HIGH COURT OF BOMBAY

Mehboob Productions (P.) Ltd.

v.

Commissioner of Income tax

VIMADALAL AND DESAI, JJ.
IT REFERENCE NO. 101 OF 1965
DECEMBER 18, 19, 1974

R.J. Kolah and **S.E. Dastur** *for the Applicant.*

R.J. Joshi and **U.B. Shastri** *for the Respondent.*

JUDGMENT

Desai, J.—This is a reference under section 66(1) of the Indian Income-tax Act, 1922 (hereinafter referred to as "the Act"), made by the Income-tax Appellate Tribunal, Bombay Bench "C", Bombay, and the following two questions have been referred to us for our consideration:

> "1.Whether, on the facts and in the circumstances of the case, the amount of Rs. 10,67,212 recovered by the assessee-company in the year of account could be included in its total income for the year 1959-60 ?
>
> 2.Whether, on the facts and in the circumstances of the case, l/3rd of the medical expenses claimed by the assessee-company for the treatment in the U.S.A. of the managing director could be disallowed under section 10(4A)?"

For the purpose of deciding these questions and giving our answers thereto it is necessary to set out the following facts which are to be found from the statement of the case submitted by the Tribunal and the annexures thereto:

The assessee, *viz.*, Mehboob Productions Private Ltd. is, as its name indicates, a private limited company which, at all relevant times, was doing business in production of films. We are concerned in this reference with the assessment year 1959-60, the corresponding previous year being the year ended 30th September, 1958. Sometime in 1957, the assessee-company completed the production of a film entitled *Mother India.* In that very year, *i.e.*, in 1957, it was awarded a certificate of merit (presumably by the Government of India), and the assessee-company preferred a claim before the State Government that the picture should be declared as "exempt from entertainment duty" and that as producer of that picture it was entitled to that portion of the proceeds of the exhibition of the film which represented entertainment duty. The claim of the assessee was accepted by the then Government of Bombay on 25th October, 1957, and in pursuance of that decision the assessee-company recovered from the various exhibitors and theatres in the then State of Bombay the aggregate amount of Rs. 10,67,212 being the amount these exhibitors and theatre-owners had collected by way of entertainment duty in the year of account. It may be mentioned that the decision of the Government was pursuant to the procedure to be found contained in the notification dated 18th May, 1957, issued by the Director of Publicity, which is to be found annexed to the statement of the case as annexure "A". The decision of the Government directing that the assessee's film should be "exempt from the liability to pay entertainment duty", to be found contained in its Resolution No. ENT. 1756-N dated 25th October, 1957, was originally not made a part of the statement of the case and was not annexed thereto; but, by our order dated 12th December, 1974, which order was made with the consent of the parties, the same was made part of the statement of the case and marked as annexure "A-1" thereto. The letters written by several Government authorities to the exhibitors and theatre-owners pursuant to this decision have also been made part of the statement of the case and are to be found as annexures "C" and "D", respectively, thereto.

Before the Income-tax Officer the assessee-company claimed that the amount of Rs. 10,67,212 was not liable to be included in its total income because it was not a trading receipt but only an amount received by way of a personal testimonial and that, at any rate, it was casual and nonrecurring and was, therefore, exempt under section 4(3)(*vii*) of the Act.

The second question arising in this reference refers to certain expenses incurred by Mehboob Khan, a director of the assessee-company, while he was on tour of the United States of America in the following circumstances: The picture, *Mother India,* was one of the foreign films nominated by the Academy of Arts and Sciences, Hollywood, and Mehboob Khan, accompanied by his wife, proceeded to the U.S.A. to attend the function for the awards by

this body. While he was in the U.S.A., Mehboob Khan suffered a a serious heart attack, for which he had to be hospitalized and an aggregate expenditure of Rs. 33,667 was incurred in connection with this illness. After his return to India from the U.S.A. the board of directors of the assessee-company at its meeting held on 1st May, 1958, passed a resolution to the effect that the entire expenditure on Mehboob Khan's treatment should be borne by the company and debited to its account. A copy of the said resolution of the board of directors of the assessee-company dated 1st May, 1958, has been annexed as annexure "E" to the statement of the case. The assessee-company accordingly claimed the whole of the expenditure of Rs. 33,667 as a proper deduction in determining its profits for the assessment year

The Income-tax Officer rejected both the claims made by the assessee-company. He included the amount of Rs. 10,67,212 in the assessee's total income and rejected its claim for the deduction of Rs. 33,667 invoking the provisions of section 10(4A) of the Act. According to the Income-tax Officer, the amount of Rs 10,67,212 constituted receipts on account of the assessee's venture of film production which was their normal business, and accordingly the said amount had to be treated as trading receipts in the hands of the assessee. According to him, further, the assessee was getting regular receipts out of the proceeds of the picture and since receipts were being received as part of the assessee-company's business, the same were neither casual nor non-recurring. Accordingly, the assessee-company's claim to exemption under the provisions of section 4(3)(*vii*) of the Act was also rejected. The Income-tax Officer further held that the amount spent for the medical expenses of Mehboob Khan in the U S.A. was an expenditure which resulted directly in the benefit or amenity to the director who had a substantial interest in the assessee-company within the meaning of sub-clause (*iii*) of clause (6C) of section 2 of the Act. Accordingly, the assessee-company's claim for deduction of this amount reimbursed to the director was disallowed, applying the provisions of section 10(4A) of the Act.

The assessee, thereafter, appealed to the Appellate Assistant Commissioner, who confirmed the order of the Income-tax Officer on both the issues. According to the Appellate Assistant Commissioner, the sum of Rs. 10,67,212 constituted a receipt from the exercise of the assessee's business as film producers, and, therefore, the assessee-company was not entitled to claim exemption in respect of the said amount as a casual or non-recurring receipt. The Appellate Assistant Commissioner also agreed with the approach and the conclusion of the Income-tax Officer as regards the assessee's claim for deduction of the medical expenses which had been reimbursed by the company to its director, Mehboob Khan.

The assessee, thereafter, appealed to the Income-tax Appellate Tribunal, and before the Tribunal it was contended on its behalf that the amount of Rs. 10,67,212 was not its income at all for the purposes of the Act and that, in any event, it was casual and non-recurring and did not arise out of the assessee's business. With regard to the medical expenses it was contended on behalf of the assessee that the decision to reimburse Mehboob Khan in respect of these expenses was taken purely on the ground of commercial expediency, that the department itself had accepted that Mehboob Khan was the driving force of the assessee-company and that there was nothing unbusinesslike or abnormal in the assessee-company bearing the expenses for the medical treatment of a person who meant so much to it. The Tribunal upheld the orders of the Income-tax Officer and and the Appellate Assistant Commissioner as regards the inclusion of Rs. 10,67,212 in the assessee's total income, but it restricted the disallowance of the medical expenses to only l/3rd of the amount claimed by the assessee. As far as the first question was concerned, the Tribunal was unable to accept any of the arguments advanced on behalf of the assessee-company. It found it impossible to divorce the amount received by the assessee-company from its trading activity. According to the Tribunal, this was not a case where the amount was received without any reference to the business, profession or vocation of a person. The amount was "related to a picture which was essentially a commercial commodity produced in a commercial manner. It has, therefore, no aspect of a personal testimonial which could be linked to personal qualities which had nothing to do with business, profession or vocation". According to the Tribunal, "to all intents and purposes, the amount seems to us to be in the nature of production bonus, the emphasis in this case being not on the production of quantity but production of quality". In the view that it took, *viz.*, that the amount was related to the company's business of producing films, which, in the view of the Tribunal, would include production of good films, the assessee was not entitled to claim exemption in respect of the said amount under the provisions of section 4(3)(*vii*) of the Act. Thus, the Tribunal was of the view that the amount was rightly included in the assessee's total taxable income.

