

# ANDHRA PRADESH HIGH COURT

Parimiseti Seetharamamma

Vs

Commissioner of Income-Tax

(Chandra Reddy C.J. )

03.08.1962

## JUDGMENT

### **Chandra Reddy C.J.**

1. The question at issue in this reference is formulated in these words :

"Whether on the facts and in the circumstances of the case what the assessee received in the relevant years is assessable to tax and whether section 34 of the Income-tax Act would be invoked in regard to the years 1947-48, 1948-49 and 1950-51 ?"

The reference relates to the assessment years 1947-48 and 1950-51, the inclusion of 1948-49 being an obvious mistake since the appeal preferred by the assessee in regard to that assessment year before the Income-tax Appellate Tribunal was allowed and is not involved in this reference. The assessee is one Seetharamamma alias Manavathi Bai. Though she was born near Eluru, she was brought up in Pithapur of East Godavari District. She was born in very humble circumstances belonging to the class familiarly known as "dasis". Her parents and sisters were employed in the Pithapur estate. Consequently, she came to be associated with the third daughter of the Maharaja of Pithapur, called Sita Devi was originally married to the Kumararajah of Vuyyur. Later on, she got this marriage dissolved by converting herself as a Muslim. After getting herself reconverted as an Arya-Samajist, she married the Gaikwar of Baroda. Incidentally, it may be mentioned that this led to the Government of India to withdraw their recognition of this ruler and declare his son instead as the Gaikwar of Baroda. Subsequent to her marriage with the Gaikwar of Baroda, Princess Sita Devi made various payments to the assessee in cash aggregating Rs. 6,86,600 in addition to some valuable jewellery over a period of seven years, i.e., between November 10, 1945, and October 23, 1952. It is these payments that are the subject-matter of the controversy in this reference. It is not disputed that originally these payments were not included in the taxable income of the assessee as her explanation that they constituted gifts

made by Princess Sita Devi to her on account of love and affection was accepted. Some time later, i.e., in or about 1953, the department had information that these sums of money represented the remuneration in lieu of services rendered by the assessee to the Princess Sita Devi. Thereupon, the concerned Income-tax Officer conducted an enquiry and, on the information that was available to him both in the shape of statements made by persons who were acquainted with the assessee and certain documents, he initiated proceedings under section 34 of the Indian Income-tax Act. Before issuing the notice under section 34, the proper Income-tax Officer called upon the assessee to give particulars about several matters contained therein and bearing upon the amounts received by her from Princess Sita Devi. The assessee sent a reply explaining in detail the circumstances under which these payments were made to her. She was examined in 1954 in support of the explanation given by her. After taking into account the sworn statement of the assessee and after holding further enquiry, a notice was issued to the assessee in March, 1954, under section 34. As required under section 22, the assessee filed a return of her income for the relevant years and also produced her accounts and such other documents as in her opinion would support her case of gift. The department on a consideration of the whole material before them the at these payments were exigible to tax and they were not exempt under section 4(3) (vii) of the Indian Income-tax Act as gifts. The assessee carried appeals to the Appellate Assistant Commissioner, who confirmed the assessment in so far as it related to cash payments but reduced the value of jewels to Rs. 20,000. The order of the Appellate Assistant Commissioner was confirmed by the Income-tax Appellate Tribunal on further appeal by the assessee and also by the department. The assessee then requested the Income-tax Appellate Tribunal to state a case for the opinion of this court under section 66(1). As this petition was not accepted, she had recourse to section 66(2). The court directed the Tribunal to state a case on some questions including the one that is posed before us now for our opinion. In compliance with that requisition, a case was stated by the Tribunal on several questions of which the present is one.

