Raja Rameswara Rao vs Commissioner Of Income-Tax,Hyderabad on 4 April, 1963

Equivalent citations: 1967 AIR 290, 1964 SCR (2) 847, AIR 1967 SUPREME COURT 290

Author: A.K. Sarkar

Bench: A.K. Sarkar, S.K. Das, K.N. Wanchoo, K.C. Das Gupta

PETITIONER:
RAJA RAMESWARA RAO

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX,HYDERABAD

DATE OF JUDGMENT:
04/04/1963

BENCH:
SARKAR, A.K.
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SARKAR, A.K.
DAS, S.K.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1967 AIR 290 1964 SCR (2) 847
CITATOR INFO :
D 1972 SC 260 (19,21,22)
E&D 1992 SC1495 (13,18,26,28,29,30,32)

ACT:
Income Tax-Interim maintenance allowances and commutation sum-Distinction-Interim maintenance allowances, whether income or capital-Hyderabad (Abolition of Jagirs) Regulation, 1358F-Hyderabad Jagirs (Commutation) Regulation, 1359F-Income-tax Act, 1922 (11 of 1922).

HEADNOTE:
The Hyderabad (Abolition of Jagirs) Regulation, 1358F, which abolished Jagirs, provided by s. 14 that the amount payable to the Jagirdars under the Regulation "shall be deemed to be

interim maintenance allowances payable until such time as the terms of the commutation for the Jagirs are determined." The Hyderabad Jagirs (Commutation) Regulation, 1359F, by s. 3 laid down that commutation sum for a Jagir would be a certain multiple of its basic annual revenue and by s. 6, that the commutation sum for each Jagir would be distributable between the Jagirdar and Hissedars in certain proportions. Sub-section (2) of s. 7 of the latter Regulation stated that "payment to a Jagirdar of the commutation sum of the Jagir shall constitute the final commutation as from the 1st April 1950, of his rights in the Jagir and if any payment by way of an interim maintenance allowance under the said Regulation," that is, the -Regulation of 1358F., "is made in respect of a 'period subsequent to the said date, the amount of such payment shall be recovered from the recipient thereof by deduction from .... his share in the commutation sum for the Jagir." Held that the interim maintenance allowances paid under s. 14 of the earlier Regulation in respect of a period prior to April 1, 1950, were revenue receipts on which incometax can be imposed. They were intended to be quite distinct from the commutation sum, mentioned in it which sum was admittedly a capital receipt. The words "final commutation" in s. 7 (2) of the Latter Regulation did not show that the interim allowances were part of the commutation sum and, therefore,

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of the nature of capital receipts but they only meant that the final commutation was the only commutation that the Jagirdar was to get in respect of his rights in the Jagir. The observation in Commissioner of Inland Revenue v. Butterley & Co. Ltd. that such interim allowances were sui generis and were neither income from property nor from investment nor did it arise from the right to compensation but arose from the statute itself which directed it to be paid, approved. Shanmugha R Rajeswara Sethupathi v. Income-tax officer, Karaikudi, [1962] 44 I.T.R. 853. Commissioner of Income-tax v. Shaw Wallace & Co. (1932) L. R. 59 I. A. 206 and Commmissioner of Inland Revenue v. Butterley & Co. Ltd., (1956) 36 T. C. 411, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION :Civil Appeal No. 420 of 1962. Appeal from the judgment and order dated April 3,1959 of the Andhra-Pradesh High Court in Writ Petition No. 17 of 1956 (Referred Case).

C. Krishna Reddy, A. V. V. Nair and P. Ram Reddy, for the appellant.

K. N. Rajagopal Sastri and R. N. Sachthey, for the respondent.

1963. April 4. The judgment of the Court was delivered by SARKAR J.-The appellant was the proprietor of the Wanaparthy Jagir in the former Indian State of Hyderabad. Certain payments described as interim maintenance allowances were made to him under the Hyderabad (Abolition of Jagirs) Regulation 1358 F, hereafter called the Abolition Regulation. These payments were brought to tax under the Income-tax Act, 1922 as income. The appellant contended that they were capital and not liable to be taxed. He took various proceedings and eventually a case was stated to the High Court of Andhra Pradesh for decision of the following question :

> "Whether the interim maintenance allowances received by the assessee under the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli, are income and therefore liable to tax."

The question was answered against the appellant by the High Court and hence this appeal.

