Supreme Court of India
Commissioner Of Income Tax, ... vs Karam Chand Thapar And Others on 14 August, 1996
Equivalent citations: JT 1996 (7), 280 1996 SCALE (5)843
Author: S Sen
Bench: Sen, S.C. (J)

PETITIONER:
COMMISSIONER OF INCOME TAX, CALCUTTA

Vs.

RESPONDENT:
KARAM CHAND THAPAR AND OTHERS

DATE OF JUDGMENT: 14/08/1996

BENCH:
SEN, S.C. (J)
BENCH:
SEN, S.C. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
JT 1996 (7) 280 1996 SCALE (5)843

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T SEN, J.

The Income Tax Appellate Tribunal referred the following question of law arising out of its order to the High Court for its opinion :-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right on holding that the amounts received by the assessee by way of under charges, do not constitute its trading receipts, and that accordingly neither the surplus of the receipts remaining unpaid nor the amounts transferred by the assessee to the profit and loss accounts could be assessed as the income of the assessee in the years 1953-54, 1956-57, 1957-58, 1958-59, 1959-60, 1960-61, 1961-62 and 1962-63 ? "

At all material times, Karam Chand Thapar & Others, the assessee herein, carried on business as del credere agent of the collieries and also a agent of the purchasers of coal. It acted, so to speak, as a

double agent. The coal sold by the collieries were sent by wagon to various purchasers FOR. The purchasers paid for the freight. Even if the wagons were not filled to its full capacity, the practice of the railways was to charge for the full wagon-load. In other words, the purchasers did not get any rebate from the railways for the wagons not being loaded to its full capacity. In such a situation, the assessee used to claim from the colliery companies, what was described as "under- charges". These amounts were realised by the assessee even without any claim being made by the purchasers. As and when demanded by the purchasers, the assessee used to pay off their claims on account of underloading of wagons out of the moneys obtained from the colliery companies. But every year, there was an excess if receipts over payments. The surplus amount was assessed as assessee`s income, year after year, till the assessment year 1953-54. For the first time, in its assessment for the assessment year 1953-54, the assessee claimed that these amounts of surplus receipts on account of "under-charges" were not its income at all. The assessee's contention was dealt with by the Income Tax Officer in the assessment order as under :-

> "The assessee had claimed exemption in respect of Rs.50,294/- Rs.65,994/- out of Rs.68,267/- unclaimed credit balances written off during the year. In the return exemption was claimed in respect of Rs. 53,537/- but at the assessment stage, the claim was enhances to Rs. 65,994/-. This amount of Rs.
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> 65,994/- consists of credit balances in the names of various parties. Rs. 6,625/- credit balance in the banks Rs. 4,171/- and under charges Rs. 55,197/-. It may be mentioned here that last year exemption in respect of under charges was not pressed for at the assessment stage nor it was claimed in appeal. The assessee has written that under charges are in respect of freight of under loaded wagons which their customers had to pay under the railway rules in spite of the fact that the full capacity by the various suppliers. These charges it is stated were claimed on behalf of their customers which remained unclaimed with the assessee. No evidence was produced in support of this contention. The under charges do not stand credited to the account of the customers. In the absence of any evidence it is not proved that these were not in the nature of trading receipt and the contention of the assessee company fails....."

The Appellate Assistant Commissioner in appeal upheld the order of the Income Tax Officer with the following observations :-

> "the appellant claims to act as brokers for supply of coal to the permit holders by placing orders thereon with the various collieries. the collieries supply the coal directly to the permit holders "with railway freight to pay: at the destination but it raised a debit note against the appellant from the permit holders. It sometimes happens, more often than not, that the collieries for not load the wagons to its full carrying capacity but the railways charges the full freight as if the wagon is full loaded. The appellant immediately prefers a claim with the collieries for the excess freight paid in respect of coal actually not supplied and realised the same. The payments are made to the ultimate buyers from these receipts as and when claims are preferred by them. Transactions of the appellant by way of purchase and sale of coal

