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Court : Allahabad

Decided On : Jan-20-1967

Reported in : [1968]67ITR616(All)

Appeal No. : Income-tax Reference No. 2 of 1958

Appellant : B. Malick

Respondent : Commissioner of Income-tax, Uttar Pradesh.

Judgement :

MANCHANDA J. - This is a case stated under section 66 (1) of the Indian Income-tax Act, 1922, hereinafter referred to as the Act. The question referred is :

'Whether on a true interpretation of section 4 of the Income-tax Act, the sum of Rs. 20,000 received by the assessee as remuneration was revenue income liable to tax under the Indian Income-tax Act ?'

The material facts lie within a narrow compass. There was a dispute, between Messrs. United Timber Trading Co., Calcutta, and the Union of India, which was referred to the arbitration of two persons. The nominee of the Government was Sri. Charan Singh, Special Solicitor to the Government Department of Industries and Supply, while the arbitrator nominated by Messrs. United Timber Trading Co. Ltd. was the late Sri Sarat Chandra Bose, a leading advocate and at that time a member of the Executive Council Government of India. The aforesaid arbitrators, at a meeting held on the 1st April, 1947, decided to request the assessee to act as

an umpire in the event of there being a difference of opinion between them. The offer was conveyed in a letter dated the 3/5th of April, 1947, and was signed by Sri. Shiv Charan Singh for self and on behalf of Sarat Chandra Bose coarbitrator. The letter concluded :

'We, arbitrators, shall feel most grateful if you will kindly intimate your acceptance of this appointment.

I am to add that by accepting this appointment you will be rendering a great public service as it is a difficult problem to find suitable umpires and I am sure the parties and the arbitrators will all have confidence in your judgment, should it become necessary to refer the matter to you.'

The assessee at that time was a puisne judge of the Allahabad High Court and after taking the permission of then Chief Justice he replied, vide letter dated the 12th April, 1947. This reads :

'I am in receipt of your registered letter No. OSD (C)/160, dated the 23rd/5th April, 1947, and beg to inform you that I have no objection to acting as umpire in the case mentioned by you.'

There was neither mention of any payment nor was there any question at that time of any payment of fee for acting as an umpire. Thereafter, the assessee became the Chief Justice in 1947, and considered that it was not proper or permissible for him to act as an umpire. As he had not heard anything for nearly three years from the arbitrators, he considered that the matter was closed. In 1949, however, he heard from the late Sri Sarat Chandra Bose, that there had been a difference of opinion between the arbitrators and the matter was going to be referred to him for its being decided in accordance with the previous decision taken. The assessee wrote to Sri Sarat Chandra Bose that it would not be right for him to act as an umpire, and, therefore, he declined to do so. The assessee by him letter dated the 9th July, 1949, also wrote to the said Sri Shiv Chandra Singh expressing his inability to act as an umpire and added that he would like to be excused. He also stated that he was returning the records of the case.

Thereafter, on or about the 20th February, 1950, Sri Sarat Chandra Bose, suddenly died of heart failure. In this situation, the late Sri Shyama Prasad Mukerji, was then the member of the Government of India, Industries Department, made a personal appeal to the assessee, vide letter dated the 23rd February, 1950, to waive his objection to work as an umpire, as otherwise it would involve the Government and the other party to the dispute in unnecessary expense and prolonged litigation, as the case would have to start de novo in the Calcutta High Court. In these peculiar circumstances, the assessee agreed to act as umpire. Even up to that stage there was no question of any payment of fees. It was only on the 8th May, 1950, that the said Sri Shiv Charan Singh informed the assessee that there was no indication of any fees that were to be charged and he should let him know so that he can obtain the sanction of the Government for payment of the fee. By a letter dated the 11th May, 1950, the private secretary of the assessee indicated the fee. The arbitration proceedings commenced on the 15th of May, 1950, and they concluded on the 26th May, 1950. The United Timber Trading Co. deposited their half share, Rs. 10,000, as fee. On behalf of the other party, Sri Shiv Charan Lal, by his letter dated 29/30th of May, 1950, conveyed to the assessee the sanction of the President of India to the payment of fee of Rs. 10,000 for acting as an umpire. The assessee, thereupon, submitted his bill, but the Deputy Accountant-General, vide his letter dated the 16th June, 1950, informed the assessee that his claim was under consideration. This was because of certain orders which had recently been issued by the Government. It was on the 12th July 1950, that the assessee was informed that the bill drawn by him had been passed. The recent order which the Deputy Accountant-General (Industry and Supply) had in mind was the confidential letter dated the 6th of May, 1950, from the Deputy Secretary Government of India, Ministry of Home Affairs to all Chief Secretaries on the question of the grant of honorarium to High Court judges. The relevant portion thereof reads :

'The Government of India have reviewed the position and have decided that the payment of honoraria or other remuneration to judges of High Court for performing additional non-judicial functions should be prohibited. Any non-judicial work which a High Court judge might reasonably be asked to perform should be performed by him with the consent of the President and without any additional remuneration.'

This was a general order applying to all work performed outside the official duties as a judge of the High court. It required the prior consent of the President before undertaking by a High Court judge of any such work and there was no question of charging or being paid any additional remuneration. Some doubt, however, was raised as to whether acting as an arbitrator or an umpire was a judicial or non-judicial function of a High court judge. This was clarified by a letter dated the 29th January, 1952, from the Deputy Secretary Government of India, to all Chief Secretaries of Part A States. The material portion thereof reads :

'The Government of India have also decided in partial modifications of their letter No. 11/8/50 Judicial, dated the 6th May, 1950, that no payment of honoraria or other remuneration should be made to a judge for performing additional functions outside his normal duties, whether judicial or non-judicial. 5.... but, they consider that in no circumstances should a judge of a High Court act as an arbitrator in the strict sense, whether in cases pending before him or in private matters so as to place himself in a position where his award would become the subject of controversy in a law court and his character and action become the subject-matter of criticism before other judicial officers who may be his colleagues on the Bench.'

