

DELHI CLOTH & GENERAL MILLS CO. LTD.

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v.

WORKMEN*September 3, 1971*[G. K. MITTER, C. A. VAIDIALINGAM AND P. JAGANMOHAN
REDDY, JJ.]

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Payment of Bonus Act, 1965, s. 6—Whether on the facts and circumstances of the case, the workers are entitled to higher bonus.

The appellant is a public limited company owning various industrial units including the Delhi Cloth Mills (D.C.M.) and the Swatantra Bharat Mills (S.B.M.). Although separate balance-sheet and profit and loss accounts were prepared for each of these two mills, their workmen have always been paid bonus calculated on the basis of pooled profits of the two units treating them as one unit. Disputes and differences having arisen as regards payment of bonus between the workers of these two units, the following questions were referred to the Tribunal for adjudication.

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(i) Whether in calculating the bonus table for the accounting year in question, the allocation separately made by the company towards capital and reserves of the two units (D.C.M. and S.B.M. units) is fair and reasonable.

(ii) Whether workmen of these two mills are entitled to bonus at a higher rate for the said accounting year.

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On the basis of documents filed both by the management and the workers, it appeared that according to the company, direct taxes which have to be deducted for computation of allocable surplus for payment of bonus was much higher, while according to the workers, direct taxes should be much less. If the computation of the management were to be accepted, the rate of bonus to each employee would remain at 7.30 per cent, while according to workers, the rate of bonus would be 16.64%. The Tribunal however, gave its award in favour of the workers. Allowing the appeal,

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HELD : The direct taxes under s. 6(c) of the Bonus Act were properly quantified by the Appellant company in their calculation and the rate of Bonus to each employee is 7.31 per cent of their annual wage bill and not 16.64 per cent as claimed by the workers. The bonus Act, being a complete Code, the provisions thereof must have effect of their own force. So far as the two mills are concerned, the gross profits must be computed in terms of the second schedule to the Act and the available surplus mentioned in s. 5, in terms of ss. 6 and 7 of the Act. Where a branch or undertaking has to be taken as an Establishment under the proviso to s. 2 for the purpose of the Act, the gross profits, prior charges, the available

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A surplus and the allocable surplus have all to be found out notionally applying the fiction to the branch or establishment. When the fiction is to have effect with regard to all other matters, it is not possible to hold that for the purpose of computation of direct tax, it has to be given a go-by and the actual realities of the situation taken note of only in respect of the amount of tax payable under the Income-tax Act for all the establishments which have to suffer taxation together and thereby to displace the fictional or notional liability. [604 C, 605 E, 607 A]

B *Metal Box Co. v. Workmen*, [1969] 1 S.C.R. 750, *Shree Meenakshi Mills v. Their Workmen*, [1958] S.C.R. 878, *M/s. Tulsidas Khemji v. Their Workmen*, [1963] 1 S.C.R. 675 and *M/s. Alloy Steel Project v. The Workmen*, [1971] 1 S.C. Cases 536, referred to.

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 622 of 1967.

Appeal by special leave from the award dated February 28, 1967 of the Delhi Administration Special Industrial Tribunal, Delhi in Reference No. 53 of 1966..

D *G. B. Pai, D. R. Thadani and S. S. Sharma*, for the appellants.

M. N. Phadke, S. S. Khanduja, V. P. Kohli and Lalita Kohli, for respondents Nos. 1(c) and 3(c)(i).

E *M. K. Ramamurthi and Vineet Kumar*, for the respondent No. 1(a).

O. P. Sharma and K. S. Suri, for respondent No. 1(b).

The Judgment of the Court was delivered by

F *Mitter, J.* The only point of dispute between the parties to this appeal by special leave from an order of an Industrial Tribunal relates to the quantum of direct taxes deductible under s. 6 of the Payment of Bonus Act, 1965.

G The appellant is a public limited company owning and running various industrial units situate at different places in India. These are engaged in the manufacture of different kinds of articles such as cotton textiles, artificial silk fabrics, sugar, industrial alcohol, vanaspati, chemicals, fertiliser, polyvinyl chloride and rayon tyre record etc. Two of these units *i.e.*, The Delhi Cloth

H Mills and the Swatantra Bharat Mills are cotton textile mills each registered as a factory under the Factories Act. The award under appeal relates to these two mills alone. The appellant prepares

and publishes one consolidated balance sheet and profit and loss account of the company showing the final results of the working of all the units for its shareholders. It had however for many years past, prepared and maintained separate balance sheets and profit and loss accounts for some of its units individually and some grouped together. Although separate balance sheets and profit and loss accounts were prepared for each of these two mills (hereinafter referred to as D.C.M. and S.B.M. for abbreviation) their workmen have always been paid bonus calculated on the basis of pooled profits of the two units treating them as one unit. This is borne out by the award of the Tribunal in paragraph 29.

