

ANDHRA PRADESH HIGH COURT

P.V.G. Raju

Vs

Commissioner of Expenditure-Tax

(Chinnappa Reddy and M Reddy, JJ.)

19.02.1970

JUDGMENT

Chinnappa Reddy, J.

1. The late Professor Laski thought that "politics" was a science and wrote his famous treatise, A Grammar of Politics. Cynics say that " politics " is a game played by adventurers. One of the questions posed to us in this reference is whether politics can be called an "occupation". Since an "occupation" is that with which a person occupies himself, there is no reason why " politics " cannot be an occupation provided it is taken up as a career. An occasional excursion into the political arena is, of course, not enough. It is true that a profit motive is absent but then profit motive is not an essential requisite of " occupation ". A person, well endowed with the goods of the world, may prefer to pursue a profession or occupation without receiving any remuneration for his services. In the present case the facts show that from the year 1952 onwards, the assessee, Sri P.V.G. Raju, adopted " politics " as a career and to him, therefore, it was an occupation.

2. The further question is whether the amount spent by the assessee towards the election of candidates set up by him can be considered to be expenditure incurred wholly and exclusively for the purpose of his occupation. We are of opinion that, in the peculiar circumstances of the case, it can be so considered. During the relevant period the assessee was the chairman of the Socialist Party of the State. He had made politics his career. The candidates whose election expenses he bore were set up by him. The success of the candidates set up by him was necessary for the success or advancement of the assessee's political career. It is, in these circumstances, that we hold that the expenditure incurred by the assessee was incurred by him wholly and exclusively for the purpose of his occupation. We, however, hasten to add that we do not mean to lay down that whenever a politician incurs expenditure for the benefit of other candidates he is doing so wholly and exclusively for the purpose of his occupation.

3. Yet another question with which we are concerned in this reference is whether the amounts

paid to the Secretary of the Socialist Party and other officials of the party by way of cheques for " party expenses " can be called " donations ". We do not see why not. The amounts were not advanced as loans. They were given gratuitously and without consideration. The learned counsel for the department argued that the assessee was merely meeting the expenses of the party as if they were his own and, therefore, the amounts were not donations. Even so, if a worthy citizen tells the head of a charitable institution that instead of giving a lump-sum donation he would meet the weekly or monthly expenses of the institution, we do not see why the amounts he so pays cannot be called donations. The position is not different here.

4. My brother Madhava Reddy J. has stated the facts fully and discussed the questions at length. I am in general agreement with his conclusions and the answers which he has given to the questions referred to us.

Madhava Reddy, J.

5. The assessee, Sri P.V.G. Raju, Rajah of Vizianagaram, in response to a notice under Section 13(2) of the Expenditure-tax Act for the assessment year 1958-59, filed a return wherein he disclosed taxable expenditure to the tune of Rs. 3,997 only. At the relevant point of time, the assessee was actively engaged in politics and was the chairman of the State Socialist Party. In the said return for the accounting period, he mentioned the previous year to be " July 1, 1956, to June 30, 1957 ".

6. Before the Expenditure-tax Officer, among others, the assessee raised the contention that the expenditure incurred by him towards his own election and the election of certain other candidates who have been set up on the Socialist Party ticket by him as the chairman of the State Socialist Party should be deducted under Section 5(a) of the Act. The expenditure-tax Officer allowed a sum of Rs. 16,807 " being the amount incurred for his own election " and disallowed the rest, i.e., Rs. 38,832, " as having been spent for the benefit of the candidates nominated by him ". He also claimed that a sum of Rs. 47,867 was spent by him for the vocation or occupation of politics in which he has engaged as a leader of the Socialist Party and that this expenditure was deductible under the provisions of Section 5(a) of the Expenditure-tax Act. The Expenditure-tax Officer rejected this claim also. In rejecting the contention of the assessee, the Expenditure-tax Officer held that politics cannot be called a " vocation " and that there is no evidence that the amounts debited under the head " party expenses " was actually employed for this purpose. Lastly, it was contended that only the expenditure from April 1, 1957, to March 31, 1958, must be taken into account for the purpose of the assessment and not the expenditure incurred between July 1, 1956, to June 30, 1957. The Expenditure-tax Officer took the view that the petitioner had adopted the Fasli year July -1, 1956, to June 30, 1957, as the " previous year " and, therefore, could not claim that the expenditure between April 1, 1957, to March 31, 1958, should be taken into account for

the purpose of assessment and, accordingly, rejected his claim.

