TEA ESTATE INDIA (P) LTD.

v.

COMMISSIONER OF INCOME-TAX

April 26, 1976

[H. R. KHANNA AND P. K. GOSWAMI, JJ.]

Income Tax Act 1922—*Sec.* 2(1), 2(4*A*), 2(6*C*), 2(3)(8) *and* 2(6*A*) *C.*

Income Tax Rules 1922—*Rules* 23 *and* 24—*Dividends—Accumulated profits —Composite business activity including agricultural and non-agricultural— Excess over book value on land account—Profit and loss account—General reserve account and reserve created on revaluation whether accumulated profits —Interpretation of statutes—Whether court can add words to a section.*

The assessee company held certain shares in Dibru Darang Tea Co. Ltd. (D.D.T. Company) and Taikron Tea Company Ltd. (TT Company). Both the companies were companies growing, manufacturing and selling tea and owned large tea estates consisting of land, building plant, machinery etc. In 1947, both the said companies sold their entire tea estates including all assets to Brooke Bond Estate India Ltd. Consequently DDT Company received a surplus is Rs. 17,18,081/- over the book value of its assets. The amount relating to the land of DDT Company was Rs. 19,30,374/- and that relating to the T.T. company was Rs. 10,11,216/-. Both the companies went into voluntary liquidation in 1954. On account of the liquidation of the two companies the assessee company became entitled to receive Rs. 57,69,186/- out of the total distributable assets of DDT Company and Rs. 36,53,453/- out of the total distributable assets of T.T. Company.

Section 2(1) defines agricultural income. Section 2(4A) defines capital asset to mean property of any kind held by an assessee whether or not connected with his business, profession or vocation but does not include any land from which the income derived is agricultural income. It was defined to include any distribution made to the shareholders of a company on its liquidation to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not. Explanation provides that expression "accumulated profits" shall not include capital gain arising during certain periods. The income has been defined by s. 2(6C) to include dividend. Section 2(3)(8) provides that agricultural income shall not be included in the total income chargeable to tax under s. 3 of the Act. Rule 23 provides for assessment of income which is partly agricultural income and partly income chargeable to income tax. Rule 24 provides that income derived from the sale of tea grown and manufactured by the seller in the taxable territories shall be computed as if it were income derived from business and 40 per cent of such income shall be deemed to be income, profits and gains liable to tax.

The assessee contended before the Income Tax Officer that apart from Rs. 2,47,921/- which had been assessed as capital gain under s. 12B of Income Tax Act 1922 in respect of T.T. company, no other amount could be included in the computation of the accumulated profits available for distribution under s. 2(6A)(c) of the Act. The Income Tax Officer rejected the claim of the assessee. On an appeal, the Appellate Assistant Commissioner rejected the main claim of the assessee.

On further appeal the Tribunal held as far as item 1 (land) and item 4 (reserve on revaluation) are concerned that since the lands of the two tea estates were utilised for producing and selling tea it cannot be said that the said assets were lands from which the income derived was agricultural income. At best, what could be said is that barring 40 per cent of such income the balance was agricultural income. As far as item 2 (profit and loss a/c)

A and item 3 (general reserve) are concerned, the Tribunal held that the ratio of 60 : 40 as laid down in rule 24 of the Income Tax Rules, 1922 could not be applied for finding out the proportion of accumulated profits in a tea business and that profits whether capitalised or not did not admit of such a bifurcation for the determination of accumulated profits. The Tribunal held that the general and taxation reserves were accumulated profits and the share received by the assessee company on the distribution of such accumulated profits was taxable as dividend within the meaning of s. 2(6A)(c) of the B Act.

Both the assessee as well as Revenue approached the High Court in two references arising out of the judgment of the Tribunal.

The High Court held :

(1) Regarding item No. 1 and 4 the excess of the prices is not profit of the business, unless such appreciation has been C included in the capital gains. The High Court arrived at certain figures of excess profit which was included in the computation of capital gains and held that only that figure was includible in the accumulated profits within the meaning of s. 2(6A)(c).

(2) Regarding items 2 and 3 the High Court held that the balance in the profit and loss account is arrived at after deducting or providing for all outgoings including the estimated liability for both the income tax and agricultural income tax. There- D fore, the balance carried to the balance sheet is pure profit, *i.e.*, the accumulated profit. The High Court negatived the contention that each item in the balance sheet contains in itself the proportion of the income attributable to business activity and to the agricultural activity of the companies or that they must be disintegrated into 6 components parts at the time of inclusion in dividends. Tea companies carry on a business activity though such activity may include agricultural operation as part E thereof. Overall excess of incomings over outgoings as reflected in the balance of profit and loss account would represent the commercial profits of the business undertaking and though a bifurcation is necessary for the purpose of assessment and imposition of tax, no further bifurcation could be made once the balance of profit was finally determined.

In appeals filed by both the assessee and Revenue by special leave the assessee contended that 60 per cent of the amounts mentioned in items 2 and F 3 were agricultural income and as such, were not income for the purpose of the Act. To that extent the said amount did not constitute accumulated profits within the meaning of s. 2(6A)(c). Revenue contended that 40% of income derived in respect of item 1 not being agricultural should be held to be capital asset and, therefore, accumulated profits.

Dismissing both the appeals,

G HELD : (1) Clause 2(6A)(c) provides that dividend shall include any distribution made to the shareholders of a company on its liquidation to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation whether capitalised or not. The proviso is, however, to the effect that only the accumulated profits so distributed which arise during the 6 previous years of the company preceding the date of liquidation shall be so included. 60 per cent of the profits made by both the companies by sale of tea grown and manufactured by them were H not liable to be taxed in view of rule 24. However, once those profits got accumulated with the two companies they became accumulated profits within the meaning of s. 2(6A)(c). The contention of the assessee that only 40 per cent of the profits which got accumulated were liable to be taxed and therefore only 40 per cent should be treated as accumulated profit for the purpose of

s. 2(6A)(c) cannot be accepted. The assessee wants to add to s. 2(6A)(c) the following words : A

"as are liable to be taxed under the Act"

It is not permissible for us to construe the clause by adding those words.

[152 F-G, 154 G-H, 155 A-B]

(2) The decision of the case in *Mrs. Bacha F. Guzdar, Bombay* v. *Commissioner of Income Tax, Bombay*-27 I.T.R. 1, followed with approval.

[155 E] B

(3) The contention of the Revenue that the land in question to the extent of 60 per cent would not answer the description of capital asset, and as 40 per cent of the income derived from that land was not agricultural income 40 per cent interest in that land should be held to be capital asset for the purpose of s. 2(4A), is not well founded. The income which is realised by sale of tea by a tea company which grows tea on its land and thereafter subjects it to manufacturing process in its factory is an integrated income consisting of agricultural and non-agricultural components. Rule 24 prescribes the formula C which should be adopted for apportioning the income realised as a result of the sale of tea after it is grown and subjected to manufacturing process in the factory. So far as the lands held by the company were concerned they yielded purely agricultural income in the shape of green tea leaves. 40 per cent of the income on sale of tea which was received by both the companies was not income from land. It was income which could be ascribed to manufacturing process to which the green tea leaves were subjected in the factories of those companies. As the lands held by both the companies yielded agricultural income it would follow that those lands did not constitute capital asset as D defined in s. 2(4A). Section 2(4A) expressly states that capital asset does not include any land from which income is derived as agricultural income. Any gain arising from the transfer of such land would not constitute capital gain under the Act and consequently would not be liable to be taxed as such.

[155 H, 156 A-D, 157 B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1491 and 1693 of 1971. E

Appeals by Special Leave from the Judgment and Order dated the 13th January, 1971 of the Calcutta High Court in I.T. Reference No. 192 of 1966.

K. Ray and *D. N. Gupta,* for the Appellant in CA No. 1491/71 for respondent in C.A. 1693/71.

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Hardayal Hardy, B. B. Ahuja and *S. P. Nayar* for Respondent in CA1491/71 and for Appellant in 1693/71.

The Judgment of the Court was delivered by

KHANNA, J.—This judgment would dispose of two cross civil appeals Nos. 1491 and 1693 of 1971 which have been filed by special leave by the assessee, M/s Tea Estate India (P) Ltd., and the Commissioner of Income-tax West Bengal respectively against the judgment of the Calcutta High Court answering the following question referred to it under section 66(1) of the Indian Income-tax Act, 1922 (hereinafter referred to as the Act) partly in favour of the assessee and partly in favour of the revenue : G

> "Whether on the facts and in the circumstances of the case, the balances in the undernoted accounts are includible in the 'accumulated profits' within the meaning of section 2(6A)(c) and if so, to what extent? H

