workers under s. 2(l), s. 79 should not be applied to them as they can absent themselves whenever they like. In this very case it is said that the respondents remained absent for a longer period than that provided in the Act and therefore they do not need any leave. This argument has in our opinion no force. The leave provided under s. 79 arises as a matter of right when a worker has put in a minimum number of working days and he is entitled to it. The fact that the respondents remained absent for a longer period than that provided in s. 79 has no bearing on their right to leave, for if they so remained absent for such period they lost the wages for that period which they would have otherwise earned. That however does not mean that they should also lose the leave earned by them under s. 79. In the circumstances they were entitled under s. 79 of the Factories Act to proportionate leave during the subsequent calendar year if they had worked during the previous calendar year for 240 days or more in the factory. There is nothing on the record to show that this was not so. In the circumstances the appeal fails and is hereby dismissed with costs. One set of hearing costs.

Appeal dismissed.

VOLTAS LIMITED

v.

ITS WORKMEN

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Industrial Dispute—Bonus—Contribution to political fund, if can be deducted from gross profit—Extraneous income—Nature of—Salesmen and apprentices, if entitled to bonus.

The question in this appeal was whether the Tribunal was wrong in not allowing the amount paid to a political fund which was permissible as an item of expense and for disallowing the claim for deduction of certain amounts as extraneous income and whether the salesmen and apprentices were entitled to bonus.

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Held, that though the law or the rules of the company permitted the employer to pay amounts as donations to political funds, it was not a proper expense to be deducted when working out the available surplus in the light of the Full Bench formula.

Held, further, that neither the profits from transactions which were carried out in the normal course of business, nor the commission earned on transactions entered directly with foreign manufacturers, where the workmen had serviced the goods and did other work which brought such business to the employer, could be allowed as extraneous income.

Held, also that the salesmen who were given commission on sales had already taken a share in the profits of the company on a fair basis and there was no justification for granting them further bonus out of the available surplus of profits.

That the apprentices hardly contributed to the profits of the company. Thus they were not entitled to any bonus.

The Associated Cement Companies Ltd. v. *Their Workmen*, [1959] S.C.R. 925 and *The Tata Oil Mills Co. Ltd.* v. *Its Workmen and Ors.*, [1960] 1 S.C.R. 1, applied.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 153 and 154 of 1960.

Appeals by special leave from the Award dated February 5, 1959, of the Industrial Tribunal, Bombay, in Reference (I.T.) No. 212 of 1958.

S. D. Vimadalal, S. N. Andley and *J. B. Dadachanji*, for the appellant in C. A. No. 153/60 and Respondent in C.A. No. 154/60.

M. C. Setalvad, Attorney-General for India and *Janardan Sharma*, for the respondents in C.A. No. 153/60 and Appellants in C.A. No. 154/60.

1960. December 9. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—The only question raised in these two appeals by special leave is about the quantum of bonus to be paid to the workmen (hereinafter called the respondents) by Voltas Limited (hereinafter called the appellant) for the financial year 1956-57. The dispute between the parties was referred to the adjudication of the industrial tribunal, Bombay. The appellant, it appears, had already paid 4½ months' basic wages as bonus for the relevant year but the respondents claimed it at the rate of six months' basic wages subject to the minimum of Rs. 250 per employee.

The tribunal went into the figures and after making the relevant calculations came to the conclusion that the available surplus worked out according to the Full-Bench formula justified the grant of bonus equal to five months' basic salary; it therefore ordered payment of this amount excluding the amount already paid. The appellant in its appeal claims that the tribunal should have allowed nothing more than what the appellant had already paid; the respondents in their appeal on the other hand claim that they should have been allowed six months' bonus.

The principles on which bonus has to be calculated have already been decided by this Court in *the Associated Cement Companies Ltd.* v. *Their Workmen* (1) and the only question that arises for our consideration is whether the tribunal in making its calculations has acted in accordance with those principles. This leads us to the consideration of various points raised on behalf of the parties to show that the tribunal had not acted in all particulars in accordance with the decision in the *Associated Cement Companies' case* (1).