The point at issue is whether these payments constituted capital or income. The answer to this question will have to be found in the Abolition Regulation under which the payments were made and another Regulation called the Hyderabed jagirs (Commutation) Regulation, 1359F (hereafter called the Commutation Regulation) which was intended to be supplementary to the earlier Regulation. The material provisions of these Regulations may, therefore, be referred to at once.

We shall first take up the Abolition Regulation. Under s. 6 of this Regulation, the jagirs were included in "Diwani" (Government) as from the "appointed day" to be fixed under s. 5 and thereupon the powers, rights and liabilities of the Jagirdars in relation to the Jagirs ceased to be exercisable by or against them. Section 3 provided for the appointment of an officer called the Jagir Administrator. Section 8 provided for payment to Government of a specified percentage of the gross revenue, which for practical purposes may be taken to be the total realisation or income of the Jagir, for meeting the administration expenses. Section 13 required a separate account in respect of each Jagir to be kept by the Jagir Administrator. Section 10 provided for payment to the Jagirdar out of the income of the jagir of a sum equivalent to half of what he was getting before the commencement of the Regulation, as remuneration for managing the Jagir and for distribution of a like sum among the Hissedars (sharers in the Jagir income with the Jagirdar) in a certain proportion. Section 11 provided that the net income of the Jagir calculated in the manner prescribed, would be distributed between the Jagirdar and Hissedars in the proportion in which they were entitled to the income under the law in force before the commencement of the Regulation. Section 14 provided that the amounts payable to jagirdars under Regulation "shall be deemed to be interim maintenance allowances payable until such time as the terms for the commutation of Jagirs are determined." These are the interim maintenance allowances with regard to which the question has arisen in this case.

We turn now to the Commutation Regulation. Section 3 of this Regulation provided that the commutation sum for a Jagir would be a certain multiple of its basic annual revenue, the method of calculation of which was laid down in s. 4. Section 5 stated that the commutation sum for every Jagir

would be determined by the Jagir Administrator. Section 6 said that the commutation sum for each Jagir would be distributable between the jagirdar and Hissedars in like proportion as the income was distributable between them under s. 1 1 of the Abolition Regulation subject to certain deductions to which it is unnecessary to refer. It is not in dispute that as a result of the Regulations the appellant's rights in his Jagir were extinguished. The appellant contends that he was divested of the Jagir as from the "appointed day" fixed under s. 5 which was, it is said, September 15, 1949. It appears that a somewhat different view was taken in Shanmugha Rajeswara Sethupathi v. Income-tax officer, Karaikudi (1). We do not think (1) [1962] 44 I,T.R. 853, it necessary in the present case to fix the precise point of time when the Jagir was taken away from the appellant and we will proceed on the basis that the appellant's contention is the correct one.

As we have earlier said, the real point for decision is whether the payments were of income nature or of the nature of capital. If they were made as compensation for the deprivation of the Jagir, they would undoubtedly be capital. It may be stated that it is common case of the parties that ,-the commutation sum payable under the Commutation Regulation was paid as such compensation. The first thing that we wish to observe is that the two Regulations made a clear distinction between the interim maintenance allowances and the commutation sum. The allowances were paid under the Abolition Regulation which said nothing about the right to the payment of the commutation sum; that right was created only by the Commutation Regulation. The allowances were measured as a fraction of the current income while the commutation was a multiple of annual revenue. The allowances were recurring payments for a certain time while the Commutation sum was a fixed sum payable at once or by instalments. Then we find that under s. 14 of the Abolition Regulation the interim maintenance allowances were "payable until such time as the terms for the commutation of Jagirs are determined". In other words, after the terms for commutation are determined, the interim maintenance allowances are to cease to be payable. It follows that when compensation begins to be paid, the payments of the maintenance allowances have to stop.

Lastly, we find this distinction emphasised in sub-sec. (2) of S. 7 of the Commutation Regulation. That provision is in these terms :

> "The payment to a Jagirdar or Hissedar of his appropriate share in the commutation sum of the Jagir shall constitute the final commutation as from April 1, 1950, of his rights in the Jagir and if any payment by way of an interim maintenance allowance under the said Regulation is made in respect of a period the whole or part of which is subsequent to the said date, the amount of such payment or, as the case may be, the appropriate proportion of such amount shall be recovered from the recipient thereof by deduction from the first payment made to him on account of his share in the commutation sum for the Jagir".

