

(1966) 09 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 14/C of 1961

PRINCESS RUBY RAJIBER KAUR

APPELLANT

Vs

COMMISSIONER OF Income Tax, PUNJAB.

RESPONDENT

Date of Decision : 16-09-1966

Acts Referred:

Constitution of India, 1950 — Article 295

Citation : (1967) 1 ILR (P&H) 921 : (1967) 64 ITR 624

Hon'ble Judges : S. B. Capoor, J;H. R. Khanna, J

Bench : Full Bench

Judgement

H. R. KHANNA J. - The following question has been referred u/s 66 (1) of the Income Tax Act, 1922 (herein after referred to as the Act), for decision to this court by the Income Tax Appellate Tribunal, Delhi :

"Whether the amount of Rs. 10,000 received as annual allowance by the assessee during the previous year relevant for the assessment year 1954-55 was revenue income liable to tax under the Indian Income Tax Act ?"

The case relates to the assessment year 1954-55. The assessee, Princess Ruby Rajiber Kaur Grewal, is the daughter of the late Maharaja of Jind. Her marriage was celebrated some time in 1943. According to the long-standing custom prevailing in Jind State, she was given an annual allowance of Rs. 12,000 in lieu of dowry. After the merger of Jind State in the Pepsu Union, the payment year after year according to the practice prevailing in the Jind State. The matter went to the Government of India and on 11th November, 1949, the Government of India sent a letter to the Government of Pepsu, the relevant part of which reads as under :

"I am directed to state that the Government of India have carefully considered the views put forward in paragraph 1 of your letter. They are of opinion that all allowances sanctioned by competent authorities in the covenanting State before the date of merger should continued except where it is established to be

unreasonable excessive. The recommendation of Pepsu Government that the allowances to the married sisters should be totally discontinued is not right. In some States, these allowances had been made in lieu of dowry and in any case they should be honoured as a commitment of the old Rulers. The Government of India have accordingly accepted the Pepsu Governments recommendations subject to the following modifications :

1. Malerkotla :-

2. Jind :-

(a).....

(b) The allowance to the married sister of H. H. the Maharaja of Jind should be continued at Rs. 10,000 per annum each with the effect from 1st November, 1949. The arrears should be paid at the old rates."

On receipt of the above letter, the arrears were duly paid by the Pepsu Government to the assessee. In 1950, the payment of the allowance was again stopped by the Pepsu government. Shri. V. Vishvanathan, Joint Secretary to the Government of India, then sent the following letter dated 25th November, 1953, to the Chief Secretary to the Government of Pepsu :

"I am directed to refer to the correspondence resting with Shri P. S. Rais D. O. letter No. 215/A DV 53/4166 dated the 21st October, 1953, and to say that after further careful examination of the case, the Government of India are satisfied that, (a) there was a custom in Jind State of granting annual allowances to the married daughters and sisters of the Ruler in lieu of dowry, and that (b) the allowances of Rs. 10,000 per annum granted to Maharaj Kumari Ruby Rajiber Maharaj Kumari Diamond Balbir Rajinder Kaur were allowances of the nature. They are, therefore, of the view that these allowances should be restored with effect from the date on which they were stopped in 1950. I am to request that the formal orders of the State government authorizing the restoration of these allowances and the payment of the arrears may be passed as soon as possible, as the two Maharaj Kumari Kaur have already been put to great Hardship due to the stop page of these allowances."

On receipt of that letter the arrears amounting to Rs. 47,600 were paid by the Pepsu Government to the assessee. The Income Tax Officer held that the whole payment was revenue income and as such was liable to tax. He, accordingly, subject the above amount to tax in the hands of the assessee as per order dated 10th July, 1957. On appeal the Appellate Assistant Commissioner as per order dated 17th March, 1958, affirmed the order of the Income Tax Officer. The assessee then preferred a second appeal to the Income Tax Appellate and also filed a revision to the commissioner of Income Tax. The Commissioner directed the Income Tax Officer to allocate the amount of arrears over the years to which the amount related. He accordingly, held that Rs. 10,000 only were liable to be considered in the assessment year in question. The issue which the Tribunal had,

