

In our opinion the proper test to apply in this case is, was the payment made as a matter of practice which affected the quantum of salary or was there an expectation by the employee of getting a gratuity or was the sum of money expended on the ground of commercial expediency and in order indirectly to facilitate the carrying on of the business. But this has not been shown and therefore the amount claimed is not a deductible item under s. 10(2)(xv).

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

NEW BANK OF INDIA LTD.

v.

PEAREY LAL

(B. P. SINHA, C. J., J.L. KAPUR, M. HIDAYATULLAH,
J. C. SHAH and J. R. MUDHOLKAR, JJ.)

Bank—Money delivered by constituent—Special instruction to await direction for deposits—If held by the bank as trustee—Scheme for settlement of bank's liabilities sanctioned—Amount, if subject to it.

The respondent delivered certain sums of money to the appellant-bank at Lahore for transmission to Calcutta, with instructions to await his directions regarding the opening of accounts for keeping the money in fixed deposit in the Calcutta Branch of the bank which was proposed to be opened in the near future. The respondent did not however give any instruction for opening any account, fixed deposit or otherwise in regard to the amounts after they reached Calcutta. Within a few days after the opening of the Calcutta branch of the bank it ceased making payments and a moratorium for a limited period was declared under an ordinance issued by the Governor General restraining the bank from making payments to its depositors. After the expiry of the period of the moratorium the Calcutta branch of the bank raised objections to the respondent's application for withdrawal of the amount

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whereupon the respondent filed a suit in the Calcutta High Court for a decree for refund of the amount. During the pendency of the suit the High Court of East Punjab sanctioned a scheme under ss. 153 and 153A of the Indian Companies Act, 1913 for settlement of the liabilities of the Bank.

The courts below decreed the respondent's suit. On appeal by the bank by special leave, the questions which arose for decision were whether the bank was a trustee for transmission of the amounts to Calcutta and whether in the absence of any instruction for opening a fixed deposit account the bank was liable to refund the full amount or a reduced amount according to the scheme sanctioned by the Punjab High Court.

Held, that when a person dealing with a bank delivers money to the bank an intention to create a relation of creditor and debtor between him and the bank is presumed, but the presumption may be rebutted by proof of special instructions. When money is paid to a bank with special instructions to retain the same pending further instructions, a trust is created and the presumption which ordinarily arises by reason of payment of money to the bank is rebutted.

Held, further, that the money delivered by the Respondent remained in trust with the bank and was not held by it as a deposit subject to any scheme for the settlement of the liabilities of the bank sanctioned by the High Court under the Companies Act.

The Official Assignee, Madras v. Natesam Pillai, I.L.R. (1940) Mad. 845, *Arbuthnot v. D. Rajan Ayyar*, I.L.R. (1913) 36 Mad. 499 and *Farley v. Turner*, (1857) 26 L.J. Ch. 710, applied.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 398 of 1960.

Appeal by special leave from the judgment and decree dated June 23, 1959, of the Calcutta High Court in Appeal from Original Decree No. 50 of 1955.

Veda Vyasa, S. K. Kapur and B.P. Maheshwari, for the appellant.

K. L. Gosain and K. L. Mehta, for the respondent.

1961. December 20. The Judgment of the Court was delivered by

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SHAH, J.—Mr. Justice Bachawat of the High Court of Judicature at Calcutta decreed Suit No. 1039 of 1948 filed by one Pearey Lal—hereinafter called the plaintiff—for a decree for Rs. 1,35,000/- with interest against the New Bank of India Ltd. The appeal of the Bank against the decree was dismissed by a Division Bench of the High Court. With special leave the Bank has appealed to this Court.

The Bank had its registered office originally at Lahore but after the partition of India the office was transferred to Amritsar. The plaintiff who was a resident of Lahore had accounts with several banks including the New Bank of India Ltd. In view of the impending partition, the plaintiff was anxious to transfer his moveable property outside the territory it was apprehended would be included in Pakistan, and he gave instructions for transferring his accounts with the Bank to its other branches in India. He also paid an amount of Rs. 1,25,000/- on July 18, 1947, into the Bank at Lahore with instructions to transmit the same to Bank's branch at Calcutta which it then proposed to open in the near future. An amount of Rs. 10,000/- was also paid into the Bank at Lahore on July 19, 1947, with similar instructions. In respect of these two transactions the Bank executed receipts which are set out below :

“Received the sum of Rs. 1,25,000/- (Rs. One Lac & twenty five thousand) only from Mr. Pearey Lal on account of amount to be remitted to Calcutta branch for preparing various F.D. Receipts subject to his instructions on or after the opening date when he would call upon them personally.