	Dibru Darang Tea Co. Ltd.	Taikrong Tea Co. Ltd.
	Rs.	Rs.
Land A/o	19,30,374/-	10,11,216/-
Profit & Loss Account	16,69,285/-	18,73,125/-
General Reserves and liabilities for taxation	3,50,799/-	2,243/-
Reserve created on writing up the value of the assets of the ten estates	15,69,828/-	58,772/-

The matter relates to the assessment year 1956-57, the corresponding accounting year for which ended on June 30, 1955. The assessee company held 52,350 shares out of the total issued shares of 54,600 in Dibru Darang Tea Co. Ltd. (hereinafter referred to as DDT Co.) and 22,998 shares out of the total issued shares of 23,000 in Taikrong Tea Co. Ltd. (hereinafter referred to as TT Co.). DDT Co. and TT Co. were tea companies growing, manufacturing and selling tea. For this purpose, those two companies owned large tea estates consisting of land, building, plant and machinery. On August 11, 1947 the said tea companies sold their entire tea estates, including all the assets, to Brooke Bond Estate India Ltd. As a result of these sales, DDT Co. received a surplus of Rs. 17,18,081 over the book value of its assets. Likewise, TT Co. received a surplus of Rs. 13,11,339 over the book value of its assets. The amount relating to the land of the tea estate of DDT Co. was Rs. 19,30,374 and that relating to TT Co. was Rs. 10,11,216. DDT Co. realized Rs. 2,12,313 less than their book value on the sale of the other assets. It may also be mentioned that in 1936 the assets of the two companies were revalued. On such revaluation the book value of the assets of DDT Co. appreciated by an amount of Rs. 15,69,828 and those of TT Co. by an amount of Rs. 58,772. These amounts were carried to the respective reserves of the two companies.

DDT Co. and TT Co. went into voluntary liquidation on October 29, 1954. On account of the liquidation of the two companies, the assessee company became entitled to receive Rs. 57,69,186 out of the total distributable assets of DDT Co. and Rs. 36,53,453 out of the total distributable assets of TT Co. During the relevant accounting period the assessee received Rs. 52,23,786 and Rs. 34,15,500 (in all Rs. 86,39,286) from the liquidators of DDT Co. and TT Co. respectively.

On behalf of the assessee company, it was urged before the Income-tax Officer that apart from Rs. 2,47,921 which had been assessed as capital gain under section 12B of TT Co. for the assessment year 1949-50, no other amount could be included in the computation of the accumulated profits available for distribution under section 2(6A)(c) of the Act. The Income-tax Officer rejected this

contention and allowed only a deduction of Rs. 27,000 being payment on share premium account and included the balance of Rs. 86,11,986 (grossed up to Rs. 91,64,075) as the assessee's dividend income under section 2(6A)(c) of the Act.

On appeal the Appellate Assistant Commissioner allowed a further deduction of Rs. 1,77,964 representing pre-incorporation advances in the case of TT Co. The Appellate Assistant Commissioner rejected all other contentions of the assessee, including the contention that 60 per cent of the amounts appearing under the head "balance of appropriation account" in the balance-sheets as also the general reserves and liabilities for taxation appearing in the books of the two tea companies should be excluded from the computation of accumulated profits.

On further appeal before the Tribunal, two main contentions were raised on behalf of the assessee : (1) that in determining the quantum of the accumulated profits, the surplus arising from sale of lands of the two tea estates as also the reserves created on the revaluation of the agricultural assets should be left out, and (2) that only 40 per cent of the balance in the profit and loss account and the general reserves of the two companies should be included, as only 40 per cent of these amounts had been assessed under the Act. Regarding the first contention, the Tribunal observed :

> "In the case before us, since the lands of the two tea estates were utilised for producing and selling the tea, it cannot be said that the said assets could be termed as 'land from which the income derived was agricultural income'. At best what can be said is that barring 40% of such income the balance was agricultural income. We must, therefore, hold that only 40% of the profits derived on sale of the land of tea estates as also the reserves created on writing up the value of the assets of the land of the tea estates was referable to land from which income derived was agricultural income. To that extent, therefore, the total of the profit on sale of the land of tea estates and reserves created on revaluation were to be excluded in computing the accumulated profits for finding out the section 2(6A)(c) dividend."

