A

SHRI AMBICA MILLS LTD. NO. 1

v.

THE TEXTILE LABOUR ASSOCIATION, AHMEDABAD, AND VICE VERSA

December 20, 1972

B [A. ALAGIRISWAMI, I. D. DUA AND C. A. VAIDIALINGAM, JJ.]

Payment of Bonus Act 1965, *Second Schedule Item* 6(*g*)—*Allowable deductions under—'Subsidy' meaning of—Cash payments by way of assistance are subsidy—Indirect assistance like Customs Drawback and relate on Railway Freight is not 'Subsidy'—Subsidy to be allowable under Item* 6(*g*) *must be by Govt. body or Body Corporate established by* C *any law for the time being in force—Distinction between Body Corporate established 'by' law and 'under' under law—Payment received for earlier year must be deemed to be income of year of receipt especially when accounts maintained on cash basis.*

There was a dispute between the appellant mills and their workmen as to the bonus payable for the year 1967. The dispute was referred to the Industrial Court, Gujarat under s. 73-A of the Bombay Industrial D Relations Act, 1946. The workmen claimed *inter alia* that bonus should be paid at the rate of 6.59% of the annual earnings. The Mills on the other hand contended that bonus was payable only at the minimum rate of 4%. The Mills in calculating the available surplus claimed deductions of certain items falling under item 6(g) of the Second Schedule of the Payment of Bonus Act 1965, as subsidies. The dispute centred round the meaning of the word 'subsidy' in item 6(g) of the Second Schedule to the Payment of Bonus Act. Another E incidental question was whether the Joint Plant Committee or the Indian Cotton Mills Federation was a 'Body Corporate established by any law for the time being in force'.

HELD : (i) The Industrial Court was right in holding (a) that the word 'Subsidy' cannot be confined only to those cases where cash payment is made by Government in order that an industry may survive, (b) that even if assistance is given by way of an incentive it would F not cease to be a subsidy provided it is a cash payment given by way of assistance and (c) that certain types of assistance particularly those which are only indirect like rebates etc. should be excluded. [127D]

Whether the grant is made to a single establishment or it is granted on certain terms which make it available to all persons and establishments carrying on the same industry does not make any difference in principle. The subsidy is received by the concern or establishment G carrying on that industry or activity. [129E-F]

In view of the clear provision in item 6(g) for subsidy being deducted it was not open to the Court to consider whether it was proper to deduct the subsidy from the allocable surplus. But the word 'Subsidy' should be restricted to the narrowest possible limits and should take in only direct cash subsidies as contemplated under item 6(g). It cannot H cover indirect assistance like Customs Drawback or rebate on railway freights. [130A-C]

The mere fact that the full excise duty and railway freight is paid in the first instance and part of it is later refunded should not make

any difference to the ultimate fact that what is paid by the management is only concessional excise duty and concessional freight. [130F] A

Sona Valley Portland Cement Co. v. *The Workmen,* [1972] L.L.J. 642 and *Bengal Textiles Association* v. *I.T. Commr.* 1960 A.I.R. 1320, referred to.

Accordingly, while item 1 claimed by the appellant Mills *i.e.* the subsidy paid by the Government should be deemed to be a permissible deduction, items 3 & 4 were not permissible deductions. B

(ii)(a) The Joint Plant Committee is certainly not a Government Body. It seems to be more or less functioning on an informal basis. It does not seem to have any statutory powers. The decision of the Industrial Court that the cash paid by the Body is a deductible item could not be upheld. Item 2 claimed by the appellant Mills was therefore not a permissible deduction. [133C-D]

(b) Item 5 claimed by the Company was also not an allowable deduction because the Indian Cotton Mills Federation which made the cash payment in this case was not a Body Corporate established by any law for the time being in force. The contention that the words 'body corporate established by any law' should be deemed to include even a body corporate established under any law *i.e.* even a company, could not be accepted. [133G] C

Majoor Sahkari Bank Ltd. v. *M. N. Jujumdar & Anr.* 1955 2 L.L.J. 755 applied. D

(iii) The amount of Rs. 6873 due for the year 1966 but received (under item 1) in 1967 should also be deemed to be income for the year 1967.

