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that proceedings for assessment of a partnership firm to sales tax can be commenced after its dissolution, and despite notice of dissolution having been served on the Department even before the issue of a notice as a preliminary to assessment. Moreover, since the Hyderabad General Sales Tax Act, 1950, provided some machinery for the assessment to tax a business which was discontinued, these two cases cannot be relied upon as authorities against the judgment of the Allahabad High Court in *Jagat Behari Tandon and another* v. *Sales Tax Officer, Etawah, and another* (7).

The conclusion, therefore, is that none of the cases under the various Sales Tax Acts cited on behalf of the Department really affects the line of reasoning as given by the learned Judges of the Allahabad High Court in *Jagat Behari Tandon and another* v. *Sales Tax Officer, Etawah, and another* (7), with which we are in respectful agreement.

For the reasons set out above we would answer the question referred to in the affirmative. The assessee will have his costs of this reference, counsel's fee being assessed at Rs. 250.

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TEK CHAND, J.—I agree.

Prem Chand Pandit, J.

PREM CHAND PANDIT, J.—So do I.

B.R.T.

FULL BENCH

Before Tek Chand, S. B. Capoor and P. C. Pandit, JJ.

THE PUNJAB DISTILLING INDUSTRIES LTD,—*Petitioner*

versus

THE COMMISSIONER OF INCOME-TAX,—*Respondent.*

Income-Tax Reference No. 9 of 1959.

1962

February 21.

Income-tax Act (XI of 1922)—Section 2 (6A)(d)—Whether ultra vires *the Central Legislature—Dividend—Meaning of—Reduction of Capital sanctioned in one*

*accounting year but the amount actually distributed amongst the shareholders in the following year—Whether to be included in the assessment of the accounting year in which actual distribution took place or in the previous year in which declaration was made—Distribution—Meaning of—Section 16(2)—"Paid, credited or distributed"—Meaning of—Interpretation of statutes—*Casus omissus—*Whether can be supplied by Court—Entries in Legislative lists—How to be interpreted.*

Held, that section 2(6A) (d) of the Indian Income-tax Act, introduced by section 2 of the Indian Income-tax (Amendment) Act (7 of 1939), was within the legislative competence of the Central Legislature and was within the ambit of entry No. 54 of List I of the 7th Schedule of the Government of India Act, 1935, not only in form but also in substance. The five instances of "dividend" mentioned in sub-section (6A) of section 2 relate to distribution of accumulated profits either wholly or partly. This is in contradistinction to the ordinary dividend which is paid out of current profits. What is to be seen is whether the language of the impugned sub-clause (d) effectuates the intention of the Legislature while at the same time keeping the provisions well within the legislative competence. The competence to legislate regarding income-tax also includes the power to legislate in order to check evasion. The object of section 2(6A) (d) is to provide a check against the device of distributing accumulated profits under the cloak of reduction of capital. It is only the distribution of the accumulated profits which is treated as dividend on the reduction of capital and not the amount which is in excess of the accumulated profits. The law treats the distribution of accumulated profits alone as dividend and the company cannot, by styling the entire amount for distribution as capital, evade its liability to be taxed on the amount of the accumulated profits.

Held, that section 2(6A) of the Income-tax Act added an inclusive definition of "dividend" which was not exhaustive. The connotation of the word "dividend" has been extended. Speaking generally, "dividend" is a sum of money or portion of divisible thing to be distributed according to a fixed scheme being what the shareholder earns as return on his investment; it is his share of corporate earnings credited to his account. The characteristic feature of "dividend" is that it is declared and

paid wholly from the net profits or undivided earnings leaving intact the shareholder's fractional interest represented by his holding in the capital stock. A "dividend" is not capital but the produce of capital. Subject to well-recognised limitations, "dividend" is a word of general and indefinite meaning without any narrow, technical or rigid significance. The term dividend is applied to a distributive sum, share or percentage arising from some joint venture as profits of a corporation. In the second sense, it is a proportionate amount paid on liquidation of a company. In this context "dividend" is being referred to in the sense of corporate profits set apart for reteable division amongst shareholders being surplus assets obtained in excess of capital.

Held, that the distribution of accumulated profits which is treated as "dividend" under section (6A)(d) of the Income-tax Act, is to be deemed to have been made in the accounting year in which the debits of refunds were actually made in the accounts of the shareholders and the refunds were actually granted to the shareholders and not in the accounting year in which the declaration was made consequent upon the certificate granted by the Registrar of Joint Stock Companies under section 61(a) of the Indian Companies Act, 1913.

Held, that the word "distribution" in section 2(6A)(d) of the Indian Income-tax Act, 1922, connotes to deal out or bestow in portions or shares among many; to allot or apportion as one's share. When something is delivered to several persons it is said to be distributed among them. Distribution is an act of dispensing portions between several. A "declaration" of a dividend is not the same thing as "distribution", as in the latter there are three stages, namely, the declaration, the dividend, and its distribution or disposal. "Distribution" is not merely an act of dividing or opportioning, but also dispensing or dealing out. The act of "distribution" has to be actual and not notional: physical and not mental. A resolution or decision to distribute is not "distribution" as there is no giving out, dispensing, or disbursement involved. "Distribution" connotes two acts: a "division" and "delivery".

Held, that section 16(2) of the Indian Income-tax Act, 1922, uses three words : "paid, credited or distributed" and, according to well-known canons of statutory interpretation, each expression is to be given a distinct meaning.

The word "credited" is used when an entry on the credit side of an account is made. It does not signify actual dealing out. A thing is said to be "paid" when something is given which need not be first apportioned and then disbursed. The word "distributed" is used in the sense of division and delivery. The expression which follows the word "distributed", namely, "deemed to have been * * * distributed" is significant. "Deemed" in this context means "supposed". When a thing is deemed to be distributed, it means that though in fact it is not distributed yet it will be considered or treated as if it had been distributed. If the word "distribute" were to signify a mental decision, or even a book entry, the use of the word "deemed" would perhaps be superfluous. The use of the word "distributed" in section 16(2) suggests that it refers to actual distribution or delivery. In other words, distribution is being considered in the factual and not in the notional sense, and distribution is the sequence of reduction of capital. In the phrase occurring in section 2(6A)(d) "any distribution by a company *on* the reduction of its capital" the preposition "on" means "after". As the act of distribution is not notional, reduction of a capital does not imply contemporaneous distribution. It is a subsequent process after-reduction of capital.

