

Commissioner of Income-tax v. Shri Saroop Krishan
(D. S. Tewatia, J.)

Singh, Mr. Gopi Chand, counsel for the claimants had sought to rely upon *Mohinder Singh and another v. Gurdial Singh and another* (5), *Nimayi Chand Mahapatra and others v. Kartika Chandra Sahu and others* (6), and, *Association Pool, Bombay v. Radhabai Babulal* (7). Neither of these authorities lays down any proposition of law contrary to the position as set out above. All the cases cited were decided on their own facts where the owner was held liable on the ground that at the time of the accident, the driver was engaged in some business of the owner. These cannot, therefore, be taken to support the point sought to be canvassed by the counsel for the claimants.

(20) In the result, the compensation payable to the claimants is hereby enhanced to Rs. 48,000, which they shall be entitled to along with interest at the rate of 12 per cent per annum, from the date of the application to the date of the payment of the amount awarded. Half of the amount awarded shall be payable to the children of the deceased, in equal shares and the balance to his widow. The liability for the compensation awarded shall be that of the driver—Sukhdev Singh only. No liability can be fastened upon its owner Tirlok Singh.

(21) The appeal filed by Tirlok Singh and the cross-objections of the claimants are accordingly accepted, while the appeal of Sukhdev Singh is hereby dismissed. The claimants shall, however, be entitled to their costs of these proceedings. Counsel fee Rs. 300.

H.S.B.

Before D. S. Tewatia, J.

COMMISSIONER OF INCOME-TAX,—Applicant.

versus

SHRI SAROOP KRISHAN,—Respondent.

Income Tax Reference No. 118 of 1979.

January 14, 1985.

Income-tax Act (XLIII of 1961)—Sections 15 to 17—Assessee retired Government servant drawing pension—Such assessee claiming standard deductions from pension taxed under head 'salary'—Such deductions—Whether admissible.

(5) 1978 A.C.J. 279.

(6) 1977 A.C.J. 58.

(7) 1976 A.C.J. 362.

Held, that the Legislature has declared the pension to be salary for the purposes of section 16 of the Income-tax Act, 1961. One can receive salary only if one is employed or one is in employment and therefore by virtue of the deeming provision of section 17 of the Act, such person would be treated to be in employment and for this purpose it is not necessary to examine as to what are the reasons for which one is entitled to derive pension i.e. whether the pension is a deferred payment of the past employment or has some other character. For the purpose of the provisions of sections 16 and 17, it is enough that a given amount is indisputably pension. The only reason for declaring pension to be salary for the purposes of sections 15 and 16 is to enable the assessee to claim the deductions permitted by Section 16 of the Act for the Legislature was aware that a pensioner was likely to incur some expenditure in retrieving his pension, if the pensioner happened to be living away from the place from where the pension is to be collected. As such once it is held that the pension is to be treated as salary for the purposes of sections 15 & 16 of the Act, the assessee would be entitled to claim standard deductions available under section 16(i) of the Act.

(Paras 13 & 19)

Reference under Section 256(1) of the Income-tax Act, 1961 made by the Income-tax Appellate Tribunal, Chandigarh Bench for the opinion of this Hon'ble High Court on the following question of law arising out of I.T.A. No. 15 of 1978-79 order dated 10th August, 1978 and R.A. No. 99 of 1978-79 for the Assessment Year 1976-77:—

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that standard deduction under section 16(i) of the Income-tax Act, 1961, dealing with deductions from salary is available even in respect of income derived from pension which is taxed under the head 'salaries'?

Ashok Bhan, Senior Advocate (A. K. Mittal, Advocate with him),
for the Appellant.