This matter came on for hearing before one of us (the honble Chief Justice) and Srinivasachari J. While disposing of the reference bearing on other questions, the Bench referred back the matter to the Tribunal to make an additional statement as it was not satisfied that statement of the case before the court was sufficient to enable it to determine the question as to the applicability of section 34 of the Income-tax Act to the facts of the assessee's case. Accordingly, the Tribunal has submitted an additional statement giving further particulars which formed the basis of belief of the Income-tax Officer for invoking section 34. Sri K. Rajah Ayyar appearing for the assessee once again impugnes the proceedings started under section 34, contending that there was no scope to bring

that section into operation as the assessee had stated at the time of the original assessment all the facts which were in her knowledge and which were sufficient to enable the department to assess her income. It is only in cases where the basic facts were not disclosed by the assessee which resulted in the profits or gains escaping assessment that it is permissible for the Income-tax Officer to start proceedings under section 34, continues the learned counsel. In order to appreciate these contentions, it is necessary to extract here section 34 of the Act :

"34. (1) If -

(a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed, he may in cases falling under clause (a) at any time and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or reassess such income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

We are unconcerned with the provisos to the section, as nothing turns upon them in this enquiry. The answer to the question posed in this reference in so far as it relates to the assessment year 1947-48 turns upon the construction to be put on the first part of the section, namely, "If the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 22, etc..." The submission of Sri Rajah Ayyar, learned counsel for the assessee, is that it is the duty of the assessee only to place the basic facts necessary for the assessment and it is for the Income-tax Officer to draw the necessary inference from the facts in his possession, either on the basis of the disclosure made by the assessee or on the basis of facts discovered by him and the duty of the assessee does not extend beyond making a full and truthful disclosure of the primary facts. That being the real

position the assessee is not called upon to say whether on the facts of the case the payments constitute gifts or whether they are gains or profits falling within the ambit of section 7 of the Income-tax Act. As substantiating this proposition, learned counsel for the assessee drew our attention to the judgment of the Supreme Court in Calcutta Discount Co. Ltd. v. Income-tax Officer, Calcutta. We are not persuaded that this submission is substantial. It is true that the assessee is obliged only to disclose the primary facts upon which the assessment could be founded and it is not necessary for him to indicate the inferences to be drawn from such material. But it is the duty of the assessee to reveal all the material facts to the department. Could it be said in this case that this duty has been discharged by the assessee? Our answer has to be in the negative for the reason that she had not told the Income-tax Officer the real relationship that existed between her and Princess Sita Devi. She appears to have stated to the department that she was her loyal friend and that Sita Devi was induced to make these presents to the assessee out of love and affection. It cannot, therefore, be predicated that she had made a disclosure of all the basic facts. It is urged by learned counsel for the department that it is this non-disclosure of the most material facts bearing on the relationship between the assessee and Sita Devi that misled the department into the belief that this was not "income" that could be brought to tax. In such a situation, we decided on not think that Calcutta Discount Co. Ltd. v. Income-tax Officer, Calcutta or Dhanwate v. Commissioner of Income-tax, has any analogy here. In the first of the cases, at the time of the original assessment, all the material facts necessary for the assessment were revealed to the Income-tax Officer. A return was filed by the assessee company which set out all the particulars regarding the sale of shares made by it and it stated that they were casual transactions. On further investigation, the proper Income-tax Officer came to know that the company was systematically carrying on trade in the sale of investments. Thereupon, proceedings under section 34(1) of the Income-tax Act were started on the ground that the company had failed to disclose the true intention behind the sale of shares. The Supreme Court ruled that the failure to disclose the true intention behind the sale of shares would not amount to an omission to disclose the material facts within the meaning of section 34. Their Lordships of the Supreme Court pointed out, inter alia, that the words "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year" in section 34 only postulated a duty on every assessee to disclose fully and truly all the material facts necessary for his assessment and that it was for the assessing authority to draw the proper legal inferences and ascertain on a correct interpretation of the taxing enactment the proper tax leviable and that the assessee was under no obligation to indicate the legal inferences to be drawn from that material. In fact, there are observations in the judgment of their Lordships which militate very much against the theory propounded by the learned counsel for the assessee. They observed :

"There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet the possible contention

that when some account books or other evidence has been produced there is no duty on the assessee to disclose further facts, which on due diligence, the Income-tax Officer might have discovered, the legislature has put in the Explanation, which has been set out above."

They added :

"Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them - including particular entries in account books, particular portions of documents, and documents and other evidence which could have been discovered by the assessing authority, from the documents and other evidence disclosed."

