

## **Babulal Narotfamdass And Ors vs Commissioner Of Income-Tax, Bombay on 14 December, 1990**

**Equivalent citations: 1991 AIR 513, 1990 SCR SUPL. (3) 541, AIR 1991 SUPREME COURT 513, 1991 TAX. L. R. 26, (1990) 4 JT 784 (SC), (1991) 55 TAXMAN 3, 1991 ALL TAXJ 348, (1991) 1 COM LJ 196, 1990 (4) JT 784, 1991 (2) SCC (SUPP) 618, (1991) 187 ITR 473, (1991) 5 CORLA 158, (1991) 91 CURTAXREP 127**

**Author: P.B. Sawant**

**Bench: P.B. Sawant, M. Fathima Beevi**

PETITIONER:

BABULAL NAROTFAMDAS AND ORS.

Vs.

RESPONDENT:

COMMISSIONER OF INCOME-TAX, BOMBAY

DATE OF JUDGMENT 14/12/1990

BENCH:

SAWANT, P.B.

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SAWANT, P.B.

FATHIMA BEEVI, M. (J)

CITATION:

1991 AIR 513                      1990 SCR Supl. (3) 541

1991 SCC Supl. (2) 618 JT 1990 (4) 784

1990 SCALE (2) 1257

ACT:

Income-Tax Act, 1922: Section 4--Right to receive extra remuneration-Resolution authorising the payment challenged before Court-Resolution held Valid--Whether the right accrued from the date of Resolution or from date of judgment.

HEADNOTE:

The appellant-assessee was maintaining the Mercantile system of accounting. He was the Managing Agent of a company and by way of a Resolution passed on 20.7.1949 the company had agreed to pay the appellant special additional remunera-

tion at the rate of Rs.15,000 per annum. However, a representative suit was filed by the shareholders of the company for perpetual injunction from giving such extra remuneration and for declaring the Resolution as illegal. Trial Court decreed the suit. On appeal, the High Court reversed the decree and held that the Resolution was validly passed. Though the company debited the sum of Rs.15,000 for the year ended 31.12.1949 and in the subsequent years showed the sum as contingent liability, the amounts were not paid to the assessee during the relevant years. After the death of the assessee on 16.11.1952, the amount due to him was paid to his heirs in 1956.

A sum of Rs.15,000 each for assessment years 1950-51, 1951-52 and 1952-53 and a proportionate sum of Rs.13,125 were brought to tax by the Income Tax Officer rejecting the contention of the assessee that no amount was due as extra remuneration in the several years and that no income had accrued during the said years. On appeal, the Appellate Assistant Commissioner confirmed the assessment. The assessee preferred an appeal to the Tribunal. Setting aside the assessments, the Tribunal held that no income had accrued to the assessee during the said years and that the amount accrued to the assessee only in November 1955 when the High Court pronounced the judgment upholding the Resolution, and not earlier.

At the instance of Revenue, the Tribunal referred the question as regards the date of accrual, to the High Court. The High Court answered the reference in favour of Revenue and

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against the assessee.

Aggrieved by the judgment, the assessee preferred the present appeal contending inter alia that until the High Court rendered the judgment holding that the Resolution was validly passed, the company could not make any payment to the assessee nor could the assessee claim payment of any extra remuneration from company and, in such a case, the entire amount became payable only on the date of judgment and could therefore, be properly brought to tax only in the year of the judgment.

Dismissing the appeal, this Court

HELD: 1.1. The date of accrual is the date on which the right to receive the income has been acquired by the assessee. [545G]

1.2. In view of the Resolution passed in the annual general meeting of the company, income of Rs.15,000 accrued to the assessee in each year. This income was actually earned by him during the relevant previous years. The right to receive the extra remuneration flowed from the Resolution. The income accrued or arose at the end of each accounting year irrespective of the fact whether the amount was actually paid by the company to the assessee or not. Though the payment was deferred on account of the pending

litigation, it cannot be said that accrual of income was postponed simply because a suit was filed by the shareholders challenging the validity of the Resolution passed by the company. [545D-F]

E.D. Sassoon & Co. Ltd. v. C.I.T., [1954] 26ITR 27 and C.I.T. v. K.R.M.T.T. Thiagaraja Chetty, [1953] 24 ITR 525, relied on.

2. In the instant case, the right to receive extra remuneration cannot be said to have arisen on the date of the judgment of the High Court. The right to receive the extra remuneration arose only on the Resolution of the company. In view of the Resolution, such amount had become payable to the assessee by the company at the end of the accounting year. What was deferred on account of the pending litigation was not the accrual of the right but the date of payment. Since the suit was pending during the first year, the company had made the debit entry in the accounts. For the subsequent years also, the amount had been shown in the profit and loss account as contingent liability in view of the pending litigation. There was no dispute between the company and the assessee regarding the payment of such extra remuneration.

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Since the Resolution created the right in favour of the assessee to receive the extra remuneration at the agreed rate, the assessee acquired the right to receive that income by virtue of the Resolution and not by virtue of the judgment which held the Resolution to be valid. [546A-D]

C.I.T. v. Babulal Narottamdas, [1976] 105 ITR 721, approved.

C.L. T. v. Hindustan H & L Development Trust Ltd. Calcutta, [1977] 108 ITR 380, distinguished.

JUDGMENT: