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(1978) 03 KL CK 0032

High Court Of Kerala

Case No: Income-tax Reference No''s. 111 to 120 of 1977

K SANKARAN		APPELLANT
	Vs	
COMMISSIONER OF Income Tax, KERALA.		RESPONDENT

Date of Decision: March 30, 1978

Acts Referred:

- Income Tax Act, 1961 - Section 10(3)

Citation: (1978) 115 ITR 561

Hon'ble Judges: Gopalan Nambiyar, C.J

Bench: Division Bench

Judgement

GOPALAN NAMBIYAR C.J. - These references are by the I.T Appellate Tribunal, Cochin Bench, under s. 256(2) of the I.T. Act, 1961. The question of law referred for determination is :

"Whether the circumstance, under which the arbitration work together with the fee offered was quite unexpectedly thrust upon the petitioner-assessee, made the fee in question casual and non-recurring in nature, not arising from business or the exercise of a profession or occupation and as such falling within the exemption provided for in cl. (3) of s. 10 of the I.T. Act ?"

The assessee was the Chief Justice of this court who retired in the year 1960. The question raised in these references is the assessability to tax of the remuneration received by the assessee for his work either as arbitrator or as commission in certain Commissions of Enquiry, for settling disputes or investigating into facts. In the statement of the case sent up by the Tribunal it has furnished a tabular statement showing the assessment years during which the engagements in question were undertaken, the amounts received by the assessee, and the nature of the assignments. For the sake of convenience, we reproduce the said tabular statement :

Assessment year	Amount	Assignment
	Rs.	
1962-63	12,000	Arbitrator in dispute between Kerala Govt. & Cannanore-Tellicherry Electricity.
1964-65	27,375	Arbitrator in Gwalior Rayons Dispute.
1965-66	16,375	Arbitrator in Gwalior Rayons Dispute.
1966-67	1,500	-do-
1967-68	2,323	ChairmanCommittee for revision of fares of stages carriages.
1968-69	7,645	ChairmanCommittee for revision of fares of stages carriages.
	15,000	Arbitrator in dispute between Electricity Board and Engineering Employees.
	12,250	Commission of Enquiry in allegations against Electricity Board in respect of its contracts.
1969-70	15,000	-do-
	10,000	Arbitrator in dispute between Electricity Board and Ministerial Staff.
1970-71	16,500	Commission of Enquiry in allegations against President and a Member of the Travancore Davaswom Board.
1971-72	18,000	-do-
1972-73	15,484	-do-

It was noticed that the question of law referred by the Tribunal is somewhat inappropriate to cover the cases other than the first of the assignments, viz., the arbitration dispute between the Kerala Government and the Connanore-Tellicherry Electricity undertaking. But in paragraph 8 of the statement of the case, the Tribunal somewhat broadly stated that the question of law formulated by it, arises for each

of the ten assessment years, 1962-63 and 1964-65 to 1972-73, both years inclusive. It may, therefore, be taken that the question arises, mutatis mutandis, in regard to the assessment years and in respect of the assignments undertaken by the assessee during the said period.

We may briefly notice the facts relating to the nature of the assignments as found by the Tribunal and incorporated in the statement of the case.

S. 13 of the Madras Electricity Undertaking (Acquisition) Act, 1954, provides for the appointment of an arbitrator who shall be a District Judge or a Retired High Court Judge. S. 21 provides for Rules to be above to provide for remuneration to the arbitrator. In the light of the above provisions, the assessees name was in the panel of five names proposed for appointment as arbitrator. The assessee was chosen by the Government. Thereafter, there was consultation between the Government Secretary and the assessee, in respect, inter alia, of the remuneration payable for the arbitration work. By order dated January 3, 1961, the assessee was appointed arbitrator as agreed to. On May 19,1961, the Government wrote to the accredited representative that they proposed to fix the remuneration of the arbitrator at Rs. 12,000 which had to be borne by the parties to the disputes in equal halves. It was stated that the Government was inviting the consent of the arbitrator. On June 30, 1961, the Government passed orders fixing the arbitrators remuneration as Rs. 12,000 as to a letter dated June 1, 1961, from the assessee to the Government. The Tribunal stated that the copy of the letter about the remuneration, to which there was express reference in the Government order. The work commenced in 1961 and was completed before April, 1962. The remuneration was paid in the financial year 1961-62.

(ii) Gwalior Rayons Arbitration-Assessment years 1964-65 to 1966-67 - I.T. A. Nos. 560, 561 and 562/Cochin/72-73.

The assessee had been appointed by the Government of India as Chairman of the Railway Rates Tribunal, on a salary of Rs. 3,000 per month, for a period of three years. He assumed duty at Madras on April 2, 1962, and held the post till April 1, 1965. It was in January, 1963, that a dispute between the Gwalior Rayons (P.) Ltd. and one of their contractors arose for settlement by arbitration. The advocate for the company suggested the name of the assessee, who eventually at the persuasion of the advocate, agreed to accept the appointment as arbitrator on a remuneration of Rs. 15,000 calculated at Rs. 1,500 per sitting, on the assumption that the work would be finished in ten sittings. The RAilway Board granted permission for the work as requested by the assessee by his letter dated March 14, 1963. A retired puisne judge of the Madras High Court was the nominee of the other party to the dispute; and Dr. P. V. Rajamannar, Retired Chief Justice of the Madras High Court was the umpire. The arbitration work commenced in May, 1963; but could not be finished in ten sittings. By agreement with the company and the assessee the remuneration for the additional sittings was fixed at Rs. 750 per sitting beyond the

first ten sittings, and the work was completed in May, 1965. The assessee received Rs. 27,375 during the assessment year 1964-65; Rs. 18,375 during the assessment year 1965-66 and Rs. 1,500 during the assessment year 1966-67. There were forty-three additional sittings over and above the ten sittings for which remuneration at Rs. 1,500 per day had been stipulated.

