BOMBAY HIGH COURT

Maharaj Sri Govindlalji Ranchhodlalji

Vs.

Commissioner of Income Tax

I.T.R. No. 53 of 1957

(M.C. Chagla, C.J. and S.T. Desai, J.)

13.03.1958

JUDGMENT

M.C. Chagla, C.J.

1. The assessee is a direct descendant of Shri Vallabhacharya who founded a Faith known as Vallabh Sampradaya. It has been found as a fact by the Tribunal that he is not a sanyasi, that he has married and has children and that he will be succeeded by his sons who would inherit and divide his properties. He resides at Porbandar and keeps an idol of Lord Krishna in his house. Offerings are made to him from time to time by his devotees and these offerings are not made to the idol but to the assessee himself. The offerings are made usually at the time of the prayers. It has also been found as a fact that the assessee by virtue of the office he holds has to perform some obligations as the head of this faith and that he is looked upon by his devotees as "Guru" and he gives "mantras" to his disciples. As a matter of fact a person can only be initiated into this faith by the assessee chanting certain "mantras". Now, it was found by the Income-tax authorities that the assessee's income from these gifts for the year 1953-54 was Rs. 9,228/- and for 1954-55 was Rs. 17,591/-. The contention of the assessee was that these amounts were not subject to tax. The Tribunal held that these amounts constituted an income and were liable to tax under Section 10 or 12 of the Indian Income-tax Act.

2. Now, every receipt that a man receives is either a revenue receipt or a capital receipt and in this case there can be little doubt that the receipts which have been subjected to tax are revenue and not capital receipts. The source of these receipts is the abiding faith that the disciples have in their Guru and the receipts come in with a fair regularity. But even if a receipt is a revenue receipt, it may not be subject to tax if the assessee establishes that the receipt is exempted from tax under one of the provisions of the Income-tax Act and Mr. Thakkar, on behalf of the assessee, has strongly pressed upon us that these particular receipts are personal gifts made by the devotees to the assessee and, therefore, are exempted from payment of tax. Now, it is perfectly true that a

personal gift is exempted from tax on the ground that it is casual and non-recurring. But the essence of such a gift is that it should be personal. It should be voluntary: the person making the present should have no obligation to make it and it should be made by the person out of personal considerations for the done. Mr. Thakkar's contention is first that in this case there is no obligation upon the disciples to make these gifts. Now, it is true that in the sense of a legal obligation, there is none upon the disciples to make these gifts. The disciples could not be sued is a court of law if they failed to make these offerings to the assessee. But the Tribunal has taken judicial notice of the fact that it is customary on the part of the followers of a faith to make presents to the head of the faith. Therefore, that is the compelling motive and in India fortunately or unfortunately nothing is more compelling than the dictates of a faith. It is that compelling motive that leads the devotees to make these presents to the assessee. It is not in that sense therefore a present purely voluntary dependant upon the whim or caprice of the person making the present. It is a gift made by a member of the community practising a particular faith because he feels that as a member of that faith it is incumbent upon him to make a present to the head of his faith.

3. Mr. Thakkar then argued that this was a gift personal to him and it is made out of personal considerations. That contention is belied by the record. It is clear that the presents are made to the assessee by virtue of the office held by him. Now, an office may not depend upon any law, or any contract, or any mandate from the State or any other authority. An office means a position which requires the person holding it to perform certain duties and discharge certain obligations and in this sense the assessee undoubtedly holds an office and according to his disciples a very high and august office. It is impossible to accept the suggestion that the gifts are made out of personal regard for the assessee. It is not the charm of his personality or his personal virtues or characteristics that induce his followers to make these gifts. The gifts are made to him because he is the head of his sect. Mr. Thakkar says that he is the head of his sect because he is the descendant of Shri Vallabhacharyaji. Again it makes no difference whether the office is hereditary, or whether the office is held by reason of the fact that the holder of the office is descendant of his forefather who held the same office in his time. Whether it is due to heredity or any other cause, the fact remains - an uncontrovertible fact - that the gifts are made to the holder of the office and not to any particular individual who is holding that office. If that be so, then the very essense which is required in order that the income should be exempted from payment of tax; is lacking. Mr. Thakkar drew our attention to two or three authorities, which, it seems to us, emphasize this very aspect of the matter.

