and in the circumstances of each case, a different result may follow. So far as the instant case is concerned, I have no doubt in my mind that the question whether there is or is not a reasonable cause is a pure question of fact and, therefore, I am not prepared to ask the Tribunal to refer the first question in income-tax case 28 of 1972 for the opinion of this Court. Even Mr. Justice Tek Chand in *Kanshi Ram's case* (supra), from which I have quoted extensively, observed that there were cases in India in which a contrary view had been expressed and that the judicial opinion in the Lahore High Court as well as in other High Courts was not uniform. It is only on the basis of the decision of the House of Lords in *Shotts Iron Company's case* that the learned Judge took the view that a question of law did arise when the facts were admitted and the inference to be drawn was whether there is a reasonable or probable cause within the meaning of the statute. These observations, as I have already said, should be confined to the facts of that case as observed by the House of Lords, for they were not laying down a rule of universal application as is apparent from their respective speeches.

(23) For the reasons recorded above, the question required to be referred in each of Income-tax Cases Nos. 26 and 27 of 1972 does arise for the opinion of this Court and so also question No. 2 in Income-tax Case No. 28 of 1972. However, question No. 1 in Income-tax Case No. 28 of 1972 is not a question of law arising out of the Tribunal's order and, therefore, it cannot be required to be referred for the opinion of this Court.

(24) The Tribunal is directed to refer the only question in Income-tax Cases Nos. 26 and 27 of 1972 and question No. 2 in Income-tax Case No. 28 of 1972 for the opinion of this Court along with the agreed statement of the case. There will be no order as to costs.

SURI, J.—I agree.

K.S.K.

Before D. K. Mahajan, C.J. & P. S. Pattar, J.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, J. &K. AND CHANDIGARH, PATIALA,—*Applicant.*

versus

M/S. HINDUSTAN MILK FOOD MFG. LTD., NABHA,—*Respondent.*

Income Tax Reference No. 27 of 1972.

April 8, 1974.

Super Profits Tax Act (XIV of 1963)—Sections 2(5), (9), 4, 7(2) *and Second Schedule, Rule* 1—*Assessee keeping apart an amount*

from the mass of profits for distribution as proposed dividend in the same year—Such amount—Whether a 'reserve' within the meaning of Rule 1 of Second Schedule.

Held, that two things must co-exist before an amount can be treated as a reserve within the meaning of rule 1 of second schedule to the Super Profits Tax Act 1963. (a) that the amount must be separated from the general mass of profits and (b) that it should be apparent from the surrounding circumstances that it is in fact a reserve and not an amount kept for distribution as dividend. Dividend is distributed out of profits. Therefore, to convert the nature of the mass of profits into 'reserve', they cannot be kept apart at the same time for distribution as dividend in the same year. The earmarking of profits has to be with the intention of creating a reserve with a view to distribute them in future lean years as in the case of dividend equalization reserve, and not for distribution of dividend in the same year. Reservation of profits for distribution in the same year as dividend is destructive of making them a reserve. Hence when an assessee keeps an amount apart for distribution as proposed dividend in the same year it is not a 'reserve' within the meaning of Rule 1 of Second Schedule to the Act.

Reference made under section 19 *of the Super Profits Tax Act,* 1963 *read with section* 256(1) *of the Income-tax Act,* 1961, *by the Income-tax Appellate Tribunal.*

Chandigarh Bench on 7th August, 1972 *to this Hon'ble Court for opinion on the following question of Law arising out of S.P.T.A. No.* 14 *of* 1969-70 *(Assessment year* 1963-64).

