BUSINESS EXPENDITURE

-Allow ability – Assessee carrying business in various ventures – Entire expenditure incurred on all venture – Deductible if all venture constitute one business.
I.T.R. No. 86 of 1987, D/-9-11-1993 (Raj), Reversed.
In computing 'profits and gain of business or profession' when an assessee is carrying on a business various venture and some among them yield taxable income and the others do not, the question of allow ability of the expenditure under section 37, will depend on (a) fulfillment of requirement of S. 37, namely (i) the expenditure should not be in the nature of the capital expenditure or personal expenditure of the assessee. (ii) It should had been laid out or expended wholly and exclusively for the purpose of the business or profession; and (iii) it should have been expended in the previous year; and (b) on the fact whether the entire venture carried on by him constitute one indivisible business or not. If they do not entire expenditure will be a permissible deduction but if they do not the principal of apportionment of the expenditure will apply because there will be no nexus between the expenditure attributable to the venture not forming integral pert of the business and the expenditure sought to be deducted as the business expenditure of the business of the assessee. Rajasthan State Warehousing Corpn. v. I.T. Commr. **AIR 2000 SC 972: 2000 AIR SCW 629: 2000 Tax LR 253: 2000(2) JT 373: 2000 (2) Scale 44: 2000 (1) Supreme 601: 2000 (3) SCC 126.**
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allow ability – Assessee carrying business in various ventures – Question whether various venture of assessee constitute one business – Plea by revenue that they do not constitute one business – Held not tenable when question referred itself showed that the business of the assessee was one and indivisible. Rajasthan State Warehousing Corpn. v. I.T. Commr. **AIR 2000 SC 972: 2000 AIR SCW 629: 2000 Tax LR 253: 2000(2) JT 373: 2000 (2) Scale 44: 2000 (1) Supreme 601: 2000 (3) SCC 126.**
-Allow ability – Nexus between expenditure and business of assessee necessary – Assessee company holding bulk shears in several companies – its business was of holding investment – Assessee paying managerial remuneration to Directors of subsidiary companies – Expenditure has no direct and immediate connection with business of assessee – Not allowable as deduction.
The assessee company was bulk share holder in several companies and in the relevant year there were sixteen such companies. The assessee company was rendering certain common services to its subsidiaries by having (1) a finance committee; (2) a liaison office in Delhi; (3) an export promotion department; and (4) an internal audit department. The expenditure on account of maintenances of liaison office in Delhi and departments of export promotion and internal audit was borne by the assessee company and was recovered from the subsidiary. the finance committee was working in an advisory capacity to the subsidiaries company to help them to carry on their business more efficiently. The directors of the assessee-companies were also director / managers in the subsidiaries companies. As per the service agreement between them and the concerned subsidiary company they were entitled to payment of remuneration and also a certain percentage of the profit s as commission. Similarly service agreement had been entered by other direction of subsidiary companies who were not the director of the assessee-

company. In view of the provision of section 198 of the companies Act, 1956, fixing a ceiling on the overall managerial remuneration at 11% of the net profit of the company. It was not possible for the subsidiary companies to pay the contracted remuneration to the persons concerned. The board of director of the assessee-company passed a resolution whereby it was resolved that the remuneration payable to the director of the subsidiaries company would be paid to them in full in accordance with the term of the contract respectively entered into by them and the amount in excess of the maximum amount permissible under the companies Act, 1956 would be met by the assessee company. Out of these directors three were director two were member of finance committee. None of the other six directors of the subsidiaries companies was a member of the finance committee. In accordance with the said resolution with the assessee-company paid diverse amount to the said directors and claimed them as the business expenditure.

Held, the amount paid by the assessee-company to the director of its subsidiary companies can be admissible as a deduction under S. 10(2) (xv) of the 1922 Act or S. 37(1) of the 1961 Act if only they can be regard as expenditure "laid out or expended wholly and exclusively for the purpose of the business" of the assessee-company. The business of the assessee company is the holding of the investment and if with reference to the business of holding investment and expenditure had been incurred in payment of managerial remuneration to the director of the subsidiary companies cannot be said to be expenditure incurred in carrying of the business of the assessee-company holding its investment. The assessee-company could hold investment and earn its dividend without incurring this expenditure. Since the subsidiary company was not obliged to distribute by way of dividend the entire profit earned on account of their managerial remuneration paid by assessee-company and the assessee-company was only entitled to dividend from the subsidiary company as and when declared, it cannot be said that there was a direct immediate connection between the expenditure incurred and the business of the assessee-company.

