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DR. K. GEORGE THOMAS

v.

THE C.I.T. KERALA, ERNAKULAM

SEPTEMBER 23, 1985

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[V.D. TULZAPURKAR AND SABYASACHI MUKHARJI, JJ.]

Indian Income Tax Act, 1922 - S.4(3)(vii) - Receipts - Casual or non-recurring in nature - Arising out of an avocation - Whether income exigible to tax - Link between activities of C assessee and payments received - Relevancy of.

The assessee-appellant had associated himself with the India Gospel Mission while he was getting his education in the United States of America during 1953 to 1957 and was propagating the ideals of Indian Christian Crusade, U.S.A., an institution sponsoring religious education in India. The India Gospel Mission D was collecting money for its working abroad through the Indian Christian Crusade. On returing to India in January 1957 he started publishing a religious magazine called "Viswa Deepam" and in 1959 started publishing Malyalam daily newspaper called "Kerala Dhwani". In the assessment year 1960-61 he filed a return disclosing a loss of Rs.1,59,894 under the head 'business'. While scrutinising the accounts, the Income Tax Office found E amounts totalling Rs.2,90,220 credited in the assessee's accounts. Since the names and other details of persons who had donated the amounts were not available it had to be presumed that the amounts had been given to the assessee by the Indian Christian Crusade, U.S.A. and, therefore, the Income Tax Officer rejected the contention of the assessee that the amounts received F by him were purely personal gifts and testimonials made voluntarily and held that the so called donations were payments by way of remuneration for the work done by the assessee in connection with the spreading in India, of the ideals of the Indian Christian Crusade, U.S.A. and that these amounts were connected with the business of the assessee and were liable to be G taxed as his business income. He, therefore, brought to tax Rs.2,90,220 which had been received during the assessment year 1960-61.

For the assessment year 1961-62 the assessee had received similar amounts totalling to Rs. 3,63,750 through the Indian H Christian Crusade, U.S.A. and Income Tax Officer treated this amount also as business income and brought the same to tax.

The assessee filed appeals and the Appellate Assistant Commissioner while dismissing the appeals held that the assessee was a journalist and it was his avocation or vocation to propagate Christian ideas and ideals and that the assessee during the stay in U.S.A. and after his return was engaged in a movement for the spread of religion and for fighting the forces of atheism.

In further appeal, the tribunal held that the amounts did not represent remuneration or payments for services rendered, and that the receipts were clearly casual and non-recurring and did not arise in the course of the exercise of any vocation.

The Tribunal referred the matter to the High Court, which held that the receipts of casual and non-recurring nature would not be included in the total income of a person. But if there was receipts arising from the exercise of a vocation, these would be included in the total income, even if these were of a casual or non-recurring nature or voluntary and the receipts resulting from such payments would be outside section 4(3)(vii) of the Income Tax Act, 1922. Since there was link between the activity of the assessee and the payments and the same were made by those who held similar views and who were interested in the propagation and the acceptance of those views by the general public, the receipts, therefore, arose from the exercise of an occupation by the assessee.

Dismissing the Appeals,

HELD: 1. The receipts by the assessee arose out of the avocation of the assessee of propagating views against atheism and preaching Christian Gospel. [947 H]

2. There was a link between the activities of the assessee and the payments received by him and the link was close-enough. [948 A]

Strong & Company, of Romsey Limited v. Woodifield (Surveyor of Taxes), 1906 A.C. 448 and **The Commissioner of Inland Revenue v. E.C. Warnes & Co. Ltd.**, [1919] 12 T.C. 227, referred to.

3. Section 4(3)(vii) of the Indian Income Tax Act 1922 makes it clear that in order to be entitld to the exemption, the receipts must be of income character first. if a sum of money is received for the purpose in pursuance of an avocation or vocation, it arose out of this vocation or profession. If that is

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so, then this was income under the Act. Such income could only be eccluded if it was specifically excluded by any provision of the Act. [943 D-E]

4. The High Court rightly held that in view of the facts B and circumstances of this case as found by the Tribunal, these amounts were received by the assessee in the course of his avocation or vocation and were given to him for the purpose of the same. These were, therefore, incomes which were neither of a casual or non-recurring nature nor were these capital gains under s.12B of the Act. The amounts were, therefore, clearly taxable as C held by the Income Tax Officer and by the High Court. [943 E-G]

P. Krishna Menon v. Commissioner of Income-Tax, Mysore, Travancore-Cochin and Coorg. Bangalore. 35 I.T.R. 48, relied upon.

