GUJARAT HIGH COURT

Acharya D.V. Pande

Vs.

Commissioner of Income tax

I.T. Ref. No. 16 of 1963

(J.M. Shelat, C.J. and P.N. Bhagwati, J.)

17.09.1964

JUDGMENT

Bhagwati, J.

1. This Reference raises two questions relating to the assessment of the assessee who is the Acharya, that is, spiritual preceptor of one of the two dioceses of the religious denomination known as Swaminarayan Sampradaya. In order to be able to arrive at a proper determination of these questions, it is necessary to go a little into the history of this Sampradaya culminating in the framing of the Scheme by the High Court in Appeal No. 430 of 1927. The entire history is set out in the judgment of the High Court in that appeal and that judgment having been referred to and relied upon in the order of the Tribunal, a copy of it has been taken on record by us by consent of parties. The whole of the history is however not material and we will, therefore, state only so much of it as is necessary for the purpose of the present Reference.

2. This Sampradaya which has a large number of adherents in this part of the country was founded by a great Hindu religious reformer named Sahajanand Swami who came to Gujarat in the early part of the nineteenth century. Himself of a life of religious austerity, he fiercely denounced the licence and immorality prevalent among the priesthood at the time and in the scheme of doctrine which he eventually promulgated, while recognizing to the full the impossibility of salvation without faith, he emphasized the no less essential condition of purity and righteousness. Attracted by the magnetism of his personality, the purity of his life, and the inherent force of his teaching, a numerous following soon gathered around him. With the assistance of the moneys given by his followers and also a permanent religious tax called Dharmada Vero which he imposed on his followers, he built during his lifetime several temples, the two principal ones being, one at Ahmadabad and the other at Vadtal. Both these temples were dedicated to Krishna, the temple at Ahmadabad being called Narnarayan temple and that at Vadtal, Laxminarayan temple. In 1827, three years before his death, he withdrew himself from

the management of the affairs of the Sampradaya he founded and by a document called Deshvibhag Lekh or deed for the apportionment of the territory, he divided the whole of India into two dioceses subordinating each diocese to one of these temples and over each of the two dioceses, he appointed one of his nephews as Acharya, that is, spiritual preceptor. We are concerned in this reference only with the northern diocese of Ahmadabad having the temple of Narnarayan as its centre since the assessee is the Acharya of that diocese. The properties appertaining to the temple of Narnarayan belonging to the Ahmedabad diocese wore considerable and there were also a large number of other temples subordinate to the main temple. In addition to the income derived from the properties and the Dharmada Vero, there were two other sources of income, namely, Nam Vero, that is, salutation tax which represented a sort of voluntary contribution made by the followers to the Acharya and Bhets, that is, presents given by the followers to the Acharya. Now in connection with the properties of this diocese, a suit being Suit No. 22 of 1902 was filed in the District Court of Ahmedabad and in that suit the question whether the properties were the private properties of the Acharya or were properties held in trust for public purposes of a charitable or religious nature was canvassed. The suit was decided by Mr. Knight, who was the District Judge, and on appeal being taken to the High Court, the judgment of Mr. Knight was confirmed with some slight modifications. The result was that all the properties were held to be properties belonging to a public religious trust, barring Nam Vero and Bhets which were declared to be the personal income of the Acharya intended for his personal maintenance and benefit and not for the support of the institution. It was also held that the Acharya had an unfettered power of disposal over the surplus income of the trust which remained after defraying the established charges of the institution. These established charges of the institution included defraying of expenses for the house-hold of the Acharya, that is, providing residence, food, clothing, servants, horses, carriages and elephant for the Acharya and the members of his household and also customary expenditure on official tours or on other official occasions. This litigation thus cleared many of the points of dispute between the followers and the Acharya but it did not succeed in bringing peace and quiet to the Sampradaya. Another litigation soon followed and that was Suit No. 97 of 1920. This suit was carried in appeal to the High Court. At the hearing of the appeal the Acharya offered to give up his unfettered power of disposal over the surplus income of the trust if a proper personal allowance was fixed for him and a scheme was framed on the lines of the scheme framed by the High Court for the Vadtal diocese. The Acharya also offered that income from Nam Vero and Bhets which was his private income under the High Court decision in Suit No. 22 of 1902 may thenceforth be treated as income of the trust provided he was given an allowance of Rs. 2,000/- per month. This proposal of the Acharya was acceptable in principle to the relators but they submitted that the allowance to be given to the Acharya should not exceed Rs. 1,500/- per month. The learned Judge, however, took the view that the amount of Rs. 2,000/- per month suggested by the Acharya was a reasonable amount. N.J. Wadia, J., said :

> "Considering the high position which Sahajanand assigned to the Acharyas in the scheme framed by him, and which, in spite of the disputes and friction which have unfortunately

> prevailed in the Ahmedabad diocese during the last 30 years, the Acharya still continues to hold, it is very necessary that the scheme to be framed, and the allowance which we given to the Acharya, should be such as to enable him to maintain adequately the dignity and traditions of his position as the head of a great religions institution."

