Shrimant Padmaraje R. Kadambande

Vs

Commissioner of Income Tax, Pune

Civil Appeal Nos. 2201-2203 of 1979

(S. Mohan, G. N. Ray JJ)

22.04.1992

JUDGMENT

MOHAN, J. -

1. All these appeals, arising out of a judgment of the High Court of Bombay (Nagpur Bench), can be dealt with under a common judgment since they relate to one and same assessee, the appellant before us.

2. Shrimant Padmaraje R. Kadambande is the assessee and the only child of Late Chhatrapati Raja Ram Maharaj, the ruling Chief of the former State of Kolhapur, under the Huzur order dated April 8, 1947 the assessee was granted a cash allowance of Rs. 3,000 per month from April 1, 1947. This order was passed by the successor of Chhatrapati Raja Ram Maharaj. After the merger of Kolhapur State in the then State of Bombay, the allowance was continued for some time up July 31, 1955. Thereafter it was discontinued. This was because of the provisions of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 (hereinafter referred to as 'the Act'). It may be stated at this stage that the Act was passed to abolish miscellaneous alienations of various kinds prevailing in the merged territories in the State of Bombay.

3. The District Treasury Officer, Kolhapur by his letter dated April 14, 1956 communicated the discontinuance of the said allowance. Under sub section (1) clause (d) of Section 15 of the Act it was provided that a cash allowance could be paid as a compassionate payment notwithstanding the abolition of all alienations under Section 4 of the Act. The assessee continued to receive cash allowance from August 1, 1956 on modified terms. The sanction of this cash allowance was conveyed to the appellant by the Collector of Kolhapur through his letter dated October 6, 1959. It appears that an amount of Rs. 10 lakhs out of a trust property in the Bank Of Kolhapur in accordance with the provisions of Indenture of Trust dated October 19, 1947 was misappropriated. The cash allowance that was to be paid to the assessee under order dated October 6, 1959 was to be reduced in the circumstances mentioned therein.

4. For the assessment year 1963-64 the assessee received a sum of Rs. 36,000. For the assessment year 1964-65 she received a sum of Rs. 33,992. Before the Income Tax Officer a question arose whether the amounts received by the assessee were subject to income tax. It was urged on behalf of the assessee that these receipts were of a capital nature and, therefore, would not be subject to income tax. This contention was negatived by the Income Tax Officer who subjected the respective amounts to tax in each of the assessment years.

5. Being aggrieved by the said assessment orders an appeal was preferred by the assessee before the Appellate Assistant Commissioner. Two alternative contentions were urged on behalf of the assessee -

> (i) the receipt were of a capital nature and, therefore, would be exempt from income tax;
>
> (ii) having regard to the casual and non-recurring nature of this income it would be exempt under Section 10(3) of the Income Tax Act.

6. Rejecting these two contentions, the Appellate Assistant Commissioner confirmed the orders of the Income Tax Officer.

7. The appeal to the Tribunal was preferred urging the same contention but without success. Thereafter a reference was made for determination by the High Court for the assessment year 1963-64 and 1964-65 which reads as under :

> Whether the amount of Rs. 36,000 and Rs. 33,992 received by Shrimant Padamraje R. Kadambande of Kolhapur from the Government of Maharashtra during the financial years ended March 31, 1963 and March 31, 1964 and receipts of an income nature and taxable under the provisions of the Income Tax Act, 1922 (sic) (1961) ?"

8. The High Court on reference to the statutory provisions of the Act and relying on the case in H. H. Maharani Shri Vijaykuverba Saheb of Morvi v. CIT ((1963) 49 ITR 594 (Bom)) came to the conclusion that the decision of the taxing authorities and the Tribunal that the amounts received by the assessee during the two relevant financial years were income within the meaning of Income Tax Act (sic was correct). They could not be regarded as capital receipt in the hands of the assessee. Accordingly the reference was answered in the affirmative in favour of the Revenue. It is under these circumstances, civil appeals arose, special leave petitions having been granted on August 10, 1979.

9. Civil Appeal No. 2201 of 1979, directed against the order passed in Income Tax Reference No. 192 of 1974, relates to assessment year 1970-71 corresponding to financial year 1969-70.