The alternative claim by the assessee-company for deduction in respect of the expenditure incurred by the assessee-company in respect of amount paid to its own directors who were also the member of the finance committee is also not tenable in view of the resolution passed by the assessee-company wherein the directors whether they be the member of the finance committee or not, have been treated as class and with the reference to all of them as the assessee-company incurred the expenditure only because they could not be remunerated to the extend by the subsidiary companies. The fact they were directors of the assessee-company and the member of finance committee was not taken in to account in taking over the remuneration payable to them. I.T. Commr. Madras v. M/s. Amalgamation Pvt. Ltd. **AIR 1997 SC 2404: 1997 AIR SCW 2316: 1997: Tax LR 679: 1997(5) SCC 33: 1997(5) JT 50: 1997 (5) Supreme 382.**

- Amalgamation of another company with assessee-company Both company carrying on complimentary business – Amalgamation necessary for smooth and efficient conduct of business – expenditure incurred toward professional charges of the solicitors firm for service render in connection with amalgamation – was in course of carrying on business - deductible as revenue expenditure. Commissioner of Income-tax Bombay v. Bombay Dyeing and Manufacturing Company Limited. **AIR 1996 SC 3309: 1996 AIR SCW 2614: 1996 Tax LR 514: 1996 (3) SCC 496: 1996 (6) JT 68.**

-Amount contributed by Assessee Company to Housing Board towards construction of tenements for company's workers – Was business expenditure. AIR 1981 SC 395 and (1990) 186 ITR 276 (SC), Foll. I.-T. Commr., Bombay v. Bombay Dyeing and Manufacturing CO. Ltd. **AIR 1996 SC 3309: 1996 AIR SCW 2614: 1996 Tax LR 514: 1996(3) SCC 496: 1996(6) JT 68.**

- Amount paid to worker for satisfaction of his claim. **1987 (Supp) SCC 590.**

-Assessee, a textile mill – Contravention of direction given under Cotton Textiles (Control) Order, by Textile Commissioner- Payment for- Made in compliance with law or scheme – Is allowable business expenditure. (1976) 103 ITR 298 (Guj), **Foll.** Commissioner of Income-tax Gujarat-I Ahmedabad v. Ahmedabad Cotton Mfg. Co. Ltd. **1993 AIR SCW 3815: 1993 (6) JT 155: 1994 (1) SCC 632.**

-Assessee, a textile mill – Export obligation under bond entered into as regards exporting certain quantity of Sanforized cloth – assessee instead of fulfilling said obligation making payment of textiles commissioner in excise of its option available under the term of bond – claim of deduction of said amount as business expenditure – Is allowable. 1978 Tax LR 579 (Guj), **Foll.** Commissioner of Income-tax, Gujarat-I, Ahmedabad v. Ahmedabad Cotton Mfg. Co. Ltd. **1993 AIR SCW 3815: 1993 (6) JT 155: 1994 (1) SCC 632.**

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-Assessee-Company in business of generation and distribution of electricity – Appropriating sum towards contingency Reserve Account as provided by electricity (Supply) Act – Not allowable as deduction.

1973 Tax LR 1402 (Kerala) and (1974) 97 ITR 334 (Bom), Impliedly Overruled.

The sum transferred to the contingencies Reserve Account is allowable as deduction in arriving as the taxable business income of the assessee-company engaged in the business of the generation of electricity and its distribution to consumers. Contingency Reserve is set a part to be utilized by the electricity for the purpose set out in clause V of the sixth Schedule. These are to meet expenses or recoup loss of profit arising out of accidents, strikes or other circumstances which the electricity company could not have prevented; to meet expenses on replacement or renewal of plant or works; and for payment for compensation required by law for which no other provision has been made. These are all expenses which the electricity company has to incur. The reservation is made so that money is always available for meeting these expenses and the supply of electricity is not interrupted. For the same reason, payment out of the contingencies Reserve can be only with the State Government approval. It is particularly noteworthy that the electricity company can make good from out of the Contingencies Reserve even a loss of profit arising out of strikes, accident and other circumstances over which it has no control. There can be no doubt, in the circumstances, that the monies in the contingencies Reserve belong to the electricity company.

