

EMIL WEBBER

v.

COMMISSIONER OF INCOME TAX, V AND M, NAGPUR

FEBRUARY 19, 1993

[B.P. JEEVAN REDDY AND N. VENKATACHALA, JJ.]

Income Tax Act, 1961 : Sections 2(24), 14, 17, 56, 195—'Income'—Meaning of—Amount paid by way of tax on the salary amount of assessee on his behalf—Whether assessee's Income—Whether taxable under the heading "other sources".

Ballarpur, a public limited company undertook to set up a caustic soda/chlorine manufacturing plant. It entered into an agreement with a French concern for purchase of certain machinery and equipment.

In another agreement with Ballarpur, the French concern agreed to provide services of certain personnel and Ballarpur agreed to pay salaries and other emoluments free of any Indian tax or duty to the personnel.

The French concern entered into an arrangement with a Swiss concern for supply of certain machinery and to make available services of certain personnel.

The assessee-appellant was one such person. He came to India and started working in connection with the setting up of the plant.

In addition to daily allowances and other facilities, the assessee-appellant was paid Rs. 3,82,481 and Rs. 67,200 for the assessment years, 1974-75 and 1975-76, respectively.

Before the Income Tax Officer, the assessee contended that he was not liable to pay tax. The I.T.O. did not agree. Ballarpur paid the tax amount of Rs. 3,23,400 and Rs. 35,546 for the assessment years respectively.

The Income Tax Officer treated the tax amount paid by Ballarpur as a perquisite and added the same to the salary amount of the assessee.

The assessee questioned the action of the I.T.O. in appeal before the A.A.C., which was dismissed.

A The appeal filed before the Tribunal was also dismissed, whereupon the assessee obtained a reference to be answered by the High Court.

B The High Court answered the reference, "whether on the facts and in the circumstances of the case the amount of tax paid by Ballarpur on behalf of the assessee in assessment years 1974-75 and 1975-76 is income taxable under the heading 'other sources'," against the assessee.

C Hence these appeals by the assessee contending that the amount paid by way of tax could not be treated as 'Income' of assessee; that as the assessee did not receive the said amount from Ballarpur, it could not constitute his income.

Dismissing the appeals, this Court,

D HELD: 1.01. The definition of 'Income' in clause (24) of Section 2 of the Act is an inclusive definition. It adds several artificial categories to the concept of income but on that account the expression 'income' does not lose its natural connotation. It is repeatedly said that it is difficult to define the expression 'income' in precise terms. Anything which can properly be described as income is taxable under the Act unless, of course, it is exempted under one or the other provision of the Act. [31D]

E 1.02. The amount paid by Ballarpur by way of tax on the salary amount received by the assessee can be treated as the income of the assessee. The said amount is nothing but a tax upon the salary received by the assessee. By virtue of the obligation undertaken by Ballarpur to pay tax on the salary received by the assessee among others, it paid the said tax. The said payment is, therefore, for and on behalf of the assessee. It is not a gratuitous payment. But for the said agreement and but for the said payment, the said tax amount would have been liable to be paid by the assessee himself. He could not have received the salary which he did but for the said payment of tax. The obligation placed upon Ballarpur by virtue of Section 195 of the Income Tax Act cannot also be ignored in this context.

G It would be unrealistic to say that the said payment had no integral connection with the salary received by the assessee. [31E-G]

H 1.03. Inasmuch as the assessee is not an employee of Ballarpur, which made the payment, it cannot be brought within the purview of Section 17 of the Act. It must necessarily be placed under sub-section (1)

of Section 56, 'income from other sources'. According to the said sub-section, income of every kind which is not to be excluded from the total income under the Act shall be chargeable to income tax under the head 'income from other sources', if it is not chargeable to income tax under any of the other heads specified in Section 14, Items A to E. [32A-B] A

N.A. Modi v. S.A.L. Narayana Rao, 61 ITR 428 SC; *C.I.T., Bombay v. Smt. T.P. Sidhwa*, 133 ITR 840 and *Mrs. Sheela Kaushish v. C.I.T. Delhi* 131 ITR 435 SC, distinguished. B

CIVIL APPELLATE JURIDICITION: Civil Appeal Nos. 3115-16 of 1980. C

From the Judgment and Order dated 15.6.1978 of the Bombay High Court in I.T. Ref. No. 458 of 1976.