This clarified the position and placed an absolute embargo on a sitting judge from acting in any arbitration matter, and the payment of any honoraria was ruled out. But in the assessee's case it was only at the instance of the late Sardar Patel, the then Home Minister, that a special exemption was made in his favour and a sum of Rs. 10,000 was sanctioned and paid as his fee by the Government of India as its half share. To complete the narration of events, it may be mentioned that while, the assessee was a sitting judge he was invited to act as an arbitrator in two other proceedings but, upon his asking to be excused, presumably because of the embargo placed upon the judge, they were never referred back to him. The payment of the aforesaid arbitration fee of Rs. 20,000 to the assessee was, therefore only a solitary instance, under the circumstances set out hereinabove.

In due course the assessee submitted his return of total income for the relevant assessment year 1951-52. In Part I, Section G, of the return the assessee, very properly mentioned that he had received Rs. 20,000 as arbitration fee and claimed

that the amount was exempt from tax under section 4 (3) (vii) of the Income-tax Act. Along with the return the assessee submitted the opinion which his counsel had given him. The assessee, when asked to explain the reason for claiming the exemption, wrote that the Government had issued orders prohibiting the payment of any additional remuneration to judges and copies of the relevant Government orders were enclosed therewith. The assessee also furnished his statement in writing on the 3rd March, 1955. The Income-tax Officer, however, held that the amount of Rs. 20,000 was income liable to tax and was not exempt under section 4 (3) (vii) of the Act.

On appeal, the Appellate Assistant Commissioner reversed the finding relying upon Ahmad Badsha Sahebs case, and held that the assessee had not stipulated for the payment of fees and as there was no possibility of its recurrence, the sum of Rs. 20,000 was not income liable to tax under the Indian Income-tax Act. He, accordingly, directed the sum of Rs. 20,000 to be deleted from the total income of the assessee.

Against the order of the Appellate Assistant Commissioner the Income-tax officer preferred an appeal before the Income-tax Appellate Tribunal (hereinafter referred to as the Tribunal). The department contended that the Appellate Assistant Commissioner had erred in holding that the case was governed by the ruling in Ahmad Badsha Sahebs case, and that the amount of Rs. 20,000 was income liable to tax under the Income-tax Act. The assessee, on the other hand contended, firstly, that the amount of Rs. 20,000 was not income liable to tax, and, secondly, even it is was income it was exempt from tax under the provisions of section 4 (3) (vii), being of a casual and non-recurring nature and not being a receipt arising from the carrying on of a business or the exercise of any profession, vocation or occupation. The Tribunal accepted the appeal of the department relying upon the decision of the Madras High court in Commissioner of Income-tax v. V. P. Raoi, where it had been held that a retired High court judge when he takes up a 'weighty' arbitration, that amounts to the exercise of an 'occupation' of an arbitrator, even though it had been exercised only once. The Tribunal held that, acting as an umpire was clearly 'occupation' of the assessee, inasmuch as he occupied himself with it and it had a good deal of connection with his work as a

judge.

The findings recorded by the Tribunal were :

(1) That the sum of Rs. 20,000 received by the assessee as arbitration fee was for rendering some service and was, therefore, income liable to tax under the Income-tax Act.

(2) That the source of the income was not any fund or any capital outlay but it was the rendering of service by the assessee.

(3) That the receipt of Rs. 20,000 was remuneration for the exercise by the assessee of an 'occupation'.

(4) That the payment was anticipated though of, stipulated for and was not causal nor was it a mere wind-fall. The Tribunal, accordingly, reversed the order of the Appellate Assistant Commissioner and restored that of the Income-tax Officer. Hence, this reference at the instance of the assessee.

At the outset, the relevant provisions of the Act which may have a bearing on the questions which arise may conveniently be set out :

'Section 3. Charge of income-tax. - Where any Central Act 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.....

Section 2. (15) 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....

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

Section 4. (3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them.....

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

Section 2. (4) business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.'

It may be noticed that there is no similar definition of 'profession', 'vocation' or 'occupation' in the Act, and one of the questions which will arise for consideration is whether a single plunge in the waters of a profession, vocation or occupation will constitute 'the exercise of a profession, vocation, or occupation.'

An analysis of the aforesaid provisions shows that the under section 4 (1) of the Income-tax Act profits and gains from all sources are taxable but that is expressly made subject to 'the provisions of the Act'. Therefore, section 4 (1) has to be read along with the exemptions given under sub-section (3) of that Section. The said sub-section contains a mandate that the income profits and gains from sources specified in the classes thereunder, shall not be included in the total income of an assessee. Under sub-section (3) there is a complete exemption from tax and such income cannot be included in the assessment for any purpose whatsoever. It cannot be taken into consideration either for the purpose of computing the total income or even for rate purposes. If the receipts, income, profits or gains is from one of those sources which are enumerated in sub-section (3) of section 4, then it will not fall to be assessed under any circumstances. One such source is one in sub-clause (vii) set out herein above. When analysed, this sub-clause requires several conditions to be satisfied before the exemption can be availed of. They are :

(1) That the receipts are not chargeable under section 12B as capital gains.

(2) The receipts must not arise from business.

(3) The receipts must not arise from the exercise of a profession, vocation or occupation.

(4) The amount paid should not be by way of additional to the remuneration of an employee.

(5) If the receipts is not from business or the exercise of any profession vocation or occupation then it should be of casual and non-recurring nature.

There is no question in the instant case of the receipt being from capital gains, nor is the receipt one which arose from any business; nor is it a payment in additional to the remuneration of the assessee. Therefore, three out of the five conditions would appear to be satisfied. The only question to be considered is whether it was a receipt from the exercise of a profession, vocation or occupation, and if it was not, then whether the receipt was of a casual and non-recurring nature ?