What the learned judges meant by these remarks is that all the facts which have a bearing on the assessment must be placed before the department for the purpose of assessment. In this case, as we have already stated, the real relationship between the assessee and her benefactress, i.e., of master and servant, has not been disclosed to the department. It is altogether a different matter to say that, in fact, no such relationship existed between her and Sita Devi. Whether there was material for the Income-tax Officer to believe that there was a true disclosure of all the facts or not will be dealt with in the appropriate context. *Dhanwate v. Commissioner of Income-tax* is of similar character, and it does not carry the assessee very far, the principle enunciated in that case being in consonance with that underlying in Calcutta Discount Co. Ltd. v. Income-tax Officer, Calcutta. For these reasons, we are unable to subscribe to the view pressed upon us by learned counsel for the assessee. It was next urged by Sri Rajah Ayyar, learned counsel for the assessee, that there was no material to justify the inference that the true facts were not revealed to the Income-tax Officer. It appears from the record that before the Income-tax Officer commenced proceedings under section 34 he made independent enquiries and he had also before him the report of the Income-tax Officer, Bombay. It is seen from the report sent by the Income-tax Officer to the Income-tax Commissioner for sanction to initiate proceedings under section 34 that the manager of the Vuyyur estate had informed him that the assessee was the servant maid attached to the Princess Sita Devi and she helped the princess in her venture to dissolve her first marriage. In addition to the statement made by the Kumararajah or Vuyyur, Princess Sita Devi's former husband, that the assessee was employed in his estate prior to 1941, there was also the admission of the assessee that she acted as the agent of the Princess Sita Devi at Nuzvid to disburse the salaries to the members of the staff of the Maharaja and the statement made by one of the partners of Chamanlal Manchand & Co. to the Income-tax Officer, D-II Ward, Bombay, to

the effect that Sitharamamma alias Manavathibai was the maid servant of the junior Maharani of Baroda. There was also a bill issued by the Bombay Garage Ltd. to the assessee describing her as the private secretary to the Princess Sita Devi in 1948 in regard to certain repairs carried out by the company to the car belonging to the Princess Sita Devi. The report of the Income-tax Officer to the Commissioner for sanction to initiate proceedings under section 34 contains the material that was before him. Sri Rajah Ayyar maintains that the material adverted to in the report could not justifiably lead the Income-tax Officer to conclude that the assessee was in the employ of Princess Sita Devi and that the payments were made in token of the appreciation of services rendered by her as thought by the department. Learned counsel urges that there must be, prima facie, grounds for thinking that there has been some non-disclosure of material facts. It is true that the belief contemplated by section 1(a) of section 34 must be of a reasonable person based upon good grounds and it cannot be based on mere suspicion. There should be some material which could furnish a basis for forming that belief. In other words, it is not the subjective satisfaction of the Income-tax Officer that is envisaged by that section. But that test is not in any way destructive of the decision reached by the Income-tax Officer to put into operation section 34. We have already referred to the various circumstances which led the Income-tax Officer to believe that there was non-disclosure of the primary facts by the assessee at the time of the original assessment. The sufficiency of the reasons is not justiciable and as such it is not open to this court in the exercise of its jurisdiction under section 66 of the Income-tax Act to consider whether the material was sufficient to warrant the belief entertained by the Income-tax Officer. We are supported in this opinion of ours by the observations of this court in *Parimiseti Seetharamamma v. Commissioner of Income-tax*. Even assuming that the question as to adequacy of reasons could be gone into by this court, we are satisfied that the material on record is sufficient to form the basis of belief that there was omission or failure on the part of the assessee to make a true disclosure of the material facts. The next limb of the argument of Sri Rajah Ayyar in this behalf is that since the material was not put to the assessee, no use could be made of it by the income-tax department in the context of the application of section 34. Here again, we are unable to give effect to the argument of learned counsel. As remarked by their Lordships of the Privy Council in *Commissioner of Income-tax v. Mahaliram Ramjidas* the Income-tax Officer is not required by section 34 to intimate to the assessee the nature of the alleged escapement or to give him opportunity of being heard before deciding to operate the powers conferred by that section. The Income-tax Officer is, therefore, under no obligation to draw the attention of the assessee to the documents he proposed to rely upon and the several circumstances that are against him or her before resorting to section 34. It cannot be overlooked in this context that at that stage the Income-tax Officer does not impose any charge on the subject, the assessee. The assessee has an opportunity after the initiation of the proceedings under section 34 to place all the material in support of the return filed by him or her. Consequently, the