M. L. Sarin, Advocate with D. Khanna, Advocate, for the
Respondent.

JUDGMENT

D. S. Tewatia, J. (Oral)—

(1) The assessee, a pensioner, sought deduction of Rs. 2085 claiming the same to be standard deduction under section 16 of the Income Tax Act, 1961 (hereinafter called the Act), from his

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pension amounting to Rs. 10850 for the assessment year 1976-77. The deduction was declined by the Income Tax Officer. However, the Appellate Assistant Commissioner allowed the deduction, which was sustained by the Income Tax Tribunal. The Tribunal, at the instance of the Revenue, referred the following question for the opinion of this Court:—

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that standard deduction under section 16(i) of the Income Tax Act, 1961, dealing with deductions from salary is available even in respect of income derived from pension which is taxed under the head ‘salaries’?”

(2) The Income Tax Reference in question at the first stage came up for hearing before a Division Bench consisting of late B. S. Dhillon, J. and S. P. Goyal, J. Both the Judges wrote separate opinion dissenting from each other. The papers were then placed before the Hon'ble Chief Justice in view of the provisions of section 259 of the Act, and that is how this matter is before me.

(3) The assessee rested his claim for deduction on the ground that his pension amount constituted salary by virtue of the provisions of section 17 of the Act, which *inter alia* has declared pension to be salary for the purposes of sections 15/16, which permits *inter alia standard deduction from the salary*.

(4) Dhillon, J. reasoned that the pension was one of the very important terms and conditions of employment. Pension was earned by an employee by rendering a requisite period of service and the receipt of pension was one of the incidents of employment. In other words, the receipt of pension could be easily termed as deferred payment of remuneration for the services rendered by an employee. In view of the terms and conditions of his appointment, the employee receives the salary for the specified period and thereafter when he retires, he receives pension as part and parcel of the terms and conditions of employment in lieu of the services rendered by him to the employer. It was because of this that the Legislature thought it fit to provide in section 17 of the Act that the salary for the purposes of sections 15 and 16 would include any annuity or pension. The Legislature classified the income under various heads regarding which provision has been made under section 14 of the Act. ‘Salary’ represents one of the heads of

income. In fact, income has to be categorised under a given head before any deductions are to be allowed therefrom. Regarding salary, provisions have been made in sections 15, 16 and 17 of the Act. By way of comparison, it was pointed out that interest on securities was dealt with under sections 18 to 21 and sections 19 and 20 provided for the deductions from such income. The income from house property was dealt with under section 22 to 27, profits and gains of business from profession under sections 41 and 44-B, capital gains under sections 45 to 55 and income from other sources under sections 56 to 59. The learned Judge also took note of the fact that for the given assessment year the actual incurring of expenditure incidental to the employment of the employee was not necessary, i.e. the employee did not have to prove that he actually incurred any expenditure incidental to his employment. To claim the said deduction, only one thing was necessary to prove that the income from which the deduction was sought was salary. The learned Judge referred to *Dinesh Chandra Sangma v. State of Assam and others*, (1) and the principles enunciated therein to the effect that 'no words should be considered redundant or surplus while interpreting the statute, and then observed that if deduction provided under clause (i) of section 16 was not permitted to a pensioner, then the provisions of section 17 where it is declared that the pension is salary, would become otiose and would not serve any purpose for the purposes of Income Tax Act. The learned Judge relying on the rule of harmonious construction sought to read the expression 'in respect of expenditure incidental to the employment of the assessee' as to mean 'in respect of expenditure incidental to past or present employment of the assessee.'

(5) Goyal, J. on the other hand, laid stress on the fact that unless the assessee could be held to be in present employment, he could not become entitled to claim a deduction under section 16(i) of the Act. According to him, a pensioner cannot be considered to be in present employment. Reliance for the above view was placed on *C. Rajagopalachari v. Corporation of Madras and another*, (2).

(6) Ratio of *General Manager Southern Railway and another v. Rangachari* (3), which was relied upon by Dhillon, J. was

(1) A.I.R. 1978 S.C. 17.

(2) 53 I.T.R. 454.

(3) A.I.R. 1962 S.C. 36.