When then can it be said that a person is exercising a profession, vocation or occupation The words 'the exercise of' in section 4(3) (vii) which precede the words 'profession, vocation or occupation' must not be lost sight of. What then is the meaning to be given to these context of the facts of the present case The conditions of appointment of a judge of the High Court are given in the circumstances itself and there is a restriction placed upon the practice after retirement in the particular High court and therefore there cannot be any question of a sitting High Court and therefore cannot be any question of a sitting High court judge, simultaneously exercising a profession or a vocation. According to the Manual of Law Terms and Phrases by Aiyar (at page 294) a 'judge' definite judgment or a judgment which if not appealed against would be definitive'. A sitting judge, therefore cannot have a 'profession'. In this connection the observations of Scrutton L. J. in Commissioners of Inland Revenue v. Maxse may be reproduced with advantage :

'The next question is, what is a profession... it seems to me as at present advised, that a profession in the present use of language involves the idea of an occupation requiring either purely intellectual skill, or if any manual skill, as in painting and sculpture, or surgery, skill controlled by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production, or sale, or arrangements for the production or sale of commodities. The line of demarcation may vary from time to time. The word profession used to be confined to the three

learned professions - Church, Medicine and law. It has now, I think, a wider meaning.'

The receipt by the assessee for acting as an umpire cannot, therefore, under any circumstances be a receipt from the exercise of a profession.

The next question is whether it can be treated as a receipt from the exercise of a 'vocation'. In *Corpus Juris Secundum*, Volume XCII, the word 'vocation' has been defined thus :

'The word vocation is in common use, and is defined as meaning a vocation, calling, occupation or trade, ones regular calling or business, a calling occupation or business in which one engages more or less regularly.... the activity upon which a person spends the major one is called by some special fitness or sense of duty; usual avocation.

It has been said that the term conveys the idea of systematic employment, implies continuous or habitual course of dealing.....'

In *Websters Third International Dictionary*, volume 2, at page 2561, the relevant meaning of 'vocation' given is :

'The work in which a person is regularly employed usually for pay, line of work'.

Some sort of regularity, therefore, would appear to be since *qua non* to constitute a 'vocation'. The assessee acting as an umpire was a solitary transactions and it would be difficult, if not impossible, to say that the impugned receipt was one from the exercise of a 'vocation.'

In this connection, it only remains to consider whether his acting as an umpire constituted an 'occupation' and can it be said that the assessee had in fact exercised such an occupation In *Corpus Juris Secundum*, volume 67, page 74, it is stated that 'the word occupation is employed as refereeing to that which occupies time and attention'; but it is also 'a calling or a trade; and it is only as employed (in this latter sense) that the word is discussed' presumably for the reason that in law, the mere taking up time and attention of a person will not make

that his occupation. Corpus Juris goes on to say :

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

The word occupation is frequently defined as meaning the business in which one principally engages in order to procure a living or obtain wealth;.....

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

A person may engage in more than one occupation,... or he may engage in two occupations at the same time, as where he carries on his chief occupation and also another as a side line.'

It is clear from that what has been extracted above that the meaning of the word 'vocation' as given in the dictionaries and law lexicons has been used in more senses than one according to the context in which it is used or the subject-matter to which it applied. As laid down by the Supreme Court in Municipal Committee

Amaroti v. Ramachandra Vasudeo the meaning has to be determined in each case according to the context in which it is used. Looking at the word 'vocation' in the context as used in sub-clause (vii) of sub-section (3) of section 4 can it be said in the present case that one plunge more or less under compelling circumstances and as a special case in the waters of arbitration constituted a side line to the main occupation of the assessee which was that of a sitting judge of a High Court Some kind of continuity or repetition would appear, from the meanings extracted above, to be a necessary ingredient to constitute an 'occupation' in law. The use of the words 'exercise of an occupation' in section 4 (3) (vii) of the Act are significant and would also have the same meaning 'arising from business' - words which precede the exercise of a profession etc. 'Exercise', in Strouds Judicial Dictionary, volume 2, in regard to 'business' means 'the same thing as to carry on business or trade'. The carrying on of a and, business would again involve the idea of some sort of continuity or regularity and, therefore, it had become necessary to specifically provide in section 2(4) of the Act that business shall include 'an adventure in the nature of trade'. The same meaning of the word 'exercise' as given in Strouds Judicial Dictionary is also to be found in Corpus Juris Secundum volume 35.

That is one side of the picture as painted laboriously and painstakingly by Mr. Jagdish Swarup, the learned counsel for the assessee, on the basis of the meanings given to the word profession, vocation and occupation in law lexicons and dictionaries, and, on the other side, are the observations of the Supreme Court, albeit obiter, in P. Krishna Menon v. Commissioner of Income-tax and the decision of the Madras High Court in the case a retired judge acting as an arbitrator in the Commissioner of Income-tax v. V. P. Rao.

Before dealing with the Supreme Court case, it is perhaps best at this stage to clear the decks by referring to the other cases cited at the Bar. An analysis of the authorities cited shows that there are only two cases which relate directly to the taxable nature of the fee received by an arbitrator. They are both Madras Cases. The first one is Commissioner of Income-tax v. Ahmad Badsha Saheb. In that case the merchant was a dealer in hides and was carrying on his business in the city of Madras. In the year 1938, one Nawab C. A. Hakeem died leaving a large estate. A dispute arose among the heirs with regard to the division of the property

left by Nawab. The heirs chose five gentlemen of the same community to act as arbitrators and assist in the distribution of assets. The assessee was one of the five gentlemen who agreed to act as an arbitrator. The arbitrators did a considerable amount of work in connection with the administrations of the estate and when at a later stage there were proceedings in the High Court in regard to the partition of assets, it has decided that the sum of Rs. 87,000 should be divided among the five arbitrators. The assessee's share came to Rs. 17,400. The Income-tax Officer held that the assessee was liable to income-tax thereon. But, the Tribunal reversed the orders of the Income-tax officer on the ground that the payment represented a receipt of a casual and non-recurring nature. On a reference by the Commissioner, Leach C.J., who was sitting for the Bench, observed that the receipt was not one 'arising from the exercise of a profession, vocation or occupation', as the assessee was a merchant dealing in hides and was not a professional arbitrator and it is very unlikely that he would be called upon again in a case like the one referred. Further, that there was no stipulation made for remuneration and that the receipt was of a casual and non-recurring nature. It was, however, also pointed out very pertinently that 'there can be no rule laid down with regard to what is of a casual and non-recurring nature. Each case must be decided on its particular facts.'

