# Rajapalayam Mills Ltd vs Commissioner Of Income Tax, Madras on 6 October, 1978

## Equivalent citations: 1979 AIR 117, 1979 SCR (1)1138, AIR 1979 SUPREME COURT 117, 1979 TAX. L. R. 1, 1978 UJ(SC) 798, (1979) 2 MAD LJ 9, 1979 UPTC 529, (1979) 1 SCR 1138 (SC), (1979) 1 SCJ 492

## Author: P.N. Bhagwati

## Bench: P.N. Bhagwati, V.D. Tulzapurkar, R.S. Pathak

PETITIONER:
RAJAPALAYAM MILLS LTD.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, MADRAS

DATE OF JUDGMENT06/10/1978

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
TULZAPURKAR, V.D.
PATHAK, R.S.

CITATION:
1979 AIR 117 1979 SCR (1)1138
1978 SCC (4) 322
CITATOR INFO :
MV 1985 SC 421 (5)
F 1991 SC1322 (17)

ACT:
Income Tax Act, 1922 , Sec. 15C and Sec. 84 of Income Tax Act, 1961, interpretation of.

HEADNOTE:
The appellant assessee, a public limited company carrying on business in manufacture and sale of yarn, set up a new industrial undertaking during the financial year ending 31st March, 1959 being the accounting year relevant to the assessment year 1959-60. The entire amount of depreciation and development rebate in respect of this new

unit for the assessment years 1959-60 and 1960-61 were set off against the total profit of the assessee arising out of all units old and new, and therefore nothing remained unabsorbed to be carried forward to the next assessment year 1961-62. In the assessment year 1961-62 the assessee earned a net business income of Rs. 12,69,403/- which included a sum of Rs. 1,36,822/- representing the income from the new unit. The assessee in its assessment to tax for this assessment year claimed exemption of the income from the new unit to the extent of 6% of the average capital employed in it under section 15C of the Income Tax Act 1922. Taking the view that the benefit of Sec. 15(c) sub-section (1) could be claimed by the assessee only if there was any profit derived from the new unit and since the profit was, by reason of sub-section (3) of Sec. 15C required to be computed in accordance with the trading result of the new unit without reference to any other activity carried on by the assessee and if that was done, the result would clearly show that there was a loss in the working of the new unit in the assessment year 1961-62, the Income Tax Officer held that the benefit of exemption under Sec. 15C, sub-section (1) was not available to the assessee and thus the claim of the assessee for exemption was rejected. In appeal, the Appellate Assistant Commissioner set aside the order of the Income Tax Officer but on further appeal by the Revenue to the Tribunal the order of the Income Tax Officer was restored. The same view was taken by the Tribunal in regard to the assessment in the year 1962-63. The High Court, on a reference, agreed with the view taken by the Tribunal. Hence the appeals by special leave in respect of the assessment years 1961-62 and 1962-63.

Allowing the appeals, the Court,

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HELD: (1) The law of income tax in a modern society is intended to achieve various social and economic objectives and is used as an instrument for accelerating economic growth and development. Sec. 15C is a provision introduced in the Indian Income Tax Act, 1922 with a view to carrying out this objective and it is calculated to encourage setting up of new industrial undertakings. [1147 A-B]

Sub-section (1) of Sec. 15C exempts from tax so much of the profits or gains derived from a new industrial undertaking as do not exceed 6% per annum of the capital employed in the undertaking and, therefore, there must

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be profits or gains derived from the new industrial undertaking in the assessment year in question before any claim for exemption can be sustained under Sec. 15C, sub-sec. (1). If there are no profits or gains derived from the new industrial undertaking in any particular assessment year, there can be no question of any exemption, because it is only where there are such profits or gains that to the extent of 6% per annum of the capital employed, they become

eligible for exemption [1147 B, C-D]

(2) Though the profits of each distinct business carried on by an assessee have to be computed separately, in accordance with the provisions of Sec. 10, the tax is chargeable under that section not separately on the profits of each business, but on the aggregate of the profits of all the business carried on by the assessee. Therefore, where the assessee carries on several he is entitled under section 10 to set off loss in one business against profits of another. If there is any loss in a business carried on by the assessee by reason of the profits of such business not being sufficient to absorb the depreciation allowance, such loss can be set off against the profits of another business carried on by the assessee. If, however there are no profits chargeable under the head 'Business or profession' or if the profits chargeable under that head are insufficient to cover the depreciation allowance, the amount of the allowance to the extent to which it is not absolved can be set off against profits chargeable under any other head for the assessment year. This is the plain and undoubted effect of Section 24 sub-section (1). [1148 A-E]

Anglo-French Textile Co. Ltd. v. Commissioner of Income Tax, 23 ITR 82 at 86; Commissioner of Income Tax v. Indo-Mercantile Bank Ltd., 36 ITR 1 at 6; at 6; Commissioner of Income Tax v. Muthuraman Chettiar 44 ITR 710 at 713 referred to.

