Supreme Court of India
Commissioner Of Excess Profit ... vs Kalyan Mal Phool Chand, Nagar ... on 13 March, 1987
Equivalent citations: 1987 AIR 2140, 1987 SCR (2) 601
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
COMMISSIONER OF EXCESS PROFIT TAX, KANPUR

Vs.

RESPONDENT:
KALYAN MAL PHOOL CHAND, NAGAR GANJ, KANPUR

DATE OF JUDGMENT13/03/1987

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
NATRAJAN, S. (J)

CITATION:
1987 AIR 2140 1987 SCR (2) 601
1987 SCC (2) 458 JT 1987 (1) 691
1987 SCALE (1)563

ACT:
Excess Profit Tax Act, 1940---Sections 2, 5-7--'Accounting period'--'Chargeable account period'--'Standard profits'--What are-Deficiency in profits--Setting off--Basis of determination.

HEADNOTE:
The assessee was an unregistered firm carrying on business of manufacture and sale of Katechu. The firm carried on the work of extraction of Katechu in Nepal and sales were affected in Kanpur. It had first taken a jungle on lease and Katechu were extracted from October 1940 to September, 1941. Sales were effected from 30th May, 1941 to 29th September, 1941. Thereafter, another jungle was taken on lease and Katechu were extracted from 23rd November, 1942 to 6th November, 1944. The sales were effected between 26th July, 1943 to 4th April, 1944.

The assessee claimed set off of deficiency of profit for the periods 20th October, 1940 to 17th October, 1941 and 23rd November, 1942 to 31st March, 1943 on the ground that the business carried on during the chargeable accounting period 1-4-1943 to 31-3-1944 was not separate to and distinct from the business carried on in 1940-41.

The Excess Profit Tax Officer did not set off the deficiency of profits that accrued in respect of the period 1940-41 out of the profits for the chargeable accounting period from 1-4-1943 to 31-3-1944, and held that the business carried on during October, 1940 to October, 1941 was completely different from the business carried on during the aforesaid chargeable accounting period.

So far as the deficiency pertaining to the period November, 1942 to 31st March, 1943 was concerned, the manufacturing operations started on or about 23rd November, 1942 and the sales started on 26th July, 1943. Katechu produced from 23rd November, 1942 to 31st March, 1943 remained in stock till the last date of the chargeable accounting period. namely, 31st March, 1943. As the assessee did not, maintain any books of account, the provisions of s. 13 of the Income Tax
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Act, 1922 were applicable. The Revenue, therefore, valued the stock-intrade at cost and held that there could be no profit or loss during the chargeable accounting period.

In appeal, the assessee urge that deficiency in profits pertaining to the chargeable accounting periods from October, 1940 to 31st March, 1941, and 23rd November, 1942 to 31st March, 1943 should be allowed a set off in computing the excess profits and as there were no profits during the said chargeable accounting period, the standard profits became the deficiency of the said two years which should have been allowed set off and that as manufacturing operations were carried on during the said periods, it could not be said that the assessee did not carry on any business.

The Appellate Assistant Commissioner found that the constitution of the firm during the chargeable accounting period was the same as in 1940-41, that the accounts were maintained in the same fashion and the same business was carried on, that the assessee had effected sales only during 30th May, 1941 to 29th September, 1941 and held that the assessee was entitled to set off in respect of the deficiency of profits. He, therefore, confirmed that there were no profits and losses during the chargeable accounting period ending on 31st March, 1941 and as such there could be no deficiency of profits. The assessee was, therefore, held to be entitled to a set off of the deficiency only for the chargeable accounting period ending on 31st March, 1942 which consisted of the period 1st April. 1941 to 29th September. 1941.

The Tribunal, however, held that no profits accrued unless sale was effected and accepting the contention of the Revenue that no part of profits, which accrued during the said two chargeable accounting periods could be charged and were in fact not so charged to income-tax, as no sales were effected, the Act itself did not apply and confirmed the order of the Appellate Assistant Commissioner.

