Allahabad High Court
Commissioner Of Income-Tax vs Smt. Shanti Meattle on 27 December, 1971
Equivalent citations: 1973 90 ITR 385 All Author: C Singh

Bench: R Pathak, C Singh
JUDGMENT C.S.P. Singh, J.

1. The Income-tax Appellate Tribunal, Delhi Bench A ", at the instance of the Commissioner of Income-tax, U.P. II, Lucknow, referred the following questions of law for our decision for the assessment years 1955-56, 1956-57, 1957-58 and 1958-59:

" (1) "Whether, on the facts and in the circumstances of the case, the receipt of maintenance allowance by the assessee from her husband was rightly held to be exempt under Section 4(3)(vii) of the Indian Income-tax Act, 1922 ?

(2) If the answer to question No. (1) be in the negative, then, whether the entire receipt by the assessee was taxable when the agreement to live apart make provision for maintenance of the respondent as well as her two sons ? "

2. The facts necessary for the decision of these questions may now be shortly stated. Shrimati Shanti Meattle, the assessee, was being assessed as an individual in respect of income from property, interest from bank and other sources. It appears that the relations between her and her husband were not cordial and resulted in frequent quarrels. The husband and the wife in order to avoid deterioration of their relations agreed to live apart and an agreement for separation was executed between the parties on the 16th day of September, 1954. Under Clause (1) of that agreement, the assessee was given the option to live separate from her husband free from marital control and authority of the husband. Clause (2) thereof contained an agreement that neither the wife nor the husband shall molest or interfere with the other or bring a suit for the restitution of conjugal rights against the other. Clause (4) of the deed insured payment of an amount of Rs. 2,000 per month to the assessee for maintenance of herself and her two children till the assessee did not remarry and continued to perform the other terms and conditions of the deed. The parties consented to the appointment of an arbitrator in respect of any dispute between the parties, and made the award binding on them. The assessee received various amounts from her husband as maintenance during the year in question. The Income-tax Officer took the view that inasmuch as the amounts were being received regularly and were based on the agreement dated September 16, 1954, which was an enforceable contract, the income was taxable in her hands,

3. The Appellate Assistant Commissioner took the view that inasmuch as the amounts were not received by the assessee as member of a Hindu undivided family, nor was the money paid out of the income of any Hindu undivided family, the amount was liable to tax. He negatived the contention of the assessee that the receipt was of a casual nature and as, such not taxable. The further contention that the entire amount received could not be taxed in the hands of the assessee inasmuch as it represented an amount for the maintenance of her two children was also not accepted, inasmuch as the Appellate Assistant Commissioner took the view that the amount was received by the assessee

solely and was liable to be included in her income alone. The Appellate Tribunal, however, took a contrary view and held that the agreement, on the basis of which it was said that payments were being received by the assessee was not enforceable, and that the payment depended upon the sweet will of the husband and could be stopped at any time and at best could be termed as "a windfall of a non-recurring nature", It purported to seek support from a Full Bench decision of this court in the case of Rani Amrit Kunwar v. Commissioner of Income-tax, [1946] 14 I.T.R, 561 (All.) [F.B.].. It was further of the opinion that inasmuch as the entire amount received was not meant for the assessee alone, the authorities were in error in including the whole of it in the assessee's taxable income.

4. Before we answer the first question referred to us, it will be convenient to dispose of the second question. The revenue in order to bring the amount to tax has relied mainly on the deed of separation to show that the amount in question was income, inasmuch as it was paid on the basis of an enforceable contract between the parties. Assuming for the purpose of this question that the agreement was an enforceable one, it is clear from paragraph 4 of that deed that the entire amount of rupees two thousand, per month, received by the assessee was not paid out solely to her. The amount represented maintenance not only for the assessee, but also for her two children. In this situation it cannot be said that on account of the mere fact that the assessee received the entire amount, it could be taxed in its entirety in her hands. The amount representing the maintenance of her two sons was held in trust by her for the maintenance of her two children. It was impressed with an obligation to defray the maintenance charges of her two minor children and as such the mere act of receiving the money on behalf of her two children could not make the entire amount taxable in her hands. We are accordingly of the view that the entire amount received by the assessee as maintenance was not taxable solely in her hands.