The words "said Regulation" in this subsection refer to the Abolition Regulation.

It seems to us that though somewhat cumberously worded, the intention behind the sub-section is not in any serious doubt. Its object was to provide that the date of determination of the terms of commutation mentioned in s. 14 of the Abolition Regulation would be April 1, 1950 and no interim

maintenance allowances would be paid in respect of any period after that date but thereafter only commutation sum would be paid. Now this commutation sum is the sum determined as provided in ss. 3 and 4 of the Commutation Regulation. The interim maintenance allowances are no part of the commutation sum so determined. Furthermore, the sub- section expressly provides that if any interim maintenance allowance is paid in respect of a period subsequent to April 1, 1950, that payment is to be recovered out of the commutation sum payable under this, Regulation. Quite clearly, therefore, only what was paid in respect' of the period prior to April 1, 1950 was to be interim maintenance allowance, and what was thereafter paid was towards the commutation SUM.

It was contended on behalf of the appellant that the words ""final commutation" in the subsection showed that the interim maintenance allowances were also part of the commutation sum. It seems to us impossible to accept this contention for that would make the two the same, which, as we have shown earlier, they could not be. "'Final commutation" meant the only commutation that the Jagirdar was to get in respect of his rights in the Jagir, that is to say, he was to get no other commutation. In fact, as already stated, if any interim maintenance allowance was paid after the commutation became payable, that was to be recovered from and not added to the commutation. We have earlier said that it is not in dispute that the commutation sum was paid as compensation for the loss of the Jagir and was, therefore, capital which was not liable to be taxed. We thus find that the Regulations make a clear distinction between the commutation sum or compensation and the interim maintenance allowances. These allowances were obviously not intended to be compensation. The question then arises, if these allowances were not paid as compensation for the loss of the Jagir and were not of the nature of capital as such, what was their nature ? We think that if we have regard to the provisions of the Regulations under which they were paid, as we must, there is no doubt that they were of the nature of income. No doubt they were not income of any of the kinds that are commonly found, but are, as Lord Radcliffe said in a case to which we shall later refer, Sui generis. We proceed now to discuss why we think they were income.

These allowances, we notice, were treated by the Regulations as something other than the compensation for the loss of the Jagir. They were, therefore, not treated as capital as representing compensation for the Jagir. If they were not capital for the reason that they were not compensation for the loss of the Jagir, we find no ground on which we can say they were capital. It would follow that they must be income and taxable as such. They were certainly not windfall for a right to them was created by, the Abolition Regulation, a right which under s. 21 could be enforced in a civil court. Then we find that these allowances were payable with a regularity and were of a recurring nature, both of which are recognised as characteristic of income : see the Commissioner of Income- tax v. Shaw Wallace & Co. (1). Next. we observe that the Regulation advisedly called the payments "maintenance allow- ances," a nomenclature peculiarly suited to payments of the nature of income. Lastly, it may be pointed out that the payments were made for the interim period between the time when the income of the Jagir began to be collected by the Government through the Jagir Administrator and April 1, 1950, when the compensation for the loss of the Jagir first became payable. The payments were, therefore, by way of compensation for the loss of income in the interim period. In the words of Jenkins L. J. as will appear later, they were "income-compensation" and therefore of the income nature.

We think for all these reasons the interim maintenance allowances were taxable income. If a source had to be found for them, the Regulation had to be held to be the source. A case very near to the one in hand and a case that throws a great deal of light on the problem that faces us in the Commissioner of Inland Revenue v. Butterley Co. Ltd. (2). We think a detailed reference to it can be very profitably made. That case was concerned with the English Coal Industry (1) (1932) L.R. 59 I.A, 206.

(2) (1936) SOT,(], 411, Nationalisation Act, 1946, which nationalised the collieries and divested all owners of them and the businesses concerning them. Under this Act and the Coal Industry (No.

2) Act, 1949, the assessee company became entitled to compensation for the assets transferred to the Government and to certain payments called "revenue payments" and "interim income" for the period between what was called the primary vesting date and the date on which compensation for the assets taken away was fully satisfied. The question was with regard to these payments. The assessee company had contended in the beginning that the payments were not of income nature at all. In the Court of appeal however that contention was abandoned and it was conceded that the payments were of income nature. The only dispute was whether they were income chargeable to profits tax as profits of a trade or business carried on by the assessee company. The decision was that the payments were not income or profit of any trade or business.