10. Civil Appeal No. 2202 of 1979, directed against the order passed in Income Tax Reference No. 191 of 1973, relates to the assessment years 1965-66, 1966-67, 1967-68, 1968-69 and 1969-70 corresponding to financial years 1964-65 to 1968-69.

11. Civil Appeal No. 2203 of 1979 directed against the order passed in Income Tax Reference No. 121 of 1969, relates to assessment year 1963-64 and 1964-195 corresponding to financial years 1962-63 and 1963-64.

12. The learned counsel for the appellant draws our attention to the various provisions of the Act particularly to Section 2 wherein the definition of alienation is provided. According to him payment was originally made under Huzur order which was abolished consequent to the merger of Kolhapur State. Section 4 of the Act makes it very clear that all alienations shall be deemed to have been abolished. The said section contains a non obstante clause. However where any cash allowance which is included in the definition of alienation is granted under section 15(1)(d), the said payment is on compassionate ground. This payment is entirely different from those allowance paid under clauses (i),(ii) and (iii) of the said section. If that much is clear the High Court is incorrect in

holding that it is a receipt of revenue and would not amount to compensation when the statute declare otherwise. The interpretation of section 15 runs counter to the spirit of the section.

13. The Revenue relies heavily on the case in Raja Rameshwara Rao v. CIT ((1963) 49 ITR 144 : AIR 1967 SC 290 : (1964) 2 SCR 847). The case referred to therein namely Buttlerley case (IRC V. Buttlerley Co. Ltd., (1957) 36 Tax Cas 411 : (1956) 2 All ER 197 (HL)) proceeded on the contention that the payments were of income nature. Then again, Raja Rameshwara Rao case ((1963) 49 ITR 144 : AIR 1967 SC 290 : (1964) 2 SCR 847) itself came to deal with maintenance allowance as qualified by statute. As a matter of fact, this is explained in R. Y. Sivaram Prasad Bahadur v. CIT ((1971) 3 SCC 726, 732 : (1971) 82 ITR 527, 535) wherein it was categorically held "shall be deemed to be interim maintenance allowances" and therefore, were held as revenue receipts.

14. The submission of other learned counsel is that in determining whether payment constitute revenue receipt or not, regard must be had to the statutory provisions. The principle to be applied is found in P. H. Divecha v. CIT ((1963) 48 ITR 222, 231-232 : AIR 1964 SC 758 : 1963 Supp (2) SCR 949). It is nature and the quality of the payment and not the periodicity whereof which constitute income. As matter of fact, the periodicity was not held to be conclusive.

15. A case similar to the one hand is H. H. Maharani Shri Vijaykuverba Saheb of Morvi ((1963) 49 ITR 594 (Bom)) wherein the High Court held that a voluntary payment without consideration cannot fall in the category of income. The position here is exactly same. There is no compulsion on the part of the Government to give any allowance. It is purely discretionary. It cannot be got over by saying that after the order is passed the assessee gets a right. That has nothing to do in determining the question.

16. In S. R. Y. Sivaram Prasad Bahadur ((1971) 3 SCC 726, 732 : (1971) 82 ITR 527, 535) in no uncertain terms it was laid down that it is the quality of the payment that is decisive of the character of payment and not the method of payment or its measure which will make it fall within the category of capital or revenue, undoubtedly, the High Court had not kept these important aspects before rendering the decision whether it is a revenue receipt or not. The Judgment of the High Court requires to be interfered with.

17. The learned counsel appearing for the respondent (Revenue) after referring to Section 2(24) of the Income Tax Act, 1961, would submit that if it is not windfall and if there is regularity in payment, that would be enough to constitute income. That is the test adopted as seen in the case of E. D. Sasson & Co. Ltd. v. CIT ((1954) 26 ITR 27, 49 : AIR 1954 SC 470 : (1955) 1 SCR 313). Similar is the case in Raghuvanshi Mills Ltd. v. CIT ((1952) 22 ITR 484, 489 : AIR 1953 SC 4 : 1953 SCR 177). Therefore, if these are applied there is no difficulty in holding that the payment received by the assessee, which do not amount to compensation, are nothing but income. Where it is a case of compensation that would be as said down in CIT v. Kamal Behari Lal Singha ((1973) 3 SCC 540 : (1971) 82 ITR 460).

