Shriyans Pradad Jain vs Income-Tax Officer And Others on 14 September, 1993

Equivalent citations: AIR1993SC2612, [1993]204ITR616(SC), JT1993(5)SC292, 1993(3)SCALE743, 1993SUPP(4)SCC727, [1993]SUPP2SCR279, AIR 1993 SUPREME COURT 2612, 1993 AIR SCW 3364, 1993 TAX. L. R. 1061, (1993) 5 JT 292 (SC), 1993 (5) JT 292, 1993 (4) SCC(SUPP) 727, (1993) 70 TAXMAN 290, (1993) 204 ITR 616, (1993) 3 SCJ 401, (1993) 117 TAXATION 283, (1993) 114 CURTAXREP 411

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Bench: B.P. Jeevan Reddy, S.P. Bharucha

ORDER

B.P. Jeevan Reddy, J.

1. This appeal is preferred against the judgment and order of the Settlement Commission (Income Tax and Wealth Tax), New Delhi, disposing of the application filed by the appellant with certain direction. The matter pertains to the Assessment-Year 1950-51

2. The appellant, Shriyans Prasad Jain (since deceased) was appointed as the Officer-in-Charge of Bombay office of the Dalmia Cement & Paper Marketing Company Limited (DCPM) by an order date 11.10.1943. His salary was fixed at Rs. 4,000 per month - free of Income-tax. According to the appellant, the order of appointment further stipulated that the period of employment shall be 25 years and that in case his services are terminated before the expiry of the said period, he shall be paid compensation at the rate of Rs. 40,000 per annum for the unexpired period. The revenue, of course, disputes the aforesaid stipulations relating to period of service and the provision for compensation in case of premature termination.

3. Through a letter dated February 14, 1950, the services of the appellant were terminated with effect from November 30, 1959. An amount of Rs. 7 lacs was paid to the appellant on that occasion.

4. In the assessment proceedings relating to Assessment-Year 1950-51, the appellant claimed that the said sum of Rs. 7 lacs received by him was not taxable inasmuch as it represented compensation for loss of employment. He submitted that according to the law as it then stood, the amount paid by way of compensation towards loss of employment was not taxable. The Income-tax Officer did not

agree with the submission and included the said amount in his income. On appeal, the Assistant Appellate Commissioner upheld the appellant's plea and allowed the appeal, whereupon the Revenue went in appeal to the Tribunal. This appeal was dismissed on 13.8.1956. An application filed by the Revenue under Section 66(1) of the Indian Income-tax Act, 1922 was dismissed by the Tribunal. An application under Section 66(2) was also dismissed by the High Court, whereupon the Revenue approached this Court under Article 136 of the Constitution. This Court directed the Tribunal to refer the following question for the opinion of the High Court under Section 66(2) of the 1922 Act: "whether on the facts and circumstances of the case, the sum of Rs. 7 lacs is liable to tax under Section 7 of the Income-tax Act, 1922."

5. On February 8, 1965, the High Court at Bombay answered the reference in favour of the appellant and against the Revenue. It held that the sum of Rs. 7 lacs represented compensation for loss of office and was therefore not taxable. The decision is reported in 56 ITR 724. Against the order of the Bombay High Court, the Revenue filed a special leave petition in this Court but withdrew it later.

6. On December 11, 1956, the Government of India appointed Justice Vivian Bose, a retired Judge of this Court, as Commission f Inquiry to look into the affairs of certain companies controlled by Dalmia-Jain group. The Commission submitted its report in June, 1962. The Commission found several irregularities and fraudulent transactions by and between the companies controlled by Dalmia-Jain group including the Dalmia Cement & Paper Marketing Company Limited. The Commission also dealt with the aforesaid payment of Rs. 7 lacs to the appellant. The main question considered in this regard was the truth and genuineness of the latter dated October 11, 1943. In other words, the question was whether there was any such letter of appointment prescribing the period of employment as 25 years and also providing for the amount of compensation payable in case of premature termination. The findings of the Commission relevant for the purpose of this appeal are to following effect :-

> Actually there was no decision about this (about the genuineness of the letter dated 11th October, 1943) on the merits because of a slip at the original stage, the question of its genuineness was shut out at the later stage. But so far we are concerned, it would not have mattered whether the matter was considered and finally decided on the merits or not. Even if there was a final decision on the merits, it would be final only for the purposes of those Tribunals and would not bind other Tribunals or this Commissions investigating the matter afresh for any other purposes.
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> xxx xxx xxx The question before the Income-tax authorities was whether the receipt of Rs. 7 lacs was taxable or not in the hands of Shriyans Prasad Jain. We are not however, looking into this question viz. taxability or otherwise of the payment of Rs. 7 lacs what we are concerned with is the propriety of the transaction itself.
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> The Commission had further observed:
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> we do not deny that Shri Shriyans Prasad worked for DCPM from 1943 and that he drew remuneration specified in the Liquidator's letter of the 1st May, 1953 to M/s.

