* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on November 21, 2014
Judgment Delivered on March 27, 2015

\+ ITA 232/2002

AROON PURIE

..... Appellant

Through Mr. Prakash Kumar, Advocate

versus

COMMISSIONER OF INCOME TAX

..... Respondent

Through Mr. Kamal Sawhney, Sr. Standing Counsel with Mr. Sanjay Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

The present appeal under Section 260A of the Income Tax Act, 1961 ('Act' for short) has been filed by the assessee challenging the order dated 08.04.2002 in ITA No.531/Delhi/1995, whereby the Income Tax Appellate Tribunal ('Tribunal' for short) has set aside the order of the Commissioner of Income Tax (Appeals) and affirmed the finding of the assessing officer that Rs.1 lakh received by the assessee from B. D. Goenka Foundation is income so as to be taxable. The year of assessment with which we are concerned in this appeal is 1991-92.

2. The following substantial questions of law fall for our consideration

in this appeal:-

> *"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the receipt of Rs.1 lakh by the appellant as an award given to him by B. D. Goenka Foundation for his excellence in journalism was in the nature of income liable to tax in the hands of the assessee.*
>
> *2. Whether on the facts and in the circumstances of the case the ITAT was right in holding that the receipt of the amount of Rs.1 lakh by way of an award from B. D. Goenka Foundation was taxable as assessee's income as the said institution was not covered by section 10(17A) of the I.T. Act."*

3. The brief facts are that the appellant at the relevant time was Editor in Chief of the English magazine i.e. India Today. According to him, he derived income from salary, interest, dividend and property. He filed return for the previous year relevant to the assessment year 1991-92 declaring an income of Rs.5,47,190/-. The return was accompanied by financial statement of accounts. From the assessment order it is observed that while perusing the details given in the return, the Assessing Officer noted, the assessee had claimed an exemption for sum of Rs.1 lakh received by him as B. D. Goenka Award for excellence in Journalism.

During the proceedings, the assessee counsel's attention was drawn towards Section 10(17A) of the Act, which provides that if any payment is made in cash or in kind in pursuance to an award instituted in public interest by the Central Government or any State Government or by any other body approved by the Central Government or as a reward by the Central Government or any State Government then such a award/reward is exempted. According to the assessee, the award was not for any services rendered but in the nature of testimonial and expression of recognition by an institution of eminence of a person in the field of Journalism. The assessee relied upon the following judgments in support of his case:

(i) (1978) 114 ITR 253 (Mad.), ***S. A. Ramakrishnan vs. CIT***,
(ii) (1986) 160 ITR 534 (Mad.), ***C.P. Chitrarasu vs. CIT***
(iii) (1988) 171 ITR 447 (Mad.), ***CIT vs. M. Balamuralikrishna***
(iv) (1984) 148 ITR 333 (Mad.), ***CIT vs. Dr.B.M. Sundaravadanan***

4. The Assessing Officer was of the view that the award given to the assessee was not covered by the exemption provisions of Section 10(17A) of the Act and the judgments relied upon by the assessee were not applicable to the facts of the case. He accordingly added the amount of Rs.1 lakh to the income of the assessee.

5. On an appeal, the Commissioner of Income Tax (Appeals) agreed

with the appellant assessee and allowed the appeal by holding as under:-

> *"I have carefully considered the submissions made. I find merit in the arguments advanced. The award given to the appellant was an open one, instituted by B. D. Goenka Foundation, an independent entity, and there is nothing on record to show that for getting the award there has been any rendering of services by the appellant to the Foundation. It also cannot be inferred that the appellant was having an expectation of the award, much less to say that any regularity in receipt from the Foundation was even remotely probable. It is not every receipt that can be held chargeable to tax but in order to be so chargeable it must fall within the expression "income" as contemplated in the I.T. Act. On the facts and in the circumstances of the case, I quite agree with the Ld. A.R. that the receipt in question cannot be construed to par-take the character of income and therefore the question whether it is taxable or exempt would not be relevant. To conclude this issue, therefore, I hold that the receipt cannot be construed to be an income component in the hands of the appellant and therefore its inclusion in the total income is not justified and the same is accordingly deleted from the total income as computed in the impugned order. The appellant will accordingly be entitled to a consequential relief of Rs.1 lakh."*

