MADHAV PRASAD JATIA

v.

COMMISSIONER OF INCOME TAX, U.P., LUCKNOW

April 17, 1979

[P. N. BHAGWATI AND V. D. TULZAPURKAR, JJ.]

Income-Tax Act 1922, *Section* 10(2)(iii), 10(2)(xv)—*Deduction against business income—Conditions to be satisfied under Section* 10(2)(iii) and 10(2)(xv) *for claiming deduction, explained—Words and Phrases—"For the purpose of business", scope of.*

The appellant-assessee carried on money-lending and other businesses and derived income from various sources such as investment in shares, properties and business. Pursuant to her promise to donate a sum of Rs. 10 lacs for setting up an Engineering College to commemorate the memory of her late husband, she actually made over a sum of Rs. 5.5 lacs by depositing the same in a joint account opened in the name of the District Magistrate, Bulandshahr and Smt. Indermani Jatia for the College. The balance of Rs. 4.5 lacs was left with the assessee and was treated as a debt to the institution and interest thereon at 6% per annum with effect from October 21, 1955 was to be finally deposited in the technical institute account. Though in the books of accounts, on November 21, 1955, a sum of Rs. 10 lacs was debited to her capital account and corresponding credit was given to the account of the institute, the assessee actually paid the sum of Rs. 5.5 lacs to the institution on January 7, 1956 from the overdraft account which she had with the Central Bank of India, Aligarh.

In the assessment proceedings for the assessment years 1957-58, 1958-59, 1959-60, the assessee claimed the deduction of these sums—Rs. 20,107/- Rs. 25,470/- and Rs. 18,445/- being the respective items of interest paid by her to the bank on Rs. 5.5 lacs during the samvat years. The assessee contended that she had preferred to draw on the overdraft account of the bank for the purpose of paying the institution in order to save her income earning assets, namely, the shares, which she would have otherwise been required to dispose of and therefore, the interest paid by her should be allowed. As regards interest on the remaining sum of Rs. 4.5 lacs (which was left as a loan with the assessee) that was debited to her account, the assessee claimed that it was a permissible deduction.

The taxing authorities took the view that the claim for deduction was not admissible either against business income under section 10(2) or against income from investments under section 12(2) of the Income Tax Act, 1922. The appeals preferred to the Appellate Tribunal failed. The references made to the High Court went against the assessee.

Dismissing the appeals by special leave, the Court

HELD : 1. Under section 10(2)(iii) of Income Tax Act, 1922, three conditions are required to be satisfied in order to enable the assessee to claim a deduction in respect of interest on borrowed capital, namely, (a) that money

A (capital) must have been borrowed by the assessee, (b) that it must have been borrowed for the purpose of business and (c) that the assessee must paid interest on the said amount and claimed it as a deduction. [755B-C]

2. As regards the claim for deduction in respect of expenditure under s. 10(2)(xv), the assessee must also satisfy three conditions namely (a) it (the expenditure) must not be an allowance of the nature described in clauses (i) B to (xiv); (b) it must not be in the nature of capital expenditure or personal expenses of the assessee and (c) it must have been laid out or expended wholly and exclusively *for the purpose of his business.* [755C-D]

3. The expression "for the purpose of business" occurring in s.10(2)(iii) as also in 10(2)(xv) is wider in scope than the expression "for the purpose of earning income profits or gains" occurring in s. 12(2) of the Act and, therefore, the scope for allowing a deduction under s. 10(2)(iii) or 10(2)(xv) C would be much wider than the one available under s. 12(2) of the Act. [755D-E]

Commissioner of Income Tax v. *Malayalam Plantations Ltd.*, 53 ITR 140 (SC); applied.

4. Neither there had been any confusion of the issue nor any wrong D approach had been adopted by the taxing authorities, the Tribunal or the High Court. The case of the assessee had been considered both by the Tribunal as well as by the High Court under s.10(2)(iii) or 10(2)(xv) and not under s.12(2). In fact, in Reference No. 775 of 1970 the questions framed by the Tribunal in terms referred to s.10(2)(iii) and 10(2)(xv) and proceeded to seek the High Court's opinion as to whether the sums representing interest paid by the assessee to the Central Bank on the overdraft of Rs. 5.5 lacs for E the concerned three years were allowable as deduction under either of the said provisions of the Act and the High Court after considering the matter and the authorities on the point had come to the conclusion that such interest was not allowable as a deduction under either of the said provisions. [743D-G]

