Supreme Court of India
Standard Triumph Motor Co. Ltd vs Commissioner Of Income Tax, ... on 25 February, 1993
Equivalent citations: 1993 SCR (2) 96, 1993 SCC Supl. (3) 315
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
STANDARD TRIUMPH MOTOR CO. LTD.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, MADRAS

DATE OF JUDGMENT25/02/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
VENKATACHALA N. (J)

CITATION:
1993 SCR (2) 96 1993 SCC Supl. (3) 315
JT 1993 Supl. 46 1993 SCALE (1)699

ACT:
Income Tax Act 1961:
Sections 5(2) and 145-Non Resident Company and Indian Company--Collaboration agreement-Indian Company to apy royalty to non resident company on all sales-Royalty to be remitted to non resident in pounds Sterling-Royalty credited by Indian Company to non resident in its account books-Credit entries-Whether amount to receipt of income-whether non resident liable to method of accounting adopted-Whether relevant.

HEADNOTE:
The assessee-appellant in the appeal is a non resident company having its place of business at Coven" in the United Kingdom. It entered into a collaboration agreement with an Indian company in November, 1939 the assessee being entitled to royalty of 5% on all sales effected by the Indian Company, and this amount less the Indian tax had to be remitted by the assessee in Sterling currency. The assessee's accounting year was the year ending 30th September and with respect to its Indian income, it was filing its returns through the Indian Company. The aforesaid collaboration agreement expired in the year 1965, but it was renewed and the renewed agreement also expired in

November, 1970.

For the assessment years 1967-68 and 1968-69 the assessee riled returns in which it stated that it was maintaining its accounts on mercantile basis, and did not dispute its liability to assessment. In these returns, it disclosed a royalty income of Rs. 7,21,600 and Rs. 4,57,311 respectively. When it came to the filing of the return for the assessment year 1969-70 the assessee admitted a royalty of Rs. 9,25,357 but filed a nil return saying that it was maintaining its accounts on cash basis and not on mercantile basis, that no part of the royalty amount had been received by it and, therefore, nothing was taxable. For the next assessment year 1970-71 as well, the same stand was taken by the assessee.

The Income-Tax Officer completed the assessment for the first two

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assessment years on the basis of the returnes, but for the assessment years 1969-70 and 1970-71, he refused to accept the plea of the assessee; and held that the assessee maintaining its accounts on mercantile basis alone and that the royalty amount disclosed be brought to tax.

The assessee filed appeals against the assessments relating to all the four years, taking the stand that even with respect to the accounting year relevant to the assessment years 1967-68 and 1968-69, it had been maintaining accounts on cash basis and since it did not actually receive any income in all these 4 years no tax was payable. The Appellate Assistant Commissioner dismissed the appeals holding that the assessment orders for the past years reveal that the method of accounting was mercantile, that for the assessment year 1967-68, the assessee never contested its liability to be taxed on the amounts disclosed and further it was not open to the assessee to change the method of accounting to suit its convenience, without the approval of the Income Tax Officer.

The assessee carried the matter In further appeals to the Tribunal and contended that it was not following any particular method of accounting regularly in the past years that it was the Indian Company which was finally filing the returns of income on behalf of the assessee by incorporating the figures as per its profit and loss account, that the Indian Company was not aware of the assessee's system of accounting in regard to royalty and that, therefore, it had committed a mistake in filing the returns for the assessment years 1967-68 and 1968-69, that as soon as the mistake had been noticed, it was corrected and returns for the assessment year 1969-70 on correct basis showing that the method of account cash receipt basis was filed. 'Me appeals were allowed the Tribunal which held that as the assessee had not been following any particular method of accounting regularly over the past years, the question of the method of accounting adopted by the assessee must be examined afresh

and for that purpose remanded the matters to the Income Tax Officer.

On a reference made at the instance. of the Revenue, the High Court answered the reference in favour of revenue and against assessee. The High Court held that it was 'immaterial whether the assessee was keeping his accounts in regard to a particular income regularly on the cash basis; that even if the assessee was keeping his accounts on the cash basis in regard to his income the assessee was liable to tax under Section 5 (2) (a); to hold

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otherwise would be to take the income outside the purview of taxation under the Act, though such income had accrued in India to a non-resident, and under Section 5(2)(b) the charge to tax had taken effect; and, therefore, there is no possibility of Section 5(2)(b) ever coming into operation and that Section 145(1) cannot be given such an overriding effect so as to defeat the charge and the provisions of Section 5(2)(b).

