Kettlewell Bullen and Co. Ltd.

Vs

Commissioner of Income-Tax, Calcutta

Civil Appeal No. 226 of 1963

(K. Subha, J. C. Shah, S. M. Sikri JJ)

01.05.1964

JUDGMENT

SHAH J. -

The appellant is a public limited company, and has its registered office at Calcutta. By an agreement dated May 1, I925, the Fort William Jute Company Ltd. appointed the appellant its managing agent upon certain terms and conditions set out therein. Under the agreement the appellant was to receive as managing agent remuneration at the rate of the Rs. 3,000 per month, commission at the rate of ten per cent. on the profits of the company's working, additional commission at three per cent. on cost price of all new machinery and stores purchase by the managing agent outside India on account of the company, on the security of the company's by stocks, raw materials and manufactured goods. The appellant and its successors in business, whether under the same or any other style or firm, unless they resigned their office were entitled to continue as managing agent until they ceased to hold shares in the capital of the company of the aggregate nominal value of Rs. 1,00,000 and were on that account removed by

Besides the managing agency of the Fort William Jute Co. Ltd., the appellant held at all material times managing agencies of five other limited companies, viz., Fort Gloster Jute Manufacturing Co. Ltd. Bowreach Cotton Mills Co. Ltd., Dunbar Mills Ltd., Mothola Co. Ltd., and Joonktolle Tea Co. Ltd. The appellant had advanced Rs. 12,50,000 to the Fort William Jute Co. Ltd. on the security of the stocks, raw materials and manufactured goods of that company. The appellant held in 1952, 600 out of 14,000 ordinary shares of the face value of Rs. 100 each, and 6,920 out of 10,000 preference shares also of the face value of Rs. 100 each. On May 21, 1952, the appellant entered into an agreement with M/s. Mugneeram Bangur and Co., the principal conditions of which were :

> (i) M/s. Mugneeram Bangur and Co., to purchase the entire holding of shares of the appellant in the Fort William Jute Co. Ltd. - Ordinary shares at Rs. 400 each and preference shares at Rs. 185 each and to make an offer to all holders of the company's shares - preference and ordinary - to purchase their holdings at the same rates;
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> (ii) M/s. Mugneeram Bangur and Co., to procure repayment on or before June 30, 1952, of all loans made by the appellant to the principal company;
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> (iii) M/s. Mugneeram Bangur and Co., to procure that the principal company will compensate the appellant for loss of office in the sum of Rs. 3,50,000, such sum being payable to the appellant after it submitted its resignation as managing agent;

and

(iv) M/s. Mugneeram Bangur and co., to reimburse the company the amount payable to the appellants.

The reasons for which the appellant agreed to relinquish the managing agency were set out in a letter dated May 28, I952, addressed by the appellant to the members of the company intimating that M/s. Mugneeram Bangur and Co. were willing to purchase the shares at the same rates at which they had agreed to purchase the shareholding of the appellant. It was recited in the letter that the installation of modern machinery in the company's factory entailed heavy capital expenditure and it was necessary to obtain a loan secured by debentures charged on the company's property; that large sums were required for renewals and replacements of machinery and it was not possible to obtain additional bank accommodation; that the appellant had made large advances to the company exceeding Rs. 12,50,000 and, having regard to its other commitments, it was doubtful if it would be able to make available to the company additional finance; that the arrangement with M/s. Mugneeram Bangur and Co., by acceptance of the terms offered

The arrangement with M/s. Mugneeram Bangur and Co. was carried out. The appellant tendered its resignation with effect from July 1, 1952, in pursuance of the terms of the agreement and M/s. Mugneeram Bangur and Co. were appointed as managing agent of the company. The sum of Rs, 3,50,000 received by the appellant from the company - which it is common ground was provided by M/s. Mugneeram Bangur and Co. - was credited in the profit and loss account of the appellant as received from the Fort William Jute Co. Ltd. on account of compensation for loss of office. But in arriving at the net profit in the return for income-tax for the year 1953-54 this amount was deleted. In the proceedings for assessment for the year 1953-54 the Income-tax Officer, Companies District IV, Calcutta, included this amount in the appellant's taxable income. In appeal the Appellate Assistant Commissioner modified the assessment holding that the sum of Rs. 3,50,000 received by the appellant as compensation for surrendering the managing age

At the instance of the Commissioner of Income-tax, the Tribunal referred under section 66(1) of the Income-tax Act, 1922, the following question to the High Court of Judicature at Calcutta :

> "Whether on the facts and in the circumstances of the case of the case the sum of Rs. 3,50,000 received by the assessee to relinquish the managing agency was revenue receipt assessable under the Indian Income-tax Act ?"

