

(1974) 05 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Income Tax Reference No's. 34 and 40 of 1969

Commissioner of Income Tax

APPELLANT

Vs

Keshri Singh and Another

RESPONDENT

Date of Decision : 07-05-1974

Acts Referred:

Income Tax Act, 1922 — Section 4(3)

Citation : (1977) 106 ITR 184

Hon'ble Judges : B.P. Beri, C.J.;D.P. Gupta, J

Bench : Division Bench

Advocate : S.K. Mal Lodha, for the Appellant;

Judgement

Gupta, J.—These are two connected references made at the instance of the revenue u/s 256(1) of the Income Tax Act, 1961, by the Income Tax Appellate Tribunal (Delhi Bench " A "). In reference No. 34/69 the following question has been referred to this court for an answer :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the payment of Rs. 1,50,000 made by Messrs. Belpahar Refractories Ltd., Sambalpur (Orissa), to the assessee is not income assessable in his hands, being a casual and non-recurring receipt not arising from the exercise of any business, profession or vocation carried on by the assessee ?"

In reference No. 40 of 1969, the following question of law has been referred to this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Appellate Assistant Commissioner in excluding the sum of Rs. 1,50,000 from the total income of the assessee-firm ?"

As these two references arise out of the same facts and circumstances, it will be convenient to deal with them together and dispose them of by a common order. The facts giving rise to these references are as under :

In July, 1958, Messrs. Tata Iron and Steel Co. Ltd., Jamshedpur (hereinafter referred to as "the Tata Company"), along with a German firm, Messrs. Didier Works A. G., promoted a company by the name of Belpahar Refractories Ltd, (hereinafter referred to as "the company") which was incorporated on September 6, 1958. According to the pre-incorporation agreement between the promoters of the company, Messrs, Didier Works A.G., Germany, were to take up shares worth Rs. 70 lakhs and the Tata Company and their friends were to take shares worth not less than Rs. 178.50 lakhs, being 51% of the issued capital of the company. Thus a subscription of Rs. 248.50 lakhs was assured by the promoters towards its issued capital. Article 26 of the articles of association of the company authorised it to pay at any time a commission to any person in consideration of his subscribing or agreeing to subscribe for any shares in the company. On December 26, 1958, a statement in lieu of prospectus was delivered for registration by the company, pursuant to section 70 of the Companies Act, 1956, para. 10 of which stated that no person was entitled to be given an option to subscribe for shares or to acquire from a person to whom they had been allotted or agreed to be allotted. Para. 18 (iv) of the aforesaid statement laid down that interest at the rate of 4% was to be paid by the company to the Tata Company, the Maharaja of Jaipur and Didier Works A.G. for the moneys advanced by them for the purchase and construction of the refractories plant until the money was repaid in cash or adjusted towards the subscription for the shares. Para. 25 of the statement provided that the preliminary expenses were to be paid in the first instance by the Tata Company, who were to be later on reimbursed by the company.

The Maharaja of Jaipur had deposited with the Tata Company on various dates sums aggregating Rs. 100 lakhs, as detailed below :

Rs.

16- 7-58 30 lakhs

13-12-58 25 "

20- 1-59 9 "

23- 1-59 8 "

31- 1-59 1 "

10- 2-59 4 "

24- 2-59 10 "

2- 4-59 4 "

29- 6-59 9 ""

100 lakhs

The board of directors of the company submitted at a meeting of its members

held on July 25, 1959, a statutory report in pursuance of Section 165 of the Companies Act, 1956, giving the particulars of shares allotted and cash received by the company up to June 19, 1959. In this statement and the statement issued by the company in lieu of prospectus, commission and brokerage on issue or sale of shares was shown as nil, both in the actuals up to June 19, 1959, and also in the estimates in regard to expenses to be incurred after the above date. The then Maharaja of Jaipur, Lt. Gen. Sir Sawai Man Singh, was shown in this statement to have been appointed as an additional director of the company on February 12, 1959,

