HIGH COURT OF MADRAS

Gemini Pictures Circuit Ltd.

v.

Commissioner of Income-tax

RAJAGOPALAN, OFFG., CJ. AND RAJAGOPALA AYYANGAR, J.
CASE REFERRED NO. 27 OF 1955 AND WRIT PETITION NO. 925 OF 1955
DECEMBER 6, 1957
R.M. Seshadri *for the Applicant.*

C.S. Rama Rao Sahib *for the Respondent.*

JUDGMENT

Rajagopala Ayyangar, J.—The question arising for consideration both in the reference under section 66(2) of the Indian Income-tax Act as well as in W.P. No. 925 of 1955 are identical and relate to the proper rule to be applied for determining the amortisation of films for computing the income, profits and gains of the assessee which is carrying on business as a film distributor. The assessee in the Reference Case No. 27 of 1955 is the petitioner in the writ petition.

It would be convenient to deal first with the Reference Case No. 27 of 1955 before adverting to the point raised in the writ petition.

The Gemini Pictures Circuit, Limited, Madras, a private limited company, is the assessee in question and the reference is in relation to the assessment year 1950-51. The company was incorporated on 1st April, 1946, and took over the business of Gemini Pictures Circuit, a proprietary concern, owned by Shri S.S. Vasan. The company has been carrying on business as producers, distributors and exhibitors of motion pictures. The company submitted a return for the assessment year 1950-51 disclosing the net income of Rs. 28,67,771 for the previous accounting year—the calendar year 1949. In the year of account the assessee completed the production of a Tamil picture "Strange Brothers" with its Hindi version under the name "Nishan" at a total cost of Rs. 10,13,726 (Rs. 10,12,314 ?) and these were released for public exhibition on October 21,1949), from which date up to the end of the account year (December 31,1949), they yielded a total collection of Rs. 9,50,189 (Rs. 9,50,192 ?). The cost of production was debited to the trading account and similarly the collections were credited to the same account. At the end of the account year the assessee valued the films at 40 per cent. of the total cost of production that is at Rs. 4,04,925 and credited the same to the trading account. This meant that the assessee claimed an amortisation allowance of 60 per cent, for the year 1949, notwithstanding that the interval between the release of the films and the end of the year was just over two months. The Income-tax Officer disallowed this rate of amortisation and added back a sum of Rs. 4,87,154, for the reason : "...the picture has run only for 72 days in the year of account and so the assessee can be allowed to write off 72/365 of 60 per cent, of cost of production or roughly 12 per cent, of the cost of production. Therefore at the close of the year the picture will be valued at 88 per cent, instead of 40 per cent, adopted by the assessee. The value of the closing stock will, therefore, be enhanced by a sum of Rs. 4,87,154." and completed the assessment on this basis. The assessee filed an appeal to the Appellate Assistant Commissioner who dismissed the appeal and confirmed the assessment. A further appeal to the Tribunal was also unsuccessful. The assessee thereafter moved this court and obtained an order requiring the Tribunal to refer to this court under section 66(2) of the Act the following question of law:

> "Whether in view of the uniform and consistent method adopted by the assessee and accepted by the income-tax authorities in previous years of valuing the films at 40 per cent, of the cost in the first year in which the same was released for public exhibition, the income-tax authorities are entitled to change the said methods and value the film at cost reduced by a sum calculated on time basis at the rate of 60 per cent, for the first twelve months of public exhibition ?"

The following facts are not in dispute. The assessee has been producing films continuously which it has been exhibiting ever since the company came into existence. In fact, as already stated, the company was formed to take over the pre-existing business in the production and distribution of films. Ever since the company was started (and before that by Sri S.S. Vasan who carried on the business which was taken over by the company) a uniform method of valuation had been adopted for computing depreciation in the films produced. This was based upon the expectation that the normal life of a film was three years. On this assumption which, it is common ground, correctly represents the average, 60 percent, depreciation was allowed for the first year, 25 per cent. for the second and 15 per cent. for the third. In other words, at the end of the first year the film was valued at 40 per cent, of its total cost of production and 15 per cent, at the end of the second year and nil at the end of the third year. That this again represented correctly by large the depreciation of an average picture is not in dispute either. This method of valuation had the sanction of departmental instructions issued by the Central Board of Revenue in D.O.R. Dis. No. 178-I.T./37 dated May 13, 1937. In the circular of the Central Board of Revenue they stated :

