In Re: B.M. Kamdar

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Court : Mumbai

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Judge : Leonard Stone, Kt., C.J. and ;Chagla and ;Kania, JJ.

Appeal No. : Income-tax Reference No. 12 of 1944

Appellant : In Re: B.M. Kamdar

Judgement :

Leonard Stone, Kt., C.J.

1. This is a reference under Section 66(1) of the Indian Income-tax Act, 1922, and comes to us direct from the Commissioner under the option given to the assessee by the 1940 Act. The reference arises out of an assessment to income-tax upon the assessee for the assessment year 1939-40 in respect of the accounting year previous, which in this case is the calendar year 1938.

2. The assessee was assessed to income-tax by an assessment order dated March 23, 1939, in a total sum of Rs. 34,731, made up as the assessment order shows of income from four sources, namely salary (director's remuneration), profession, interest and a one-third share from the estate of a Mr. Kamdar. The item in dispute is Rs. 12,302, which, in the assessment order, is described as : 'Profession-Recoveries from outstandings during calendar year 1938 as per bill book.

3. Before February 15, 1938, the assessee had carried on the business of a furniture dealer under the name of 'Kamdar Karyalaya,' and he also carried on a professional practice as a consulting engineer. On February 15, the assessee sold his furniture business to a limited company which had been formed for the purpose of taking it over. Under the terms of the agreement for sale, the assessee agreed to devote the whole of his time and attention and abilities to the business of the company; and, at any rate, on February 15, 1938, if not before, his practice of a consulting engineer had been wholly discontinued. The exact date of such discontinuance is in some doubt, but in this Court it was agreed by counsel that February 15, 1938, should be taken as the date of discontinuance. The sum of Rs, 12,302 represents the assessee's outstanding professional fees earned from his practice as a consoling engineer previously to January 1, 1938, and paid to or received by the assessee during the calendar year 1938. It follows that, if a certain view of this matter was taken, the sum of Rs. 12,302 would have to be apportioned in order to discover how much of it was in fact received on or before February 15, 1938.

4. The question referred to us is as follows:

Whether in the circumstances of the case, the outstanding professional fees which were realised by the assessee during the year under assessment are taxable as part of his income for that year?

This question is misleading, as the expression 'the year under assessment' is used not in the sense of the assessment year, which was 1939-40, long before which the business had been discontinued and in which no part of Rs. 12,302 was received, but the previous year, that is to say, the accounting year 1938.

5. The industry of counsel, to whose clear and able arguments we are much indebted, has not discovered any decision under the Indian Income-tax Act as to the outstanding fees which come in after the discontinuance of the practice by retirement of a professional man who keeps his books on a cash basis. In spite of Section 25 of the Act, to which I will refer later, it appears to have been assumed by the Income-tax authorities that such fees are liable to be brought to tax in the subsequent year. To quote from the opinion of the Commissioner of Income-tax in

this case : 'a sum which clearly represents income from a profession would escape assessment merely because he has chosen to maintain his accounts on the cash basis.

6. When this matter came before my brother Kania and myself, we felt considerable difficulty in discerning from the cross currents set up by the divers facts of the decided cases in which the nature of income taxable under the Indian Act has been considered, any principle which would cover the important question, which arises for decision on this reference, and accordingly the reference has been reargued before this full bench. It is with regret that I find myself compelled to take a different view of this matter from that taken by my learned brethren, and it is, therefore, not without diffidence that I shall proceed to give my reasons for the conclusion to which I have come, as the result of the arguments which have been addressed to us and an exhaustive examination of the Act itself and of the cases in which the nature of taxable income has been considered. To my mind this complex question admits of a simple answer, namely that in the circumstances of the case the receipt after the discontinuance of the profession of outstanding fees is not income, profits or gains to which the Act applies.

7. It will be convenient, in the first place, to examine and consider the relevant sections of the Act and then to refer to certain reported cases in which the Judicial Committee of the Privy Council has expressed opinions on the structure and scheme of the Indian Act and upon the nature of the income taxable under it. At the outset, however, it should be observed that it is the Indian Act after the 1939 amendments had been introduced with which we have to deal, whereas all the cases, which have come before the Judicial Committee and to which we have been referred, are concerned with the 1922 Act' as amended from time to time, but before the 1939 amendments came into operation.

8. Section 3 provides that where any Act of the Central Legislature enacts that income-tax

shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual,

Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or members of association individually.

'Total income' is defined by Sub-section 2(15) of the Act as follows:

Total income' means total amount of income, profits and gains referred to in Sub-section (1) of Section 4 computed in the manner laid down in this Act.

9. Turning to Sub-section 4(1), it is in these terms:

Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which-

(a) are received or are deemed to be received in British India in such year by or on behalf of such person, or

(b) if such person is resident in British India during such year,-

(i) accrue or arise or are deemed to accrue or arise to him in British India during such year, or

(ii) accrue or arise to him without British India during such year, or

(iii) having accrued or arisen to him without British India before the beginning of such year and after the 1st day of April, 1933, are brought into or received in British India by him during such year, or

(c) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year.

These sub-sections are followed by a number of Provisos and Explanations, which principally concern the position when income arises outside British India. Sub-section (3) exempts from taxation certain classes of income, such as income from charities and agricultural income.

10. Section 4 completes Chapter I, which is intituled ' Charge of Income-tax.'

11. Chapter II is concerned with 'Income-tax authorities.'

12. Section 6 heads Chapter III 'Taxable Income,' and is as follows:

6. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely:

(i) Salaries.

(ii) Interest on securities.

(iii) Income from property.

(iv) Profits and gains of business, profession or vocation.

(v) Income from other sources.

Section 7 deals with 'Salaries'; Section 8 with 'Interest on securities'; Section 9 with 'Income from property'; whilst Sections 10 and 12, with which we are particularly concerned, deal respectively with 'Profits and gains of business, profession or vocation' and 'Income from other sources.' Section 11, which formerly dealt with 'Professional earnings,' has been dropped by the 1939 amendments, which have enlarged the ambit of Section 10 so as to cover 'business, profession or vocation.'

13. The other relevant sections are : Section 13, which makes the method by which accounts are kept of a business, profession or vocation of material importance; Section 24, which provides for the set-off of losses under one head of Section 6 against gains under one of the other heads; Section 25, which is permissive and provides what may be done when a business or profession is discontinued.

14. Section 10 is as follows:

(1) The tax shall be payable by an assessee under the head' Profits and gains of business, profession or vocation' in respect of the profits or gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely:

There follow, set out in numbered sub-paragraphs, a number of items of disbursement, such as rent, repairs, interest on capital borrowed for the purposes of business, premiums on insurance and depreciation, implemented by Provisos and Explanations.

15. Section 12 is as follows:

(1) The tax shall be payable by an assessee under the head ' Income from other sources' in respect of income, profits and gains of every kind which may be included in his total income (if not included under any of the preceding heads).

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of-

This time there follow sub-paragraphs explanatory of the excluded allowances. Section 13 provides:

Income, profits and gains shall be computed, for the purposes of Sections 10 and 12, in accordance with the method of accounting regularly employed by the assessee:

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deducted therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

16. In this case the assessee regularly kept his accounts on a cash basis, and there has been no challenge to the propriety of his methods. Section 24 makes provision for the setting-off of losses sustained under one of the heads of Section 6 against profits made under another head of that section. The section is:

(1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in Section 6, he shall be entitled to have the amount of the loss set oft against his income, profits or gains under any other head in that year:

17. Again, there follow a number of Provisos with regard to the setting-off of losses. Section 25 is as follows:

(2) Where any business, profession or vocation on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

Sub-section (3) deals with the discontinuance of business, profession or vocation which was charged under the provisions of the Indian Income-tax Act, 1918, and it provides that, except in the case of a succession, no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and also provides that the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. No regard has been paid to this section in the assessment of the assessee to tax, no assessment has been made under it for the fraction of the year January 1 to February 15, 1938 (both inclusive). No reliance has been placed upon its operation by the Commissioner of Income-tax. Indeed there is nothing to show whether tax was charged on the profession under the provisions of the Indian Income-tax Act, 1918, or not.

18. Looking at the scheme of the early sections, the salient features of the 1939 Act are, as it seems to me, that under Section 3 tax is to be charged for any particular assessment year in respect of the total income of the previous year, which, by the conjoint effect of Sub-section 2(15) and Section 4, is the total amount of income, profits and gains (including all income, profits and gains from whatever source derived) which are received or are deemed to be received in British India or which accrue or arise or are deemed to accrue or arise in British India in the accounting year computed in the manner laid down in the Act. Three matters relevant to this apparently simple arrangement must be noticed. First, that income is nowhere defined, so that the search for a definition of it, which has agitated economists and lawyers wherever a civilized order of society exists, is presented in all its unsatisfying perplexities by the Indian Act. Secondly, that the manner of computation laid down by the Act forms an integral part of the definition of 'total income.' Computation, it is to be observed, does not form a part of the charging section, but is introduced into the definition of the total income to be brought to tax. Thirdly, that both Sections 3 and 4 are expressly made 'subject to the provisions of this Act.'

19. What is chargeable to tax is the total amount of income, profits and gains circumscribed by three ideas, that is to say, the irrelevance of derivative sources, the connection with India and computation as laid down by the Act.

20. The charge to tax never operates upon a gross amount. The correlation of the three words, income, profits and gains makes this clear, for although income may be either gross or net, both profits and gains presupposed that the expenditure laid out in order to produce them has already been defrayed.

21. It is not, in my opinion, the correct method of approach to say that what is charged to tax by Sections 3 and 4 are gross receipts and that you then distribute those gross receipts to the appropriate heads of income in Section 6 throwing into 'other sources' anything that will not fit the four preceding heads : all this being for the purpose of ascertaining the proper allowances and deductions to be made under each head, so that the truncated total of gross receipts remaining is the taxable balance. The correct method of approach in my judgment is to treat

nothing as being charged to tax until by the process of computation laid down by the Act, the status of income, profits and gains emerges. If this be the correct approach, then what is taxable under the Act is something capable of being processed by the machinery of computation laid down by the Act for inclusion in what the Act describes as the total amount of income, profits and gains.

22. The fees outstanding from time to time of a professional man, who admittedly keeps his books on a cash basis, must, for the purpose of being processed to income, profits and gains, come either under head (iv) 'Profits and gains of business, profession or vocation,' dealt with by Section 10, or under head (v) 'Income from other sources,' dealt with by Section 12. Section 13 is mandatory, income, profits and gains shall be computed, for the purposes of Sections 10 and 12, in accordance with the method of accounting regularly employed by the assessee-in this case the cash basis. The nexus between it and Sub-section 2(15) is not unimportant.

