1934

JAGMANDAR DAS v. COMMISSIONER OF INCOME-TAX

the books were kept simply for the purpose of ascertaining his financial state. Accordingly we direct that this reference be returned to the Commissioner and we allow to Mr. Verma a fee of Rs.150, and the amount which has been certified for the assessee will be allowed as costs against the department.

Before Mr. Justice Niamat-ullah and Mr. Justice Bennet

1934
November, 30

GAYA PRASAD CHHOTEY LAL (APPLICANT) *v.* COMMISSIONER OF INCOME-TAX (OPPOSITE PARTY)*

Income-tax Act (XI of 1922), section 4(3)(vii)—"Business"—Receipt arising from business—Income of a casual nature—Single transaction of loan, of a highly speculative character—Money advanced for financing a litigation, payment depending on the result.

A person, who ordinarily did not do any money-lending or other business and whose principal source of income was certain house property, entered into an agreement to finance another person in a litigation which the latter was conducting, the condition being that all sums advanced, together with an additional sum of Rs.21,000, would be repaid in case of the litigation being successful, but nothing would be repaid if the litigation terminated adversely. The litigation terminated favourably, and the sums advanced were repaid together with an addition of Rs.15,000, in place of the Rs.21,000 promised. The question was whether the recipient was liable to pay income-tax on the Rs.15,000 or whether it was exempt as being an income of a casual nature under section 4(3)(vii) of the Income-tax Act:

Held, that the transaction amounted to "business" within the meaning of the Income-tax Act and so the money was a receipt arising from business; and the income could not be held to be of a purely casual nature, but on the contrary it represented a return on the money invested by the assessee. For these reasons it did not come within the exemption contained in section 4(3)(vii). A single transaction or investment may be "business" and any receipts exceeding the capital must be treated as profit. It is not necessary that the source of income must be one which yields income periodically, and not only once, in order that the income derived from it can be assessable to income-tax. The transaction upon which the assessee embarked was one in which

*Miscellaneous Case No. 285 of 1934.

unusual conditions were stipulated and it was of a speculative character, but it was certainly a transaction of loan from which the lender expected to derive considerable profit; it was a business transaction.

Mr. *Gopi Nath Kunzru,* for the assessee.

Mr. *K. Verma,* for the Crown.

NIAMAT-ULLAH and BENNET, JJ.:—This is a reference by the Commissioner of Income-tax under section 66(2). The assessee is a Hindu undivided family, which owns a certain house property which is the principal source of its income. In previous years income-tax used to be assessed on the income of that property. In the year ending 31st March, 1932, the family was assessed on an income which included a sum of Rs.15,000 recovered in a transaction to be presently referred to. The question which arose before the assessing authorities was whether this sum of Rs.15,000 can be considered to be income, profit, or gain of business within the meaning of the Income-tax Act. The Income-tax Commissioner held that it was income accruing from business and, therefore, taxable. He, however, made a reference under section 66(2) on the application of the assessee, and the questions which we are called upon to answer are as follows: (1) Did the sum of Rs.14,560 assessed by the Income-tax Officer represent income, profits or gains? (2) If so, did that sum represent a receipt arising from business within the meaning of clause (vii) of sub-section (3) of section 4 of the Indian Income-tax Act, 1922, and consequently excluded from the exemption conferred by that clause?

It appears that one Kanhaiya Lal Jaju was a party to an appeal pending in the High Court. The assessee entered into an agreement with Kanhaiya Lal, under which the assessee undertook to supply funds needed for the prosecution of the appeal by Kanhaiya Lal, who agreed to repay the sums to be advanced to him by the assessee together with an additional sum of Rs.21,000 in case the appeal was decided in favour of Kanhaiya

1934

GAYA PRASAD CHHOTEY LAL v. COMMISSIONER OF INCOME-TAX

Lal. It seems to have been implied that if Kanhaiya Lal was unsuccessful, he was not liable to repay any part of the advances made by the assessee, nor would he be liable to pay anything by way of compensation. The agreement was reduced to writing. The assessee, represented by one Chhote Lal, executed an instrument stipulating to supply all funds needed by Kanhaiya Lal for the prosecution of his appeal and to take formal receipts from the latter. The agreement proceeded to lay down that, in case the appeal was successful, Kanhaiya Lal would pay back all the sums advanced by the assessee together with the sum of Rs.21,000, and that in case Kanhaiya Lal failed to fulfil his undertaking it would be open to the assessee to institute a suit for recovery of the sums due under the agreement with interest at the rate of 9 per cent. per annum. The agreement further provided that in case any compromise was arrived at between Kanhaiya Lal and his adversary, the assessee would be entitled to repayment of the sums advanced by him and also to the sum of Rs.21,000, referred to above.

The assessee financed the litigation, and Kanhaiya Lal won his appeal. Apparently Kanhaiya Lal was not willing to pay the sum of Rs.21,000 in addition to the sums actually advanced. Eventually a compromise was arrived at between the assessee and Kanhaiya Lal, under which the latter paid Rs.15,000 in full satisfaction of the assessee's claim under the agreement referred to above. The Income-tax department deducted a sum of Rs.440 on account of interest paid by the assessee, and assessed Rs.14,560 to income-tax. This is the sum which is referred to in question No. 1.