The learned Judges accordingly fixed the allowance of the Acharya at Rs. 2,000/- per month. This allowance was in lieu of Nam Vero and Bhets which were declared thenceforth to form "part of the public revenues of the institution." The allowance being in substitution of Nam Vero and Bhets, just as Nam Vero and Bhets were intended for the personal use of the Acharya, so also was the allowance meant for the personal use of the Acharya. The obligation of the trust to defray expenses for providing residence, food, clothing, servants, horses, carriages, elephant etc., for the Acharya and the members of his household and to meet customary expenditure on official tours or on other official occasions which existed when Nam Vero and Bhets were the personal income of the Acharya remained unaffected by the allowance since the allowance was only in lieu of Nam Vero and Bhets and this obligation was in fact recognized by both the learned Judges. N.J. Wadia, J., pointed out that when. Sahajanand Swami wrote the Deshvibhag Lekh and the Shiksha Patrika, two of the authoritative documents of the Sampradaya, the Nam Vero and Bhets-were not in existence and he must, therefore, have intended that the Acharya should be maintained out of the income of the institution and added :

> "The fact that in Clauses 23 and 25 of the Lekh he provides that the Acharya shall, after consultation with the more religious amongst the Sadhus and followers, provide suitable amounts to his brothers and sons for their maintenance out of the public funds, clearly suggests that he intended that the maintenance of the Acharya should also come from the public funds."

Macklin, J., also recognized this obligation of the trust in the following words :

> "It is however recognized in the sacred books that the Acharya and his dependents must be maintained out of those, and clearly the maintenance of a person in this position means much more than bare maintenance."

3. The fundamental principle on which this obligation, was based was that the Acharya is an essential part of the institution; in fact, the institution cannot exist without him and his maintenance is, therefore, a duty laid upon the institution just like the duty to provide food, ghee, clothes etc., to Tyagis i.e., Sadhus who constitute another important part of the institution. The learned Judges also decided certain other questions which were raised before them but they are not material for the purpose of the present reference and we need not, therefore, dwell on them. Suffice it to state that in accordance with their judgment the learned Judges framed a scheme for the administration of the properties of the trust.

(3) Clause 1 of the scheme entrusted the management of the properties of the institution to the Acharya and declared that he shall manage the properties with the assistance of a Committee in accordance with the provisions of the scheme. Clause 16. sub-clause (1) made provision in regard to expenditure out of income of the institution for the Acharya and it ran as follows :

"16. (1) The Acharya shall be entitled to set aside for his personal use a sum of Rs. 2,000/- per month and his personal expenditure other than that referred to in sub-clauses (a) and (b) below shall be kept within that amount, and shall not, so long as it is within that amount be subject to the control of the committee. In very exceptional circumstances the committee shall have power for reasons to be recorded in writing to sanction expenditure in excess of this amount.

As an alternative to the provision mentioned in the earlier part of this clause, the Acharya shall from time to time and for such period or periods as he thinks fit, be at liberty

(a) to keep to himself for his personal use the 'Nam' and the 'Bhets' presented to him.

(b) to draw the expenses of and incidental to his household including travelling expenses, from the funds of the institution. If the household expenditure for residence, food, medicine, clothing, servants and vehicles exceeds Rs. 1,500/- in any month such additional expenditure shall be subject to the sanction of the committee.

The term 'personal expenditure' shall not include either –

(a) the expenses of his household (including expenses upon residence, food, clothing, servants, horses, carriages, and elephant) as hitherto met out of the funds of the institution;

(b) any customary expenditure on official tours or on other official occasions.".

Clause 31 provided for giving of certain benefits to Tyagis i.e., Sadhus and that provision was in the following terms :

"31. Food, ghee, clothing, medical and travelling allowances shall be given to the Tyagis in accordance with the practice prevailing in the institution before this scheme came into operation. Any additional expense which may be necessary for books and other purposes upto a maximum of Rs. 5/- in any month per Tyagi shall be met by the Mahant. The committee shall frame rules for the guidance of the Mahant in this matter.

Any expenditure in excess of the above shall be notified by the Mahant to the Acharya for his directions and orders."

Lastly, Clause 35 declared by way of a residuary provision that subject to the provisions of the scheme the power of management of the Acharya and his duties shall be in accordance with the lakh i.e., the Deshvibhag lakh.