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distinguished by observing that the said authority did not justify a finding that the state of being a pensioner is the state of being employed. The learned Judge observed that the right to pension would be covered by the words "matters relating to the employment" according to this decision, not because it related to the actual employment but because it was a matter incidental to employment and directly flew from the past employment. While dealing with the contention that if deduction under section 16(i) of the Act was not to be permitted from the pension then why was pension declared to be 'salary' for the purposes of section 16, the learned Judge observed that prior to substitution of the present clause (i), the word 'salary' included annuity or pension received by the assessee from the past employer for the purposes of section 16, that no deduction was admissible to such an assessee under section 16 in respect of the pension or annuity from his past employer and the only possible purpose which he could conceive appeared to be that the framers of law intended to make the definition of salary of such a wide amplitude so as to include all the benefits received by a person during or after the course of employment, that for the purposes of claiming deduction it was not enough that the pension had been declared to be salary in section 17 for the purposes of section 16 but it had to be further shown that the amount had been spent by the assessee on matters relating to his employment as covered by the four clauses of section 16 prior to its amendment; that after the amendment, the said four clauses had been substituted by a comprehensive clause with a view to avoid an elaborate enquiry by the assessing authority, and that he was unable to ascribe any intention to the Legislature while enacting clause (i) of section 16, it intended to extend the benefit of deduction thereunder to a pensioner simply because the amount of pension received by the assessee was deemed to be salary by virtue of the provisions of section 17 for the purposes of sections 15 and 16 of the Act. The learned Judge concluded by observing that if the plea of the assessee was accepted then the expression in respect of expenditure incidental to the employment of the assessee occurring in clause (i) of section 16 would be rendered a mere surplusage and such an interpretation would run counter to the principle enunciated in *Dinesh Chandra Sangma's* case (supra). With respect, I entirely concur in the view that has been taken by Dhillon, J. for reasons detailed hereinafter.

(7) Before dealing with the contention advanced on behalf of the Revenue, which found favour with Goyal, J., it would be

desirable to notice the relevant provisions of section 16 before amendment and after amendment and section 17 of the Act. These read as under:—

(The provisions of section 16 before its amendment)—

“16(i) any amount not exceeding five hundred rupees, expended by the assessee on the purchase of books and other publications necessary for the purpose of his duties;

any amount paid by the assessee in respect of taxes on professions, trades, callings or employments levied under any State or Provincial Act;

where the assessee is not in receipt of a conveyance allowance, whether as such or as part of his salary in respect of expenditure on travelling for the purposes of his employment, a sum calculated in respect of each calendar month or part thereof comprised in the period of his employment during the previous year, on the basis provided hereunder, namely:

- (a) where the assessee owns a motor car which is used for the purposes of his employment ... Rs. 200;
- (b) where the assessee owns a motor-cycle, scooter or other moped which is used for the purposes of his employment ... Rs. 75;
- (c) if any other case ... Rs. 50;
- (v) any amount actually expended by the assessee, not being an amount expended on the purchase of books or other publications, or on entertainment or on the maintenance of a conveyance, which, by the conditions of his service, he is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties.”

(8) The Finance Act of 1974 amended section 16 with effect from 1st April, 1975 and the amended section 16 is as follows:—

“16. The income chargeable under the head ‘salaries’ shall

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be computed after making the following deductions, namely:—

(i) in respect of expenditure incidental to the employment of the assessee, a sum calculated on the basis provided thereunder, namely:—

(a) where the salary derived from such employment does not exceed Rs. 10,000 20 per cent of such salary;

(b) where the salary derived from such employment exceeds Rs. 10,000. Rs. 2,000 plus 10 per cent of the amount by which salary exceeds Rs. 10,000 or Rs. 3,500, whichever is less:”

17. For the purposes of sections 15 and 16 and this section,—

(1) ‘Salary’ includes:—

(i) wages;

(ii) any annuity or pension;

* * * * *

(9) While interpreting a deeming provision in a statute, the Court has to give full effect to it by taking it to its logical conclusion by imagining as real and natural even the consequences flowing from the assumed situation or fact, unless such an interpretation would lead to absurd results. In this regard, one may recall with advantage the following observations of Lord Acquith of Bishopstone from *East End Dwelling Co. Ltd. v. Finsbury Borough Council* (4):—

“If one is bidden to treat an imaginary state of affairs as real, one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.”