The assessee appealed to this Court contending that so far as the royalty income was concerned, the assessee was maintaining its accounts at Coventry in the United Kingdom on receipt basis, that the accounting year was the year ending 30th September of each year, whereas the accounting year for the Indian Company was the Calendar year and that notwithstanding the stipulation in the collaboration agreement for half yearly remittances, the practice was that the Indian Company was determining the amount of royalty at the end of its accounting year and that this amount was credited to the account of the assessee in the account books of the Indian Company and that receipt is only when the amount is remitted to the United Kingdom in accordance with the Company.

Dismissing the appeals, this Court,

HELD: The collaboration agreement between the assessee and the Indian Company was as old as 1939. The assessee had been riling its income-tax return in India through the Indian Company. Though the collaboration agreement contemplated the royalty amount being remitted in Sterling Currency to U.K., it cannot be said that until it was so remitted to and received in the U.K., the assessee had not received the income. The practice evidently was that the Indian Company was maintaining an account pertaining to the assessee in its Books. After it made up its accounts at the end of the calender year and determined the royalty amount payable to the assessee, the Indian Company was crediting the said amount to the account of the assessee in its Books, and this was recorded as income by the assessee over all these years. The returns riled by the assessee even with respect to the assessment years 1967-68 and 1968-69 were based upon this premise. In the said returns, the assessee declared a particular amount of income and offered the same for taxation. It did not take the stand that the said

credit entry in the Books of the Indian Company did not give rise to income in India nor did it ever say that the receipt in U.K. in the shape of sterling pounds alone constitutes
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income or for that matter receipt of income. It can also be noticed that in its returns relating to the assessment years 1967-68 and 1968-69, the assessee stated that it was maintaining its accounts on mercantile basis, and that only in the returns relating to the assessment year 1968-69, did it raise the plea that it was maintaining its books, with respect to the said royalty amount, on cash receipt basis. [105E-H]

The receipt of the said income in the U.K., is immaterial. It may happen that a non-resident assessee may choose not to repatriate his income/profits to his parent country; he may choose to plough back the said amount in India for such purposes as he may choose. It, therefore, cannot be said in such a situation that he has not received the income in India. [106H]

Raghava Red& v. C.I.T, Andhra Pradesh, 44 I.T.R. 720; relied on.

[107A]

The credit entry to the account of the assessee in the Books of the Indian Company does amount to receipt by assessee and is accordingly taxable. It is immaterial when it was actually received in U.K. [108C]

The method of accounting adopted by the assessee for the relevant accounting years Is really irrelevant. Thi very concept of 'receipt" as espoused by the assessee is untenable and unacceptable. The order of remand made by the Tribunal was unnecessary. It is not necessary to express any opinion either on the question whether there is any conflict or inconsistency between Section 5(2) and Section 145 of the Act or on the view expressed by the High Court that in the case of a non-resident assessee like the appellant clause (a) of sub-section (2) of Section 5 has no application whatsoever and that Section 5(2)(b) governs it irrespective of the fact whether it maintains its accounts on cash basis or mercantile basis. The question referred did not really arise in the facts and circumstances of the case and need not have been answered. The Tribunal shall complete the assessments in question. [108D-F]

C.I. T. v. Machillan & Co., 33 I.T.R. 182 and Keshav Mills Ltd. v. C.I T., Bombay, 23 I.T.R. 230, distinguished. [108G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1022-24 & 423 of 1982.

From the Judgment and Order dated 14.3.78 & 2.7.79 of the Madras High Court in Tax Case Nos. 228/74 & 215 of 1975. Uttam Reddy, Atul Sharma, A.V. Palli and Ms. Reena Agarwal for E.C. Agrawala for the Appellant.

G. Vishwanatha, P. Parmeshwaran and Ms. A. Subhashini (NP) for the Respondent.

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J. These appeals are preferred by the assesagainst the judgment of the Madras High Court answering the Income Tax reference made at the instance of the Revenue, against the assessee. The assessment years concerned are 1967-68, 1968- 69, 1969-70 and 1.970-71. The question of law which was referred for the opinion of the High Court under Section 256(2) of the Income Tax Act is:

> "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the royalty amounts should be assessed on cash basis for 1967-68. 1968-69 and 1969-70 assessment if the books and balance sheet of such receipts were found to be maintained on cash basis and directing fresh assessment on such basis?"