1988 Tax LR 1524 (Cal), **Approved.** AIR 1996 SC 30, **Disting.**

-Assessee engaged in tobacco business – Indulged in transaction in violation of provision of foreign Exchange Regulation Act – Expenditure incurred by him for evading provisions of FERA and also the penalty levied for such evasion – Cannot be allowed as deduction.

In the instant case, the assessee had indulged in transaction in violation of the provision of the foreign exchange regulation Act. The assessor's plea is that unless it entered into such a transaction, it would have been unable to dispose of the unsold stock of inferior quality of tobacco. In other words, the assessee would have incurred a loss. Super of loss can not be justification for contravention of law. The assessee was engaged in tobacco business. The assessee was expected to carry on business in accordance with law. If the assessee contravenes the provision of FERA to cut down its losses or to make larger profits while carrying on the business, it was only to be expected that proceeding will be taken against the assessee for violation of the Act. The expenditure incurred for evading the provision of the Act and also the penalty levied for such evasion cannot be allowed as deduction. It was not enough that disbarment was made in the course of trade. It must be for the purpose of the trade. The purpose must be lawful purpose.

Moreover, it will be against public policy to allow the benefit of the deduction under one statue, of any expenditure incurred inn violation of the provision of another statue or any penalty imposed under another statue. In the instant case if the deductions are allowed, the penalty provision of FERA will become meaningless. It has also to be borne in mind that evasion of law cannot be trade pursuit. The expenditure in the case cannot, in any way, be allowed as wholly and exclusively laid out for the purpose of assessor's business. M/s. Maddi Venkataraman and Co. (P) Ltd. v. Commissioner of Income-tax. **AIR 1998 SC 563: 1998 AIR SCW 155: 1998 Tax LR 130: 1997 (9) JT 546: 1998 (1) Supreme 20: 1997 (7) Scale 327: 1998(2) SCC 95.**

-Assessee paying certain amount to a foreign company for information process and invention received from that company for running its business – Though said foreign company did not sell the said information, Process or inventions to the assessee company. The assessee was prohibited from disclosing the same to others – Amount paid by assessee to foreign company is revenue expenditure and not capital expenditure – Hence, allowable as business expenditure. Commissioner of income-tax, Calcutta v. Indian Oxygen Limited. **AIR 1995 SC 1737: 1995 AIR SCW 2715.**

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Contribution by assessee, to public welfare fund directly related to carrying on of his business – It is allowable deduction – Assessee making contribution to District welfare Fund evolved by rice millers' association with district Collector – Each member proposing to export rice require to deposit certain amount- in application for export permit member required to state amount of contribution deposited by him, giving particular of banks etc. – assessee was entitled to claim deduction of amount deposited under S. 37(1). C.R. No. 85 of 1979, D/- 23-12-1983 (Andh pra), Reversed.

Any contribution made by an assessee to public welfare fund which is directly connected or related with the carrying on of the assessor's business or which result in the benefit to the assessee business has to be regarded as allowable deduction under S. 37(1). Such a donation whether voluntary or instance of the authority concerned, when made to a chief minister's Drought relief fund established by the district collector or any other fund for the benefit of the public and with the view to the secure benefit to the assessor business

cannot regarded as payment opposed to public policy. There is no law which prohibits the making of such donation the mere fact that making of a donation for a charitable or public cause or in public interest result in government patronage or benefit can be no ground to deny the assessee a deduction of that amount under S. 37(1) when such payment had been made for the purpose of assessors business.

Interest paid for delayed payment of advance tax – Not allowable as business expenditure.

