

PARIMISETTI SEETHARAMAMMA

v.

COMMISSIONER OF INCOME-TAX, HYDERABAD

April 21, 1965

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Income Tax Act, 1922, ss. 3 and 4—Gifts of jewellery and money made to assessee—Not in the nature of income—Whether burden of proving if such receipts taxable is upon the department.

The appellant submitted a return of her income from property and business for the assessment year 1947-48 and disclosed in a statement that the Maharani of Baroda had, between November 1945 and February 1948, "out of natural love and affection", given her some jewellery and money amounting to Rs. 5,20,000. The income-Tax Officer accepted this statement and did not treat the jewellery and money as taxable income. But while considering the payment of further similar amounts in the course assessment proceedings for a subsequent year, the Income-Tax Officer decided to issue the appellant a notice under s. 34; he eventually held the gifts made by the Maharani during the years in question to be remuneration for services rendered by the appellant as a maid-servant or Secretary, and therefore to be taxable income.

In appeal, the Appellate Assistant Commissioner and the Tribunal substantially agreed with the view taken by the Income-Tax Officer. Upon a reference, the High Court also decided in favour of the respondent, mainly on the ground that as the assessee was admittedly in receipt of large sums of money, in order to claim exemption from tax, the burden was upon her to establish that these amounts were voluntary payments by the Maharani out of natural love and affection; and that this burden had not been discharged.

On appeal to this Court.

HELD: The burden of proof was wrongly placed on the appellant. 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. The appellant admitted that she had received jewellery and diverse sums of money from the Maharani and claimed that as these were gifts made out of love and affection, they did not fall within the taxing provisions. It was not her case that being income, the receipts were exempt from taxation because of a statutory provision. Consequently, it was for the Department to establish that these receipts were chargeable to tax. [12 E--13 A]

Whether a receipt is liable to be treated as income depends very largely upon the facts and circumstances of each case; it is open to the Income-tax authorities to raise an inference that a receipt by an assessee is assessable income where he fails to disclose satisfactorily the source and the nature of the receipt. But here the source of income was dis-

A closed by the appellant and there was no dispute about the truth of the disclosure. [14 C-D]

Commissioner of Income Tax, West Bengal v. Calcutta Agency Ltd., 19 I.T.R. 191 and *A. Govindarajulu Mudaliar v. Commissioner of Income Tax, Hyderabad*, 34 I.T.R. 807, explained and distinguished.

B CIVIL APPELLATE JURISDICTION : Civil Appeals Nos, 199, 200 of 1964.

Appeals by special leave from the judgment and order dated April 13, 1960 of the Andhra Pradesh High Court in Case Referred No. 11 of 1960.

C AND

Civil Appeals Nos. 201 and 202 of 1964.

Appeals from the judgment and order dated April 13, 1960 of the Andhra Pradesh High Court in Case Referred No. 12 of 1960.

D *N. A. Palkhivala* and *R. Ganapathy Iyer*, for the appellant (in all the appeals).

N. D. Karkhanis and *R. N. Sachthey*, for the respondent (in all the appeals).

E The Judgment of the Court was delivered by :

Shah, J. The appellant carried on business at Nuzvid as a money-lender and conducted a cinematograph theatre. In respect of income from property and business she submitted a return of her income for the assessment year 1947-48 and disclosed in a statement, dated August 26, 1949, that Sita Devi—Maharani of Baroda—had between November 10, 1945 and February 11, 1948 “out of natural love and affection” given to her some jewellery and four amounts of money which aggregated to Rs. 5,20,000/-. The Income-tax Officer, Special Circle, Vijayawada, accepted the appellant’s statement and did not treat the money and jewellery received by her as taxable income. In the course of assessment proceedings for the year 1951-52 the Income-tax Officer was inclined to treat the money and jewellery given to the appellant as remuneration for services rendered to Sita Devi as a maid-servant. He accordingly issued a notice under s. 34 of the Income-tax Act and called upon the appellant to “submit an explanation adducing all documentary and other evidence in her possession relating to the receipt of assets admitted by her in her statement” dated August 26, 1949 and relating to other cash amounts and cheques

received by her between August 25, 1948 and October 23, 1952 and to other assets possessed by the appellant and disclosed by her in her "wealth statement". By her statement, dated November 27, 1953, the appellant submitted a detailed explanation about the items referred to in the letter of the Income-tax Officer and claimed that income received by her was earned with the aid of property which Sita Devi and the Yuvarani of Pithapuram had given to her out of love and affection from time to time. On December 26, 1954, the appellant was examined on oath before the Income-tax Officer. She stated :

