1934 *Present :* **Macdonell C.J. and Garvin S.P.J.**

HAKIM BHAI *v.* COMMISSIONER OF INCOME TAX.

96—(Inty.) Special.

Income Tax—Loans on security of promissory notes and I.O.U's.—Instruments drawn for larger sums than actually lent—Profits accruing from loans—Not restricted to interest—Meaning of profit—Ordinance No. 2 of 1932, ss. 6 (1) (a), 47, and 52 (2).

Where a money-lender took, as security for loans, promissory notes and I. O. U's for larger sums than those actually lent by him,—

Held, that in assessing the income of the money-lender for purposes of Income Tax, it was competent to take into consideration any profits which may accrue to him from the loans other than the interest made payable under them.

The difference between the amount stated in the promissory note or I. O. U. and the sum actually lent amounts to a profit within the meaning of section 6 (1). (a) of the Income Tax Ordinance.

Section 47 of the Ordinance is not inconsistent with the right to assess for the purpose of Income Tax the whole of the profits, whether it consists of interest or any other form of profit, which a money-lender derives from his business.

THIS was a case stated under section 74 (2) of the Income Tax Ordinance by the Board of Review constituted under section 70 of the Ordinance.

The appellant who was an Afghan money-lender appealed against an assessment of his income made for the year ending March 31, 1933. He carried on business in Colombo and lent money on the security of promissory notes and I. O. U's, carrying interest at 18 per cent. His method of conducting business was to take, as security for a loan, a promissory

note or an I. O. U. for a considerably larger sum which was repayable by instalments spread over a certain period. The appellant rendered a return supported by a statement of accounts declaring that his income was only interest at 18 per cent. per annum on all loans secured as above, the amount for the year preceding the year of assessment being Rs. 2,785. It was contended for the appellant that his sole income was from interest on loans and that under section 47 of the Income Tax Ordinance his income from that source should be the full amount of interest falling due and that, if the appellant did receive sums in excess of the amounts secured to him, such sums were not income within the meaning of the Income Tax Ordinance.

Hayley, K. C. (with him *Iyer*), for appellant.—The income of the petitioner is all derived from loans. The Income Tax Ordinance deals with loans on a purely artificial basis. It is not a tax on incomes. So far as loans are concerned, the receipt of any money under the contract is not a condition for the payment of tax—see section 47. One must pay on the recoverable amount whether recovered or not. Conversely, if a man agrees to take a certain interest the fact that he agreed with the debtor to take a higher rate does not affect the amount of tax. It is not interest falling due under section 47. Interest falling due is interest legally recoverable.

L. M. D. de Silva, K.C., S.-G. (with him *Wendt C.C.*), for *respondent*.—Section 47 is not applicable. Even if it were, money falling due must be money which has fallen due because the tax is assessed on the income for the previous year. Section 52 (2) provides for artificial or fictitious transactions and provides for the possibility of fictitious transactions standing in the way of the collection of income tax. The transaction would be the whole transaction of loan. Fictitious is used in the sense of something that pretends to be what it is not. This section is wide enough to include all cases in which the effect of the transaction is to reduce the amount of tax.

[GARVIN S.P.J.—In a case like the present if you disregard the transaction, there is no transaction at all.]

You disregard merely what the transaction purports to be and to that extent only. The taxing would be on the real transaction. The word "disposition" is free from any such legal objections. Further, the assessment has been made under section 6 (1) (*a*) in this case. Section 47 is therefore inapplicable. If section 47 applies then the excess would be taxable as other profits under the other sections. Even if the profit consists of interest not legally recoverable, it can be taxed. (*Minister of Finance v. Smith.*[1])

Cur. adv. vult.