2. The board of directors of the company passed a resolution by circulation on September 2, 1959, which directed that the estimate of the capital costs for the construction of the Belpahar and Kerupur plants was Rs. 363 lakhs and was approved by the board of directors of the company in its meeting held on February 12, 1959, when it was also approved that the total issued capital of the company should be Rs. 350 lakhs. It was further narrated in this resolution that, if necessary, a third party should be invited to participate in the capital of the company to the extent of at least of Rs. 100 lakhs and that Messrs. Suraj Kamal Enterprises, Kesar Vilas, Bikaner (hereinafter referred to as "the Firm"), was engaged as brokers for this purpose to negotiate with prospective investors on the understanding that the brokerage calculated at 1 1/2% of the issue price of the shares would be paid to them on the capital obtained through them. It was further mentioned in the aforesaid resolution that the capital to the tune of Rs. 100 lakhs subscribed by the Jaipur family was obtained through the services of the firm. It was proposed that an amount of Rs. 1.50 lakhs, being 1 1/2% of the issue price of the aforesaid shares be paid to the firm. As a matter of fact, the amount of Rs. 1,50,000 was thereafter actually paid by the Tata Company by their cheque dated October 8, 1959, to the firm and the company in turn reimbursed the Tata Company for the same by its cheque dated October 23, 1959.

3. The firm was constituted of three partners, namely, Col. Keshri Singh, Raghubir Singh and Madan Singh and it came into existence with effect from August 18, 1959, although the relevant instrument of partnership was executed on October 24, 1959. The purpose for which the firm was constituted was to carry on the business of financiers, traders, commission agents and industrialists. The sum of Rs. 1.50 lakhs paid by the Tata Company to the firm by their cheque dated October 8, 1959, was credited to the current account of the firm on October 16, 1959, but in the account books of the firm the proceeds thereof were credited to the personal account of Col. Keshri Singh.

4. Neither Col. Keshri Singh nor the firm submitted the returns of their respective income for the relevant assessment year 1960-61, pertaining to the period April 1, 1959, to March 3, 1960. However, on receipt of information in respect of the aforesaid payment of Rs. 1,50,000, the Income Tax Officer "A" and "C" Wards, Bikaner, issued notices u/s 148, both to Col. Keshri Singh and to the firm calling

upon them to file returns of their income for the relevant assessment year. Col. Keshri Singh thereupon filed a return of income on August 30, 1965, declaring a loss of Rs. 609. However, he showed in the said return, the income of Rs. 1,50,000 as a casual and non-recurring receipt. It was stated on behalf of Col. Keshri Singh before the Income Tax Officer that a sum of Rs. 1,50,000 was received from the company by cheque dated October 8, 1959, issued in favour of the firm and was credited in the current account of the firm on October 16, 1959, but in the account books of the firm the proceeds thereof were credited in his personal account. It was further submitted on his behalf that the aforesaid sum was a personal reward or gift and was a casual and non-recurring receipt and that it was not the income or receipt of the firm.

5. The firm also filed a return of its income on August 13, 1965, in response to the notice issued by the Income Tax Officer u/s 148 of the Income Tax Act, declaring a loss of Rs. 1,827. The firm also took the stand that although the cheque for Rs. 1,50,000 dated October 8, 1959, was issued in favour of the firm and was credited in its current account on October 16, 1959, yet it was not the income or receipt of the firm, but was a gift or reward to Col. Keshri Singh in his personal capacity. It was also submitted on behalf of the firm that it never contacted Messrs. Belpahar Refractories Ltd. prior to or at the time of issue of share capital, offering its services to the company as brokers, nor any contract was entered into between the company and the firm for securing the share capital for the company to the tune of Rs. 100 lakhs. It was submitted that the resolution passed by the board of directors of the company on September 2, 1959, did not represent the correct factual position, but the said resolution was passed merely to fulfil the requirements of section 76 of the Indian Companies Act, to enable the company to make payment of Rs. 1,50,000. It was, therefore, submitted that the essential ingredients of payment of the aforesaid sum as brokerage or commission to the firm did not exist and that the said payment was merely a gift or reward to Col. Keshri Singh in his personal capacity.

6. The Income Tax Officer, "A" and "C" Wards, Bikaner, passed two separate orders on October 14, 1965. In one of them, relating to the firm, he held that the amount of Rs. 1,50,000 was not a casual or non-recurring receipt, but was brokerage or commission earned in the character of business for services rendered and was, therefore, taxable as income arising from the exercise of profession or service rendered to the company by the firm through its partners. The firm was, therefore, liable to pay Income Tax on the aforesaid amount of Rs. 1,50,000. By the other order passed on the same day, the Income Tax Officer held that since it was the contention of Col. Keshri Singh that the aforesaid income did not belong to the firm, but that was his personal income, precautionary assessment was made and, as the amount of Rs. 1,50,000 was not a casual and non-recurring income, but was brokerage or commission earned in the character of business for services rendered, Col. Keshri Singh was also held to be liable for payment of Income Tax on the aforesaid amount.