(3) It is clear on a plain reading of the language of proviso (b) to clause (vi) of Section 10 of the Act, that it comes into operation only where full effect cannot be given to the depreciation allowance for the assessment year in question owing to there being no profits or gains chargeable for that year or profits or gains chargeable being less than the depreciation allowance. [1149 B-C]

(4) The words 'no profits or gains chargeable for that year' are not confined to profits and gains derived from the business whose income is being computed under section 10, but they refer to the totality of the profits or gains computed under the various heads and chargeable to tax. It is, therefore, clear that effect must be given to depreciation allowance first against the profits or gains of the particular business whose income is being computed under section 10 and if the profits of that business are not sufficient to absorb the depreciation allowance, the allowance to the extent to which it is not absorbed would be set off against the profits of any other business and if a part of the depreciation allowance still remains unabsorbed, it would be liable to be set off against the profits or gains chargeable under any other head and it its only if some part of the depreciation allowance still remains unabsorbed that it can be carried forward to the next assessment year. Obviously, therefore, there would be no scope for the applicability of proviso (b) to clause (vi) if the total income of the assessee chargeable to tax is

sufficient to absorb the depreciation allowance, for then there would not be any unabsorbed depreciation allowance to be carried forward to the following assessment year. But where any part of
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the depreciation allowance remains unabsorbed after being set off against the total income chargeable to tax, it can be carried forward under proviso (b) to clause (vi) to the following year and set off against that year's income and so on for succeeding years. The method adopted by the statute for achieving this result is that the carried forward depreciation allowance is deemed to be part of and stands on exactly the same footing as, the current depreciation for the assessment year and is this allowable as a deduction under clause (vi). Therefore, when the profits or gains of a business for a particular assessment year are to be computed under Sec. 10, the current depreciation allowance for the assessment year in question is deductible under clause (vi) but the depreciation allowance of the preceding years would be liable to be taken into account only if, and to the extent to which, it is not absorbed by the total income of the assessee computed under different heads and chargeable to tax for those assessment years. [1149 D-H, 1150 A-B]

Commissioner of Income Tax v. Jaipuria China Clay Mines, 59 ITR 555 followed.

(5) Though the amount of the development rebate is, under the main provisions in sub-clause (ii) of clause (vi-b), allowable in the first instance against the profits or gains of the particular business whose profits or gains are being computed, clause (i) of Explanation (1) makes it clear that if any part of the development rebate remains unabsorbed, it is to be set off against the other income of the assessee under any of the chargeable heads and it is only if some part of the development rebate still remains outstanding that it can be carried forward to the following assessment year and set off against the total income of the assessee for that year. The amount of the development rebate is to be set off against the total income of the assessee and not merely against the profits or gains of the particular business in respect of which the development rebate is granted and so also the development rebate which remains unabsorbed and is carried forward to the next assessment year is by reason of clause (ii) of Explanation 1 to be set off not merely against the profits or gains of the particular business but against the total income of the assessee for that year. Therefore it is only where the amount of development rebate has not been fully set off against the total income of the assessee in the past assessment years and a part of it still remains unabsorbed and is carried forward to the assessment year in question that it can be allowed against the profits or gains of the business for the particular assessment year and if there is still is some balance outstanding, then against the other

income of the assessee for that assessment year. But if the amount of the development rebate is wholly set off against the total income of the assessee in the past assessment years and there is no unabsorbed development rebate to be carried forward to the assessment year in question, there would be nothing in respect of the past development rebate to be set off against the profits or gains of the business under clause (ii) of Explanation 1. [1151 D-H, 1152 A-B]

(6) As sub-section (3) of Sec. 15C provides that the profits or gains of a new industrial undertaking shall be computed under Sec. 10, and therefore, according to clause (vi) read with proviso (b), no part of depreciation allowance and according to clause (vi-b) Explanation 1, no part of the development rebate in respect of the new industrial undertaking for the past assessment years can be allowed as a deduction in computing the profits and gains, unless

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it has remained unabsorbed by reason of inadequacy of the total income chargeable to tax in the post assessment years, and is carried forward to the assessment year in question. Total income means not only profits or gains derived from the new industrial undertaking but the totality of profits or gains computed under various heads.[1152 F-G]

(7) There is nothing in sub-section (3) of Sec. 15C or in any other provision of the Act which requires that in computing the profits or gains of a new industrial undertaking under section 10, depreciation allowance or development rebate in respect of the new industrial undertaking for the past assessment years should be taken into account. even if it has been set off fully against the profits or gains of any other business carried on by the aesessee or against income under any other head and there is no unabsorbed depreciation allowance or development rebate to be carried forward. [1152 G-H, 1153 A]