5. It is true that the High Court did refer to the decision of the Bombay High Court in *Bhai Bhuriben's* case but that decision was referred to only for F the purpose of emphasising one aspect which was propounded by that Court, namely, that the motive with which an assessee could be said to have made the borrowing would be irrelevant. In fact the High Court found that there was no material to show that the assessee, in the instant case, would necessarily have had to employ the business assets for making payment to charity. The High Court actually considered the assessee's case under section 10(2)(iii) and 10(2)(xv) and disallowed the claim for deduction under these provisions G principally on the ground that the said borrowing of Rs. 5.5 lacs was unrelated to the business of the assessee. [754G-H, 755A-B]

Bhai Bhuriben Lallubhai v. *Commissioner of Income Tax, North Cutch and Saurashtra,* 29 I.T.R., 543; explained.

(6) In the instant case :

H (a) The amount of Rs. 5.5 lacs having been actually parted with by the assessee on January 7, 1956, and having been accepted by the institute the same being deposited in the joint account of the assessee and the District

Magistrate, Bulandshahr for the Engineering College, the gift to that extent was undoubtedly complete with effect from the said date. [756A-C] A

(b) The said payment made by the assessee by drawing a cheque on the overdraft account was a borrowing which was made to meet her personal obligation and not the obligation of the business and as such expenditure incurred by the assessee by way of payment of interest thereon was not for carrying on the business nor in her capacity as a person carrying on that business. Such expenditure could by no stretch of imagination be regarded as business expenditure. [756C, F] B

(c) It is true that initially on November 21, 1955 the capital account of the assessee was debited and the college account was credited with the sum of Rs. 10 lacs in the books of the assessee but making of these entries in the assessee's books would not alter the character of the borrowing nor would the said borrowing be impressed with the character of business expenditure for admittedly, the assessee maintained only one common set of books in which were incorporated entries pertaining to her capital, assets and income from all her difference sources. The borrowing was completely unrelated to the purpose of the business and was actually used for making charity. It is, therefore, clear that the interest that was paid on the sum of Rs. 5.5 lacs to the bank by the assessee for the three concerned years was rightly held to be not deductible either under section 10(2)(iii) or under section 10(2)(xv) of the Act. [756F-H, 757A] C D

Commissioner of Income Tax, Bombay City II v. *Bombay Samachar Ltd., Bombay*, 74 ITR 723; *Commissioner of Income Tax, Bombay City IV* v. *Kishinchand*, 109 I.T.R. 569; distinguished.

(d) Both the Tribunal as well as the High Court were right in taking the view that the certificate dated October 17, 1958 was of no avail to the assessee inasmuch as it merely stated that the assessee had promised a donation of Rs. 10 lacs on October 21, 1955, out of which Rs. 5.5 lacs were deposited in the joint account maintained in the name of the assessee and the District Magistrate, Bulandshahr for the college and the remaining sum of Rs. 4.5 lacs was left as a loan with the assessee and interest thereon at 6% per annum was to be finally deposited in the technical institute account. The Tribunal and the High Court were also right in taking two views that beyond making entries in the books of account of the assessee there was no material on record to show that the assessee had actually made over a sum of Rs. 4.5 lacs to the college or that the college had accepted the said donation with the result that the amount credited to the college account in her books represented her own funds and lay entirely within her power of disposition and that being so, the interest credited by the assessee on the said sum of Rs. 4.5 lacs and the accretion thereto continued to belong to the assessee, and, therefore she was not entitled to the deduction in respect of such interests, and [758C-G] E F G

(e) If no trust in favour of the college in regard to the amount of Rs. 4.5 lacs could be said to have come into existence either on October 21, 1955 or November 21, 1955 or on any other subsequent date during the relevant years, no deduction in respect of interest credited by the assessee to the account of the college over the said sum can be allowed. [759A-B] H

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1831-1833 of 1972.

Appeals by Special Leave from the Judgment and Order dated 22-9-1971 of the Allahabad High Court in I.T. References Nos. 775/70 and 342/64.

B *S. C. Manchanda* and *Mrs. Urmila Kapoor* for the Appellant.