5. The first question is of some complexity. The assessee along with her two children had started living separately from her husband. The situation on the recitals contained in the deed was brought about on account of unhappy relations between the parties resulting in frequent quarrels. The deed of separation was executed in order to prevent further deterioration in relations between the parties. Not only did it have the result of permitting the wife to live apart, but denied the husband access to the wife and also prevented him from filing a suit for restitution of conjugal rights. The wife as a result of the deed was removed completely from marital control and authority of the husband.

6. It is admitted that the payments which had been received by the assessee were on account of the agreement. The question arises as to whether, in these circumstances, the amount received by the wife could be treated as her income. The Tribunal, while holding that the amount aforesaid did not constitute the income of the assessee, was influenced to a great extent by the fact that the agreement was not enforceable in a court of law.

7. Counsel for the assessee has sought to support this conclusion of the Tribunal, and has relied mainly on the Full Bench decision of this court in Rani Amrit Kunwar v. Commissioner of Income-tax.

8. On behalf of the department, it has been contended that the agreement in question was enforceable and the maintenance having been paid as a result of that agreement, the amount

constituted the income of the assessee. In the alternative, it has also been urged on behalf of the revenue, that even assuming that the agreement was not enforceable, yet inasmuch as it has been admitted by the assessee that the payments received were as a consequence of the agreement, the amounts would still be taxable in spite of the fact that no legal proceedings could be taken by the assessee on the basis of the agreement. The deed in question undoubtedly was an agreement between the parties to live apart, but before such an agreement can be enforceable in a court of law, it must not offend any of the provisions of the Indian Contract Act, which renders certain agreements void and unenforceable. Counsel for the assessee has suggested that the agreement in question is hit by Section 23 of the Indian Contract Act, as being opposed to public policy. We shall now examine whether it is so. Under the Hindu law, the wife's first duty to her husband is to submit herself to the authority of her husband, and to remain under his roof and protection. She is, therefore, not entitled to separate residence and maintenance unless she proves that by reason of his conduct or by his refusal to maintain her in his own place of residence, she is compelled to live apart from him. Mere unkindness not amounting to cruelty, nor ordinary quarrels between the husband and wife justify a claim for separate residence and maintenance. It is only when the wife is treated cruelly as to endanger her personal safety that she is entitled to separate residence and maintenance (Mulla on Hindu Law 13th edition, Article 555). This was the established rule of Hindu law till the enactment of the-Hindu Married Women's Right to Separate Maintenance & Residence Act, 1946 (Act XIX of 1946), which came into force on 23rd April, 1946. Section 2 of that Act sets out certain grounds on which a married Hindu woman was entitled to separate residence and maintenance from her husband. Clauses (i) to (vi) of Section 2 do not cover the case of the present kind, Clause

(vii) justifies a claim for separate maintenance and residence " for any other justifiable cause ". This clause, however, in our opinion does not entitle the wife to maintenance on the mere ground of incompatibility of temper or frequent quarrels. No authority has been cited to support a right of separate residence and maintenance on such a ground alone. Apart from this, the agreement brings to an end all marital rights which a husband can exercise in relation to his wife. Such an agreement, to our mind is opposed to the basic tenets of Hindu law relating to marriages. That being so, it can be said that the agreement in question is opposed to public policy, and as such is hit by Section 23 of the Indian Contract Act. In the case of Tekait Mon Mohini Jemadai v. BasantaKumar Singh, [1901] I.L.R. 28 Cal. 751 there was an ante-nuptial agreement on the part of the husband that he will never be at liberty to remove his wife from parental abode. The husband abided by the terms of the agreement for a certain time, but, thereafter filed a suit for enforcement of conjugal rights against the wife and asked for a decree directing the defendant to live with the plaintiff at his house. The agreement was pleaded as a defence to the suit. That defence fell on the ground that inasmuch as the enforcement of the agreement would defeat the rule of Hindu law that the wife must reside with her husband wherever he may choose and on the ground that it was opposed to public policy. There is an elaborate discussion of the duties of a wife under the Hindu law in the case and we are in agreement with the views expressed in that decision. In the case of Krishna Aiyar v. Balammal, [1910] I.L.R. 34 Mad. 398. the wife had refused to return to cohabitation with the husband. The husband filed a suit for restitution of conjugal rights. The suit terminated in a compromise by which it was agreed that the wife should return and livs with the husband, and that if at any time thereafter, she should desire to live apart from the husband, she was to be paid Rs. 350 by the husband. The wife never returned and thereafter the husband brought a suit for restitution of conjugal rights. One of the defences set up to the suit was the agreement between the parties which

