at the stage of reference. Therefore, we have declined the contention of the assessee's counsel that we should ask the Tribunal to send a supplementary statement of the case after taking on record the lease-deed.

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, except to the extent of the amount found by the Tribunal being on account of repairs. There will be no order as to costs.

K.S.K.

INCOME TAX REFERENCE

Before Prem Chand Pandit and S. S. Sandhawalia, JJ.

THE COMMISSIONER OF INCOME-TAX.—*Appellant.*

versus

THE SARASWATI INDUSTRIAL SYNDICATE, YAMUNANAGAR,—*Respondents.*

Income Tax Reference No. 54 of 1965.

December 16, 1970.

Indian Income-tax (XI of 1922)—Section 10(2)(xv)—Professional-tax paid by an assessee—Whether an allowable deduction as business expenditure.

Held, that under clause (xv) of section 10(2) of the Income-tax Act, 1922, only that expenditure is covered which the assessee has spent or laid out exclusively for the running or betterment of its business. If a tax is imposed simply because a person is carrying on a particular business, that is not covered by this clause, because the tax is the result of that person's doing the business. If he had not done, that business, the tax would not have been levied on him. The professional tax paid by an assessee is the outcome of his carrying on the business. That, however, does not mean that the said tax is an expenditure which has been incurred by the assessee for the purpose of its business. Hence professional-tax paid by an assessee in respect of his business is not an allowable deduction under section 10(2)(xv) of the Act as business expenditure.

(Para 6)

Reference under Section 66(1) of the Income-tax Act, 1922 made by the Income-tax Appellate Tribunal, Delhi Bench,—vide *his award dated 9th*

July, 1964, in R.A. No. 964 of 1964-65, for decision of an important question of law arising out of I.T.A. No. 4614 of 1963-64 for the assessment year 1959-60.—

"Whether on the facts and in the circumstances of the case the amount Rs. 250 paid on account of professional tax was allowable as a deduction in assessee's assessment?"

D. N. AWASTHY AND B. S. GUPTA, ADVOCATES, for the appellant.

S. C. SIBAL AND R. C. SETIA, ADVOCATES, for the respondent.

JUDGMENT.

P. C. PANDIT, J.—The following question of law has been referred to us for opinion:—

"Whether on the facts and in the circumstances of the case the amount of Rs. 250 paid on account of professional tax was allowable as a deduction in assessee's assessment ?"

(2) The Saraswati Industrial Syndicate, Yamunanagar, District Ambala, the assessee, is a public limited company. The assessment year is 1959-60 and the relevant accounting period being the year ending 31st August, 1958. The assessee claimed a deduction of Rs. 250, which was paid by it on account of professional-tax. Both the Income-tax Officer and the Appellate Assistant Commissioner disallowed this amount in view of the provisions of section 10(4) of the Indian Income-tax Act, 1922 (hereinafter called the Act). The Appellate Tribunal, however, held it to be an allowable deduction, because the assessee had to pay this tax in order to carry on its business. This finding was given relying on the decision of the Allahabad High Court in *Simbholi Sugar Mills Ltd.* v. *Commissioner of Income-tax, U.P. & V.P.*, (1). The Commissioner of income-tax then made an application requiring the Tribunal to refer certain questions of law to this Court for opinion. The Tribunal, however, referred only the above-mentioned question.

(3) The assessee paid this tax under the Punjab Professions, Trades, Callings and Employments Act, 1956; and it claimed this deduction under section 10(2)(xv) of the Act. The relevant part of section 10 reads—

"10. Business—(1) The tax shall be payable by an assessee under the head "Profits and gains of business, profession

(1) XLV I.T.R. 125.

or vocation" in respect of the profits and gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely :—

* * * *

* * *

(xv) any expenditure not being an allowance of the nature described in any of the clauses (i) to (xiv) inclusive; and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purpose of such business, profession or vocation."

(4) The case of the assessee was that this expenditure was neither an allowance of the nature described in any of the clauses (i) to (xiv) of action 10(2) and nor was it in the nature of capital expenditure or personal expenses of the assessee, but the same was laid out or expended wholly and exclusively for the purpose of his business. The assessee had to pay the professional-tax in order to carry on its business. This tax was, therefore, fully covered by the provisoins of section 10(2) (xv) and was allowable as a deduction in the relevant assessment.

(5) The position taken by the Revenue, on the other hand, was that the assessee could not claim this deduction in view of the provisions of section 19(4) of the Act, the relevant part of which is :

"Nothing in clause (ix) of clause (xv) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains ;....."

Their case was that since this tax was levied on the profits or gains of the assessee's business or in any case assessed at a proportion of or otherwise on the basis of any such profits or gains, therefore, this sum could not be allowed as a deduction in view of the provisions of section 10(4) of the Act.

