
(1995) 02 RAJ CK 0021

In the Rajasthan High Court

Case No : Income Tax Reference No. 48 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Abdul Gani Gurdeji

RESPONDENT

Date of Decision : 23-02-1995

Acts Referred:

Income Tax Act, 1961 — Section 263

Citation : (1995) 02 RAJ CK 0021

Hon'ble Judges : Y.R. Meena, J;V.K. Singhal, J

Bench : Division Bench

Advocate : G.S. Bafna, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated January 31, 1984, in respect of the assessment, year 1979-80 u/s 256(1) of the Income Tax Act :

" Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the sum of Rs. 1,05,000 received by the assessee from Shri Abu Sufian under a gift deed dated June 22, 1978, was not taxable as the assessee's income from his profession/vocation ?"

2. The brief facts of the case are that the assessee is Khadim at the Dargah of Khwaja Moinuddin Chisti, Ajmer, and derives income by exercise of such profession. He received a sum of Rs. 1,05,000 on June 19, 1978, from a non-resident pilgrim, Abu Sufian, who was coming to the Dargah for a number of years. The assessment for the year 1979-80 was completed by the Income Tax Officer on June 16, 1982, and the amount of Rs. 1,05,000 was considered as a gift out of natural love and affection for which a gift deed dated June 22, 1978, was executed, The Commissioner of Income Tax exercised the power u/s 263 of the Income Tax Act and cancelled the assessment order and was of the opinion that the payment has been camouflaged as a gift out of natural love and affection. The real nature of the offerings or present to the Khadim is receipt by

the assessee on account of his Khadim profession. It was also found that Abu Sufian was visiting the Dargah since 1966 to pay obeisance at the Dargah and the Jiyarat through Khadim assessee. The services which were rendered by the assessee to Abu Sufian from time to time were considered .to be the cause on account of which the payment is made. According to the assessee, Abu Sufian has given an interview to the Hindu Islamic Magazine "Phukaru" where he stated that a bad debt due to the grace of Allah was recovered and he decided to serve Khadim Abdul Gani Maullim (assessee) by presenting this amount of Rs. 1,05,000, The Commissioner of Income Tax was also of the view that there was nothing existing so far as natural love and affection between the assessee and Abu Sufian is concerned and the only relationship was of profession which the assessee has exercised. The order of the Commissioner of Income Tax was challenged before the Income Tax Appellate Tribunal where it was stated that the assessee rendered petty services to the pilgrims in that he looks after the pilgrims who come to Ajmer to pay obeisance and lead them to the Dargah where they pay obeisance and for these services no one could have paid the amount of Rs. 1,05,000 which is nothing but a gift considering the personal qualities of the assessee and the payment was voluntary. The Tribunal came to the conclusion that it is a case of voluntary payment made to the assessee for his personal qualities and as a mark of the high esteem and regard in which the assessee was held by the donor. It was further observed that there is not an iota of evidence to link the impugned payment with the routine and ordinary services rendered by the assessee as Khadim to the donor.

3. The submission of Mr. Bafna, learned standing counsel on behalf of the Revenue, is that the donation was linked only with the service rendered by the assessee as Khadim of the Dargah and in view of the decision of the apex court in Dr K. George Thomas Vs. Commissioner of Income Tax , Kerala, the receipt cannot be considered to be casual and non-recurring. It is a taxable receipt arising from the carrying on of a profession. In that case, the assessee was carrying on the vocation of practising against atheism and in the course of such vocation and for the purpose of the same, received the amount in question as donation for the furtherance of the objects of his vocation. In these circumstances, it was held by the apex court that there was a link between the activities of the appellant and the payments received by him and the link was close enough. The receipts arose to the assessee from the carrying on of his vocation and they were not casual and non-recurring receipts and were taxable.

