

The Swadeshi Bima Co. Ltd. vs The Commissioner Of Income-Tax, U.P., ... on 7 May, 1954

Equivalent citations: AIR1954ALL693, [1954]26ITR530(ALL), AIR 1954 ALLAHABAD 693

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This is a reference by the Income-tax Appellate Tribunal, Bombay, under Section 66(1), Income-tax Act.

2. The reference first came before this Court on 30-10-1952. Learned counsel for both parties then stated that they were agreed that the Statement of the Case was wholly insufficient to enable the Court to answer the important question of law, raised in the reference and they gave the Court detailed notes on the facts which they wanted to be mentioned in the reference and the papers which they wished to be included in the paper-book. Copies of those notes were sent to the Income-tax Appellate Tribunal which was directed to make a fuller statement of the case and send it to this Court. The Tribunal was further permitted to re-frame the questions upon which the opinion of the Court was sought and take such further evidence as might be necessary.

A fresh Statement of the Case was accordingly prepared but again it was found that the Tribunal had not given a finding on all the necessary facts. Consequently on 2-3-1954, the case was again sent back to the Income-tax Appellate Tribunal to record a finding on certain specific questions which were set out in that order. A third statement of the Case has now been received from the Tribunal, giving findings on those questions. In dealing with the reference, we have taken into account all the three Statements of the Case received from the Tribunal.

3. The assessee is the Swadeshi Bima Company, Ltd., Agra, which was incorporated as a public limited company on 11-4-1931, and which commenced business on 16-6-1931. The purposes for which the company was incorporated are set out in the Memorandum of Association, the more important clauses of which read as follows :

"1. To carry on in India including Indian States and any part of the world, all kinds of insurance and all kinds of guarantee and indemnity business and in particular

without prejudice to the generality of the foregoing words.

2. To carry on the business of life assurance in all its branches, sickness assurance, accident assurance, and annuity business in all its various forms, either alone or in combination with any other or others either with or without the right of participating in the profits of the Company including the whole life and short period life assurance, endowment assurance, loss of health assurance, joint life and survival assurance, against sickness or accident alone or in combination, with life assurance the purchase of reversions and contingent life interests, and the purchase and sale and repurchase of annuities of all kinds, including the immediate, deferred permanent, joint life or survival annuities, and to make or grant assurance for payment of money by way of single payment or several payments.

or by way of immediate and deferred annuities or otherwise on the happening of any contingency whatsoever; and generally to transact the business of Life Assurance Company, which may be in any way connected with or dependent on the contingencies of human life; and which may be undertaken and transacted according to Law.

3. To reinsure with other Insurance Companies, doing similar business all or any of the risk, taken by the Company, and to undertake any authorised risk from similar companies either direct or by way of re-insurance.

4. To carry on the business of Insurance on Pension Fund basis, i.e., to pay policy-holder or his dependents in way of monthly pension, instead of lump sum when the policy matures.

5. To invest the funds of the Company in any movable and immovable property, government securities, municipal debentures, co-operative societies, banks, shares of industrial companies or shares of Commercial concerns, debentures of commercial and manufacturing concerns or limited concerns or loans to the individuals.

9. To purchase, take on lease, hire or otherwise acquire any estate or interest in any lands, buildings, easements, rights, privileges, concessions or immovable property of any kind and tenure, necessary or convenient for the business of the Company in any part of the world.

10. To sell, exchange, lease, mortgage, or otherwise to make deed for any part of the Company's property or to construct, alter, maintain buildings work; machinery, necessary or convenient for the business of the Company.

14. To purchase or otherwise acquire, all or any part of the business and property, of any person, firm or Company carrying on any business, which this Company is authorised to carry on and to take over the assets or property, and liability of such

persons firm or Company, on such terms as the Company may think fit.

16. To borrow, sell, exchange, lease, mortgage all or any of the movable or immovable property, present or future including Capital and to issue debenture or debenture stock, perpetual or otherwise, with or without a specific charge on all or any part of the Company's property. 18. To enter into working arrangements of all kinds, for sharing profits, co-operation, joint adventure, reciprocal conversion or otherwise with any other Company or Companies, Corporation firms or persons carrying on or about to carry on business which this Company is authorised to carry on or engaged in carrying on.

24. To act as loan and Estates Agents and to negotiate Loans for State, Estate and against other movable or immovable securities or Towns Municipalities, Port Trust etc.