5. The burden is on the revenue to establish that the receipt is of a revenue character. Once receipt is found to be of D a revenue character whether it comes under exemption or not, it is for the assessee to establish. Facts must be found by the Tribunal and the High Court must proceed on the basis of those facts. The High Court cannot afresh go to the facts over-ruling the facts found by the Tribunal unless there is a question to that effect challenging the facts as found by the Tribunal. In this case the High Court has not interferred with the basic facts E found by the Tribunal. It has been established that the assessee was carrying on a vocation of preaching of Christian Gospel and helping anti-athesim. He was running a newspaper in aid of that. The donations received from America were to help him for the said purpose. They arose out of his carrying on and continued so long as he carried on this avocation or vocation. These receipts, F therefore, arose out of his vocation. These were, therefore, his income, not exempt under s.4(3)(vii) of the Act and were taxable. [945 H, 946 A-C]

Parimisetti Seetharamma v. Commissioner of Income Tax, Andhra Pradesh, 57 I.T.R. 532 inapplicable.

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Acharya D.V. Pande v. Commissioner of Income-tax, Gujarat, 56 I.T.R. 152, **Commissioner of Income-tax, Gujarat v. Shri Girdharram Hariram Bhagat,** 154 I.T.R. 10, **Maharaj Shri Govindlal-ji Ranchhodlalji v. Commissioner of Income-tax, Ahmedabad,** 34 I.T.R. 92, **H.H. Maharani Shri Vijay Kuverba Saheb of Morvi and** H **Another v. Commissioner of Income-tax Bombay City II,** 49 I.T.R. 594, **S.A. Ramkrishnan v. Commissioner of Income-tax, Madras,** 114 I.T.R. 253, **Siddhartha Publications (P) Ltd. v. Commissioner of**

Income-tax, Delhi. 129 I.T.R. 603, **Karnani Properties Ltd. v. Commissioner of Income-tax, West Bengal,** 82, I.T.R. 547, **Aluminium Corporation of India Ltd. v. Commissioner of Income-tax, West Bengal,** 86 I.T.R. 11, **Anil Kumar Roy Chowdhury and Ohters v. Commissioner of Income-tax, West Bengal II,** 102 I.T.R. 12, **Commissioner of Income-tax, West Bengal III v. Kamal Singh Rampuria,** 75 I.T.R. 157, **Commissioner of Income-tax, West Bengal III v. Imperial Chemical Industries (India) (P) Ltd.** 74 I.T.R. 17, **Commissioner of Income-tax, Bombay City II v. Devi Prasad Khandelwal and Co. Ltd.** 81 I.T.R. 460, **and Commissioner of Income-tax v. P.S. Chelladurai,** 145 I.T.R. 139, **referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 295 & 296 (NT) of 1974.

From the Judgment and Order dated 19.7.1973 of the Kerala High Court in I.T.R. Nos. 32 and 33 of 1971.

S. Poti, S. Sukumaran and D.N. Mishra, for the Appellant.

G.C. Sharma, K.C. Dua and Miss A. Subhashini, for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. These two appeals arise by certificate by the High Court in Income-Tax Reference Nos. 32 and 33 of 1971. The High Court of Kerala by its judgment dated 19th July, 1973 answered the following two questions in the negative and in favour of the revenue.

> "(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the sums of Rs. 2,90,220 and Rs. 3,63,750 were not assessable as income of the assessee for the assessment years 1960-61 and 1961-62?
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> (ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law and had material for holding that the sums of Rs.2,90,220 and Rs. 3,63,750 are exempt from texation under section 4(3)(vii) of the Indian Income-tax Act, 1922 for the assessment years 1960-61 and 1961-62 respectively?"

The references relates to assessment years 1960-61 and 1961-62. The assessee's accounting year was the calender year.