The High Court, for reasons which we will presently set out, answered the question in the affirmative. With certificate granted by the High Court, this appeal is preferred by the appellant.

This case raises once again the question whether compensation received by an agent for premature determination of the contract of agency is a capital or a revenue receipt. The question is not capable of solution by the application of any single test : its solution must depend on a correct appraisal in their true perspective of all the relevant facts. As observed in Commissioner of Income-tax v. Rai Bahadur Jairam Valji by Venkatarama Aiyar J. :

> "The question whether a receipt is capital or income has frequently come up for determination before the courts. Various rules have been enunciated as furnishing a key to the solution of the question, but as often observed by the highest authorities, it is not possible to lay down any single test as infallible or any single criterion as

> decisive in the determination of the question, which must ultimately depend on the facts of the particular case, and the authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a decision : vide Van den Berghs Ltd. v. Clark. That, however, is not to say that the question is not of fact, for, as observed in Davies v. Shell Company of China Ltd. 'these questions between capital and income, trading profit or no trading profit, are questions which, though they may depend no doubt to a very great extent on the particular facts of each case, do involve a conclusion of law to be drawn from those facts'."

The interrelation of facts which have a bearing of the question propounded must, therefore, first be determined. The managing agency was not, except in the circumstances set out in clause 2 of the agreement, liable to be determined at the instance of the company before January 14, 1957, unless the appellant by giving noticed of three weeks voluntarily resigned the agency. At the date of termination the agency had five more years to run, and the Companies Act did not prohibit renewal of the agency in favour of the appellant, after the expiry of the initial period of twenty years. The appellant company was formed for the object, amongst others (vide clause 3(2) of the memorandum of association of the appellant) of carrying on the business of managing agencies. The appellant was entitled under the terms of the agreement to receive so long as the agency enured ten percent, of the profits of the company's working, three per cent, on all purchases of stores and machinery abroad, and a monthly remuneration of Rs. 3

The High Court summarised the effect of the agreement between the appellant and M/s. Mugneeram Bangur and Co., as follows : The sum of Rs. 3,50,000 described as compensation for loss of officer of the managing agent was part of the whole scheme incorporated in the agreement. Each clause of the agreement was a consideration of the other clauses and payment of compensation for the alleged loss of office did not, being part of the total scheme, stand by itself. Determination of the managing agency of the appellant was not compulsory cessation of business : it was a voluntary resignation for which under the agency agreement the appellant was not entitled to any compensation, but by the device of procuring a purchaser the appellant was doing "business of selling the managing agency and getting a profit and value for it which it otherwise could not have got." The High Court stamped this transaction with the nature and character of a trading or a business deal, because in their view the managing agency of a company

> (1) that, on the facts of the case, the managing agency held by the appellant of the Fort William Jute Co. Ltd. was stock-in-trade; and
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> (2) that the appellant was formed with the object of acquiring managing agencies, and in fact held managing agencies of as many as six companies. Earning profits by conducting the management of companies, being the business of the appellant, compensation received as consideration for surrendering the managing agency was a revenue receipt.

We are unable to agree with the High Court that the managing agency of the Fort William Jute Co. Ltd. was an asset of the character of stock- in-trade of the company. The appellant was formed with the object, among others, of acquiring managing agencies of companies and to carry on the business and to take part in the management, supervision or control of the business or operations of any other company, association, firm or person and to make profit out of it. That only authorised the appellant to acquire as a fixed asset, if a managing agency may be so described, and to exploit it for the

purpose of profit. But there is no evidence that the company was formed for the purposed of acquiring and selling managing agencies and making for the purpose of acquiring and selling managing agencies and making profit by those transactions of sale and purchase. A managing agency is not an asset for which there is a market, for it depends upon the personal qualifications of the agent. Counsel appearing on behalf of the Com rincipal companies of the appellant as managing agent being a normal incident of such business, compensation received by the appellant is not for loss of capital but must be regarded as a trading receipt, especially when the termination of the agency does not impair the structure of the business of the appellant.