As regards the medical expenses, the Tribunal accepted the assessee's contention that Mehboob Khan's visit to the U S.A. was for the purposes of the assessee's business. According to the Tribunal, Mehboob Khan must be held to

have suffered a heart attack while he was in the U.S.A. by reason of the company's work and, therefore, it came to the conclusion that the expenses of medical treatment in the U.S.A. to the extent that it was in excess of the expenses which would normally have been incurred in India should be allowed as a deduction to the assessee. On a rough and ready basis such expenses in India were estimated by the Tribunal at l/3rd of the expenses incurred in the U.S.A., and, accordingly, the Tribunal upheld the disallowance only of an amount equivalent to l/3rd of the medical expenses, and the assessee was permitted to claim the balance 2/3rd expenses as a deduction.

I propose to deal first with the second question referred to us, which question pertains to the disallowance of l/3rd of the expenses for the medical treatment of Mehboob Khan in the U.S.A. This is because this question is not capable of any elaborate discussion as seems to be required for answering the first question. The findings of the Tribunal pertaining to this claim have already been indicated earlier. According to the Tribunal Mehboob Khan's visit to the U.S.A. was for the purpose of the company's business, and it was noted that his air-fare to that country had been allowed as expenditure incurred by the assessee on that footing. Further, it was observed that whilst there was no agreement regarding such medical expenses, absence of such agreement was not conclusive of the matter inasmuch as it was a special contingency which would not normally arise and, therefore, would not be required to be provided for. It was observed by the Tribunal that this was not the ordinary medical treatment, nor was it a case where the director had taken advantage of his visit to the U.S.A. for a medical check-up. The seriousness of the heart attack was also accepted by the Tribunal, which also proceeded on the footing that Mehboob Khan was the driving force behind the assessee-company. Accordingly,. the Tribunal seems to have accepted that it was on the principle of commercial expediency that the assessee-company decided to reimburse these expenses to the concerned director. In para. 8 of its order the Tribunal has referred to the contentions of the department itself which are to the effect that Mehboob Khan was the driving force of the company and that there was nothing unbusinesslike or abnormal in the company bearing the expenses of medical treatment of a person who meant so much to the company. Now, the question which we have to consider is whether with these findings there was any justification for disallowing l/3rd of the expenses of the director on the footing or on the basis that the Tribunal has chosen to adopt. In my opinion, once having accepted that it was on the principle of commercial expediency that the company had resolved to reimburse such expenses to the director who was admittedly the driving force of the company, it would not be open to the Tribunal to disallow a portion of such expenses on the footing that it has done. It must be noted in connection with this point that it was not the revenue's case that any part of the expenses claimed was not satisfactorily proved or that the l/3rd which was disallowed was such amount found to be excessive or unreasonably incurred. We must proceed upon the footing that the entire amount which had been agreed to be reimbursed represented the expenses which in fact had been incurred by the director, that the amount claimed was duly proved and that no part of such expenses could be regarded as excessive or unreasonable. With these factual findings, can the resolution of the board of directors of the company dated 1st May, 1958 (annexure "E" to the statement of case), resolving to bear the entire expenses on the medical treatment be said to be in any way improper or against the principle of commercial expediency ? It is important to point 6ut that it has not been the revenue's case that the Tribunal's conclusion to the effect that such decision of the board of directors of the company was based on the principle of commercial expediency is in any way improper or perverse. Now, if the decision by the assessee to bear these medical expenses of its director is held justifiable and sustainable on the principle of commercial expediency, I do not see any basis for disallowing l/3rd of these expenses on the footing that the Tribunal has adopted. Either the entire medical expenses have to be properly reimbursed on the principle of commercial expediency or no part of such reimbursed expenses is allowable to the assessee-company.

In the question as posed, the Tribunal has referred to section 10(4A) of the Act which was the basis on which the Income-tax Officer and the Appellate Assistant Commissioner had rejected the assessee's claim that these expenses be allowed as a deduction. Under the relevant statutory provisions, nothing in sub-section (2) of section 10 of the Act shall be deemed to authorise the making of any allowance in respect of any expenditure which results directly or indirectly in the provision of any remuneration or benefit or amenity to a director or a person who has a substantial interest in the company within the meaning of sub-clause (*iii*) of clause (6C) of section 2 of the Act. Now, in the first place, the question arises whether such reimbursement could be regarded as remuneration or benefit or amenity provided by the assessee-company to its director. In any case, it would not be possible to sustain the disallowance of l/3rd of such expenses on the footing that this would fall within the mischief of section 10(4A) of the Act, whilst the balance 2/3rds expenses, in respect of which the assessee's claim has been upheld by the Tribunal, would not be so governed. As indicated earlier, the proper view to be taken

would seem to be that in view of the facts and conclusions arrived at by the Tribunal regarding the basis on which the resolution (annexure "E" to the statement of case) was passed by the assessee-company, the entire amount of medical expenses occasioned by Mehboob Khan's illness which were borne by the assessee-company pursuant to this resolution, is liable to be allowed on the footing that the decision to reimburse was taken on the principle of commercial expediency and that no part of such expenses was held to be not proved or arbitrarily excessive or unreasonable.

This brings us to a consideration of question No. I. Two points arise for determination in order to give our answer to this question. The first is whether the various amounts received by the assessee-company and aggregating to Rs. 10,67,212 should be held to be the income of the assessee as defined in section 2 of the Act; and the second aspect is whether such income is exempt from taxation on the ground that it falls under section 4(3)(*vii*) of the Act. However, before considering the statutory provision and the mass of legal authorities pertaining to these statutory provisions, it appears to be worthwhile to refer in some detail to the Government notifications and decisions which form part of the statement of the case, pursuant to which the assessee-company came to be in receipt of this large amount.

Annexure "A", which has been given the title "A copy of the notification, dated May 18, 1957", appears to have been issued by the Director of Publicity, Government of Bombay, Bombay, and seems to indicate comprehensively the modified procedure accepted by the Government of Bombay with regard to selection of films for exemption from payment of entertainment duty. It may be noted that under such modified procedure, producers desirous of obtaining exemption from entertainment duty were required to forward their applications with relevant particulars to the Secretary to the Government of Bombay, Revenue Department, Sachivalaya, within one week from the commencement of each quarter. After receipt of the applications, a preliminary scrutiny of the entries was to be made by a committee to be appointed by the Government in that behalf and the committee was, after such scrutiny, to submit its recommendations to the Government. It was indicated in the notification prescribing the modified procedure that in considering whether a film was eligible for exemption or not, due attention was to be given "to the quality of the film and purpose of the film, its artistic and technical merits, the quality of songs and dances and of the dialogue, the social or educational purpose a film has purported to serve with the idea of educating the masses, improving their general tone and outlook and setting a high standard of film production as a medium of mass education and improvement". It appears to me that as the notification itself indicates, the use of the word "exemption" from entertainment duty was to a substantial extent a misnomer inasmuch as the paying party, *i.e.*, the movie-goer was not exempted or relieved from payment of such duty in respect of the exempted film, but a portion of the proceeds of the exhibition of the film which represented entertainment duty collected from the movie-goer was to be handed over to the producer of the film. It was indicated in the notification further that the procedure for scrutiny, recommendation and selection, as indicated earlier, was not to apply to films which were recipients of the President's award. The later part of the notification goes on to say that "such exemption" should be granted to those films: (*i*) which have won the President's Gold Medal, or (*ii*) which after a careful scrutiny and to the satisfaction of Government are likely to fulfil some educational or social purpose of a high order, *e.g.*, films devoted wholly or mostly to the cause of eradication of untouchability or of the inculcation of temperance. The intention of the Government in handing over a portion of the proceeds of the exhibition of the film which represented entertainment duty to the producer is also made clear in the said notification, and the intention was "to encourage the production of films which are technically of a sufficiently high quality, and, in addition, serve a high social purpose, by assisting the producer in financing their similar subsequent ventures". The notification indicates that there was some existing ad hoc procedure, which procedure was required to be modified inasmuch as the said existing procedure entailed considerable lapse of time which resulted in the producers being unable to take advantage of the decision to exempt their films. It appears that on 5th October, 1957, the assessee-company wrote a letter to the Revenue Department, Government of Bombay, regarding its claim for exemption from entertainment duty. On 25th October, 1957, Government Resolution No. ENT. 1756-N appears to have been issued (see annexure "A-1" to the statement of the case). This resolution sets out that six films, including the film, *Mother India*, produced by the assessee, had sought exemption from liability to pay entertainment duty. The resolution indicates that the Films Advisory Committee appointed by Government had viewed all these films and recommended that two of them (one being *Mother India*) may be exempted from the liability to pay entertainment duty as they were qualified for it, having regard to the quality and purpose of the films, their artistic and technical merits and also the educational and social purpose they serve. The notification embodies the Government decision to accept the recommendations of the