A The assessee publishes a Malyalam daily newspaper by name Kerala Dhwani. Till 1953, he was a lecturer in History and Political Science in the College at Kottayam. He had his education in the United State of Americal., during 1953 to 1957. During this period of stay in the U.S.A. he had the privilege of associating himself with the India Gospel Mission in the United States. The B India Gospel Mision, it was stated, was collecting money for its working abroad through the Indian Christian Crusade. The assessee was also publishing a religious magazine called "Viswa Deepam". The magazine was started in January, 1957. The father of the assessee Shri K.G. Thomas was the Editor of Viswa Deepam. Shri Thomas was also in America and he was also doing missionary work in America for some time. In 1958, Shri Thomas, the father of the C assessee was in India. He was going to America off and on. Indian Christian Crusade, U.S.A. is an institution sponsoring religious education in India and it was admitted that the assessee was propagating the ideals of the Indian Christian Crusade on returning to India after finishing his education in the States. Later on the assessee started publishing a paper called "Kerala Dhwani". This paper was started in 1959. While the assessee was D in America, he took his Ph.D. degree.

For the assessment year 1960-61, the assessee filed a return disclosing a loss of Rs.1,59,894 under the head 'business'. The assessee, as mentioned hereinbefore, was publishing Malayalam daily newspaper called 'Kerala Dhwani'. While E scrutinising the accounts, the Income-tax Officer found in the ledger folio in the name of the assessee amounts totalling Rs.2,57,138 credited in his account. The assessee was asked to explain these credits and he represented that most of the amounts were received by the assessee as donations from U.S.A. through an organisation known as Indian Christian Crusade, U.S.A. The F Income-tax Officer found that the names and other details of persons who had donated the amounts were not available. He also found that such amounts amounted in all Rs.2,90,220. The Income-tax Officer had stated that in the absence of definite information regarding the individuals who has made the donations, it had to be presumed that the amounts had been given by the G Indian Christian Crusade, U.S.A. to the assessee. The assessee's case before the Income-tax Officer was that the amounts received by the assessee were purely personal gifts and testimonials which were given because of the esteem and regard for the personal qualities of the assessee and that the payments were purely voluntary. The Income-tax Officer rejected the contention. He H held:

(i) The payment of donations started simultaneously with the publication of the daily newspaper Kerala Dhwani and the donations were continued during the period the publication continued. (ii) The donations were regular and continued for the next year also. (iii) There was nothing to show that the amounts were given on account of the personal qualities of the assessee. (iv) The donations were being made regularly throughout the year and these were evidently given as aid to the running of the newspaper which was the business carried on by the assessee. (v) The Indian Christian Crusade, U.S.A. which was paying money to the assessee was an enterprise in India established for the furtherence of ideals and objectives similar to theirs.

For aforesaid reasons the Income-tax Officer held that the so called donations were payments by way of remuneration for the work done by the assessee in connection with the spreading, in India, of the ideals of the Indian Christian Crusade, U.S.A. The Income-tax Officer came to the conclusion that the amounts paid to the assessee were connected with the business of the assessee and were liable to be taxed as the business income of the assessee. He, therefore, brought to tax Rs.2,90,220 which had been received during the assessment year.

For the next assessment year, the assessee had received similar amounts totalling to Rs.3,63,750 through the Indian Christian Crusade, U.S.A. For the reasons given in the order of the previous year, the Income-tax Officer treated this amount also as the business income for the assessment year 1961-62 and brought the same to tax.

The assessee filed appeals in respect of both the years and the Appellate Assistant Commissioner disposed of the appeals by different orders delivered on the same date. He discussed all the contentions raised by the assessee in his appellate orders. The main contention raised by the assessee before the Appellate Assistant Commissioner was that the various amounts credited in his bank account and in his personal account in the business represented gifts made by personal friends in the U.S.A., that the amounts were collected by the Indian Christian Crusade and forwarded to India to the assessee. The Appellate Assistant Commissioner rejecting these contentions of the assessee found that the assessee was a journalist and it was his avocation or vocation to propagate certain ideas and ideals. He was closely associated with the missionary work carried on by the Indian Christian Crusade in America and he was propagating the ideals of

A Indian Christian Crusade, America in India because of his close relationship with that orgainsation as mentioned hereinbefore. The assessee during his stay in U.S.A. and after his return was engaged in a movement for the spread of religion and for fighting the forces of atheism. According to the assessee, his friends in America and those who believed in the cause which he sponsored B were sending him donations for helping the movement and the amounts that were handed over to or were collected by the Indian Christian Crusade, U.S.A. were remitted to him.