V. S. Desai and *Miss A. Subhashini* for the Respondent.

The Judgment of the Court was delivered by

TULZAPURKAR, J.—The assessee, Smt. Indermani Jatia, widow of C Seth Ganga Sagar Jatia of Khurja, carried on money-lending and other businesses and derived income from various sources such as investment in shares, properties and businesses. However, the capital, assets and income in respect of different sources of income were incorporated in one common set of books. With a view to commemorate the memory of her deceased husband, on October 21, 1955 D she promised a donation of Rs. 10 lacs for setting up an Engineering College at Khurja to be named "Seth Ganga Sagar Jatia Electrical Engineering Institute Khurja". She also promised a further sum of Rs. 1.5 lacs for the construction of a Female Hospital at Khurja but this subsequent donation of Rs. 1.5 lacs was to include the total interest that was to accrue on E the sum of Rs. 10 lacs earlier donated to the college. In pursuance of the promise made on October 21, 1955 she actually made over a sum of Rs. 5.5 lacs by depositing the same in a joint account opened in the names of the District Magistrate, Bulandshahr and Smt. Indermani Jatia for the college while the balance of Rs. 4.5 lacs was left F with the assessee and was treated as a debt to the Institution and interest thereon at 6% per annum with effect from October 21, 1955 was to be finally deposited in the Technical Institute account. These facts become clear from a certificate dated October 17, 1958, issued by the District Magistrate, Bulandshahr which was produced before the Appellate Tribunal.

G The aforesaid transaction came to be recorded in the books of the assessee as follows : At the beginning of the accounting year (Samvat year 2012-13—accounting period 13-11-1955 to 1-11-1956) relevant to the assessment year 1957-58 the capital account of the assessee showed a net credit balance of Rs. 23,80,753. Initially on H November 21, 1955, a sum of Rs. 10 lacs was debited to her capital account and corresponding credit was given to the account of the said Institute. At the close of the said accounting year (i.e. on

1-11-1956) after debiting the aforesaid sum of Rs. 10 lacs the capital account showed a net credit balance of Rs. 15,06,891. Thereafter, during the same year of account the assessee actually paid only a sum of Rs. 5.5 lacs to the institution on January 7, 1956 from the overdraft account which she had with the Central Bank of India Ltd., Aligarh. At the beginning of the accounting year the amount outstanding in the overdraft was Rs. 2,76,965; further overdrafts were raised during the accounting year with the result that at the end of the year the liability of the assessee to the bank was Rs. 9,55,660; among the further debits to this account during the year was said sum of Rs. 5.5 lacs paid to the Engineering College on January 7, 1956. The balance of the promised donation, namely, Rs. 4.5 lacs was, as stated earlier, treated as a debt due by her to the Institute and accordingly she was debited with interest thereon at 6% per annum with effect from October 21, 1955.

In the assessment proceedings for the assessment years 1957-58, 1958-59 and 1959-60 the assessee claimed the deduction of three sums—Rs. 20,107/-, Rs. 25,470/- and Rs. 18,445/- being the respective items of interest paid by her to the bank on Rs. 5.5 lacs during the Samvat years relevant to the said assessment years. The assessee contended that she had preferred to draw on the overdraft account of the bank for the purpose of paying the institution in order to save her income earning assets, namely, the shares, which she would have otherwise been required to dispose of and, therefore, the interest paid by her should be allowed. As regards interest on the remaining sum of Rs. 4.5 lacs (which was left as a loan with the assessee) that was debited to her account, the assessee urged that she was also entitled to claim the same as a permissible deduction; the claim in respect thereof, however, was made for the assessment years 1958-59 and 1959-60. As regards the three sums paid by way of interest on Rs. 5.5 lacs to the bank, the taxing authorities took the view that said claim for deduction was not admissible either against business income under s. 10(2) or against income from investments under s. 12(2) of the Indian Income Tax Act, 1922. So also the claim for deduction of interest credited to the college account on Rs. 4.5 lacs was disallowed. The assessee preferred appeals to the Appellate Tribunal. It was contended on behalf of the assessee that she had promised a donation of Rs. 10 lacs to the Engineering College on October 21, 1955, that the obligation to pay the said amount arose on November 21, 1955 when the amount was debited to her capital account and the corresponding credit was given to the account of the institution, and that out of this total donation a sum of Rs. 5.5 lacs was actually deposited in the joint account of the

