Mahesh Anantrai Pattani and Another Vs Commissioner of Income Tax, Bombay North, Ahmedabad

Court: Bombay High Court

Date of Decision: Oct. 6, 1958

Acts Referred: Income Tax Act, 1922 â€" Section 10, 66(1), 7, 7(1)

Citation: AIR 1959 Bom 454 : (1959) 61 BOMLR 386 : (1959) ILR (Bom) 1350 : (1959) 35 ITR 734

Hon'ble Judges: S.T. Desai, J; K.T. Desai, J

Bench: Division Bench

Advocate: R.J. Kolah and D. Dwarkadas, for the Appellant; G.N. Joshi and R.J. Joshi, for the Respondent

Judgement

S.T. Desai, J.
In this Reference u/s 66(1), the principal question that arises for our determination relates to the ambit and scope of Section

7(1) and Explanation 2 to the same prior to the amendment of the section by the Finance Act, 1955, and the question arises in the context of a

payment of Rupees five lacs made as a gift by the employer, the Maharaja of Bhavnagar, to the assessee who had been his Chief Dewan ""in

consideration of ..... having rendered loyal and meritorious services."" The section, relevant parts of which we shall presently set out, as is well-

established, was couched and also after it amendment in 1955 remains couched in the broadest possible terms. So stringent and embracing has

been the rule that even a purely voluntary payment of the nature of a gift or prize or reward when given by a quondam employer to his employee

has been regarded as falling within the very wide reach of the section if the object or consideration which moved the employer in making the

payment was of renumerating or recompensating past service. Within its compass, have been all employees, high and low. regardless of

nomenclature or designation.

2. In 1937 the Maharaja of Bhavnagar appointed the assessee Mr. Anantrai Prabhashankar Pattani as the Chief Dewan of his State. Mr. Pattani

continues to hold that office till January 1948 when responsible government was introduced in the State by the maharaja. At that time Mr. Pattani

was drawing a salary of Rs. 2000/- per month and enjoyed certain additional perquisites. ON 22-1-1948 the Maharaja passed an order

Ã¯Â¿Â½BjkcÃ¯Â¿Â½ By that order the Maharaja fixed a monthly pension for the retiring Chief Dewan at Rs. 2000/-. An extract of that order is as follows:

During our minority he (i.e. Chief Dewan) looked well after us and during the difficult times of the last World War and the after he has rendered

valuable service sincerely and conscientiously to us and our State with the result that the prosperity and reputation of the State have been enhanced

and the position of the State and its subjects has received increased estimation in India. In appreciation thereof, It is resolved to give him a monthly

pension of Rs. 2,000/- which is the monthly remuneration being paid to him.

It appears that for about two months thereafter Mr. Pattani continued to look after the management of the Bhavnagar State Bank without any

remuneration. On 31-5-1950 the Maharaja directed Messrs. Premchand Roychand and Sons, Bombay, with whom he had an account, to pay to

Mr. Pattani by cheque a sum of Rs. five lacs out of the amount lying to the credit of the Maharaja in that account. That payment was made to the

assessee on 12-6-1950. Then it appears that towards the close of the year i.e.e on 27-12-1950 the Maharaja passed an order Ã¯Â¿Â½BjkcÃ¯Â¿Â½,

which is very strongly relied upon by the Revenue in this case. It is as under:

In consideration of Shri Anantri P. Pattani the Ex-Diwan of our Bhavnagar State having rendered loyal and meritorious services Rs. 5,00,000/-

(Rs. five lacs) are given to him as gift. Therefore, it is ordered that the said amount should be debited to our Personal Expenses Account.

In Course of time, question arose during the assessment proceedings of Mr. Pattani for the assessment year 1951-52 whether this sum of Rs. five

lacks was a taxable receipt. At the request of the assessee, the Maharaja wrote the following letter to the assessee on 10.3-1953:

I confirm that in June 1950 I gave you a sum of rupees five lacs (Rs. 5,00,000/-) which was a gift as a token of my affection and regard for you

and your family. This amount was paid to you by Premchand Roychand and Sons according to my letter of 31-5-1950 from moneys in my

account with them.

The Income Tax Officer concluded that the amount of Rs. five lacs received by the assessee was a taxable receipt within the provisions of Section

7(1) read with Explanation 2 as it stood before its amendment by the Finance Act, 1955.