The High Court divided the entire period of manufacture

and sales to determine the question whether there was manufacturing activity and sale; (1) October 28, 1940 to March 31, 1941, failing in the financial year ending March 31, 1941, Katechu was manufactured but there was no sale; (2) April 1, 1941 to September 29, 1941, failing in the financial year ending March 31, 1942; sales took place from May 30, 1941 to September 29, 1941; (3) November 23, 1942 to March 31, 1943 failing in the financial year ending March 31, 1943; Katechu was manufactured but there was no sale; (4) April 1, 1943 to March 31,
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1944, failing in the financial year ending March 31,. 1944; sale took place from July 26, 1943 to March 31, 1944; (5) April 1, 1944 to April 4, 1944, failing in the financial year ending March 31, 1945; sales were effected from April 1, 1944 to April 4, 1944 when the business was discontinued. It held that while there was manufacturing activity there was no sale during the financial years ending March 31, 1941 to March 31, 1943, that the profits earned upon sales effected during the chargeable accounting period ending 31st March, 1944 must be apportioned between the manufacturing activity during the chargeable accounting period ending 31st March, 1943 and the sales during the chargeable accounting period ending 31st March, 1944 and that the deficiency of profits must be set off in computing the excess profits for the chargeable accounting period ending 31st March, 1944. The High Court, therefore, did not accept the opinion of the Tribunal and held that the assessee was entitled to a set off of deficiency of profits relating to the periods 28-10-1940 to 31-3-1941 and 23-11-1942 to 31-3-1943 from the profits of the chargeable accounting period 1-4-1943 to 31-3-1944.

Allowing the Appeal,

HELD: 1. The scheme contained in the Excess Profits Tax Act is a legislation intended to tax the profits of certain business in excess of a certain limit as provided in that Act. It is, therefore, complementary to the Income Tax Act by its very nature. [610D]

Commissioner of Income Tax, Bombay v. Raipur Manufacturing Co., Ltd., 14 ITR 725 at 733, followed.

2. In order to work out the scheme of the Act, there must be proper dovetailing of the concept of 'accounting period'. 'chargeable accounting period' and basic scheme of the Income-Tax Act bearing in mind that excess profits are excess of profits which were intended to be mopped up during the war period, to be taxed separately and differently. [612H; 613A-B]

3. If the right to receive those profits had accrued or arisen subsequently then even though they had accrued or arisen by reason of work done during the chargeable accounting period, these were not liable to be treated as the profits of that chargeable accounting period. [613C]

4.Whether the profits in the one case could be identi-

fied with the profits in the other would be determined by reference to the period in which those accrued or arose. The profits during the chargeable
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accounting period must be computed under the Excess Profits Tax on the same basis as are profits for an income-tax assessment. [613D-E]

Haji Rahmat Ullah and Co. v. Commissioner of Income-tax, U.P., 59 I.T.R. 109, relied upon.

5. It has to be clearly borne in mind that the Act is not an entirely different Act in the sense that it proceeds upon the concept completely different from the notions of Income Tax and has its source in an entirely different tax concept. More profits which were likely to have been earned due to profits, these were made subject to excess profits. [613E-F]

6. Though profit in a composite transaction could be apportioned as between manufacture and sale in the same accounting year, such an apportionment is not permissible when one part of the transaction, i.e. manufacture, falls in one chargeable accounting period and falls in another part of the accounting period i.e. the trading operations i.e. falls in another accounting period, then set off deficiency in profits under section 7 of the Act is permitted but a necessary precondition was that profit must be made in the accounting period to which the deficiency relates. [613G-H; 614A]

7. The excess profit under the Act is profit determined under the Income Tax Act subject to prescribed adjustments. If the income tax assessment discloses nil profits, no separate profit can be determined independently under the Act. [614A-B]

8. It is a general principle, in the computation of the manual profits of a trade or business under the Income Tax Acts, that those elements of profits or gain, and those only, enter into the computation which are earned or ascertained in the year to which the enquiry refers; and in like manner, only those elements of loss or expense enter into the computation which are suffered or incurred during that year. [614C-D]

Edward Collins & Sons Ltd. v. The Commissioners of Inland Revenue, 12 T.C. 773 at 780, followed and Commissioner of Incometax, Bombay v. Ahmedbhai Umarbhai & Co., Bombay, 18 I.T.R. 472, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1375 of From the Judgment and Order dated 21.2. 1971 of the Allahabad High Court in Excise Profit Tax Reference No. 55 of 1968.