> "The Central Board of Revenue has decided that films in the hands of their producer and of their purchaser should be treated as stock-in-trade. In arriving at the closing stock valuation the assessee's figure should be accepted if it appears reasonable. In this connection it should be borne in mind that since our rates are on a sliding scale and losses are not allowed to be carried forward an assessee may be tempted to manipulate this figure. As a general rule the greatest determination in the value of a film takes place in the first year. The Income-tax Officer will have to decide for himself what figures to adopt in such case since the 'life' of a film is subject to great variation. It has been suggested that a film may be valued at 40 per cent. of its cost after one year, 15 per cent. after two years and thereafter at nothing. The actual percentages that should be adopted in the case of each film are however matters that must be decided on the merits of each case and no hard and fast rates can be laid down."

The assessee had been keeping his accounts purporting to act in accordance with this circular. The method adopted by the assessee was to treat the expression "year" in the above, not as a twelve months period but as its accounting year. On this method of computation the value of any film produced and distributed by it was at the end of the first account year taken at 40 per cent, of its cost of production and at 15 per cent. of its cost of production at the end of the second year. As already stated the assessee computed its income by treating the films produced by it as part of its stock-in-trade, debited the cost to the revenue account and valued the "closing stock" after allowing a depreciation of 60 percent, of such total cost for the period ending with the end of the accounting year whatever be the period in the year

during which the picture was exhibited and collections made. It is common ground that this method of accounting was regularly employed by the assessee ever since the company was started up to the assessment year with which this case is concerned.

In January, 1951, the Central Board of Revenue issued another circular containing administrative instructions relating to the amortisation allowance for films. After referring to the circular dated May 13, 1937, material portions of which we have already extracted the Board stated (C. No. 9(48) IT/48, Central Board of Revenue dated January 4, 1951:

> "On representations made by the film industry the Board wish to make it clear that the general or 'standard' formula regarding amortisation of the cost of production of a film, at 60 per cent, in the first year, 25 per cent, in the second year and 15 per cent, in the third year should not be treated as inflexible and that it may be varied in favour of the assessee if he is able to prove by adducing appropriate evidence that the earning capacity of the film was extinguished much earlier than over the period presumed in the above formula. If, for example, an assessee is able to prove that the film had no real life beyond the first year and there were no receipts in respect thereof in the next year, the entire cost of the film should be allowed in the first year.
>
> It should however be carefully noted that the percentages mentioned in the standard formula are percentages to be allowed strictly on time-basis, for any other method may open the way for tax evasion. A person may purchase a film towards the end of the year and claim to be allowed 60 per cent, of the amount in that very year. With a view to safeguarding against such possibilities, the rates of 60 per cent., 25 per cent, and 15 per cent, should be treated as rates *per annum.* If, for example, the account year of the film producer is the year ended December 31,1947, and a film produced during that year came to be exhibited on October, 1, 1947, the allowance for amortisation should be as follows:

Accounting year	*Rate of amortisation*
1947	15%(1/4 of 60%)
1948	45%(3/4 of 60%) plus 6¼%(1/4 of 25%)
1949	18¾% (3/4 of 25) plus 3¾%(1/4 of 15%)
1950	11¼% (3/4 of 15%)"

The assessee's assessment was completed by the Income-tax Officer on March 31, 1951. In this assessment year the officer disregarded the method of account for determining the value of the closing stock adopted by the assessee and applying "the time-basis rule" as set out in the circular of 1951 (though this circular was not mentioned in the order) enhanced the closing stock value in the manner already stated. The assessee's contention that the computation of its income on the basis of a "method of accounting regularly employed by him" could not be disregarded under the terms of section 13 was overruled by the Officer holding that a method for valuing the closing stock would not amount to a "method of accounting". The assessee in his appeal to the Appellate Assistant Commissioner raised the objection that the Income-tax Officer erred in his construction of section 13 of the Income-tax Act. The Appellate Assistant Commissioner, though he disagreed with the view of the Officer that the system of valuation adopted by the assessee did not amount to a "method of accounting," declined to interfere with the addition made, holding that the method of accounting employed by the assessee did not truly reflect the profits and gains of the assessee. He recorded "...the method employed by the appellant is such that the correct income could not possibly be deduced wherefrom. Hence, the officer was within his rights in refusing to act upon the method of accounting even though it had been regularly employed by the appellant and in proceeding to compute the income on the correct basis under the proviso to section 13." The same contentions regarding the jurisdiction of the Income-tax Officer in invoking the proviso to section 13 as well as the propriety of the computation that was adopted were urged before the Income-tax Appellate Tribunal on further appeal by the assessee. The appeal was unsuccessful and the same points were raised by the assessee in the question referred to this court for its determination which ran:

> "Whether in view of the uniform and consistent method adopted by the assessee and accepted by the Income-tax authorities in previous years, of valuing the films at 40 per cent, of the cost in the first year in which the same was released for public exhibition, the Income-tax authorities are entitled to change the said methods and value the firm at costs reduced by a sum calculated on time basis at the rate of 60 per cent, for the first twelve months of public exhibition."

Section 13 of the Income-tax Act enacts:

> *"13. Method of accounting.*—Income, profits and gains shall be computed, for the purposes of sections 10 and 12, in accordance with the method of accounting regularly employed by the assessee:
>
> Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine."

The contentions urged before us by learned counsel for the assessee were two-fold. (1) There was a statutory obligation upon the Income-tax Officer to accept the method of accounting regularly employed by the assessee under the first paragraph of section 13. The assessee in this case had certainly adopted "a method and that was regularly employed" by it ever since it commenced its business. Counsel contended that by the use of the expression "shall be computed" in the opening words of section 13 the Legislature had imposed an obligation upon the Department to accept that method of computing the income. In this connection he urged that the Income-tax Officer was in error in holding that the first paragraph of section 13 was inapplicable because the system of valuation adopted was not a method of accounting and that the Appellate Assistant Commissioner though he was right in dissenting from this view of the Income-tax Officer erred in applying the proviso to the section. On this, two points were made: (1) in regard to the propriety of the order, the contention being that the proviso to section 13 was not attracted to the instant case and (2) that on the language of the proviso, the jurisdiction to invoke it was exclusively that of the Income-tax Officer and that the Appellate Assistant Commissioner was not competent to apply it to sustain the assessment.

It was not disputed by learned counsel for the Department that the manner in which the assessee valued its closing stock and computed the depreciation amounted to a "method of accounting" and that the assessee had regularly employed it so as to bring it within the first

paragraph of section 13. If this were so, it would follow that this should normally have been accepted by the assessing authorities for determining the income, profits and gains of the assessee. This however would not suffice to enable the question referred to us being answered in favour of the assessee. Under the proviso, if the Income-tax Officer was satisfied that "the income, profits and gains" could not be properly deduced on the method of accounting regularly employed by the assessee, he was entitled to disregard this method and make the computation upon such other basis as might be appropriate.

The question therefore turns on whether the Income-tax Officer was or could reasonably be satisfied that the method of accounting adopted by the assessee would not disclose the correct profits. Learned counsel for the assessee urged that the departmental authorities and the Tribunal were in error in holding that the method of accounting was defective as not disclosing the correct profits. He based this argument upon the fact that the assessee was continuously in business producing a number of films in each year and that during a period of years any errors in the computation of the assessable income for any particular year would get rectified and that therefore such a method could not be said to fail to reflect correctly the income, profits or gains so as to attract the proviso to section 13. He pointed out, that the closing stock value for one year became the value of the opening stock for the next year and therefore any diminution in the computed income for one year would be made up by a corresponding increase in the income of the succeeding year by reason of the diminished opening stock value for that year. With reference to this point, learned counsel invited our attention to the following passage in the judgment of Lord Buckmaster in *Commissioner of Income-tax, Bombay* v. *Ahmedabad New Cotton Mills Co. Ltd.* [1930] ILR 54 Bom. 213 :

> "The method of introducing stock into each side of a profit and loss account for the purpose of determining the annual profits is a method well understood in commercial circles and does not necessarily depend upon exact trade valuations being given to each article of stock that is so introduced. The one thing that is essential is that there should be a definite method of valuation adopted which should be carried through from year to year, so that in case of any deviation from strict market values in the entry of the stock at the close of one year it will be rectified by the accounts in the next year."

