Supreme Court of India
Commissioner Of Income-Tax, ... vs Malayalam Plantation Ltd on 10 April, 1964
Equivalent citations: 1964 AIR 1722, 1964 SCR (7) 693
Author: K Subbarao
Bench: Subbarao, K.

PETITIONER:
COMMISSIONER OF INCOME-TAX, KERALA

Vs.

RESPONDENT:
MALAYALAM PLANTATION LTD.

DATE OF JUDGMENT:
10/04/1964

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1964 AIR 1722 1964 SCR (7) 693
CITATOR INFO :
R 1965 SC 321 (15)
R 1966 SC1053 (17)
R 1966 SC1250 (6)
F 1967 SC 444 (12)
R 1979 SC1291 (8)
F 1982 SC 757 (8)

ACT:
Income Tax-Assessee treated as agent - Estate duty of non-resident paid by assessee-If an allowable deduction-Expression "for the purpose of the business"-Meaning of Indian Income-tax Act, 1922 (11 of 1922), s. 10(2)(xv)-Estate Duty Act, 1953 (34 of 1953), s. 34.

HEADNOTE:
For the two accounting periods the assessee, a resident company, incorporated outside India paid -estate duty payable on the death of its certain share holders not domiciled in India and debited the said amounts to revenue in its accounts in ascertaining the profits and gains of its business for the said years. The Income-tax Officer included the said amounts so paid towards estate duty in the profits and gains of the company for the said two accounting

periods and assessed the company to income-tax for 1955-56 and 1956-57 on that basis. The appeals by the assessee to the Appellate Assistant Commissioner were dismissed but on further appeal, the Appellate Tribunal set aside the said orders and held that the assessee was entitled to deduct the said amount in computing its profits. On an application by the Commissioner of Income-tax, the Tribunal stated a case under s. 66(1) of the Act to the High Court and referred the following question of law for its opinion: "Whether on the facts and in the circumstances ,of the case, the estate duty paid by the company under s, 84 ,of the Estate Duty Act , 1953, is a revenue expenditure deductible in computing the assessee's business income for the ,assessment years in question." The High Court agreed with the view of the Tribunal and answered the question in the affirmative. On appeal by special leave it was urged on behalf of the appellants, (1) that the sum paid by the assessee under s. 84 of the Estate Duty Act were not expenditure of the assessee company and therefore, they could not be deducted from its profits in computing its assessable income under s. 10(2)(xv) of the Act; and (2) that even if it was revenue expenditure, it was not laid out or expended wholly or exclusively for the purpose of the assessee's business within the meaning of the said sub-clause.

Held: (i) There was nothing on the record to show whether in England, where the concerned share holders died, the resident company could recover the amount representing the estate duty paid by it in India from the legal representative of the deceased share holders. Therefore, the assessee who, as a statutory agent paid to the State the estate duty, could not recover the same from the legal representative of the deceased non-resident share holders. In that situation the company would be out of pocket to the extent it paid the estate duty of the said persons. Therefore, it cannot be held that the amounts paid by the assessee towards estate duty were not expenditure incurred by it, but only amounts paid by it on account with a right to recover the same from the persons on whose behalf it paid.

(ii)The expression" for the purpose of the business"in s.10(2) (xv) of the Act is wider in scope than the expression "for the purpose of earning profits". Its range is wide: it may

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take in not only the day to day running of a business but also the rationalization of its administration and modernization of its machinery; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on of a business; it may comprehend many other acts incidental to the carrying on

of a business. However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for carrying on the business and the assessee shall incur it in his capacity as a person carrying on the business. It cannot include sums spent by the assessee as agent of a third party, whether the origin of the agency is voluntary or statutory; in that event, he pays the amount on behalf of another and for a purpose unconnected with the business.
In the present case, the amounts in question were paid by the assessee as a statutory agent to discharge a statutory duty unconnected with the business, though the occasion for the imposition arose because of the territorial nexus afforded by the accident of its doing business in India. Therefore, it must be held that the estate duty paid by the respondent was not an allowable deduction under s. 10(2)(xv) of the Act.
Case law reviewed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 384 and 385 of 1963. Appeals by special leave from the judgment and Decree dated January 19, 1961, of the Kerala High Court in Income-tax Referred case No. 20 of 1959.