23. Under Section 10 the profits and gains must foe from a business, profession or vocation carried on by the assessee, and from these profits or gains certain stated allowances are to be deducted. Do the words 'carried on by him' mean carried on by the assessee in the assessment year or the accounting year, or do they mean carried on by the assessee at any time? If the latter, it would be difficult to find a terminal point; since even if the profession was in fact terminated, so long as there was a single outstanding fee, the profession would still nationally be 'carried on,' so that in any future assessment or accounting year in which an outstanding fee was received, there would have to be a head of assessment under Section 10 of the Act. If so, the assessee must be entitled to any permissible allowances, deductions and set-offs mentioned in Sub-section 10(2) and Section 24 in order that his total income might be computed under the Act, so that if on the termination of the profession there are outstanding debts of the profession which come within the permitted deductions, they would have to be brought into computation in the year in which they were actually paid, e.g. by Sub-section 10(2)(iii) the amount of interest in respect of capital borrowed for the purposes of the profession, if such capital were not paid off before or upon the determination of the profession, would be a permissible deduction in future years, and if this exceeded the amount of

outstanding fees received in any such future year, it must follow that under Section 24 this loss would be set off against other heads of income as if the profession was still being carried on. To quote again from the Income-tax Officer's opinion:

The assessee was accounting for his income on cash basis. Hence, he must necessarily recover the outstandings till they are exhausted and until these are exhausted the business is deemed to have continued.

There does not appear to me any justification in the Act for artificially continuing a non-existing profession in this way. In my judgment, for a receipt to be assessable to tax under Section 10 it must be a receipt in respect of an existing business, profession or vocation capable of being processed to profits or gains by the method of computation laid down by Section 10. The Act itself has solved the problem of professions which are discontinued by Section 25. Why advantage of that section was not taken in this case by the Income-tax authorities it is difficult to understand except on the ground that the Crown was not satisfied with tax on that portion of the fees received between January 1 and February 15, (both inclusive), which under Section 25 could clearly have been assessed to tax and which were receipts of the profession while the profession was still being carried on.

24. Turning, then to Section 12, are the outstanding fees when received 'income from other sources? ' In order to be so, it would mean that some new source of income, profits or gains sprang up either on January 1 or on February 16, 1938, composed of the fees then outstanding. So far as the fees received on and between January 1 and February 15 are concerned, this clearly is not the case, the profession was then being carried on and these receipts, less the proper allowances, could, and, in my opinion, should have been assessed by the conjoint operation of Sections 10 and 25. On February 15 the profession ceased and according to the assessee's method of accounting there was left over a list of bookdebts owed by debtors who were in arrear in the payment of their fees. In my opinion, having regard to the method of accounting employed by the assessee, these debts when collected are not income from other sources. There is nothing continuous about them and they are incapable of repetition, and the very fact that Section 25 is wholly silent with regard to them, though it deals with the situation in

which they arise, negatives, in my opinion, their assessability to tax.

25. Before referring to the decided cases, some of the changes wrought by the amending Act of 1939 must be noticed. In new Sub-section 2(25) reference to Sub-section 4(1) is introduced in lieu of the Words 'from all sources to which this Act applies' and the important words, 'computed in the manner laid down in this Act,' are substituted for the words 'computed in the manner laid down in Section 16.' The scope of old Section 16 is of very limited operation. In new Section 3, tax is to be charged 'in respect of the total income,' whereas formerly tax was charged ' in respect of all income, profits and gains.' The consequential changes in Section 4 are no less important. The new words, 'Subject to the provisions of this Act,' are substituted for the old words 'Save as hereinafter provided, this Act shall apply.' I have already noticed the amendment to Section 6. The amendment to Section 12 harmonizes with the amendments referred to above. By the new section, tax is payable in respect of 'income, profits and gains of every kind which may be included in his total income,' whereas formerly it was payable in respect of ' income, profits and gains of every kind and from every source to which this Act applies.

26. In my opinion, these amendments are material and must be borne in mind in any consideration of the cases which have been decided under the Act of 1922.

27. The first case is Probhat Chandra Borua v. The King-Emperor . In that case certain receipts were held not to be agricultural income so as to exempt them from taxation under the Act. Lord Russell of Killowen, delivering the judgment of the Board, considered the scheme of the Act and said (p. 238):

It would appear that the purpose of Section 3 is to charge income-tax at the current rate for the time being, and that the purpose of Section 4 is (by Sub-section 1) to confine the tax to income actually or artificially accruing or arising or received in British India, and (by Sub-section 3) to exempt specified classes of income from tax.

Although Chapter I is entitled 'Charge of income-tax', the real charging section would appear to be Section 6, which occurs in Chapter III.

28. Having stated that the income of a zamindar would not be chargeable under the head 'property', and that if chargeable it would be under the head 'other sources,' his Lordship continued (p. 239):

Section 12 deals with that head, and requires close attention. Section 12, Sub-section 1, provides that the tax shall be payable by an assessee under that head : '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).' These words appear to their Lordships clear and emphatic, and expressly framed so as to make the sixth head mentioned in Section 6 describe a true residuary group embracing within it all sources of income, profits and gains provided the Act applies to them, i.e., provided that they accrue or arise or are received in British India or are deemed to accrue or arise or to be received in British India, as provided by Section 4, Sub-section 1, and are not exempted by Virtue of Section 4, Sub-section 3.

Dealing with the incidence of taxation, his Lordship observed (p. 240):

The tax is upon 'income, profits and gains.' It is not a tax on gross receipts. With this fact in view, each section which deals with one of the first five 'heads' specified in Section 6 contains, where proper, specific provisions for the necessary deductions and allowances to be made for the purpose of arriving at the taxable balance. Section 12, which deals with the general residuary group, is necessarily framed in general terms and authorises the allowance of any ' expenditure (not being in the nature of capital expenditure) incurned solely for the purpose of making or earning such income, profits or gains.

29. The next case is Income-tax Commissioner v. Shaw, Wallace & Co. . In that case the assessee-company, which carried on t he business of distributing agents in India for two oil companies, received from each of those companies a solatium on the termination of the inter-company arrangements; and the question was : whether the sums thus paid by the two oil companies were liable to income-tax in the hands of the assessee-company. One of the questions formulated in the reference was (p. 211):

If it could be said to be income, profits or gains within the meaning of the Act, was it liable to be assessed under either of the Sections 10 and 12 of the Act, inasmuch as (1) it was not the profits or gains of any business carried on by the assessees within the meaning of Section 10 of the Act, nor (2) income, profits or gains from other sources within the meaning of Section 12 of the Act?

In delivering the judgment of the Board, Sir George Lowndes said (p. 212):

The object of the Indian Act is to tax 'income,' a term which it does not define. It is expanded, no doubt, into 'income, profits and gains,' but the expansion is more a matter of words than of substance. Income, their Lordships think, in this Act connotes a periodical monetary return ' coming in' with some sort of regularity, or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something which is often loosely spoken of as ' capital.' But capital, though possibly the source in the case of income from securities, is in most cases hardly more than an element in the process of production.

Having referred to and quoted Section 6 of the Act, his Lordship continued (p. 213):

The claim of the taxing authorities is that the sum in question is chargeable under head (iv) business. By Section 2, Sub-section 4, business 'includes any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture.' The words used are no doubt wide, but underlying each of them is the fundamental idea of the continuous exercise of an activity. Under Section 10 the tax is to be payable by an assessee under the head business 'in respect of the profits or gains of any business carried on by him. Again, their Lordships think, the same central idea : the words italicised are an essential constituent of that which is to produce the taxable income : it is to be the profit earned by a process of production. And this is borne out by the. provision for allowances which follows. They include rent paid for the premises where the

business is carried on; the cost of current repairs in respect of such premises; interest on money borrowed for carrying on the business, etc.

And later his Lordship observed (p. 215):

Their Lordships will only add that the reasoning of this judgment would apply equally if the appellant based his claim on head (vi) 'other sources' and the corresponding provisions of Section 12.

30. There followed in 1935 the case of Commissioner of Income-tax, Madras v. Mathukaruppan Chettiar (1935) 37. In that case the asessee was the partner in a money lending business, and on dissolution his share of the profits was paid to him in Colombo outside British India. Interest on capital amounting to Rs. 38,305 together with a greater part of the capital sum due was however paid to him in Madras; and the question arose : Whether this sum thus received in British India as interest on capital was a capital receipt or income assessable to tax. Lord Atkin, delivering the judgment of the Judicial Committee, said (p. 816):

The account taken on dissolution ascertains what is due to the partners for profits, and what is due for capital. It can hardly be suggested that the partners share according to their capital proportions in the whole assets of the partnership. This sum due for undrawn profits was and remains a sum due by the partners to each partner : and necessarily ranks first before the slums due for capital can be distributed. In other words on dissolution of a partnership an outgoing partner has the right to receive not as in the case of a shareholder in winding up a company only a share of the assets : but to receive payment of his profits, profits which were his before dissolution and do not cease to be his on dissolution. In their Lordships' opinion, the respondent received this payment in India as a payment of profits and was properly assessed.

Later in the judgment their Lordships point out that their decision did not cover cases where undrawn profits had, with the consent of all parties, been invested in the business so as to increase the capital account; nor had they had to consider any special provisions of the partnership articles which might affect the matter.

31. The next case is Income-tax Commissioner, Bombay Presidency and Aden v. Chunilal B. Mehta of Bombay (1938) L.R. 65 IndAp 332 : 40 Bom. L.R. 916. In that case the assessee, who carried on business as a broker in Bombay, entered into certain future delivery contracts for the purchase and sale of commodities in various foreign markets from parties outside British India. No delivery was either given or taken, and the profits of such contracts were not received in British India. Sir George Rankin delivering the judgment of the Board said (pp. 347-348):

Their Lordships do not consider that the Indian Income-tax Act is patient of this construction. They will first deal with the argument, based on Sections 4 and 6, that the respondent's business is the source of the profits, and that the sections require that the situation of the source should determine the place where the profits arise. This, in their Lordships' view, is a straining of the sections. The effect of Section 6 is to classify profits and gains under different heads for the purpose of providing for each appropriate rules for computing the amount; its language is 'shall be chargeable...in the manner hereinafter appearing'. One of the heads is 'Business', which as a head of income stands alongside Salaries, Interest on securities, Professional earnings, and other sources. True the classification of income is according to the character of the source, and it has been held that ' income, profits and gains' as distinct from casual receipts and from other forms of receipt or enrichment, involve the idea of a periodical money return from a definite source. Income-tax Commissioner v. Shaw, Wallace & Co. . It may further be said that Sub-section 1 of Section 4 having used the word of notion 'source' the words which follow 'accruing or arising' are language in consonance therewith. But the list of ' heads' in Section 6 is a list of sources not in the sense of attributing the income to one property rather than another, one business rather than another, but only in the sense of attributing it to property as distinct from employment, or business as distinct from investment. Sections 4 and 6, taken together, say of business profits that they are taxable on certain conditions stated in Section 4 and in a manner to be laid down in a later section. When one comes to that section (Section 10) and not before, a further idea is introduced., 'The tax shall be payable by an assessee under the head ' Business' in respect of the profits or gains of any business carried on by him.' What is to be learnt from an examination of the language of Sub-section 1 of Section 4-' income, profits or gains as, described or

comprised in Section 6, from whatever source derived'-is that Section 6 is intended as describing different kinds of profit, and that if the condition ' accruing, or arising or received in British India', etc., is satisfied by the profits, they will not escape by reason of any quality or circumstance of the source. There may be room for the view that, having regard to the sixth head in Section 6, the words ' from whatever source derived' are surplusage; even so, they are not there as a guide to the place where profits accrue or arise, but to make clear that for another purpose source is irrelevant. There is every presumption that in such a section in an Indian Act the legislature intends the exact language of the section to be the test of liability. To answer the question, ' Do these profits accrue or arise in British India?' by asking another, What in the sense of Section 6 is the source of these profits, and is it situate in British India?' is to divert attention from that to which the statute points and to devote attention to what it discards.