7. Both Col. Keshri Singh and the firm filed appeals before the Appellate Assistant Commissioner of Income Tax, Jodhpur Range, Jodhpur. The Appellate Assistant Commissioner by his order dated January 7, 1967, held that the aforesaid receipt of Rs. 1,50,000 could not be considered to be the income of the firm, since the said sum was received for something done before the firm came into existence, and the appeal of the firm was allowed. The Appellate Assistant Commissioner, however, by another order passed on the same date held that although the receipt of the aforesaid sum of Rs. 1,50,000 cannot be said to have arisen to Col. Keshri Singh on account of business or by exercise of any profession, vocation or occupation by him, yet it was not without calculation or design or was not wholly unanticipated or unforeseen but appeared to be in fulfilment of some understanding or moral undertaking given by the company to Col. Keshri Singh and it was, therefore, not a receipt of a casual or non-recurring nature in his hands. He, therefore, held that the aforesaid sum of Rs. 1,50,000 was taxable income of Col. Keshri Singh, as income from other sources.

8. Both the parties, Col. Keshri Singh as well as the Income Tax Officer, "A" and "C" Wards, Bikaner, filed appeals against the aforesaid two orders, passed by the Appellate Assistant Commissioner before the Income Tax Appellate Tribunal (Delhi Bench "A"). The Appellate Tribunal consolidated the two appeals and disposed them of by a common order dated August 29, 1968. The Appellate Tribunal took into consideration a letter dated October 2, 1965, written by Col. Keshri Singh to Shri N. K. Desai, secretary of the Tata Company, wherein he averred that the resolution passed by the board of directors of the company on September 2, 1959, was based on some misconception and stated as to how he got interested in the matter without any monetary inducement having been offered to him by anybody and that there was no contract for the engagement of the services of the firm or of Col. Keshri Singh by the company or for payment of any amount by way of brokerage. He further averred that in view of the house of Tata's being a "place of lucrative investment and in view of cordial friendly relations existing between him and Shri J. R. D. Tata and J. D. Choksi, he thought it worthwhile to help the Maharaja of Jaipur to take a decision regarding investment of his funds and that he arranged a meeting between Shri J. R. D. Tata and the Maharaja of Jaipur without any expectation, understanding or promise of remuneration or reward. According to Col. Keshri Singh, he was only rendering "friendly assistance" in bringing together a prospective investor and a prospective entrepreneur, both of whom were his close acquaintances. According to this letter when the Tatas desired to pay him the sum of Rs. 1,50,000 he hesitated and "felt non-plussed", but later on agreed to accept the payment when his friends in the Tata group explained that the payment of the aforesaid amount was by way of gift or reward in recognition of the "friendly assistance" rendered. He suggested that the payment of the amount be made on his behalf to his "benamidar", the firm, and the amount was accordingly paid. However, Shri N.K. Desai in his reply dated October 11, 1965, to the aforesaid letter of Col. Keshri Singh did not accept this position but he affirmed that the payment of Rs.

1,50,000 was made to the firm by the company for "the assistance" given by Col. Keshri Singh in connection with the investment made by the Maharaja of Jaipur and that the payment was not made to Col. Keshri Singh in pursuance of any contract entered into between the Tata Company with him or the firm.

9. The Appellate Tribunal upheld the finding recorded by the Appellate Assistant Commissioner that the payment of Rs. 1,50,000 was not received by the assessee from any business or from the exercise of any profession or vocation by him. The Tribunal also agreed with the conclusion arrived at by the Appellate Assistant Commissioner that the version given in the resolution of the board of directors of the company dated September 2, 1959, was factually incorrect and that the said resolution was of little evidentiary value and that the case was to be decided in the light of other attending circumstances and material. The Tribunal took into consideration the fact that in the statement issued by the company in lieu of prospectus on December 26, 1958, and in the statutory report submitted by the company at the meeting of the board of directors held on July 25, 1959, no provision was made for payment of any commission for subscription of shares either in the actual expenses incurred up to June 19, 1959, or even in the head of expenses estimated to be incurred thereafter. The Tribunal also considered that Col. Keshri Singh had been a soldier and had no business background and that he did not do any canvassing on behalf of the company. The Tribunal came to the conclusion that the payment of the aforesaid amount of Rs. 1,50,000 to Col. Keshri Singh was casual and nonrecurring receipt not arising from the exercise of any business, profession or vocation carried on by him nor it was income from other sources in his hands and held that Col. Keshri Singh was, therefore, not liable to payment of tax for the receipt of the aforesaid amount. The Tribunal agreed with the Appellate Assistant Commissioner in coming to the conclusion that the aforesaid amount did not form the income of the firm. In the result, the Tribunal allowed the appeal filed by Col. Keshri Singh while it dismissed the appeal filed by the department.