Consolidated Coffee Estate Ltd. v. *Workmen,* 1970 2 L.L.J. 576 relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2083 and 2084 of 1969. E

Appeals by special leave from the Award Part-I dated August 13, 1969 of the Industrial Court, Gujarat in Ref. (IC) No. 110 of 1968.

Civil Appeal Nos. 1259 and 1260 of 1970.

Appeals by special leave from the Award Part II dated August 28, 30, 1969 of the Industrial Court Gujarat Ahmedabad in Ref. (IC) No. 110 of 1968. F

S. V. Gupte, Bhuvanesh Kumari, O. C. Mathur, J. B. Dadachanji and *Ravinder Narain* for the appellant. (in C.As. Nos. 2083 & 2084/69) & for respondent (in C.As. Nos. 1259 & 1260 of 70). G

V. M. Tarkunde, K. L. Hathi and *P. C. Kapur* for the respondent (in C.As. Nos. 2083 & 2084/69) & for the appellant (in C.As. Nos. 1269 & 1260/70).

The Judgment of the Court was delivered by

ALAGIRISWAMI, J. Civil appeals Nos. 2083 and 2084 of 1969 are by the Management, Shri Ambica Mills Ltd No. 1, against the Award Part I dated 13th August, 1969 and Part II dated 28th August, 1969, respectively of the Industrial Court, Gujarat in Reference IC No. 110 of 1968. Civil appeals Nos. H

A 1259 and 1260 of 1970 are by the Textile Labour Association, Ahmedabad, representing the workmen against the same award.

Shri Ambica Mills Ltd., Ahmedabad, is a public limited company owning three textile units, *viz.*, Shri Ambica Mills Ltd. No. 1 and No. 2 at Ahmedabad, Shri Ambica Mills Ltd. No. 3 B at Baroda and two engineering units, *viz.*, Shri Ambica Tubes at Vata, and Shri Ambica Machinery Manufacturers in the premises of Shri Ambica Mills Ltd. No. 1 at Ahmedabad. The last unit, *i.e.*, Ambica Machinery Manufacturers came into existence in the beginning of the year 1967. Shri Ambica Mills Ltd. 2 and 3 have entered into an agreement to pay bonus on the C lines of Shri Ambica Mills Ltd. No. 1, Ahmedabad. All the aforesaid undertakings have been treated as parts of the same establishment, namely, Shri Ambica Mills Ltd., for the purpose of computation of bonus.

The dispute relates to the payment of bonus for the year D 1967. The demand for the payment of bonus for the year 1967 was raised as a result of notice of change given by the Textile Labour Association (hereinafter referred to as the Association) on 15-7-1968. The appellant mills did not agree to the payment of bonus as demanded and conciliation proceedings having failed, the dispute was referred under Section 73-A of the Bombay Industrial Relations Act, 1946. The Association requested the E Mills Company to furnish the information regarding the computation of gross profits as well as allocable surplus to enable the Association to calculate the bonus for the year 1967. The Mills Company supplied the said information, but it also claimed certain deductions from the gross profit for calculating the allocable surplus.

F

In the statement of claim filed by the Association it was submitted that—

(a) The Mills Company should be directed to pay bonus at the rate of 6.59% of the annual earnings.

G (b) The said amount should be directed to be paid with interest at the prevailing rate.

(c) The Hon'ble Court may be pleased to grant any other further relief as it may deem fit.

The deductions claimed by the mills in calculating the available surplus were of certain items falling under item 6(g) of the H Second Schedule of the payment of Bonus Act, 1965, as subsidies. It was contended that only 4% bonus *i.e.*, the minimum bonus was payable.

The Association accepted the facts and figures furnished by the Mills Company and the dispute only related to the matter of deduction in respect of an amount of Rs. 32,42,945/- and whether the whole or any part thereof was subsidy or not.