Held, that a *casus omissus* cannot be supplied by a Court, for that would amount to making laws. It is not the function of the Court to re-write a section or to amend a statutory provision with a view to translate the supposedly real intention of the framers of the Act, or on grounds of any inadvertence of the Legislature. It is not permissible to a Court to insert by implication any matter thought to be erroneously left out by the Legislature as that would not be construing an Act, but altering or amending it.

Held, that entries in Legislative Lists are given a broad and comprehensive interpretation, the cardinal rule of construction being that words should be read in their natural and grammatical meaning subject to the rider that in construing the words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude. The various entries in the Lists are not powers of legislation but fields of legislation. The words "with respect to" occurring

in section 100, sub-section (1), of the Government of Indian Act, 1935, and also in Article 246 (1) of the Constitution are of wide import as they simply mean "with reference to" or "with regard to". Thus, the legislative field is extensive and the items of legislation include not merely the main purposes but also all ancillary and subsidiary matters which can fairly, and reasonably he said to fall within the scope of a particular entry. These entries are in the nature of legislative heads and are deemed to be of enabling character. The language of these entries is given wide scope for the main reason that they set up a machinery of Government and may cover the power not only of conferment but also of extinguishment, control, or modification of the rights. The scope of ancillary or subsidiary matters is very extensive.

Case referred by Division Bench consisting of Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice K. L. Gosain on 15th March, 1961 to a larger Bench for decision of the question of law involved in the case. The case was finally decided by a full bench consisting of Hon'ble Mr. Justice Tek Chand, Hon'ble Mr. Justice S. B. Capoor and Hon'ble Mr. Justice P. C. Pandit on 21st February, 1962.

The case referred under Section 66(1) of the Indian Income-tax Act, 1922 (Act XI of 1922) by the Income-tax Appellate Tribunal for the decision of four questions of law arising out of the Tribunals' order in I.T.A. No. 9431 of 1957-58 regarding assessment 1956-57; set out in the Judgment.

S. M. SIKRI, ADVOCATE-GENERAL AND B. R. KOHLI, ADVOCATE, for the Appellants.

D. N. AWASTHY AND H. R. MAHAJAN, ADVOCATES, for the Respondents.

JUDGMENT

Tek Chand, J.

TEK CHAND, J.—The following four questions of law have been referred to the Full Bench—

(1) Whether the provisions of section 2(6A) (d) of the Indian Income-tax Act are *ultra vires* the Central Legislature?

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(2) Whether the accumulated profits amounting to Rs. 4,69,244-13-0 could be deemed to have been distributed on the reduction of the capital from Rs. 25 lakhs to Rs. 15 lakhs within the meaning of section 2(6A)(d) of the Indian Income-tax Act?

(3) Whether the amount of Rs. 11,687-3-0 received by the assessee as security deposit on account of empty bottles could be considered as Capital Gains?

(4) Whether the accumulated profits could be considered as dividend deemed to have been distributed in the assessment year 1955-56 in view of the certificate granted by the Registrar of Companies under section 61(4) of the Indian Companies Act, 1913, or could be considered as dividend deemed to have been distributed in the assessment year 1956-57 because the debits of refunds were actually made in the accounts of the share-holders and the refunds were actually granted to the share-holders during the accounting period of the assessment year 1956-57.

The assessee is the Punjab Distilling Industries Limited, Khasa, and was incorporated on 23rd May, 1945, with a share capital of Rs. 50 lakhs. On 15th December, 1947, on a resolution having been passed, the High Court sanctioned the reduction of the capital of the company from Rs. 50 lakhs to Rs. 25 lakhs and the capital was accordingly reduced. Again, on 16th December, 1953, a resolution was passed by the company for a further reduction of the share capital from Rs. 25 lakhs to Rs. 15 lakhs and the necessary sanction was granted by the High Court on 6th August, 1954, and on 4th November, 1954, Registrar of Joint Stock Companies issued a certificate as required by section 61, sub-section (4), of the Indian Companies Act, 1913, On 5th November,

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1954, the company issued notice to the shareholders inviting applications for the refund of the share capital so reduced, and the necessary funds were distributed between 1st December, 1954, and 30th November, 1955. The assessment year in this case is 1956-57 and the accounting year ended on 30th November, 1955. All the shares of this company were fully paid.

According to the findings of Income-tax Officer, who made the assessment, the accumulated profits of the assessee-company at the time when the capital was reduced to Rs. 15 lakhs were Rs. 8,42,337, the details of which were as under—

		Rs.
Special reserve	...	17,620
General reserve	...	7,44,708
Workmen's compensation reserve	...	22,950
Income-tax reserve	...	57,059
Total	...	8,42,337

The Income-tax Officer also held that the assessee-company had actually distributed dividends of Rs. 1,06,250. The Income-tax Officer required the assessee by a notice under section 23(3) of the Income-tax Act to explain why the distribution on the reduction of its share capital to the extent to which the company possessed accumulated profits be not treated as distribution on account of dividend in accordance with the provisions of section 2(6A)(d) of the Income-tax Act. The relevant provisions of section 2(6A)(d) are as under—

"2. In this Act, unless there is anything repugnant in the subject or context—

* * * *

(6A) 'dividend' includes—

* * * *

(d) any distribution by a company on the reduction of its capital to the extent

to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not; * * *

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."