The only other case on the nature and character of arbitration fees is Commissioner of Income-tax v. V. P. Rao. That was a case of retired judge of a High Court, who had agreed to serve as an arbitrator, under section 234 of the Madras Local Boards Act, 1920, for enquiring and reporting about a dispute which had arisen between two district boards. The Government agreed to pay him for the work a lump sum of Rs. 3,000 and traveling allowance on the scale admissible to High courts judges. The assessee claimed that the sum of Rs. 3,000 received by him was exempt from assessment under section 4(3) (vii) of the Act. The assessee contended that he had no whole time profession, vocation or occupation, he being on the retired list and the impugned receipt was of non-recurring nature. It was held that acting as an arbitrator was his 'occupation', that he had agreed to this arbitration work between the two local boards because of the promise by the Government to pay a lump sum of Rs. 3,000 besides traveling allowance on the scale admissible to High Court Judges..... that Rs. 3,000 in

question in this case arose from the exercise of the occupation of an arbitrator by Mr. V. P. Rao and that therefore the assessee cannot claim exemption under section 4(3) (vii) of the Act, and the sum will be taxable. The earlier case in Ahmad Badsha Sahebs case was distinguished on the ground that the arbitrator in that case had not stipulated or been promised or had been even expected any remuneration. He had occupied himself with the work of arbitration as a friend of the family. As regards the words 'from the exercise of' in section 4(3) (vii) it was observed :

'Very few people speak of receipts arising from the exercise of a business, and only speak of receipts arising from business; whereas the usual phrase for receipts from a profession, vocation or occupation is receipts arising from the exercise of a profession, vocation or occupation. If the argument of the Income-tax Appellate Tribunal in its judgment is correct, all the three words, profession, vocation and occupation, would mean much the same thing.... In our opinion, there is nothing in the words exercise of to require us to hold that the person exercising the occupation should be of the said profession, vocation or occupation already..... Receipts got as remuneration by a person, who is not already having the occupation of arbitrator on being appointed as an arbitrator will, in our opinion, be receipts arising from the exercise of the occupation of an arbitrator even though it had been exercised only once.'

Both these Madras cases do not really advance the matter as they were decisions on their peculiar facts. V. P. Raos case would have been directly in point if it was a case of a sitting judge and upon whom there would have been an embargo from acting as an arbitrator or accepting any honoraria. We are, therefore obliged to travel further field and consider other cases in order to ascertain whether the impugned receipt can be said to arise from the exercise of an occupation and if not whether it was of a casual and non-recurring nature.

If the receipt was not from a vocation, then exemption under the clause is only available if two further conditions are satisfied that the receipt was casual as well as non-recurring. If the nature of the receipt is that of recurring then, even if its is casual, it will not qualify for exemption. This court In re L. Indra Sen, by a majority,

held that an assessee who had purchased three horses and trained them for racing and whose horses had received in stakes a sum of Rs. 4,797, had also spend money in training and upkeep and running of the horses and there was a net loss on bets of Rs. 7,458, the loss claimed was not allowable as maintaining of racing horses and betting was not the vocation of the assessee. Braund J., speaking for the majority observed :

'..... Neither the assessee's ownership, management and running of his three race horses, nor his betting transactions can, and on such facts as have been disclosed to us by him, be said to constitute his business, profession, vocation or his occupation. I should, for myself, be very unwilling to lay down any general definition of what a business, professions, vocation, or occupation is, because it is a matter which, to my mind, must necessarily depend in every case upon the circumstances of the assessee, the particular things he does, and the degree to which, and the object with which, he does them.... in my opinion, neither the assessee's activities on the race course itself nor his betting can, on the facts of this case,.... be held to constitute a business. They certainly do not, in my opinion, constitute a profession or a vocation; and, though in a sense they engage part of the owner's time, they equally do not constitute his occupation... in its context used in this Act.'

On the question of casual and non-recurring, the learned judge held that betting transactions had nothing of a recurring nature about them. 'It was not its nature to recur. If it did in fact recur with great frequency it might on that account become a business. It may be true that, in fact, these bets did recur. But that was not the result of the nature of the transactions but of the mere spasmodic volition of the assessee. They were not, to my mind, of a recurring nature... I think also, upon this line of reasoning, that they were casual - casual in the sense that they were merely arbitrary acts dictated by the assessee's mood at the time of making them and following no set course of dealing.... I think that the word casual in this section must be reasoning as meanings the antithesis of that which is governed by something more than mere change - something out of which, according to the probabilities of business or to the known course of practical experience, a rational expectation of profits arises'.

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

The case of sitting judge would, in any case, be distinguishable from the case of business man who was no longer in business and yet had negotiated sale of a mill, acting more or less as a broker and had received remuneration as such, as in his case there would be no embargo whatsoever on his acting as a broker in a matter in which, while he was in business, he had special experience (vide *In re Chunnilal Kalyan Das*). Nor is it possible to equate the present case with the case of a practicing lawyer who, by his presence at a meeting of a company, was able to secure a substantial issue of new shares for the public, and firm of stock-brokers who were benefited by what that lawyer had achieved, though not at their request, nor directly on their behalf, gifted Rs. 10,000, and it was held that the income arose from the exercise of his profession as a lawyer (vide *in re Susil C. Sen*). Similarly, in *David Mitchell v. Commissioner of Income-tax*, the Calcutta High Court, following *Susil Sens* case, held, that a partner in a firm of chartered accountants who had received which was assessable as it was in the ultimate analysis by way of an appreciation of to professional services rendered by such accountant.