Dr. V. Gauri Shankar and Miss A. Subhashini for the Appellant.

S.T. Desai, Harish Salve, Mrs. A.K. Verma and D.N. Mishra for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This appeal is directed against the judgment and order of the High Court of Allahabad dated 21st February 1971. It relates to the assessment under the Excess Profits Tax Act, 1940 (hereinafter called the 'Act'). The assessee was an unregistered firm carrying on business of manufacture and sale of katechu. The chargeable account- ing period was 1-4-1943 to 31.3. 1944. There were two partners of the assessee firm, namely, L. Phoolchand and M/s Biharilal Balkishan each having profits in proportion of 11 annas and 5 annas respectively. The work in connection with the extraction of Katechu was carried on in Nepal by 1.. Phoolchand and the sale of Katechu were effected by M/s Biharilal Balkishan at their shops in Kanpur. The assessee firm did not maintain any books of account and the entire record of the business transaction was maintained in the books of M/s Biharilal Balkishan in the account styled "Kalyanmal Phoolchand".

The assessee firm had taken a jungle on lease for this purpose and had extracted Katechu from October, 1940 to September, 1941. The sales of katechu extracted were effect- ed from 30th May, 1941 to 29th September, 1941. Thereafter another jungle was taken on lease in November, 1942 and Katechu were extracted from 23rd November, 1942 to 6th November, 1944. The sales in this case were effected between 26th July, 1943 to 4th April, 1944. The High Court divided the entire period of manufacture and sale as follows:

1. October 28, 1940 to March 31, 1941, failing in the financial year ending March 31,1941. Katechu was manufac- tured but there was no sale.

2. April 1, 1941 to September 29, 1941, failing in the financial year ending March 31, 1942. Sales took place from May 30, 1941 to September 29, 1941.

3. November 23, 1942 to March 31, 1943, falling in the financial year ending March 31, 1943. Katechu was manufac- tured but there was no sale.

4. April 1, 1943 to March 31, 1944, falling in the finan- cial year ending March 31, 1944, sales took place from July 26, 1943 to March 31, 1944.

5. April 1, 1944 to April 4, 1944, falling in the finan- cial year ending March 31. 1945, sales were effected from April 1, 1944 to April 4, 1944, when the business was dis- continued.

Therefore, while there was manufacturing activity there was no sale during the financial years ending 31st March, 1941 and 31st March, 1943. The dispute in this case is with regard to the set off of deficiency of profit relating to the periods 20th October, 1940 to 17th October, 1941 and 23rd November, 1942 to 31st March, 1943.

The Excess Profit Tax Officer did not set off the said deficiency of profits that accrued in respect of the period 1940-41 out of the profits for the chargeable accounting period from 1.4.1943 to 31.3. 1944. The submission of the assessee was that the business carried on during the charge- able accounting period under consideration was not separate to and distinct from the business carried on in 1940-41. The Excess Profit Tax Officer held that business carried on during October, 1940 to October, 2941 was completely differ- ent from the business carried on during the chargeable accounting period under consideration.

