1939 *Present :* **Moseley S.P.J. and Soertsz J.**

CRAIB *v.* COMMISSIONER OF INCOME TAX.

S. C. (Inty.) 136.

Income tax—Payment to superintendent of estate for exceptional services rendered—Personal gift—Profits from employment—Ordinance No. 2 of 1932, s. 6 (2) (a).

Where the appellant, the superintendent of an estate, was given by the Directors of the Company, which owned the estate, a sum of money for exceptional services rendered,—

***Held*, that the payment was a personal gift and could not be regarded as profits from any employment within the meaning of section 6 (2) (*a*) of the *Income Tax Ordinance*.**

THIS was a case stated by the Board of Review constituted under the Income Tax Ordinance at the request of the assessee, appellant. The assessee, who is the Superintendent of an estate received a sum of Rs. 10,000 in terms of a resolution passed by the Directors of the Company, which employed him. The resolution was as follows :— "In view of Mr. Craib's exceptional services to the Company and in consideration of the fact that he has to undergo medical treatment while at Home, it was resolved to grant him a special bonus of Rs. 10,000".

The question was whether the payment was "profits from employment" within the meaning of section 6 (2) (*a*) of the Income Tax Ordinance.

H. V. Perera, K.C. (with him *Aiyar, Renganathan* and *C. C. Rasaratnam*), for assessee, appellant.—The sum of Rs. 10,000 cannot be included as part of the assessee's taxable income. It is not a profit from employment within the meaning of section 6 of Ordinance No. 2 of 1932. To begin with, it was a voluntary payment. Secondly, it was a payment made in special circumstances personal to him and not for services rendered. The immediate reason for the payment was the assessee's illness. The reason of "exceptional services" mentioned in the resolution of the Directors was merely a motive. The Board of Appeal have interpreted section 6 (2) (*a*) too literally. A bonus to be taxable must proceed from the employment. The corresponding provisions in English law appear in the Income Tax Act of 1918, Schedule E, rule 1. Certain English decisions throw light on the expression "profits from employment"— *Seymour v. Reed* [1], *Dewhurst v. Hunter* [2], *Blackiston v. Cooper* [3], *Benyon v. Thorpe* [4]. The real purpose of the gift was to enable the assessee to take a holiday and recuperate his health.

S. J. C. Schokman, C.C., for Income Tax Commissioner, respondent.—The resolution of the Directors shows that the payment was intended as a bonus. Our section is much wider than the English law ; it specifically includes "bonus". The wider definition in our Ordinance makes it difficult to apply English decisions. Even in the light of English decisions, the money in question in the present case is taxable. The

[1] (*1927*) *A. C. 554.*
[2] (*1932*) *146 L. T. R. 510.*
[3] (*1909*) *A. C. 104.*
[4] *14 Tax Cases 1.*

resolution states that it was given for services to the Company. (*Denny v. Reed* [1], *Mudd v. Collin* [2], *Davis v. Harrison* [3].) Each case, therefore, depends on its own facts.

The Indian law is also wider than the English law, although not so wide as our law—Section 7 (1) of the Indian Income Tax Act, No. 11 of 1922—*Saunders v. Commissioner of Income Tax, United Provinces* [4], *Iyer v. Commissioner of Income Tax, Madras* [5].

Under our law any bonus received from an employer or even others is taxable. The reason why it was given does not matter. The words "bonus" and "perquisite" in section 6 (2) (*a*) are quite sufficient to render the assessee liable.

H. V. Perera, K.C., in reply.—The words "profits from an employment" do not appear in the Indian Act. The meaning of that expression was examined in the English cases which have already been cited. The word "perquisite" in the English law is wide enough to cover our "bonus". It cannot be said that our law is wider than the English law. The judgment of Rowlatt J. in *Mudd v. Collins* (*supra*), particularly the latter part of it, is applicable in our favour. In *Davis v. Harrison* (*supra*), the money given to the footballer was in accordance with the terms of his employment. The other cases cited on behalf of the respondent can be similarly distinguished.

Cur. adv. vult.

March 27, 1939. MOSELEY S.P.J.—

This is a case stated by the Board of Review constituted under the provisions of the Income Tax Ordinance, 1932, at the request of Mr. A. P. Craib (the assessee-appellant) who is the Superintendent of the Lellopitiya Estate, the property of the L. L. P. Estates, Ltd. The Directors of the Company passed a resolution in the following terms :—

> "In view of Mr. A. P. Craib's exceptional services to the Company, and in consideration of the fact that he has to undergo medical treatment while at Home, it was resolved to grant him a special bonus of Rs. 10,000."

The payment was included by the Company in the return furnished under section 55 (2) of the Ordinance as a "bonus" paid to the appellant, whereupon the assessor included the sum as part of the appellant's income. The assessment was confirmed, upon appeal, by the Commissioner and the appellant appealed to the Board of Review. The Board dismissed the appeal and the appellant made an application as provided by section 74 of the Ordinance requiring the Board to state a case for the opinion of this Court.