10. The Commissioner of Income Tax required the Appellate Tribunal to refer the above-mentioned questions of law arising out of its order dated August 29, 1968, to this court for answer and it is in this way that the matter has come before us.

11. We have heard Shri Shrikishan Mal Lodha, learned counsel for the department, at great length. The assessee did not appear in both the cases in spite of service of notices upon them. However, Shri Lodha fairly placed before us all the relevant case-law on the subject, both for and against his contentions and we appreciate the assistance rendered by him in doing so.

12. The answer to the question referred to us would depend upon the interpretation of the provisions of Section 4(3)(vii) of the Indian Income Tax Act, 1922 (hereinafter referred to as "the Act"), and the application thereof to the facts of the present case. Section 4(3)(vii) of the Act reads as under:

"4. (3) Any income, profits or gains falling within the following classes shall not

be included in the total income of the person receiving them:.....,

(vii) any receipts not being capital gains chargeable according to the provisions of Section 12B and not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee."

We have to consider as to whether the receipt of Rs. 1,50,000 in the present case was income:

(a) of a casual and non-recurring nature;

(b) which arose from business or the exercise of a profession, vocation or occupation; and

(c) whether it is taxable in the hands of Col. Keshri Singh or Messrs. Suraj Kamal Enterprises ?

Although the aforesaid provisions in Section 4(3)(vii) of the Act are not absolutely analogous to the provisions of the English Income Tax Act, yet the decisions in respect of similar provisions in that Act do provide a certain amount of guidance. In *Herbert v. McQuade* [1902] 4 TC 489 ; 2 KB 631, a society made a voluntary payment to a clergyman and the question arose as to whether such receipt was liable to payment of Income Tax. In that case, Sir Richard Collins, Master of the Rolls, made the following observations;

"... a payment may be liable to Income Tax although it is voluntary on the part of the persons who make it, and that the test is whether from the standpoint of the person who receives it, it accrues to him in virtue of his office; if it does, it does not matter whether it was voluntary or whether it was compulsory on the part of the persons who paid it. That seems to me to be the test; and if we once get to this--that it has come to him by virtue of his office, accrued to him in virtue of his office--it seems to me that it is not negated, that is not impossible merely by reason of the fact that there was no legal obligation on the part of the persons who contributed the money, to pay it."

The King's Bench Division approved the aforesaid principle laid down in the decision of *In re Strong* [1878] 1 TC 207 . The leading case on the subject in England is *Cooper v. Blakiston* [1908] 5 TC 347, where the free will offerings made on Easter, collected by the church wardens were received by the Vicar of the Parish personally. It was argued that the said sum was a voluntary gift and was made on a particular occasion and had nothing to do with the discharge of his duties by the Vicar. Lord Loreburn, Lord Chancellor, in his speech in the House of Lords observed :

"In my opinion, where a sum of money is given to an incumbent substantially in respect of his services as incumbent, it accrues to him by reason of his office. Here the sum of money was given in respect of those services. Had it been a gift of an exceptional kind, such as a testimonial or a contribution for a specific

purpose, as to provide for a holiday, or a subscription peculiarly due to the personal qualities of the particular clergyman, it might not have been a voluntary payment for services, but a mere present."

Lord Ashbourne in that case made the following observations:

"But in what character did the appellant receive them ? It was suggested that the offerings were made as personal gifts to the Vicar as marks of esteem and respect. Such reasons no doubt played their part in obtaining and increasing the amount of the offerings, but I cannot doubt that they were given to the Vicar, as Vicar, and that they formed part of the profits accruing by reason of his office."