The Appellate Assistant Commissioner on appeal found that the constitution of the firm during the chargeable accounting period was the same as in 1940-41 and the ac- counts were maintained in the same fashion; and that the same business of manufacturing Katechu in Nepal and selling the finished products at kanpur was carried on. The Appel- late Assistant Commissioner, therefore, held that the asses- see was entitled to set off in respect of the deficiency of profits accruing in the year 1940-41. The Appellate Assist- ant Commissioner further found that the assessee had effect- ed sales only during 30th May, 1941 to 29th September, 1941. As such there were no sales either during or until 30th May, 1941 land subsequent to 29th September, 1941. As such he held that there was no profit arising during the accounting period ending on 31st March, 1941. He, therefore, confirmed that there were no profits and losses during the chargeable accounting period ending on 31st March, 1941 and as such there could be no deficiency of profits. In the premises, according to the Appellate Assistant Commissioner, the assessee was entitled to a set off of the deficiency only for the chargeable accounting period ending on 31st March, 1942 which consisted of the period 1st April, 1941 to 29th September. 1941. He allowed such deficiency of Rs.5,600 only. So far as the deficiency pertaining to the period November, 1942 to 3 Ist March, 1943 was concerned, the facts were that the manufac- turing operations started in Nepal on or about 23rd Novem- ber, 1942 and the sales of Katechu started at Kanpur on 26th July, 1943 Katechu produced in Nepal from 23rd November, 1942 to 31st March, 1943 remained in stock till the last date of the chargeable accounting period namely 31st March, 1943 and no part of it was sold. As the assessee did not maintain any books of account, the provisions of section 13 of the Income Tax Act, 1922 as applied to the Act vide section 21 of the Act were applicable. The revenue, there- fore, valued the stock-in-trade at cost and held that there could be no profit or loss during the chargeable accounting period. In appeal, the assessee had urged that deficiency in profits pertaining to the chargeable accounting periods from October, 1940 to 31st March, 1941 and 23rd November, 1942 to 31st March, 1943 should be allowed a set off in computing the excess profits for the year under consideration. It was submitted that there was no profits pertaining to the said chargeable accounting period, and therefore, the standard profits as provided in the Act became the deficiency of the said two chargeable accounting periods which should have been allowed set off. It was further urged on behalf of the assessee that the manufacturing operations were carried on during the said periods and as such it could not be said that the assessee did not carry on any business. The Tribunal, however, held that no profits accrued unless sale was effected and, therefore, there was no merit in the submission made on behalf of the assessee that during the said two chargeable accounting periods, although there were no sales effected, yet profits accrued to the assessee. It was urged on behalf of the revenue that as provided in the Act, the provisions of the Act would apply to every business of which any part of profits was made during the chargeable accounting period, is chargeable to income-tax. It was further urged that no part of profits, if any, which accrued during the said two chargeable accounting periods could be charged and were in fact not so charged, to income-tax, as no sales were effected and, therefore, the Act itself did not apply to the said two chargeable account- ing periods. The Tribunal accepted this contention on behalf of the revenue and as such confirmed the order of the Appellate Assistant Commis- sioner.

On the said facts, the following question of law was referred to the High Court at the instance of the assessee:

> "Whether, on the facts and in the circum- stances of the case, the assessee was entitled to a set off of deficiency of profits relating to the period 28.10.1940 to 31.3.1941 and 23.11. 1942 to 31.3.1943 from the profits of the chargeable accounting period 1.4.1943 to 31.3.1944 in accordance with the provisions of the E.P.T. Act, 1940?"

The High Court held that it was not disputed before them that the assessee was carrying on the same business from 28th October, 1940 to 4th April, 1944 for the purpose of the Act. The only question was whether the assessee could be said to have suffered any deficiency of profits during the period 28th October, 1940 to 31st March, 1941 and 23rd November, 1942 to 31st March, 1943 and was whether entitled to be given the benefit of such deficiency. of profit. The High Court referred to certain definitions and recognised and in our opinion rightly that there were sever- al stages in business activities before profits could be realised. The High Court observed that profits realised were not of the sale alone. The profits were attributable to the manufacturing operations as well. The High Court referred to certain decisions to which our attention was also drawn where under the Act as to the place where the profits arose, the courts had enquired into the place where the manufactur- ing took place and where the sales took place. This conten- tion is no longer relevant for the controversy before us. It was accepted before us that a manufacturing process may begin in one year and result in sale in another year and also that manufacturing process may take at one place and sale at another place. For the purpose of computing the profit of certain operation, it is true as the High Court noted, that manufacture and sale might take place in two different years.