4. Since the framing of the scheme, the properties of the institution are being managed by the Acharya for the time being in accordance with the provisions of the scheme. It appears that in accordance with clause 16 sub-clause (1) the assessee who is the present Acharya set apart for his personal use every month a sum of Rs. 2,000/- and in addition certain expenses, namely, (i) household expenses; (ii) motor-car expenses; (iii) horse and carriage expenses and expenses for grass and fodder; and (iv) rental value of the house occupied by the assessee, were also defrayed out of the funds of the institution. In the assessment of the assessee for the assessment years 1958-59, 1959-60 and 1960-61 the corresponding previous years being Samvat Years 2013, 2014 and 2015, the Income-tax Officer added the sum of Rs. 2,000/- per month as also the amounts representing the aforesaid expenses to the income of the assessee. The matter was carried in successive appeals to the Appellate Assistant Commissioner and the Tribunal and the final outcome of these appeals was that the amounts of expenses set out against items (ii), (iii) and (iv) above were excluded from the assessment and the only items which remained were the sum of Rs. 2,000/- per month and the household expenses set out against item (i) above, but even out of the household expenses a sum of Rs. 6,000/- per year was excluded on the ground that it was an amount properly attributable to the high office which the assessee occupied. This was done having regard to the decision of the Tribunal in the earlier assessment years, namely, 1953-54 to 1957-58 given on 28th October 1959. The household expenses which thus remained after deducting the sum of Rs. 6,000/- per year were Rs. 22,059/-, Rs. 23,538/- and Rs. 20,552/- and these amounts were added in the assessment of the assessee for the assessment years 1958-59, 1959-60 and 1960-61 respectively. The assessee being aggrieved by this decision of the Tribunal made an application for reference and the Tribunal accordingly made the present reference to this Court.

5. The first question that is referred to us for our opinion raises the point whether the sum of Rs. 2,000/- per month set apart by the assessee for his personal use under clause 16, sub-clause (1) of the Scheme constitutes income of the assessee. Now every receipt that a man receives is either a revenue receipt or a capital receipt and in this case there can be no doubt that the sum of Rs. 2,000/- per month received by the assessee for his personal use is a revenue receipt. The assessee holds the high and august office of Acharya of the Sampradaya and it is in virtue of that office that he receives the sum of Rs. 2,000/- per month. The amount is given to him as Acharya and is a monthly payment accruing to him by reason of his office. If for any reason he ceases to be the Acharya he would also cease to be entitled to the amount. By the very language of cl, 18, sub-clause (1) of the scheme the sum of Rs. 2,000/- per month to be received by the Acharya is in his capacity as Acharya. It is the person holding the, office of Acharya who is entrusted with the management of the properties of the institution under clause 1 and when he is authorized by clause 18, sub-clause (1) to set apart a sum of Rs. 2,000/- per month for his personal use, it is evident that this amount is received by him virtute officer. Moreover this amount is provided for him in lieu of Nam Vero and Bhets. The Nam Vero and Bhets which until the decision of the High Court in Suit No. 97 of 1920 were the personal income of the Acharya are now since that

decision part of the revenues of the institution like any other income of the institution and clause 16, sub clause (1) gives an option to the Acharya either to set apart out of the revenues of the institution the lump sum of Rs. 2,000/- per month for his personal use or to keep to himself for his personal use Nam Vero and Bhets. Now Nam Vero, as the very name suggests, is a salutation tax and salutation is made to the Acharya not because of any considerations personal to the individual who happens to be the Acharya but because he is the Acharya of the Sampradaya. So also Bhets are given to the Acharya not out of any personal regard, nor, to use the words of Chagla, C.J., as he then was, in *Govindlaljj Ranchodlalji v. Commissioner of Income-tax, Ahmedabad*[1], because of "the charm of his personality or his personal virtues or characteristics" but because he is the spiritual head of the Sampradaya. It is the office of Acharya which draws Nam Vero and Bhets and the sum of Rs. 2,000/- per month being in lieu of Nam Vero and Bhets, it is clear that this amount is received by the Acharya in virtue of the office held by him. The first of the two passages from the judgment of N.J. Wadia, J., which we have quoted above also shows that the allowance of Rs. 2,000/- per month was given by the High Court to the Acharya because he is the head of the Sampradaya and he has to maintain adequately the dignity and traditions of that office.