6. On an appeal by the Revenue, the Tribunal vide a detailed order, allowed the same by holding that the initial onus is on the assessee to

show that the particular receipt is exempt from tax. The Tribunal held the amount of Rs.1 lakh as an income. It was also the argument of the appellant assessee that for being an income there must be 'expectation and regularity'. In other words, it was the case of appellant assessee that for a receipt to be an income, criteria is 'expectation and regularity'. The said argument was rejected by the Tribunal relying upon Section 10(3) (since repealed) of the Act which stipulated even casual and non-recurring receipts where the aforesaid two criteria namely 'expectation and regularity' were absent, to hold that the law does not stipulate total exemption but only upto Rs.5,000/- and which was reduced to Rs.2,500/- where the receipt represents winnings from the races including horse races. The Tribunal reversed the finding of Commissioner of Income Tax (Appeals) and held that the sum of Rs.1 lakh received by the assessee from B. D. Goenka Foundation was not exempt under Section 10(17A) of the Act and added back the amount.

7. Learned counsel for the appellant assessee would submit that the receipt in question from B. D. Goenka Foundation was in the nature of testimonial or personal gift unrelated to any consideration or services. The testimonial paid to any professional or any person as a token of esteem and regard for his ability or qualities and unconnected with any particular professional act or service is not income. He would further submit that the

award was given to the appellant by said foundation for recognition of the appellant's excellence in journalism and was not in the nature of income or casual income. As such, the aforesaid amount cannot be treated as income. There is no question of claiming exemption under Section 10(17A) of the Act. Moreover, Section 10(3) of the Act is also not applicable on the facts of the instant case to put a ceiling of Rs.5,000/-. He would further submit that the assumption of Assessing Officer/Tribunal that since the award is not recognised as per provisions of Section 10(17A) of the Act, the assessee is not entitled to exemption and the receipt of the amount constituted assessee's income liable to tax is erroneous. In the last he would state that the receipt in question does not fall within the expression 'income' as envisaged under Section 2(24) of the Act. He relied upon the following judgments:-

(i) CIT vs. Balamurlikrishna (M.), (1988) 171 ITR 447 (Mad.)

(ii) S.A Ramakrishnan vs. CIT, (1978) 114 ITR 253 (Mad.)

(iii) Parimsetti Seetharamamma vs. CIT, (1965) 57 ITR 532 (SC)

(iv) Sidhartha Publications P. Ltd. vs. CIT, (1981) 129 ITR 603 (Del.)

8. On the other hand, learned Sr. Standing Counsel for the Revenue would support the judgment of the Tribunal inasmuch as the provisions of Section 10(17A) exempting certain categories of awards/rewards itself

provides that those awards/rewards not fulfilling the conditions laid down in Section 10(17A) will be income liable for tax. He would submit that the Supreme Court in the case ***CIT Vs. Karthikeyan (G.R.),*** (1993) 201 ITR 0866 (SC) has held that income defined in Section 2(24) is an inclusive definition. Even if a receipt does not fall within the ambit of any of the sub-clauses in Section 2(24), it may still be income if it partakes the nature of the income. The idea behind providing an inclusive definition in Section 2(24) is not to limit its meaning but to widen its net. The word "income" is of the widest amplitude, and that it must be given its natural and grammatical meaning. He would further submit that this Court in the case ***Commissioner of Income Tax vs. J. C. Malhotra*** (1998) 230 ITR 361 (Del.) following the view taken by Patna High Court in ***CIT vs. S. N. Singh, ITO*** (1991) 192 ITR 306 (Pat.) held that the reward to the assessee, that was given by the Central Government directly in connection with the Voluntary Disclosure Scheme to an Income Tax Officer was income. A separate approval of the Central Government for the purpose of exemption under Section 10(17B) of the Act was not given. That being the position, protection under Sub-Section (17B) of Section 10 of the Act was not attracted and the reward was not liable to be excluded from the computation of the income.

9. Having heard learned counsel for the parties, insofar as the submission of learned counsel for the appellant assessee on Section 10(3) of the Act is concerned, suffice would it be to state as admitted by him, Section 10(3) of the Act relates to exemption in respect of receipt in the nature of a casual and non-recurring nature. Insofar as Section 10(17A) is concerned, it is not the case of the parties that the award has been instituted in public interest by the Central Government or by the State Government. It is also not the case of the parties that it has been instituted by any other body approved by the Central Government. It is to be seen whether the Award having been given by B. D. Goenka Foundation for excellence in Journalism was in the nature of income liable to be taxed.

10. Sub-section (24) to Section 2 of the Act seeks to define the term 'income' but does not expressly and particularly define the said expression. It only stipulates what would be included in the said term. The phrase that is used before the specific Clauses is 'income includes'. Section 2 (24) provides for an inclusive definition and is not exhaustive in its scope. Therefore, whatever would be income under law and the express stipulations is income. What falls and is covered under different Clauses of sub- section (24) is certainly income, even if the said receipts would not be income as understood in law. The word 'income' has widest and broadest connotation and means what would constitute income in law

and otherwise declared as income in the different clauses of the sub-section (24) to Section 2 of the Act.

