P. Krishna Menon

Vs

The Commissioner of Income-Tax, Mysore, Travancore-Cochin and Coorg, Bangalore

Civil Appeal No. 401 of 1956

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, A. K. Sarkar JJ)

07.10.1958

JUDGMENT

SARKAR J. -

The appellant who was a Superintendent of Police in the service of the former Travancore State, retired sometime in 1940. After retirement he was spending his time in studying Vedanta philosophy and expounding the same to such person as were keen on understanding it. He soon gathered about him a number of disciples, one of whom was J. H. Levy of London, U. K. Levy along with others used to receive instructions in Vedanta from the appellant. He used to come to Travancore from England at regular intervals and stay there for a few months at a time and attend the discourses given by the appellant and so had the benefit of his teachings on Vedanta.

Levy had an account in Lloyd's Bank at Bombay. On December 13, 1941, Levy transferred the entire balance standing to his credit in this account amounting to Rs. 2,41,103-11-3, on the credit of an account which he got the appellant to open in his name in the same bank. Thereafter, from time to time Levy put in further sums into the appellant's aforesaid account in Lloyds Bank, Bombay. It appears that the payments so made up to August 19, 1951, amounted to about Rs. 4,50,000/- From time to time the appellant got moneys transferred from his account at the Lloyd's Bank, Bombay, to his account in a bank at Trivandrum in Travancore.

This appeal arises out of orders for assessment to income-tax passed against the appellant for the assessment years 1122, 1123 and 1124, all according to the Malayalam era. The respective accounting periods according to the Gregorian calendar were from August 17, 1945, to August 16, 1946, August 17, 1946, to August 16, 1947, and August 17, 1947, to August 16, 1948. It appears that during these periods Levy had deposited in the appellant's account at Lloyd's Bank in Bombay the following respective sums : Rs. 13,304/-, Rs. 29,948/- and Rs. 19,983/-. During the same periods the appellant had obtained transfers of the following respective sums from his Bombay account to his Trivandrum account : Rs. 81,200/-, Rs. 47,000/- and Rs. 37,251/-. The Income-tax Officer, Trivandrum, assessed the appellant to tax on the latter amounts as foreign income, i.e., income arising in India, and brought into Travancore State in the relevant periods. We are not concerned in this case with the assessment made on other income of the appellant. The appellant appealed from these assessment orders to the Appellate Assistant Commissioner who consolidated them into one appeal. The Appellate Assistant Commissioner dismissed the appeal and confirmed the orders of the Income-tax Officer. The appellant then went up in appeal to the Appellate Tribunal but that appeal also failed.

The appellant thereafter obtained an order from the Tribunal referring the following questions to the High Court of Travancore-Cochin for decision :

"(i) Whether the aforesaid receipts from John H. Levy constitute income taxable under the Travancore Income-tax Act, 1121 ? and

(ii) Whether there are materials for the Tribunal to hold that the deposits into the assessee's bank account in Bombay by John H. Levy from 1941 as aforesaid represented income that accrued to the assessee outside Travancore State ?"

The High Court answered the first question in the affirmative. It however answered the second question in favour of the appellant, holding that he was carrying on a vocation or occupation in that State and the income derived therefrom should be considered as having arisen in Travancore, and that therefore the appellant was liable to be taxed not on the amounts which he brought into Travancore but on the amounts which had been paid to the credit of his account at Bombay by Levy during the relevant periods. The appellant has now come up to this Court in appeal by special leave against the answer given by the High Court to the first question. We are not concerned in this appeal with the answer given to the second question as it had been decided in favour of the appellant and there has been no appeal against it by the revenue authorities.

We do not think that the case presents any difficulty. It has to be decided on the terms of the Travancore Income-tax Act, 1121 (Malayalam Era), but as the provisions of that Act are, for the present purpose, identical with those of the Indian Income-tax Act, 1922, it would be more convenient to refer to the provisions of the latter.

Mr. Sastri, appearing for the appellant, has stated that the case involves really two points. First, was the appellant carrying on a vocation ? And secondly, if he was, can the amounts with which we are concerned, be said to be profits or gains of the vocation ? We agree with his view of the case and proceed to discuss these points.