In the case of *Reed v. Seymour* [1927] 11 TC 625 Seymour was in the employment of the Kent County Cricket Club as professional cricketer for many years and had played fine cricket. The committee of the Cricket Club granted him a benefit match. The proceeds of the match, together with certain public subscription, were invested in the names of the trustees of the Club and the income therefrom was paid to the beneficiary in accordance with the rules of the Club. Subsequently, the investments were realised and the proceeds were paid over to the beneficiary who applied them, with the approval of the trustees, in purchasing a farm. Rowlatt J. held that the award of the proceeds of the benefit match to the cricketer was not a profit accruing to him in respect of his office or employment, but was in the nature of a personal gift and not assessable to Income Tax. In the view of the learned judge this was simply a testimonial. The House of Lords ultimately agreed with the finding arrived at by Rowlatt J. and held that,--

"the net proceeds of the benefit match should be regarded as a personal gift and not as income from the appellant's employment. The terms of his employment did not entitle him to a benefit..... Its purpose is not to encourage the cricketer to further exertions, but to express the gratitude of his employers and of the cricket-loving public for what he had already done and their appreciation of his personal qualities..... The whole sum --gate money and subscriptions alike--is a testimonial and not a perquisiteit is not remuneration for services, but a personal gift."

The real question in such cases is as Rowlatt J. put it in *Reed v. Seymour* [1927] 11 TC 625. "But is it in the end a personal gift or is it remuneration ?" And this test was approved by the House of Lords when that case went up in appeal. Viscount Cave L.J. further added : "if the latter, it is subject to the tax, if the former, it is not". (At page 646).

13. The aforesaid tests laid down by the courts in England were approved by their Lordships of the Supreme Court in *P. Krishna Menon Vs. The Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore*, , where the appellant, after his retirement as a Superintendent of Police, spent his time in studying and teaching Vedanta philosophy and one of his disciples, Levy, who used to come from England at regular intervals for a few months at a time and

attend his discourses and so received instructions in Vendanta and had the benefit of his teachings, transferred certain sums amounting to more than Rs. 2,00,000 to the account of his teacher. A question arose as to whether the said receipt was to be treated as income which was not taxable on account of the provisions of Section 4(3)(vii) of Act. It was held by the Supreme Court:

"We do not appreciate the significance of saying that in order to become a vocation an activity must be organised. If by that a continuous, or as was said, a systematic activity, is meant, we have to point out that it is well-known that a single act may amount to the carrying on of a business or profession. It is unnecessary to discuss this question further as we find no want of system or continuity in the activity of the appellant. He had gathered a large number of disciples around him and was instructing them in Vedanta regularly. Levy came all the way from England at regular intervals to obtain such instructions. All this clearly indicates organisation and system.

Again, it is well-established that it is not the motive of the person doing an act which decides whether the act done by him is the carrying on of a business, profession or vocation. If any business, profession or vocation in fact produces an income, that is taxable income, and none the less because it was carried on without the motive of producing any income."

It was held in that case that the question was whether the activity had actually produced an income and it did not matter that that activity was called by the name of business, profession or vocation or by any other name or with what intention it was carried on. The teaching of Vedanta was as such held to be carrying on of a vocation by the assessee. It was further observed that :

"We have no doubt in this case that the imparting of the teaching was the causa causans of the making of the gift; it was not merely a causa sine qua nan. The payments were repeated and came with the same regularity as Levy's visits to the appellant for receiving instructions in Vedanta."

In *Susil C. Sen. In re SUSIL C SEN Vs. RE.*, , the facts were that an attorney and advocate, acting for certain shareholders of a company, interviewed the managing agents of that company and attended a meeting of the shareholders, made a speech at the meeting and secured a substantial issue of new shares to the public. X, a firm of stock brokers, who were also benefited by the issue of the new shares, paid a sum of Rs. 10,000 to the assessee, even though the assessee had not acted for them and they were not legally bound to pay anything to the assessee. In these circumstances it was held by the Calcutta High Court that notwithstanding the fact that the sum of Rs. 10,000 was not paid under any contract to employ the assessee nor the persons, who paid the the said sum to him, were under any legal liability to do so, yet it was clear that the said receipt accrued to the assessee from the exercise of his profession as a lawyer and advocate and it was part of the assessee's income and was, therefore, taxable as his income. It was further held that if the assessee would not have been a

solicitor, he would not have got this sum of Rs. 10,000 but the causa causans of the payment was the part played by the assessee on the instructions of some shareholders and in consideration of the assessee's handling of the situation.

