Mamanchand Fakirchand, In Re. vs Unknown on 14 April, 1954

Equivalent citations: [1954]26ITR112(ALL)

JUDGMENT

This is a reference under Section 66(1) of the Indian Income-tax Act and the following question has been referred to us for decision :-

> "Whether on the facts and in the circumstances stated above, the sum of Rs. 11,787 in the assessment year 1946-47 and the sum of Rs. 11,515 in the assessment year 1947-48 are special allowances, benefits or perquisites specially granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit within the meaning of Section 4(3) (vi) of the Income-tax Act and as such exempt from taxation ?"

The assessee firm Messrs. Mamanchand Fakirchand works as commission agent and deals in tobacco and potatoes. Besides the usual commission, the assessee used to charge a sum of 8 annas per bag from customers to meet the expenses incurred in the supply of the commodities to them. These charges amounted in the assessment year 1946-47 to Rs. 11,787 and in the year 1947-48 to Rs. 11,515. The assessee showed in its account books that in 1946-47 it had spent Rs. 11,796 and in 1947-48 Rs. 11,498.

The Income-tax Officer, however, did not accept the entries in the account books as regards the expenses incurred and held that the assessee had in each year made an extra profit of Rs. 8,000 from this source which he added back to the income. Several objections were taken which were decided against the assessee and with which we are not concerned. The assessee had relied on the provisions of Section 4(3) (vi) of the Income-tax Act and claimed that the amount of 8 annas per bag was a special allowance granted to the assessee to meet the expenses wholly and necessarily incurred in the performance of its duties as commission agent.

The Appellate Tribunal held against the assessee but decided to refer the question for our decision.

The point raised before the Appellate Tribunal was that the amount of 8 annas per bag was a special allowance granted to the assessee who held an employment of profit to meet the expenses wholly and necessarily incurred for the purpose of its duties as commission agent.

Reliance has been placed on behalf of the assessee on a decision of the Bombay High Court in Tejaji Farasram Kharawalla v. Commissioner of Income-tax, Bombay. That is the only case to which reference has been made by counsel. In that case the assessee was the representative of the Ciba (India) Ltd. He was getting a commission of 12 1/2 per cent. out of which 5 per cent. was to be taken by him as compensation in lieu of certain expenses that he had to meet in the discharge of his duties, such as commission to dyeing masters, agents, etc. The only question raised was whether exemption could be claimed only for the expense proved to have been actually incurred or for the entire amount

of the 5 per cent. commissioner received. The Court held that the assessee was entitled to exemption for the whole of the 5 per cent. and not only for the amount proved to have been spent. The point raised before us is, however, entirely different.

Taxable income has been divided under various heads in Section 6 of the Income-tax Act. They are :-

(i) Salaries

(ii) Interest on securities

(iii) Income from property

(iv) Profits and gains of business, profession or vocation

(v) Income from other sources and

(vi) Capital gains.

All income from whatever source received is liable to income-tax unless specially exempted. Under Section 4(3) certain classes of income are not to be included in the total income for the purpose of levy of income-tax. One of these classes is "any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred for the performance of the duties of an office or employment of profit" [Section 4(3) (vi)]. The allowance thus exempted must be attached to an office or employment of profit and is granted to enable the holder of the office or employment of profit to meet certain expenses which have to be incurred by the holder of the office or employment of profit as such. This charge of 8 annas per bag can neither be called an allowance nor is employment of profit. If a part of the salary under the terms of contract of employment has to be spent by the employee, it comes under the proviso to Section 7 and no tax is payable on it. Section 4(3) (vi) contemplates a case of an extra payment by way of an allowance, benefit or perquisite payable not on personal grounds but to the holder of an office or employment of profit, it being recognised that it is necessary for the holder of the office or employment of profit to meet such expenses by reason of the fact that the person holds such office or employment of profit.

In this connection reference may be made to certain English decisions though the language of the English and Indian Income-tax Acts not being exactly similar much assistance cannot be derived from those decisions.

Rowlatt, J., in Great Western Railway Company v. Bater said that the words meant that "an office or employment which was a subsisting, permanent, substantive position, which had an existence independent of the person who filled it, which went on and was filled in succession by successive holders," and that if a man was engaged to do any duties which might be assigned to him whatever the terms on which he was engaged, his employment to do those duties did not create an office to which those duties were attached; he was merely employed to do certain things, and the so-called office or employment was merely the aggregate of the activities of the particular man for the time

being.

The learned Master of the Rolls pointed out the difficulties in accepting this as an absolute definition and by way of illustration mentioned that though the manager of a railway company could be said to be holding an office, an engine driver would not be deemed to be holding an office, or employment of profit, and mentioned the somewhat unsatisfactory and inconclusive result where a court of law was not able to draw a line and a large tract was left undefined within which the question, whether a person was holding an office or employment of profit or not, would depend upon the circumstances of the case.

The definition given by Rowlatt, J., was accepted by the House of Lords in Great Western Railway Company v. Bater and in McMillan v. Guest H. M. (Inspector of Taxes).

Though it may not be necessary to import into the interpretation of the Indian statute an interpretation which Rowlatt, J., pointed out might lead to certain difficulties, the working of the section makes it clear that the allowance, benefit or perquisite must be attached to an office or employment of profit, that is, the duties that have to be performed by the holder of such an office or employment of profit make it necessary to incur those expenses and in recognition of that fact the allowance was being granted.

It cannot be said in this case that the assessee held an office or employment of profit to which an allowance, benefit or perquisite was attached. The assessee firm was a commission agent. As such it had to act under the directions of its principals and charge them for the expenses incurred in carrying out their orders. If for its own convenience or for the convenience of its principals instead of charging the actual expenses that it had to incur on their behalf it charged them at a flat rate of 8 annas per bag, this charge cannot be said to be an allowance, benefit or perquisite, nor can it be said to have been granted to the assessee to meet expenses incurred in the performance of the duties of any office or employment of profit. This amount was not an allowance but was a charge for work done under the contract of agency. The amount, therefore, clearly does not come under the exception.

Our answer to the question is, therefore, in the negative.

The assessee must pay the costs of the other side which we assess at Rs. 400.

Reference answered in the negative.