A assessee and the District Magistrate, Bulandshahr on January 7, 1956 for which the overdraft with the Central Bank was operated and hence the interest was deductible as business expenditure. As regards interest on Rs. 4.5 lacs that was debited to her account and credited to the Institute's account it was urged that this balance amount was
B kept in trust for the institution and hence the accruing interest thereon which was debited to her account should be allowed as a deduction. In support of these submissions a certificate issued by the District Magistrate, Bulandshahr dated October 17, 1958 was produced before the Tribunal. The Appellate Tribunal, however, confirmed the disallowance of interest claimed in respect of the sum of
C Rs. 5.5 lacs holding that the said sum of Rs. 5.5 lacs over-drawn from the bank was not borrowed for business purposes but was borrowed for making over the donation and, therefore, the claim could not be sustained under s. 10(2) of the Income Tax Act, 1922. As regards the interest accruing on the sum of Rs. 4.5 lacs in favour of the Engineering College, the Appellate Tribunal held that no
D donation of that sum had been made by the assessee, that it was at best a promise by the assessee to the District Magistrate to pay that amount for purpose of charity and the mere entries in the assessee's own account book crediting the trust, which had yet to come into existence, would not amount to a gift or charity for a trust and as such the interest credited to the account of the Engineering College
E was also disallowed. Meanwhile, Smt. Indermani Jatia died and her legal heir Madhav Prasad Jatia was substituted in the proceedings.

On the question whether the interest on Rs. 5.5 lacs was deductible for the assessment years 1957-58, 1958-59 and 1959-60, the
F Tribunal declined to make any reference to the High Court, whereupon the assessee applied to the High Court under s. 66(2) and upon the application being allowed, the Tribunal referred the question whether interest on the overdraft of Rs. 5.5 lacs—the sums of Rs. 20,107 (for the assessment year 1957-58), Rs. 25,470 (for the assessment year 1958-59) and Rs. 18,445 (for the assessment year
G 1959-60)—paid to the Central Bank was allowable as a deduction under s. 10(2)(iii) or 10(2)(xv) of the Indian Income Tax Act, 1922 (being Income Tax Reference No. 775 of 1970). As regards the deduction of interest on Rs. 4.5 lacs claimed for the assessment years 1958-59 and 1959-60, the Tribunal itself made a reference to the High Court under s. 66(1) and referred for the opinion of the
H High Court the question whether in the facts and circumstances of the case the interest credited by the assessee to the account of Ganga Sagar Jatia Engineering College on the sum of Rs. 4.5 lacs

and accretion thereto was an admissible deduction for each of the said two years (being Income Tax Reference No. 342 of 1964). The High Court heard and disposed of both the references by a common judgment dated September 22, 1971. In the Reference No. 775 of 1970, the case of the assessee was that there was an obligation to pay Rs. 10 lacs to the Engineering College, that for the time being the assessee decided to pay Rs. 5.5 lacs, that it was open to the assessee to pay the amount from her business assets or to preserve the business assets for the purposes of earning income and instead borrow the amount from the bank and that she had accordingly borrowed the amount from the bank and, therefore, since the borrowing was made to preserve the business assets, the interest thereon was deductible under s. 10(2)(iii) or 10(2)(xv) of the Act. The High Court observed that there was nothing to show that the assessee would necessarily have had to employ the business assets for making payment of that amount, and secondly, it was only where money is borrowed for the purposes of business that interest paid thereon becomes admissible as a deduction, and since, in the instant case, the sum of Rs. 4.4 lacs was admittedly borrowed from the Bank for making payment to the Engineering College it was not a payment directed to the business purposes. According to the High Court the mere circumstance that otherwise the assessee would have to resort to the liquidation of her income-yielding assets would not stamp the interest paid on such borrowings with the character of business expenditure. After referring to the decisions one of the Bombay High Court in *Bai Bhuriben Lallubhai* v. *Commissioner of Income-Tax, Bombay North Cutch and Saurashtra*(1) and the other of the Calcutta High Court in *Mannalal Ratanlal* v. *Commissioner of Income-Tax Calcutta*(2), the High Court rejected the contention of the assessee and held that interest paid on Rs. 5.5 lacs in any of the years was not deductible either under s. 10(2)(iii) or 10(2)(xv) of the Act and answered the questions against the assessee. As regards the question referred to it in Income Tax Reference No. 342 of 1964, the High Court took the view that there was nothing on record before it to establish that the assessee had actually donated the entire amount of Rs. 10 lacs to the Engineering College, that the certificate issued by the District Magistrate, Bulandshahr on October 17, 1958 merely showed that a balance of Rs. 4.5 lacs was left as a loan with the assessee and that the interest accruing thereon from the date of the initial donation "was to be finally deposited in the account of the Technical Institute" and that though the assessee had made

(1) 29 I.T.R. 543.
(2) 58 I.T.R. 84.