provided for a future separation. It was held by the Madras High Court that such an agreement was forbidden by Hindu law, and it was also opposed to public policy and unenforceable.

9. Counsel for the department has sought to sustain the agreement on the basis of certain observations made in the case of Egerton v. Earl Brownslow [1853] 4 H.L. Cas. 1, 40, John Wright, In re: Wright Henniker Wilson v. Mary Wright Henniker Wilson, [1848] 1 H.L. Cas. 538 and Hyman v. Hyman , [1929] A.C; 601 (H.L.). It is, however, unsafe to rely upon the dictum of these cases in so far as the rights of the husband under the Hindu law are wider than those under the laws of England. The conception of marriage under the two systems of laws is entirely different. Under the Hindu law, marriage is treated as a sacrament while under the English law, it is not put on a higher pedestal than a contract.

10. Counsel for the department has then urged that the principle laid down in the Calcutta case should not be applied to the present case, inasmuch as the agreement in the Calcutta case was a pre-nuptial agreement. In the present case, although the agreement has been entered into by the parties after their marriage this by itself is not sufficient to dissuade us from applying the principle laid down in the Calcutta case. Apart from the Calcutta case it has already been seen that the agreement entered into between the parties is not in consonance with any rule of Hindu law, or sanctioned by any statute, and that it is opposed to public policy, and as such hit by Section 23 of the Contract Act. The Madras case dealt specifically with an agreement between the husband and the wife for separate residence and had been entered into after their marriage and even then the agreement was held to be void. At this stage, it would be useful to refer to cases cited on behalf of the parties relating to maintenance allowance. In Raja Rameshwar Rao v. Commissioner of Income-tax, [19633 49 I.T.R. (S.C.) 144 interim maintenance allowance was received by the assessee under the Hyderabad Abolition of Jagir Regulation. This was held to be income and not a mere windfall as the right to receive them was created by Regulations and the payment could be enforced in a civil court. The question still remains as to whether the amounts received by the assessee could be treated as her income even though the agreement on the basis of which they were received is void. This case, however, cannot be helpful, for the decision (sic) of the amount being received here are not relatable to any statute, and neither do they partake of the nature of " income compensation". In H. H. Maharani Shri Vijayakuverba Saheb of Morvi v. Commissioner of Income-tax, [1963] 49 I.T.R. 594 (Bom.) payments were being made voluntarily by the son of the assessee. The allowance was not paid under any custom or usage. The amount could not also be regarded as maintenance allowance as the assessee possessed a large fortune. In these circumstances, it was held that inasmuch as the payment was volunary and made without consideration, and was not traceable to any source which a practical man may regard as a real source of income and as it depended entirely on the whim of the donor it could not be said to come within the category of "income". This case is, however, not an authority for the proposition that it is not necessary that before an amount can be termed as income, it must be traceable to some enforceable right. In Her Highness Maharani Kesarkunverba Saheb of Morvi v. Commissioner of Income-tax, [I960] 39 I.T.R. 283 (S.C.) the assessee was receiving from Morvi State certain maintenance allowance. Later on, in lieu of maintenance, a village was granted to the assessee in accordance with the tradition running in the family from ancient time, and in order that she may maintain her status and dignity. The Government of Saurashtra passed a resolution granting a cash annuity of Rs. 35,807. Exemption in respect of this amount was claimed