Films Advisory Committee pertaining to these two films and it was decided that amounts equivalent to the amounts of entertainment duty leviable on their exhibition should be paid by the exhibitors to the producers thereof, one of whom in the case of the film, *Mother India,* being the assessee-company. The procedure for such payment is indicated in clause 4 of the resolution. Under this procedure the proprietors of cinemas or exhibitors are to be called upon to give an undertaking, which is to be procured by the producers concerned, to the effect that they (the proprietors or exhibitors) will pay to the producers an amount equivalent to the amount of entertainment duty leviable on the exhibition of the film, with a rider to the effect that if they fail to comply with this undertaking, they (the exhibitors or proprietors of the cinemas) would be liable to pay to the Government an amount equivalent to the amount of entertainment duty leviable on the exhibition of the films, *treating the exemption mentioned* earlier as withdrawn (underlining* supplied). It is clear that it was pursuant to this decision embodied in annexure "A-1" that letters similar to annexures "C" and "D" were addressed to various theatre-owners by the authorities concerned.

According to the submissions made on behalf of the assessee, the view taken by the taxing authorities that the assessee-company must be deemed to have produced the picture with the expectation of the same achieving a particular standard so that it may be eligible for a possible grant by the Government under the scheme for exempting suitable pictures from entertainment duty was untenable and farfetched. Further, the award was purely voluntary and there was no obligation on the part of the Government of Bombay to grant exemption nor was the assessee-company legally entitled to demand such exemption or, even after the decision was taken, to enforce any rights against the Government. According to the assessee, it was entirely a matter for the discretion of the Government to decide whether a particular film producer should be the recipient of its largess, and it was fully competent to accept any application of a producer or reject it, or even to accept or reject the recommendation of its Films Advisory Committee; and, according to the assessee, it was equally open to the Government to withdraw the so-called exemption at any time and require payment of entertainment duty to itself. It is clear from a fair perusal of annexures "A" and "A-1" that the so-called exemption was by way of making a grant or an award to deserving producers to give them financial assistance for producing films of high quality and suitable social content in future; and the procedure for the so-called exemption from entertainment duty has been devised merely to ensure the computation of the amount of the grant by Government, it being assured that good films which have had a fairly good commercial success would get a higher grant than the ones which did not have such success, and further ensuring that in any event such grants were not being made from Government funds but from what would in normal circumstances have gone to the coffers of the Government.

There is some difficulty on the facts of the case in deciding whether the assessee's film became entitled to receipt of this grant or subvention or subsidy by reason of its being awarded a certificate of merit or on the recommendation of the Films Advisory Committee. The provisions under the notification regarding automatic application of the scheme are available for films which are recipients of the President's award or President's Gold Medal. Inasmuch as as annexure "A-1" shows, the film had been referred for its recommendation to the Films Advisory Committee, it does not appear to be a film which was an automatic recipient under the scheme of exemption from entertainment duty but one which competed with other similar films for the Government's favour. It is in the background of these facts as are to be found from the material on record that the relevant statutory provisions and the authorities pertaining thereto will have to be considered.

Under section 2 of the Act, which section deals with various definitions, there was originally no provision regarding the definition of "income", and even after the addition of sub-section (6C) in section 2 we find that certain items merely have been indicated as included in "income". None of these items to be found in the said sub-section (6C) is of any assistance in the case before us. Section 6 of the Act indicates the various heads of income chargeable to tax, and under section 4 of the Act the total income of any previous year of any person includes all income, profits and gains from whatever source derived, which are covered by the further requirements provided for in the said section. Here, it may be noted that section 4(3) contains several exemptions, and we aie concerned in this reference with the exemptions contained in clause (*vii*) of subsection (3), which provides for the non-includibility in the total income of the person receiving them of "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". It is well settled that the onus to establish a claim as one falling within this exemption would be on the assessee and it is equally clear that for such purpose it would be necessary for the assessee to establish that these receipts cannot be considered to be receipts arising from its

business and further that such receipts are of a casual and non-recurring nature. But, before proceeding with the consideration of the assessee's claim to exemption under section 4(3)(*vii*) of the Act, it becomes necessary to consider its claim that the amount of Rs. 10,67,212 does not constitute its income.

The expression "income" has been considered in several cases and it will now be proper to refer to and discuss some of them. I would first refer to *Commissioner of Income-tax* v. *Shaw Wallace & Co.* [1932] 2 Comp Cas 276, 280; AIR 1932 PC 138, 140, in which case the Privy Council attempted to indicate what the term "income" in the Indian Income-tax Act, 1922, connoted. It is true that subsequent decisions of the Privy Council and of the Supreme Court have, to a certain extent, restricted the applicability of the discussion to be found in the above case; but, in my opinion, it must remain the starting point of all discussions on the question and it will be found referred to in all subsequent decisions both of the Supreme Court and other High Courts on this aspect of the matter. In that case it was observed as follows:

> "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."

Thus, according to this decision, the term "income" in the 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 and, according to the Privy Council, anything in the nature of a windfall must be excluded from what may be properly regarded as income.

It is true that in *Raghuvanshi Mills Ltd.* v. *Commissioner of Inome-tax* [1952] 22 ITR 484 (SC), the Supreme Court has observed that the remarks of the Judicial Committee in *Commissioner of Income-tax* v. *Shaw Wallace & Co.* [1932] 2 Comp Cas 276; AIR 1932 PC 138, with regard to the meaning of the word "income" must be read with reference to the particular facts of the case. In *Raghuvanshi Mill's* case [1952] 22 ITR 484 (SC) the Supreme Court was considering the case of the assessee-company which had insured its mills with a certain insurance company and had also taken out certain policies known as "consequential loss policies" which insured against loss of profits, standing charges and agency commission. The mills were completely destroyed as a result of fire. The question was whether an amount paid to the assessee by the insurance company which was treated as paid on account of loss of profits was assessable to income-tax. It was held that the amount received by the assessee was income and was so taxable; and in this connection reference was made to the observations of the Privy Council which pertained to income being a periodical monetary return coming in with some sort of regularity or expected regularity. In the opinion of the Supreme Court even though the payment to the assessee-company before it (Raghuvanshi Mills) had a non-recurring aspect, still it was an item of income in any normal sense of the term; it was money received by the assessee for loss of profits, as opposed to loss of capital, and it was inseparably connected with the ownership and conduct of its business and arose from it. Accordingly, it was held to be income and, further, income which was not exempt within the meaning of section 4(3)(*vii*) of the Act. It may be mentioned in passing that earlier in *Maharajkumar Gopal Saran Narain Singh* v. *Commissioner of Income-tax* [1935] 3 ITR 237 (PC) the Judicial Committee of the Privy Council had itself pointed out that "the word 'income' is not limited by the words 'profits' and 'gains' and that anything which can properly be described as income is taxable under the Act, unless expressly exempted". Thus, it would be seen that the word "income" as used in section 4(1) of the Act not only may denote something larger than profits and gains but may denote whatever may properly be described as "income" in the ordinary parlance of language unless expressly exempted from the charge of tax by the Act itself.

