Bombay High Court
H.H. Maharani Shri Vijaykuverba ... vs Commissioner Of Income-Tax, ... on 19 October, 1962
Equivalent citations: 1963 49 ITR 594 Bom
Author: V Desai
Bench: V Desai, Y Tambe
JUDGMENT V.S. Desai, J.

1. The following three questions have been referred to us by the Income-tax Appellate Tribunal in the present reference :

"(1) Whether the sum of Rs. 500 can be deducted in arriving at the total income of the 'previous year' ended March 31, 1950, when it was neither paid in that year nor any liability to pay it was incurred in that year though it related to professional services to be rendered at some future date after March 31, 1950 ?

(2) Whether the monthly sum of Rs. 10,000 received by H. H. Maharaja Sir Lukhdhirji Bahadur from H. H. Maharaja Mahendrasinhji during the year ended March 31, 1953, is 'income' for the purposes of the Indian Income-tax Act, 1922 ? and (3) If so, whether the said receipt is of a casual and non-recurring nature and as such exempt from tax under section 4(3) (vii) ?"

2. The question arise out of the order passed by the Tribunal relating to the assessment of the assessee for the assessment years 1950-51 to 1953-54. Although in question No. 1 the dates mentioned are with reference to the first assessment year, viz., 1950-51, the same question arises in the remaining three years also. Question No. 1, therefore, is common to all the assessment years. Questions Nos. 2 and 3 only relate to the assessment year 1953-54. The learned counsel appearing for the assessee has stated before us that the assessee does not want to press question No. 1 and the said question, therefore, need not be answered. We will accordingly not answer question No. 1.

3. The facts necessary to be stated in connection with question Nos. 2 and 3 are as follows : The original assessee, H. H. Maharaja Lukhdhirji Bahadur of Morvi, who has since died on the 4th of May, 1957, and is now represented by the surviving administrators of his estate, was the ruler of the erstwhile Indian State of Morvi. On the 21st of January, 1948, he abdicated the gadi in favour of his son, H. H. Maharaja Mahendrasinhji. From 1st of April, 1949, a sum of Rs. 10,000 was being paid each month by the son Maharaja to the assessee. This monthly payment, admittedly, continued to be paid from April, 1949, to October, 1953, and from April, 1954, to April, 1957. According to the assessee for the interval between November, 1953, to April, 1954, such payment was not made, but that statement of the assessee was not accepted by the Tribunal. It will thus be seen that a monthly payment of Rs. 10,000 continued to be made by the son Maharaja to the father Maharaja from April, 1949, until the father Maharaja died on the 4th of May, 1957. In the assessment year 1953-54 the Income-tax Officer brought to tax the sum of Rs. 1,20,000 in respect of the said payment which the assessee had received during that year. In reply to the inquiries, which the Income-tax Officer had made during the said assessment proceedings, the chartered accountants under instructions from the assessee had referred to the said payment as an amount of personal allowance of Rs. 10,000 allowed to H. H. Maharaja Lukhdhirji by his son, H. H. Maharaja Mahendrasinhji, and in

another letter, which they had sent on the 27th of June, 1957, they had stated that on the adbication of His Highness the Maharaja Lukhdhirji Bahadur on January 21, 1948, His Highness was being paid at Morvi Rs. 10,000 per month by way of jiwai. It was contended before the Income-tax Officer that the amount was exempted from tax being in the nature of jiwai of maintenance allowance. This contention, however, was not accepted by the Income-tax Officer, who took the view that the payment was in the nature of an annuity, which was taxable under the Act.