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The reference herein was made by notification dated March 4, 1966 under ss. 10(1)(d) and 12(5) of the Industrial Disputes Act for adjudication of several specified matters of which the first two read as follows :

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1. Whether in calculating the bonus table for the accounting year ending 30-6-1965 the allocation separately made by the Delhi Cloth and General Mills Co. Ltd. towards the Capital and Reserves of the Delhi Cloth Mills and Swatantra Bharat Mills, the two units of the Company, is fair and reasonable? If not, what directions are necessary in this regard?

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2. Whether the workmen of these Mills are entitled to bonus at a rate higher than 6 per cent of the wages for the accounting year ending 30-6-1965? If so, what directions are necessary in this regard?

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After prolonged proceedings before the Tribunal a settlement was arrived at between the Management and the Labour Unions which were parties to the reference and agreed directions given in accordance therewith in regard to issue No. 1 were as follows :

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1. Balance-sheets of D.C.M. and S.B.M. will be taken together for calculation of available surplus in accordance with the formula laid down in the Payment of Bonus Act, 1965.

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2. Interest has been charged in the profit and loss account of D.C.M. and S.B.M. units of the head-office

A current account. Hence, no return will be claimed thereon.

B 3. Interest has not been charged on the fixed capital expenditure accounts and the gratuity reserves appearing in the balance sheets of the D.C.M. and S.B.M. therefore, return on such amounts will be claimed.

C 4. The following method will be followed in making a claim for return on the following amounts :

D (a) The fixed capital expenditure account in the D.C.M. and S.B.M. as represented by the written down value of the Fixed assets appearing in the balance sheet of these two units will be treated as paid up share capital of the company allocated to and invested in these two units and return at the rate of $8\frac{1}{2}\%$ or as provided in the Payment of Bonus Act, 1965 from time to time will be charged thereon as provided under the Payment of Bonus Act, 1965.

E (b) The gratuity reserves of these two units will be treated as reserves and return at the rate of 6% will be charged thereon as provided under the Payment of Bonus Act, 1965.

F 5. The method and basis of casting balance sheets will not be unilaterally altered or changed.

G 6. The above method of charging return on paid up share capital and reserve of the above two units will be followed in future also.

H Thereafter the parties filed a large number of documents waiving formal proof thereof. Those filed on behalf of the Management were Exs. M to M-352 while three other opposite parties filed some documents each. On the basis of the documents before the Tribunal the Management and the workers made their respective calculations which were summed up in a chart, a copy whereof was handed over to us by learned counsel for the appellants. The same reads as follows :—

CHART

Management
M-330 (Paper Book p. 200)

Workers
W-84 (Paper Book p. 213)

| | Ref. of Bonus Act | Details | Ext. | DCM | SBM | Total | | Lakhs | |
|---|-------------------|------------------------|-------------------------------|--------|-------|--------|--|--------|--|
| Gross Profit | Schedule 2 | As per Ext. deductions | 1 | 107.14 | 48.93 | 156.09 | Gross Profits | 156.09 | |
| Prior charges | S. 6 (a) | Statutory depreciation | | | | 35.83 | DEDUCTIONS | | |
| | | Development rebate | 2 | | | 2.72 | Depreciation u/s 6 (a) | 35.83 | |
| | (b) | Development rebate | 2 | | | 2.72 | Development rebate u/s 6 (b) | 2.72 | |
| | | Direct taxes | | | | | Direct taxes u/s 6 (c) as in Ex. M.-15 | 10.09 | |
| | (c) | (a) Income-tax | 3 | | | 52.24 | Return on capital under s. 6 (d) | 22.47 | |
| | | (b) Surtax | 3 | | | 5.48 | | | |
| | (d) | Sch. 3 | RETURN | | | | | | |
| | | | (a) Dividend on Pref. capital | 4 | | | 27.17 | | |
| (b) on equity capital | | | 4 | | | | | | |
| | | (c) on reserve | 4 | | | 1.30 | | | |
| | | | | | | 118.74 | Available surplus is | 84.98 | |
| Available surplus | S. 5 | | | | | 37.35 | Allocable surplus is 60% of Rs. 84.98 | 50.99 | |
| Allocable surplus | S. 2 | (a) Payable as bonus | | | | 22.40 | | | |
| | | (b) 60% | | | | | | | |
| Annual wage bill of all the eligible of employees | | 5. 201.78 plus 101.54 | | | | 306.32 | Annual wage | 306.32 | |
| Rate of bonus to each employees | | | | | | 7.31% | Rate of bonus | 16.64% | |