18. The direct authority which governs the present case is Raja Rameshwara Rao v. CIT ((1963) 49 ITR 144 : AIR 1967 SC 290 : (1964) 2 SCR 847) because that was a case of maintenance allowance. Here, as well, the assessee applied to the Government in order to maintain herself. It is such an allowance which is talked of under clause (d) of Section 15(1) of the Act. Therefore, where she is paid maintenance allowance periodically it cannot be claimed as compensation. It does not matter on what ground or on what basis the grant is made. That is alien to taxation. Therefore, to

say that it is paid as compassionate allowance cannot make the position of assessee any better.

19. The next authority on which reliance could be placed in S. R. Y. Sivaram Prasad Bahadur ((1971) 3 SCC 726, 732 : (1971) 82 ITR 527, 535) in which also it was held that one must look at the substance of the payment. Therefore, the Judgment of the High Court is correct.

20. No doubt, the marginal heading of the section is compensation but that does not control the operation of the section or the interpretation of Section 15. The general principle that marginal heading cannot control the interpretation, is deducible from Chandroji Rao v. CIT ((1970) 2 SCC 23 : (1970) 77 ITR 743).

21. We will now proceed to consider the correctness of these submissions. Section 2(24) of the Income Tax Act, 1961 defines in an inclusive manner what "income" is. The word "income" connotes periodical monetary return coming in with some regularity or expected regularity from definite sources. In E. D. Sassoon & Company Ltd. ((1954) 26 ITR 27, 49 : AIR 1954 SC 470 : (1955) 1 SCR 313) at page 49 this Court cited the Privy Council ruling in CIT v. Shaw Wallace & Co. (ILR (1932) 59 Cal 1343, 1350 : AIR 1932 PC 138 : 59 IA 206) wherein it was observed :

Income, their Lordship think, in the Indian Income Tax Act, connotes a periodical monetary return coming in with some sort of regularity, or excepted regularity from definite sources. The source is not necessarily one which is expected to continuously productive, but it must be on whose object is the production of a definite return, excluding anything in the nature of mere windfall."

22. In Raghuvanshi Mills Ltd. ((1952) 2 While dealing with a case of the amounts received under an insurance policy it was held that it would constitute income. It is sufficient if we extract the head-note which is as under :

The assessee company had insured its mills with certain insurance the companies and also had taken out certain policies of the type known as 'consequential loss policy' which insured against loss of profit, standing charges and agency commission. The mills were completely destroyed as a result of fire and a certain amount was paid to the assessee by the insurance companies. The question was whether this amount which was treated as paid on account of loss of profit was assessable to income tax :

> Held, that the amount received by the assessee was income and so was taxable;
>
> Held further, that the receipt was inseparably connected with the ownership and conduct of the business and arose from it and therefore it was not exempt under section 4(3)(vii)
>
> The view taken in England in B. C. Fir and Cedar Lumber Co. v. The King (1932) AC 441 (HL) and IRC v. William's Executors ((1944) 26 Tax Cas 23 : (1944) 1 All ER 38 In (HL)), preferred.
>
> The remarks of the Judicial Committee in CIT v. Shaw Wallace & Co. (ILR (1932) 59 Cal 1343, 1350 : AIR 1932 PC 138 : 59 IA 206) with regard to the meaning of the word 'income' must be read with reference to the particular facts of that case."

23. What is to be carefully observed is at page 489 ((1952) 22 ITR 484, 489 : AIR 1953 SC 4 : 1953 SCR 177) where it was held as under :

> "It is true the Judicial Committee attempted a narrower definition in CIT v Shaw Wallace & Co. (ILR (1932) 59 Cal 1343, 1350 : AIR 1932 PC 138 : 59 IA 206) by limiting income to 'a periodical monetary return "coming in" with some sort of regularity, or expected regularity, from definite sources' but, in our opinion, those remarks must be read with reference to the particular facts of that case."

24. Therefore, the observation of the privy Council in CIT v. Shaw Wallace & Co. case (ILR (1932) 59 Cal 1343, 1350 : AIR 1932 PC 138 : 59 IA 206) cannot be pressed into service as of general application as is sought to be done by the learned counsel for the Revenue. Those observations must be read with reference to the particular facts of the case. The salient facts in this case are :

> (1) Under the Huzur order dated April 8, 1947 passed by the Maharaja of Kolhapur the appellant-assessee was granted a cash allowance of Rs. 3,000 per month from April 1, 1947.
>
> (2) After the merger of Kolhapur State the allowance was discontinued from July 31, 1955.
>
> (3) Section 4 of the Act having an overriding effect over the settlement grant order etc. states that all alienations shall be deemed to have been abolished. Clause (ii) of Section 4 says :
>
> Save as expressly provided by or under this Act all rights legally subsisting on the said date in respect of such alienation and all other incidents of such alienations shall be deemed to have been extinguished."