The amounts claimed as subsidies consisted of the following five different items :—

(1) Rs. 8,63,194/-

Cash subsidy on export of steel pipes and tubes received from Joint Chief Controller of Imports and Exports, Bombay.

(2) Rs. 4,25,233/-

Cash by way of steel entitlement received from the Joint Plant Committee, Calcutta.

(3) Rs. 9,33,213/-

Cash by way of Customs Drawback realisation on certain types of pipes received from the Collector of Customs, Bombay.

(4) Rs. 71,754/-

Cash by way of Railway Freight Rebate paid by the Chief Commercial Superintendent, Western Railway, Bombay.

(5) Rs. 9,49,551/-

Export incentive on the cotton textile goods exported received from the Indian Cotton Mills Federation, Bombay.

Out of this total amount, an amount of Rs. 9,72,986/- relates to past years *i.e.*, the year 1965 and 1966, and, according to the Mills Company that cannot, in any event, be treated as income for the accounting year 1967 to which the dispute relates.

The Industrial Court held that the Mills Company was entitled to deduct the first two items *i.e.*, cash assistance from Jt. Chief Controller of Imports & Exports, Bombay, being Rs. 8,63,194 and cash payment by way of steel entitlement being Rs. 4,25,233 but not items Nos. 3, 4 and 5. It further directed the parties to file fresh calculation on the basis of its directions in Award Part I.

On the basis of the above directions the Association filed the calculations reserving its right to appeal. The Mills Company also submitted fresh calculations. Based on these calculations the Industrial Court made an award directing the Mills Company

A to pay 4.53% of wages as bonus to all its employees in the 3 textile units and 2 engineering units.

The dispute thus centres round the meaning of the word 'Subsidy' found in item 6(g) of the Second Schedule to the Payment of Bonus Act. Another incidental question is whether the B Joint Plant Committee or the Indian Cotton Mills Federation is a "Body Corporate established by any law for the time being in force".

The word 'Subsidy' is not defined in the Act. The Industrial Court took into consideration the meanings of the word 'Subsidy' given in the (i) Webster's New World Dictionary, 1962, (ii) C Shorter Oxford English Dictionary, Vol. II, Third Edition, (iii) Chambers Twentieth Century Dictionary, Revised Edition, and (iv) The Reader's Digest Great Encydopaedic Dictionary, Vol. II (M-Z), and came to the conclusion that the word 'subsidy' cannot be confined only to those cases where cash payment is made by Government in order that an industry may survive, that even D if assistance is given by way of an incentive it would not cease to be a subsidy provided it is a cash payment given by way of assistance and that certain types of assistance particularly those which are only indirect like rebates etc. should be excluded.

We find ourselves in agreement with this view. The various definitions given in the dictionaries in so far as they are relevant, E are as follows :

Webster's New World Dictionary, 1962

> "... a grant of money, specifically (a) ... (b) a government grant to a private enterprise considered of benefit to the public."

F *Shorter Oxford English Dictionary*

> "Help, aid, assistance N. Financial aid furnished by a state or a public corporation in furthering of an undertaking or the upkeep of a thing...."

G *Chambers Twentieth Century Dictionary, Revised Edn.*

> "Assistance and in money ... a grant of public money in aid of some enterprise, industry etc., or to keep down the price of a commodity..."

The Reader's Digest Great Encyclopaedic Dictionary, H *Vol. II (M-Z)*

> "2. Financial aid given by government towards expenses of an undertaking or institution held to

> be of public utility; money paid by government to producers of a commodity so that it can be sold to consumers at a low price..."

In addition our attention has been drawn to the definition given in 'Words and Phrases, Permanent Edition, Col. 40" where subsidy is described as follows :

> "A subsidy is a grant of funds or property from a government as of the state or municipal corporation to a private person or company to assist to the establishment or support of an enterprise deemed advantageous to the public; a subvention." Reference is made to 60 Corpus Juris.