The liability in the case of payment of income-tax and interest for delayed payment of income-tax or advance tax arises on the computation of the profit and gain of the business. The tax which is payable is on the assessee income after the income is determined. Interest which is paid for delayed payment of advance tax on such income cannot be considered as expenditure wholly and exclusively for the purpose of business. Under the income-tax Act the payment of such interest is inextricably connected with the assessee tax liability. If income-tax itself is not permissible deduction under S. 37, any interest payable for default committed by the assessee in discharge his statutory obligation under the Income-tax Act, which is calculated with reference to the tax on income cannot be allowed as a deduction.

AIR 1980 SC 754 and AIR 1972 SC 19, **Disting.** M/s. Bharat Commerce and Industries Ltd. v. Commissioner of Income-tax, Central – II. **AIR 1998 SC 1795: 1998 AIR SCW 1584: 1998 Tax LR 645: 1998 (3) SCC 510: 1998 (2) JT 283: 1998 (3) Supreme 67: 1998 (2) Scale 240.**

-Payment of interest – assessee disclosing certain income under voluntary Disclosure of income under voluntary Disclosure of income and wealth Act – interest paid by him for delayed payment of income-tax and sur-tax – Assessee obtaining installment from the income-tax department and paying interest – cannot be consider equivalent to borrowing money from third party and paying interest on such borrowed money – Provision of S. 80 V, not attracted – Such payment of interest is not expenses incurred for business – hence not deductible.

The interest, which is payable for delayed payment of income-tax on the voluntarily disclosed income is of the same nature as interest of income-tax under the income-tax Act. Payment of such interest cannot be consider as expenditure in curred wholly or exclusively for the purpose of the business of the assessee. The tax which required to be paid under the voluntarily disclosure of income and Wealth Act, 1976 is a tax on declared income of the assessee which is not discloser and is disclose under the said Act, income tax is payable by virtue of the said Act. It is nevertheless a tax on income and share all characterizes of such tax. When the assessee is liable to pay interest on the delayed payment of such tax, it is on account of his not paying income-tax within the prescribed period. No distinction can be made between such interest and interest paid under income tax Act, 1961. Both payments do not have any nexus with the business of assessee. They are statutory liability in respect of the obligation of the assessee which arises under the income-tax Act, 1976 after the income of the assessee is determined and / or declared under a said Act. They cannot be deducted before the determination of such income obtaining installment from the department and paying interest cannot be consider as equality to borrowing money from a third party for payment of tax and payment of such borrowed money.

1988 Tax LR 1140 (Andh Pra) and 1986 Tax LR 427 (Gujarat), **Disting.** M/s. Bharat Commerce Industries Ltd. v. I.T. Commr. **AIR 1998 SC 1795: 1998 AIR SCW 1584:**

1998 Tax LR 645: 1998 (3) SCC 510: 1998 (2) JT 283: 1998 (3) Supreme 67: 1998 (2) Scale 240.

-Penalty imposed on assessee under Central Sales Tax Act – Same imposed not on account of any delayed payment of Sales tax but was for contravention of provision of central sales tax – It was not of compensatory nature but was of penal nature – Deduction hence not allowable. AIR 1978 ALL 405 (FB), **Rel. on.** Swadeshi Cotton mills Co. Ltd. v. Commissioner of Income-tax. **AIR 1999 SC 1579: 1998 AIR SCW 4074: 1999 Tax LR 163: 1998 (233) ITR 199: 1998 (147) Taxation 353.**

--Penalty levied for violation of FERA – Not deductible. **AIR 1998 SC 563: 1998 AIR SCW 155: 1998 Tax LR 130.**

--Starting point of business – Assessee company carrying on business of letting out premises on licence or lease – Reapers, rewriting, installation of lift and other expenses incurred in the course of carrying on business – Business commence when property is ready for being let out on lease or licence – Expenses thereafter are deductible – Business does not commence when lessee or licensee is inducted and starts paying rent. Commissioner of I.T. v. Sarabhai Management Corporation Ltd. **(1991) 192 ITR 151 (SC).**

-Statutory imposed paid by assessee by way of damages or penalty or interest – Allowable as business expenditure if found to be compensatory in nature and not penal.