(6) The first question to be determined is whether the case set up by the assessee itself would come under section 10(2) (xv) of the Act. It can claim the exemption of this tax only if it can show, as is alleged by it, that this tax was an expenditure laid out or expended wholly and exclusively for the purpose of its business. In other words, can it be said that this was an expenditure which had been incurred by the assessee exclusively for the purpose of its business ? It is quite different to say that the assessee was taxed, because it carried on its business. Only that expenditure will be covered by this clause, which the assessee has spent or laid out exclusively for the running or betterment of its business. If a tax has been imposed simply because a person was carrying on a particular business- that, in my view; will not be covered by this clause, because the tax is the result of that person's doing the business. If he had not done that business, the tax would not have been levied on him. The tax, in the instant case, was the outcome of the assessee's carrying on the business. That, however, does not mean that the said tax was an expenditure which had been incurred by the assessee for the purpose of its business.

(7) The view that I have taken above is supported by a Full Bench decision of the Madras High Court in *Commissioner of Income-tax* v. *King and Partridge*, (2). There the question for consideration was whether the profession tax paid under section 111 of the Madras City Municipal Act should be allowed as a proper deduction from the taxable income "as an expenditure incurred solely for the purposes of the profession" of the assessees within the meaning of section 11 of the Act. The Commissioner of Income-tax was of the opinion that the deduction claimed was not an allowable item. While giving their opinion on this question, the learned Judges observed :—

> "The answer to the question put to us depends in our opinion upon the nature of the profession tax levied by the Municipality. If the profession-tax is a contribution from the income of the assessee to the Municipality it will stand on the same footing ts income-tax itself which is such a payment to the Government. It is clear, in assessing the income of a person the income-tax he pays could not be deducted. for what is paid is a part of the

(2) A.I.R. 1926 Mad. 368.

income itself and not an expenditure for earning that income or profit. It was so ruled in *Ashton Gas Co.* v. *Attorney General,* (3), and the proposition is conceded before us. What then is the profession-tax ? Is it a payment made out of the income of the tax-payer or is it an expenditure which he has to incur to enable him to earn his income ? We are of opinion that it is the former and not the latter.

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Now the nature of the tax cannot vary with the individual taxed. In the case of persons holding appointments under the Government it seems to us impossible to predicate that they pay profession-tax to enable them to earn their salary. * * * *
the proper basis of the tax is the income earned. In this view the payment of the profession-tax cannot be held to be "an expenditure for the purpose of such profession" though it is incurred in connection with it. The words "for the purpose of" were construed by Lord Davey in the case of *Strong and Co.,* v. *Woodifield,* (4), where the expression was "for purposes of the trade." His Lordship observed :

"These words appear to me to mean for the purpose of enabling a person to carry on and earn profits in the trade etc. I think the disbursements permitted are such as are made for that purpose. It is not enough that the disbursement is made in the course of, or arises out of, or is connected with, the trade, or is made out of the profits of the trade. It must be made for the purpose of earning the profits." Following that view we consider that the payment of profession tax does not fall within section 11".

(8) In this view of the matter, it is needless to decide the other question whether the profession-tax is levied on the profits or gains of any business or assessed at a proportion of or otherwise on the

(3) (1906) A.C. 10.
(4) (1906) A.C. 443.

basis of such profits or gains as contended by the Revenue; or it is charged on the total receipt during an assessment year of an assessee irrespective of the fact whether it made any profits or not, as argued by the learned counsel for the assessee.

(9) I would, accordingly, answer the question referred to us in the negative. There will be no order as to costs.

S. S. Sandhawalia, J.—I agree.

B. S. G.

REVISIONAL CIVIL

Before D. K. Mahajan and Bal Raj Tuli, JJ.

THE JULLUNDUR CENTRAL CO-OPERATIVE BANK LTD,—*Petitioner.*

versus

GIAN SINGH,—*Respondent.*

Civil Revision No. 934 of 1969.

December 17, 1970.

The Punjab Co-operative Societies Act (XXV of 1961)—Sections 55 and 79—Dispute arising out of conditions of service between a co-operative society and its employees—Whether referable to arbitration under section 55—Notice under section 79 by an employee of a co-operative society—Whether essential before filing a suit arising out of such dispute.

Held, that a dispute between a co-operative society and an employee arising out of the conditions of his service, including dismissal or removal from service, is not referable under section 55 of Punjab Co-operative Societies Act. A dispute of this kind, therefore, can be tried in a civil court or by an industrial Court on a reference by the State Government.

(Para 2)

Held, that notice under section 79 of the Act is required to be delivered to the Registrar, Co-operative Societies only if the suit against a co-operative society arises out of any act touching its business and not for every suit. The Registrar has been given certain powers to supervise and control the working and business of the co-operative society in order to see that it is carried on in accordance with the principles of co-operation and according to the provisions of the Act. He is not concerned with other activities of the co-operative society and its disputes with the strangers or its employees arising out of their service conditions. It is, therefore, not necessary