4. The first case to which he referred is *Rani Amrit Kunwar v. Commissioner of Income-tax. C. P. and U.P*[1]. This was a case of Rani Amrit Kunwar and what the Allahabad High Court held was that the gifts were not subject to tax, which were payments made to her by her brother, the Ruler of the Nabha State. It is true that these presents were made from time to time and they had been made for a long period, but they were not made to the Rani because she held any office, but because of the fact that the donor was her brother and was making the gifts out of personal consideration for his sister.

5. Then, there is an English case, which again emphasises the same principle and that is *Moor-house (Inspector of Taxes) v. Dooland*[2] where a question arose whether a cricket professional who obtained collections in twenty five matches that he played was liable to pay tax on those collections and the test that the English Court laid down was that the test of liability to tax on a voluntary payment made to the holder of fin office or employment is whether, from the standpoint of the person who receives it, it accrues to him by virtue of his office or employment, that is, by way of remuneration for his services and the Court held that the cricketer was liable to pay tax. Now, Mr. Thakkar says that in this case

[1]1946-14 ITR 561 : AIR 1946 All 306

[2](1955) 28 ITR 86

the contract of employment entitled him to receive this voluntary payment. That is perfectly true. But the English Court's decision is not based upon this contract. All that the Court says is that the fact that there was this contract was a strong ground for holding that the amount was received by the recipient by virtue of his employment. Therefore, it is not necessary that the recipient of an office should receive presents by virtue of a contract in order to constitute those receipts income. If he receives them because he is holding an office and not as personal gifts, even in the absence of a legal and binding contract, the receipts would still be income, which would be subjected to tax.

6. To the same effect is the judgment in the King's Bench's case in *Seymour v. Reed*[3] which case went through various vicissitudes, different judges taking different view of the case. This was a case where a single benefit match was given to a professional cricketer and this was given by the Committee of Cricket Club in the exercise of their absolute discretion and what the House of Lords ultimately held was that this was in the nature of a personal gift. Now, in this connection, it may be said that even the periodicity of the gift must have some bearing on the question whether it is a personal gift or a remuneration paid by virtue of an office. When you have one single payment, it would be easier to contend that it is a personal gift than when you have payments made with regularity and over a long period. We have a case here of regular continuous payments over a long period. We have here a finding of custom which obliges the disciples to make the payments and finally we have a fact established that the assessee was holding an office and it was only that office that induces his disciples to make these gifts. In the circumstances, in our opinion, it is an untenable proposition that the amounts received by the assessee were income which was exempted under the provisions of the Indian Income-tax Act.

7. Now, Mr. Thakkar wanted to argue that even if these receipts constituted "income", he was entitled to deductions permissible under the Income-tax law. No question has been raised on this reference and we cannot go into it. But when the matter goes back to the Tribunal for final disposal, it may be that the assessee may be in a position to point out to the Tribunal what deductions he is entitled to, which have not been allowed to him. All that we can say on this Reference is that we are sure that the Tribunal will dispose of the matter under Section 66(5) according to law.

8. It is perhaps not strictly necessary to decide whether the case falls under Section 10 or 12. The view taken by the Tribunal is that the assessee practises a vocation. We are inclined to accept this view. Even a practice of religion can become a vocation and more so, when it brings in a steady income. If the assessee does practise a vocation, then the case falls under Section 10; but even otherwise the income would fall in any case under Section 12 of the Income-tax Act.

9. We answer the question submitted to us in the affirmative.

10. Assessee to pay the costs.
Answer in the affirmative.
[3](1927) 11 Tax Cas 625