Whenever any statutory impost paid by an assessee by way of damages or penalty or interest, is claimed as an allowable expenditure under S. 37(1), the assessing authority is required to examine the scheme of the provision of the relevant statue providing for payment of such impost notwithstanding the nomenclature of the impost as given by the statue find whether it is compensatory or penal, in nature. The authority has to allow deduction under S. 37(1) wherever such examination reveals the concerned impost is found to be of competitive nature, that is, partly of compensatory nature, partly as penal nature, the authority obligated to bifurcate the two component which is compensatory in nature and refuse to give deduction to the component which is compensatory in nature and refuse to give deduction to that component which is penal in nature.

AIR 1990 SC 754, **Followed.**

1998 Tax LR 1486 (Andh Pra), **Approved.** M/s. Prakash Cotton Mills Pvt. Ltd. v. Commissioner of Income-tax (Central), Bombay.

AIR 1993 SC 2174: 1993 AIR SCW 2412: 1993 Tax LR 826: (1993) 3 SCC 452: 1993 (2) JT 619.

BUSINESS ASSET

-Sale – Amount Realized in excess of written down value – Regard by S. 41 (2) as business income – S. 41(2) thus contains a legal fiction.
Section 41(2) of the Act is a special provision whereby the amount received in excess of written down value became the chargeable to income tax as income of business or profession of the pervious year in which the money is payable for the building. Machinery, plat or furniture becomes due. But for the specific provision, this amount would not have been taxed as business from business. Building, machinery, Plant or Furniture on which depreciation has been allowed, would be capital asset of the assessee. Any some received in respect of thereof would ordinarily respect a capital receipts. But S. 41(2) regards this amount as income but the business of profession and of the year in which the amount become due. Even though the words "deemed" is not used in S. 41(2) of the Act, as has been used in S. 10(2) (vii) second provision of 1922 Act, nevertheless this provision create a legal fiction whereby an amount received in excess of the written down value is firstly treated as income and secondly regard as income from business or profession and thirdly it is consider to be the income of the previous year in which the money payable become due. The two provisions namely S. 10(2) (vii) second provision of the 1922 Act and S. 41(2) of the both creates a legal fiction, difference in language notwithstanding. Commissioner of Income-tax, Madras v. Urmila Ramesh. **AIR 1998 SC 2640: 1998 AIR SCW 2684: 1998 Tax LR 904: 1998(3) SCC 6: 1998 (1) Scale 206.**

-Assessee Indian company – Business connection with non residential Indian company – Affidavit – Admissibility. **AIR 1987 SC 1234: 1987 Tax LR 674.**

BIHAR AGRICULTURAL INCOME-TAX ACT

(7 OF 1938)

SECTION 2

--S. 2(a) – Agricultural income- Assessment taking zarpeshgi lease – Income held agricultural income.

Zarpeshgi lease for 28 years – No term making loan returnable either by repayment or by enjoyment of usufruct – No interest fixed – No right of redemption granted – No provision for any personal liability – Lessee entitled to deduct 12 ½ per cent of gross aggregate amount payable by mokarraridars as expenses of collection and other charges incidental thereto after payment of the rent reserved to "lessor" and to appropriate to himself the remainder – **Held,** instrument must – **Held,** instrument must be read as whole – Income from leasehold property was "agricultural income" – Transaction was not money lending transaction – Receipts were not capital receipts – If repayment of to lessor was premium and not loan, income being agricultural, was assessable under Act, Kameshwar Singh v. State of Bihar. **AIR 1959 SC 1303: (1959) 37 ITR 388: 1960 SCJ 145: (1960) 1 SCR 332.**

Transaction for benefit of property is always to advantages of its owner

--S. – Transaction for benefit of property is always to advantages of its owner. AIR 1950 Pat 134, Reversed.

There is no justification for thinking that the reference to property in S. 18 is by way of antithesis to the ward. If a transaction is for the benefit of the property, the person who would reap the advantages thereof must be the owner of the property. It is difficult to conceive of a transaction which is for the benefit of the property but not to the advantages of its owner. Karanpura Development Co. Ltd. v. Kamakshya Narain Singh. **AIR 1956 SCJ 511: 1956 SCR 325: 1956 SCA 591.**

Income derived by sale of water pumped out from coal mine

--Ss. 6 and 72 – Assessment of Cess – Income derived by sale of water pumped out from coal mine – Constitutes profit derived from mine.