under paragraph 15(1)(i) of the Part B States (Taxation Concessions) Order, 1950. The Supreme Court on a consideration of the terms of that order held that the cash annuity being received by the Maharani was exempt. This case is of no assistance to the present controversy. In Princess Ruby Rajiber Kaur v. Commissioner of Income-tax, [l967J 64 I.T.R. 624 (punj.) the assessee, a married daughter of the late Maharaja of Jind, was getting an annual allowance of Rs. 12,000, in lieu of dowry. The payment was stopped twice by the Pepsu Government but on a representation made to the Government of India, an annual allowance of Rs. 10,000 was directed to be paid together with all arrears. The assessee claimed that the amount received was in the nature of a gift, and not taxable. It was found that the payment of dowry in the shape of an annual allowance to married daughters and sisters was based on a well established custom of the Jind ruling family, and that it was in view of this custom that the allowance was continued by the Government of India. The Punjab High Court held that inasmuch as the payments were made on the basis of an established custom, the amount received by the assessee constituted her income. In that case, it was sought to be urged that inasmuch as the assessee could not bring a suit for recovery of the amount in question against the Government of India, the amounts should not be treated as her income. The Punjab High Court declined to go into that question, and took the view that inasmuch as the payments were being made by the Government on the acceptance of the position that the custom was of a binding nature, the amounts could be said to have been received by the assessee on the ground that such a custom had been accepted, and, therefore, constituted the income of the assessee. This case also is not of much help in deciding the dispute, inasmuch as the payments which were made to the assessee were on the basis of an agreement, which we have held to be not enforceable. In Kedar Narain Singh v. Commissioner of Income-tax, [1938] 6 I.T.R, 157 (All.) which is a case of this court, an amount was paid by the court of wards to the assessee who was the daughter's son of a widow who was the proprietor of an estate. The amount was taxed in the hands of the assessee as his income. The claim for exemption by the assessee was based on Section 14(1) of the Act, and it was held that before exemption under Section 14(1) of the Act could be claimed, the assessee should be entitled to maintenance under the Hindu law, and inasmuch as the assessee was the daughter's son and only a prospective heir to the estate, the allowances received by him were not received as a member of the joint family within the meaning of Section 14(1) and, therefore, not exempt. This case also is of not much help inasmuch as the assessee is not claiming any exemption under Section 14(1) of the Act. In fact the Appellate Assistant Commissioner has recorded a clear finding, which has not been challenged before the Tribunal that Section 14(1) of the Aet is not attracted to the present case. The case of Rani Amrit Kttnwar v. Commissioner of Income-taxl now needs consideration. The assessee in that case was receiving allowance from her husband and her brother. So far as allowance from her husband was concerned, it was held that inasmuch as it had been received within British India, it was on the terms of Section 4(2) of the Act deemed to be the income of the wife. In respect of the payment received from her brother, Braund J. held that they were in the nature of a bounty from the Maharaja of Nabha State, He held that inasmuch as it had not been shown that they were attributable to some custom, usage or obligation, it could not be said that they had the character of income in the hands of the recipient. The contention of the department was thrown out on the basis that apart from proving that the amount had been received with regularity, there was nothing else to establish that the payments were of the character of income as defined under the Act. While considering the question as to the precise scope of the word " income " as used in the Act, Braund J., on page 573 of the report held that it was not necessary that the amount received must have its

origin either in a business activity, an investment or an enforceable obligation. Considering the matter further, he opined on page 574 of the report as below :

" But there seems to me to be another class of cases altogether in which in particular circumstances payments may be made by one person to another which can only be explained on the ground that the giver intends to give, and the recipient expects to receive, with regularity or expected regularity and from a source the nature of which is to produce such a payment, an ' income ' which is in the income-tax sense his own. I can find nothing in the Indian Income-tax Act to warrant any general conclusion that it is only in a case in which, if the payment is discontinued, the recipient will have an immediate right of action against the payer, that it will be income in his hands in the Indian income-tax sense. That is to put too limited a construction on the word ' income.'."