amount to several crores of rupees and the excess freight charges by the railways for the coal actually not supplied by the collieried and realised by the appellant from collieries comes to a very sizable figure of the order of 1 or 2 lacks of rupees. The same is paid over to the permit holder, when a claim is preferred by them and after meeting this claim there is always a sizable balance left whcih is transferred to the profit & loss account under the head miscellaneous receipts. The I.T.O. taxed the same as the appellant's income from business inasmuch as the same has arisen in the course of the appellant's trading activity and in view of the treatment given by the appellant itself treating these amounts as income in its accounts. At the time of hearing the learned Advocate contended that these unclaimed balances transferred to the profit & loss account could not be treated as the appellant's income since they did not have the characteristics of income at the time of receipt and reliance was placed on the decision on Morley V, Tattersall (22 Tax Cases page 51). Reference was made to this passage "The money which was received was money which had not got any profit making quality about is; is was money which, in a business was the client's money ans nobody else's. It was money for which they were liable to account to the clients, and the fact that they paid it into their own account, do they clearly did, and the fact that it remained in their assets until paid out do not alter that circumstances". In a nutshell his argument was that if the receipt did not partake of the nature of a trading receipt it could not be taxed merely because the appellant treated the same as income in its accounts.

6. I have heard the argument of the learned Advocate. In my opinion the case does not fall within the ratio of the above decision. first of all the appellant prefers a claim on the collieries and gets if by its won right and what if transmits or pays out to the constituents may form a legitimate item of outgoing, but is cannot be said that the receipt by the appellant was merely a receipt for and on behalf of the third parties. The appellant has not treated these receipts as liabilities in its accounts an in my opinion it was clearly an income receipt arising in the course of appellant's trade. But the same should be taxed in the manner which the I.T.O. has done by taxing them in the year when the assessee had transferred certain portions from this account received during this year are Rs.208913/59 and the amounts paid are Rs.109049/10. there is thus a net surplus of Rs.99863/11/9 or in round figures Rs.99864/- which should be taxes as income of this year in the place of Rs.55197/- which is the amount which has been transferred by the appellant to the profit and loss account and which has been taxed by the I.T.O. The amount to be taxed is the higher figure of Rs.99864/- and in that view of the matter there will be an enhancement on this account to the extent of Rs.44667/-."

The assessee made a further appeal to the tribunal. The tribunal after referring to a larger number of decisions including three English cases - Morley (H.M.Inspector of Taxes) V. Messrs Tattersall (22 Tax Cases 51), Jay's-The Jewellers Ltd. V. Commissioners of Inland Revenue (29 Tax Cases 274) and Elson (Inspector of Taxes) V. Prices Tailors Ltd. (1963) 1 A.E.R. 231 - concluded that the amounts received by the assessee from the colliery companies on account if under-charges were not its

trading receipts. The tribunal strongly relied on the observations of Calcutta High Court in the case of C.I.T.V. Sandersons & Morgans (AIR 1969 Cal. 211) wherein it was held that the amounts received by a firm of solicitors on behalf of its clients was not its income when it was received and will not be treated as its income later on merely because the amount remained with the firm and was utilised by the firm in its business. The tribunal strongly relied on the following observations of the Court :-

> ".....The Solicitor is the agent of the client.... We are of opinion that when a solicitor receives money from his client, he does not do so as a trading receipt but he receives the money of the principal in his capacity as an agent and that also in a fiduciary capacity. The money so received does not have any profit making quality about it when received.... The solicitor remains liable to account by this money to his client.
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> We think these observations full apply to the facts of the present case. It was then contended for the Revenue that since the solicitor did not stand in the position of a trustee to the client and since the Limitation Act applied, the remedy of the clients to recover by limitation. This contention was rejected, their Lordships observing "We do not think that this consideration in any way alters the legal position... Thus even though the remedy of some of the clients may have become barred by limitation, even then the batted debt did not become the income of the assessee." These observations apply with equal force here and make it clear that the transfer of some of the balances to the Profit & Loss Account by the assessee done not convert it into a trading receipt, even if such transfer is based on the ground of limitation. We may only add that, on this aspect of the case, it is true that their Lordships were not asked to consider Jay's case but their decision is binding on us. We see no difference between the character of the assesee's receipts in that case and here except that the amounts involved are larger."

On the application of the Department, the aforesaid question of law was referred by the Tribunal to the High Court. The High Court upheld the order of the Tribunal. Hence this appeal to this Court.

