

**(1942) 02 AHC CK 0006****Allahabad High Court****Case No:** None

Income Tax COMMISSIONER

APPELLANT

Vs

REV J C MANRY.

RESPONDENT

**Date of Decision:** Feb. 24, 1942**Citation:** (1942) 12 AWR 194 : (1942) 10 ITR 205**Final Decision:** Allowed**Judgement**

This is a reference u/s 66 (2) of the Indian Income Tax Act. The assessee is the Rev. J. C. Manry, and the year of assessment is 1936-37. The assessee belongs to the Board of Foreign Missions of the Presbyterian Church of the United States of American; and so too does his wife. They had at the material time four children, two boys and two girls. The assessee and his wife each receive a separate salary and the house allowance from the Board, and the Board also pays an allowance in respect to each of the four children. Up to and including the year 1935-36 the salaries of the assessee and his wife and the allowances on account of the children were lumped together by Income Tax authorities and were assessed jointly to tax. This was done, as stated by the Commissioner of Income Tax in the statement of the case, on the assumption that the wifes salary and the allowances for the children were "additional emoluments paid to the assessee to meet the additional cost of married life and education of his children." For the year 1936-37 the assessee returned an income of Rs. 2,318 only, which represented his own salary and house allowance; he claimed that his wife should be separately assessed on her salary and that the allowances for the children were exempt from taxation on the ground that they were personal allowances to the children and were not perquisites within the meaning of Section 7 of the Act either of the assessee or of his wife. The Income Tax Officer repelled the claim and assessed upon a total income of Rs. 7,712, which included the salary and the house allowance of the assessee's wife and the allowances for the children.

Against this assessment an appeal was preferred and the Assistant Commissioner allowed the assessee's claim for the exclusion of his wife's salary on the ground that it was the latter's own income; but he rejected the claim for exemption in respect to the allowances for the children on the ground that they were paid by the Board to meet the additional cost of maintenance and education of the children and were in the nature of perquisites taxable in the hands of the assessee.

Thereafter the assessee preferred an application to the Commissioner of Income Tax for the exercise of his revisionary powers u/s 33 or alternatively for a reference to this Court u/s 66 (2) of the Act. The Commissioner declined to exercise his powers of revision under Section 33 of the Act, but he has referred the following question of law to this Court :-

"Whether on the facts of the case the sum of Rs. 3,078 paid by the Board for the maintenance and education of the assessee's children is the income, profits and gains of the assessee within the meaning of Section 3 of the Act and taxable in his hands? "

The Commissioner is of opinion that the answer should be in the affirmative. In stating his opinion he says :

"It will be observed that the allowance commences from the first day of the month in which the child is born and it is obvious that it is the parent to whom the allowance is payable."

Further on he says :

"The children's allowances become payable only by reason of the employment of the parent missionary work by the Board and it is clearly stated in the paragraph quoted"-by this is meant paragraph 144 of the Manual of the Board of Foreign Missions of the Presbyterian Church in the U. S. A, revised edition of 1933-"that the allowances terminate when the missionary leaves the service of the Board. The payments of the allowances are thus entirely dependent of the missionary's service with the Board, and, therefore, in my opinion the allowances constitute perquisites or profits to the missionary parent within the meaning of Section 7 (1) of the Act and are as such taxable as salary in the hands of the parent."

Then the Commissioner says;

"There is a further question as to whether the allowances should be treated as part of the salary of the father or the mother or of both. This question has only arisen because Mrs. Manry also happens would have been payable even if Mrs. Manry was not so employed and as it is the father who is primarily responsible for the maintenance and education of the children, I am of opinion that the allowances should be treated as part of the salary of the assessee."

In our opinion the Commissioner's view is correct

" Perquisite is defined inter alia in Websters Dictionary as a gain or profit incidentally made from employment in addition to regular salary or wages, especially one of a kind expected or promised....." In Murrays English Dictionary it is defined as "any casual emolument, fee or profit attached to an office or position in addition to salary or wages." What we have to consider is whether the allowances which are paid by the Board for the children of the assessee are or are not perquisites or profits in addition to his salary and whether they fall under the head "Salaries" under Sections 6 and 7 (1) of the Income Tax Act.