"The credits in my accounts are all out of gifts. . . . As to correspondence I have very few letters but such of them as I have contain matters relating to others. I shall produce them if you are prepared to exclude those portions. What other record I have I gave to my auditors. I have no objection to their producing all those records before you. In fact I desire that they should be so A complete inventory of records with my auditor will be given to you on Monday and you may look into them. . . . I can give full particulars for all deposits in my accounts. I have not purchased any jewellery worth mentioning. I have filed a statement for that. All my jewels are gifted by Srimati Seetha Devi."

The Income-tax Officer by his order, dated March 31, 1956, held that the "gifts made by Sita Devi were remuneration for services rendered by the appellant as a maid-servant or Secretary to the Princess and were accordingly taxable as income in her hands". For the year 1946-47 he determined the escaped income of the appellant at Rs. 4,70,000/- (Rs. 4,00,000/- being the value of jewellery and Rs. 70,000/- cash). He determined the escaped income for the year 1947-48 at Rs. 2,50,000/-, for the year 1950-51 at Rs. 96,600/- and for the year 1951-52 at Rs. 30,000/-.

In appeal the Appellate Assistant Commissioner agreed with the Income-tax Officer that the receipts were income taxable under the Income-tax Act, but he valued the jewellery received by the appellant in the account year corresponding to the assessment year 1946-47 at Rs. 20,000/- and directed consequential modifications in that order. The Income-tax Appellate Tribunal held that the Income-tax Officer was justified in reopening the assess-

A ment under s. 34, and that cash, cheques and jewellery received by the appellant from Sita Devi in the previous year corresponding to the assessment years 1946-47, 1947-48, 1950-51 and 1951-52 being remuneration for services rendered, were taxable.

B The Tribunal submitted two consolidated statements of case—one in respect of the assessment years 1946-47 and 1951-52 and the other in respect of the years 1947-48 and 1950-51 and submitted in each of the statements the following question :

C “Whether on the facts and in the circumstances of the case what the assessee received in the relevant years is assessable to tax and whether Section 34 of the Income Tax Act could be invoked in regard to the years 1947-48, 1948-49 and 1950-51 ?”

D (Reference to the year 1948-49 in the question is due to oversight as no reference was asked for and none was made in respect of that year.) The High Court held that there was evidence before the Tribunal to support the finding that the appellant was an employee of Sita Devi and that the cash, cheques and jewellery admitted as received by the appellant were not given to her as gifts made out of love and affection, but as remuneration for services rendered. In the reference relating to E the years 1947-48 and 1950-51 the High Court called for a supplementary statement, for determination of the question whether action under s. 34 was justifiable. The Tribunal submitted a supplementary statement and thereafter the High Court answered the second branch of the question holding that the F action of the Income-tax Officer under s. 34 was justified. The appellant has appealed to this Court against the order of the High Court recording answers in the two references.

G It is not necessary to consider whether the Income-tax Officer was competent to issue a notice under s. 34 of the Income-tax Act for the years 1947-48 and 1950-51, for in our view the property received by the appellant was not remuneration given to her by Sita Devi for services rendered or to be rendered by her.

H The High Court in dealing with the question about the liability of the receipts to tax observed :

“The Supreme Court in the case of the Commissioner of Income-tax v. Calcutta Agency Ltd. (19 L5Sup. CI/65—2

I.T.R. 191) observed that the burden of proving the necessary facts in order to entitle the assessee to claim exemption was upon the assessee. It would, therefore, appear that where admittedly the assessee was in receipt of large sums of money as shown in the accounts submitted by her, that they were outside the pale of taxable income was a matter which had to be established by the assessee herself. The question is as to whether the assessee has discharged the burden that lay upon her. She did not produce any evidence in support of her case that these amounts were gifts made by Sita Devi out of love and affection. When she was asked to lead evidence to substantiate her contention she pleaded utter inability to do anything of the kind and denied the existence of any correspondence which would throw any light upon the question and simply contended herself by making bland statements like 'Her Highness Sita Devi Gackwad of Baroda used to give me these gifts according to the will and pleasure of her Highness'. With regard to the jewellery that she received from Princess Sita Devi she makes the same statement to say that these were received as gifts on various occasions in India and she says 'I do not have any correspondence regarding these gifts'. . . . The bare allegation unsupported by any evidence, in our opinion, was not sufficient to discharge the burden which lay upon the assessee. . . . the burden lay upon the assessee in this case to establish that the amounts received were voluntary payments made by the Princess out of love and affection."