In the present case there is a special circumstance which must first be noticed. In truth the amount of Rs. 3,50,000 was received by the appellant from M/s. Mugneeram Bangur and Co., in consideration of the former agreeing to forgo the agency which it held and which M/s. Mugneeram Bangur and Co. were anxious to obtain. It was in a business sense a sale of such rights as the appellants possessed in the agency to M/s. Mugneeram Bangur and Co. This is supported by the recitals made in clause 2 of the agreement that if at any time within six months after the completion of such sale M/s. Mugneeram Bangur and Co. were unable to exercise the voting rights attached to the shares purchase by them, the appellant will appoint any person nominated by M/s. Mugneeram Bangur and Co. to attend and vote for them at any meeting of the company or the holders of any class of shares to be held within such period in such manner as M/s. Mugneeram Bangur and Co. may decide. The object underlying the agreement was therefore to trans

Counsel for the assessee contended that even assuming that the form of the transaction under which for loss of the managing agency the appellant received compensation from the principal company is decisive, or has even a dominant impact and the ultimate source from which the compensation was provided is to be ignored, the compensation received for loss of agency by the agent must always be regarded under the Indian Income-tax Act as capital receipt. In support of that contention counsel placed strong reliance upon the judgment of the Judicial Committee in Commissioner of Income-tax v. Shaw Wallace and Co. In the alternative, counsel pleaded that even if the extreme proposition was not found acceptable, the right of the assessee in the managing agency of the principal company was to enure for another five years and which in the normal course would have continued for another twenty years was an enduring asset and consideration received by the appellant for extinction of that asset was a capital receipt.

On behalf of the income-tax department it was contended that Shaw Wallace and Co. case does not lay down any proposition of general application to compensation paid for determination of all agency contracts. It was further submitted that, having regard to the nature of the agreement and the voluntary resignation submitted by the assessee, no enduring asset remained vested in the assessee, and none was attempted to be transferred : the compensation directly paid by the principal company (which compensation was under the terms of the contract not payable) was only a "measure of profit" which the appellant would, but for the resignation, have earned, and was therefore in the nature of revenue. It was also urged that compensation was not payable to the assessee when resignation of the managing agency was tendered under clause 8 of the agreement and therefore the amount sought to be brought to tax was received by the assessee in the course of a normal trading transaction of the assessee. Finally, it was urged tha

Whether a particular receipt is capital or income from business, has frequently engaged the attention of the courts. It may be broadly stated that what is received for loss of capital is a capital receipt : what is received as profit in a trading transaction is taxable income. But the difficulty arises in ascertaining whether what is received in a given case is compensation for loss of a source of

income, or profit in a trading transaction. Cases on the borderline give rise to vexing problems. The Act contains no real definition of income; indeed it is a term not capable of a definition in terms of a general formula. Section 2(6C) catalogues broadly certain categories of receipts which are included in income. It need hardly be said that the form in which the transaction which gives rise to income is clothed and the name which is given to it are irrelevant in assessing the exigibility of receipt arising from a transaction to tax. It is again not predicated that the income must necessarily have a recurrent qua

The Indian Income-tax Act, is not in pari materia with the English income-tax statutes. But the authorities under the English law which deal not with in interpretation of any specific provision, but on the concept of income, may not be regarded as proceeding upon any special principles peculiar to the English Acts so as to render them inapplicable in considering problems arising under the Indian Income- tax Act. It is well-settled in England that money paid to compensate for loss caused to an assessee's trade is normally regarded as income. In Short Bros. v. Commissioners of Inland Revenue a sum received as compensation for loss resulting from cancellation of a contract was held to be revenue in the ordinary course of the assessee's trade, and liable to excess profits duty. Similarly, in Commissioners of Inland Revenue v. Northfleet Coal and Ballast Co. Ltd. compensation paid by a person, who had agreed to purchase a certain quantity of chalk yearly for ten years, from a company, which was the owner of a quar

In Commissioners of Inland Revenue v. Newcastle Breweries Ltd. compensation received under an order of the War Compensation Court, under the Indemnity Act, I920, in addition to what was paid by the Admiralty for rum taken over in exercise of the power under the Defence of the Realm Regulations, was held to be revenue.