6. Now it is well-settled that even a voluntary payment if made because of the office or vocation of the donee is income in the hands of the donee and can be taxed as such. If money coins to or accrues to a person by virtue of his office, it is income in his hands and

[1]1058-34 ITR 92 : AIR 1959 Bom 100

it does not matter whether the payment is Voluntary or compulsory on the part of the person making it. Vide *Blakiston v. Cooper*[2], and *Krishna Menon v. Commissioner of Income-tax, Mysore*[3], If a voluntary payment made to an assessee in respect of his office (and not to him as an individual independently of his office) is income chargeable to income-tax, ex hypothesi it should be so where the payment is made to an assessee in respect of his office by virtue of a legal obligation. Here the sum of Rs. 2,000/- per month received by the assessee was paid to him under clause 16, sub-clause (1) and since that amount was received by the assessee as an incident of the office of Acharya, in virtue of the office of Acharya held by him, and came in periodically every month, it was clearly income liable to be taxed as such in the hands of the assessee.

7. To escape this conclusion Mr. P.B. Desai on behalf of the assessee contended that the payment of the sum of Rs. 2,000/- per month to the Acharya was by way of compensation or solatium for the assignment or relinquishment of the right to Nam Vero and Bhets by the Acharya and was, therefore, in the nature of a capital receipt. Now even by the farthest stretch of imagination it is difficult to see how there could be said to be any assignment or relinquishment by the Acharya of his alleged right to Nam Vero and Bhets at the time of the framing of the Scheme. In the first instance it is not correct to say that the Acharya had any right to collect Nam Vero or Bhets. Nam Vero and Bhets are by their very nature voluntary payments and there is no obligation on the followers to pay these amounts to the Acharya. When this was pointed out, Mr. P.D. Desai explained by saying that when he made this submission what he meant was not the assignment or

relinquishment of the right to collect Nam Vero and Bhets for such a right did not exist at all but the assignment or relinquishment of the source of Nam Vero and Bhets. He contended that so far as the assessee was concerned the source was no more since Nam Vero and Bhets were no longer his private income and since this source was given up by him in consideration of the payment of Rs. 2,000/- per month, the receipt of Rs. 2,000/- per month was in his hands capital receipt. This contention is also in our opinion without any force. The source of Nam Vero and Bhets was clearly the office of Acharya. The followers paid Nam Vero and Bhets to the Acharya because of the office of Acharya held by him. This office still continued to be held by the Acharya even after the framing of the Scheme and it is, therefore, difficult to take the view that the source which brought Nam Vero and Bhets ceased to exist or was given up by the Acharya. The Acharya continued to hold the office which brought in these recurring payments and these recurring payments continued to come in even after the Scheme was framed. The only difference which was brought about by the Scheme was that Nam Vero and Bhets which would have been the private income of the Acharya now became the income of the institution and in their place the Acharya received a fixed sum of Rs. 2,000/- per month. The legal effect of this transaction was that the Acharya took a fixed sum of Rs. 2,000/- per month in substitution of Nam Vero and Bhets and if Nam Vero and Bhets would have been income in his hands liable to tax, it is difficult to see why the sum of Rs. 2,000/- per month received by him in substitution of Nam Vero and Bhets should be exempt from tax. The sum of Rs. 2,000/- per month was paid to the Acharya not in substitution of the source of the income which still continued to exist but in substitution of the income derived from that source. It is undoubtedly true that by reason of the Scheme the income from Nam Vero and Bhets when received by the Acharya was no longer the income of the Acharya

[2]1909 AC 104

[3](1959) 35 ITR 48

but was the income of the institution but instead of that fluctuating income which he would have received, he had substituted for it a definite income of Rs. 2,000/- per month. The sum of Rs. 2,000/- per month thus represented merely income in a new form and was, therefore, chargeable to tax as income.

8. We were referred to a decision of the Chief Court of Sind in *Commissioner of Income-tax v. Mills Store Co., Karachi*[4] and reliance was placed on it on behalf of the asssessee. But we do not see how that decision can have any application to the facts of the present case. In that case an annual payment spread over a period of ten years was stipulated to be paid to the assessee in consideration of the assessee agreeing not to import petroleum for a period of ten years and to act on behalf of anyone else as importers of oil for sale for a period of five years. The question which was debated before the Court was whether this annual payment was a capital receipt or a revenue receipt. The Court held that it was a capital receipt inasmuch as it was neither salary, profits and gains of business, profession or vocation, nor income from other sources. The payment was obviously by way of consideration for the assessee agreeing not to carry on business for a particular period of time. It was, therefore, in substitution of the source of income itself and not in substitution of income and it was, therefore, clearly a capital receipt. In the

present case, however, the sum of Rs. 2,000/- per month was paid to the assessee in substitution of what would have been his income and not in substitution of the source from which that income was derived and the ratio of this decision cannot, therefore, help the assessee.