In *Commissioner of Income-tax* v. *Shaw Wallace & Co.* [1932] 2 Comp Cas 276; AIR 1932 PC 138 it appears to have been held that, in order to constitute "income", the receipt must be something which comes in, (1) periodically, (2) as a return, (3) with some sort of regularity or expected regularity, and (4) from a definite source, it being made clear that it would not be in the nature of a windfall. As seen from the Supreme Court decisions

above cited, in order to constitute income such receipt need not necessarily come in periodically, nor with any sort of regularity or expected regularity. According to this decision and some other decisions, to which reference will now be made, such receipts in order to constitute income of the assessee need not necessarily have their origin in business activity, investment or enforceable obligation.

The meaning to be given to the expression "income" has received elaborate consideration in a Full Bench decision of the Allahabad High Court in *Rani Amrit Kunwar* v. *Commissioner of Income-tax* [1946] 14 ITR 561 (All) [FB], where separate judgments have been given by each of the three judges constituting the Full Bench. At page 573 of the report, Braund J. considers the test indicated by the Privy Council in *Shaw Wallace & Co.'s* case [1932] 2 Comp Cas 276; AIR 1932 PC 138, and observes that the principal emphasis was on the words "return" and "definite sources" used by Sir George Lowndes J., who delivered the judgment for the Privy Council.

The Full Bench of the Allahabad High Court was considering certain regular payments received by the assessee from the Ruler of Kalsia State and the Maharaja of Nabha State: she was the wife of the Kalsia Ruler and the sister of the Maharaja of Nabha. It was held ultimately that the allowances received by the assessee from the Kalsia State were remittances from her husband and were taxable as income. As the assessee was residing at Dehra Dun in British India, it was further held that the accrual to the assessee was in British India. It was also held that there was no evidence in the case to show that the payments made by the Nabha State were attributable to any custom, usage or traditional obligation and there was consequently no origin for the payments which could amount in its nature to a definite source so as to render such payment "income" and not merely a casual or annual windfall. It was accordingly held that the payments received by the assessee from her brother (Nabha State) were not income and were not assessable to income-tax. After considering certain English authorities, Braund J. observed as follows [1946] 14 ITR 561, 574 (All) [FB]:

> "The conclusion, therefore, I have reached is that, in construing the word 'income' in the Indian Income-tax Act, one has to ask oneself whether, having regard to all the circumstances surrounding the particular payments and receipts in question, what is received is of the character of income according to the ordinary meaning of that word in the English language or whether it is merely a casual receipt or mere windfall."

In this very decision of the Allahabad High Court Malik J., who gave a supporting judgment, considered several dictionary meanings of the word "income", which may be usefully set out (page 583):

> "That which comes in as the periodical produce of one's work, business, lands or investments (considered in reference to its amount and commonly expressed in terms of money) or 'annual or periodical receipts accruing to a person or corporation' (See *Oxford Dictionary*) .
>
> It is denned in the *Oxford Concise Dictionary* as: 'Periodical receipts from one 's business, lands, work, investments, etc. (income-tax levied on this).'In the *Webster's Dictionary* it is defined as:
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> 'That gain or recurrent benefit (usually measured in money) which proceeds from labour, business or property; commercial revenue or receipts of any kind, including wages or salaries, the proceeds of agriculture or commerce, the rent of houses or return on investments'."

It may be observed that the contention of the above assessee, that voluntary payments which did not involve a legal or enforceable obligation to pay on the payee would not constitute income, was decisively rejected by the Full Bench of the Allahabad High Court in *Rani Amrit Kunwar's* case [1946] 14 ITR 561 (All) [FB].

In *H.H. Maharaja Rana Hemant Singhji* v. *Commissioner of Income-tax* [1971] 79 ITR 83 (Raj) the Rajasthan High Court was called upon to consider the nature of certain payments made in respect of "Dholpur House" at New Delhi to the erstwhile Maharaja of Dholpur State. In a number of letters written by the Government of India it had been clarified and reiterated that these were ex gratia payments. It was accordingly contended on behalf of the assessee that payments by virtue of gratuitous arrangement which could not be enforced in a court of law would not amount to income, as the receipt would not be referable to a definite source capable of yielding some periodical return. The Division Bench of the Rajasthan High Court rejected the contention, holding that it could not be said that there was no source for the income. According to that High Court, the payments were being made "by virtue of an arrangement which, as mentioned in the letter dated 15th May, 1963, was of such a nature that the Government of India considered themselves bound to honour and which the assessee expected the Government of India to honour. No doubt, every time the payment that was made was gratuitous payment in the eye of law, but it was expected that such payment was to be made annually"(page 88). In this view of the matter, the payments were held to be income liable to taxation unless the assessee was able to show that it fell within one of the exemptions

provided under the Act. It may be mentioned that the judgment subsequently goes on to consider the claim of the assessee for exemption under section 4(3)(*vii*) of the Act, which claim was upheld. That portion of the judgment may be usefully referred to later on since it deals with the second aspect involved in this question.

Our attention was drawn by the learned counsel for the revenue to a decision of the Allahabad High Court in *Commissioner of Income-tax* v. *Smt. Shanti Meattle* [1973] 90 ITR 385 395 (All), where an observation is to be found to the following effect:

> "Every receipt generally may be described as income unless it is expressly exempt."

In the said judgment reference has been made by the Allahabad High Court to a decision of the Supreme Court in *Dooars Tea Co. Ltd.* v. *Commissioner of Agricultural Income-tax* [1962] 44 ITR 6 (SC). But a perusal of the Supreme Court judgment referred to by the Allahabad High Court shows that the Supreme Court in this judgment has not held that all receipts are to be taken as income. The Allahabad High Court, however, has rightly observed that the source for the income need not be one which is recognised under the law and that even income derived from an illegal business could be held liable to tax. Reference may now be made to the case of *Dooars Tea Co. Ltd.* [1962] 44 ITR 6, 11 (SC) referred to by the Allahabad High Court. In the said case the Supreme Court had occasion to deal with the concept of income as used in the Income-tax Act and Gajendragadkar J. (as he then was), speaking for the court, has made the following observations :

> "In dealing with this argument it is necessary to bear in mind that the word 'income' even as it is used in the Income-tax Act has often been characterised by judicial decisions as formidably wide and vague in its scope. It is a word of elastic import and its extent and sweep are not controlled or limited by the use of the words 'profits and gains' in sections 4 and 6. As has been observed by Sir George Lowndes in *Commissioner of Income-tax* v. *Shaw Wallace & Co* [1932] 2 Comp Cas 276; AIR 1932 PC 138, the object of the Indian Income-tax 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. Similar is the observation of Lord Russell in *Maharajkumar Gopal Saran Narain Singh* v. *Commissioner of Income-tax* [1935] 3 ITR 237 (PC), where it has been observed that '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'. The diverse forms which income may assume cannot exhaustively be enumerated, and so in each case the decision of the question as to whether any particular receipt is income or not must depend upon the nature of the receipt and the true scope and effect of the relevant taxing provision."

Thus, it is clear that all receipts by the assessee would not necessarily be deemed to be income of the assessee and the question as to whether any particular receipt is income or not will have to be determined depending upon the nature of the receipts and the true scope and effect of the relevant taxing provision.