It has been argued that the character of the trading receipt is finally decided once for all as soon as the amount of money is received by a trader. If the money is received as his trading profit, it is taxable as his income. But, if the amount is received for and on behalf of somebody else, then is does not become a trading receipt. The money in such a case, did not belong the assessee. In this case the money which was received by the assessee was really for and on behalf of the purchasers of coal and it was being held for and on behalf of the purchasers. It may be that some of the purchasers did not demand their dues as result of which the assessee was left with a surplus. But, since the true character of the surplus when the amount was received was not trading receipts, it could not be impressed with character later on merely because some of the purchasers were not paid their dues for one reason or another.

We are unable r uphold this contention made on behalf of the assessee. first of all, from the facts narrated above, it is difficult to hold that the money on account of under-charges was received by the assessee for and on behalf of the their customers. Even before the customers made any demand,

the assessee lodged its claim with the colliery companies and received payments. It has been noted in the order of the Tribunal, "It is not clear whether the terms of the contract between the colliery and the consignee entitle the latter to call upon the former to refund to him the excess freight charged on the ground that such excess freight was charges because of the colliery's negligence in loading the wagon to full capacity. It is not also clear whether in the absence of a contract to that effect the colliery will have valid defence against such claim, if made." It has not been established by producing the contract or any other evidence that the colliery was bound to supply coal in such quantity as would load a railway wagon to its full capacity. Freight was payable by the purchaser. That was a matter between the purchaser and the railways. The onus lies on the assessee to prove facts which entitle his it claim a deduction. The tribunal has noted that is not clear upon the seller (colliery company) to refund to him the excess freight charges. It is difficult to see how the tribunal without the facts being clear came to the conclusion that the colliery companies were under legal obligation to reimburse to the consignee for underloading of the wagons.

In any event, the finding of fact is that only some of the consignees demanded reimbursement of excess freight paid. But even if no specific demand was made, the assessee use to realised large amounts every year on account of under-charges. For example, the Appellate Assistant Commissioner has noted that during the year appeal, the assessee realised Rs.208913/59 as under-charges but paid out only Rs.99863/11/9. The surplus amount was ultimately taken to assessee's profit and loss account as miscellaneous receipts. The assessee did not contest assessment of these amounts as profits from its agency business till the assessment year 1953-54. The departure from the long standing practice was justifies on the ground that the amount received as under-charges from the collieries were held in trust by the assessee for and on behalf of the purchasers of coal. Mr. Verma, appearing on behalf of the assessee, has contended that the assessee may have committed breach of trust in treating the amounts as its own but the fact remains that the money was held in trust for the consumers of coal. The character of receipt will not change merely because of the accounting practice of the assessee. As has been noted earlier, the case of the assessee's conduct. The assessee has brought the surplus amounts as miscellaneous receipts to is profit and lass account year after year. A trustee normally should not mingle his own money with money held in trust. The conduct of the assessee does not indicate that the assessee was treating the amount as nothing but his own. It was using it as part of its profits of business. The natural presumption from such a conduct will be that these amounts were the assessee's own profits from its coal agency. The sum and substance for the case is that the assesssee without any demand from the purchasers of coal, claimed from the colliery companies large amounts of money year after year as under-charges. Some of the purchasers demanded payment on account possibly as del credere agent of the collieries. But the fact remains that this was the mode in which the assessee was doing its business and year after year, surplus was generated which was taken by the assessee to its profit and loss account. There is nothing in trust. Even if a purchaser demands reimbursement for underloading of coal, any payment by the assessee will be entitled to usual deduction. But that facts brought on record and the conduct of the assessee belies the case of any entrustment of money for and on behalf of some purchasers of coal. There are actual four findings of fact made by the tribunal in this regard. The first is that the freight charges have to be paid the consignees and not by the colliery nor by the assessee who was only an agent. The second finding of fact is that the assessee has realised from the colliery company in course of its business from time to time various amounts

on account of under-charges. The third finding is that only a portion of the amount thus realised by the assessee was utilised to pay the consignees. The fourth fact found by the tribunal is that the surplus amounts, year after year, has been taken by the assessee to its profit and loss account and had been assesses to tax without contest as its income from business in the earlier years of assessment.

The case of the assessee that it paid the consignees from time to time some amounts on account of under-charges has been accepted by the tribunal. But there is nothing to indicate that the amounts which the assessee received from the collieries in usual course of business were not on its own account but on behalf of unspecified consignees who had not even made any claim. The agency contract under which the business was carried in was not produced before the tribunal. But the tribunal has recorded the fact that the assessee has a dual role to play in these transactions. He was a del credere agent for the colliery companies. So far as the consignees were concerned, he arranged for delivery of coal FOR. There is nothing to indicate that he has guranteed that the railway wagons would be fully loaded by the colliery companies. The only argument of the assessee was that payment of under-charges by the colliery companies in such cases was customary. It may be that the collieries, according to trade practice, had to pay the consignees for underloading the wagon. But from this it does not follow that what the del credere agent received from his principal in course of his trade was not his trading receipt. He collected money on account of under-charges not on the basis if on a demand made by the purchasers, but as a matter of routine irrespective of any demand by the consignees. If and when any purchaser made demand for payment, some payments were made. The surplus balance was taken to the profit & loss account. It must be presumed that money taken to the profit and loss account of the assessee will be its trading receipt. No fact had been brought on record to the contrary. The amount was not kept in a suspense account or shown as a liability. It should also not be readily inferred that the assessee mingled the moneys which he held in trust with his own profits and utilised it as profit if his business. On the contrary, the inference should be that the assessee acted in accordance with law and not contrary to law. Mr. Verma's contention that the assessee may have acted in breach of trust but that will not alter the character of the receipt cannot be upheld in the facts and circumstances of this case.

Mr. Verma strongly relied on the decision in the case of Morley (H.M.Inspector of Taxes) V. Messrs. Tattersall (22 Tax Cases 51) and contended that the unclaimed balances of the assessee in the instant case was of the same nature as unclaimed balances in the case of Tattersall and could not be treated as revenue receipts for the purpose of taxation. Messrs. Tattersall were auctioneers who sold horses on behalf of their clients. From the purchase price, the deducted commission and other expenses. The balance amount was payable to the vendors on the Monday week following the sale. At the foot of the printed conditions of the contract, it was stated in bold type "No money paid, or remittance sent by post, without a written order". On a number of occasions, the vendors did not immediately call for payment of their money. Consequently, moneys remained in the hands of the firm to the credit of the vendors. Many of these balances remained unclaimed for cosiderable number of years but the position in law admitted by the revenue was that vendors were entitled to claim the payment of money at any time unaffected by the statue of limitation because of the absence of a written order as required by the conditions of sale for making payment. the Court pointed out that "we are dealing, therefore, with obligation which, as a matter of law are existing

obligations which the form can be called upon to perform at any moment. That is a matter not without importance in the examination of this case."

The other important features of Tattersall's case was that the unclaimed balance was never taken to the Profit and Loss Account. The business was initially carried on by Tattersall alone. He took a partner on 23.2.1922. Thereafter a third partner was taken on 23.3.1936. When the first partner was taken to the partnership, the unclaimed balance which was shown under the heading "Auction Sales Suspense Account" in the books of the firm was transferred to E.S. Tattersall Capital Account. When the third partner Mr. Needham was brought into the partnership, out of the unclaimed balance, some amount was transferred to the personal current account of Tattersall and some to the personal account Mr. Deane the other partner. The partnership deed provided that such liabilities as subsisted on respect of the unclaimed balances should be assumed by the partnership and any payments actually made in respect thereof should be borne by the partners in proportion to their shares of profits at the time when the payment was made. In view of the said facts, it could not be argued that the receipts arising out of the sale of horses belonging to the clients were trading receipts of the firm of acutioneers. In fact, it was recorded in the judgment by Sit Wilfrid Greene, M.R. that -

> "Both arguments proceeded on the footing that it was impossible to say that the sums when received were trade receipts . . . It might, I think, be more convenient to deal with Mr. Hill's argument first, because that is the one which starts off with this perfectly clear admission, that the money when received from the purchasers was not a trade receipt. That proposition, I should have thought, in any case was quite incontestable. .....I invited Mr. Hills to point to any authority which in any way supported the proposition that a receipt which at the time of its receipt was not a trading receipt could by some subsequent operation ex post facto be turned into a trading receipt, not be it observed, as at the date of receipt, but as at the date of the subsequent operation. It seems to me, with all respect to that argument, that it is based on a complete misapprehensions of what is meant by a trading receipt in Income Tax law. No case has been cited to is in which anything like that proposition appears. It seems to me that the quality and nature of a receipt for Income Tax purposes is fixes once and for all when it is received."

Mr. Verma has laid great emphasis on this passage in the judgment of Greene, M.R. and had argued that in the instant case the money in the hand of the assessee was the client's money and was not a trading receipt when it came into the hand of the assessee, it could not thereafter change its character and become trading receipt by some subsequent operation.

In our judgment, the observations made by Greene, M.R. will have to be understood in the special facts of that case and nothing more should be read into than what has been laid down. Tattersall sold horses on behalf of his clients. He was an auctioneer. The money arising out of the sale of the horses was of his clients. Although the amount remained for a considerable period with the form, the claim was not barred by limitation because no money was payable by Tattersall without a written order. Greene, M.R. emphasised that he was dealing with a case where the form had an existing

dealing with a case where the form had an existing obligation to pay.

In the instant case, the assessee collected the amounts of under-charges in advance even before any claim was lodged. He realised the amounts from the Colliery Company not because any demand was made against him, but possibly, in order to protect himself from the eventuality of any demand being made against him as the del credere agent of the seller. The second important feature is that there is no finding as in the case of Tattersall that when the assessment was made, there was still an existing liability to pay. Greene, M.R. has emphasised that this was an important feature in the Tattersall's case. The third feature which has not been explained is why the assessee year after year, brought these payment on account of under- charges into the profit and loss account. The onus lies in the assessee to explain his conduct. Usually what is entered into the profit and loss account is the profit or loss of the business. The assessee usually will not enter into profit and loss account something which is not profit or loss of his business at all.

The other contention of Mr. Verma is that an amount which is not initially received as a trading receipt, cannot become a trading receipt by influx of time. This proposition which was stated in Tattersall's case has to read in the context of the facts of that case. It cannot be laid down that, as a matter of law, any amount which was initially not received as a trading receipt, can never become a trading receipt. There are two English decisions after Tattersall's case in which amounts which were not received initially as trading receipts were eventually regarded as business income.

In Jay's-The Jewellers, Ltd V. Commissioners of Inland Revenue (29 Tax Cases 274), the assessee-Company carried in business of Jewellers and pawnbrokers. In course of its business of pawnbroking, it sold unredeemed pledges. The Company used to make loans to pawners of three classes - (a) pledges pawned for a sum of ten shillings or under; (b) pledges pawned for a sum exceeding ten shillings and not exceeding ten pounds; and (c) pledges pawned for a sum exceeding ten pounds. The business of pawnbroking was controlled by the Pawnbrokers Act, 1872. Under Section 17 of the said Act, it was provided that a pledge pawned for ten shillings or under, if not redeemed within the year redemption and days of grace shall, at the end of the days of grace, become the pawnbrokers absolute property. There was not dispute about the assessability of the same realised on sale of pledges under class (a). The Company admitted that any profit realised by it on sale of pledge property was taxable receipt of its trade.

Under the provisions of the Act, the Company was able, in cases of pledges exceeding ten shillings but not exceeding forty shillings, to dispose of the property pledged by public auction. In cases where pledges were sold for more that the amount of the land and interest due at the time of sales, the excess had to be paid to the Pawnee on demand provided the demand was made within there years after the sale. In the case of goods pledged for a sum ten pounds or more in terms of a special contract, the Company was entitled to dispose of the property pledged as security either by public auction or private contract and out of the proceeds to pay all expenses of and incidental to such sale and to retain the amount of the said loan and interest. No time limit was laid down within which the surplus money had to be paid to the pawner or within which the Pawnee might demand from the Company to pay the surplus on any sale. Before the Court, two types of cases came up for consideration: (1) where the load was over the shillings and three-year period did not applied and

(2) where the three- year period did not apply and the pledger's rights were not barred by limitation of six years. The Court noted that for various reasons, the grater part of the surplus realised by sale of pledges was never demanded by the pledger and ultimately became the property of the pawnbroker. The question was : Were these surplus receipts in the pawnbroker's trade assessable profits and if so, when? The contention of the assessee-Company was that is was entitled to leave the surplus out of their trading accounts altogether. There was no doubt that these surpluses were debts owed to the customers and that for three years or six years as the case may be, the Company could be called upon to pay the amount to the customers. The whole amount was a legal liability. The Court held that the surpluses were not trading receipts in the year in which they were received. On this aspect of the matter, the case was completely governed by Tattersall Case (supra).

Atkinson, J. thereafter dealt with the issue thus: "Then comes the more difficult question: Can a surplus be treated as a trade receipt of the year in which, it not having been claimed by the pledger, the pawnbroker becomes entitled to retain it as his own?" On the strength of Tattersall, it was argued by the assessee-Company that either the receipts were trade receipts or they were not at the time of the receipt. If they were not trade receipts at the time of the receipts nothing that happen afterwards could make them trade receipts. The question was answered in the following manner:-

> "The true accountancy view would, I think, demand that these sums should be treated as paid into a suspense account, and should so appear in the balance sheet. The surpluses should not be brought into the annual trading account as a receipt at the time they are received. Only time will show what their ultimate fate and character will be. After three years that fate is such, as to one class of surplus, that in so far as the suspense account had not been reduced by payments to clients, that part of it remaining becomes by operation of law a receipt of the Company, and ought to be transferred from the suspense account and appear in the profit and loss account for that years as a receipt and profit. That is what it in fact is. In that year Jays become the richer by the amount which automatically becomes theirs, and that asset arises out of an ordinary trade transaction. It seems to me to be the commonsense way of dealing with these matters."

Distinguishing Tattersall Case on facts, it was states that -

> "But here the position is quite different. Here, at the end of three years, the money in question, the three-years-old surplus, did attain totally different quality; a different quality was imprinted on surpluses three year old. I think there was then a definite trade receipt. At the end of three transaction, and it seems to me that what the Master of the Rolls was dealing with in that case was s situation quite different from that which exists here."

It was further pointed out by Atkinson, J. that even in Tattersall's case Greene, M.R., dealing with the argument that the quality of the transaction had changed, had observed that if this argument was to be made, it was essential that some act which was effected by the turning into a trading asset of something which was not a trading assets, should have taken place within the accounting year.

Distinguishing the facts of the Tattersall's case Atkinson, J. pointed out :-

> "There, no asset was created. A mere change in the method of book- keeping created no asset. In this case, a new asset was created automatically by operation of law at the end of the three years, and common sense would seem to demand that should br entered in the profit and loss account for the year and be treated as taxable."

Atkinson, J. pointed out that Tattersall's case was distinguishable because in that case there had been no change whatsoever in the character and nature of the money held by the auctioneer. The money was payable only upon instruction of the client. The Satatue of Limitations had not commenced to run and the Court was dealing merely with the effect of a change in the method by which the sums were dealt with in the firm's book. In the case of Jays-The- Jewellers, Atkinsin, J. fisrt held that Commissioners were right in holding that the surplus amount could not be deemed to be trade receipt of the year in which they were received. However, thereafter, Atkinson, J. wnet on to say that a surplus could treated as a trade receipt of the year in which it not having been claimed by pledger, the pawnbroker became entitled to retain it as his own. Atkinson, J., therefore, concluded that after lapse of the period of three years the debtors lost their right and the money became the pawnbroker's money. It having been received in the course of the trade will have to be treated as trade receipt after the end of third year of sale and therefore, should be brought to assessment as such.

The next category of case were pledges for 10 Pounds or more. At the end of sixth year the customer's remedy became barred by laws of limitation. It was held:-

> "But, from the business point of view, I think, the position ought to be treated as the same. In practice those amounts would be dealt with and properly dealt with by the firm as their own. They could not get into difficulties by so doing; they cannot be called upon to pay, and I do not think any distinction ought to be drawn between the three-yearly surpluses and the six-yearly surpluses...."

The scope of Morley (H.M.Inspector of Taxes) V. Messrs Tattersall was also examined in the case of Elson (Inspector of Taxes) V. Prices Tailors Ltd., (1963) 1 All England Law Reports 231. The facts were that when taking an order for made-to-measure garments the appellants, who carried on business as bespoke and ready-to-wear tailors, recorded a customer's measurement on an order form. The customer would then be asked for a deposit. After the customer has paid the deposit, its amount was recorded on the order form, from which a slip detached and given to the customer. This slip showed the price, and the balance; the difference being the amount of the deposit. If, subsequently, the customer declined to take the garment, the appellants refunded his "deposit", but where, as often happened, neither garment, nor "deposit" was claimed after several reminders, they transferred the sums to an unclaimed deposits account, from which they assessed to income tax in respect of unclaimed deposits as trading receipts of their business in the year in which they were paid.

