

(1950) 05 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous Case No. 209 of 1944

Shamnath Mushran

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-05-1950

Acts Referred:

Income Tax Act, 1922 — Section 4, 4A

Citation : AIR 1950 All 612 : (1950) 20 AWR 578 : (1950) 18 ITR 840

Hon'ble Judges : Malik, C.J.;V. Bhargava, J

Bench : Division Bench

Advocate : R.N. Gurtu, for the Appellant; S.C. Das, for the Respondent

Judgement

Malik, C.J.—The question referred to us is as follows :

"Whether the visits of the assessee on the facts of the case could, on the correct interpretation of the words "otherwise than on an occasional or casual visit" that find a place in S. 4A (a) (iii), be legally regarded as otherwise than occasional or casual."

2. The assessee was an Assistant Solicitor employed in the Legislative Department of the Government of India. He was appointed the Legal Remembrancer of the Bikaner State on 14th September 1933. In the assessment year 1939-40 he was treated for purposes of assessment as a resident of British India. In the year 1940-41 it was held, however that he was a nonresident. In the year 1941-42 the question arose whether the assessee was or was not a resident of British India.

3. The relevant provision of the Income Tax Act, Section 4 (A) (a) (iii), is as follows :

"For the purposes of this Act any individual is resident in British India in any year if he having within the four years preceding that year been in British India for a period of or for periods amounting in all to three hundred and sixty-five days or

more, is in British India for any time in that year otherwise than on an occasional or casual visit."

In October 1940, on his way from Solan to Bikaner the assessee broke his journey for one day at Delhi. This was held by the Department to be a casual visit and we are no longer concerned with this visit. In October 1940, the assessee had come to Allahabad for three days to meet his friends and relations and had proceeded to Lucknow where also he had stayed for three days. In the Christmas of 1940 the assessee had to come to Lucknow for his eye-treatment and stayed there for a period of four days. It is these ten days that have to be considered in deciding the question whether these visits were "occasional" or "casual" visits.

4. No cases have been cited before us by either party. The appellate Tribunal has used the word "intentional" as opposed to "casual". We do not think that a casual visit necessarily means an unintentional visit. In Murray's Oxford Dictionary, the word "casual" when relating to persons or their actions is said to mean "not depended on: uncertain; unmethodical; haphazard; happy-go-lucky." It would appear from this that a "casual visit" means a visit which cannot be defined as a regular visit which occurs with any fixed regularity or at uncertain intervals. As regards the word "occasional" it would ordinarily mean "on an occasion", that is, "on the happening of a certain event". The word has been defined in the same dictionary as meaning "that happens or arises casually or incidentally; casual. Happening or operating on some particular occasion; limited to specific occasions; arising out of, required by, or made for, the occasion." The idea behind both these words is that the assessee should not have visited British India in connection with his regular pursuit or, as has been put by the Tribunal, "in connection with his regular plan of life". Occasional or casual visits mean visits which are not regular, which take place at uncertain intervals and not for a specific or certain object connected with the assessee's regular plan of life. As we have already said the word "casual" visit means more or less a chance visit or an accidental or unforeseen visit. The word "occasional" implies that there is no regularity behind it--a visit connected with particular occasion that might have arisen without any plan or scheme behind it.

5. Coming back now to these visits, learned counsel for the Department has said that the visits to Allahabad and Lucknow in October 1940 would not be casual but might be occasional. The two words more or less overlap, although there is a shade of difference in their meaning. The word "occasional" has in it an implication of multiplicity, but what is casual may also be occasional. We do not see why the visits in October 1940 to Allahabad and Lucknow for the purposes of meeting the relations and friends of the assessee could not be deemed to be either casual or occasional. Similarly, the visit to Lucknow during the Christmas week for eye-treatment was a casual or occasional visit as it was limited to a specific occasion that had arisen by reason of the eye trouble.

6. We are of the opinion that the visits in October 1940 and in Christmas 1940

were occasional or casual visits and that is our answer to the question formulated by the Tribunal.

7. The assessee is entitled to his costs which we assess at Rs. 200/-.