In Ensign Shipping Co. Ltd. v. Commissioners of Inland Revenue an amount paid by the Government to a ship-owner to compensate him for loss resulting from detention of his ships during a coal-strike, and for wages, etc., was held liable to excess profits duty. Again as held in Burmah Steam Ship Co. Ltd. v. Commissioners of Inland Revenue money received by a ship-owner from a firm of ship-builders to compensate for loss resulting from the failure by the latter to complete repairs to ship within the stipulated period was regarded as revenue.

These cases illustrate the principle that compensation for injury to trading operations, arising from breach of contract or in consequence of exercise of sovereign rights, is revenue. These cases must, however, be distinguished from another class of cases where compensation is paid as a solatium for loss of office. Such compensation may be regarded as capital or revenue : it would be regarded as capital, if it is for loss of an asset of enduring value to the assessee, but not where payment is received in settlement of loss in a trading transaction.

In Chibbett v. Joseph Robinson and Sons the assessees, who were ship- managers employed by a steamship company under a contract which provided that they should be paid a percentage of the company's income, were paid compensation for loss of office in anticipation of liquidation of the steamship company. It was held that payment to make up for loss resulting from cessation of profits from employment was not itself and annual profit, but was payment in respect of respect of termination of employment and was not assessable to tax.

In Du Cros v. Ryall the assessee settled a claim made by his employee for damages for wrongful dismissal and paid Pounds 57,250 as compensation for wrongful dismissal. It was held that no part could be apportioned to salary and commission and the whole escaped assessment.

In Duff v. Barlow the managing director of the appellant company, who was employed for a period of ten years, was asked by it to manage the business of one of its subsidiaries, and to receive a percentage of profits made by the subsidiary. The employment was terminated by mutual agreement two years after its commencement and Pounds 4,000 were paid as compensation to the managing director for loss of his rights of future remuneration. This was held not taxable, because it was a sum paid as compensation for loss of a source of income and hence a capital asset. This case was followed in Henley v. Murray, where the appellant employed as a managing director of a property company under a service agreement which was not determinable till March 31, I944, was also appointed a director of a subsidiary company. At the request of the board of directors of the property company the appellant resigned his office in the property company as well as its subsidiary and received from the property company an amount equal to the

In Barr, Crombie and Co. Ltd. v. Commissioners of Inland Revenue the appellant company managed the ships of another company under an agreement for a period of fifteen years. The shipping company went into liquidation and a sum exceeding pounds 16,000 was paid to the appellant company for the eight years which were still to run to the date of expiry of the agreement. Over a period upwards of sixteen years only two per cent. of the appellant company's income was derived from other managements, and on the liquidation of the shipping company the appellant company lost its entire business except for some abnormal and temporary business. It was held by the Court of Session in Scotland that the sum in question was not a trading receipt of the appellant company. Lord President Normand observed (page 411) :

> "In the present case virtually the whole assets of the appellant company consisted in this agreement. When the agreement was surrendered or abandoned practically nothing remained of the company's business. It was forced to reduce its staff and to transfer into other premises, and it really started a new trading life. Its trading existence as practised up to that time had ceases with the liquidation of the shipping company."

These cases establish the distinction between compensation for loss of a trading contract and solatium for loss of the source of income of the assessee.

But payment of compensation for loss of office is not always regarded as capital receipt. Where compensation is payable under the terms of the contract which is determined, payment is in the nature of revenue and therefore taxable. For instance, in Henry v. Foster it was held that when compensation stipulated under a contract is paid for loss of office, it is taxable under Schedule E, and it was also held in Dale v. Soissons, that compensation paid under an agreement to an assistant to the managing director for premature termination of employment was held to be income. The principle on which these cases proceeded was also applied by the Court of Session in Scotland in Kelsall Parsons and Co. v. Commissioners of Inland Revenue, to a case in which there was no express term for payment of compensation on termination of employment. The appellants in that case carried on business a agents on a commission basis for sale in Scotland of the products of various manufacturers, and entered into an agency agreement for

> "We are not embarrassed here by the kind of difficulties which arise when, by agreement, a benefit extending over a tract of future years is renounced for a payment made once and for all. The sum paid in this case is really and substantially a surrogatum for one year's profits."

