PATNA HIGH COURT

Commissioner of Income Tax

Vs

Kameshwar Singh

Misc. Judicial Case No. 234 of 1951

(Ramaswami and Sarjoo Prosad, JJ.)

23.01.1953

JUDGMENT

Ramaswami, J.

1. This reference is made at the instance of the assessee by the Income-tax Appellate Tribunal under Section 66(1) of the Indian Income-tax Act.

2. The first objection relates to a sum off Rs.10,497 which the Income-tax authorities included as taxable income for the assessment year 1947-48. The assessee owned textile mills known as Navsari Mills which had closed down several years past. Babu Gokhulchand who was the proprietor of the firm Sital Prasad Kharag Prasad managed the textile mills on behalf of the assessee. Gokhulchand sold away the machinery of the mills and a sum of Rs.13,363 was due from Gokulchand to the Maharaja on this account. During the accounting year the Maharaja realised as a result of litigation between him and Gokulchand a sum of Rs.25,530 which included the principal, law charges expenses as also interest. Out of the amount of Rs.25,530 realised by the assessee the Income-tax Officer calculated the interest to be Rs.10,497. The assessee claimed that this amount should be treated as accretion to capital because the mill business having been closed the sale proceeds of the machinery could not be profits arising from that business. The contention was rejected by the Income-tax Appellate Tribunal who held that the price of the machinery was only Rs.13,000 and odd, which was deducted from the amount decreed to the Maharaja. After making other deductions, the interest was computed to be Rs.10,497 which the Income-tax Appellate Tribunal held, was taxable in the hands of the assessee.

3. A second objection was also preferred by the Maharaja with respect to the 1947-48 assessment. It appears that the Maharaja had made advance payment of tax under Section 18A of the Indian Income-tax Act. Under the provisions of this section, the Maharaja was entitled to interest at the rate of 2 per cent on the amount deposited. A sum of Rs.41,813/6/- was thus due to the Maharaja as statutory interest on the amount of tax he had paid in advance. It was claimed by the Maharaja that this amount was not taxable but the objection was overruled by the Income-tax Appellate Tribunal.

4. The questions of law referred are

> (1) "whether in the facts and circumstances of this case the amount of Rs.10,497 which was realised from Gokulchand being a part of Rs.25,530 has been rightly taxed as income in the hands of the assessee?" and (2) "whether the sum of Rs.41813/6/- received by the assessee as statutory interest under Section 18A has been rightly taxed as income under the Indian Income-tax Act?"

5. As regards the first question the argument presented by Mr. S.K. Majumdar on behalf of the assessee is that the amount of Rs.10,497 was awarded as damages against Gokulchand for detention of the amount of sale proceeds. It was argued that the amount though called as interest in the decree was not really interest but was in the nature of damages for retention of money. The contention of the learned counsel is that there is a distinction between the quality of interest which is awarded by way of damages and the quality of interest proper which arises out of a contract or agreement. It was said that in the present case the amount of Rs.10,497 was not interest an proper sense but was compensation estimated and measured in terms of interest and was not therefore taxable under the Income-tax Act. In my opinion the argument of the learned counsel proceeds upon a misconception. It is true enough to state that there is a difference between interest which accrues as a result of an express contract and interest which is granted by way of damages for wrongful retention of money. To put it differently the distinction is between the conception of interest as a reward for the use of money and the conception of interest as compensation for the deprivation of money. For instance, Section 73 of the Indian Contract Act has been construed to mean that in the absence of any contract, express or implied, or of any provision of law to justify the award of interest on the decretal amount for the period before the institution of the suit, interest for that period cannot be allowed by way of damages for wrongful retention of money - *'B.N. Rly. Co. Ltd. v. Ruttanji Ramji[1]',* But the distinction has no relevance in the realm of income-tax law. The question is not Whether the amount in dispute is interest in its proper sense or interest by way of damages, but the question is whether the amount is of an income or capital nature. In the present case, the textile mills were sold by Gokulchand who retained the sale proceeds and did not make them over to the assessee. A suit was brought and ultimately the assessee was granted a decree for Rs.25,530 which included the principal amount of Rs.13,363 and interest calculated to be Rs.10,497 and certain other expenses. Mr.S.K. Majumdar argued that as the mills have been closed down the amount of Us. 10,497 cannot be said to be income arising from the textile mills.

Learned counsel is correct when he states that the amount is not income from business. But the amount is nevertheless income for the reason that it constitutes interest on the sale proceeds which Gokulchand ought to have made over to the Maharaja. In my opinion, the taxing authorities rightly treated this amount as taxable income in the hands of the assessee. This opinion is supported by the decision of the House of Lords in - *'Westminster Bank Ltd. v. Riches[2]',* (B). R brought an action against the Westminster Bank as judicial trustees of X.'s estate, R. claimed to be entitled under an agreement made in 1936 to a half share of the profits realised by X. on the purchase and resale of certain shares, and the Court awarded R. the sum of £36,255 as representing the balance due to him. After judgment, application was

made on R's. behalf to the Court to exercise its discretion under Section 3 of the Law Reform (Miscellaneous Provision) Act, 1934. The Court granted in its discretion a further sum of £10,028 representing interest on the £36,255 at 4 p.c. from 14-6-1936 to 14-5-1943. It was held by the House of Lords that this amount was 'interest of money' within Schedule D of the Income-

tax Act and that income-tax was payable on that amount.