February 22, 1934. MACDONELL C.J.—

This was a case stated under section 74 (2) of the Income Tax Ordinance, No. 2 of 1932, by the Board of Review, a body constituted under section 70 of that Ordinance. Section 64 of the Ordinance provides that an Income Tax Assessor appointed under the Ordinance can require any person in his opinion chargeable with income tax, to furnish a return of income upon which the Assessor can make an assessment, or the Assessor can

[1] (*1927*) *A. C. 193, at 197.*

make one, disregarding the return or even if the person has furnished no return. If the person against whom an assessment is made objects to it, he can under section 69 appeal to the Commissioner. Under that section the Commissioner can institute further inquiry with a view to obtaining an agreement between the Assessor and the person assessed, sub-section (2), and failing such agreement shall fix time and place for the hearing of the appeal to him, sub-section (3), to which hearing he can, "summon any person whom he may consider able to give evidence respecting the appeal to attend before him at the hearing and may examine such person on oath or otherwise", sub-section (5), and he may "in disposing of an appeal . . . . confirm, reduce, increase, or annul the assessment", sub-section (6). If the person assessed is dissatisfied with the decision of the Commissioner on the appeal under section 69, he can give notice of appeal to the Board of Review, section 71 (3). The hearing and disposal of an appeal to that Board are regulated by section 73 which provides for the attendance at it of the appellant personally or by representative, sub-section (2), and of the Assessor or other authorized person in support of the assessment, sub-section (3). The rest of section 73 is as follows:—

(4) The onus of proving that the assessment as determined by the Commissioner on appeal, or as referred by him under section 72, as the case may be, is excessive shall be on the appellant.

(5) All appeals shall be heard *in camera.*

(6) The Board shall have power to summon to attend at the hearing any person whom it may consider able to give evidence respecting the appeal and may examine him as a witness either on oath or otherwise. Any person so attending may be allowed by the Board any reasonable expenses necessarily incurred by him in so attending.

(7) At the hearing of the appeal the Board may, subject to the provisions of section 71 (4), admit or reject any evidence adduced, whether oral or documentary, and the provisions of the Ceylon Evidence Ordinance, 1895, relating to the admissibility of evidence shall not apply.

(8) After hearing the appeal, the Board shall confirm, reduce, increase, or annul the assessment as determined by the Commissioner on appeal, or as referred by him under section 72, as the case may be, or make such orders thereon as to the members present may appear fit.

(9) Where under sub-section (8) the Board does not reduce or annul such assessment, the Board may order the appellant to pay as costs of the Board a sum not exceeding one hundred rupees, which shall be added to the tax charged and recovered therewith.

The provisions of the Ordinance as to cases stated, such as that now before us, are contained in section 74 which enacts as follows:—

(1) The decision of the Board shall be final: provided that either the appellant or the Commissioner may make an application requiring the Board to state a case on a question of law for the opinion of the Supreme Court. Such application shall not be entertained unless it is made in writing and delivered to the Clerk to the Board, together with a fee of fifty rupees, within one month of the date of the Board's

decision. If the decision of the Board shall be notified to the Commissioner or to the appellant in writing, the date of the decision, for the purposes of determining the period within which either of such persons may require a case to be stated, shall be the date of the communication by which the decision is notified to him.

(2) The stated case shall set forth the facts and the decision of the Board, and the party requiring it shall transmit the case, when stated and signed, to the Supreme Court within fourteen days after receiving the same.

(3) At or before the time when he transmits the stated case to the Supreme Court, the party requiring it shall send to the other party notice in writing of the fact that the case has been stated on his application and shall supply him with a copy of the stated case.

(4) The Supreme Court may cause a stated case to be sent back for amendment and thereupon the case shall be amended accordingly.

(5) The Supreme Court shall hear and determine any question of law arising on the stated case and may in accordance with the decision of the Court upon such question confirm, reduce, increase, or annul the assessment determined by the Board, or may remit the case to the Board with the opinion of the Court thereon. Where a case is so remitted by the Court, the Board shall revise the assessment as the opinion of the Court may require.

(6) In any proceedings before the Supreme Court under this section the Court may make such order in regard to costs in the Supreme Court and in regard to the sum paid under sub-section (1) as to the Court may seem fit.