4. In the appeal before the Appellate Assistant Commissioner, it was contended on behalf of the assessee that the jiwai allowance received by the assessee was an ex gratia payment made to him by his son without there being any legal obligation on him to make the said payment or in the absence of any legal custom binding on him. It was, therefore, not "income" at all, and hence, not taxable. The Appellate Assistant Commissioner held that the payment made by the son Maharaja to the father Maharaja in the present case was not under any contractual or other legally binding obligation, nor could it be said to be in consideration of the father having abdicated the gadi in favour of his son. According to him, therefore, the amount of the payments was not income, which was taxable under the India Income-tax Act. He accordingly accepted the contention of the assessee and modified the order passed by the Income-tax Officer to the extent. Against this part of the Appellate Assistant Commissioner's order, the department appealed to the Appellate Tribunal. Before the Tribunal the argument advanced by the assessee was two-fold. It was contended in the first place that the payment was not "income" under the Indian Income-tax Act, and, secondly, if it was income at all, it was exempt under section 4(3) (vii), being of a casual and non-recurring nature. It was contended, on the other hand, by the department that the monthly payment of Rs. 10,000 made by the son Maharaja to the father Maharaja represented a customary payment made by the ruling chief to a relation of his for maintenance and, therefore, constituted "income" under the Indian Income-tax Act, as being income from a definite source. It was further urged that since the payment was being made periodically over a long period of time, it could not be regarded as casual or non-recurring. The Appellate Tribunal accepted the contentions put forward on behalf of the department and allowed the appeal filed by the department. It has then drawn up a statement of the case and referred to this court the two questions relating to this part of its order, which we have already stated.

5. Mr. Palkhivala, the learned counsel appearing for the assessee, has urged that on the facts found in the present case, the payment made to the assessee by his son Maharaja could not be said to be the assessee's income from any source. It was found by the Appellate Assistant Commissioner that the payment was not made in pursuance of any contractual or other legally bindings obligation; it was also not in consideration of the adbication of the gadi by the father Maharaja in favour of his son and the payment, therefore, was a purely ex gratia payment made by the son to his father as by way of allowance. Mr. Palkhivala complains that the Tribunal has erred in taking the view that the payment was made in accordance with the custom and usage and the custom and usage, therefore, provided the source for the said payment and thus constituted it the income of the assessee. According to him, there was no material whatsoever before the Tribunal for the said conclusion, and the three pieces of evidence on which it sought to rely in that connection do not supply any such evidence. Now, the said three pieces of evidence are : the two statements of the chartered accountants in the letters which they had written to the Income-tax Officer in reply to his enquiries

to which we have already made reference earlier. In one of them, they referred to the payment as the personal allowance given by the son Maharaja to the father Maharaja and in the other they referred to it as a jiwai allowance. The third piece of evidence was a note appearing in the son Maharaja's return for the assessment year 1948-49, in which in referring to a similar allowance of Rs. 10,000 which the father Maharaja before his adbication was paying to his son, the son had stated that he was receiving it as jiwai allowance. Mr. Palkhivala says that the fact a payment is being made by way of jiwai allowance or a personal allowance does not constitute it a payment made under either a contractual or legal obligation unless the right to such allowance is possessed or acquired by the person to whom the allowance is made under a legal or contractual obligation nor is there any evidence of any such custom or usage. The circumstance that a father was paying a similar allowance to the son by way of allowance will not constitute any evidence of a custom that a son, on succeeding to the gadi on the abdication of the gadi by the father, is required to make such an allowance in favour of his father. Mr. Palkhivala points out that in the history of Morvi the present abdication was the only abdication that had taken place and, therefore, there could be no possibility of any custom or usage being established under which a father Maharaja on an abdication of the gadi will be entitled to receive a jiwai or personal allowance from the son succeeding to the gadi. According to Mr. Palkhivala, therefore, the payment in the present case could not be said to be customary at all in the sense of being made in pursuance of a legally binding custom. It can at the most be customary in the sense of habitual, and a habitual payment, without there being any right in the person to whom the payment is made to enforce the said payment if not made, cannot be anything but an ex gratia or voluntary payment. The payment in the present case, therefore, is a purely voluntary payment. The payment, moreover, is in no way connected with the office, profession or vocation of the person to whom the payment is made. Such a payment, Mr. Palkhivala argues, is a payment, which does not proceed from any definite source and cannot, therefore, quality to be "income" under the Indian Income-tax Act. Mr. Palkhivala's further argument is that, at any rate, even if it is held to be "income", it would be an income of a casual and non-recurring nature.