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- A The above brings out the wide divergence between the parties as to the figure of direct taxes. According to the appellant direct taxes which have to be deducted for computation of allocable surplus for payment of bonus are : Rs. 52-24 lakhs by way of income-tax and Rs. 5-48 lakhs by way of surtax making a total of Rs. 57-72 lakhs, while according to the calculation of the
- B workers direct taxes should be no more than Rs. 10-09 lakhs on the basis of Ex. M-15, one of the documents produced by the Management itself. If the computation of the Management is accepted, then the allocable surplus in terms of s. 2(4) of the Bonus Act is Rs. 22-40 lakhs and the rate of bonus to each employee is 7.31 per cent while according to the computation of
- C the workers the allocable surplus is Rs. 50-99 lakhs and the rate of bonus should be 16.64%.

- In order to appreciate the viewpoints of the two parties, it is necessary to refer to some provisions of the Act. It is unnecessary to state that before the enactment of the Bonus Act of 1965
- D bonus used to be awarded by Industrial Tribunals whenever there was a dispute between the Management and the workers, by applying the Labour Appellate Tribunal Full Bench formula formulated as far back as 1950 and approved of and explained in several decisions of this Court. The Act of 1965 was passed for creating a statutory liability "for payment of bonus to persons employed in certain establishments and for matters connected therewith". Subject to certain exceptions it was made applicable to every factory or other establishment in which twenty or more persons were employed on any day during an accounting year. The accounting year in the present case is 1st July 1964 to 30th June, 1965. Under s. 8 every employee is entitled to be paid by the employer in an accounting year, bonus in accordance with
- E the provisions of the Act. The amount of bonus is to be specified percentages of the allocable surplus of the establishment which is defined in s. 2 sub-s. (4) of the Act. Establishments may be of two kinds. They are either establishments in private sector or establishments in public sector. Although 'establishment' by itself has not been defined in the Act separately, s. 3 gives a clue to the meaning thereof. The said section runs as follows :
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- G "Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act :
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Provided that where for any accounting year a separate balance-sheet and profit and loss account are

prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.”

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Gross profits of each establishment have to be computed in terms of s. 4 which in its turn refer to two Schedules the first to be applicable to a banking company and the other to any other case. After the ascertainment of gross profits s. 5 lays down the method of computation of available surplus. Before the amendment introduced by Act 8 of 1969 the available surplus in respect of any accounting year was to be the gross profits for the year after deducting therefrom the sums referred to in s. 6. S. 6 provided for the deduction of certain amounts from the gross profits as prior charges. These are, namely, (a) any amount by way of depreciation admissible in accordance with the provisions of sub-s. (1) of s. 32 of the Income-tax Act or in accordance with the provisions of the agricultural income-tax law, as the case may be (the provision is irrelevant for our purpose); (b) any amount by way of development rebate or development allowance which the employer is entitled to deduct from his income under the Income-tax Act; (c) subject to the provisions of s. 7 any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year; and (d) such further sums as are specified in respect of the employer in the Third Schedule. Before the amendment of the Act in 1969 s. 7 read as follows :—

“For the purpose of clause (c) of section 6, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely :—

(a) in calculating such tax no account shall be taken of—

(i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;

(ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowances for

A depreciation for any following accounting year or years under sub-section (2) of section 32 of the Income-tax Act;

(iii) any exemption conferred on the employer under section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of the Act, as in force immediately before the commencement of the Finance Act, 1965;

B (b) where the employer is a religious or a charitable institution to which the provisions of section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;

C (c) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;

D (d) where the income from any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;

E (e) no account shall be taken of any rebate (other than development rebate or development allowance) or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry."