The assessee, *inter alia*, contended that the above provisions were *ultra vires* the central Legislature, and, further, the entire amount mentioned in the notice was not "accumulated profits" which could be deemed to be dividend under section 2(6A) (d) in as much as the amount included a sum of Rs. 1,69,268 on account of capital gains which had to be excluded by virtue of the explanation to section 2(6A)(d). The assessee also maintained that the accumulated profits, when the Capital was reduced from Rs. 50 lakhs to Rs. 25 lakhs were not made available to the assessee and the amount could not be deemed to have been distributed as dividend. It was also stated that the balance, after reduction of the capital, did not relate to the assessment year 1956-57 which was under consideration, because the distribution had occurred before the commencement of the accounting period. These contentions of the assessee did not prevail with the Income-tax Officer, who held that the entire sum of Rs. 8,42,337 was dividend and deemed to have been distributed in accordance with section 2(6A)(d). He, therefore, assessed tax at Rs. 9,48,587 as shown below—

		Rs
Dividends deemed to be distributed in accordance with th provisions of section 2(6A)(d)	...	8,42,337
Dividends distributed as per balance sheet	...	1,06,250
Total	...	9,48,587

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The assessee was unsuccessful in its appeal to the Appellate Assistant Commissioner. A further appeal was filed before the Income-tax Tribunal, Delhi, branch, which was disposed of on 21st March, 1958, holding that section 2(6A)(d) was *intra vires* the central Legislature. The Tribunal, however, held that at the time when the capital was reduced from Rs. 50 lakhs to Rs. 25 lakhs in 1948, the assessee had accumulated, by way of profits, a sum of Rs. 361,405 and those profits had been exhausted long before the capital was reduced for the second time in 1954, that is, from Rs. 25 lakhs to Rs. 15 lakhs. According to this finding, the Tribunal reduced the amount of the accumulated profits of Rs. 8,42,337 to Rs. 4,80,932.

The assessee also raised a contention that the capital gains amounting to Rs. 1,15,303, which represented the assessee's receipts on account of the security money for the return of empty bottles, were of a capital nature and not revenue receipts, and the Tribunal held that out of this amount capital gains to the extent of Rs. 65,616 had already been included in the profits of Rs. 3,61,405 which had already been exhausted before the reduction of the capital from Rs. 25 lakhs to Rs. 15 lakhs and the unexpended capital gains were only Rs. 11,687-3-0. The Tribunal's view was that Rs. 11,687-3-0 were liable to be deducted from the amount of accumulated profits. The Tribunal consequently reduced the accumulated profits from Rs. 8,42,337 to Rs. 4,69,244-13-0. This figure was arrived at by substracting the two amounts of Rs. 3,61,405 and 11,687-3-0 from Rs. 8,42,337. Lastly, it was also contended before the Tribunal by the assessee that as the certificate from the Registrar for reduction of capital from Rs. 25 lakhs to Rs. 15 lakhs was obtained on 4th November, 1954, the distribution of the dividend could be deemed to have taken place in the accounting year ending 30th November, 1954, preceding the assessment year in question, 1956-57. The Tribunal expressed the view that as the actual payment to the shareholders on the refund of the capital (reduced), and the debits in the accounts

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of the shareholders had been effected in the accounting period of the assessment year, the tax liability in question could be rightly considered to have arisen in the assessment year under consideration. Copies of the orders of the Tribunal, the Appellate Assistant Commissioner and the Income-tax Officer have been placed upon the record of this case as also of the balance-sheets and of the Tribunal's orders for the previous assessment years.

The questions of law under reference may now be considered *ad seriatim*. The first question is whether the provisions of section 2(6A)(d) of the Indian Income-tax Act are *ultra vires* the central Legislature. The argument raised by Mr. S. M. Sikri, assessee's counsel, is that the assessee has been taxed on the return of capital on reduction which is not the income, which would bear the incidence of income-tax. He has drawn our attention to entry No. 54 in Federal Legislative List I of the 7th Schedule of the Government of India Act, 1935, which refers to "Taxes on income other than agricultural income". In the same list, there is also an entry No. 55 mentioning "Taxes on the capital value of the assets exclusive of agricultural land, of individuals and companies, taxes on the capital of companies". Our attention has also been drawn to omission in the above list of words which now appear against entry No. 97 in the Union List Schedule VII of the Constitution of India which read as under—

> "97. Any other matter not enumerated in List 2 or List 3 including any tax not mentioned in either of those Lists".

No residuary power was specifically vested either in the Dominion Legislature or in the Provincial Legislatures by the Government of India Act, 1935. Section 104 of that Act, however, authorised the Governor-General by public notification to empower either the Federal Legislature, or a Provincial Legislature, to enact a law with respect

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to any matter not enumerated in any of the Lists in the 7th Schedule to that Act including a law imposing a tax not mentioned in any such List. Entry No. 82 of the Union List, under the Constitution is in identical language as entry No. 54 of the Federal Legislative List in Government of India Act, 1935. In the course of his arguments Mr. Sikri has referred us to a decision of the Supreme Court in *Navinchandra Mafatlal* v. *the Commissioner of Income-tax, Bombay City* (1), It was held that the term "capital gains" comes well within the meaning of the word "income" used in item No. 54 of List I of the 7th Schedule of the Government of India Act, 1935. The Supreme Court endorsed the principle that none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to appertain to it. Therefore, in construing an entry in a List conferring legislative powers, widest possible construction according to their ordinary meaning must be put upon the words used therein. A word occurring in a constitutional Act must not be construed in any narrow and pedantic sense. A reference was made to the observations of Lord Wright in *Kamakshya Narain Singh* v. *Commissioner of Income-tax* (2), who said—

> "Income, it is true, is a word difficult and perhaps impossible to define in any precise general formula. It is a word of the broadest connotation."

Das, J., said—

> "The cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional

(1) (1955) 1 S.C.R. 829
(2) (1943) L.R. 70 I.A. 180=(1943) 11 I.T.R. 513

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enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude. What, then, is the ordinary, natural and grammatical meaning of the word 'income'? According to the dictionary it means 'a thing that comes in'. (*See* Oxford Dictionary, Volume V, page 162; Stroud, Volume II, pages 14—16). In the United States of America and in Australia both of which also are English speaking countries the word 'income' is understood in a wide sense so as to include a capital gain. Reference may be made to *Eisner* v. *Macomber* (3), *Merchants' Loan and Trust Co.,* v. *Smietanka* (4), and *United States* v. *Stewart* (5), and *Resch* v. *Federal Commissioner of Taxation* (6), In each of these cases very wide meaning was ascribed to the word 'income' as its natural meaning. The relevant observations of learned Judges deciding those cases which have been quoted in the judgment of Tendolkar, J., quite clearly indicate that such wide meaning was put upon the word 'income' not because of any particular legislative practice either in the United States or in the Commonwealth of Australia but because such was the normal concept and connotation of the ordinary English word 'income'. Its natural meaning embraces any profit or gain which is actually received."

