BUSINESS INCOME

Landmark judgments of the Supreme Court of India

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BUSINESS INCOME -SELECT ISSUES

1. What is “business”
2. Whether “Income” includes “loss”
3. Income tax and legality of business
4. Interplay between accounts and income tax
    1. Generally
    2. Valuation of closing stock
5. “Wholly and exclusively” “for the purpose of business”
6. Capital v. Revenue expenditure
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WHAT IS "BUSINESS"?

1. *G. Venkataswami Naidu & Co. (1959) 35 ITR 594 (SC)*

"……..When section 2(4) of the 1922 Act, refers to an adventure in the nature of trade, it clearly suggests that the transaction cannot properly be regarded as trade or business. It is allied to transactions that constitute trade or business but may not be trade or business itself. …….. even an isolated and single transaction can satisfy the description of an adventure in the nature of trade."

"In each case, it is the total effect of all relevant factors and circumstances that determines the character of the transaction."

Thus, the decision about the character of a transaction in the context cannot be based solely on the application of any abstract rule, principle or test and must in every case depend upon all the relevant facts and circumstances."

WHAT IS "BUSINESS"?

2. *Sutlej Cotton Mills Supply Agency Ltd. (1975) 100 ITR 706 (SC)*

"It is not necessary to constitute trade that there should be a series of transactions, both of purchase and of sale. A single transaction of purchase and sale outside the assessee's line of business may constitute an adventure in the nature of trade. Neither repetition nor continuity of similar transactions is necessary to constitute a transaction an adventure in the nature of trade."

"Where a purchase is made with the intention of resale, it depends upon the conduct of the assessee and the circumstances of the case whether the venture is on capital account or in the nature of trade. A transaction is not necessarily in the nature of trade because the purchase was made with the intention of resale."

WHETHER "INCOME" INCLUDES "LOSS"?

1. *Badridas Daga v. CIT (1958) 34 ITR 10 (SC)*

'It is like wise well settled that profits and gains which are liable to be taxed under section 10 (1) are what are understood to be such according to ordinary commercial principles. The word "profits" is to be understood in its natural and proper sense—*in a sense which no commercial man would* misunderstand."

"……. that when a claim is made for a deduction for which there is no specific provision in section 10(2), whether it is admissible or not will depend on whether, having regard to accepted commercial practice and trading principles, it can be said to arise out of the carrying on of the business and to be incidental to it. If that is established, then the deduction must be allowed, provided of course there is no prohibition against it, express or implied, in the Act."

"…….the loss sustained by the appellant as a result of misappropriation by Chandratan is one which is incidental to the carrying on of his business, and that it should therefore be deducted in computing the profits under section 10(1) of the Act"

WHETHER "INCOME" INCLUDES "LOSS"?

2. *CIT vs. Nainital Bank (1965) 55 ITR 707(SC)*

"trading loss of a business is deductible for computing the profit earned by the business. But every loss is not so deductible unless it is incurred in carrying out the operation of the business and is incidental to the operation. Whether loss is incidental to the operation of a business is a question of fact to be decided on the facts of each case, having regard to the nature of the operations carried on and the nature of the risk involved in carrying them out. The degree of the risk or its frequency is not of much relevance but its nexus to the nature of the business is material."

"It was an integral part of the process of banking that sufficient money should be kept in the bank duly guarded to meet the demands of the constituents. The retention of the money in the bank was a part of the operation of banking. The retention of money in the bank premises carried with it the ordinary risk of its being subject of embezzlement, theft, dacoity or destruction by fire and such other things. Such risk of loss was incidental to the carrying on of the operations of the business of banking. In this view, the loss incurred by dacoity in the instant case was incidental to the carrying on of the business of banking."

INCOME TAX AND LEGALITY OF BUSINESS

1. *CIT vs. S.C. Kothari (1971) 82 ITR 794 (SC)*

"If the business is illegal neither the profits earned nor the losses incurred would be enforceable in law. But, that does not take the profits out of the taxing statute. Similarly, the taint of illegality of the business cannot detract from the losses being taken into account for computation of the amount which can be subjected to tax as "profits" under section 10(1) of the Act of 1922."

"The tax collector cannot be heard to say that he will bring the gross receipts to tax. He can only tax profits of a trade or business. That cannot be done without deducting the losses and the legitimate expenses of the business. We concur in the view of the High Court that for the purpose of section 10(1) the losses which have actually been incurred in carrying on a particular illegal business must be deducted before the true figure relating to profits which have to be brought to tax can be computed or determined.