7. On appeal by the assessee, the Appellate Assistant Commissioner agreed with the Expenditure-tax Officer that the Fasli year, viz., July 1, 1956, to June 30, 1957, was properly adopted as the " previous year " for the purpose of assessment. Before the Appellate Assistant Commissioner, the assessee sought to sustain his claim for deduction of Rs. 38,832 spent for the election of party candidates and Rs. 47,867 spent for the party both under Clauses (a) and (j) of Section 5 of the Expenditure-tax Act. The Appellate Assistant Commissioner, however, held that the contention " that the assessee was carrying on vocation or occupation of a politician as the leader of the Praja Socialist Party is too far fetched". He further held that Section 5(j) has no application and it cannot be said " that the expenditure incurred by the assessee on behalf of the other candidates represent gifts or donations made by him for the benefit of those persons ". In that view he disallowed both the deductions claimed by the assessee.

8. On further appeal to the Tribunal, E. T. A. No. 26/62-63, it held that the assessee had taken up politics as a career and whether or not there was any profit motive, it would amount to an occupation. It, however, was of the view that the expenditure was not incurred wholly and exclusively for the purpose of occupation of the assessee but that the assessee met the expenditure incurred by the other candidates and in that view disallowed the exemption claimed by him under Section 5(a) of the Act, It also held that the expenditure could not be treated as donation or gift and exemption could not be granted under Section 5(j) of the Act. The claim of the assessee regarding Rs. 47,867 towards " party expenses " was also rejected by it both under Sections 5(a) and 5(j) of the Act. It also confirmed that the " previous year " adopted by the assessee in filing the return was rightly taken as the basis for assessment.

9. At the instance of the assessee, the Tribunal referred the following questions of law as arising out of its order in E. T. A. No. 26/62-63 dated June 22, 1963:

" (1) Whether, on the facts and in the circumstances of the case, the expenditure of Rs. 38,832 claimed to be the amount incurred by the assessee for the benefit of other candidates for election is excludible from the taxable expenditure either under Section 5(a) or under Section 5(j) of the Expenditure-tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the sum of Rs. 47,867 claimed to be party expenses could be excluded from the taxable expenditure of the assessee either under Section 5(a) or under Section 5(j) of the Expenditure-tax Act ? and

(3) Whether on a proper construction of Section 2(n) read with Section 3 of the Expenditure-tax Act, the "previous year" of the assessee was rightly adopted as the period from July 1, 1956, to June 30, 1957 ? "

10. In this reference Mr. Subramanya Reddy, learned counsel for the assessee, strenuously contended that the Tribunal having come to the conclusion that politics was the occupation of the assessee, it ought to have allowed the claim of the assessee with regard to the expenditure incurred by him towards the election of the candidates set up by him as the Chairman of the State Socialist Party and the expenditure incurred by him for the " party ". These two items of expenditure ought to have been treated as expenditure incurred for the purpose of the occupation carried on by the assessee. Alternatively, it was contended that these two items of expenditure could also be treated as donations or gifts to the particular candidates or to the party and as such exempt under Section 5(j) of the Act. In order to appreciate these contentions, it is necessary to read certain provisions of the Act.