In so observing, the High Court, in our judgment, has committed an error of law. By ss. 3 & 4 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. The appellant admitted that she had received jewellery and diverse sums of money from Sita Devi and she claimed that these were gifts made out of love and affection. The case of the appellant was that the receipts did not fall within the taxing

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- A provision : it was not her case that being income the receipts were exempt from taxation because of a statutory provision. It was, therefore, for the Department to establish that these receipts were chargeable to tax. The decision of this Court in the *Commissioner of Income-tax, West Bengal v. Calcutta Agency Ltd.*⁽¹⁾ lends no support to the proposition which the High Court has enunciated.
- B That was a case in which the taxpayer was claiming under s. 10(2)(xv) allowance for an expenditure out of the income of the business and to establish such a claim indisputably the burden lay upon the taxpayer. The following observations made by Kania C.J., in delivering the judgment of the Court make the ratio of the judgment clear :

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“Now it is clear that this being a claim for exemption of an amount, contended to be an expenditure falling under section 10(2)(xv), the burden of proving the necessary facts in that connection was on the assessee, it being common ground that the commission was due and had become payable and was therefore the business income of the assessee company liable to be taxed in the assessment year.”

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- E Counsel for the Commissioner submitted that where an assessee fails to prove satisfactorily the nature of the receipt, it is open to the Income-tax Officer to infer that the receipt is taxable, and relied upon the observations made in *A. Govindarajulu Mudaliar v. Commissioner of Income-tax, Hyderabad*⁽²⁾ by Venkatarama Aiyar, J., who speaking for the Court observed :

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“There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature.”

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- But these observations cannot be read divorced from their context. In the books of the firm in which the assessee was a partner certain amounts were found credited to the assessee, and when called upon to explain how he came to possess those amounts, he rendered an explanation which was not accepted by the Tribunal, and the amounts were treated as income liable to tax. It was argued on behalf of the assessee in *Govindarajulu Mudaliar's case*⁽²⁾ that even if the case set up by him was not accepted by

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the Tribunal, it did not follow as a matter of law that the amounts in question were income received during the previous year, and it was for the Department to adduce evidence to show from what source the income was derived and why it should be treated as concealed income, and in the absence of such evidence the finding of the Tribunal was erroneous. This Court held that it was open to the Income-tax Officer when the assessee failed satisfactorily to disclose the source and nature of the receipt to treat that as concealed income of the previous year in which the assessee was being taxed. The observation relied upon does not lay down a proposition that it may be inferred that a receipt is taxable as income because the assessee fails to lead all evidence in support of the case pleaded by him that the receipt is not within the taxing provision. Whether a receipt is liable to be treated as income depends very largely upon the facts and circumstances of each case: it is open to the Income-tax authorities to raise an inference that a receipt by an assessee is assessable income where he fails to disclose satisfactorily the source and the nature of the receipt. But in this case the source of the income was disclosed by the appellant, and there was no dispute about the truth of that disclosure.

The High Court disposed of the reference holding that the onus of proving that the receipts were not taxable lay upon the appellant, and that she did not discharge that burden. On the view expressed by us the answer recorded by the High Court on the taxability of the receipts must be discharged. Since the High Court has not considered the evidence, we would normally have remanded the case for disposal of the reference according to law. But this proceeding has been pending for a very long time, and in enforcement of the orders of assessment the entire property of the appellant has been attached. We have, therefore, thought it fit to hear and decide the reference on the merits.

In the view of the Income-tax Appellate Tribunal, in determining the question whether receipts by the appellant represented income liable to be brought to tax under the Income-tax Act, it could not be said that there were no materials justifying the Department in treating the assessee as being an employee of Sita Devi, for apart from the information the Department had collected from various sources, there were clear indications that the assessee was acting as the local agent of Sita Devi in Pittapuram for disbursing salary to various servants of Sita Devi, and that she was described as the Private Secretary to Sita Devi in a "bill" issued by the

A Bombay Garage Ltd., and that in any event it was for the appellant to prove her case of gift. The Tribunal then observed that the word "income" is not precisely defined in the Act and the Act seeks to bring to tax all income, profits and gains from whatever source derived and inasmuch as receipt of the amounts and jewellery in question had been admitted it was for the appellant to establish that it was not liable to be taxed under the Act. Observing then that the appellant had not placed "all the cards on the table which will go to show the real nature of the receipt of the amounts and the jewellery" and had declined to produce the correspondence which passed between her and Sita Devi, but merely offered to produce certain extracts from the letters which the Income-tax Officer refused to admit, it was open to the Income-tax authorities to raise an inference that the receipts were income, when ample opportunity was given to the assessee to explain the nature of the receipts and since the appellant had not chosen to do so, she was not entitled to the exemption under s. 4(3)(vii).