4. The decision in Father Epharam Vs. Commissioner of Income Tax, is also relied on wherein the amounts were received for performing masses or to have the masses performed by other priests and the assessee was not required under the arrangement to pay the amount to the priest, the receipts were held traceable to the vocation or occupation of the assessee as priest and were assessable as income. It was observed that voluntary or gratuitous payments which are connected, linked or referable or traceable to the office, vocation or occupation are income. From the standpoint of the person receiving the payments, it

accrues to him by virtue of his office, position, though there was no legal obligation on the part of the persons remitting or paying the money to do so.

5. We have considered the arguments of learned counsel for the Revenue. In order to constitute the receipt as income, it is necessary for the Revenue to establish the link between the receipt and the service rendered, i.e., rendering of service was causa causans of the receipt. In *MOORHOUSE (INSPECTOR OF TAXES) Vs. DOOLAND.*, the following principles were deduced on the basis of a number of decisions (at page 104) :

" (i) The test of liability to tax on a voluntary payment made to the holder of an office or employment is whether, from the standpoint of the person who receives it, it accrues to him by virtue of his office or employment, or in other words by way of remuneration for his services.

(ii) If the recipient's contract of employment entitles him to receive the voluntary payment, whatever it may amount to, that is a ground, and I should say a strong ground, for holding that, from the standpoint of the recipient, it does accrue to him by virtue of his employment, or in other words, by way of remuneration for his services.

(iii) The fact that the voluntary payment is of a periodic or recurrent character affords a further, but I should say a less cogent, ground for the same conclusion.

(iv) On the other hand, a voluntary payment may be made in circumstances which show that it is given by way of present or testimonial on grounds personal to the recipient, as, for example, a collection made for the particular individual who is at the time vicar of a given parish because he is in straitened circumstances, or a benefit held for a professional cricketer in recognition of his long and successful career in first class cricket. In such cases 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 in the former example and by reason of his personal qualities or attainments in the latter example."

6. In *P. Krishna Menon Vs. The Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore*, the apex court has considered the nature of receipt by a teacher of Vedanta who received an amount from his disciples and came to the conclusion that the teaching of Vedanta by the assessee was the carrying on of a vocation by him and that the imparting of the teaching was the causa causans of the making of the gift. It was further observed that in order that an activity might be called a vocation, it was not necessary to show that it was an organised activity and that it was indulged in with a motive of making profits ; it was well established that it is not the motive of a person doing an act which decides whether the act done by him was the carrying on of a business, profession or vocation; and if any business, profession or vocation in fact produced an income, that was taxable income, and was none the less so because

it was carried on without the motive of producing an income. The decision of *Blakiston v. Cooper* [1909] AC 104 was also taken into consideration wherein it was observed as under (at page 108) :

" It was suggested that the offerings were made as personal gifts to the vicar as a mark of esteem and respect. Such reasons no doubt played their part in obtaining and increasing the amount of the offerings, but I cannot doubt that they were given to the vicar as vicar and that they formed part of the profits accruing by reason of his office."

7. It was also observed that one must not forget that these are the cases of voluntary payments and the question of payment of teaching receipt in terms of money is not very material. If the first payment was to be paid for teaching received, it was to be paid by way of gift. In this case it was found that the payment to the appellant had not been made in consideration of the teaching imparted. It appears to us that it was because of the teaching that the gift was made. It is true that he made the gift. The imparting of the teaching was considered *causa causans* of the making of the gift and it was not merely a *causa sine qua non*.

8. In *Dilip Kumar Roy Vs. Commissioner of Income Tax, Poona*, it was observed as under (at pages 4, 5) :

" Having regard to the provisions of Section 10 of the Act it cannot be disputed that it is only the receipts arising out of profits or gains of business, profession or vocation that can be subjected to tax under that section, but if it is a personal gift for personal qualities of the assessee and as a token of personal esteem it cannot be subjected to tax. It is well settled that by Sections 3 and 4 of the Act, the Act imposes a general liability to tax upon all income, but the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision.