11. Clause (h) of Section 2 of the Expenditure-tax Act defines as follows:

" 2. (a) ' Expenditure ' means any sum in money or money's worth, spent or disbursed or for the spending or disbursing of which a liability has been incurred by an assessee, and includes any amount which under the provisions of this Act is required to be included in the taxable expenditure. "

12. Section 5(a) and (j), under which the exemption is claimed by the assessee in this case, reads as follows:

" 5. No expenditure-tax shall be payable under this Act in respect of any such expenditure as is referred to in the following clauses, and such expenditure shall not be included in the taxable expenditure of an assessee-

(a) any expenditure, whether in the nature of revenue expenditure or capital expenditure, incurred by the assessee wholly and exclusively for the purpose of the business, profession, vocation or occupation carried on by him or for the purpose of earning income from any other source;

(j) any expenditure incurred by the assessee by way of, or in respect of, any gift, donation or settlement on trust or otherwise for the benefit of any other person."

13. There can be no doubt that in view of the definition of " expenditure " any sum of money actually spent or disbursed by the assessee for the election of the candidates set up by him is expenditure within the meaning of the Act. Unless this expenditure comes within the ambit of Clauses (a) and (j) of Section 5 of the Act, under which exemption is claimed by the assessee, the expenditure of Rs, 38,832 incurred by the assessee for the election of the candidate set up by him as the Chairman of the Socialist Party and the expenditure of Rs. 47,867 incurred as "party expenses" would not be excludible from the taxable expenditure.

14. Before we proceed to deal with the question, we may advert to the facts found by the Tribunal, in regard to the activities in which the assessee was engaged and whether these activities would constitute an occupation within the meaning of Clause 5(a) of the Act. From the order of the Tribunal and statement of the case, it is found that the assessee entered politics in 1952, and was taking an active part in politics ever since. He was elected to the Madras Legislative Assembly in 1952. During the 1957 elections he was elected to Parliament on the Socialist Party Ticket. Subsequently, he was elected to the Andhra Pradesh Legislative Assembly, and also became a Minister in the State Government. During the relevant financial year he was the Chairman of the State Socialist Party. As the Chairman of the said Socialist Party he had put up other candidates at the election to contest for the membership of the Legislative Assembly. Although the Expenditure-tax Officer and the Appellate Assistant Commissioner did not think that the assessee's activities constituted an occupation, the Tribunal was of the view that the assessee had taken up politics as a career and that it did constitute an occupation within the meaning of Section 5(a) of the Act. The Shorter Oxford English Dictionary defines " occupation " as " the taking up of space or time. 'The being occupied with, or engaged in something ; that in which one is engaged; employment, business. A particular action or course of action in which one is engaged; an employment, business, calling ". Such activity need not be carried on with a view to earn any profit.

15. In P. Krishna Menon v. Commissioner of Income-tax, , it was held by the Supreme Court that " in order that an activity might be called a vocation it was not necessary to show that it was an organised activity and that it was indulged in with a motive of making profit. " The word " occupation " is a word of wider import than the word " vocation ".

16. Mr. Subramanya Reddy, learned counsel for the assessee, relied upon a decision of the Gujarat High Court in *Commissioner of Expenditure-tax v. Manorama Sarabhai*¹, in which it was held :

" It is not necessary that the income or profit motive should exist before an activity can be termed vocation or occupation. A vocation or occupation may be carried on without any profit motive. A vocation or occupation may be carried on out of considerations of social services or of conferring some benefit to humanity or to a class of persons The earning of income or the desire to earn income cannot be regarded as the dominant consideration or the requisite element for the purpose of constituting an activity into a vocation or occupation If a profit motive is not the pre-requisite of the activity ' vocation ' , it cannot be regarded as the pre-requisite of the activity which could be termed ' occupation ' Merely because the assessee being in affluent circumstances does not receive any remuneration, the character of her activity does not change. If her activity could be regarded as an occupation within the meaning of the section and if she received

remuneration therefor, it is not possible not to regard it as occupation merely because she is carrying on the same activity from the motive of doing social service or social good without taking any remuneration therefor."