Mr. Sikri stresses on the last sentence and contends that even giving the word "income" its

(3) (1920) 252 U.S. 189=64 L. Ed. 521
(4) (1925) 255 U.S. 509=65 L. Ed. 751
(5) (1940) 311 U.S. 60=85 L. Ed. 40
(6) (1942) 66 C.L.R. 198

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widest meaning, it cannot be stretched so as to include capital which cannot be taxed. A legislation, he maintains, under entry 54 of the Federal Legislative List must confine itself to taxes on "income" and section 2(6A)(d) which was introduced by section 2 of the Indian Income-tax (Amendment) Act, (7 of 1939) in so far as it makes "capital" taxable is *ultra vires* the central Legislature. When the term is given its ordinary, every-day and broad meaning, it carries the implication of gain-profits or increment, and is understood as gain, either derived from capital, or from labour or from both. Income, for purposes of taxation, has an element of gain or profit as distinguished from corpus or principal. It is sometimes called fruit born of capital, but mere conceivability or faculty of fruition is not income. An important distinguishing feature which, however, cannot be overlooked is that income in the sense of tax laws is distinct from the capital or the stock. It is an increase of wealth out of which money may be taken to satisfy the tax demands of the Government. Mr, Sikri cited an Amercian decision in *Eisner* v. *Macomber* (7), in which the word "income" occurring in the Sixteenth Amendment to the American Constitution was considered. The Sixteenth Amendment provides—

> "Income-tax. The Congress shall have power to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States, and without regard to any census or enumeration."

Delivering the opinion of the Suoreme Court Pitney, J., cited with approval the definition adopted in two previous cases to the following effect—

> "Income may be defined as the gain derived from capital, from labour, or from both combined."

(7) 64 L. Ed. 521

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and added, that the definition be understood to include profit gained through sale or conversion of capital assets. Referring to the above definition, the learned Judge observed—

> "Brief as it is, it indicates the characteristic and distinguishing attribute of income, essential for a correct solution of the present controversy. The Government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word 'gain', which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived,—'derived- from- capital,'—'the—gain —derived—from —capital', etc. Here we have the essential matter: not a gain accruing to capital, not a growth or increment of value in the investment; but a gain, a profit, something of exchangeable value proceeding from the property, served from the capital, however invested or employed, and coming in, being 'derived', that is, received or drawn by the recipient (the taxpayer) for his separate use, benefit, and disposal; that is income derived from property. Nothing else answers the description."

Pitney, J,, also referred to a case decided by a Circuit Court of Appeals in *Commissioner of Internal Revenue* v. *Mayer* (8), for the following observations—

> "It is generally accepted that a return on capital or investment is not taxable under the Sixteenth Amendment,"

Reference was also made to *Kansas City Southern Railway Co.* v. *Commissioner of Internal Revenue* (9), for the general proposition that restorations of capital assets are not taxable income.

The main contention of the assessee's counsel is that the assessee is not liable to tax on the capital

(8) 139 Federal Reporter (2nd Series) 256(258).
(9) 52 Federal Reporter (2nd Series) 372 (378).

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and it is capital which on reduction is being taxed under section 2(6A)(d) by being included in the definition of "dividend". According to section 2(6A)(d), any distribution on the reduction of its capital becomes dividend to the extent to which the company possessed accumulated profits arising after the end of the previous year ending next before the 1st day of April, 1933. According to Mr. Sikri the distribution by the company is necessarily of the capital which is being reduced. What is being made taxable, he says, is the capital reduced though the extent of the taxability does not exceed the accumulated profits possessed by the company. The language of the Act, therefore, refers to distribution of the capital on reduction, as dividend, which is being made available for purposes of imposition of the tax. Reference has been made to a decision of the Supreme Court in *A. V. Fernandez* v. *The State of Kerala* (10), for the proposition that in construing a fiscal statute and in determining the liability of a subject to tax, one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. The Revenue had, therefore, to satisfy the Court that the case fell strictly within the provision of the law; and where the case was not covered within the four corners of the taxing statute, no tax could be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter. Observations of Lord Russel of Killowen in *Inland Revenue Commissioners* v. *Duke of West-minster* (11), and of Lord Cairns in *Partington* v. *The Attorney General* (12), were cited with approval, and reference was also made to *Bank of Chettinad* v. *Income-tax Commissioner* (13). Lord Russel, in the former case, had observed—

> "I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the

(10) A.I.R. 1957 S.C. 657
(11) 1936 A.C. 1 (24)
(12) (1869) 4 H.L. 100(122)
(13) A.I.R. 1940 P.C. 183

case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case."

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On the second question under reference Mr. Sikri merely said that in case the Court answered the first question in the negative and held in favour of the validity of section 2(6A)(d) of the Act, then the provision should be interpreted as if the words "of other than capital" were inserted in section 2(6A)(d) after the words "any distribution". In other words, Mr. Sikri wants this Court to find that a *casus omissus* has really occurred in the statute through the inadvertence of the Legislature. I do not think that a *casus omissus* can be supplied by a Court, for that would amount to making laws. It is not the function of the Court to rewrite a section or to amend a statutory provision with a view to translate the supposedly real intention of the framers of the Act, or on grounds of any inadvertence of the Legislature. I do not think, it is permissible to a Court to insert by implication any matter thought to be erroneuosly left out by the Legislature as that would not be construing an Act, but altering or amending it. It was observed by Lord Mersey in *Thompson* v. *Goold* (14)—

"It is a strong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do."

Lord Loreburn similarly observed—

"We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself."

(14) 1910 A.C. 409 (420).

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(*vide Vickers* v. *Evans* (15), Evershed M. R. in *Tinkham* v. *Perry* (16), remarked—

> "Words plainly should not be added by implication into a statute unless it is necessary to do so to give the language sense and meaning in its context."