25. To carry on the business of a loan Company in all its branches.

28. To undertake the sale of Swadeshi or foreign manufactures on commission or any other basis."

4. In pursuance of the objects mentioned in its Memorandum of Association, the assessee company carried on life and other insurance business. It also engaged in certain undertakings which have given rise to the present reference, the dispute, shortly stated, being whether these undertakings or activities, to use a perhaps more neutral term, can properly be regarded as constituting part of the assessee-company's life insurance business within the meaning of the Schedule to the Income-tax Act. The activities have been mentioned in paragraphs 5 to 11 of the second Statement of the Case sent dated 15-5-1953.

5. In paragraphs 5 to 7, the Tribunal has given the facts relating to the purchase and running of the business of the Swadeshi Bima Cotton Mills. The assessee-company advanced a loan of Rs. 40,000 to the New Krishna Mills, Ltd. upon the security of a mortgage dated 20-7-1939, of the New Krishna Mills. This mortgage was registered under the Indian Registration Act but the prescribed particulars were not filed with the Registrar of Companies pursuant to Section 109, Indian Companies Act. On 15-8-1940, the assessee-company purchased the mortgaged property for a sum of Rs. 1,24,000/-, Machinery of the value of RS. 57,120-10-0 was purchased between January, 1941, and January 1943.

It was claimed that the whole of the machinery was second hand but the Tribunal, relying on the fact that the invoices for the purchase of the machinery had not been produced, held that it could not be said that there was no new machinery though a part of the machinery was no doubt second hand. The entries relating to the money invested in the purchase of these mills were shown in the balance sheet as having been debited in the accounts of the life insurance branch. A further debit of a sum of Rs. 50,168 was shown in this account with a corresponding entry in the revenue account in respect of appreciation of the value of the mills, so that the account of the life insurance branch of the company showed a total investment of Rs. 2,50,191/- in the mills.

This figure appeared in the balance sheet as it stood on 31-12-1940. After the purchase, the name of the New Krishna Mills was changed to Swadeshi Bima Cotton Mills. The assessee-company thereafter by working this mill earned an income for several years. This income from the mill was incorporated in the revenue accounts of the assessee company relating to the life insurance branch. This method was followed in all the three years of assessment in question, viz., 1943-44, 1944-45 and 1945-46. In the assessment year 1945-46 relevant for the accounting year ending on 31-12-1944, the mill was worked for a period of 26 days only up to 26-1-1944, and was then sold as a running business to Bharat Stores Agra.

The assessee company received a sum of ten lacs of rupees as purchase money in this sale. The entire surplus of this sale was treated as profit and was credited to the company's life insurance revenue account. While the Swadeshi Bima Cotton Mills were being run by this company, the company maintained separate account books in which transactions of the mill were recorded and only the net result was incorporated in the revenue account of the company's life insurance business.

6. Paragraph 8 deals with the activity of purchase and sale of lands and buildings. On 27-8-1940, the company purchased free-hold rights of about 9 bighas and 12 biswas of land together with a bungalow near the Civil Courts, Agra & outhouses attached to it for a sum of Rs. 29,000/-. The land was developed and parcelled out into smaller plots and was sold to a number of persons, but the bungalow was reserved by the company for use as its own office for some time. The bungalow was also ultimately sold. The whole area thus developed by the company was known as Swadeshi Bima Nagar, Agra. On this activity, the company earned a net profit of Rs. 25,579/-. The assessee company also purchased and ran two brick kilns at Khandhari and a ginning factory at Harduaganj; it constructed houses in the Swadeshi Eima Nagar Colony and purchased land at Patehabad for colonization.

7. Paragraph 9 deals with the transactions relating to the Harduaganj Ginning Factory mentioned above. This factory was purchased in 1941 and the company started working the factory on 26-10-1941. In one of the assessment years in question, the company made a profit of Rs. 134/- and this amount was also incorporated in the company's life insurance revenue account.

8. Paragraph 10 gives the facts relating to a contract for purchase of certain land, buildings and machinery known as the Laxmi Mills for a sum of Rs. 1,60,000/-. In the purchase of this mill, a sum of Rs. 15,000/- was paid by the assessee company as earnest money in 1940. The vendor later resiled from the contract and the company had to file a suit for specific performance. The suit was compromised and possession over the mills was taken in May, 1942. While these disputes were going on, the company had entered into an agreement with the Bharat Stores, Limited, under which the latter had guaranteed to the company a net profit of Rs. 25,000/- on the purchase of this property and had undertaken to bear the risks and expenses of the litigation. The property in the mills was finally conveyed to the Bharat Stores, Limited, Agra, through a document dated 30-12-1942, and the profit of Rs. 25,000/- was credited in the revenue account of the company's life insurance business. A special commission of Rs. 6,250/- was paid on this transaction to the Managing Director.