> *"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified to hold that the sum of Rs.* 8,64,961 *was a reserve for the purpose of Rule* 1 *of Schedule* 2 *of the Super Profits Tax Act,* 1963 *?"*

D. N. Awasthy, Advocate & S. S. Mahajan, Advocate with him, *for the appellant.*

S. E. Dastur, Advocate and L. S. Wasu, Advocate with him, *for the respondent.*

JUDGMENT

MAHAJAN, C.J.—The Income-tax Appellate Tribunal, Chandigarh Bench has referred the following question of law for our opinion:—

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified to hold that the sum

of Rs. 8,64,961 was a reserve for the purpose of Rule 1 of Schedule 2 of the Super Profits Tax Act, 1963?"

The assessment year with which we are concerned is 1963-64. The assessee is a limited company. Its registered office is at Nabha. The Income-tax Officer on 17th August, 1966, made an assessment under section 7(2) of the Super Profit Tax Act, 1963 (hereinafter called the Act). He computed the standard deductions from chargeable profits at Rs. 31,53,591, after adding surplus profits of the company to the extent of Rs. 7,02,001, as well as the amount of proposed dividend amounting to Rs. 8,64,961. These amounts were claimed by the assessee as "reserves" within the meaning of Rule 1 of Second Schedule to the Act. The Commissioner of Income-tax in the exercise of his powers under section 17(1) of the Act set aside the order of the Income-tax Officer. The Commissioner passed his order on 31st July, 1968. The Commissioner took the view that the surplus profit and the provision for proposed dividend were not includible for the standard deduction. For this view support was derived from *Commissioner of Income-tax Bombay City* v. *Century Spinning and Manufacturing Company Ltd* (1). Thereafter, the Income-tax Officer passed a fresh order on 10th November, 1968. The assessee then preferred an appeal to the Appellate Assistant Commissioner, who, by his order, dated 11th of August, 1969, confirmed the order of the Income-tax Officer.

(2) The Assessee being dissatisfied with the order of the Appellate Assistant Commissioner preferred an appeal to the Income-tax Appellate Tribunal. Two matters were agitated before the Tribunal that (a) the surplus profit amounting to Rs. 7,02,001 and (b) the proposed dividend amounting to Rs. 8,64,961, should have been held to be a "reserve" and not a "mass of undistributed profits". Therefore, the entire amount of Rs. 15,66,962 should have been held to be a 'reserve' and allowed to be taken into account for computing the standard deduction. The Tribunal held that the sum of Rs. 7,02,001 was a "mass of undistributed profits' and, therefore, could not be treated as a reserve within the meaning of rule 1, of Schedule II of the Act. But with regard to the proposed dividend amounting to Rs. 8,64,961 it took the view that

(1) 24 I.T.R. 499.

this was a reserve within the meaning of the aforesaid rule. The observations of the Tribunal in this behalf are as follows:—

> "The question which arises for our consideration is whether the facts of the instant case before us are absolutely identical with the facts of the case before their Lordships in 24 I.T.R., S.C. 499."

(3) After stating the facts of *Century Company's case*, it was observed:—

> "It was on these facts that their Lordships of the Supreme Court, held that the assessee had not created a 'reserve' within the meaning of the Second Schedule of the Business Profit Tax Act. One fact which emerges out and has considerable significance is, that in the case of *Century Spinning and Manufacturing Co. Ltd.*, the proposed dividend was only earmarked for distribution. In the case before us, the proposed dividend has not only been earmarked but kept apart, kept back, stored up or relied upon for future use or advantage, as would be apparent from the profit and loss account and the balance sheet of the company. If the amount had been only earmarked for distribution as dividend, then the judgment of their Lordships of the Supreme Court would have prevalied. In the instant case before us, the proposed dividend having been earmarked and set apart by a definite volition by the requisite authority who had indicated the manner of the disposal or the destination. Therefore, the facts of the case before us take out a distinct and different shape from the facts which were there before the Lordships of the Supreme Court. If the assessee had only earmarked for distribution the proposed dividends the assessee would have failed, but what the assessee has done is that he has not only earmarked, but kept back or set back or set apart or stored up by a definite act as indicated by the profit and loss account and the balance sheet. This is a 'reserve' as their Lordships of the Supreme Court in *Commissioner of Income-Tax Bombay City* v. *Century Spinning and Manufacturing Co. Ltd.*, want us to understand. This is the kind of a 'reserve' which their Lordships had in their mind when they held against the assessee in