6. On behalf of the assessee, Mr. Majumdar placed much reliance on - *'Commissioner of Income-tax v. Rani Prayag Kumari Devi'*[3], But the material facts of that case are different. The Rani had instituted a suit for recovery of all the moveables and immoveables of. an impartible Raj against a collateral of the last male-holder of the estate. A decree was passed in 1933 awarding to the Rani a number of moveables and damages to the extent of Rs.22 lacs for wrongful detention of them. After some part payments a compromise was arrived at to the effect that all payments should be credited in the proportion of 6 annas towards the balance of principal amount and 10 annas towards the balance of damages. In the accounting year 1936-37, the assessee received Rs.1 lac out of which Rs.62,500 was adjusted towards damages according to the compromise. The question was whether this sum of Rs.62,500 was taxable as income in the hands of the assessee. It was held by the High Court that the amount was received by the assessee as damages for wrongful detention of the moveable properties of the assessee and not under any contract to pay interest and that it was not, therefore, income within Section 3, Income-Tax Act, read with Section 4(3)(vii). In the course of his judgment, Manohar Lall, J. referred to the mode of accounting which was ordered by the decree of the Calcutta High Court and reached the conclusion that the sum awarded to Rani Prayag Kumari was awarded as damages and not by way of interest. The actual decision may be supported on the ground that the interest calculation was merely used as a means of arriving at a capital sum of damages, the interest calculation being in 'modum aestimation es'. In the present case, the material facts are obviously different.

7. In a case of this description, the crucial question is whether interest calculation is used as a means of estimating a capital sum of damages or not. In other words, the question is whether the amount sought to be taxed is damages by way of interest or interest by way of damages. For instance, in - *'Commissioners of Inland Revenue v. Ballantine*[4]*',* the arbitrators to whom a claim for 'additional costs, loss and damages' was referred, awarded an amount which included a sum described as interest. The Court of Session, having concluded that what was described as interest was in fact part of the total sum awarded by way of damages, rejected the claim of the Revenue to tax upon it. As Lord President said: "If the decree was substantially one of damages, the interest ordered to run on it was just part of the damages, and not therefore chargeable to Income Tax." Again in - *'Simpson v. Executors of Bonnar Maurice*[5]*',* tax was held not to be payable upon any part of a sum which was paid by way of compensation under Article 297(e) of the Treaty of Versailles. In the Court of Appeal the Master of the Rolls in course of his judgment dealt with the nature and quality of the compensation which was paid under Article 297 of the Treaty of Versailles. At page 601 the Master of the Rolls stated :

> "Is it interest? Is that its quality, or is it compensation estimated and measured in terms of interest? It appears to me quite clear that, apart from Article 297, no such sum could have been recovered. It could not have been recovered according to English law as interest. In the case of - *'The London, Chatham and Dover Railway v. S.E. Rly. Co'*, which was before the House of Lords, (1893) A C 429, there was a delay in payment of an important sum by one railway to another, and the creditor sought to recover interest in consequence of the delay. It was pointed out that interest, according to our law, depends upon, first, a contract express or implied, and, secondly, the Statute of 3 and 4 William IV, chapter 42, under which you can make interest payable in respect of a debt or sum certain, payable by

> virtue of a written instrument at a certain time, or after a demand has been made giving notice that interest will be charged. Now it is quite clear that there was no contract made by the Germans to pay this interest. The duty to pay compensation was imposed upon them by the Treaty. The Statute does not apply it, and the root of the payment is the duty to pay compensation."

The Master of Rolls later stated:

> "That being our law about it, how has this sum come to be paid? It appears to me that it has been paid only by virtue of sub-clause (e) of Article 297, which lays down that the nationals, such as Mr. Kay 'shall be entitled to compensation in respect of damage or injury inflicted upon their property rights or interests', and it is that right on which the sum paid is based - 'compensation in respect of damage or injury inflicted upon their property, rights or interests'. For withholding this sum, for preventing Mr. Kay, or his executors exercising the power of disposition over his property, the Germans have been compelled to pay compensation. The way to estimate that compensation or damages - the sensible way no doubt - would be by calculating a sum in terms of what interest it would have earned. That has been done, but the sum that was paid has not been turned into interest so as to attach Income Tax to it. It remains compensation and, for these reasons, it appears to me that it is not a sum which attracts or attaches Income Tax to it."