32. Though the last two cases to which I desire to refer are both reported in the 1943 volume of the Indian Tax Reports, they both deal with the position before the 1939 Amending Act.

33. The first of those cases is Indian Iron & Steel Co., Ltd. v. Commr. of Income-Tax, Bengal (1943) 11 I.T.R. 328 : 46 Bom. L.R. 235. The assessee-company agreed to acquire and take over the whole of the property of another company as existing on the date of transfer, which was December 2, 1936, and the assessee-company continued the business which it purchased in conjunction with its own existing business. Both companies had to their respective credit large sums of unabsorbed depreciation allowance which, under the Act, they could set off against future profits. December 2, 1936, came within the accounting period, which was from April 1, 1936, to March 31 following, and it was held that the purchaser-company was not entitled to have the depreciation allowance of the vendor-company computed on the original cost of the assets of the vendor-company for the whole of the previous year but only up to the date of succession. Lord Porter delivering the judgment of the Board said (p. 336):

Indian income-tax is assessed and paid in the next succeeding year upon the results of the year before. If then Company A sold its business to Company B in

the first of the two years, apart from the provisions of Section 26(2), the former company could not be assessed and would not be liable for any profits it then made, because it would not be carrying on the business in the next year for which in the normal course the assessment would be made and in respect of which tax would be due, nor would Company B be liable except for any period during which it had itself owned the business and made profits, because the tax under Section 10(1) is only 'payable by an asstesee under the head 'business' in respect of the profits or gains of any business carried on by him.

34. The remaining case is : Kamakshya N. Singh v. Commr. of Income-tax (1943) 47 Bom. L.R. 545. That case concerned the assessability to tax of certain royalties, and delivering the judgment of the Board Lord Wright, having dealt with the nature of the mining lease and the rights of the lessee thereunder and having referred, without approval, to the pictorial simile of ' income' given in the Shaw, Wallace case, stated (p. 552):

There is, therefore, in their Lordships' judgment, no real justification for treating the royalties as capital payments. They think that they are 'income' within the meaning of the Act, whatever may be the exact definition of that word in the Act. Its applicability may, in particular cases, differ because the circumstances, though similar in some respects, may be different in others. Thus the profit realised on a sale of shares may be capital if the seller is an ordinary investor changing his securities, but in some instances at any rate it may be income if the seller of the shares is an investment or an insurance company. Income is not necessarily the recurrent return from a definite source, though it is generally of that character. Income again may consist of a series of separate receipts, as it generally does in the case of professional earnings. The multiplicity of forms which 'income' may assume is beyond enumeration. Generally, however, the mere fact that the income flows from some capital assets, of which the simplest illustration is the purchase of an annuity for a lump sum, does not prevent it from being income, though in some analogous cases the true view may be that the payments, though spread over a period, are not income, but instalments payable at specified future dates of a purchase price.

35. The arguments and submissions of counsel have in large measure ranged round these cases in endeavours to show that one or some of them are decisive of the case before us. But when all has been said, the basic question is, whether the receipt of these outstanding fees after the profession has been discontinued are taxable income. It seems to me that the view I take is consistent with these authorities. In the language used by Lord Russell of Killowen in delivering the judgment in Probhat Chandra Barua v. The King-Emperor (supra), 'it is not a tax on gross receipts', and the sum of Rs. 12,302 in the case before us is unquestionably made up of gross receipts; it is not a 'taxable balance.'

36. Even if the pictorial simile to be found in the judgment in the case of Income-tax Commissioner v. Shaw, Wallace & Co. (supra) is to be discarded, the Rs. 12,302 can be tested in the light of the observations in that case. It does not comply with ' the fundamental idea of the continuous exercise of an activity;' nor can any part of the Rs. 12,302 come within ' the same central idea 'being' in respect of the profits or gains of any business carried on by him,' except such part of the Rs. 12,302 as was received on or before February 15, 1938.

37. The case of Commissioner of Income-tax, Madras v. Muthukaruppan (supra) is, in my opinion, not in point, because in that case what was brought into British India were profits, profits existing and which were the assessee's before the dissolution of the partnership firm, so that they in fact represented a taxable balance and not a gross receipt.

38. The case of Commr. of Income-tax, Bombay v. Chunilal B. Mehta (supra) dealt with the geographical quality of the source and not with the nature or composition of the receipt, which, apart from the question of source, was admittedly a profit and a profit from the continuous exercise of an activity.

39. The case of Kamakshya Narain Singh v. Commissioner of Income-tax (supra) is strongly relied upon by Mr. Setalvad in his argument on behalf of the Crown, but the nature of the receipts in that case, royalties derived by virtue of a mining lease, and the receipt of outstanding fees in the case before us, are fundamentally different. The passage in the judgment delivered by Lord Wright that : 'Income is not necessarily the recurrent return from a definite source, though it is generally of

that character,' shows that there may be exceptions to any comprehensive definition of 'taxable income' which may be attempted. Indeed, that case makes it clear that what may be taxable income when received by one man would be a capital receipt in the hands of another. It is the circumstances of each case which must be examined in the light of the general scheme and the specific provisions of the Indian Income-tax Act.

40. Various cases decided in the High Courts in India were referred to in the arguments before us. South Indian Industrials, Ltd. Madras v. Commissioner of Income-tax, Madras I.L.R (1934) Mad. 433 and B.C.G.A. (Punjab) Ltd. v. Com, of Income-tax, Punjab , are in favour of the view which I take of this problem. On the other hand, a full bench decision in Calcutta, Behari Lal Mullick, In re I.L.R (1927) Cal. 630., is to the contrary. Having regard to the decisions in the Privy Council already referred to, I do not think it would be profitable to enter into any exhaustive discussion on the Indian decisions. In my judgment the answer to the question referred to us in this case is that that portion of these outstanding fees which was received from January 1 to February 15 (both inclusive) ought to have been assessed under Section 25 of the Act, and, had they been they would have been liable to income-tax and that the balance being that portion received on and from February 16 till the end of the calendar year is not assessable to income-tax. In deference to the able arguments that have been addressed to us, there are two further aspects of the matter which I desire to mention. Although in my judgment, the primary answer to the question in this case is, that outstanding fees which come in after the determination of the profession which earned them are not receipts capable of computation as income, profits or gains within the meaning of the Act, the question can also be answered by saying that having regard to the terms of Section 13 tax has notionally already been paid in respect of the outstanding fees during the continuance of the business.

41. The English cases of Bennett v. Ogston H.M. Inspector of Taxes (1930) 15 T.C. 374 and Hillerns and Fowler v. Murray H.M. Inspector of Taxes (1932) 17 T.C. 77 were relied upon by Sir Jam-shedji Kanga. They must be approached with the caution enjoined by the Judicial Committee in numerous cases to the effect that the Indian Act and the English statutes are not in pari materia. However, as

stated by Lord Greer in the case of Hillerns and Fowler v. Murray H.M. Inspector of Taxes(supra), the reason why the outstanding fees of a professional man, which come in after the discontinuance of the profession, are not taxable in England is 'by reason of the technical application of the provision of the Taxing Acts.' Although the scheme of the English and the Indian Acts is very different, the technical satisfaction of tax antecedently, in my opinion, is equally applicable.

42. Lastly, the question of the relevant year was adumbrated, that is to say, whether the year, to which the termination of the profession is relevant, is the accounting year or the assessment year. In Indian Iron & Steel Co., Ltd. v. Commr. of Income-Tax, Bengal (1943) 11 I.T.R. 328 : 46 Bom. L.R. 235., Lord Porter in delivering the judgment of the Board states that in the case of a succession to a business (p. 336):

if...Company A sold its business to Company B in the first of the two years, apart from the provisions of Section 26(2), the former company could not be assessed and would not be liable for any profits it then made, because it would not be carrying on the business in the next year for which in the normal course the assessment would be made and in respect of which, tax would be due.

43. Except, therefore, for the special provisions found in Sub-section 26(2), which deals with cases of succession, the relevant year is the assessment year and not the accounting year. In my opinion, in the case of the discontinuance of a business, profession or vocation the same result would follow but for the provisions of Section 25.

44. Accordingly, for the reasons stated above, it is my opinion that the question referred to us ought to be answered in the negative.

Kania, J.

45. I had an opportunity of reading the judgment just delivered by the learned Chief Justice. After giving it anxious consideration I regret I am unable to agree with his view.

46. This is a reference made under Section 66(2) of the Indian Income-tax, 1922, by the Commissioner. The relevant facts are that the assessee was the sole proprietor of a business run in the name of 'Kamdar Karyalaya' and was also carrying on the profession of a consulting civil engineer in Bombay. The business of 'Kamdar Karyalaya' was converted into a limited company, styled Kamdar, Ltd., on. February 15, 1938, and the assessee was appointed the 'managing member' of the company. The business of 'Kamdar Karyalaya' was transferred to the limited company. The question before us does not relate to that part of the transaction.

47. After February 15, 1938, the assessee did not carry on the profession of a consulting civil engineer as before. The accounting year of the assessee was 1938. In respect of his professional earnings he kept accounts on the basis of receipts and his income of the previous years was computed on that footing. In respect of his income in 1938, the assessee contended that as he had ceased to carry on the profession of a consulting civil engineer in 1938 he was not liable to be assessed in respect of his fees for that year. In the alternative, it was urged that, in any event, after February 15, 1938, such outstanding (professional) fees as were received by him were not income, because he had ceased to carry on the profession of a consulting civil engineer and the recoveries were debts. It is common ground that these receipts were fees to which the assessee became entitled because of the practice of profession before February 15, 1938. It was contended on his behalf that where the 'carrying on of profession' ceased, the source had come to an end and therefore there could be no income in respect of the profession thereafter. In support of this contention counsel relied on the following observations of Rowlatt J. in Benett v. Ogston H.M. Inspector of Taxes (1930) 15 T.C. 374:

When a trader or a follower of a profession or vocation dies or goes out of business. and there remain to be collected sums owing for goods supplied during the existence of the business or for services rendered by the professional man during the course of his life or his business, there is no question of assessing those receipts to income-tax; they are the receipts of the business while it lasted, they are arrears of that business, they represent money which was earned during the life of the business and are taken to be covered by the assessment made

during the life of the business, whether that assessment was made on the basis of bookings or on the basis of receipts.

The same learned Judge in Hillerns v. Fowler v. Murray H.M. Inspector of Taxes (1932) 17 T.C. 77 again observed as follows (p. 81):

Under those circumstances, the question is whether, during this year of assessment ending April, 1937, they were trading. If they were not trading they could not be assessed any more than a retired professional man can be assessed if after he retires he receives fees from clients or patients according to what his profession is-and, if you like, also pays arrears of rent for the premises in which he formerly carried on his business.

