

(2001) 08 MAD CK 0073

In the Madras High Court

Case No : T.C. No. 807 of 1983 (Reference No. 415 of 1983)

Commissioner of Income Tax

APPELLANT

Vs

K.A. Narayan

RESPONDENT

Date of Decision : 20-08-2001

Acts Referred:

Income Tax Act, 1961 — Section 10(10A), 17(3), 2, 4(3), 7(1)

Citation : (2002) 254 ITR 683

Hon'ble Judges : R. Jayasimha Babu, J; C. Nagappan, J

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant; None, for the Respondent

Judgement

C. Nagappan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question of law, arising out

of its order for the assessment year 1974-75, for our consideration :

Whether, on the facts and circumstances of the case, the Tribunal was correct in law in holding that the sum of Rs. 1,32,765 is not taxable but

exempt under the Income Tax Act, 1961 ?

2. The assessee is a retired employee of Burma Shell Petroleum Company Ltd. having served that company in then Malaya. He retired from

service on June 1, 1961, and was entitled to receive pension from Shell Malaya Staff Pension Fund. In the assessment made for 1974-75, for

which the previous year ended on March 31, 1974, the Income Tax Officer included in the assessee's total income two sums, namely, (i) Rs.

6,502 representing pension, and (ii) Rs. 1,32,765 representing commutation of retirement benefits received from Burma Shell Oil Storage and

Distribution Company of India Ltd., both of which were claimed by the assessee

as not being chargeable to tax. The appeal by the assessee before the Appellate Assistant Commissioner having failed, the assessee went up in further appeal before the Tribunal. The Tribunal rejected the claim of the assessee with regard to pension of Rs. 6,502 and at the same time upheld the claim of the assessee for exclusion of the sum of Rs. 1,32,765 from the assessee's total income for the year. The present reference has been brought before us at the instance of the Revenue.

3. According to a letter from the company, dated July 17, 1973, and addressed to the assessee, he was informed that the Shell Malaya Staff

Pension Fund would be dissolved following the introduction of a new retirement scheme effective from May 1, 1973, and the assessee, as a

pensioner, is allowed to commute 100 per cent, of his monthly pension entitlement if he so desired and if he did not choose to commute the

pension payment, there was a proposal by the trustees of the fund to transfer sufficient funds to cover his pension liabilities. The assessee chose to

commute and he received an amount of Rs. 1,32,765 in India. The assessee thus surrendered his right to the monthly pensionary benefit for a

consideration of lumpsum payment.

4. The lumpsum payment of pension to the assessee was in consideration of the service that had been rendered by him and arose from the contract

of employment. The fact that the lumpsum payment was made in consideration of the assessee forgoing his right to claim the monthly pensionary

benefit, to which he was entitled under the previous agreement, does not make any difference to the true character of the receipt. The fact that the

assessee had rendered his service abroad, does not in the facts before us make any difference to the taxability of the amount received by the

assessee in India. Admittedly, the assessee is resident in India and the monies were disbursed to him in India by the Burma Shell Oil Storage and

Distribution Company of India Ltd.

5. In this context, the decision of a Division Bench of this court in B.R. Sundaram (Decd.) (by Lrs.) Vs. Commissioner of Income Tax, , is

relevant. In that case, the assessee, who was a resident at Madras, was a pensioner of the Malaysian Government and the pension was paid by the

Accountant General, Madras, in Indian currency in pursuance of an arrangement entered into between the Government of India and the

Government of Malaysia as a result of which the Government of India was credited with-dollars by the Malaysian Government. The assessee's

claim in that case was that the pension was not taxable in India as it had been received in Malaysia and hence it could not be assessed on accrual

basis by applying Section 5(l)(c). The claim was negated by the Department as also by the Tribunal and the Tribunal's decision was upheld by

this court on a reference. The relevant portion of that judgment is extracted below (page 962) :

Counsel appearing on behalf of the assessee contended before us that the pension having been received in Malaysia, it could not be assessed on

accrual basis by applying Section 5(l)(c) of the Act. We are unable to accept this submission. As regards a resident, tax will be attracted as soon

as the ingredients of Section 5(l)(c) are satisfied. There was a vague suggestion that the pension had not accrued at all. But this suggestion also we

are unable to accept. The pension had accrued. In fact, it was further submitted that it had been received. Receipt normally follows accrual.

Income, generally speaking, must accrue first. In other words, right to receive must exist before the actual receipt takes place. The latter is only the

consequence of the former. The pension was, therefore, liable to Income Tax under the Income Tax Act, 1961.

6. In the present case, the amount had accrued and it had been received by the assessee and hence it is includible in his total income.

7. The Tribunal has concluded that a lumpsum received in commutation of pension cannot be described as pension but it is a capital receipt and it

relied on the commentary on the Law of Income Tax by A.C. Sampath Iyengar, 1981 edition. The Tribunal has failed to take note of the fact that

to effect a change in the law, in the repealed 1922 Act Clause (v) of Section 4(3) was omitted and two new provisions Clause (6C) to Section 2

and Explanation 2 to Section 7(1) introduced to bring to tax commutation of pension as income. That position continued under the 1961 Act till

Clause (10A) was introduced and Section 17(3)(ii) was suitably amended in 1965.

8. Thus, though commutation of pension received in lumpsum was earlier considered as a capital receipt and not revenue and accordingly was not

chargeable, after the change in the law from the year 1939 till 1965 commuted pension was included in the total income of the employee. For the

assessment year 1974-75, in view of Clause (10A) only a portion of the lumpsum payment is treated as taxable income. The Tribunal was not

correct in law in holding that the entire receipt is not taxable. The commuted pension of Rs. 1,32,765 is taxable subject to the provision of Section

10(10A)(iib) of the Income Tax Act, 1961.

9. Accordingly, we answer the question of law referred to us in the negative and in favour of the Revenue. However, there will be no order as to

costs.