14. Similarly, in *David Mitchell Vs. Commr. of Income Tax, West Bengal*, where a firm of chartered accountants was engaged by a company, which assisted in the floatation of a new company, the assessee, who was a partner of the aforesaid firm of chartered accountants (accountant by profession) attended to this work on behalf of the firm ; the company after the work was done and the firm was paid in full for its services, made an unsolicited gift of 2,500 shares (in the new company) to the assessee "as a token of appreciation for the assistance rendered to it in connection with the floatation of the company," The questions which arose for consideration in that case were, firstly, whether the payment was connected with the exercise of the assessee's profession or vocation and, secondly, if it was so connected, the said payment was made merely in appreciation of personal qualities of the assessee, displayed in the course of his engagement or was intended to confer a special benefit on him with respect to the services rendered, so as to increase his earnings in the exercise of his profession or vocation ? Their Lordships of the Calcutta High Court approved the observations of Sir Harold Derbyshire C.J. made in *Susil C. Sen, In re SUSIL C SEN Vs. RE.*, that "Commercial men rarely pay money without good reason and generally do so in return for property, goods, services or help." It was held that the amount so paid to the assessee was connected with the exercise of his profession.

15. In *Chunni Lal Kalyan Das, In re In Re: Chunni Lal Kalyan Das*, the assessee, who was a cloth and grain merchant, received a sum of Rs. 60,000 as brokerage in the transaction of the sale of the mills of Messrs. John and Company of Agra. It was held that the said income was not a receipt of a casual and non-recurring nature within the meaning of Clause (vii) of Section 4(3) of the Indian Income Tax Act, 1922, but it was a receipt arising from business or the exercise of a profession, vocation, or occupation by the assessee, although such a transaction was not apparently in the assessee's ordinary line of business and might not be repeated. The learned judges of the Allahabad High Court observed that:

"In taking the view we do, we found ourselves mainly upon the use of the word "nature" in the exemption. The word is not "occurrence". If the language were "a casual or non-recurring occurrence", there would be much to be said for the contention of the assessee. But the expression "nature" appears to us to be a word used independently of the accident of the event happening in fact once only, or more often in a fortunate year. It connotes a class of dealing which might occur only once, but which might occur several times. Now the adventure of a businessman who is enabled, through his business associations, to negotiate a large transaction and thereby to earn a heavy commission, may undoubtedly be in fact nonrecurring in the sense that so successful an adventure would not be likely to occur again. But on the other hand, it is a class of transaction which

might occur to any such businessman once only or half a dozen times again during the course of the year.....you engaged in a solitary transaction of bringing two of your friends together and negotiated the sale of the house of one of them to the other and thereby earned a commission, you would, in our opinion, be carrying out a transaction, which, although casual in fact, would not be of a non-recurring nature, because having done so once with success, you might be asked by some vendor to do it again."

In *Mahesh Anantrai Pattani and Another Vs. The Commissioner of Income Tax, Bombay North, Ahmedabad*, the assessee was the Dewan of the native State of Bhavnagar until January, 1948, when the Maharaja granted him a monthly pension of Rs. 2,000. On March 1, 1948, the then Bhavnagar State was merged in the United State of Saurashtra and the Maharaja ceased to be the ruler of that State. More than two years later the Maharaja directed a company with whom he had an account to pay by cheque to the assessee a sum of Rs. 5 lakhs out of the amount lying to the credit of his account with the company and later on he directed that the said amount be considered to have been given as gift to the assessee for having rendered loyal and meritorious services. The Supreme Court by a majority held that the sum of Rs. 5 lakhs was paid as a personal gift to the assessee for personal qualities and as a token of personal esteem. The Supreme Court considered the fact that the gift need not cease to be a mere gift because what led to it is a past employment, an employment which has ceased. The earlier judgment of the court in *P. Krishna Menon Vs. The Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore*, was distinguished and Kapoor J., delivering the judgment of the majority, observed that the question was not what the donor thought he was doing but why the donee received it and that in *P. Krishna Menon Vs. The Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore*, it was held that if the voluntary payment had been made for reasons purely personal to the donee and not connected with his office or occupation they would not be taxable but if they were made because of the office or occupation they would be taxable. It was also observed that in *P. Krishna Menon Vs. The Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore*, the payments were made to the preceptor because of the imparting of the teachings and, therefore, they were income arising from the vocation to the recipient as a teacher of Vedanta philosophy. What weighed with their Lordships in *Mahesh Anantrai Pattani and Another Vs. The Commissioner of Income Tax, Bombay North, Ahmedabad*, was that the assessee had ceased to be an employee of the Maharaja or the State and immediately thereafter the Maharaja had granted him a pension from out of the public funds for the services rendered to the State as Dewan and further that the gift of Rs. 5,00,000 was made by the Maharaja after a gap of two years and that too, out of his personal funds.

