

Supreme Court of India

Commissioner Of Expenditure Tax, ... vs Shri Pvg Raju, Rajah Of ... on 29 September, 1975

Equivalent citations: 1976 AIR 140, 1976 SCR (1)1017

Author: V Krishnaiyer

Bench: Krishnaiyer, V.R.

PETITIONER:

COMMISSIONER OF EXPENDITURE TAX, ANDHRA PRADESH

Vs.

RESPONDENT:

SHRI PVG RAJU, RAJAH OF VIZIANAGARAM

DATE OF JUDGMENT 29/09/1975

BENCH:

KRISHNAIYER, V.R.

BENCH:

KRISHNAIYER, V.R.

GUPTA, A.C.

CITATION:

1976 AIR 140

1976 SCR (1)1017

1976 SCC (1) 241

ACT:

Expenditure Tax Act, (29 of 1957), s. 5 (a) and (j)-
Politics if a pro fession - Gratuitous payments towards
election expenses of party candidates and to office bearers-
if 'donation'.

HEADNOTE:

Under s. 5 (a) and (j) of the Expenditure Tax Act, 1957, no expenditure tax shall be payable on any expenditure incurred by the assessee wholly and exclu sively for the purpose of his business profession or vocation, and on any expenditure incurred by the assessee by way of donation.

The respondent-assessee was the Chairman of the State Socialist Party and politics was his profession or occupation. He is a wealthy socialist and spent Rs. 38,832/- towards election expenses of other candidates of his party, and gave Rs. 47,867/- to the office-bearers of his party to meet the expenses involved in party work.

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HELD: The two amounts are eligible for exclusion from expenditure tax.

[1021 B]

(1) Under modern conditions, politics is a profession or occupation. [1020 C]

(2) But the expenses incurred on behalf of other candidates cannot be the assessee's professional expenses. [1020 D]

(3) The amounts, however, fall under s. 5(j) of the Act. When a person gives money to another without any material return, he donates that sum. Therefore, when the assessee gave money to the candidates of his party for their elections expenses, it was money gratuitously given, that is he made donations. [1020 E-G]

(4) Similarly, the amounts paid to office-bearers of the party were not for any material return. They were for loyalty or gratitude. Wholly motiveless donation is rare but material return alone negates a gift or donation. Therefore, they also were outright gifts. [1021 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 30 of 1971.

Appeal by special leave from the judgment and order dated the 19th February, 1970 of the Andhra Pradesh High Court in case Reference No. 2 of 1967.

R. M. Mehta and S. P. Nayar for the appellant. P. Ram Reddy and A.V.V. Nair for the respondent. The Judgment of the Court was delivered by KRISHNA IYER, J.

Keynote thought.

Politics and philanthropy may well fall victims to the contruction of s. 5(a) and (j) of the Expenditure. Tax Act, 1957 (the Act for short) if we fall victim to the submission naively made, at the first stage, by counsel for the State. In fairness to him, we must state that later he retracted from that position, and rightly so, for the Act, in spirit and letter, does not intend this blow on the profession of politics or the disposition for donations.

A fair reading of the provisions in question convincingly excludes from 'taxable expenditure' sums wholly and exclusively incurred for the purpose of a profession or occupation carried on by the assessee and no modern man may dispute that politics is a profession or occupation. Likewise, expenditure by way of gift or donation incurred by the assessee is also excluded and no politically conscious soul will deny that donation to the party in a democracy squarely comes within this exclusionary provision.

The factual matrix Expenditure tax under the Act was sought to be levied from the assessee PVG Raju, the respondent before us. Paradoxical, perhaps, it may appear-but here is a case of a rich Maharaja practising the politics of socialism, spending lavishly for furthering his party's popularity and the prospects of his fellow candidates at the elections to the Andhra Pradesh Legislative Assembly. This expenditure, falling under two heads, was taxed by the assessing authority and

upheld up to the Tribunal level. The High Court, on reference, reversed the findings on both counts and the Commissioner of Expenditure Tax, the appellant, challenges the legality of this verdict.

The best beginning in stating the facts may well be to extract the questions of law referred by the Tribunal in its own words:

"(1) Whether on the facts and in the circumstances of the case the expenditure of Rs. 38,832/- claimed to be the amount incurred by the assessee for the benefit of other candidates for election is excludible from the taxable expenditure either under Section 5 (a) or under Section 5 (j) of the Expenditure Tax Act ?

(2) Whether on the facts and in the circumstances of the case the sum of Rs. 47,867/- claimed to be party expenses could be excluded from the taxable expenditure of the assessee either under Section 5(a) or under Section 5(i) of the Expenditure Tax Act ?

We have to assume the following facts as implied in the very questions referred to the High Court and from the attendant circumstances. They are:

(a) that the respondent, during the relevant period was the Chairman of the State Socialist Party which was interesting itself in electoral politics;

(b) the respondent was a wealthy socialist;

(c) that he was meeting not only the expenditure of his own elections but spending moneys for the benefit of other candidates belonging to his party;

(d) that he was issuing cheques to the Secretary and other office-bearers of his party to meet the expenses involved in party work.