therefore, to decide was whether the amount of Rs. 10,000 was revenue income of the assessee liable to tax under the Income Tax Act. The contention advanced on behalf of the assessee was that the amount was not liable to tax because the same had been paid in lieu of dowry and was, therefore, capital receipt and not revenue receipt. According to the assessee, the payment of the dowry was by way of gift and was a voluntary payment and the periodical payment were like the wasting of a capital asset which gradually diminished. The Tribunal as per order dated 27th September, 1960 rejected the assessee contention and held that the amount of Rs. 10,000 was revenue income liable to tax under the Act. The Tribunal also held that the payment of dowry by way of annual allowance was a source of income which was liable to tax. Further according to the Tribunal, the directions contained in the letter of the Pepsu Government were themselves a source from which the assessee could be said to have received the payment year after year, and the receipt could not be treated as of a casual and non-recurring nature. On an application filed by the assessee, the Tribunal referred the question mentioned above to this court for decision.

While dealing with laws relating to Income Tax one has always to draw a distinction between income which is revenue receipt and other receipt of a capital nature which is described as capital receipt. In a great many cases the matter affords no difficulty but in a number of other cases, especially those on the border line, the question is best with considerable difficulty. In the case of Commissioner of Income Tax v. South India Pictures Ltd., their Lordships of the Supreme Court endorsed the following observations of Lord Macmillan in *Vanden Berghs Limited v. Clark* :

"... that though in general the distinction between as income and a capital receipt was well recognized and easily applied, cases did arise where the item lay on the borderline and the problem had to be solved on the particular facts of each case. No infallible criterion or test can be or has been laid down and the decided cases are only helpful in that they indicate the kind of consideration which may relevantly be borne in mind in approaching the problem. The character of the payment received may vary according to the circumstances. Thus the amount received as consideration for the sale of a plot of land may ordinarily be a capital receipt but if the business of the recipient is to buy and sell lands, it may well be his income."

In the case of Commissioner of Income Tax v. Shaw Wallace & Co., their Lordships of the Judicial Committee referred to the word "income" and said that it connoted a periodical monetary return coming it with some sort of regularity or expected regularity from definite sources. The source may not necessarily be 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 wind fall. Income was thus likened pictorially to the fruit of a tree or the crop of a field. In the case of Gopal Saran Narain Singh v. Commissioner of Income Tax, Lord Russell of Killowen, speaking for the Judicial Committee, remarked that

anything which can properly exempted. In the later case of Raja Bahadur Kamakshya Narain Singh v. Commissioner of Income Tax, a discordant note was struck by Lord Wright. With reference to the observations in the earlier case of Shaw Wallace & Co., Lord Wright, speaking for the Board observed that it was not in their Lordships opinion correct to regard as an essential element in any of these or like definitions a reference to the analogy of fruit or increase or sowing or reaping of periodical harvests and that such picturesque similes could not be used to limit the true character of income in general. Lord Wright further observed :

"Its applicability may, in particular cases, differ because the circumstances though similar in some respect may be different in others. This the profit realised on a sale of shares may be capital if the sellers is an ordinary investor changing his securities, but in some instances at any rate it may be income if the seller of the shares is an investments or an insurance company. Income is not necessarily the recurrent return from a definite source, though it is generally of that character. Income again may consist of a series of separate receipts as it generally does in the case of professional earning. The multiplicity of forms which income may assume is beyond remuneration. Generally however, the mere fact that the income flows from some capital assets, of which the simplest illustration is the purchase of an annuity for a lump sum, does not prevent it from being income, though in some analogous cases the true view may be that the payment though spread over a period, are not income but instalments payable at specified future dates of a purchase price."

On behalf of the assessee in the present case, reliance has been placed, as was done on behalf of the assessee before the Tribunal upon the decision of a Full Bench of the Allahabad High Court in the case of Rani Amrit Kumar v. Commissioner of Income Tax. The assessee in that case was the wife of the Ruler of the Kalsia State and the sister of the Maharaja of Nabha State. She was residing at Dehra Dun in British India for some years with her sons and daughters. In the assessment year she reduced a sum of Rs. 14,744 from the Kalsia State and Rs. 8,910 from the Nabha State. It was found that similar payments had been made to the assessee of varying amounts in each of the years she had lived at Dehra Dun, and that they represented allocation for her benefit made in the relative State Budes. In the case of payments from the Kalsia State, they were made for the purpose of meeting the assessee household and living expenses and the education of her children, and in the case of the allowances from Nabha State, they were made as an annual "wardrobe" allowance, and as presents on certain days of festival each year. She was not bound to account for the moneys. It was held that the allowances received by the assessee from the Kalsia State were remittances from her husband and were taxable as income which must be deemed to have accrued to the assessee in British India and the question whether the remittances received by her were casual and non-recurring did not arise. It was further held that as there was no evidence in the case to show that the payment made by the Nabha State were