Relying on this passage learned counsel contended that provided the closing stock valuation of one year appeared in the accounts as the value of the opening stock for the succeeding year there would be an automatic rectification of any defect in the valuation of such stock with the result that the proviso could not be attracted merely to correct errors in the method of stock valuation. We are unable to agree with this construction of the proviso to section 13 or of the decision of the Privy Council. The Judicial Committee was concerned with the propriety or legality of an order of an Income-tax Officer who rte-valued the closing stock, declining at the same time to re-value the opening stock at the same figure. Lord Buckmaster pointed out that unless the valuation of the closing and of the opening stock was made on the same basis the true profits could not be ascertained. This has nothing to do, however, with the manner in which that valuation should be effected or whether any defect in the mode of valuation would or would not reflect the true income or profits of any particular year. Though undoubtedly the assessee carries on business from one year to another, it is not charged on the average of its annual profits. Tax rates may vary from year to year under the annual Finance Acts and though there are now no variations in the rate of tax on companies dependant on the quantum of its assessable income, the application of the proviso cannot be made to depend on the nature of the assessee or such varying factors as the terms of the relevant Finance Acts. We have to proceed on the basic postulates that under the Income-tax Act the tax is levied upon the true income of each year, and that the machinery of the Act is designed to ascertain this true income.

Learned counsel also referred us to a passage from the well-known decision of *Commissioner of Income-tax, Bombay* v. *Sarangpur Cotton Manufacturing Company Limited* [1938] 6 ITR 36 reading :

> "……The section (section 13) clearly makes such a method of accounting a compulsory basis of computation unless in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom…….It is the duty of the Income-tax Officer, where there is such a method of accounting to consider whether income, profits and gains can properly be deduced therefrom, and to proceed according to his judgment on this question."

We do not see how this passage helps learned counsel because the ground upon which the method of accounting adopted by the assessee was disregarded was that such a method did not disclose the true profits of the business. Learned counsel also referred us to other decisions containing a discussion of the circumstances in which Income-tax Officers might apply the proviso. But we are not referring to them, since we do not consider that they help us in answering the question to be determined in this case.

The crucial point to be considered therefore is whether the method of accounting employed by the assessee, namely, to treat the year for the purpose of calculating depreciation or the rate of amortisation of a film, as any period of whatever duration ending with its accounting year, is one which reflects the true income or profits from the business. To take an extreme illustration, the argument on behalf of the assessee ought to be and its learned counsel did not hesitate to urge it, that if a picture was released for public exhibition towards the end of the year and ran say only for 8 or 10 days during the year, still the depreciation of 60 per cent, would be claimed for such a film in computing the profits for that year. It would be seen that in such a case the value of the closing stock which should be held to represent the saleable or realisable value of the picture on the last day of the year would have been arrived at without taking into account the period during which the picture had run in the accounting year. The assumption underlying the percentages of annual depreciation taken into account by the assessee—60 per cent. plus 25 per cent, plus 15 per cent.—is the same as that contained in the departmental instructions of 1937, extracted earlier, namely, that the normal life of a film was three years and that its saleable value was lost rapidly and to the extent of 60 per cent. in the first year of its life. Though there might be exceptional cases where the life of a film would be much shorter or much longer than three years, the general rule that three years represent the normal life of a picture does not appear to be disputed. From this it would be apparent, that the year for this purpose should be, not any period long or short ending with the accounting year of an assessee but rather as a period of 365 days. If the method of accounting employed by the assessee did not proceed on this basis but on an artificial computation of "a year", it would follow that it would not disclose or reflect the true profits or gains of the assessee for the year of account. We are therefore satisfied that the rejection of the method of accounting regularly employed by the assessee by the Appellate Assistant Commissioner was not erroneous.

Before passing from this point we shall notice the argument urged by the learned counsel for the assessee that under the terms of section 13 it was the Income-tax Officer and he alone that was vested with jurisdiction to determine whether the method of accounting regularly

employed by the assessee would not reflect the true profits and that in the present case the Income-tax Officer not having done so, the Appellate Assistant Commissioner had no jurisdiction to apply the terms of the proviso. We are clearly of the opinion that this submission should be rejected. In the first place, learned counsel is not right in assuming that the Income-tax Officer did not exercise his discretion in the present case to reject the accounts of the assessee. It is true that this officer rejected the accounts on the ground that the system of valuing the stock by taking credit of a particular percentage of depreciation was not a method of accounting but this reasoning though erroneous did amount to a rejection of the accounts of the assessee and an invoking of the power under the proviso, to compute the profits by a different method. This apart, we are also inclined to hold that the power vested by the proviso to reject a method of accounting on the ground that it did not reflect the true profits was one open to the Appellate Assistant Commissioner at the stage of an appeal under section 31 of the Act.