Lahore	for the New Bank of India Ltd.
The 18th day of	Sd. Illegible
July, 1947.	Manager.”

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"Received the sum of Rs. 10,000/- (Rupees ten thousand) only through Mr. Pearey Lal for transmission to our Calcutta Office for making up various F.D. Receipts at his instance when he calls upon them personally on or after the opening date of the Branch.

Lahore for the New Bank of India Ltd.
19-7-47.

Sd. Illegible
Manager."

The two amounts were transmitted by the Bank to Calcutta. A branch of the Bank was opened at Calcutta on September 24, 1947, but within a few days thereafter the Bank ceased making payments. It appears that a moratorium for a limited period was declared under an Ordinance issued by the Governor-General restraining the Bank from making payments to its depositors. In December, 1947, after the expiry of the period of the moratorium the plaintiff applied to the Bank's branch at Calcutta for facility to withdraw the whole amount but the Calcutta Branch raised certain technical objections against such a course. On March 24, 1948 the plaintiff commenced an action against the Bank *inter alia* for a decree of Rs. 1,35,000/- in the Calcutta High Court on its original side. During the pendency of the suit the High Court of East Punjab sanctioned a scheme for arrangement under ss. 153 and 153A of the Indian Companies Act, 1913, for settlement of the liability of the Bank. By the first clause of the scheme the expression "deposit" was to include "Fixed Deposits, Bank's own Cash Certificates, Current Accounts, Deposits at Call, Savings Fund Accounts Amounts lying in Sundries or in any other kind of Credit Accounts, Bank Drafts, Cash Orders, and documents of the like nature and amounts due to Bankers over and above the value of Government Securities lying with them against

such depositors". It was directed by the scheme, as it finally emerged, that the depositors were to be paid 70½% of the deposits held by them and to be allotted shares of the face value of 5% of the deposits.

The plaintiff claimed by his suit that he had entrusted to the Bank at its registered office at Lahore Rs. 1,35,000/- on July 18 and 19, 1947, with instructions to transmit the same to the branch of the Bank which it proposed to open at Calcutta and to hold the amount subject to further instructions to be given by him when he would call personally at the branch at Calcutta on or after the opening date, that prior to the opening of the said Calcutta Branch the plaintiff countermanded his instructions on or about September 13, 1947 and demanded at Lahore that it be returned, but the Bank wrongfully claimed to have remitted the two sums to its Calcutta Branch and to have kept the same in a fixed deposit account in the name of the plaintiff, even though the plaintiff, had opened no such account at the Calcutta Branch and had given no instructions to put the same into any account by way of fixed deposit or otherwise. The plaintiff, accordingly, claimed that the Bank was a trustee for transmission of the amount and in the absence of any instructions given by him for opening a fixed deposit account; in respect of the amount transmitted the Bank stood *qua* the plaintiff in a fiduciary relation and was liable to refund the full amount. In substance, it was claimed by the plaintiff that the amount lying with the Bank at Calcutta was not a deposit within the meaning of the scheme and was not liable to any reduction.

The Bank submitted that the amount of Rs. 1,35,000/- was deposited by the plaintiff at its head office at Lahore for the purpose of opening a fixed deposit account in the name of the plaintiff upon the terms that the fixed deposit would carry

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interest as on the respective dates of the deposits, that it was agreed that the plaintiff would be allowed to take loans upto 90% of the deposit at a rate of interest of half percent. above the current fixed deposit rates and that the amount would be transmitted to the Calcutta Branch of the Bank for the purpose of crediting the same to the fixed deposit account of the plaintiff. The Bank denied the alleged instructions in September, 1947, countermanding the original arrangement and contended that the plaintiff was bound by the scheme of arrangement sanctioned by the High Court of East Punjab. The Bank offered to pay the amount due to the plaintiff under the scheme of arrangement and also to allot shares of the value of 5% in accordance with the scheme.

A decree on admission was passed against the Bank for Rs. 81,000/- and the suit was contested by the Bank for the balance of the claim.

The trial Court held that even though the plaintiff failed to prove the instructions in the month of September, 1947, set up by him countermanding transmission, it was established on the evidence, that the plaintiff had entrusted to the Bank Rs. 1,35,000/- for transmission and the plaintiff having given no further instructions, the Bank held the amount as trustee for the plaintiff and that the plaintiff's claim was not liable to be reduced under the scheme sanctioned by the High Court of East Punjab. The Court also negatived the plea of the Bank that the amount of Rs. 1,35,000/- was deposited with the Bank at Lahore for opening a fixed deposit account subject to the conditions which the Bank set up. The finding of the trial Court were confirmed, in appeal, by a Division Bench of the High Court at Calcutta.