9. The last activity mentioned in para. 11 is in respect of a transaction of purchase and sale of shares in the Anjewar Spinning and Weaving Mills, Ltd. On the sale of those shares the company made a profit of Rs. 56,250 during the years in question and this amount was also incorporated in the revenue account of the company's life insurance business.

10. At the time of assessment, the Income-tax Officer held that the income received by the assessee company from these activities, namely those referred to in paras. 5 to 11 of the second Statement of the Case, was income derived from business carried on by the company other than its life insurance business and was taxable under the relevant provisions of the Indian Income-tax Act. The assessee company's claim that the income derived from these activities must be treated as part of the income from its life insurance business and must therefore be taxed under the Schedule of the Act in accordance with Sub-section (7) of Section 10, Income-tax Act was rejected by the income-tax Officer. The assessee company appealed to the Assistant Commissioner of Income-tax and to the Income-tax Appellate Tribunal but unsuccessfully. The assessee company thereupon asked for a reference to this Court and the question, now referred, which has taken final shape in the second Statement of the Case, is as follows:

"Whether on the facts and in the circumstances of this case the assessee company's business in Swadeshi Bima Cotton Mills, in the purchase and sale of lands, machinery, and in running other trading activities referred in the paras. 5 to 11 was not in the nature of business of insurance within the meaning of Section 10(7), Income-tax Act, and the income therefrom was not liable to be assessed under the schedule to Section 10 (7) of the Act but otherwise?"

11. Sri Mitra, the learned counsel for the assessee company, contended that, as a matter of fact all these activities were carried on with the funds of the life insurance branch of the company and that consequently it should be held that they were part of the life insurance business of the company and the income derived therefrom should be treated as part of the income of the company's life insurance business and assessed to tax as such. In view of this contention we considered it necessary to refer the following question to the Tribunal :

"Out of which of the under-mentioned sources, and to what extent, did the funds utilised in each of the activities mentioned in paras. 5 to 11 of the supplementary Statement of the Case come, namely-

(1) funds of the life insurance branch of the assessee, and, if so, whether from the 'life fund'; (2) funds of the assessee other than those of the life insurance branch, and, if so, stating the nature of those funds: (3) funds of the assessee falling partly under source (1) and partly under source (2), and, if so, stating the particulars in each case?"

12. The Tribunal returned its finding on this question on 23-3-1954. It summarised its conclusions in a statement which for the sake of convenience, is reproduced below :

Sources of the amount invested.

Nature of investment.

Total amount invested Life fund Misc. branch fund Profit from disputed activities.

Other funds of the life branch.

Total of columns 3 to 6 Swadeshi Bima Cotton Mills.

834491 286074 238658 231110 28649 834491 Land and buildings 215761 215761
215701 Laxmi Mills 55368 55368 — — 55368 Harduaganj factory 18327 18327 — —
18327 Shares from Anjawar Spinning and Weaving Mills ...

300000 73698 226302

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300000 This finding has been challenged by learned counsel for the assessee company not on the facts but on the ground that the Tribunal was wrong in holding that any of the amounts utilised in the activities in question could be held to come from the miscellaneous branch fund when the balance sheet of the company showed that all the amounts invested in these activities were included only in the balance sheet of the life insurance branch. The Tribunal was of the view that the sum of Rs. 2,88,658 invested in the Swadeshi Bima Cotton Mills and the sum of Rs. 2,26,302 invested in shares of the Anjawar Spinning and Weaving Mills, Ltd., must be treated as having come from the funds of the miscellaneous insurance branch, on the ground that the accounts of both the life insurance branch and the miscellaneous insurance branch were kept in the same set of account books and did not disclose from which source the amounts were being drawn by the company for the purpose of investment.

It was only in the balance sheet that these amounts were shown as having come out of the funds of the life insurance branch, and such entries could be made by the assessee at its discretion after the accounts had been closed. The balance sheets, moreover, showed that a transfer of funds was made from the accounts of the miscellaneous insurance branch to the accounts of the life insurance branch. Such transfers were shown as deposits or loans, and represented amounts which could not have been invested out of the ordinary funds of the life insurance branch unless the deposits or loans taken from the miscellaneous insurance branch were treated as part of the life insurance branch.