16. Now, we have to consider as to whether in the facts and circumstances of the present case, the decision of their Lordships of the Supreme Court in *P. Krishna Menon Vs. The Commissioner of Income Tax, Mysore, Travancore-Cochin and*

Coorg, Bangalore, or the decision in Mahesh Anantrai Pattani and Another Vs. The Commissioner of Income Tax, Bombay North, Ahmedabad, is applicable.

17. The crux of the matter is as to in what character did the assessee receive the amount in question? If the voluntary payment was made in the circumstances, which showed that it was given by way of present or a testimonial on grounds personal to the recipient in appreciation of the personal qualities of the assessee and as a token of personal esteem for him it would amount to a gift but if the payment was made substantially in token of an appreciation of the services rendered by the assessee to the donor or as a reward for services or assistance rendered by him, then it cannot be considered to be a mere gift. In the words of Rowlatt J. we have to decide "is it in the end a personal gift or is it remuneration ?" If it is the latter, it will be subject to tax but if it is the former, it will not be taxed.

18. The sum of Rs. 100 lakhs was deposited by the Maharaja of Jaipur with the Tata Company and it appears that the services of the assessee were utilised by the Tata Company for obtaining the conversion of the aforesaid deposit amount into investment in the company. In order to appreciate as to how the assessee received the amount of Rs. 1.50 lakhs it would be significant to notice that a cheque for the sum of Rs. 1,50,000 was issued by the Tata Company on October 8, 1959, in the name of the firm, which v/as brought into existence only some time before the aforesaid cheque was issued by the Tata Company with the object of carrying on business of financiers, traders, commission agents and industrialists. If the amount was really paid in appreciation of the personal qualities of the assessee or in token of personal esteem for him and if the assessee intended to receive the amount by way of a present or a testimonial then there was no reason whatsoever as to why Col. Keshri Singh did not receive the amount of Rs. 1.50 lakhs in his own name. It is significant that the petitioner in this matter employed a subterfuge for obtaining the payment of the aforesaid amount in the name of the firm as his benamidar. The constitution of the firm in August, 1959 and, thereafter, the Tata company issuing the cheque on October 8, 1959, in the name of the firm and the subsequent execution of the partnership agreement of the firm on October 24, 1959, are relevant facts which cannot be lost sight of in considering the nature of the payment of Rs. 1.50 lakhs. The resolution of the board of directors of the company dated September 2, 1959, clearly narrated that the firm (probably reference is to Col. Keshri Singh for whom the firm was a benamidar) was engaged as a broker to negotiate with prospective investors on the understanding that brokerage calculated at 1 1/2% of the issue price of the shares would be paid to them on the capital obtained through them. A sum of Rs. 1,50,000 evidently formed an amount of brokerage calculated at the rate of 1 1/2% on the sum of Rs. 100 lakhs which was invested by the Maharaja of Jaipur by way of capital in the company, as a result of the "assistance" rendered by the assessee to the Tata Company. This makes the payment a calculated payment for specific services rendered by Col. Keshri Singh. The constitution of a new firm, obviously for the purpose of obtaining the

cheque from the Tata Company in respect of the amount of brokerage in the name of the firm, clearly shows that the assessee did not consider that the aforesaid amount was paid by the company to him by way of personal gift, for ought we know the Col. did not like his name in the picture. Shri N. K. Desai of the Tata Company in his reply dated October 11, 1965, to the letter of Col. Keshri Singh also affirmed that the payment of Rs. 1,50,000 was made to the firm "for the assistance given by Col. Keshri Singh in connection with the investment made by the Maharaja of Jaipur". According to the letter of Col. Keshri Singh dated October 2, 1965, he rendered "friendly assistance in bringing together a prospective investor and a prospective entrepreneur". He further stated in that letter that it was by way of "reward in recognition of the friendly assistance rendered" by him to the Tata Company. Col Keshri Singh himself admitted in the aforesaid letter dated October 2, 1965, that the payment to the firm was made on his suggestion and on his behalf as his "benamidar". If the aforesaid payment was made by the company merely by way of a personal gift or a testimonial for his personal qualities, then why Col. Keshri Singh should have hesitated in receiving the said amount in his own name and why should he have employed the contrivance of suggesting to the Tata Company to make payment of the said amount in the name of a newly constituted firm and then obtained the cheque in the name of the firm ? Thus, taking all these facts and circumstances into consideration, there is no doubt that the amount of Rs. 1,50,000 was paid by the company to Col. Keshri Singh in appreciation of the services rendered by him in persuading the Maharaja of Jaipur, who was admittedly his close acquaintance, for converting his deposits with the Tata Company into investment in the company which was newly incorporated--Chief Justice Sir Harold Derbyshire observed in the case of *SUSIL C SEN Vs. RE.*, that "commercial men rarely pay money without good reason and (they) generally do so in return for property, goods, services or help". We are in entire agreement with the aforesaid observations and further we are of the opinion that these observations are fully applicable to the facts of the present case. The Tata Company according to the pre-incorporation agreement between the promoters of the company undertook to take up shares worth Rs. 178.50 lakhs by themselves and through their friends.