3. It will be convenient to set out the relevant part of that section at this stage, Section 7(1) ran as follows:

7(1). The tax shall be payable by an assessee under the head ""Salaries"" in respect of any salary or wages, any annuity, pension or gratuity, and

any fees, commissions, perquisites or profits in lieu of, or in addition to, any salary or wages, which are due to him from whether paid or not, or are

paid by or on behalf of .....any private employer.....Explanation 2: A payment due to or received by an assessee from an employer or former

employer or from a provident or other fund, is to the extent to the with it does not consist of contributions by the assessee or interest on such

contributions a profit received in lieu of salary for the purpose of this Sub-section, unless the payment is made solely as compensation for loss of

employment and not by way of remuneration for past services;.....

4. The Appellate Assistant Commissioner confirmed the order passed by the Income Tax Officer. The matter was carried by the assessee in

appeal to the Tribunal and the Tribunal dismissed the appeal. The Tribunal in its order laid stress on the order Ã¯Â¿Â½BjkcÃ¯Â¿Â½ of 27-12-1950. It was

not impressed and found it difficult to rely on the contents of the letter dated 10.-3-1953, written by the Maharaja to the assessee. The assessee

has now come before us on this Reference.

5. The question we are called upon to determine is:

Whether the sum of Rs. 5 lacs has been properly brought to tax in the year hands of the assessee for the assessment year 1951-52.

6. It is argued by Mr. Kolah, learned counsel for the assessee, that the Tribunal was in error when it discarded the contents of the Maharaja''s

letter dated 10-3-1953. It is not necessary for us to dwell on the matter of this letter at any length. This is what the Tribunal has said in its order

about this letter:

In due course, the question arose in the course of assessment proceedings relating to the assessment year 1951-52 whether the said sum of Rs. 5

lacs was a taxable receipt. In response to a request made by the assessee to the Maharaja (we were told that it was orally made) he wrote the

following letter to the assessee on 10-3-1953.

Then are quoted the contents of that letter which we have already stated. The Tribunal proceeds to state in its order:

We have already indicated the circumstances in which that letter came to be written and would merely observe that we find it difficult to bring

ourselves to believe in the contents of that letter and would leave the matter at that. We would attach more importance to the contemporaneous

document viz., the order dated 27-12-1950. It clearly mentions why the sum of Rs. 5 lacs was being paid to the assessee by the Maharaja.

The Tribunal found it difficult to bring itself to believe in the contents of that letter. We feel bound to bear that in mind and deem it unsafe to attach

weight of what the employer''s impressions or recollections were after more than two years of the order dated 27th December 1950, which is a

formal document and a writing made within a few months of the payment. The Tribunal has described the order as a contemporaneous document.

7. Then it is argued by Mr. Kolah, learned counsel for the assessee, that Explanation (2) to Section 7(1) does not apply to the case of person who

has ceased to be an employee when the payment was made. It is stressed that a payment of the nature before us cannot be regarded as made in

lieu of ""salaries"" within the meaning of the these words in Sub-section (1) of Section 7. the argument ran that once full salary is paid as in this case it

has been paid, the Explanation has no application. The argument stands repelled by the language of the Sub-section itself and of Explanation 2. The

section read with the Explanation plainly covers any payment received by the employee in addition to his stipulated salary, in addition to what was

due to him and what he was entitled to claim and any voluntary payment received by him, the object or purpose of which was to remunerate or

recompensate him for past services. Compensation for loss of employment stands on a different footing and we are not concerned here with that

aspect of the rule for which the Explanation made an express provisions by excluding from its purview any payment made solely as compensation

for loss of employment. In our opinion, Explanation 2 even before its amendment did apply to the case of remuneration for past services received

by an employee from his quondam employer.

8. Then the matter was put on a different ground. It was urged that on a proper reading of the writing of 27th December 1950, the dominant

intention of the Maharaja was to make a gift pure and simple to the assessee, who had been fully remunerated for loss of service and also for past

services by a full and generous pension equal to the amount of his salary which was Rs. 2000/- per month. The argument has been that this

payment of Rs. five lacs was a personal gift and was nothing different from a voluntary payment given by way of a present or testmonial.