9. Another decision on which reliance was placed on behalf of the assessee was that reported in *Commissioner of Income-tax, Bombay v. Tata Sons Ltd*[5]*.,* But we do not see how that decision in any manner advances the contention of the assessee. In that case an agreement was entered into between the assessee and a financier by which the financier agreed to lend a crore of rupees to the assessee on condition that the assessee gave an assignment to him of a share of six annas in the rupee of the commission and other remuneration which the assessee might be entitled to recover as managing agent of the managed Company. The Court held that the agreement operated as an assignment of a portion of the commission to the financier and in that view the share assigned would not be the income of the assessee. That of course is perfectly understandable and in our case also if the income from Nam Vero and Bhets were sought to be included in the income of the Acharya after the framing of the Scheme, it could have been contended by the Acharya that the receipt from Nam Vero and Bhets had ceased to be his income and was the income of the institution. But such is not the case before us and nothing that is stated in this decision can, therefore, throw any light on the question before us.

10. We are, therefore, of the view that the sum of Rs. 2,000/- per month received by the assessee in the assessment years 1958-59, 1959-60 and 1960-61 was income liable to be taxed as such in the hands of the assessee.

11. That takes us to the next question relating to the house-hold expenses defrayed out of the funds of the institution. The contention on behalf of the assessee in regard to this question was that when the trust defrayed the household expenses out of its funds, no benefit in the shape of money or money's worth was received by the assessee and no

[4](1941) 9 ITR 642

[5](1939) 7 ITR 195 : AIR 1939 Bom 283

income could, therefore, be said to have accrued to the assessee which would be liable to be taxed in his hands. This contention involves a consideration of the question as to what is income and when can a benefit or advantage received by an assesses be said to be income. What is the natural connotation of income is, however, nowhere to be found in the Income-tax Act. The Income-tax Act merely describes sources of income and prescribes the methods of computing income, but what constitutes income, it discretely refrains from saying. The decided cases of course declare that "income" is a term of formidably wide and vague import and it is a word difficult and perhaps impossible to define in any precise general formula. But howsoever broad may be the connotation of the word "income", one thing is clear that income for tax purposes must be money or money's worth. It is not necessary that income must be received in cash. It may also be received in kind but that must represent money's worth, that is, something which is capable of being converted in terms of money. As observed by Lord Halsbury, L.C., in *Tennant v. Smith*[6]*,* "income" includes anything "capable of being turned into money from its own nature".

Of course there are certain things which are not capable of being turned into money from their own nature and yet they have by statute been artificially deemed to be "income", but the general principle is clear that income must be money or money's worth. There must be, as observed by the Privy Council in *Kaghuuanclan Prasad v. Commissioner of Income-tax, R. and O*[7]*.,* "an actually realized or realizable profit or loss". If, therefore, a benefit or advantage is received by an assessee, he would be assessable in respect of the value of such benefit or advantage if it consists of money or money's worth. Where the benefit or advantage consists of money, there is no difficulty, but where it does not consist of money, the test would be, is it something capable of being turned to pecuniary account ? If it is, then its value would be the income of the assessee. Of course there may be cases where the assessee may receive a benefit or advantage in the shape of satisfaction of a pecuniary obligation which the assessee has incurred. Such a benefit or advantage would give an immunity to the assessee against pecuniary obligation already incurred and would, therefore, represent money's worth and would, as such, be chargeable to tax.

12. This statement of the law is amply borne out by the decisions which were cited before us. The first decision to which we were referred was the decision in (1892) 3 Tax Cas 158 (supra). This decision was in some cases misunderstood by the Courts in England and Scotland and its true ratio had therefore to be explained by the House of Lords in a subsequent decision to which we shall presently refer. However in order to understand what was decided in this case it is necessary to know precisely the scope of the question which arose for decision in this case. A Banking Company gave to its agent as a residence a portion of the bank premises occupied by them in respect of which they were assessed to income-tax under Schedule A. The agent was required to reside in the building as the servant of the bank and for the purpose of performing the duty which he owed to his employers. The question was whether the annual value of the portion of the premises in which, as a servant of the bank, the agent was required to reside, formed part of his income liable to tax. The Crown sought to tax the annual value of the portion of the bank premises in which the agent resided either under Schedule D or Schedule E. The House of Lords held that the annual value of the residence was not taxable either under Schedule D or Schedule E and was not liable to be included in the total amount of the agent's income. Lord Halsbury L.C., made certain general observations in regard to what he conceived to