The foundation of the distinction made in Kelsall Parsons and Co., Henry v. Foster and Dale v. de Soissons is to be found in the observations made by Lord Macmillan in Van den Berghs Ltd. v. Clark. In that case two companies which were manufacturers of margarine and similar products entered into an agreement with a view to end competition between them and to work in friendly alliance and to share the profits and losses in accordance with and elaborate scheme. This arrangement was terminated by mutual agreement in consideration of the payment by the Dutch company of pounds 4,50,000 to the appellant company as damages. It was held by the House of Lords that the amount was received by the appellant as payment for cancellation of the appellant company's future rights under the agreements, which constituted a capital asset of the company, and that it was a capital receipt. Lord Macmillan observed at page 25 :

> "Now what were the appellants giving up ? They gave up their whole rights under the agreements for thirteen years ahead. These agreements are called in the Stated Case 'pooling agreements' but that is a very inadequate description of them, for they did much more than merely embody a system of pooling and sharing profits. If the appellants were merely receiving in one sum down the aggregate of profits which they would otherwise have received over a series of years, the sump sum might be regarded as of the same nature as the ingredients of which it was composed. But even if a payment is measured by annual receipts, it is not necessarily itself an item of income."

Cases which have lately arisen before the courts in the United Kingdom have elaborated this distinction. In Commissioners of Inland Revenue v. Fleming and Co., the Court of Session held, following Kelsall Parsons and Co.'s case, that compensation paid to the assessee who carried on business as manufacturers' agent and general merchants and had acted as the sole agents since 1903 for certain products of the manufacturers for termination in 1948 of the agency at the instance of the manufacturer was regarded as revenue. In the view of Lord President Cooper the cases relating to determination of agencies, broadly speaking, fell on two sided of the line drawn in the light of the varying circumstances :

> "(a) the cancellation of a contract which affects the profit-making structure of the recipient of compensation and involves the loss by him of an enduring trading asset, and
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> (b) the cancellation of a contract which does not affect the recipient's trading structure nor deprive him of any enduring trading asset, but leaves him free to devote his energies and organisation released by the cancellation of the contract to replacing the contract which has been lost by other like contracts",

and held that the case fell within the second class, and not the first.

In Wiseburgh v. Domville, the appellant had entered into an agreement in 1942 under which he acted as sole agent for the manufacturer. In 1948 when this agreement could have been determined by notice expiring in October, 1949, the manufacturer dismissed him. The appellant received pounds 4,000 as damages for breach of agreement. The appellant had several agencies from time to time as agents and it was one of the incidents of agency business that one agency may be stopped and another may come and it being normal incident of the kind of business that the appellant was doing, that agency should come to an end, compensation paid was regarded as income on the principle laid down in Kelsall Parsons and Co.'s case.

In another case, which soon followed Anglo-French Exploration Co. Ltd. v. Clayson, the appellant company carried on business, among others, as secretary and agent for a number of other companies. A South African company appointed the appellant company as its secretary and agent at a remuneration of pounds 1,500 per annum under a contract terminable at six months' notice. Under an arrangement with the purchaser of the controlling interest of the shareholders under which the appellant company was to resign its office as secretary and agent of the South African company, an amount of pounds 20,000 received by the appellant company was held by the Court of Appeal in the nature of a trading receipt.

In Blackburn v. Close Bros. Ltd. the respondent company carried on business of merchant bankers and of a finance and issuing house and derived income in the form of allowances for performing managerial and secretarial services. Following a dispute with one "S" for which the respondent company had agreed to provide secretarial services for three years at a remuneration of pounds 8,000 per annum, the agreement was terminated within about 2 1/2 months from the date of its commencement. pounds 15,000 received by the respondent company as compensation for termination of the agreement was held to be a trading receipt. Pennycuick J. held that the contract was one of a number of ordinary commercial contracts for rendering services by the assessee in the course of carrying on its trade, and, therefore, the sum received on the cancellation of the agreement was a receipt of a revenue nature.