In the paper-book supplied by the assessee-appellant the Statement of the Case is not available nor are the orders of any of the authorities supplied. We are, therefore, obliged to draw the facts from the judgment of the High Court which we presume are drawn from the Statement of the Case. As a matter of fact, the facts require to be appreciated clearly for a proper decision of the question arising herein. The assessee, Standard Triumph Motor Co. Ltd. is a non- resident company, having its place of business at Coventry in the United Kingdom. It entered into a collaboration agreement with the Standard Motor Products of India Ltd. (Indian Company) in November, 1939 whereunder the assessee was entitled to royalty of five per cent on all sales effected by the Indian Company. This amount of five per cent less the Indian tax had to be remitted to the assessee in the Sterling currency. The assessee's accounting year was the year ending 30th of September. With respect to its Indian income, it was filing its returns through the Indian Company.

The collaboration agreement between the assessee and the Indian Company expired in the year 1965. It was renewed. The renewed agreement too expired in November, 1970. For the assessment years 1967-68 (year ending 30.9.1966) and 196869 (year ending 30.9.1967) the assessee filed returns in which it stated that it was maintaining its accounts on mercantile basis. It did not dispute its liability to assessment. In these returns, it disclosed a royalty income of Rs. 1,600 and Rs. 4,57,311 respectively. When it came to filing of the return for the assessment year 1969-70 (year ending 30.9.1968), the assessee admitted a royalty of Rs. 9,25,257 but filed a nil return saving that it was maintaining its accounts on cash basis and not on mercantile basis, that no part of the royalty amount has been received by it and, therefore, nothing is taxable. For the next assessment year 1970-71 (year ending 30.9.1.969) as well, it took the same stand. The I.T.O. completed the assessment for the first two assessment years on the basis of the returns. For the assessment years 1969-70 and 1970- 71, however, he refused to accept the assessee's plea that it was maintaining its accounts on cash basis. He held that it was maintaining its accounts on mercantile basis alone and accordingly brought to tax the royalty amount disclosed. The assessee filed appeals against the

assessments relating to all the four years. In these appeals, it took the stand that even with respect to the accounting years relevant to the assessment years 1967-68 and 1968-69, it has been maintaining accounts on cash basis and since it did rot actually receive any income in all these four years, no tax is payable by it. Its case was that there was 'no actual payment' of the royalty by the Indian Company. It stated that though the Indian Company had credited to the assessee in its account books for the relevant years (accounting year for the Indian Company is stated to be the calendar year), the assessee did not actually receive the amount nor did it take credit for the said amounts in its Books at Coventry. The Appellate Assistant Commissioner dismissed the appeals holding that the assessment orders for the past years relating to the assessee reveal that the method of accounting was mercantile, that for the A.Y. 1967-68, the assessee did never contest its liability to be taxed on the amounts disclosed and further that it was not open to it to change the method of accounting to suit its convenience, without the approval of the Income Tax Officer. The assessee carried the matter in further appeals to the Tribunal.It was contended by the assessee before the Tribunal that it was not following any particular method of accounting regularly in the past years, that it was the Indian Company which was finally filing the returns of income on behalf of the assessee by incorporating the figures as per its profit and loss account, that the Indian Company was not aware of the assessee's system of accounting in regard to royalty and that, therefore, it had committed a mistake in filing the returns for the assessment years 1967-68 and 1968-69. The assessee submitted that as soon as it noticed that said mistake it corrected the same and filed the return for the assessment year 1969-70 on correct basis, showing that the method of accounting was cash receipt basis. The appeals were allowed by the Tribunal. The Tribunal held that the assessee had not been following any particular method of accounting regularly over the past years. For example, it said, for the assessment year 1963-64 it did not say anything regarding the method of accounting. For the assessment year 1.964-65, it said it was on cash basis. For the assessment years 1967-68 and 1968-69 it stated it was maintaining accounts on mercantile basis and again for the two subsequent years it stated as cash basis. The Tribunal was, therefore, of the opinion that the question of method of accounting adopted by the assessee must be examined afresh and for that purpose allowed the appeals and remanded the matters to the Income Tax Officer. The Tribunal gave liberty to the parties to adduce additional evidence in that behalf. It directed further that if it is found that the assessee was maintaining its accounts and balance sheets on cash basis in respect of the royalty it should be assessed on cash basis. On a Reference made at the instance of Revenue, the High Court answered the question in the negative, i.e., in favour of the revenue and against the assessee. It would be appropriate at this stage to notice the contentions urged by the assessee and how they were met by the High Court. Though the High Court has not set out the arguments of the assessee as such, the arguments advanced can easily be gleaned from the judgment. The assessee reiterated his contention that though the Indian Company made a credit entry in the account of the assessee in its Books, it did not actually receive the amount. The argument appears to be that the assessee can be said to have received the royalty amount only when it receives the same in U.K. in the shape of pounds and makes an entry to that effect in its own Books at Coventry. Since it is maintaining its accounts, with respect to the said royalty on cash basis, it argued, receipt means receipt in U.K. Section 145 was relied upon by the assessee to say that the method of accounting regularly adopted by an assessee is binding upon the department; on that basis it was argued that if the assessee is proved to have maintained its accounts with respect to royalty amount on cash basis, then there is no receipt until it is received by it in U.K. It is this argument which led the High Court to say that