F Section 3 is the key to the Act in that it fixes the res or the property which is to provide the allocable surplus for the distribution of bonus in terms of the Act. This must be an establishment and a question directly arises when there are a number of establishments in common ownership as to how the allocable surplus is to be found out. If s. 3 had no proviso to it, all departments, undertakings or branches, be they complete factories or not, for turning out commercial products under common ownership could be treated as one establishment for the purpose of computation of bonus. A company which is a legal entity

owning and running factories of diverse characters whether situate at the same place or located at different places would in such eventuality, form one establishment for the purpose of the Act. The proviso to the section however shows that the legislature intended that each of these factories is to be treated as a separate establishment for the purpose of computation of bonus if a separate balance sheet and profit and loss account were prepared in respect thereof unless such a factory was, immediately before the commencement of the accounting year, treated as a part and parcel of the company *i.e.*, the establishment. In other words, if different units or branches or departments had been treated separately for the purpose of computation of bonus and separate balance sheet and profit and loss accounts had been prepared in respect thereof, they were not to lose their separate identity as establishments because of the main provision of s. 3. Once it is ascertained that a branch, department or a factory is an establishment by itself under the Act, sections 4 to 7 are to have effect in respect of that establishment by themselves without the impact or connection with other branches, departments or factories even if they subserve a common cause. Gross profits of such an establishment like the two mills before us would have to be calculated in terms of the Second Schedule to the Act by taking the net profit as per profit and loss account and adding thereto the various amounts therein mentioned and deducting the amounts like capital receipts, profits of and receipts relating to business outside India etc. The gross profits to be computed for the purpose of bonus would not be the same as to be computed under the Indian Companies Act or the Income-tax Act. Under s. 5 of the Act the available surplus in respect of the two units would be the gross profits computed under s. 4 as reduced by the prior charges mentioned in sub-cl. (a) to (b) of section 6. All these amounts *i.e.*, gross profits, available surplus and sums deductible from gross profits would be notional amounts in that they would not be the amounts which would be computed under the Companies Act for submission to the shareholders or for assessment under the Income-tax Act to the taxing authorities. S. 7 cl. (a) of the Act further illustrates the point that the direct taxes which are to be deducted as prior charges are not to be the same as would be assessed by the income-tax authorities under the Income-tax Act. That the calculation of direct taxes would be on a notional basis is also emphasised by cls. (b), (c), (d) and (e) of s. 7.

The net result seems to be that the legislature intended that subject to the express provisions mentioned, the employees of a particular establishment should be entitled to bonus under the Act without any consideration to facts or matters not mentioned

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- A in the Act. The employer is to be treated as a separate juristic person liable to pay bonus to the employees as if the establishment was his only venture, no matter how he fares in his other ventures. Even if the sum total of his activities in respect of his ventures resulted in a loss for the accounting year, he would have to pay bonus subject to the maximum specified in section
- B 10 of the Act to each employee of the establishment which was making profits. The profits or losses of the other establishments, although they may form part of the composite whole in the accounting to be done under the Companies Act or the assessments to be made under the Income-tax Act, would be wholly alien to consideration and computation of bonus of the profit-making establishments in terms of the Act.
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- The balance sheet and the profit and loss account of the Delhi Cloth and General Mills as on 30th June 1965 and for the year ended 30 June 1965 were Exs. M-5 to M-7 before the Tribunal while Exs. M-8 to M-10 are the corresponding documents for the Swatantra Bharat Mills. There is no dispute
- D between the parties with regard to the figure of gross profits in terms of the Second Schedule to the Bonus Act as shown in the main chart Ex. M-330 of the Management. The gross profits for the Delhi Cloth Mills was Rs. 107.14 lakhs and that for Swatantra Bharat Mills Rs. 48.95 lakhs totalling Rs. 156.09 lakhs. There is also no dispute that the statutory depreciation in terms
- E of s. 6(a) of the Act was Rs. 17,52,048 for the Delhi Cloth Mills and Rs. 18,30,969 for Swatantra Bharat Mills the total whereof comes to Rs. 35.83 lakhs. The corresponding figures for the development rebate of the two mills add up to 2.72 lakhs but whereas according to Ex. M-330 the direct tax *i.e.*, the sum of income-tax and surtax in respect of these two units should be
- F Rs. 52.24 lakhs and Rs. 5.48 lakhs totalling Rs. 57.72 lakhs, the employees claim that the figure should be no higher than Rs. 10.09 lakhs in terms of Ex. M-15.