K. N. Rajagopal Sastri and R. N. Sachthey, for the appellant.

Bishan Narain, G. B. Pai, T. A. Ramachandran, J. B. Dadachanji, 0. C. Mathur and Ravinder Narain, for the res- pondents.

April 10, 1964. The judgment of the Court was delivered by SUBBA RAO, J.-These two appeals by special leave raise the question whether the estate duty paid by the resident Company, hereinafter called the assesses, incorporated outside India, on behalf of members not domiciled in India is deductible from its profits in computing its assessable income under s. 10(2)(xv) of the Indian Income-tax Act, 1922, hereinafter called the Act.

The material facts are not in dispute and they may be briefly stated. The assesses is a resident Company incorpo- rated outside India. Most of its shareholders are in the United Kingdom. During the accounting period ending March 31, 1955, it paid pound 1,302-9-4 and pound 1,303 towards estate duty which was payable on the death of certain share- holders who were not domiciled in India. The assessee debited the said amounts to revenue in its accounts in ascertain-

ing the profits and gains of its business for the said year. Similarly, for the accounting year ending March 31, 1956, it paid a sum of pound 3,809-1-5 towards estate duty payable on the death of certain shareholders and debited the said amount to revenue in its accounts in ascertaining the

profits and gains of its business for that year. The Income-tax Officer included the said amounts so paid towards estate duty in the profits and gains of the company for the said two accounting periods and assessed the company to income-tax for 1955-56 and 1956-57 on that basis. The appeals preferred by the assessee to the Appellate Assistant Commissioner were dismissed. On further appeal to the Appellate Tribunal it held that the assessee was entitled to deduct the said amount in computing its profits; and on that finding it set aside the orders of the Appellate Assistant Commissioner. On an application made by the Commissioner of Income-tax, the Appellate Tribunal stated a case under s. 66(1) of the Act to the Kerala High Court, and referred the following question of law for its opinion:

> "Whether on the facts and in the circumstances of the case, the estate duty paid by the Company under Section 84 of the Estate Duty Act, 1953, is a revenue expenditure deductible in computing the assessee's business income for the assessment years in question?"

The High Court agreed with the view expressed by the Appellate Tribunal and answered the question referred to it in the affirmative. The present appeals by special leave have been filed against the said order of the High Court. Mr. Rajagopala Sastri, learned counsel for the Commissioner of Income-tax, raised before us the following two points; (1) The sums paid by the assessee under s. 84 of the Estate Duty Act, 1953, are not expenditure of the assesseeCompany and, therefore, they cannot be deducted from its profits in computing its assessable income under s. 10(2)(xv) of the Act; and (2) even if it is revenue expenditure, it is not laid out or expended wholly or exclusively for the purpose of the assessee's business within the meaning of the said sub-clause.

Mr. Bishan Narain, learned counsel for the respondent, supported the judgment of the High Court and contended that the said estate duty was revenue expenditure incurred by the assessee as it was put out of pocket to that extent and that it had not been proved that the assessee could legally recover the said amounts from the legal representatives of the deceased shareholders. He further argued that he said expenditure was wholly and exclusively for the pur- pose of the assessee's business within the meaning of s.10(2)(xv) of the Act inasmuch as it discharged its statu- tory obligation in order to preserve the assets of the com- pany.

The question raised turns upon the provisions of s. 10(2)

(xv) of the The act. It reads :

> Section 10. Business-The tax shall be payable by an assessee under the head "Profits and gains of business, profession or vocation" in respect of the profits and gains of any business, profession or vocation carried on by him.
>
> (2) Such profits or gains shall be computed after making the following allowances, namely:-

> (xv) any expenditure (not being an allowance of the nature described in any of the clauses (1) to (xiv) inclusively, and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly or exclusively for the purpose of such business, profession or vocation."

The first facet of the argument turns upon the question whether the estate duty paid by the assessee is an expendi- ture incurred by it within the meaning of the said provision. Under s. 5 of the Estate Duty Act the property of every person dying after the commencement of the said Act shall be liable to a duty called "estate duty" at the rates fixed in accordance with s. 35 thereof. Under s. 21 of the said Act there shall not be included in the property passing on the death of the deceased, inter alia, movable property situated outside the territories to which the said Act extends at the time of the death of the person. Under s. 53 of the said Act, where any property passes on the death of the deceased, every legal representative to whom such property so passes for any beneficial interest in possession or in whom any interest in the property so passing is at any time vested and others mentioned in the section shall be accountable for the whole of the estate duty on the property passing on the death. Section 84 thereof is aimed to reach the property of a member of a company dying outside India: the section before amendment read:

Section 84. Company to furnish particulars of deceased inemberrs to the Controller-

> Where a company incorporated outside India carried on business in the territories to which this Act extends and has been, treated for the purposes of the Indian income-tax Act, 1922 (Xi of 1922),as resident for two out of three completed assessments immediately preceding, such company shall, within three months of the receipt of intimation of the death of a member dying after the commencement of this Act, fur- nish to the Controller such particulars as may be prescribed in respect of the shares of the deceased member in the company, and shall be liable to pay estate duty at the rates mentioned in Part III of the Second Schedule, on the principal value of the shares held by the deceased in the company except in cases where the deceased member was a person domiciled in India and the person accountable has obtained a certificate from the Controller showing that either the estate duty in respect thereof has been paid or will be paid or that none is due, as the case may be."

Under this section in the circumstances mentioned therein a company is liable to pay estate duty in respect of the shares of the deceased member of the company on the princi- pal value of the share held by the deceased in the company: under this section a statutory obligation is imposed on the company to pay the estate duty on the shares of a deceased non-resident member. If such a member of the company had died in India, subject to the conditions mentioned in the section, the company would not be liable to pay the estate duty payable on the shares held by the deceased. In substance the company is made a statutory agent to pay the said duty payable in respect of property belonging to another. Section 77 of the Estate Duty Act enables a person authorised or required to pay estate duty in respect of any property to transfer the said property for the purpose of paying the duty. This section cannot have extra-territorial operation. Prima facie the company cannot transfer the shares or the property of a person domiciled in a country outside India. Nor sub-s. (2) of s. 77, which says

that a person having an interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge, as the estate duty in respect of that property had been raised by means of a mortgage to him, has application, for it cannot be said that the company has any legal interest in the shares owned by a third party. That apart, -the said sub-section also cannot have extra- territorial operation. Nothing has been placed before us to enable us to ,.come to the conclusion whether in England, where the concerned shareholders died, the resident company could recover the amount representing the estate duty paid by it in India from the legal representatives of the deceased share- holders. We, therefore, assume that the assessee who, as a statutory agent pays to the State the estate duty, cannot recover the same from the legal representatives of the deceased non-resident shareholders. In that situation the company would be out of pocket to the extent it paid the estate duty of the said persons. We cannot, therefore, accede to the contention of the learned counsel for the appellant that the amounts paid by the assessee towards estate duty were not expenditure incurred by it, but only amounts paid by it on account with a right to recover the same from the persons on whose behalf it paid. The next question is whether the said expenditure was expended wholly and exclusively for the purpose of the business of the assessee within the meaning of s. 10(2)(xv) of the Act. The crucial words of the section relevant to the present enquiry are "for the purpose of such business." Subsection (2) cl. (xv) is a residuary clause which provides for allowing the items of business expenditure not covered by the other clauses of sub-s. (2) of s. 10 of the Act. Beforethe Amending Act of 1939, the language of the predecessor of this clause read thus:

> " not being in the nature of capital gains incurred solely, for the purpose of earning such profits or gains."

The Amending Act of 1939 substituted the present clause and made it more comprehensive by using the expression "for the purpose of such business". Some of the decisions cited at the Bar, both English and Indian, throw some light on the construction of the said expression and we would, therefore, briefly notice them.

The House of Lords in Strong and Company of Romsey, Limited v. Woodifield(1) construed a corresponding provision in the Income-tax Act of the United Kingdom, the, relevant part whereof read: "money wholly and exclusively laid out or expended for the purposes of such concern."' There, a brewing company, which also owned licensed houses in which it carried on the business of innkeepers, incurred damages and costs to the amount of pound 1,490 on account of injuries caused to a visitor staying at one of its houses by falling in of a chimney. The House of Lords held that the damages and costs were not allowable as a deduction in computing the company's profits for income-tax purposes. The learned Lord Chancellor said:

> "They cannot be deducted if they are mainly incidental to some other vocation, or fall on the-, (1) (1906) 5 T.C. 215, 219, 220.
>
> trader in some character other than that of a trader."

Lord Davey, whose dictum was the basis for some of the subsequent decisions in that country, referring to the expression "for the purpose of trade" observed as follows:

It is not enough that the disbursement is made in the course of, or arises out of , or is connected with, the trade or is made out of the profits of the trade. It must be made for the purpose of earning the profits."