It is manifest that the principle, broadly stated in the earlier cases, that compensation for loss of office, or agency, must be regarded as a capital receipt has not been approved in later cases. As exception has been engrafted upon that principle that, where payment even if received for termination of an agency agreement, but the agency is one of many which the assessee holds, and the termination of the agency does not impair the profit-making structure but is within the framework of the assessee's business, it being a necessary incident of the business that existing agencies may be terminated and fresh agencies may be taken, the receipt is revenue and not capital.

A case on the other side of the line may be noticed : Sabine v. Lookers Ltd. Under agreements, annually renewed with the manufacturers, the respondent company had acted for many years as their main distributors in the Manchester area of the manufacturer's products, which it bough for resale. The respondent had sunk considerable sums in fixtures and equipment specially designed for the trade of wholesale dealers and carried a large stock of spare parts mainly for wholesale sale. The whole of the trade of the respondent was geared to the display, sale, service and repairs of the manufacturer's products. Up to 1952 inclusive, the manufacturers had included in its agreements with distributors a standard "continuity clause" giving the distributors, on certain conditions, the option of renewal for a further year. But in 1953, the manufacturers adopted a new standard agreement, containing a new continuity clause which the respondent company regarded as giving it less security than before. As compensation for loss r

Elaborate arguments were presented before us on the decision of the Judicial Committee in Shaw Wallace and Co.'s case. The appellant contended that Shaw Wallace's case laid down a principle of general application applicable to all cases of compensation received from the principal as solatium for determination of the contract of agency. Counsel for the revenue contended that the principle should be restricted to its special facts, and cannot be extended in view of the later decisions. It is necessary to closely examine the facts which gave rise to that case. Shaw Wallace and Company carried on business as merchants and agents of various companies and had branch offices in different parts of India. For a number of years they acted as distributing agents in India for the Burma Oil Company and the Anglo- Persian Oil Company, but without a formal agreement with

either company. The two oil companies having combined decided to make other arrangements for distributing their products. Each company terminated its contr

The Judicial Committee declined to seek inspiration from the English decisions cited at the Bar. The Board observed that the expression "income" which is not defined 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, excluding anything in the nature of a mere windfall. They further observed that the income chargeable under head (iv) of section 6 "business" read with section 10 is to be in respect of the profits and gains of any business carried on by the assessee, and, therefore, the sums which the income-tax department sought to charge could only be taxable if they were the produce or the result of carrying on the agencies of the oil companies in the year in which they were received by the assessee. But when once it was admitted that they were sums received, not for carr

The judgment of the Board proceeds upon the ground that compensation received not for carrying on the business but as solatium for its compulsory cessation, would be regarded as capital receipt, and for the application of this principle, existence of other independent commercial interests out of which profits were earned by the assessee was irrelevant. Two comments may be made at this stage. It cannot be said as a general rule, that what is determinative of the nature of the receipt is extinction or compulsory cessation of an agency or office. Nor can it be said that compensation received for extinction of an agency may always be equated with price received on sale of goodwill of a business. The test applicable to contracts for termination of agencies is : what has the assessee parted with in lieu of money or money's worth received by him which is sought to be taxed ? If compensation is paid for cancellation of a contract of agency, which does not affect the trading structure of the business of the recipient

The view expressed by the Judicial Committee has not met with unqualified approval in later cases. Lord Wright in Raja. Bahadur Kamakshya Narain Singh of Ramgarh v. Commissioner of Income-tax observed that it is incorrect to limit the true character of income, by such picturesque similies like "fruit of a different tree, or crop of a different field". Again it cannot be said generally that compensation for every transfer or determination of a contract of agency is capital receipt : Kelsall Parsons and Co. v. Commissioners of Inland Revenue, Commissioners of Inland Revenue v. Fleming and Co., Wiseburgh v. Domville and Commissioner of Income-tax and Excess Profits Tax v. South India Pictures Ltd. Nor is true to say that where an assessee holds several agency contracts each agency contract cannot without more be regarded as independent of the other contracts, and income received from each contracts cannot always be regarded as unrelated to the rest of the business continued by the assessee. The decision in Shaw mination of an agency is a capital or a revenue receipt, it must be considered whether the agency was in the nature of a capital asset in the hands of the agent, or whether it was only part of his stock-in- trade. The learned judge also observed that payments made in settlement of rights under a trading contract are trading receipts and are assessable to revenue, but where a trade is prevented from doing so by external authority in exercise of a paramount power and is awarded compensation therefor, whether the receipt is a capital receipt or a revenue receipt will depend upon whether it is compensation for injury inflicted on a capital asset or on stock-in- trade.