6. Now, there can be no doubt that the payments made by the son Maharaja to the father Maharaja in the present case were voluntary payments in the sense that if the payment were discontinued, there would have been no right in the father Maharaja to have them enforced against the son. Further, there was no contractual or other legal obligation in pursuance of Which the payments were made. The Tribunal has, no doubt, taken the view that they could be regarded as having been made in accordance with a custom or usage requiring the ruling chief to make a maintenance allowance to a relation. There is, however, no evidence whatsoever of such a custom or usage, which could be said to have a binding force. The said inference is drawn by the Tribunal because the payment has been referred to as a jiwai allowance by the accountants in their letter under instructions from the Maharaja and because it appeared that the son Maharaja was in receipt of a jiwai allowance from his father, while the father was the rule. Now, neither of these facts can, in our opinion, be sufficient to warrant a legal inference that there was a custom or usage having the force of law requiring such payments to be made. The mere circumstance that an allowance was paid by the father to his son without anything more would not suffice to draw an inference that the allowance was paid under the obligation of a binding custom or usage. Nor could the circumstance be sufficient to hold in favour of a custom requiring the ruling chief to make a maintenance allowance in favour of any relation of his. It must also be noted that what militates against such an

inference is the fact that on the material on the record in the present case, while the abdication took place in January, 1948, the payment of allowance started more than a year later from April, 1949. If the payment was in pursuance of a legally binding obligation, whether arising from contract or from a custom or usage having the force of law, the payment would have started immediately after the abdication and would not have been postponed till a year thereafter. There is no evidence also to connect the said payment with the abdication of the gadi in any way excepting the bare fact that the payment has come to be made some time after the abdication. In there circumstance, it must be held that the payment is wholly voluntary. The only features of the payment, which may have to be considered are that the payments have been made to a person, who had held the gadi; that the payments have been made subsequent to his having relinquished the gadi in favour or his son and that the payments have been made over fairly a long period right up to the death of the payee with almost an unbroken regularity. What has got to be considered is whether the voluntary payments made in such circumstances would constitute the income of the payee.

7. There is no doubt that under the Indian Income-tax Act even payments, which are voluntarily made may constitute "income" of the person receiving them. It is not necessary that in order that the payments may constitute "income", they must proceed from a legal source : in that if the payments are not made the enforcement of the payments could be sought by the payee in a court of law. It does not, however, mean that every voluntary payment will constitute "income". Thus, voluntary and gratuitous payments, which are connected with the office, profession, vocation or occupation may constitute "income" although if the payments were not made the enforcement thereof cannot be insisted upon. These payments constitute "income" because they are referable to a definite source, which is the office, profession, vocation or occupation. It could, therefore, be said that such a voluntary payment is taxable as having an origin in the office, profession or vocation of the payee, which constitutes a definite source for the income. What is taxed under the India Income-tax Act is income from every source (barring the exceptions provided in the Act itself) and even a voluntary payment, which can be regarded as having an origin, which a practical man can regard as a real source of income, will fall in the category of "income", which is taxable under the Act. Where, however, a voluntary payment is made entirely without consideration and is not traceable to any source, which a practical man may regard as real source of his income, but depends entirely on the whim of the donor, cannot fall in the category of "income". What we have to see, therefore, in the present case, is whether the payment made by the son Maharaja to the father Maharaja, though voluntary, could be regarded as having an origin in what might be called the real source of income. On the facts found in the present case, we cannot say that the payments would be referable to any such source. The department has not been able to show any material on record, from which such a conclusion can be drawn.

8. Mr. Joshi, learned counsel for the revenue, has argued that the course could be inferred from the fact that the payment was made to a person, who held the position of an ex-Maharaja and it was in pursuance of the position occupied by him that the payment was made. The other fact, which may indicate the source, is that the payment has been made to a person, who has renounced the gadi in favour of the son and has thus accelerated his succession to the gadi. It may, therefore, be said that the payment has been made in consideration of the said circumstance, which constitutes the source of the income.