I do not think that any case has been made out for construing the provisions, by inserting words, without which the language of the statute would be either incomprehensible or not in conformity with its avowed purpose.

These arguments of the learned counsel for the petitioner may first be considered with reference to the scope of entry No. 54 in List I of the VII of the Schedule of the Constitution Act, 1935, and then by closely examining the language of the impugned statute in order to check whether it falls within the ambit of the legislative competence of the Central Legislature. It is a well settled principle that entries in Legislative Lists are given a broad and comprehensive interpretation : the cardinal rule of construction being, that words should be read in their natural and grammatical meaning subject to the rider that in construing the words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude (vide *Navinchandra Mafatlal* v. *The Commissioner of Income-tax, Bombay City* (1). Moreover, the various entries in the Lists are not powers of legislation but fields of legislation as was pointed out in *Mst. Govindi* v. *The State of Uttar Pradesh* (17). The words "with respect to" occurring in section 100, sub-section (1), of the Government of India Act, 1935, and also in Article 246(1) of the Constitution are of wide import as they simply mean "with reference to" or "with regard to". Section 100, sub-section (1), provides—

> "100. *Subject matter of Federal and Provincial Laws*.—(1) Nothwithstanding

(15)1910 A.C. 444
(16) (1951) 1 K.B. 547 (549)
(17) A.I.R. 1952 All. 88

> anything in the two next succeeding sub-sections, the Federal Legislature has and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the 'Federal Legislative List')."

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Thus, the legislative field is extensive and the items of legislation include not merely the main purposes but also all ancillary and subsidiary matters which can fairly, and reasonably be said to fall within the scope of a particular Entry. Reference may be made to *United Provinces* v. *Mt. Atiqa Begum* (18). These entries are in the nature of legislative heads and are deemed to be of enabling character. The language of these entries is given wide scope for the main reason that they set up a machinery of Government and may cover the power not only of conferment but also of extinguishment, control, or modification of the rights. The scope of ancillary or subsidiary matters is very extensive.

Section 2(6A) of the Income-tax Act added an inclusive definition of "dividend" which was not exhaustive. The connotation of the word "dividend" has been extended. Speaking generally, "dividend" is a sum of money or portion of divisible thing to be distributed according to a fixed scheme being what the shareholder earns as return on his investment; it is his share of corporate earnings credited to his account. The characteristic feature of "dividend" is that it is declared and paid wholly from the net profits or undivided earnings leaving intact the shareholder's fractional interest represented by his holding in the capital stock. A "dividend" is not capital but the produce of capital. Subject to well-recognised limitations, "dividend" is a word of general and indefinite meaning without any narrow, technical or rigid significance. The term

(18) A.I.R. 1941 F.C. 16(25)

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dividend is applied to a distributive sum, share or percentage arising from some joint venture as profits of a corporation. In the second sense, it is a proportionate amount paid on liquidation of a company. In this context "dividend" is being referred to in the sense of corporate profits set apart for rateable division amongst shareholders being surplus assets obtained in excess of capital.

The five instances of "dividend" mentioned in sub-section (6A) of section 2 relate to distribution of accumulated profits either wholly or partly. This is in contradistinction to the ordinary dividend which is paid out of current profits. What is to be seen is whether the language of the impugned sub-clause (d) effectuates the intention of the Legislature while at the same time keeping the provisions well within the legislative competence. Mr. Sikri argued that accumulated profits might be taxed even if capitalised as they are income whether capitalised or not. His contention is that capital cannot be taxed as such and what is being taxed here is capital, though the extent to which it can be taxed is up to accumulated profits. Mr. Awasthy, on the other hand, maintained that the object of section 2(6A)(d) is to provide a check against the device of distributing accumulated profits under the cloak of reduction of capital. He puts it this way : Before the company had decided upon reduction of capital from Rs. 25 lakhs to Rs. 15 lakhs, the net accumulated profits with the company, as found by the Tribunal, were Rs. 4,69,244-13-0, that is, Rs. 8,42,337 less Rs. 3,61,405 less Rs. 11,687-3-0. Now, the effect of section 2(6A)(d) is that distribution by a company on the reduction of its capital to the extent of Rs. 4,69,244-13-0 the amount which the company possessed as accumulated profits, is being treated as dividend. The capital character of the distribution which is in excess of the accumulated profits is not being disturbed and to that extent that sum is not being treated as dividend under section 2(6A)(d). In the present case, the company, on the reduction of its capital from Rs. 25 lakhs to Rs. 15 lakhs, had to distribute a sum of Rs. 10

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lakhs. Out of this sum of Rs. 10 lakhs, law treats the distribution of Rs. 4,69,244-13-0 as of accumulated profits and, therefore, as "dividend". The company cannot, by styling the entire amount for distribution as capital, evade its liability to be taxed on the sum of Rs. 4,69,244-13-0 which, being accumulated profits, now falls within the definition of "dividend". Mr. Sikri expressed an apprehension that as in the balance-sheets for the subsequent years, it was being shown that the company was still possessed of accumulated profits, the assessee-company ran the risk of being taxed again, as that amount would not be treated as capital. This apprehension is more imaginary than real. The Tribunal has in this very case found that at the time of the reduction of the capital from Rs. 50 lakhs to Rs. 25 lakhs in 1948, the assessee had accumulated profits of Rs. 3,61,405 and those profits had been exhausted long before the capital was reduced a second time, from Rs. 25 lakhs to Rs. 15 lakhs in 1954, and consequently the Tribunal reduced the amount of accumulated profits of Rs. 8,42,337 by a sum of Rs. 3,61,405. This amendment has succeeded in avoiding the likelihood of evasion by a company, by transferring its profits to the capital and then by reducing the capital proportionately and thereby distributing profits under the label of "capital reduction". There is authority for the proposition that competence to legislate regarding income-tax would include the power to legislate in order to check evasion (vide *K. M. S. Lakshmana Aiyar* v. *Additional Income-Tax Officer, Special Circle, Madras* (19), and *S. Kumaraswami* v. *Income-Tax Officer, Nagercoil* (20), Mr. Sikri tried to find fault with the language used in section 2(6A)(d) and said that it also embraced the distribution of capital. The reading of the relevant provision does not convey, to my mind, that distribution of capital on reduction, is being treated as dividend and not as accumulated profits.