It cannot be denied and in fact, is not denied before us that under Section 2 of the Act the allowance paid to the assessee would fall within the definition of alienation. In fact, Section 2(1)(III) defines "alienation" as follows :

> Section 2(1)(III). - of cash allowance or allowance in kind of any person by whatever name called."
>
> (4) The next question would be whether the saving clause would apply to the payment made in favour of the assessee. This takes us to Section 15. It is worthwhile to quote the section in full :
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> Section 15. compensation in respect of allowances in cash or kind. - (1) In the case of an alienation consisting of a cash allowance or allowance in kind the alienee shall be paid -
>
> (i) seven time the amount of the cash allowance or of the value of the allowance in kind, as the case may be, if the alienation was hereditary without being subjected to deduction or cut at the time of each succession;
>
> (ii) five times the amount of the cash allowance of the value of the allowance in kind, as the case may be, if the alienation was hereditary but subject to a deduction or cut at the time of each succession;or
>
> (iii) three time the amount of cash allowance or the value of the allowance in kind, as

the case may be, if the alienation was continuable for the lifetime of the alienee :

Provided that if under the terms of a grant any cash allowance or allowance in kind -

(a) is received by a widow for the purpose of maintenance, she shall be paid an amount equal to such allowance for the remainder of her life;

(b) is received by an alienee for the purpose of education, he shall be paid an amount equal to such allowance during a life period and subject to the like conditions, as are contained in the grant;

(c) is received by an alience who is -

(i) a male minor, he shall be paid an amount equal to the allowance till the attains the age of twenty-one years;

(ii) an unmarried female, she shall be paid an amount equal to the allowance till she marries,

or the amount calculated in accordance with the provisions of this section, whichever is greater;

(d) is received by an alienee of whom, upon application made to it, in the manner prescribed, before the first day of August 1958, the State Government is satisfied after such inquiry (if any) as it thinks fit, that he has no other source of income, or that if he has any other source of income it is insufficient for his livelihood, or that on account of old age, mental or physical infirmity or other reason he is incapable of earning a livelihood, or maintaining himself in a reasonable manner, there shall be paid to such alienee as a compassionate payment an amount equal to such allowance during his lifetime, or for such lesser period as the State Government in the circumstances thinks just.

(2) For the purpose of sub-section (1), the amount of cash allowance shall be the amount paid or payable to the alienee for the year immediately preceding the appointed date and the value of the allowance in kind shall be the value of the allowance in the kind paid or payable to the alienee for the year immediately preceding the appointed date, such value being determined in the prescribed manner."

The marginal heading (ED. : Given as section heading in italics) says 'compensation'.

In our considered view those cases falling under sub-section (1) clauses (i), (ii) and (iii) fall under a different category than what is covered under clause (d) of the proviso. While clauses (i), and (ii) and (iii) provide for statutory payment at different rates of payment for different categories of persons, in the case of a person falling under clause (d) it requires an alienee to make an application.

(5) If such an application had been made in prescribed form before the first day of August 1958, the State Government, if satisfied after such enquiry, as it thinks fit, that the applicant has no other source of income, there shall be paid as a compassionate payment, an amount equal to such allowance during his lifetime or for

lesser period, as the State Government may think fit.

(6) This payment is made on account of

(a) old age

(b) mental or physical infirmity or

(c) other reason that he is not engaged in earning his livelihood or maintaining himself in a reasonable manner. It was under Section 15 that an application was made by the assessee to the State Government on May 23, 1958 for compassionate payment.

(7) The decision of the Government was communicated to the assessee by a letter of the Collector dated April 6, 1959 wherein the Government stated that 'Government is pleased to sanction under clause (d) of the proviso to Section 15(1) of the Act to the making of compassionate payment of Rs. 3,000 per month with effect from August 1, 1956 to the assessee during lifetime as compensation for the abolition of the cash allowance held by her subject to certain condition laid down therein'.