17. In *Mridula A. Sarabhai v. Commissioner of Expenditure-tax*, , their Lordships of the Gujarat High Court, who were considering the nature of the activity of an assessee chiefly working for the emotional integration between the people of India and Kashmir and in the course of the performance of the said activity, incurred expenditure on publication and distribution of educative and informative literature on the subject by way of postage, telegrams, printing, salaries of staff, legal, travelling and telephone charges and even paid interest on monies borrowed by her for the purpose of meeting this expenditure, held:

" That the activities of the assessee constituted her 'occupation' within the meaning of Section 5(a) of the Expenditure-tax Act, and the Tribunal erred in coming to the conclusion on the facts that the expenditure was not incurred by her wholly and exclusively for the purpose of her occupation."

18. In another case in *Commissioner of Expenditure-tax v. Ambalal Sarabhai*, , of the Gujarat High Court, Bhagwati, Chief Justice, speaking for the Bench, observed;

". . . . that the object of the enactment of the Expenditure-tax Act was to impose an annual tax on personal expenditure so that it might discourage excessive personal expenditure and encourage savings. The non-personal expenditure incurred by an assessee was, therefore, sought to be excluded and that was done by enacting, inter alia, the exempting provisions of Section 5. Section 5(a) exempted expenditure incurred by an assessee wholly and exclusively for the purpose of business, profession, vocation or occupation carried on by him or for the purpose of earning income from any other source, for such expenditure would be clearly non-personal expenditure. Now it is significant to note that, in enacting this exemption, the legislature did not restrict itself to the well-worn formula 'business, profession or vocation' employed in the Income-tax Act but enlarged it by adding a word of large connotation, namely, 'occupation'. The legislative intent clearly was to bring within the scope and ambit of the exempting provision non-personal expenditure incurred by an assessee in connection with a much wider class of activity than what would be comprehended within the expression ' business, profession or vocation' . . . But one thing is clear that whatever else ' occupation' may comprise, activity in a specific line of endeavour which engages or occupies time and attention of a person and which is carried on with a certain amount of continuity or regularity in the sense that it is not ' momentary '--not' an isolated or semi-occasional and temporary adventure' in that line of endeavour--would certainly constitute ' occupation ' . "

19. Applying this test to the facts in that case, the activity of the assessee who was concerned with about 24 institutions and organisations engaged in social welfare work and connected with other institutions was held to be an " occupation " .

20. We find ourselves in entire agreement with the view taken by the Gujarat High Court in the above decisions as to what would constitute an "occupation". In the present case we find that the activity of the assessee was not an isolated or occasional or temporary adventure. He was engaged in politics from 1952 onwards. He was the Chairman of the Socialist Party. He was elected to the Assembly and he was actively engaged in promoting the causes of the party and in setting up the candidates for the elections and seeing to their success over a long period. We have therefore, no hesitation in holding that politics was the occupation in which the assessee engaged himself during the relevant period.

21. The next question that falls for consideration in order to determine whether the expenditure of Rs. 38,832 incurred by the assessee falls within the exemption mentioned in Clause (a) of Section 5 is :

" Whether it was wholly and exclusively spent for the purpose of the occupation carried on by him ?"

22. Before the Expenditure-tax Officer and the Appellate Assistant Commissioner no dispute seems to have been raised about the fact that this amount was expended wholly and exclusively for the purpose of election of the candidates nominated by him as the Chairman of the State Socialist Party. It was also not in dispute that he was then the Chairman of the State Socialist Party and he had nominated those candidates. The only question that was raised and considered was that, although this amount was spent wholly and exclusively for the purpose of the election of those candidates, since the assessee could not be deemed to be carrying on the occupation of a politician in engaging himself in such activity, such expenditure could not be excluded for the purpose of determining the tax liability. The Expenditure-tax Officer held that expenditure incurred for other candidates cannot "be allowed and that expenditure incurred for the election of the assessee could alone be allowed. As already noticed, the Tribunal held that the assessee had taken up politics as a career and that amounted to an occupation. But it was of the view that the expenditure incurred for the other candidates cannot be held to have been wholly and exclusively incurred for the purpose of the " occupation " of the assessee.