11. For the purpose of the present appeal, we would like to refer to some of the clauses to sub- section (24) to Section 2 of the Act. Clause (i) states that profits and gains would be income; Clause (iii) stipulates value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) to Section 17, would be income. Similarly, under Clause (iiia) special allowances other than perquisites otherwise included, granted to an assessee to meet expenses wholly or necessarily and exclusively for the performance of duties of an office or employment of profit, is income; and under Clause (iv) allowances granted either to meet personal expenses at the place whether the duties of his office or employment are ordinarily performed, or at the place where he ordinarily resides or any compensation that he receives, is income. Winnings by way of lotteries, including card games or games of any other sort, entertainment programmes on telephone or electronic mode, in which people compete or any other similar game, is also treated as income in terms of Clause (ix) to sub-section (24) to Section 2. Sums referred to in Clauses (v), (vi), (vii), (viib) and (ix) of sub-section (2) to Section 56 are income. Thus, certain categories of gifts are treated as income, but all gifts are not treated as income. The non- specified gifts are not income, being capital in nature.

12. Sub-section (24) to Section 2, therefore, adopts a dual approach; 'income' means what would be included and is treated as income, and in addition certain specific/specified categories of receipts or earnings are to be treated or are deemed to be income. Nevertheless all receipts or incomings are not income and aren't exigible to tax. A capital receipt is not taxable income.

13. In the facts of the present case, Revenue does not rely upon Clauses (ii) to (xvii) of sub-section (24) to Section 2. What is relied upon is the general scope and ambit of the term 'income' and the term 'gains' used in 'profits and gains' in sub-clause (i). The expression 'profit and gains' finds mention under the heading D in Chapter IV of the Act. The said heading reads as 'Profits and gains of business or profession'. Section 28 under the said heading then sets out what would be chargeable to tax under the said head. It includes profits and gains of any business or profession carried out by the assessee at any time during the year and includes under Clause (iv) value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of a profession.

14. Sub-section (36) to Section 2 defines the term 'profession' to include vocation, which is a wider term. A person can have more than one profession or vocation.

15. Incomes which are not taxable under the heads 'A' to 'D' are taxable under the residuary head 'income from other sources' dealt with under the heading F of Chapter IV i.e. Section 56 to Section 59 of the Act. However, they must partake the nature and character of 'income' as understood in law or covered by the express clauses of sub- section 24 to Section 2 of the Act.

16. In the present case, the appellant was an editor of a newspaper and had income by way of salary, interest, dividends and profit. Section 17 of the Act, however, has not been invoked in the instant case and it is not the case of the Revenue that the prize money received is taxable under the head 'income from salary' under Part 'A' of Chapter IV of the Act. We need not, therefore, examine the judgments where the discussion is centered on whether the amount paid by the employer or the ex-employer would be taxable as salary or as perquisite or benefit. We, however, note that the statute i.e. Income Tax Act, 1961 has considerably expanded the ambit of the terms 'salary', 'benefit' and 'perquisites'. We will be referring to some of the earlier decisions to exposit the scope and four corners of the term 'income', as understood in law. Similarly, it is not the case of the Revenue that any of the Clauses to sub- section 24 to Section 2 are applicable. In the present case, Revenue has not directly submitted and asserted that the appellant was carrying on business or profession or

even vocation. The appellant has not been taxed for income in the form of 'profits' and 'gains' earned from profession. Assuming, that the appellant was carrying on vocation as a journalist or publisher, the issue raised is whether the prize money is a revenue receipt or a capital receipt. The other aspect is whether the prize money is taxable under the head "income from other source".