24 I.T.R. 499 because they were of the view that the proposed dividend merely earmarked continued to be a mass of undistributed profits but they have been given a definite shape; they have been given a definite treatment, they have been specifically provided to be a reserve for a specific purpose and, therefore, is a 'reserve'. We are, therefore, of the view that the authorities below were not right in treating the proposed dividend of Rs. 8,64,961 as a mass of undistributed profit and not a reserve and hold that the proposed dividend constituted a reserve within the meaning of Schedule II of the Super Profits Tax Act."

(4) The result was that the Tribunal partly allowed the appeal of the assessee. ....

(5) The assessee was satisfied with the order of the Tribunal with regard to the amount of Rs. 7,02,001, but the Department was not satisfied with the decision of the Tribunal with regard to the proposed dividend being held as a reserve within the meaning of the rule. The Commissioner of Income-tax then moved the Income-tax Appellate Tribunal under section 19 of the Act, read with section 256(1) of the Income-tax Act, 1961, requiring it to refer the question of law set out in the earlier part of this order, for the opinion of this Court. This application was allowed and that is how the matter has been placed before us.

(6) This case has been argued before us by Mr. D. N. Awasthy, for the Department, and Mr. S. E. Dastur, for the assessee, with great vigour and at considerable length. Both the counsel rely on *Century Spinning and Manufacturing Company's case* (supra) for their respective contentions. In other words, the fate of the reference hinges on the determination of the question as to what their Lordships of the Supreme Court laid down in *Century Spinning and Manufacturing Company's case.*

(7) Mr. Awasthy, learned counsel for the Department, contends that the amount of Rs. 8,64,961 can in no case be held to be a reserve within the meaning of rule 1 of Schedule II of the Act. The learned counsel refers to the definitions of 'chargeable profits' and 'standard deduction' in section 2(5) and 2(9) and to section 4 of the Act, which are in the following terms:—

"2(5) 'chargeable profits' means the total income of an assessee computed under the Income-tax Act, 1961 (43 of 1961) for

any previous year or years, as the case may be, and adjusted in accordance with the provisions of the First Schedule.

2(9) 'standard deduction' means an amount equal to six per cent. of the capital of the company as computed in accordance with the provisions of the Second Schedule, or an amount of fifty thousand rupees, whichever is greater:

Provided that where the previous year is longer or shorter than a period of twelve months, the aforesaid amount of six per cent. or, as the case may be, of fifty thousand rupees shall be increased or decreased proportionately:

Provided further that where a company has different previous years in respect of its income, profits and gains, the aforesaid increase or decrease, as the case may be, shall be calculated with reference to the length of the previous year of the longest duration;

4. *Charge of tax.*—Subject to the provisions contained in this Act, there shall be charged on every company for every assessment year commencing on and from the 1st day of April, 1963, a tax (in this Act referred to as the super profits tax) in respect of so much of its chargeable profits of the previous year or previous years, as the case may be, as exceed the standard deduction, at the rate or rates specified in the Third Schedule."

(8) The Second Schedule to the Act contains rules for computing the capital of a company for the purposes of Super Profits Tax. These rules have been framed under section 2(9) of the Act. In the instant case, we are only concerned with rule 1. The relevant part of this rule is in the following terms:—

"Subject to the other provisions contained in this Schedule, the capital of a company shall be the sum of the amounts, as on the first day of the previous year relevant to the assessment year, of its paid up share capital and of its reserve, if any, created under the proviso (b) to clause (vib) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (3) of section 34 of the Income-tax Act, 1961 (43 of 1961), and

> of its other reserves in so far as the amounts credited to such other reserves have not been allowed in computing its profits for the purposes of the Indian Income-tax Act, 1922 (11 of 1922) .....".