(19) (1960) 40 I.T.R. 469(478)
(20) (1961) 43 I.T.R. 423(426)

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I feel satisfied that the impugned provision was within the legislative competence of the Central Legislature and was within the ambit of entry No. 54 of List I of the 7th Schedule of the Government of India Act, 1935, not only in form but also in substance.

In view of this finding, it is not necessary to deal with the argument that the succeeding entry No. 55 of the Government of India Act, 1935, which empowers legislation, *inter alia,* on "taxes on the capital of companies", also covers this case and brings section 2(6A)(d) within legislative competence of the Central Legislature. The Supreme Court in *K. C. Gajapati Naravan Deo* v. *The State of Orisa* (21), referred with approval to what Lefroy in his well-known work on Canadian Constitution had said. He expressed the view in the following words:—

> "Even if the legislature avow on the face of an Act that it intends thereby to legislate in reference to a subject over which it has no jurisdiction ; yet, if the enacting clauses of the Act bring the legislation within its powers, the Act cannot be considered *ultra vires.*" (*vide* 1913 edition, p. 75).

Question No. 3, whether the amount of Rs. 11,687-3-0 received by the assessee as security deposit on account of empty bottles could be considered as capital gains, has been referred to this Court at the instance of the Commissioner of Income-tax. In Income-tax Reference No. 14 of 1960, relating to the accounting year ended 30th November, 1945, and also the accounting year ending 30th November, 1948, the question of law which was referred was:—

> "Whether on the facts and circumstances of the case the collections by the assessee-company described in its accounts as

(21) 1954 S.C.R. 1(12)

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'empty bottle return security deposits' were income assessable under section 10 of the Income-tax Act ?"

and it was answered by the Division Bench as under:—

"On the facts and circumstances of the case the collections by the assessee-company described in its accounts as 'empty bottle return security deposits' were income assessable under section 10 of the Income-tax Act in so far as the collections have been made after 1st April, 1948, and to the extent allowable under rule 40, sub-rule (14) clause (f) of the Punjab Liquor Licence Rules as amended."

This matter is now *res judicata* and Mr. D. N. Awasthy, learned counsel for the Commissioner of Income-Tax, says that in view of the answer given by the Bench in I. T. Reference No. 14 of 1960, question No. 3 need not now be answered.

I may now deal with the last question of law which is referred to this Court—

"Whether the accumulated profits could be considered as dividend deemed to have been distributed in the assessment year 1955-56 in view of the certificate granted by the Registrar of Companies under section 61(4) of the Indian Companies Act, 1913, or could be considered as dividend deemed to have been distributed in the assessment year 1956-57 because the debits of refunds were actually made in the accounts of the share-holders and the refunds were actually granted to the share-holders during the accounting period of the assessment year 1956-57 ?"

The case of the assessee is that distribution should be deemed to have taken place on 4th November,

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1954, when the certificate of the Registrar of the Joint Stock Companies was obtained and on this reasoning the distribution of dividend could be included in the income of the year ending 30th November, 1954, and not in the succeeding accounting year as has been done. Reference was made to section 61(2) of the Indian Companies Act, 1913, according to which, on the registration of the order of the Court confirming the reduction of the share capital of the company, the resolution for reducing share capital as confirmed by the order so registered shall take effect. An argument is sought to be based on section 61 that immediately on registration the dividend under section 2(6A)(d) of the Income-tax Act is deemed to have been distributed.

Before examining the various arguments addressed on this question, the various steps taken by the assessee-company may be recorded. On 16th December, 1953, a resolution was passed by the shareholders for the reduction of the capital from Rs. 25 lakhs to Rs. 15 lakhs. This resolution was followed by an application made to this Court for sanction to reduce the capital, and on 6th August, 1954, the sanction was granted. On 4th November, 1954, the notification was published regarding reduction of the capital as directed by the High Court, and on the same date the Registrar, Joint Stock Companies, Jullundur, registered the order of the High Court referred to above. On 5th November, 1954, the company notified to the shareholders that this Court had sanctioned the reduction of company's paid-up capital and, consequently, the shareholders would be entitled to refund of Rs. 2 per share. It was also mentioned that the refund would be made on receiving confirmation of registration by the Registrar. The shareholders were requested to send their share-certificates to the company for necessary endorsement and refund. They were also informed that the Share Transfer Register of the company would remain closed from 16th November to 30th November, 1954 (inclusuive); and that refund would be made to those shareholders whose names stood

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on the 15th November, 1954, in the books of the company. A reference may also be made to the balance-sheet for the year ending 30th November, 1954, in which the issued, subscribed, and paid-up capital is shown as Rs. 25 lakhs and not Rs. 15 lakhs as reduced. It is stated in the assessment order passed by the Income-tax Officer on 23rd February, 1957, that the share capital was distributed amongst the shareholders during the accounting period 1st of December, 1954 to 30th November, 1955, which was the period under consideration before him. Requisite entries reducing the share-capital by Rs. 10 lakhs were passed in the books of the company on 30th November, 1955, and this is significant. On the above facts, the Income-tax Officer was of the view that the reduction of share-capital took place during the accounting period relevant for the assessment in question. He understood the word "distribution" occurring in section 2(6A)(d) to mean the actual distribution of the share-capital. The Appellate Assistant Commissioner repelled the assessee's contention that the reduction of the capital took place on 4th November, 1954, the moment the Registrar of Joint Stock Companies had registered the order and the minute under section 61(2) of the Indian Companies Act, 1913. The Appellate Assistant Commissioner thought that only preliminaries relating to reduction of capital were carried out during the accounting period 1953-54 and that the reduction of capital was done in the succeeding accounting year 1954-55. He was also of the view that the shareholders could not enforce payment of the refund before 15th November, 1954, the date mentioned in the notice dated 5th November, 1954 (annexure 'H'), and that the office of the company remained closed from 16th to 30th November, 1954. According to him, the proportionate refund of capital, if any, could only be made after 30th November, 1955, and not earlier. A similar contention canvassed by the assessee before the Tribunal was also repelled. What weighed with the Tribunal was, that the payments, as well as debits to the individual accounts of the shareholders had been made in the previous

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year relevant for assessment year under consideration.