Lord Davey's definition appears to be much narrower than that of the Lord Chancellor, for the former restricts the expression to mean that the expenditure should have been made only for the purpose of earning profits. Finlay, J., in Allen v. Farquharson Brothers Limited(1), noticed that the qualifictaion "for the purpose of earning profits" was a slight expansion of the words of the statute, though he ex- pressed the view that it brought out the real import of the relevant section. In Rowntree and Company, Ltd. v. Curtis (H.M. Inspector of Taxes)(2), in disallowing the deduction claimed by a company of a sum set aside for the relief of ,the invalid employees, Rowlatt, J., applied the test whether the said expenditure incurred by the company was for the purpose of earning profits. In Cooke v. Quick Shoe Repair Service(3), the court allowed a deduction in respect of sums paid by the respondent-firm in discharging the liabilities of the business outstanding at the date of the said respondent purchased the business from a third party on the ground that the said expenditure, having been incurred for the purpose of preserving the goodwill and for ensuring the continuity of supply of raw-material and labour, was wholly and exclusively laid out for the purpose of its business. After referring to earlier decisions, Croom- Johnson, J., made the following observation:

> Here is a payment made in the circumstances of this case in order to ensure a supply of leather for the business, a payment made in order to ensure a continuance of labour willing to be employed in this business, and payment for rent in order to ensure that the landlord's consent to assignment of the premises, of the premises in which the business was carried on, should not be re- fused. I find it quite impossible to say that there is no evidence to justify those findings."
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> (1) 17 T.C. 59. 65. (2) (1924) 8 T.C. 678. (3) (1949) 30 T.C. 460. 466.

Here it will be noticed that the learned Judge went beyond the limited scope given by Lord Davey to the expression in the statute and did not confine it to the amounts spent only for earning profits, but to expenditure incurred in connec- tion with the business. Where a company incurred an ex- penditure in defending its title to property, it was held in Southern (H.M. Inspector of Taxes) v. Borax Consolidated, Ltd.(1) that the said amount was spent wholly and exclu-- sively for the purpose of the company's trade and was, therefore, an allowable deduction for the purpose of com- puting the profits of the company for income-tax purposes. This decision gives a more liberal meaning to the expression "for the purpose of the trade" than that given by Lord Davey. "Purpose" of the trade includes the purpose to pro- tect the assets of the company carrying on the trade. The House of Lords resurveyed the legal position in Morgan (Inspector of Taxes) v. Tate and Lyle Ltd.(2) in the context of the questions whether the expenditure incurred by a com- pany engaged in sugar refining in a propaganda campaign to oppose the threatened nationalization of the industry was, an admissible deduction. Lord Morton, after referring to the relevant case-law and to Lord Davey's formula, made the following observations:

> ".....this seeems to me to be an assumption wholly unwarranted by the evidence. There is no evidence that a transfer of the assets to a national body or authority would not destroy or adversely affect the company's business..... It is clear on the authorities that Lord Davey's formula includes expenditure for the purpose of' preventing a person from being disabled from carrying on and earning profits in the trade."

Lord Reid laid down the relevant test thus:

> "A general test is whether the money was spent by the person assessed in his capacity of trader or in some other capacity-whether on the one hand the expenditure was really incidental to the trade itself or on the other hand it was mainly incidental to some other vocation or was made by the trader in some other capacity than that of trader."

This decision also restated the two tests namely (i) that the expenditure should be for carrying on the business to earn profits in the trade, and (ii) that the expenditure shall' be incurred by the assessee in his capacity of a person (1) (1942) 10 T.T.R. (Suppl.) 1, S.

(2) (1954) 26 I.T.R. 195, 205, 206, 219.

carrying on the business. Lord Greene, M.R., in Rushden Heel Co., Ltd. v. Keene(1) reaffirmed the second test in the following words:

> "I find, however, in Strong and Company's case(2) what appears to me to be a clear answer to the present appeal. It is, I think, a matter not of dictum but of decision in that case that an expense is not deductible if it falls on a trader in some character other than that of a trader. This was the ground of the opinion of Lord Loreburn, L.C., with which Lords Macnaghten and Atkinson agreed. Their Lordships held that the expense there in question fell upon the appellants in their character not of traders but of householders."

