

P. Krishna Menon Vs Commissioner Income Tax

Court: High Court Of Kerala

Date of Decision: March 8, 1956

Acts Referred: Income Tax Act, 1922 " Section 4(3)
Travancore Income Tax Act, 1121 " Section 113(1)

Hon'ble Judges: Koshi, C.J; M.S. Menon, J

Bench: Division Bench

Advocate: Subbaraya Iyer, M.K. Paramcswara Kurup, Naravana Menon and C.S. Narayanan, for the Appellant; G. Rama Iyer, for the Respondent

Judgement

M.S. Menon, J.

This is a reference by the Income Tax Appellate-" Tribunal Madras Bench "B" u/s 113(1) of the Travancore Income Tax

Act 1121. Paragraphs 2 and 3 of the statement of the case indicate the circumstances under which the Assessee received the amounts in

controversy and read as follows:

2. The Assessee, P. Krishna Menon, Trivandrum retired from the service of the former Travancore State as a District Superintendent of Police and

subsequently disciples gathered about him to receive his teachings in Vedanta Philosophy. As one of such disciples, John II. Levy of England

commenced his first contacts with the Assessee in or about, 1941. He had been subsequently visiting his master from abroad almost annually to

spend a few months with him on each visit. For purpose of his stay during such visits he also purchased a residence at Malakkara in Travancore.

3. Levy transferred on 13th December ,1941 the entire balance in his Bank account with the Lloyds Bank Ltd., Bombay, of Rs. 2,41,103-11-3,

to the account of the Assessee opened with the same bank for tire purpose. Thereafter he remitted to or deposited therein almost always round

sums in Pound, Sterling or in Rupees. The source of these remittances is admitted to be part of his rental and investment income in England. From

this Bank account, the Assessee withdrew large amounts periodically into Travancore with which he made investments in shares in own name, gave

large gifts of money to his sons and bought properties in his wife"s name too. A statement containing a summary of all the transactions in this Bank

account for the period 13th December 1941 to 1st August 1951 is annexed hereto as Annexure "A" and iorins part of the case.

2. Annexure "A" shows the following payments into the Bombay account of the Assessee and withdrawals by him into Travancore during; the

previous years

Previous year Deposits by Levy General withdrawals into Travancore

Rs. Rs.

(i) (ii) (iii)

1121 M.E. 13,304 81,200

1122 M.E. 29,948 47,000

1123 M.E. 19,983 37,251

The Income Tax Officer, as observed in the statement of the case,

assessed the above general withdrawals in column (iii) as remittances into Travancore of foreign profits, under "other sources" in assessment years

1122, 1123 and 1124 M. E. for the respective previous years aforesaid under the Travancore Income Tax Act, 1121, as they were larger than the

respective foreign accrued income shown in column (ii).

3. The Assessee's contentions which have been rejected by the Income Tax Officer, the Appellate Assistant Commissioner and the Income Tax

Appellate Tribunal were:

(a) that the payments by Mr. Levy were not liable to Income Tax being but casual gifts made out of esteem and affection for him; and (b) that if

they are held to be income derived, from a vocation or occupation of his they should be considered as arising in Travancore and taxed on that

basis.

The two questions referred to us embody those contentions and read as follows:

(i) Whether the aforesaid receipts from John H:H. Levy constitute income taxable under the Travancore Income Tax Act, 1121 and (ii) Whether

there are materials for the Tribunal to hold that the deposits into the Assessee's bank account in Bombay by John H, Levy from 194.1 as aforesaid

represented income that accrued to the Assessee outside Travancore.

4. u/s 4 (3) (vii) of the Travancore Income Tax Act, 1121, corresponding to Section 4 (3) (vii) of the Indian Income Tax Act, 1922:

Any receipts 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.

shall not be included in the total income of the person receiving them and the main argument on behalf of the assessee is that the receipt from Mr.

Levy come within the ambit of S. 4 (3) (vii). We cannot agree. The provision has no application if the receipts arise from the exercise of a

profession, vocation or occupation and we entertain no doubt on the facts found in his case that Mr. Krishna Menon since his retirement from the

police force has been devoting his life to the exposition of the Vedanta Philosophy, that such teaching is his current vocation or occupation and that

the amounts paid by disciples like Mr. Levy should be considered as receipts arising from the exercise of that vocation or occupation.

5. The word ""vocation"" is a word of very wide meaning and is analogous to a calling *Patridge v. Mallandaine* (1887) 2 STC 179 (A). It means

the way in which a person passes his life or the pursuit to which he devotes his time. As stated by Commissioner of Income Tax Vs. Indra Sen

Raizada,

It is obvious that the words ""business profession vocation and ""occupation"" have been used in S. 4(3)(vii) in contradistinction to each other and

having regard to the scheme of taxation underlying the Act, conclusion is irresistible that the word ""profession"" is of wider import than the word

business and the word ""vocation is of wider import than the word ""profession"" and lastly ""occupation"" is a word of wider signification than the

word ""vocation."" In other words, what may not amount to business may amount to profession and what may not amount to profession may amount

to vocation and what may not amount to vocation may amount to occupation within the meaning of the Act.

6. We have stated that are satisfied that the teaching of the Vedanta Philosophy has been the vocation or occupation of the Assessee since his

retirement from Government service and that the payments made by disciples like Mr. Levy should be considered as receipts arising there from.

Apart from this, as pointed out in *Simon's Income Tax Volume 2*, page 383:

Except in special cases, where the facts point only to one conclusion, the question whether a person is carrying on a profession is a question of

fact, and the Court will not disturb the decision of] the Appeal Commissioners unless they have misdirected themselves in law.

The same is the position as regards ""vocation"" and ""occupation"" for which expressions also the contains no definition.

7. A number of Indian cases which have a bearing on Section 4 (3) (vii) of the Indian Income Tax Act, 1922, and a number of English cases under

Schedule E of the English Income Tax Act ending with *Moorhouse v. Dooland*, (1955) Chh 284 (C) and dealing with the question as to whether

grants or annuities to Ministers of Religion, Easter offerings and other gifts from the congregation, proceeds of benefit matches and payments by

way of tips to restaurant and. hotel employees, taxi drivers and railway porters were emoluments within the meaning of that Schedule or not were

cited before. As we. have come to the conclusion that Section 4 (3) (vii) has; no application to the present case the receipts concerned being

receipts from a vocation or occupation practised by the assessee we do not think that any useful purpose will be served by a discussion of those

judgments.

8. In the light of what is stated above the first of" the two questions referred to us has to be answered in the affirmative and we do so.

9. The Assessee was carrying on his vocation or Occupation in the Travancore State except perhaps for an occasional tour outside the State and

in view at this the income derived from disciples like Mr. Levy should be considered as having arisen in Travancore and not outside it. The learned

Counsel for the Department has not been able to point out any specific piece of evidence which should induce a contrary conclusion and as we see

nothing in the materials. before us which will support the view that the income from the vocation or occupation practised by the Assessee in

Travancore arose anywhere other than within that State we answer the second of the two questions referred to us in the negative.

10. The questions referred are answered as above. A copy of this judgment under the seal of

this Court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal as provided in Sub-section (5) of Section 113

of the Travancore Income Tax Act, 1121. We make no order as to costs.