(9) This rule talks of two types of 'reserve'. It is common case before us that the amount of Rs. 8,64,961 claimed as reserve by the assessee and disputed as such by the Department, will only fall within the phrase "such other reserves". Mr. Awasthy urges that an amount which is provided for dividend cannot be a reserve and this was so held in the *Century Spinning and Manufacturing Company's case.* It hardly matters that the amount has been separated from the mass of profits and given a distinct entity by putting it under the head 'reserve' in the profit and loss account; whereas, Mr. Dastur, learned counsel for the assessee, contends that moment an amount is separated from the mass of profits and given a distinct entity, it automatically becomes a reserve without anything more. According to the learned counsel, this is what was held in *Century Company's case.* It would, therefore, be necessary at this stage to refer to the *Century Company's case* and find out its *ratio.*

(10) The Supreme Court was dealing with the Business Profits Tax Act, 1947, Schedule II, rule 2(1), and the relevant part of that rule is as follows:—

> "Where the company is one to which rule 3 of Schedule I applies, its capital shall be the sum of the amounts of its paid-up share capital and of its reserves in so far as they have not been allowed in computing the profits of the company for the purposes of the Indian Income-tax Act . . .".

So far as rule 1 of the Second Schedule to the Act is concerned, though differently worded, in substance its import is the same as that of rule 2(1) of Schedule II to the Business Profits Tax Act. While dealing with rule 2(1) of the Second Schedule to the Business Profits Tax Act, their Lordships of the Supreme Court observed that there were two essential requirements which had to be fulfilled, namely, (a) that the amount should not have been allowed in computing the profits of the company for the purposes of Income-tax Act, and (b) that it should be a reserve as contemplated by the rule.

(11) The Century Spinning and Manufacturing Company earned a profit of Rs. 90,44,677 for the calendar year 1945. Out of this amount, after giving credit for provisions made for depreciation and taxation, a sum of Rs. 5,08,637 was carried to the balance-sheet on 1st January, 1946, in the profit and loss account. On 28th of February, 1946, the directors recommended that the aforesaid sum should be appropriated in the following manner:—

"Payment of a final dividend at the rate of Rs. 18 per share (making Rs. 28 per share for the whole year free of income-tax absorbing	...	Rs. 4,92,426
Balance to be carried forward to next year's account	...	Rs. 16,211-6-8".

This recommendation was accepted by the shareholders in their meeting on the 3rd April, 1946. The dividend was made payable on the 15th of April, 1946, and was actually distributed. On these facts, the question was posed whether the amount of Rs. 5,08,637 could be called a 'reserve'. Their Lordships then gave the dictionary meaning of the term 'reserve' and thereafter observed:—

> "What is the true nature and character of the disputed sum, must be determined with reference to the substance of the matter and when this is borne in mind, it follows that on the 1st of April, 1946, which is the crucial date, the sum of Rs. 5,08,637 could not be called a 'reserve' for nobody possessed of the requisite authority had indicated on that date the manner of its disposal or destination. On the other hand, on the 28th February, 1946, the directors clearly earmarked it for distribution as dividend and did not choose to make it a reserve. Nor did the company in its meeting on the 3rd April, 1946, decide that it was a reserve. It remained on the 1st of April as a mass of undistributed profits which were available for distribution and not earmarked as 'reserve'. On the 1st of January, 1946, the amount was simply brought from the profit and loss account to the next year and nobody with any authority on that date made or declared a reserve. The reserve may be a general reserve or a specific reserve, but there must be a clear indication to show whether it was a reserve either of the one or the other kind. The fact that it constituted a mass of undistributed profits on the 1st January, 1946, cannot automatically make it a reserve. On the 1st April, 1946, which is the commencement of the

chargeable accounting period, there was merely a recommendation by the directors that the amount in question should be distributed as dividend. Far from showing that the directors had made the amount in question a reserve, it shows that they had decided to earmark it for distribution as dividend. By the resolution of the shareholders on the 3rd April, 1946, the amount was shortly afterwards distributed as dividend. The High Court appear to have been under a misapprehension as to the real position, for they observed:—