9. We are afraid, we cannot accept these submissions of Mr. Joshi, in the absence of any further material placed before us. The position of the ex-Maharaja would not be regarded as an office held by him for which the payment has been made. As we have already pointed out, the payment had started a considerable time after the abdication, i.e., a considerable time after the said position came to be occupied by the son Maharaja. Again, there being no evidence of any connection between the abdication of the gadi and the subsequent payment made to the father Maharaja, it is not possible to say that the said circumstance also affords any foundation for the source of income. It may be that these circumstances may have been either partly or wholly responsible for the desire to arise in the mind of the son Maharaja to make an allowance for his father, but even assuming that it served as a motive for the payment, it would not suffice to make the payment anything but a purely voluntary payment depending upon the which of the donor. Mr. Joshi has also pointed out that the reference to the allowance as jiwai itself connotes an allowance for maintenance and it is the obligation of the ruling chief to maintain his relations. The said obligation, therefore, provides the source of the income.

10. Mr. Palkhivala has pointed out that although the allowance has been referred to as jiwai, it could not be regarded as an allowance for maintenance in the sense of money required for the maintenance of the father, because the father was possessed of a large fortune himself and his yearly income, which was assessable to tax, even apart from this payment, was in the neighbourhood of Rs.
5 lakhs. The allowance, therefore, could not be said to have been proceeding from the obligation of a ruling chief to maintain his relations or dependents.

11. In our opinion, therefore, the payments made by the son Maharaja to the father Maharaja in the present case could not be said to be payments, which constituted income under the Indian Income-tax Act.

12. The view that we are taking is supported by the decision of the Full Bench of the Allahabad High Court in Rani Amrit Kunwar v. Commissioner of Income-tax. In that case the question arose whether the annual wardrobe allowance, which the assessee was receiving from her brother, the Maharaja of Nabha State, out of the State budget, constituted her income under the Indian Income-tax Act. There was no contractual or other legal obligation under which the payments were made and there was also no evidence in the case to show that the payments were attributable to any custom, usage or traditional obligation. It was held on these facts that there was no origin for the payments, which could amount in its nature to a definite source so as to render each payment "income" and not merely a casual or annual income and hence the payments were not income and were not assessable to income-tax. In our opinion there is hardly any distinction between the said case and the case before us. In that case also the payments were made by a Maharaja to a person, who stood in the relationship of a sister to him. The payments were made regularly every year as wardrobe allowance on to festive occasions. It was held that in the absence of any further evidence which would show some more sanction to those payments, they were merely the result of the bounty of the ruler and, therefore, could not be said to have their origin in a definite source, which the assessee could regard as a real source of income. In our opinion, therefore, the payment of Rs. 1,20,000, with which we are concerned in the present case, could not be said to be the income of the assessee.

13. In the view that we are taking the next question, viz., whether, if it was income, it was exempt from tax under section 4(3) (vii) as being if a casual and non-recurring nature, does not fall to be considered.

14. Mr. Palkhivala has urged that it would be so exempt under section 4(3) (vii). He has argued that the payment is of a casual nature because it depends upon the sweet will of the donor and if not paid to him, could not be enforced against him. He has further argued that the payment is also non-recurring in the right sense of the term and the mere circumstance that it has been paid at regular intervals does not make it cease to be a non-recurring payment. According to him, a non-recurring payment is one for the recurrence of which the payee has no right to expect. In the present case the payee could have had no right to expect the recurrence because there was no obligation whatsoever on the part of the paper to make the same. The payee would get it if it was paid and may perhaps hope for it, but he would have no right to expect that the payment will necessarily be made or that he will necessarily get it.

15. Mr. Joshi, on the other hand, has argued that when it is said that a payment is voluntary, there could possibly be no right in the payee either to get it or even to expect it. Since even a voluntary payment can be one, which is not casual or non-recurring, the test for determining whether a payment is non-recurring or not in the case of a voluntary payment, cannot be said to be whether the payee has a right to expect it or not, because if the payee has a right to expect it, it would cease to be a voluntary payment.

16. We do not propose to go into a detailed discussion of the submissions urged before us, though prima facie we are inclined to agree with the view put forward by Mr. Palkhivala, because it is not necessary to answer the said question in view of our answer to the earlier question.

17. In the result, therefore, question No. 1 is not answered because it is not pressed. Our answer to question No. 2 is in the negative and in view of our answer to question No. 2, question No. 3 need not be answered. Assessee will be entitled to get three-fourths of the costs from the department.

18. No order on the notice of motion.

19. Question No. 2 answered in the negative.