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**(1980) 01 RAJ CK 0049**

**In the Rajasthan High Court**

**Case No :** Civil Expenditure-tax Reference Case No. 4 of 1971

Commissioner of Expenditure Tax

APPELLANT

Vs

Rao Raja Vikram Singh

RESPONDENT

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**Date of Decision :** 07-01-1980

**Acts Referred:**

Expenditure Tax Act, 1987 — Section 3(1)

**Citation :** (1980) 123 ITR 190 : (1980) WLN 76

**Hon'ble Judges :** C.M. Lodha, C.J.; N.M. Kasliwal, J

**Bench :** Division Bench

**Advocate :** S.M. Mehta, for the Appellant; V.K. Singhal, for the Respondent

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## **Judgement**

C.M. Lodha, C.J.—This is a reference by the income tax Appellate Tribunal, Delhi Bench "C", under s. 25 of the Expenditure-tax Act, 1957 (which will hereinafter be referred to as "the Act"). The question of law referred to us reads as under:

Whether, on the facts and in the circumstances of the case, the assessee was entitled to exemption from expenditure-tax for the assessment year 1958-59 in view of the proviso to section 3(1) of the Expenditure-tax Act as it stood at the relevant time?

Before we proceed to narrate the facts giving rise to the reference, we may reproduce here, s. 3(1) of the Act which is relevant for the disposal of this reference.

3. (1) Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1958, a tax (hereinafter referred to as expenditure-tax) at the rate or rates specified in the Schedule in respect of the expenditure incurred by any individual or Hindu undivided family in the previous year:

Provided that no expenditure-tax shall be payable by an assessee for any assessment year if his income from all sources during the relevant previous year

as reduced by the amount of taxes to which such income may be liable under any other law for the time being in force does not exceed rupees thirty-six thousand.

2. The assessee's total income for the assessment year 1958-59 was determined for the purpose of income tax at Rs. 88,147 by the ITO, G-Ward, Jaipur, by his order dated October 30, 1958. This included an amount of Rs. 62,204 being the compensation received by the assessee for surrender of certain privileges regarding levy, collection of customs and excise duty on account of the resumption of his estate under the Land Reforms and Resumption of Jagirs Act, 1952. The income tax Tribunal before whom the assessee took the matter by its order dated April 26, 1965 (annex. B), deleted the amount of Rs. 62,204 from the assessee's income holding the receipt of the said amount as a capital receipt. The Tribunal's view was upheld by the High Court also in D. B. income tax Reference No. 1 of 1968 - COMMISSIONER OF Income Tax Vs. RAO RAJA KALYANSINGH., . Thus, the total income of the assessee was reduced by Rs. 62,204 leaving a balance of Rs. 25,943.

3. In the meantime, the Expenditure-tax Officer by his order dated April, 1959 (annex. C), held the assessee liable to expenditure-tax for the assessment year 1958-59, on the basis of the total income originally determined by the ITO. He determined the taxable expenditure at Rs. 2,30,467. The AAC of Expenditure-tax, by his order dated August 1, 1962 (annex. D), confirmed the order of the Expenditure-tax Officer, with a slight modification. He reduced the assessable expenditure by Rs. 9,005. The assessee then filed an appeal before the Tribunal, which by its order dated April 7, 1970 (annex. E), allowed the appeal and set aside the expenditure-tax assessed by the assessing authority. The Commissioner of Expenditure-tax made an application to the Tribunal to refer to this court the question of law arising out of the order of the Tribunal dated April 7, 1970, and the Tribunal allowed the application and has made this reference.

4. The learned counsel for the Commissioner has urged that the income determined for the purpose of income tax cannot form the basis for the purposes of assessment of expenditure-tax under the Act. We are, how-ever, unable to accept this contention. The proviso to s. 3(1) of the Act clearly lays down that no expenditure-tax shall be payable by an assessee if his income from all sources during the relevant previous year as reduced by the amount of tax to which such income may be liable to tax under any other law, for the time being in force, does not exceed Rs. 36,000. The income referred to in the proviso undoubtedly refers to the income determined in the income tax proceedings. The term "income" has nowhere been defined. As to the question : what is "income", we cannot do better than that as quoted in the following passage from the judgment of the Privy Council reported as AIR 1932 138 (Privy Council)

The object of the Indian Act is to tax "income", a term which it does not define. It is expanded, no doubt, into "income, profits and gains" but the expansion is more a matter of words than of substance. Income, their Lordships think, in this

Act, connotes a periodical monetary return "coming in" with some sort of regularity, or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something, which is often loosely spoken of as "capital". But capital, though possibly the source in the case of income from securities, is in most cases hardly more than an element in the process of production.

Consequently, we have to say what is the income of the assessee for the relevant assessment year. In other words, the question is whether the amount of Rs. 62,204 awarded to the assessee on account of compensation for resumption of his right to collect customs and excise duty, can be considered as his income. It may be pointed out that in the reference arising out of the Tribunal's order in connection with income tax it was held by this court that the sum of Rs. 62,204 was a capital receipt not liable to tax and that the said amount of Rs. 62,204 had been rightly deleted from the assessable income of the assessee. Thus, there is no room for the argument that the amount of Rs. 62,204 awarded to the assessee by way of compensation on account of the surrender of his right to levy and collect customs and excise duty should be considered as income. If this amount of Rs. 62,204 is deleted the assessee's income would be below Rs. 36,000 for the relevant year. In this view of the matter, the proviso would have clear application to the assessee's case and the assessee would not be liable to pay expenditure-tax for the relevant assessment year. Hence, we return the answer to the question in the affirmative in favour of the assessee, but make no order as to costs.