- It is well known that under the Indian Income-tax Act the total profits and gains of a business are to be worked out in terms of s. 28 of the Income-tax Act, 1951. Under s. 29 the income referred to in s. 28 is to be computed in accordance with the
- G provisions contained in ss. 30 to 43-A. S. 30 shows what reductions are to be allowed in respect of rent, rates, taxes etc. for premises used for the purpose of a business or profession. S. 31 specifies the amounts deductible in respect of repairs and insurance of machinery, plant and furniture used for the purpose of the business. S. 32 deals with depreciation allowable under the
- H Income-tax Act. It contains elaborate provisions as to how the depreciation is to be worked out. S. 33 provides for computation of development rebate in respect of the plant or machinery.

S. 33-A provides for development allowance. S. 33-B provides for computation of rehabilitation allowance. S. 34 lays down the conditions for the allowance of depreciation and development rebate. Ss. 35, 35-A, 35-B, 35-C and 36 provide for special allowances. When the total income is ascertained after providing for the many allowances specified in the Act, income-tax is charged in respect of the total income of the previous year or previous year as the case may be, at rates laid down in the Finance Act for the relevant year. The Companies Act however is not concerned with any other allowance except the one for depreciation under s. 32 of the Income-tax Act and the amounts deductible by way of development rebate or development allowance under the said Act.

It must follow from the above that the liability for direct tax under s. 6(c) must be the one which would have to be computed by principles followed in the Income-tax Act. In other words, the liability under s. 6(c) must be the notional liability of a venture of which the gross profits are known and the prior charges by way of depreciation and development rebate and development allowance have been computed. The calculation of income-tax in Ex. M-330 proceeds on the basis that the gross profits are Rs. 156.09 lakhs and the depreciation and development rebate allowable under s. 6(a) and (b) are Rs. 38.55 lakhs leaving a margin of Rs. 117.54 lakhs for computation of income-tax. If this tax is quantified at 45% of the said balance it comes to Rs. 52.24 lakhs as shown in the calculation chart of the Management and surtax thereon would be Rs. 5.48 lakhs. The respondents do not dispute that the figures for income-tax and surtax would be as shown by the Management if their basic calculation is correct; but according to them the Management must accept the figure given in Ex. M-15. Ex. M-15 proceeds on the basis that the total liability of the company being Rs. 16.00 lakhs as shown at page 4 of the Directors' report to the shareholders under the Indian Companies Act for the year ended 30th June 1965, the same would be allocable to the two units of Delhi Cloth Mills and Swatantra Bharat Mills in the proportion of Rs. 7.37 lakhs and Rs. 2.24 lakhs. These figures however have no bearing on the computation of the liability to tax under s. 6 (c) of the Bonus Act for the two particular units involved in this case. It was argued at one stage by the respondents that cl. (c) of s. 6 is not related to cls. (a) and (b) of the said section. If that were so, there is no reason why the tax liability at 45% should not be calculated on the whole of the gross profits *i.e.*, Rs. 156.09 lakhs. Ex M-15 was apparently prepared on the basis that the total tax liability for income-tax purposes of all the various units under the ownership of the Delhi Cloth and

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- A General Mills Company Ltd. being Rs. 16 lakhs, Rs. 7.85 lakhs and Rs. 2.24 lakhs would be attributable to the working results of Delhi Cloth Mills and Swatantra Bharat Mills. If the direct tax liability be as quantified by the Management in Ex. M-330 the available surplus in terms of s. 5 of the Act is Rs. 37.35 lakhs and allocable surplus under the Act being 60% thereof is to be quantified at Rs. 23.40 lakhs which works out to 7.31 per cent on the annual wage bills of all the eligible employees totalling Rs. 306.32 lakhs.

