

Madhya Pradesh High Court

Late Nawabzada Rashiduzzafar ... vs Commissioner Of Income-Tax on 17 September, 1968

Equivalent citations: 1969 72 ITR 523 MP

Author: Singh

Bench: P Dixit, G Singh

JUDGMENT Singh, J.

1. This is a reference at the instance of the assessee made by the Income-tax Appellate Tribunal under Section 66(1) of the Income-tax Act, 1922. The question of law referred to us is ;

" Whether, on the facts and in the circumstances of the case, having regard to the notification, the sanad and the rules, the mansab received by the assessee, namely, the sum of Rs. 1,07,591, is income liable to assessment under the Income-tax Act ?"

2. The material facts are these : The assessee, Nawabzada Rashiduzzafar Khan, who is now dead and is represented before us by his legal representative, belonged to the royal family of Bhopal. By a sanad dated February 23, 1949, the assessee was granted by the Ruler of Bhopal, a jagir of seventy-two villages having an annual income of Rs. 1,17,745-10 as. The jagir was for the lifetime of the assessee who was to observe all the laws and rules pertaining to jagirs and was subject to eight conditions entered in the sanad. Condition No. 7 was as follows ;

" 7. The ruler has the right in his discretion to issue orders to exchange the whole or part of the area of your jagir with other area of equal value in any other part of the State or convert it into annual cash annuity of equal amount."

3. It appears that the law relating to jagirs in Bhopal State was contained in an order issued by the Ruler of Bhopal which was divided into 34 clauses. Clause 30 of that order which enabled the conversion of jagirs into mansabs (annual cash grants) reads as follows :

" 30. (i) The ' mansab ' can be given instead of jagir under the following circumstances without interfering with the powers of the Ruler regarding the grants of yearly cash amount given in the attached schedule (2), para. 5, that is :

(a) when the jagirdar is guilty of such carelessness or mismanagement which does not reach the boundary of forfeiting the jagir ;

(b) when it is compelled by the administrative affairs of the State that the ' mansab ' be given instead of jagir ;.....

(e) When a jagirdar himself applied for the cash grants instead of jagir.....

(ii) when the administrative affairs compel to give ' mansab ' instead of jagir then at the time of the transfer of the jagir village under the circumstances of mismanagement stated above in the schedule  
(A) the matter will also be considered for taking the jagir under the court of wards;

(iii) If any jagir of permanent nature is converted into 'mansab', the 'mansab' will also be of permanent nature (see paras. 10 and 11) and if rulers issue such instruction 'mansabdar' will be benefited by the rights and designations. The same principle will be applicable in the matters of the reduceable jagirs also."

4. The assessee applied under this clause for conversion of his jagir into mansab. By a notification of the Chief Commissioner, Bhopal, dated August 11, 1953, issued in exercise of the powers under Clause 30(i)(c) the assessee's jagir was converted into 'mansab' (cash annuity) and he was granted a sum of Rs. 1,07,591-15 as per year as mansab payable for his life. By the same notification the jagir was taken over by the State. The notification of the Chief Commissioner which also covered other jagirs is as under :

Notification No. 1, dated the 11th August, 1953 :

" In exercise of the powers vested under Clause 30 Sub-clause (c) of the orders relating to jagirs in Bhopal State, the Chief Commissioner has been pleased to convert the jagirs of the jagirdars mentioned in column (1) of the statement, annexed hereto, into mansabs (cash annuity) mentioned in column (5) against each payable for their lifetime only, which shall be payable to them in two equal six monthly instalments, on 1st April and 1st October, every year, commencing from the 1st April, 1954. The mansab amount is sanctioned subject to their paying due share or amount to their guzaradars as usual. The decision in respect of guzars, payable to the guzaradars in each individual case, shall, however, be made in due course.

The Collectors and Conservator of Forests are hereby authorised to take over possession of the jagir villages and jagir forests respectively on or before the 1st September, 1953.

M. S. Das, Chief Secretary.

List of jagris converted into mansabs.

Sl.

No.

Name of Jagirdar Jama Awab Awab & Zare Charum & Punjum Mansab sanctioned

11. Nawabzada Rashiduzzafar Life grantees Khan 1,17,745-10-0 10,153-11-0 1,07,591-15-0

5. In accordance with this notification the assessee received the yearly grant of Rs. 1,07,591-15-0. This receipt was assessed to income-tax under Section 12 of the Act in the assessment years 1955-56 and 1956-57, But in the assessment proceedings for the year 1957-58 relating to the previous year ending 31st March, 1957, the assessee contended that the receipt of Rs. 1,07,591 was not a receipt of a revenue nature but was in the nature of a capital receipt and was not liable to income-tax. This contention of the assessee was negatived by the Income-tax Officer whose order was upheld in

appeal by the Appellate Assistant Commissioner and the Tribunal. On application of the assessee, the Tribunal has referred for our answer the question of law which we have already quoted.