failure on the part of the Income-tax Officer to confront the assessee with the material that is sought to be used against him or her would not vitiate the action under section 34. Moreover, it has not been established in this case, or even alleged, that the assessee was not asked about these documents. It follows that the contention in this regard is of no avail to the assessee. We have next to deal with the argument of learned counsel for the assessee that, in any event, the department has to establish that these payments were "profits or gains" within the ambit of section 7 of the Income-tax Act and as such were exigible to tax. It is argued by Sri Ananta Babu, learned counsel for the petitioner, that there is a vital difference between an assessment made under section 34 and one as originally made, and, consequently, the proposition that the burden lies on the assessee to prove the facts in order to entitle him or her to claim exemption is inapplicable to a case in which there was reassessment by reason of the applicability of section 34 of the Income-tax Act. It is well-established that where admittedly an assessee was in receipt of monies, it is for him to show that they were outside the pale of taxable income. Before exemption could be claimed, he has to place before the taxing authority such facts as would entitle him to claim the exemption. As pointed out by their Lordships of the Privy Council in *Maharajkumar Gopal Saran Narain v. Commissioner of Income-tax*, the word "income" is not limited by the words "profits and gains" and "anything which can properly be described as income is taxable under the Act, unless expressly exempted."

Having regard to this principle, learned counsel sought to distinguish an original assessment from a reassessment made under section 34 of the Income-tax Act. In support of his submission he cited to us *Commissioner of Income-tax v. Manohar and Lakshman Shenoy v. Income-tax Officer*. We do not think that neither of these two decisions comes to the rescue of the assessee. In the first of the cases cited above, the Division Bench of the Bombay High Court consisting of Beaumont C.J. and Rangnekar J. was not dealing with the distinction between the two categories of assessments. The learned judges were concerned with a question arising under the first part of section 34. Similarly, in the second case, their Lordships of the Supreme Court did not discuss the question now raised by learned counsel for the assessee. There also, they were dealing with the connotation of the phrase "definite information" occurring in section 34(1) (a) as it stood prior to the amendment in 1948 and with the distinction between receipt of definite information as a consequence of which a discovery is made and a notice is issued, and the final determination as to the liability or extent of liability or extent of liability for escaped assessment. Therefore, either of these two pronouncements is not of any assistance to the assessee.

On the other hand, apart from the fact that the language of section 34 itself furnishes a sufficient answer to this contention there are rulings of the Privy Council and the Supreme Court which tend to wipe out any such distinction. We will first read the relevant portion of section 34, which clinches the issue against the assessee. It says :

"34. ... he may in cases falling under clause (a) at any time and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or reassess such income, profits or gains, or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

It is manifest that when once an assessment is reopened under section 34, the Income-tax Officer proceeds de novo under the relevant sections of the Income-tax Act, i.e., he issues notice under section 22(2) and proceeds to assess the assessee. He has to follow the same procedure as in the case of the first assessment as is clear from the clause in section 34 "and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section". The proceedings under section 34 must be deemed to relate to proceedings which commence with publication of notice under section 22(1). This principle is also illustrated by *Commissioner of Income-tax v. Mahaliram Ramjidas*. The rule as stated by their Lordships of the Judicial Committee is in these words :

"The operative part of section 34 empowers the Income-tax Officer to proceed de novo under sub-section (2) of section 22, and that in turn leads, if there should still be a question of the accuracy of the return, to an enquiry under section 23(2) and (3) and in that enquiry the assessee has a statutory right to appear and to produce evidence."

In the same trend of thought is *Govindarajulu Iyer v. Commissioner of Income-tax*. It is unnecessary to labour this point any further. Suffice it to say that there is no real distinction between the two kinds of assessments and the same considerations govern both the cases. If so, the doctrine regarding burden of proof stated above is applicable even to proceedings initiated under section 34. It is not disputed in this case that the assessee had not discharged the onus. She had not produced any evidence in support of her case. When she was asked to lead evidence to substantiate her contention, she pleaded her inability to do so. She even denied correspondence which would throw any light upon the question but simply contended herself by making bald statements like "Her Highness Sita Devi used to give me these gifts according to the will and pleasure of Her Highness from time to time." Thus, she did not make any attempt to prove that the several sums of money received by her were gifts and as such they were exempt from tax falling under section 4(3) (vii) of the Income-tax Act. Beyond her ipse dixit, there was no material to bear out her statement that they constituted gifts. In view of what is stated above, the view of the department that the payments in question were made to the assessee in recognition of the valuable services rendered by her and they could not be regarded as gifts not liable to be