The High Court held that though chargeable levy was an annual charge and generally for the purpose of the levy of the annual charge the profits of the year preceding the year of charge are taken into consideration if the manufacturing activity leading to the production of finished article which was subsequently sold contributed to the profits realised, according to the High Court, it mattered little whether or not the manufacturing activity of the sale related to the same period of twelve months. Some part of the profits realised would be attributable to the manufacturing activities and, therefore, could be said to arise during the period when manufacturing was carried on even though sales were effected in the next year. The High Court, therefore, was of the view that it was necessary to ,determine what part of the profits realised upon the sales from 30th May, 1941 to 29th September, 1941 could be attributed to the manufacturing activity between 28th OCtober, 1940 to March, 1941 and then to compute the deficiency of profits for the chargeable accounting period ending 31st March, 1941. That might require, according to the High Court, a fresh determination of the profits earned during the period 1st April, 1941 to 29th September, 1941 and, consequently, of the deficiency of profits during the chargeable accounting period ending 31st March, 1942. The High

Court was of the view that the deficiency of profits for the chargeable accounting periods ending 31st March, 1941 and 31st March, 1942 would have to be set off when computing the excess profits for the relevant chargeable accounting period ending 31st March, 1944. The High Court expressed the view that under section 2(5) of the Act the job of the assessee in the extraction and sale of Katechu under the two jungle leases must be considered as a single business for the purpose of the Act. The High Court, there- fore, came to the conclusion that upon the principle of apportionment of profits to which it had adverted to, the profits earned upon sales effected during the chargeable accounting period ending 31st March, 1944 must similarly be apportioned between the manufacturing activity during the chargeable accounting period ending 31st March, 1943 and the sales during the chargeable accounting period ending 31st March, 1944 and the deficiency of profits worked out on that basis in respect of the chargeable accounting period ending 3 Ist March, 1943 must be set off in computing the excess profits for the chargeable accounting period ending 31st March, 1944. The High Court, therefore, did not accept the opinion of the Tribunal that because the chargeable account- ing periods ending 31st March, 1941 and 31st March, 1943 were occupied with manufacturing activity alone and there were no sales, therefore, no part of the profits realised upon the sales could be apportioned to those chargeable accounting periods and consequently that it could not be said that there was any deficiency of profits during those periods. The question referred to the High Court was an- swered in affirmative.

In order to appreciate the real controversy in this matter, it is appropriate to refer to the observations of Kania, J., as the Chief Justice then was, in the decision in the case of Commissioner of Income Tax, Bombay v. Raipur Manufacturing Co., Ltd.; 14 ITR 725 at

733. It was observed as follows:

> "The Excess Profits Tax Act as shown by the preamble itself is a legislation to impose tax on excess profits arising out of certain business. The Income-tax Act is the principal legislation which imposes a tax on the income of a person. Section 6 divides the income under five heads which are chargeable to tax. The fourth head is profits and gains of busi- ness, profession or vocation. Out of that a certain portion is carved out by the Legisla- ture for the purpose of imposing the excess profits tax. I am unable to accept the conten- tion of the Commissioner that the Excess Profits Tax Act is an entirety independent legislation, which is connected with the Income-tax. Act only to the extent it is expressly so stated in the Excess Profits Tax' Act. The scheme that the Excess Profits Tax Act is a legislation intended to tax the profits of certain business in excess of a certain limit as provided in that Act. It is therefore complementary to the Income-tax Act by its very nature."

As the Statement of Objects of the Act stated that the outbreak of war, while it has necessitated greatly increased expenditure by the Government on defence and other services, has simultaneously created opportunities for the earning by companies and persons engaged in business of abnormally large profits. The object of the Bill (which later became the Act was to secure for the Government a considerable portion of the additional business profits which accrued as a result of the conditions prevailing during the war. To begin with the right to impose a tax of 50% of the excess of the profit made in any accounting period after the 1st day of April, 1939 was given. It had subsequently been increased to 66-2/3 %.