6. From the facts that we have stated above it will be clear that the assessee himself made an application under Clause 30(i)(c) of the order relating to jagirs for conversion of his jagir into mansab. This application was accepted by the Chief Commissioner of Bhopal, who ordered conversion of the jagir into " mansab " (cash annuity) of Rs. 1,07,591, which became payable to the assessee for his life every year in two six monthly instalments. The conversion of the jagir resulting from the order of the Chief Commissioner created no obligation on the State to pay any capital sum; the obligation brought about only to pay annual sums unrelated to any capital obligation. The jagir which was a capital asset was handed over altogether to the State and converted into yearly sums payable to the assessee during his lifetime. The distinction between an annuity and a capital sum payable in instalments is well brought out in the following passage from Halsbury's Laws of England :

" An annuity is an income purchased with a sum of money or an asset, which then ceases to exist, the principal having been converted into an annuity. In order, therefore, to constitute an annuity properly so called, the purchaser must have handed over the money or other asset altogether and converted it into a certain or uncertain number of yearly payments, Where on an examination of the facts it is found that he has so parted with the money or asset, such yearly payments as he may receive will be taxable ; if, however, it appears from the facts on the true construction of the contract that he has not parted with the money or other asset, but is to receive his capital back in the form of yearly payments, then the payments are not income payments and are not taxable." (Volume 20, page 249).

7. Having regard to the facts of the instant case and the principles stated above, in our opinion the assessee in this case exchanged his jagir which was a capital asset for a life annuity which was a revenue receipt in his hands. This was not a case where the jagir was exchanged for a capital sum payable in instalments : See Maharaj Kumar Gopal Saran Narain Singh v. Commissioner of Income-tax, [1935] 3 I.T.R. 237 (P.C.).

8. The learned Advocate-General, who appeared for the assessee, in support of his argument that what the assessee received was a capital receipt, relied upon two cases, viz., Raja Rameshwar Rao v. Commissioner of Income-tax, [1960] 40 I.T.R. 576. and Shanmugha Rajeswara Sethupathi v. Income-tax Officer, Karaikudi, [1962] 44 I.T.R. 853. These cases lay down that payment of compensation for acquisition of a jagir under Jagir Abolition Acts is capital in nature. The instant case is different. Here the jagir was not acquired in lieu of compensation but it was converted into a life annuity on the application of the assessee. In our opinion, the cases cited are not applicable to the facts of the present case. It may, however, be noted that in Raja Rameshwar Rao's case interim maintenance allowance, payable to jagirdars, which was paid before the compensation for the loss of the jagir became due, was held to be income assessable to tax.

9. It was then contended by the learned Advocate-General that mansab was not income, for it was casual in nature and there was no enforceable obligation against the State to pay it to the assessee.

We do not agree. The conversion of jagir into mansab or life annuity was ordered by the Chief Commissioner under Clause 30 of the Order relating to jagirs which was made by the Ruler of Bhopal, and was the general law governing the jagirs. The Chief Commissioner's notification of 11th August, 1953, read with Clause 30 of the Order created a legally enforceable obligation to pay the annuity. Indeed, the attempt of the State to abolish cash grants by enacting Abolition of Cash Grants Act (16 of 1963) failed, as that Act was struck down as unconstitutional (State of Madhya Pradesh v. Ranojirao Shinde, A.I.R. 1968 S.C. 1053).

10. The annuity received by the assessee satisfied all the characteristics of income. It was payable with regularity, was recurring in nature and its source was in the Chief Commissioner's notification read with Clause 30 of the Order relating to jagirs : See Commissioner of Income-tax v. Shaw Wallace and Company, A.I.R. 1932 P.C. 138. The sum of Rs. 1,07,591 received by the assessee was, therefore, income liable to assessment under the Income-tax Act.

11. The learned Advocate-General also attempted to argue that the annuity received by the assessee was placed for ten years under the disposal of the Controller of Wakfs by virtue of a consent decree and was not received by the assessee. This point was, no doubt, argued before the Tribunal and some references are also made to it in the statement of the case submitted by the Tribunal but, as the point has not been referred to us for our answer, we are not entitled to go into it.

12. For the reasons given above we answer the question referred to us in the affirmative. The assessee will pay the costs of this reference. Counsel's fee, Rs. 200.