The facts found proved, according to the findings of the trial Court and confirmed by the

High Court are therefore that the plaintiff delivered an amount of Rs. 1,25,000/- on July 18, 1947, and Rs. 10,000/- on July 19, 1947, to the Bank at Lahore for transmission to Calcutta, with instructions to await the directions of the plaintiff regarding the opening of accounts for keeping the same in fixed deposit or otherwise in the Calcutta Branch of the Bank, and the plaintiff never gave instructions for opening any account, fixed deposit or otherwise, in regard to the amounts after they reached Calcutta.

Delivery of the amount for transmission to the Bank created *ex facie* a relationship of a fiduciary character. But counsel for the Bank contends that when the amount was handed over at Lahore to the Bank by the plaintiff who was an old constituent of the Bank it must be presumed that a relationship of debtor and creditor arose and by the addition of instructions for transmission of the amount to another branch the relationship of trustee and cestuique-trust did not arise. He submitted that the contention that the relation between the plaintiff and the Bank was of creditor and debtor was supported by three important circumstances: (1) that the Bank agreed to pay interest on the amount delivered by the plaintiff; (2) that the Bank charged no commission or remuneration for transmission of the amount and (3) that even on the plaintiff's case the amount was to be utilized for opening fixed deposit accounts at Calcutta. It is true that in the absence of other evidence a person paying money into a Bank, whether he is a constituent of the Bank or not, may be presumed to have paid the money to be held as bankers ordinarily hold the moneys of their constituents. If no specific instructions are given at the time of payment or thereafter, and even if the money is held in a suspense account the bank does not thereby become a trustee for the amount paid. In other words, when a person dealing with

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a bank delivers money to the Bank an intention to create a relation of creditor and debtor between him and the Bank is presumed, it being the normal course of the business of the Bank to accept deposits from its customers. But this presumption is one of fact arising from the nature of the business carried on by the Bank and is rebutted by proof of special instructions, or circumstances attending the transaction. Where the money is paid to a bank with special instructions to retain the same pending further instructions (*The Official Assignee, Madras v. Natesam Pillai* ⁽¹⁾), or to pay over the same to another person who has no banking account with the bank and the bank accepts the instructions and holds the money pending instructions from that other person (*Arbuthnot & Co. v. D. Rajam Ayyar* ⁽²⁾), or where instructions are given by a customer to his banker that a part of the amount lying in his account be forwarded to another bank to meet a bill to become due and payable by him and the amount is sent by the banker as directed (*Farley v. Turner* ⁽³⁾), a trust results and the presumption which ordinarily arises by reason of payment of the money to the bank is rebutted.

It is not necessary in this appeal to consider whether because of an agreement to pay interest the relationship may be deemed to be of debtor and creditor, because it was held by both the courts below that no such agreement is proved, and according to the settled practice of this court the finding is regarded as binding.

The Bank charged no commission or remuneration for transmitting the amount to Calcutta, but that, in our judgment, is a circumstance which permits of no inference against the plaintiff. Undoubtedly, when the amount was delivered to the Bank by the plaintiff it was his intention to open fixed deposit account in Calcutta with the

(1) 1 I. L. R. (1940) Mad. 845.

(2) 1 I. L. R. (1913) 36 Mad. 499.

(3) [1857] 26 L. J. Ch. 710.

Bank's branch but the fixed deposit accounts were to be opened after instructions were received.

The transaction, as evidenced by the two receipts, was primarily one of entrustment of the amount to the Bank for transmission to Calcutta. After the purpose for which the moneys were entrusted was carried out, in the absence of further instructions the defendant did not cease to be a trustee. So long as instructions were not given by the plaintiff for appropriation of the amounts the Bank continued to hold the amounts transmitted for and on behalf of the plaintiff and there is no evidence that the plaintiff gave instructions or acquiesced in the opening of a fixed deposit account after the same reached Calcutta. It is immaterial that the Bank purported to open fixed deposit account in the name of the plaintiff with the amounts received at its head office at Lahore. That course of action was adopted without the consent of the plaintiff and it could not bind the plaintiff. The High Court was, therefore, right in holding that the amount delivered by the plaintiff to the Bank at Lahore remained in trust even after it reached Calcutta, and it was not held by the Bank, in deposit for the plaintiff within the meaning of the scheme sanctioned by the High Court of East Punjab.

In that view of the case the appeal fails and is dismissed with costs.

Appeal dismissed.

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