V.U. Eradi and Suman J. Khaitan for Khaitan & Co. for the Appellant. D

S. Rajappa for Ms. A. Subhashini for the Respondent.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Assessee is the appellant. He is aggrieved by the decision of the Bombay High Court in Income Tax Reference No. 458 of 1976 answering the following question, which was referred to it at his instance, against him: "whether on the facts and in the circumstances of the case the amount of tax paid by Ballarpur on behalf the assessee in assessment years 1974-75 and 1975-76 is income taxable under the heading 'other sources'". E F

The Ballarpur Paper and Straw Board Mills Limited (Ballarpur) is a public limited company engaged in the manufacture of paper and straw board. It undertook to set up a caustic soda/chlorine manufacturing plant at Ballarpur. For this purpose, it entered into an agreement with Krebs, a French concern, for purchase of certain machinery and equipment. There was a second agreement between Ballarpur and Krebs whereunder Krebs undertook to provide services of certain personnel including engineers for setting up the plant at Ballarpur. Krebs, in turn, entered into an arrangement with a Swiss concern, Escher Wyas Eurich, for supply of certain machinery and also to make available services of certain personnel. The H

A assessee, Emil Webler, was one such person provided by the Swiss concern The assessee came to India and worked here in connection with the setting up of the plant.

B According to the agreement between Ballarpur and Krebs the former undertook to pay salaries and other emoluments to personnel provided by Krebs in accordance with the formula contained in the agreement. *Inter alia*, it was provided that "salaries are understood free of any Indian tax or duty". For the assessment year 1974-75, the assessee-appellant was paid a sum of Rs. 3,82,481 and for the assessment year 1975-76, a sum of Rs. 67,200 in addition to daily allowances and other facilities.

C The assessee contended before the Income Tax Officer that he was not liable to pay tax. He also filed returns affirming the said stand. The stand taken by him was negatived, whereupon Ballarpur paid the tax of Rs. 3,23,400 and Rs. 35,546 for the said two assessment years respectively. In his assessment orders, the I.T.O. treated the said tax amount as a perquisite and added the same to the salary amount received by the assessee. The said addition was questioned by the assessee in appeal, before the A.A.C. but without success. The matter was then carried to the Tribunal. The Tribunal too did not agree with the assessee's contention and dismissed his appeal whereupon he obtained the aforesaid reference which, as stated above, has been answered against him by the Bombay High Court.

F For a proper appreciation of the question arising herein, it is necessary to notice certain factual statements contained in the Statement of the Case. It is stated therein: "according to this agreement, Ballarpur were under an obligation to pay by the device of delegation invoices opened with a bank in France certain amount of salaries at agreed rates to Krebs and Cis. Paris for setting up the plant at the town of Ballapur..... The Tribunal clarified that there was no dispute between the parties that the amounts of Rs. 3,82,481 and Rs. 67,200 paid by Ballarpur through Krebs to the assessee for services rendered by it in the two respective years were taxable under the heading 'Salary'. It further clarified that there was no dispute between the parties, that the relationship of the employer and employee did not exist between Ballarpur and the assessee. The Tribunal held as below: (1) Ballarpur was under a legal obligation to pay the tax, if any, levied on the assessee; (2) Ballarpur paid the tax by virtue of such a legal obligation....."

The facts found by the Tribunal thus show that the assessee-appellant was paid certain salary free of tax but that the tax payable in that behalf was to be and was in fact paid by Ballarpur. The assessment was made upon the assessee directly. The question is whether the said tax component paid by Ballarpur can be included within the income of the assessee. The first contention of the learned counsel for the assessee is that the amount paid by Ballarpur by way of tax cannot be treated as 'income' of assessee at all. His second contention is that the assessee did not receive the said amount and, therefore, it cannot constitute his income. Indeed, the learned counsel sought to argue that Ballarpur was under no obligation to pay the said tax amount relating to the salary amount received by the assessee. We find it difficult to agree with the learned counsel.