This brings me to the consideration of a decision of the Bombay High Court, *viz.*, *H.H. Maharani Shri Vijaykuverba Saheb of Morvi* v. *Commissioner of Income-tax* [1963] 49 ITR 594 (Bom). The High Court in that case was considering a monthly allowance *jiwai* made by the Ruler of a Native State to his father who had earlier abdicated in the son's favour. The allowance was not paid under any custom or usage. It could not also be regarded as maintenance allowance, as the assessee possessed a large fortune. Following *Rani Amrit Kunwar's* case [1946] 14 ITR 561 (All) [FB] and bearing in mind the fact that the payments were commenced long after the Ruler had abdicated and that they were not made under a legal or contractual obligation nor under any custom or usage, it was held that they were not assessable as they did not fall within the category of income. The relevant observations of the Division Bench of our High Court are to be found at pages 604 and 605 ([1963] 49 ITR 594) of the report and maybe usefully set out:

> "There is no doubt that under the Indian Income-tax Act even payments, which are voluntarily made, may constitute 'income' of the person receiving them. It is not necessary that in order that the payments may constitute 'income', they must proceed from a legal source: in that if the payments are not made the enforcement of the payments could be sought by the payee in a court of law. It does not, however, mean that every voluntary payment will constitute 'income'. Thus, voluntary and gratuitous payments, which are connected with the office, profession, vocation or occupation may constitute 'income' although if the payments were not made, the enforcement thereof cannot be insisted upon. These payments constitute 'income' because they are referable to a definite source, which is the office, profession, vocation or occupation. It could, therefore, be said that such a voluntary payment is taxable as having an origin in the

office, profession or vocation of the payee, which constitutes a definite source for the income. What is taxed under the Indian Income-tax Act is income from every source (barring the exceptions provided in the Act itself) and even a voluntary payment, which can be regarded as having an origin, which a practical man can regard as a real source of income, will fall in the category of 'income', which is taxable under the Act."

In the view that the Bench took of the allowance, it observed that the other contention advanced on behalf of the assessee, *viz.*, that even if the allowance was income it was exempt from tax under section 4(3)(*vii*) of the Act as being of a casual and non-recurring nature, did not require to be considered.

I will now refer to the decisions of the Gujarat and the Punjab High Courts in connection with this aspect of the question. These are *Smt. Dhirajben R. Amin* v. *Commissioner of Income-tax* [1968] 70 ITR 194 (Guj) and *Princess Ruby Rajiber Kaur* v. *Commissioner of Income-tax* [1967] 64 ITR 624 (Punj). In the former case the assessee was a member of a family which had a substantial interest in several limited companies. Resolutions were passed by the board of directors of two of the companies whereby the assessee was to be paid Rs. 1,000 per month by one of the companies and 20 per cent, of the profits of another company for services to be rendered by her. The amounts were disallowed as expenditure in the assessments of the two companies. It was found that the assessee in fact rendered no services to the two companies. The assessee contended that inasmuch as the payments had been held to be gratuitous, they did not constitute "income". This contention was rejected by the Gujarat High Court, which held that although no services had been rendered by the assessee to the companies concerned, the payments were received periodically and arose from a definite source; the amounts received were, therefore, income. In the other decision, *viz.*, in *Princess Ruby Rajiber Kaur's* case [1967] 64 ITR 624 (Punj) the assessee was the married daughter of the late Maharaja of Jind and was receiving an annual allowance in lieu of dowry. The payment had been stopped twice by the Pepsu Government but, on representations made to the Government of India, a lesser allowance than originally fixed was directed to be paid together with all arrears. The question was whether this amount was liable to be taxed as "income" of the assessee. It was contended on behalf of the assessee that payment of dowry was in the nature of a gift and the periodical payments were analogous to the wasting of a capital asset. It was, however, found that the payment of dowry in the shape of annual allowance to married daughters and sisters was based on a well-established custom of the Jind ruling family and that it was in view of this custom that the allowance was continued by the Government of India. In these circumstances it was held that any such allowance was not a capital receipt but income liable to tax under the Income-tax Act. The decision of the Punjab High Court proceeded upon the basis that in order that income may be chargeable to tax under the Indian Income-tax Act, it is not necessary that it should have an origin in some obligation enforceable by law.

In *Commissioner of Income-tax* v. *Shaw Wallace & Co.* [1932] 2 Comp Cas 276; AIR 1932 PC 138 it was observed that in order to be income, the receipts must be something which came in (1) periodically, (2) as a return, (3) with some sort of regularity or expected regularity, and (4) from a definite source. The Supreme Court in the case of *Raghuvanshi Mills* [1952] 22 ITR484 (SC) has indicated decisively that in order to constitute income, the receipt need not be one coming in with some sort of regularity or expected regularity and even a single payment received by the assessee may, in the circumstances of the case, constitute its income. In some cases it had been contended on behalf of the assessee that in order to constitute income, the receipt must not be gratuitous or ex gratia in character but must arise from some legal obligation on the part of the donor or a corresponding legal right to receive on the part of the donee. In *Maharani of Morvi's* case [1963] 49 ITR 594 (Bom), which decision being that of a Division Bench of this court is binding on us, it has been held that even a voluntary payment made entirely without consideration can be considered to fall within the category of "income" provided it is traceable to a real source and is not something dependent entirely on the whim of the donor. It was expressly held by the Division Bench that it is not necessary that in order that a payment may constitute income, it must proceed from a legal source, and it is not necessary that if payments are not made, the enforcement can be secured by the payee in a court of law. However, as indicated by Braund J. in *Rani Amrit Kunwar's* case [1946] 14 ITR 561 (All) [FB], a receipt must be one having the character of income according to the ordinary meaning of that word in the English language and not one which is in the nature of a windfall. The expression "windfall" had also been earlier used by Sir George Lowndes J. in *Shaw Wallace & Co.'s* case [1932] 2 Comp Cas 276; AIR 1932 PC 138. The result of all this discussion is that in order to constitute "income", the receipt must be one which comes in, (*a*) as a return, and (2) from a definite source. It must also be of the nature which is of the character of income according to the ordinary meaning of that word in the English language and must not be one of the nature of a windfall.

At this juncture a few words are necessary in order to appreciate the true nature of what, according to me, would be a "windfall", having relevance to the question being considered by us. In the *Oxford English Dictionary*, volume II, the word "windfall" has been given the meaning of a casual or unexpected acquisition or advantage. Now, it has to be made clear that when we are talking of a windfall receipt in connection with the consideration of the question whether such receipt would be income or not, we will have to restrict the concept of such windfall to a case where the unexpectedness of the advantage pertains to the factum of receipt and not to the quantum of receipt. By reason of the exigencies of the economic situation or political or international situation a trader or a businessman or an industry may make unduly large profits which are often loosely expressed as windfall profits. But this is not the nature of the windfall we are contemplating. Where the element of windfall or unexpectedness pertains only to the quantum of receipt, such element will not have any bearing on the question we are considering and such receipt will be profit or income of the assessee although unusually large. What we are considering as "windfall" is some unexpected receipt not in the contemplation of the assessee and not directly attributable to or occurring by way of its business profits. To put it in other words, if the assessee had produced the picture, *Mother India*, or if it can even be said that it was producing motion pictures with the idea that they would be exempted from entertainment duty by the Government of Bombay and the amount attributable to the collections of entertainment duty would be paid over to the assessee, then such receipt, perhaps, may not be said to be a windfall received by the assessee. Similarly, if the assessee had produced a motion picture with a particular situation which becomes extremely successful commercially by reason of some extraneous fact, the extra profits received by the assessee or by the exhibitors may be called windfall profits loosely or in ordinary parlance, but would not be a "windfall" for our purposes. Where the obtaining of a particular advantage or receipt could not be said to be within the ordinary contemplation of the party obtaining or receiving it, then only would it be proper to characterise the advantage or receipt as a windfall. On the other hand, where there was clear expectation, though small, of receiving such advantage or profit, then it cannot be properly regarded as windfall merely because the advantage or receipt is much more than could have been reasonably contemplated.

That the advantage received must be attributable to some conscious process on the part of the assessee also appears to be implicit in the aspect of a "return". Now, it must be made clear that when we talk of return in the context of this aspect of the question, we are not considering the return on any outlay or investment made by the assessee in the sense of capital employed. This may be one of the ways of securing a return, but not the only way. But, return will involve conscious outlay of resources or of effort or of talent. It is the consciousness of the effort made which invests the receipt with the character of a return and removes it from the category of a windfall.