Whenever an amount is paid as a personal gift for the personal qualities of the assessee and as a token of personal esteem and veneration it cannot be subjected to tax as income arising out of business, profession or vocation u/s 10 of the Act."

9. In the case of *David Mitchell Vs. Commr. of Income Tax, West Bengal*, it was observed by the Calcutta High Court as under (at page 715) :

" The test to be applied in such cases has been variously stated. In the well-known case of *Cooper v. Blakiston* [1908] 5 TC 347 which is popularly known as the Easter Offerings case and which is regarded as the root authority on the subject. Lord Loreburn, L.C., made the following statement of the law :

"Where a sum of money is given to an incumbent substantially in respect of his services as incumbent, it accrues to him by reason of his office 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". "

10. The evidence which has come on record is that the assessee was performing his duties as Khadim and this is his profession and it is not in dispute. The point which arises for consideration is as to whether the payment by Abu Sufian of Rs. 1,05,000 was a gift to him out of natural love and affection or was in respect of the service rendered by the assessee as Khadim or was connected in any manner with such service. It has come on record that Abu Sufian was coming from outside to the Dargah since 1966 and the assessee was rendering services as Khadim. The Tribunal has proceeded on the basis that such a huge amount had never been paid on any other occasion. We are afraid, the view which the Tribunal has taken that payments have not been made in the past or not been paid on other occasions, will not change the nature of the character of the receipt. It is also not necessary that persons who were given the amount should be benefited by any of the qualities of the assessee by rendering of service as Khadim which has not been denied. Even a voluntary payment which is given to a priest for his personal qualities or high esteem in relation to the service rendered would only increase the amount and would not take it out of the scope of the income. The payment was voluntary and in view of the principles which have been laid down by the apex court in the case of P. Krishna Menon Vs. The Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore, it has to be seen whether the income has arisen from the profession or vocation which the assessee was carrying on as Khadim. The link of the service rendered by the assessee as Khadim and the payment made has to be seen from the circumstance as to whether it could be falling within the definition of gift which is alleged to be given out of affection and love or it was in respect of the service performed by the assessee. In the press release on which the reliance has been placed by the Income Tax Appellate Tribunal, the amount has been stated to have been given out of the spiritual command of Khwaja Saheb and not for any service rendered by the assessee for carrying the Abu Sufian to the Dargah of Khwaja Moinuddin Chisti of which the assessee was Khadim. The circumstance that it was given on account of realisation of the bad debt which had been written off and was realised because of the blessings of Khwaja Saheb shows the faith of the person in Khwaja Saheb. The amount, which has been received by the assessee was not directly related to the exercise of the profession/vocation but was incidentally connected with the profession as Khadim carried on by him.

11. The finding which the Tribunal has recorded in this case is that it is not a case where the donor was benefited from any preaching or discourse or any special service of the assessee, but it is a case where the donor on his own noticed some supernatural power in the assessee and being influenced by that he decided to earmark the pounds equivalent to the amount for making the payment to the assessee. It was observed that it is a clear case of voluntary payment made to the assessee for his personal qualities or as a mark of the high

esteem and regard in which the assessee was held by the donor. There is not an iota of evidence to link the impugned payment with the routine and ordinary services rendered by the assessee as Khadim to the donor. The finding which has been recorded is one of fact and has not been challenged. It was open to the Revenue even to challenge the finding which has been recorded by the Tribunal on any ground including that they are perverse. No such steps were taken to challenge the finding of fact recorded by the Tribunal. It has nowhere been established that the gift had any relation with the service rendered. It may be the basis of acquittance but cannot be considered as having any link or reference, traceable to the vocation which the assessee was performing as Khadim.

12. In these circumstances, we are of the view that the Tribunal was justified in holding that the sum of Rs. 1,05,000 received by the assessee from Abu Sufian under gift deed dated June 22, 1978, was not taxable as the assessee's income from his profession/vocation.

13. The reference is answered in favour of the assessee and against the Revenue. No order as to costs.