In further appeal the Tribunal held that the amounts did not represent remuneration or payments for services rendered. The tribunal further held that the receipts were clearly causal and C non-recurring and did not arise in the course of the exercise of any vocation. Then the aforesaid two questions were referred to the High Court under Section 66 (1) of the Indian Income-tax Act, 1922.

The High Court held that the receipts of casual and non-recurring nature would not be included in the total income of D a person. But if there were receipts arising from the exercise of a vocation, these would be included in the total income, even if these were of casual or non-recurring nature or voluntary and the receipts resulting from such payments would be outside Section 4(3)(vii) of the Income-tax Act, 1922 (hereinafter referred to as the ('Act').

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Relying on the findings of the Tribunal, the High Court held that the assessee was very actively, fully occupied with the activities connected with achieving the objects of strenghtening faith in God and fighting against atheism and was occupied with this affair. The paper which he published for this purpose was a F daily coming out with views in support of this mission. Teaching and propagating religion could be an occupation. It was not necessary that its object should be to earn a livelihood. Anything in which a person was engaged systematically could be an occupation or vocation. The next question would be whether receipts could be said to arise from such occupation or vocation. G There was link between the activity of the assessee and the payments, and that the payments were made by those who held similar views as those of the assessee and who were very much interested in the propagation and the acceptance of those views by the general public. The payments were made for the purpose of helping the assessee to run the paper which was the mouth-piece H or medium through which the ideas were to be spread. The

connection between the activity of the asessee and the donations was thus intimate. It arose out of the vocation or the occupation carried on by the assessee. Therefore, the receipts arose from the eercise of an occupation by the assessee. The High Court also considered whether such payments were excluded by Section 4(3)(vii) of the Act.

Section 4 of the Act made the total income of the previous year of any person assessable to tax and sub-section (3) specified certain incomes which should not be included in the total income of the person. Sub-section (vii) of Section 4(3) was in the following terms:

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

As the section made it clear, in order to be entitled to exemption, the receipts must be of income character first. In the instant case, there is no doubt that if a sum of money is received for the purpose in pursuance of an avocation or vocation, it arose out of this vocation or profession. If this is so, then this was income under the Act. Such income could only be excluded if it was specifically excluded by any provision of the Act. The High Court held, and in our opinion rightly, that in view of the facts and circumstances of this case as found by the Tribunal, these amounts were not excluded under Section 4(3)(vii) of the Act. The position was thus, these amounts were received by the assessee in the course of his avocation or vocation and were given to him for the purpose of the same. These were therefore incomes which were not also of a casual or non-recurring nature nor were these capital gains under Section 12B of the Act. If that was the position, then, in our opinion, the amounts were clearly taxable as held by the Income-tax Officer and by the High Court.

Several aspects of the question were placed before us on a large canvass namely that the High Court had gone into facts of the first time over-ruling the findings of the fact of the Tribunal without there being a question to that effect and also there was no finding that the recceipts were of income character. In support of these contentions, several decisions of this Court were referred before us, Inter alia, **Parimisetti Seetharamma v.**

A **Commissioner of Income-Tax, Andhra Pradesh.**, 57 I.T.R. 532. Reliance was placed on the observations appearing at pages 536, 537 and 538 of the said report. It was urged that the burden of proof was wrongly placed by the High Court and on the facts, that the two circumstances relied on by the High Court did not establish that certain money was given to the assessee as remune-
B ration for services and as such it could not be held that the person concerned was assessable to tax. It was urged that the High Court wrongly placed the burden of proof upon the assessee.

But on the facts and in the circumstanes of this case, the conclusion recorded by the High Court in the instant case was borne out on the facts on record. The observations of this Court
C referred to above cannot be of much assistance to the assessee.