17. In ***Krishna Menon (P) vs. CIT,*** (1959) 35 ITR 48 (SC), the assessed, was a retired Inspector of Police, had extensively studied *Vedantic* philosophy and excelled in giving discourses on *Vedantic* thought. He had a number of disciples. On the question, whether the assessed was carrying on a business or a profession (including vocation), the Supreme Court observed that:

> *"It is said that in order that an activity may be called a vocation for the purposes of the Act, it has to be shown that it was an organized activity and that it was indulged in with a motive of making profit; that as the appellant's activity in teaching Vedanta was neither organised nor performed with a view to making profit, he could not be said to be carrying on a vocation. It is said that as the word " vocation " has been used along with the words " business and profession " and the object of a business and a profession is to make a profit, only such activities can be included in the word " vocation " the object of which*

like-wise is to make a profit. We think that these contentions lack substance. We do not appreciate the significance of saying that in order to become a vocation an activity must be organised. If by that a continuous, or as was said, a systematic activity, is meant we have to point out that it is well-known that a single act may amount to the carrying on of a business or profession. It is unnecessary to discuss this question further as we find no want of system or continuity in the activity of the appellant. He had gathered a large number of disciples around him and was instructing them in Vedanta regularly. Levy came all the way from England at regular intervals to obtain such instructions. All this clearly indicates organization and system. Again, it is well established that it is not the motive of the person doing an act which decides, whether the act done by him is the carrying on of a business, profession or vocation. If any business, profession or vocation in fact produces an income, that is taxable income and nonetheless because it was carried on without the motive of producing any income. ..."

18. Rejecting the contention of the assessed that the payments were made only on account of esteem and affection, the Court remarked that the disciples had the benefit of teachings of *Vedanta* and the following paragraph from the judgment in ***Herbert vs. McQuade*** (1902) 4 TC 489

was quoted:

> *"Now that judgment, whether or not the particular facts justified it is certainly an affirmation of a principle of law that a payment maybe liable to income tax although it is voluntary on the part of the persons who made 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 the money has come to or accrued to, a person by virtue of his office-it seems to me that the liability to income-tax is not negatived 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. "*

19. Therefore voluntary payment made because of office or vocation would be taxable, but a voluntary payment made for reasons purely personal and unconnected with his office or vocation would not be taxable.

20. The Court also referred to the judgment delivered by Rowlatt, J. in ***Reed vs. Seymour*** (1926) 1 K.B. 588, wherein Rowlatt, J. while explicating the difference between personal gifts and remuneration paid, held that the former wouldn't be subjected to tax but the latter would be.

21. Reference was made to another decision in ***Blakiston v. Cooper*** 5 TC 347, wherein it was held that what was paid to the vicar was given to him due to his office and hence formed a part of profits accruing by reason of the office he held.

22. Reverting back to the case in question i.e. ***Krishna Menon*** (supra), it was held that imparting of teaching was the *causa causans* of making the gift and not merely a *causa sine qua non.* The payments were repeatedly and regularly made at certain intervals. Rejecting the contention of the assessed that payments ought to be treated as casual in nature, it was held that the question of exemption does not arise as the assessed was unequivocally carrying on a vocation.

23. In ***Divecha (P.H.) vs. CIT,*** *(*1963) 48 ITR 222 (SC), it was observed that the motive and intent of the person who pays is not relevant and it is the nature of the receipt in the hands of the person who receives the same, which determines the quality of the receipt. However, for this purpose, one may examine the intent of the person paying/ donee. The quantum of the amount paid may not be decisive. Even the nomenclature given to the payment under consideration may not be determinative of the true nature of the receipt. This judgment held that periodicity is not conclusive, but the term 'periodicity' refers to the recurring nature of the payment and not a regular source of payment over a certain period of

time. In the said case, the payment was made to the partners by a third party, which earlier had business relationship with the partnership firm. This agreement between the third party and the firm was terminated. This payment to the partners, it was held was not for any service performed or likely to be performed in the future. It was not remuneration, but was made out of regard for qualities of the three partners and their long association. It was a payment out of appreciation and gratitude and not as a recompense for past service or services to be rendered *in futuro*. Therefore, the payment was held to be not taxable. Though the statutory amendments made thereafter would require consideration, in case of a similar nature, we have thought it relevant to state the said general principle. Some paragraphs of this judgment lucidly elucidate the principle in question and hence they merit a reproduction:-

> *"In determining whether this payment amounts to a return for loss of a capital asset or is income, profits or gains liable to income-tax, one must have regard to the nature and quality of the payment. If the payment was not received to compensate for a loss profits of business, the receipt in the hands of the appellant cannot properly be described as income, profits or gains as commonly understood. To constitute income, profits or gains the must be a source from which the particular receipt has arisen, and a connection must exist between the quality*

of the receipt and the source. If the payment is by another person it must be found out why that payment has been made. ... It may also be stated as a general rule that the fact that the amount involved was large or that it was periodic in character have no decisive bearing upon the matter. A payment may even be described as "pay", "remuneration", etc., but that does not determine its quality, though the name by which it has been called may be relevant in determining its true nature, because this gives an indication of how the person who paid the money and the person who received it viewed it in the first instance. The periodicity of the payment does not make the payment a recurring income because periodicity may be the result of convenience and not necessarily the result of the establishment of a source expected to be productive over a certain period. ...

