

## **Commissioner Of Income-Tax, Bombay ... vs S.P. Jain on 4 May, 1961**

**Equivalent citations: AIR1962SC1164, [1962]44ITR535(SC), AIR 1962 SUPREME COURT 1164**

**Bench: J.C. Shah, M. Hidayatullah**

### **JUDGMENT**

Shah, J.

1. These are two appeals from certain orders in income-tax proceedings. Civil Appeal No. 457 of 1960 is against the order dated March 26, 1958, of the High Court of Judicature at Bombay refusing to call upon the Income-tax Appellate Tribunal to state a case under section 66(2) of the Indian Income-tax Act. Civil Appeal No. 458 of 1960 is against the order dated August 13, 1956, of the Income-tax Appellate Tribunal, deciding an appeal under section 33(4) against the department.

2. The respondent was an employee of the Dalmia Cement and Paper Marketing Co. Ltd. By an agreement dated October 11, 1943, he was appointed to look after the Bombay Officer Organisation of the company at a remuneration of Rs. 4,000 per month. The company undertook to pay income-tax and super-tax due and payable on this amount of remuneration at the rate prescribed in the yearly financial Acts, and also to pay conveyance and entertainment allowance as may be agreed upon from time to time. The term of employment of the respondent was for a definite period of 25 years commencing from April 1, 1943, the company reserving to itself the right to depute the respondent to look after the interest of any other concern and to arrange for the remuneration to be paid to the respondent either by the other concern or by itself. It was further agreed that should the services of the respondent be terminated before the expiry of 25 years, on account of the company "severing connection with" the respondent or terminating the office of employment due to any reason whatsoever, the respondent would be entitled to compensation "calculated as equivalent to Rs. 40,000/- for each un-expired year of the duration of his employment."

3. The respondent worked as an employee of the company till sometime in 1949. By letter dated February 14, 1950, the employment of the respondent was terminated with the effect from November 30, 1949, and an account of the unilateral termination of the employment, the respondent was awarded a sum of Rs. 7 lakhs which was called "compensation for the cessation of employment." It was recited in the letter intimating that the employment was terminate that the quantum of compensation had been considered and had been mutually agreed upon, the respondent having a consequence of the termination of his employment claimed compensation. The income-tax authorities sought to tax this amount of Rs. 7 lakhs under section 7 of the Indian Income-tax Act. The Income-tax Officer brought the amount to the but in appeal to the Appellate Assistant

Commissioner the order was reserved. That order was confirmed by the Income-tax Appellate Tribunal. The Income-tax Appellate Tribunal was called upon by the Commissioner to state a case under S. 66(1) but the Tribunal declined to do so. An application by the Commissioner under S. 66(2) to the High Court was rejected. The Commissioner of Income-tax has with special leave appealed to this Court against the order of the Tribunal under S. 33(4) disposing of the appeal and against the order of the High Court refusing to call upon the Tribunal to state a case.

4. The respondent contends that before the income-tax authorities, the sole question argued by the department was that the payment of Rs. 7 lakhs to the respondent was as compensation in lieu of past services and was on that account taxable. The department not having submitted any other ground and the Appellate Assistant Commissioner and the Appellate Tribunal having held that the payment was not in lieu of past services, there is a finding of fact which the High Court could call upon the Tribunal to state a case. In our view, the true nature of the payment received by the respondent fell to be determined on the legal effect of the terms of the agreement of employment, the letter terminating employment and the agreement under which Rs. 7 lakhs were paid to the respondent. Such a determination in our view is one on a question of law, and not of fact. The High Court, in our view, was in error in declining to call for a statement of the case from the Tribunal.

5. We, therefore, declare that the following question of law arises and direct that the Tribunal do make a statement of the case on that question :

"Whether, on the facts and circumstances of the case, the sum of Rs. 7 lakhs is liable to tax under section 7 of the Indian Income-tax Act ?"

6. Civil Appeal No. 458 of 1960, being an appeal against the order of the Income-tax Appellate Tribunal, has not been pressed before us and is accordingly dismissed. No order as to costs.

7. Civil Appeal No. 457 of 1960 is allowed and for the order passed by the High Court an order calling for a statement of the case to the High Court will be substituted. Costs of this appeal will be costs in the reference to the High Court.

8. Appeal No. 457 of 1960 allowed.

9. Appeal No. 458 of 1960 dismissed.