In Smith v. Lion Brewery Co., Ltd.(3), the question was whether a brewery company, which was owner and lessee of a number of licensed premises where business was carried on on the tide-house basis, was entitled to deduct for the purposes of income tax its liability in respect of compensation fund charges under the, Licensing Act, 1904. It was contended by the Crown that the liability to which the Company became subject was in its capacity as landlord of the property and not as trader carrying on the trade of brewer. When the case ultimately came up before the House of Lords, the House was equally divided. The view of two of the members who agreed with the view of the Court of Appeal prevailed. The basis of the judgment was that the liability was wholly and exclusively related to the carrying on of the company's business, because on the facts of that case the company had assumed the position of landlord for the purpose of its trade. If the finding was that the company paid the tax in its capacity as landlord as opined by the learned Lords who dissented, the result would have been the other way. In Harrods (Buenos Aires) Ltd. v. TaylorGooby (H.M. Inspector of

Taxes)(4), Buckley, J., covered the entire ground over again in the context of a question whether the appellant-company therein which was incorporated and resident in the United Kingdom and carrying on the business of a large general stores in Buenos Aires, having paid in Argentina a tax known as the "substitute tax" to which it was liable, could claim deduction under the Income-tax Act, 1952 (15 and 16 Geo. VI and 1 Eliz. 1, c. 10, s.137 (a)). The learned judge held on the facts of that case (1) (1947) 30 T.C. 298, 316. (2) (1905) 5 T.C. 215. (3) (1910) 5 T.C. 568.

(4) Appeal No. 2048 (Ch. D.) decided on 25th March, 1963 (unreported).

that incurring liability for that tax was a pre-condition of the Company's earning profits in the Argentina, for without incurring liability for that tax the Company could not carry on business in the Argentina at all. On that finding the learned Judge came to conclusion that it was a liability which the Company had undertaken for the purpose of its trade, and was, therefore, a payment made wholly and ex- clusively for the purpose of the company's trade. It will be seen that in that case the tax was paid by the Company in its capacity as company doing business and unless that tax was paid the company could not carry on its business. The two tests laid down are satisfied.

Pausing here, we shall briefly recapitulate the legal posi- tion in England. The relevant wordings of section with which the English Judges were concerned are, in effect, similar to the terms of s. 10(2)(xv) of the Indian Income-tax Act, 1922. The test laid down by Lord Davey in Strong and Company of Ramsey, Ltd. v. Woodifield(1), namely, the disbursement must be made for the purpose of earning profits, has been accepted and followed throughout, though the content of that test has been expanded to meet diverse situations. Broadly, the English courts applied two tests to ascertain whether a deduction was permissible or not, namely. (i) whether the expenditure was incurred for the purpose of carrying on of the business and for removing obstacles and impediments in the conduct of the business, and (ii) whether the assessee paid the amount in his capacity as businessman or in his personal capacity. Now coming to the Indian decisions, a Devision Bench of the Bombay High Court in Tata Sons Ltd. v. Commissioner of Income-tax, Bombay (2) held that the share of bonus voluntarily paid by a company, which held the managing agency of another company, to some of the officers of the managed company was a permissible deduction under s.10(2)(xv) of the Act. The reason for the conclusion is stated thus:

> "But having considered the whole case and the question submitted to us I am satisfied that looking purely at it from the point of view of commercial principles what the assessee company has done is something which had as its object increasing the profits of the Tata Iron and Steel Co. nd thereby increasing its own share of the commission."

(1) (1906) 5 T.C. 215.

(2) (1950) 18 I.T.R. 460, 472.

In Badridas Daga v. Commissioner of Income-tax(1), where the agent of the assessee misappropriated his money and the assessee claimed the part of the amount misappropriated and

not recovered from the agent as a deduction under s. 10(2)(xv) of the Act for the purpose of income-tax, this Court held that it was not allowable under s. 10(2)(xi) or s.10(2)(xv) of the Act. Venkatarama Ayyar ,j., observed :

> "The result is that when a claim is made for a deduction for which there is no specific provision in section 10(2), whether it is admissible or not will depend, on whether having regard to accepted commercial practice and trading principles, it can be said to arise out of the carrying on of the business and to be incidental to it."

