

# Commissioner of Income Tax, Tamil Nadu-I v. M Ramalakshmi Reddy

*Tax Case No. 680 of 1976 (Reference No. 548 of 1976)*

*Decided on July 10, 1980*

## JUDGMENT

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**Balasubrahmanyam J.**

In this reference made by the Income-tax Appellate Tribunal, Madras, at the instance of the Commissioner of Income-tax, Madras, under s. 256(1) of the I.T. Act, 1961, the following question of law had been referred for our opinion :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the sum of Rs. 37,770 received by the assessee from the two concerns for sale of water is casual and non-recurring receipt and did not arise from business or the exercise of a profession or occupation by the assessee and, therefore, exempt from taxation under section 10(3) of the Income-tax Act ?"

The Tribunal, in their stated case, have given us a vivid account of the circumstances in which the receipt in question came about. The assessee in the case is Mrs. Ramalakshmi Reddy. She was the owner of a nine-ground plot of land in Kodambakkam, Madras. She applied to the Corporation of Madras for approval of her plan to construct a residential building in her plot. With the plan sanctioned, she started construction work. Almost the first thing she did at the site was to find a spot and dig a well, for there was no municipal water supply in that locality and she needed water, initially, for building operations, and, thereafter, to serve sheer god fortune, she happened to strike a perennial spring at the spot where she cut for the well. The water was good. It was also plentiful. This was just about the time when the rest of Madras found itself in the throes of an acute water famine. Scarcity of water was not only a practical problem, but was apparently the main topic of conversation among city dwellers. In May, 1969, when the drought was at its worst, the assessee's husband had been to a Rotary meeting at Hotel Connemara. There he chanced to meet the secretary of Spencer and Co. Ltd., Madras. Spencer had an aerated water factory in the city. They were experiencing production problems on account of depletion of their usual sources of water supply. When the assessee's husband heard about their difficulties, he made a sporting offer to the secretary then and there. He said that Spencers might unreservedly help themselves from his wife's well to help their factory out of their shortages. Spencers fell in with the suggestion, and later found that the assessee's well could meet all their demands with ease. Thus began a steady baling out of lorry loads of water by Spencers from the assessee's domestic well. The whole thing happened just like that, in this casual off-hand way. There was no thought in anyone's mind about payment for the water. Later, however, Spencers did not, and could not, grudge paying the assessee at the rate of Rs. 50 a lorry, considering that they made quite a profit out of processing it in their aerated water factory. A neighbour of Spencers at Mount Road, the First National City Bank of New York, also had a water problem of their own. They needed potable water to keep their air-conditioning plant going. They too approached the assessee and obtained a like facility from her paying for their lorry loads at the same rate of Rs. 50 a load. In this way, by the end of the year, the assessee had received as much as Rs. 37,770 from both these concerns.

The ITO assessed this amount in its entirety as constituting the assessee's taxable income. He did not explain under what head to taxable income he was bringing the amount to charge. He simply described the amount in his assessment order as "profit from sale of water", and levied tax on it.

The assessee appealed against this assessment, saying that the receipts were casual receipts and they could not be treated as chargeable to income-tax. The AAC accepted this contention and deleted the amount from the assessment. He said that the money which the assessee got was the outcome entirely of fortuitous circumstances. He said that the assessee was but a housewife and the receipt was purely casual in her hands.

The I.T. Dept. appealed against this order to the Tribunal, contending that the receipt was not casual in nature, exempt as such from income-tax under s. 10(3) of the Act, but was assessable as income. The Tribunal negated this contention. They pointed out that the receipt of money by the assessee was rendered possible by the drought conditions which prevailed in the city, and, although the recurrence of a similar situation was not altogether beyond the realms of possibility, the receipt as