9. Reference was by Mr. Kolah to certain decisions to which we shall immediately turn. In the first case cited MOORHOUSE (INSPECTOR OF

TAXES) Vs. DOOLAND., , the assessee was a cricket professional who had been employed under a contract made in 1949, between himself

and the East Lancashire Cricket Club upon the terms that he should be paid a salary and a certain sum for expenses and talent money. It was

further provided that ""collections shall be made for any meritorious performance by the professional with bat or ball in certain matches"" in

accordance with the rules for the time being of the Lancashire Cricket League. The assessee played in 25 matches in the cricket season of 1951

and on eleven occasions collections were made on his behalf under the Club"s rules and the total sum of Ã¯Â¿Â½48.15s. was collected. He was

assessed in that sum, the Crown claiming that it was subject to tax as being ""fees, wages, perquisites or profits arising from his employment. The

Court of Appeal considered the matter at some length and inter alia enunciated a test of liability to tax on a voluntary payment made to an

employee by the employer from the standpoint of the person who receive it. One of the considerations laid down by the Court of Appeal and on

which counsel for the assessee has relied upon before us is

if a voluntary payment is made in circumstances which show that it is given by way of present or testimonial on grounds personal to the recipient,

the proper conclusion is likely to be that the voluntary payment is not a profit accruing to the recipient by virtue of his office or employment but a

gift to him as an individual, paid and received by reason of his personal needs or by reason of his personal qualities.

Applying the principal enunciated in that case, the Court of Appeal held that the proceeds of the collections were by the terms of his contract of

employment received by the assessee as part of what he was to get by way of remuneration of reward and that the collections were liable to tax.

We are in respectful agreement with the principle laid down in that case.

10. The next case to which Mr. Kolah has drawn our attention is David Mitchell Vs. Commr. of Income Tax, West Bengal, . In that case the

assessee was an accountant by profession and a partner in a firm of chartered accountants. The promoters of a company engaged the services of

that firm to assist them in the flotation of the company and the assessee, as a partner in the firm, attended to that work. After the company was

floated and after charges for that work were fully paid to the firm for the service rendered by it, one of the promoters ""as a token of appreciation

for the assistance rendered to him by the assessee in connection with the floatation of the company made an unsolicited gift of 2500 shares in the

company"" to the assessee. It was held by the High Court of Calcutta that as the contract of service was with the firm and not with the assessee and

the assessee was not an employee of the promoters, the value of the shares could not be assessed u/s 7 as perquisites or profits received by the

assessee in lieu of or in addition to salary or wages. It was however, held on the facts of the case that the payment was not made in appreciation of

the personality or character of the assessee but in appreciation of the professional service rendered by the assessee and in order to give him an

extra profit over and above the share of the profit he may get from the firm, and the value of the shares was, therefore, assessable as the

assessee"s income u/s 10 of the Income Tax Act, One of the contentions in that case was that the receipt was of the nature of a casual and non-

recurring receipt. That contention also was dismissed by the Court.

11. Mr. Kolah has also drawn our attention to a decision of the House of Lords: Reed (inspector of Taxes) v. Seymour, (1927) 11 Tax Cas 625.

That case also related to the assessment of a professional cricketer, who was granted a benefit match by the Committee of a Cricket Club in the

exercise of their absolute discretion. The proceeds of the match, together with certain public subscription, were in vested in the names of the

Trustees of the Club and the income therefrom was paid to the beneficiary in accordance with the rules of the Club. Subsequently the investments

were realised and the process paid over to the beneficiary were applied with the approval of the Trustees in purchasing a farm. The assessee

cricketer was assessed in respect of the proceeds of the benefit match other than the public subscriptions. The order was discharged by the

General Commissioners on appeal and ultimately the matter was carried to the House of Lords. It was held that the award of the proceeds of the

benefit match to the cricket was not a profit accruing to him in respect of his office or employment, but was in the nature of a personal gift and not

assessable to Income Tax. Now, the case turned mainly on the meaning and effect of the rules of the Cricket Club. In the speeches of their

Lordships are to be found references to the case of Blakiston v. Cooper, 1909 AC 104, which has been frequently referred to in tax cases of

voluntary payments. The head-note of that case fairly states what was the pith of the decisions. It is there set forth that voluntary Easter offerings

given as free gits to the incumbent of a benefice as such for his personal use are, if given for the purpose of increasing his stipend, assessable to

Income Tax as profit accruing to him by reason of his office. In that case lord Loreburn observes:

Had it been a gift of an exceptional kind, such as a testimonial or a contribution for a specific purpose, as to provide for a holiday, or a

subscription peculiarly due to the personal qualities of the particular clergyman, it might not have been a voluntary payment for services, but a mere

present.:

That principle was acceptable to the majority of the Judges in the House of Lord in the case of(1927) 11 Tax cas 625 relied on by Mr. Kolah.