As for set off u/s 24(1) explanation 2, it was held that, "the contract has to be an enforceable contracts and not an unenforceable one by reason of any taint of illegality resulting in its invalidity." Therefore, if the business of commission agency or forward business was the same in the which the profits were made and the loss was incurred, then in order to arrive at the figure which could be subjected to tax, the loss would have to be deducted from the profit."

INCOME TAX AND LEGALITY OF BUSINESS

2. *CIT vs. Piara Singh (1980) 124 ITR 40(SC)*

"If the smuggling activity could be regarded as a business, the person carrying on the same must be deemed to be aware that a necessary incident involved-in the business was detection by the custom authorities and the consequent confiscation of the currency notes. It was an incident as predictable in the course of carrying on the activity as any other feature of it. Having regard to the nature of the activity, possible detection by the custom authorities constituted a normal feature integrated into all that was implied and involved in it. Therefore, the confiscation of the currency notes was a loss occasioned in pursuing the business; it was a loss in much the same way as if the currency notes had been stolen or dropped on the way while carrying on the business; and it was a loss which sprung directly from the carrying on of the business and was incidental to it."

It was further held that "There was a significant distinction between the infraction of the law committed in the carrying on of a lawful business and an infraction of the law committed in a business inherently unlawful and constitute a normal incident of it." Therefore, the SC distinguished the case of Haji Aziz & Abdul Shakoor Bros. v. CIT (1961) 41 ITR 350, wherein it was held that "an infraction of the law was not a normal incident of the lawful business carried on by the assessee and the penalty was rightly held to fall on the assessee in some character other than that of a trader."

INCOME TAX AND LEGALITY OF BUSINESS

3. *Dr. T.A.Quereshi vs. CIT, Bhopal (2006) 287 ITR 547 (SC)* –

"……. it is implicit that the Tribunal reiterated to view that the assessee was doing the business of manufacture and sale of heroin. Once the income-tax authorities records such a finding of fact, it follows that any loss from such a business is a business loss."

The *Explanation* to section 37 has really nothing to do with the present case as it is not a case of a business expenditure, but of business loss. Business losses are allowable on ordinary commercial principles in computing profits.

The SC further emphasised that the High Court had adopted an emotional and moral approach rather than a legal approach. The SC held that the High Court was right in opining that the assessee was committing a highly immoral act in illegally manufacturing and selling heroin. "However, cases are to be decided by the Court on legal principles and not on one's own moral views. Law is different from morality, as the positivist jurists Bentham and Austin pointed out."

INTERPLAY BETWEEN "ACCOUNTS" AND "INCOME TAX"

A. General: Relevance of Accounting entries and role of ICAI

1. *Kedarnath Jute Mfg. Ltd. V. CIT (1971) 82 ITR 363 (SC) –*

"We are wholly unable to appreciate the suggestion that if an assessee under some misapprehension or mistake fails to make an entry in the books of account and although, under the law, a deduction must be allowed by the Income-tax Officer, the assessee will lose the right of claiming or will be debarred from being allowed that deduction. Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of its right nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter. The assessee who was maintaining accounts on the mercantile system was fully justified in claiming deduction of the amount of sales tax which it was liable under the law to pay during the relevant accounting year. The liability remained intact even after the assessee had taken appeals to higher authorities or courts which failed."

INTERPLAY BETWEEN "ACCOUNTS" AND "INCOME TAX"

2. *CIT vs. U.P. State Industrial Development Corpn. (1997) 225 ITR 703 (SC)* –

"It is a well-accepted proposition that for the purposes of ascertaining profits and gains the ordinary principles of commercial accounting should be applied, so long as they do not conflict with any express provision of the relevant statute." The Court held that the revenue had not shown that the accountancy practice followed by the assessee was repugnant to any provision of the Act. In the circumstances, it must be held that the Tribunal and the High Court had not committed any error in taking the view that the underwriting commission earned by the assessee in respect of the shares which were not subscribed by the public and were purchased by the assessee, would not be treated as a part of its taxable income but could only be treated as reducing the price of the shares purchased by the Assessee.

INTERPLAY BETWEEN "ACCOUNTS" AND "INCOME TAX"

3. *CIT vs. Virtual Soft Systems Ltd (2018) 404 ITR 409 (SC)* –

"The purpose behind the accounting standards was to arrive at a computation of real income after adjusting the permissible depreciation. It is not disputed that these accounting standards are made by the body of experts after extensive study and research. …….The method of accounting followed, as derived from the ICAI's Guidance Note, is a valid method of capturing real income based on the substance of finance lease transaction."