48. Counsel for the assessee very strongly relied on Income-Tax Commissioner v. Shaw, Wallace & Co. . In that case the respondent company carried on business at Calcutta as merchants and agents of various companies and had branch offices in different parts of India. For a number of years prior to 1928 they acted as distributing agents in India of the Burma Oil Co., Ld., and the Anglo-Persian Oil Co., Ld., but had no formal agreements with either company. In or about 1927 the two companies joined and decided to make other arrangements for distribution of their products. The respondents' agency with the Burma Oil Co. was accordingly terminated on December 31, 1927, and that of the Anglo-Persian Co. on June 30, 1928. Some time in the first half of 1928 the Burma Oil Co. paid to the respondents Rs. 12,00,000 'as full compensation for cessation of the agency' and in August of the same year the Anglo-Persian Oil Co. paid to them a sum of Rs. 3,25,000 as 'compensation for the loss of your office as agents of the company,' These expressions were accepted as correctly describing the nature of the transactions. On behalf of the Commissioner it was sought to be argued that these payments were income in 1928 and liable to be taxed. The contention was negatived by the High Court at Calcutta and also by the Privy Council. Sir George Lowndes in his judgment observed as follows (pp. 212-214):

The object of the Indian Act is to tax 'income', a term which it does not define. It is expanded, no doubt, into 'income profits and gain,' but the expansion is more a matter of words than of substance. Income, their Lordships think, in this Act

connotes a periodical monetary return 'coming in' with some sort of regularity, or expected regularity, from definite sources. The source is not necessraily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to the fruit of a tree, or the crop of a field....

The claim of the taxing authorities is that the sum in question is chargeable under head (iv) business. By Section 2, Sub-section 4, business 'includes any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture.' The words used are no doubt wide, but underlying each of them is the fundamental idea of the continuous exercise of an activity. Under Section 10, the tax is to be payable by an assessee under the head business ' in respect of the profits or gains of any business carried on by him.' Again, their Lordships think, the same central idea : the words italicised are an essential constituent of that which is to produce the taxable income : it is to be the profit earned by a process of production. And this is borne out by the provision for allowances which follows..,.

Following the line of reasoning above indicated, the sums which the appellant seeks to charge can, in their Lordships' opinion, only be taxable if they are the produce, or the result, of carrying on the agencies of the oil companies in the year in which they were received by the respondents. But when once it is admitted that they were sums received, not for carrying on this business, but as some sort of solatium for its compulsory cessation, the answer seems fairly plain.

Towards the close of the judgment it was observed as follows (p. 215):

Their Lordships will only add that the reasoning of this judgment would apply equally if the appellant based his claim on head (vi) other sources and the corresponding provisions of Section 12.

49. Relying on these observations it was argued that in order to constitute 'income' the sum must flow or grow out of a source in existence in the accounting year. In this connection the provisions of Section 24 of the Act were also relied upon. It

was pointed out that unless the business was carried on in the accounting year, the loss of the previous year, which was carried over and permitted to be set off, could not be set off. Section 24 permitted such set off only when the same business was continued. It was urged that while Sections 3 and 4 were charging sections, Chapter III commencing with Section 6 dealt with 'taxable income.' Under Section 6 it was provided that income shall be shown under five heads and the fourth head was 'profits and gains of business, profession or vocation.' Income under that head was dealt with in Section 10. That runs as follows:

The tax shall be payable by an assessee under the head 'Profits and gains of business, profession or vocation' in respect of profit or gains of any business, profession or vocation carried on by him.

50. It was urged that the very idea of income postulates the existence of source in the year in which it is taxed. Unless the source existed it could not be stated that it was income of the business or profession carried on by the assessee. Contending that the allowances provided by Section 10 were all in respect of a source which existed in the accounting year, it was argued that if no machinery was provided for allowances to be given on the footing of receipts, it was a strong argument for holding that the amount received after a source had ceased to produce further income was not taxable.

51. On the construction of the Indian Income-tax Act it was contended that unless the income fell under any of the heads mentioned in Sections 6 to 12 it was not taxable income. It was argued that Section 6 and not Section 4 was the charging section and the heading of Chapter III and the words of Section 6 were relied upon in this connection. Counsel also relied on Probhat Chandra Barua v. The King-Emperor , where at p. 238 it was observed:

Although Chapter I is entitled 'Charge of Income-tax' the real charging section would appear to be Section 6, which occurs in Chapter III.

It was strenuously urged that the governing section was Section 6 read with Section 10 and not Section 4. It was contended that the scheme of the Indian Act was to tax all income on the accrual basis, and in respect of income from business

and other sources although the tax was on that basis, for computation the Act had permitted different methods under Section 13. That, however, was only for computation. The result was that once the income of the 'previous year ' was taxed and the source ceased at the end of the year, there remained nothing to tax in the next year when the source did not exist, In respect of Section 4(1)(a) it was contended that the same applied to receipts by nonresidents only and not to all persons. All were taxed alike on accrual basis as under the English Income-tax Act of 1918.

52. Against this it was contended on behalf of the Commissioner that the English law was different in material respects from the Indian Income-tax Act and observations found in the English cases should not be considered relevant. It was urged that Section 4 was the charging section and the only relevant question was whether the amount could be included in the expression 'total income' under that section. Once an amount was classified as 'income', it did not alter its character because it was received later. As regards the allowance and set-off permitted under Sections 10 and 24 respectively it was argued that the same were permitted as provided in those sections, and Section 10(2)(ii) was wide enough to cover expenditure laid out for business or profession even though it had ceased to be carried on in the accounting year.

53. Our attention has not been drawn to any decision on the construction off Section 4 after its amendment in 1939. Therefore it is desirable first to look at the provisions of the Income-tax Act in force in the assessment year. It is common ground that the Act as amended in 1939 is applicable to the case before us. In order to appreciate the rival contentions of the parties it is necessary to notice the relevant provisions of the Act of 1922 and consider the same with the amended provisions of the Act of 1939. This is material because several decisions of the Privy Council which have been relied on were pronounced on the wording of the sections of the Act of 1922. The Act of 1922 was an Act to consolidate and amend the law relating to income-tax and super-tax. In Section 2(15) the expression 'total income' was denned as follows : ''Total income' means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in Section 16.' Section 3 provided that the rate applicable to the

total income of the assessee would be the rate prescribed in the Act of the Central Legislature from time to time. Section 4, Sub-sections. (1) and (2), were in these terms:

4. (1) Save as hereinafter provided, this Act shall apply to all income, profits or gains as described or comprised in Section 6, from whatever source derived, accruing, or arising, or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

(2) Income, profits and gains accruing or arising without British India to a person resident in British India shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be income, profits and gains of the year in which they are so received or brought notwithstanding the fact that they did not so accrue or arise in that year.

54. In the remaining portion of Section 4 provision was made for exemption from tax of certain kinds of income, e.g. agricultural income, income arising or accruing in a State of India, charitable income, income of local authorities and several others. Chapter III was headed ' Taxable Income' and Section 6 was in these terms:

6. Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to income-tax in the manner hereinafter appearing, namely:

(i) Salaries,

(ii) Interest on securities,

(iii) Property,

(iv) Business,

(v) Professional earnings,

(vi) Other sources.

Section 10, Sub-section (1), provided as follows:

Tax shall be payable by an assessee under the head 'Business' in respect of profits and gains of any business carried on by him.

Sub-section (2) provided : 'Such profits and gains shall be computed after making the following allowances namely :'.... Section 11, Sub-section (1), provided as follows:

Tax shall be payable by an assessee under the head 'Professional earnings' in respect of the profits or gains of any profession or vocation followed by him.

Sub-section (2) provided:

Such profits or gains shall be computed after making the following allowances), namely:

(i) any expenditure not being in the nature of capital expenditure incurred1 solely for the purposes of such profession or vocation, and not being personal expenses of the assessee....

Section 12, Sub-section (1), provided as follows:

Tax shall be payable by the assessee under the head 'Other sources' 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).

Sub-section (2) provided:

Such income, profits and gains shall be computed after making allowances for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee.

The relevant part of Section 13 was: Income, profits and gains shall be computed for the purpose of Sections 10, 11 and 12 in accordance with the method of accounting regularly employed by the assessee. Section 16 dealt with certain

general exceptions which are not material. The rest of the sections are not material to the present discussion.

55. In the amended Act of 1939 'Total income' is defined in Section 2(15) in these terms:

Total income' means total amount of income, profits and gains referred to in Sub-section (1) of Section 4 computed in the manner laid down in this Act.' For the present discussion there was no material change in Section 3. Section 4 was recast and the material portions run as follows:

4. (1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which-

(a) are received or deemed to be received in British India in such year by or on behalf of such person, or

(b) if such person is resident in British India during such year,-

(i) accrue or arise or are deemed to accrue or arise to him; in British India during such year, or

(ii) accrue or arise to him without British India during such year, or

(iii) having accrued or arisen to him without British India before the beginning of such year and after the 1st day of April, 1933, are brought into or received in British India by him during such year, or

(c) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year:

Then follow various provisions for exemptions of different kinds of income. Section 6 of the amended Act is in the same terms as before except that the fourth head is 'profits and gains of business, profession or vocation' all put together and head 5 is omitted. Section 10 was also correspondingly amended and runs as follows:

10. (1) The tax shall be payable by an assessee under the head 'profits and gains of business, profession or vocation' in respect of the profit or gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allowances', namely:

* * *(xii) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation;

56. Section 11 is deleted by the Act of 19391. Section 12 remains unchanged. Section 13 remains as before, after omitting all reference to Section 11.

57. The whole contention of the assessee is based on the argument that as the source of income, viz. the practice of profession had ceased in the year 1938, the receipts after February 15 were not income and not liable to tax. This argument cannot be accepted because it cannot be stated that throughout that year the source was not in existence. It is admitted that the assessee ceased to act as a consulting architect from February 15, 1938. Therefore, the utmost which could be urged is that the source ceased to exist on February 15, 1938.

58. The question then arises if in respect of the fees earned for work done and completed in 1937 and up to February 15, 1938, there is a difference, if the receipt was on or before February 14 or after February 16, The argument urged by the assesaee would make a difference in the amount liable to tax, according to the dates of receipt in the accounting year.

59. The scheme of the amended Act of 1939 appears to be this : Chapter I, in which Sections 3 and 4 are found, is headed, 'Charge of income-tax.' As the words ' total income' on which the charge has to be made occur in Section 3, it is necessary first to find out what that expression means under the Act. The second question is whether it is assessable in the year in question, because the law considers it the assessee's income of the previous year. The definition of total income found in Section 2(15) shows that in respect of the amount to be included

in the expression two things are essential : (1) The income, profits and gains should be referred to in Section 4, Sub-section (2); and (2) it should be computed in the manner laid down in the Act. This is an artificial definition for the purpose of the Act. The main body of Sub-section (2) of Section 4 provides that the total income of any previous year 'includes' all income, profits and gains from whatever source derived. Having ascertained that it is such income, and the receipt is not of any other class, the next thing is to turn to Clauses (a), (b) and (c) of the sub-section. The Clauses show, (a) that it should be received or deemed to be received in British India in such year, or (b) if such person is resident in British India, it accrues or arises or is deemed to accrue or arise to him under Clauses (i), (ii) and (iii) in such year, or (c) if such person is not resident, it has accrued or arisen to him in British India during such year. It cannot be disputed that the words used in Section 4(1)(a) relate to the first receipt after the accrual of income. Once it is received by the party entitled to it, in respect of any subsequent dealing with the said amount, it cannot be said to be 'received' as income on that occasion. Section 4(1)(b) is not limited only to-income accrued to the person in the previous year. Clause (ii) covers income received in foreign country between April 1, 1934, and the beginning of the previous year, but brought into British India in the previous year. Moreover, the words in the main body of the section do not refer to any period during which the income, profits or gains have been derived. There appears no justification for reading 'in the previous year' in the main body of the section. The limitation of time is found in appropriate words in each of the clauses. According to Section 4 therefore two questions arise : (1) whether the amount in question is income, profits and gains, from whatever sources derived; and (2) whether such income falls within the words found in Sub-section (a), (b) and (c). If the answer to these questions is in the affirmative, the next process is to ascertain if such income is excluded under Section 4(3) from tax. This is material because the heading of this section is 'Applicability of the Act'. Section 4 itself excludes certain income, like agricultural income or income of charitable trusts from taxation. If it was so excluded, the same ceased to be income for the Act, and no computation is necessary to be made. If the amount passes these tests, it becomes income referred to in Section 4(1).