The definition of 'income' in clause (24) of Section 2 of the Act is an inclusive definition. It adds several artificial categories to the concept of income but on that account the expression 'income' does not lose its natural connotation. Indeed, it is repeatedly said that it is difficult to define the expression 'income' in precise terms. Anything which can properly be described as income is taxable under the Act unless, of course, it is exempted under one or the other provision of the Act. It is from the said angle that we have to examine whether the amount paid by Ballarpur by way of tax on the salary amount received by the assessee can be treated as the income of the assessee. It cannot be overlooked that the said amount is nothing but a tax upon the salary received by the assessee. By virtue of the obligation undertaken by Ballarpur to pay tax on the salary received by the assessee among others, it paid the said tax. The said payment is, therefore, for and on behalf of the assessee. It is not a gratuitous payment. But for the said agreement and but for the said payment, the said tax amount would have been liable to be paid by the assessee himself. He could not have received the salary which he did but for the said payment of tax. The obligation placed upon Ballarpur by virtue of Section 195 of the Income Tax Act cannot also be ignored in this context. It would be unrealistic to say that the said payment had no integral connection with the salary received by the assessee. We are, therefore, of the opinion that the High Court and the authorities under the Act were right in holding that the said tax amount is liable to be included in the income of the assessee during the said two assessment years.

The question then arises under which head of income should the said

A income be placed. Inasmuch as the assessee is not an employee of Ballarpur, which made the payment, it cannot be brought within the purview of Section 17 of the Act. It must necessarily be placed under sub-section (1) of Section 56, 'income from other sources'. According to the said sub-section, income of every kind which is not to be included from the total income under the Act shall be chargeable to income tax under the head

B 'income from other sources', if it is not chargeable to income tax under any of the other heads specified in Section 14, Items A to E. It is not the case of the assessee that any provision of the Act exempts the said income from the liability to tax.

C The learned counsel for the assessee-appellant relied upon certain decisions in support of his contention. The first is the decision of this court in *N.A. Modi v. S.A.L. Narayana Rao*, 61 ITR 428 SC. An advocate was appointed as a Judge. He received certain income after his appointment as a Judge in lieu of the professional service rendered by him before his appointment. The question was whether the said amount is taxable. It was held that it was not (in view of the provisions of the Act as it then stood). The basis for the said decision is that the assessee therein cannot be said to be carrying on the profession of an advocate at the time he received the said income. We are unable to see how the said decision helps the assessee herein. Indeed, in the said decision this court emphasised that the question

E whether an income falls under one head or the other has to be decided according to the common notion of practical men, inasmuch as the Act does not provide any guidance in the matter. It was observed that the heads of income must be decided on the nature of income by applying practical common notions and not by reference to the assessee's treatment of income. The application of said test does not certainly help the assessee

F herein.

The second decision cited is of the Bombay High Court in *C.I.T. Bombay v. Smt. T.P. Sidhwa*, 133 ITR 840. The question was whether the income from property received by an assessee of which he is not the owner

G can be taxed as 'income' from other 'sources'. It was held that it cannot be so taxed. We do not see any analogy between the facts and principle of that case and those of this case. Here the integral connection between the salary received by the assessee and the tax payable thereon, paid by Ballarpur in pursuance of a legal obligation, cannot be overlooked. The

H third case cited is in *Mrs. Sheela Kaushish v. C.I.T., Delhi*, 131 I.T.R. 435

S.C. In this case, it was held that determination of annual value under Section 23 of the Income Tax Act, 1961 should be done by taking the standard rent as the basis even where the assessee is receiving rent higher than the standard rent. Again we must say, we see no relevance of the said principle of this case to the facts of this case. A

For the above reasons, the appeals fail and are dismissed. No costs. B

V.P.R.

Appeals dismissed.