> D.P. Khosla and Co., nor did we question that the Income-tax was paid as stated during that period. We have questioned in another place the reasonableness of the terms but not the fact of appointment on those terms. What we arc questioning here are the terms about period of employment and the provision about the payment of compensation for the breach that finds place in the impugned letter. In our opinion, that was an after-thought. We are of the view that those terms do not appear in the original contract. The scheme to defraud the exchequer by these ingenious devices was devised later and the impugned letter was forged and antedated in furtherance of that scheme.
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> In the circumstances indicated above specially regarding the destruction of the letter immediately after the Inspector had drawn up his report and in face of the fact, that the Inspector had questioned the genuineness of this document and initialled it and affixed the rubber stamp of his office to it; and also in view of the failure of Shriyans Prasad to produce before the Commission the original letter, which was with him, and the very important fact that during this period there was some payments of compensation for the supposed purchase of managing agencies and selling agencies agreement, in a number of other cases, we are entitled to drew the conclusion that this is one more instance of device adopted to evade and avoid payment of substantial income-tax.
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> (Quoted from the paper-book supplied by the appellant).

7. On December 23, 1965, a notice was issued by the Revenue calling upon the appellant to explain why his assessment relating to the Assessment-Year 1950-51 be not reopened on the basis of the information which had come into possession of the department. The findings of Justice Vivian Bose Commission were sought to be made the basis for such action. The appellant submitted a reply to the said notice after considering which a considering which a notice under Section 148 of the Income-tax Act, 1961 was issued on March 26, 1966. Soon after receiving the said notice, the appellant approached the Bombay High Court by way of Writ Petition under Article 226 of the Constitution challenging the validity of the notice under Section 148 of the Income-tax Act, 1961. On July 04, 1973, the Writ petition was dismissed by the High Court. The High Court opined :

> If upon consideration of material before him the Income-tax Officer takes a prima facie view and entertains a reasonable belief that the assessee omitted or failed to disclose truly and fully all material and primary fact, then action under Section 147(1) is always justified. It is conceivable that such reasonable belief as to omission or failure to disclose may arise as a result of information which may come to his knowledge but even in such cases if the assessee has omitted or failed to disclose truly and fully all material and primary facts, it will always be open to take action under Section 147(a). Under Section 151(1) no notice shall be issued under Section 148 after the expiry of eight years from the end of the relevant assessment year, unless the Board is satisfied on the reason recorded by the Income-tax Officer that it is a fit case for the issue of such notice. The notice under Section 148 in the present case has been

> issued after the expiry of eight years from the end of the assessment year 1950-51 but the Central Board of Direct Taxes upon a report submitted by the Income-tax officer has accorded it sanction for initiation of proceedings against the assessee for the assessment year 1950-51 under Section 147(a) of the Act. In that view of the matter it is not possible to take the view that the initiation of proceedings can be regarded as time-barred. Accordingly, the notice for initiation of reassessment proceedings will have to be upheld in so far as it relates to the item of Rs. 7 lacs paid by the company to the petitioner. 94 ITR 34 P.53.

8. The appellant sought to question the judgment of the Bombay High Court by way of special leave petition in this Court which was rejected on 24the February, 1975. The Income-tax Officer completed the reassessment on July 30, 1977. At that stage the appellant approached the Settlement Commission by way of an application under Section 245C of the Act. After making the necessary inquiry and after hearing the appellant, the Commission passed order on March 16, 1979. The Commission held that the amount of Rs. 7 lacs received by the appellant was of a composite character. It apportioned the said sum into Rs. 2 lacs representing the compensation for loss of employment (not subject to tax) and Rs. 5 lacs taxable under Section 7 of the 1922 Act. On the basis it computed the income of the appellant for the said Assessment-Year and directed him to pay the tax in four equal quarterly instalments, along with interest in the manner specified by it. The Commission further opined that since the issue involved in the Settlement is one of law, the question of granting immunity from penalty and prosecution does not arise.

9. Mr. B. Sen, learned Counsel of the appellant urged the following contentions:-

> (1) The Settlement Commission was in error in placing upon the appellant the onus of proving that he said payment was solely in connection with the termination of employment within the purview of explanation 2 of Section 7 of the 1922 Act. In a reassessment proceeding, the burden lies upon the Revenue to establish that there has been concealment and that there has been an escapement of income.
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> (2) The Revenue led on evidence whatsoever to establish its case and to establish the taxability of the said amount or any part thereof. It merely relied upon the Report of justice Vivian Bose Commission which was in to way binding upon the appellant. The findings of the Commission have no evidentiary value.
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> (3) That the settlement Commission was in error in holding that the letter dated February 11, 1943 was not true and genuine. The said letter was produced by the appellant in the original assessment proceedings and both the Appellant Assistant Commissioner and the Tribunal had in fact gone into the question of its genuineness and found it to be a genuine document. The said finding had become final and could not have been reopened either in reassessment proceedings or by the Settlement Commission in proceedings under Chapter XIX-A of the Act.

