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 RAMBHAU
 v.
 RAMCHAN-
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The result is the appeal succeeds and the decree passed by the lower appellate Court must be set aside. At our instance Mr. Chandrachud has, however, agreed not to execute the decree for six months from to-day. We would, therefore, decree the plaintiff's suit and direct that the defendant should deliver vacant possession of the premises to the plaintiff on or before October 1, 1952. During the time that the tenant would be in possession of the suit premises hereafter he will have to pay to the plaintiff by way of damages or compensation the same amount that he was paying before by way of rent. In the circumstances of this case we direct that the parties should bear their own costs throughout.

Appeal allowed.

M. W. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

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 March 28
 THE COMMISSIONER OF EXCESS PROFITS TAX ACT, BOMBAY
 NORTH (APPLICANT) v. KARAMCHAND PREMCHAND LTD.
 (RESPONDENTS)*

Excess Profits Tax Act (XV of 1940), ss. 7 and 9 (3)—Deficiency of Profits of a Company prior to its becoming a subsidiary Company—Profits made by the subsidiary Company—Whether the deficiency of profits could be set off against profits made after becoming a subsidiary Company.

In the year preceding the chargeable accounting period (Jan. 1 to Dec. 31, 1943) there was a deficiency of profits in the sum of Rs. 1,83,422 for the purpose of excess profits of Messrs. Sarabhai Ltd. During the chargeable accounting period Sarabhai Ltd. became a subsidiary company of the assessee company (Karamchand Premchand Ltd.) and made profits.

Held, that under s. 9 (3) read with s. 7 the profits of Sarabhai Ltd. for the chargeable accounting period could only be determined after deducting the deficiency of profits in the sum of Rs. 1,83,422 which under s. 7 Sarabhai Ltd. were admittedly entitled to carry forward to the next year if Sarabhai Ltd. had continued as a principal company.

In assessing the excess profits of the assessee company for the chargeable accounting period January 1 to December 31, 1943, the assessee claimed that the profits made by its subsidiary company Sarabhai Ltd., during the chargeable account-

*Income-tax Ref. No. 46 of 1951.

ing period, had to be determined after allowing for the deficiency of profits of Rs. 1,83,422 during the period that Sarabhai Ltd. was not a subsidiary company as Sarabhai Ltd. could have been entitled to carry forward that deficiency to the chargeable period if it had continued as a principal company. This contention was not accepted by the Appellate Assistant Commissioner. On appeal to the Appellate Tribunal the assessee's contention was accepted.

At the instance of the Commissioner of E. P. Tax Bombay, North, the following question was referred to the High Court.

"Whether on the facts of the case, Sarabhai Ltd. which is a subsidiary company of the assessee company can be deprived of the benefits contained in s. 7 of the Excess Profits Tax Act, merely on the ground that Sarabhai Ltd. became a subsidiary company of the assessee company in the year of account."

The reference was heard.

C. K. Daphtary Solicitor General with *G. N. Joshi*, for the applicant.

Sir Jamshedji Kanga with *R. J. Kolah*, for the respondents.

CHAGLA C. J. This reference has become necessary by reason of a somewhat extraordinary and extravagant claim made by the Department. We are concerned with the excess profits tax of the assessee and the chargeable accounting period is January 1, 1943, to December 31, 1943. It seems that in the chargeable accounting period Messrs. Sarabhai Ltd. became a subsidiary company of the assessee company. Now before January 1, 1943 i.e. prior to Sarabhai & Co. Ltd. became, if I may use that expression, merged with the assessee company, Sarabhai Ltd. had a deficiency of profits in the sum of Rs. 1,83,422 for excess profits purpose. In the chargeable accounting period Sarabhai Ltd. made profits and the contention of the assessee was that inasmuch as there was a deficiency of profits in the account of Sarabhai Ltd. in a sum of Rs. 1,83,422 and inasmuch as Sarabhai Ltd. had made profits during the chargeable accounting period the deficiency of profits should be set off against the profits made by Sarabhai Ltd. This contention was resisted by the Department on the ground that the Department was only concerned with the assessment of the assessee company and any relief to which Sarabhai Ltd. may have been entitled had no bearing on the assessment of the assessee company; or in other words, the

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assessee company was not entitled to the benefit which Sarabhai Ltd. would have been entitled to if Sarabhai Ltd. had remained an independent company and had not become a subsidiary company to the assessee.

Turning to the provisions in the Excess Profits Tax Act, the principle of relief on the occurrence of deficiency of profits is embodied in s. 7. Deficiency of profits occurs where profits have been made in any chargeable accounting period, and the amount of such profits falls short of the standard profits; and the relief given is that if excess profits tax is payable in respect of the earlier years then relief is given by a reduction from that amount and if necessary even by a repayment and if deficiency of profits cannot be absorbed by excess profits in the earlier years then the deficiency has to be carried forward in subsequent chargeable accounting years. This is the scheme of s. 7. Now it is not disputed and it cannot be disputed that Sarabhai Ltd. if it had continued to function as a principal company, would have been entitled to carry forward the deficiency of profits in the amount of Rs. 1,83,422 to the chargeable accounting period January 1, 1943, to December 31, 1943. The only reason why Sarabhai Ltd. is not entitled to this relief, according to the Department, is that it has ceased to be a principal company and has become a subsidiary company of the assessee company. Reliance is placed by the Department on s. 9 (3) which provides that—

“If a subsidiary company is a subsidiary company of the principal company throughout the chargeable accounting period, such capital employed in, and profits or losses arising from, the business of the subsidiary company as is employed, or arise in,

(i) the chargeable accounting period or;

(ii) any year constituting or comprised in the standard period of the principal company shall be treated for the purposes of this Act as if it or they were capital employed in, or as the case may be profits or losses arising from, the business of the principal company.”

Therefore, according to the Solicitor General it is only the profits or losses of the subsidiary company during the chargeable accounting period which have got to be taken into account in assessing the assessee to excess profits tax. In other words, the profits made by Sarabhai Ltd. in the chargeable accounting period should be taken into consideration in assessing the profits of the assessee company but the deficiency of profits incurred by the subsidiary company in the previous year must be completely wiped off and not taken into account.

In our opinion s. 9 (3) cannot be read by itself without reference to s. 7. A statute must be so read that all the sections as far as possible are reconciled and fitted into the scheme which the Legislature embodied in the statute. The scheme of s. 7 is clear and when we turn to s. 9 (3) it only refers to how the assessment of the principal company has got to be made with reference to the subsidiary company. Section 9 (3) does not mean that in deciding whether the subsidiary company has made profits or not s. 7 has got to be completely overlooked and not given its proper application. Therefore, when for the purpose of s. 9 (3) it has got to be decided whether the subsidiary company has made any profits during the chargeable accounting period the profits are only to be determined subject to the provisions of s. 7. Therefore, the profits of Sarabhai Ltd. for the chargeable accounting period are the profits actually made by them during that period less Rs. 1,83,422 which is the deficiency of profits which under s. 7 Sarabhai Ltd. are entitled to carry forward to the next year. It must not be forgotten that when we have to assess the excess profits of the assessee it is not only in respect of its own business but also in respect of the business of Sarabhai Ltd. which has become a subsidiary company during the chargeable accounting period. Therefore, the Tribunal was right in the view it has taken and the result is that the question that is submitted to us must be answered in the negative. The Commissioner must pay the costs of the reference.

Attorney for respondent: *Payne & Co.*

Attorney for Commissioner: *N. K. Petigara.*

Answer accordingly.

A. J. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.
 MESSRS. HARAKCHAND MAKANJI AND CO., APPLICANT *v.* THE
 COMMISSIONER OF INCOME-TAX, BOMBAY, RESPONDENT.*

Indian Income-tax Act (XI of 1922), ss. 24, 42—Tax on the statutory agent of foreign principal—Goods purchased in Bombay and shipped to Sudan—Whether profit and loss should be apportioned for taxing purposes in the taxable territory—Whether the loss may be allowed to be carried forward under s. 24 (2) of the Act.

*Income-tax Ref. No. 33 of 1951.

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