

Autar Singh and  
another  
v.  
The State  

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Dua, J.

opinion, such conduct is generally considered to be a very small item in the evidence on which a conviction can be based. Absconding may be equally consistent with innocence and guilt, depending as it does, on various factors and it can only be properly considered along with the other facts of the case. On the circumstances and the facts of the instant case, where several offences were the subject-matter of trial and where for some of the offences charged the accused have not been convicted, absconding by itself is hardly of much real value in determining the guilt of the accused in the offence of murder.

For the reasons given above, this appeal is allowed and the accused are acquitted.

Mehar Singh, J. MEHAR SINGH, J.—I agree.

B.R.T.

#### CIVIL WRIT

*Before Bhandari, C.J. and Falshaw, J.*

THE PUBLIC FOUNDRY & WORKSHOP PRIVATE  
LIMITED, PHILLAUR,—*Petitioners.*

*versus*

THE DEPUTY COMMISSIONER, JULLUNDUR AND  
ANOTHER,—*Respondents.*

Civil Writ No. 114 of 1959.

1959

Sept. 4th

*Punjab Professions, Trades, Callings and Employments Taxation Act (VII of 1956)—Sections 2 and 5—"Total gross income"—Meaning of.*

*Held*, that the expression "total gross income" as defined in Section 2 of the Punjab Professions, Trades, Callings and Employment Taxation Act, 1956 means the aggregate income derived from various professions, trades, callings

and employments. To put it in the form of an equation, total gross income is equal to the sum total of the income derived by an individual from each of the following sources, namely, income from professions; income from trades; income from callings and income from employments. The expression "income" appearing in this definition has not been defined, but there can be little doubt that it ought to be interpreted in accordance with the ordinary every day meaning and in accordance with its natural and commonly accepted sense, as the balance of gain over loss. It is synonymous with the expressions gain, profit, revenue. Income as a subject of taxation imports an actual gain and means an increase of wealth out of which money may be taken to satisfy the pecuniary imposition made by the taxing statute. There must be an element of gain or profit as distinguished from the corpus or principal. The income of a person is equivalent to the gross income accruing to him minus the legitimate charges incurred by him in earning it. For purposes of taxation "income" means net income and not gross income. Proposition to the contrary that the expression "income" means "all that which comes in" cannot be supported.

*Petition under Articles 226 and 227 of the Constitution of India praying that a Writ in the nature of Certiorari be issued for quashing the order of respondent No. 1, dated the 12th December, 1958, and a writ in the nature of Mandamus be issued directing the respondent No. 2 not to recover the tax imposed upon the petitioners under Act No. 7 of 1956 (The Punjab Professions, Trades, Callings and Employments Taxation Act, 1956.)*

BHAGIRATH DASS, for Petitioners.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for Respondents.

#### ORDER

*Bhandari, C.J.*—This petition unnder article 226 of the Constitution raises a question upon the interpretation of the expression "total gross income" appearing in section 5 of the Punjab Professions, Trades, Callings and Employments Taxation Act, 1956. Bhandari, C. J.

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On the 14th October, 1950, the Assessing Authority constituted under the Act of 1956 imposed a professional tax of Rs. 250 on the petitioner on the ground that his total income for the year 1957-58 aggregated to a sum of Rs. 99,821. The order of the Assessing Authority was upheld by the Appellate authority, and the petitioner has accordingly presented a petition under article 226 of the Constitution.

Section 3 of the Act of 1956 provides that every person who carries on trade either by himself or by an agent or representative, or who follows a profession or calling, or who is in employment, either wholly or in part, within the State of Punjab, shall be liable to pay for each financial year a tax in respect of such profession, trade, calling or employment. Section 4 declares that the tax shall be levied at the rates specified in the Schedule annexed to the Act, and section 5 enacts that the tax payable by any person under this Act shall be determined with reference to his total gross income during the previous year : provided that the tax payable by any person shall not exceed Rs. 250 for any financial year.

The expression "total gross income" as defined in section 2 means the aggregate of income derived from various professions, trades, calling and employments. To put it in the form of an equation, total gross income is equal to the sum total of the income derived by an individual from each of the following sources, namely, income from professions, income from trades, income from callings and income from employments. The expression "income" appearing in this definition has not been defined, but there can be little doubt that it ought to be interpreted in accordance with the ordinary

everyday meaning and in accordance with its natural and commonly accepted sense, as the balance of gain over loss *Lawless v. Sullivan* (1). It is synonymous with the expressions gain, profit, revenue. Income as a subject of taxation imports an actual gain and means an increase of wealth out of which money may be taken to satisfy the pecuniary imposition made by the taxing statute. There must be an element of gain or profit as distinguished from the corpus or principal. The income of a person is equivalent to the gross income accruing to him minus the legitimate charges incurred by him in earning it *Rs. Ar. Ar. Arunachallam chettiar v. Namakal Union Board* (2). For purposes of taxation "income" means net income and net gross income [*Deputy Commissioner, Akola v. Municipal Committee, Basi* (3)]. In Gunn's Commonwealth Income Tax Law the learned author observes in section 192 as follows :—

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"The word "income" is not a term of art, and what form of receipts are comprehended within it, and what principles are to be applied to ascertain how much of those receipts ought to be treated as income, must be determined in accordance with the ordinary concepts and usages of mankind, except in so far as the statute states or indicates an intention that receipts which are not income in ordinary parlance are to be treated as income, or that special rules are to be applied for arriving at the taxable amount of such receipts *A.G. for british Columbia v. Ostrum* (4), *Lambe v. I.R. Comrs.* (5)."

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(1) (1881) 6 A.C. 373  
(2) A.I.R. 1928 Mad. 346  
(3) A.I.R. 1931 Nag. 45  
(4) (1904) A.C. at p. 147  
(5) (1934) 1 K.B. at pp. 182-183

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vate, Limited,  
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Proposition to the contrary that the expression "Income" means "all that which comes in" cannot possibly be supported.

The petitioner in the present case contends that although his total gross receipts aggregated to a sum of Rs. 1,05,433, the actual income received by him after deducting the necessary expenses was considerably less. The Excise and Taxation Department should in my opinion determine the income of the petitioner in accordance with the principles propounded above.

For these reasons I would allow the petition, quash the order of the Appellate Authority and direct the Assessing authority to make a fresh assessment in accordance with law. There will be no order as to costs.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

APPELLATE CIVIL

*Before Shamsheer Bahadur, J.*

M/S ANGAD RAM-RAM SINGH,—*Defendant-Appellant.*

*versus* ...

M/S GAINDA MAL CHARANJI LAL AND OTHERS,—*Defendants-Respondents.*

**Execution First Appeal No. 72 of 1958.**

1959

Sept. 7th

*Code of Civil Procedure (V of 1908)—Order 41 Rule 6(2)—Order directing stay of sale of immovable property on condition that judgment debtor deposits half the decretal amount in cash in Court—Whether legal.*

*Held*, that the conditions envisaged in sub-rule (2) of rule 6, Order 41 of the Code of Civil Procedure clearly contemplate an order asking for the deposit of a substantial