attributable to any custom, usage or traditional obligation and there was consequently no origin for the payment which could amount in its nature to a definite source so as to render each payment "income" and not merely a casual or annual wind fall these payment were not "income" and were not assessable to Income Tax. Reference has also been made on behalf of the assessee by her learned counsel, Mr. Nehra, to a Bench decision of the Bombay High Court in H. H. Maharani Shri Vijaykuverba Saheb of Morvi v. Commissioner of Income Tax. In that case the assessee, who was the Maharaja of Morvi, abdicated his gadi in favour of his son in January, 1948. From April, 1949, onwards, his son paid him a monthly allowance. The allowance was not paid under any custom or usage. The allowance could not be regarded as maintenance allowance as the assessee possessed a large fortune. It was held that as the payment were commenced long after the Ruler had abdicated, they were not made under a legal or contractual obligation. It was further observed that as the allowances were not also made under a custom or usage or as a maintenance allowance, they were not assessable.

It would be noticed that in both of the above cases, an expenses finding was given that the payment which were made to the assessee in those cases, were not attributable to any custom. In the present case, however, the letters of the Government of India dated 11th November 1949, and 25th November, 1953, relevant parts of which have been reproduced above, clearly indicate that the Government of India while directing the payment of the amounts in question was influenced by the consideration of the existence of a custom to pay such allowances. As such I fail to understand as to how the above-mentioned two authorities can be of any assistance to the assessee.

Mr. Nehra on behalf of the assessee, however, contends that even though there as no proof of custom alleged in those cases, while there was proof of custom in the present case, the learned judges in the above two cited cases were of the view that custom must be of a binding nature. Could the assessee have compelled the payment of the amounts by action in a court of law ? If the answer to this question according to Mr. Nehra is in the negative, the custom should be held to have no binding force. In this receipt, I am of the view that it is not necessary for this court to express an opinion on the point as to whether the assessee in the present case could have maintained the suit for recovery of the amounts in question basing her claim on custom before the issue of the letters dated 11th November, 1949, and 25th November, 1953, sent by the government of India. The important thing in the present case is that in issuing the direction was influenced by the existence of such a custom and it accordingly took the stand that there was a commitment which should be honoured. It is distinctly stated in these communication by the Government of India that there was a custom in Jind State of granting annual allowances to the married daughters and sisters of the ruler in lieu of dowry and that it created a commitment of the old Rulers which should be honoured. The fact that the government of India referred to the commitment shows that the government accepted the position that the

custom was of a binding nature, and the commitment, which had its origin in the custom, should be honoured. It may be stated that the Appellate order dated 17th March, 1958, of the Assistant Commissioner shows that the assessee herself put before the Income Tax Officer evidence about a notice recorded by Sir Ganga Kaula on 16th February, 1953, explaining the origin of her allowance. The note reads as under :

"4. From a time long before this Maharaj Kumari marriage it was the invariable practice in the Jind State to make the customary marriage settlement of girls of the ruling family in the shape of a pensioner allowance for life, such as was done in this case.

5. This was a well-established and well-known custom. The reasons for it were obvious. The state possess no vast properties or other revenue-yielding resources which could be utilised for making a marriage settlement, such as a dowry the dictionary meaning of the word dowry being a gift the estate a woman brings to her husband in marriage.

6. The State possessed no such assets at its free disposal as could be given away as a gift worthy of the dignity of a ruling family or of her husband family.

8. Thus it grew up and was consistently maintained, the previous Rulers practice of submitting for a proper dowry a life allowance as the only valuable gift which the girls of the ruling family took with them to the husbands family in addition to the usual wearing apparel, jewellery, cash, presents, etc....