Section 2(1) of the Act defines the 'accounting period'. Section 2(6) defines 'chargeable accounting period as (a) any accounting period falling wholly within the term begin- ning on the 1st day of September, 1939, and ending on the 31st day of March, 1946 and (b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as fails within the said term. The 'standard profits' is defined under section 2(2) which was required to be computed in accordance with the provisions of section 6 of the Act. It is not necessary in view of the controversy before us to refer to other defini- tions except that section 2(3) deals with 'average amount of capital' which is relevant for computation of the excess profits. Section 6 defines the 'standard profits' and how it is to be computed. As there was no controversy on this aspect before us, it is not necessary to deal with it. Section 2(9) defines 'deficiency of profits' as follows:

> (9) "deficiency of profits" means-- "(i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the stand- ard profits;
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> (ii) where a loss has been made in any charge- able accounting period, the amount of the loss added to the amount of the standard profits;" Section 4 defines 'charge of tax' as follows: "Charge of tax"--(1) Subject to the provi- sions of this Act, there shall in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable ac- counting period exceed the standard profits a tax (in this Act referred to as "excess prof- its tax") which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty per cent, of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act;
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> Provided that any profits which are, under the provisions of sub-section (3) of section 4 of the Indian Incometax Act, 1922, exempt from income-tax, and all profits from any business of life insurance shall be total- ly exempt from excess profits tax under this Act.
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> Provided further that in the. case of any business which includes the mining of any mineral, any bonus paid by or through the Central Government in. respect of increased out-put of the mineral shall be totally exempt from excess profits tax under this Act. (2)Where a chargeable accounting period falls partly before and partly after the end of March, 1941, the foregoing provisions of this section shall apply as if so much of that chargeable accounting period as falls before, and so much of that chargeable accounting period as falls after, the said end of March were each a separate chargeable accounting period, and as if the excess of profits of that separate chargeable accounting period were an appor- tioned part of the excess of profits arising in the whole period determined in accordance with the provisions of section

7A." Section 7 deals with the relief on occurrence of defi-

ciency of profits and provides in substance that where a deficiency of profits occurs in any chargeable accounting period in any business, the profits of the business charge- able with excess profits tax shall be deemed to be reduced and relief shall be granted according to the provisions laid down therein.

The main question in this case is to keep the distinc- tion between 'accounting period' and 'chargeable accounting period'. The accounting period, it has to be borne in mind, is the twelve months' proceeding just on the basis of the income-tax year and the assessment must be made on the same basis. The 'chargeable accounting period' is the period beginning from 1st September, 1939 ending after amendment on 31st March, 1946. So if there is any deficiency of profits in any of the accounting period which has not been absolved in the assessment for that year may be carried forward but the assessment must be made on the basis of the accounting period. This has to be emphasised and it must be borne in mind that though it is wholly immaterial whether the manu- facture and sale took place in the same year or in two different years, the division of time into periods for its assessment must be made in a real sense as in the income-tax one, and then make appropriate adjustments. Therefore the profits and losses of each year must be computed on yearly basis in terms of the definition of 'accounting period' under section 2(1) of the Act. But if any deficiency of profits remains unabsolved, it may be carried forward against any excess profits made and set off during the next accounting period. The chargeable accounting period is the period from 1st September, 1939 to 31st March, 1946. But each year's excess profit & loss must be computed in the manner contemplated in section 2(1) of the Act. So if there was any deficiency of profits in any particular period, it must be determined on that basis. In order to work out the scheme of the Act, there must be proper devetailing of the concept of "accounting period", "chargeable accounting period" and basic scheme of the Income-Tax Act bearing in mind that excess profits are excess of profits which were intended to be mopped up during the war period intended to be taxed separately and differ- ently. This view finds support in the decision of the Alla- habad High Court. In the case of Haji Rahmat Ullah and Co. v. Commissioner of Income-tax, U.P., 59 I.T.R. 109 the High Court of Allahabad held that a payment received in any year subsequently to a chargeable accounting period is not liable to be treated as the profits of that period, merely because the work which occasioned that payment was done during that period. The "profits during the chargeable accounting peri- od" are those profits respecting which a right to receive had accrued or arisen during that period. If the right to receive those profits had accrued or arisen subsequently, then even though they had accrued or arisen by reason of work done during the chargeable accounting period, these were not liable to be treated as the profits of that charge- able accounting period. The High Court observed that it would seem ex facie that if the profits earned during a certain period are taxable under the Income-tax Act, it is a part of those very profits which is liable to excess profits tax. Whether the profits in the one case could be identified with the profits in the other would be determined by refer- ence to the period in which those accrued or arose. It was emphasised that the profits during the chargeable accounting period must be computed under the Excess Profits Tax on the same basis as are profits for an income-tax assessment. It is clear that excess profits tax is attracted in respect of a business to which the Act applied when the profits during the chargeable accounting period exceed the standard profit. It has to be clearly borne in mind that the Act is not an entirely different Act in the sense that it proceeds upon the concept completely different from the notions of Income tax and has its source in an entirely different tax concept. More profits which were likely to have been earned during those years, these were made subject to excess profits. It appears to us that the period of assessment in the Act is an "accounting period" in the same way as the 'previ- ous year' is the period of assessment for the purpose of Income-Tax. Though profit in a composite transaction could be apportioned as between manufacture and sale in the same accounting year, such an apportionment is not permissible when one part of the transaction, i.e. manufacture, fails in one chargeable accounting period and falls in another part of the accounting period i.e. the trading operations, i.e. falls in another accounting period, then set off of defi- ciency in profits under section 7 of the Act is permitted but a necessary precondition was that profit must be made in the accounting period to which the deficien- cy relates. The profits attributed on apportionment was outside the scope of section 7 of the Act. It must be remem- bered that the 'excess profit' under the Act is profit determined under the Income Tax Act subject to prescribed adjustments.. If the income tax assessment discloses nil profits, no separate profit can be determined independently under the Act.