On the other side of the line is *Shiner v. Lindblom*. It was pointed out by Danckwerts J. that merely because the profession or calling affords the opportunity of earning the receipt does not necessarily make such receipt one arising from the exercise of that profession or occupation. In this connection it was observed :

'It seems to me that it may well be that his position as an actor in this case enable him to dispose of the copyright in the way in which he did, but it was no part of his profession to dispose of the copyright; it so happened that the film producing company were not prepared to produce the film unless he assigned to them the copyright, but that seems to me to be quite a different thing from saying that it was part of his profits in the course of his profession.'

Similarly, in *Down v. Compston*, it was pointed out that merely because a golfer bets upon game of golf played by him will qualify such receipts from betting as a result of the exercise of his profession as golfer.

It is, therefore, clear that no hard and fast rule can be laid down as to when an income can be said to arise from the exercise of a profession or vocation and each case has to be decided on its own facts. In any event, in the case of a sitting judge it would be difficult or not impossible, to say that he can have a double occupation, one as a sitting judge, and the other as an arbitrator at one and the same time. The impugned receipts in the hands of the assessee were clearly a casual and non-recurring one, as in the position in which he was placed there was no question of his legitimately expecting it to recur. In retrospect, also the facts on the record establish that this was a solitary instance and, if Sardar Patel had not personally intervened, no payment would have been made to him. In the peculiar facts and circumstances of this case it has to be held that the impugned receipt was casual and non-recurring.

The question whether the receipt in this case arises from the exercise of an occupation or not appears to me, speaking for myself, not to be free from considerable difficulty, in view of the decision of the Supreme Court in *P. Krishna Menon v. Commissioner of Income-tax*. But, after having perused the judgment, of my brother Beg. I concur with the interpretation he has given to the observations

made by the Super Court, in P. Krishna Menons case. I also accept the proposition, which is well-established, that where a view in favour of the assessee can reasonably be taken out of two possible views upon an interpretation of a taxing provisions, preference should be given to the view most favorable to the assessee. An assessee cannot be expected to abstain from accepting an assignment by forecasting that the income-tax authorities will necessarily take a view unfavourable to him even when a view in favour of the assessee can reasonably be taken, out of two possible views upon interpretation of a taxing provision, preference should be given to the view most favorable to the assessee. An assessee cannot be expected to abstain from accepting as assignment by forecasting that the income-tax authorities will necessarily take a view unfavourable to him even when a view in favour of the assessee can reasonably be taken. It is quite conceivable that, under conditions in which the rate of taxation rise steeply as the amount of income goes up, an assessee may not consider it at all worth his while to make or accept a casual assignment if he know that the receipt there from will all but be allowed up in the shape of tax. The legislature, on the other hand, is expected to make its intention clear in its enactments, so that citizens governed by the law enacted may know the law reasonable certainly and adjust their affaris accordingly. The provisions of section 4 (3) (vii) of the Income-tax Act, 1922, are certainly so worded that any one would, one a cursory reading of the provisions, conclude that, unless a causal, solitary, and non-recurring receipt is referable to the exercise of a profession, vocation, or occupation, an item of income falling under the head of casual and non-recurring receipt is exempt from income-tax. I have already indicated that, upon the peculiar facts of this case I consider that the receipt Rs. 20,000 by the assessee was an item of a casual and non recurring income.

For the reasons given above. I would answer the question in the negative and against the department. The cost of this reference are assessed at Rs. 250. Counsels fee is also assessed at Rs. 250.

M. H. BEG J. The question referred to us relates to a correct interpretation of section 4 of the Income-tax Act, 1922 (hereinafter referred to as the Act.) Section 4 of the Act provides that the 'total income of any persons includes all income, profits

and gains, from whatever, source derived'. It goes on to lay down the conditions under which such amount become part of the total income of a presences previous years. Sub-section (3) of section 4 of the Act lays down twenty two items of income or gains or receipts excluded from the purview of the total income of a person as defined by section 4 (1) of the Act. We are concerned with the seventh item which consists of : 'Any recipes not being capital gains chargeable according to the provisions of section 12B and not being receipts arising from business or the exercise of a profession, vocation or occupation which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.'

It is contended before, us by Mr. Guilty, on behalf of the department, that all receipts are, prima facie, taxable income of an assessee unless he shows that they exempt. Perhaps facie, taxable income of an assessee unless he shows that they are exempt. Perhaps section 4 (3) (vii) of the Act, as it is worded, creates a doubts as to whether the assessee must discharge the burden of proving that the receipts did not arise from the exercise of a profession, vocation or occupation. It appears to me that the manner in which this particular exemption is provided for in section 10(3) of the Income-tax Act of 1961 clarifies the position in so far as the burden to prove is concerned. There appears to me to be no difference made in the substance of the provision of section 4 (3) (vii) of the Act of 1922, as reproduced in 1961, but the legislature seems to have altered to order of words in order to clarify the nature of the exemption which is now found in section 10(3) of the Act of 1961, as follow :

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

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

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

(iii) receipt by way of addition to the remuneration of an employee.'

Just like section 10(3) of the Act of 1961, section 4 (3) (vii) of the Act exempt from the purview of total income 'any respites which are of casual or non-recurring

nature.' The characteristic which appears to be necessary for containing an exemption is that the receipt should be of a casual and non-recurring nature. In other words, the burden of bringing the receipt within an exception to the exemption, which the receipt obtains by proof of its casual and non-recurring character, is on the department. The primary condition for obtaining the exemption is that the assessee should prove its casual and non-recurring character. After that, the department must, on the evidence on the record, prove the receipt to result from the exercise of a profession, vocation or occupation. The question of burden of proof is of importance only if evidence on the two sides is equi-balanced. In the case before us, there is no dispute about facts which are quite clear. If however, after examining the admitted or established facts, we are left in some doubt whether the assessee had the profession, location or occupation of an arbitrator, this view on onus of proof on this matter can have a decisive bearing on the final answer which may be given by us. The principal question which arises, upon admitted facts of the case, may be put as follows : 'Does a single instance of acting as an arbitrator by an individual holding the office of a High Court judge give him a profession, vocation, occupation within the meaning of section 4 (3) (vii) of the Act, in addition to the vocation occupation his office gives him ?'