(8) Effect cannot be given to depreciation allowance and development rebate twice over, once in the past assessment years and again in the assessment year in question. To give effect to depreciation allowance or development rebate for the past assessment years even though it has been set off and absorbed completely against the total income of the assessee for those assessment years would be to allow a deduction not warranted by any provision of the Act and indeed it would be going contrary to the express provision of proviso (b) to clause (vi) and Explanation 1 to clause (vi-b). Sub-section (3) of Sec. 15C clearly does not have any such effect. What it does is no more than provide as to how "the profits or gains derived from new industrial undertaking" referred to in sub-section (i) of Section 15C shall be computed. [1153 A-D]

(9) Sub-section (3) of Sec. 15C does not enact any legal fiction providing that the profits or gains of the now industrial undertaking shall be computed as if the new

industrial undertaking were the only business of the assessee from the date of its establishment or the past years depreciation or development rebate had not been set off against other income of the assessee The new industrial undertaking is not retrospectively quarantined or isolated from the other income producing activities of the assesee for determining its profits or gains for the purpose of applicability of sub-section (1) of section 15C. What sub-section (3) of section 15C does is meanly to lay down the same rule of computations for the profits or gains of a new industrial undertaking as in respect of any other business and, therefore, neither depreciation allowance nor development rebate in respect of the new industrial undertaking for the past assessment year can be allowed as a deduction in computing the profits or gains for the assessment year in question, except where and to the extent to which, it has not been set off against the total income of the assessee for those assessment years and has remained unabsorbed. This is the plain and undoubted effect of the language used in sub-section (3) of section 15C. Indeed the language is so clear and unambiguous that it is impossible to place any other construction upon it. [1153 E-H 1154 A]

(10) Apart from the language of the section, if the construction contended for on behalf of the Revenue and upheld by the High Court. as well as the Tribunal were accepted, it would lead to the highly anomalous result that though, for the purpose of computing the total income chargeable to tax. the depreciation allowance and development rebate which have been set off against
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the other income of the assessee for the past assessment years would not be liable to be taking into account, they would have to be deducted in computing the profits or gains of the business for the purpose of applicability of subsection (1) of Section 15C. Thus, there would be two different modes of determining the profits or gains of the business, one for computing the total income chargeable to tax and the other for applying the provisions of subsection (1) of Section 15C. Such a consequence could never have been intended by the legislature [1154 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1989 and 2418/77.

From the Judgments and orders dated 3-1-1970 and 18-1- 1973 of the Madras High Court in Tax Case Nos. 112 of 1966 and 84 of 1971 respectively.

T. A. Ramachandra for the Appellant in C.A.1989 and Inter-vener-Sepapati Whitely.

P. A. Francis and Miss A. Subhashini for the Respondent Devi Pal, S. Swarup and J. B. Dadachanji for the Intervener (The Indian Aluminium Co. in C.A. 1989/72.

J. Ramamurthi and Miss R. Vaigai for the Appellant in C.A. 2418/77.

B. B. Ahuja and Miss A. Subhashini for the Respondent in C.A. 2418/77.

R. N. Bajoria, P. V. Kapur, U. K. Khaitan, Praveen Kumar and R. K. Chaudhary for the Intervener (M/s Orient Paper Mills Ltd.) The Judgment of the Court was delivered by BHAGWATI J., These two appeals by special leave raise a short but interesting question of Law relating to the interpretation of sections 15C of the Indian Income Tax Act, 1922 and section 84 of the Income Tax Act, 1961. These two sections are in material respects in identical terms and the interpretation we place on section 15C is bound to apply equally to section 84. We will, therefore, first deal with Civil Appeal 1989 of 1972 which involves the interpretation of section 15C and then turn to Civil Appeal 2418 of 1977 which deals with section 84.

The assessee in Civil Appeal 1989 of 1972 is a public limited company carrying on business in manufacture and sale of yarn. During the financial year ending 31st March, 1959, being the accounting year relevant to the assessment year 1959-60, the assessee set up a new industrial undertaking which admittedly satisfied the requirement of section 15C(2) of the Indian Income Tax Act, 1922. The profit, depreciation and development rebate in respect of this new unit for the assessment years 1959-60 and 1960-61 were as follows:

> Year Profit Depreciation and Development Rebate 1959-60 Rs. 33,118/- Rs. 1,44, 361/- Rs. 5,07, 336/-(Development rebate) 1960-61 Rs. 3,64, 672/- Rs. 3,19, 591/- Rs. 1,17, 205/-(Development rebate)
>
> ---------- Rs. 3, 97, 790/- Rs. 10, 88,493/-
>
> In the assessment year 1959-60 the total profit of the assessee in respect of its old and new units came to Rs. 2,42,432/-, including Rs. 33,118/- in respect of the new unit and the total depreciation amounted to Rs. 2,66,651 including Rs. 1,44,361 in respect of the new unit and after setting off the amount of depreciation against the total profit, a sum of Rs.24,183/-remained as unabsorbed depreciation which was carried forward to the next year. The entire development rebate which included Rs. 5,07,336/- in respect of the new unit, also remained unabsorbed owing to the smallness of the profit and that too had to be carried forward. The total profit of the assessee in respect of its old and new units for the assessment year 1960-61 was Rs. 14,13,604/- inclusive of Rs 3,64,672/- in respect of the new unit and this was large enough to absorb the carried forward depreciation and development rebate as also the current year's depreciation and development rebate in respect of both the units. In fact, after setting off of such depreciation and development rebate, a sum of Rs. 3,25,176/- remained as the taxable income of the assessee and it was assessed to tax in its hands. The result was that no part of the depreciation or development rebate for

the assessment years 1959-60 and 1960-61 remained unabsorbed to be carried forward to the next assessment year 1961-62.

The position in the assessment year 1961-62 was that the assessee earned a net business income of Rs. 12,69,403/- which included sum of Rs. 1,36,822/- representing the income from the new unit. The assessee in its assessment to tax for this assessment year claimed exemption of the income from the new unit to the extent of 6% of the average capital employed in it under section 15C. This section insofar as material read as follows:

(1) Save as otherwise hereinafter provided, the tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking (or hotel) to which this section applies as do not exceed six per cent per annum on the capital employed in the undertaking (or hotel), computed in accordance with such rules as may be made in this behalf by the Central Board of Revenue.

(2) x x x x x x (3) The profits or gains of an industrial undertaking (or a hotel) to which this section applies shall be computed in accordance with the provisions of section 10. (4) The tax shall not be payable by a shareholder in respect of so much of any dividend paid or deemed to be paid to him by an industrial undertaking (or a hotel) as is attributable to that part of the profits or gains on which the tax is not payable under this section.

(EXPLANATION-The amount of dividend in respect of which the tax is not payable under this sub section shall be computed in accordance with such rules as may be made in this behalf by the Central Board of Revenue.) (5) x x x x x x (6) The provisions of this section (shall, in relation to an industrial undertaking, apply) to the assessment for the financial year next following the previous year in which the assessee begins to manufacture or produce articles and for the four assessments immediately succeeding).

The Income-Tax Officer took the view that the benefit of section 15C, sub-section (1) could be claimed by the assessee only if there was any profit derived from the new unit and since this profit was, by reason of sub-section (3) of section 15C, required to be computed in accordance with the provisions of section 10, it was necessary to work out the trading result of the new unit without reference to any other activity carried on by the assessee and if that was done, the result would clearly show there was a loss in the working of the new unit in the assessment year 1961-62. The computation made by the Income Tax Officer was as under. The total depreciation and development rebate in respect of the new unit for the assessment years 1959-60 and 1960-61 was Rs. 10,88,493/-, while the profit for these two assessment years came to only Rs. 3,97,790/- so that, taking, into account only the trading result of the new unit as that was the only source or income of the assessee during the assessment years 1959-60 and 1960-61, a sum of Rs. 6,90,703/- representing the excess of depreciation and development rebate over profit remained unabsorbed to be carried forward to the next assessment year 1961-62. If this carried forward depreciation and development rebate amounting to Rs. 6,90,703/- were allowed against the profit of Rs. 1,36,822/- derived from the new

unit in the assessment year 1961-62, there would be a resultant loss and hence the benefit of the exemption under section 15C, sub-section (1) was held not available to the assessee and the claim of the assessee for exemption was rejected.

The assessee carried the matter in appeal and before the Appellate Assistant Commissioner, the assesses succeeded in making good its claim for exemption under section 15C, sub-section (1). The Appellate Assistant Commissioner pointed out in a brief but precise order: "The loss of Rs. 6,90,703/- being depreciation in excess of the income made by the new mill was set off against the income of the old mill in both the years and the net result for the assessment year 1960-61 was a positive figure which was assessed to tax. There is no question of once again carrying forward the depreciation of the new mill to the assessment year 1961-62 and allowing it against the income of the new mill. It is only when there is a loss of the earlier year due to depreciation attributable to the new industrial undertaking which could not be set off against the profits of the earlier years, it has to be carried forward and set off against the income of the current year in working out the income liable to tax under section 10". The Appellate Assistant Commissioner accordingly allowed the claim for exemption and directed the Income Tax Officer to modify the assessment in conformity with his decision.