'It was open to the directors to distribute the sum of Rs. 5,08,537 as dividends. They did not choose to do so and have kept back this amount. Therefore, by keeping back this amount they constituted it a reserve. A reserve in the sense in which it is used in rule 2 can only mean profit earned by a company and not distributed as dividend to the shareholders but kept back by the directors for any purpose to which it may be put in future. Therefore, giving to the 'reserves' its plain natural meaning it is clear that the sum of Rs. 5,08,637 was kept in reserve by the company and not distributed as profits and subjected to taxation. Therefore, it satisfied all the requirements of rule 2. The directors had no power to distribute the sum as dividend. They could only recommend, as indeed they did, and it was upto the shareholders of the company to accept that recommendation in which case alone the distribution could take place. The recommendation was accepted and the dividend was actually distributed. It is, therefore, not correct to say that the amount was kept back. The nature of the amount which was nothing more than the undistributed profits of the company, remained unaltered. Thus the profits lying unutilized and not specially set apart for any purpose on the crucial date did not constitute reserves within the meaning of Schedule II, rule 2(1).

Reference was made to Sections 131(a) and 132 of the Indian Companies Act. Section 131(a) enjoins upon the directors to attach to every balance sheet a report

with respect to the state of company's affairs and the amount if any which they recommend to be paid by way of dividend and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account. The latter section refers to the contents of the balance sheet which is to be drawn up in the Form marked F in Schedule III. This Form contains a separate head of reserves. Regulation 99 of the 1st Schedule, Table A, lays down 'that the directors may, before recommending any dividend set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose, to which the profits of the company may be properly applied...'. The Regulation suggests that any sum out of the profits of the company which is to be made as a reserve or reserves must be set aside before the directors recommend any dividend. In this case the directors while recommending dividend took no action to set aside any portion of this sum as a reserve or reserves. Indeed they never applied their mind to this aspect of the matter. The balance sheet drawn up by the assessee as showing the profits was prepared in accordance with the provisions of the Indian Companies Act. These provisions also support the conclusion as to what is the true nature of a reserve shown in a balance sheet."

(12) It will appear from the above observations that the following matters weighed with their Lordships in holding that the amount of Rs. 5,08,637 was not a reserve, namely :—

(1) That the said amount was simply brought from the profit and loss account to the next year and nobody with any authority on that date *made or declared a reserve.*

(2) That the reserve could be a general reserve or a specific reserve, but there must be a clear indication to show that it is a reserve of one or the other kind.

(3) The mass of undistributed profits cannot automatically become a reserve.

(4) The mere recommendation by the directors that the amount be distributed as dividend did not show that the directors had made the amount in question a reserve. But it shows that they had decided to earmark it for distribution as dividend.

If these matters are kept in view, it will appear that two things must co-exist before an amount can be treated as a reserve, namely, (a) that the amount must be separated from the general mass of profits and (b) that it should be apparent from the surrounding circumstances that it is in fact a reserve, and not an amount kept for distribution as dividend. It is not denied and could not be, that devidend is distributed out of profits. Therefore, to convert the nature of the mass of profits into "reserve", they cannot be kept apart at the same time for distribution as dividend in the same year. The earmarking of profits has to be with the intention of creating a reserve with a view to distribute them in future lean years as in the case of dividend equalization reserve, and not for distribution of dividend in the same year as in the present case. To my mind the reservation of profits for distribution in the same year as dividend is destructive of making them a reserve. If this distinction is kept in view, the decision of the Supreme Court presents no difficulty, and its *ratio* becomes clear.