Corpus Juris Secundum, Vol. 83, page 760 gives the following under the heading of Subsidy :

> "Something, usually money, donated or given or appropriated by the government through its proper agencies; a grant of funds or property from a government, as of the state or a municipal corporation, to a private person or company to assist in the establishment or support of an enterprise deemed advantageous to the public; a subvention.
>
> Pecuniary premiums offered by the government to persons enlisting in the public service, or engaging in particular industries, or performing specified services for the public benefit are treated in Bounties."

The emphasis in every one of these definitions is on something given or donated; indirect assistance is not mentioned.

Before we proceed further, it may be necessary to refer to the history regarding the place of "subsidy" in the payment of bonus. Under what is known as the "Full Bench" formula, subsidy will not be a proper deduction in calculating the surplus available for payment of bonus. There is no reason on principle why subsidies should be kept out of account in calculating the available sum for payment of bonus. The Bonus Commission in its report did not recommend subsidy as a deductible item. Schedule 2 to the Bonus Act is really a copy of the schedule found at page 30-40 of the Commission's report, with the single addition of item (g) after item 6(f) found in the Commission's report. Even the dissenting minute to that report did not recommend that subsidy should be a deductible item; but then the dissenting minute was on a completely different basis from that of the main report.

A After the report of the Commission, the legislation regarding bonus took the form of a Bonus Ordinance where for the first time we come across item 6(g) in Schedule 2. The Resolution of the Government of India which considered the recommendations of the Commission's report and accepted it subject to certain modifications, for the first time referred to subsidies. The B particular sentence is as follows :

> "(ii) ....
> Further, subsidies paid by Government to certain concerns like the Hindustan Shipyard should not be taken into account in working out the gross profits for the purpose of payment of bonus."

C The Press Note issued by the Government regarding the Ordinance also contained a similar statement. On the basis of these two statements and on the basis of an extract from Kothari's "Economic Guide and Investors' Handbook of India" where this subsidy to the Hindustan Ship Yard, which was originally called the Scindia Steam Navigation Co., has been described, it had D been argued before the Industrial Court, and the same argument was repeated before this Court, that the subsidy contemplated under item 6(g) can only be a subsidy to a particular concern or establishment. We consider this argument as fallacious. The reference to the Hindustan Shipyard is merely illustrative. The argument based on this that only grants to particular establish- E ments as such and not grants to any activity which any establishment can carry on should be called a subsidy, is a far-fetched one. Whether the grant is made to a single establishment or it is granted on certain terms which make it available to all persons or establishments carrying on the same industry does not make any difference in principle. The subsidy is received by the con- F cern or establishment carrying on that industry or activity.

On the other hand we realize the force of the argument advanced on behalf of Labour that a grant, even a cash subsidy, made in respect of the export of some commodity or other, as in the present case, is related to the commodity itself, towards the production of which both labour and capital have contributed G and, therefore, any part of the income received in respect of that activity should not be deducted in calculating the available surplus, and that it would be unfair to labour to do so. The force of this argument was appreciated and acceded to even by Shri Gupta appearing on behalf of the Management. His sole point was that but for the introduction of item 6(g) in the Second H Schedule to the Bonus Act it would not be open to him to contend that subsidy should be deducted from the allocable surplus for the purpose of payment of bonus. But he contended, the Act itself having made the provision for subsidy being deducted

it is not open to this Court to consider whether it was proper to deduct the subsidy from the allocable surplus. He argued that if subsidy should not be so deductible the remedy lay elsewhere and that it was with the Legislature and while it would be perfectly legitimate for this Court to recommend that the deduction of subsidy should not be permitted, the subsidy must be deducted as long as the statute stands as it is. We appreciate the reasonableness of the stand. But we consider that the word 'subsidy' should be restricted to the narrowest possible limits and should take in only direct cash subsidies as contemplated under item 6(g). It cannot cover indirect assistance like Customs Drawback or rebate on railway freight.