It is sufficient for the moment to say of this section that under it the Supreme Court has power to hear the point of law stated in the case and to determine it, and to require the confirmation, reduction, &c., of the assessment in question in accordance with such determination. The Court can also send the case back for amendment by the Board and this might be necessary, for instance if the point of law for determination was imperfectly stated.

The case stated to us was in the following terms:—

1. At a meeting of the Board of Review held on February 10, 1933, for the purpose of hearing appeals, under the provisions of section 73 of the Income Tax Ordinance, Seyed Hakim Bhai, hereinafter called the applicant, appealed against an assessment of Rs. 9,080, tax Rs. 138.20, made upon him for the year ending March 31, 1933.

2. The following facts were admitted or established to the satisfaction of the Board :—

(*a*) The applicant is a member of the " Afghan " community in Ceylon. He is a native of Baluchistan in British India. For the year in question he was resident in Ceylon within the meaning of the Income Tax Ordinance.

(*b*) The applicant carries on in Colombo the business of a money-lender.

(*c*) His method of conducting his business is to lend money on the security of promissory notes or I. O. U's. These documents state on the face of them that the client has borrowed a certain

stated sum of money, and in every case it is stipulated that interest at the rate of 18 per cent. per annum shall be paid thereon. The applicant never lends money except on the security of documents of this nature.

(*d*) The applicant has rendered a return, supported by a statement of accounts, declaring that his only income was from interest at 18 per cent. per annum on all loans secured as mentioned above, the amount for the year preceding the year of assessment being Rs. 2,783.

(*e*) The applicant's usual method of conducting business was to take as security for any loan, a promissory note or an I. O. U. for a considerably larger sum which is repayable by instalments spread over a certain period.

(*f*) His profit did not consist of interest at 18 per cent. per annum on the amount stated in the promissory note or I. O. U. as the principal sum lent, but the difference between that sum and the sum actually lent; and

(*g*) The return furnished by him did not truly disclose the whole of his income for the year from his business as a money-lender.

3. It was contended on behalf of the applicant—

(*a*) That the applicant's return and statement are correct and should be accepted.

(*b*) That the whole of the applicant's business consisted in lending money on the security of promissory notes and I. O. U's, and these being written documents setting out particulars of transactions must be regarded as conclusive evidence of those transactions; that no oral evidence could be led to contradict them and that the Board must arrive at its determination on the assumption that the documents correctly represented the transactions.

(*c*) That the applicant's sole income was from interest on loans, and that under section 47 of the Income Tax Ordinance his income from that source should be the full amount of interest "falling due". The amount of interest falling due, it was argued, is the amount secured to and legally recoverable by the applicant on the documents. If the applicant does, in fact, receive sums in excess of the amounts secured to him, such sums were not income within the meaning of the Income Tax Ordinance and were not taxable, as only such interest as can be recovered at law on the documents could be taken into consideration.

(*d*) That the applicant was entitled to exemption under the provisions of section 15 of the Income Ordinance.

4. It was contended in support of the assessment—

(*a*) That the applicant's return and statement did not disclose the true facts regarding his business and should be rejected.

(*b*) That the question at issue was not what sum could be legally recovered as interest on certain documents, but a pure question of fact, namely, what was the amount of profit derived by the applicant from his business as money-lender.

(c) That the applicant had been assessed on the profits from a trade or business under the Income Tax Ordinance, section 6 (1) (*a*). Section 47 refers solely to the determination of income from interest, which is assessable under section 6 (1) (*e*). Section 47 had no application to an assessment made under section 6 (1) (*a*).

(*d*) That the profit derived by the applicant consisted of the difference between the nominal amount of the promissory note or I. O. U. and the sum actually advanced. This difference was not interest, and section 47 had no application thereto.

(*e*) That the promissory notes and I. O. U's in so far as they related to the payment of interest, were "dispositions which were not given effect to" within the meaning of section 52 (2). The Assessor had disregarded such dispositions, and was entitled to do so by virtue of that section.