It was held by Ungoed-Thomas, J. that the sums called 'deposits' were the property of the appellants from the moment of receipt, though subject to certain contingencies; accordingly each deposit was a trading receipt of the year in which it was received by the appellants. The case of Tattersall and Jays-The Jewellers were distinguished in the following manner:-

> "In Morley V. Tattersall, the vendors' unclaimed balanced of proceeds of sale of horses were held not to be trading receipts; and in Jay's. The Jewellers, Ltd.
>
> V. Inland Revenue Comrs.., Inland Revenue Comrs. V. Jay's. The Jewellers, Ltd., a pawner's unclaimed balance in the hands of a pawnbroker of the proceeds of sale o fan unredeemed pledge, after satisfying the amounts due under the pledge, was held not to be a trading receipt until the pawner's claim was statue-barred. In these cases, the balances in the trader's hands were not their at all but were held for others, and this fact is fundamental to the decisions. The traders had no beneficial interest in them at the relevant time, and although it was because they were not receipts of their trade at all."

Ultimately, Ungoed-Thomas, J. concluded that the deposits received by the taxpayer was a trading receipt and not the less so because they might or might not have to be debited again.

In the case of Jays the Jewellers, it has been categorically laid down that the money which belonged to the customers and which arose out of sale of customer's property could become a trading receipt when the customers did not or could not make any claim against that money in law and the amount was taken by the assessee to its profit and loss account. In fact, it was emphasized that was the correct accounting practice. Atkitson, J. pointed out that a new asset could come into existence automatically by operation of law. When no demand for payment was made commonsense requires that such amount should have entered into profit and loss account for the year and be treated as taxable.

In the case before us, in the words of Atkinson, J., money in question arose from trading operations. The surplus had arisen out of trading transactions and taken to profit and loss account. It has a definite quality of trading receipt. The money was not received by the assessee by selling properties of the customers. There is nothing to show that the money obtained by the assessee in course if his usual course of business from the colliery company actually belonged to the consignees. There is not factual or legal foundation for this proposition. The finding of fact is that as and when the consignees demanded payment on account of underloading, the assessee made such payments. Such payments must have been on behalf of the collieries. But the assessee had received more that it spent. Neither the colliery not the assessee has any obligation the seek out the consignees and pay them on account of underloading of wagons. The amount received by the assessee from the collieries was not on account of any claim actually lodged by the consignees. Mr. Verma strenuously argued that the amount in the hands of the assessee belonged to the consignees. The Tribunal has found that the amount was paid to the agents out of sale proceeds of the coal. The consignees could not claim that a portion of the sale proceeds in the hands of the assessee belonged to the consignees were their own money. Till they were paid, the money did not belong to them nor were held on trust

for them. Similarly, when the del credere agent was paid, the consignees could not claim that the money belonged to them even before making any claim. The money was the agent`s money till the consignee made his claim when consignee was paid, it became his money and the agent`s expenditure. The Appellate Assistant Commissioner on his order compiled the following table to show how the amount was treated in the balance sheet of the assessee year after year,

---------- Assessment Credit Debit Net* Transfer to P.L. A/C.

Year	Rs.	Rs.	Rs.	Rs.
1953-54	2,08,913	1,09,049	99,863	55,197
1956-57	1,48,927	85,898	63,029	1,06,509
1957-58	1,79,048	99,860	79,188	83,137
1958-59	.....details not available.....			
1959-60		do		97,551
1960-61		do		1,02,832

This chart reveals that year after year, large sums of money were received by the assessee from the Collieries (credit side). Various sum of moneys were also paid out from time to time to meet the claims of the customers. But the fact remains that every year, the assessee was left with a substantial amount as surplus and that surplus arose every year for the last ten years.