The case which is most apposite to the facts of the instant case is a decision of this Court in the case of **P. Krishna Menon v. Commissioner of Income-Tax, Mysore, Travancore-Cochin and Coorg. Bangalore.**, 35 I.T.R. 48. There after retirement from government service, the appellant therein was spending his time
D in studying and teaching Vedanta philosophy. L, who was one of his disciples, used to come from London at regular intervals to Trivendrum where the appellant resided, and stay there for a few months at a time and attend his discourses, and so received instructions in Vedanta and had the benefits of his teachings. L tranferrred his entire balance standing to this credit in his own
E account at Bombay, amounting to more that Rs. 2 lakhs, to the account of the appellant opened in the letter's name in the same bank at Bombay. Thereafter, from time to time, L put in further sums into the appellant's account in Bombay. The question was whether the receipts from L. constituted the appellants income taxable under the Travancore Income-Tax Act, 1121 (Malayalam Era)
F which was identical with the Indian Income-Tax Act, 1922. It was held that teaching was a vocation, if not a profession, and teaching Vedanta was just as much teaching as any other teaching and therefore a vocation; that in order that an activity might be called a vocation it was not necessary to show that it was an organised activity and that it was indulged with a motive of
G making profit; it was well established that it was not the motive of a person doing an act which decided whether the act done by him was the carrying on of a business, profession or vocation; and if any business, profession or vocation in fact produced an income, that was taxable income and none the less so because it was carried on without the motive of producing an income; that
H teaching of Vendata by the appellant in that case was the

carrying on of a vocation by him and that the imparting of the teaching was the causa causans of the making of the gifts by L, and it was impossible to hold that the payments to the appellant had not been made in consideration of the teaching imparted by him, and that, therefore, the payments were income arising from the vocation of the appellant, that the payments made by L were income arising from a vocation. These were not casual or non-recurrng receipts and no question of exemption under Section 4(3)(vii) of the Act arose. It was further observed that in order that a payment might be exempted under Section 4(3)(vii) as a casual and non-recurring receipt, it had to be shown that it did not arise from the exercise of a vocation.

In the instant case before us, identical is the position. The assessee carried on a vocation of preaching against atheism. In the course of such vocation and for the purpose of the same he received the amounts in question as donation for the furtherance of the objects of his vocation. The receipts arose to the assessee for the carrying on of the vocation by the assessee, and these were not casual and non-recurring. These were taxable. These facts were found by the Income-tax Officer. These facts not in so many terms but essentially found by the Appellate Assistant Commissioner and were reiterated by the Tribunal and the High Court accepted these findings of facts and answered the question accordingly.

Reliance was also placed on the decisions of the Gujarat High Court in the case of **Acharya D.V. Pande v. Commissioner of Income-tax, Gujarat.**, 56 I.T.R. 152., and **Commissioner of Income-tax, Gujarat v. Shri Girdharram Hariram Bhagat,** 154 I.T.R. 10., decisions of the Bombay High Court in the Case of **Maharaj Shri Govindlalji Ranchhodlalji v. Commissioner of Income-tax, Ahmedabad,** 34 I.T.R. 92., and **H.H. Maharani Shri Vijaykuverba Saheb of Morvi and Another v. Commissioner of Income-tax, Bombay City II,** 49 I.T.R. 594., decision of the Madras High Court in the case of **S.A. Ramakrishnan v. Commissioner of Income-tax, Madras,** 114 I.T.R. 253., and decision of the Delhi High Court in the case of **Siddhartha Publications (P) Ltd. v. Commissioner of Income-tax, Delhi,** 129 I.T.R. 603., dealing with certain facts and circumstances where income could be said to be taxable.

From all these decisions, two facts emerge. The burden is on the revenue to establish that the receipt is of a revenue character. Once receipt is found to be of a revenue character

A whether it comes under exemption or not, it is for the assessee to establish. Facts must be found by the Tribunal and the High Court must proceed on the basis of the facts found by the Tribunal. The High Court cannot afresh go to the facts over-ruling the facts found by the Tribunal unless there is a question to that effect challenging the facts found by the B Tribunal. These propositions are well-settled and in this case in the decision of the High Court, these principles, in our opinion, have not been breached. It has been established that the assessee was carrying on a vocation, the vocation preaching of Christian Gospel and helping anti-atheism was the vocation of his life. He was running a newspaper in aid of that. The donations C received from America were to help him for the said purpose. They arose out of his carrying on and continued so long as he carried on this avocation or vocation. These receipts therefore arose out of his vocation. These were therefore his income. In the facts these were not exempt under Section 4(3)(vii) of the Act. In the premises these were taxable.