(*f*) That under section 73 (4) of the Income Tax Ordinance the onus of proving that the assessment was excessive lay on the applicant. He had failed to prove that the assessment was excessive. The assessment should, therefore, be confirmed.

5. We, the members of the Board who heard the appeal, gave the following decision:—

"The Board of Review having heard the Counsel for the appellant, and the Assistant Commissioner on behalf of the Assessor, confirm the assessment as determined by the Commissioner.

The Board orders the appellant to pay the sum of Rs. 100 as costs.

The Board came to the conclusion that the matter before them for decision was a pure question of fact, and it was not prepared to accept the statement of accounts submitted by the appellant as a true return of his income".

6. The applicant on February 23, 1933, required us to state a case on a question of law for the opinion of the Supreme Court which case we have accordingly stated and signed.

In argument before us the form of this case was variously criticised and is indeed open to objection on several grounds. It does not clearly raise what is the point of law we are to determine and paragraphs 4 (*b*) and 5 describe as "pure questions of fact" what are in reality mixed questions of law and fact. Thus, paragraph 4 (*b*) "the amount of profit derived by the applicant from his business as money-lender" involves a question of fact, namely, what amount of money the applicant has received from that business but it also involves questions of law, for instance, the interpretation of section 6 (1) of the Ordinance, and, having regard to other portions of the case, of section 47 also, possibly of other sections as well. None the less, though the case has been inartificially stated, it is perfectly possible to extract from it certain questions of law which therefore we can answer.

The gist of the facts set out in this case is that the applicant being a money-lender takes from his borrowers promissory notes or I. O. U's, wherein the borrowers acknowledge themselves to be indebted to him in a certain sum and promise to repay that sum with interest thereon at 18 per centum per annum, and the applicant claims that his sole income is

the interest on the loans as stated in these documents, namely, the 18 per cent. and that if he does, in fact, receive from his borrowers something over and above that interest and over and above the sums they bind themselves to repay, those extra amounts he so receives are not 'income' within the meaning of the Ordinance and so not taxable thereunder. This contention involves consideration of section 47 of the Ordinance the material portion of which is as follows:—"Income arising from interest on loans, mortgages, and debentures shall be the full amount of interest falling due, whether paid or not". This provision deals only with that kind of income from loans which can be described as 'interest', it says so; it does not profess to deal with any other income which may possibly arise from loans. All interest from loans is income but it does not therefore follow that all income from loans is interest—it is the familiar, all terriers are dogs but all dogs are not terriers.

This consideration of section 47 shows negatively that in the case of loans, 'interest' does not necessarily comprise all the income that may be derivable from loans. Is there anything in the Ordinance which states positively that income derived from loans other than interest on those loans is income taxable under its provisions? Section 6 (1) defines 'profits and income' to mean "(*a*) the profits from any trade, business, profession or vocation", also "(*g*) rents, royalties, and premiums". Having this definition of 'profits and income' we find from section 11 (1) that, save for certain exceptions not claimed in this case, "the statutory income of every person for each year of assessment from each source of his profits and income in respect of which tax is charged by this Ordinance"—loans are a source in respect of which such tax is charged—"shall be the full amount of the profits or income which was derived by him or arose or accrued to his benefit from such source during the year preceding the year of assessment". From this 'statutory income' as defined in section 11 (1), there must be deducted under section 13 certain matters or allowances, none of which have been claimed in the present case, to arrive at the 'assessable income' of any person, and when that deduction has been made—here there is nothing to deduct—you arrive at the taxable income of the person, section 14. The taxable income, then, of any person is his statutory income, less certain deductions which do not require to be made in this case, and his statutory income is the full amount of the profits or income which was derived by him or arose or accrued to his benefit from any source thereof taxable under the Ordinance,—loans are a taxable source—and the phrase 'profits and income' include profits from any business, section 6 (1) (*a*), and also premiums, section 6 (1) (*g*). Then there is positive enactment that income derived from loans, other than interest on those loans, is taxable income under this Ordinance.