acceptance of the said argument would mean escapement of income from taxation in India altogether. This is what the High Court said : "If the contention of the assessee that the royalty should be assessed to income-tax only on its actual receipt under Section 5(2)(a) of the Act on the ground that it maintains its accounts on cash basis is accepted, the income could not be taxed at all as it would be received in England and not in India. The assessee-company, a non-resident, receiving its income outside India could be assessed to tax only under Section 5(2) (b) of the Act on accrual basis. Section 5(2) (a) cannot be made applicable to such an assessee. In the case of a non-resident, to whom income accrues in India, Section 5(2)(a) will have no application. unless the non-resident receives income in India. On the facts of this case it is clear that eventuality will never arise in regard to the income with which were are concerned, because that income will have to be remitted to the nonresident by obtaining an irre-vocable letter of credit and will thus be received only outside India." Pursuing the said reasoning the High Court held further:

> "So it is clear that there can be cases of non-residents to whom section 5(2)(a) will never apply in regard to a particular income. The question then is, whether in such circumstances the assessee concerned (non- resident to whom income had accrued in India) can insist it, since )has kept his accounts in regard to that income on the cash basis, he is not liable to be taxed on the accrual basis.
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> In other words, the question is Sec 145(1) can be applied in such circumstances. The effect of applying the section would be to take the income outside the purview of taxation though the charge to tax on that income had taken effect on the accrual basis. Further, no occasion for imposing tax on receipt outside India would arise in the case of a non-resident, because Section 5(2)(a) will apply only to receipt in India. In such circumstances, to apply Section 145(1) would be to defeat the charge under Section 4 and to obliterate the provisions of section 5(2)(h) and let the income which is taxable escape Such a result is not certainly intended by the statute. Section 145(1) is only an enabling provision to effectuate the charge. The section cannot be used for destroying the charge to tax and the provisions of Sec. 5(2)(b), though by merely looking at the wording of Section 145(1) it may appear that in all cases the method of accounting must be followed, unless in any case where the accounts are correct, but the method is such that, in the opinion of the Income-Tax Officer, the income cannot properly be deduced therefrom.
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> But it must be remembered that Sec. 145 is only a machinery provision and cannot qualify the charging section so as to make the latter otioss. So Section 145(1) should not be permitted to be applied in such circumstances as those while arise from the facts of this case. it is therefore immaterial whether the assessee is keeping his accounts in regard to a particular income regularly on the cash basis. Even if the assessee is keeping his accounts on the cash basis in regard to his income, the assessee is liable to tax under Sec. 5(2)(b). To hold otherwise would be to take the income outside the purview of taxation under the Act, though such income had accrued in India to a nonresident and under Sec. 5(2)(b) the charge to tax had taken effect and there is no possibility of Sec. 5(2)(b) ever coming into operation. We

cannot give to Sec. 145(1) such an overriding effect as to defeat the charge and the provisions of Section 5(2)(b)."