We shall first take the points raised on behalf of the appellant. The first point raised is that the tribunal was wrong in not allowing a sum of rupees one lac paid as contribution to political fund as an item of expense. It is urged that this is a permissible item of expense and therefore the tribunal should not have added it back in arriving at the gross profits. We are of opinion that the tribunal was right in not allowing this amount as expenditure. In effect this payment is no different from any amount given in charity by an employer, and though such payment may be justified in the sense that it may not be against the Articles of Association of a company it is nonetheless an expense which need not be incurred for the business of the company. Besides, though in this particular case the donation considering the circumstances of the case was not much, it is possible that permissible donations may be out of all proportion and may thus result in reducing the available

(1) [1959] 2 S.C.R. 925.

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surplus from which low paid workmen are entitled to bonus. We are therefore of opinion that though the law or the rules of the company may permit the appellant to pay such amounts as donations to political funds, this is not a proper expense to be deducted when working out the available surplus in the light of the Full Bench formula. The tribunal's decision therefore on this point must be upheld.

The second contention of the appellant relates to deduction of what it calls extraneous income. This matter has been considered by this Court in *The Tata Oil Mills Co. Ltd.* v. *Its Workmen and Others* (1) and what we have to see is whether in accordance with the decision in that case, the appellant's claim for deducting certain amounts as extraneous income is correct. Learned counsel for the appellant has pressed four items in this connection. The first item relates to a sum of Rs. 3·47 lacs. It is said that this was not the income of the year and therefore should not have been taken into account in arriving at the gross profits. The exact position with respect to this item is not clear and in any case learned counsel for the appellant appearing before the tribunal conceded that the amount could not be deducted from the profits. In view of that concession we are not prepared to allow the deduction of this amount as extraneous income. The second item is a sum of Rs. 1·76 lacs in respect of the rebate earned on insurance by the appellant with other companies by virtue of its holding principal agency. Obviously this is part of the insurance business of the appellant and the work in this connection is entirely handled by the insurance department of the appellant; as such the tribunal was right in not allowing this amount as extraneous income. The third item is a sum of Rs. 3·33 lacs being gain on foreign exchange transactions. These transactions are carried on in the normal course of business of the appellant. As the tribunal has rightly pointed out, if there had been loss on these transactions it would have certainly gone to reduce the gross profits; if there is a profit it has to be taken into account as

(1) [1960] 1 S.C.R. 1.

it has arisen out of the normal business of the appellant. The tribunal was therefore right in not allowing this amount as extraneous income. The last item is a sum of Rs. 9·78 lacs being commission on transactions by government agencies and other organisations with manufacturers abroad direct. It seems that the appellant is the sole agent in India of certain foreign manufacturers and even when transactions are made direct with the manufacturers the appellant gets commission on such transactions. The tribunal has held that though the transactions were made direct with the foreign manufacturers, the respondents were entitled to ask that the commission should be taken into account inasmuch as the respondents serviced the goods and did other work which brought such business to the appellant. It seems that there is no direct evidence whether these particular goods on which this commission was earned were also serviced free by the appellant like other goods sold by it in India. We asked learned counsel for the parties as to what the exact position was in the matter of free service to such goods. The learned counsel however could not agree as to what was the exact position. It seems to us that if these goods are also serviced free or for charges but in the same way as other goods sold by the appellant in India, the respondents are entitled to ask that the income from commission on these goods should be taken into account. As however there is no definite evidence on the point we cannot lay down that such commission must always be taken into account. At the same time, so far as this particular year is concerned we have to take this amount into account as the appellant whose duty it was to satisfy the tribunal that this was extraneous income has failed to place proper evidence as to servicing of these goods. A claim of this character must always be proved to the satisfaction of the tribunal. In the circumstances we see no reason to interfere with the order of the tribunal so far as this part of its order is concerned.

Two other points have been urged on behalf of the

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appellant with respect to the interest allowed on capital and on working capital. The tribunal has allowed the usual six per cent on capital and four per cent on working capital. The appellant claimed interest at a higher rate in both cases. We agree with the tribunal that there is no special reason why any higher rate of return should be allowed to the appellant.

This brings us to the objections raised on behalf of the respondents. The main objection is to a sum of Rs. 4.4 lacs allowed by the tribunal as income-tax, which is said to be with respect to the previous year. It appears that there is a difference between the accounting year of the appellant and the financial year. In the particular year in dispute there was an increase in the rate of tax which resulted in extra payment which had to be paid in this year. In these special circumstances, therefore, the tribunal allowed this amount and we see no reason to disagree.