The next question for consideration is whether the method of accounting actually adopted by the departmental authorities and confirmed by the Tribunal was one calculated to reflect the true profits of the business. It is not the law and it was not contended before us by learned counsel for the Department, that when once a method of accounting employed by an assessee was rejected by the departmental authorities, it was open to them to adopt any method for computing the income. The reason for the rejection of an assessee's accounts being that they were not reflecting the true profits, it would follow as a logical corollary that the other method of accounting to be employed by the departmental authorities ought to reflect such profits truly and justly. As Chagla, C.J., observed in *Moosa & Sons* v. *Commissioner of Income-tax* [1953] 23 ITR 73 :

> "He (the Income-tax Officer) must exercise his judgment in such a manner as would make it possible for him to ascertain the profits and gains of the assessee most approximating to the truth. As pointed out by the House of Lords in *Sun Insurance Office* v. *Clark* [1912] AC 443 where it becomes necessary to have recourse to some form of estimate by the Income-tax Department that method should be adopted which approximates most near to the truth and Earl Loreburn, L.C., in his judgment at page 454 emphasises the fact that a rule of thumb may be very desirable, but could not be substituted for the only rule of law that he knew of, namely, that the true gains were to be ascertained as nearly as it could be done."

The Income-tax Officer and the Appellate Assistant Commissioner who confirmed him have proceeded to adopt the time basis for calculating the amortisation rate as set out in the departmental instructions of January, 1951. The question we have now to consider is whether this system which might be a sounder one than that adopted by the assessee, does still reflect the true profits. As no material was placed before the Department by the assessee to establish that to the film now in question the normal three-year-life rule should not be applied, the assessing authorities had to proceed on the basis that the entire cost of production should be written off at the end of such period, and indeed this was generally the basis of the assesee's method of accounting. Again there was no dispute that the film in question did not depart from the normal to justify any variation in the rate of depreciation allowable during each year of its "life." But the question still remains— did the unqualified "time basis rule" contained in the departmental instructions and adopted in computing the income, truly reflect the profits of the year.

We shall next proceed to consider the material that was before the departmental authorities and the Tribunal on the basis of which the computation could be made. We have already referred to two postulates which were vital in this connection, *viz.*, (1) that the normal life of an average film was three years the instant one being no exception to the rule and (2) the rate of depreciation for the years during this three-year period would normally be 60 per cent., 25 per cent. and 15 per cent, and here again the film concerned conformed to this norm. These varying rates of depreciation for the several years which comprise the "life" for the film would themselves indicate that the rate of the ebbing of the life is not constant but is progressively decreasing. In this connection it has to be borne in mind that the expression "the life" of a film is merely a mode of describing the period during which the film is income-producing, while the "rate of depreciation" indicates the rapidity with which its income-producing character progressively diminishes until it reaches the vanishing point when figuratively the film might be said to be "dead."

There is thus a third integer which would have a material bearing on the determination of the "rate of death", *viz.*, the figures of collections of the film during the three year period and the departmental authorities had before them the figures of the collections during the period October 21, 1949, the date of the release, to October 23,1952, which has been taken both by the Department and the assessee to represent the date beyond which the film practically ceased to exist as a live income-producing asset. These figures yield the following results.

		Rs.	Rs.	Rs.
1949	21-10-1949 to 31-12-949 (the end of the account year)…			9,50,192
1950	1-1-1950 to 20-10-1950			
	By collect1ons:… By sale of territorial rights:	13,11,451		
		2,93,251	16,04,702	
	22-10-1950 to 31-12-1950			
	By collect1ons…	1,49,311		
	By sale of territorial rights :			
		40,000		
			1,89,311	17,93,993
1951	1-1-1951 to 21-10-1951	4,65,522		
	22-10-1951 to 31-12-1951	1,63,799		
				6,29,301
1952	1-1-1952 to 21-10-1952			2,56,576
			Rs.	36,29,576

The complaint urged before us on behalf of the assessee was that though the instructions of the Central Board of 1951 were flexible and vested a considerable amount of discretion in the Income-tax Officer to evaluate the amortisation rate, taking into consideration other relevant material in the shape of the collection figures, the departmental authorities have in the case before us adopted the percentages of depreciation s*et out in the circular of 1951 as if it were a cast iron rule ignoring other material which indicated that the "time basis" computation required to be qualified. Learned counsel urged that the Tribunal erred in approving this computation as reflecting the true profits of the assessce out of these films during the assessment year.