The learned advocate for the assessee has argued that the receipt of Rs.15,000 from Kanhaiya Lal in the circumstances already stated cannot be considered to be income, profit or gain from business within the meaning of section 4(3)(vii) of the Income-tax Act. He also contended that it is income of a casual nature and should

be deemed to have been exempted by the aforesaid section. Reliance is placed on *Commissioner of Income-tax* v. *Shaw, Wallace and Company* (1), in which their Lordships of the Privy Council made certain observations to the effect that the word "business" connotes continuity and regularity of transactions. In that case Messrs. Shaw, Wallace and Co., agents of a certain petroleum company, were paid a large sum of money as compensation for the termination of their agency. The Income-tax authorities treated it as income, profit or gain, and assessed it to tax. The Calcutta High Court held that it could not be considered to be income, gain or profit so as to attract the application of the Income-tax Act. Their Lordships of the Privy Council took the same view and observed (page 1350): "The object of the Indian Act is to tax 'income', a term which it does not define. It is expanded, no doubt, into 'income, profits and gains', but the expansion is more a matter of words than of substance. Income, their Lordships think, in this Act, connotes a periodical monetary return 'coming in' with some sort of regularity, or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something, which is often loosely spoken of as 'capital'. But capital, though possibly the source in the case of income from securities, is in most cases hardly more than an element in the process of production." Their Lordships also referred to the phrase "business carried on by him" in section 10. In the end they held the payment to Messrs. Shaw, Wallace and Company as no more than a *solatium*. We are clearly of opinion that the observations

(1) (1932) I.L.R., 59 Cal., 1343

1934

GAYA PRASAD CHHOTEY LAL v. COMMISSIONER OF INCOME-TAX

of their Lordships of the Privy Council quoted above, which are strongly relied on by the assessee, should be taken in conjunction with the facts of that case, and we are unable to hold that their Lordships intended to lay down that, unless the source of income is one which yields income periodically and not only once, the income derived from it cannot be assessed to tax. Circumstances are easily conceivable in which there can be no doubt that the receipt of a sum of money is the income, profit or gain from business, and yet it accrued only once. In the case before us there can be little doubt that the assessee embarked upon a transaction of loan in which unusual conditions were stipulated. He agreed to advance such sums as were needed by Kanhaiya Lal for the prosecution of his appeal and stipulated for its return together with profit on the sums advanced. The profits were not calculated at a given rate of interest, but in a lump sum. It may be, as the learned advocate for the assessee argues, that there was an element of speculation in the transaction. At the same time, it cannot be gainsaid that the transaction was one of loan from which the lender expected to derive considerable pecuniary profit. The business which yielded profit to the lender commenced from the date of the agreement and continued till the assessee realised the sum of Rs.15,000 from Kanhaiya Lal. There was continuity and regularity in the sense that he advanced sums from time to time, as occasions arose for Kanhaiya Lal to borrow, took steps to enforce the agreement against Kanhaiya Lal and succeeded so far as to recover Rs.15,000, out of the Rs.21,000 agreed to be paid, over and above the sums actually advanced. We are clearly of opinion that the transaction amounted to business within the meaning of the Income-tax Act. We are unable to hold that this income was of a purely casual nature. On the contrary, we think that it represents a return on the money invested by the assessee. To hold otherwise would imply that the income, profit or

gain accruing from a single transaction or investment which is not akin to the assessee's trade or avocation is not income, gain or profit from business, which, in our opinion, is contrary to the plain meaning of the words employed in the Act. That a single transaction or investment may be business cannot admit of doubt. Any receipts exceeding the capital must be treated as profit. It is true that if Kanhaiya Lal had lost the case the assessee would probably have lost all he had advanced to him. That, however, is beside the point. The fact remains that he received Rs.15,000 as a return on the sums which Kanhaiya Lal had borrowed.

For the reasons given above we answer both the questions in the affirmative. The assessee shall pay the costs of this reference. We assess the fee of the advocate for the department at Rs.150, for which a certificate shall be filed within the time allowed by the rules.

Before Mr. Justice Niamat-ullah and Mr. Justice Bennet

RAMRATAN MADANGOPAL (APPLICANT) *v.* COMMISSIONER OF INCOME-TAX (OPPOSITE PARTY)*

1934 *November*, 30

Income-tax Act (XI of 1922), section 55, proviso—"Individual" whether includes a Hindu undivided family—Hindu undivided family becoming a partner in an unregistered firm—Income-tax and super-tax paid by the unregistered firm—Whether the Hindu undivided family liable to pay super-tax on its share of the income of the unregistered firm—Interpretation of statutes—Same word used in different places of same section.

Where a Hindu undivided family was one of the partners in an unregistered firm, and the unregistered firm had paid income-tax and super-tax on the income made by that firm: *Held*, that the Hindu undivided family was exempted, by the proviso to section 55 of the Income-tax Act, from paying super-tax in respect of the share of the income of the unregistered firm which came to the Hindu undivided family as a partner of that firm.

The word "individual" in the proviso to section 55 must be deemed to include a Hindu undivided family. Although in the main section itself the word "individual" is used in

*Miscellaneous Case No. 39 of 1934.