In the course of his arguments, however, the learned counsel for the department indicated that he also contended that the receipt was not of a casual and non-recurring nature. I do not think that there can be any doubt, upon the facts as found, that the receipt was actually non-recurring. I confess that I had my doubts on the question whether the receipt can be treated as casual in this case. The word 'casual', as defined in the third edition of Webster's New International Dictionary, means as follows :

'Subject or produced as result of chance; without design; not resulting from plan; without specific motivation, special interest or constant purpose; without foresight, plan or method; occurring encountered, acting, or performed without regularity or at random; occasional.'

The mere fact that the payment came within the realm of expectation and was then offered and accepted and finally paid would not make the payment a receipt in pursuance of some plan or design. An arbitration generally taken place in the course of a litigation as result of circumstances which are foreseen and provided for by parties to an arbitration agreement in pursuance of some plan. The selection of particular arbitrators is usually quite unforeseen and undetermined. Such selection taken place as a result of unpredictable factors. So far as a particular arbitrator is concerned, his selection, and consequently, the payment for the service rendered by him are not the result of any plan pursued by him. At any rate, there was neither a plan nor a design in the case of the present assessee to act as an umpire or arbitrator. The arbitration was accepted by the assessee as result of pressure and the claim of public interest which was placed before him in order to induce him to accept the arbitrate. The resulting financial gain, in such a case, does not appear to me to stand footing other than that of a casual receipt. Whatever doubts I had on this question have certainly been cleared by the judgment of my learned brother, Manchanda, which I have had the advantage of going through. I, very respectfully, concur with the view he has taken on this question and consider that the more correct of two possible opinions is that in this case was of a casual and non-recurring nature.

As already indicated, the main question argued before us was whether the assessee could be said to be exercising a profession, vocation, or occupation in acting as arbitrator in the circumstances set out very fully in the judgment of my learned brother. No decision was cited before us which could completely cover the case of the assessee. Learned counsel for the department, however, placed great reliance on *Commissioner of Income-tax v. V. P. Rao*. That was a case of a retired High Court judge. It was stated, at the outset of the judgment in the case, that the retired judge had 'no whole time profession, vocation, or occupation'. It was held there that the fact that he worked as an arbitrator was enough to give him an 'occupation' within the meaning of section 4 (3) (vii) of the Act. Reliance was placed by the High Court on a definition in the Oxford Dictionary of the term 'occupation' as 'being occupied with or engaged in something.' Another dictionary definition relied upon in that case was : 'state of being employed or engaged in some way.' In that case, the words 'the exercise of', occurring before 'profession,

vocation or occupation,' were not considered of any special significance and it was observed that they only meant 'using, employing or exerting.' 'Exercing or employing or using' was treated by the Madras High Court as though it was meant to be applied to an assessee's faculties. Section 4 (3) (vii) of the Act, however, obviously refers to an exercise of something more than and distinct from the faculties of the assessee. The use of faculties of the assessee must be so directed and be of such a character as to give the assessee a 'profession, vocation or occupation.' An activity of the assessee before the assessee has actually acquired a profession, vocation or occupation, either by a habitual pursuit of the activity or by engaging in it as a result of a design to pursue an occupation, cannot in my view, be considered the exercise of a profession or occupation. The activity of the assessee, however disorganised or irregular or desultory, must assume or acquire the form of or flow from an 'occupation' before the resulting income becomes taxable under the provisions of section 4 (3) (vii) of the Act. Whether it has assumed that character or not, will be a question of fact which could only be determined by taking the intention with which, the number, of times on which, and the whole set of attendant circumstances, in which an activity, which may produce some monetary gain, is carried on. In every case, however, it is 'the exercise of a profession, vocation or occupation' by an assessee which has to be established and not the mere use of the faculties or energies of an assessee which may result in an income.

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

exempt receipts which are casual and non-recurring in nature unless they are shown to be related to or resulting from 'the exercise of a profession, vocation or occupation.' The terms 'profession' and 'vocation' are definitely used in law for a calling or the principal occupation on which one generally depends for one's livelihood. Even if the term 'occupation' is somewhat wider, we are not at all convinced that it was intended to cover every kind of possible activity which may bring in some gain. If the term 'occupation' was meant to be used, so widely, practically every receipt of money would cease to enjoy the exemption conferred by section 4 (3) (vii) of the Act on the simple ground that some time and effort must have been expended in receiving it. If the ambit of the term 'occupation' is to be cut down, I would interpret it as a word used justly and generously with the preceding words. In other words, the idea of an engagement in an activity as one's ordinary or habitual or usual or principal work in the life or source of livelihood cannot be dissociated completely from the term 'occupation' as used in section 4 (3) (vii) of the Act. I am, therefore, unable to agree with the view taken by the Madras High Court in V. P. Rao's case. The mere fact that a person agrees to give his time and energy to the performance of some work or to exert himself, so that some monetary gain resulted from it in the form of a receipt of money, is not sufficient to convert the gain into a receipt resulting from the 'exercise' of an 'occupation' or to deprive it of its character as a casual and non-recurring receipt where that has been proved.