We shall now consider whether the Appellate Tribunal was right in holding that an apportionment on a strict time basis was calculated to yield the true profits or gains of the assessee. The time-basis, it will be seen, proceeds on the theory that during each period of one year (in the three years) the film suffered depreciation at an uniform rate *per diem.* If this were granted, nothing could be said against such computation. But the basis on which different rates of depreciation are allowed for the three years which is taken as the normal "life" of a film, itself indicates that it is not so. Take for instance the first 365 days for which a depreciation of 60 per cent, is allowed under the rule. A strict application of the "time-rule" would be based on the assumption that the rate of depreciation for each day of the year was constant and identical and that it was the same on, say, the first day of the year as on the last. Then we will have a strange spectacle that on the last day of the first year the depreciation suffered by the film would be 1/365 of 60 per cent, of the cost, while on the next day it would be 1/365 of 25 per cent, of that cost. We are saying this to show that if expressed in a graph the rate of depreciation even during each year would not be a straight line, parallel to the axis but rather one sharply inclined to it. The amount of depreciation during the first days of the year would be larger and more extensive than towards the end of any given period, and it is only the average for the entire period which for the purpose of convenience is taken as a twelve months period that is represented by the 60 per cent, allowance. This would apply equally to the next two twelve month periods, the figure of depreciation for each period being the average rate of the daily depreciation for that duration. If then the rate of depreciation is not constant but is progressively less as day advances, a method of calculation based upon the time factor alone, must disclose a profit quite different from the true profits. In order to arrive at a just estimate of profits, any computation of the amortisation rate must take into account the actual collections from the film during the period of its normal life and the depreciation allowance must be computed with that at least as one of the relevant integer. In our judgment the proper method of calculation would have been to take the total revenue from the film for the three-year period—for the life of the films we are concerned has been taken as of that duration—as one of the factors from which the percentages of the depreciation should be worked out.

The various alternative bases on which the value of the films of the assessee could be determined as on December 31, 1949, are these: (1) That adopted by the assessee, *viz.*, taking the life of a film as three years the percentages of depreciation during these years being calculated at 60, 25 and 15 the year however being taken as the assessee's account year. On this basis the assessee claims a depreciation of 60 per cent. for the accounting year. This is wholly unscientific based on no principle and except in cases where the duration of the "year" is sufficiently long is incapable of reflecting the true profits. We have already upheld the rejection of this method of accounting. (2) The application of the time basis rule without any connection based on the actual collections from the film. This method might be slightly better than that adopted by the assessee, but is equally illogical in that it assumes that the rate of depreciation *per diem* is constant throughout each of the three yearly periods.

(3) Proceed on the basis that three years is the life of a film—an assumption on which both the assessee and Revenue have proceeded in this case. That life was represented by a total collection of about 36 1/3 lakhs. The assumption as to the rate of depreciation taken by the Department was 60 per cent. in the first year, the year of course being calculated as a twelve month period. During that period the assumed exhaustion of life was 60% × 36 1/3 lakhs, *i.e.*, about 22 lakhs. Out of this 9½ lakhs has been collected in the accounting period which would work out roughly to 47 per cent, of the 60 per cent, or about 26 per cent, of the whole. If so, the amortisation would be 26 per cent, and the closing stock would be valued at 74 per cent. of the cost.

(4) Take the total receipts from the film for the three year period as reflecting the quantum of its life and calculate the depreciation during any period on the basis of the collections in that period.

Thus in the case of the assessee before us the total collections for the three year period came roughly to Rs. 36 1/3 lakhs while the collections during the year of assessment were about 9½ lakhs. The latter was therefore 26 per cent, of the total, *i.e.*, which expresses the exhaustion during the relevant period.

(5) Alternatives 3 and 4 have proceeded on the basis that the total collection for the three year period is known and this would be possible only if the assessment for the first year is being completed after the end of the three year period. There should however be no difficulty in applying the formula even if the first year's collections only are known. The nature of the fall in collections even during the year ought to afford some indication whether the picture in question does or does not conform to the norm of the three year life. Assuming that it conforms, which is the case on hand, the collections for the first year might be taken as 60 per cent, of the total and the proportionate figure for the duration of the account year may be calculated on that basis. Applying this to the present case the total collections for the twelve month period, October 21, 1949, to October 21, 1950, was Rs. 25,54,894 (made up of Rs. 9,50,192 up to December 31, 1949, Rs. 13,11,451 from January 1, 1950, to October 21, 1950, and Rs. 2,93,251 out of sale of territorial rights). Out of this 9½ lakhs having been collected in the accounting year the percentage of depreciation would be 60 per cent, of 9½/25 ½ or roughly 22 1/3 per cent.