In Peirce Leslie and Co. Ltd. v. Commissioner of Income-tax, the assessee company took up managing agencies of several plantation companies. The managing agencies were liable to termination, but the assessee was entitled to compensation by the terms of the agreement. The

Talliar Estates Ltd. was one of the companies managed by the assessee. The agreement was a composite agreement about the managing agency rights and certain other rights. When the Talliar Estates Ltd. went into liquidation the assessee received Rs. 60,000 by way of compensation for loss of office and the question arose whether that amount was income in the hands of the assessee. The Madras High Court held that the loss of one of several managing agencies had little effect on the structure of the assessee's business even in tea or on its profit earning apparatus as a whole and the termination of the agreement with the Talliar Estates could well be said to have been brought about in the ordinary course of business of the assessee and therefore

In South Indian Pictures Ltd.'s case, Rai Bahadur Jairam Valji's case and Peirce Leslie Co.'s case it was held that the receipt of compensation for loss of agency was in the nature of revenue. In the South India Pictures Ltd.'s case the amount received was not compensation for not carrying on its business, but was a sum paid in the ordinary course of business to adjust the relations between the assessee and the producers : the termination of the agreements did not radically or at all affect or alter the structure of the assessee's business, and the amount received by the assessee was only so received towards commission, i.e., as compensation for the loss of commission which it would have earned, had the agreements not been terminated. Therefore, the amount was not received by the assessee as the price of any capital assets sold or surrendered or destroyed, but the amount was simply received by the assessee in the course of its doing distributing agency business and therefore it was an income receipt. In that

On the other side of the line are cases of Commissioner of Income-tax v. Vazir Sultan and Sons and Godrej and Co. v. Commissioner of Income- tax. In Vazir Sultan and Sons' case the majority of the court held that compensation paid for restricting the area in which a previous agency agreement operated was a capital receipt, not assessable to income-tax. It was held that the agency agreements were not entered into by the assessee in the carrying on of their business, but formed the capital asset of the assessee's business which was exploited by the assessee by entering into contracts with various customers and dealers in the respective territories : it formed part of the fixed capital of the assessee's business and was not circulating capital or stock-in-trade of their business and, therefore, payment made by the company for determination of the contract or cancellation of the agreement was a capital receipt in the hands of the assessee.

In Godrej and Co.'s case the managing agency agreement in favour of the assessee of a limited company which was originally for a period of thirty years and under which the assessee was entitled to a commission at certain rates was modified and remuneration payable to the managing agents was reduced. As compensation for agreeing to this reduction, the assessee received Rs. 7,50,000 which was sought to be taxed as income in the hands of the assessee. This court held, having regard to all the attending circumstances, that the amount was paid not to make up the difference between the higher remuneration and the reduced remuneration, but in truth as compensation for releasing the company from the onerous terms as to remuneration as it was in terms expressed to be : so far as the assessee firm was concerned it was received as compensation for the deterioration or injury to the managing agency by reason of the release of its rights to get higher remuneration and, therefore, a capital receipt.

On an analysis of these cases which fall on two sides of the dividing line, a satisfactory measure of consistency in principle is disclosed. Where on a consideration of the circumstances, payment is made to compensate a person for cancellation of a contract which does not affect the trading structure of his business, nor deprive him of what in substance is his source of income, termination of the contract being a normal incident of the business, and such cancellation leaves him free to

carry on his trade (freed from the contract terminated) the receipt is revenue : Where by the cancellation of an agency the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regarded as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt.

In the present case, on a review of all the circumstances, we have no doubt that what the assessee was paid was to compensate him for loss of a capital asset. It matters little whether the assessee did continue after the determination of its agency with the Fort William Jute Co. Ltd. to conduct the remaining agencies. The transaction was not in the nature of a trading transaction, but was one in which the assessee parted with an asset of an enduring value. We are, therefore, unable to agree with the High Court that the amount received by the appellant was in the nature of a revenue receipt.

We accordingly record the answer on the question submitted by the Tribunal in the negative. The appellant would be entitled to its costs in this court.

Appeal allowed.

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