25. In the light of these facts the only question is whether the amount received by the assessee during these financial years could be regarded as capital receipts in the hands of the assessee.

26. Strong reliance is placed on Raja Rameshwara Rao ((1963) 49 ITR 144 : AIR 1967 SC 290 : (1964) 2 SCR 847). That case no doubt dealt with interim maintenance allowance. At page 148 the following observations are found

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 Regulation 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 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 Regulation 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 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 treated as capital for the reason that they were not compensation for the loss of Jagir, we find no ground on which we can say that 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 Section 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 CIT v. Shaw Wallace and Co. (ILR (1932) 59 Cal 1343, 1350 : AIR 1932 PC 138 : 59 IA 206) Next, we observe that the Regulation advisedly called the payments 'maintenance allowance', a nomenclature peculiarly suited

to payments of the nature of income."

27. Therefore, in this case, the maintenance allowance was qualified by the statute and it was a nomenclature peculiarly suited to payments of the nature of income. The learned counsel for the Revenue would state if the payment in this case do not constitute windfall and the right to payment of these cash allowances in the case on hand, could be enforced in a civil court, as laid down in this ruling, there is no other way than to hold this to be an income. But, as we have pointed out just now, maintenance allowance is qualified by statute unlike the present case which is purely a discretionary payment. It is no use contending as also observed by the High Court that after the order is passed an enforceable right arises. On the contrary the question would be whether the statute gives an enforceable right. We think in such of those cases falling under clause (d) of the proviso to Section 15 (1) of the Act, no statutory right is created. This is unlike those cases falling under clauses (i), (ii) and (iii) of sub-section (1) of Section 15. These constitute different clauses as has already been pointed out by us. The fact that the assessee has applied for a grant for maintenance, nor again, the periodicity of payment, would be conclusive as we will demonstrate later.

28. Now, we come to observations at page 149 :

> We think for all these reasons the interim maintenance allowances were taxable income. If a source has to be found for them, the Regulation had to be held the source.
>
> A case very never to the one in hand and a case that throws a great deal of light on the problem that faces us is Commissioners of Inland Revenue v. Butterley Co. Ltd. (IRC V. Buttlerley Co. Ltd., (1957) 36 Tax Cas 411 : (1956) 2 All ER 197 (HL)), we think a detailed reference to it can be very profitably made. That case was concerned with the English Coal Industry Nationalisation Act, 1946, which nationalised the collieries and divested all owners of them and the business 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 payment 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 profit 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."

29. It is clear from the above extract that Butterley case (IRC V. Buttlerley Co. Ltd., (1957) 36 Tax Cas 411 : (1956) 2 All ER 197 (HL)) proceeded on concession that the payments were of income nature. This ruling was explained by this Court in S. R. Y. Sivaram Prasad Bahadur ((1971) 3 SCC 726, 732 : (1971) 82 ITR 527, 535) (at SCC pages 734-35 and ITR page 537-38) which is extracted as under :

> In order to understand the ratio of that decision, we must bear in mind the provision of the two Regulations referred to herein before. The first Regulation provided for the taking over of the management of the estates and the second regulation prescribed

> the mode of determining the commutation sum in respect of each Jagir and for its payment. The character of the receipt which this Court was called upon to consider was the maintenance allowance paid under section 14 of the first of the two regulations. Under that regulation, the Administrator of the Jagirs took over the management of the Estates Pending making provision for determination of the commutation amount. Provision in that regard was made under the second Regulation. Till the payment of the commutation sum, the Administrator merely managed the Estate on behalf of the former owners of those Estate. This is clear from Section 5, 8, 11, 12, 13 and 14 of the first Regulation. Under Section 5 thereof the quondam Jagirdars were required to hand over the possession of their Estates to the Jagir Administrator. Section 8 required the former Jagirdars to pay the Government the administration expenses of their Estate. Section 11 provided for distribution of the net income of an Estate between the Jagirdars and his Hissedars who were entitled to share in the income of the Estate. Section 12 (1) says :
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> 'From the amount payable to any person under section 11, there shall be deducted the amount of any maintenance allowance which under sub-section (2) is debitable to the share of that person.'
>
> Section 13 required the Jagir Administrator to maintain Separate account in respect of each Jagir and afford the Jagirdar and Hissedar concerned reasonable facilities for the inspection of the same. Section 14 reads :
>
> 'The amount payable to Jagirdars and Hissedars under the Regulation shall be deemed to be interim maintenance allowances payable until such time as the terms for the commutation of Jagirs are determined.'