If there had been no such deposits or loans, the funds of the life insurance branch would not have sufficed for these investments to be made from the funds of that branch. The entry in the balance sheet was, therefore, treated as a mere paper entry

and, going behind it, the Tribunal held that these sums were, in fact, investments out of the funds of the miscellaneous insurance branch and that the entries in the account books could be ignored in arriving at this conclusion. On behalf of the assessee company it was further contended that the Income-tax authorities are not entitled to disregard the entries made by the assessee in its account books and must treat the sums invested in the Swadeshi Bima Cotton Mills and in the shares of the Anjawar Spinning and Weaving Mills, Ltd., as having come out of the funds of the life insurance branch as shown in the balance sheets, Life insurance business as well as miscellaneous insurance business were being carried on by the assessee company, and the latter could have easily debited these amounts in the accounts of the miscellaneous insurance branch direct. It appears to us that the Tribunal correctly took the view that the entries in the account books were so made for the purpose of enabling the assessee company to contend that the activities in which it was engaged were a part of its life insurance business. If the funds available in the life insurance branch of the company's business had equalled or exceeded the amounts which had been invested in the Swadeshi Bima Cotton Mills and in the shares of the Anjawar Spinning and Weaving Mills, Ltd., there could have been no doubt about the source of the moneys so invested, and it would have been immaterial from which particular account the company might have drawn the cash for the purpose of making the investment.

The cash of both the branches might have been kept together in the bank or with the treasurer of the company. In such a case, whether the amounts had been paid from the bank account or from the balance in hand with the treasurer, the source of those amounts would necessarily have been determined by the entries made in the account books in which the company would have shown a debit of the amounts in the particular fund or funds from which the company had drawn these amounts.

When however the accounts of the life insurance branch show that there was no surplus at all available the company was compelled to resort to making entries indicating that the life insurance branch had accepted deposits or loans from the miscellaneous insurance branch. It was in our view quite competent for the Income-tax authorities to disregard such entries and to hold that the real source of these amounts was the fund of the miscellaneous insurance branch and not the fund of the life insurance branch.

13. Learned counsel for the assessee-company referred us to the case of -- 'Allchin v. Coulthard', (1942) 2 KB 228 (A) and has placed reliance on certain observations of Lord Green in that case, particularly at page 236 of the Report where the Master of the Rolls says:

"A trader may spend the whole of his profits for the year in buying himself a house, with the result that he has to borrow money to pay his mortgage interest. This does not disentitle him from saying that, as between himself and the revenue he is entitled to debit the interest paid to the fund representing the amount in which his profits for

the year are assessed..... Nor can the way in which for his own convenience, he chooses to keep his accounts deprive him of this right.

If he carries on two businesses and chooses to keep their accounts distinct, he may in those accounts show the profits of one business as having been wholly applied in buying capital assets for that business and charge the whole of the interest which he is liable to pay to, for example, a reserve account in the other business representing profits of past years, taut, in taking the account as between himself and the revenue, he is entitled to treat the assessed profits of the first business as available for the payment of the interest. To speak of this as re-writing the trader's accounts is a misdescription. His domestic accounts stand, and there is no question of re-writing them. The account which is drawn up between himself and the revenue is a totally different account drawn up for totally different purposes and the figure representing taxed profits which appears in it is a statutory and (except in the case of profits taxed at source) not an actual figure."

14. Learned counsel's argument is that the assessee-company had the option of choosing whether the moneys which it invested in the activities in question were to be debited to the funds of the life insurance branch or to those of the miscellaneous insurance branch; and if it chose to debit the former with expenditure the Income-tax authorities were not entitled to disregard its choice and hold that the amount so expended came from the funds of the miscellaneous insurance branch. We do not think that any such inference can be drawn from Lord Green's observations.

In 'Allchin v. Coulthard (A)' the South Shields Corporation paid out of their general rate fund, which consisted partly of untaxed income (the rates collected) and partly of profits from its undertakings duly assessed to income tax, interest on a loan raised for the purpose of their electricity and transport undertakings and general purposes, deducting the income-tax in the usual way. The Corporation claimed under the provisions of the South Shields Corporation Act, 1935, to treat the assessed profits of the electricity and transport undertakings as part of the assessed profits out of which the interest was paid and to retain the amount of tax paid on those profits.

Under the Act in question all receipts and expenditure had to be paid into and out of the general rate fund but for the purpose of the internal accounts of the Borough separate accounts showing the specified particulars had to be kept in respect of its undertaking. The Court of Appeal held that under its Act the profits of the Corporation's undertakings could lawfully be applied to the payment of the interest on the whole or the loan, and that those profits as assessed to income tax formed part of the profits brought into charge out of which the interest was paid or deemed to be paid, notwithstanding that from the accounts of those undertakings the surplus revenues arising therefrom had been treated as applied to certain specified purposes of those undertakings.