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Even if it be not regarded as a payment for loss of capital it cannot be regarded payment for any services rendered or likely to be rendered, The services in the past were amply remunerated. The payment does not contemplate that the agreement in the past had not been sufficiently remunerative to the firm. It does not pretended to pay them for past services. The minutes do not show that any services in the future was expected from these appellants. What remained to be done was to wind up the business with regard to the agreement of 1938 itself. For this

purpose, the company agreed to give all facilities to the firm in respect of easily saleable articles and to make over those which required a longer duration to sell. The only service, if services it can be called, was that the firm was to hand over to the company a list of customers and the supplies made to them during the past six months. It cannot be said that for this service the payment was made. The payment was thus not related to any services in the past or in the future. Both side have relied upon cases in which certain payments were held to be taxable or not taxable according as the facts in those cases suggested that the payment was for some services in the past or future or was entirely gratuitous. No useful purpose will be served by going over such cases because the facts of two very dissimilar cases lead to different principles. ... . It was in no sense a remuneration. It was in fact a payment made out of regard for the qualities of the three partners of the firm who were long associated with the company to its profits and who had built up a vast net-work of sales organisation of which the company would have obtained benefit when it entered on the business of selling for itself. This payment need not be given a particular name. ..."

24. The question whether the said receipt could be treated as income of casual and non-recurring nature was rejected by the Court, by making the

observation that:

> *"The receipt may only be described as a receipt of a casual and non-recurring nature if it were income, profits or gains."*

25. In ***Mahesh Anantrai Pattani vs. CIT,*** (1961) 41 481 (SC), reference was made to ***Beynon vs. Thorpe*** (1927-28) 14 Tax Cases 1. In the said case, the question that arose for consideration of the Court was whether the gift was as a result of employment or not. The Court observed that a personal gift for the personal qualities of the assessee and as a token of personal esteem is not taxable, even if the gift is motivated by some sort of gratitude and moral obligation. The Court made an apposite distinction made between a gift simpliciter and payments made for services rendered or to be rendered. In the opinion of the Court, gifts simplicitor would not be taxable, if they are not connected with employment and are purely personal in character. Citing the decision in ***Moorehouse (Inspector of Taxes) v. Dooland,*** (1954) 36 TC 1, the Court went on to postulate three tests. Firstly, the litmus test for determining whether a voluntary payment would be exigible to tax has to be applied from the stand point of the recipient, by asking whether what has accrued to him is primarily and fundamentally by virtue of his office or employment; secondly whether the employment or office under

consideration normally entails receipt of such voluntary payments; and lastly whether the said payments were periodic or recurring in character. The Court however held that payments which are quite ostensibly gifts would not be taxable, as they were mere testimonials and were made in recognition of the personal qualities of the recipient.

26. The Supreme Court in ***Parimisetti Seetharamamma vs. CIT,*** (1965) 57 ITR 532 (SC), dealt with a case where a substantial amount by way of cash and jewellery had been gifted by one of the members of a royal family of Baroda to a maid servant/secretary. The question that arose for the consideration of the Court was whether the said gifts were taxable as income. The Court held that the Act does not make a blanket provision whereby any and every receipt is to be treated as income and thereby made exigible to tax. The Supreme Court in the instant case held that the testimonials and personal gifts do not fall within the ambit of the term 'income'. In all cases, the burden lies on the Revenue to prove that the receipt is income within a taxing provision, but where the receipt is in the nature of income, the burden to prove that it is exempt is on the assessee. In the said case, the appeal of the assessee succeeded on the ground that the Revenue had proceeded on the wrong interpretation of the law that the assessee had failed to discharge the burden of leading evidence that the receipt was not income within the taxing provision. The

legal burden was actually on the Revenue to prove that the receipt was income. The decision has covered three aspects: - all receipts are not income; testimonials and personal gifts are not income; and burden was on the Revenue to show that the receipt was income within the taxable provisions. In view of the factual matrix of the said case, the majority judgment held that the circumstances did not establish that what was paid to the assessee was remuneration for the services already rendered or to be rendered. The Court reversed the decision of the High Court, the Tribunal and the Authorities as the Revenue had failed to discharge its burden of proving that the receipts were income.

27. The Supreme Court in ***Dr. K. George Thomas vs. Commissioner of Income Tax, Kerala,*** (1985) 156 ITR 412 (SC), observed that the assessed was carrying on the vocation of preaching against atheism, and during the course of such vocation he had received donations in furtherance of the objects of his vocation. There being a proximate and live link between the activities of the assessed and the payments so received, the receipts were not casual in nature. As the payments partook a recurring character, the Court declared them to be taxable.