Another case sought to be relied on by Mr. Gulati, on behalf of the department, was P. Krishna Menon v. Commissioner of Income-tax. This was a case in which there was no doubt that the assessee, a retired superintendent of police, had taken to giving lessons in Vedanta as his vocation in life. He had been giving lessons to a number of persons including a man called Levy, who came from England at different intervals to obtain instructions. It was held that the mere fact that the payment was made in a lump sum, as a purported charitable donation could not deprive the alleged donation of the character of a receipt made as a payment for the service rendered by the assessee who, it pointed out by the Lordship of the Supreme Court, could be considered as being engaged even in 'profession'. It was observed there that the existence or absence of organised activity or profit-making motive could not take away the character of a vocation from the activity carried on by the

assessee. It was pointed out there that want of continuity was also not a decisive test of the pursuit of a profession or vocation. Their Lordship however, came to the conclusion that there was neither any want of system, nor of continuity in the activities of the assessee. After that, they observed that the name by which such activity was called was immaterial and that the real question to be decided was whether the gain which the activity had brought to the assessee was income or not. It was held there that the fact the receipt was related to and resulted from the vocation adopted and carried on by the assessee was enough to make the receipt part of taxable income. I find it different apply this case, the facts of which are so very different, to the case of the assessee before us. If, on the facts of the case stated, we are unable to hold that the assessee was carrying on profession of an arbitrator or pursuing a vocation or occupation which may be described as that of an arbitrator, the above-mentioned Supreme Court decision could not help the department.

It was contended that P. Krishna Menons case could apply to the case of a High Court judge who has already got a vocation or occupation which disable him from engaging in any other occupation. There was no such disability in any of the cases cited before us. It was because of this debilitate that special exemption to act as an arbitrator in one case had to be obtained in the case of the assessee. Even though the Constitution of India does not contain an express prohibition, it does seem quite inconsistent with the office of a judge of a High Court that he should have, in addition to his office, a profession, or a vocation or occupation, which beings him income. Indeed, if a High court judge were to engage in a profession or pursue a vocation or occupation part from his juridical office, it may conceivably provide justifiable grounds for his impeachment.

Very great stress was laid on behalf of the department upon the following words from the decision of their Lordship of the Supreme Court in P. Krishna Menons case.

'The question is, whether the activity has actually produced an income and it matter not whether that activity is called by the name of business, profession, vocation or by any others name or with what intention it was carried on.'

I do not think that it is at all fair, or permissible to abstract or lift few words or sentence or even a passage, and after tearing the words out from the context, to urge that the words used laid down a principle or the ratio disdained of the case. I may here refer to an essay of Prof. Arthur L. Goodhart, in book entitled 'jurisprudence in Action' (Legal Essays collected by the Association of the bar of the City of new York, 1953), on 'Determining the ratio disdained of the case.' After an illuminating and elaborate discussion, profit Goodhart correctly at the following conclusion :

'The principle of the case is found by taken into account : (a) all the facts treated by the judge as material and (b) his decision as based on them.'

In P. Krishna Menons case it was certainly observed by the Supreme Court that a man can carry on a profession or vocation or occupation within the meaning of section 4 (3) (vii) of the Act without the necessity of doing so either continuously or in an organised fashion. But, a try observation of this kind interspersed amidst a number of observation of this kind, interspersed midst a number of observations in the course of the judgment, cannot be elevated to the rank of a principle enunciated having the effect of making it quite necessary to prove either any system or continuity of organisation or the intention with which an activity was carried on. Speaking for myself, I have no doubt whatsoever in my mind that the Supreme Court did not mean to lay down any such proposition as a principle to be deduced from its decision. The ratio disdained of that case was simply that, upon the facts roved there, the assessee was actually carrying on the profession, vocation or occupation which produced the income to be taxed. I may pointed out that, immediately after the observation quoted above, relied, upon so much on behalf of the department, occurs the following passage ending with the conclusion towards which all the observations of their Lordship of the Supreme Court were directed in the particular paragraph of the judgment in P. Krishna Menons case :

'The observation of Rowlatt J. in Stedeford v. Beloe to which we were referred by Mr. Sastri, that there could be no tax on pension granted to a retired headmaster as there is no background of business in it, was clearly not intended to lay down that without a profit motive there can be no business, profession or vocation. The

pension could be taxed only if had arisen out of the office and the only point decided was that it had not so arisen as the headmaster held no office, having retired earlier, at the date the person had been granted : see the same case in the House of Lords (Stedford v. Beloe). We think, therefore, that the teaching of Vedanta by the appellant in this case can properly be called the carrying on of a vocation by him.'

The paragraph has to be read as a whole to arrive at the meaning correctly. The meaning and intention of the words used are clearly lost by trying to read a few words divorced from the context and the obvious intention in using them. Their Lordship were emphasising that the manner in which vocation or profession or occupation is carried on cannot wipe off the fact that a profession, vocation or occupation is actually carried on. The words used by the Supreme Court cannot, in my opinion, be possibly interpreted to mean that their Lordship of the Supreme Court did not require that a profession or occupation or vocation should actually be carried on in order to make receipt capable of being regarded as a result of such a profession, vocation or occupation. In the case before us, we are unable to find a profession, occupation. In the case before is, we are unable to find a profession, occupation or vocation of the assessee part from the work he did as a holder of the office of High Court judge. It is true that the amount which he received as an arbitrator in a solitary case was an item of income for him. Nevertheless, if the income was of character, which came under the class of non-taxable receipts was shown to be the result of the exercise of the profession, vocation or occupation. The department has not, on the findings recorded, shown that his was the position in the case before us. The amount received must be not only an item of income but also a taxable item of income.

The Appellate Tribunal plainly erred in holding that the assessee, who possessed special qualifications for functioning as an arbitrator by reason of his high judicial office and legal knowledge and ability, was really doing a work connected with his judicial office. In effect, the Tribunal, assimilated the work and the income of arbitration with what of the assessee's judicial office which, according to the Tribunal, enabled the assessee to earn the fees for the arbitration. The line of reasoning adopted by the Tribunal overlooks the distinction, rightly borne in mind

by the Assistant Appellate Commissioner, between the assessee's functions as a High Court judge and the work of arbitration. The Appellate Assistant Commissioner had, quite correctly, pointed out that the Income-tax Officer had erred in holding that the award was given by the assessee 'as chief Justice working in a judicial Capacity.' It is surprising that the Appellate Tribunal should have repeated a very obvious error of the Income-tax officer, albeit, in an attenuated form. The Income-tax Officer seems to have thought that it was part of the judicial functions of the chief justice to arbitrate generally, but the Tribunal apparently held the view that arbitration was inextricably 'connected' with the judicial functions of the assessee.