"…….assessee can be charged only on real income. For such calculation, it is obvious that the assessee has to take course of Guidance Note prescribed by the ICAI if it is available. Only after applying such method which is prescribed in the Guidance Note, the assessee can show fair and real income which is liable to tax under the IT Act. ……Hence, there is no force in the contentions of the revenue that the accounting standards prescribed by the Guidance Note cannot be used to bifurcate the lease rental to reach the real income for the purpose of tax under the IT Act."

INTERPLAY BETWEEN "ACCOUNTS" AND "INCOME TAX"- A CAUTION

4. *Tuticorin Alkali Chemicals & Fertilizers Ltd. V. CIT (1997) 227 ITR 172 (SC)*

"…….. Further, any argument based on accountancy practice has little merit if such practice cannot be justified by any provision of the statute or is contrary to it……. "It is true that the Supreme Court has very often referred to accounting practice for ascertainment of profit made by a company or value of the assets of a company. But when the question is whether a receipt of money is taxable or not or whether certain deductions from that receipt are permissible in law or not, the question has to be decided according to the principles of law and not in accordance with accountancy practice. Accounting practice cannot override section 56 of the 1961 Act or any other provision of the Act ……that the Income-tax Law does not march step by step in the divergent footprints of the accountancy profession ."

INTERPLAY BETWEEN "ACCOUNTS" AND "INCOME TAX"

B. Valuation of Closing Stock

1. *Chainrup Sampatram vs. CIT (1953) 24 ITR 481 (SC)*

"…… The true purpose of crediting the value of unsold stock is to balance the cost of those goods entered on the other side of the account at the time of their purchase, so that the cancelling out of the entries relating to the same stock from both sides of the account would leave only the transactions on which there have been actual sales in the course of the year showing the profit or loss actually realized on the years trading."

"Again, it is a misconception to think that any profit "arises out of the valuation of the closing stock" ……. As already stated, valuation of unsold stock at the close of an accounting period is a necessary part of the process of determining the trading results of that period, and can in no sense be regarded as the "source" of such profits. ……

"…….. the closing stock is to be valued at cost or market price whichever is the *lower,* and it is now generally accepted as an established rule of commercial practice and accountancy. As profits for income-tax purposes are to be computed in conformity with the ordinary principles of commercial accounting, unless of course, such principles have been superseded or modified by legislative enactments unrealised profits in the shape of appreciated value of goods remaining unsold at the end of an accounting year and carried over to the following year's account in a business that is continuing are not brought into the charge as a matter of practice, though, as already stated, loss due to a fall in price below cost is allowed even if such loss has not been actually realised. …… What seems an exception is recognised where a trader purchased and still holds goods or stocks which have fallen in value. No loss has been realised. Loss may not occur. Nevertheless, at the close of the year he is permitted to treat these goods or stocks as of their market value".

INTERPLAY BETWEEN "ACCOUNTS" AND "INCOME TAX"

2. *United Commercial Bank vs. CIT (1999) 240 ITR 355 (SC)*

"For valuing the closing stock, it is open to the assessee to value it at the cost or market value, whichever is lower."

"In the balance sheet, if the securities and shares are valued at cost, yet from that no firm conclusion can be drawn. A taxpayer is free to employ for the purpose of his trade, his own method of keeping accounts, and for that purpose, to value stock-in-trade either at cost or market price."

"A method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the departmental authorities on the view that he should have adopted a different method of keeping accounts or of valuation."

"The concept of real income is certainly applicable in judging whether there has been income or not, but in every case, it must be applied with care and within their recognised limits."

"Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation."

INTERPLAY BETWEEN "ACCOUNTS" AND "INCOME TAX"

3. *CIT vs. Bannari Amman Sugars Ltd. (2012) 349 ITR 708 (SC)*

"……..The method that an assessee adopts for closing is an integral part of accounting, within the meaning of Section 145 of the Act. There are different methods of valuation of closing stock. The popular system is Cost or Market, whichever is lower. However, adjustments may have to be made in the principle having regard to the special character of assets, the nature of the business, the appropriate allowances permitted etc. to arrive at taxable profits."

"The closing stock of incentive sugar should be allowed to be valued at levy price, which on facts, is found to be less than the cost of manufacture of sugar (cost price)…. The excess realisation was a capital receipt, not liable to be taxed….. The stock valuation of incentive sugar has a direct impact on the manufacturer's revenue or business profits…. One cannot have a stock valuation which converts a capital receipt into revenue income."