Now this being the law, as disclosed in the sections quoted, it remains to apply it to the facts stated in the case before us. Paragraphs 2 (*e*) and (*f*) of that case are as follows:—"(*e*) The applicant's usual method of conducting business was to take as security for any loan a promissory note or I. O. U. for a considerably larger sum which is repayable by instalments spread over a certain period. (*f*) His profit did not consist of interest at 18 per cent. per annum on the amount stated in the

promissory note or I. O. U. as the principal sum lent, but the difference between that sum and the sum actually lent". In the bygoing, we may note that it was conceded in argument that there was evidence before the Board for the findings on fact contained in these paragraphs 2 (*e*) and (*f*) —so far as they do contain findings of fact, for they also contain a proposition of law—though the adequacy of that evidence was contested. The facts are then that the applicant would pay to his borrower one sum but would require the borrower to admit his indebtedness for, or to promise repayment of, a larger sum. The difference between the larger sum and the smaller sum, seems clearly to be a 'profit', section 6 (1) (*a*), the definitions of 'profit' in the Concise Oxford Dictionary being 'advantage, benefit, pecuniary gain, excess of returns over outlay'. The difference between the larger sum and the smaller might also be described as a 'premium', section 6 (1) (*f*), one of the definitions of which in the same Dictionary is 'sum additional to interest'. It seems to follow then that the difference between "the amount stated in the promissory note or I. O. U. as the principal sum lent . . . . and the sum actually lent" is a 'profit' or 'income' derived by the lender from a "source in respect of which tax is charged" under the Ordinance, and therefore a portion of his statutory income under section 11 (1), which by the combined effect of sections 13 and 14 becomes his taxable income, and he is taxable thereon accordingly. This conclusion will dispose of the matters of law raised in paragraphs 2 (*e*) and (*f*), and also of that raised in paragraph 2 (*g*), for on the facts stated the return made by the applicant did not disclose the whole of the income, as that word is defined by section 11 (1) read in conjunction with section 6 (1) (*a*) and (*g*), made by him as a money-lender, and also of that raised in paragraph 4 (*b*) which though stated as a 'pure question of fact' really contains a question of law, namely, the profit derived by applicant from his business as a money-lender; the difference between the larger sums and the smaller sums mentioned just above, will be a profit, defined as above. Further this conclusion will dispose of the matters of law raised in paragraph 3 (*c*) and in paragraphs 4 (*c*) and (*d*) since it holds that in questions as to profit or income from loans, it is necessary to consider and, where the facts require, to apply not only section 47 but also section 11 (1) read in conjunction with section 6 (1) (*a*) and (*g*).

Further questions of law, dependent upon those just determined and upon the facts on which they are based, arise out of paragraph 3 (*b*) and paragraph 4 (*e*) of the case. Those paragraphs contain the contention of the applicant that the written documents, promissory notes and I. O. U's, setting out particulars of his transactions as money-lender must be regarded as conclusive evidence of those transactions not to be contradicted by oral evidence, and the contention in reply that these promissory notes and I. O. U's in so far as they relate to interest are "dispositions which were not given effect to" within the meaning of section 52 (2) and consequently to be disregarded. The important parts of section 52 are as follows:—"(2) Where an Assessor is of opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the persons

concerned shall be assessable accordingly. (3) Nothing in this section shall prevent the decision of an Assessor in the exercise of any discretion given to him by this section from being questioned in an appeal against an assessment in accordance with Chapter XI. (4) In this section (*a*) '*disposition*' includes any trust, grant, covenant, agreement, or arrangement".

The 'disposition' is said to be this. The applicant takes a written statement from the debtor that the debtor owes him, and will repay by instalments, say, Rs. 200, but in actual fact the applicant has only lent the debtor, say, Rs. 150. The admission, express or implied, by the debtor that he has borrowed, and so received, the Rs. 200, is said to be a disposition in the sense of 'agreement' or "arrangement' which is 'not in fact given effect to' since in fact he has not received Rs. 200 but Rs. 150 only. But he has agreed to pay the Rs. 200 and this sum to the extent of Rs. 50 will be a 'profit' to the lender since it is an excess of returns over outlay, and it is argued that the disposition can be disregarded and the lender assessed on the profit disclosed. This may be so, but it is perhaps unnecessary in the present case to make any pronouncement thereon.

Paragraph 4 (*f*) after referring to section 73 (4) of the Ordinance as placing on an applicant the onus of proving that his assessment is excessive goes on to state that this applicant has failed to prove that his assessment was excessive. It only remains to mention paragraph 5 of the case which formally confirms the assessment as determined, declares the matter to be one of pure fact and declines to accept that statement of accounts submitted by the appellant as a true return of his income. It has been pointed out above that this paragraph 5 contains a proposition of law as well as statements of fact, but the conclusions set out above will dispose of the proposition of law contained therein.

The other paragraphs in the case not specifically referred to in this judgment, namely, paragraphs 1, 2 (*a*), (*b*), (*c*) and (*d*), 3 (*a*) and (*d*) do not seem to contain any question of law but only questions of fact or of argument as to fact and do not therefore need discussion.

I would summarize the conclusions arrived at on those points of law which can be collected from the case submitted to us. Loans may produce to the lender that kind of profit or income called interest taxable under the Ordinance as interest, section 47, but they may produce a further profit or income derived otherwise than by way of interest on those loans which further profit or income will be taxable under the Ordinance, by section 11 (1) read in conjunction with section 13 and section 14, if falling within the definition of profit or income given in section 6 (1). On the facts stated, the difference between the sum named by this applicant in his business instruments as the sum repayable, and the sum which he actually lent, will be a profit within section 6 (1), and the recording in a business instrument one sum as lent while at the same time lending a smaller sum to the person bound by that instrument, may possibly be a disposition not in fact given effect to within section 52 (2), and if so liable to be disregarded under that section. The business instruments of the applicant were not conclusive evidence of the transactions recorded therein but could be contradicted by parol evidence.

In addition to the matters of law discussed and determined above, a large number of matters were argued as to which it seems unnecessary to pronounce an opinion. It was urged for the appellant that in stating a case the Board must state that case which the applicant asks and no other. It was also urged that the evidence upon which the Board found certain facts proved was insufficient but at the same time it was conceded that there was some evidence for such finding and also (as I understood) that if there is some evidence to justify a finding on fact by such a tribunal as the Board, a Court will not go behind that finding. The differences between Ordinance No. 2 of 1932 and the corresponding English and Indian enactments were also insisted upon, by both sides. In support of the assessment emphasis was laid on the differences between Ordinance No. 2 of 1932 and other income tax enactments as increasing under that Ordinance the powers of the taxing authority and diminishing the rights of the subject in that behalf. It was argued on the same side that section 73 (7) of the Ordinance had "emptied the term evidence of all content"—this phrase was put from the bench but adopted by the Solicitor-General,—also that 'to the extent that the Board of Review adopts the findings of the Commissioner the Supreme Court on a case stated has seisin of the matter' but that 'to the extent that the Board departs from the Commissioner's finding, the matter is beyond the competence of the Court'. These questions and others were very ably argued before us on both sides but a decision upon them is unnecessary since the matters of law arising out of the case stated to us can all be determined, and have all been determined, without pronouncing on these questions. They are matters which can be decided when they definitely arise, but in the case before us they do not arise, so I would wish to express no opinion upon them.

For the reasons given earlier in this judgment I think that the assessment on the applicant referred to in paragraphs 1 and 5 of the case stated must be confirmed, and this appeal dismissed. The appellant must pay the costs of these proceedings but the Rs. 50 already paid by him in accordance with section 74 (1) may be taken as part of the costs he is now ordered to pay.

GARVIN S.P.J.—

This matter comes before us upon a case stated by the Board of Review under the provisions of section 74 of the Income Tax Ordinance, No. 2 of 1932. The case was stated at the instance of a person who objected to the assessment of his income made under the provisions of this Ordinance and who, for convenience, will be referred to as the appellant.