The mere fact that arbitration is work of a judicial character, for which a lawyer and judge maybe specially qualified and suited, could not either make it part of the duties of the holder of a judicial office or fuse or integrate one with the other. In fact, arbitration is undertaken by persons who function completely outside the course of the work done by judges appointed by the State. The arbitrators are unlike judges appointed by the state, chosen by the parties themselves as substitutes for the regular judges. They are often laymen who are ignorant of the technicalities of law. They operate within limits set by the parties to an agreement. Their awards can be subjected to attacks and scrutiny by ordinary courts on specified grounds. This is one of the reasons why High Court judges are practically debarred from working as arbitrators; and it was for this reason that Presidential sanction became necessary to enable the assessee to get a remuneration for a service rendered outside the scope of his official duties. There could certainly be neither an assimilation of the functions of the arbitrator with that of the judge nor of the fees for arbitration, which could be classed as a casual and non-recurring receipt in such a case, with the income of the judge which falls under the head of 'salary'. The superficial similarity in the nature of work done by a High Court judge and an arbitrator cannot hide the very striking differences in the character of work done and the nature of income earned from them which have, unfortunately, completely escaped the attention of the Tribunal.

Two of the cases placed before us on this aspect may be mentioned here. A decision of the Calcutta High Court in *In re Susil C. Sen*, was relied upon by the

Income-tax Appellate Tribunal. This was a case in which the assessee had performed the function of an attorney and an advocate and had acted in that capacity in attending a meeting of the shareholders of a company as a proxy for a client. He made a speech at the meeting which persuades the shareholders to agree to a substantial issue of new shares to the public. It may have been possible to look upon the contested sum of Rs. 10,000 paid to the assessee by a firm of stock-brokers, which benefited from the issue of new shares, as a purely gratuitous gift to the assessee. The Calcutta High Court, however held that the money was paid by presumably prudent commercial men with a view to obtain some advantage in future by rewarding an advocate for smoothing out the difficulties and advocating the claim of Indian shareholders. The payment was held to have been made for services rendered by Mr. Sen as a member of the legal profession acting on behalf of a client who was a shareholder. It may be that the payment was made without a stipulation or contract for it. Nevertheless, the payment, was in fact, held to constitute a reward for services of a member of the legal profession acting exercise of his of vocation or occupation. The work done by Mr. Sen was assimilated with and held to constitute a part of his professional activities. It was not a case in which the very existence of the profession, vocation or occupation, which resulted in some income, was a matter of doubt or uncertainly at all.

Another case cited was : Rajagopalachariar v. Commissioner of Income-tax. Here, the number of occasions on which the assessee had given talks on the All India Radio was held to be sufficient to convert the activity into a vocation within the meaning of section 4 (3) (vii) of the Act. Nevertheless, the acquisition of the profession, vocation or occupation which given rise to the particular item of income sought to be taxed has to be proved. Just as to quote a proverb, 'one swallow does not make a summer'. I do not think that 'a single plunge into the waters of profession,' as my learned brother has put it, can amount to the acquisition of a profession, vocation, or occupation. It is impossible to lay down an inflexible rule applicable to every set of circumstances which may arise. It is possible that even 'a single plunge in to the waters of professional' may result in taxable income provided the profession or vocation had been acquired as a result in taxable of some design or plant to pursue it prior to such a single plunge. In other cases, the

very acquisition of a profession, vocation or occupation, which may be in dispute, will be judged by the number of instance in which the activity is indulged in.

Upon the view I take, the ratio decidendi of the case in *In re Lala Indira Sen*, a decision of this court and of *Commissioner of Income-tax v. Ahmad Badsha Saheb*, a decision of the Madras High Court, is applicable to the case before, us inasmuch as it was held in both these cases that the amount received by the assessee was not taxable because the assessee had not acquired a profession. With grant respect, I find myself in agreement with the opinion of Braund J. in *Lala Indra Sens* case, that the question whether an assessee has made an income from any profession, vocation or occupation acquired by him is necessarily a question of fact any profession, vocation or occupation acquired by him is necessarily a question of fact depending upon the varying sets of circumstances so that no single absolutely conclusive or decisive test can be laid down for determining the acquisition of a profession, vocation or occupation. I think that the majority view in *Lala Indra Senss* case, is bringing upon us as it is a decision of this very court. As already indicated by me, I have not found anything either in *P. Krishna Menons* case, or in any other case decided by the Supreme Court which makes an item of income taxable even before the activity of an assessee producing this income could be held to ripen into a profession, vocation or occupation. I have also indicated the reason why I do not find the observation of the Madras High Courts in *V. P. Raos* case acceptable in so far as they point to a contrary conclusion. I think that, upon the facts of the present case, the Income-tax Appellate Tribunal could no reasonably entertain the view that the assessee had an occupation other than that of a judge. The Appellate Tribunal had arrived at an erroneous conclusion, because of the obvious fallacy in supposing that the work of the arbitrator in the present case was inextricably connected with the assessee's judicial office when there is nothing of any substance whatsoever which could justify such a view.

Lastly, I may observe that even if this was a case in which there was some doubt the sum of Rs. 20,000 paid to the assessee as an umpire or arbitrator was taxable income or not, the doubt should be resolved in favour of the assessee where this can be reasonably done. I am definitely of opinion that the more reasonable and

plausible of the two possible views-even if it were conceded, for the sake of argument, that two views are possible - is that the sum of Rs. 20,000 was a casual and non-recurring item of income which cannot be related to the exercise of any profession, vocation or occupation by the assessee.

I, therefore, in agreement with my learned brother, answer the question in the negative and against the income-tax department. I also concur with my learned brother in the order proposed as to costs.

Question answered in the negative.

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