(1998) 04 MAD CK 0192

In the Madras High Court

Case No : Tax Cases No''s. 308 to 311 of 1989 (Reference No''s. 169 to 172 of 1989)

J.R. Daniel APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 22-04-1998

Acts Referred:
Income Tax Act, 1961 — Section 15

Citation : (2001) 248 ITR 174

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for Subbaraya Iyer, for the Appellant; C.V. Rajan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question of law referred to us at the instance of the assessee is regarding the taxability of the assessee''s income. The question has arisen out of the order of the Tribunal in relation to the assessment made against the assessee under the Income Tax Act for the assessment years 1978-79 to 1981-82. The question referred is as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amounts of Rs. 28,347, Rs. 33,890, Rs. 41,629 and Rs. 45,821 received by the assessee from the British Government for the assessment years 1978-79 to 1981-82 were taxable in his hands as salary ?"

2. The relevant facts as set out in the statement of the case are ; The assessee received from the British Government sum of Rs. 28,347, Rs. 33,890, Rs. 41,629 and Rs. 45,281 as pension for the assessment years 1978-79 to 1981-82. He was an employee of the Somali Government from April 10, 1926, until April 8, 1950. From April 9, 1950, he was an employee of the Aden Government until his retirement on August 24, 1956. During the time when the assessee was in service, Somaliland and Aden (Yeman) were under the colonial rule of the British Government. During 1963 and in 1968 Somaliland and Aden were free from the

colonial rule of the British Government and came under the rule of their own independent Governments. The assessee was an employee of the then British Government and when these countries became independent the obligation of the British Government to pay salaries and pensions to the employees naturally devolved on the respective local Governments. An agreement is stated to have been reached between the Somali Government and Her Majesty''s Government in 1961 to the effect that payment of pensions to the retired employees should be made by the Crown agents on behalf of the Somali Government from a special account set up with them by the Somali Government and that account would be funded by the payment into it of an appropriate part of the grant-in-aid that Her Majesty''s Government had agreed to make to the Somali Government. When the Somali Republic broke off diplomatic relations with the British Government and requested that payment of grant-in-aid should cease, Her Majesty''s Government asked them as to what arrangements they proposed to make to meet the pension liability. No reply has been received. The crown agents in the meantime had been instructed by the Somali Ministry of Finance not to make any further pension payments from the Somali Republic Funds and no other arrangements appear to have been made for these payments. In view of this position and in the absence of any other arrangements made for payment of pensions to the erstwhile Government servants of the British Crown, the British Government considered that the pensioners concerned should continue to receive the sums to which they are entitled to without interruption. For this purpose, they proposed to make ex-gratia loan advances recoverable solely from arrears of pension when the arrears are eventually paid. Thus, the pensioners were assured of the continuous payment of their pensions as if the Somali authorities had paid the pensions. An undertaking was obtained from those pensioners by the British Government to the effect that as and when the Somali Government makes arrangements to pay the pensions, such amounts would be adjusted towards the amount which the British Government had paid to them. It was also understood that if the Somali Government does not make any pension payments nothing is payable by such pensioners to the British Government. Thus, as far as the pensioners are concerned, they received full amounts due to them from the British Government as the Somali Government had abdicated their responsibility. The letter of the Crown agents for Overseas Governments and Administration, London, dated October 30, 1968, addressed to the assessee also indicates that in the case of residents of the U. K. these payments were treated as liable to the United Kingdom Income Tax, which would have been payable if the pensions were being paid in the United Kingdom. From time to time, the pension is being revised by the British Government by issuing revised pension supplements. During these four years under consideration the assessee received certain amounts from the Crown agents for Overseas Governments and Administration of the British Governments towards his pension which the Income Tax Officer included in the assessee''s total income as pension received by the assessee on account of services rendered by him to the Somali and Aden Governments.

3. The assessee''s contention that no Income Tax is payable on the amounts so received has been rejected uniformly by the Income Tax Officer, the Commissioner as also by the Appellate Tribunal.

4. It is not in dispute that the amounts were received by the assessee in India ; that he is resident in India and that the amount received by him were paid to him by the British Government in consideration of the services rendered by him to the British Government when it was the colonial power. The pension was at all times paid by the British Government. Even after the independence of Somaliland the pension was to be paid by the Crown agents of the British Government on behalf of the Somali Government and the funds required for such payment were also to come from the British Government. The Somali Government, in fact, had, assumed no liability at all for payment of pension as the amount for payment of such pension was to come from the British Government by way of grant in-aid.

5. The British Government by continuing to pay the pension and even revising the same upward from time to time, though describing it as an advance against pension, merely put an end to the pretence that the Somali Government was paying the pension. The source of funds required for paying the pension was at all times the British Government. The payment to the pensioners continued even after the British Government stopped giving grant-in-aid for that purpose to the Somali Government. The payments were made after the refusal of the Somali Government''s refusal to receive aid, directly by the British Government to the pensioners. The euphemism of "advance" was adopted but the real character of the payment was revealed by stating" that such advance would only be recoverable from pension if and when paid by the Somali Government--a wholly unlikely event. In the hands of the recipients the amounts received were only towards pension that had become payable for the services rendered by them over a long period to the British Government.

6. The amount received as pension is to be regarded as salary for the purpose of tax. The Tribunal has treated it as such and has directed the Income Tax Officer to allow the standard deduction on the amount received by the assessee as pension. We are in agreement with the directions so given by the Tribunal.

7. The real character of the payment received by the assessee being pension, the question referred to us for our consideration has necessarily to be and is answered in the affirmative, in favour of the Revenue and against the assessee. Having regard to the case, there shall be no order as to costs.