(iii) Revision of stage carriage fares-Assessment years 1967-68 and 1968-69.

By Government order dated December 17, 1966, a "Three man Committee" was constituted with the assessee as its chairman to consider certain questions referred to the Committee and offer its recommendations in regard to the question of fare structure of stage carriages. On the same day by another Government order, Rs. 1,000 per month was fixed as honorarium for the chairman, besides travelling allowance at the scale available to the High Court Judge, free use of the State-car for work connected with the duty, reimbursement of telephone bills and staff. The work commenced on December 22, 1966, and was completed on October 20, 1967. The appointment had been preceded by correspondence between the assessee and the Government and was discussed between the Chief Secretary and the assessee. These relates, inter alia, to the honorarium and allowance of the assessee. The assessee received a sum of Rs. 2,323 as honorarium during the assessment year 1967-68, and Rs. 7,645 during the assessment year 1968-69.

(iv) Engineering Employees Association-and the Kerala State Electricity Board-Assessment year 1968-69.

The above dispute related to service conditions of the engineering employees of the Board. As a result of the Governments intervention there was a settlement on October 15, 1966, at which it was decided to refer the dispute to an arbitrator who shall be a retired High Court Judge. The assessee was then at Bangalore and was contacted over the telephone by the Chief Secretary to Government and pressed and pursuaded to serve as arbitrator. On his return from Bangalore, he was met by the chairman of the Electricity Board and offered Rs. 15,000 as remuneration which was agreed to by the assessee. The order of appointment was issued by the Board on October 27, 1966, and on the same day followed another order fixing the remuneration of Rs. 15,000 and providing for appointment of the staff of the arbitrator. The work commenced on October 27, 1966, and was completed on April 6, 1967. The remuneration was received during the assessment year 1968-69.

(v) Enquiry into the irregularities in awarding contract in the Keral State Electricity Board-Assessment years 1968-69 and 1969-70.

By Government orders dated May 19, 1965, the assessee was constituted as the Commission of Enquiry under the Commission of Enquiries Act, 1952, to enquire into the above irregularities. By a separate order, of even date, the assessees remuneration was fixed at Rs. 15,000 per month as honorarium besides travelling allowance at the rates applicable to the High Court Judges and use of a State car

within the city limits of Trivandrum. The orders were preceded by consultations between the Minister-in-charge of Electricity and the assessee. The work started on June 22, 1967 and was completed by the end of January, 1969. Remuneration was received during the assessment year 1969-70.

(vi) Dispute between the Kerala State Electricity Board and Its Ministerial Gazetted Officers - Assessment year 1969-70.

The chairman of the Board fixed up the assessee as the one-man commission to go into the above dispute on a remuneration of Rs. 10,000. A letter dated June 13, 1967, was sent by the chairman containing his offer of appointment. The assessee accepted the appointment by his reply dated June 23, 1967. The order of appointment of the Commission followed on June 30, 1967. On August 10, 1967, an order was issued fixing the remuneration of the assessee at Rs. 10,000 and providing for the staff and office equipments of the Commission. The work commenced on August 10, 1967, and was completed in April, 1968. The remuneration was received during the assessment year 1969-70.

(vii) Allegations against the President and another Member of the Travancore Devaswom Board and counter-allegations made by them - Assessments years 1970-71, 1971-72 and 1972-73.

The assessee was informed by a letter of the then Revenue Secretary dated February 22, 1969, about the above allegations and the counter-allegations and the Governments proposals to appoint a Commission of Enquiry under the Commission of Enquiries Act, 1952, and that the Government was thinking of choosing the assessee for the purpose of conducting the enquiry. The assessee signified his willingness. On March 26, 1969, notification appointing the Commission of Enquiry was issued. On the same day, another order was issued fixing a monthly honorarium of RS. 1,500 and providing for payment of travelling allowance at the rates applicable to High Court Judges, and permitting the use of a State car for the assessee within the municipal limits of the Trivandrum city. The enquiry commenced on April 1, 1969, and came to an end on December 10, 1971, without being completed on account of adventitious reasons. The assessee received a remuneration of Rs. 16,500 during the assessment year 1971-72 and Rs. 15,484 during the year 1972-73. On the above facts let us examine the question of law sent up by the Tribunal which we have set out earlier.

Counsel for the assessee referred to th three questions settled for cosideration by the Tribunal which were :

"(i) Whether the seven items of remuneration specified above or any one of those are receipts of a casual nature;

(ii) Whether such receipts are receipts of a non-recurring nature; and

(iii) Whether such receipts are receipts arising from the exercise of a profession (vocation or occupation) ?"