It was contended that an assistance is an assistance whether it is direct or indirect and the drawback of Central Excise and the rebate on railway freight are indirect assistance towards export, and they should also be deemed to be subsidy. As pointed out earlier the overwhelming view of the meaning of the term "subsidy" is direct payment and not indirect assistance. Furthermore, if instead of allowing a drawback in Central Excise and a rebate on railway freight the scheme of assistance had been on the basis that goods exported will pay only half the Central Excise Duty and half the usual railway freight, this argument will not be available to the Management. In that case there would have been no repayment to the Management of part of the Central Excise Duty and part of the railway freight paid by it and it could not have been claimed as a cash receipt. The whole of the Excise Duty and the railway freight originally paid has been included as an item of expense, thus reducing the surplus and when part of it is received back it does not stand to reason that it should not go towards reduction of the expenses and consequently increasing the surplus. The mere fact that the full excise duty and railway freight is paid in the first instance and part of it is later refunded should not make any difference to the ultimate fact that what is paid by the management is only concessional excise duty and concessional railway freight and but for the mode adopted of collecting the full excise duty and full railway freight in the first instance and refunding part of it later, neither the sums nor the argument would be available to the management. We are, therefore, quite clear in our mind that the drawback of Central Excise and rebate on Railway freight should not be deemed to be a subsidy for the purposes of this Act. The term subsidy cannot cover concessional rates of excise duty and freight but only cash payments.

We may, perhaps, refer in this connection to certain decisions relied on by the both sides. In *Sone Valley Portland Cement Co.*

A v *The Workmen*(1) this Court held that apart from legislation an incentive bonus for increase of production, irrespective of the question as to whether the industry was making profit or not is one that must be introduced by the particular unit of industry, and it would be for the management to fix what incentives should be given to different departments to step up production. It was B further held that an Industrial Tribunal would not be justified in holding that merely because there has been augmentation in the production labour would be entitled to make a claim to bonus because of such increase, and that labour would undoubtedly be entitled to revision of wage scales, dearness allowance and other terms and conditions of service as also profit bonus. This deci- C sion is not, therefore, an authority for the proposition that a subsidy intended to encourage export could not be taken into account for the purpose of calculating the allocable surplus. This decision itself proceeds on the basis that in calculating the profit bonus such amounts would have to be taken into account. All that was held was that the amount paid as subsidy by itself could D not be considered to be one in which labour would be entitled to share.

The decision of this Court in *Bengal Textiles Association* v. *I. T. Commr.*(2) though it had to consider the meaning of the word 'subsidy' occurring in the Business Profits Tax Act 1947, would not be relevant for deciding the question at issue. In that E case it was held that the use of the word 'bonus' or 'subsidy' connotes that the payment is in the nature of a gift, and as the payments in that case were made by the Government to an association to assist it in carrying on its business and for the services it was rendering to Government, the payments were not in the nature of a gift. This decision was relied on by Mr. Tarkunde as F supporting his argument that a payment made for a service rendered cannot be deemed to be a subsidy. That is no doubt so, but in the present case there is no question of any service rendered by the management to the Government. The mere fact that the Government is interested in encouraging exports and, therefore, offers many incentives for export, of which any manu- G facturer could take advantage, does not mean that any such manufacturer is rendering any service to Government. These are schemes intended by the Government for the benefit of the country and, therefore, any person would be entitled to take advantage of that scheme and be entitled to subsidy or assistance promised by the Government. Such payments do not become either payments for service rendered or cease to be subsidy merely on the H ground that any number of persons coming under that category would be entitled to that benefit or payment.

(1) [1972] L.L.J. 642. (2) A.I.R. 1960 S.C. 1320.