60. According to Section 2(15), one has next to compute the income in the manner laid down in other parts of the Act. Section 6 is in Chapter III which is headed 'Taxable Income'. That section enacts that the following heads of income, profits and gains shall be chargeable to tax in the manner thereafter appearing. It is clear, therefore, that Section 6 does not attempt to define income or prescribe limitations on income. It only sets out the heads under which income, which has been referred to in Section 4(1), is chargeable. The heads which are particularly dealt with in Sections 7, 8, 9, 10 and 12 do not also attempt to define the conditions under which the income is charged. They prescribe the manner in which the charge, under each head, has to be made. That appears to ma to be the scheme, because in respect of each head a different method of computation in respect of allowances is prescribed. If the Income-tax Act contained only the provisions found in Sections 2(25), (3) and (4), the gross income would be liable to tax, because there would be no provision for any deductions for expenses incurred in order to earn the income. Bearing that in mind the wording of Sections 6 and 12 should be particularly noticed. Having arrived at the total income liable to be taxed under Section 4 the scheme of the Act is not to tax such gross income, but to tax what is legitimately considered his income, after allowing for expenses incurred to earn the gross income. Therefore, the total of the gross receipts is not made taxable as one item. Certain heads, covering particular sources, are specified in Section 6 and the provision is that 'the heads' mentioned therein 'shall be chargeable to income-tax in the manner' thereafter appearing. The section begins with the words 'Save as otherwise provided by this Act' so as not to exclude the operation of any other section permitting a deduction. The result is that Section 6 specifies five heads and provides that under those heads income shall be chargeable in the manner appearing thereafter. The last head is necessarily made a wide residuary head so as to cover and include everything which had not fallen under any of the other heads but was included in the expression ' total income''. Because of the generality of that head the deductions permissible under Section 12 are necessarily generally worded, so as to achieve the result of finding out the net income of the assessee under that head. In my opinion, Sections 6 to 13 are thus not the charging sections but are inserted in the Act for computation of the net income of the assessee. This construction is in accord with the view that under the

Act income, and not several incomes, is taxed. Indeed this is the view taken by Lord Russell in Probhat Chandra. Barua v. The King-Emperor, where at p. 240 he stated that the scheme of the Act is not to tax the gross receipts and the different heads specified in Section 6 are for the purpose of arriving at the taxable balance after the necessary deductions and allowances are made from gross receipts. In Income-tax Commissioner, Bombay Presidency and Aden V. Chunilal B. Mehta of Bombay (1935) L.R. 65 IndAp 332 : 40 Bom. L.R. 916 Sir George Rankin stated that the effect of Section 6 was to classify the profits and gains under different heads for the purpose of providing appropriate rules for computing the amount of tax. He further stated (even when there was an express reference in Section 4(1) to Section 6 in the Act before its amendment in 1939) that Section 6 is intended as describing different kinds of profit and that if the condition 'accruing, arising or received in British India, etc.' is satisfied by the profits, they will not escape the tax by reason of any quality or circumstance of the source.

61. Again Sections 7 to 12 divide themselves into two parts. Sections 7, 8 and 9 provide for charging tax, irrespective of the manner in which the assessee keeps his books. Salaries have to be charged as earned, whether the same are received or not by the assessee in the accounting year. Interest on securities under Section 8 is to be charged to tax if it is receivable by the assessee, i.e. irrespective of the| question whether it is received or not. Under Section 9 the income from property is charged on the bona fide annual letting value of the property of which the assessee is the owner, irrespective of the question whether such value as computed by Section 9(2) is received or not. This must be computed subject to the limitations and provisos found in that section. The important fact to remember is that the method of accounting adopted by the assessee is immaterial for these sections. Sections 10 and 12 stand on a different footing. In addition to the manner in which, the income is to be computed and the deductions allowed under each of those sections, Section 13 provides that the computation shall be in accordance with the method of accounting regularly employed by the assessee, unless the income-tax officer in any individual case finds that the method so adopted does not disclose the true income of the assessee. Except for that contingency Section 13 requires the department to compute the income according to the method of accounting regularly adopted by the assessee.

62. The Income-tax Act has never attempted to define the word 'income'. The result is that at different times Judges have described the word in different language. Apart from the definition of 'income', the scheme of the Act therefore is clear. The arguments based on deductions and set off found in Section 24 do not for this purpose affect the material question. Once the income is found to be referred to in Section 4(1), and is computed in the manner laid down in the Act, the same is taxable under Section 3. The amendments made by the omission of Section 11 should be particularly noticed. In the body of Section 10 the words 'Profession or vocation' are added while in Sub-section (2), where deductions are provided, Clause (xii)-which was the only clause for deductions under old Section 11-is bodily included, without any change. The result is that a general head (xii) of allowances in respect of business, which did not exist before, is now included in Section 10.

63. The contention that Section 10 is an independent section or that it controls in any way the income referred to in Section 4, Sub-section (1), is, in my opinion, unsound. I concede that the two sections have to be read together, but the process is to approach Section 4(1) first, and, thereafter, for the purpose of computation, (as provided in the definition in Section 2(15)), the other sections of the Act have to be referred to. If the department seeks to bring a portion of income (as referred to in Section 4(1)) to charge under the head 'Business, etc.', the same should be computed according to the rules found in Section 10 read along with Section 13. The amount of the total income referred to in Section 4(1) having been first ascertained, the department has to allocate it under the different heads mentioned in Section 6, and if it does not fall under any of the specific heads 1 to 4, it must go under the general head 'Other Sources', because the scheme clearly is that all income referred to in Section 4(1) must come for charge under one or the other of the heads mentioned in Section 6 and dealt with in Sections 7 to 12.

64. The Judicial Committee of the Privy Council had occasion to examine the scheme of the Indian Income-tax Act of 1922, and consider the meaning of the word 'income' before the Act was amended in 1939. I shall therefore next consider those decisions, only with a view to ascertain their Lordships' views about the scheme of the Act. As the word 'income' is not defined in the amending Act also,

those observations still hold good. In Probhat Chandra Barua v. The King-Emperor the question arose about the assessment to tax the income of a zamindari. In the course of its judgment the Board considered the scheme of the Act of 1922 and noticed that it was an Act to consolidate and amend the law relating to tax. Sections 3 and 4 in Chapter I which was headed 'Charge to Income-tax' were considered and it was observed 'although Chapter I is entitled 'Charge to Income-Tax', the real charging section would appear to be Section 6, which occurs in Chapter III which was intituled 'Taxable Income', and was composed of Sections 6 and 7 inclusive. The Board next considered the six sections following Section 6 and pointed out that they dealt with greater particularity the items in respect of which the tax was payable by the assessee under the particular head, and those sections gave details of allowances and exemptions with regard to different heads. It next considered that income of zamindari would not be chargeable under the head 'Property' because that head was confined to the annual letting value of buildings or lands appertaining thereto. It therefore held that Section 12 covered the case. The words of Section 12 are in respect of income, profits and gains of every kind and from every source to which this Act applies, if not included in any of the preceding heads. Their Lordships observed as follows (p. 239):.These words appear to their Lordships clear and emphatic and expressly framed so as to make the sixth head mentioned in Section 6 describe a true residuary group embracing within it all sources of income, profits and gains provided the Act applies to them, i.e. provided that they accrue or arise or are received in British India or are deemed to accrue or arise or to be received in British India, as provided by Section 4, Sub-section 1, and are not exempted by virtue of Section 4, Sub-section 3.

According to these observations it is therefore clear that all income which was covered by Section 4(1), and was not exempted by virtue of Section 4(3), was to be charged under one or the other of the heads separately mentioned in Section 6; and if it was found not to fall within the words of a particular head, it was embraced by the residuary group, viz. the last head, 'Other Sources.' The observation, that although Chapter I is intituled 'Charge to Income-tax' the real charging section would appear to be Section 6 which occurred in Chapter III, in my opinion, was due to the express reference to Section 6 in Section 4(1) of the Act of 1922. The income, profits and gains, to which that Act applied, therefore, were as described

or comprised in Section 6. Those words are now omitted from Section 4(1). In my opinion, therefore, those observations do not apply to Section 4(1) under the present Act. Two vital changes are made in this connection by the amending Act of 1939 : (1) All reference to. Section 6 is omitted in Section 4, and (2) in the definition of Section 2(15) there is an express reference to Section 4(1), It should also be noticed that the division of Section 4(1) into three clauses is new and makes a vital change in answering the first question, 'What income is to be included in the expression 'Total Income' in Section 3?' This decision therefore supports the view that to ascertain the total income the first approach is to Section 4(1), next to Section 4(3) and then to allocate it under one or other of the heads described in Section 6.

65. The argument advanced on behalf of the assessee that this construction will result in a tax on gross receipts was also disposed of at p. 240 in the following terms:

The tax is upon 'income, profits and gains'. It is not a tax on gross receipts. With this fact in view, each section which deals with one of the first five 'heads' specified in Section 6 contains, where proper, specific provisions for the necessary deductions and allowances to be made for the purpose of arriving at the taxable balance. Sections 12, which deals with the general residuary group, is necessarily framed in general terms and authorises the allowance of any 'expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains.

It is therefore clear that the scheme of the Act is never to charge tax on gross receipts but all proper deductions, as prescribed by the Act, must be made in computing the total.

66. In Income-lax Commissioner v. Shaw, Wallace & Co. the Privy Council considered the meaning of the word 'income' in connection with business. The facts of that case and the definition of 'income' given therein have been set out in the early part of this judgment. The amounts in that case were held not liable to tax because they were not the produce or the result of carrying on agencies but they were received as solatium for its compulsory cessation. It must be conceded that,

if an amount is received, not as a fruit of the business, but as compensation for cutting off the tree, it cannot be called income in any sense of the word. It is on that ground that the Court rejected the contention of the taxing authority. The emphasis on the words 'carried on' in Section 10 was to point out that the amount was not received for carrying on, but for not carrying on the business. To argue that the Privy Council had held in that case that unless the source was in existence in the year of assessment it should not be considered income at all, is a misreading of the judgment. The case is not an authority and does not purport to state that if the payments were in respect of their commission earned when the agencies subsisted, they were not income under Section 10 because the receipts were after the termination of the agencies. Every case is an authority only for the proposition it lays down. The Board was not concerned in that case with the question, 'If the receipts were income of the agencies would it make any difference if they were received later on?' In my opinion that case while defining pictorially the word 'income' does not lay down the proposition urged by the assessee.

