

**(1928) 05 CAL CK 0003**  
**In the Calcutta High Court**

**In Re: Turner Morrison and Co. Ltd.**

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**Date of Decision :** 16-05-1928

**Acts Referred:**

Income Tax Act, 1922 — Section 4(3)(7)

**Citation :** AIR 1929 Cal 212 : 117 Ind. Cas. 689

**Hon'ble Judges :** Rankin, C.J.; Mukerji, J.; Buckland, J

**Bench :** Full Bench

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**Judgement**

Rankin, C.J.—In this case, the Commissioner of income tax. Bengal, has stated to this Court for its opinion the question whether a certain sum, Rs. 2 1/4 lakhs, received by the assesseees is exempt from taxation u/s 4, Sub-section 3, Clause 7, income tax Act, 1922. The sum in question is a sum which was voted to the assesseees by the shareholders of a company called the Cossipur Sugar works Ltd. It appears that that company was passing a resolution for voluntary winding up. A firm which had previously carried on the business now carried on by the assesseees had been nominated by the Articles of Association of this company as their Managing Agents. No time was fixed throughout which they were to be the Managing Agents and no remuneration was settled for the office; but in point of fact, the firm and afterwards the company, namely, the present assesseees acted as the Managing Agents and during certain years which are mentioned in the letter of Reference, received about half a lakh of rupees annually for their trouble. Now the business was coming to an end. The Cossipur Sugar works Ltd. was being wound up and the Resolution passed by the share holders was that an amount of 2 1/4 lakhs of rupees was to be paid to Messrs. Turner Morrison and Co. Ltd. as compensation for their loss of office as Managing Agents of the company.

2. The question which we have to decide is whether or not that sum which was paid to the assesseees is a receipt not being a receipt arising from business of the exercise of a profession, vocation or occupation, which is of a casual and non-recurring nature and is not by way of addition to the remuneration of an employee. The Commissioner of income tax is of opinion that it cannot be predicated that it was not a receipt arising from business. I am of the same

opinion.

3. We are dealing here with two companies. It is quite true that the "assessee company was a shareholder of the Cossipur Sugar Works Ltd. One company was not only making a large payment to the other company but stated that the reason of it was "as compensation for their loss of office as Managing Agents." We are not, therefore, considering a personal gift to a friend, and cases-of that class may be put on one side.

4. It has been contended before us that, in view of the fact that the Managing Agency of the Cossipur Sugar Works Ltd. came to an end by reason of the resolution to wind up, the payment of compensation for the loss of office cannot be a payment or receipt arising from business. Now, that contention has been urged upon us mainly on the basis of certain English cases which are addressed to a very different state of the law. The problem before the English Courts in the cases which have been cited before us was whether or not the payment in question was a perquisite of an office or employment. The scheme of the Indian Act is different. Section 4 sets out, in the first place, certain forms of income which are not to be exposed to income tax at all ; and it is in that connexion that Clause (7), Sub-section (3), is enacted. When we come to the subsequent section, we find that these sections beginning with Section 6 deal with incomes under certain heads specified by the statute. Section 6 lays down these heads and the following sections deal with each of those six heads. When we come to Section 10 we find that tax is payable under the head of "business" in respect of the profits or gains of any business carried on by the assessee; and Section 12 which deals with the residuary heading "other sources" is expressed in this way: the tax shall be payable in respect of "income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads)."

5. If, therefore, a payment comes under Clause (7), Sub-section (3), Section 4, it is not covered by Section 12 at all. In my judgment we have to take the words of Clause (7) by themselves. We are not concerned for this purpose with the wording of Section 10. We are vitally concerned with the wording of Clause (7) of the third Sub-section of Section 4. Whether or not an amount is profit or gain of any business is one question; whether it is "" a receipt arising from business" is another question. We are concerned with the latter.

6. Now the English cases go not upon any similar test. They go upon the question whether a certain receipt is a perquisite of an office. If it is not a perquisite of an office or a profit of business or trade, then it is not taxable. Consequently, the class of cases, known as "Easter offering" cases, e.g., *Herbert v. Mequade* [1902] 2 K.B. 631 and *Turner v. Cuxson* [1888] 22 Q.B.D. 150 are not, in the least, in point. In one case, it was held that the person got the money because he was the parson, therefore, it was a perquisite of the office. In the other case, it was held that, although the... curate would not have got the money unless he had been the curate of the parish, still he got it as a testimonial for his

work and not because he was curate. In the same way, in the case of *Cowan v. Seymour* [1920] 1 K.B. 500 the question was whether or not the voluntary payment accrued to the person by reason of his office. That was the case of a person who had acted as the secretary of a company. He was given what was called a testimonial. In view of the fact that it was a testimonial, it was held that it was not a perquisite of the office which had come to an end. Similar considerations were canvassed in the *Cricketer's* case [*Seymour v. Reed* [1927] A.C. 554] and in the *Jockey's* case [*Wing v. O'Connell* [1927] Irish Rep. 84]

7. Now, in the case before us, we are not considering whether Messrs. Turner Morrison and Co. Ltd. received this sum of money as a perquisite of an office. We are enquiring whether they received this sum of money as a receipt arising from business. They are a company that have several--it may be many--managing agencies. This is found as a fact by the Commissioner of income tax. They were given this sum of money because, without notice to them, in the middle of the year, one of their managing agencies was being brought to a close. In these circumstances, it was thought right to give them this money by way of compensation for their sudden dismissal. In my judgment, it is impossible to say that the receipt is not a receipt arising from business and that is the statutory test which in this country has to be applied. It was not contended before the Commissioner that this case, if it did not come u/s 10, would not apart from this exemption clause, be hit by Section 12. We are not concerned, therefore, to find yes or no whether Rowlatt, J.'s view is right or not in the case of *Seymour v. Reed* i.e., whether the payment for the loss of the managing agency would be a profit of the business. If it does not come u/s 10, then it comes u/s 12. And the observation in the *Cricketer's* case that such windfall as was there before the house was not income does not avail in this case. There is no doubt upon the Indian Act that the payment in the present case is income within the meaning of Section 12 unless it is saved by Section 4(3)(7).

8. In these circumstances, it seems to me that the Commissioner of income tax was right in deciding that the exemption relied on was of no use for the assessee and that income tax was rightly assessed.

9. Costs must be paid by the assessee.

Buckland, J.

10. I agree.

Mukerji, J.

11. I agree.