It is the character of the payments made under section 14 that came up for consideration before this Court in Rameshwara Rao case ((1963) 49 ITR 144 : AIR 1967 SC 290 : (1964) 2 SCR 847). Quite clearly the maintenance allowances paid were revenue receipts. Hence that decision has no bearing on the question of law under consideration in the present case. The observations made by this Court in that decision must be read in the light of the facts of that case.

30. Thus it is clear that the observation made by this court in Rameshwara Rao case ((1963) 49 ITR 144 : AIR 1967 SC 290 : (1964) 2 SCR 847) must be read in the light of the facts of the case. From the ruling in S. R. Y Sivaram Prasad Bahadur ((1971) 3 SCC 726, 732 : (1971) 82 ITR 527, 535) it is clear that what is decisive of the character is the quality of the payment. The following passage at page 535 (SCC p. 732, Para 16) is of vital significance :

> It is the quality of payment that is decisive of the character of the payment and not the method of the payment or its measure, and makes it fall within capital or revenue."

31. Equally, in P. H. Divecha case ((1963) 48 ITR 222, 231-32 : AIR 1964 SC 758 : 1963 Supp (2) SCR 949) at pages 231-32 the test applied was as under :

> In determining whether this payment amounts to a return for loss of a capital assets or is income profits or gains liable to income tax one must have regard to the nature and quality of the payment. If the payment was not received to compensate for a loss

> of profit of business, the receipt in the hands of the appellant cannot properly be described as income, profit or gains as commonly understood. To constitute income, profit or gains, there must be a source from which the particular receipt has arisen and a connection must exist between the quality of the receipt and the source. If the payment is by another person it must be found out why that payment has been made. It is not motive of the person who pays that is relevant. More relevance attaches to the nature of the receipt in the hands of the person who receives it though in trying to find out the quality of the receipt one may have to examine the motive out of which the payment was made. It may also be stated as general rule that the fact that the amount involved was large or that it was periodic in character have no decisive bearing upon the matter. A payment may even be described as 'pay' 'remuneration', etc., but that does not determine its quality, though the name by which it has been called may be relevant in determining its true nature, because this gives an indication of how the person who paid the money and the person who received it viewed it in the first instance. The periodicity of the payment does not make the payment a recurring income because periodicity may be the result of convenience and not necessarily the result of the establishment of a source expected to be productive over a certain period. These general principles have been settled firmly by this Court in a large number of cases : see, for example, CIT v. Vazir Sultan & Sons ((1959) 36 ITR 175 : AIR 1959 SC 814 : 1959 Supp (2) SCR 375), Godrej & Co. v. CIT ((1959) 37 ITR 381 : AIR 1959 SC 1352 : (1960) 1 SCR 527), CIT v. Jairam Valji ((1959) 35 ITR 148 : AIR 1959 SC 291 : 1959 Supp (1) SCR 110) and Senairam Doongarmall v. CIT ((1961) 42 ITR 392 : AIR 1961 SC 1579 : (1962) 1 SCR 257)."

32. This was the reason why we said neither the nomenclature nor the periodicity of the payment would be the determinative factors. Regards must be had only to the nature and quality of payment. The High Court took the view that this is not compensation. One thing that is certain is that the assessee lost her right to those allowances. Thereafter, on an application by way of compassion the payment is made. The mere fact, after the order is made it becomes an enforceable right, is neither here nor there. The reliance on Rameshwara Rao case ((1963) 49 ITR 144 : AIR 1967 SC 290 : (1964) 2 SCR 847) does not seem to be correct in view of what we have pointed out above.

33. It has already been seen that the marginal heading of Section 15 is "compensation". The fact that under clauses (i), (ii) and (iii) of Section 15(1) the compensation is paid as of right and in cases falling under clause (d) of the proviso, it is a discretionary payment, would not stamp the payment with a character of revenue. As to how a marginal heading has to be construed can be gathered from Chandroji Rao case ((1970) 2 SCC 23 : (1970) 77 ITR 743). It is stated therein that the marginal heading to a section cannot control the interpretation of the words of the Section particularly where the meaning of the section is clear and unambiguous.