67. In Gopal Saran Narain Singh v. Commissioner of Income-tax, B. & O. : (1935)37BOMLR817 the Board 'had to consider the meaning of the word 'income' and the application of Sections 4 and 12 of the Act. The facts shortly put were these : The assessee who owned a nine annas share in an estate conveyed the greater portion of that estate to X who owned the remaining seven annas. The consideration of the transfer was (1) payment of the assessee's debts amounting to Rs, 10,26,937, (2) a cash payment of Rs. 4,73,063, and (3) an annual payment of Rs. 2,40,000, to the assessee for life. The contention which was ultimately argued before the Privy Council was whether the annual payment of Rs. 2,40,000 was liable to tax as income. In delivering judgment Lord Russell at p. 821 observed as follows:

The word 'income' is not limited by the words 'profits' and 'gains'. Anything which can properly be described as income, is taxable under the Act unless expressly exempted. In their Lordships' view the life annuity in the present case is ' income' within the words used in the judgment of this Board which was delivered in the case of Income-tax Commissioner v. Shaw, Wallace & Co.

According to that judgment therefore the Court had first to find whether the amount in question was 'income' and if it was not exempted under the Act, it was liable to tax. The Board approved of the definition of the word 'income' given in Shaw Wallace's case.

67. In Income-tax Commissioner, Bombay Presidency and Aden v. Chunilal B. Mehta of Bombay (1935) L.R. 65 IndAp 332 : 40 Bom. L.R. 916 the Board had occasion to consider again the applicability of Sections 4 and 6 in the matter of taxing a particular amount. The question was whether the amount was covered by the words 'accruing or arising or received in British India.' Sir George Rankin observed (p. 347):

They will first deal with the argument, based on Sections 4 and 6, that the respondent's business is the source of the profits, and that the sections require that the situation of the source should determine the place where the profits arise. This, in their Lordships' view, is a straining of the sections. The effect of Section 6 is to classify profits and gains under different heads for the purpose of providing for each appropriate rules for computing the amount; its language is 'shall be chargeable...in the manner hereinafter appearing.' One of the heads is 'Business', which as a head of income stands alongside Salaries, Interest on securities, Professional earnings, and Other Sources. True, the classification of income is according to the character of the source, and it has been held that 'income, profits and gains' as distinct from casual receipts and from other forms of receipt or enrichment, involve the idea of a periodical money return from a definite source.... But the list of ' heads' in Section 6 is a list of sources not in the sense of attributing the income to one property rather than another, one business rather than another, but only in the sense of attributing it to property as distinct from employment, or business as distinct from investment. Sections 4 and 6, taken together, say of business profits that they are taxable on certain conditions stated in Section 4 and in a manner to be laid down in a later section.... What is to be learnt from an examination of the language of Sub-section 1 of Section 4 is that Section 6 is intended as describing different kinds of profit and that if the condition 'accruing, or arising or received in British India,' etc., is satisfied by the profits, they will not escape by reason of any quality or circumstance of the source.. There is every

presumption that in such a section in an Indian Act the legislature intends the exact language of the section to be the test of liability. To answer the question, 'Do these profits accrue or arise in British India?' by asking another, 'What in the sense of Section 6 is the source of these profits, and is it situate in British India?' is to divert attention from that to which the statute points and to devote attention to what it discards.... However that may be, the profits of each particular business are to be computed wherever and by whomsoever the business is carried on, but 6nly on condition that they are profits 'accruing, or arising or received in British India....' The italics are mine. These observations clearly emphasise that while Section 6 is intended as describing different kinds of profits, reference must be made to the words in Section 4 to ascertain what is income under the Act.

68. In Kamakshya N. Singh v. Commr. of Income-tax (1943) 47 Bom. L.R. 545., the Board had to consider, whether royalty paid in respect of a mining lease under certain conditions was liable to tax. The contention that profits and gains of business only were liable to tax and the word 'income' was limited by those words was rejected by approving the following observations of Lord Russell in Gopal Saran Narain Singh's case : 'The word 'income' is not limited by the words ' profits and gains'. Anything which can be properly described as 'income' is taxable under the Act unless expressly exempted.' The Board did not appear impressed by the pictorial definition of ' income' given in Shaw Wallace's case. Lord Wright in delivering judgment of the Board stated (p. 551):

But it is clear that such picturesque similes cannot be used to limit the true character of income in general, and particularly when it is constituted by mining rent or royalties.' The Board held that royalties were income within the meaning of the Act, whatever be the exact definition of the word. It was then observed as follows (p. 552):

Income is not necessarily the recurrent return from a definite source, though it is gene-really of that character. Income, again, may consist of a series of separate receipts, as it generally does in the case of professional earnings. The multiplicity of forms which 'income' may assume is beyond enumeration.

69. None of these decisions in my view support the contention that the source must be in existence at the time of receipt. In fact Section 4(1)(b)(iii) shows that income may have accrued in England in 1934, and although the source may have ceased in 1938, if the same was brought in British India in 1940, it was taxable. If the existence of the source is immaterial for this sub-clause, I see no reason why it should be considered material for the construction of the words in the main part of Section 4(1). The opening words of Section 4(1) 'Subject to the provisions of this Act...' are inserted only to find out if any income, which is referred to in Section 4(1), is exempted under the same section or another section of the Act. As in my opinion Sections 6 to 12 are not sections defining or limiting the word 'income,' the above quoted words in Section 4 do not support the contention of the assessee. The absence of all reference to Section 6 in Section 4, and the words used in Section 6, make Sections 7 to 12 as laying down now only the manner in which the income (which has been referred to in Section 4) has to be charged, according to the rules of computation relating to each individual head found in the said sections. Having regard to the scheme of the Act the questions to be considered are : (1) Whether it is income referred to in Section 4(1). (2) If so, whether it is exempted under Section 4 or any other section of the Act. The next step is to divide the income so arrived at under the heads mentioned in Section 6 and compute the same in the manner laid down in those sections. In respect of 'business' and 'other sources' the provisions contained in Section 13 have also to be applied. The result is the 'total income' on which tax is to be levied as prescribed by Section 3 of the Act. This method of approach does not leave any difficulty in the plain reading of the Act.

70. Counsel for the assessee also relied on B.C.G.A. (Punjab), Ltd. v. Com. of Income Tax, Punjab . In that case the assessee had kept his accounts on the mercantile system under Section 13. A question arose in respect of certain debts which had become time-barred. It was contended that they had become time-barred in the year in question and therefore became bad debts for which the assessee claimed deductions. The taxing authorities rejected the contention on the ground that they had become bad debts before the assessment year and the Court held that they had no power to interfere with the finding. In the course of his judgment Din Mohammad J. observed as follows (p. 304):

This being so, the question arises whether the assessee can claim any relief on account of those losses, the business having been long discontinued before the year of account. The answer is clearly in the negative. In South Indian Industrials Ltd. v. The Commissioner of Income-tax I.L.R (1934) Mad. 433., in a case where the assessee had carried on several separate businesses before, but in the account year some of those businesses had closed, a Special Bench of the Madras High Court held that the assessee could not set off the losses of the discontinued businesses against the profits of the current business, inasmuch as Section 10 of the Income-tax Act dealt with businesses that were being carried on and not with businesses which had ceased to exist, and further that the losses were capital losses and not revenue losses.

It was emphasised that in order to claim a set-off the condition precedent was that both businesses should be alive during the current year. Dead business's losses cannot be set off against living business's gains. These observations must be read with the facts of the case. If it is appreciated that the accounts are kept on mercantile basis, the question of receipts does not come in; at the end of each year the total profits or loss on the basis of accrual are assessed and taxed. During the last year of business, when it was closed, all its profits and losses computed in the manner permitted by the Act were assessed and taxed. Thereafter, there can remain nothing to accrue or to be taxed in respect of that business. The contention is unsound when the computation is on the receipt basis, and, in my opinion, those observations are inapplicable when the mercantile basis was not the method of accounting.

71. Counsel for the assessee strongly relied on the two English cases mentioned at the commencement of the judgment. In Benett v. Ogston the facts were these : A person doing money-lending business died. During his lifetime he had taken from his debtors bonds, which were payable at stated intervals, and which included certain portions of the loan and interest thereon. After the death of the money-lender certain bonds were discharged by the debtors by payment. It was argued on behalf of the estate of the deceased that this was not income as the trade had come to an end. The contention was rejected because it was pointed out that the repayment was of interest on capital which had remained advanced even

after the death of the trader, and therefore was income. In discussing the liability of such receipts to tax Rowlatt J. observed that the source must be in existence at the time of the receipt of the income, and if the trade or profession had ceased, the receipts were not chargeable to tax. In Hillerns and Fowler v. Murray, on facts, it was found that the firm was trading when the amount was received, and, therefore, the question whether the income was received after the source had come to an end did not arise. In discussing the question of liability if the trade had stopped, Rowlatt J. made observations similar to what he had made in the former case. In my opinion those cases are not relevant for the present discussion. The scheme of the English Act is entirely different from the scheme of the Indian Act. Under the English Act the tax is on the income of the assessment year, i.e. the current year's income. As some or a large portion of the year is still to run at the time of assessment, the previous year's or the average income of certain years is taken as a measure ; but the tax is still on the current year's income. The result is that the basis of taxation is accrual and not receipts, as contemplated by Section 4(1)(a). The opening words of schedule D of the English Act show that the charge is on the accrual basis and not on the basis of receipts at all. A comparison of the two Acts shows that there is nothing like Sections 20, 20 and 31 of the English Act of 1926 in the Indian Income-tax Act,

72. In the matter of assessment of Behari Lal ,Mullick, In re I.L.R (1927) Cal. 630. the assessee was the owner of two house properties, one of which was mortgaged. Income during 'the previous year' was received from the property but in the year of assessment the property was sold by the mortgagee. Relying on the principles of Brown v. National Provident Institution : Ogston v. Provident Mutual Life Association [1921] 2 A.C. 222 and Whelan v. Henning [1926] A.C. 293, it was contended that as the assessee had no income from the property in the year of assessment no income-tax was due from him, notwithstanding that in the previous year he derived income from that source. The next question of law on which the Court was asked to give its opinion was on the basis that while in the 'previous year' the assessee received an income from ground-rent, he had, in the year of assessment, derived no income from that source. The Court held that the Indian Act of 1918 was framed on the model of the English Act. It was pointed out that under the English Act the assessment in any particular year was made on the

income which the Legislature deemed the assessee to have received in the year of assessment. The Legislature imputed statutory income to the assessee for computation of income for the year of assessment. A reference to the previous year's income, under the English Act, was made only for the purpose of measurement and for computation of tax for the year of assessment. The observations of Rowlatt J. in Brown's case (p. 509)

There is no doubt that the general scheme of the income tax is that it is payable in respect of a source of income existing in the year of assessment, though the amount is often measured by the results of the previous years-

were, under the English Act, appropriate. The Court next rejected the contention of the Crown that the Indian Income-tax Act, 1922 (which was applicable to the case) maintained the general scheme of the English Act of putting tax upon income derived during the year of assessment. It was pointed out that the tax under the Indian Act of 1922 was on the income of the previous year and it was not a standard by which the next year's income was to be computed. It was pointed out that this fundamental distinction made a complete change in the manner of assessment under the Indian Act of 1922. The Court relied on the rules under which adjustments were permissible under the Indian Act of 1918, but which were dropped in the Act of 1922. It was held that while Sections 6 to 12 stated the heads of income, which are chargeable, and which authorised specific allowances or exclusions, the tax was one on the total income of the assessee. The tax was not paid on each of the heads. It was pointed out that there may be difficulties in computing income and the allowances permitted may not work out equitably. With that aspect the Court cannot be concerned in construing the plain meaning of the sections of the Act. In dealing with the exemptions allowed under Sections 9 and 10 Rankin C.J. observed as follows (p. 643):

It seems to me to be reasonably clear in Sections 9 and 10 that though the present tense is used throughout, the sections are to be applied to the state of facts in the ' previous year' or in the case of an exceptional assessment under Section 25(1) a completed portion of the year of assessment. They afford no reasonable ground for a contention that the particular sources numbered (iii) and (iv) must persist

throughout two years in order to be chargeable. It is here that it is important to remember that the income-tax is one tax as Section 3 shows it to be.

