months, each of such periods;

(b) in any other case, such period as the Excess Profits Tax Officer may determine :

Provided that in determining any account period under sub-clause

(b) the Excess Profits Tax Officer shall have regard to the period, if any, which is or has been determined as the previous year for that business for the purpose of the Indian Income-tax Act, 1922. '

'Chargeable accounting period means -

(a) any accounting period falling wholly within the term beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1942, and,

(b) Where the accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term.'

Under Rule I of Schedule I of the Excess Profits Tax Act :

'The profits of a business during the standard period, or during any chargeable accounting period, shall be separately computed, and shall, subject to the provisions of this schedule, be computed on the principles on which the profits of a business are computed for the purposes of income-tax under Section 10 of the Indian Income-tax Act, 1922. '

The third proviso lays down the method of computing the profits for the standard period or chargeable accounting period when those periods did not correspond to the accounting period; and under the last part of that proviso :

'an apportionment has to be made in such cases in proportion to the number of months or fractions of months in the respective periods unless the Excess Profits Tax Officer, having regards to any special circumstances, otherwise directs.'

From a perusal of these provisions it would be seen that the unit for computation of the profits under the Excess Profits Tax Act is the accounting period which is a period of 12th months, and, in this case, it is not disputed that the Samvat year was accepted by the assessee as the accounting year for purposes of the excess

profits tax and for income-tax purposes. The profits, therefore, in the first instance have to be computed for a period of 12th months and the principles to be adopted in computing those profits are those contained in Section 10 of the Indian Income-tax Act, subject, of course, to such modifications have been have introduced in Schedule I to the Excess Profits Tax Act. After computing the profits in that manner, if the accounting period does not correspond or is not conterminous with the chargeable accounting period or with the standard period in order to arrive at the profits for such periods, the proportion has to be worked out in the manner indicated on the third proviso, that is, instead of the time basis it is open to the Excess Profits Tax Officer to adopt a different method of apportionment. From an examination of the scheme it is evident that if there are bad debts during the accounting period such bad debts can be taken into consideration only in arriving at the profits for the accounting period of 12th months. It is not open Under Rule I Schedule I to the Excess Profit Tax Officer to split up the period with a view to ascertain the profits from the accounts of the assessee even if it be found to be a convenient method instead of working out the proportion. The first step and the most important and essential step in arriving at the period for the chargeable accounting period is to find out and ascertain the profits of the assessee during the accounting period; that is a period of 12 month which has been fixed by the assessee or has been settled by the Excess Profits Tax Officer. If this done, then the question of making apportionment under the third proviso would arise in cases in which the periods did not correspond or are not conterminous. It follows, therefore, that there is no option left to the Excess Profits Tax Officer to vary the method of ascertaining the profits. Our attention was not drawn to any rule or any section of the Act which authorises the Excess Profits Tax Officer to vary the method of computing the profits as laid down in Schedule I of the Act. The only option that he has under the Act is to alter or vary the method of apportionment. Instead of the time basis he may adopt some other basis. But that does not mean that he is entitled under the cover or cloak of this proviso to alter even the mode of computing the profits for purposes of the Excess Profits Tax Act. The learned counsel for the assessee was not able to point out any justification either in the proviso or in any part of the Act in support of his contention, assuming that there are special circumstances in this case that the accounts for the period from 4th

November, 1945 to 31st March, 1946, instead of taking an account for the entire period of 12th month of the accounting year and then working out, by the method of apportionment, the profits attributable to the chargeable accounting period. the construction which we are inclined to place is supported by the decision of the Court of Appeal in England under the corresponding provisions of the English Finance in the decision reported in Jenkins Productions Ltd. v. Commissioners of Inland Revenue 29 Tax Cas. 142.

At page 151 Lord Greene, M. R., observed as follows :-

'We pointed out in the course of the discussion that the whole object of this provision is to arrive at the true profits or as near as they can be ascertained, of the standard period (referring to the third proviso to Schedule I, Rule I, of the Indian Act). That, obviously, is the only fair basis on which the Legislature could proceed. We pointed out that the rule of thumb laid down by the proviso to deal with cases where the accounting period does not coincide with the calendar year is merely a rough and ready rule which, in the ordinary circumstances, was thought, and, no doubt, rightly thought, to be a sufficient and accurate method of ascertaining the profits of the standard period for the purpose of this particular taxation.

But, where special special circumstances exist, the Commissioners may direct that some other method of apportionment should be adopted.....'

We, therefore, think that the conclusion reached by the Appellate Tribunal was correct; and our answer to the first question is in the affirmative and against the assessee. In the view we have taken of the proviso it is unnecessary to answer the second question as, even if it is a special circumstance it will not help the assessee. As the assessee had failed he must pay the costs of the respondent which we fix at Rs. 250.

Reference answered accordingly.