CIT, Kerala Vs Dr. K. George Thomas

Court: High Court Of Kerala

Date of Decision: July 19, 1973

Acts Referred: Income Tax Act, 1922 â€" Section 4(3)(vii)

Citation: (1974) 97 ITR 111

Hon'ble Judges: P. Govindan Nair, J; George Vadakkel, J

Bench: Division Bench

Advocate: P.A. Francis, K.I. John and P.K. Ravindranatha Menon, for the Appellant;

Judgement

P.Govindan Nair, Ag. C.J.

1. The income tax Appellate Tribunal, Cochin Bench, has referred to this Court under S. 66(1) of the Indian income tax Act, 1922, the following

two questions for decision;

(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. 2,70,220 and Rs.

3.63,750 were not assessable as income of the assessee for the assessment years 1960-61 and 1961-62?

(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 taxation under S. 4(3)(vii) of the Indian income tax Act, 1922 for the assessment years 1960-61 and

1961-62 respectively?

Before we read S. 4(3)(vii) of the Act, we shall refer to the admitted facts and the basis on which the Tribunal dealt with the case.

The assessee publishes a Malayalam daily newspaper by name Kerala Dhwani Till 1953, he was a lecturer in History and Political Science in a

college at Kottayam. In 1953, he got a scholarship for higher studies in the United States and he was there from 1953 to 1957 during which period

he took his Ph.D. degree. He returned to India by the end of 1957, and then started the newspaper, Kerala Dhwani, in August 1959. According

to the assessee, during his stay in the United States and after his return to India, he was engaged in a movement called India Gospel Mission, for

the spread of religion and for crusading against the forces of atheism and the political ideologies which favoured atheism. He has further stated that

his friends in America and those who believed in the case which he was espousing were sending him donations and helping the movement. These

donations were being banded over or were being collected by the Indian Christian Crusade U.S. A. and were being remitted to him by the crusade

from the U.S. A. through banks in India.

2. From the above source, the assessee admittedly received a sum of Rs. 2,90,220 during the accounting period relevant to the assessment year

1960-61 and a sum of Rs. 3,63,750/- during the accounting period relevant to the assessment year 1961-62. The income tax Officer found that

these amounts came from the U.S. A. He, however, rejected the contention of the assessee that they were not taxable for the five reasons which

the Tribunal has extracted in Para. 2 of the statement of the case. Dealing with the assessee''s appeal, the Appellate Assistant Commissioner held

that the assessee had not explained the source of the credits made in bis accounts relating to the above mentioned amounts and therefore applied

the principle of the decision in A. Govindarajulu Mudaliar Vs. Commissioner of Income Tax, Hyderabad, and taxed the amounts as the income of

the assessee. In further appeal before the Tribunal, the Tribunal found that the source of the credits was the remittances from the Indian Christian

Crusade in U.S. A. The Tribunal then posed the question for decision in these terms;

The real question that has to be considered is whether these payments represent remuneration for services rendered or whether they were mere

donations as represented by the assessee for a movement which he was espousing (paragraph 14).

After having held that the amounts did not represent remuneration or payments for services rendered, the Tribunal came to the conclusion that the

principle of the decision in Parimisetti Seetharamamma Vs. Commissioner of Income Tax, Hyderabad, would apply. After having said so the

Tribunal also accepted the argument of counsel for the assessee that the principle of the decision of the Bombay High Court in H.H. Maharani Shri

Vijaykuverba Saheb of Morvi and Another Vs. Commissioner of Income Tax, Bombay City II, would govern the case and that the receipts did

not fall within the category of income. The Tribunal further found that the donors were supporting a movement in which they believed, that there

was no obligation cast on them to continue the payments and that the payments were not made under any legal or contractual obligation. This was

followed by the finding that the receipts were clearly casual and non-recurring and did not arise in the course of the exercise of any vocation.

3. We shall now extract S. 4 (3) (vii) of the Act.

4(1)...

(2)....

(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them;

(i)~~~

(ii)...

(iii)...

(iv)...

(v)....

(vi)....

(vii) any receipts not being capital gains chargeable according to the provisions of S. 12B and not being receipts arising from business or the

exercise of a profession, vocation or occupation, casual and non-recurring nature or are not by way of addition to the remuneration of an

employee.

4. The assessee''s case was that the payments were made to him in his personal capacity and were made to him as personal gifts and testimonial-

because of the personal relations and friendship between the assessee and those who made the contributions. His case has been clearly stated in

the communication dated 3rd January, 1962 addressed to the income tax Officer by the Chartered Accountants who represented the assessee:

The source of credit in the personal account of Dr. K. George Thomas is from the money received by Dr. George Thomas as gifts from the Indian

Christian Crusades California, and from several of his friends in the United States. The receipts are purely personal gifts and testimonials paid as a

token of esteem and regard for the personal qualities of Dr. George Thomas, and is unconnected with any particular act or service. There is no

specific purpose for the contributions, but are purely contributions made on account of the personal relations and friendship. Complete details as to

the contributions received from outside from the commencement till 31-12-1961 will be furnished shortly.