Dealing with the second contention of the assessee, the Tribunal observed that the ratio of 60 : 40 as laid down in rule 24 of the Income-tax Rules, 1922 could not be applied for finding out the proportion of accumulated profits in a tea business and that profits, whether capitalised or not, did not admit of such a bifurcation for determination of accumulated profits. General and taxation reserves having been included in the pool of distributable surplus could, in the opinion of the Tribunal, only be held to be excess provisions out of the profits of the two tea companies which were not required to be paid out in discharge of any liability. The Tribunal accordingly held that balance left over, after making the deduction indicated above from the total distributable pool, was accumulated profits of the two tea companies

A and the share received by the assessee on distribution of such accumulated profits was dividend within the meaning of section 2(6A)(c) of the Act.

Accumulated profits in the case of two tea companies immediately before the liquidation were determined as under :

B *"DDT Co.*

40% of (Rs. 19,30,374+Rs. 15,69,828)+the whole of (Rs. 16,69,285+Rs. 3,50,799)=Rs. 34,20,165.

TT Co.

40% of (Rs. 10,11,216+Rs. 58,772)+the whole of (Rs. 18,73,125+Rs. 2,243)=Rs. 23,03,363."

C The Tribunal accordingly came to the conclusion that out of the distributable surplus, an amount of Rs. 57,23,528 was attributable to accumulated profits and hence was dividend within the meaning of section 2(6A)(c) of the Act. The assessee's appeal was allowed to that extent.

D Both the assessee company as well as the Commissioner applied to the Tribunal for reference of certain questions arising from the order of the Tribunal to the Court. The Tribunal thereupon referred the question reproduced above in a composite reference to the High Court.

Dealing with items 1 and 4 mentioned in the question, the High Court held as under :

E

"As both the learned counsel agree that the same treatment should be given to the reserves created on writing up the value of the assets as to the excess and/or profit realised on sale either of the lands or of the assets of the tea estates, it should be sufficient to consider the case of such excess arising from the sale and/or transfer by the

F two tea companies. Whether the excess of the price realised over the book value of the lands as shown in the land account balance and as envisaged in the question referred or whether the excess on the sale of the entire tea estates over the book value of the assets are to be considered for inclusion in the 'accumulated profits' under section 2(6A)(c), there can be no doubt that such excess or profit is a realisation of capital

G rise and not profit of the business. As according to the decision of the Supreme Court in *Short Brothers'*(1) case, unless such appreciation has been included in capital gains, distribution thereof by the liquidator will not be deemed to be divided for the purpose of the Income-tax Act, we have to find out how much of such excess or profit has been included in the computation of capital gains of the two tea

H companies on the transfer of the tea estates in 1947. In his order the Appellate Assistant Commissioner has recorded that for the assessment year 1949-50 the assessment order on Dibru Darang Tea Company Ltd. showed that the com-

pany was not liable to capital gains tax, while the assessment order for that year of M/s. Taikrong Tea Co. Ltd. showed that a sum of Rs. 2,47,921 was brought under tax under the head of 'Capital gains.' It must, therefore, be held that it is only the sum of Rs. 2,47,921 which could be included in accumulated profits' for the purpose of determining the dividend under section 2(6A)(c). Mr. B. L. Pal contended that there was no conclusive finding in the order of the Appellate Asistant Commissioner as to the capital gains of the two tea companies in respect of the transfer of the tea estates and the proper determination of capital gains payable in respect thereof had not been established. We are unable to accept this contentions. Accordingly, so far as the first and last items in the referred question are concerned the answer would be that only the sum of Rs. 2,47,921 was includible in the accumulated profits within the meaning of section 2(6A)(c)."

Regarding items 2 and 3 in the question the finding of the High Court was as under :

"The balance in the profit and loss account is arrived at ater deducting or providing for all outgoings including the estimated liability for both income-tax and agricultural income-tax. Therefore, the balance carried to the balance-sheet is pure profit, that is to say, the commercial profit of the undertaking. We are unable to accept Mr. Ray's contention that each item in the balance-sheet contains in itself the proportion of the income attributable to the business activity and to the agricultural activity of the tea companies and must be distintegrated into its component parts at the time of inclusion in dividends. Tea companies carry on a business activity though such activity may include agricultural operation as part thereof. Overall excess of incomings over outgoings, as reflected in the balance of profit and loss account, would represent the commercial profits of the business undertaking of the tea companies and though a bifurcation is necessary for the purpose of assessment and imposition of tax no futrher bifurcation could be made once the balance of profit was finally determined of such balance it could not be said that a part represents agricultural income and the rest represents income from business. So far as the general and taxation reserve is concerned, Mr. Ray agrees that such reserve is usually built up out of the profits to meet future liabilities but contends that as in this case also such reserve had been built up of 60 per cent. agricultural profit such reserve should again be disintegrated into the component parts. We are entirely unable to accept this contention. As pointed out by Mr. Pal, the Supreme Court in *Girdhardas's*(2) case advocated disintegration of the amount distributed into two components, namely, capital and accumulated profits. There is no scope for further distintegration of profits into its component parts."