8. Mr. Majumdar then submitted that the amount of Rs.10,497 was receipt which was of a casual and non-recurring nature and so was exempt from income-tax under Section 4(3)(vii) of the Indian Income-tax Act. Learned counsel said that the amount in question was a lump sum payment awarded to the Maharaja and there was no quality of recurrence about it. I do not think this submission is correct. It is true that the Maharaja received a lump sum payment on account of interest. That does not, however, necessarily mean that the amount of interest is not a receipt of recurring nature. On the other hand, the interest is calculated upon the footing that it accrues 'de die in diem', and hence it has the essential quality of recurrence which is sufficient to bring it within the scope of income-tax. The argument of the learned counsel for the assessee on this aspect of the case must, therefore, be rejected. It was also contended that the receipt of interest was casual in its character. The expression 'casual' has not been defined in the Act and must therefore be construed in its plain and ordinary sense. According to the Oxford English Dictionary the word 'casual' is defined to mean (a) subject to, depending on, or produced by chance; (b) occurring at uncertain times; not to be calculated on. A receipt of interest which is foreseen and anticipated cannot be regarded as casual even if it is not likely to recur again. It is not possible to accept the argument that the receipt of interest under the decree obtained by the Maharaja against Babu Gokulchand is a receipt of casual or non-recurring nature.

9. I proceed to the next question whether the amount of interest granted to the assessee under Section 18A of the Income-tax Act is liable to be taxed. The Maharaja paid advance instalments of tax under Section 18A in the year 1944-45 and the statutory interest accrued was Rs.41,813 and odd up to the date of assessment, that is, up to 27-3-1946. Section 18A provides that the Income-tax Officer may require an assessee to make advance payment of tax in quarterly

installments. Section 18A(5) states that the Central Government shall pay on the amount of deposit simple interest at two per cent. per annum from the date of payment up to the date of assessment made under Section 23. On this question, learned counsel for the Maharaja advanced arguments similar to those with respect to the first question. Indeed Mr. Majumdar did not deal with the two questions separately but much of his argument was common. The amount of statutory interest which is the subject-matter of the second question has certain special elements. The interest is not paid by virtue of any decree granted by Court. The amount of interest is payable under the statute and the Maharaja is entitled to the interest at the rate prescribed as a matter of right. The amount in question being granted in lieu of interest has the quality of recurrence as I have already shown. It cannot be argued that the receipts of interest was not foreseen, on the contrary, the statute itself provides that the Maharaja is entitled to receive the rate of interest prescribed in section 18A for the advance payment of tax. In - *'Schulze (sic) v. Bensted[6]',* the question arose whether a sum which a negligent trustee had failed to get in and which he had been ordered to make good to the trust estate was liable to income-tax. It was held by the Court of Sessions that the amount was rightly assessed under Schedule D in respect of the interest. The reason was that the trustee having duly paid the interest, it was in the words of Lord Johnston "a surrogatum for that which ought to have termly reached the hands of the trustees and have been applied by them as income". In - *'Commissioners of Inland Revenue v. Barnato[7]',* the facts were very similar. There too the defendants became bound under a consent Order, founded on certain admissions, to pay not only a principal sum but interest upon it. It was held that such interest was liable to tax. These cases illustrate the proposition that which reaches the hand of the recipient as interest upon a principal sum is income liable to Income-tax, notwithstanding that it may come to him in a single sum and as the result of a hostile suit. Applying the principle to the present case it is manifest that the amount of Rs.41,813 and odd awarded as interest under Section 18A was undoubtedly income in the hands of the Maharaja.

10. In this connection learned counsel on behalf of the Maharaja referred to - *'Behari Lal v. Commissioner of Income Tax, C.P. and U.P.[8]',* in which it was held by the Allahabad High Court that the interest awarded under Section 28, Land Acquisition Act was in the nature of compensation for the loss of the assessee's right to retain possession of the property acquired; that it was damages assessed in terms of interest; that it was not income and therefore was not assessable as such to tax. The learned Judges however reached their decision "not without considerable doubt and hesitation." One of the reasons given was that under Section 28 the awarding of interest was not mandatory but was discretionary with the Court and so the claimant was not entitled to it as of right under any rule of law. On this point, the case must be clearly distinguished for in the present case the Maharaja is entitled as a matter of right to a grant of two per cent. interest on the advance payment of tax. It is not a matter of discretion for the Central Government but the duty to pay interest is imposed by the Statute. Apart from this I think (with great respect) that the Allahabad decision is of doubtful authority. The decision is not consistent with the principle laid down in '(1919) 7 Tax Cas 30 (G)' and '(1935) 20 Tax Cas 455 (H)'. The Madras High Court expressly declined to follow the Allahabad case in - *'Commissioner of Income Tax v. Narayanan Chettiar[9]',*

11. For the reasons expressed, I hold that in the circumstances of the case the amount of Rs.10,497 which was realised by Gokulchand and the amount of Rs.41,813/6/- paid as interest under Section 18A have been rightly taxed as income in the hands of the Maharaja.

12. The questions must accordingly be answered in favour of the Income-tax Department. The assessee must pay the cost of the reference. Hearing fee Rs.250.

Sarjoo Prosad, J.

13. I agree and have nothing to add.

Answers in the affirmative.

Cases Referred.

[1] AIR 1938 PC 67
[2](1947) 28 Tax Cas 159
[3] AIR 1939 Pat 662
[4](1920) 8 Tax Cas 595
[5](1929) 14 Tax Cas 580
[6](1919) 7 Tax Cas30
[7](1935) 20 Tax Cas 455
[8] AIR 1941 All 135
[9] AIR 1943 Mad 682