Mr. Ramnama Prasad, who has vigorously argued this reference on behalf of the assessee, pleads in the first place that the allowances belong to the children themselves and form no part of the income, profits or gains of either of the parents. Alternatively he contends that if the allowances do form part of such income, profits or gains, the assessee and his wife are equally entitled to these allowance and it is impossible to say that they form part of the income, profits and gains of the one rather than of the other; and in these circumstances the assessee is not liable to be taxed in respect to them.

Paragraph 144 of the Manual has been reproduced by the Commissioner of Income Tax and it reads as follows :-

"The Board makes certain provision towards the increased cost of the children of missionary parents by an allowance of 200 dollars per year for each child under ten years of age, 300 dollars for the next six years, and 420 dollars for the following five years, the final increase being only for those in school or college. No allowances will be paid after 18 years of age and if the child becomes self-supporting, had married or has left school for other than health reasons. All allowance cease at the end of the 21st year, or one month after a child's death at an early age. They are usually suspended during furlough extension (Articles 38, 196). The allowances are computed in full months from the first day of the month in which the birth occurs, increases to begin from corresponding dates. Allowances for children taken to the field by new masonies begin with the departure from home on the outward journey. All children's allowances terminate when the missionary leaves the service of the Board, save that, in Co-operation with the Pension Board, the allowances of children whose father has died in active service. The Board cannot provide allowances for travel for adopted Children, nor advance travel funds for them as a loan."

Upon the plain language of this paragraph it would appear that these allowance are paid to missionary parent by reason of the increased cost which they have to incur on account of their children. The rule provides that when the missionary leaves the services of the Board, these allowances shall terminate-except where the father has died in harness, so to speak, in which case the allowances continue (until the age of 21) as a sort of pension. This shows that the allowances are directly dependent upon service; they are paid on account of and during the continuance of employment and if the missionary who is entitled to receive these allowance on behalf of his or her

children elects to to quite the service of the Board, he or she is no longer entitled to receive them. There is before us an extract from an affidavit which was sworn by the Treasurer of the Board on the 18th August 1936, in which he says :

"The allowances to children of missionaries of the Board of Foreign Missions of the Presbyterian church in the United states of America are in no sense or manner part of the salaries or remuneration of their parents."

We have no doubt that the Treasurer made this statement in good faith and it presumably represents his interpretation of the rules; but we find it difficult to reconcile his statement with the relevant portion of the Manual. Chapter VII is headed "Salaries, Allowances and furloughs" and it is divided into seven main headings marked A, B, C, D, E, F, G. Heading A is "Salaries" and it is under this very heading that we find the provisions in respect to allowances for children, which indicates that, whatever opinion the Treasurer may have held, the Board itself regarded these allowances as forming part of the salary of the missionary concerned. In all the circumstances we are of opinion that these allowances must be regarded as failing under the head of "Salaries" as contemplated by Section 6 and Section 7 (1) of the Act.

This finding does not quit conclude the matter, for learned colossal for the assessee further claims exemption on the ground that it cannot be said that the assessee rather than his wife is liable to pay the tax in respect to these allowances.

We do not think that there is any real force in this contention. Under English law the father is the natural guardian of his children and is not suggested before us that the American law is in any way different. The assessee in his letter dated 5th May 1938 has by cleat implication admitted that it was he himself who received these allowances, and this is only what one would expect. The allowances are for the maintenance and education of the children and it is naturally the father who would receive them. He certainly goes on to say :

"From the age of 16 my son Robert himself received his own allowance each month and was responsible for its expenditure himself. My second son Jonh had just reached the age of 16 on 26th March 1938 and had begun to receive his own allowance each month and to spend it himself".

We accept this statement of the assessee has correct : but he does not say from whom his two sons have been receiving the allowance, whether himself or from the Treasurer. Assuming that it is the Treasurer who has been paying these allowances to Robert and John, there is nothing in the assessee's letter to indicate whether this was done by the Treasurer on his own account or at the instance of the assessee; and we find it difficult to believe that the Board can ever have contemplated that these allowances should be paid direct to the minor children. They may have been nominally received by these two boys, but in the circumstances the actual recipient must be deemed to have been their father, the assessee.

In our opinion the allowances must be treated as an addition to the assessee's income u/s 7 (1) of the Act and we therefore answer the reference in affirmative.

The assessee will pay the costs of this reference. We fix the Advocate-Generals fee at rs. 200. a copy of our judgment will be sent under the signature of the Registrar and the seal of the court to be commissioner of Income Tax.