[6](1892)3 Tax Cas 158

[7](1933) 1 I.T.R. 113 at p. 119 : (AIR 1933 PC 101 at p. 103)

be income in the true sense of the word and said that "it is certainly true that the
occupation of a house rent free is not income". The Lord Chancellor then considered the question whether the case fell within Schedule D or Schedule E and in his view the case could come only under Schedule E. He then proceeded to construe the words occurring in Schedule E and came to the conclusion that the annual value of the residence was not covered by the words of Schedule E. It is, therefore, undoubtedly true that what the Lord Chancellor construed in that case was the language of Schedule E but he did observe what would be income within the accepted connotation of that word and he said that "the thing sought to be taxed is not income unless it can be turned into money." Lord Watson considered what would come within the category of

"profits" in the ordinary acceptation of that word and he said that that word in its ordinary meaning appeared "to denote something acquired which the acquirer becomes possessed of, and can dispose of to his advantage, in other words money, or that which can be turned to pecuniary account." Lord Field also emphasized the same aspect and observed that the residence of the agent upon the bank premises, although rent free, could not be held to be either gain or profit. It was also pointed out by Lord Hannen and in this be was joined by Lord Macnaghten that a person is chargeable for income-tax not on what saves his pocket, but on what goes into his pocket. It is, therefore, clear that though the facts of that case were different and the question which arose was also different in that it related to the applicability of Schedules D and E of the English Act, the learned Law Lords did pronounce upon the question as to what would be "income" or "profits" in the ordinary acceptation of those words and they said that it must be money or money's worth and by money's worth they made it clear that what they meant was something which could be turned to pecuniary account.

13. The learned Advocate General drew our attention to the subsequent decision of the House of Lords in *Lady Miller v. Commissioners of Inland Revenue*[8], and relied on certain passages from the speeches of Lord Buckrnaster and Lord Warrington of Clyffe in order to show what was the true ratio of the decision in (1892) 3 Tax Cas 158 (supra). Turning first to the speech of Lord Buck-master, the learned Law Lord while referring to the case of (1892) 3 Tax Cas 158 made it clear that the judgments in that case were based upon the fact that whatever advantage the agent might have enjoyed from his residence, it could not possibly be made the subject of assessment under Schedules D and E. That case did not involve the question whether the agent was liable in respect of the annual value of the residence under Schedule A or Schedule B which was the question before the House of Lords in Lady Miller's case, (1930) 15 Tax Cas 25. The learned Law Lord, therefore, pointed out that no observations in (1892) 3 Tax Cas 158, could be relied upon for the purpose of negativing the claim of the Crown to tax in respect of annual value under Schedule A or Schedule B. This observation was prompted because the Court of Session in Lady Miller's case, (1930) 15 Tax Cas 25 had, on an erroneous view that what was decided in (1892) 3 Tax Cas 158 was that in order to be taxable as income, the annual value must be such as could be realised by letting or otherwise, held that since the annual value in the case of Lady Miller, (1930) 15 Tax Cas 25 was not realisable by her by letting or otherwise, it was not liable to be taxed as income under Schedule A or Schedule B. It will, therefore, be seen that there is nothing in the speech of the learned Law Lord which casts any doubt on the observations of the various Law Lords in (1892) 3 Tax Gas

[8](1930) 15 Tax Cas 25

158 in regard to the question as to what is income or profit for the purpose of Schedule D or Schedule E nor is there anything which in any manner detracts from the validity of the general observations made in that case as regards what would constitute income or profit in the ordinary acceptation of that word. The speech of Lord Warrington of Clyffe also does no more than point out that the only question in (1892) 3 Tax Cas 158 was whether anything in respect of the animal value of the portion occupied by the agent could be treated as income under Schedule E and the

learned Law Lord emphasized that the case had nothing to do with Schedule A which was the Schedule with which the House of Lords was concerned in Lady Miller's case, (1930) 15 Tax Cas 25.

14. Our attention was also invited by the learned Advocate General to the decision of the Court of Appeal in *Shanks v. Commissioners of Inland Revenue*[9], and particularly to the judgment of Russell, L.J., since that judgment was wholly approved by Lord Warrington of Clyffe in Lady Miller's case, (1930)15 Tax Cas 25. But we do not find anything in this judgment which would cast any doubt on the correctness of the statement of the law given above. In that case also the Court was concerned only with Schedule A and the Court held that in the case of an occupier, whether the annual value is realisable or not, he must show in the return of his total income the annual value which is enjoyed during the year in question.