Mr. Joshi, on behalf of the revenue, urged that the receipts in the present case are receipts arising from business and even if in the nature of a windfall they would still be income and liable to tax unless the assessee can satisfactorily show that the income fell within the exemption. Alternatively it was submitted that even assuming that the receipts cannot be said to directly arise from the business of the assessee, the receipts in the present case are attributable to a definite source, *viz.*, the Government notification, dated 25th October, 1957, and the various orders passed thereunder. Accordingly, it was submitted that the receipts cannot be regarded as non-recurring or in the nature of a windfall and would have to be properly regarded as income of the assessee. The submission proceeded upon the footing that windfall receipts attributable to the business activity of the assessee are taxable as income. As indicated earlier, in my opinion, windfall receipts would have to be understood as falling into two broad categories; and receipts which are of the nature of a windfall as to the factum as explained by me earlier can normally be not regarded as income of the assessee. It becomes, therefore, necessary now to refer to a few decisions cited on behalf of the revenue in connection with this aspect of the matter.

One of these cases on which great reliance was placed by Mr. Joshi was *Janab Syed Jalal Sahib* v. *Commissioner of Income-tax* [1960] 39 ITR 660 (Mad). In the said decision the assessee before the Madras High Court carried on the business of manufacturing and selling bidis but attended horse-races regularly every year and indulged in betting and also entering in the races, horses, some of which were his own and some of which he owned in partnership with others. He maintained a separate set of accounts for these racing activities. The excess of the receipts over expenditure in these activities amounted to a substantial amount. The question being considered by the Madras High Court was whether these amounts were taxable income or were casual and non-recurring receipts and exempt from tax under section 4(3)(*vii*) of the Act. It was held by the Madras High Court that whether taxable or not, the amounts constituted income. It was held further that the income was not taxable as it was income of a casual and non-recurring nature within the scope of exemption granted by section 4(3)(*vii*) of the Income-tax Act. The question is whether the decision of the Madras High Court in the above case really helps Mr. Joshi for the

purpose of the decision to be given in the present case. When the assessee before the Madras High Court undertook racing and betting activities, he did so with an expectation of a return and the receipts received from these activities, although the activities could not be regarded as his business or vocation and even though the receipts or items of receipts could be regarded as casual or non-recurring, were attributable to definite sources, *viz.*, these activities, and, therefore, would satisfy both the requirements as postulated by me. These receipts were in the nature of a return as also from a definite source. In the ordinary parlance these receipts would comprise the assessee's income from racing and betting activities. As indicated above, if these activities had been embarked upon with the hope of earning some money therefrom, the receipts could not be properly regarded as a windfall in the limited sense of the term "windfall" that I have enunciated. There was a definite expectation of an income, and it is irrelevant to consider whether in fact such expectation was based on a sound or unsound foundation. The above decision of the Madras High Court, therefore, really does not help Mr. Joshi.

Mr. Joshi also referred us to and relied on the case decided by the Calcutta High Court in *In re Susil C. Sen* [1941] 9 ITR 261 (Cal). In that case the assessee, an attorney and advocate, acting for a shareholder of a limited company, interviewed the managing agents of the company, attended a meeting of the shareholders of the company as a proxy, made a speech at the meeting and secured a substantial issue of new shares to the public. The firm of stock-brokers who benefited by the issue of the new shares paid a sum of Rs. 10,000 to the assessee, even though the assessee had not acted for them and they were not legally bound to pay anything to the assessee. It was held that assuming that the receipt was of a casual and non-recurring nature, it arose from the exercise by the assessee of his profession as a lawyer and advocate and it was accordingly not exempt under section 4(3)(*vii*) of the Indian Income-tax Act. Now, it may be pointed out that the only question which arose in the reference before the Calcutta High Court was whether the amount received by the assessee was exempt under the provisions of section 4(3)(*vii*) of the Indian Income-tax Act, 1922, and that question was decided against the assessee on the court holding that the receipt could be said to be one arising from the exercise of profession, vocation or occupation. It is clear that the broader question similar to the one placed before us, *viz.*, whether the receipts constitute income at all, was not being directly considered by the Calcutta High Court. Further, according to the Calcutta High Court, the amount of Rs. 10,000 had been paid to a person, who was an advocate and attorney, in appreciation of the part played by him in securing that benefit. In the words of the Calcutta High Court [1941] 9 ITR 261 , 274 (Cal)! "It was as plain as anything could be that the *causa causans* of the payment was what Mr. Sen had done on the instructions of his client (shareholder whose proxy he held) at the shareholders' meeting." It was on that footing that it was held that the receipt arose from the exercise by the assessee of his profession as lawyer and advocate and, therefore, could not be exempt from taxation. To repeat, the broader question which we are considering was not canvassed before nor decided by the Calcutta High Court in the above decision.

Mr. Joshi also referred us to an English case, *Herbert* v. *McQuade* [1902] 4 TC 489, 500 (CA). The assessee concerned in that case was a vicar of the parish of St. John de Sepulchre in the city of Norwich and the assessments made upon him were in respect of a certain amount granted to him by the Queen Victoria Clergy Sustentation Fund (Norwich Diocese). This fund was established in the year 1897 and was incorporated under the above name by a charter. It was controlled entirely by the local diocesan council which reserved to itself the entire control over the apportionment and distribution of grants and the right to consider all the circumstances of the cases where applications were made to it for grants from the fund. The assessee had applied for and received the grant from the fund each year since its institution. It was held that the payments received by the assessee were chargeable as they must be deemed to have accrued to him by reason of his office. According to the Master of the Rolls:

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

Now, bearing in mind the various facts as found by the High Court in *Herbert's* case [1902] 4 TC 489 (CA) which need not be fully set out, it would be possible to say that the receipt of the amounts by the vicar were attributable to his vocation and arose in the circumstances of the case from a definite source, *viz*, the fund, and could not be

regarded, although complete discretion did vest in the controlling council, to be in the nature of a windfall. As a matter of fact, the object of the fund was to help clergymen who were in receipt of emoluments below a certain limit to make up for their loss. Such payments, although having the nature of subsidy, would rightly be regarded in the ordinary parlance as having the character of income and would be assessable to tax unless the said receipt would fall within any of the exemptions. This case, therefore, will have to be distinguished on its own facts as not detracting from the principle which I have indicated earlier, which appears to be the correct basis of considering whether the receipts could be properly regarded as income or not. On the same footing one would have to reject from consideration the decision in *Seaham Harbour Dock Company* v. *Crook* [1931] 16 TC 333 (HL), which also turns on its own facts. In that case the court was considering a subsidy given by the grants committee to the dock company and although the amount had been first credited to revenue in the account of the company, were held not to be profits or gains of trade bearing in mind the purposes for which the grants were made.

On the material before us there is nothing to show that the assessee-company had produced the said picture *Mother India* with the slightest expectation that the same would be exempt from entertainment duty and that the amounts collected by the exhibitors as and by way of such duty would be directed to be paid over to it as producers by the Government of Bombay. It is true that we may consider the two notifications of the Government (annexures "A" and "A-1" to the statement of case) and the various letters or orders made pursuant to the later notification dated 25th October, 1957, as the definite source to which the receipts are attributable. The fact that the payments appear to be entirely at the discretion of the Government and that the exemption can be withdrawn by the Government even without any default on the part of the assessee (see clause 4 of annexure A-l) would not be sufficient to disentitle the receipts from being considered as income. It is true that the object of the subsidy was to assist the producers (as annexure "A" shows) and to encourage future production of films of sufficiently high quality and which served a high social purpose. Bearing the factual position in mind, which has been indicated earlier in this judgment, I would hold that these receipts do not partake of the element of a return which is necessary for it to constitute income, and further that it was of the nature of a windfall—a windfall as to the factum and not a windfall as to mere quantum. On both the counts, therefore, the answer to the question whether these receipts constitute income of the assessee must be in the negative and in favour of the assessee, *viz.*, that they did not constitute income.