23. Mr. Anantha Babu, learned counsel for the department, in support of the contention that in order that the exemption may be allowed the expenditure should not only have been incurred for the purpose of occupation of the assessee, but that it should have been wholly and exclusively incurred for the purpose of the said occupation, relied upon the decision in Union Cold Storage

Co. Ltd. v. Jones, [1924] 8 T.C. 724, 738 (C.A.) Pollock M. R., considering the question whether for the purpose of assessment of its profits and gains to income-tax the appellant company was entitled to deductions, (a) in respect of the wear and tear of certain machinery and plant, and (b) to make a deduction for fire insurance premiums which they paid in respect of the refrigerating stores, held as follows :

" Deductions may be allowed in respect of money wholly and exclusively laid out or expended for the purposes of the trade, manufacture or concern of the subject making the return for income tax purposes. It is plainly seen by reading those words that it is not all money that is laid out by the subject but only money which is laid out, first of all, for the purposes of the trade, and, secondly, laid out wholly and exclusively for the purposes of the trade, and, unless the expense incurred can be brought within these words which are narrow words the deductions cannot be allowed. It is quite plain the intention of the legislature was not to make a broad general rule that whatever a subject likes to expend in his business could be deducted but only such sums were to be allowed to which the character could be assigned that they had been wholly and exclusively laid out for the purposes of the subject's business."

24. It is not necessary to multiply cases enunciating this principle, for, in view of the wording of Clause (a) of Section 5, it cannot be contended that, even though the expenditure is not wholly and exclusively incurred for the purpose of the occupation carried on by the assessee, it may be yet exempted for the purpose of tax under the Act. What has to be seen is whether, on the facts of the instant case, it could be said to have been wholly and exclusively incurred for the purpose of the "occupation" carried on by the assessee.

25. Before the Tribunal it was not disputed that this expenditure was not incurred for the election of the other candidates set up by the assessee. The accounts of the assessee were never questioned. The accounts did disclose, as found by all the authorities, that this sum of Rs. 38,832 was spent for the election of the other candidates. If that be the position, the mere fact that the assessee spent this amount not on his own election, but on the election of other candidates set up by him, does not any the less make it an expenditure incurred for the purpose of the occupation in which he is engaged. He was the Chairman of the State Socialist Party. He was thus the foremost leader at least in the State and, as the Chairman of the party, it was his primary objective to see that as many candidates as possible are set up and elected to the legislature. The occupation of a person, situated as the assessee was, did not cease with his own election. As Chairman he was concerned with the election of other persons as well. He was as much concerned with the election of other candidates set up by him as he was with his own. It was part of his occupation to see that the candidates set up by him are successful and any expenditure

incurred for that purpose cannot be deemed to be in any way unconnected with the occupation carried on by him. The expenditure incurred by an assessee carrying on an occupation of which exemption may be claimed under Section 5(a) is not expenditure incurred for his person; all that is required is that it must be an expenditure incurred by the assessee wholly and exclusively for the purpose of the occupation carried on by him. An amount of Rs. 16,807 was allowed by the Tribunal as expenditure incurred by the assessee for the purpose of his election. That expenditure as well as the expenditure incurred on the other candidates set up by the assessee as the Chairman of the Socialist Party must, in our opinion, in view of the facts, be held to be an expenditure incurred wholly and exclusively for the purpose of the occupation carried on by the assessee.