Next it is urged that the tribunal had allowed a sum of Rs. 4.76 lacs for making provision for gratuity as a prior charge. This is obviously incorrect, as this Court has pointed out in *the Associated Cement Companies' case* (1) that no fresh items of prior charge can be added to the Full-Bench formula, though at the time of distribution of available surplus such matters, as provision for gratuity and debenture redemption fund, might be taken into account. This disposes of the objections relating to the accounts.

Two other points have been urged on behalf of the respondents. They are with respect to (1) salesmen and (2) apprentices. The tribunal has excluded these two categories from the award of bonus made by it. The respondents contend that they should also have been included. We are of opinion that the decision of the tribunal in this behalf is correct. So far as salesmen are concerned, the tribunal has examined the relevant decisions of other tribunals and has come to the conclusion that salesmen who are given commission on sales are not treated on par with other workmen in the matter of bonus. It has also been found that the clerical work done by salesmen is small and incidental to their duty as such; salesmen have

(1) [1959] S.C.R. 925.

therefore been held not to be workmen within the meaning of the Industrial Disputes Act. The tribunal has pointed out that the commission on an average works out at about Rs. 1,000 per mensem in the case of salesmen and therefore their total emoluments are quite adequate. Besides, the salesmen being paid commission on sales have already taken a share in the profits of the appellant on a fair basis and therefore there is no justification for granting them further bonus out of the available surplus of profits. As for the apprentices, the tribunal has held that there is a definite term of contract between them and the appellant by which they are excluded from getting bonus. Besides, as the appellant has pointed out, the apprentices are merely learning their jobs and the appellant has to incur expenditure on their training and they hardly contribute to the profits of the appellant. The view of the tribunal therefore with respect to apprentices also is correct.

We now turn to calculation of the available surplus according to the decision in *the Associated Cement Companies' case* (1). The gross profit found by the tribunal will stand in view of what we have said with respect to various items challenged by either party. The chart of calculation will be as follows:—

		in Lacs
Gross profits	Rs.	109·97
Less depreciation		3·28
Balance		106·69
Less income-tax @ 51·5 per cent.		54·20
Balance		52·49
Less dividend tax, wealth tax etc.		7·50
Balance		44·99
Less return on capital at 6 per cent.		13·20
Balance		31·79
Less return on working capital at 4 per cent.		1·66
Available surplus		30·13

(1) [1959] S.C.R. 925.

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Out of this, the tribunal has allowed five months' basic wages as bonus to the respondents which works out at Rs. 16.80 lacs. In the circumstances it cannot be said that the award of the tribunal is not justified. We do not think that we would be justified in giving anything more than what the tribunal has awarded, because the appellant has to provide for a fund for gratuity, for it is a new concern which took over the old employees of another concern when it was started and has thus a greater liability towards gratuity than otherwise would be the case. We are therefore of opinion that the tribunal's award of five months' basic wages as bonus for the year in dispute should stand. We therefore dismiss both the appeals. In the circumstances we pass no order as to costs.

Appeals dismissed.

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December 12.

SETH JAMNADAS DAGA AND OTHERS

v.

COMMISSIONER OF INCOME-TAX, SOUTH BOMBAY

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income-tax—Two firms registered and another unregistered—Income from unregistered firm, if can be set off against loss from registered firms—Losses of the registered firm, if can be carried forward in subsequent year—Indian Income-tax Act, 1922 (11 of 1922), ss. 14(2), 16(1)(a) and 24(1).

The appellants were partners of two registered firms and another firm which was unregistered. Their profit and loss for the assessment year 1948-49 were as follows:—From registered firms Rs. 11,902 loss, 1,265 loss, total loss Rs. 13,167. Income from the unregistered firm Rs. 26,110 profit, other income Rs. 262. The income of the unregistered firm was taxed on the firm. In assessing the amount of Rs. 262 the Income-tax Officer first determined the total income of each of the appellants by setting off their share of the profits of the unregistered firm against their share of the loss of the registered firm. The appeal to the Appellate Assistant Commissioner being unsuccessful appeals