5. Receipts of a casual and non-recurring nature will not be included in the total income of a person. But if there are receipts arising from the

exercise of a vocation they will be included in the total income. In that case, whether they were of a casual and non-recurring nature is of no

importance, in fact, irrelevant. This aspect is not seriously disputed before us. This is an accepted proposition is clear from the commentaries to the

Income Tax Act by Kanga, 6th Edition, page 318, under the heading "Voluntary payments". Even if the payments are purely voluntary from the

point of view of those making the payments, if such voluntary payments arise out of the exercise of a vocation, the receipts resulting from such

payments will be outside S. 4(3)(vii). The only question in the case therefore is whether the assessee was exercising a vocation or on occupation it

would not be proper to call what he was doing the exercise of a business or a profession and whether there were receipts arising from the exercise

of that occupation or vocation. We do not think that the principle of the decision in Parimisetti Seetharamamma Vs. Commissioner of Income Tax,

Hyderabad, is very pertinent to decide the question before us. We are also of the view that the argument on behalf of the assessee before the

Tribunal that the payments were to the ""Indian Gospel Mission"" or to any movement should not have been entertained, because it was against the

specific case of the assessee. There was no material whatever to indicate the existence of any such outside agency to which the payments were

made, the assessee merely receiving the payments on behalf of that agency as if he was a trustee or one standing in a fiduciary capacity to that

agency.

6. Now, turning to the question as to the nature of the activities of the assessee, it is difficult to postulate that propagating religion and trying to

restore faith in God which, according to the assessee, was on the decline, and fighting against atheism, were not his occupation or vocation. As far

as we are able to glean from the facts of the case, he was very actively, fully, occupied with the activities connected with achieving the objects of

strengthening faith in God and fighting against atheism. After his return to India from the U.S. A., he was solely occupied with this affair. The paper

which he published for this purpose was a daily coming out with views in support of this mission. There can be various occupations in life. Even

religion can be an occupation. It has been so ruled. Teaching religion can be an occupation. And it is unnecessary that an occupation must have for

its object the earning of a livelihood. Anything in which a person is engaged systematically can be an occupation or a vocation.

7. If the question of receipts being treated or omitted to be treated as income arises, the further question as to whether those receipts can be said

''to arise'' from such occupation or vocation will naturally have to be considered. That is the aspect which we must now consider. Two decisions of

the English Courts and a decision of the Supreme Court which has referred to the English decisions have been brought to our notice. These

decisions dealt with the claim for deduction and the question was whether the claim could be said ''to arise'' from the exercise of a profession or

from the business activities of an assessee to income tax. We think the principle of those decisions is apposite. The earliest decision on the subject

referred to was by the House of Lords in Strong and Co. of Romsey Limited v. Woodifield (1906 A.C. 448). The facts of the case were these. A

brewery company owned an inn which was carried on by a 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 company''s 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 was very guarded in his approach to the problem. A passage from this judgment is useful:

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 to 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 second case Commissioner of Inland Revenue v. Warness and Company, Limited (1919 A.C. 444)-Rowlatt J. dealing with a question

similar to that dealt with by the Lord Chancellor, said:

I may shelter myself behind the authority of Lord Loreburn L.C. who in his judgment in the House of Lords, in Strong & Co. v. Woodifield (1906

A.C. 448) 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 examining a number of analogies; but it seems to me that penal liability of this kind cannot be

regarded as loss connected with or arising out of a trade.

8. In both the cases the question that arose for consideration was whether within the meaning of S. 100, Scheduled (D), Case 1, R. 3 of the

Income Tax Act, 1842, the sum claimed was or was not a loss connected with or arising out of a trade or business. The words construed are very

similar to that part of S. 4 (3) (vii) of the Act with which we are concerned excepting that the words ""connected with"" are left out in S. 4 (3) (vii).

We are inclined to think that S. 4 (3) (vii) may, therefore, have more limited application than the English statute construed in the above decisions.

Whatever it be, the question is whether in this case the receipts can be said to arise out of the occupation of the assessee. The Indian Christian

Crusade is an organisation having the same objects as those of the assessee. There were many people in the U.S. A. who held the same views and

the same ideals as those of the assessee and the Indian Christian Crusade. They made voluntary payments to the Indian Christian Crusade who

passed them on to the assessee There is therefore a link between the activity of the assessee and the payment, in that the payments were made by

those who held the 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. These payments were made for the purpose of helping the assessee to run the Paper which was the mouth piece or the

medium through which ideas were to be spread. In the statement on oath by the assessee before the income tax Officer, on the 27th March, 1967

there is the following passage.

In 1959 they collected some donations and sent to me. I am the Vice President of the India Gospel Mission from its inception till to date. These

funds were sent to me with the idea of enabling me to carry out the ideals of India Gospel Mission in India. With these funds I purchased the plot

etc. and started the Press and newspaper. It was giving a huge loss. In November 1959 or so I represented that I cannot carry on the newspaper

with huge losses and suggested that the; take over the newspaper. They agreed and sent me further money.

9. This statement clearly established not only the link but the purposes for which the amounts had been paid to the assessee. The donors were

interested in the paper being continued which was at the point of being stopped at one time. The connection between the activity of the assessee

and the donations was intimate and the payments were made because of the activity in which the assessee was engaged. From the facts of this case

this conclusion is inevitable. Even assuming for arguments'' sake that this can only be a prima facie conclusion, we think that that would be sufficient

to shift the burden from the department to the assessee to displace the prima facie inference that the receipts were Income. In this regard the

specific case of the assessee, as we pointed out earlier, was that the receipts represented personal gifts or testimonials resulting from personal

relationship. No materials had been placed before the assessing authorities to establish any such personal relationship, and there was no evidence

to suggest that those were personal gifts to the assessee. On the other band the circumstances pointed out that the donors were interested in the

assessee continuing to exercise his vocation. There is nothing personal in that. We therefore hold that these receipts arose from the exercise of an

occupation by the assessee, excluded from the ambit of S. 4 (3)(vii).

10. The two questions referred to us have therefore to be answered in the negative, that is, in favour of the department and against the assessee.

The case is not free from difficulty. As far as this Court is concerned and for that matter as far as the courts in India are concerned we have not

been referred to a parallel in any reported decision. We direct the parties to bear their respective costs.

A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required

by sub-s. (5) of S. 66 of the Indian income tax Act, 1922.