73. In numerous cases the Privy Council has repeatedly cautioned the Indian Courts not to rely on English cases which are based on technical rules and provisions of English law of taxation. The observations of Rowlatt J. in Bennet v. Ogston themselves show why the receipts should not be considered income if the profession or vocation had ceased in the assessment year. The learned Judge observed (p. 378):.they are the receipts of the business while it lasted, they are arrears of that business. and are taken to be covered by the assessment made during the life of the business, whether that assessment was made on the basis of bookings or on the basis of receipts.

On the principle that in England the current year's income is assessed and taxed, while the business is going on during that year, the income is taken to be covered by the assessment and there can arise no question of taxing it again at any later date. This emphasises the distinct principle of taxation under the English Act. The observations in Hillems and Fowler v. Murray are also explicable on the same footing. On the other hand Lord Wright in delivering the judgment of the Privy Council in Kamakshya Narain Singh's case observed : 'Income, again, may consist of a series of receipts, as it generally does, in cases of professional earnings.' He did not draw a distinction between receipts during the time the assessee was carrying on a profession and after he had ceased to practise.

74. In my opinion, the question whether a particular amount is income or not has nothing to do with the time of its receipt. The question of receipt is material only for the purpose of determining whether on that amount tax is to be levied under the Act in the year of assessment. The question of receipt may be material, not for the purpose of determining whether it is income or not, but for computing it in the assessment year. If the assessee, in respect of his business or income from other sources, keeps his accounts on the mercantile basis, his income is computed on the footing of accrual. If on the other hand he keeps his accounts on the footing of receipts, his income is computed in that manner. There is no difficulty in reading Sections 10, 12 and 13 together for the purpose of computation. The allowances

permitted under Sections 10 and 12, if the method of accounting is the mercantile method, will have to be computed according to that method. If, however, the computation is on the method of receipts, all those allowances must be allowed in the year of disbursements, irrespective of the question when the liability to pay the same arose. Any other construction will result in a hopeless confusion. If the method of accounting is receipts, on the credit side, irrespective of the question whether the source exists or not, the receipt, which is income, is credited. On the debit side disbursements or 'deductions'', permitted in Section 10 and 12, irrespective of the question when the liability to pay the same arose, have to be entered. The balance so arrived at has to be taxed. It need not be repeated that the gross receipts are not to be taxed. If the taxing authorities have accepted the method of accounting as cash receipts and cash payments, this is the only way in which the 'total income' could be properly computed in the assessment year under the Indian Income-tax Act.

75. I do not think this construction of Section 4 results in making two incomes out of the same amount, as argued on behalf of the assessee. Clauses (a), (b) and (c) of Sub-section (1) are connected by the word 'or' and not 'and'. The result is that in the previous year's income, which is to be included in the 'total income', the amount can be entered if it falls under (a), or (b) or (c). It must be recognised that if a particular amount is assessed and taxed under (a), or (b) or (c), the same amount cannot be taxed under a different heading either in the same year or in a different year. It is therefore futile to contend that the result of the construction suggested above makes the same income liable to tax under two heads. The contention that under the Indian Act the method of accrual only is accepted as the method of taxation is unsound, because Section 4(2)(a) expressly makes the receipts of income, from whatever source derived, taxable if it is received in the 'previous year.' The words there used clearly mean the income received for the first time, if the method of accounting is not mercantile basis. On that amount the assessee will not be taxed on the accrual basis under Section 4(2)(b), but the taxation will be under Section 4(2)(a) only. As pointed out in Behari Lal Mullick, In re, the Income-tax Act of 1918 was framed to tax the income of the current year. To ascertain the amount the income of the previous year or the average of certain years was taken as a measure. The tax, however, was on the income of the cur-

Tent year. That scheme was changed by the Act of 1922 and thereafter in fact it was the income of the previous year which was taxed. On that ground alone the relief granted under Section 26 of the Act could be justified and reconciled. In 1939 the Act was again amended. One of the principal objects of the amendment of the various sections was to tax the foreign income of a resident or the foreign income of a non-resident brought into British India. We are not directly concerned with the motives of the Legislature but we are bound by the effects of the amendments. The amendments made by that Act further emphasise the view that under the Indian Act 'accrual' is not the only basis for computation and taxation. There appears no justification for the contention that Section 4(2)(a) is limited to receipts by non-residents only. If that was the intention of the Legislature, Clause (a) should be after Section 4(2)(c) and not where it is placed. The separate scheme of computation found in Sections 7 to 9 on the one hand, and Sections 10 to 12 read with Section 13 on the other hand, also negatives that contention. Again the fact that Section 4(2)(b) is confined to 'persons ordinarily resident' and Section 4(1)(c) is confined to persons 'not ordinarily resident' emphasises the construction that Section 4(2)(a) is of general application and not limited to one of those two classes of persons only.

76. Neither side relied on Section 25 of the Act. This course appears to have been advisedly adopted because it is a permissive right given to the taxing authorities to prevent a man escaping assessment, if he proposes to close his business and leave British India in the middle of a year. In my opinion that section, however, does not preclude the authorities from proceeding with the assessment of an assessee, against whom the machinery of that section is not used, under the other sections of the Act.

77. In my opinion, therefore, the conclusion of the Commissioner is right and the answer to the question must be in the affirmative, with this reservation that the gross outstanding fees are not taxable but they are subject to the deductions permitted under Section 10, in view of the fact that the method of accounting regularly employed by the assessee was the cash receipts basis.

Chagla, J.

78. The question for our determination in this reference is whether the receipts from a business or profession which has been discontinued are income liable to tax under the Indian Income-tax Act. It has been contended by the assessee that the profits or gains of a business or profession are only taxable provided the business or profession was carried on at the time the profits or gains were received. It has been further contended that the whole scheme of the Income-tax Act is to tax income only so long as the source from which the income was derived is in existence. If the income is received from a defunct source, then that income is not liable to tax.

78. In order to understand and appreciate this contention of the assessee, it is necessary to consider the scheme of the taxing statute. Section 3 of the Act provides that the tax shall be charged at the rate mentioned in the Finance Act. Section 4, which defines the applicability of the Act, lays down the conditions of chargeability. It states what the total income of the assessee in any previous year is. That section deals in the first instance with any person whether he be a resident or non-resident in British India. Then it deals with a resident in British India and finally with a person not resident in British India. In the case of any person the conditions of chargeability shall be that the income shall be received or deemed to be received in British India in the previous year. Having dealt with the receipt of income in British India and made it liable to tax in the case of every person, the section then proceeds to deal with accrual of income and in Clause (b) it deals with accrual in the case of a resident in British India and in Clause (c) in the case of a nonresident in British India. Then under Sub-section (3) it provides various exceptions which need not be included in the total income of the assessee. Therefore, in the first instance, it is necessary to ascertain whether what is sought to be charged as income under Section 4 satisfies the conditions of charge-ability laid down in that section.

79. 'Income' is nowhere defined in the Act. Even the plain natural meaning of 'income' is so full of connotations that it is not always easy to say with precision what exactly 'income' means. Even so high a tribunal as the Privy Council when it has launched upon the adventurous task of defining 'income' has found itself confronted with serious difficulties.

80. In Income-tax Commissioner v. Shaw, Wallace & Co. Sir George Lowndes delivering the judgment of the Privy Council defined 'income' as a periodical monetary return 'coming in' with some sort of regularity, or expected regularity, from definite sources. He likened 'income'' pictorially to the fruit of a tree, or the crop of a field. He further points out that the expansion of 'income' into income, profits and gains is more a matter of words than of substance. In Gopal Saran v. Commsr. of Inc. Tax : (1935)37BOMLR817 the Privy Council went as far as saying that anything which can properly be described as income is taxable under the Act unless expressly exempted. Lord Wright in the judgment of the Privy Council in Kamakshya Narain Singh v. Commr. of Inc. Tax, Bihar and Orissa (1943) 11 I.T.R. 513 : 47 Bom. L.R. 545., appreciates the difficulty of defining 'income' and concedes that it is perhaps impossible to define it in any precise general formula, but he says that it is a word of the broadest connotation. He rather disapproves of Sir George Lowndes' pictorial language and sounds a note of warning against using picturesque similes to limit the true character of income in general. He gives several instances of what 'income' might be, and it is rather pertinent to note that he considers a series of separate receipts in the case of professional earnings as income.

81. The first question then is : are the outstanding professional fees which were realized by the assessee during the year under assessment income within the meaning of Section 4 of the Act? It has not been disputed and it cannot be disputed that these professional fees would have undoubtedly been 'income' if the assessee had been carrying on his profession as a consulting civil engineer in the accounting year. It is also admitted that when these fees accrued to the assessee they were income, but he was not taxed with regard to these fees because he was, maintaining his accounts on a cash basis and not on a mercantile basis, which right is given to him under Section 13 of the Act. It is difficult to see how or why these receipts which would be 'income' if the business was going on should cease to be 'income' merely because that business had ceased at the time these receipts were collected. Section 4 refers to all income, profits and gains from whatever source derived. This particular income was derived from the profession of the assessee. Section 4 does not lay down as a condition of charge-ability that the source should be in existence at the time the income is received. The only two

conditions which are imposed by that section are that the receipt must be income and it must be received in British India during the previous year. In this case it is not disputed that the assessee received the amount in question in British India during the previous year and it was an amount derived from a particular source, namely, his profession, although that source had ceased to exist at the time when the amount was received.

82. A rather ingenious construction of Section 4 was suggested by Sir Jamshedji Kanga on behalf of the assessee. He argued that Sub-clause (a) of Section 4 only applied to persons not resident in British India and that in the case of persons resident in British India the only income chargeable was that which accrued or arose or was deemed to accrue or arise in British India during the previous year. It was therefore suggested that in India as in England all assessment of residents in this country was on the accrual basis and the cash basis permitted under Section 13 was merely a method of arriving at the income. It was therefore contended that the assessee could only be assessed with regard to income which accrued to him, and as his business had come to an end, there could be. no accrual of income from that source. Such a construction, in my opinion, is patently opposed to the scheme of Section 4 and to the other provisions of the Act. If receipt of income was intended to apply only to non-residents, then it is difficult to understand the use of the language 'any person' and also why this particular provision was not inserted in Sub-clause (c) which deals with the case of non-residents. Further as Section 13 permits of the cash method of accounting in the case of business and other sources provided in Sections 10 and 12, the Legislature had to make both actual receipts in certain cases and accrual of income in other cases liable to tax which it has done under Section 4.