Before us Mr. Awasthy has maintained that "distribution" of the money, by which the capital was reduced, had taken place in the accounting year which was the subject of assessment in question.

The controversy hinges upon the meaning of the word "distribution" as used in section 2(6A)(d). The word "distribution" connotes to deal out or bestow in portions or shares among many ; to allot or apportion as one's share: When something is delivered to several persons it is said to be distributed among them. Distribution is an act of dispensing portions between several. A "declaration" of a dividend is not the same thing as "distribution", as in the latter there are three stages, namely, the declaration, the dividend, and its distribution or disposal. "Distribution" is not merely an act of dividing or apportioning, but also dispensing or dealing out. To my mind, the act of "distribution" has to be actual and not notional ; physical and not mental. A resolution or decision to distribute is not "distribution" as there is no giving out, dispensing, or disbursement involved. "Distribution" connotes two acts : a "division" and "delivery". This word "distributed" occurs in section 16(2), which provides—

> "16(2). For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased to such amount as would, if income-tax (but not super-tax) at the rate applicable to the total income of the company (without taking into account any rebate allowed or additional income-tax charged(for the financial year in which the dividend is

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paid, credited or distributed or deemed to have been paid, credited or distributed, were deducted therefrom, be equal to the amount of the dividend:

Provided that when the sum out of which the dividend has been paid, credited or distributed or deemd to have been paid, credited or distributed includes—

* * * *".

In the above passage, three words are used : "paid, credited or distributed" and, according to well-known canons of statutory interpretation, each expression is to be given a distinct meaning. The word "credited" is used when an entry on the credit side of an account is made. It does not signify actual dealing out. A thing is said to be "paid" when something is given which need not be first apportioned and then disbursed. The word "distributed" is used in the sense of division and delivery. The expression which follows the word "distributed", namely, "deemed to have been. . . . distributed" is significant. "Deemed" in this context means "supposed". When a thing is deemd to be distributed, it means that though in fact it is not distributed yet it will be considered or treated as if it had been distributed. If the word "distribute" were to signify a mental decision, or even a book entry, the use of the word "deemed" would perhaps be superfluous. The use of the word "distributed" in section 16(2) suggests that it refers to actual distribution or delivery. In other words, distribution is being considered in the factual and not in the notional sense, and distribution is the sequence of reduction of capital. In the phrase occurring in section 2(6A)(d) "any distribution by a company *on* the reduction of its capital" the preposition "on" means "after". As the act of distribution is not notional, reduction of a capital does not imply contemporaneous distribution. It is a subsequent process after reduction of capital.

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Mr. Sikri has referred to section 13 of the Income-tax Act which deals with different methods of accounting, the two main methods being the "cash system" and the "mercantile system." The other nomenclature employed as equivalent of mercantile basis is "accrual basis" and "double entry system". According to "cash basis" a record is kept of the actual receipts and actual payments and entries are made only when sums are actually received or disbursed. The tax is levied on the basis of the difference between the receipts and disbursements for the particular accounting period. The "double entry system" in book-keeping signifies two entries of the same transaction, one on the credit and the other on the debit side. When books are kept by the tax-payer on "accrual basis" the entries are made of credits and debits as liability arises and the tax is computed on that basis despite the fact that the time of receipts and disbursements may be different. Keeping accounts on the "accrual basis" as distinct from the "cash basis" imports that it is the right to receive and not the actual receipt that determines the inclusion of a particular amount in the tax-payer's gross income. The argument advanced on behalf of the assessee is that the method of accountancy adopted was the "mercantile system" under which the net profit or loss is calculated after taking into account all the income and all the expenditure during the accounting year regardless of the fact whether such income has been received or not, or, such expenditure has been actually paid or not. The argument based on the above distinction is that the sums should be treated as soon as the liability accrues, and as this liability arose on 4th November, 1954, when the Registrar, under section 61 of the Indian Companies Act, 1913, registered the order and the minute, the date of the distribution should be during the previous accounting period and not during the accounting period under assessment. Mr. Sikri cited a decision of the Supreme Court in *Calcutta Company Limited* v. *Commissioner of Income-tax, West Bengal* (22), where the observation made in the

(22) (1959) 37 I.T.R. 1.

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former decision in *Calcutta Company Limited* v. *Commissioner of Income-tax* (23), explaining the mercantile system of accounting, were approved. He also referred to a decision of the United States Supreme Court in *Commissioner of Internal Revenue* v. *Hansen* (24), to the effect that "keeping accounts and making returns on the accrual basis, as distinguished from the cash basis, import that it is the right to receive and not the actual receipt that determines the inclusion of the amount in gross income ;" and "when the right to receive an amount becomes fixed, the right occurs". Mr. Sikri then referred us to a decision of the Bombay High Court in *Commissioner of Income-tax, Bombay City* v. *Laxmidas Mulraj Khatau* (25). In that case it was held that as soon as the dividend was declared, the dividend became the income of the assessee and, therefore, the dividend income of the assessee would be deemed to have been received in the accounting year when the dividend was declared and not during the year in which the dividend income had been actually received for the assessee was maintaining its accounts on mercantile basis. In my view, this decision is not helpful as by parity of reasoning, it would not govern the case of distribution on reduction of capital. Moreover, a case of dividend declared is distinct from a case of dividend distributed. No assistance can be derived from the other authority relied upon by Mr. Sikri, *Commissioner of Income-tax, Delhi* v. *Nagri Mills Co., Ltd* (26), which was a case for determining when bonus payable to the workers was deemed to have been paid by the company for purposes of claiming deduction. It was held in that case that, as under section 10(5) of the Income-tax Act, actual payment was not necessary for the purpose of deduction and it was sufficient if the liability to bonus was incurred according to the method of accounting, upon the basis of which the profits or gains were computed, the assessee-company was entitled to the deduction under section 10, sub-section (2)(x) of the

(23) (1953) 24 I.T.R. 454
(24) 3 L. Ed. 2d (1360) (1372)
(25) (1948) 16 I.T.R. 248
(26) (1958) 33 I.T.R. 681

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bonus paid from the profits of the earlier year even though the amount had not been entered in its accounts for that year. This case is no authority for interpretation of the meaning of the relevant expression in section 2(6A)(d). Moreover, in none of these cases question of "distribution" under section 2(6A)(d) or under section 16(2) arose.