A entries in her account books crediting the trust with the interest on the amount, the trust had not yet come into existence and as such the amount credited represented her own funds and lay entirely within her power of disposition. With such material on record, the High Court confirmed the Tribunal's view that Rs. 4.5 lacs had not been donated by the assessee on October 21, 1955 in favour of the Engineering College and, therefore, the interest credited by the assessee in favour of the Institute on the said sum and the accretion thereto continued to belong to the assessee and as such she was not entitled to the deduction claimed by her and accordingly the question was also answered against the assessee. On obtaining special leave the original assessee represented by her legal heir has preferred Civil Appeals Nos. 1831-1833 of 1972 to this Court.

Mr. Manchanda appearing for the appellant has raised two or three contentions in support of the appeals. In the first place he has contended that though the deduction claimed by the assessee in this case was on the basis of business expenditure falling under either s. 10(2)(iii) or 10(2)(xv), the taxing authorities, the Tribunal and the High Court have confused the issue by considering the claim for deduction under s. 12(2) of the Act. According to him the scope for allowing the deduction under s. 10(2)(iii) or 10(2)(xv) was much wider than under s. 12(2) of the Act. He urged that by applying the ratio of the decision in *Bhuriben's* case (supra), which was admittedly under s. 12(2) of the Act, to the facts of the instant case the lower authorities as well as the High Court had adopted a wrong approach which led to the inference that the deduction claimed by the assessee was not admissible. Secondly, he urged that considering the case under s. 10(2)(iii) or 10(2)(xv) the question was when could the obligation to pay Rs. 10 lacs to the Engineering College be said to have been incurred by the assessee and according to him such obligation arose as soon as the donation or gift was complete and in that behalf placing reliance upon the certificate dated October 17, 1958, issued by the District Magistrate, Bulandshahr, as well as the entries made by the assessee in her books, he urged that the gift was complete no sooner the capital account of the assessee was debited and the college account was credited with the said sum of Rs. 10 lacs on November 21, 1955, especially when her capital account had a credit balance of Rs. 15,06,891 after giving the debit of Rs. 10 lacs; the gift in the circumstances would, according to him, be complete then as per decided cases such as *Gopal Raj Swarup* v.

(1) 77 I.T.R. 912.

(2) 77 I.T.R. 332.

Commissioner of Wealth-Tax, Lucknow(1) *Naunihal Thakar Dass* v. *Commissioner of Income-Tax, Punjab*(2). He further urged that though the sum of Rs. 5.5 lacs was actually paid by the assessee by borrowing the amount on January 7, 1956 from the overdraft account with the Central Bank of India Ltd. the said overdraft was a running overdraft account opened by her for business purposes and if from such overdraft account any borrowing was made interest thereon would be deductible under s. 10(2)(iii) or 10(2)(xv) as being expenditure incurred for the purposes of the business. According to him, once a borrowing was made from an overdraft account meant for business purposes, the ultimate utilization of that borrowing will not affect the question of deductibility of interest paid on such borrowing under s. 10(2)(iii) or 10(2)(xv) and in that behalf he placed reliance upon two decisions of the Bombay High Court, namely, *Commissioner of Income-Tax, Bombay City II* v. *Bombay Samachar Ltd., Bombay*(1) and *Commissioner of Income Tax, Bombay City-IV* v. *Kishinchand Chellaram.*(2) He, therefore, urged that the High Court had erred in sustaining the disallowance in respect of interest paid by the assessee on Rs. 5.5 lacs to the Bank in the three years in question as also the disallowance in regard to the interest credited by the assessee to the account of the Engineering College in the two years in question on the sum of Rs. 4.5 lacs and the accretion thereto.