(1) 63 I. T. R. 300

A The amounts mentioned in terms 2 and 3 of the question were accordingly held to be wholly includible in the accumulated profits within the meaning of section 2(6A)(c) of the Act.

Before dealing with the contentions advanced by the counsel for the parties, it would be convenient to set out the relevant provisions of the Act. Section 2(1) defines "agricultural income" to mean, *inter*
B *alia*.

> "(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such;
>
> C (b) any income derived from such land by—
>
> (i) agriculture, or
>
> (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to
> D render the produce raised or received by him fit to be taken to market, or
>
> (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);
>
> E (c) ....

"Capital asset" in section 2(4A) means property of any kind held by an assessee, whether or not connected with his business, profession or vocation, but does not include—

> (i) ....
>
> F (ii) ....
>
> (iii) any land from which the income derived is agricultural income.

"Dividend", according to section 2(6A)(c), includes "any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated pro-
G fits of the company immediately before its liquidation, whether capitalised or not." The explanation to clause 2(6A) reads as under:

"*Explanation.*—The expression 'accumulated profits, wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April 1946, or after the 31st day of March 1948, and before the 1st day of April 1956."

H "Income" has been defined in section 2(C6) to include dividend. "Total income" has been defined in section 2(15) to mean the total amount of income, profits and gains referred to sub-section (1) of section 4 computed in the matter laid down in the Act. Section 3

provides *inter alia* that income-tax shall be charged for a year in respect of the total income of the previous year of every individual and company. Section 4 relates to total income of a previous year of any person. According to clause (8) of sub-section (3) of that section, agricultural income shall not be included in the total income chargeable to tax under section 3 of the Act. Section 6 enumerates the six heads of income to be :

> (i) salaries, (ii) interest on securities, (iii) income from property. (iv) profits and gains of business, profession or vocation, (v) income from other sources, and (vi) capital gains.

According to section 12(1A), income from other sources shall include dividends. Under section 12B, as it stood at the relevant time, capital gains tax shall be charged in respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset affected after the 31st day of March 1946 and before the 1st day of April 1948 and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange, relinquishment or transfer took place. Section 59 empowers the Central Board of Revenue, subject to the control of the Central Government, to make rules for carrying out the purposes of the Act. Indian Income-tax Rules, 1922 were framed in pursuance of that section. Rule 23 of the said rules provides for assessment of income which is partly agricultural and partly income chargeable to income-tax. Rule 24, with which we are concerned, reads as under :

> "Income derived from the sale of tea grown and manufactured by the seller in the taxable territories shall be computed as if it were income derived from business, and 40 per cent., of such income shall be deemed to be income, profits and gains liable to tax....."

There is a proviso to this rule, but it is not necessary to reproduce the same.

In appeal filed by the assessee-company, its learned counsel, Mr. Ray, has contended before us in respect of items 2 and 3 of the question that 60 per cent of the amounts mentioned in these items were agricultural income and as such were not income for the purpose of the Act. To that extent, it is urged the amounts did not constitute accumulated profits within the meaning of section 2(6A)(c) of the Act. The High Court, according to the contention, was in error in holding to the contrary. The above contentions has been controverted by Mr. Hardy on behalf of the revenue and, in our opinion, is not well founded.

In *Inland Revenue Commissioners* v. *George Burrell*(1) it was held that super-tax was not payable on the undivided profits, of past years and of the year in which the winding up of a company occurred were distributed among the shareholders, because in the winding up

(1) [1924] 2 K. B. 52.