15. Another decision which was cited before us by the learned Advocate General was that of Finlay, J. in *Nicholl v. Austin*[10], In that case the assessee who held a controlling interest in a Company, entered into an agreement with the Company which provided that he should be appointed managing director of the Company for ten years at a specified salary together with bonus and director's fees. It appears that at the time when the agreement was made, the assessee intimated to the Company that he would have to vacate the house in which he was residing at the time owing to the high cost of upkeep but the Company in its own interest desired that he should continue in the same house and it was. therefore, agreed that he should continue to reside in the same house and the Company should pay all outgoings in respect of the house including rates, taxes and insurance, and cost of gas, electric light and telephone and maintain the house and gardens in proper condition. The assessee was assessed to income-tax under Schedule E in respect of the amount actually expended by the Company on the upkeep, etc., of the house and gardens. The assessment was challenged on the ground that the benefit received by the assessee did not constitute money nor was it capable of being converted into money and was, therefore, not chargeable to tax. Finlay, J., held that the amounts spent by the Company were income of the assessee and were profits of the office of Managing Director of the Company assessable as such under Schedule E. Strong reliance was placed on this decision by the learned Advocate General and it is, therefore, necessary to see what was the basis on which this decision was reached by the learned Judge. The learned Judge accepted the principle that income must be either money or money's worth. But he held on the facts of the case before him that the amounts expended by the Company were money's worth and were, therefore, income of the assessee. Now we do not know as to who had actually incurred the obligation in connection with the various items for which payment was made by the Company. If obligation in respect of these items qua third parties was incurred by the assessee, then obviously the benefit received by the assessee by satisfaction of that

[9](1929) 14 Tax Cas 249
[10](1935) 19 Tax Cas 531

obligation would represent money's worth and would, therefore, be assessable as income and that seems to have been the case before the learned Judge. As a matter of fact that is the basis on which this case has been explained by the Court of Appeal in *Wilkins v. Kogerson*[11], Lord Evershed, M.R., said in that case :-

> "If I have incurred a debt e.g., my debt due for income tax comparable to that in *Hartland v. Diggines*[12]. and my employer chooses to-discharge that debt for me, then it is no doubt true that what I have received in money or money's worth is the equivalent of the debt; and the sum of money is, therefore, properly brought within the scope of the charge.... So far as the rates and telephone charges in that case (*Nicoll v. Austin*[13] were concerned, the result was on all fours with the decision in (1926) 10 Tax Cas 247, where the employer discharged a liability or an obligation of the servant."

Donovan, L.J. also explained this casein the same manner and observed :-

> "It looks true in cases like (1926) 10 Tax Cas 247 and (1935) 19 Tax Cas 531, where money liabilities of the employed officers were discharged by the employer. But what the officers were really taxed on was the money's worth of the immunity they were thus given from their own liabilities."

The same is the basis on which we find this case explained in Elements of Income-tax and Profits Tax Law, Fifth Edition, page 110, and British Tax Encyclopaedia, Volume I, Paragraph 1.134. The decision in (1935) 19 Tax Cas 531 therefore, lays down only this much, namely, that if a pecuniary liability or obligation incurred by the assessee is discharged by another, the benefit which the assessee derives by reason of discharge of such liability or obligation would represent money's worth and would, therefore, be income assessable in his hands.

16. The learned Advocate General cited two decisions before us. one a decision of a Division Bench of the Bombay High Court in *Province of Bihar v. Haribhajan Das*[14], and the other a decision of the Allahabad High Court in *Rani Amrit Kunwar v. Commissioner of Income-tax*[15], for sounding a note of warning that decisions given on construction of the provisions of the English Income-tax Act should not be relied on by us for the purpose of interpreting the provisions of the Indian Income-tax Act. Of course the learned Advocate General is right that we should not allow ourselves to be guided blindly by what is stated in the English decisions because the scheme of the English Act is different from the Scheme of the Indian Act, but where we find observations made which are of a general nature and which do not depend for their validity on the particular provision of the English statute, we do not see why we should not receive light from them. As a matter of fact we find that the principle laid clown in these decisions that income must be money or money's worth has also been accepted by the Privy Council in Raghunandan Prasad's Case, 1933-1 ITR 113 (supra).

[11](1961) 1 All England Reporter 358
[12](1928) 10 Tax Cas 247
[13](1935) 19 Tax Cas 531)
[14](1946) 14 ITR 298 : AIR 1946 Bom 350