On the other hand, Mr. Desai for the Revenue, disputed that there was any confusion of the issue or that any wrong approach had been adopted by the lower authorities or by the High Court as suggested by learned counsel for the appellant. He pointed out that initially the assessee had specifically raised the plea that the borrowing of Rs. 5.5 lacs had been resorted to with a view to save income-yielding investments, namely, the shares and, therefore, both the alternative cases as to whether the interest paid on Rs. 5.5 lacs was an admissible deduction either against business income under s. 10(2) (iii) or income from investments under s. 12(2) were considered by the taxing authorities and the taxing authorities held that such interest was not admissible under either of the provisions. He pointed out that so far as the Tribunal and the High Court were concerned the assessee's claim for deduction under s. 10(2) (iii) or 10(2) (xv) had been specifically considered and negatived. He sought to justify the view of the Tribunal and the High Court in regard to the disallowance of interest paid by

(1) 74 I.T.R. 723.

(2) 109 I.T.R. 569.

A the assessee on the sum of Rs. 5.5 lacs to the Bank in the three concerned assessment years as also the disallowance of interest credited by the assessee to the account of the Engineering College on the sum of Rs. 4.5 lacs and the accretion thereto; as regards the sum of Rs. 5.5 lacs he contended that the real question was not as to when the obligation to pay to the college was incurred by the assessee but whether the B obligation incurred by the assessee was her personal obligation or a business obligation and whether the expenditure by way of payment of interest to the Bank was incurred for the purpose of carrying on business and as regards the sum of Rs. 4.5 lacs whether the trust in favour of the college had at all come into existence on October 21, 1955 or C November 21, 1955 as contended for by the assessee and on both the questions the view of the Tribunal and the High Court was right. As regards the two Bombay decisions, namely *Bombay Samachar's* case (supra) and *Kishinchand Chellaram's* case (supra), he urged that the ratio of the decisions was inapplicable to the instant case.

D At the outset we would like to say that we do not find any substance in the contention of learned counsel for the appellant that there has been any confusion of the issue or that any wrong approach has been adopted by the taxing authorities, the Tribunal or the High Court. After going through the Tribunal's order as well as the judgment of the High Court we are clearly of the view that the case of the assessee E has been considered both by the Tribunal as well as by the High Court under s. 10(2) (iii) or 10(2) (xv) and not under s. 12(2). In fact, in Reference No. 775 of 1970 the questions framed by the Tribunal in terms referred to s. 10(2)(iii) and 10(2) (xv) and proceeded to seek the High Court's opinion as to whether the sums representing interest paid by the assessee to the Central Bank on the overdraft of F Rs. 5.5 lacs for the concerned three years were allowable as a deduction under either of the said provisions of the Act and the High Court after considering the matter and the authorities on the point has come to the conclusion that such interest was not allowable as a deduction under either of the said provisions It is true that the High Court did refer to G the decision of the Bombay High Court in *Bai Bhuriben's* case (supra) but that decision was referred to only for the purpose of emphasizing one aspect which was propounded by that Court, namely, that the motive with which an assessee could be said to have made the borrowing would be irrelevant and that simply because the assessee in that case had chosen to borrow money to buy jewellery it did not follow H that she had established the purpose required to be proved under s. 12(2) that she borrowed the money in order to maintain or preserve the fixed deposits or helped her to earn interest. This is far from say-

ing that the ratio of that case has been applied by the High Court to the instant case. In fact, the High Court found that there was no material to show that the assessee in the instant case would necessarily have had to employ the business assets for making payment to charity. The High Court actually considered the assessee's case under s. 10(2) (iii) and 10(2) (xv) and disallowed the claim for deduction under these provisions principally on the ground that the said borrowing of Rs. 5.5 lacs was unrelated to the business of the assessee.