It would thus be seen that where the figure of collections is taken as a relevant factor for computing the rate of amortisation, the results yielded by alternatives 3 and 4 are nearly the same in the present case. This is because the assumed depreciation rate of 60 per cent, for one year is not far from the actual depreciation suffered by the films during that period. No doubt the fourth method of computation we have set out, above is likely to reflect the true profits better but we have endeavoured to work on foot of the assumed annual rate of depreciation of 60 per cent, for the first year which was the common basis of the rule adopted both by the assessee and the Department. We believe we have said enough to show that the method now adopted in computing the income of the assessee did not reflect the true profits.

No doubt the adoption of an unqualified time basis rule has this advantage that it could be employed without the assessing authorities having the figures of collection during the later accounting years, but when the life of a film extends beyond the accounting year and the Income-tax Officer has before him the figures of collections for the years extending upto three years, a method of computation which omits to take into consideration the receipts from the film cannot be held to be a method of accounting which would truly reflect the profits. We

cannot therefore uphold the time basis adopted for computing the income of the assessee in the present case because as we have shown earlier it is nearly as illogical as the method of accounting employed by the assessee in that it does not take into account the fact that the rate of depreciation becomes progressively low and is not to be conceived of as three consecutive bands of uniform but different widths but as a single strip of triangular shape gradully diminishing in width tapering to a point. The methods we have suggested earlier of taking into account the earnings from the film and computing the depreciation for the different periods on that basis affords in our opinion a more just, reasonable and proper method of amortisation than an unqualified mechanical time-rule adopted in the present case purporting to follow the departmental instructions. The instructions themselves make this rule flexible and vest a large amount of discretion in the Income-tax authorities to have regard to several individual factors which of course include the figure of collections over the period and its distribution during the different period of time but Revenue having these figures before them ignored them as irrelevant and their method of computation has received the approval of the Tribunal. As Lord Radcliffe said "to charge tax on a profit unduly accelerated...is...no more respectable an achievement than to admit that the annual accounts of business do in some cases require the introduciion of estimates or valuations if a true statement of profit is to be secured." *Southern Railway of Peru* v. *Owen* [1957] 32 ITR 737 at 753.

Our answer to the question referred to us therefore is: (1) The method of accounting regularly employed by the assessee was properly rejected as not calculated to disclose the true profits. (2) The mechanical time-basis rule adopted by the Tribunal is not also calculated to reflect the true profits of the assessee. The assessments of the assessee would have to be revised in the light of the principles we have enunciated above and the Tribunal will give the necessary directions for the purpose. As neither party has succeeded in full, there will be no order as to costs.

W.P. No. 925 of 1955.—This is a petition for the issue of a writ of prohibition directed to the Income-tax Officer *v* Circle filed by the assessee in R.C. 27 of 1955. The prayers in the petition cover several related matters: (1) it seeks to stay the collection of the tax assessed for the year 1950-51 the legality of which is in dispute in R.C. 27 of 1955 pending our decision of the reference.

(2) It seeks to prevent the reopening of the assessment under section 34 of the year 1949-50. The Income-tax Officer started proceedings for reopening the assessments for the year 1949-50 to bring into line the method of valuation adopted for the year 1950-51. The result of this revaluation has no doubt resulted in liability to additional assessment for the year 1949-50, but on the basis of the revised closing stock valuation which the officer arrived at for the year 1949-50, the figures for 1950-51 have been revised under section 35 of the Act and it has been pointed out in the counter-affidavit of the Department that the revision has resulted in favour of the assessee. When this was pointed out, learned counsel urged that he was only disputing the correctness of the method of computing the amortisation.

(4) In regard to the years later than that to which R.C. 27 of 1955 relates, Revenue is adopting the time basis for computing depreciation and was rejecting the method adopted by the assessee which we have already discussed. The petitioner prays that the authorities might be prohibited from doing this.

It would thus be seen that the questions raised by the writ petition are all directed to obtain answers to the questions referred to us in R.C. 27 of 1955. In view of our answer to the question referred in Referred Case No. 27 of 1955, no orders are necessary in this writ petition which has really become unnecessary except to say that the rule is discharged and the petition dismissed.