(13) Mr. Dastur, however, would insist that all that was required to create a reserve was a bifurcation of the amount from the mass of general profits and putting it under a separate head. We are unable to accept this contention and, in our opinion, it is not justified on the plain and true reading of the decision of the Supreme Court in *Century Company's case.* In fact, the observations made by their Lordships of the Supreme Court after referring to sections 131(a) and 132 of the Indian Companies Act, clearly show that when a reserve is being created, the directors should apply their mind in that behalf. On the contrary, when the directors reserved the amount in question for distribution as dividend, they clearly took this amount out of the category of 'reserve'. That is why their Lordships were at pains to stress that the amount was actually distributed as dividend after the general meeting had adopted the proposal made by the directors in that behalf. If the mere earmarking of the funds would have made it a reserve, all these observations would be besides the point and would not have been made. It will

be profitable to refer to section 217 of the Companies Act, 1956. The relevant part of this provision for purposes of this case is as under:—

> "217(1) There shall be attached to every balance-sheet laid before a company in general meeting, a report by its Board of directors, with respect to—
>
> (a) the state of the company's affairs;
>
> (b) the amounts, if any, which it proposes to carry to any reserves in such balance-sheet;
>
> (c) the amount, if any, which it recommends should be paid by way of dividend;
>
> (d) .....".

It will appear from this provision that the recommendation as to the amount that should be paid by way of dividend is a distinct matter from the amount that is to be a 'reserve'. While presenting the balance-sheet for the relevant year, the directors made the following report:—

> "Referring to the accounts you will observe that the Company made a profit during the 12 months period of Rs. 12,20,370.45 nP. after making provision for depreciation and taxation. Of this sum Rs. 7,000 have been allocated to development rebate reserve. The Directors recommend a dividend of Rs. 7.25 nP. per Rs. 10 share which will require Rs. 8,64,961.25 nP. The balance together with the amount brought forward from the previous year (after certain adjustments which are evident from the accounts) amounts to Rs. 7,02,001.09 nP. and it is proposed to carry this forward. If the final dividend is approved at the forthcoming Annual General Meeting it will be paid, less income-tax, within 42 days of the date of the Annual General Meeting to shareholders on record on 28th September, 1962."

In the balance-sheet, under the heading "Reserves and Surplus", the amount of Rs. 7,02,001.09 is shown as 'Profit and Loss Account (as per account annexed)' under the heading "Revenue", whereas under the heading "Provisions", the amount of proposed dividend is shown

as Rs. 8,64,961.25. This itself discloses that the intention was not to treat the amount earmarked for dividend for that year as a reserve.

(14) Thus, we are clearly of the view that the Tribunal was in error in holding the amount of Rs. 8,64,961 as a reserve. In fact, the Tribunal did not really understand the *ratio* of the decision of the Supreme Court in *Century Company's case*, and merely took a superficial view of the matter and were side-tracked.

(15) The view we have taken of the matter has been adopted by the Allahabad High Court in *Commissioner of Income-tax, U.P.* v. *Hind Lamps Ltd.* (2). This is a case under the Super Profits Tax Act, 1963. The assessee claimed that the amount of proposed dividend be included in the computation of capital. It was held that the amount of proposed dividend could not be included in the computation of capital under the Super Profits Tax Act. To constitute a 'reserve', the amount must be specifically kept apart for future use or for a specified occasion. It will be useful to quote the observations of the learned Judges in this case:—

> "Turning to the facts before us, it seems that the item of Rs. 4,17,500 representing proposed dividends cannot be treated as a reserve. It appears that the board of directors of the assessee made a proposal to the shareholders that the amount be distributed among the shareholders by way of dividends and made a provision for that amount in the balance-sheet of the year ending December 31, 1961. Apparently, therefore, the amount was earmarked for payment of dividend and was not treated by the directors as a reserve. So far as this item is concerned, the case, in our opinion, falls within the rule laid down in *Century Spinning and Manufacturing Co. Ltd.* It remained a mass of undistributed profits liable to be distributed as dividend upon the acceptance of the recommendation by the shareholders. It was not set apart as a reserve for any purpose, and, therefore, could not be treated on January 1, 1962, the first day of the relevant previous year, as a reserve for the purposes of Schedule II, rule 1 of the Super Profits

(2) 90 I.T.R. 487.