"WHOLLY AND EXCLUSIVELY" FOR THE PURPOSE OF BUSINESS

1. *Sassoon J. David & Co. Pvt. Ltd vs. CIT (1979) 118 ITR 261 (SC)*

"…….. the expression "wholly and exclusively" used in section 10(2)(xv) of the Act does not mean "necessarily". Ordinarily it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction under section 10(2)(xv) of the 1922 Act even though there was no compelling necessity to incur such expenditure."

"Even assuming that the motive behind the payment of retrenchment compensation was that the terms of the agreement of the sale of shares should be satisfied, as long as the amount had been laid out or expended wholly and exclusively for the purpose of the business of the assessee, there appears to be no good reason for denying the benefit of section 10(2)(*xv*) of the Act to the Company if there is no other impediment to do so."

"……..The fact that somebody other than the assessee is also benefited by the expenditure should not come in the way of an expenditure being allowed by way of deduction under section 10(2)(xv) of the Act if it satisfies otherwise the tests laid down by law

WHOLLY AND EXCLUSIVELY "FOR THE PURPOSE OF BUSINESS"

1. *CIT vs. Malayalam Plantations Ltd (1964) 53 ITR 140 (SC)*

"The expression "for the purpose of the business" is wider in scope than the expression "for the purpose of earning profits". Its range is wide : it may take in not only the day to day running of a business but also the rationalization of its administration and modernization of its machinery; may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title ; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business."

"However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business. It cannot include sums spent by the assessee as agent of a third party, whether the origin of the agency is voluntary or statutory; in that event, he pays the amount on behalf of another and for a purpose unconnected with the business."

"WHOLLY AND EXCLUSIVELY" & "FOR THE PURPOSE OF BUSINESS"

2. *S.A Builders vs. CIT (2007) 288 ITR 1 (SC)*

"It has been consistently held in decisions relating to section 37 that the expression 'for the purpose of business' includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby."

"The expression 'commercial expediency' is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency."

".....once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. "

NOT A CAPITAL EXPENDITURE

1. *Empire Jute Co. Ltd vs CIT (1980) 124 ITR 1 (SC)*

"…Various tests for distinguishing between capital and revenue expenditure but no test is paramount or conclusive. There is no all-embracing formula which can provide a ready solution to the problem; no touchstone has been devised. Every case has to be decided on its own facts keeping in mind the broad picture of the whole operation in respect of which the expenditure has been incurred."

"…… There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may breakdown. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a, commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future."

NOT A CAPITAL EXPENDITURE

2. *Alembic Chemical Works Co. Ltd vs. CIT 177 ITR 377 (SC)*

"In the infinite variety of situational diversities in which the concept of what is capital expenditure and what is revenue arises, it is well nigh impossible to formulate any general rule, even in generality of cases sufficiently accurate and reasonably comprehensive, to draw any clear line of demarcation."

"The idea of 'once for all' payment and 'enduring benefit' are not to be treated as something akin to statutory conditions; nor are the notions of 'capital' or 'revenue' adjudicial fetish. What is capital expenditure and what is revenue are not eternal varieties but must needs be flexible so as to respond to the changing economic realities of business. The expression 'asset or advantage of an enduring nature' was evolved to emphasise the element of a sufficient degree of durability appropriate to the context."

"There is also no single definite criterion which by itself, is determinative whether a particular outlay is capital or revenue. The 'once for all' payment test is also inconclusive. What is relevant is the purpose of the outlay and its intended object and effect, considered in a common-sense way having regard to the business realities."

NOT A CAPITAL EXPENDITURE

3. *CIT vs. Madras Auto Service (P.) Ltd (1998) 233 ITR 468 (SC)*

"In order to decide whether this expenditure is revenue expenditure or capital expenditure, one has to look at the expenditure from a commercial point of view. What advantage did the assessee get by constructing a building which belonged to somebody else and spending money for such construction. The assessee got a long lease of a newly constructed building suitable to its own business at a very concessional rent… The saving in expenditure was a saving in revenue expenditure in the form of rent. Whatever substitutes for revenue expenditure should normally be considered as revenue expenditure."

"….expenditure which did bring about some kind of an enduring benefit to the company as a revenue expenditure when the expenditure did not bring into existence any capital asset for the company."