The first question is, whether the appellant was carrying on a vocation. Under section 10 of the Income-tax Act, 1922, tax is payable by an assessee in respect of the profit or gains of any profession or vocation carried on by him. The facts found are that the appellant was studying Vedanta philosophy himself and imparting the knowledge acquired by him as a result of his studies to such as cared to come and imbibe it. There is no evidence to show that the appellant had made it a condition that he would impart such knowledge only to those who were prepared to pay for it. We have therefore to proceed on the basis that the appellant was teaching his disciples Vedanta without any motive or intention of making a profit out of such activity.

We find no difficulty in thinking that teaching is a vocation if not a profession. It is plainly so and it is not necessary to discuss the various meanings of the word 'vocation' for the purpose or to cite authorities to support this view. Nor do we find any reason why, if teaching is a vocation, teaching of Vedanta is not. It is just as much teaching, and therefore, a vocation, as any other teaching. It is said that in teaching Vedanta the appellant was only practising religion. We are unable to see why teaching of Vedanta as a matter of religion is not carrying on of a vocation. In any case the question does not really arise, for, whether the appellant was, in teaching Vedanta, practising religion, is of course a finding of fact. It may be that Vedanta could be taught as a practice of religion but it could of course also be taught as any other philosophy or school of thought. The statement of case in this case does not contain any finding that in teaching Vedanta the appellant was practising religion.

It is said that in order that an activity may be called a vocation for the purposes of the Act, it has to be shown that it was an organised activity and that it was indulged in with a motive of making

profit; that as the appellant's activity in teaching Vedanta was neither organised nor performed with a view to making profit, he could not be said to be carrying on a vocation. It is said that as the word 'vocation' has been used along with the words 'business and profession' and the object of a business and a profession is to make a profit, only such activities can be included in the word 'vocation' the object of which likewise is to make a profit. We think that these contentions lack substance. We do not appreciate the significance of saying that in order to become a vocation an activity must be organised. If by that a continuous, or as was said, a systematic activity, is meant, we have to point out that it is well-known that a single act may amount to the carrying on of a business or profession. It is unnecessary to discuss this question further as we find no want of system or continuity in the activity of the appellant. He had gathered a large number of disciples around him and was instructing them in Vedanta regularly. Levy came all the way from England at regular intervals to obtain such instructions. All this clearly indicates organisation and system.

Again, it is well-established that it is not the motive of the person doing an act which decides whether the act done by him is the carrying on of a business, profession or vocation. If any business, profession or vocation in fact produces an ome, that is taxable income and none the less because it was carried on without the motive of producing any income. This, we believe, is too well-established on the authorities now to be questioned. It was decided as early as 1888 in the case of the Commissioner of Inland Revenue v. Incorporated Council of Law Reporting ((1888) 3 Tax Cas. 105, 113) and followed ever since, that "it is not essential to the carrying on of a trade that the people carrying it on should make a profit, nor is it even necessary to the carrying on of the trade that the people carrying it on should desire or wish to make a profit". If that were not so, a person carrying on what otherwise would be a business, may say that he did not carry on a business because it was not his intention to make any income out of it. That would, of course, be absurd. The question is, whether the activity has actually produced an income and it matters not whether that activity is called by the name of business, profession, vocation or by any other name or with what intention it was carried on. The observation of Rowlatt, J., in Stedeford v. Beloe ((1930) 16 Tax Cas. 505) to which we were referred by Mr. Sastri, that there could be no tax on pension granted to a retired headmaster as "there is no background of business in it", was clearly not intended to lay down that without a profit motive there could be no business, profession or vocation. The pension could be taxed only if it had arisen out of the office and the only point decided was that it had not so arisen as the headmaster held no office, having retired earlier, as the date the pension had been granted : see the same case in the House of Lords ((1932) A.C. 388). We think therefore that the teaching of Vedanta by the appellant in this case can properly be called the carrying on of a vocation by him.