A decision of the Bombay High Court in *Purshotamdas Thakurdas* v. *Commissioner of Income-tax, Bombay City* (27), was cited by Mr. Sikri for the proposition that section 16(2) of the Income-tax Act is not controlled by section 13, and that the assessee's method of keeping accounts does not control the provisionsof section 16(2), that the dividend income is to be included in a particular year. It was also held that declaration of dividend was not the test of taxability prescribed under section 16(2) of the Income-tax Act by the Legislature. This decision, though not under section 2(6A)(d), is by similarity of reasoning, more helpful. I may refer to the following observations of Chagla, C.J.—

> "Mr. Joshi (for the Commissioner) says that if the Legislature chose to make the declaration of a dividend the only test of taxability, then it is not for us to say that because of hardships or other difficulties of an assessee, some other test should be laid down. We entirely agree with Mr. Joshi. But Mr. Joshi's difficulty, for which he can have no answer, is that a declaration of dividend is not made the test of taxability by the Legislature. It is difficult to understand why, if the intention of the Legislature was that no other circumstances should be considered except the declaration of dividend, the Legislature should have indulged in circumlocution and instead of using the simple expression 'to be

(27) (1958) 34 I.T.R. 204

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the income of the previous year in which it was declared' should have used the words 'in which it is paid, credited or distributed'. Therefore, one thing is clear from the language used by the Legislature that it did not intend to equate 'paid' with 'declared' in every case. Therefore, it is open to us to consider, not withstanding the *Khatua Mills' case* (25), whether on the facts of this case, it could be said that dividend has been paid, which although it may have been declared may never be payable and in fact has not been paid. We are not concerned to decide, as we did not decide in *Khatua Mills'* case, as to the proper meaning to be given to the expression 'credited'. The whole of the reference is based on this reference on the contention of the Department that this is a case where a dividend has been paid within the meaning of section 16(2). It was never suggested or contended that the dividend was credited or distributed, and, therefore, we must confine our decision to holding that under the facts and circumstances of this case the dividend was not paid in the year previous to the assessment year 1953-54."

If, according to the reasoning in the above decision, section 16(2) of the Act is not controlled by section 13 ; and the assessee's method of keeping accounts does not control the provisions of section 16(2) as to the inclusion of an assessee's dividend income in a particular year, it is difficult to hold that, for purposes of construction of the word "distribution" occurring in section 2(6A)(d), the provisions of section 13 can be any guide.

The company sent a circular notice (annexure H) on 5th November, 1954, to its shareholders requesting them to send their share-certificates to the company, at an early date for necessary

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endorsement and refund of share-capital. They were also informed that the Share Transfer Register of the company would remain closed from 16th to 30th November, 1954 (inclusive). It may be mentioned that no entry regarding distribution was made in the accounting year which ended on 30th November, 1954. In the balancesheet (annexure F) for the period which ended on 30th November, 1954, the Directors, in their report to the shareholders, had made the following recommendation as to payment of dividend—

> "To pay dividend for the year at 7½ per cent per annum Rs. 1,81,250."

Against the words "Capital issued, subscribed and paid-up", the figure was Rs. 25,00,000 and not Rs. 15,00,000. A perusal of this balance-sheet does not give any indication either of the reduction of the capital or the consequent distribution of Rs. 10,00,000. Thus the position shown in the company's own account books is that the paid-up capital for the period which ended on 30th November, 1954, was still Rs. 25,00,000 and this would not have been the case if any steps had been taken to distribute the money on reduction of capital. The fact, however, is that no distribution had taken place even up to 5th June, 1955. From what has been stated above, it is difficult to resist the conclusion that the accumulated profits as dividend, were deemed to have been distributed in the assessment year 1956-57 because the debits of refunds were actually made in the accounts of the shareholders, and the refunds were actually granted to the shareholders during the accounting period of the assessment year 1956-57. The contention of the assessee-company that the dividend was deemed to have been distributed in the accounting year 1954-55 corresponding to the assessment year 1955-56 cannot prevail and must, therefore, be rejected. Question No. 4 of the reference would, therefore, be decided, as stated above, in favour of the Commissioner of Income-tax and against the assessee-company.

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In the circumstances, the Commissioner of Income-tax is entitled to costs which are assessed at Rs. 250.

S. B. CAPOOR, J.—I agree.

PREM CHAND PANDIT, J.—So do I.

B.R.T.

FULL BENCH

Before Tek Chand, S. B. Capoor and Prem Chand Pandit JJ.

AMRIT LAL C. SHAH,—*Applicant.*

versus

RAM KUMAR, ADVOCATE,—*Respondent.*

Civil Miscellaneous No. 1066 of 1960.

1962

March, 7th

Bar Councils Act (XXXVIII of 1926)—Section 10—Professional misconduct by lawyer—Retaining of money belonging to client by lawyer—Whether amounts to professional misconduct—Relationship between lawyer and client—Nature of and rights and obligations arising from—Onus of proof of unfair transaction between the lawyer and client—On whom lies—Principal and Agent—general agent, special agent and universal agent—Distinction between and respective powers of each.

Held, that an Advocate practising in a Court of law enjoys a number of privileges and he has equally important obligations which he owes to his client and to others. In view of the trust and confidence which a client must necessarily repose in his Advocate a very high standard of the appreciation of his obligations is expected of him. The relationship between the counsel and the client is highly fiduciary and of a confidential character imposing upon him the duty of a high degree of fidelity and good faith. When a transaction between the litigant and his lawyer is assailed by the former, a burden is cast upon the attorney to show that he has maintained highest standard of fairness and has acted with best of faith. He has to show that the transaction was entered into without