10. This is what happened in this case when Maharaj Kumari Ruby Rajibber Kaur was married in April, 1945. A substantial dowry was out of question, and a life allowance was given to her to cover the deficiency....

12. The statement made above are, however, true within my knowledge and belief, acquired during the 8 years of my service in the State as Chief Minister (1963-64) and 3 years intimate connection thereafter as honorary special adviser of the Maharaja."

It would follow from the above the assessee herself relied on the evidence according to which there was a well-established and well-known custom of making what was described in the evidence as "a customary marriage settlement to girls of the ruling family in the shape of pensionary allowance for life."

Apart from the above, I find that the question about the maintainability of a suit for the recovery of the amount sought to be taxed was considered in the case of Rani Amrit Kunwar and it was observed by Braund J. ...

"I can find nothing in the Indian Income Tax Act, warrant any general conclusion that it is only in a case in which, if the payment is discontinued, the recipient will have an immediate right of action against the payer, that it will be income in his hands in the Indian Income Tax sense that is to put too limited a construction on the word income. If the payment are such as to come within the category of

payment which are casual and non-recurring, then it is to be observed that the Act itself has taken them out of the category of income. The very facts that the framers of the Indian Income Tax Act found it necessary by a special clause to exempt casual and non-recurring receipts from the category of income, profits and gains itself in my opinion, an indication that, but for that exemption, they are to be regarded as capable of falling within the class of income, profits or gains under the charging section. If it is to be assumed that *ex hypothesi* a casual and non-recurring payment could never be income, then as I see it the statutory exception of it would be otiose and unnecessary."

Argument has then been advanced that the Government of India reduced the amount of allowance of the assessee from Rs. 12,000 to Rs. 10,000 and this fact indicates that the custom, according to which the payments used to be made to the assessee was not of a binding nature. There is no force in this contention. The facts that the Government of India reduced the amount of the allowance from Rs. 12,000 to 10,000 would not go to show that the Government of India did not recognise the binding nature of the custom. A reduction on the other hand, shows that though the Government recognised the existence of the custom paying the allowance it reduced the amount because in its opinion, it was somewhat excessive.

According to the section 4 of the Act, the total income of a person includes all income, profits and gains from whatever source derived. The section thus shows that except in cases for which special provision has been made and with which we are not concerned at present, the receipt, in order to be taxable has to be in the shape of the income, profit and gains and that it must be emanate from a definite source. So far as the assessee in the present case is concerned, she has her recurring income in the form of allowance, because the Government was of the view that there was a custom to pay such allowances and it created a commitment of the old Rulers which should be honoured. The direction of the government of India was thus based upon the custom and the commitment flowing from it.

Another case to which reference has been made on behalf of the assessee in *Mahesh Anantrai Pattani v. Commissioner of Income Tax*. In that case, in January, 1948, the Maharaja of Bhavnagar state granted a monthly pension of Rs. 2,000 to the assessee who was the Dewan of the Maharaja. In March, 1948, Bhavnagar State was merged in the United State of Saurashtra. In June, 1950 the Maharaja paid a sum of rupees five lakhs from his personal account to the assessee. In 1953, at the requested of the assessee, the Maharaja of Bhavnagar wrote in his letter that the transfer was a gift as a token of his affection and regard for the assessment and his family. In December, 1950, however, on his accountant asking the Maharaja made an order that the sum was given to the assess as a gift in consideration of his having rendered loyal and meritorious services and should be debited to his personal expenses account. It was held by the majority that the sum of rupees five lakhs was not paid to the assessee in

token of appreciation for the services already rendered by him as a Dewan of Bhavnagar State but as a personal gift for his personal qualities and as a token of personal esteem and was not liable to tax. Reliance in this connection was placed upon the English case, *Beynon v. Thorpe*. The facts in that English case were that the assessee resigned his position as a managing director of the company; did no work for the company; did not attend any board meeting and received no remuneration as a director of the company; it was, however, a custom of the company to give to its retiring employees, voluntary pension or allowance and the company voted a pension of Pounds 5,000 a year to the assessee, but this resolution was rescinded and by another resolution Pounds 5,000 was voted to the assessee "not as or because he is a director but as a personal gift". The question, which came up for decision, was whether, the payment made to the assessee were income assessable to Income Tax in the hands of the assessee. The question was answered in the negative. *Rowlatta J.*, while dealing with the argument that the payment had been made out in respect of the employing observed :

"But it is said that nevertheless they are in respect of the employment. We it seems to me that is a complete fallacy. It is nothing but a gift moved by remembrance of past services 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".