A they had ceased to be profits and were assets only. It was further observed in *Burrell's* case that the only thing the liquidator of a company in liquidation may do is to turn the assets into money, and divide the money among the shareholders in proportion to their shares. Surplus of trading profit made in a particular year are distributable rateably among all the shareholders as capital, and it is not right to split up the sums received by the shareholders into capital and income, B and thus disintegrate the sums received by the shareholders subsequently into component parts based on an estimate of what might possibly have been done, but was not done. As the Indian Companies Act, 1913, closely followed the scheme of the English Companies Act, and the view expressed in *Burrell's* case (supra) applied to the Indian Income-tax Act, a special definition of "dividend" was devised by the legislature by the enactment of the Income-tax (Amendment) Act 7 C of 1919 with a view to undo the effect of *Burrell's* (supra) case. Clause (c) of sub-section (6A), as originally enacted, stood as follows :

> " 'Dividend' includes—
>
> (c) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation D of the company :
>
> Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included."

By the Finance Act, 1955, the proviso to sub-clause (c) of clause (6A) was omited. There was a further amendment made by the E Finance Act, 1956, and clause (c) to the amended section read as follows :

> " 'Dividend' includes—
>
> (c) any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company F immediately before its liquidation, whether capitalised or not."

As a result of the above, distribution which is attributable to the accumulated profits of the company immediately before its liquidation is deemed to be dividend and as such liable to be taxed.

Sixty per cent of the profits made by DDT Co. and TT Co. by sale G of tea grown and manufactured by them were not liable to be taxed under the Act in view of rule 24 of 1922 Rules because they were to be treated as agricultural income of these two companies. The question with which we are concerned, however, is that even though 60 per cent of the said profits constituted agricultural income in the hands of DDT Co. and TT Co., once these profits got accumulated with those two companies, did they answer to the description of H "accumulated profits" as used in the definition of dividend in section 2(6A)(c)? The answer to this question, in our opinion, should plainly be in the affirmative. We are unable to accede to the contention of Mr. Ray that as only 40 per cent of the profits which got

accumulated were liable to be taxed in the hands of DDT and TT companies under the Act and 60 per cent were not liable to be so taxed, only 40 per cent of the amount of accumulated profits should be treated as accumulated profits for the purpose of section 2(6A)(c). The acceptance of the contention would necessarily postulate reading in section 2(6A)(c) the words "accumulated profits as are liable to be taxed under the Act". The words "as are liable to be taxed under the Act" are not there in the definition and it would not, in our opinion, be permissible to so construe the clause as if those words were a part of that clause. There is also nothing in the language or context of that clause as would warrant such a construction. Accumulated profits would retain their character as such even though a part of them were not taxed as profits under the Act. It is pertinent to mention in this connection that we are concerned in the appeal of the assessee with items 2 and 3 of the question which relate to accumulated profits in the ordinary sense and not to accumulated profits arising out of capital gains which are dealt with by the explanation to section 2(6A) of the Act.

There can also be no doubt that whatever amount has been distributed to the assessee company and is attributable to accumulated profits in items 2 and 3 mentioned in the question would constitute dividend in the hands of the assessee and the whole of the amount so received would be liable to be taxed as such. This is clear from the Constitution Bench decision of this Court in the case of *Mrs. Bacha F. Guzdar, Bombay* v. *Commissioner of Income-tax Bombay*(1). The assessee in that case was a shareholder in certain tea companies, 60 per cent of whose income was exempt from tax as agricultural income under section 4(3)(viii) of the Indian Income-tax Act. The assessee claimed that 60 per cent of the dividend income received by her on her shares in those companies was also exempt from tax as agricultural income. This claim was rejected and it was held that the dividend income received by the assessee was not agricultural income but was income assessable under section 12 of the Act. Agricultural income as defined in the Act, according to that decision, was intended to refer to revenue received by direct association with the land which is used for agricultural purposes and not by indirectly extending it to cases where that revenue or part thereof changes hands either by way of distribution of dividends or otherwise.

Mr. Ray has assailed the correctness of the view taken by the Constitution Bench of this Court in the above decision and has submitted that the matter should be reconsidered. Apart from the fact that this Bench is bound by the decision of the Constitution Bench, we find nothing in that decision as warrants reconsideration of the matter. We would, therefore, uphold the answer given by the High Court in respect of items 2 and 3 of the question.

In appeal by the Commissioner of Income-tax his learned counsel, Mr. Hardy, has submitted in respect of items 1 and 4 that as 60 per cent of the income from the land held by DDT Co. and TT Co. was to be treated as agricultural income in view of rule 24 of 1922 Rules,

(1) 27 I.T.R. 1.