28. We would now like to briefly deal with some judgments of various High Courts.

29. We begin with the decision of the Calcutta High Court in ***David***

Mitchel vs. CIT, [1956] 30 ITR 701 (Cal.). The assessee was a partner of a well known firm of Chartered Accountants. He had received payments from a third party who had engaged services of the partnership firm while floating a company. The said company had paid full fee for the services rendered by the partnership firm. Subsequently, the company, it was claimed, had made unsolicited gift of 2500 shares to the assessee. The value of the shares, it was observed, could not be taxed as a perquisite or profits, as they were not a part of salary or wages. It was observed by the Court that the conclusive test to decide whether the shares could be said to be profits and gains arising out of a profession or vocation would be to ascertain, whether the same were a gift in the form of a testimonial in recognition of the personal qualities of the partners. The said test would be applied from the stand point of the recipient and it had to be first ascertained whether it accrued to him by virtue of his office and if it did, it is irrelevant whether it is voluntarily or compulsorily made on the part of the payer. If it was found to have any causal connection with the exercise of a profession or vocation, then it would not be treated as a gift arising out of personal admiration; rather the same would be treated as a payment having a correlation with the office held. In such a case, it would not be treated as one in appreciation of his personality or character. The Court recognized that money is rarely paid without a good reason or some *quid*

pro quo, and it is generally paid in return of property, goods or service or help. Therefore, care and caution has to be exercised when the payment is made not by third parties but by parties who had received any benefit of professional services.

30. At this stage, we would also like to refer to ***Govindlalji Ranchhodlalji (Maharaj Shri) vs.CIT,*** [1958] 34 ITR 92 (Bom.). The assessee therein was a direct descendant of the original founder of the religious faith and had received offerings. It was pleaded that there was no legal obligation for the followers to make gifts. The argument was rejected holding that the gifts were taxable because they were not made because of personal reasons but because the recipient was the head of the particular sect. Another reason was that it was customary to make gifts. Thirdly, the assessee held an office that induced the disciples to make gifts. Thus, even practice of religion would become a profession when it has the characteristic of a steady income. The gifts or donations in the said case were not personal gifts, but were receipts of recurring nature. Referring to the contention that the donations were voluntary, it was observed that the true test to determine whether a receipt is income or not, has to be perceived from the stand point of the recipient and not the payer. In the said case, it was observed that the gifts were not made due to the charismatic personality of the recipient or to a person because of his

virtues. The gifts were made because he was a head of the sect. "Unsolicited" donations received by an evangelist could therefore be taxable.

31. In ***Dilip Kumar Roy vs. CIT,*** (1974) 94 ITR 1 (Bom.), Rs. 1 lakh received by the assessee to enable him to build a temple on account of voluntary payments, was held not to be income. These payments were made keeping in mind the personal esteem and venerated position, a fact which was not denied by the Revenue and accepted by the Court as true.

32. In ***Lacchmandas vs. CIT,*** (1980) 124 ITR 532 (Del.), gifts of land made to the assessee out of natural love and affection, as the assessed had served in his capacity as general attorney, was held to be not taxable as it was not in the nature of remuneration paid, but a transaction of gift.

33. The Madras High Court in ***CIT vs. Paramanand Uttamchand,*** (1984) 146 ITR 430, had to grapple with the issue, whether presents worth Rs.19,242/-, received at the time of *Grih Pravesh* ceremony from relations, friends and well-wishers would be taxable. The issue was decided in favour of the assessee by observing that it was not something earned and the payments were merely a gift and a windfall. These were gifts of a voluntary or gratuitous nature, without any *quid pro quo*, which is a prerequisite to qualify anything as a gift. Thus, all what comes in is not income and gifts are not income. Gifts, it was observed, were the

opposite of income as they are wind falls. They are not earned as such. Earned income comes from a definite source and it also possesses the other characteristic of recurrence.

34. Similarly in ***CIT vs. Sundaravadanam (B.M.)(Dr.),*** (1984) 148 ITR 333 (Mad.), gifts received by a professional doctor which was not towards his professional fee, were held to be not income.

35. In ***C.P. Chitrarasu vs. CIT,*** (1986) 160 ITR 534 (Mad.), gifts received by a member of a political party were not treated as income.