(10) Their Lordships of the Supreme Court in *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum and others* (5) enunciated the law in the same terms.

(4) (1951) 2 All England Law Reports 587.

(5) A.I.R. 1978 S.C. 1239.

(11) A Full Bench of the Andhra Pradesh High Court in *K. Venugopal v. Controller of Estate Duty* (6) too has given expression to the same view.

(12) The Legislature is entitled to engraft a deeming provision on a certain statute. It may even say that a man shall be deemed to be a woman or a woman shall be deemed to be a man for certain purposes and when it is so enacted, it is not open to the Courts to start looking for various attributes of a man or a woman to see whether one is a man or a woman. The Court must accept the verdict of the Legislature for the given purpose. Biological or physical realities may be any.

The view that Goyal, J., has expressed appears to have been influenced by two circumstances—(i) that unless an assessee is held to be in present employment, which a pensioner is not, he would not be entitled to a deduction of the kind which represents an amount of expenditure incurred incidental to his employment, and (ii) that prior to the amendment the said expenditure within the prescribed limit was claimable if the assessee proved the actual incurring of the given amount. If a person is not, for the given assessment year, in employment how would he prove actual incurring of the amount in regard to his employment. In other words, according to Goyal, J., the aforementioned two circumstances constituted two hurdles in the way of a pensioner-assessee in claiming the given deduction.

(13) So far as the first hurdle is concerned, it stands easily demolished by the fact that the Legislature has declared the pension to be salary for the purposes of section 16. One can receive salary only if one is employed or one is in employment and therefore by virtue of the deeming provision he would be treated to be in employment and for this purpose it is not necessary to examine as to what are the reasons for which one is entitled to derive pension, i.e. whether the pension is a deferred payment of the past employment or has some other character. For the purposes of provisions of sections 16 and 17 it is enough that a given amount is indisputably pension. Once that is held or there is no dispute regarding that fact, then the pension is to be treated as salary for the purposes of sections 15 and 16 of the Act.

(14) As regards the second hurdle, it may be observed that it is no hurdle at all. Even if assessment year happens to be one to

(6) (1983) 143 I.T.R. 988.

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which an unamended provision of section 16 is applicable, the pensioner would be entitled to a deduction of an amount if the pensioner is liable to establish that the given amount had been expended by him for the purposes of collecting his pension. Suppose a pensioner is living in Bombay and he has to get his pension from Chandigarh. Since admittedly, a pension is never delivered at the pensioner's house, he per force, would have to incur some expenditure in travelling. By virtue of the deeming provision, he would be treated in employment and expenditure incurred for the purpose of securing his pension has to be treated incidental to his employment. The present is the case where the imagery is not even that far fetched as would be a case where the Legislature was to declare for a given purpose a man to be a woman or a woman to be a man, or some such impossible situation, as the pensioner does have some connection with a state of employment however tenuous.

(15) Their Lordships of the Supreme Court in *Rangachari's* case (supra), while interpreting the expression 'the matters relating to employment', declared that matters in relation to employment both prior and subsequent to the employment which are incidental to the employment form part of terms of such employment.

(16) So far as the ratio of *C. Rajagopalachari's* case (supra) is concerned, which was relied upon by Goyal, J. for holding that the state of being a pensioner is not the state of being employed, it may be observed that that was a case in which question for interpretation that arose was whether entry 60 in the State List II of Seventh Schedule of the Constitution authorised enacting of a statute imposing profession tax. Their Lordships in that case held that a pensioner is not in employment, as the expression 'employment' used in entry 60 would refer to only present employment and that a pensioner is not in present employment.

