

(1934) 09 BOM CK 0014

Bombay High Court

Case No: Civil Reference No. 6 of 1934

COMMISSIONER OF INCOME  
TAX, BOMBAY

APPELLANT

Vs

C. MACDONALD and CO.

RESPONDENT

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**Date of Decision:** Sept. 11, 1934**Acts Referred:**

- Income Tax Act, 1922 - Section 66(2)

**Citation:** AIR 1935 Bom 197 : (1935) 3 ITR 459**Hon'ble Judges:** Beaumont, C.J; Rangnekar, J**Bench:** Full Bench

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### Judgement

BEAUMONT, C. J. - This is a reference by the commissioner on Income Tax made u/s 66(2), Income Tax Act, 1922, raising the questions, (1) whether in the circumstances of the case and in view of the provisions of Sections 4(1) and 10 of the Act the assesseees have been correctly assessed on the total amount of Rs. 97,882 received by them as profits and gains of business carried on by them as managing agents of a certain company; and (2) whether under the provisions of Section 10 of the Act, or under any other provision of law, the assesseees are entitled to have a deduction from their liable to tax of the amount of Rs. 19,576 paid by them out of their earnings to certain parties as per the declaration, Exhibit G. The questions arise in this way. The assesseees are the agents of the Katni Cement and Industrial Company Limited; and in respect of the year of assessment they received as such agents the sum of Rs. 97,000 odd referred to in the question. But it appears that from that sum they have paid away to third parties the sum of Rs. 19,000 odd referred to in the second question. Those sums were paid under the agreement, which is Exhibit F, and the question is whether the assesseees are liable to be assessed in respect of their income so paid away to third parties. It has not been argued that the sums paid to third parties come within any of the various deductions allowed by the Indian Income Tax Act. But the argument has been that the sums paid to third

parties never were the income, profits or gains of the assessees within the meaning of Section 4 of the Act. The Income Tax Commissioner relies on a decision of the Privy Council, *Pondicherry Railway Co. v. Commissioner of Income Tax, Bombay* in support of his view that assessees are liable to be assessed in respect of the whole sum of Rs. 97,000 odd received by them. In that case the Pondicherry Railway Company were liable to be assessed for tax under the Indian Income Tax Act in respect of the whole of their net profits, and could not deduct from their income the proportion paid away to the French Government. It seems to me that the principle of that decision covers the present case.

The only distinction suggested by Mr. Coltman is that in that case the amount to be paid away was a proportion of the net profits whereas, here it is a proportion of the income. But whether the obligation to pay is based on the gross income or on the net profits cannot in my view affect the question. I think therefore that the case is really covered by that decision. But Mr. Coltman, in support of his contention that the sum paid to third parties is not part of the income of the assessees, has relied on a decision of the Privy Council, *Raja Bejoy Singh Dudhuria v. Commissioner of Income Tax*. In that case the assessee was in receipt of income from immovable property, and that property and the income therefrom were subject to charge for maintenance in favour of the assessees step-mother, and it was held by the Privy Council that the sums paid to the step-mother in respect of this charge never constituted part of the income, or what the Privy Council call, the real income, of the Raja liable to assessment under Act. I am not sure that I follow very clearly the distinction which the Privy Council found between the two cases, the Pondicherry case and *Rajas* case, but the facts of the present case are clearly much closer to the facts in the Pondicherry case than to those in the *Rajas* case, because in the *Rajas* case there was a charge on the property, whereas in the present case as in the Pondicherry case, there is no charge, there is only a convenient to pay. It seems to me therefore that it is the Pondicherry case which governs the case before us, and we must follow that case. The questions therefore will be answered, No. 1 in the affirmative and No. 2 in the negative. Costs to be paid by the assessees on the original side scale to be taxed by the Taxing Master.

RANGNEKAR, J. - I agree and have nothing to add.