36. Again, there are decisions on the question whether gifts received by a singer etc. are personal in nature and hence exempt; or whether they are receipts in nature of income because the recipient carries on the vocation or occupation. We are not required to decide the question regarding vocation or hobby as such, but would accept that the term 'income' would include payments of a recurring and periodical nature which are made from time to time. When this happens it would be plausible and right to infer that the recipient is carrying on a vocation and the receipts relate and have a causal connection with the said activity. It has ceased to be a mere hobby. Such payments therefore, have periodicity and regularity and they disclose some sort of obligation, which may be even moral, social or customary. It may be unwritten and overtly voluntary, but gifts or payments received as a norm and a convention, are taxable income.

Periodicity is a good indicator of what may be income as it can denote and manifest the *causa causans* between the "act" of the assessed and the earning. However, periodicity is not determinative in all cases, for one solitary instance of receipt can be income. Similarly, expectation of reward even when there is no obligation would be income; but if a person performs an action unaware that the other person would reward him, the receipt may not be towards or for a service rendered, unless there is an element of *quid pro quo.*

37. The aforesaid *ratios* do indicate a distinction drawn between a 'capital receipt' and 'revenue receipt'; for income as a taxable term is a revenue receipt. Income by way of capital gain is deemed to be income under Clause (vi), provided it is chargeable under Section 45. Capital receipts which are not chargeable under Section 45 are not incomes. Thus, the capital receipt could be taxable in view of the amendments and statutory provisions which now cover and apply to particular situations. Albeit, every capital receipt is still not income.

38. The decision of this Court in ***J.C. Malhotra*** (supra) is in consonance with our reasoning, for the assessee in the said case was an Income Tax Officer and on account of the services rendered/performed by him, he had received a reward. In that case it was established that his vocation was the *causa causans* for the

award.

39. Reference can be made now to the widely acclaimed and often cited decision of the Supreme Court in ***Commissioner of Income Tax, Madras vs. G.R. Karthikeyan,*** (1993) 201 ITR 866 (SC)**,** where the assessed had income from various sources including salary and business. Earnings in the nature of prize money etc. for winning were held to be income. It was observed:

> *"The idea behind providing inclusive definition in Section 2(24) is not to limit its meaning but to widen its net. This Court has repeatedly said that the word 'income' is of widest amplitude, and that it must be given its natural and grammatical meaning. Judging from the above standpoint, the receipt concerned herein is also income. May be it is casual in nature but it is income nevertheless. That even the casual income is 'income' is evident from Section 10(3). Section 10 seeks to exempt certain 'incomes' from being included in the 'total income'. A casual receipt - which should mean, in the context, casual income - is liable to be included in the total income, if it is in excess of Rs. 1,000/-, by virtue of Clause (3) of Section 10. Even though it is a clause exempting a particular receipt/income to a limited extent, it is yet relevant on the meaning of the expression income. In our respectful opinion, the High Court, having found that the receipt in question does not fall within Sub-clause (ix) of*

Section 2(24), erred in concluding that it does not constitute income. The High Court has read the several Sub-clauses in Section 2(24) as exhaustive of the definition of income when in fact it is not so. In this connection it is relevant to notice the finding of the Tribunal. It found that the receipt in question was casual in nature hut - it opined - it was nevertheless not an income receipt and fell outside the provision of Section 10(3)of the Act. We have found it difficult to follow the logic behind the argument."

40. Nature of and accordingly the tax treatment given to receipts by way of endorsements; prize money received in a tournament or a match or even gifts received by sportspersons have undergone a change over the period of time. Earlier decisions in the case of ***Seymour vs. Reed*** (supra) and ***Moore vs. Griffiths,*** (1972) 3 All ER 399 pronounced in 1927 and 1972 respectively, may not be of contemporary relevance and have limited applicability today because sports have now become a profession or occupation and such prizes as well as gifts are now the norm and not just once in a lifetime occasion. Even amateur athletes, who perform well, receive awards, prizes and gifts. The expectation for the said rewards and acknowledgment exists. It is subterranean and covert in nature, but sufficiently self- evident and distinctively demonstrative and the accepted standard. It is an unwritten code and rule. Element of gratis

is missing, and when the 'gift', 'prize' etc. relate to and are connected with the activities rendered by the sportsperson, they would be assessed as income even if no employer -employee or contractual relationship exists or even when the payments are not compulsory in nature or legally enforceable. The payments received in such cases are means of livelihood. Whatever be the motive of the payer, the intention of the recipient is to take advantage and cash in on the source i.e. his vocation or occupation. However, mere hobby resulting in a sudden and unexpected testimonial would not be an income. The aforesaid principles should obviously be subject to the specific clauses in Section 2 (24) of the Act, which treats income or earnings from card games or games of any other sort as income.