To turn again to the test of the ordinary connotation of the word "income", the proper approach to the question would be to regard the amount received by the assessee as some sort of a subsidy, subvention or grant given to them to encourage them to produce similar good pictures in future. The occasion to give grant to them or to pay them subsidy or subvention or what may be property called a prize (though the computation of the quantum has been fixed in an uncertain manner, depending upon the entertainment duty payable by the patrons at the cinemas) was because they had produced the picture, *Mother India.* But from this it cannot be said that this was their income in the ordinary or normal sense of the term from the picture, *Mother India.* The income of the assessee from the picture, in the normal parlance of the expression, would be attributable to what their distributors and exhibitors have paid to them. This would be their income from the picture, *Mother India,* as also the income from their normal business activity. If the view canvassed for by the department were to prevail, then any prize or subsidy or award given to an individual or business concern for some aspect of their business activity would have to be comprised in its income and would be held taxable unless it qualified for any particular exemption as such.

At this juncture it would be appropriate to refer to some cases cited in connection with the second aspect of this question but which may be considered to have some bearing even on the first aspect. Before, however, dealing with these authorities, a brief reference may be made to the provisions of section 4(3)(*vii*) of the Act on which reliance was placed on behalf of the assessee. In the view that I have taken of the first aspect of the question being considered by us, it is unnecessary to discuss the claim of the. assessee to be exempted under section 4(3)(*vii*) of the Act at any great length. However, I propose to indicate briefly my views as regards this aspect of the question also. It is clear from a perusal of the statutory provision that five conditions are required to be fulfilled to secure exemption under this clause. These are: (*i*) that the receipt should be of a casual and non-recurring nature, (*ii*) that it should not arise from the assessee's business, (*iii*) that it should not arise from the exercise of a profession, vocation or occupation, (*iv*) that it should not be capital gains chargeable according to the provisions of section 12B of the Act, and (*v*) that it should not be by way of addition to the remuneration of an employee. In order, therefore, that the assessee before us can avail themselves of these exemptions, it would be necessary for them to show that the receipts received by them by way of collection of entertainment duty aggregating to Rs. 10,67,212 were of a casual and non-recurring nature and that they did not arise from their business; the other three

conditions indicated above do not arise for consideration in this case.

The Bombay High Court had occasion to consider the applicability of section 4(3)(*vii*) of the Act to a prize secured by a firm of architects in *Parelkar Gore and Parpia* v. *Commissioner of Income-tax* [1958] 34 ITR 312 (Bom). The assessees, who were practising architects, had submitted plans to the All India Medical Institute, Delhi, for the construction of a medical centre. This was pursuant to an advertisement given by the Ministry of Health publicising an architectural competition for the designing of the institute's building, for which three prizes of Rs. 50,000, Rs. 25,000 and Rs. 10,000, respectively, were offered, of which the assessees secured the third prize. It was made clear that the first prize would be merged in the fees of the architects which would be eventually paid to the architects who secure the first prize and who would be entrusted with the work. It was held by the court that it was part of the assessees' professional duty to submit plans for the construction of buildings and that their submitting the plans which ultimately resulted in the coming of the receipt was an incident of their ordinary activity as architects It was further held that it was directly the exercise of their profession and the result of their professional activity which made it possible for them to earn the receipt. Accordingly, the amount was held to be a receipt of the assessees from the exercise of a profession and was not, therefore, exempt from tax as a casual or nonrecurring receipt. The particular feature of that case which attracted the attention of the court was the conclusion that the intention of the assessees, in submitting the plans, which won the third prize, was not merely to win the prize but to get work and, therefore, it was held that it was as a result of their professional skill that they ultimately succeeded in getting the prize of Rs. 10,000. It was on this footing that it was held that it was the ordinary work of the firm of the assessees as architects which ultimately resulted in the coming in of the receipt. However, it would be very pertinent to note that the firm of architects, who were the assessees before the Division Bench, had prepared and submitted plans and competed deliberately for the prizes which had been offered in connection with the competition. That is the feature which is absent in the facts in the present case.

Section 4(3)(*vii*) of the Act came to be considered by the Supreme Court in P. *Krishna Menon* v. *Commissioner of Income-tax* [1959] 35 ITR 48 (SC). The assessee before the court had retired from Government service and was spending his time in studying and teaching Vedanta philosopy. One L, who was one of his disciples, used to come from England at regular intervals to Trivandrum where the assessee resided, and stay there for a few months at a time where he attended the discourses given by the assessee and received instructions in Vedanta from the assessee. L transferred the entire balance standing to the credit in his own account at Bombay, amounting to more than Rs. 2,00,000, to the account of the assessee opened in the latter's name in the same bank at Bombay. Thereafter, from time to time, L put in further sums into the said account. The question considered by the court was whether the receipts from L constituted the appellant's income taxable under the Travancore Income-tax Act, 1121 (which was identical with the Indian Income-tax Act, 1922). The court held that the teaching was a vocation, if not a profession, and teaching Vedanta was just as much teaching as any other teaching, and, therefore, a vocation. It was observed that in order that an activity might be called a vocation it was not necessary to show that it was an organised activity and that it was indulged in with a motive of making profit. It was held further that imparting of the teaching was the *causa causans* of the making of the gifts by L, that it was impossible to hold that the payments to the appellant-assessee had not been made in consideration of the teaching imparted by him, and that, therefore, the payments were income arising from the vocation of the appellant-assessee. In this view of the matter it was held that the payments made by L were the assessee's income arising from a vocation, and no question of exemption under section 4(3)(*vii*) of the Act arose. It is important to note—and that is also a distinction which the learned counsel for the assessee before us sought to make—that it was held by the court in the above case that the payments to the assessee had been made in consideration of the teaching imparted by him. The Supreme Court placed considerable reliance on a statement to be found in the affidavit of the donor, L, which was that: "I have had the benefit of his teachings on Vedanta." According to the court, it was because of the teachings that the gift had been made and the gifts, therefore, were clearly the result of the teaching imparted by the appellant.

P. Krishna Menon's case [1959] 35 ITR 48 (SC) came up for consideration subsequently before the Supreme Court in *Mahesk Anantrai Pattani* v. *Commissioner of Income-tax* [1961] 41 ITR 481 (SC), where the majority of the court decided that an amount paid to the assessee not in token of appreciation for the services rendered as the Dewan of the Bhavnagar State but as a personal gift for the personal qualities of the assessee and as a token of personal esteem was not taxable.

It was submitted by the learned counsel for the assessee before us that the payments by way of exemption from

entertainment duty cannot be considered to be payments in consideration of the film, *Mother India*, produced by it. On the material on record before us it cannot be stated that the assessee had produced the film [as was the case in *Parelkar's* case [1958] 34 ITR 312 (Bom)] with some idea or expectation of obtaining the amount by reason of the film being exempted from entertainment duty. Even then the question would arise whether it would not be correct to say that it was the production of a film of high quality, *viz.*, *Mother India*, by the assessee that resulted in the awards ? The question is: was it a *causa causans* of the assessee receiving the amount, or was it a mere *causa sine qua non* ? It appears to me that on this aspect the question is concluded against the assessee by reason of the decision of the Supreme Court in *P. Krishna Menon's* case [1959] 35 ITR 48 (SC) and the approach adopted therein, and the receipt by the assessee must be declared to be referable to the film produced by it. It was urged that the receipt was referable to the scheme of the Government and the selection made by the Government choosing the assessee's film for exemption from entertainment duty. This argument arises as a result of a confusion between the source for the receipt and the reason for the receipt. Even if the scheme of selection is not to be ignored, in a broad sense, the amount is a combined result of the assessee producing the film of a high standard, the film being recommended for exemption by the films advisory committee and the recommendation being accepted by the Government of Bombay. In that sense also the production of a film of an excellent standard by the assessee must be regarded, bearing in mind the decision in P. *Krishna Menon's* case [1959] 35 ITR 48 (SC), substantially as the *causa causans* of the giving of the amount.