This case is not, we think, of assistance. A wholly different question was before the Court and the facts bore no similarity to those with which we are concerned. In particular there was no question of a payment being made or purporting to be made out of one fund the assets of which had been augmented for this purpose by a book transfer of moneys available in another fund. In the case

before us the Income-tax Appellate Tribunal has found that the surplus available in the life insurance fund was insufficient to cover the amount invested in the several activities in which the assessee-company was engaged and that the balance in fact came from other sources which it specifies. In our opinion no valid objection can be taken, to the course taken by the Tribunal and we propose therefore to determine this reference on the footing that the finding of the Tribunal dated 23-3-1954, must be acted upon.

15. This finding shows that at least in the case of two of the activities in question, namely the Swadeshi Bima Cotton Mills and the purchase of shares of the Anjawar Spinning and Weaving Mills, Ltd., part of the funds came from the miscellaneous insurance branch and part only came from the funds of the life insurance branch.

16. The consequence of this finding is in our opinion this, that the profits accruing to the company from its activities in connection with the purchase, sale and running of the Swadeshi Bima Cotton Mills and the purchase and sale of the shares of the Anjawar Spinning and Weaving Mills, Ltd. must, on the principle recognised by a Full Bench of this Court in -- 'Mohammad Isa v. Commissioner of Income-tax, C. P. and U. P.', AIR 1942 All 194 (SB) (B), be divided between the life insurance branch and the miscellaneous insurance branch in proportion to the investments actually made from the funds of the two branches. In the statement giving the sources of the moneys so invested, the Tribunal has, however, shown a third source, namely "profit from disputed activities".

In the case of the Swadeshi Bima Cotton Mills, a sum of Rs. 2,31,110 is shown as having been invested out of the profits of the mill itself. Since this profits accrued as a result of the investment of the funds of the life insurance branch and of the miscellaneous insurance branch, it also must in our opinion be divided in proportion to the amounts found as having been drawn out of the funds of the two branches. The amounts drawn from the life fund and the other funds of the life insurance branch have to be added together and treated as the amount drawn from the funds of the life insurance branch.

17. We now come to the principal question that arises on this reference, namely whether the activities in question are a part of the life insurance business of the assessee-company. Sri Mitra contended that whatever activity may be carried on by the company out of the fund which appertains to its life insurance business must be held to be a part of the life insurance business of that company irrespective of the nature of that activity. His contention was that no insurance company can do business merely by doing the work of insurance and that every such company has to carry on other activities in order to earn income for the purpose of carrying on its insurance business.

Apart from, the provisions of Section 27, Insurance Act, 1938, which provided (prior to its amendment in 1950) that, subject to certain exceptions every insurer incorporated or domiciled in British India should at all times invest and keep invested assets equivalent to 55 per centum of the sum of the amounts of its liabilities to the holders of life insurance policies in India, an insurance company was at liberty to invest its remaining surplus funds in whatever manner it considered would serve the interests of the company; and the income arising from such investments would be

part of the income of the insurance company. We entertain no doubt that the investment of money not immediately required is part of the normal business of insurance for as Lord Mersey said in -- 'Liverpool, London and Globe Insurance Co. v. Bennett', (1913) AC 610 at p 621 (C).

"It is well known that in the course of carrying on an insurance business large sums of money derived from premiums collected and from other sources accumulate in the hands of the insurers, and that one of the most important parts of the profits of the business is derived from the temporary investment of these moneys. These temporary investments are also required for the formation of the reserve fund, a fund created to attract customers and to serve as a stand-by in the event of sudden claims being made upon the insurers in respect of losses. It is, according to my view, impossible to say that such investments do not form part of this company's insurance business, or that the returns flowing from them. do not form part of its profits. In a commercial sense the directors of the company owe a duty to their shareholders and to their customers to make such investments, and to receive and distribute in the ordinary course of business, whether in the form of dividends, or in payment of losses, or in the formation of reserves, the moneys collected from them".

Referring to Clause 3 (18) of the memorandum of association of the appellant company in the same case. Lord Parker of Waddington said:

"It provides that moneys of the company 'not immediately required' may be invested in such manner as may, from time to time, be determined. Obviously, moneys invested under this clause are not withdrawn from the businesses of the company, but are retained i'or the purposes of such businesses, though temporarily invested, so as not to lie idle."

The same view was taken by the Calcutta High. Court in -- 'General Family Pension Fund v. Commissioner of Income-tax, Bengal', AIR 1946 Cal 539 (D). In that case a mutual life assurance company, limited by guarantee, was exempted from the provisions of the Indian Life Assurance Companies Act, 1912. The company, 'inter alia', derived income from government securities and other investments and its profits were ascertained by means of quin-quennial actuarial valuations. The question was how the company should be assessed in respect of its income from government securities and other investments for the year ending the 31st December, 1936. It was held that the company's investments and the income derived from them were part of its life assurance business.