Strenuous arguments were advanced by counsel for the assessee on all the above questions. Counsel for the revenue objected emphasising the only question which had been referred at the instance of this court under s. 256(2) of the Act. He further pointed out the order of the Tribunal, where, after formulating the three questions arising for consideration, the Tribunal had entered its finding only on point No. 1 to the effect that the remuneration in the seven instances was not of a casual nature (vide paragraph 8 of the order of the Tribunal); and left open points 2 and 3 without recording any finding. Counsel for the revenue drew our attention to the well-know decision of the Supreme Court in Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., which has explained when a question of law can be said to arise out of the order of the Tribunal. Observed the Court (page 611) :

"The result of the above discussion may thus be summed up :

(1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

(2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is, therefore, one arising out of its order.

(3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.

(4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it.

Stating the position compendiously, it is only a question that has been raised before or decided by the Tribunal that could be held to arise out of its order."

The scope of the above decision was explained by a Division Bench of this court in C. Vs. MATHUKUTTY v. COMMISSIONER OF Income Tax, KERALA., . After referring to the above decision of the Supreme Court, the Division Bench observed (page 3) :

"Counsel contended that the question was raised before the Tribunal and even though the Tribunal had not dealt with that question, it must be deemed to have been dealt with by the Tribunal. We think that the principle laid down by the Supreme Court will only apply to cases where an advertance to that question and a consideration of the same and decisions on the questions is necessary for disposing of the appeal before the Tribunal. If it was unnecessary to consider the contention raised as the case control material, the fact that the assessee had raised a contention, the consideration of which was unnecessary for disposing of the appeal, and the fact that that contention had not been considered, would not give rise to a

question of law which can be said to arise from the order of the Tribunal. On this aspect no decision of any court had been placed before us. We are of the view that a question of law can be said to arise from an order of the Tribunal only when a consideration of that question was necessary for disposing of the appeal before the Tribunal. Otherwise, any question, unnecessary for the decision of a case which the Tribunal rightly refrained from taking into contention, can be said to arise from the order of the Tribunal."

In the light of the above principle, we agree with counsel for the revenue that question Nos. 2 and 3 formulated by the Tribunal and not dealt with by it, as unnecessary, in view of its finding on question No. 1, do not arise out of the order of the Tribunal. In view, however, of the strenuousness with which the point was urged by counsel for the assessee, and for the sake of completeness we propose to deal with the question No. 3 formulated by the Tribunal, viz., whether the receipts can be said to arise from the exercise of a profession, vocation or occupation.

We might begin our discussion by extracting s. 10(3) of the I.T. Act, 1961, as it stood at the relevant time.

"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included.....

(3) any receipts which are of a casual and non-recurring nature, unless they are -

(i) capital gains, chargeable under the provisions of s. 45; or

(ii) receipts arising from business or the exercise of a profession or occupation; or

(iii) receipts by way of addition to the remuneration of as employee."

From the section it will be seen that unless the receipt satisfies the dual test of being of a casual and of a non-recurring nature, it will not qualify for exemption from taxation. Also, even if the receipt satisfies the two tests, it will not be eligible for exemption if it is derived from business, or the exercise of a profession or occupation. Therefore, the Tribunal rightly concentrated attention upon the first and the foremost of the questions arising for consideration, viz., whether the receipts in this case can be said to be of a casual and non-recurring nature. The requirement being cumulative, if the receipts are found to be not of a casual nature, as the Tribunal found, there would be no need to examine if they are non-recurring.

What then, is the meaning of the term "casual" ? It is not defined in the Act; nor, the expression "non-recurring". We are left to gather the meaning and the import of the terms to the terms to the best of our resources with the aid of dictionaries and from the object and purpose of the statute. In Rm. Ar. Ar. Rm. Ar. Ramanathan Chettiar Vs. Commissioner of Income Tax, Madras, , the Supreme Court observed (page 464) :

"The expression casual has not been defined in the Act and must, therefore, be construed in its plain and ordinary sense. According to the Shorter Oxford English Dictionary, the word is defined to mean : (1) Subject to or produced by chance; accidental, fortuitous; (ii) Coming at uncertain times; not to be calculated on, unsettled. A receipt of interest which is foreseen and anticipated cannot be regarded as casual even if it is not likely to recur again. When the action was commenced by way of a petition in the District Court of Ceylon, it was well within the contemplation and anticipation of the persons representing the estate that a successful termination of the action would not merely result in a decree for the tax illegally collected, but would also make the crown liable to pay interest on that amount from the date of the petition till the date of the payment. The receipt of interest in the present case by virtue of the decree of the Supreme Court of Ceylon bears no semblance, therefore, to a receipt of a casual character. It is not, therefore, possible to accept the arguments of the appellant that the receipt of interest obtained under the argument of the appellant that the receipt of interest obtained under the decree of the Supreme Court of Ceylon was of a casual or non-recurring nature. We, accordingly, reject the submission of the appellant on this aspect of the case."