(4) The finding of the Tribunal with respect to the said letter is based on no evidence. It is a case of pure guess.

10. Shri P.S. Poti, the learned Counsel for the Revenue supported the reasoning and conclusion of the Settlement Commission. He submitted that the findings recorded by the Commission are not subject to review in this appeal. The learned Counsel submitted that in the absence of the appellant establishing that the order of Commission is violative of any of the provisions of the Act, no relief can be granted to him in this appeal. He relied upon the decision of this Court in Jyotendrasinhji v. S.I. Tripathi and Ors. 210 1TR 611.

11. Section 7 of the Indian Income-Tax Act, 1922 read as follows at the relevant time :

> Salaries- (1) The tax shall be payable by an assessee under the head "salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, communications, perquisites or profits in lieu of, or in addition to, or are paid by or on behalf of, the Government, a local authority, a company, or any other public body or association, or any private employer; and for the purposes of this Sub-section advances by way of loan or otherwise of income chargeable under this head shall be deemed to be salary due on the date when the advance is received :
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> (Provisos and the explanation (1) of Section 7 omitted as unnecessary).
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> [Explanation 2. - A payment due to or received by an assessee from a provident or other fund 1, is to the extent to which it does not consist of contributions by the assessee or interest on such contributions a profit received in lieu of salary for the purposes of this Sub-section, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services :
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> Provided that nothing herein contained shall render liable to income-tax any payment from a provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies, of any payment from a recognised provident fund within the meaning of Chapter IXA if such payment is exempted from payment of income-tax under the provisions of Chapter IXA, or any payment from an approved superannuation fund within the meaning of Chapter IXB made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established]" Sub-section 2. Omitted unnecessary.

12. The Revenue relied upon explanation 2 aforesaid. According to it. the said sum of Rs. 7 lacs was a payment received by the appellant from his employer, that it did not comprise or consist of contributions made by the appellant and inasmuch as the appellant has failed to prove that the said payment was made solely as compensation for the loss of employment, the amount is taxable. The Revenue submitted that the said amount can be characterised as remuneration for past services as well. On the other hand, the appellant's case was that the said amount was paid to him solely as

compensation for loss of employment and hence, not taxable. According to him the said amount was not paid to him by way of remuneration for past services.

13. To establish his case that the said amount was paid to him solely as compensation for loss of employment he relied upon the letter of appointment dated October 11, 1943, aforesaid. According to the appellant, the letter read as follows :

> DALMIA CEMENT & PAPER MARKETING CO., LTD.
>
> DALMIANAGAR.
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> Syt. Shriyans Prasad Jain, October 11, 1943. BOMBAY. Dear Sir, Confirming the negotiations that have been carried on between this company and yourself, this is to confirm that you will please look after the Bombay office Organisation of this company, for which you will be paid a fixed amount of Rs. 4,000 (Rupees Four Thousand only) per month. Income-tax and super-tax due and payable on this amount of remuneration will be paid by the company according to the rate prescribed in the yearly financial acts. Conveyance and entertainment allowances will be allowed as may be agreed upon from time to time.
>
> The term of employment will be for a definite period of 25 years commencing from the 1st April, 1943 and the Company reserves to itself the right to depute you to look after the interests of any other concern and arrange for your remuneration being paid either by that other concern or itself meet the same.
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> You have requested that it should be made clear that should your services be terminated before the expiry of 25 years then a definite compensation for loss of office and breach of agreement should be provided. In confirming that on the occurrence of any such contingency of our severing connections with each other or terminating the office of employment due to any reason whatsoever, it is hereby stipulated that you will be entitled to a compensation and the same shall be calculated as equivalent to Rs. 40,000 for each unexpired year of the duration of your employment.
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> This is being addressed to you in duplicate. Kindly acknowledge in the duplicate and send same for our file keeping the original for our own record.
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> Yours faithfully, For Dalmia Cement Paper Marketing Co. Limited. Sd/- Vishnu Hari Dalmia Director.