COMPUTATION OF ONLY "REAL INCOME"

1. *E.D. Sassoon & Co. Ltd. Vs. CIT (1954) 26 ITR 27 (SC)*

"If income has accrued to the assessee it is certainly earned by him in the sense that he has contributed to its production or the parenthood of the income can be traced to him. But in order that the income can be said to have accrued to or earned by the assessee it is not only necessary that the assessee must have contributed to its accruing or arising by rendering services or otherwise but he must have created a debt in his favour. A debt must have come into existence and he must have acquired a right to receive the payment. Unless and until his contribution or parenthood is effective in bringing into existence a debt or a right to receive the payment or in other words a *debitum in presenti, solvendum in futuro* it cannot be said that any income has accrued to him. "

"The mere expression "earned" in the sense of rendering the services etc., by itself is of no avail. They had no doubt rendered services as Managing Agents of the Companies for the broken periods. But unless and until they completed their performance, viz., the completion of the definite period of service of a year which was a condition precedent to their being entitled to receive the remuneration or commission stipulated thereunder, no debt payable by the Companies was created in their favour and they had no right to receive any payment from the Companies. No remuneration or commission could therefore be said to have accrued to them at the dates of the respective transfers."

COMPUTATION OF ONLY "REAL INCOME"

2. CIT vs. Shoorji Vallabhdas & Co. (1962) 46 ITR 144 (SC)

"Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income", which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable."

"Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."

COMPUTATION OF ONLY "REAL INCOME"

3. *Godhra Electricity vs. CIT (1997) 225 ITR 746 (SC)*

"It is no doubt true that the letter addressed by the Under Secretary to the Government of Gujarat to the assessee-company had no legally binding effect but one has to look at things from practical point of view."

"The question whether there was real accrual of income to the assessee- company in respect of the enhanced charges for supply of electricity has to be considered by taking the probability or improbability of realisation in a realistic manner… The Tribunal, therefore, had rightly held that the claim at the increased rates as made by the assessee-company on the basis of which necessary entries were made represented only hypothetical income and the impugned amounts as brought to tax by the Assessing Officer did not represent the income which had really accrued to the assessee-company."

"The assessee-company was following the mercantile system of accounting and had made entries in the books regarding enhanced charges for the supply made to the consumers, no real income had accrued to the assessee-company in respect of those enhanced charges in view of the representative suits filed by the customers and a request to maintain *status quo* by the Government of Gujarat."

COMPUTATION OF ONLY "REAL INCOME"

4. *CIT vs. Excel Industries (2013) 358 ITR 295 (SC)*

"Income tax cannot be levied on hypothetical income…. An income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then it can be said that for the purposes of taxability said income is not hypothetical and it has really accrued to the assessee."

"…..three tests laid down by various decisions of this Court, namely, whether the income accrued to the assessee is real or hypothetical; whether there is a corresponding liability of the other party to pass on the benefits of duty free import to the assessee even without any imports having been made; and the probability or improbability of realisation of the benefits by the assessee considered from a realistic and practical point of view (the assessee may not have made imports), it is quite clear that in fact no real income but only hypothetical income had accrued to the assessee and section 28(iv) of the Act would be inapplicable to the facts and circumstances of the case. Essentially, the Assessing Officer is required to be pragmatic and not pedantic."

COMPUTATION OF ONLY "REAL INCOME" A CAUTION

5. *State Bank of Travancore vs. CIT (1986)158 ITR 102 (SC)*

"The question of how far the concept of real income entered into the question of taxability in the facts and circumstances of this case and how far and to what extent the concept of real income should intermingle with the accrual of income will have to be judged in the light of the provisions of the Act, the principles of accountancy recognised and followed and the feasibility."

"…. Whether an accrual has taken place or not must, in appropriate cases, be judged on the principles of real income theory. …..What has really accrued to the assessee has to be found out, and what has accrued must be considered from the point of view of real income, taking the probability or improbability of realisation in a realistic manner and dovetailing these factors together, but once the accrual takes place, on the conduct of the parties subsequent to the year of closing, an income which has accrued cannot be made 'no income'."……(Continued on the next page)

COMPUTATION OF ONLY "REAL INCOME" (CONTINUED FROM EARLIER SLIDE)

"Mere improbability of recovery, where the conduct of the assessee is unequivocal, cannot be treated as evidence of the fact that income has not resulted or accrued to the assessee. After debiting the debtor's account and not reversing that entry, but taking the interest merely in suspense account, cannot be such evidence to show that no real income has accrued to the assessee or has been treated as such by the assessee."

"The concept of real income is certainly applicable in judging whether there has been income or not, but in every case it must be applied with care and within well-recognised limits, and must not be called in aid to defeat the fundamental principles of law of income-tax as developed."

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