In this court, the learned counsel for the assessee contended that so far as the royalty income is concerned, the assessee was maintaining its accounts at Coventry in the United Kingdom on receipt basis. Its accounting years was the year ending on 30th of September of each year whereas the accounting year of the Indian Company was the calendar year. Notwithstanding the stipulation in the collaboration agreement for half-yearly remittances, the practice was that the Indian Company was determining the amount of royalty at the end of its accounting year. This amount was credited to the account of the assessee in the account books of the Indian Company, but mere crediting to the account of the assessee in the Books of the Indian Company does not amount to receipt of income by the assessee. Receipt is only when the amount is remitted to United Kingdom in accordance with the agreement. Counsel submitted that the assessee was not maintaining any particular method of accounting regularly in respect of the said royalty amount and that the alleged statement in the returns relating to the assessment years 1967-68 and 1968- 69 to the effect that it was maintaining its accounts on mercantile basis, was an incorrect statement made by the Indian Company which was not aware of the true state of affairs relating to the assessee's accounts. The learned counsel submitted that all that the Tribunal has done is to direct an inquiry to find out the true state of affairs viz., whether the assessee was maintaining its accounts on mercantile basis or on cash receipt basis in so far as the royalty amount is concerned. He submitted further that since the Appellate Assistant Commissioner exercises all the powers of the assessing authority, it was perfectly open to the assessee to raise the contention relating to the method of accounting even with respect to the assessment years 1967-68 and 1968-69, in the appeals. When the assessee has not actually received any royalty income from the Indian Company, it is not expected to bring money from the United Kingdom for paying its taxes in India, the learned counsel contended. The collaboration agreement between the assessee and the Indian Company is as old as 1939. According to its own case, the assessee has been filing its income-tax returns in India through the Indian Company. It is true that the agreement contemplated royalty amount being remitted in Sterling currency to U.K., but it cannot be said that until it is so remitted to and received in the U.K., the assessee has not received the income. The practice evidently was that the Indian Company was maintaining an account pertaining to the assessee in its Books. After it made up its accounts at the end of the calendar year and determined the royalty amount payable to the assessee, the the Indian Company was crediting the said amount to the account of the assessee in its Books. This was treated as income by the assessee over all these years. The returns filed by the assessee even with respect to assessment years 1967-68 and 1968-69 were based upon the said premise. In the said returns, the assessee declared a particular amount of income and offered the same for taxation. It did not take the stand that the said credit entry in the Books of the Indian Company does not give rise to income in India nor did it ever say that the receipt in U.K. in the shape of Sterling pounds alone constitutes income or for that matter receipt of income. It may also be noticed that in its returns relating to the assessment years 1967-68 and 1968-69, the assessee stated that it was maintaining its accounts on mercantile basis. Only in the returns relating to the assessment year 1968-69, did it raise the plea that it was maintaining its books, with respect to the said royalty amount, on cash receipt basis. (The Tribunal appears to have stated that for the year 1964-65 too, the assessee had stated ,cash basis' but it is not clear for what purpose the said plea was raised. One thing is clear: the assessee did not say at any