41. When we apply the aforesaid test to the present receipt, it has to be held that the said amount would be a capital receipt, being purely in the nature of a testimonial. The *causa causans* in the present case is not directly relatable to the carrying on of vocation as a journalist or as a publisher. It is directly connected and linked with the personal achievements and personality of the person i.e. the appellant. Further, it is to be noted that the payment in this case was not of a periodical or repetitive nature. The payment was also not made by an employer; or by a person associated with the "vocation"

being carried on by the appellant; or by a client of his. The prize money has in the instant case been paid by a third person, who was not concerned with the activities or associated with the "vocation" of the appellant. It being a payment of a personal nature, it should be treated as capital payment, being akin to or like a gift, which does not have any element of *quid pro quo*. The aforesaid prize money was paid to the assessee on a voluntary basis and was purely gratis.

42. On the concluding note we would like to deal with the alternative submission of the counsel for the Revenue that all prizes or awards in cash or kind would be income except those specifically covered and exempted under sub- section (17A) to Section 10 of the Act. In view of the pronouncement of the Supreme Court in ***Divecha (P.H.)*** (supra), the answer to the above mentioned submission of the Revenue has to be in the negative and accordingly against the Revenue. In the said case, the argument raised on behalf of the Revenue was that the receipt in question was not exempt under sub section (3) to Section 10, and therefore would be taxable income. The Supreme Court in the quoted portion (see paragraph 23) has clearly and categorically held that the question of exemption

would not arise where the receipt itself does not fall within the ambit of income. The question whether or not income is exempted and thus non- taxable would only arise when the receipt itself is income. The question of exemption is distinct and separate and would arise at a secondary stage.

43. In the considered opinion of this Court, the correct legal position is that Section 10 exclusively deals with the exempt income not exigible to tax and should not *per se* be relied upon to ascertain whether the receipt would be a revenue receipt i.e. income chargeable to tax under sub-section (24) to Section 2 read with the charging provisions. The question of exemption under Section 10 would only arise if at the first instance, the receipt is found to be a revenue receipt. It would be incorrect to first examine whether a particular receipt has been exempted and then on the said reasoning and ratio proceed to decipher and hold that the amount/receipt is income for the purposes of the Act i.e. the Income Tax Act. In ***International Instruments vs. CIT,*** (1982) 133 ITR 283 (Kar.), it has been held that "A receipt may not be 'income' at all within the proper connotation of that term and yet may come within the express exemption in this section, due to the over- anxiety of the draftsman to make the fact of non- taxability clear beyond

possibility of doubt." Just because a certain receipt is not exempt under Section 10, it doesn't follow that it is a revenue receipt and hence income. Relevant in this regard would be to also quote ***Dilip Kumar Roy*** (supra), wherein it was held:

> *"It is well settled that by Sections 3 and 4 of the Act, the Act imposes a general liability to tax upon all income, but the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision. Where however a receipt is of the nature of income, the burden of proving that it is not taxable, because it falls within an exemption provided by the Act, lies upon the assessee. Where the case of the assessee is that a receipt did not fall within the taxing provision, the source of the receipt is disclosed by the assessee and there is no dispute about the truth of that disclosure, the income-tax authorities are not entitled to raise an inference that the receipt is assessable to income-tax on the ground that the assessee has failed to lead all the evidence in support of his contention that it is not within the taxing provision."*

44. In ***G.R. Karthikeyan*** (supra), the Supreme Court has made an observation that when a particular "income" or "receipt" is exempt to a limited extent, it may be a relevant factor for determining the

meaning of the expression "income". However, this statement should not be read in isolation, bereft of the context in which it was made. The entire paragraph quoted above (see paragraph 39 above) clearly illustrates that the main thrust there was on highlighting that the term 'income' is of widest amplitude and should be given a natural and grammatical meaning. Casual 'income' is income. Once, it is settled, that the receipt is income, partial exemption would necessarily indicate that the non- exempt part is taxable.

45. In view of the aforesaid discussion, the substantial questions of law mentioned above, are answered in favour of the appellant-assessee and against the Revenue. Rs. 1 lakh received by the appellant- assessee as an award from B.D. Goenka Trust for Excellence in Journalism would be a capital receipt and hence not income taxable under the Act, i.e. Income Tax Act, 1961. There shall be no order as to costs.

(V.KAMESWAR RAO)
JUDGE

(SANJIV KHANNA)
JUDGE

MARCH 27, 2015/km