Proceeding to consider the claim for deduction made by the assessee under s. 10(2)(iii) or 10(2)(xv), we may point out that under s. 10(2)(iii) three conditions are required to be satisfied in order to enable the assessee to claim a deduction in respect of interest on borrowed capital, namely, (a) that money (capital) must have been borrowed by the assessee, (b) that it must have been borrowed *for the purpose of business* and (c) that the assessee must have paid interest on the said amount and claimed it as a deduction. As regards the claim for deduction in respect of expenditure under s. 10(2)(xv), the assessee must also satisfy three conditions, namely, (a) it (the expenditure) must not be an allowance of the nature described in clauses (i) to (xiv), (b) it must not be in the nature of capital expenditure or personal expenses of the assessee and (c) it must have been laid out or expended wholly and exclusively *for the purpose of his business*. It cannot be disputed that the expression "for the purpose of business" occurring in s. 10(2)(iii) as also in 10(2)(xv) is wider in scope than the expression "for the purpose of earning income profits or gains" occurring in s. 12(2) of the Act and, therefore, the scope for allowing a deduction under s. 10(2)(iii) or 10(2)(xv) would be much wider than the one available under s. 12(2) of the Act. This Court in the case of *Commissioner of Income Tax, Kerala* v. *Malayalam Plantations Ltd.*(1) has explained that the former expression occurring in s. 10(2)(iii) and 10(2)(xv), its range being wide, may take in not only the day-to-day running of a business but also the rationalisation of its administration and modernisation of its machinery; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for the carrying on of a business; it may comprehend many other acts incidental to the carrying on of the business but, however wide the meaning of the expression may be, its limits are implicit in it; the purpose shall be for the purpose of business, *that is to say, the expenditure incurred shall be*

(1) 53 I.T.R. 140.

for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business.

So far as the claim for deduction of interest paid by the assessee on the sum of Rs 5.5 lacs to the Bank in the three concerned years is concerned, the real question that arises for determination is whether the particular borrowing of Rs. 5.5 lacs was for the purposes of business of the assessee or not? The amount of Rs. 5.5 lacs having been actually parted with by the assessee on January 7, 1956, and having been accepted by the institute the same being deposited in the joint account of the assessee and the District Magistrate, Bulandshahr for the Engineering College, the gift to that extent was undoubtedly complete with effect from the said date. The said payment was made by the assessee by drawing a cheque on the overdraft account which she had with the Central Bank of India Ltd., Aligarh. In regard to this overdraft account the Tribunal has noted that at the beginning of the accounting year the amount outstanding in the said over-draft was Rs. 2,76,965, that further overdrafts were raised during the accounting year with the result that at the end of the year the assessee's liability to the bank in the said account rose to Rs. 9,56,660 and that among the further debits to this account during the year was said sum of Rs. 5.5 lacs paid to the college on January 7, 1956. On a consideration of the aforesaid position of the overdraft and the other material on record, the Tribunal has recorded a clear finding of fact which has been accepted by the High Court that the said borrowing of Rs. 5.5 lacs made by the assessee from the Bank on January 7, 1956 had nothing to do with the business of the assessee but the amount was directly made over to the college in part fulfilment of the promised donation of Rs. 10 lacs with a view to commemorate the memory of her deceased husband after whom the college was to be named. In other words the borrowing was made to meet her personal obligation and not the obligation of the business and as such expenditure incurred by the assessee by way of payment of interest thereon was not for carrying on the business nor in her capacity as a person carrying on that business. Such expenditure can by no stretch of imagination be regarded as business expenditure. It is true that initially on November 21, 1955 the capital account of the assessee was debited and the college account was credited with the sum of Rs. 10 lacs in the books of the assessee but in our view making of these entries in the assessee's books would not alter the character of the borrowing nor would the said borrowing be impressed with the character of business expenditure, for, admittedly, the assessee maintained only one common set of books in which were incorporated entries pertaining to her capital, assets and income from all her different sources. It is, therefore, clear to us that the interest that was paid on the sum

of Rs. 5.5 lacs to the bank by the assessee for the three concerned years was rightly held to be not deductible either under s. 10(2)(iii) or under s. 10(2)(xv) of the Act. A