time earlier to A.Y. 1968-69 that receipt of money in U.K. alone is receipt by it). It also took the rather strange plea that the Indian Company was not aware of the method of accounting adopted by the assessee and, therefore, it made the aforesaid incorrect statement in the returns relating to the years 1966-67 and 1967-68. This plea, the Appellant Assistant Commissioner refused to countenance. It is significant to notice that the assessee did not say that the method of accounting adopted by it for all its income was on cash basis. It confined the said plea to its Indian income alone. The said plea, it should be noticed, had no significance by itself. Its significance lies when we examine the said plea in the fight of the further contention of the assessee that it did not actually receive the amount from the Indian Company. We put a pointed question to the learned counsel for the assessee whether it was the assessee's case at any stage that the credit entry made in the account books of the Indian Company in favour of the assessee was a bogus or a mere make-believe entry. The counsel replied that it was not its case at any point of time. His contention was that the mere entry in the account books of the Indian Company does not amount to receipt of income by the assessee. The assessee had been very careful not to say that the Indian Company did not place the said amount at the disposal of the assessee. Indeed, he replied to a further question by us that even if the said amount were put by the Indian Company in a Bank to the credit of the assessee, it could not have been said that the assessee has received the amount. In other words, according to the learned counsel, the said royalty income can be said to have been received by the assessee only when it received the same in U.K. It is this extreme argument which led the High Court to make the observations quoted hereinbefore. It would immediately be evident that this was not the basis put forward by the assessee at any point of time till it to the filing of return for the assessment year 1969-70. We are not suggesting that it is estopped from doing so. We are only saying that the said plea was not and is not acceptable. The receipt of the said income in the U.K., in our opinion, is immaterial. It may happen that a non-resident assessee may choose not to repatriate his income/profits to his parent country; he may choose to plough back the said amount in India for such purposes as he may choose. It cannot be said in such a situation that he has not received the income in India. In Raghava Reddi v. CL T., Andhra Pradesh, 44 I.T.R. 720 the non-resident company instructed the assessee, in view of the difficulties in this country in remitting the monies abroad, to credit the amount due to it on account of commission in the account Books of the assessee awaiting further instructions regarding its remittance. The assessee was assessed as the statutory agent of the non-resident company. The I.T.O. assessed the amounts credited in the accounts of the assessee as the income of the non-resident company. The contention of the assessee was that mere entry in the Books of the assessee cannot amount to receipt and that the amounts cannot be assessed until they were actually paid over to the non-resident company or dealt with according to its directions. Rejecting the contention, it was held by this court that as soon as the monies were credited to the account of the non-resident (Japanese) com- pany, it must be held that it "received" the same and are taxable. Hidayatullah, J. speaking for the Constitution Bench observed:

> "This leaves over the question which was earnestly argued, namely, whether the amounts in the two account years can be said to be received by the Japanese company in the taxable territories. The argument is that the money was not actually received, but the assessee firm was a debtor in respect of that amount and unless the entry can be deemed to be a payment or receipt, clause (a) cannot apply. We need not

> consider the fiction, for it is not necessary to go to the fiction at all. The agreement, from which we have quoted the relevant term, provided that the Japanese company desired that the assessee firm should open an account in the name of the Japanese company in their books of account, credit the amounts in that account, and deal with those amounts according to the instructions of the Japanese company. Till the money was so credited, there might be a relation of debtor and creditor; but after the amounts were credited, the money was held by the assessee firm as a depositee. The money then belonged to the japanese company and was held for and on behalf of the company and was at its disposal. The character of the money changed from a debt to a deposit in much the same way as if it was credited in bank to the account of the company. Thus, the amount must be held, on the terms of the agreement, to have been received by the Japanese company, and this attracts the application of section 4(1)(a). Indeed, the Japanese company did dispose of a part of amounts by instructing the assessee firm that they be applied in a particular way. In our opinion, the High Court was right in answering the question against the assessee."

Applying the above principle, it must be held in this case that the credit entry to the account of the assessee in the Books of the Indian Company does amount to its receipt by assessee and is accordingly taxable and that it is immaterial when did it actually receive it in U.K. In this view of the matter, it must be held that in the circumstances of the case. the method of accounting adopted by the assessee for the relevant accounting years is really irrelevant. As explained hereinbefore, the very concept of "receipt" as espoused by the assessee is untenable and unacceptable. The order of remand made by the Tribunal was thus unnecessary. In the circumstances, we do not think it necessary to express any opinion on the question whether there is any conflict or inconsistency between Section 5(2) and Section 145 of the Act nor is it necessary to express ourselves on the view expressed by the High Court that in the case of a non-resident assessee like the petitioner clause (a) of sub-section (2) of Section 5 has no application whatsoever and that Section 5(2)(b) governs it irrespective of the fact whether it maintains its accounts on cash basis or mercantile basis. The question referred did not really arise in the facts and circumstances of the case and need not have been answered. The Tribunal shall complete the assessments in question in the light of this judgment.

In view of the above, it is unnecessary for us to deal with the decisions cited by the learned counsel for the assessee. The first decision cited by him is in C.I.T v. Macnzillan & Co., 33 I.T.R. 182 regarding the powers of the Appellate Authority. The second decision is in Keshav Mills Ltd. v. CL T., Bombay 23 I.T.R. 230. The principle of this decision does in no way support the principle contended for by the appellant.

The appeals accordingly fail and are dismissed. No costs. N.V.K.

Appeals dismissed.