D The conclusion of the Tribunal recorded on this process of reasoning was open to grave challenge in point of law. It does not appear that any serious attempt was made by the appellant to prove that the receipts under discussion were exempt from tax, because they were casual and of a non-recurring nature. The appellant's case primarily was that the receipts were not taxable because they were not income chargeable to tax. The Tribunal rightly observed that the information collected by the Department from different sources which consisted of record of *ex parte* statements of certain persons about the relation between Sita Devi and the appellant, which they even declined to give in writing, could have no value in establishing the case of the Department. There remained two pieces of evidence on which the Tribunal relied— (i) admission made by the appellant that she acted as the local agent in Nuzvid for disbursing salary to servants of Sita Devi and (ii) in a "bill" issued by the Bombay Garage Ltd. the appellant was described as "Private Secretary to Princess Sita Devi". But these circumstances could not establish that what was given to her by Sita Devi was remuneration for services rendered or to be rendered. Realizing this infirmity, the Tribunal observed that the burden of proving that the receipts were not income lay upon the appellant. The Tribunal did not infer that as remuneration for disbursing salary to Sita Devi's servants she was given large amounts of money and jewellery. Description of the appellant in the cash-memo issued by the Bombay Garage Ltd. as "Private Secretary to Princess Sita Devi" could have no evidentiary value.

It is not claimed that there was evidence on the record that this was the general repute of the appellant. Description of the appellant as Private Secretary of Sita Devi in a stray cash-memo issued by a third party about the source of whose knowledge there is not an iota of evidence, could not evidence a relationship of master and servant : much less could it prove that what was given by Sita Devi to the appellant was remuneration for service rendered. The conclusion of the Tribunal is, therefore, based on matters which may at the highest create some suspicion, and upon its view that the burden of proving that the receipts were not taxable lay upon the appellant. But a conclusion recorded by the Tribunal by wrongly throwing the burden of proof upon the assessee cannot be regarded as binding upon the High Court in a reference under s. 66 of the Income-tax Act.

Counsel for the Commissioner contended that beside the two circumstances relied upon by the Tribunal, there were other circumstances on which the conclusion of the Tribunal could be sustained. These circumstances, counsel submitted, are on the record and must have weighed with the Tribunal in arriving at its finding that the receipts by the appellant were of the nature of income. These were (a) that the appellant belonged to a family of *Dasis* who are generally employed in the ruling family of Pittapuram in a menial capacity; (b) that the appellant was receiving a salary of Rs. 8/- per month from the Maharaja of Pittapuram; (c) that the appellant was associated with Sita Devi for at least 8 years before the earliest year of account relevant in these appeals; (d) that large amounts in cash and also jewellery were given to the appellant from time to time after Sita Devi married the Gaekwad of Baroda; (e) that the gifts commenced immediately after Sita Devi married the Gaekwad of Baroda; (f) that the appellant assisted Sita Devi in securing divorce from the Yuvaraja of Vuyyur and in getting married to the Gaekwad of Baroda; (g) that the appellant lived with Sita Devi in London in the year 1949-50 and also at Baroda; and (h) that similar gifts were given to one Narasingh Rao "associate of the appellant" and to the daughters of the appellant's sisters. There is no evidence in support of (f), and the circumstances (a) to (e) & (g) cannot possibly lead to the conclusion that property of large value was given to the appellant by Sita Devi as remuneration for performance of service. Circumstance (h) is irrelevant.

On the first part of the two questions it must be recorded that what the assessee received in the relevant years of account was not

A assessable to tax. It is unnecessary to record, as already observed, a finding on the second branch of the question, viz. whether s. 34 of the Income-tax Act could properly be invoked in regard to those receipts.

B The appeals will be allowed. The Commissioner will pay the costs of the appellant in this Court and in the High Court. One hearing fee.

Appeals allowed.