It had been urged by the learned counsel for the revenue that the receipt which is referable to the assessee's business, and in view of the decision in *Krishna Menon's* case [1959] 35 ITR 48 (SC) it must be held that it is so referable, must be considered to be income in the normal parlance; and as it does not qualify for exemption under section 4(3)(*vii*) of the Act, it must be held to be taxable income. As indicated earlier, what is exempt under section 4(3)(*vii*) of the Act are receipts of a particular nature; and as explained by the Supreme Court in *Dooars Tea Company's* case [1962] 44 ITR 6 (SC), all receipts are not income, the concept of receipt being much wider than the concept of income. It is income which is taxable and not all receipts, whether the same be referable to the business activity of the assessee or not. I have already expressed my opinion that the receipts in the instant case cannot be regarded as the income of the assessee in the ordinary tenor of the word, although if it could be so regarded then my view would be that the same would not qualify for exemption under section 4(3)(*vii*) of the Act in view of the decision of the Supreme Court in *Krishna Menon's* case [1959] 35 ITR 48 (SC).

Now, are the receipts in the instant case of a casual and non-recurring nature? The expression "casual and non-recurring receipt" came to be considered by the Allahabad High Court in *B. Malick* v. *Commissioner of Income-tax* [1968] 67 ITR 616 , 628 (All). The assessee in that case, while he was the Chief Justice of the Allahabad High Court, was requested to act as an arbitrator in a certain matter. Though the assessee expressed his unwillingness to do so, in view of certain intervention from high Government level, he ultimately agreed to act as arbitrator. A fee of Rs. 20,000 was paid to him for acting as such as a special case, though there was a prohibition against judges being paid any honoraria for taking up any other functions. On the question whether this sum of Rs. 20,000 was liable to be taxed as income in the hands of the assessee, it was held, on the peculiar facts of that case, that the amount was exempt from taxation as being receipt of a casual and non-recurring nature not arising from the exercise of a profession, vocation or occupation within the meaning of section 4(3)(*vii*) of the Income-tax Act. It was observed by the court (Mancbanda J.):

> "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 ever, if it is not likely to recur for a considerable time."

In a separate but concurring judgment, Beg J. had occasion to consider whether the receipt in the case before him could be treated as "casual", and he proceeded to set down a definition of the word "casual" to be found in the third edition of *Webster's New International Dictionary*, which was as follows (page 632) :

> "Subject or produced as a 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."

Beg J., after considering the facts of the case before him, agreed with Manchanda J. that the receipt by the assessee was of a casual and nonrecurring nature.

It may be mentioned that in *H.H. Maharaja Rana Hemant Singhji's* case [1971] 79 ITR 83 (Raj), referred to earlier in this judgment, the payments to the Dholpur Ruler were held by the Rajasthan High Court as casual and non-recurring in nature inasmuch as they depended on the goodwill of the Government of India. It is, however, to be noted that in that case it was expressly held that there was no question of the amount of receipts received by the assessee having arisen from business or exercise of a profession, vocation or occupation. Thus, although there were several regular payments made by the Government of India for several years, the amounts were still treated as casual and non-recurring.

It is unnecessary to consider the matter of exemption in any further detail in the view that I have taken that the receipt does not represent income and, therefore, the question of considering whether the assessee is entitled to exemption would not arise. It may just be indicated that the word "non-recurring" does not mean that the receipt is a single one or which has in fact not been repeated, but only that there is no claim or right in the recipient to expect its recurrence. It is further to be noted that merely because the mode of payment in the instant case is one that would ensure to the assessee receipt of the amounts in driblets, it would not necessarily characterise the receipt as a recurring receipt. It is unnecessary to consider this aspect of the matter any further in the view that I have indicated regarding whether such receipts can be regarded as income of the assessee.

In the view that I have taken, the first question would have to be answered in favour of the assessee.

Vimadalal J.—I am in entire agreement with the judgment just delivered by my brother, Desai. The legislature has, advisedly, given in section 2(24) of the Income-tax Act, 1961 (corresponding to section 2(6C) of the Indian Income-tax Act, 1922), only an inclusive definition of what is, perhaps, the most important term, *viz.* "income", for the purpose of income-tax law. That definition is really no definition at all, in so far as it gives no indication of the ambit of the concept of "income". Courts of law have, therefore, been driven to undertake that task, and the *locus classicus* on the subject in the definition of "income" given by the Privy Council in *Shaw Wallace's* case [1932] 2 Comp Cas 276; AIR 1932 PC 138. If one analyses that definition, it is clear that the Privy Council laid down that in order that a receipt by an assessee should constitute income, it must satisfy the following ingredients:

(1)It must be a periodical monetary return which, in my opinion, must mean a return for labour and/or skill and/or capital;

(2)coming in with regularity, or expected regularity;

(3)from a definite source;

(4)excluding a receipt "*in the nature of* a mere windfall", *i.e.*, not a windfall in regard only to the extent or quantum of what is received.

It has been clarified by the Privy Council in the said case that the words "profits and gains" do not add anything to the amplitude of the concept of "income". The definition of "income" given by the Privy Council in *Shaw Wallace's* case [1932] 2 Comp Cas 276; AIR 1932 PC 138 has, however, in course of time, undergone some trimming by later decisions. The Supreme Court has in the case of *Raghuvanshi Mills Ltd.* v. *Commissioner of Income-tax* [1952] 22 ITR 484 , 489 (SC) taken the view that it is not necessary and could not have been intended to be laid down by the Privy Council in *Shaw Wallace's* case [1932] 2 Comp Cas 276; AIR 1932 PC 138 as a general proposition that the return must come in with regularity or expected regularity. The element that the receipt must be something that is expected is, however, implicit in the very concept of a "return", as well as in the requirement that it must not be something in the nature of a "windfall", and that, therefore, still remains as one of the ingredients of "income". This court, in the case of *H.H. Maharani Shri Vijaykuvarba Saheb of Morvi* v. *Commissioner of Income-tax* [1963] 49 ITR 594 , 604 (Bom) has laid down that the definite source to which *Shaw Wallace's* case [1932] 2 Comp Cas 276; AIR 1932 PC 138 refers need not be a legal source in the sense that if the payments are not made, they could be enforced in a court of law. The decisions of the Supreme Court in *Raghuvanshi Mills'* case [1952] 22 ITR 484 (SC) and of this court in the *Maharani of Morvi's* case [1963] 49 ITR 594 (Bom) are binding upon us, and the definition of "income" given by the Privy Council in *Shaw Wallace's* case [1932] 2 Comp Cas 276; AIR 1932 PC 138, as pruned by those decisions, should now, therefore, read as follows:

> "Income is a monetary *return* expected by the assessee for the labour and/or skill bestowed, and/or capital invested by him; coming in from a definite source, which need not be a legal source, in the sense that the failure to pay the same need not be enforceable in a court of law; and excluding a receipt '*in the nature of*' *a mere windfall* which, as already stated above, must mean a windfall in regard to its very nature and not in regard to its extent or quantum."

Applying that definition to the receipt of the amount of Rs. 10,67,212 by the assessee in the present case, though the said amount did come in from a definite source, it was not a return expected by the assessee for the labour, and/or skill bestowed, and/or capital invested by him, but was, in my opinion, "in the nature of a mere windfall". I, therefore, agree with my brother, Desai, that it is not "income". Though called an exemption from entertainment duty, it did not really have the character of an exemption, but was in the nature of a prize, though its computation was on the basis of the entertainment duty paid by the public.

By the Court

Question No. 1.—In the negative and in favour of the assessee.

Question No. 2.—Also in the negative and in favour of the assessee.

The Commissioner must pay the assessee's costs of the reference.