To our mind, the case is very simple one. The assessee, in course of his business collected every year substantial amounts on account of under-charges. The sums so collected were the property of the assessee subject to certain contingencies. It did not cease to be a trading receipt because, in the words of Ungoed Thomas, J., they might or might not have to be debited again. The assessee`s account all along showed a steady surplus in this account. The claims made by the consignees made their claims, they were paid. These payments will have to be treated as trading expenses. We do not see the case as a case of transaction on capital account. On the contrary, this is a simple case where trading receipts were more than expenditure. The balance will have to be drought to tax as profits of business. As pointed out by Atkinson, J. in the case of Jays the Jewellers, a common sense view will have to be taken in such case.

We shall now refer to some of the other cases that were cited.

In Bijli Cotton Mill (P.) Ltd. V. Commissioner of Income-Tax, Lucknow (1971) 81 ITR 400, the finding was that from the outset, the excess of the price was impresses with the character of trust money to be held by the assessee on behalf of the quotaholders. The assessee was a cotton mill who manufactured and supplied yarn which they sold. These dealers were known as quotaholders. Subsequently, the arrangement was modified and the manufacturers could sell the stock directly to the wholesalers with the result that the quotaholders were excluded from the business altogether. In order to prevent hardship caused to the quotaholders, an order was issued by the Textile Commissioner requiring the manufacturer to recover from the wholesale dealer price of the yarn at

the controlled rate and pay to the quotaholders that part of the sum which represent the excess over the ex- mill price. The sale was deemed to be by the manufacturer on behalf of the quotaholders. The amounts due to the quotaholders were credited to an account called "quotaholders margin account". The Court found that under the order dated 13.9.1945 issued by the Textile Commissioner, the sale to the wholesalers were deemed to have been made by the manufacturers on behalf of the quotaholders. In this context of facts, the Court held that if there was any excess left in the account of the quotaholders, that could not be treated as income of the assessee. It was held that the amounts standing in the "quotaholders margin account" did not belong to the assessee but to the quotaholders because the sale was deemed to have been made on behalf of quotaholders.

In the instant case, the assessee had lodged a claim and the Colliery Company paid the amount claimed in usual course of business. At that stage, none of the consignees had made any claim. There is no deeming clause or any scheme by which it can be said that the amount was deemed to have been collected on behalf of the consignees. The money belonged to the assessee. It arose out of a trading transaction. The entire amount is Assessee's income. If any disbursement has to be made on account of the railway wagon not having been fully loaded that will be a business expenditure. The expenditure may have to be set off from the receipt but the money had been given in the instant case by the collieries to the assessee as deposit to be held in behalf of the purchasers.

In the case of Commissioner Income Tax, West Bengal-I V. Sandersons and Morgans (1970) 75 ITR 433, it was held that the assessee-firm of solicitors had credited as sum of Rs.4,078/- being the aggregate of unclaimed balances in as many as 83 personal ledger accounts of the assessee in connection with the cases conducted by the assessee for a few years. It was held by the Court that the amount was not taxable as the money belonged to the assessee's clients. I do not see how this case helps the respondents in this case. In this case, it was found that he money was entrusted to the assessee by the clients. The money was their money and after deducting of expenses, the balance amount continued to be held by the assessee in behalf of various parties. Since the money belonged to the clients of the firm of solicitors from the very beginning, it could not be equated with the money of the solicitors in the relevant year of account. Nothing had happened in this particular year to convert the clients' money into income of the solicitors.

The surplus amount in this case was generated in course of carrying on business by the assessee. The assessee had not been entrusted with the amount in question by anybody. He claimed and obtained money from the colliery in the usual course of business. This money he obtained not because the consignee had demanded it. Irrespective of may demand by the consignees, he got this money from the colliery companies. If no demand came from any of the consignees, he would have kept the entire amount himself. As a matter of fact, it had been found that only some of the consignees demanded payment and were paid by the assessee. This was the manner in which the assessee conducted his business and the surplus arose in regular course of business year after year.

The conduct of the assessee also goes to show that the assessee himself did not treat the amount as trust money. The amount was not shown as a liability nor was it kept in a suspense account. It was taken as miscellaneous receipt to the profit and loss account. He mingled the money with his other profits of business and treated the money as hid own. There is nothing in the facts of the case to

suggest that the money received by the assessee from the colliery companies actually belonged to the consignees and were not the assessee's own money.

We are of the view that the question referred by the tribunal should have been answered in the negative and in favour of the Revenue and we answer it accordingly. The appeals are allowed. The parties to bear their own costs.