- C The Act being a self-contained and self-sufficient Act except in so far as it refers to the other enactments therein mentioned, and in particular the Indian Income-tax Act, it becomes irrelevant to consider the application of the Full Bench formula of the Labour Appellate Tribunal for the computation of bonus before the Act of 1965 was enacted. Equally in our view it is unnecessary to refer to the observations of this Court in *The Sree Meenakshi Mills Ltd. v. Their Workmen*⁽¹⁾ or to *M/s. Tulsidas Khimji v. Their Workmen*⁽²⁾ relied on by learned counsel Mr. D Phadke for some of the respondents. The Act is a complete Code and the provisions thereof must have effect of their own force. So far as the mills before us are concerned, the gross profits must be computed in terms of Second Schedule to the Act and the available surplus mentioned in s. 5 in terms of ss. 6 and 7 of the Act. Where a branch or undertaking has to be taken as an establishment under the proviso to s. 3 for the purpose of the Act, the gross profits, prior charges, the available surplus and the allocable surplus have all to be found out by applying that fiction to the branch or establishment. When the fiction is to have effect with regard to all other matters, it is not possible to hold that for the purpose of computation of direct tax it has to be given a go-by and the actual realities of the situation only in respect of the amount of tax payable under the Income-tax Act for all the establishments which have to suffer taxation together allowed to displace the fictional or notional liability.

- G In the present case, it so happens that the bulk of the profits of the company (the Delhi Cloth and General Mills Company Ltd.) came from these two units : some of the other units suffered losses while still others were not equally profit-making. If the argument raised on behalf of the workmen was to be accepted and if it so happened that the other units were greater profit-making branches than these two units, greater tax liability might fall on these units thereby reducing the percentage of bonus due to the employees of these units as a whole. That certainly was not the object with which the enactment was passed. S. 7

(1) [1958] S.C.R. 878.

(2) [1963] 1 S.C.R. 675.

of the Act itself shows that the matters extraneous to the working of the establishment in the particular year were not to be taken into account although they could not be ignored for computing tax liability under the Indian Income-tax Act.

Strong reliance was placed by learned counsel for the appellant on the decision of this Court in *Metal Box Co. v. Workmen*⁽¹⁾. Counsel for the respondents made valiant efforts to persuade us to hold that many of the observations therein were *obiter* and as such the case should either be distinguished or be not followed as a precedent for the determination of the question before us. While no doubt the dispute in that case was somewhat different from the one which we have to resolve and there are some distinguishing features in that case, namely, that the Court was not called upon to examine the computation of the figures of gross profits etc. for an establishment which came within the proviso to s. 3 the observations bearing on the question of the computation of direct tax under s. 6(c) of the Act are certainly in point. It was pointed out there at p. 775 :

“What s. 7 really means is that the Tribunal has to compute the direct taxes at the rates at which the income, gains and profits of the employer are taxed under the Income Tax Act and other such Acts during the accounting year in question. That is the reason why s. 6(c) has the words “is liable for” and the words “income, gains and profits”. These words do not, however, mean that the Tribunal while computing direct taxes as a prior charge has to assess the actual taxable income and the taxes thereon.”

With respect, we entirely agree with the above observation and in our view no useful purpose will be served by referring to the other observations bearing on a question with which we are not directly concerned.

In *M/s. Alloy Steel Project v. The Workmen*⁽²⁾ where the project was owned, controlled and managed by a Government Company, *viz.*, Messrs Hindustan Steel Ltd., and separate balance sheet and profit and loss accounts of the undertaking were maintained, it was held that the claim of the workmen that the project was a part of the Hindustan Steel Ltd. should be upheld and its employees placed on the same footing as the other employees of the steel company was rejected inasmuch as the project which was started in the year 1964-65 made no profits right up to the year 1967-68.

(1) [1969] 1 S.C.R. 750.

(2) [1971] 1 S.C. Cases 536.

- A In the result, we hold that the direct taxes under s. 6(c) of the Act were properly quantified by the appellants in their calculation shown in Ex. M-330 and the Tribunal went wrong in assessing that liability on the basis of Ex. M-15. The award will therefore be set aside and modified to provide for bonus being given to the workers at 7.31 per cent of their annual wage bill.
- B The appeal is therefore allowed as indicated above, but, in the circumstances of the case, we make no order as to costs.

ORDER

- C At the suggestion of the Court, the Advocate for the appellant renewed the offer to pay ten per cent of the wages of the employees as bonus for the relevant year. The offer was accepted on behalf of the employees by their Advocates. The award will, accordingly, stand modified, and the provision of ten per cent of wages as bonus be inserted therein. The payment of bonus will be made before Diwali, 1971.

- D There will be no liability to pay interest. Our judgment having regard to the agreement of the parties will accordingly stand modified.

S.C.

Appeal allowed.