The Revenue being aggrieved by the decision of the Appellate Assistant Commissioner preferred an appeal before the Income Tax Appellate Tribunal. The appeal was successful and the Tribunal set aside the order of the Appellate Assistant Commissioner and restored that of the Income Tax Officer. The Tribunal took the view that the trading result of the new unit must be considered as if it stood by itself, ignoring every other income producing activity of the assesse and if that was done, it was clear that there was an unabsorbed depreciation and development rebate of Rs. 6,90,703/- in respect of the new unit which was required to be carried forward and treated as part of the allowance for the assessment year 1961-62 and that would wholly wipe out the profit of Rs. 1,36,822/- leaving a resultant loss in the new unit for the assessment years 1961-62. The Tribunal in this view held that the benefit of the exemption under section 15C, sub-section (1) was not available and the Income Tax officer was justified in refusing to grant such exemption.

This led to the filing of an application for reference by the assessee and on the application, the Tribunal stated a case and referred the following question of law for the opinion of the High Court.

> "Whether on the facts and in the circumstances of the case the assessee company was entitled to the relief under section 15C(2)".

The High Court agreed with the view taken by the Tribunal and proceeding on the assumption that for the purpose of determining the applicability of section 15C, sub-section (1), the new unit was required to be treated in isolation, as if no other income producing activity was carried on by the assessee, the High Court observed that there was unabsorbed depreciation and development rebate of Rs. 6,90,703/- in respect of the new unit which was required to be carried forward and set off against the profit of Rs. 1,36,822/- derived from the new unit in the assessment year 1961-62 and since that left the new unit in a resultant position of loss, the assessee was not entitled to claim the benefit of the exemption under section 15C, sub-section (1). The High Court accordingly answered

the question referred by the Tribunal in favour of the Revenue and against the assessee. The assessee thereupon preferred the present Civil Appeal No. 1989 of 1972 after obtaining certificate of fitness from the High Court.

The same question also arose in the assessment of the assessee to tax for the assessment year 1962-63, but in this assessment year the law in force was the Income Tax Act, 1961 which had come into force with effect from 1st April, 1962. The corresponding provision in section 84 of the new Act was however, in material respects in the same terms as section 15C of the old Act. The claim for exemption made by the assessee under section 84 for the assessment year 1962- 63 met with the same fluctuating vicissitudes of fortune as the claim for the earlier assessment year and ultimately, the Tribunal having decided against the assessee, a reference of the question whether on the facts and the circumstances of the case the assessee was entitled to exemption under section 84 was made to the High Court. The High Court in view of its decision for the earlier assessment year, decided against the assessee and hence, the present Civil Appeal No. 2418 of 1977 was brought by the assessee after obtaining certificate of fitness from the High Court. Since both sections 15C and 84 are, for all material purposes, in identical terms, we will discuss the interpretation and applicability of section 15C in Civil Appeal No. 1989 of 1972 and the view we take in that appeal with equally govern the decision of Civil Appeal No. 2418 of 1977.

The law of income tax in a modern society is intended to achieve various social and economic objectives. It is often used as an instrument for accelerating economic growth and development. Section 15C is a provision introduced in the Indian Income Tax Act, 1922 with a view to carrying out this objective and it is calculated to encourage setting up of new industrial undertakings in the country. Sub-section (1) of this section exempts from tax so much of the profits or gains derived from a new industrial undertaking as do not exceed 6% per annum of the capital employed in the undertaking. There are rules made under the Act for computing the capital employed in a new industrial undertaking but we are not concerned with these rules in the present appeals. What is material is only the provision for exemption and according to this provision, the profits and gains of a new industrial undertaking are exempt from tax to the extent of 6% per annum of the capital employed, and obviously, therefore there must be profits or gains derived from the new industrial undertaking in the assessment year in question before any claim for exemption can be sustained under section 15C, sub-section (1). If there are no profit or gains derived from the new industrial undertaking in any particular assessment year, there can be no question of any exemption, because it is only where there are such profits or gains that to the extent of 6% per annum of the capital employed, they become eligible for exemption. The first question which must, therefore, arise for consideration in every case where a claim for exemption is made under section 15C, sub-section(1) is whether there are any profits or gains derived from the new industrial undertaking in the assessment year in question, and if so, what is the quantum of such profits or gains. Now, sub-section (3) of section 15C says that the profits or gains of a new industrial undertaking shall be computed in accordance with the provisions of section 10 and since under the income tax law, every assessment year is a self-contained period, profits and gains of the new undertaking must be computed for the particular assessment year in respect of which the claim for exemption is made, by applying the provisions of section 10. Sub-section (2) of that section provides for various allowances to be made in computing profits and gains of a business and amongst such allowances are one in

respect of depreciation and the other in respect of development rebate. Clause (vi) of sub-section (2) deals with allowance for depreciation and it says that in computing the profits or gains of a business allowance shall be made, in respect of depreciation of building, machinery, plant or furniture belonging to the assessee and used for the purpose of the business, a sum equivalent to "such percentage on the written down value thereof as may in any case or class of cases be prescribed". Depreciation cal-