It will be noticed that, in both the above cases of the Dewan of Bhavnagar and the managing director of the company, the payment were made in lump sum and were not of a recurring nature and the court on a consideration of the facts of these cases took the payment as a kind of personal gifts. The payments of allowance in the present case is of a recurring nature and it cannot be said that the Government of India, while making the order for the payment of such allowance, was actuated by any consideration of gratitude or personal gift for the assessee.

Reference has also been made on behalf of the assessee to the case of *Stedeford v. Beloe*. In that case, the warden and council of Bradfield College, acting under powers conferred on them by the college statutes, granted the respondents an annual pension of Pounds 500 from the date of his resignation of the office of headmaster of the college. The status empowered the warden and counsel to apply certain moneys to "such purposes as in their absolute discretion they might deemed to be for the benefit of the college, including the payment of any pension or retiring allowance to any person who might have held the office of the headmaster", but laid upon them no obligation to pay, or to continue payment of such a pension. It was held that the pension was not assessable to Income Tax. *Lord Hanworth M. R.*, while dealing with the matter in appeal, observed :

"We have got here a case in which the main was not entitled to receive any pension. He did not fall within any scheme of pensions; he had no claim at all to received any money, and it was not paid to him because he remained a

schoolmaster. It was paid to him because of service that he had previously rendered, but also it was not paid to him because such a payment falling due after the completion of his term of office was a part of the contract under which he rendered the services. It is not a case, as there have been cases, in which the contract of service contemplated that even when the service were terminated or the office vacated there still would be a right to receive some sum."

The matter was then taken to the House of Lords and their Lordships, in upholding the decision of the courts below, laid stress on the fact that the grant of pension was a purely voluntary act. The above-cited case was considered in the Full Bench case of *Rani Amrit Kunwar* and it was observed by Braund J. :

"To take the case in *Stedeford v. Beloe* in the House of Lords referred to above an annual pension had been granted to a headmaster of Bradfield College on his retirement and it was held that such a pension was not chargeable to Income Tax under Schedule B of the English Income Tax Act. The question therefore was whether the pension in question was such a profit or gain as arose or accrued to the retired headmaster from an office, employment or pension. It was held that it was not, because something which was merely voluntary could never be a profit or gain derived from an employment. But Viscount Dunedin, the course of his speech, said :

.... It has been held again and again that a mere voluntary gift is not such a profit because it is not, in the true sense of the word, income. It is merely a casual payment which depends upon somebody else's goodwill.

It is true that the learned Law Lord there described a mere voluntary gift as not being, in the true sense of the word, income; but it has to be remembered that he was speaking in reference to the English Income Tax Act and not in reference to the Indian Income Tax Act. In short the English Income Tax Act by its charging provisions has taxed only those particular types of income which can be brought within the various schedules, whereas the Indian Income Tax has charged whatever is income, profits and gains on the proper construction of those expressions. It would in my view, be going altogether too far, on the strength of those words of Viscount Dunedin in the *Bradfield* case taken out of their context, to say that nothing whatever can be charged as income under the Indian Income Tax Act. It has not an origin in some obligation to pay."

With due respect, I express my concurrence with the above observations. A note of caution in relying upon the English Tax cases was also struck by the Judicial Committee in the case of *Shaw Wallace and Company*, and by the Supreme Court in the case of *Commissioner of Income Tax v. Vazir Sultan and Sons*. It was observed in the last mentioned case :

"While considering the case law, it is necessary to bear in mind that the Indian Income Tax Act is not *in pari materia* with the British Income Tax statutes; it is less elaborate in many ways subject to fewer refinements and in arrangements and language it differs greatly from the provisions with which the courts in

England have had to deal. Little held can, therefore, be gained by attempting to constitute the Indian Income Tax in the light of decisions bearing upon the meaning of the Income Tax legislation in England. But on analogous provisions fundamental concepts and general principles unaffected by the specialists of the English Income Tax Statutes, English authorities may be useful guides."