It was argued by Mr. Tarkunde that if a manufacturer takes it into his head to export all the products that he had manufactured it would mean that all his receipts would be in the form of subsidy, drawback on Central Excise and rebate on railway freight, and if all these items are to be deducted from the profits there will be nothing available for distribution as bonus and that it will be unfair to labour to deprive it of its share of the income from products towards the production of which it has made its own contribution. Notionally that is possible but in actual practice that is hardly likely. But it does not, however, take away the force of the argument that the deduction of subsidies from the total income would be unfair to labour in the matter of payment of bonus. As we have already pointed out the remedy lies with the Legislature. What prompted the Government to include item 6(g) in the Second Schedule to the Bonus Act we have no way of knowing.

We thus come to the conclusion that only direct cash payments should be deemed to be subsidies and not indirect receipts in the form of drawn up of part of the Excise Duty and rebate on railway freight, which are in reality not subsidies but concessional rate of Excise Duty and railway freight. This means that item 1, *i.e.*, the subsidy paid decree by the Government should be deemed to be a permissible deduction but not items 3 and 4.

This leaves the question regarding items 2 and 5 for consideration. Both these items are, of course, cases of cash payment, but only if they are payments by the Government or a Body Corporate established by any law for the time being in force they would be permissible deductions.

As regards the Joint Plant Committee the Industrial Court merely said that it appears to be a Government Body, and at another place that it appears to be a Body constituted by the Government. A body constituted by the Government is not necessarily a Government body. We find from the brochure issued by the Joint Plant Committee regarding Indenting Procedure and General Conditions of Sale for Iron and Steel, that it was constituted by the Central Government in exercise of the powers conferred by Clause 17 of the Iron and Steel (Control) Order 1956 to take over the functions previously performed by the Iron and Steel Controller in regard to planning and distribution of indents and rolling programmes. It consisted of Iron and Steel Controller as Chairman and one representative of each of the main steel plants, the Tata Iron & Steel Co. Ltd., the Indian Iron & Steel Co. Ltd., Hindustan Steel Ltd., Rourkela, Hindustan Steel Limited, Bhilai, Hindustan Steel Ltd., Durgapur, and a representative of the Railway Ministry. This was the result of the

decision to abolish over-all statutory control over the prices of the bulk of steel production and the decision to entrust freight equalisation to the Joint Plant Committee. Clause 17 of the Iron and Steel (Control) Order 1956 is as follows :

> "17. *Power of Central Government to give directions.*—The Central Government may give directions as to the procedure to be followed by the authorities issuing quota certificates, permits or written orders, referred to in Clause 4 and 5, as to the maintenance by the Controller of records in connection with the distribution of iron or steel and generally for the purpose of giving effect to the provisions of this part."

From these provisions it does not appear how exactly the funds of the Joint Plant Committee are obtained and why or how the Joint Plant Committee makes the payments of the kind in question. This is certainly not a Government Body. It seems to be more or less functioning on an informal basis. It does not seem to have any statutory powers. The decision of the Industrial Court that the cash paid by this Body is a deductible items cannot, therefore, be upheld.

As regards the payment made by the Indian Cotton Mills Federation, it appears that the payment is made out of a fund collected by it at the rate of Rs. 200/- per bale of imported cotton. It means, therefore, that when payments are made out of this fund the mill receiving that payment is in fact getting back either the whole or a substantial part of what it has already paid, when it purchased imported cotton. That apart, this Federation cannot be said to be a Body Corporate established by any law for the time being in force. It may be a Body Corporate established under the Companies Act because it is registered under the Companies Act. The Payment of Bonus Act, Section 2(9) defines a company as follows :

> "(9) 'company' means any company as defined in section 3 of the Companies Act, 1956, and includes a foreign company within the meaning of sec. 591 of that Act;"

A corporation is defined in section 2(11) as "any body corporate established by or under any Central, Provisional or State Act but does not include a company or a co-operative society". Now it will be noticed that the definition of the term 'corporation' takes in bodies corporate established by law as well as bodies corporate established under any law. It cannot, therefore, be said that when item 6(g) in the Second Schedule uses the words 'body corporate established by any law' it was not conscious of the distinction between a body corporate established by law and a body corporate established under any law. This distinction has also been

noticed in the decision of the High Court of Bombay in *Majoor Sahkari Bank Ltd.* v. *M. N. Majumdar & Anr.*(1) In discussing this question the learned Judges said :