This decision, though not direct in point, lays down the principle that an expenditure can be deducted only if it arises out of the carrying on of the business and is incidental to it. In Indian Molasses Co. (Pvt.) Ltd. v. Commissioner of Income-tax, W.B. (2), this Court held that s. 10(2) (xv) of the Act enacted affirmatively what was stated in the negative form in the English statute and was substantially in pari materia with the English enactment and the courts might consider the English authorities as aids to the interpretation thereof. The decision of this Court in Commissioner of Income-tax, Bombay v. Abdullabhai Abdulkadar(3), though, turns upon the provisions of s. 10(1) of the Act, gives some assistance in deciding the question raised. One of the questions raised was whether the tax paid by the assessee-firm as an agent of the non-resident principle could be claimed as a bad debt or a trading loss. In the words of Kapur, J., "the loss which the appellant has incurred is not in its own business but the liability arose because of the business of another person and that is not permissible deduction within s. 10(1) of the Act". It is true that this decision did not arise under s. 10(2)(xv) of the Act, but the principle that the expenditure incurred by the assessee in his capacity as agent of another is not a deductible item equally applies to the present case. This Court in The Commissioner of Income tax, W.B. v. Royal Calcutta Turf Club(1) had to consider the question whether an expenditure incurred by a race club for the purpose of training jockeys of the club was an allowable deduction within the meaning of s. 10(2)(xv) of the Act. (1) [1959] S.C.R. 690.

(2) (1959) 37 I.T.R. 66.

(3) [1961] 2 S.C.R. 949.

(4) [1961] 2 S.C.R. 729, 735-736.

Kapur,j., speaking for the Court , after considering the relevant decisions, concluded thus:

> "Applying the law, as laid down in those cases, to the present case the conclusion is that the amountn dispute was laid out wholly and exclusively for the purpose of the respondent's business because if the supply of jockeys of efficiency and skill failed the business of the respondent would no longer be possible. Thus the money was spent for the preservation of the respondent's business."

This decision gives a liberal interpretation to the relevant expression. -In M/s. Haji Aziz and Abdul Shakoor Bros. v. The Commissioner of Income-tax, Bombay City II(1), this Court disallowed deduction of the amount paid by a firm as penalty to release the consignment confiscated by the

Customs authorities. In coming to the conclusion, Kapur, J., speaking for the Court, observed:

"The words "for the purpose of such business"

have been construed in Inland Revenue v. Anglo Brewing Co., Ltd.(2) to mean "for the purpose of keeping the trade" going and of making it pay.,, After considering the relevant decisions, the learned Judge proceeded to state thus:

> "They cannot be deducted it they fall on the assessee in some character other than that of a trader. Therefore, where a penalty is incurred for the contravention of any specific statutory provision, it cannot be said to be a commercial loss falling on the assessee as a trader the test being that the expenses which are for the purpose of enabling a person to carry on trade for making profits in the business are permitted but not if they are merely connected with the business."

No doubt this judgment is really based upon the fact that an expense which is paid by way of penalty for breach of law cannot be said to be an amount wholly and exclusively laid out for the purpose of the business; but the observations in the decision go further and indicate that the expenditure, if incurred by the trader in some character other than that of a ,trader, is not an allowable deduction.
(1) [1961] 2 S.C.R. 651, 657, 663.

(2) [(1925] 12 T.C. 803. 813.

The expression "for the purpose of the business" is wider in scope than the expression "for the purpose of earning profits". Its range is wide: it may take in not only the day to day running of a business but also the rationalization of its administration and modernization of its machinery; it may include measure for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile titles; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business. However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business. It cannot include sums spent by the assessee as agent of a third party, whether the origin of the agency is voluntary or statutory; in that event, he pays the amount on behalf of another and for a purpose unconnected with the business. In the present case, the company, as a statutory agent of the deceased owners of the shares, paid the sums payable by the legal representatives of the deceased shareholders. The payments have nothing to do with the conduct of the business. The fact that on his default, if any, in the payment of the dues the Revenue may realise the amounts from the business assets is a conse- quence of the default of the assessee in not discharging his statutory obligation, but it does not make the expenditure any the more expenditure incurred in the conduct of the business. It is manifest that the amounts in question were paid by the assessee as a statutory agent to discharge a statutory duty unconnected with the business, though the occasion for the imposition arose because of the territorial nexus afforded by the accident of its doing business in

India. We, therefore, hold that the estate duty paid by the respondent was not an allowable deduction under s. 10(2)(xv) of the Act. We answer the question in the negative. The order of the High Court is wrong and is set aside. In the result, the appeals are allowed with costs. One set of hearing fees.

Appeal allowed