culated in accordance with the provisions of clause (vi) is thus allowable in computing the profits and gains of a business chargeable to tax and if the profits and gains of the business are insufficient to absorb such depreciation allowance, the amount of the allowance to the extent it is unabsorbed, must, like any other business loss by set off against the profits of any other business. It is settled law that though the profits of each distinct business carried on by an assessee have to be computed separately in accordance with the provisions of section 10, the tax is chargeable under that section not separately on the profits of each business, but on the aggregate of the profits of all the businesses carried on by the assessee. Vide Anglo-French Textile Co. Ltd. v. Commissioner of Income-tax Commissioner of Income tax v. Indo-Mercantile Bank Ltd. and Commissioner of Income-tax v. Muthuraman Chettiar. It follows, therefore, that where the assessee carries on several businesses, he is entitled under section 10 to set off loss in one business against profits in another. If there is any loss in a business carried on by the asessee by reason of the profit of another business carried by the assessee. If, however, there are no profits chargeable under the head 'Business or profession' or if the profits chargeable under that head are insufficient to cover the depreciation allowance, the amount of the allowance to the extent to which it is not absorbed can be set off against profits chargeable under any other head for that assessment year. This is the plain and undoubted effect of section 24, sub-section (1) as explained in Commissioner of Income-tax v. Indo-Mercantile Bank Ltd. (supra). But what would happen if still some part of the depreciation allowance remains unabsorbed. The answer is provided by proviso (b) to clause (vi) of section 10 which reads as follows:

> "Provided that-
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> (a) X X X
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> (b) Where, (in the assessment of the assessee or if the assessee is a registered firm, in the assessment of its partners,) full effect cannot be given to any such allowance in any year (not being a year which ended prior to the 1st day of April, 1939), owing to there being no profits or gains chargeable for that year or owing to the profits or gains chargeable being less than the allowance, (then, subject to the provisions of clause (b) of the proviso to sub-section (2) of section 24), the allowance or part of the allowance, to which effect has not been given as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance or if there is no such allowance for that year, be deemed to be the allowance for that a year, and so on for succeeding years:

It is clear on a plain reading of the language of proviso

> (b) to clause (vi) that it comes into operation only where full effect cannot be given to the depreciation allowance for the assessment year in question owing to there being no profits or gains chargeable for that year or profits or gains chargeable being less than the depreciation allowance.

Now, it is well settled, as a result of the decision of this Court in Commissioner of Income-tax v. Jaipuria China Clay Mines that the words 'no profits or gains chargeable for that year' are not confined to profits and gains derived from the business whose income is being computed under section 10, but they refer to the totality of the profits or gains computed under the various heads and chargeable to tax. It is, therefore, clear that effect must be given to depreciation allowance first against the profits or gains of the particular business whose income is being computed under section 10 and if the profits of that business are not sufficient to absorb the depreciation allowance, the allowance to the extent to which it is not absorbed would be set off against the profits of any other business and if a part of the depreciation allowance still remains unabsorbed, it would be liable to be set off against the profits or gains chargeable under any other head and it is only if some part of the depreciation allowance still remains unabsorbed that it can be carried forward to the next assessment year. Obviously, therefore, there would be no scope for the applicability of proviso (b) to clause (vi) if the total income of the assessee. chargeable to tax is sufficient to absorb the depreciation allowance, for then there would not be any unabsorbed depreciation allowance to be carried forward to the following assessment year. But where any part of the depreciation allowance remains unabsorbed after being set off against the total income chargeable to tax, it can be carried forward under proviso (b) to clause (vi) to the following year and set off against that years' income and so on for succeeding years. The method adopted by the statute for achieving this result is that the carried forward depreciation allowance is deemed to be part of and stands on exactly the same footing as, the current depreciation for the assessment year and is thus allowable as a deduction under clause (vi). It would, therefore, be seen that when the profits or gains of a business for a particular assessment year are to be computed under section 10, the current depreciation allowance for the assessment year in question is deductible under clause (vi) but the depreciation allowance of the preceding years would be liable to be taken into account only if, and to the extent to which, it is not absorbed by the total income of the assessee computed under different heads and chargeable to tax for those assessment years.

The position in regard to development rebate is the same. The relevant provision in that behalf is to be found in clause (vi-b) of sub-section (2) of section 10. That clause, insofar as material, provides as follows:

> "10(2). Such profits and gains shall be computed after making the following allowances, namely, (vi-b) in respect of new machinery or plant installed after the 31st day of March, 1954, which is wholly used for the purposes of the business carried on by the assessee, a sum by way of development rebate in respect of the year of the installation of the machinery or plant, equivalent to,-
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> (i) . . .