Tax Act. Reference may be made to Regulation 87 of Table A of the First Schedule to the Companies Act, 1956"

(16) It is rather interesting that the same learned Judges in *Commissioner of Income-tax, U.P.* v. *Security Printers of India (P.) Ltd.* (3), took a contrary view. Here again, as in the earlier case, a provision was made for proposed dividend and while dealing with this provision, the learned Judges observed:—

> "From the cases referred to, one thing is clear. And that is that the term 'reserve' means a sum specifically kept apart for future use or for a specific occasion. The reservation must be effected by some one having authority to do so, and it must be of a specified sum for a specified use. Where it arises out of the surplus profits of the company, it should be set apart before the distribution of dividends to the shareholders. It is a sum laid by or stored for use or application in a future contingency which is anticipated, a fund which is created and maintained for the purpose of being drawn upon in future."

It was accepted that the considerations governing the question under the Super Profits Tax Act, were substantially the same as those under the Business Profits Tax Act. The latter provisions fell for consideration in the *Century Company's case*. It is, however, interesting that the earlier decision which was rendered on 9th of August, 1971, in *Security Printers of India's case* was not noticed in the later decision rendered on 23rd of December, 1971 in *Hind Lamps' case*. In our opinion, the later decision has taken the correct view and we are in respectful agreement with the same.

(17) It is not necessary to discuss the remaining decisions that were cited at the Bar. We have merely set them down as they were cited before us. Excepting one decision, the remaining decisions do not deal with the point which requires determination in the present case:—

(1) *Aluminium Industries Ltd.* v. *Commissioner of Income-tax, Kerala* (4);

(2) *Commissioner of Income-tax, Kanpur* v. *British India Corporation (P.) Ltd.* (5);

(3) 86 I.T.R. 210.
(4) 68 I.T.R. 125.
(5) 92 I.T.R. 38.

(3) *Commissioner of Income-tax, Kerala* v. *Periakaramalai Tea and Produce Co. Ltd.*, (6);

(4) *Commissioner of Income-tax, Madras* v. *Indian Steel Rolling Mills Ltd.*, (7);

(5) *Metal Box Company of India Ltd.* v. *Their Workmen* (8);

(6) *Commissioner of Income-tax, Gujarat I* v. *Chunilal Khushaldas*, (9);

(7) *Commissioner of Income-tax and Business Profits Tax, Madras*, v. *Vasantha Mills Ltd.* (10);

(8) *First National City Bank* v. *Commissioner of Income-tax, Bombay*, (11);

(9) *Commissioner of Income-tax (Central) Calcutta* v. *Standard Vacuum Oil Co.* (12);

(10) *Kothari Textiles Ltd. and others* v. *Commissioner of Wealth-tax, Madras*, (13);

(18) The only decision which is of some use is *Periakaramalai Tea and Produce Company's* (6), wherein it was observed that a provision to meet a present liability is not a provision by way of reserve.

(19) After carefully considering the entire matter, and for the reasons recorded above, we answer the question referred to us in the negative, that is, in favour of the Department and against the assessee. However, we leave the parties to bear their own costs.

PATTAR, J.—I agree.

K. S. K.

(6) 92 I.T.R. 65.
(7) 92 I.T.R. 78.
(8) 73 I.T.R. 53=A.I.R. 1969 S.C: 612:
(9) 93 I.T.R. 369.
(10) 32 I.T.R. 237.
(11) 42 I.T.R. 17.
(12) 59 I.T.R. 685.
(13) 489 I.T.R. 816.