34. For a moment, we are not interpreting the words of the section but we are only holding that even a payment under clause (d) is nothing but a compensation because as the facts disclose the amount of Rs. 10 lakhs out of a trust property in a Bank of Kolhapur was misappropriated.

35. There is no compulsion on the part of the Government to make the payment nor is the Government obliged to make the payment since it is purely discretionary. A case similar to the one on hand is H. H. Maharani Sri Vijaykuverba Saheb of Morvi ((1963) 49 ITR 594 (Bom)) head-note

of which is extracted :

> A Voluntary payment which is made entirely without consideration and is not tractable to any source which a practical man may regard as a real source of his income but depend entirely on the whim of the donor cannot fall in the category of income.
>
> The ruler of a native State abdicated in favour of his son in January 1948. From April, 1949, onwards his son paid him a monthly allowance. The allowance was not paid under any custom or usage. The allowance could not be regarded as maintenance allowance, as the assessee possessed a large fortune.
>
> Held, that as the payments were commenced long after the ruler had abdicated, they were not made under a legal or contractual obligation. As the allowances were not also made under a custom or usage or as a maintenance allowance, they were not assessable."

36. The position is exactly the same. The payment made by the Government is undoubtedly voluntary. However, it has no origin in what might be called the real source of income. No doubt Section 15(1) proviso clause (d) enables the application to seek payment but that is far from saying that it is a source. Therefore, it cannot afford any foundation for such a source. Further, it is a compassionate payment, for such length of period as the Government may, in its discretion, order.

37. Lastly, we may refer to Kamal Behari Lal Singha case ((1971) 3 SCC 540 : (1971) 82 ITR 460) which is pressed into service by the Revenue, to support its contention one has to look at the character of the payment in the hand of the receiver and the source from which the payment is made has no bearing on the question. We will extract the head-note (from ITR) of this ruling :

During the accounting period ending April 13, 1950, the assessee, who was a shareholder in a company, received a dividend of Rs. 13,200 from the company. Out of that amount a sum of Rs. 8,829 was paid out of capital gains received by the company in the shape of salamis and land acquisition compensation receipt after March 31, 1948. The question was whether that part of the dividend attributable to salamis and compensation for land acquisition was taxable in the hands of the assessee :

> Held, that the assessee had a beneficial interest in that sum in the hands of the company. Undoubtedly, the amount received by the company towards salami and compensation of acquisition of its lands was a capital receipt in the hands of the company and when the sum was distributed amongst its shareholders each of the shareholders took a share of the capital assets to which they were beneficially entitled. The receipt of Rs. 8,829 was a capital receipt in the hands of the assessee. The fact that the sum was distributed as 'dividend' did not change the true nature of the receipt; a receipt was what it was and not what it was called.
>
> Trustees of the Will of H. K. Brodie v. IRC ((1933) 17 Tax Cases 432 (KB) applied
>
> Held also that the part of the dividend received by the assessee attributable to land acquisition compensation received by the company after March 31, 1948, was not receipt of 'dividend' within the meaning of Section 2(6-A) of the Income Tax Act, 1922.

CIT v. Nalin Behari Lall Singha ((1969) 2 SCC 310 : (1969) 74 ITR 849), followed

It is now well settled that in order to find out whether a receipt is a capital receipt or a revenue receipt one has to see what it is in the hands of the receiver and not its nature in the hands of the payer. In other words the nature of the receipt is determined entirely by its character in the hands of the receiver and the source from which the payment is made has no bearing on the question. Where an amount is paid which, so far as the payer is concerned, is paid wholly or partly out or capital, and the receiver receives it as income on his part, the entire receipt is taxable in the hands of the receiver."

38. This is a case of compensation paid under the Land Acquisition Act. It was held that a compensation as such would be capital receipt in the hands of the receiver and the fact that it was distributed as dividends would not change the true nature of the receipt.

39. As a result of the above discussion, we hold that the amounts received by the assessee during the financial years in question have to be regarded as capital receipts and, therefore, are not income within the meaning of Section 2(24) of the Income Tax Act. Accordingly, we set aside the judgment of the High Court and allow the appeals with no order as to costs.

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