

# ALLAHABAD HIGH COURT

Commissioner of income-tax

Vs.

Sharma

I. T. Ref. No. 740 of 1962  
(M.C. Desai, C.J. and R.S. Pathak, J.)

22.05.1964

## JUDGMENT

**M.C. DESAI, C.J.**

1. I agree that the question should be answered in the affirmative but solely on the ground that the Tribunal has recorded a finding of fact that "this amount was received by the assessee firm as an allowance for the purposes of reimbursement of advertisement and other expenses." The question referred to us is not whether this finding is supported by evidence or not and consequently we have to take it as binding upon us. Whether there is a special allowance specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office is a question of fact and in regard to a finding on it the only question of law that can possibly arise is whether there was any material which could justify it. The question referred to us is whether on the facts and in the circumstances of the case the amount was exempt under Section 4(3)(vi) of the income-tax Act. The facts and circumstances of the case include the findings of fact because they are binding upon us. In view of the finding of fact recorded by the Tribunal the question must be answered in one affirmative. I reserve my opinion upon the question whether Section 4(3)(vi) does not require that the special allowance must have been granted after one expenses have been incurred wholly and necessarily in the performance of the duty or that the special allowance if given in advance must have actually been spent wholly and necessarily in the performance of the duties of an office.

**R.S. Pathak, J.**

2. The assessee, an unregistered firm, carried on business as the sole selling agent of

the Kanpur Cotton Mills. Besides being their sole selling agent. It also managed their retail cloth shop. During the previous year relevant to the assessment year 1948-49 it received a sum of Rs. 67,597/5/9 from the Kanpur Cotton Mills for the purpose, it is claimed, of meeting the expenses in connection with the management of the retail cloth shop. This sum was duly credited in the profit and loss account under the entry "Retail Cloth shop expenses". Although the assessee received, Rs. 67,597/5/9 for this purpose, it actually expended Rs. 12,6417- only, leaving a surplus of Rs. 54956/-. In the assessment proceedings before the income-tax officer it claimed that the entire sum of Rs. 67,597/- was exempt from inclusion in its total income under Section 4(3)(vi) of the Indian income-tax Act, which at the relevant time stood as follows :

"Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them :

.....

(vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit."

The income-tax Officer, however, rejected the claim and treated the balance of Rs. 54,956/- as remuneration allowed to the assessee for managing the retail shop. The income-tax Officer came to this conclusion on the finding that the amount received by the assessee bore no relation to the expenses to be borne by it over the management and advertisement charges. He found that the allocation of the amount to the assessee depended upon the net profits earned by the Kanpur Cotton Mills, which fluctuated from year to year, that the expenses borne by the assessee over management and advertisement remained fairly constant through the years and did not vary with the profits earned. No written agreement setting out the terms and conditions under which the assessee carried on the management of the retail cloth shop was produced, and the assessee admitted that it was not entitled to any fixed remuneration and that the allocation of the profits of the retail cloth shop lay entirely in the discretion of the Kanpur Cotton Mills.

3. The Appellate Assistant Commissioner upheld the finding of the income-tax Officer. The Appellate Tribunal, however, came to a different opinion and found that

the amount having been received by the assessee for a specific purpose fell within the scope of Section 4(3)(vi) and was entitled to exemption. The Appellate Tribunal relied, upon its decision in an appeal filed by the assessee for the assessment year 1947-48, in which the same point had arisen, and in which it had held, after referring to *Tejaji Parasram Kharawalia v. Commissioner of income-tax*,<sup>1</sup> and *L.N. Gadodia and Co. v. Commissioner of income-tax. United and Central Provinces and Berar*,<sup>2</sup> that upon the fact that the amount was received, for the purpose of reimbursing the assessee for advertisement and other expenses it was "bound to be excluded under Section 4(3)(vi).

4. At the instance of the Commissioner of income-tax the Appellate Tribunal has referred the following question :

"Whether on the facts and in the circumstances of the case the sum of Rs. 54,956/- was exempt under Section 4(3)(vi) of the Income-tax Act ?"

5. The Appellate Tribunal has found that the sum of Rs. 67,387/5/9 was paid by the Kanpur Cotton Mills to the assessee for the purpose of meeting the expense of managing and running the retail cloth shop. If the true scope of Section 4(3)(vi) is to provide for the exemption of an amount paid to an assessee for the purpose of meeting expenses incurred in the performance of the duties of his office or employment of profit, without regard to the amount of expenditure actually incurred by the assessee, there can be no dispute that the instant case would be covered by that provision. But learned counsel for the Commissioner contends that in order to enjoy the benefit of Section 4(3)(vi) the assessee must establish that not only has it received the amount as a special allowance, benefit or perquisite but that the amount of the grant was equal to the amount of expenses actually incurred by the assessee.