In Commissioner of Income Tax Vs. V.P. Rao (Deceased) and Others, , to which reference would be made more fully, presently, the expression "casual" was explained as "accidental or fortuitous receipts; occuring without stipulation, contract calculation or design". In B. MALICK Vs. COMMISSIONER OF Income Tax, UTTAR PRADESH., , also to be fully noticed presently - one of the learned judges (Manchanda J.) observed (page 628) :

"The word casual may have several meanings. It may be something which comes in at uncertain times and something which cannot be relied upon or calculated to produce income or it may be something which is the result of chance, or the result of a fortuitous circumstances. One test which has been laid down in some cases is whether the receipt is one which is foreseen, known and anticipated and provided for by agreement. If it is a result thereof then it cannot be described as casual even if it is not likely to recur for a considerable time. This is the test which the Tribunal has severely criticised by the learned author of Kangas Income Tax Act, 5th edition, at page 225, broad and sweeping. As at present advised, I am inclined to agree with this criticism. The example given by the learned author is indeed a telling one. According to him, in the case of a bet or isolated speculation the gain may have been foreseen, known, anticipated and provided for by agreement, nevertheless, it may yet be a casual receipt. The existence of the agreement will not necessarily prevent the receipt arising therefrom from being casual. It cannot, therefore, be said in the present case that merely because there was, though not at the inception, but at a later stage, an understanding for the payment of fees of arbitration, that the receipt was not of a casual nature."

The other learned judge, Beg J., observed (page 632) :

The mere fact that the payment came within the realm of expectation and was then offered and accepted and finally paid would not make the payment a receipt in pursuance of some plain or design. An arbitration generally takes place in the course of a litigation as a result of circumstances which are not foreseen. Even if the arbitration falls in the class of arbitrations which are foreseen and provided for by parties to an arbitration agreement in pursuance of some plan, the selection of a particular arbitrator is usually quite unforeseen and provided for by parties to an arbitration is usually quite unforeseen and undetermined. Such selection takes place as a result of unpredictable factors. So far as a particular arbitrator is concerned, his selection, and, consequently, the payment for the services rendered by him are not result of any plan pursued by him. At any rate, there was neither a plan nor a design in the case of the present assessee to act as an umpire or arbitrator. The arbitration was accepted by the assessee as a result of pressure and the claim of public interest which was placed before him in order to induce him to accept the arbitration. The resulting financial gain, in such a case, does not appear to me to stand on a footing other than that of a casual receipt. Whatever doubts I had on this question have certainly been cleared by the judgment of my learned brother, Manchanda J., which I have had the advantage of joint through. I, very respectfully, concur with the view he has taken on this question and consider that the more correct of two possible opinions is that the receipt in this case was of a casual and non-recurring nature."
The question fell to be considered with respect to the nature of the income derived from betting and racing by maintaining race horses in Lata Indra Sen, LALA INDRA SEN, IN RE., , Iqbal Ahmad J. dealt with the question thus (page 200) :

"Neither the word casual nor the word non-recurring has been defined in the Act and these words must, therefore, be construed in their plain and ordinary sense. In Murrays Dictionary the word casual is said to mean :

(1) Subject to, depending on, or produced by chance; accidendtal, fortuitous.

(2) Occurring and coming out at uncertain times; not to be calculated, or uncertain, unsettled.

(3) Subject to chance or accident. The word recurring connotes the idea of repetition and of occurring more than once.

The winning of a particular horse in a particular race or the winning of bets at the race course is undoubtedly uncertain and a matter of chance, and the receipts from these sources are, in my opinion, therefore, casual. But in order to attract the provisions of cl. (vii) the receipt, though casual, is recurring, cl. (vii) can have no application and it is, therefore, necessary to decide whether or not, receipts from the sources under consideration are of a non-recurring nature.

Receipts from these sources are, in my judgment, not of a non-recurring nature. A person who maintainance horses and habitually runs them at the race course does so in the expectation of winning the races and getting stakes money and, the receipt of stakes money, in most cases, may recur. It is to be remembered in this connection that the words used in the Act are of a casual and non-recurring nature. In view of these words it is the nature of the receipt, irrespective of the facts of a particular case, that is to be the guiding factor. The receipt of stakes money by owners of racing stables is a matter of frequent occurrence and such receipts cannot, therefore, be charaterised as of a non-recurring nature. In every race the stakes money must be paid to the owner of at least one of the horses that took part in the race. In short, the receipt of stakes money is not a phenomenon of race occurence, but in bound to follow every race. Similarly bets yield receipts to bettors on horse racing and if a particular bettor wins on repeated occasions it is impossible to say that the receipts arising from nets in his case were not a recurring nature. It is true that the winning of bets is a matter of chance, but this fact by itself does not make the receipts from betting of a non-recurring nature. To put the matter in another way, bets on horse racing do bring receipts, though at irregular intervals, and such receipts are, therefore, of a recurring nature."
Bajpai J. reserved the consideration of the question till a proper case arose (See page 212). Braund J. observed page 220 :

"First, as to the betting, I have discarded the contention of the assessee that in this case he is proved to have been betting as a matter of business. It follows, I think, that the true view is that he made a bet whenever he felt inclined to do so. He was not compelled to and, as far as we know, there was no method in his betting. I think, therefore, that the right way to look at this that the assessee whenever he felt inclined, from time to time made a bet and not that he made a series of bets on a prescribed plan. He was free to stop whenever he liked. And if each bet is, as I think, an individual transaction, I can myself see nothing of a recurring nature about it. It was not its nature to recur. If it did in fact recur with great frequency it might on that account become a business. It may be true that, in fact, these bets did recur. But that was not the result of the nature of the transaction but of the mere spasmodic volition of the assessee. They were not, to my mind, of a recurring nature and the assessee has not shown us that in this case they did recur in such a way as to constitute them a business. I think also, upon this line of reasoning, that they were casual - casual in these sense that they were merely arbitratory acts dictated by the assessees mood at the time of making them and following no set course of dealing. Nor can it be denied that whether or not any particular bet yielded a profit was a mere matter of chance. Whether the chance was a good chance or a poor chance (or, in other words, whether the odds were short or long), a chance it remained and, in that sens, its proceeds were, I think, mere casual receipts. I think that the word casual in this section must be read as meaning the antithesis of that which is governed by something more than mere chance - something out of which,

according to the probabilities of business or to the known course of practical experience, a rational expectation of profit arises. And that does not, in my opinion, apply to a mere bet."