18. These cases clearly recognise the principle that profits accruing to an insurance company from the investment of its surplus funds form part of the company's income. They do not, however, touch the mam question that arises in this case which is whether the income arising from the utilisation by an insurance company of the surplus funds of its life insurance branch in carrying on a business undertaking or activity forms part of the income of the life insurance branch. The contention of Sri Mitra that, since the Indian Insurance Act nowhere lays down any limitation on the powers of an insurance company the activity of the company in carrying on any business not prohibited by law must be deemed to be a part of its insurance business, does not derive any support from the cases to

which we have referred.

These cases only lay down that the earning of income by investment is a part of the normal business of insurance; they nowhere lay down that the carrying on of other business with the funds of the life insurance business is a part of the life insurance business. In this connection we examined the scheme of the Indian Insurance Act, 1938, as it was in force during the years of assessment. Section 11 of the Act laid down that every insurer shall, at the expiration of each calendar year, prepare a balance sheet in the form set forth in Part II of the First Schedule. That form is Form A and in it the nature of the assets of an insurance company is indicated by giving various heads under which the assets can be shown.

The principal heads are loans, investments, agent's balances, outstanding premiums, interest, dividends and rents outstanding, interest, dividends and rents accruing but not due, amounts due from other persons or bodies carrying on insurance business, sundry debtors, bills receivable, cash and other accounts to be specified. Then under the heading 'loans' are mentioned the various kinds of loans that are expected to be advanced by an insurance company, similarly, under the heading 'investment' is mentioned the nature of various investments that an insurance company is expected to make.

These investments include deposits with the Reserve Bank of India, various securities including Government securities or foreign securities, bonds, debentures, stocks and other securities, debentures of any railway in India, debentures of any railway out of India, preference or guaranteed shares of any railway in India, railway ordinary stocks (i) in India (ii) out of India, other debentures & debenture stock of companies incorporated (i) in India (ii) out of India, other guaranteed and preference stocks and shares of companies incorporated (i) in India (ii) out of India, other ordinary stocks and shares of companies incorporated (i) in India, and (ii) out of India, holdings in subsidiary companies house property (i) in India, (ii) out of India, and other investments to be specified.

It is to be noticed that the form does not mention investment in any other business carried on by the insurance company itself. 'Prima facie', therefore, Form A is an indication that the carrying on of another business by an insurance company itself was not considered to be a normal activity of an insurance company as such. In the Indian Insurance Act, as now in force, Section 27A has been introduced which lays down that no insurer shall invest or keep invested any part of his controlled fund otherwise than in any of the approved investments mentioned in the section.

The controlled fund in the case of the assessee-company would mean at the present time all the funds appertaining to the company's life insurance business. An exception is made in respect of 15 per cent. of the controlled fund which can be invested or kept invested otherwise than in approved investments on certain conditions. What is, we think, significant is that the entire Section 27A all the time mentions investments and not the running of other businesses with the fund of the life insurance business.

19. So far as we are aware, the running of other businesses in order to augment its income is not a part of the normal activity of an insurance company as such. What an insurance company is

expected to do is to utilise its surplus funds in making investments to get income from them. Whenever such a company engages in other business, that activity would be, in pur opinion, a separate and distinct business carried on by it, apart from the business of insurance.

The contention of learned counsel for the assessee-company that source from which the funds arise determines the nature of the business in which they are employed leads to strange results. A company having successfully carried on an ordinary business embarks (its Memorandum of Association permitting it to do so) on the business of insurance; would it be possible to contend in such cases that the insurance business is a part of that other business simply because the funds utilised for the purpose of carrying on that insurance business come out of the assets of the other business?

20. In considering the main question raised in this case, the distinction between the expressions "making investments", "acquiring ownership" and "carrying on business" must we think be kept in view, under Section 10 of the Indian Income-tax Act, income tax is payable by an assessee in respect of the profits and gains of any business, profession or vocation "carried on by him". Rule 1 of the Schedule lays down that, in the case of any person who "carries on, or at any time in the preceding year carried on, life insurance business", the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.

Rule 1 of the Schedule, therefore, draws a distinction between a life insurance business carried on by a person and any other business carried on by him, both of which are covered by the provisions of Section 10 of the Act. If a person happens to carry on any other business besides the life insurance business, it is clear from the use of the words 'that business' in Rule 1 of the Schedule that the income of the life insurance business alone is to be taxed under the Schedule whereas the income from any other business must be taxed in accordance with the general provisions of Section 10. In carrying on a life insurance business it would normally be necessary to make investments or to own property which may yield income.