(ii) in the case of machinery or plant installed before the 1st day of April, 1961, twenty-

five per cent and in the case of machinery or plant installed after 31st day of March, 1961, twenty per cent of the actual cost of the machinery or plant to the assessee;

Explanation 1. In the case of machinery or plant installed after the 31st day of December, 1957, where the total income of the assessee for the year of installation (the total income for this purpose being computed without making any allowance under this clause) is nil or is less than the full amount of the development rebate calculated at the rate applicable thereto under this clause,-

(i) the sum to be allowed by way of development rebate for that year under this clause shall be only such amount as is sufficient to reduce the said total in come to nil; and

(ii) the amount of the development rebate, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following year, and the development rebate to be allowed for the following year shall be such amount as is sufficient to reduce the total income of the assessee for that year, computed in the manner aforesaid, to nil, and the balance of the development rebate, if any, still outstanding shall be carried forward to the following year and so on, so however that no portion of the development rebate shall be carried forward for more than eight years;

The amount of development rebate in respect of new machinery used for the purpose of the business is allowable in the year of installation of the machinery under sub-clause (ii) of clause (vi-b), but Explanation (1) provides that if the total income of the assessee for the year of installation is nil or is less than the full amount of the development rebate, the amount of the development rebate, to the extent to which it is not absorbed, may be carried forward to the following year and set off against the total income of the assessee for that year and if even thereafter, a part of the development rebate remains unabsorbed, the balance outstanding may be carried forward to the following year and so on for an aggregate period not exceeding eight years. Though the amount of the development rebate is, under the main provision in sub-clause (ii) of clause (vi-b), allowable in the first instance against the profits or gains of the particular business whose profits or gains are being computed, clause (i) of Explanation (1) makes it clear that if any part of the development rebate remains unabsorbed, it is to be set off against the other income of the assessee under any of the chargeable heads and it is only if some part of the development rebate still remains outstanding that it can be carried forward to the following assessment year and set off against the total income of the assessee for that year. The amount of the development rebate is to be set off against the total income of the assessee and not merely against the profits or gains of the particular business in respect of which the development rebate is granted and so also the development rebate which remains unabsorbed and is carried forward to the next assessment year is, by reason of clause (ii) of Explanation 1 to be set off not merely against the profits or gains of the particular business but against the total income of the assessee for that year. It would, therefore, be seen that it is only where the amount of development rebate has not been fully set off against the total income of the assessee in the past assessment years and a part of it still remains unabsorbed and is carried forward to the assessment year in question that it can be allowed against the profits or gains of the business for the particular assessment year

and if there is still some balance outstanding, then against the other income of the assessee for that assessment year. But if the amount of the development rebate is wholly set off against the total income of the assessee in the past assessment years and there is no unabsorbed development rebate to be carried forward to the assessment year in question, there would be nothing in respect of the past development rebate to be set off against the profit or gains of the business under clause (ii) of Explanation 1. It is, therefore, necessary, when the profits or gains of business are being computed under section 10 to ask the question whether the machinery in respect of which the development rebate is admissible has been installed in the assessment year in question, and if it is found that it has been installed earlier, whether any part of the development rebate has remained unabsorbed against the total income of the assessee in the past assessment years and is carried forward to the present assessment year. In a case where the machinery is installed in an earlier assessment year, it is only if the whole of the development rebate has not been fully set off against the total income of the passessee in the past assessment years and a part of it has remained unabsorbed and is carried forward that it can be set off against the profits or gains of the business for the particular assessment year But if the whole of the development rebate has been absorbed and no part of it is carried forward, there can be no question of allowing it against the profits' or gains of the business for the assessment year in question.

Now, sub-section (3) of section 15C provides that the profits or gains of a new industrial undertaking shall be computed under section 10 and, therefore, according to clause (vi) read with proviso (b), no part of the depreciation allowance and according to clause (vi-b) Explanation 1, no part of the development rebate in respect of the new industrial undertaking for the past assessment years can be allowed as a deduction in computing the profits and gains, unless it has remained unabsorbed by reason of inadequacy of the total income chargeable to tax in the past assessment years-and, as pointed out above, by total income we mean not only profits or gains derived from the new industrial undertaking but the totality of profit's or gains computed under various heads-and is carried forward to the assessment year in question. There is nothing in sub-section (3) of section 15C or in any other provision of the Act which requires that in computing the profits or gains of a new industrial undertaking under section 10, depreciation allowance or development rebate in respect of the new industrial undertaking for the past assessment years should be taken into account, even if it has been set off fully against the profits or gains.