> "But what, in our opinion, the notification contemplates is not incorporation under any law but by an Indian law, which means that a special law should incorporate the particular company or association. For instance we have a Reserve Bank of India; we had an Imperial Bank of India; we have now State Banks. The Act itself incorporates the bank, association or society. And the language used is clear. It is not "incorporated under an Indian law"; it is "incorporated by an Indian law". But what appears to us to be fairly clear in the first part of the notification and when we look at that it applies to the business of banking companies registered under any of the enactments relating to companies for the time being in force. Now the object obviously was to apply this notification not to associations of less than 10 persons who were doing business of banking and who could not be incorporated but to confine the operation of this notification to ten persons or more who could be, and would have to be registered, either under the Indian Companies Act or some other Act relating to companies."

It was argued by Mr. Gupte that under the Act bonus is payable by a "corporation" as well as a "company" and, therefore, the words 'body corporate established by any law' should be deemed to include even a body corporate established under any law *i.e.*, even a company. But it appears to us that the words 'body corporate established by any law' have been deliberately used. While all companies and corporations, as defined in the Act are liable to pay bonus, the intention seems to be that only subsidies paid by body corporate established by any law, should be deductible items and not subsidies paid by bodies corporate established under any law. The above decision of the Bombay High Court referred to the Reserve Bank of India, Imperial Bank of India and State Banks. There are bodies corporate established by law like the Rubber Board, Coffee Board etc., which grant subsidies for replantation, rehabilitation etc. The idea apparently in referring to a body corporate established by any law was that when bodies corporate are established by any law for the specific purpose of encouraging any industry and they grant subsidies, such subsidies alone should be taken into account. We are of the opinion, therefore, that item 5 also is not a deductible item.

(1) [1955] 2 L.L.J. 755.

A This leaves for decision the question whether the sum of Rs. 9,72,986 which relates to amounts received in the year 1967 but relate to earlier years, can also be deducted or not. In the view that we have taken that only item 1 is a deductible item, the amount involved is a small one of Rs. 6,873 due for the year 1966 but received in the year 1967. We are not able to agree B with the contention on behalf of labour that as the whole of the sum of Rs. 32.43 lacs has been shown as item of income in the profit and loss account of the mills the management cannot now contend that any part of it cannot be deducted and that the whole of the amount should be held to be profit available for calculating the bonus. All that section 23 of the Act provides is for pre- C sumption of the accuracies of the balance sheet and profits and loss account of corporations and companies. The correctness has been accepted by both the parties. But whether any part of that amount should be held to fall under item 6(g) of the Second Schedule to the Act cannot be decided on the basis that it is shown as an income in the profit and loss account or the balance D sheet. There is no question of estoppel here. All the same we have no doubt that amounts due for earlier years received in 1967 should also be deemed to be income for the year 1967. Otherwise it means that such sums would not have been taken into account in the years for which they were due as also in the years when they were received. Moreover, the accounts in this case have been maintained on a cash basis and, therefore, the amounts E received in the year 1967 should be deemed to be the income of that year though due in respect of an earlier year. We may also refer to the decision in *Consolidated Coffee Estate Ltd.* v. *Workmen*(1) where it was held that even though the company had been paying bonus in the past by negotiating with its employees, if it insisted that for the year in question it would pay in accord- F ance with the relevant law it could not be prevented from having its liability for bonus determined accordingly.

In the result the appeals of the Mills Company are dismissed. The appeals of the Association are allowed in part holding that item 2, *i.e.*, the sums received from the Joint Plant Committee is not a deductible item and item 1 alone will be a deductible item G under item 6(g) of the Second Schedule. As the Association has succeeded in five out of six questions that had to be decided they will get their costs from the management. The Industrial Court will have to re-calculate the bonus on this basis. One hearing fee.

G.C.

(1) [1970] 2 L.L.J. 576.