

Commissioner Of Income Tax, Assam ... vs Shri G. Hyatt on 21 January, 1971

Equivalent citations: 1971 AIR 725, 1971 SCR (3) 438, AIR 1971 SUPREME COURT 725, 1971 TAX. L. R. 193

Author: K.S. Hegde

Bench: K.S. Hegde, J.C. Shah, A.N. Grover

PETITIONER:
COMMISSIONER OF INCOME TAX, ASSAM ANDNAGALAND ETC.

Vs.

RESPONDENT:
SHRI G. HYATT

DATE OF JUDGMENT21/01/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SHAH, J.C. (CJ)
GROVER, A.N.

CITATION:
1971 AIR 725 1971 SCR (3) 438
1971 SCC (1) 466
CITATOR INFO :
R 1972 SC 149 (227)

ACT:
Income-tax Act 1961, ss. 17 and 560-Contribution to
unrecognised provident fund-Interest thereon-Whether taxable
under s. 56.

HEADNOTE:

On the question whether an amount representing the interest on the amount of the assessee's own contributions to an unrecognised provident fund was assessable under the residuary s. 56 of the Income-tax Act, 1961,
HELD : The amount was liable to be assessed.
The receipt of an interest of any investment is a gain made by the investor and therefore the same is 'income'.

In view of s. 17 (1) (iv), all receipts of profits in lieu of salary have to be considered as salary. In defining the expression 'profits in lieu of salary', the legislature excluded from the scope of that expression any payments received by the assessee from a provident fund, his own contribution,; to the fund or any interest on such contributions. Therefore this receipt cannot be considered as salary, though undoubtedly that is an income. As the income in question is not salary and the same cannot be said to be either interest on the securities; income from house property, profits and gains of business of profession or capital gains, it has to be considered as 'income from other sources' and brought to tax under s. 56 . Section 56(1) provides that income of every kind which is not to be excluded from the total income under the Act shall be chargeable to Incometax under any of the heads specified in s.; 14 item "A" to "E". [43 9 C-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1174 of 1967. Appeal from the judgment and order dated August 22, 1966 of the Assam & Nagaland High Court in income-tax Reference No. 3 of 1966.

Jagadish Swarup, Solicitor-General, G. C. Sharma, R. N. Sachthey and B. D. Sharma, for the appellant. T. A. Ramachandran, for the respondent.

The Judgment of the Court was delivered by Hegde, J. The Commissioner of Income-tax, Assam and Nagaland has brought these appeal by certificate. The assessment with which we are concerned in this appeal is for the assessment year 1963-64, the relevant accounting year is the financial year 1962-63. The assessee was the manager of a Tea Estate under the managing agency of M/s. Gillanders Arbuthnot & Co. Ltd. The said Co. had a Provident Fund scheme for its employees. But that provident fund was not a recognised one. The assessee retired during the previous year relevant to assessment year 1963-64 and received out of this provident fund an amount of Rs. 27,948/- which represented the interest on the amount of his own contribution to the fund. The Income-tax Officer assessed this amount as the assessee's income from other sources. That order was confirmed in appeal by the Appellate Assistant Commissioner. But on further appeal to the tribunal 'by the assessee, the tribunal came to the conclusion that the receipt in question being profits 'in lieu of salary', the same was his salary as defined in s. 17 of the Income-tax Act, 1961 (to be hereinafter referred to as the Act); the same having not been assessed as his salary, the assessment order relating to that item of receipt was not legal. At the instance of the-Commissioner, the tribunal referred the following question of law to the High Court of Assam and Nagaland for its opinion:

"Whether on the facts and circumstances of the case and having regard to the provisions of section 17 (3) (ii) of the Income-tax Act, 1961 the amount Rs. 27,948/- representing the interest on the amount of the assessee's own contributions to an

unrecognised provident fund was assessable under the residuary section 56 of the said Act?"

The High Court answered that question in the negative and in favour of the assessee. While it came to the conclusion that the, receipt in question cannot be considered as salary as defined in s. 17, in its view the same was exempt from payment of tax in view of s. 17(3) (ii). The Commissioner is challenging the above conclusion.

The receipt of Rs. 27,948/- is undoubtedly an income as defined by s. 2(24). The receipt of an interest on any investment is a gain made by the investor and therefore the same is "income". The next question is whether the said income is exempt from tax or if it is not exempt under what head the same has to be brought to tax?

Section 14 of the Act gives the heads of income. They are (A) Salaries; (B) Interest on securities; (C) Income from house property; (D) Profits and gains of business or profession; (E) Capital gains and (F) Income from other sources.

The salaries are 'brought to tax under s. 15 and "the income from other sources" is brought to tax under s. 56. In this appeal we are not concerned with the other heads of income The salary is defined in s. 17 as including any "profits in lieu of or in addition to any salary or wages" [s. 17(1)(iv)]. Subsection (3) of s. 17 says :

profits in lieu of salary" includes.-

(ii) any payment..... due to or received by an assessee from an employer or a former employer or from a provident or other fund (not being an approved superannuation fund) to the extent to which it does not consist of contribution by the assessee or interest on such contributions."

The contributions to recognised provident funds are dealt with by other provisions of the Act. Herein we are concerned with the contribution to an unrecognised provident fund. The learned judges of the High Court opined that the receipt by the assessee with which we are concerned is exempt from the payment of tax in view of s. 17 (3) (ii). In our opinion they were clearly in error in arriving at that conclusion. Deductions from salaries are dealt with by s. 16. In view of s. 17 (I) (iv), all receipts of profits in lieu of salary have to be considered as salary. But then the question is what is meant by "profits in lieu of salary". In defining the expression "Profits in lieu of salary", the legislature excluded from the scope of that expression any payments received by the assessee from a provident fund, his own contributions to the fund or any interest on such contributions. From that it follows that the receipt of Rs. 27,948/- by the assessee in the relevant accounting year cannot be considered as salary though undoubtedly that is an income. Section 17 has nothing to do either with deductions or with exemptions. It is merely a provision defining the expression "salary". As the income in question is not salary and the same cannot be said to be either interest on the securities; income from house pro- perty; profits and gains of business or profession or capital gains. it has to be considered as "income from other sources" and brought to tax under s. 56. Section 56 (I) provides

that 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 heads specified in S. 1.4 items 'A' to 'E'. In our opinion the meaning of s. 17(3) (ii) is plain and unambiguous. Hence there is no need to call into aid any of the rules of construction as was sought to be done by the High Court.

The respondent was not represented before this Court. We are obliged to Mr. T. A. Ramachandran for acceding to our request to appear on his behalf an amicus curiae and assist us at the time of hearing of the appeal.

For the reasons mentioned above we allow this appeal, discharge the answer given by the High Court and answer the question referred to the High Court in the affirmative and in favour of the Department. Under the circumstances of the case we make no order as to costs.

Y.P. Appeal allowed..