The Income derived by sale of water pumped out from the coal mine constitutes a profit derived from the mine and is covered by the provision of S. 6 read with S. 72. there is no doubt that water comes out of the mine and that water has got to be pumped out from the mine to save it from being inundated or to enable the working of the mine. But if that water is sold away for a price and an income is derived in that way it can be said to be a profit from the mine. It cannot be said that the income by sale of water is only a casual income and not a regular permanent income and, therefore, it could not be assessed to cess, State of West Bengal v. Ghusick and Muslia Collieries Ltd. **AIR 1985 SC 840 : (1985) 2 SCC 715: 1985 UJ (SC) 760: (1985) 3 SCR 352.**

--**S. 6 –** Assessment of profit – Arrival at "the annual profit " – It is left to enquiry by competent authorities – See Ibid S. 5. **AIR 1976 SC 2452.**

--**S. 6 –** allowable deduction – payment of cesses – The assessee- Company raising and selling coal – Cess for road and public works under the Bengal Cess Act and as education cess under the Bengal (Rural) Primary Education Act – Deduction under S. 10(2) (ix) or (xv) read with S. 10(4) permissible – See Income-tax Act (1922), S. 10(2) (ix),(xv). **1972 Tax LR 237 (SC).**

--**S. 6 –** Annual profit from mine – Levy of cess on – Ore taken out by mine-owner assessee – No direct sale of ore but ore utilized by assessee for production of finished products – Finished product sold and profit made – profit derived from working mine imbedded in final realization – profit thus accrued can be disintegrated and ascertained – Cess can be levied on such profit – See Ibid, S. 5. **AIR 1963 SC 577.**

SECTION 72

-- S. 72 – Return of net annual profits from mines – Sale of price of water pumped out and discharged from mine- To be included in return – Cess levied – Justified – See Ibid, S. 6. **AIR 1985 SC 840.**

--S. 72 – Assessment of profit- Arrival at "the annual profit" – It is left to enquiry by competent authorities – See Ibid, S.6. **AIR 1976 SC 2452.**

SECTION 102.
BENGAL CESS ACT (9 OF 1880)

SECTION 5.

--Ss. 5, 6, and 72 – Cess Manual, Appendix E-C – Assessment of profit – what deduction is permissible.

The manner in which disintegration should take place or the components or item which would have to be taken in to account in arriving at the annual profit from the Mine for the purpose of being brought to tax under section 6 and 72 is left to enquiry by the relevant competent authorities. The impugned observation made by the board of revenue that the authority (The Cess Deputy Collector) should take particular care to ensure that only such deduction which are attributable to mining operation are actually allowed as permissible under Appendix E-C of the Cess Manual, is not the correct view to take in regard to assessment of profit for the payment of the tax. I.I. & S. Co. v. Cess Deputy Collector. **AIR 1976 SC 2452.**

-- Ss. 5 – Allowable deduction – Payment of Cesses – The assessee-Company raising and selling coal – Cess for road and public works under the Bengal Cess Act and as education cess under the Bengal (Rural) Primary education Act – Deduction under section 10(2) (ix) or (xv). **1972 Tax LR 237 (SC).**

--Ss. 5, 6, and 72 (as amended in Bihar)

--Annual profits from mine – Levy of cess on – One taken out by mine-owner assessee – No direct sale of ore but ore utilized by the assessee for production of finished product – finished product sold and profit made – profit derived from working mine imbedded in final realization – profit thus accrued can be disintegrated and ascertained – Cess can be Levied v. State of Bihar. **AIR 1963 SC 577: (1963) 48 ITR (SC) 123: 1963 Supp (1) SCR 199: (1963) 2 SCA 373.**

SECTIO 6

--S. 6 – Validity – Cess on royalty from mines and quarries – Invalid – Cannot be sustained by relying on Art. 277 of the constitution. Orissa Cement Ltd. v. State of Orissa. **AIR 1991 SC 1676: 1991 Supp (1) SCC 430: 1991 (2) JT 439: (1991) 34 ECR 497.**