6. Section 4(3)(vi) entitles the recipient of the special allowance, benefit or perquisite specified in that sub-clause to claim that such receipt should not be included in his total income. The allowance must be specifically granted for the purpose of meeting expenses incurred by the recipient in the performance of the duties of his office or employment. The object of the grant must be to meet such expenses only. If the grant is made not merely for meeting these expenses but also for some other purpose, the exemption will not be available. The expenses, for which the grant is made, must be wholly and necessarily incurred in the performance of the recipient's duties. If the expenses are such as are incurred not only in the performance of the recipient's duties

but also on account of expenditure of some other nature, Section 4(3)(vi) will not apply. The grant may be made for the purpose of meeting expenses already incurred or expenses which have yet to be incurred and are with the contemplation of the grantor. The grant contemplated by Section 4(3)(vi) is a special allowance, benefit or perquisite. It need not necessarily be a monthly or annual grant. It need not even be a grant made periodically. It may be an, ad-hoc grant, it may be a grant made in one year in respect of expenditure which may not be completely incurred by the recipient during the year of payment but may extend to a subsequent year or years, it may also be that while the grant is made in one year in the expectation that part at least of the expenses will be incurred in that year, the assessee may, because of the exigencies of business and of circumstances beyond his control, find that the expenses cannot be incurred at all until the next year or thereafter. It is not suggested that Section 4(3)(vi) must be confined to an allowance which has been granted to meet expenses already incurred, it may also include an allowance granted for the purpose of meeting expenses contemplated at some future time. There is nothing to suggest that the words "expenses incurred" must mean only "expenses incurred already and ascertained. An employer, in his wisdom and experience and having regard to the exigencies of the office or employment of profit, may consider it necessary to grant an allowance in order that the expenses incurred at a future date relating to the performance of the duties may be defrayed from such allowance. It is not difficult to conceive of a case where an employer is unable beforehand to know with definite certainty what is the exact amount of the expenses which will be incurred at some latter date. If the contention of the Commissioner is accepted and, it is held that Section 4(3) (vi) can operate only where the grant is made not only for the purpose of meeting the expenses referred to but must also be equivalent in amount to those expenses, it is difficult to see how the provision can apply to a case where the expenses are merely within the contemplation of the grantor and have not yet been incurred by the recipient. The words "wholly and necessarily incurred in the performance of the duties of an office or employment of profit" indicate the nature of the expenses for the purpose of which the grant is made. They do not necessarily indicate the quantum of the expenses, because, as I have pointed, out, it may not be possible to ascertain beforehand what will be the exact expenses when they have to be incurred at some future time. I think that what is relevant for the income-tax Officer to determine, when considering a claim under Section 4(3)(vi), is whether the special allowance, benefit or perquisite has been specifically granted for the purpose of meeting expenses incurred or to be incurred, by the recipient in the performance of his duties.

7. Nowhere in the language of Section 4(3)(vi) do I find any indication as to the amount of the special allowance, benefit or perquisite which will be exempted. It is true that an employer may make a grant of this kind estimating approximately what its amount should be and it is open to the Legislature to grant an exemption in respect of an amount less than the amount of the grant. Although the amount granted may depend upon the estimate made by the employer, the legislature may say that the entire amount of grant will not be exempted but only that portion of the grant which is actually spent by the recipient, for that, adequate language is necessary, and that language is not to be found in the provision under consideration. The income-tax Officer is merely concerned with determining whether the grant is of the nature and has been made for the purpose described in the provision. If the grant is found to enjoy that nature and to have been made for that purpose, the income-tax Officer is bound to exempt it. He is not concerned with the amount of the expenses actually incurred and whether they are less than the amount granted. That Section 4(3)(vi) requires the income-tax Officer to merely enquire whether the purpose of the grant is covered By the language of that provision, and that he is not concerned with the amount actually expended by the recipient, was held by the Bombay High Court in Tejaji Parasram's case, 1948-16 ITR 260 : AIR 1949 Bombay 34 (supra).

8. In the instant case, it is not disputed that the amount constituted the income, profits and gains of the assessee and was received by the assessee for the purpose of meeting the expenses of managing and running the retail cloth shop. The Appellate Tribunal has given an express finding to the effect that it was received for this purpose. Having regard to the true scope of Section 4(3)(vi), I hold that the entire amount of Rs. 67,597/- was bound to be excluded from the total income of the assessee.

9. I have also examined the decision of this Court in L.N. Gadodia's case, (1951) 20 ITR 400 : AIR 1953 Allahabad 271 (supra). There the Court was concerned with a case under the Excess Profits Tax Act, and the question was whether the amount received by the assessee, who it seems was the predecessor of the assessee before us, as sole selling agent of the Kanpur Cotton Mills was liable to be treated as the profits of a business. The Court found that what was received by the assessee was received by it as an employee and, therefore, fell to be treated as salary paid to the assessee and accordingly was outside the scope of the Excess Profits Tax Act. To the extent, however, that the expenditure of the selling agency business was met from the grant

received by the assessee, the Court held that the profits of the selling agency business were liable to be increased for the purpose of the excess profits tax assessment. The provisions of Section 4(3)(vi) did not fail for consideration.

10. I am, therefore, of the view that the sum of Rs. 54,956/- was also exempt under Section 4(3)(vi) and, therefore, answer the question referred in the affirmative.

11. A copy of this Judgment under the seal of the Court and the signature of the Registrar shall be sent to the Appellate Tribunal. The assessee shall be entitled to its costs which we assess at Rs. 200/-. Counsel's fee is assessed at Rs. 200/-.

Reference answered.

Cases Referred.

1. 1948-16 ITR 260: AIR 1949 Bom 34
2. (1951) 20 ITR 460: AIR 1953 All 271