of any other business carried on by the assessee or against income under any other head and there is no unabsorbed depreciation allowance or development rebate to be carried forward. It is indeed difficult to see how effect can be given to depreciation allowance and development rebate twice over, once in the past assessment years and again in the assessment year in question. To give effect to depreciation allowance or development rebate for the past assessment years, even though it has been set off and absorbed completely against the total income of the assessee for those assessment years would be to allow a deduction not warranted by any provision of the Act and indeed it would be going, contrary to the express provision of proviso (b) to clause (vi) and Explanation 1 to clause (vi-b). Sub-section (3) of section 15C clearly does not have any such effect. What it does is no more than provide as to how "the profits or gains derived from new industrial undertaking" referred to in sub-section (1) of section 15C shall be computed. If sub-section (3) of section 15C had not been enacted, it might have been a matter of some controversy as to what is meant by the expression "the

profits or derived from new industrial undertaking". Does it mean commercial profits or gains or profits or gains chargeable to tax or does it have any other connotation? It was to set this controversy at rest that sub-section (3) of section 15C enacted that the profits or gains of the new industrial undertaking shall be computed in accordance with the provisions of section 10. It may be noted that sub-section (3) of section 15C does not enact any legal fiction providing that the profits or gains of the new industrial undertaking shall be computed as if the new industrial undertaking were the only business of the assessee from the date of its establishment or the past years depreciation or development rebate had not been set off against other income of the assessee. The new industrial undertaking is not retrospectively quarantined or isolated from the other income producing activities of the assessee for determining its profits or gains for the purpose of applicability of sub-section (1) of section 15C. What sub- section (3) of section 15C does is merely to lay down the same rule of computation for the profits or gains of a new industrial undertaking as in respect of any other business and, therefore, neither depreciation allowance nor development rebate in respect of the new industrial undertaking for the past assessment years can be allowed as a deduction in computing the profits or gains for the assessment year in question, except where and to the extent to which, it has not been set off against the total income of the assessee for those assessment years and has remained unabsorbed. This is the plain and undoubted effect of the language used in sub-section (3) of section 15C. Indeed the language is so clear and unambiguous that it is impossible to place any other construction upon it. But apart from the language of the section, it may be noted that if the construction contended for on behalf of the Revenue and upheld by the High Court as well as by the Tribunal were accepted, it would lead to the highly anomaIous results that, though, for the purpose of computing the total income chargeable to tax, the depreciation allowance and development rebate which have been set off against the other income of the assessee for the past assessment years would not be liable to be taken into account, they would have to be deducted in computing the profits or gains of the business for the purpose of applicability of sub-section (1) of section 15C. Thus, there would be two different modes of determining the profits or gains of the business, one for computing the total income chargeable to tax and the other for applying the provisions of sub-section (1) of section 15C. We cannot imagine that such a consequence would ever have been intended by the Legislature.

We find in the present case from the undisputed figures on record that the whole of the depreciation allowance of Rs. 1,44,361/- in respect of the new industrial undertaking for the assessment year 1959-60 could not be absorbed owing to the total profit of the assessee being insufficient and a sum of Rs. 24,183/- remained as unabsorbed depreciation which was carried forward to the assessment year 1960-61. The entire development rebate of Rs. 5,07,336/- also remained unabsorbed and had to be carried forward to the assessment year 1960-61. But during the assessment year 1960-61 the total profit of the assessee came to Rs. 14,13,604/- and this was sufficient to absorb not only the carried forward depreciation of Rs. 24,183/- and the current year's depreciation, but also the carried forward development rebate of Rs. 5,07,336/- and the development rebate of Rs. 1,17,205/- in respect of machinery installed in that assessment year. The result was that no part of the depreciation allowance or development rebate remained unabsorbed to be carried forward to the assessment year 1961-62. If that be so, it is difficult to see how any part of the depreciation allowance or development rebate could possibly be allowed as a deduction in computing the profits or gains of the new industrial undertaking for the assessment year 1961-62. It is only if a part of the

depreciation allowance or development rebate had remained unabsorbed against the total income of the assessee in the past assessment years that it could be carried forward and set off against the profits or gains of the new industrial undertaking for the assessment year 1961-62. But when admittedly entire depreciation allowance and development rebate for the past assessment years were fully set off against the total income of the assessee for those assessment years and no part of the depreciation allowance or development rebate remained unabsorbed, nothing could be deducted in respect thereof and hence, for the purpose of sub-section (1) of section 15C the profits or gains of the new industrial undertaking for the assessment year 1961-62 came to Rs. 1,36,822/- and the assessee was in the circumstances, entitled to the benefit of the exemption under section 15C, sub-section (1). We are, therefore, of the view that the High Court as well as the Tribunal were in error in refusing the benefit of the exemption under section 15C, sub-section (1) to the assessee for the assessment year 1961-62. The same view must also prevail in regard to the assessment year 1962-63 for, as we have pointed out above, section 84 of the new Act is, in material respects, identical as section 15C of the old Act. The reasoning which has weighed with us must apply equally in regard to the assessment year 1962-63 and we must likewise hold that the assessee was entitled to the benefit of the exemption under section 15C, sub-section (1) in respect of the assessment year 1962-63 also.

We accordingly allow these appeals, set aside the judgments of the High Court and answer the questions referred by the Tribunal in both the appeals in favour of the assessee and against the Revenue. The Revenue will pay the costs of the assessee in both the appeals.

S.R. Appeals allowed.