He expended Rs. 38,832/- for propelling the election prospects of other party candidates during the election. Likewise, he gave Rs. 47,867/- to his party through its office-bearers. On these facts the question is whether he is eligible for exclusion of the two sums from expenditure tax either under s. 5(a) or under s. 5(j) of the Act.

Consideration of the legal issue It is appropriate to start with reading the relevant portion of s 5 of the Act:

"s. 5. No. expenditure-tax shall be payable under this Act in respect of any such expenditure as is referred to in the following clauses, and such expenditure shall not be included in the taxable expenditure of an assessee. . .

(a) any expenditure, whether in the nature of revenue expenditure or capital expenditure, incurred by the assessee wholly and exclusively for the purpose of the business, profession, vocation or occupation carried on by him or for the purpose of

earning income from any other source;

(b) to (i)...

(j) any expenditure incurred by the assessee by way of, or in respect of any gift, donation or settlement on trust or otherwise for the benefit of any other person."

The assessee was Party Chairman and politics was undoubtedly his profession or occupation, it being admitted that his interest in politics was not causal nor sporadic but abiding and ambitious.

The contention of the respondent which met with success before the High Court was that the election expenses of other candidates set up by him as Chairman of the Socialist Party, loosely described as 'party expenditure', were incurred wholly and exclusively for the purpose of his 'profession' or 'occupation'. So, the first point which arrests our attention in examining this contention is as to whether politics of the socialist brand or otherwise is a profession or occupation.

There can hardly be any doubt that it is either, or both. Harold Laski treated politics as a science and wrote his well-known book on the Grammar of Politics, but the art of politics at a practical level has also been the subject of comment and has been praised and denounced on the basis that it is a profession. To Gandhiji it is sacred as religion. In Lincoln it rises to noble heights of statesman-

ship. Lenin, Nehru and a galaxy of other great visionaries and makers and moulders of the modern world have dedicated themselves to politics as a profession. Of course in its vulgar and vicious manifestations, this occupation has been regarded by literary giants like Dr. Johnson as the last refuge of a scoundrel'. Robert Louis Stevenson has used barbed words: 'Politics is perhaps the only profession for which no preparation is thought necessary (Familiar studies of Men and Books, 'Yoshida-Torajiro'). George Bernard Shaw uses stinging language in Major Barbara: 'He knows nothing; and he thinks he knows everything. That points clearly to a political career'. It is thus clear, without reference to the wealth of case-law relied on by the High Court, that politics has been a profession and, indeed, under modern conditions in India, perhaps the most popular and uninhibited occupation-with its perils, of course. Law cannot take leave of realities and therefore s. 5(a) must bear the construction that politics is a profession or occupation.

The next question is whether the expenditure incurred by the assessee for the election of candidates set up by him as Chairman of his party can be legitimately regarded as incurred 'wholly and exclusively' for the purpose of his profession or occupation. We have grave doubts whether meeting the expenses of other candidates can be fulfilment of his professional expenses, but this question deserves no deeper probe for the simple reason that s. 5(j) embraces the expenditure as it does answer the description of a donation. When a person gives money to another without any material return, he donates that sum. An act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another, without any consideration, is a donation. A gift or gratuitous payment is, in simple English, a donation. We do not require lexicographic learning nor precedential erudition to understand the meaning of what many people do every day, viz., giving donations to some fund or other, or to some person or other. Political donations are not only

common, but are assuming deleterious dimensions in the public life of our country. It is therefore clear that when this Raja assessee gave money to the candidates of his Party for them to meet their election expenses, he made donations. Even if he met their election expenditure, it was money gratuitously given on their behalf and therefore amounted to donation. Without straining language, we reach the natural conclusion that what the respondent expended for the other candidates during the elections was 'donation' in the language of the law. There is no suggestion nor evidence that any material return was in contemplation when he spent these sums. Being a politically important man with plenty of money and vitally interested in boosting his Party's standing in the State, he donated liberally for candidates set up by the party. In this view s. 5(j) applies to these donations which earn exemption from the expenditure tax.

The next item relates to sums given to the Socialist Party. It is reasonable to assume that the amounts paid to the office-bearers of the party were without an eye on any material return other than loyalty or gratitude. They were outright gifts. Indeed, many rich people out of diverse motives make donations to political parties. The hope of spiritual benefit or political goodwill, the spontaneous affection that benefaction brings, the popularisation of a good cause or the prestige that publicised bounty fetches-these and other myriad consequences or feelings may not mar a donation to make it a grant for a quid pro quo. Wholly motiveless donation is rare, but material return alone negates a gift or donation. We need not investigate the propriety or political donations 'unlimited' and often invisible. All that we need consider is whether such sums are gifts and donations or are non-gratuitous payments with a tag of return. We have no doubt that on the question as framed, and on the facts and circumstances present, these sums were paid purely as gifts and donations to his Party by the respondent. It is not surprising either, because he was the Chairman of the said party, had a long and liberal purse from which to draw and a large circle of support to build up in the long run.

The inevitable conclusion from our discussion is that both the heads of expenditure fall under s.5(j) of the Act and, therefore, flow out of the assessable zone. The High Court's conclusion is sound and the appeal deserves to be and is hereby dismissed, but without costs.

V.P.S.

Appeal dismissed.