12. One more decision to which our attention has been drawn by Mr. Kolah is Beynon v. Throne (1929) 14 Tax Cas 1. That was a case of a

pension to a retiring director of a company. It was the company''s customs to give retiring employees voluntary pensions or allowances. In 1923

the Directors passes a resolution awarding the respondent-assessee during his retirement a pension of Ã¯Â¿Â½ 5000 a year. That resolution was

rescinded in 1925 and a final payment of Ã¯Â¿Â½ 5000 was voted to the respondent ''"not as or because he is a director but as a personal gift"''. An

examination of the decision shows that these express words in the resolution weighed with the Court when it reached the conclusion that it was not

a taxable receipt. Mr. Kolah has relied upon the following observations of Rowlatt J. in that case:

Now the question is whether this ceases to be a mere gift because what has led to it is a past employment, an employment which has ceased. It

has been made abundantly clear by the Court in Scotland in Duncan''s case that this sort of sums received by a person cannot possibly be put as

receipts from his office or in respect of his office or employment, and they said in terms of that Kind in a case like this that these emoluments

cannot be taxed under Schedule E, and I am bound to say I think that goes a very long way to conclude this case., ?But it is said that nevertheless

they are in respect of the employment. Well, it seems to me that is a complete fallacy. It is nothing but a gift moved by the remembrance of past

service already efficiently remunerated as services in themselves; it is merely a gift moved by that sort of gratitude or that sort of moral obligation if

you please; it is merely a gift of that kind. In this case it happens to be very large; in many cases it is very small but in all the cases it seems to me,

whether it is a large gift like this or whether it is a small git to a humble servant, they are exactly on the same footing as gifts which are made to a

child or gifts which are made to any other person whom the river thinks he ought to supply with funds for one reason or another; and as the Lord

President in Scotland points out it is only a matter of history that the feeling between the parties which has generated the fit arises out of an

employment.

Now, these observations have to be read in the light of the facts of the case before the learned Judge. The resolution of the directors in terms

stated that the sum was voted to the assessee ""not as or because he was a director but as a personal gift."" Of course, there had been the

relationship of an employer and an employee between the company and the retiring director and the element of remembrance of past services was

there, but it is difficult to see how it helps in the case before us where, as we shall presently discuss, there are express and explicit words recording

the purpose of object of the voluntary payment which go to negative contention.

13. The question of voluntary gifts in tax cases is a well-worn subject. The crux of the matter and the differentia to be applied is : is it a personal gift

given on personal grounds other than for services rendered or is it a remuneration? The matter is not to be viewed in segments or by segregating

some facts of the transaction from the whole of it. We have to examine the whole order Ã¯Â¿Â½BjkcÃ¯Â¿Â½ of 27th December, 1950, of course, in the

light of its background. It is a single question to be answered after all the relevant facts have been taken into account and particularly the express

intention f the employer when such intention is manifest. The transaction cannot be considered as it were a series of separate compartments. Now

this is precisely what Mr. Kolah in effect in asking us to do. Counsel lays all the stress possible on the word ""gift"" and none on the words ""in

consideration of ..... having rendered loyal and meritorious services"". The matter, after all is said, lies is a narrow compass. The principle is well-

defined and the difficulty, when it arises, is not in ascertaining the law, but its application to facts which are at times complex and sometimes vague

and inadequate. At times the statement of the case itself is bald and meagre. Such, however, is not the position in the case before us in which the

matter of the order Ã¯Â¿Â½BjkcÃ¯Â¿Â½ dated 27th December, 1950 does not leave the object of the voluntary payment described as a ""gift"" to the

gathered from implications of language used, or surrounding circumstances of mere inferences. We find no difficulty in applying the law to the facts

of this case. We have the explicit and express words of the employer which leave no doubt about the dominant intention of the Maharaja as to the

object and purpose of the payment. One case on the subject goes to this length that even where the employer for the purpose of assisting his

employee, whom he does in fact remunerate for his services, attempts to relieve his employee from his obligation to pay income tax by saying ""I do

not intend it to be a remuneration""; even so the receipt becomes a taxable receipt if on all the facts of the case the voluntary payment was

connected with and related to the factum of service or employment.