The position of the Excess Profits Tax Act was explained by Lord President Clyde in Edward Collins & Sons. Ltd. v. The Commissioner of Inland Revenue, 12 T.C. 773 at 780 where the Lord President emphasised that subject to certain modi- fication those profits had to be determined in the same way and on the same principle as a trader's profits and gains have to be computed for the purposes of the Incometax Act. It is a general principle, in the computation of the annual profits of a trade or business under the Income Tax Acts, that those elements of profit or gain, and those only, enter into the computation which are earned or ascertained in the year to which the enquiry refers; and in like manner, only those elements of loss or expense enter into the computation which are suffered or incurred during that year. The same principle, in our opinion, would be applicable to the facts of this case.

The decision of this Court in Commissioner of Income- tax, Bombay v. Ahmedbhai Umarbhai & Co., Bombay, 18 I.T.R. 472 related entirely to a different context where certain part of the activities occurred at Raichur and the sales took place in Bombay, the question was whether the activity which the assessee carried on at Raichur was part of their business within the meaning of the third proviso to section 5 of the Act, that the profits of a part of the business, the manufacturing of oil in their mills at Raichur, accused or arose at Raichur and that such profits were not assessa- ble to excess profits tax under the third proviso to Section 5 of the Act. That is not the controversy here.controversy is not so much where the profits arose nor is the controver- sy whether the profits arose during the chargeable account- ing period but where the profits arose during the 'account- ing period' and as such whether the deficiency of the prof- its not arising during 'counting period' but during the 'chargeable accounting period' could be set off without computation. The method of computation under section 7 of the Act must be on the basis of 'accounting period' and after that the deficiency in profits for that period should be computed on that basis and after set off carried forward to be set off during the chargeable accounting period. It is thus an harmonious construction of the different provisions of the Act is possible and the true excess profits, if any, as contemplated by the Act be deter- mined. The concept of 'accounting period' in the background of the 'chargeable accounting period' can thus be harmo- nised. The accounting period was 1st April, 1943 to 31st

March, 1944. In the facts of the case we are of the opinion that the question must be answered in the negative and in favour of the revenue. The appeal is allowed and the judg- ment and order of the High Court are set aside. In the facts and circumstances of the case, parties will pay and bear their own costs.

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A.P.J.                                                     Appeal
allowed.
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