19. They had a deposit of Rs. 100 lakhs from the Maharaja of Jaipur on which interest was payable to him. In these circumstances it was of considerable importance to them if the Maharaja of Jaipur agreed to convert the aforesaid deposit of Rs. 100 lakhs into capital investment in the newly floated company and for achieving that end, the services of Col. Keshri Singh who was a close acquaintance of the Maharaja of Jaipur were employed. It may be true that there might not have been a prior understanding or promise of remuneration or reward by way of brokerage but that is not necessary to make the amount so paid as taxable because what is of importance is not as to whether the payment was voluntary but whether the cause causans of making the payment was the part played by Col. Keshri Singh in the matter of the conversion of the aforesaid

deposit into investment. It may also be that the payment may be of a non-recurring nature, in the sense that so successful an adventure may be a solitary transaction and may not be likely to recur but having rendered such assistance once with success, the services of the assessee could have been utilised by some other businessman again, as was held in the case of *In Re: Chunni Lal Kalyan Das*, . However, whether such a transaction was repeated or not, is not decisive so long as it is absolutely clear from the facts of the present case that the so-called "friendly assistance" was rendered by the assessee in the matter of the business and according to the resolution of the board of directors dated September 2, 1959, brokerage was payable by the company to the person through whose services capital was subscribed. The payment was certainly in the nature of commission or remuneration for the service or help rendered by Col. Keshri Singh to the company and it could not be considered as a mere windfall.

20. We may also observe that "occupation" is a very comprehensive term and it includes the incidental as well as the main requirements of one's vocation, calling and business (see *Words and Phrases*, Permanent Edition, West Publishing Co., volume 29, at page 157--reference made to *McPeck v. Travellers' Equitable Ins. Co.* 215 N.W. 217, 220, 55 N.D. 750). While "profession" is a vocation in which a professed knowledge of some department of learning or science is used in its application to the affairs of others or in the practice of an act founded on it (*Words and Phrases*, Permanent Edition, West Publishing Co., volume 34, at page 381), "Vocation" is one's regular calling or business--the activity on which he spends major portion of his time and out of which he makes his living (*Words and Phrases*, Permanent Edition, volume 44, at page 523, West Publishing Co.) Thus the activity which produced the aforesaid income of Rs. 1,50,000 to the assessee may not be called his profession or vocation but it would be covered by the generic term "occupation". However, as held by their Lordships of the Supreme Court in *P. Krishna Menon Vs. The Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore*, the question is whether the said activity actually produced an income and it did not matter that that activity was called by the name of business, profession or vocation or by any other name. Moreover, although the amount received by the assessee in the present case was, no doubt, a solitary transaction it was not of a casual nature and might be the result of an incidental occupation of the assessee as he was not engaged in any regular business, employment or profession at the relevant time. We, therefore, hold that, in the facts and circumstances of the present case, the decision of the Supreme Court in *P. Krishna Menon Vs. The Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore*, is fully applicable and the receipt of Rs. 1,50,000 by the assessee was income assessable to tax as it did not fall within the exceptions enumerated in Section 4(3)(vii) of the Act.

21. As it was the case of Col. Keshri Singh himself that the amount was paid by the Tata Company to him and was received by the firm only as his benamidar, the amount of Rs. 1,50,000 is assessable to tax in the hands of Col. Keshri Singh. In this view of the matter, the said amount could not be taxed as the

income of the firm. We are thus of the opinion that the Tribunal was not right in holding that the payment of Rs. 1,50,000 made by M/s. Belpahar Refractories Ltd., Sambalpur (Orissa), to the assessee (Col. Keshri Singh) was not income assessable in his hands. We would, therefore, answer the question referred to us in Reference No. 34 of 1969 in the negative. However, in view of the aforesaid, we would answer the question referred to us in Reference No. 40 of 1969 in the affirmative. We leave the parties to bear their own costs.