The same question, i.e., the nature of the income derived from betting and racing, fell for consideration in Janab A. Syed Jalal Sahib (deceased) by legal representative Syed Usman Sahib Vs. Commissioner of Income Tax, Madras, . Referring to Lala Indra Sen, LALA INDRA SEN, IN RE., and Braund J.s dissertation on the meaning of the word "casual", the learned judges observed that the success of a horse or that of a bet is obviously uncertain and wholly a matter of chance and the receipts obtained on such chances can never be anything but casual. The learned judges stated that in LALA INDRA SEN, IN RE., Iqbal Ahmad J. had held that the test of "non-recurring" had not been satisfied, and that Braund J, and Bajpai J. were in substantial agreement that the receipt was both casual and non-recurring. In Surat District Cotton Dealers'' Association Vs. Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Ahmedabad, , a Division Bench of the Bombay High Court consisting of Chief Justice Chagla and Justice Desai, stated the test of casualness as follows (page 131) :

"The test of casualness of a receipt is not merely that it must be of a non-recurring nature, but it must also be casual. The test of casualness is this, that the receipts is foriuitous in the sense that it is not anticipated or foreseen. How can it possibly be said in this case that the receipt was not anticipated or foreseen ? The association solemnly agrees to render services it has to be paid a certain amount and before it starts is nothing unforeseen or unanticipated about this receipt. Another test that might be applied with regard to an income being casual and non-recurring is that the income must depend upon the caprice or whim of the person who pays the amount which constitutes the receipt in the hands of the assessee. Again in this case there is no element of caprice or whim. The distribution committee could not have told the Association that it would pay or not pay the commission agreed upon at its own sweet will. There was an agreement - if not express, but implicit - that for the services rendered the nominees, as the instance of the distribution committee, will pay a certain amount to the Association. Under these circumstances, in our opinion, it is impossible to urge that the income received by the Association because it happened to be for a short duration and because it happened to be only once in the history of the Association, becomes a casual and non-recurring income."

We have refrained from citing English decision in view of the caution administered against transplanting into the Indian conditions and the provisions of the Indian statute, the principles laid down with respect to the English Act. Applying the principle of the decisions noticed, we are clearly of the opinion that the Tribunal was right in its conclusion that the receipts by the assessee in the seven instances mentioned by us were not receipts of a casual nature. The remuneration in each of the seven cases was fixed and agreed upon between the assessee on the one hand,

and either the Government, or the Keral State Electricity Board or the party or authority which required the assessees services, on the other. We are by no means saying that the assessee in any way sought the work in these cases. But we are clear that there was anticipation and expectation of remuneration; nay more, there was agreement about the remuneration to be paid. The nature and background of the engagements are such that we are not prepared to regard the receipts from them as "casual". The receipt of remuneration was both foreseen and anticipated, as expounded by the Supreme Court in Rm. Ar. Ar. Rm. Ar. Ramanathan Chettiar Vs. Commissioner of Income Tax, Madras, cited supra. We, therefore, answer the question referred by the Tribunal, which, in our opinion, is the only question that arises out of the order of the Tribunal in the nagative, i.e., against the assessee and in favour of the department. We make no order as to costs.

This would be sufficient to dispose of these references but for the sake of completeness, we shall briefly deal with the question whether the income derived by the assessee constituted an income from his profession, vocation or occupation within the meaning of s. 10(3) of the Act. We may turn again to the decisions in Lala Indra Sen, LALA INDRA SEN, IN RE., noticed already for an exposition of these terms. At page 202, Iqbal Ahmad J. observed :

"The words profession, vocation or occupation have not been defined in the Act. By s. 2(4) business includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. This is also not an exhaustive definition of the word business. The Act is, therefore, of no assistance in the determination of the question whether a particular activity or course of conduct constitutes business or the exercise of a profession, vocation or occupation, and the question must be answered by giving these words their plain and ordinary meaning. But, having regard to the provisions of s. 2(4), it may be assumed that the word business has been used in the Act in a commercial and limited sense. There is, however, no warrant in the Act to give the words profession, vocation or occupation a limited meaning.

The words business, profession and vocation have been interpreted in some English decisions and though those decisions cannot in view of the observations of their Lordships in the Privy Council in CIT v. Shaw Wallace & Company [1932] ALJ 588; [1932] 2 comp Cas 276, furnish an infallible guide, they are of assistance in interpreting the words under consideration. The word business has also been interpreted in two decisions under the Indian I.T. Act." Further on, the learned judge observed at page 204 :

"It would appear from this observation that the word occupation is a word of wider import than the word profession.

In Partridge v. Mallandine [1887] 18 QBD 276, the word vocation was held to be analogous to "calling", a word of wide signification meaning the way in which a man

passes his life."