The two Bombay decisions on which reliance was placed by the counsel for the appellant, namely, *Bombay Samachar's* case (supra) and *Kishinchand Chellaram's* case (supra) are clearly distinguishable and do not touch the issue raised in the instant case before us. In the former case, the assessee had during the relevant assessment years paid amounts of interest on capital which was borrowed from outsiders and had claimed deduction in respect of such interest. It was not disputed that the capital borrowed by the assessee from the outsiders was admittedly used by the assessee for the purpose of its business. The taxing authorities had taken the view that if the assessee had collected outstandings which were due to it from others it would have been able to reduce its indebtedness and save a part of the interest which it had to pay on its own borrowings, that the assessee could not be justified in allowing its outstandings to remain without charging any interest thereon while it was paying interest on the amounts borrowed by it, and that to the extent to which it would have been in a position to collect interest on the outstandings due to it from others, it could not be permitted to claim as an allowance interest paid by it to outsiders. The High Court held that such a view was clearly unsustainable and observed that it is not the requirement under s. 10(2)(iii) that the assessee must further show that the borrowing of the capital was necessary for the business so that if at the time of the borrowing the assessee has sufficient amount of its own the deduction could not be allowed and the High Court further took the view that in deciding whether a claim of interest on borrowing can be allowed the fact that the assessee had ample resources at its disposal and need not have borrowed, was not a relevant matter for consideration. The decision in *Kishinchand Chellaram's* case (supra) was rendered in the peculiar facts which obtained in that case. The Tribunal had recorded a clear finding that since the business of the assessee was that of banking there was no borrowal as such but only acceptance of deposits by the assessee from its clients which were made by the assessee in the course of and for the purposes of its business. In those circumstances the Tribunal took the view that the aspect as to how these deposits, which were admittedly received by the assessee from the depositors in the course of its banking business, were subsequently utilized would not be material for the purpose of deciding the question whether interest paid by the assessee on these deposits should be allowed under s. 10(2)(xv) of the Act and the High Court refused to interfere with that view of the Tribunal and rejected the Revenue's application for a Reference. In the instant B C D E F G H

A case admittedly the borrowing of Rs. 5.5 lacs had been made by the assessee to meet her personal obligation and not the obligation of her business. The borrowing was completely unrelated to the purpose of the business and was actually used for making charity. On these facts it will be clear that the interest paid on such borrowing cannot be allowed as deduction either under s. 10(2) (iii) or 10(2) (xv).

B

Turning to the question of interest credited by the assessee during the assessment years 1958-59 and 1959-60 to the account of the Engineering College on the sum of Rs. 4.5 lacs and the accretion thereto the real question is whether the gift or donation of Rs. 4.5 lacs was complete and a trust of that amount came into existence in C favour of the college as has been contended for by the assessee. The only material on which reliance has been placed by the assessee in this behalf consists of the entries made in the assessee's books of accounts and the certificate dated October 17, 1958 issued by the District Magistrate, Bulandshahr but from this material it is difficult to draw the inference suggested by the counsel for the appellant. In D our view both the Tribunal as well as the High Court were right in taking the view that the certificate dated October 17, 1958 was of no avail to the assessee inasmuch as it merely stated that the assessee had promised a donation of Rs. 10 lacs on October 21, 1955, out of which Rs. 5.5 lacs were deposited in the joint account maintained E in the name of the assessee and the District Magistrate, Bulandshahr for the college and the remaining sum of Rs. 4.5 lacs was left as a loan with the assessee and interest thereon at 6% per annum was to be finally deposited in the Technical Institute account. The Tribunal and the High Court were also right in taking the view that beyond making entries in the books of account of the assessee there was no F material on record to show that the assessee had actually made over a sum of Rs. 4.5 lacs to the college or that the college had accepted the said donation with the result that the amount credited to the college account in her books represented her own funds and lay entirely within her power of disposition and that being so, the interest credited by the assessee on the said sum of Rs. 4.5 lacs and the accretion thereto G continued to belong to the assessee, and, therefore, she was not entitled to the deduction in respect of such interests. Counsel for the assessee attempted to contend that the obligation to make over the said sum of Rs. 4.5 lacs could be said to have become enforceable on the basis of promissory estoppel but in our view, no material has been placed on record by the assessee to show that acting on the promised H donation the college authorities had actually incurred any expenditure towards construction or acted to their prejudice during the accounting period relevant to the assessment years 1958-59 and 1959-60 so as

to support the plea of promissory estoppel. Of course, if in any subsequent years the assessee is in a position to place any material before the taxing authorities or the Tribunal or the Court which would support the plea of promissory estoppel the position in such years may be different. It is thus obvious that if no trust in favour of the college in regard to the amount of Rs. 4.5 lacs could be said to have come into existence either on October 21, 1955 or on November 21, 1955 or on any other subsequent date during the relevant years, no deduction in respect of interest credited by the assessee to the account of the college over the said sum can be allowed.

In the circumstances, in our view, the High Court rightly answered the questions referred to it against the assessee in both the references. The appeals are accordingly dismissed with costs.

V.D.K. *Appeals dismissed.*