

Justice Deoki Nandan Agarwala

Vs

Union of India

Civil Appeal No. 411 of 1982

(S.P. Bharucha, B.N. Kirpal, S. Rajendra Babu, S.S. Mohammed Quadri, M.B. Shah JJ)

04.05.1999

JUDGMENT

S.P. Barucha, J.

1. The appellant was a Judge of the Allahabad High Court. He filed his income tax return for the Assessment Year 1978-79 on the basis that the salary that he received as a Judge was not liable to tax under the Income Tax Act. The contention having been rejected both by the I.T.O. and in appeal, a special leave petition was filed. Leave to appeal was granted and on 19th April, 1983 the following four questions were referred by two learned Judges to a Constitution Bench :

"1. Whether the salary of a Judge of the High Court of a State payable under cl.(1) of Art. 221 of the Constitution and the salary of a Judge of the Supreme Court payable under cl.(1) of Art. 125 is taxable by a law made by Parliament under Entry 82 of List 1 of the Seventh Schedule.

2. Whether the expression "Rupees" in Part D of the Second Schedule which stipulates the sums payable to the Judges of the Supreme Court and the Judges of the High Court implies the purchasing power equivalent to the goods and services that could be bought in the year 1950. That is to why, whether the salaries so fixed should be construed as meaning their real value in terms of goods and services which they would buy at the commencement of the Constitution or do they represent their nominal value of any given point of time.

3. Whether the expression "such allowances" referred to in cl. (2) of Art. 125 and cl. (2) of Art. 221 of the Constitution as payable to a Judge of the Supreme Court or a Judge of the High Court of a State includes dearness allowance; and if it is so, whether the dearness allowance as paid to them from February 1, 1978 is relatable to these provisions as there appears to be no express law made by Parliament for that purpose.

4. Whether the salary of a Judge of the Supreme Court payable under cl.(1) of Art. 125 or the salary of a Judge of the High Court of a State payable under cl.(1) of Art. 221 is not taxable under the head "Salaries", and, if it is so, is it taxable under any other head of income referred to in S.14 of the Income Tax Act, 1961."

2. It appears that the second question arose on a writ petition which stood transferred to this Court and which was withdrawn earlier today. This question does not, therefore, survive for consideration.

The third question, it is said by learned counsel for the appellant, was raised suo moto by this Court and we do not think, in the circumstances, that it should be answered.

3. Learned counsel for the appellant concentrated on the first and fourth questions. The fundamental question is whether the salary of a High Court Judge and a Supreme Court Judge was liable to income tax prior to 1st April, 1996. It must be stated here that it is not disputed that, with effect from 1st April, 1986 when Articles 125 and 221 stood amended, such salaries are taxable because Parliament then became entitled to legislate thereon.

4. The contention on behalf of the appellant is that Parliament could not legislate, prior to the said amendment, on the subject of the salaries were not liable to income tax because the definition of 'income' under the Income Tax Act includes 'salary'. The argument really is that the levy of income tax upon salary, by Parliamentary enactment, cuts down the Judges' salaries.

5. There can be no doubt that prior to the said amendment Parliament could not have legislated on Judges' salaries, but it is a far cry to conclude therefrom that the salary of a Judge is not taxable under the Income Tax Act. The subject of the salary of a High Court and Supreme Court Judges and the subject of tax on income are altogether different and the conclusion that is sought to be drawn is quite unacceptable. The salary of a Judge of a High Court and the Supreme Court is income and is taxable by Act of Parliament in just the same manner as is the income of any other citizen.

6. It is contended qua the fourth question that, in any event, a Judge of High Court and the Supreme Court has no employer and, therefore, what he receives is not salary; accordingly, what he receives as remuneration is not taxable under the head of salary under the Income Tax Act. To our mind, there is a misconception here. It is true that High Court and Supreme Court Judges have no employer, but that, *ipso facto*, does not mean that they do not receive salaries. They are constitutional functionaries. Articles 125 and 221 of the Constitution deal with the 'salaries' of Supreme Court and High Court Judges respectively and expressly state that what the Judges receive are 'salaries'. It is not possible to hold, therefore, that what Judges receive are not salaries or that such salaries are not taxable as income under the head of salary. The appeal is dismissed.