The learned judge wound up his discussion thus (page 204) :

"It is obvious that the words business, profession, vocation and occupation have been used in s. 4(3)(vii) in contradistinction to each other and, having regard to the scheme of taxation underlying the Act, the conclusion is irresistible that the word profession is of wider import than the word business and the word vocation is of wider import than the word profession and lastly occupation is a word of wider signification than the word vocation. In other words, what may not amount to business may amount to profession and what may not amount to profession may amount to vocation and what may not amount to vocation may amount to occupation within the meaning of the Act."

In Janab A. Syed Jalal Sahib (deceased) by legal representative Syed Usman Sahib Vs. Commissioner of Income Tax, Madras, a Division Bench of the Madras High Court recorded agreement with the above view and observed that the term "occupation" is of wider import than the term "vocation". (vide pages 676-677 of the ITR). In Commissioner of Expenditure Tax, Gujarat I Vs. Ambalal Sarabhai (Deceased) (By Legal representative), Bhagwati C.J., speaking for the Division Bench of the court, observed (pages 83, 84) :

"The decided cases illustrate the futility of attempting a definition of the word occupation. So vast is the range of human activity and so diverse and varied its nature that it is wellnigh impossible to find a definition exclusive or inclusive which will take in all activities falling within the matrix of occupation and leave out those which do not. The word occupation is a word of large and indefinite import and its meaning is not susceptible of any precise or definite formulation. No universal test can be laid down for determining when an activity amounts to an occupation and when it does not. But there are certain features which are, in any view of the matter, definitely indicative of what is occupation and they are clearly brought out in the discussion of the word occupation in Corpus Juris Secundum, vol. 67, page 74. The word "occupation" says Corpus Juris Secumdum, is employed as referred to that which occupies time and attention; it also means a calling or a trade and then the Corpus Juris Secundum proceeds to elaborate the meaning :

There is nothing ambiguous about the word "occupation" as it is used in the sense of employing ones time. It is a relative term, in common use with a well understood meaning, and very broad in its scope and significance. It is described as a generic and very comprehensive term, which includes every species of the genus, it compasses the incidental, as well as "occupation" is variously defined as meaning the principal business of ones life; the principal or usual business in which a man engages; that which principally takes up ones time, thought and energies; that which occupies or engages the time and attention; ..... that activity in which a person..... is engaged with the element of a degree of permanency attached.....

The word "occupation" has reference to the principal or regular business of ones life..... The word particularly refers to the vocation, profession, trade, or calling which a person is engaged for hire or for profit, and it has been repeatedly held that a persons principal business and chief means of obtaining a livelihood constitutes his occupation. The term "occupation" expresses the idea of continuity; a continuous series in transactions,..... and implies regularity in a specific line of endeavour. Furthermore, time is a necessary ingredient, and, although it need not be protracted, it must not be momentary. As generally understood, the term does not include as isolated or semi-occasional and temporary adventure in another line of endeavour, and does not extend to acts and duties which are simply incidents connected with the daily life.....

A person may engage in more than one occupation,..... or he may engage in two occupations at the same time, as where he carries on his chief occupation and also another as a side line. It may be debatable whether the idea of continuity or regularity is a necessary ingredient of the concept of occupation and if so what degree of regularity or continuity is requisite to qualify an activity for coming within the category of occupation. But one thing is clear that whatever else occupation may comprise, activity in a specific line of endeavour which engages or occupise time and attention of a person and which is carried on with a certain amount of continuity or regularity in the sense that it is not momentary - not as isolated or semi-occasional and temporary adventure in that line of endeavour - would certainly constitute occupation. Applying this test to the facts found by the Tribunal, the activity of the assessees wife must b held to be her occupation. "We do not wish to multiply citations. We spare ourselves also, the task of referring to dictionaries and law lexicons which have expounded the meaning of the word "occupation". Both from the juxtaposition of the words used in the section, and from the point of view of the object of the statute, we are of the opinion that "occupation" must be understood in a comprehensive sense as anything that occupies the time and labour and attention of the assessee. In that sense, we are of the opinion that the activities of the assessee undoubtedly constituted "occupation", within the meaning of s. 10(3) of the Act.

The position was keenly debated before us with respect to the two well-known decisions of judicial arbitration, one by a retired High Court judge, and the other, by a sitting judge, and that too, the Chief Justice of a High Court. These are respectively, the decision of the Madras High Court in Commissioner of Income Tax Vs. V.P. Rao (Deceased) and Others, and of the Allahabad High Court in B. MALICK Vs. COMMISSIONER OF Income Tax, UTTAR PRADESH., . Were leaving out the decision of the Madras High Court, in COMMISSIONER OF Income Tax, MADRAS Vs. M. AHMAD BADSHA SAHEB., , as, on the facts disclosed, it is clear that the receipt in question was of a casual and non-recurring type, that there was no fixation of remuneration or agreement to receive the same, and that the remuneration happened to be sanctioned quite fortuitously after the work of arbitration was over.