15. The letter, if true, dies support the appellant's case. The Settlement Commission, however, has doubted the same. It has rejected the very existence of the said letter, relying substantially upon the Report of the Justice Vivian Bose Commission quoted hereinbefore. It commented upon the unusual nature of the stipulations with respect

to the period of employment and compensation for premature termination contained therein. It also stressed the conduct of the appellant in suppressing the said letter from the Commission as recorded in the Report of Justice Vivian Bose Commission. The Settlement Commission was of the opinion that though the appointment of the appellant was with effect from April 1, 1943, the impugned letter containing the alleged terms and conditions of employment is, strangely enough, dated October 11, 1943 - nearly six month later and further that while there is no letter informing the applicant that his services would no longer be required after November 30, 1949, there is the letter of February 14, 1950 agreeing to pay compensation. This too is somewhat strange, said the Commission. It also noticed the close relationship between the appellant and the persons controlling the company (DCPM) and opined that the appellant occupied a special position in the company. Though he was stayed as an employee, he was in fact a part of the management. In short, the Commission not only relied upon the findings of Justice Vivian Bose Commission but also gave several other reasons in support of its finding. It is, therefore, not correct to say that the said finding is based on no evidence or that it is in the nature of a pure guess.

16. Mr. B. Sen is not right in submitting that the genuineness of the letter was gone into in the original assessment proceedings and that the finding recorded therein in appellant's favour is not open to review either in the reassessment proceedings or by the Settlement Commission. So far as the Assessing Officer is concerned, admittedly he did not refer to the said aspect. He did say that the said letter was produced before him but he did not says whether the letter produced before him was the original or a copy. So far as the Appellate Assistant Commissioner is concerned, he merely observed in his order that "there is on record an agreement dated 11.10.1943." The genuineness of the said letter was not put in issue before him. It is true that before the Tribunal, the departmental representative sought to challenge the genuineness of the said letter, but the said challenge was not allowed to be raised. The Tribunal held that it was not open to the department to attack the genuineness of the said agreement/letter for the first time at the stage of Tribunal. It is, therefore, not correct to say that the genuineness of the letter was pronounced upon by the authorities in the original assessment proceedings. In this view of the matter, it is not necessary for us to go into the question whether, if any such finding has been recorded, would it operate as a bar to reopening the said question in reassessment proceedings or before the Settlement Commission.

17. With respect to the objection regarding the relevance and binding nature of the findings recorded by Justice Vivian Bose Commission, we must say that the findings recorded by the said Commission may not certainly be binding upon the appellant in proceedings under the Act but it is wrong to say that they do not constitute relevant material. They undoubtedly constitute relevant material. Further, before they were relied and acted upon, the appellant was given an opportunity to meet the same. It is idle to contend that findings recorded by a Commission manned by an eminent Judge is off no evidentiary value. The said findings were recorded after an exhaustive

inquiry and examination of the relevant records, account books and other proceedings of the companies controlled by Dalmia-Jain group.

18. We are equally unable to agree with Mr. Sen that the order of the Settlement Commission is vitiated by the erroneous placing of burden of proof upon the appellant. The Commission has given as many as eight specific reasons (mentioned as 'a' to 'j') in support of its finding that a major portion of the said amount is taxable under Section 7 of the Act. Even if it is assumed for the sake of argument that one of the said reasons is unsustainable in law that does not vitiate the order of the Commission. The other reasons given by it are perfectly adequate to support the finding of the Commission. By saying so, we should not be understood as upholding Mr. Sen's argument with respect to burden of proof. We express no opinion thereon.

19. Mr. Poti, learned Counsel for the Revenue, is right in submitting that in this appeal this Court would not go onto questions of the fact or review the findings of fact recorded by the Commission. As pointed out by this Court in Jyotendrasinhji v. S.I. Tripathi's case, (supra) this Court can interfere with the Commission's order only if it is found to be "contrary to any of the provisions of the Act". To the same effect is the earlier decision of this Court in Shreeram Durga Prasad & Fatehchand Nursing Das v. Settlement Commission I.T. and W.T. (1989) ITR 169 (SC).

20. No serious objection has been taken with respect to the apportionment of the said amount of Rs. 7 lacs effected by the Commission. Indeed, no such objection could have been taken. Once, the letter aforesaid is disbelieved, the Commission's finding in this behalf is perfectly justified.

21. We are, therefore, of the opinion that the Commission was right in holding that a substantial portion of the said amount should be treated as taxable under and by virtue of explanation 2 to Section 7 of the Indian Income-tax Act, 1922.

22. Mr. Sen submitted lastly that the matter is more than 40 years old, that the original assessee is dead and that it would be just in these circumstances to direct that the penalty proceedings initiated against the assessee - which are said to be kept pending - be dropped. We are afraid, we cannot make any such direction in this appeal at this stage.

23. The appeal accordingly fails and is dismissed with costs. The Respondents costs are assessed at Rs. 7,500 consolidated.