taxed, has to be upheld. There remains the contention urged on behalf of the assessee that even if they were payments made by the Princess Sita Devi to one under her employ, inasmuch as they were made voluntarily they should be regarded as gifts exempt under section 4(3) (vii) of the Income-tax Act and not as payments arising out of contractual obligations. It is mainly founded on the pronouncement of the Supreme Court in Mahesh Anantrai Pattani v. Commissioner of Income-tax. At the outset it must be mentioned that such an argument was not presented before the Bench when the matter came on for hearing on the last occasion. Nor was it urged before any of the Tribunals. Even otherwise, we are unable to accede to this proposition. We are not satisfied that the payments in question could be regarded as gifts. When once it is found that periodical payments were made to an employee in consideration of services rendered by him, or her, it is difficult to bring those payments within the ambit of gifts. In this case, the payments were made in token of services rendered by the assessee to her mistress and the fact that there was no obligation on the part of the latter to give such large sums of money to the assessee could not make any material difference. These amounts are traceable to the office held by the recipient. It cannot also be overlooked that the assessee did not cease to be in the employ of Princess Sita Devi when the several payments were made to her. It is seen from the relevant records that she was still acting at that time as the agent of the Princess in regard to disbursement of salaries to the staff of the Maharaja. In such a situation, the principle enunciated by the Supreme Court in Mahesh Anantrai Pattani v. Commissioner of Income-tax is inapplicable to this case. In that case, the assessee was the Chief Dewan of the native State of Bhavnagar from 1937, till January, 1948, when responsible Government was introduced by the Maharaja. On January 22, 1948, the Maharaja passed an order to the effect that the assessee should be paid a monthly pension of Rs. 2,000. Shortly thereafter, the Bhavnagar State merged in the United State of Saurashtra with the result that the Maharaja ceased to be the ruler of the State. This led the Maharaja to direct his bankers to pay by cheque to the assessee a sum of Rs. 5,00,000 (rupees five lakhs). In accordance with these instructions, this amount was paid to the assessee on 12th June, 1950. Six months later, when the accountant of the Maharaja asked for instructions as to how the amount of Rs. 5,00,000 was to be adjusted in the accounts, the Maharaja passed the following order :

"In consideration of Sri Anantrai P. Pattani, the ex-Diwan of our Bhavnagar State, having rendered loyal and meritorious services, Rs. 5,00,000 (Rupees five lakhs) are given to him as gift. Therefore, it is ordered that the said amount should be debited to our personal expense account."

When the nature of this payments was put in issue by the taxing authorities in the course of the assessment proceedings for the assessment year 1951-52 the Maharaja wrote a letter at the request of the assessee in these terms :

"I confirm that in June, 1950, I gave you a sum of Rupees five lakhs (Rs. 5,00,000) which was a gift as a token of my affection and regard for you and your family. This amount was paid to you by Premchand Roychand & Sons according to my letter of 31st May, 1950, from moneys in my account with them."

It is in this set-up that the Supreme Court that the sum of Rs. 5,00,000 was paid to the assessee not in token of services rendered as the Dewan of the Bhavnagar State but as a personal gift for the personal qualities of the assessee and as a token of personal esteem and as such it was not taxable. That is not the position here. It could not be postulated in this case that the payments were made to the assessee as an expression of the esteem which her employer had for her, or that they were made in appreciation of the personality and character of the assessee. Nor could it be said that the sums receive by her could not be described as receipts in respect of her employment. Further, in that case, at the material time, the assessee had discontinued to be the Dewan of the Bhavnagar State. Here, as we have already remarked, there is nothing to indicate that the relationship of master and servant had come to an end before the assessee received all these payments. For these reasons, we are unable to assent to the view sought to be pressed upon us in this behalf. It follows that the order of the Tribunal could not be successfully impeached in this reference.

We have, therefore, to answer the question in favour of the department and against the assessee. The assessee will pay the costs of this reference. Advocates fee Rs. 250 (Two hundred and fifty).