In our opinion the dividing line occurs, when the return to the company from the employment of its funds can be more accurately described as a trade profit than as investment income. It is we think difficult to lay down any hard and fast rule, for something will depend on the facts of each case, but generally speaking it can be said that the return cannot properly be described as investment income when the company itself engages in the management of the undertaking from which the return arises. The distinction between carrying on a business and earning income by investment in property was brought out in -- Saifuddin Alimohamed v. Commissioner of Income-tax, Bombay City', AIR 1954 Bombay 219 (E). Dealing with Section 10 (1), Income-tax Act, Chagla, C. J., observed :

"Therefore, looking to the plain language used by the Legislature, what has been emphasised in this section is the fact of a business being carried on by the assessee. It is the assessee who carries on a business who is liable to pay tax under the head of business. It is rather significant to notice the difference in language in Section 10, and Section 9. Section 9 deals with tax under the head of property and that tax is payable

by an assessee who is the owner of the property. So, in the case of property, what is emphasised by the Legislature is ownership. In the case of business what is emphasised is not the ownership of the business, but the fact of the business being carried on by the assessee.

Now, if the intention of the Legislature was that tax under the head of business should be paid by every assessee who owns a business, irrespective of the question whether he carries it on or not, nothing would have been simpler for the Legislature than to have reproduced the same language in Section 10 as is to be found in Section 9. The Legislature could have provided that the tax shall be payable by an assessee in respect of the profits and gains of any business owned by the assessee."

This distinction drawn between owning a business and the carrying on of a business clarifies the view that if the funds of a life insurance company are utilised in any other business, then although that business may be owned by the life insurance company it does not follow that that other business is also being carried on by the life insurance company. Lawrence, J. in -- 'Commissioners of Inland Revenue v. Imperial Tobacco Co. (of Great Britain and Ireland) Ltd.', (1940) 29 Tax Cas 1 (F), while interpreting the words "income received from investment and other property" said "in my opinion, the Paragraph contrasts investment income as opposed to trade profits. I think the words mean, as Lord Cave, L. C., seems to me to have suggested in his judgment in --'Commrs. of Inland Revenue v. Gas Lighting Improvement Co. Ltd.', (1922) 12 Tax Cas 503 (G), income derived from sources outside the trade, income produced by money or money's worth not then used in the trade."

In -- 'Smiles (Surveyor of Taxes) v. Australasian Mortgage and Agency Co. Ltd.', (1888) 2 Tax Cas 367 (H), Lord Shand in the Scottish Court of Exchequer said-

" It appears to me, after a full argument on the effect of the previous cases and on the provisions of the Statute, that the fourth case in the Statute is meant to cover the case in which money is invested upon securities in the British plantations in America, or in any other of Her Majesty's dominions out of the United Kingdom. I say invested, meaning by that something Quite distinct from the use of money in the ordinary trading transactions of a company.

It appears to me that if we are dealing with a company making profits by the use of its capital in mercantile transactions that should fall under the first case; but if a company which has a large rest fund laid aside for the purpose of investment makes investments in foreign stock or other foreign securities, including securities over moveable properties in the colonies that is a case in which the charge is to be made under the fourth case."

In -- 'Bourne & Hollings Worth v. Commissioners of Inland Revenue', (1921) 12 Tax Cas 483 (I) Sankey, J, had to consider the nature of money placed in war loan and held:

"I do not like to hazard the opinion that in all cases money placed in War Loan would be an Investment. I think you have to consider the facts of the case. It may be different in the case of an investment company, and indeed the Act provides for that because it goes on, to say: 'except in the case of life insurance business and businesses where the principal business consists in the making of investment.'"

These cases bring out the difference between investment an earning of profits by the carrying on of a trade, and support the view which we have formed that, while the process of investment is a normal part of the business of a life insurance business, the carrying on of an industrial or other undertaking is not part of the business of life insurance.

21. In the present case, it has to be noticed that the assessee company was not incorporated solely with the object of carrying on life insurance and other business oi insurance. The clauses of the Memorandum of Association quoted earlier in this judgment show that the objects of the company included the carrying on of other types of business, such as dealing in moveable or immoveable properties by borrowing, selling, exchanging, leasing, mortgaging all or any of such properties, present or future, acting as loan and estates agents and carrying on the business of a loan company in all its branches, as well as undertaking the sale of Swadeshi or foreign manufactures on commission or on any other basis.

The facts found by the Tribunal show that, even in the miscellaneous branch, deposits were accepted by the assessee company from policy-holders as well as non-policy-holders so as to augment the money available to the company for carrying out its objects. These deposits were shown in the accounts of the miscellaneous insurance branch. Various amounts from that branch were then transferred to the life insurance branch and were used for some of the activities now in question.