26. The expenditure of Rs. 47,807 was claimed by the assessee as "party expenses". Accounts also disclose a separate head for this item of expenditure. From the statement of accounts, it is evident that these amounts were either paid to the secretary of the party or other officials of the Socialist Party by way of cheques. They were not paid for the expenses of any particular individual to meet any specified expenditure. These amounts were given to the party officials, evidently for the benefit of the party and its members. It is not the case of the revenue that the assessee derived any benefit therefrom. It is also not in dispute that these amounts in fact were so given. But the Tribunal, however, refused to allow exemption claimed under Clause (j) of Section 5 of the Act taking the view that the assessee was advancing the monies to meet the expenses of the party, as and when necessary. Even as found by the Tribunal, the assessee was only giving the amounts to the secretary or other officials of the party for meeting such expenditure as they may have incurred. The assessee himself did not meet the expenditure nor did he expect any return for the sums paid to them. In the face of the facts found by the Tribunal itself, it is rather difficult to accept that the assessee was advancing monies which necessarily implies that he expected the same to be returned or that he was directly meeting the expenditure already incurred by the party. That the assessee was merely advancing money for any specific item of expenditure is not borne out by the record placed before us. Even if it were to be so, we do not think that such expenditure necessarily ceases to be a "donation". So far as the Expenditure-tax Officer is concerned, he rejected this claim on the ground that it was not an expenditure incurred for the purpose of vocation or occupation carried on by the assessee and did not consider whether it could be exempted under Clause (j) of Section 5 of the Act as a "gift" or "donation". It is only the Appellate Assistant Commissioner and the Tribunal that held that it cannot be treated as "donation". According to Corpus Juris Secundum the term "donation" implies absence of consideration and transfer of title and control without power of revocation. It has been defined as " an act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another without any consideration ; a gift or grant in gratuity ; gift, gratuitous transfer of property from one to another, or voluntary alienation of

property. Also that which is given or bestowed; and in a particular connection, a gratuitous present of the public funds " Dealing with the expression " by way of use " in Clause (j) of Section 5 of the Expenditure-tax Act, with reference to the gift, which would also equally apply to "donation", in Prince *Azam Jak v. Commissioner of Income-tax*², Jagannmohan Reddy C.J. (as he then was), speaking for the Bench, observed:

" The words ' by way of ' in Section 5(j) of the Expenditure-tax Act indicate that the exemption is given to the expenditure incurred by the assessee by way of any gift and also to the gift itself.

The amounts relinquished by the assessee in favour of his sons being gifts within the definition of Section 5(j) of the Expenditure-tax Act were exempt from expenditure-tax."

27. In view of the above the amounts paid by way of cheques to the secretary and the officials of the Socialist Party by the assessee gratuitously must therefore be deemed to be by way of " donation " and not as " advance of money " for meeting any particular expenditure. The assessee, in our opinion, is entitled to the exemption of this item of Rs. 47,867 which constitutes " donation " within the meaning of Clause (j) of Section 5 of the Act.

28. The last contention that remains to be considered is whether the expenditure-tax authorities erred in adopting the period July 1, 1956, to June 30, 1957, as the " previous year " for the purpose of assessment.

29. The argument is based on the footing that the Act came into force on April 1, 1958, and, therefore, the " previous year" for the purpose of assessment should be taken as the " financial year " immediately preceding the Act coming into force. But such a contention cannot be upheld in view of the definition of the " previous year " given in Section 2(n).

30. The assessee himself adopted this period as the " previous year " in filing the return. Section 2(n) of the Expenditure-tax Act defines " previous year " in the following words :

"2. (n) 'previous year', in relation to any assessment year, means the previous year as defined in Clause (11) of Section 2 of the Income-tax Act if an assessment were to be made under the said Act for that year :Provided that where in the case of an assessee there are different previous years under the Income-tax Act for different sources of income, the previous year shall be that previous year which expired last."

31. The assessee having exercised his option, cannot be allowed to contend that the period between April 1, 1957, and March 31, 1958, should have been adopted for the purpose of assessing the expenditure-tax. When the assessee himself has exercised the option, the authorities

cannot be said to have erred in adopting the said period as the " previous year " for the purpose of assessment under the Expenditure-tax Act.

32. In view of the above discussion, we answer the first two questions in favour of the assessee and the last question in favour of the department. As the assessee has succeeded on the two main questions which affect the assessment, he will have his costs. Advocate's fee Rs. 250.

Cases Referred.

1[1966] 59 I.T.R. 262, 266-67 (Guj)

2[1963] 67 I.T.R. 757 (A.P)