A the said land to the extent of only 60 per cent would not answer to the description of capital asset as defined in section 2(4A) of the Act. As 40 per cent of the income derived from that land was not agricultural income, 40 per cent interest in that land, according to the submission, should be held to be capital asset for the purpose of section 2(4A) of the Act. Forty per cent interest in that land, it is further submitted, would not be taken out of the definition of capital by virtue of clause (iii) of section 2(4A) and any appreciation in the value of B the land to the extent of 40 per cent would constitute capital gain. As such gain arose during the period from April 1, 1946 to March 31, 1948, the same, according to Mr. Hardy, would answer to the description of accumulated profits as mentioned in the explanation to section 2(6A) of the Act.

The above contention of Mr. Hardy, in our opinion, is not well C founded. Income which is realised by sale of tea by a tea company which grows tea on its land and thereafter subjects it to manufacturing process in its factory is an integrated income. Such income consists of two elements or components. One element or component consists of the agricultural income which is yielded in the form of green leaves purely by the land over which tea plants are grown. The second element or component consists of non-agricultural income which is the D result of subjecting green leaves which are plucked from the tea plants grown on the land to a particular manufacturing process in the factory of the tea company. Rule 24 prescribes the formula which should be adopted for apportioning the income realised as a result of the sale of tea after it is grown, and subjected to the manufacturing process in the factory. Sixty per cent is taken to be agricultural income and the same consists of the first element or component, while 40 per cent E represents non-agricultural income and the same comprises the second element or component.

We are fortified in the above conclusion by two decisions of this Court in the cases of *Karimtharuvi Tea Estates Ltd.* v. *State of Kerala*(1) and *Anglo-American Direct Tea Trading Co. Ltd.* v. *Commissioner of Agricultural Income-tax, Kerala*(2). In the case of F Karimtharuvi Tea Estates Ltd. it was observed while dealing with the income derived from the sale of tea grown and manufactured by the seller in the context of rule 24 :

> "Of the income so computed, 40 per cent is, under rule 24, to be treated as income liable to income-tax and it would follow that the other 60 per cent only will be deemed to be 'agricultural income' within the meaning of that expression G in the Income-tax Act."

In the case of Anglo-American Direct Tea Trading Co. Ltd. the Constitution Bench of this Court held that income from the sale of tea grown and manufactured by the assessee is derived partly from business and partly from agriculture. This income has to be computed as if it were income from business under the Central Income-tax Act H and the Rules made thereunder. Forty per cent of the income or com-

(1) 48 I.T.R. 83
(2) 69 I.T.R. 667.

puted is deemed to be income derived from business and assessable to non-agricultural income-tax. The balance of 60 per cent of the income so computed is agricultural income within the meaning of the Central Income-tax Act. A

So far as the lands held by DDT Co. and TT Co. were concerned, they yielded purely agricultural income in the shape of green tea leaves. Forty per cent of the income on sale of tea which was received by DDT Co. and TT Co. was not income from land. It was income which should be ascribed to manufacturing process to which the green tea leaves were subjected in the factories of those companies. As the lands held by DDT Co. and TT Co. yielded agricultural income, it would follow that those lands did not constitute capital asset as defined in section 2(4A) of the Act. Clause (iii) appended to section 2(4A) expressly states that capital asset does not include any land from which income derived is agricultural income. Any gain arising from the transfer of such land would not constitute capital gain under the Act and consequently would not be liable to be taxed as such. The distribution of that amount on the liquidation of the companies would also not partake of the character of dividend. It may be apposite in this context to refer to the case of *First Income-tax Officer, Salem* v. *Short Brothers (P.) Ltd.* (supra) wherein this Court dealt with the sale of a coffee estate by a company which went into liquidation. It was held by this Court that the capital appreciation in respect of the lands from which the income was derived as agricultural income and was not taxable in the hands of the company as capital gains would not on distribution be liable to be so taxed as dividend under section 12 of the Act. We, therefore, see no reason to interfere in the appeal filed by the Commissioner of Income-tax with the answer given by the High Court in respect of items 1 and 4 of the question. It is the common case of the parties that items 1 and 4 share the same fate. B C D E

As a result of the above, we dismiss both the appeals. In view of the divided success, we leave the parties to bear their own costs of both the appeals.

P.H.P.

Appeals dismissed.