In Commissioner of Income Tax Vs. V.P. Rao (Deceased) and Others, , the question arose regarding the nature of the receipt of Rs. 3,000 as remuneration by Sri V. P. Rao, I. C. S., a retired judge of the Madras High Court, in connection with an arbitration undertaken by him. The learned judged (Subba Rao and Panchapakesa Ayyar JJ.) observed that the receipt cannot be said to be of a casual nature, left open the question whether it was of a non-recurring type; and, for the sake of completeness, considered further, whether it could be said to be income arising from a business, profession or occupation. The learned judges were of the view that it was income arising from an occupation. The question was considered with respect to s. 4(3)(vii) of the Indian I.T. Act, 1922, substantially in similar, if not in identical terms as s. 10(3) of the 1961 Act. The learned judges stated that no rule can be laid with regard to what is of a casual and non-recurring nature and each case has to be decided on its particular facts. It was observed that the word "casual" applied only to accidental or fortuitous receipts; occurring without stipulation, contract, calculation, or design - something in the nature of an unforeseen windfall, Viewed from that angle, the learned judges noticed the observation of Rowlatt J. in Ryall v. Hoare [1923] 8 TC 521, which referred to the case of a lump sum remuneration granted, inter alia, to a retired judge appointed to hold an important arbitration in connection with the London Water, as amounting to casual receipt, treated the observation, although arbiter, as entitled to respect, having been made by an eminent judge, and recorded agreement with the same. The learned judges noticed that remuneration had been fixed and agreed to by Sri V. P. Rao and held that the receipt of the same was not a casual receipt. Dealing with the words "from the exercise of" in s. 4(3)(vii) of the Act, the Bench observed (page 834) :

"The words from the exercise of s. 4(3)(vii) cannot be given the meaning given to it by Tribunal and by the learned counsel for the assessee but must be given the natural meaning in the ordinary English idiom. Very few people speak of receipts arising from the exercise of a business, and only speak of receipts arising from business; whereas the usual phrase for receipts from a profession, vocation or occupation if receipts arising from the exercise of a profession, vocation or occupation. If the argument of the Tribunal in its judgment is correct, all the three words, profession, vocation and occupation, would mean much the same thing, and the use of three different words in the Act would be otiose. That is also so one of the reasons why we disagree with the meaning sought to be given to the word "occupation" by the learned counsel for the assessee. In our opinion, there is nothing in the words exercise of to require us to hold that the person exercising the occupation should be of the said profession, vocation or occupation already. The meaning of the word exercise in the New English Dictionary is "act of using, who is not already having the occupation of arbitrator on being appointed as an arbitrator will, in our opinion, be receipts arising from the exercise of the occupation of an arbitrator even though it had been exercised only once."

In B. MALICK Vs. COMMISSIONER OF Income Tax, UTTAR PRADESH., , the position disclosed was unusual. Malick J., while a judge of the Allahabad High Court, was proposed eventually nominated some time in 1947 as an umpire to enter on the dispute between the Union of India and the United Timber TRading Co. Ltd., in case of difference of opinion between the two arbitrators, Sri Sarat Chandra Bose and Sri Charan Singh. No question of any payment was mooted or agreed to. After nomination, nothing was heard for nearly two years. Malick J. became the Chief Justice of the Allahabad High Court in 1947. He was informed in 1949 that difference had occurred between the arbitrators and that it was necessary for him as umpire to enter upon the references. In view of the changed situation by reason of his having become the Chief Justice, Mr. Justice Malick was unwilling to take up the assignment and wrote expressing his inability. At about that time matters were further complicated by the sudden death of one of the arbitrators, Sri Sarat Chandra Bose, from heart failure. Persuasion from the high quarters, including a personal letter from the late Sri Shyama Prasad Mukherji, led Mr. Justice Malick to enter upon the reference as umpire. On May 8, 1950, Sri Shiv Charan Singh wrote to Malick C.J. to indicate the fee. This was done by letter dated May 11, 1950. His work commenced on May 15, 1950, and concluded on May 26, 1950. A remuneration of Rs. 20,000 was sanctioned to the Chief Justice for his work as umpire. There was a confidential letter of the Government of India prohibiting remuneration to a sitting judge of a High Court for doing judicial work except with the consent of the President. Exemption from the Government of India was specially granted by the President at the Intervention of the late Sri Sardar Patel. It was on such extraordinary facts and circumstances that Malick J.s work as umpire proceeded. It was against the background of such facts and circumstances that the Allahabad High Court ruled that the income derived cannot be regarded as income from the exercise of a business or profession or occupation but was essentially an income of a casual and non-recurring nature. Stress was laid on the following discussion of Beg J. that the income was not shown to have been derived from the exercise of a profession or occupation (page 633) :

"The Madras case is distinquishable on facts from the case before us. But, the very wide scope given to the term occupation there certainly supports the contentions advanced before us on before us on behalf of the department. With great respect for the view taken by the Madras High Court, we find it difficult to understand why the legislature took the trouble of laying down that it was a receipt arising only from the exercise of profession, vocation or occupation which was not covered by the exemption clause, if it intended to take away the character of an exemption from all receipts resulting from the use of human skill, intellectual effort, or activity of any kind. The I.T. Act contains technical concepts in words which have special legal connotations. If no such connotation was intended, the most abvious way of expressing the intention was to lay down that only receipts which are not the result of expenditure the intention of appreciable time and effort are exempt from the