14. Mr. Joshi, learned counsel for the Revenue, has naturally relied very strongly on the initial words of the order of 17th December 1950. Counsel

stated that there are artificial conceptions evolved by the section and the Explanation. It is also said by Mr. Joshi that this payment to the assessee

cannot be regarded as a testimonial even when the matter is examined in the light of all the circumstances attending it. The argument has proceeded

that there is a contemporaneous writing to which full effect should be given by the Court. Mr. Kolah in the course of his argument had referred to

this order of 27th December 1950 as no more than a mere direction given by the Maharaja to his accountant. The writing does not contain mere

directions but is a formal document incorporated in an order in what is described as an Order Ã¯Â¿Â½BjkcÃ¯Â¿Â½ . It is also urged that the letter of 10th

March 1953 had no significance. We accept Mr. Joshi''s submission that letter must be disregarded.

15. It is not possible for us to regard this receipt by the assessee as a ""windfall"" nor is it possible to accept the contention of the assessee that it

was a personal gift of the nature of a testimonial. We are unable to equate the case of the assessee in principle with that of the beneficiare cricketer.

Here the gift was not made in appreciation of the personality or character of the assessee nor was in symbolical of appreciation of the personal

qualities of the assessee. Here a sum of money was given to recompensate or remunerate past services, which were obviously very highly

appreciated. It is not as if this voluntary payment was in any manner differentiated by any personal qualities of the assessee. The consideration for

the gift was in terms stated to be past services. The appreciation was of loyal and meritorious services. Therefore, even though we would be slow

in treating a mere gift by an employer to an employee as if it were remuneration for past services, when we do not know what motivated it, on the

facts of the case before us, we must reach the conclusion that the case falls within the ambit of the section. We do so not without some reluctance.

16. There remains for consideration the contentions of the assessee that this was a casual and non-recurring receipt and, therefore, not liable to tax.

Mr. Kolah rightly stated that if we take the view that the cas is hit by Section 7(1) read with Explanation 2, then there is little scope for this

contention, and that even a single voluntary payment, if it falls within the ambit of that section, the receipt would be liable to tax and cannot be

exempted from tax on the ground that it was merely a casual or non-recurring receipt. Once connection with the employment is established, there is

no question of considering the recurring or the causal nature of the receipt. This contention of the assessee must also fail.

17. Before we part with the matter, we may observe that the case before us has been argued by Mr. Kolah on the footing that the relationship of

an employer and employee subsisted between the Maharaja and the assessee. Before the Tribunal the first contention urged by Mr. Tricumdas,

who appeared for the assessee, was that the amount of Rs. 5 lacs was not received from the former employer inasmuch as the assessee was an

employee of the Bhavnagar State and not in the personal private employment of the Maharaja who made the payment of Rs. five lacs. The other

contention urged by Mr. Tricumdas before the Tribunal was that it was a completely voluntary payment made by the Maharaja out of his private

and personal property and was in the nature of a personal gift in token of affection and regard for the assessee and his family. The second

contention obviously rested substantially on the letter of 10th March 1953 addressed by the Maharaja to the assessee. In view of the facts

including the Order Ã¯Â¿Â½BjkcÃ¯Â¿Â½ dated 22nd January 1948 in which the Maharaja while granting pension to be assessee stated that the assessee

had rendered valuable services sincerely to the Maharaja and to the State it was difficult for Mr. Kolah to argue before us that the assessee could

not be regarded as in the employment of the Maharaja. But that is not all. The order dated 27th December 1950 in terms proceeds on the footing

that the Maharaja was the employer and the assessee was his employee. We do not think we would be in error in accepting for the purpose of this

case the equation or equivalence which the Maharaja established between himself and his State. It is not necessary to draw on one''s general

knowledge in this case because the writings dated 22nd January 1948 and 27th December, 1950 do show that the Maharaja regarded himself as

the State. Therefore, Mr. Kolah in our judgment very rightly did not seek to rely on that contention. IN fairness to Mr. Kolah, we must add that

the point has not been conceded by him.

18. Our answer to the question will be in the affirmative.

19. Assessee to pay the costs.

20. Answer in affirmative.