11. Malik J. agreed with the answers given by Braund J. to the questions referred, although he did not go into the question as to whether amounts received were the income of the Rani for he took the view that even if they were her income, they were exempt under Section 4(3)(vii) (page 590). While considering the question of the allowance paid to the Rani by her husband, he observed on page 582 that in cases of voluntary allowance, it would be difficult to class the husband as a source of the income, but where the husband pays on account of an order of the court or under an agreement, the order or the agreement might be deemed to be a source of the income. Iqbal Ahrned C.J. agreed with the conclusions of Braund and Malik JJ., although he did not give any separate reasons. It would thus appear that the case of Rani Amrit Kunvar v. Commissioner of Income-tax is not identical with the present one, for in that case the payments were not relatable to any agreement. In this case, Braund J. has, as has been seen, taken the view that an amount received may be income, even if it does not arise out of an enforceable agreement. Malik J. has not disagreed with this proposition, although he based his judgment on the alternative ground that the allowance was exempt under Section 4(3)(vii). The acceptance of the test formulated by Braund J. would tilt the balance against the assessee. The Bombay High Court has in H. H. Maharani Vijaykuverba Saheb of Morvi v. Commissioner of Income-tax, considering the question on page 604, observed:

" 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 I in that if the payments are not made, the enforcement of the payments could be sought by the payee in a court of law....."

12. We are of the opinion, with respect, that the view taken by Braund J. appears to be sound. Thus, even if the agreement in question is void, yet the amounts received by the assessee can be taxed if they can be classified as income, or if they can be said to arise from some " source " and are not exempt under Section 4(3)(vii) of the aforesaid Act.

13. Under Section 4 of the Act, all income of any previous year received from whatever source is liable to be taxed in the hands of the assessee. The source has not been defined in the Act. There is nothing to indicate that the source must be one which is recognised under the law for if that were so then the income derived from illegal business could not be liable to tax.

That income realised from illegal business is taxable as any other income is well-settled and reference in this context may be made to the case of Minister of Finance v. Smith, [1927] A.C. 193 (P. C.). Thus, we are of the view that inasmuch as the assessee herself has traced the origin of the payment to the agreement, it cannot be said that the agreement did not constitute the source of the receipt. Even if such a source existed, could the receipt be termed as the income of the assessee? The word "income " as used in the Income-tax Act has often been characterised by judicial decisions as formidably wide and vague in its scope. It is a word of elastic import and its extent is not controlled and is not governed by the words " profits and gains " in Section 10 of the Act. Every receipt generally may be described as income unless it is expressly exempt. Dooars Tea Co. Ltd. v. Commissioner of Agricultural Income-tax, [1962] 44 I.T.R. 6 ; [1962] 3 S.C.R. 157 (S.C.). is a case on the point. In coming to this conclusion, their Lordships have referred to the decision of Sir George Lowndes J. in the case of Commissioner of Income-tax v. Shaw Wallace & Co., [1932] 2 Comp. Cas, 276; A.I.R. 1932 P.C. 138. and Maharajkumar Gopal Saran Narain Singh v. Commissioner of Income-tax, [1935] 3 I.T.R. 237 (P.C.).

14. We are of the view that taking into account the totality of circumstances as found in this case, the allowance received by the assessee constituted her income. Once it is held that the amount constituted the income of the assessee, it is difficult to see how exemption could be claimed on the ground that it is of a casual and non-recurring nature. The amounts in question have been received by her with regularity and they cannot be said to be casual, inasmuch as they are related to an agreement. We are, therefore, of the view that the assessee could not claim exemption in respect of the maintenance allowance under Section 4(3) of the Act. We, therefore, hold in respect of the first question that the income was not exempt under Section 4(3)(vii) of the Indian Income-tax Act> 1922, and answer the question accordingly.

15. In respect of the second question, we hold that the entire receipt was not taxable in the hands of the assessee inasmuch as it included the maintenance of the two sons of the assessee; we are of the view that, in the circumstances, the parties should bear their own costs. Counsel's fee is assessed at Rs. 200.