purview of taxable income. We, however, find that the legislature has taken unless they are shown to be related to or resulting from the exercise of a profession, vocation or occupation. The terms profession and vocation are definitely used in law for a calling or the principal occupation on which one generally depends for ones livelihood. Even if the term occupation is somewhat wider, we are not at all convinced that it was intended to cover every kind of possible activity which may bring in some gain. If the term occupation was meant to be used so widely, practically every receipt of money would cases to enjoy the exemption conferred by s. 4(3)(vii) of the Act on the simple ground that some time and effort must have been expended in receiving it. If the ambit of the term occupation is to be cut down, I would interpret it as a word used ejusdem generis with the preceding words. In other words, the idea of an engagements in an activity as ones ordinary or habitual or usual or principal work in life or source of livelihood cannot be dissociated completely from the term occupation are used in s. 4(3)(vii) of the Act. I am, therefore, unable to agree with the view taken by the Madras High Court in Commissioner of Income Tax Vs. V.P. Rao (Deceased) and Others, . The mere fact that person agrees to give his time and energy to the performance of some work or to exert himself, so that some monetary gain results from it in the form of a receipts of money, is not sufficient to convert the gain into a receipt resulting from the exercise of an occupation or to deprive it of its character as a casual and non-recurring receipt where that has been proved." The other learned judge, Manchanda J., at page 630, observed that the question whether the receipt was from the exercise of an occupation was not free from difficulty, in view of the decision of the Supreme Court in P. Krishna Menon Vs. The Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore, . But after having perused the judgment of the learned brother, Beg J., the learned concurred in the interpretation placed by the learned judge on that decision. B. MALICK Vs. COMMISSIONER OF Income Tax, UTTAR PRADESH., differed from the interpretation put in V. P. Raos case [1950] 18 ITR both on the concept of the "casual" nature of the income, and on the concept of the income having been derived "from the exercise" of an occupation. It differed also from the concept of "occupation" as expounded in Commissioner of Income Tax Vs. V.P. Rao (Deceased) and Others, . We have already stated that having regard to the Supreme Courts pronouncement in Rm. Ar. Ar. Rm. Ar. Ramanathan Chettiar Vs. Commissioner of Income Tax, Madras, , to the justaposition of the words, and to the object and purpose of the statute, the word "occupation" must be given a wide meaning. It seems enough state that B. MALICK Vs. COMMISSIONER OF Income Tax, UTTAR PRADESH., was based on unusual facts; and it was possible to hold that the receipts, in the circumstances, could not be regarded as from the exercise of an "occupation" and was a "casual" receipt. More than that, it seems unnecessary to say. We are definitely of the opinion that in the case before us, none of the special features in B. MALICK Vs. COMMISSIONER OF Income Tax, UTTAR PRADESH., should complicated the issue; and that the remuneration derived by the assessee was from an "occupation" and was not of a

"casual" nature. We wish to draw attention to the comment made on B. MALICK Vs. COMMISSIONER OF Income Tax, UTTAR PRADESH., by the Delhi High Court in The Commissioner of Income Tax Central, New Delhi Vs. P.N. Behl, . Hardayal Hardy J., speaking for the Division Bench after noticing the two cases of Commissioner of Income Tax Vs. V.P. Rao (Deceased) and Others, and B. MALICK Vs. COMMISSIONER OF Income Tax, UTTAR PRADESH., , observed (page 133) :

"Whether the difference between the status of the two judges made such a great difference as to convert the receipt of one of them into a receipt from income, business or profession and the receipt of one of them as that of a casual and non-recurring nature is not one that arises for decision in the case before us. The fact remains that two different views have been taken. What was material in the case before the HIgh Court of Allahabad was that in that case the receipt of Rs. 20,000, by Chief Justice B. Malick was held to be a case of casual and non-recurring nature and it was said that there was neither a plan nor a design on the part of the learned Chief Justice to act as umpire or arbitrator. The arbitration was accepted by him as a result of pressure and the claim of public interest which was placed before him in order to induce him to accept the arbitration. M. H. Beg J., who agreed with Manchanda J., said that the word casual as defined in the third edition of Webstors New International Dictionary meant as follows : subject or produced as a result of chance; without design; not constant purpose; without foresight, plan or method; occuring, encountered, acting or performed without regularity or at random; occassional. In the present case also the premises occupied by the assessee did not belong to him. He was a tenant. His family was already away in the U. K. for about 8 months. When he was about to leave the country he was contacted by Shri O. P. Singhal of the United States of America and he gave his house to two Americans on a caretaker basis and was paid a sum of Rs. 3,000 for that purpose. This was the first and the last time on which he gave his house to two foreigners for a short period. He could not sublet the property and, therefore, there was no rental income from the same or was it a part of the business of the assessee to let out his properties. In such circumstances, it is not necessary to accept the meaning of the word income in the case of CIT v. Shaw Wallace & Co. [1932] 6 ITC 178; [1932] 2 Comp Cas 276 (PC) , that it was likened pictorially to the fruit of a tree or the crop of a field, for it was said by Panchapakesa Ayyar J. in Commissioner of Income Tax Vs. V.P. Rao (Deceased) and Others, , that there are some trees which yield only once like the plantain tree; but all the same, there was neither any design nor any plan behind the money that the assessee obtained from the two foreign parties. There was no doubt a sort of agreement between the assessee and those two foreign parties; but the receipt in itself was entirely fortuitous and exceptional. The petitioner may go abroad once again and yet he may not be lucky enough to get hold of a foreigner who should give him money and also look after his house during his absence for a short period." We are of the opinion that the receipt in question involved in these cases was clearly the assessees income from his occupation.

A copy of this judgment under the seal of the court and the signature of the Registrar, will be sent to the Income Tax Appellate Tribunal, as required by law.