[15](1946) 14 ITR 561 : AIR 1946 All 300

17. That leaves only one decision before we go to the facts of the case and that decision is the one reported in *Daly v. Commissioners of Inland Revenue*[16], This is rather an important decision for it bears a fairly close analogy to the facts of the present case. The assessee in this case was the priest-in-charge of a Roman Catholic mission in the Archdiocese of Glasgow. The income of the mission was mainly derived from offertories and other contributing by Church members which the Ordinances of the Roman Catholic Church in Scotland deem to be the property of the Church and not gifts to the priest, but out of which the priest will receive what is needed for his "seemly maintenance". The income of the mission was paid into a bank account in the names of the assessee and his archbishop and normally all the expenses of the mission were met by cheques drawn on this account by the assessee. Included among these disbursements was a salary of £ 50 to the assessee, which was admittedly chargeable to income-tax, and household expenses, viz., food, drink, fuel, wages, etc. incurred at the presbytery house where the assessee, in accordance with the regulations of the Archdiocese, lived communally with three curates. The question which was raised was whether the assessee was liable to be assessed in respect of the value of his maintenance at the presbytery house. The test whether the benefit received by the assessee was money or money's worth, that is something which could be turned to pecuniary account, was applied and it was held that the assessee was a trustee of the revenues of the mission and since maintenance was received by him in kind and was not capable of conversion into money, it was not assessable to income-tax.

18. This being the test to be applied, let us see whether in the present cane the benefits received by the assessee were money or money's worth. They were obviously not money and it was also not contended that they were such. But it was argued on behalf of the revenue that the benefits certainly represented money's worth. This proposition was disputed on behalf of the assessee and what we are, therefore, called upon to consider is whether these benefits received by the assessee were money's worth in the sense that they were capable of being converted into money or could be turned to pecuniary account. Now at the outset it must be pointed out that there is nothing to show that it was the assessee who in his individual capacity incurred pecuniary obligation in connection with the various items of expenses defrayed out of the funds of the institution and that the funds of the institution were applied in satisfaction of such pecuniary obligation. The learned Advocate General relied on the language of Clause 16, sub-clause (1) and contended that the expenses which were to be met out of the funds of the institution were the expenses of the household of the assessee and the assessee, therefore, got the benefit of these expenses being met by the institution and this benefit constituted money's worth as in the case of (1935) 19 Tax Gas 531 (supra). This contention is in our opinion not well founded and stands answered by the observations of Lord Hannen and Lord Macnaghten in (1892) 3 Tax Gas 158 (supra). It is no doubt true that the assessee got the benefit of these expenses being met out of the funds of the institution in the sense that if these expenses had not been defrayed out of the funds of the institution, the assessee would have had to incur them but to use the words of the learned Law Lords, the assessee is chargeable "not on what saves his pocket but on what goes into his

pocket". Clause 16 sub-clause (1) does not show that the obligation in respect of those expenses would be first incurred by the Acharya in his individual capacity and then that obligation would be discharged from the funds of the institution. If that were so, the ratio of the decision in (1935) 19 Tax Cas 531 (supra) would have certainly applied. But what clause 16 sub-

[16](1934) 18 Tax Cas 641

clause (1) provides is that the expenses of the household of the Acharya, that is the expenses necessary for providing food, clothing, servants, horses, carriages and elephant for the Acharya and the members of his household, shall be incurred and met by the institution. The institution is to incur the expenses in connection with the various matters relating to the household of the Archarya such as providing food, clothing, servant, horses, carriages, elephant etc. This obligation is founded on the basic principle of the faith that the Acharya is a fundamental part of the institution and the obligation to maintain the Acharya is therefore, a duty laid upon the institution as much as the duty to provide food, ghee, clothing etc., to Tyagis i.e., Sadhus who form another important part of the institution. Just as under clause 31 the funds of the institution are to defray the expenses of food, Ghee, clothing etc., to be provided to Tyagis i.e., Sadhus, so also the funds of the institution are to defray the expenses of providing residence, food, clothing, servants, horses, carriages, elephant etc., for the Acharya and the members of his household. It is the institution which has to provide these benefits to the Acharya and the members of his household and to incur expenses for the same. Of course the Acharya being the person entrusted with the management would be defraying the expenses in his capacity as the person in charge of the management, but those would be the expenses of the institution incurred for the purpose of discharging a duty plainly laid upon the institution, namely, providing these various benefits to the Acharya. The case, therefore, in our opinion stands on the same footing as the case of the priest-in-charge in (1934) 18 Tax Cas 641 (supra). The benefits received by the Acharya by reason of the institution providing residence, food, clothing, servants, horses, carriages, elephant etc., for the Acharya and the members of his household and incurring expenditure for the same cannot be said to represent money's worth i.e., something which can be turned to pecuniary account. The question whether the benefits are capable of being turned to pecuniary account is a question which must be judged as a whole and so judged, it is to our mind clear that they are incapable of being converted in terms of money and cannot, therefore, be regarded as income assessable to tax in the hands of the assessee.

19. We, therefore, answer question No. 1 in the affirmative and question No. 2 in the negative. Each party will bear and pay his own costs of the Reference.

Reference answered accordingly.