D Numerous decisions were referred to us on the question as to how far the High Court could interfere with the facts found by the Tribunal. Reliance was placed on the decisions of this Court in the case **Karnani Properties Ltd. v. Commissioner of Income-tax, West Bengal**, 82, I.T.R. 547., **Aluminium Corporation of India Ltd. v. Commissioner of Income-tax, West Bengal**, 86 I.T.R. 11., **Anil Kumar Roy Chowdhury and Others v. Commissioner** E **of Income-tax, West Bengal II**, 102 I.T.R. 12., **Commissioner of Income-tax, West Bengal III v. Kamal Singh Rampuria**, 75 I.T.R. 157., **Commissioner of Income-tax, West Bengal III v. Imperial Chemical Industries (India) (P) Ltd.**, 74 I.T.R. 17., and the decision of the Bombay High Court in the case of **Commissioner of Income-tax, Bombay City II v. Deviprasad Khandelwal and Co. Ltd.**, F 81, I.T.R. 460., and also the decision of the Madras High Court in the case of **Commissioner of Income-tax v. P.S. Chelladurai.**, 145 I.T.R. 139.

We have set out the findings of the Tribunal and considered the findings of the Tribunal as well as the judgment of the High G Court. There has not been any unwarranted interference by the High Court with the facts found by the Tribunal. Basic facts have been found by the Tribunal.

On the question where income could be said to arise, it may be relevant to refer to **Strong & Co. of Romsey, Limited v.** H **Woodifield (Surveyor of Taxes)**, [1906] A.C. 448. There a brewery

company owned an inn which was carried on by the manager as part of their business. A customer sleeping in the inn was injured by the fall of a chimney, and recovered damages and costs against the company for the injury, which was owing to the negligence of the companys servants. The question was whether the amounts paid as damages could be claimed as a deduction from the business of carrying on the activities of the inn-keeper. The Lord Chancellor observed at page 452 of the report as follows:

> "I think only such losses can be deducted as are connected with in the sense that they are really incidental to the trade itself. They cannot be deducted if they are mainly incidental to some other vocation or fall on the trader in some character other than that of trader. The nature of the trade is to be considered. To give an illustration, losses sustained by a railway company in compensating passengers for accidents in travelling might be deducted. On the other hand, if a man kept a grocer's shop, for keeping which a house is necessary, and one of the window shutters fell upon and injured a man walking in the street, the loss arising thereby to the grocer ought not be deducted. Many cases might be put near the line, and no degree of ingenuity can frame a formula so precise and comprehensive as to solve at sight all the cases that may arise."

In the case of **The Commissioner of Inland Revenue v. E.C. Warnes & Co. Ltd.,** [1919] 12 T.C. 227., at page 231 of the Report, Rowlatt J. observed:

> "I may shelter myself behind the authority of Lord Loreburn, who, in his judgment in the House of Lords in **Strong & Co. v. Woodifield,** said that it is impossible to frame any formula which shall describe what is a loss connected with or arising out of a trade. That statement I adopt, and I am not sure that I gain very much by going through a number of analogies; but it seems to me that a penal liability of this kind cannot be regarded as a loss connected with or arising out a trade."

In the instant case there cannot be any doubt that the receipts by the assessee arose out of the avocation of the assessee of propagating views against atheism and preaching Christian Gospel.

A In view of the facts and circumstances of the case there was a link between the activities of the assessee and the payments received by him and the link was close-enough. In that view of the matter, in our opinion, the High Court was right in B answering both the questions referred to it in the negative and in favour of the revenue. The appeals accordingly fail and are dismissed with costs.

Civil Miscellaneous Petition No. 10046 of 1976 for C condonation of delay in filing the additional papers is allowed.

A.P.J. Appeals dismissed.