Then the other point to be decided is, whether the payments made by Levy were income received by the appellant from his vocation of teaching Vedanta. A very large number of authorities, both Indian and English, have been pressed upon us in the course of the argument. These cases illustrate the application of the well-settled principle that in the case of a voluntary payment, no tax can be levied on it if it had been made for reasons purely personal to the donee and unconnected with his office or vocation while it will be taxable if it was made because of the office or vocation of the donee. We do not consider it profitable to discuss them in this case. Also it seems to us that the present case it too plain to require any authority. The only point is, whether the moneys were received by the appellant by virtue of his vocation. Mr. Sastri contended that the facts showed that the payments were purely personal gifts. He drew our attention to the affidavit of Levy where it is stated "all sums of money paid into his account by me have been gifts to mark my esteem and affection for him and for no other reason". But Levy also there said, "I have had the benefit of his teachings on Vedanta". It is important to remember however that the point is not what the donor thought he was doing but

why the donee received it. So Collins M.R. in Herbert v. McQuade ((1902) 2 K.B. 631), referring to Inland Revenue v. Strong ((1878) 1 Tax Cas. 207), said at p. 649 :

> "Now that judgment, whether or not the strong particular facts justified it, is certainly an affirmation of a principle of law that a payment may be liable to income-tax although it is voluntary on the part of the persons who made it, and that the test is whether, from the standpoint of the person who receives it, it accrues to him in virtue of his office; if it does, it does not matter whether it was voluntary or whether it was compulsory on the part of the persons who paid it. That seems to me to be the test; and if we once get to this - that the money has come to or accrued to, a person by virtue of his office - it seems to me that the liability to income tax is not negatived merely by reason of the fact that there was no legal obligation on the part of the persons who contributed the money to pay it."

It is well established that in cases of this kind the real question is, as Rowlatt J. put it in Reed v. Seymour ((1926) 1 K.B. 588), "But is it in the nature of a personal gift or is it a remuneration ?", an observation which was quoted with approval by Viscount Cave, L.C. when the case went up to the House of Lords with the addition "If the latter, it is subject to the tax; if the former, it is not" : see Seymour v. Reed ((1927) A.C. 554). We find it impossible to hold in this case that the payments to the appellant had not been made in consideration of the teaching imparted by him. Levy admitted that he had received benefit from the teaching of the appellant. It is plain to us that it was because of the teaching that the gift had been made. It is true that Levy said that he made the gifts to mark his esteem and affection for the appellant. But such emotions and therefore the gifts, were clearly the result of the teaching imparted by the appellant. Mr. Sastri contends that that may be so, but we have no right to follow the successive causes and as a result thereof link the gift with the teaching. An argument of this kind seems to have been advanced in Blakiston v. Cooper ((1909) A.C. 104) and dealt with by Lord Ashbourne in the following words : "It was suggested that the offerings were made as personal gifts to the Vicar as marks of esteem and respect. Such reasons no doubt played their part in obtaining and increasing the amount of the offering, but I cannot doubt that they were given to the vicar as vicar and that they formed part of the profits accruing by reason of his office." We have no doubt in this case that the imparting of the teaching was the causa causans of the making of the gift; it was not merely a causa sine qua non. The payments were repeated and came with the same regularity as Levy's visits to the appellant for receiving instructions in Vedanta. We do not feel impressed by Mr. Sastri's contention that the first payment of Rs. 2,41,103-11-3 was too large a sum to be paid as consideration. In any case we are not concerned in this case with that payment. We are concerned with payments which are of much smaller amounts and as to which it has not been said that they were too large to be a consideration for the teaching. And one must not forget that these are cases of voluntary payments and the question of the appraisement of the value of the teaching received in terms of money is not very material. If the first payment was too big to have been paid for the teaching received, it was too big to have been given purely by way of gift.

In the view that we take, namely, that the payments with which we are concerned, were income arising from the vocation of the appellant as a teacher of Vedanta, no question of exemption under section 4(3)(vii) of the Act arises. In order that a payment may be exempted under that section, it has to be shown that it did not arise from the exercise of a vocation.

In the result, we have come to the conclusion that this appeal fails and it is dismissed with costs in this Court.

Appeal dismissed.

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