We will first read from a part of the judgment of Jenkins L. J. in the Court of Appeal. He said (p. 437), "The Act of 1946 studiously avoids describing the interim income as interest on or income of the compensation." Then the learned Lord justice pointed out that the payments were to be calculated by reference to the past earning of the concern and bore no relation at all to the amount of the compensation and proceeded to observe, (p. 438), ,,I find it difficult to hold that the interim income payable under these Acts, defined and measured in the way it is, can properly be described as income of the compensation and there is, I think, much to be said for the view that, albeit itself in the nature of income, it is not income, of the compensation but rather income-compensation, if I may use that expression, that is to say, a series of periodical payments an independent right to which is conferred by the Act by way of compensation for the loss of income sustained in respect of the period between the primary vesting date and the ascertainment and satisfaction of the compensation." We think these observations can be applied in all their force to the payments with which the present case is concerned. Here also the interim payments had no relation to the commutation sum, that is, compensation for the loss of the Jagir. It is clear that Jenkins L. J. was treating the payment as a species of income and we also think that the payments in the present case cannot be treated otherwise. There are some observations in speech of Lord Radcliffe when he dealt with this case on appeal to the House of Lords which we think may be usefully quoted here. He observed, (p. 449-50), "The Coal Industry Nationalisation Act, 1946, legislated for a revolution in the coal industry of this country..... These interim income payments which are now in question are the product of that disturbance and adjustment, and it does not seem to me at all surprising that they cannot well be related to any of those other kinds of receipt which normally come into the accounts of a company conducting a trade or business. They are sui generis and it would, I think, lead to confusion if they were described in any terms except those which are strictly applicable to their own special circumstances. Thus, they were paid because the nationalisation Statute decreed that they should be paid. They would not have been payable to the Respondents if

they had not been conducting a colliery business at the vesting date, and in that sense, of course, they were paid to and received by the Respondents for no other reason than that they had been owners of colliery assets and had been in the colliery trade. Equally of course, the interim income payments that the Respondents got were fixed either as a proportion of the profits which they had been earning in the colliery trade before the date of vesting or by a computation of interest at varying rates upon sums received from time to time by way of capital compensation. But, when all that is said, the fact remains that the only identifiable origin of the payments was the Statute which authorised them and at the same time defined their terms and methods of computing. It is natural enough that moneys paid in this way, described by their instrument of creation as 'interim income', should be regarded as inherently of an income nature when the question arises of subjecting them to any tax that bears upon income as a chargeable subject. But I do not think that in any proper use of the words can they be said to arise from a source of income, in the sense that income or profits' for the moment I am not concerned with any difference between the two terms can be said to arise from a trade or a business or an investment or some other piece of property that admits of use or enjoyments." He also observed, (451-52), "I have already explained why they were not income from investments. By a similar process of reasoning they were not, in my view, income from property. It does not clear up the matter to say that the right to compensation-and, for that matter, the right to interim income--was a chose in action. The interim income payments did not arise from the right to compensation as income arises from income-producing property. They arose from the Statute itself which decreed that they were to be paid." We venture to think that the observations that we have read from the English case in the preceding paragraphs give the correct picture of the nature of the payments. It was found unarguable that the interim payments under the English Acts were not of income nature. The payments with which we are concerned were made under statutory provisions completely parimateria with those under consideration in the English case. We, therefore, hold that the interim payments to the appellant were income and liable to tax. It appears that there were in this case four payments totalling Rs. 1,47,857-4-0 of which the first was made on January 25, 1950 and the other three on April 10, 1950, July 3, 1950 and August 3, 1950, respectively. It does not appear to have been found whether the last three payments, which it will be noticed had been made after April 1, 1950, were in respect of the commutation sum or interim maintenance. It was for that reason that the Tribunal directed the Income-tax officer concerned to institute an enquiry as to the nature of these three payments. Apparently, the High Court approved of that order. We also take the same view. We think that the question was answered correctly by the High Court by saying that the interim maintenance allowance received by the assessee which do not form part of the commutation amount are income and are liable to be taxed and that the payments made subsequent to April 1, 1950, towards commutation amount are not income and not liable to be taxed.

The result is that this appeal fails and is accordingly dismissed with costs.

Appeal dismissed.