As a person who, in the opinion of the assessors, was chargeable with tax, the appellant was required to and did furnish a return of his income. The assessor did not accept the return, and, in accordance with the provisions of section 64 (2) (b), proceeded to make an estimate of the amount of his assessable income. Being dissatisfied with this assessment, he appealed to the Commissioner, and from the decision of the Commissioner affirming the assessment already made, he appealed in due course to the Board of Review. The Board in turn confirmed the assessment.

The appellant carries on in Colombo the business of a money-lender. He lends money on the security of promissory notes or I. O. U's. In every instance, the money was lent at the rate of 18 per cent. per annum, and his return consisted of a statement of accounts showing as his only income interest at 18 per cent. on various loans secured by promissory notes or I. O. U's.

The return appears to have been rejected on the ground that whereas these documents stated that what was lent was the sums specified on each note or I. O. U., the fact was that the amounts entered in these documents were greatly in excess of the amounts actually lent. In the result, therefore, the appellant, in respect of such transactions, received not only the interest upon the larger sums specified in the documents, but the difference between the amounts actually lent and the amounts specified in the documents which the borrower promised to repay.

It was admitted that there was some evidence to support the conclusion arrived at by the assessor, and, confirmed by the various tribunals of appeal that the appellant's profits did not consist solely of the interest at 18 per cent. per annum on the amounts stated in the promissory notes, but it was urged that by reason of the provisions of section 47 of the Income Tax Ordinance income from loans was restricted to the interest on the loans and that it was not competent, therefore, in making an assessment of the income of a person who may appear to be chargeable with tax, to take into consideration any other profit which the lender may derive from such loans. The point, therefore, which emerges upon a perusal of the case stated for determination by this Court is whether the appellant is right in his contention that, as the effect of section 47 of the Income Tax Ordinance, it is not permissable, when assessing the appellant's income, to take into consideration any profits which may accrue to him from loans other than the interest payable by the borrower. Now, the provisions of section 47 with which we are here immediately concerned are as follows:—

> "Income arising from interest on loans, mortgages and debentures shall be the full amount of interest falling due, whether paid or not". The remainder of the section deals with cases in which interest is unpaid or is irrecoverable and prescribes how and what measure of relief is available in such cases.

Now, all that is said in the material part of section 47 is that the "income arising from interest on loans" shall, for the purposes of the assessment, be taken to be the full amount of the interest which has fallen due irrespective of whether the interest has been paid or not. Manifestly, it was a provision that was intended to facilitate the work of assessment by enabling the assessors to treat as income all interest which has fallen due, while leaving it to the person assessed to plead and prove the existence of circumstances which entitled him to relief. The existence of such provision is in no sense inconsistent with the rights to assess, for the purpose of income tax, the whole of the profits, whether it consists of interest or any other form of profit which a money-lender derives from his business.

There might possibly have been some foundation for the argument had the opening words of the section been "income arising from loans, mortgages, and debentures shall be the full amount of interest falling due, whether paid or not". It is impossible to construe the section as bearing any such connotation as the words of the legislature are "income arising from interest on loan, &c.". Where, as in this case, the assessor and the various tribunals of appeal were satisfied that other profits were derived by the appellant from his business in addition to the interest payable on the amounts specified in the securities taken by him, it is impossible to say that they were wrong in refusing to assess the appellant on the basis of the return made by him.

It does not appear to me to be necessary, for the determination of the question of law which arises upon the case stated, to determine whether the assessor may not also rely upon the provisions of section 52 (2). As for the contention that no oral evidence was admissible or should have been admitted to contradict the terms of these various promissory notes and I. O. U's, or to show the true nature of the transactions which took place between lender and borrower, it is sufficient to state that they were not very strongly pressed upon us and clearly cannot be sustained. There is no occasion, therefore, to revise the assessment made in this case which is accordingly affirmed.

The appellant will pay the taxed costs of this proceeding. The sum of Rs. 50 already paid by him will be retained as part of the costs awarded.

Appeal dismissed.