The point for decision is whether the payment to the appellant can be regarded as "profits from any employment" within the meaning of section 6 of the Ordinance. Sub-section (2) (*a*) of that section defines the expression "profits from any employment" as including "any wages, salary, fee, pension, commission, bonus, gratuity, or perquisite, whether derived from the employer or others". Counsel for the appellant

[1] *18 Tax Cases 254.*
[2] *9 Tax Cases 297.*
[3] *11 Tax Cases 707.*
[4] *5 Indian Tax Cases 454.*
[5] *6 Indian Tax Cases 69.*

contended that in order to be taxable such a payment must be profits *from employment*, and relied upon the wording of the resolution as indicating that the appellant's "exceptional services to the Company" provided merely a motive for the payment which was not, said he, a reward for those services. He cited the case of *Seymour v. Reed*[1], in which Seymour (the appellant), a professional cricketer, had been assessed on a certain sum, the proceeds of a benefit, which had been paid to him by the Club which employed him. The assessment was made under Schedule E, rule 1, of the Income Tax Act, 1918, which renders liable to tax the "salaries, fees, wages, perquisites or profits whatsoever" from "an office or employment of profit". It was held that the appellant was not assessable in respect of the payment, inasmuch as it was a personal gift, and not a profit or perquisite arising from his employment within the meaning of the Schedule and rule. Lord Atkinson, who dissented, thought that when no reason is shown for such a gift it must be assumed that it was given for the efficient and satisfactory discharge of the duties the recipient was employed to discharge. It will be observed that the term "bonus" which appears in the corresponding passage of the local Ordinance does not appear in the English Act.

In the case before us, can it be said that the payment to the appellant, notwithstanding that it is described as a bonus, is anything more than a personal gift or testimonial ?

Seymour v. Reed (*supra*) was considered and approved in *Dewhurst and another v. Hunter*[2] in which Lord Warrington expressed the view that *Seymour v. Reed* showed that the mere fact that the payment was made to the employee as the result of or in connection with his employment is not enough to render it liable to tax.

In *Blackiston v. Cooper*[3] the assessability of voluntary Easter offerings given to a vicar for his personal use was considered. The view was taken that the object of the gifts was to increase the stipend of the vicar, and that the offerings were therefore assessable as profits accruing to him by reason of his office.

Counsel for the Commissioner contended that the guiding factor should be the actual wording of the resolution authorising the payment which, as has been seen, was described as a "special bonus", and so, said he, was clearly within the meaning of section 6 (2) (*a*). The wording of the resolution seems to me to be beside the point. It may well have been the intention of the Company to make the payment a proper deduction from their own profits, and it was open to them to give to the payment any name which, in their opinion, would best serve that end. It would be manifestly unfair to bind the assessee to the strict meaning of a word the selection of which might be a mere whim of his employer. Counsel referred to the non-appearance, in the corresponding English provision, of the word "bonus", the effect of which is to make the local section wider, and to require care in applying English decisions to the local enactment.

We were referred, on behalf of the Commissioner, to the case of *Denny v. Reed*[4], in which the appellant, managing clerk to a firm of stock-brokers, received for three years in succession varying sums in addition to his

[1] (*1927*) *A. C. 554.*
[2] (*1932*) *146 L. T. R. 510.*
[3] (*1909*) *A. C. 104.*
[4] *18 Tax Cases 254.*

salary. These payments were held to be assessable since, in the opinion of Finlay J., there was no evidence that it was paid in respect of anything but the work done by the appellant on behalf of the firm. That case is clearly distinguishable from the one before us, particularly if we do what the Commissioner asks us to do and allow ourselves to be guided by the phraseology of the resolution.

In *Mudd v. Collins*[1] the appellant was assessed in respect of a payment for services rendered outside the scope of his duty. Even so, it seems to me that the mere fact that the payment was for services rendered, granted that those services were additional to the appellant's ordinary duties, clearly brings it within the profits of his employment.

In *Davis v. Harrison*[2] a payment to a professional footballer "as a reward for loyal and meritorious service" was held to be remuneration for services rendered in his employment, and assessable. Rowlatt J. expressed the view that it must always be a question of fact how a particular payment is to be regarded.

A consideration of all the authorities cited to us on behalf of the Commissioner leads me to the conclusion that in each case the payment which was held to be assessable was, beyond all doubt, in respect of services rendered and, as such, is distinguishable from the payment to the appellant in the present case. This payment I prefer to regard in the light of a personal gift the motive for which, no doubt, but not the consideration, was the long service rendered to the Company by the appellant. The present situation has risen out of the description of the payment as a "bonus" and, as I have already hinted, I do not think the appellant should be penalized for the choice of a word, whether it be deliberate or accidental, by the party making the payment.

For these reasons I think the appeal should be allowed with costs. The sum of fifty rupees deposited by the appellant under section 74 (1) of the Ordinance will be refunded to him.

SOERTSZ J.—I agree.

Appealed allowed.