I may also observe that the law laid down in the cases of *Stedeford v. Beloe* and *Beynon v. Thorpe* is no longer good law and in England in view of the change made by the Income Tax Act of 1952, as is clear from the observations on page 322 of Halsbury's Laws of England third edition volume 20.

Reference lastly has been made on behalf of the assessee to the case of *Her Highness Maharani Kesarkunverba Saheb of Morvi v. Commissioner of Income Tax*. The appellant in that case was receiving from the Morvi State *jawai* (maintenance allowance) since 1922. By a resolution dated September 26, 1947, an asset by her husband, then Ruler of Morvi it was resolved that a sum of Rs. 5,000 per month be paid to her in the same manner as before. On February 25, 1948, the new ruler the son of the appellant passed a resolution granting a village to the appellee and in accordance with a tradition running in the family from ancient times, in order that she may maintain her status and dignity, and a formal grant was made on March 16. On March 20, the Morvi State became a part of the Saurashtra Union. The Government of Saurashtra refused to continue the maintenance allowance or to recognise the grant of the village. After some representations and an exchange of letter in which the appellant insisted on ground of sentiment and dignity, on her continuing to have the village, the Government of Saurashtra passed a resolution, on March 30, 1950, whereby the grant of the village was resumed and in lieu thereof a cash annuity of Rs. 35,807, was to be paid. The appellant was also granted *jawai* of Rs. 24,193 per annum. The Appellate Tribunal held that the cash annuity of Rs. 35,807, which was given to the appellant in lieu of the village, was received by her as maintenance allocated and fell within the exemption under paragraph 15 (1) (i) of the Part B States (Taxation Concessions) Order, 1950, as to why the village was granted to her for the purpose of maintaining her status and reputation a mother of the Ruler i.e., for the maintenance. On a reference the Bombay High Court held that the sum of Rs. 35,807 was given in lieu of the village and not by way of maintenance, and, therefore, was not exempt under paragraph 15 (1) (ii). On appeal to the Supreme Court it was held by their Lordships that the grant of the village was as much by way of maintenance as was the cash allowance called *Jawai*, and that the sum of Rs. 35,807 was exempt from taxation under paragraph 15 (1) (ii) of the Part B state (Taxation concessions) Order, 1950. It would appear from the observations on page 287 of that case that the controversy centered on the point as to whether the grant was by way of maintenance or not. Their Lordships of the Supreme Court took the view that the grant was by way of maintenance and as such was exempt from taxation under paragraph 15 (1) (i) of the Part B States (Taxation Concessions) Order, 1950. Their arises, however, no consideration in the present case as to whether the

allowance granted to the petitioner was by way of maintenance and as such was exempt from taxation under paragraph 15 (1) (i) of the Part B States (Taxation Concession) Order, 1950, because the assessee admittedly is not governed by such an order. There is also no other special provision analogous to Part B case can seek protection. Apart from that, I am of the view that if under the general law of Income Tax as enacted in the at of 1922, the annuity which had been granted to the mother of the Ruler was not assessable to tax, there could be no occasion or necessity for the assessee to seek the protection of the Part B States (Taxation Concessions) Order, 1950. The fact that the assessee sought the protection of that Order, in my opinion, clearly shows that it was taken for granted that under the general law of Income Tax as given of Income Tax Act of the 1922, the income was liable to tax.

Reference has also been made to the provisions of clause (vii) of sub-section (3) of section 4 of the Act according to which receipts which are of a casual and non-recurring nature, shall not be included in the total income of the person receiving them The assessee however can get no benefit from the above provision because the payment of the allowance in this case is neither casual nor of a non-recurring nature.

I may observe that Mr. Hardy on behalf of the revenue has relied upon article 295 of the Constitution in order to show that the above liability was accepted before the coming into force of the Constitution by the Union of India. It is however not necessary to go into this aspect of the matter in view of my observations made earlier.

After giving the matter my earnest consideration I am of the view that the amount of Rs. 10,000 received as annual allowance by the assessee during the assessment year in question, was revenue income liable to tax under the Indian Income Tax Act, and that the question referred to this court should be answered in the affirmative I order accordingly. The parties in the circumstances of the case, should bear their own costs.

S. B. CAPOOR J. - I agree.

Question answered in the affirmative.