(17) There can be no doubt about the fact that a pensioner in fact is not in the state of present employment unless the Legislature so declares him for certain purposes. The ratio of the aforesaid decision would not thus be applicable to the present case. The Legislature for the purposes of Income Tax Act has deemed the pension to be salary. Salary is received by a person who is in present employment and therefore the pensioner is to be treated, by virtue of the deeming provision in question, in present employment for the purposes of section 16(1) of the Act.

(18) No plausible argument is coming forth from the side of Revenue, nor one has been advanced by the learned Judge to counter the plea of the assessee that if pension was not to be treated as salary for the purpose of section 16(i), then why was it necessary to declare the pension to be salary in section 17 for the purposes of sections 15 and 16.

(19) In my view the only reason for declaring pension to be salary for the purposes of sections 15 and 16 is to enable the assessee to claim deductions permitted by section 16, for the Legislature was aware that a pensioner was likely to incur some expenditure in retrieving his pension, if he happens to be living away from the place from where he has to collect his pension.

(20) As a result of the Finance Act of 1980, the words 'expenditure incidental to employment' have been deleted. That means that the salaried people for the assessment year 1982-83 would not have to claim the deduction of given amount on account of expenditure incidental or in respect of employment. The given amount is to be allowed straightaway to such a person.

(21) Mr. Ashok Bhan, the learned counsel for the Revenue, drew my attention to the following passage from the speech of the Finance Minister:—

“At present, standard deduction in computing the salary income is not available in the case of pensioners. With a view to afford some relief to pensioners who are amongst the worst hit by the rise in prices, I propose to extend the benefit of standard deduction in their cases as well.”

and urged that the said speech made it clear that prior thereto the pensioners were not entitled to the standard deduction in terms of clause (i) of section 16.

(22) The aforesaid speech in my view only reflected the departmental interpretation of law which the department had circulated to its functionaries, and no more, whereas in fact the Income Tax Tribunals all over the country were by and large disagreeing with that interpretation and were allowing deductions and no decision of any High Court has been brought to my notice taking a view that the deductions of the kind were not to be allowed. In fact the learned counsel on both sides have stated at the Bar that to their knowledge no decided case of any High Court either in favour of the pensioners or the Revenue was there so far.

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(23) The view that I have taken with respect finds support from a judgment of the Karnataka High Court in *Commissioner of Income Tax v. K. Ramaiah* (7). The Karnataka High Court while interpreting the provisions of section 2 of the U.N. (Privileges and Immunities) Act, 1947 and section 18 clause (b) of Article V of the Schedule thereto, which granted exemption from income tax to salaries and emoluments paid by the United Nations to its officials, held that since under section 17 of the Income Tax Act, 1961, salary had been defined to include pension and if salary was exempt from tax, so shall be the pension. The Central Board of Direct Taxes in fact accepted the ratio of the said decision and intimated its decision in this regard by issuing Circular No. 293 dated 10th February, 1981 to the departmental authorities. Since the department, despite the aforesaid circular, had not withdrawn a reference pending in the Delhi High Court so, the said High Court answered the said reference in favour of the assessee-pensioner following the aforesaid decision of the Karnataka High Court (see in this regard *Commissioner of Income Tax, Delhi-1 v. Dr. P. L. Narula*) (8).

(24) In any case where two interpretations are possible in regard to a taxing statute, the judicial consensus favours the acceptance of the one that is in favour of the assessee.

(25) For the reasons aforementioned, I answer the question in the affirmative, i.e., in favour of the assessee, and against the Revenue. I allow Rs. 500 by way of costs to be paid by the Revenue.

H.S.B.

Before S. S. Sodhi, J.

SUNNY CHUGH AND OTHERS,—Appellants.

versus

DARSHAN LAL AND OTHERS,—Respondents.

First Appeal from Order No. 485 of 1979.

January 17, 1985.

Motor Vehicles Act (IV of 1939)—Section 110-B—Motor Accident leading to death of a young house wife—Claim petition filed by husband and minor children—Quantum of compensation in such cases—How to be determined—Principles for granting compensation—Stated.

(7) (1980) 126 I.T.R. 638.

(8) (1984) 150 I.T.R. 21.