It is a well known commercial practice to obtain funds for carrying on a business by accepting deposits or taking loans, whereas it is not the usual practice save in the case of banks to accept deposits or take loans for the purpose of making investments. In our opinion that fact that the funds of the life insurance branch of the assessee-company were utilised, wholly or in part, in certain undertakings or activities in which the company was interested is not sufficient to enable us to hold that those undertakings or activities were part of the company's life insurance business. That must depend on the nature of the undertakings and the degree of managerial control exercised by the company over them.

22. In applying these principles to the facts of this case for the purpose of considering the nature of the income earned from the activities mentioned in paras. 5 to 11 of the second statement of the case, we have first to take note of the agreed statement made by learned counsel for the parties that there was no need to take into account the income that might have arisen from the transactions relating to the Laxmi Mills, Ltd., and the Harduaganj Ginning Factory as the assessee-company had ceased to have an interest in these concerns prior to the assessment years in question. Learned counsel stated that 'we need only consider three sources of income, namely the Swadeshi Bima Cotton Mills, lands and buildings and shares of the Anjawar Spinning and Weaving Mills, Ltd.

23. It appears to us that the income earned from the transaction relating to the Swadeshi Bima Cotton Mills can be divided into two parts: Firstly, there was the income derived from the carrying on of the Swadeshi Bima Cotton Mills which might best be described as the annual profits earned from the running of that business ; and, secondly, there was the block profit which was made when the Mills were sold as a running concern by the assessee-company. In our opinion, the former, that is the annual profits from the carrying on of the business must be held to be income earned by the assessee-company otherwise than from its business of life insurance.

On the other hand, the block profit earned by sale of the Mills would be a capital gain accruing both to the life insurance branch of the business as well as to the miscellaneous insurance branch of the business in proportion to the investments made in the purchase of these mills, and the machinery for the mills, out of the funds of the two branches of the insurance business. Consequently, the income earned by carrying on the business of the Swadeshi Bima Cotton Mills described earlier as the annual profits is taxable under the general provisions of Section 10, and not under the Schedule as part of the income of the life insurance business.

So far as the capital gains are concerned, they appertain partly to the life insurance business and partly to the miscellaneous insurance business and are taxable as income of those businesses, provided of course that they are liable to tax, a question which has not been referred to us and upon which we express no opinion.

24. We have next to consider income derived from the transactions relating to lands and buildings, and the question which would ordinarily arise is whether the return on the money expended by the assessee company in these transactions was a business profit or investment income. The statement of the case indicates that the assessee company was engaged in the business of purchasing land, developing it and thereafter selling it at a profit; and Sri Mitra conceded that this was so. He did not contend that the land and buildings were purchased as a mere investment.

His argument was that the income from this source should be treated as income of the life insurance business solely on the ground that the money used for carrying on this activity came from the life funds of the life insurance business and, consequently, even if it be a trade, the income from it must be assessed as income of the life insurance business. This contention, as we have held above, cannot be accepted. In our opinion the assessee company's activities in connection with the purchase and sale of land buildings constituted a business distinct from the life or other insurance business of the company and the profits accruing from it cannot, therefore, be assessed to tax under this schedule.

25. So far as the transaction of purchase and sale of shares of the Anjawar Spinning and Weaving Mills, Ltd., is concerned, the position appears to be different. The facts found nowhere indicate that the assessee-company was regularly carrying on the business of dealing in the shares by purchasing them and selling them at a profit. It appears that the directors of the company considered that an investment in the shares of the Anjawar Spinning and Weaving Mills, Ltd., would be very profitable.

The Income-tax authorities have held that this transaction was a speculative one, but we think that it was speculative only in the sense that there was no certainty that these shares would yield a good

income and would be safe investment. It is nowhere suggested in the facts found by the Income-tax Appellate Tribunal that the purchase of the shares of this company was speculation in the sense of purchase of shares for the purpose of selling them at a profit in the course of a business of dealing in shares.

Further, there is no finding that there were any other dealings in any other shares by the assessee-company. We are, therefore, of opinion that the purchase and sale of the shares, of the Anjawar Spinning and Weaving Mills, Ltd., must be held to be an investment, and the income arising therefrom in so far as it appertains to the life insurance business, must be treated as income of that business and must be assessed under the Schedule to the Indian Income-tax Act.

26. So far as the remaining minor activities are concerned, we do not consider it necessary to deal with them in view of the statement of learned counsel for the parties that, in this reference, we are only concerned with the three activities which have been mentioned above.

26a. Our answer to the question referred to in respect of these three activities is as indicated above. Since our decision is mainly in favour of the Department, we direct that the assessee shall pay the costs of the Department which we assess at seven hundred and fifty rupees.