83. Whereas Section 4 lays down the conditions of chargeability, Section 6 deals with the manner of chargeability; and to use the language of their Lordships of the Privy Council in Income-tax Commissioner, Bombay Presidency and Aden v. Chunilal B. Mehta of Bombay (1938) L.R. 65 IndAp 332 : 40 Bom. L.R. 916:

The effect of Section 6 is to classify profits and gains under different heads for the purpose of providing for each appropriate rules for computing the amount.

Therefore once it is ascertained that the amount is income under Section 4, the next step is to classify it under one of the heads mentioned in Section 6. This classification is solely for the purpose of computing the amount of income. Sections 6 to 12 provide a machinery for computation for every species of income which is made chargeable under Section 4. In the first instance, there are four specific heads under Section 6; and even if a particular kind of income does not fall under any of these four specific heads, it would fall under the wide residual head provided under Section 12. As pointed out by Lord Russell of Killowen delivering the judgment of the Privy Council in Probhat Chandra Barua v. The King-Emperor Section 12 describes (p. 239):

a true residuary group embracing within it all sources of income, profits and gains provided the Act applies to them, i.e. provided that, they accrue or arise or are received in British India or are deemed to accrue or arise or to be received in British India, as provided by Section 4, Sub-section (1), and are not exempted by virtue of Section 4, Sub-section (3).

It would not be true to say that Sections 6 to 12 in any way control or limit the conditions of changeability laid down in Section 4 of the Act. In the first place, as I have already pointed out these sections merely provide various heads under which different income is to be classified for the purpose of computation, and the definition of a head cannot possibly control the meaning of income as referred to in Section 4 of the Act. Further the very presence of a true residuary head under Section 12 makes it impossible for any income which falls under Section 4 to escape from falling under one of the heads under Section 6.

Unfortunately the language used by the Privy Council in Probhat Chandra Barua v. The King-Emperor has afforded some basis to Sir Jamshedji Kanga to raise an argument that Section 6 is the real charging section and that it is only that income which satisfies the conditions laid down in Sections 6 to 12 which is liable to tax under the Act. In that case their Lordships said that although Chapter I of the Act was entitled 'Charge of income-tax', the real charging section was Section 6 which occurred in Chapter III. As I have already pointed out, in a later Privy Council case, Income-tax Commissioner, Bombay v. Chunilal B. Mehta (at p. 347) their

Lordships have taken quite a different view of the true effect of Section 6. But it must also be remembered that when these observations were made by the Privy Council it was dealing with the Act as un-amended by the Act of 1939, and under the old Act the language of Section 4 was different. Section 4, as it then stood, provided

that the Act shall apply to all income, profits or gains, as described or comprised in Section 6, from whatever source derived, accruing or arising, or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

Under the present section reference to Section 6 has been removed, and we have the phrase 'Subject to the provisions of this Act'. It is true that even under the present section 'Subject to the provisions of this Act' would necessarily include the provisions of Section 6. But as under the old Act the income referred to in Section 4 was specifically confined to that described or comprised in Section 6, it is quite understandable why Lord Russell should refer to Section 6 as the true charging section as it was given that high place of honour in Section 4. Not only was Section 4 amended by the Act of 1939 but also Section 12. Under the old Act the other sources were in respect of income, profits and gains of every kind and from every source to which the Act applied. Under the amended Act income, profits and gains of every kind which may be included in the total income and are not included under any of the specific heads mentioned in Section 6 may be included under this head. While it is true that the amendments I have just referred to do not in any way extend the definition or the import of income under the Act, whatever the position might have been under the old Act, it is perfectly clear that under the Act with Which we are concerned Section 6 is not a charging section and it does not in any way affect or control the conditions of chargeability.

84. The next question is : do these receipts fall under the head 'Profits and gains of business, profession or vocation'? This head only applies to a business, profession or vocation carried on by the assessee. In the case before us the profession was undoubtedly carried on by the assessee. The material question is whether the section requires that it should be carried on at or up to a particular

point of time. Three possible constructions have been suggested at the bar : first, that the expression ' carried on by him' merely connects the assessee with the business or, in other words, it is merely a paraphrase of' his business, profession or vocation ' ; second, that it must be carried on at any time during the year of assessment; and, third, that it must be carried on at the time the profits or gains of the business or profession were received. It is rather difficult to accept the first construction because an assessee cannot carry on the business of anyone else except his own, and if the only object of the Legislature was to refer to his business, the language used seems to be particularly inapt. But I see no reason to read in the expression 'carried on by him' the words 'at the time the income profits and gains are received.' All that is required is that it must be a business which is carried on by the assessee in the previous year-the year under assessment. In this case the business was carried on, by the assessee in the previous year up to February 15, 1938. It is true that subsequent to February 15, 1938, for the rest of the accounting period up to December 31, 1928, the assessee did not carry on the business. But the section does not require, as I read it, that it must be carried on throughout the year under assessment. This particular source was in existence in the accounting year, and the assessee is liable to pay tax on all income,] profits or gains derived from all sources in existence in the year under assessment.

85. Even if this income does not fall under the head of business, profession or vocation if it is income at all it must necessarily fall under the residuary head under Section 12. This head, as I have already pointed out, refers to income, profits and gains of every kind and the only condition required is that it cannot be included under any of the preceding heads referred to in Sections 7 to 10.

86. It is possible to dispose of this reference on the short point that as the profession was carried on by the assessee in the year under assessment, the profits and gains of that profession are liable to tax. As the matter was debated at great length and as we have had the advantage of listening to very learned arguments from counsel on both sides, I should like to add that in my opinion, even if the business or the profession had been discontinued prior to the accounting year, I see no reason why the profits and gains of such discontinued business or profession should not fall under the residuary head under Section 12,

if in fact they were received during the year under assessment.

87. It has been contended that what the assessee received was gross receipts and these do not constitute profits and gains of a business or profession. It has got to be remembered that as this assessee had adopted the cash basis as his method of accounting, he would be taxed on the actual receipts and not on any accrual basis. It is true that he would not be liable to pay the tax on gross receipts, but he would be permitted to deduct therefrom all permissible allowances under Section 10 of the Act. In the case before us the assessee received the sum of Rs. 12,302 from his profession. There is no reason why he should not deduct from this sum any permissible expenditure incurred by him for the purpose of his profession. If in fact he incurred no expenditure for the purpose of his profession in the year under assessment, then the receipts constitute the profits and gains of his profession.

88. The contentions of the assessee have received considerable support from the observations of Mr. Justice Rowlatt reported in two English cases Bennett v. Ogston H. M. Inspector of Taxes (1930) 15 T.C. 374 and Hillerns and Fowler v. Murray H.M. Inspector of Taxes (1932) 17 T.C. 77 and from the fact that in England the outstandings remaining to be collected by a professional man, after he has ceased to practise that profession, are not assessable to income-tax. The Privy Council has often sounded a note of warning against relying on English cases based on English income-tax statutes for the purpose of construing our own statute. As stated by their Lordships in Income-tax Commissioner v. Shaw, Wallace and Co., the Indian Act is not in pan materia. English decisions are only helpful when they enunciate a principle which is wide enough to be applicable both here and in England notwithstanding the fact that the taxing statutes of the two countries are entirely different and are based upon technical rules which have very little in common.

89. The reason why outstanding fees of a profession collected after its discontinuance are not taxed in England is that they are taken to be covered by the assessment made during the life of the profession as pointed out by Mr. Justice Rowlatt in Bennett v. Ogston H.M. Inspectot of Taxes. And in Hillems and

Fowler v. Murray H.M. Inspector of Taxes, Lord Justice Greer at p. 89 concedes that these outstandings are income and that in England some people by a stroke of good fortune are enabled to escape paying tax upon income that they have made by reason of a technical application of the provisions of the taxing Acts.

90. The fundamental difference between our taxing statute and the English statute must always be borne in mind. Our Act taxes the income of the previous year, the English Act taxes the income of the current year; and as the actual income of the current year must to a large extent be estimated by reference to various considerations and not to the actual income earned in that year, income in England has to be computed on an accrual and not on a receipt basis. In the well-known case of Behari Lal Mullick, In re I.L.R (1927) Cal. 630. Sir George Rankin, Chief Justice, explains why in England the source of the income has to be in existence in the year of assessment. At p. 636 he says:

If in the year of assessment the assessee had derived some income from a particular source the amount for purposes of taxation might have to be computed at least provisionally by reference to his income from that source in one or more of the years immediately preceding. If, however, the assessee in the year of assessment derived no income from a source which in the previous years had yielded income the statutory rules as to computation of the present and future by reference to the past did not apply so as to impute to the year of assessment an income which (did not exist at all. The basis and subject matter of the tax was the income in the year of assessment. As a matter of law this is true because it is the true construction of the English statutes and for not other reason.

91. It has been strenuously urged by Sir Jamshedji Kanga that the Privy Council in Income-tax Commissioner v. Shaw, Wallace and Co. has decided that when a business cornea to an end any income derived from such a business is not liable to tax. The facts of that case clearly show that the two sums received by the assessee company were received not out of any business carried on by them but as a solatium for the compulsory cessation of its business. As they did not arise from any business or from any continuous exercise of an activity, the Privy Council came to the conclusion that the sums did not represent income, profits or gains

within the meaning of the Act and liable to tax. It is not permissible in my opinion to extend the effect of this decision to mean that even if these two sums had been received as a result of the carrying on of the assessees' business still they would not have been liable to tax merely because that business had ceased at the time when these two sums were received.

92. Strong reliance was placed by Sir Jamshedji Kanga on a judgment of Mr. Justice Din Mohammad of the Punjab High Court in B.C.G.A. (Punjab) Ltd. v. Com. of Income-tax, Punjab . In that case the assesses closed his business in 1931 as he suffered heavy losses. He accepted bonds in respect of moneys outstanding from some of the debtors. These bonds became time-barred in the accounting year, and the assessee claimed to set off those losses against the profits of another business which he was still carrying on. Mr. Justice Din Mohammad held that the assessee could not do so as he could not set off the losses of a discontinued business against the profits and gains of a current business inasmuch as Section 10 of the Income-tax Act dealt with businesses that were being carried on and not with business which had ceased to exist. Mr. Justice Din Mohammad was dealing with a case of a set-off and not the question of income of a discontinued business. But in any case all that Mr. Justice Din Mohammad decided was that Section 10 requires that the business should not have ceased to exist in the year under assessment and should be carried on by the assessee, In the case before us, as I have pointed out, the profession of the assessee had not ceased to exist and was being carried on at least for a part of the year under assessment.

93. I, therefore, agree with my learned brother Kania that the question raised in this reference should be answered as he has suggested. I have had the advantage of reading the judgment just delivered by the learned Chief Justice. I have given it my most careful attention. It is with the very greatest reluctance that I find myself in disagreement with the conclusion reached by him.